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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

SHANNON PEREZ, ET AL, )  
Plaintiffs, )  
 ) No. SA:11-CV-360  
vs. )  
 ) San Antonio, Texas  
RICK PERRY, ET AL, )  
Defendants. )  
 ) September 14, 2011  
 )  
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VOLUME 8

TRANSCRIPT OF BENCH TRIAL

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

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18 Proceedings reported by stenotype, transcript produced by  
19 computer-aided transcription.  
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Chris Poage, RMR, CRR  
United States Court Reporter

1 (September 14, 2011, 8:01 a.m., open court)

2 MR. MATTAX: Good morning, Your Honor. As I  
3 mentioned yesterday, we took yesterday afternoon to discuss  
4 exhibits and depositions. And I'm happy to report that I have  
5 nothing for the Court to rule on, just to admit some things.  
6 So let me go through these slowly for the court reporter and  
7 explain what we're doing here.

8 There were two non-testifying experts whose reports  
9 will be admitted and whose depositions will be admitted.  
10 That's Susan Gonzalez Baker for the Latino Task Force and Todd  
11 Giberson for the State.

12 There is one expert, that is expert report 12, EX12,  
13 and that is Professor Burton who was not deposed. We do not  
14 object to the introduction of his report, subject to a  
15 deposition next week, with the Court's permission to do that.  
16 Right now, since there's no cross of him, he was not presented  
17 live, there's only one side to that report.

18 I am amenable, nevertheless, to having that  
19 conditionally admitted, subject to the ability of the State to  
20 cross and provide that cross. So with that understanding,  
21 we'll do that next week, I have no objection there.

22 Additional experts, as we discussed last week, that  
23 in order to streamline the cross-examination, we agreed that  
24 experts' depositions could be admitted. Those experts are John  
25 Alford, Stephen Ansolabehere, Anthony Fairfax, George Korbel,

1 Allen Lichtman, Ed Martin, Richard Murray and Bill Reeves.  
2 With that caveat with respect to Professor Burton, I would move  
3 that those non-testifying expert reports and those depositions  
4 be introduced into evidence.

5 MR. GARZA: No objection.

6 MS. PERALES: No objection, Your Honor.

7 JUDGE GARCIA: All right. They're in.

8 MR. MATTAX: In addition, as we discussed with the  
9 Court, in order to minimize the fact witnesses before the  
10 Court, those were streamlined. These following fact witnesses  
11 were deposed but did not appear at trial. We will move for  
12 their admission into evidence. Olivia Camarillo, Joey  
13 Cardenas, Baldomar Garza, Eddie Rodriguez, Marc Veasey, Celeste  
14 Villarreal. I move those depositions into evidence.

15 MS. PERALES: No objection, Your Honor.

16 MR. GARZA: No objection.

17 JUDGE GARCIA: All right. They're in.

18 MR. MATTAX: In addition, the plaintiffs requested  
19 that some of the State witnesses, even those who had testified,  
20 their depositions be admitted into evidence. There's no  
21 objection from the State. They are Jeff Archer, Doug Davis,  
22 Kel Seliger, Burt Solomons, Gerardo Interiano, Ryan Downton. I  
23 move those into evidence.

24 MS. PERALES: No objection from the plaintiffs, Your  
25 Honor.

1 MR. GARZA: No objection.

2 JUDGE GARCIA: All right. They're in.

3 MR. MATTAX: We have also agreed with the plaintiffs  
4 on some additional State's exhibits. I believe that the  
5 Court's notebooks now go up to D65. I disagree with Mr.  
6 Bledsoe on his final Exhibit D66. It's my understanding that  
7 there are no objections. And so I move State Exhibits D1  
8 through D66 into evidence.

9 JUDGE GARCIA: Any objections?

10 MR. GARZA: No objections, Your Honor.

11 MS. PERALES: No objection, Your Honor.

12 JUDGE GARCIA: All right. They're in.

13 MR. MATTAX: Then with respect to the question of  
14 argument, I know that that was discussed amongst the plaintiffs  
15 themselves. I'll let them speak for themselves.

16 One question I would have with the Court, as a  
17 general proposition I don't like divided argument, particularly  
18 in the context of oral argument. But Mr. Schenck and I have  
19 not had the opportunity to discuss this fully. We both did  
20 sort of separate parts of this trial, and I have some knowledge  
21 more than he does on the other. Would it -- would it be a  
22 problem with the Court if we try to do that, or should -- or  
23 would the Court prefer that only one person do it?

24 JUDGE SMITH: Dividing is okay.

25 JUDGE RODRIGUEZ: Dividing is fine.

1           MR. MATTAX: Thank you. Thank you. I think that  
2 might make it easier. I think that's all I have on  
3 housekeeping.

4           JUDGE RODRIGUEZ: While we're on the point of oral  
5 argument, we discussed amongst ourselves yesterday -- I'm sure  
6 my colleagues will chime in if I miss anything -- you all  
7 should anticipate questions from us. It would be helpful to us  
8 during your oral argument that you all provide us citations to  
9 specific documents or to specific portions of the transcript  
10 where appropriate. And just as we've done right now, there's  
11 been a number of things that have been entered into evidence  
12 but not been discussed in court. And so to the extent that you  
13 all are relying on those matters, please point that out  
14 specifically to us so we know that we need to turn to those  
15 things.

16           I'm not sure if I'm missing anything else.

17           JUDGE SMITH: Well, my only thought is, too, that  
18 everyone in this courtroom understands that these are hotly  
19 contested issues and there's a lot of emotion to it. They're  
20 important, and people feel very strongly. And I understand  
21 that, to some extent, closing argument will reflect that.

22           But it would really help the members of the Court if  
23 the focus is on the law and the facts, which I anticipate it  
24 will be, and that there won't be a lot of what I call -- when I  
25 give seminars and discussions about good oral argument, what I



1 say is to avoid what I call the wave-the-flag arguments that  
2 are designed to be reflected in the morning paper or on the six  
3 o'clock news but don't really assist the Court. And I'm saying  
4 this to both sides of the docket here.

5 So to the extent that that can be held to a minimum,  
6 I think the Court would appreciate it, and it would give us a  
7 better chance to focus on the things that we have to decide.

8 MR. SCHENCK: As a further point of housekeeping, I'm  
9 assuming -- or I've been assuming that we would probably be  
10 doing post-trial briefing as well?

11 JUDGE GARCIA: Yes.

12 MR. SCHENCK: And potentially the expectation if  
13 there are additional questions from the panel, possibly coming  
14 back down and having argument?

15 JUDGE GARCIA: Yes.

16 JUDGE SMITH: That's certainly correct. And I would  
17 anticipate that the post-trial briefing would need to be  
18 necessarily extensive.

19 JUDGE RODRIGUEZ: Yeah. But I'd say in post-trial  
20 briefing it's actually recommended findings of fact and  
21 conclusions of law with pinpoint citations to exhibits and  
22 transcript.

23 MR. GARZA: A couple of matters, Your Honor. First  
24 of all, with regard to the exhibits for plaintiff MALC, we've  
25 produced two additional exhibits yesterday, and we believe that

1 there's no objection. So just to be on the safe side, we would  
2 move the admission of Exhibits 1 through 87, plaintiff MALC's  
3 Exhibits 1 through 87.

4 JUDGE GARCIA: Any objection?

5 MR. MATTAX: No objection, subject to the raising  
6 relevancy and --

7 JUDGE GARCIA: All right. Admitted.

8 MR. GARZA: On the matter of the presentation of the  
9 oral argument, I discussed briefly with Ms. Prieto this morning  
10 that the order of the presentation would be the same as for the  
11 opening statements that we have, and that we would ask the  
12 Court to allow us 30 minutes per party for the presentation,  
13 which would mean about four and a half hours, if I'm counting  
14 correctly. And we would also ask for 30 minutes combined for  
15 rebuttal at the end of -- at the close of the State's argument.

16 JUDGE GARCIA: Thirty minutes might be too short of a  
17 time. Let's do 45. And if we ask too many questions, we'll  
18 just extend your time.

19 MR. GARZA: I appreciate that, Your Honor.

20 MR. MATTAX: I'm sorry. I forgot one thing, Your  
21 Honors. With respect to the proffers, another thing we  
22 discussed at trial to try to minimize the number of witnesses  
23 here was that some fact witnesses could be submitted by  
24 proffer. I know the plaintiff's been working on that. I think  
25 we should just set a deadline of Friday at, say, 5:00 p.m. for

1 any proffers to be here, or earlier if the Court would desire.  
2 And then I'll look at them and either do a counter-proffer or  
3 just ignore them or take a short deposition if I need to.

4 MR. GARZA: And plaintiff MALC has no objection  
5 to setting a Friday deadline.

6 JUDGE RODRIGUEZ: All right. Well, as opposed to  
7 Friday at 5:00, though, why don't we make it just by the end of  
8 closing arguments? That way, in case there's anything that  
9 needs to be brought to our attention, we're here and able to  
10 rule.

11 MR. GARZA: We can be ready with that, Your Honor.

12 MS. PERALES: No objection, Your Honor.

13 MR. MATTAX: Very good. Thank you, Your Honor.

14 MR. GARZA: And so I guess in relationship to the --  
15 has the Court thought of a timeframe for post-trial briefs? I  
16 think with the record that we have here we would prefer to have  
17 at least two weeks and maybe simultaneous filings, with then  
18 seven days for response briefs.

19 JUDGE SMITH: Well, of course, next week there will  
20 still be some things being added to the record, presumably. So  
21 would you be talking about two weeks from this Friday?

22 MR. GARZA: Two weeks from -- we would prefer two  
23 weeks from the close of evidence. So that may be Friday. If  
24 the -- if we make the proffers and there are no more  
25 depositions, then it would be -- the time line would begin on

1 Friday.

2 JUDGE RODRIGUEZ: Y'all want to chime in on that?

3 MR. MATTAX: You know, we're amenable to that. I  
4 mean, we'll just take -- what were you suggesting? Seven days  
5 after you file something or --

6 MR. GARZA: What I was suggesting is simultaneous  
7 filings by all the parties, plaintiffs and defendants, two  
8 weeks after the close of presentation of the evidence and then  
9 seven days for a response brief, if that's required.

10 JUDGE SMITH: Mr. Schenck had something to say.

11 MR. SCHENCK: Yeah. It dawned on me, having not done  
12 this for a couple of months, when we say defendants, we talking  
13 apostrophe s or s apostrophe? Because if we're responding to  
14 eight or nine briefs, it's really quite a handful. Do you  
15 think it's possible, Jose, that you guys could do some sort  
16 of -- no.

17 MR. MATTAX: Okay. So, basically, two weeks from  
18 close of evidence we both file something, and one week after  
19 for rebuttal?

20 JUDGE SMITH: For simultaneous rebuttal.

21 MR. GARZA: That's right.

22 JUDGE SMITH: So there'd be a total of four  
23 submissions?

24 MR. GARZA: That's right.

25 MR. MATTAX: That's agreeable.

1 JUDGE SMITH: I know. You have a lot to do.

2 MR. MATTAX: He has another trial, too, in another  
3 court.

4 MR. GARZA: And I believe that ends the housekeeping  
5 for the plaintiffs.

6 JUDGE GARCIA: All right. If the State will call its  
7 next witness.

8 MR. SCHENCK: Your Honor, we call Dr. John Alford.

9 THE CLERK: Please raise your right hand, sir.

10 (The oath was administered)

11 **DR. JOHN ALFORD, DEFENDANT'S WITNESS, SWORN**

12 **DIRECT EXAMINATION**

13 BY MR. SCHENCK:

14 Q. Good morning, Dr. Alford.

15 A. Good morning.

16 Q. How are you?

17 A. I'm good. I'm just trying to get my desk cleaned up here.

18 Q. Okay. Let me give you a second, and I'll grab my water.

19 Could you state your name for the record, please?

20 A. John Alford.

21 Q. Okay. Dr. Alford, where do you work?

22 A. At Rice University in Houston, Texas.

23 Q. Okay. What do you do at Rice?

24 A. I teach political science.

25 Q. And do you have a Ph.D.?

1 A. I have a Ph.D. in political science.

2 Q. Okay. And do you have any other postgraduate work?

3 A. I have a masters degree in public administration and a  
4 masters degree in political science.

5 Q. And I assume, having gotten those postgraduate degrees,  
6 you have a bachelors degree as well?

7 A. I have a bachelors degree from the -- actually, bachelor  
8 of science degree from the University of Houston in political  
9 science.

10 Q. Have you testified in redistricting cases before?

11 A. Yes.

12 Q. How many redistricting cases have you testified at?

13 A. Enough that I don't remember the exact number. Certainly  
14 more than 20.

15 Q. How long have you been testifying in redistricting cases?

16 A. About 25 years.

17 Q. Did you testify in the last round of Texas mid-decade  
18 congressional redistricting?

19 A. Yes, I think in most of that last round, if not all.

20 Q. Did you file a report in this case addressing racially  
21 polarized voting and the application of the so-called Gingles  
22 preconditions in the Texas congressional and house maps?

23 A. Yes, I did.

24 MR. SCHENCK: Your Honor, we would -- I believe we  
25 already moved the admission of the original and the

1 supplemental report. We would proffer Dr. Alford as an expert  
2 at this time, unless there are any objections.

3 MS. PERALES: No objections, Your Honor.

4 JUDGE GARCIA: All right.

5 BY MR. SCHENCK:

6 Q. Let's start with some terminology in racially polarized  
7 voting analysis. What is your understanding of a minority  
8 candidate of choice?

9 A. A candidate of choice, or preferred candidate, is just the  
10 candidate that gets the majority, or plurality, in a three-way  
11 race of the minority votes. So in a two-person contest the  
12 person who gets 50 percent plus one votes is the candidate of  
13 choice.

14 Q. Okay. Is that a distinct concept from cohesion?

15 A. That makes it fairly clear that it's, I think, distinct  
16 from cohesion. 50 percent plus one is not exactly cohesion,  
17 but it does label that person the candidate of choice.

18 Q. Can you help me to understand what bloc voting is as it  
19 relates to polarization in voting discrimination claims?

20 A. Well, I think that it's both -- there's obviously a  
21 legal -- what's sometimes called legally significant polarized  
22 voting. And I'm not going to try to define that. But  
23 certainly, the notion of polarization or the notion of bloc  
24 voting suggests something quite different from just voting for  
25 a candidate of choice.

1           Any time you vote in a two party election, there's  
2 going to be a candidate of choice. That happens automatically.  
3 The question of polarization in bloc vetoing is sort of how  
4 unanimous is that decision? And I think when we think about  
5 polarization, in sort of definitional sense, we're talking  
6 about polar opposites.

7           So I guess the first picture of polarization would  
8 be when all of one group votes for a single candidate. So all  
9 votes are for Candidate A and no votes for Candidate B, you're  
10 at one pole. And then you sort of -- if you vote all for the  
11 opposite candidate, you're at the other pole. And in the  
12 middle the 50 -- where that 50 plus one is, is sort of the  
13 equator.

14           And so when we're talking about -- in  
15 polarization, where -- the language of polarization is a notion  
16 of things -- as we say, the parties are more polarized today  
17 than they were 20 years ago, we mean they've moved closer to  
18 extreme positions from each other, not just that they have  
19 different positions. So I think it's important to separate  
20 voting differently from polarization, which suggests that we're  
21 closer to basically unanimous voting.

22           And then if we think about sort of a one side of  
23 polarization, particularly the majority side of polarization,  
24 there we're looking at what's called bloc voting. So when we  
25 talk about majority bloc voting to defeat candidates of choice,



1 it's not just majority voting. It's majority bloc voting. And  
2 I think, again, when we talk about bloc voting, we're talking  
3 about voting as a bloc. So, again, we're talking about  
4 something that fits in with that notion of polarization, which  
5 is that we're talking about relatively extreme differences and  
6 relatively unanimous voting behavior on the part of either  
7 minority groups or majority groups.

8 Q. You're familiar with the so-called Gingles preconditions.  
9 I believe you addressed that in your report?

10 A. Yes.

11 Q. Can you tell me what a multimember -- or tell the Court  
12 what a multimember district is?

13 A. The multimember -- there are a lot of different things  
14 that can happen in a multimember district. But traditionally,  
15 in the United States a multimember district is some variation  
16 of what we call at-large system. And so you have multiple  
17 candidates running. If you're running that in a true, full  
18 at-large system where you don't have other kinds of features  
19 involved, it's a system that basically allows whatever the  
20 majority sentiment is to control all of the -- all the seats in  
21 that system.

22 So there are other things you can put in place  
23 that would reduce that. But a simple, traditional, multimember  
24 system is a system that allows a simple majority to have not  
25 just a simple majority of seats but to have all the seats.

1 Q. Do multimember districts present -- are they more  
2 problematic in terms of the risks of vote dilution if there's  
3 racially polarized voting?

4 A. That's really where we start. And I think it's the --  
5 both dealing with multimember districts and the -- sort of what  
6 motivated the Voting Rights Act is that notion that if you --  
7 in a system in which you have a full at-large, you have the  
8 potential -- you have the potential not simply to have less  
9 representation than a majority group. You have the potential  
10 of being completely shut out of the political process, in two  
11 senses.

12           You're shut out of the process in the sense that  
13 you don't get to elect any candidates of choice. So what we'll  
14 typically see, as we did across the South when you had at-large  
15 elections predominantly -- which, by the way, were the result  
16 of the progressive movement, not -- they fortuitously, for the  
17 elites of that time, also allowed you to shut out racial  
18 representation. But it's often the case in these areas, there  
19 was more than simply that going on.

20           But in any case, you can effectively shut out any  
21 opportunity for minority representation, which means you will  
22 not have any minorities who actually serve as representatives.  
23 So you won't have minorities on city councils, on school boards  
24 or in legislatures.

25           But in addition, because you've set this up as a

1 structure in which the majority basically dominates that  
2 process by voting in a cohesive fashion, the -- basically, the  
3 policies of the majority are not necessarily responsive and may  
4 even be hostile to the interests of minorities.

5 Q. Well, let's talk about that. If we have racially  
6 polarized voting in a multimember district scheme, would the  
7 candidates for office have an interest in actually disserving  
8 and abusing a minority population that's interests are not  
9 aligned with the majority population, both of which would be  
10 voting on the basis of race?

11 A. I guess if we think about -- I mean, I think that's  
12 largely true. And I think probably the easiest way to think  
13 about that is just to -- is to set aside race for a moment and  
14 think about party.

15 So if we had at-large elections in Texas, the  
16 Republicans would control the entire legislature, and their  
17 interests would be antithetical to Democratic voters. And they  
18 might actually -- I don't mean to cast no aspersions here, but  
19 they might actually undertake things that Democrats wouldn't be  
20 happy with.

21 Q. And did we see that -- in the South when we had  
22 multimember districts and typically one party elections, did we  
23 see a lot of -- before the Voting Rights Act -- a lot of  
24 running for office on the basis of exploiting racial  
25 polarization in the electorate?

1 A. Yes. Certainly. And you -- and again, this occurs --  
2 however you structure that, you're going to encourage, or  
3 certainly not discourage, that kind of behavior. So if you  
4 structure an election system to allow the majority to dominate  
5 the entire election system, then making an appeal in which you  
6 indicate that you're a part of the majority would be  
7 advantageous.

8           Just as if there was no racial issue at all in a  
9 state and you were having at-large elections, and the majority  
10 party was the Democratic party, it would be important to  
11 include the word "Democrat" on your yard sign. On the other  
12 hand, if you were a Republican in that situation, probably not  
13 want to include the word "Republican." So you would be -- it  
14 would be in the interest of the majority to play up what makes  
15 up the majority. It would be in the interest of the  
16 minority -- the minority would not have the same chance to play  
17 up whatever the opposite character is.

18 Q. I've been learning a lot about election law the last few  
19 months. It was surprising to me to learn, but are you familiar  
20 with the historical process by which the states have selected  
21 their delegations for Congress and how recently some states  
22 have been electing their members of their congressional  
23 delegations at-large?

24 A. Yes. Traditionally, there have, I think almost always,  
25 been at least some states that elect members at-large. It's

1 not uncommon for small states, particularly states that move  
2 from one representative to two representatives, to elect the  
3 two representatives at-large.

4           And historically there have been several cases in  
5 which states were given additional districts, and I think  
6 understandably chose not to redraw their map in order to plug  
7 in those new districts but take the easy route and just make  
8 those new districts at-large.

9           So Texas, for example, in early era with the  
10 addition of four districts might have just left the 32  
11 districts as they were and elected an additional four at-large  
12 members of Congress.

13 Q.   Okay. We have quite a few expert reports that have been  
14 filed in this case.

15 A.   I think that my rough count was that I reviewed something  
16 in excess of 12,000 pages of documents, reports, data.

17 Q.   With one exception, is it fair to say that we're seeing  
18 pretty consistent trends in terms of the numbers as they relate  
19 to cohesion?

20 A.   Certainly, the -- one of the things I find interesting and  
21 heartening is that virtually all of the analysis, and there's a  
22 lot of it, that looks at -- makes an attempt to analyze the  
23 degree of racially polarized voting not only covers all of the  
24 methods that are usually used in one place or another, but both  
25 in the methods -- across the methods and across the experts

1 reaches conclusions that are, at least for the Court's purpose,  
2 essentially the same.

3           So the factual information that comes out of this  
4 analysis doesn't change substantively as we move across those  
5 different experts or different methods. And so the -- the  
6 issue, as always, is what's the meaning of those facts in the  
7 context of the law? And that's, appropriately, the Court's  
8 decision.

9           But we don't have here the case in which one  
10 expert is asserting one fact pattern and another fact pattern.

11           Now, the experts do disagree about what their fact  
12 pattern means. But their -- if you actually look at the  
13 results, the results are not typically different, or if they  
14 are different, are understandably different given different  
15 focuses of geography.

16 Q.   Okay. Let's turn now to your Table T -- your Table 1.

17           JUDGE GARCIA: What volume is that in?

18           MR. SCHENCK: That is in Exhibit 55, which was  
19 introduced and admitted yesterday.

20           JUDGE GARCIA: In Volume -- which one?

21           MR. SCHENCK: The supplemental -- Kathy, what volume  
22 is Dr. Alford's supplemental --

23           MS. MORRIS: It is number 55.

24           MR. SCHENCK: And what volume?

25           MS. MORRIS: 14.

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

2 JUDGE GARCIA: All right. And which exhibit number?

3 MS. MORRIS: 55.

4 MR. SCHENCK: 55.

5 JUDGE GARCIA: 55.

6 BY MR. SCHENCK:

7 Q. Dr. Alford, before we get into the data here, I think --  
8 have you identified a typographical error?

9 A. I have. As I said earlier, all of the experts share  
10 basically the same fact pattern, including a typographical  
11 error at someplace in their report or their chart. So I didn't  
12 want to be left out.

13 So if we go to the bottom of the table -- I may --  
14 I may need a pointer. In any case, if we go to the bottom of  
15 the table, and at the very bottom of the table there are some  
16 figures that represent just simple averages, summing up  
17 information.

18 And if you look all the way to the left, the third  
19 row from the bottom, you'll see the numbers 62, 93 and 28, that  
20 would, given their position on the table, suggest they are the  
21 mean of Democratic primary votes for Hispanic candidates in the  
22 exit polls. There are no Hispanic candidates in the primary  
23 exit polls.

24 And that set of numbers is actually, simply, a  
25 duplication of the numbers at the bottom of the table, 62, 93,

1 28, that are appropriately the mean for non-Hispanic Democrats  
2 in the election -- or in the exit poll analysis. So the top  
3 row of 62, 93, 28 in that bottom, right corner should just be  
4 exed out. There should be no information in those positions at  
5 all.

6 JUDGE SMITH: Mark them out in all three columns?

7 THE WITNESS: Yes, all three columns.

8 BY MR. SCHENCK:

9 Q. So if I were to take a Marks-A-Lot --

10 A. Don't do that?

11 Q. -- on this big screen, I would just strike this column out  
12 as an inadvertent duplication of this?

13 A. Yes. So that is actually a row. It's not a column. It's  
14 a part of a row. So you have those three numbers in that row  
15 that are -- should not be there at all.

16 Q. Okay. Thank you for the clarification.

17 So Dr. Alford, you have quite a bit of collected  
18 data from the experts and other sources here. Can you explain  
19 to the Court what you're focusing on in this table? You don't  
20 have every expert and every piece of data in here. What was  
21 your intention in choosing these data sets for the Court?

22 A. As I indicated in my initial report, the idea was to try  
23 to get as -- to make as clear as possible what it is that  
24 everyone agrees on so that it's not a constant matter of moving  
25 between reports. So that means you're going to put a lot of



1 information in the table. If the table was completely  
2 comprehensive, it would be too large to serve that purpose.  
3 There would be too much in there.

4 The other purpose was to highlight that there are  
5 choices of area, of geography or methods that might typically  
6 be either more useful for some purpose or possibly more stable  
7 in terms of their value as estimates.

8 And so the first thing I tried to do was to focus  
9 on a set of results that had reasonably wide coverage and that  
10 utilized fairly ideal methods. There is really no ideal method  
11 of ecological inference. It's a fixed data puzzle. But the  
12 expert report that I identified that sort of did the best job  
13 of covering geography and using the best methodology was Dr.  
14 Engstrom's. So the table actually is built entirely around  
15 providing a summary report of what, in Dr. Engstrom's report,  
16 takes up multiple tables.

17 Q. Now, we heard a lot about the various methodologies in  
18 terms of ecological inference, ecological regression,  
19 homogeneous precinct analysis. I don't want to replot all that  
20 ground from the experts but -- from the other experts. But is  
21 it your understanding that the methods here are basically  
22 consistent with methods that experts, such as yourself, would  
23 use in cases like this?

24 A. Yes. There are really only two source -- first of all,  
25 it's -- I think it's unfortunate that EI, which is ecological

1 inference as a technique, is called ecological inference, since  
2 all of the techniques are techniques of ecological inference,  
3 and sort of all attempts to infer something about individual  
4 behavior from data that's available only at the group level.  
5 So that's all ecological inference is, is if you have group  
6 level data, what can you infer about individuals?

7           And so there are a variety of methods that  
8 basically fall, if you want to think of them as different, into  
9 two camps. One is to try to make sense of it by understanding  
10 what are the sort of possibilities given the numbers of people  
11 and the distribution of information in that group. And these  
12 are sometimes called methods of bounds.

13           And in terms of EI, the actual ecological  
14 inference methodology developed by Professor King, is a method  
15 that takes advantage of bounds. But the earliest method of  
16 doing ecological inference also is a bounds method. And that  
17 is homogeneous precincts.

18           So you think about what we're doing in homogeneous  
19 precincts. We have precinct level data on elections. Then we  
20 want to try to understand how -- say, we want to understand how  
21 blacks versus Hispanics vote in particular precincts, but all  
22 we have is aggregated data. And so we have a precinct -- we  
23 know a precinct is half -- in terms of registered voters, for  
24 example, might be half Hispanic and the remainder non-Hispanic.  
25 We have an election result in which 50 percent of the vote goes

1 for one candidate, 50 for another. We'd like to find out  
2 how -- in this case how Hispanics are voting.

3           What we can see from a bounds method there is that  
4 because 50 percent of the voters are Hispanic, they might have  
5 cast -- they might have been the 50 percent that voted for the  
6 Republican candidate, or they might be the 50 percent that  
7 voted for the Democratic candidate. So really, that precinct,  
8 as nice a precinct as it is, doesn't provide us any information  
9 at all at the bounds level. It happens not to provide us much  
10 information in general.

11           So if we looked at another precinct that was -- in  
12 which all the voters who turned out were Hispanic, there the  
13 bounds, what we know might be true, would tell us a great deal.  
14 It would tell us exactly how Hispanics, in a unanimously  
15 Hispanic precinct, voted.

16           So homogeneous precinct analysis simply takes the  
17 fact that at the extremes of composition in a precinct, that is  
18 basically all of one group -- we actually know something. And  
19 then, as you might guess, as we move down from that, we still  
20 know something. We may not know everything, but we still know  
21 something. So as we move to a precinct that is 90 percent one  
22 group or another, depending on the election result,  
23 particularly the election result is variable across those types  
24 of precincts, we can learn something there as well. The  
25 further we move from a hundred percent of one group, the less

1 useful that is.

2 Q. Well, I've noticed in some of the reports -- for instance,  
3 even Dr. Engstrom's ecological inference reports -- we see some  
4 numbers, hundreds and zeros. Is it the case that -- that  
5 doesn't necessarily mean that the data's not useful, but is it  
6 an indication, for instance, that we're looking at a very small  
7 group of, for instance, Hispanic voters in a very heavily Anglo  
8 cohort that you're analyzing?

9 A. Well, I mean, that's -- it's not an unusual result in a  
10 ecological regression. So if we think about how we move from  
11 homogeneous precincts to taking advantage of information that  
12 exists in all of the precincts in an election, the way we do  
13 that is through something called ecological regression.

14 And because of a variety of characteristics of a  
15 kind of unaugmented ecological regression, there is the  
16 potential for it to violate bounds. There's the potential for  
17 it to indicate that cohesion is above a hundred percent or that  
18 voting is below zero percent, the inverse of that. It  
19 doesn't -- it obviously doesn't mean that it's expecting that  
20 to actually happen. It can be a result of small numbers. It's  
21 more commonly a result of the way in which the vote is  
22 distributed.

23 So the distribution of vote across precincts --  
24 the variation across precincts is really more important to the  
25 quality of the estimate than the numbers themselves. You can

1 have a fairly small number of voters in each precinct. But if  
2 it's distributed nicely -- so if 20 percent of the population  
3 is in one racial group, the distribution of that across -- the  
4 variability of that across precincts is more important than  
5 simply the 20 percent.

6 But even in a -- in a regression estimate in which  
7 you do a variety of things to help reduce that, so there are  
8 improved regression technologies -- or in an ecological  
9 inference estimate in which it's not possible for that to  
10 happen, not possible for it to exceed a hundred or go below  
11 zero. You still will see estimates that are essentially at --  
12 you'll see an EI estimate of 99.9 percent or .001, suggesting  
13 that you have a very, very extreme result there based on the  
14 estimate.

15 And in neither that case or in the case of a  
16 regression estimate for the same data set that might show 110  
17 percent, a negative five percent, neither of those is a  
18 suggestion or an absolute evidence that you have unanimous  
19 voting one way or another. But they -- it's -- there can be a  
20 tendency, when vote data is not nicely distributed across  
21 precincts, to get results that are a little more extreme than  
22 they probably are in the real world.

23 Q. Okay. Well, thank you. Let's start now by looking at  
24 your Table 1. Let's talk about tendencies, without first  
25 trying to explain the cause, in the general election. Let's

1 look at 2010 general election data. What are we looking at  
2 here, Dr. Alford?

3 A. All right. So this puts us in the first panel of rows  
4 going across. These are all races in the 2000 general election  
5 in Texas. And so because they're statewide races, they are  
6 available to us in any geography that we want in the state.  
7 And because they're top of the ballot races, we have some  
8 confidence that we're getting most of the turned out vote  
9 actually participating. And the numbers are simply percentages  
10 for that particular column in that particular race.

11 So, for example, if we look in the center column,  
12 which is simply a simple mean of Professor Engstrom's estimates  
13 across his five counties -- and if we look at -- under the  
14 multivariate CVAP category, this would be a multivariate  
15 ecological inference estimate using citizen voting age  
16 population. So we have the proportions for Hispanic, for Black  
17 and for the remainder, others, which would be Anglos and small  
18 proportion Asian.

19 And if we looked under Black, for example, the 94  
20 under Black, that first 94 indicates that his estimate for the  
21 five counties on average was 94 percent of Black voters cast  
22 their vote in the lieutenant governor's race for the Democratic  
23 candidate, Chavez-Thompson.

24 Q. And what do we see with respect to Hispanic cohesion in  
25 the 2010 -- before we go to Hispanic cohesion, is that level of

1 90 plus percent African-American cohesion consistent with what  
2 you would see -- or what you have seen historically in the  
3 South?

4 A. It's consistent with --

5 Q. In the United States?

6 A. It's basically consistent across time and across place.  
7 That's -- no one is surprised, I would think, who does this  
8 analysis to find that kind of a number. So voting cohesion  
9 among Black voters is high. We have 94 and 94. There's a  
10 three there we'll talk about later and a 97. Those are all  
11 essentially the same numbers. So we're looking at mid-90s --  
12 low to mid-90s cohesion. And that's the kind of cohesion that  
13 was present in the case in which the Gingles standards are  
14 derived from.

15 We see it in the rest of this analysis. You can  
16 see it everywhere in the state. You see it in -- regardless of  
17 the nature of the contest or the region of the state. That's  
18 a --

19 Q. When we were talking earlier about bloc voting and  
20 polarization, would that be consistent with what you would  
21 consider bloc voting and perhaps one-half of polarization?

22 A. It is consistent with bloc voting on the part of blacks.  
23 And it -- if you had similar levels in a majority group, it  
24 would be consistent with polarization.

25 Q. Now let's take a look at the Hispanic cohesion numbers in

1 the 2010 general election. We have five counties that Dr.  
2 Engstrom analyzed. What do they show?

3 A. The Hispanic cohesion -- so we move over in the  
4 multivariate. And Hispanic cohesion we see 82, 84. We'll skip  
5 the 18. You see 83. So these are averages. And then we can  
6 think about averaging the averages. That's 83. So we're  
7 looking here at maybe low 80s cohesion in these five urban  
8 counties, so something that's a little -- maybe a little bit  
9 more than ten points below the level of cohesion for blacks.

10 There's also another column for Hispanic, which is  
11 a separate bivariate estimate that Professor Engstrom does.  
12 And he features both of those in his tables. Originally he  
13 featured them in separate tables. And in his rebuttal report  
14 he put them in the same table. And so -- just so that all that  
15 information would be there, they're both there.

16 They show slightly higher. But I think, again,  
17 looking at both, they suggest something in the mid-80s as a  
18 level of cohesion for Hispanic voters in voting for -- in the  
19 three elections that we're looking at.

20 Q. How does the Hispanic number compare to other statewide  
21 numbers that we see for 2010?

22 A. Well, that's -- as much as I like Engstrom's methodology,  
23 the limitation of Engstrom's analysis is that, ultimately, we  
24 would like to know something, I think, about how things are  
25 working in a broader area than in the five counties.



1           To be fair, he also does some counties in the  
2 Valley, which is useful information. But there's sort of a  
3 limit to what we can get in the tables. So he does not include  
4 any statewide analysis, and he doesn't analyze any races in  
5 which there is not an Hispanic candidate. So it's somewhat  
6 focused.

7           My understanding is that -- he testified that  
8 that's what he was told to do, and that's what he did. So I  
9 appreciate that. But there -- there -- other experts have  
10 done -- taken sort of a broader look, and I think that's a  
11 useful thing to do.

12           And what we see there -- we can move over to the  
13 right to Kousser's analysis. Kousser does an EI bivariate  
14 statewide on SSRV, so something very similar to what Engstrom  
15 is doing in the five counties. And there you'll see that the  
16 cohesion numbers of 71, 74, and then skipping to 72, suggest  
17 that in 2010 statewide Hispanic cohesion is maybe in the low to  
18 mid-70s.

19 Q. And we'll explore that in a little -- little more later  
20 on. Let me also ask -- before we leave 2010, in the general  
21 election, what do the data show with respect to Anglo cohesion  
22 in the races that Dr. Engstrom analyzed?

23 A. That would be his other column which is predominated by  
24 Anglos but would also include -- the only other notable  
25 proportion of that population would be a small proportion

1 Asian. And there we see cohesion in the -- 21, 21 and then  
2 skipping to 27. Something that looks like it's -- that would  
3 be -- so this is crossover. This is such -- with the Anglo  
4 vote for Hispanic candidate. And so that would be a crossover  
5 vote of somewhere in the 20 to 25 percent range. And so if we  
6 think about the reverse of that, how cohesive -- it's cohesion  
7 in the -- up in the 70 to 75 percent range.

8 Q. Now, at the bottom of your Table T1 you have some averages  
9 that you put together.

10 John, can you scroll down for us at the bottom?

11 What do those show with respect to the general  
12 election?

13 A. So the -- that would be the third line, the general  
14 election mean for Hispanic Democrats. And again, if we move  
15 over into Engstrom's table there, across these elections we see  
16 the -- if we look, first, at the other category, 26 percent.  
17 So again, that -- about 25 percent of Anglos are crossing over,  
18 or looked at the other way, 75 percent of Anglos are voting --  
19 are not voting for the Hispanic Democrat.

20 The 94 is a number we've become familiar with.  
21 That's the number for Black cohesion, and that's very solid  
22 across the analysis. We have an 87 there. So we're moving up  
23 a bit when we average in 2008, particularly. So that's the  
24 Hispanic cohesion number.

25 Q. Now let me take you back up to the top. We had -- we were

1 talking a moment ago about some inconsistency between Dr.  
2 Engstrom's five counties and Dr. Kousser's averages. You've  
3 got some exit poll data as well. What does the exit poll  
4 suggest to you?

5 A. Well, in 2010 the only exit poll we have available -- and  
6 this exit poll data, by the way, is essentially the exit poll  
7 data -- the CNN exit poll data that Dr. Murray has in his  
8 report, with the exception of this one additional exit poll,  
9 one that he didn't include, that I included.

10 But the exit -- we don't have any exit poll data  
11 for the races that Engstrom was looking at, which are top of  
12 the ballot races but not top, top of the ballot. So national  
13 polling organizations typically don't poll on lieutenant  
14 governor or land commissioner.

15 So what we have is a poll on the governor's race.  
16 This is Bill White versus Governor Perry. And there we see, if  
17 we look first at the Anglo -- for example, Anglo vote there is  
18 29 percent. That's -- if you think about sort of the statewide  
19 numbers or even the five county numbers, that's in basically  
20 the same range we were talking about where the Anglo voting is,  
21 and this crossover voting is around 25 percent. Here it's 29  
22 percent. But I'm not -- I don't think that's necessarily  
23 substantively different.

24 Black voted 88 percent. This may be a little bit  
25 below what we were seeing in some of the other races. But

1 again, it's, you know, high.

2           And then Hispanic voting for governor wide is  
3 estimated at 61 percent. So it is certainly lower than what we  
4 see in the statewide ecological inference analysis. But  
5 it's -- I don't think it's -- you know, it's basically not in a  
6 completely different category.

7           So if we -- one important thing about -- two  
8 important things about exit polls. First of all, exit polls  
9 are not methods of ecological inference. So exit polls don't  
10 take aggregates or groups and try to infer individual  
11 characteristics. They talk to individuals and match individual  
12 characteristics to individual votes.

13           So the ideal exit poll would be an exit poll in  
14 which I was allowed to ask somebody going into the poll what  
15 they considered their race or ethnicity to be. And then the  
16 county would give me the actual ballot that they marked, or in  
17 the case of an electronic, would give me access to that.

18           And as far-fetched as that seems, it's not  
19 impossible and I think may eventually be done. There are ways  
20 to do that, particularly with the electronic voting, which  
21 would never allow you to connect the vote to the individual,  
22 only to connect the individual's race and ethnicity to the  
23 vote.

24           But in any case we're not typically allowed to do  
25 that. So what, in an exit poll, you do is you stand outside

1 the polls. When people come out, you ask them about their  
2 self-identified race and ethnicity as well as some other  
3 things. You hand them a ballot card that is the part of the  
4 ballot you want to know about and ask them to mark how it was  
5 they voted.

6           So it does -- when this says 61 percent of  
7 Hispanics, it's not an attempt to estimate what Hispanics are  
8 doing based on heavily Hispanic precincts, for example. It  
9 means that in that poll 61 percent of the people who identified  
10 themselves Hispanic also indicated that they voted for Bill  
11 White in that election.

12 Q. If we look down in the 2008 general election, you also --  
13 general election data there, is it consistent with -- I'm  
14 sorry. Scroll down a little further, John. Not down, up. So  
15 we can see the exit polls from 2010 and 2008. Do we see fairly  
16 consistent levels of cohesion with the 2010 voting?

17 A. Yes. So if we look at the first exit poll in the 2008  
18 election, that's the presidential vote. So that's  
19 McCain/Obama. And if we look at the Black cohesion at 96  
20 percent, one thing you might say is, well, of course, Black  
21 cohesion is 96 percent because Obama is black, so vote for  
22 Obama would be high. But, of course, that 96 percent really is  
23 -- that looks like Black cohesion generally.

24           You'll see the 26 percent Anglo vote for Obama  
25 looks like the number we've been seeing for a lot of Anglo

1 vote. And then the 63 percent vote for Obama among Hispanics  
2 looks a lot like what we saw for the governor's race.

3 Now, fortunately, in 2008 we also have the  
4 senatorial race, so we have an exit poll here that actually  
5 matches data for which we have EI analysis in Engstrom's  
6 analysis, for example. So there you'll see that in that  
7 senatorial race where Noriega is the Democratic candidate, 27  
8 percent. So, again, we're looking that number sort of in the  
9 mid to high 20s for crossover vote. Black cohesion is 89  
10 percent. May be a little bit below cohesion for Obama, but  
11 still in that sort of 90 percent range.

12 And then Hispanic vote for Noriega at 61 percent,  
13 partially identical to Hispanic vote for Obama and Hispanic  
14 vote for Governor White.

15 Q. Is it fair to say that the exit polls are consistent with  
16 the social science methods in predicting voting behavior among  
17 Anglos and Blacks, but perhaps somewhat less so with respect to  
18 the data as Dr. Engstrom has analyzed it with respect to  
19 Hispanics?

20 A. I mean, that's the real value of having the Noriega race,  
21 is that we can look across into the center there, and we can  
22 see Dr. Engstrom's -- and I don't want to suggest that this is  
23 Dr. -- a problem with Dr. Engstrom's analysis or a value of it,  
24 because we see exactly the same thing in our own statewide.

25 So what we see there for -- again, for Anglos in

1 the exit poll, we saw 27 percent supporting Noriega. In  
2 Professor Engstrom's analysis we see 30 percent supporting  
3 Noriega. So those numbers are very close to each other. They  
4 are certainly -- they're -- if you think about their confidence  
5 intervals, basically cross each other. So we would look at  
6 both of those numbers and say they're essentially telling us  
7 the same thing. They're something in the high 20s of --  
8 Anglos are crossing over to vote for Noriega.

9           If we look at the estimate for Blacks, the exit  
10 poll 89 and Dr. Engstrom's average of 93, those are, again,  
11 essentially the same number. Those are 90 plus level of  
12 cohesion among Black voters. So we're seeing -- in what are  
13 very different methodologies we're seeing essentially the same  
14 result.

15           When we move to the Hispanic column, you'll see  
16 that the exit poll estimate is 61 percent. Dr. Engstrom's  
17 estimate is 89 percent in the multivariate, 91 percent in the  
18 bivariate. And then if you move over to our estimate  
19 statewide, it's 83 percent. And I think that's important that  
20 our estimate statewide tells you that this is not a function of  
21 something Dr. Engstrom did wrong, unless we did it wrong, too.  
22 And it's also not just a function of the fact that Dr. Engstrom  
23 in this part of the analysis was focusing only on urban  
24 counties. Because when we estimate statewide, while we do get  
25 a lower estimate for cohesion statewide -- and I haven't

1 mentioned why that might be. But I think if you think about  
2 that, if we think about how -- how likely Hispanics are to vote  
3 Democrat, or for a Democrat, in this case Noriega, across the  
4 state, we might suspect that they would be more likely to vote  
5 Democratic in one of the five urban counties, as are Anglos in  
6 the five urban counties and Hispanics in the five urban  
7 counties. Whereas, when we take the whole state, we think that  
8 might come down a little bit. And that's exactly what we see.

9           Nonetheless, we're left with a fairly large gap  
10 from the estimation method and the self-report method.

11 Q. You mean a large gap with respect to Hispanic cohesion?

12 A. Yes. And again, it would be easy to suggest that  
13 basically this means that one of these two methods isn't any  
14 good. And I don't think that's the appropriate conclusion. So  
15 depending on which of those numbers you like, you might be  
16 tempted to say, well, exit polls, that's the real deal. That's  
17 not -- we're not trying to infer anything. Let's just go on  
18 the basis of exit polls.

19           And on the other hand, if you like the number in  
20 ecological inference, you might have some things to say about  
21 the quality of exit polling.

22           What I think is important there is that if this  
23 case were about the behavior of Black voters, there would be no  
24 argument at all about whether we should use ecological  
25 inference or exit polls. They tell us exactly the same thing.



1 If the focus of the case is on what Anglo voters are doing,  
2 they tell us exactly the same thing.

3 The only issue is that they don't tell us the same  
4 thing when we look at Hispanic voters. So what that tells us  
5 is that it may be harder -- this is what I think. I don't  
6 think it tells us that either one of those is necessarily the  
7 right answer, but is either the 60 percent or the 70 percent --  
8 there were 70 plus percent you see in 2010 or the 80 percent in  
9 2008 -- that necessarily that any one of those is the right  
10 answer, but that maybe for Hispanic voters the notion of a  
11 right answer or sort of a one size fits all is maybe not as  
12 appropriate.

13 Q. Let me ask you, you referred a minute ago to Dr. Murray's  
14 report. And I noticed neither he or Dr. Ansolabehere's  
15 analysis are on that report -- or on our table here.

16 MR. SCHENCK: Your Honor, permission to approach?

17 JUDGE GARCIA: Yes. Of course.

18 BY MR. SCHENCK:

19 Q. I'm going to hand you what I believe is Dr. Murray's  
20 report, Pages 17 and 20. Is that what you're referring to with  
21 respect to Dr. Murray's conclusions? Could you read into the  
22 record?

23 A. Just in the middle of this last paragraph on Page 17 he  
24 said, "And with the rise of the extreme right in the 21st  
25 century the State's majority party seems hell-bent on driving

1 Hispanics, who have traditionally given about a third of their  
2 votes to GOP candidates, in the same direction."

3 Q. And did he also look at exit polling on Page 20?

4 A. Yes. So from the paragraph at the bottom of Page 20 he  
5 says, "These homogeneous precinct data confirm the statewide  
6 exit poll from 2008 that showed that black voters in Texas  
7 supported is Barack Obama by a margin of 98 percent to 2 and  
8 Hispanic voters favored the Illinois senator by a margin of 63  
9 to 35. Anglos supported Senator McCain by a 73 to 26 margin."

10 Q. So is it fair to say Dr. Murray -- and by the way, Dr.  
11 Murray does live in Texas?

12 A. Dr. Murray knows more about Texas elections I think than  
13 probably anybody else living in Texas. He is an incredible  
14 repository of information. My first course in political  
15 science was from Dr. Murray. So he's -- as long as I've been  
16 thinking about politics in Texas, he's been a little bit ahead  
17 of me in thinking about politics in Texas. We don't agree  
18 about everything. But you could -- you could do worse than pay  
19 careful attention to what Dr. Murray has to say.

20 Q. So when he says Hispanic cohesion is in the 60 percent  
21 range, you wouldn't have reason to disagree with him?

22 A. Again, that's what his homogeneous precinct on the exit  
23 polls show.

24 Now, I think we disagree about the value of a  
25 homogeneous precinct analysis that's based on what I think

1 are -- upon recollection is about four precincts somewhere in  
2 Harris County. And so I don't know as much about Texas  
3 politics as Dr. Murray, so I'd be hesitant to talk about voters  
4 in the entire State of Texas based on four Hispanic precincts  
5 in Harris County. But Dr. Murray has a little more confidence  
6 about what these things mean. He does look at the exit polls  
7 to offer some confirmation of that.

8           So I guess what I'm getting -- what I'm deriving  
9 from that is not -- or what I'm trying to assert is that,  
10 therefore, that's the right number. What I'm trying to assert  
11 is that this range of numbers we're seeing here is well within  
12 the range of what people who know something about Texas  
13 politics or poll in Texas politics would expect to be true. I  
14 think most people would probably think --

15 Q. That would include -- that would include you, wouldn't it?

16 A. That would include me. So I think that's --

17 Q. And for the record you live in Houston?

18 A. Let's see. I was -- well, I have to admit I was not born  
19 in Texas. Share that with a lot of good Texans. But I was  
20 born in Japan. But as soon as I could get to Texas, I got to  
21 Fort Bliss in El Paso. I then lived in Harlingen. I then  
22 lived in Corpus Christi. And then after going away for  
23 graduated training, I saw the light and came back to Houston.

24 Q. So you are very familiar with Texas politics and you've  
25 testified in cases concerning Texas voting patterns, yes?

1 A. Yes. Although I -- Dr. Murray has written books on Texas  
2 politics. My specialty is not Texas politics.

3 Q. But to your knowledge were any of the other experts in  
4 this case Texans, other than you and Dr. Murray, if you know?

5 A. It's a little -- there are a lot of experts in this case,  
6 and I haven't been able to follow all the details, even of the  
7 material --

8 Q. How about Dr. Lichtman?

9 A. I don't believe Dr. Lichtman's a Texan.

10 Q. Or Ansolabehere?

11 A. Dr. Ansolabehere, who is smart as a whip, is not a Texan.

12 Q. All right. But let's get back. So Dr. Murray is saying  
13 somewhere in the 60s. Let me draw your attention to Table 15  
14 from Professor Kousser's report. Do these data fit the range  
15 that you would expect to see in terms of Hispanic cohesion in  
16 Texas and what Dr. Murray is suggesting he sees as the Hispanic  
17 cohesion in Texas, basically in the high 60s?

18 A. Yes. Again, you're seeing numbers that are in the high  
19 60s or 70s. So Murray's kind of general summary of about a  
20 third of Hispanics are voting for the GOP, at least coming into  
21 this -- into the next decade. And the other forms of  
22 estimation produce -- I think Dr. Ansolabehere summarizes that  
23 as saying something like 70 to 75 percent of the Anglo vote --  
24 or I'm sorry. We're talking Hispanic vote. Of the Hispanic  
25 vote goes for the Hispanic candidate. So again, this is --

1 Q. For the record I think that will appear at Page 7 of Dr.  
2 Ansolabehere's reports.

3 A. So again, although his -- I didn't put all of the expert's  
4 data in here, I would say that sort of these estimates are  
5 consistent with what all of the experts are finding, with the  
6 exception of Dr. Lichtman. Dr. Lichtman's analysis doesn't  
7 suggest this -- behavior in this range for either Hispanics or  
8 for non-Hispanics.

9 Q. So is it fair to say, based on what you've seen in this  
10 case and what's consistent with your previous experience in  
11 Texas, that we see Hispanic cohesion at about 60 to 75 percent  
12 in the general election?

13 A. The average, again, is probably going to fall somewhere  
14 like that statewide. But I think it may be more appropriate to  
15 say that what we see in the general election is, as we move  
16 across the state, Hispanic cohesion that varies from 60 percent  
17 to -- you know, in some areas, probably to the high 80s. So  
18 there's just a lot of variation across the state in Hispanic  
19 cohesion.

20 Generally, on average, Hispanic cohesion is  
21 certainly lower than Black cohesion. But I think, maybe as  
22 important, Hispanic cohesion is much more variable than Black  
23 cohesion. So there are not large areas of the state in which  
24 40 percent of the black voters vote Republican.

25 So that's -- the higher average number, and the

1 distribution around that number as we move around the state is  
2 relatively small. That makes that a fairly easy number to  
3 estimate. It really doesn't matter where you estimate it.  
4 You're going to find, basically, that number. You can even use  
5 four homogeneous precincts in Harris County to get pretty close  
6 to the real number.

7           Estimating Hispanic cohesion is more difficult for  
8 a variety of reasons. And one of them I think that is  
9 substantively important is that it's difficult to estimate  
10 because it varies substantially as you move across the  
11 geography of the state.

12 Q. With respect to the statewide data the experts have put  
13 together in this case that you've analyzed is it fair to say on  
14 a statewide basis, not looking just at counties for the moment  
15 or the most populous counties, the 60 to 75 percent Hispanic  
16 range for statewide ballpark is the level of cohesion?

17 A. I think -- you know, I think probably -- I mean, you --  
18 there's a little bit more range to it, depending on where  
19 you're looking. But I think, certainly, I wouldn't disagree  
20 with either Dr. Ansolabehere or Dr. Murray about the sort of  
21 range of cohesion.

22 Q. And with respect to the Anglo crossover vote, is it fair  
23 to say we're looking in the high 20s?

24 A. Yeah, I think, again, we have a variety of --

25 Q. Can we go to Table 1, please?

1 A. So we have a variety of ways of estimating that. And all  
2 the ways we estimate it tell us something basically the same,  
3 which is we're somewhere in the 20 percent range, somewhere  
4 between 20 and 30 percent crossover.

5 Q. And without belaboring the point, is it your experience  
6 that in the most populous counties in the state that we see --  
7 do we tend to see more Democratic voting than in the state as a  
8 whole?

9 A. In the most populous compared to the state as a whole and  
10 then, of course, varying within that. So we can't forget  
11 Travis County where Anglo cohesion -- Anglo crossover is  
12 substantially higher than it is in the other counties in Texas.

13 Q. If we look down at the bottom of your chart, we see a  
14 general mean for Hispanic Democrats of 27 percent. Is that  
15 consistent with the high 20s as the rate of Anglo crossover?

16 A. Right. So the mean is 27 percent in the exit polls. The  
17 mean in Dr. Engstrom's analysis is 26 percent. Then our  
18 statewide, which would include both, is higher at 32 percent  
19 because it includes both Anglos and Blacks?

20 Q. But you also looked statewide and not just at the most  
21 populous counties in the state, correct?

22 A. Right. So Kousser's average statewide at -- I'm sorry.  
23 That's Hispanic. Yes. So that's both statewide and in the  
24 five county analysis from Dr. Engstrom.

25 Q. Okay. So far we've just been talking about a level of

1 cohesion, without really talking about what it means or what  
2 explains or causes the cohesion. Let's now look at the  
3 candidates. What candidates have we been looking at so far in  
4 this 2010 election cycle at the top of Table 1?

5 A. Well, we've been focusing mostly on Hispanic candidates  
6 running as Democrats. I mean -- but, of course, it's hard in  
7 2010 to miss the row we've been skipping across, which is  
8 Guzman Hispanic running as a Republican for Supreme Court Place  
9 9. And so that's the -- that's the one where things look  
10 unusual.

11           So Blacks vote very cohesively for Hispanic  
12 candidates when they run as Democrats. 94, 94. Estimate --  
13 Engstrom's estimate is 3 percent of Blacks support the Hispanic  
14 candidate when the Hispanic candidate is Republican. And you  
15 can see that that's -- the one I put below that is just to show  
16 you what that -- sort of what that would be if you flipped  
17 that. So instead of thinking of it as three percent, you could  
18 think about it as, you know, what would that imply for  
19 roughly -- for cohesion for, this case, the Democratic  
20 candidate who's the Anglo. Bailey is an Anglo in that same  
21 race. So those two lines are simply sort of mathematical flips  
22 to let you see what the opposite side would be.

23           So 97 percent for the Democrat candidate looks to  
24 us like what we'd normally see in a -- in terms of the Black  
25 analysis for Chavez-Thompson and Uribe. But that's not the



1 Hispanic candidate in this case.

2           So when we flip the candidate from Democrat to  
3 Republican, we basically flip the -- for Blacks. So there's  
4 other analysis, as we move along. But if I looked at that  
5 alone, I'd say my guess is Blacks are voting on the basis of  
6 partisanship and not on the basis of desire to support the  
7 Hispanic candidate over the Anglo candidate.

8 Q. Well, let's go down into the next general election cycle  
9 we have data for, Dr. Engstrom. You see what in terms -- we  
10 don't have any candidate for Dr. Engstrom that's not a  
11 Democrat.

12 A. Now, as you recall, Dr. Engstrom's -- the candidates he we  
13 were given were only Republican -- I'm sorry. Were only  
14 Hispanic candidates. So there doesn't happen to be a Hispanic  
15 running as a Republican. There's not going to be a chance to  
16 sort of see partisanship and ethnicity flipped.

17           But if we -- but if you go back up to 2010, and we  
18 can look at the -- if we look at just the behavior for his  
19 column, others, which is basically Anglos, you'll see exactly  
20 the same flip for Anglos. So suddenly 73 percent of Anglos are  
21 supporting the Hispanic candidate, where previously  
22 approximately that same proportion of Anglos had supported the  
23 Anglo candidate. So the support for Bailey, the Anglo  
24 candidate, then drops to 27, which is the range we talked about  
25 before for typical crossover.

1           And then with Hispanic voters, Hispanic voters, 83  
2 percent vote for Bailey, not for Guzman, which looks very much  
3 like the 84 percent that voted for Uribe and the 82 percent for  
4 Chavez-Thompson.

5           We can also move over -- when we're talking about  
6 Hispanics and non-Hispanics, we can move over then to the  
7 statewide analysis. And you'll see, whether you move to the  
8 right to Kousser's statewide analysis -- there you'll see  
9 exactly the same flip for Hispanics. And you got 72 percent  
10 support for Bailey rather than Guzman. And according to our  
11 analysis where you see, again, 23 percent for Guzman, 77 for  
12 Bailey.

13           If you look at those two numbers, it's pretty  
14 clear that the 77 is the one that looks like the 76 and the 79  
15 above it. And the 23 doesn't look like it. And then again --  
16 in addition we also add in the Governor White race, and you'll  
17 see that that 79 percent for Governor White, which looks  
18 exactly like the vote for Uribe, is actually slightly higher  
19 than the vote for Chavez-Thompson. Looks like the vote for  
20 Bailey and does not look like the vote for Guzman.

21           So again, we're seeing -- what we're seeing there  
22 is not just evidence that partisanship is important, but  
23 evidence that where there's a choice between partisanship and  
24 race or ethnicity, there simply isn't any discernible impact  
25 left for ethnicity in general election voting.

1                   If we can move down to 2008.

2   Q.   Yeah.  I was going to suggest let's look at 2008, a  
3   presidential contest in which we have, for the first time in  
4   history, an African-American candidate for the voters to choose  
5   for in a general election cycle.  What does that data show us  
6   with respect to the rates at which Hispanics are voting for the  
7   Democrat?

8   A.   Well, here you can see that Dr. Engstrom's analysis only  
9   provides us information for the race -- the senatorial race of  
10  Noriega, the Democratic candidate, and then two other statewide  
11  races, both in which the Democratic candidate is the Hispanic.

12                So what's added in here, in a similar analytical  
13  format, is the presidential election at the top, and then two  
14  races at the bottom that are statewide races.  Court of  
15  Criminal Appeals Place 3, Strawn is the Democratic candidate.  
16  The Republican candidate is also an Anglo.  And then Railroad  
17  Commissioner Thompson, Anglo, is the Democratic candidate.  And  
18  the incumbent railroad commissioner is black.  So here we have  
19  races in which we vary ethnicity across party lines in a  
20  variety of ways.

21                And if you look at that column of numbers, 81, 83,  
22  87, 86, 84, 83, what I like to imagine there is if I gave you  
23  the column of numbers -- and then this is what I would do with  
24  my students to drive them crazy.  I would give them a list of  
25  candidates, and I would give them the set of numbers.  And then

1 I'd make them do those -- remember those things you had to do  
2 where you draw the lines and connect up which number goes with  
3 which candidate back in elementary school?

4 I just don't think you can get very far on the  
5 basis of the -- that information if you thought this was ethnic  
6 voting. I think you'd have a hard time figuring out. All  
7 those numbers, look to me, to be roughly the same number. And  
8 so it's the same number when the candidate is Hispanic. It's  
9 the same number when the Democratic candidate is black. It's  
10 the same number when the Democratic candidate is white, in an  
11 Anglo/Anglo race. It's the same number when the Democratic  
12 candidate is an Anglo in an Anglo/black race.

13 There's sort of all the kinds of things you'd want  
14 in a natural experiment. And you just don't get any usable  
15 variation that's outside the range of error there, or even a  
16 suggestion of a -- kind of at least a pattern or a trend.

17 Q. For the record is it your understanding that 2008 was a  
18 very good year for Democrats, 2010 being a very good year for  
19 Republicans?

20 A. Yes.

21 Q. And also for the record, the railroad commissioner race,  
22 the Democratic candidate you identify there as Thompson that  
23 received 83 percent of the Hispanic support, was the -- who was  
24 the opponent, the Republican opponent?

25 A. The Republican incumbent is black or the incumbent

1 railroad commissioner?

2 Q. Michael Williams?

3 A. Yes, Mr. Williams.

4 Q. Now, let's look at the crossover over here. Now, we -- I  
5 think we've established that the -- we're now looking at  
6 Hispanic versus non-Hispanic, correct?

7 A. Yes.

8 Q. So with non-Hispanic we're including black and white in  
9 that number?

10 A. Right. So that's -- the second column there for the 2008  
11 election would be RS. And for non-Hispanic voters that would  
12 include blacks and whites.

13 Q. And we see --

14 A. -- all those mixed together, and we can't really tell for  
15 sure what cohesion levels are separable to the two. If they  
16 were varying in some systemic way, we might expect to see some  
17 variation, but we basically don't see much variation.

18 Q. And we've established earlier that the African-American  
19 vote tends to be very cohesive, notwithstanding the race of the  
20 candidate in terms of preference for the Democrat. So to -- we  
21 do not see the range in the 2008 general election runs -- in  
22 terms of crossover from 35 to 38 percent. So would you  
23 conclude that the white vote for railroad commissioner is,  
24 again, consistent with what you would be seeing for general  
25 white voting and to support any Republican candidate,

1 regardless of race?

2 A. Yes. And if you -- so if you broke that out in an  
3 estimate more similar to the multivariate estimate where you  
4 could estimate the Anglo crossover individually, that's exactly  
5 what you would see, is that the Anglo crossover doesn't vary  
6 in --

7 Q. Is that shown in the exit polls here as well?

8 A. Yes. So, again, we can move to the exit polls. And,  
9 again, we don't have to necessarily fight between exit polls  
10 and ecological inference. But because we have an exit poll  
11 both for the presidential race and the senatorial race, we have  
12 a chance to see what happens when the Democratic candidate is  
13 black and what happens when the Democratic candidate is  
14 Hispanic. So there's been lots of talk about are blacks and  
15 Hispanics cohesive? Are they -- do they create tension? We  
16 have sort of competing possibilities here. So that set of  
17 numbers, I think, is very useful.

18 If we look at Anglos, for example, 26 percent of  
19 Anglos report voting for Obama, 27 percent for Noriega. That's  
20 the same number.

21 Q. And so by process of elimination basically 75 percent  
22 voted for McCain and Cornyn?

23 A. Yes. If we go to the Black column, we see the reported  
24 voting is slightly higher, although this is a smaller part of  
25 the exit poll. Those two numbers, the 98 for Obama and the 89

1 for Noriega, are -- may not be -- actually be very far outside  
2 the confidence intervals for those estimates, although I  
3 believe that possibly could be -- actually be true. But it's  
4 still -- again, if there is some tendency of black voters to be  
5 more likely to vote in a general election for a black candidate  
6 than a Hispanic candidate, it's an awfully small -- it's an  
7 awfully small difference, and I think would probably be  
8 forgiven. I mean, the chance to vote for a black candidate for  
9 President is something I think would be just about irresistible  
10 for blacks. So that may just reflect slightly more enthusiasm.

11           And then Hispanics, again, there's some discussion  
12 of tension districts. The Hispanic interests are different  
13 than -- possibly than black interests. There the estimates,  
14 although they're within -- clearly within the confidence  
15 intervals, suggest, if anything, Hispanics are slightly more  
16 cohesive in voting for Obama in the general than they are for  
17 Senator Noriega.

18           The main point being, of course, as we look across  
19 those two sets of numbers, again, with the exception of the --  
20 of that bump up for blacks that might elect -- might get you to  
21 think that column probably is the Obama column, it's -- there's  
22 not an appreciable difference between those numbers when we  
23 move, in this case, from a black candidate to an Hispanic  
24 candidate.

25           And then, of course, if we just look up a little

1 bit, and we direct our eyes up, we'll see the set of numbers  
2 for the governor's race in 2010. That's the exit poll where we  
3 have a white candidate. So here we get to see a white -- Bill  
4 White is an Anglo. So we have an Anglo Democrat. We have a  
5 black Democrat in the presidential race, 2008. And then we  
6 have an Hispanic Democrat in the senatorial race.

7           And again, if we look at those numbers, there just  
8 isn't any difference in the behavior of Anglos, blacks or  
9 Hispanics when we vary the race of the candidate or ethnicity  
10 of the candidate and hold the party of candidate constant --

11 Q. So what conclusions can we draw from the rates of cohesion  
12 --

13           THE REPORTER: I'm sorry. Can you slow down a little  
14 bit?

15 BY MR. SCHENCK:

16 Q. What conclusions do you draw based on these rates of  
17 cohesion in terms of whether they are attributable to party  
18 preference or racial voting patterns?

19 A. Well, if we look at the -- if we move down to the bottom  
20 of the table in the -- in the bottom, left-hand cell.

21 Q. John, down. Thanks.

22 A. Sorry. At the bottom there we have the mean vote of  
23 Hispanics and non-Hispanics across all of the statewide  
24 analysis for Hispanic Democrats. So when a Hispanic is running  
25 as a Democrat, which is most of the races, given how they were



1 selected for Dr. Engstrom, you see that the Hispanic vote --  
2 average Hispanic vote for the Hispanic Democrat is 82 percent.  
3 And other average is 32 percent, so that would be the crossover  
4 by blacks and Anglos.

5           When we look at the same mean -- for non-Hispanic  
6 Democrats, the support from Hispanic voters is 81 percent,  
7 essentially the same number as 82. And the crossover 36, which  
8 really isn't any different than 32. So we -- whether we look  
9 at the races individually or we sum the races up, we see the  
10 same -- we see the same thing. There just is not a  
11 distinguishable effect of race or ethnicity of the candidate,  
12 once we've moved to the general election and added a party -- a  
13 party label to the -- to the individual.

14           So if you think about that, one thing I think is  
15 important not to suggest is that this means there -- that there  
16 is no preference for race or ethnicity of the candidate, that  
17 people don't actually have a preference. It just means that in  
18 Texas elections today the -- if you get two signals about a  
19 person, one signal -- a clear and unambiguous signal about  
20 partisanship, which you get on a Texas ballot, then also know  
21 something about the race or ethnicity of the candidate, your  
22 preference for partisanship is so strong that it overrides any  
23 preference you might have otherwise.

24           I have no doubt that if you ran this same set of  
25 elections but removed -- even if you just removed partisan

1 information, I think you would see a different result,  
2 particularly as you move down ballot.

3 Q. If we were looking at this racial polarization in the  
4 '60s, would we see, in your experience, anything that looked  
5 like this?

6 A. Well, I'd love to have a table just like this for the  
7 '60s, which we don't have. But we weren't -- none of us had a  
8 year to prepare, I guess. Even then, we probably wouldn't have  
9 gone back to the '60s. We probably would have just given you  
10 like way more information about 2008 and 2010, to be fair.

11 So I don't know, but I would -- you know, I would  
12 expect that -- that as we move historically, that partisanship  
13 would not have completely dominated race and ethnicity. I  
14 mean, my experience -- at least my experience would suggest  
15 that there was a period in Texas history, for example, in which  
16 white Republicans would have been reluctant to vote for either  
17 an Hispanic or a black even if they were running as a  
18 Republican in a general election. And that would have been  
19 true, obviously, of the majority of Anglo Democrats in that  
20 period as well. So I think -- and I think there are two things  
21 there, and they're both important things to remember in looking  
22 at this analysis.

23 One is I think the degree to which the race of a  
24 candidate matters in elections has declined in most of the  
25 United States, including Texas. So the degree of racial

1 animosity in the political system has declined. And I would  
2 attribute the lion share of that to the success of the Voting  
3 Rights Act. So I think that's a very important thing to  
4 remember.

5           And the second thing that's also important to  
6 remember is that the degree to which parties are polarized in  
7 this country has increased substantially. There's some  
8 disagreement about that in political science, but I happen to  
9 believe fairly strongly that the parties are much more  
10 ideologically polarized and becoming even more ideologically  
11 polarized. And when ideology and party match up, party becomes  
12 a very important cue. And, in fact, it's ideology, I think,  
13 that's really driving a lot of this voting behavior.

14           So if sort of the impact of race is declining and  
15 the -- simultaneously the impact of party is increasing, then I  
16 think it's not too surprising to see putting those two things  
17 together, we could end up, as we are here, clearly by 2008,  
18 2010, in a situation where the increasingly polarized partisan  
19 nature of politics simply subsumes any residual impact of race  
20 or ethnicity.

21           Basically, where people might at one time have  
22 been more willing to vote for, say, a liberal, and been more  
23 willing to vote for a conservative based on their race or  
24 ethnicity, it's now simply an issue of voting on the basis of  
25 ideology or party?

1 Q. Do you believe the other experts in this case agree with  
2 your conclusion the rates of voter cohesion we see are  
3 attributable to party preference rather than race?

4 A. I didn't see any suggestion otherwise. Any of the -- any  
5 place where there was any variation in that -- I mean,  
6 obviously, in Engstrom's case he didn't have a lot of data to  
7 base that on, but he certainly did -- he did look at the Guzman  
8 race in 2010. And he doesn't assert that there's something  
9 here that goes beyond party. And so I think that's -- people  
10 would generally agree it's just -- quite frankly, I don't see,  
11 given -- and this is not just my analysis. It's Engstrom's  
12 analysis. It's --

13 Q. How about Dr. Murray's analysis of straight ticket voting  
14 tendencies?

15 A. I think Dr. Murray clearly recognizes that -- as you would  
16 think, much of this comes from the fact that, as you become  
17 increasingly partisan, you're increasingly likely to vote a  
18 straight party. It's easy to vote a straight party in Texas.

19 And if you think about that, if people are voting  
20 a straight party, unless they're voting a straight party based  
21 on the race or ethnicity of one of the candidates in the  
22 respective parties, it seems unlikely that they're going to end  
23 up -- if you think about -- how did all these numbers end up  
24 being so similar? Most of the voters that go into these  
25 numbers are voting every single race -- contest on the ballot

1 for the same party because they're only basically pulling one  
2 lever. Now, I guess, you know, choosing one box.

3 But so long as the majority of voters are voting  
4 straight party ticket -- and as Dr. Murray's analysis shows,  
5 there's lots of straight party ticket voting, particularly in  
6 the precincts he looks at in Harris County -- always that  
7 proviso. But I think generally we recognize that statewide,  
8 particularly people with strong partisan sentiments, which are  
9 more likely to vote, tend to vote party tickets.

10 Once you pull the party lever, your vote is not  
11 going to vary according to the race or ethnicity of candidates  
12 because your vote doesn't vary as it moves down the ballot.

13 Q. So far we've been talking about the general election. Now  
14 let's move to the primaries. Okay?

15 A. All right.

16 Q. Let's talk about the Republican primary first. Do you see  
17 any significant racial polarization in the Republican primary  
18 data?

19 A. There are two difficulties with the Republican primary  
20 data that we could start out with so we don't maybe make too  
21 much of it. We don't have a lot of contests to analyze here.  
22 And we -- we don't have as much variability as we might like,  
23 particularly with regard to our estimate for black voting in  
24 the Republican primary.

25 So we do have there -- I think someone said --

1 somewhere I think I heard one of the experts say something  
2 about that you didn't really have -- you couldn't really be  
3 sure about the Hispanic number because there aren't enough  
4 Hispanics. But there -- there are both enough Hispanics and  
5 enough variation in Hispanics in the Republican primary to do a  
6 pretty good job of estimating that.

7 Black estimate doesn't -- blacks don't vary as  
8 much in proportion in the Republican primary. And they're a  
9 smaller number. So that's a little more difficult to estimate.  
10 And, again, we don't have as many contests. So we can't be as  
11 sure about the role being played by the particular candidates  
12 in the contests as we can for the Democratic primary.

13 But generally what we see from Engstrom's  
14 analysis, for example, if we look at the 2010 -- and this is a  
15 good example of why having a few contests is an ideal. In 2010  
16 we have two primary races that Engstrom analyzes in which they  
17 are Hispanic candidates. The governor's race, in which Medina  
18 is the Hispanic candidate, his analysis, and the railroad  
19 commission, which Carrillo is the Hispanic candidate.

20 The -- I tend not to give too much weight to the  
21 Medina contest because there's some question about whether  
22 Medina is actually Hispanic. And there's some question about  
23 whether Medina is actually a Republican. And if you put the  
24 two together, it kind of makes for an odd mix when you get  
25 into -- when you get into the primary.

1           But certainly, that doesn't -- what that shows is  
2 not only are groups not voting differently with regard to  
3 Medina. They also are not supporting. So Medina's not the  
4 candidate of choice of anybody in the Republican primary based  
5 on this analysis. And that lack of support early doesn't vary  
6 that much across groups.

7           With regard to Carrillo, we see higher vote totals  
8 in terms of the multivariate analysis. 52 percent of  
9 Hispanics, 50 percent of blacks, 39 percent of others are  
10 voting for Carrillo. That suggests that Hispanic cohesion is  
11 low or basically absent. They're essentially voting without  
12 regard to race or ethnicity. The same is true for blacks  
13 for -- and with crossover vote at 40 percent, there may be some  
14 impact there, I don't know there is, of ethnicity. But it's  
15 certainly not at the level that we would think of as polarized  
16 voting.

17           I think that multivariate estimate for Hispanics  
18 is too low. 52 percent is too low. But if we look at  
19 Engstrom's bivariate, we see that at 78 percent. I mean, I'm  
20 not certain it's true, but my guess is that that -- that  
21 some -- a number closer to 70 percent is probably the correct  
22 number for Hispanic cohesion in the Republican primary.

23 Q. Now, with respect to -- you made some comments about, in  
24 the governor's race, Medina -- let me ask you this question.  
25 If a Hispanic voter were interested in voting in the Republican

1 primary and voted on the basis of race, wouldn't you expect a  
2 number higher than 31 or 36 percent, which are the numbers in  
3 the multivariate and the bivariate of Engstrom?

4 A. Yes. But the reason I wouldn't put too much weight on  
5 that is that if -- I mean, first of all, it is -- it is the  
6 case that people who are unfamiliar with candidates often infer  
7 ethnicity from, for example, surname, as we do when we collect  
8 the data for Spanish surname registered voters.

9           So in this case you might infer that Medina was  
10 Hispanic. But you might also -- we're talking about primary  
11 voters. I'm talking about Republican primary voters. And  
12 these -- that's a pretty serious level of political  
13 involvement. These are pretty -- these are people who  
14 typically vote year in and year out and so forth. And there  
15 was lots of -- this is a person challenging a -- you know, a  
16 popular incumbent governor. And so my guess is that's less of  
17 a -- would be less of a factor here.

18           And then offsetting that you have the factor that  
19 there's -- that there is at least some -- among some  
20 traditional Republicans a view that Medina is actually a  
21 Libertarian and not really a mainstream Republican. And so I'm  
22 just not sure what to make of that.

23 Q. Okay. Well, let's go down to the 2004 Republican primary  
24 which you looked at. What does that data tell you?

25 A. So this is -- here we don't have Engstrom's analysis.



1 Engstrom doesn't go back to 2004. I went back to 2004 because,  
2 otherwise, we would really have, I think, just basically one  
3 primary to go on. Now we've got a second primary.

4           You'll see that, unfortunately, we have the same  
5 candidate. So we're still not getting a whole lot of  
6 variation. And we have what appears to be two contests. But  
7 that's because it's basically the same candidate and the same  
8 contest, one in the general and one in the runoff. But at  
9 least it gives us some data points.

10           And what we see here is in the -- in the general  
11 where there are multiple candidates -- well, I'm sorry. In  
12 the -- in the election -- in the first primary, before the  
13 runoff, not the general, where there are multiple candidates,  
14 the estimated Hispanic vote for Carrillo is 50 percent and for  
15 others 51 percent. So basically everybody's voting about --  
16 splitting up at least about the same.

17           And then in the runoff where it's a two-person  
18 race you see Hispanic vote for Carrillo estimated at 67 percent  
19 and Anglo at 72 percent. So here, clearly, the vote for --  
20 excuse me -- the vote for Carrillo is going up, but it's not --  
21 it's going up uniformly across both Hispanics and the other  
22 category combined, blacks and Anglos.

23 Q. Now let's talk a little bit about the Democratic primary.  
24 What do the data show with respect to racial cohesion in the  
25 Democratic primary?

1 A. Here we have -- here we have more contests in Engstrom's  
2 analysis, as well as in ours. And so we can look in 2010, for  
3 example. We can look at Chavez-Thompson and Uribe. We see  
4 there sort of modest levels of cohesion among Hispanic voters,  
5 something in the 70 percent range. And then we see black  
6 support being in -- looks like somewhere in 30 to 40 percent,  
7 so substantial crossover but not majority support. And then  
8 Anglo at 37 to 50. Looks like basically Anglo and black vote  
9 for the Hispanic candidates in that primary are both in the  
10 same range. Substantial crossover but not candidate of choice.

11 So there you have what I would characterize not as  
12 a polarized voting pattern, because we're not really looking at  
13 the extremes here, anything like what we see, for example, for  
14 blacks in the general election. But there are -- the majority  
15 of Hispanic voters appear to be voting for the Hispanic  
16 candidates. And the majority of black and Anglo voters appear  
17 to be voting -- to not be voting for the Hispanic candidates.

18 If we go down to the 2008 primary, here we've got  
19 three contests. And, again, we see Hispanic cohesion in the  
20 70 -- 90 percent range, and the estimates -- average vote among  
21 blacks may be a little bit higher there, and crossover, but  
22 still not a majority. And then Anglo voting is basically in  
23 that same range. So the one of -- the Noriega race that pops  
24 up at 56 percent. So there I guess you could argue that the  
25 majority support among Anglos for the Hispanic candidate I

1 think -- I mean, that's the general pattern there, is for that  
2 base to bounce around.

3           The voting's not polarized, I don't think. And  
4 certainly, to the extent that they're sort of groups voting  
5 slightly differently, again, blacks and -- or blacks and Anglos  
6 appear to be voting one way, moderately, with lots of  
7 crossover, and Hispanics voting the other way, again, with  
8 substantial crossover.

9 Q. Is it fair to say from the data here that Anglos are more  
10 likely to vote for a Hispanic candidate in the Democratic  
11 primary than African-American voters are?

12 A. Well, let's see what the summary tells us.

13 Q. Let's go down to the summary, John, at the bottom.

14 A. So this would be the first row of the summary. And this  
15 is Democratic primary mean for Hispanic candidates. And going  
16 to Engstrom's analysis, the average vote for the Hispanic  
17 candidate among blacks participating in the primary is 40  
18 percent, while Anglo is 45 percent. And that's if -- 45 is  
19 higher than 40. I don't think it's substantively different.

20 Q. Would you call -- would you say that blacks and Hispanics  
21 in the Democratic primary are cohesive based on this data?

22 A. No. Well, the candidate cohesion would be on opposite  
23 sides. Again, I'm not saying that they're polarized. It's 75,  
24 40. I don't think that we see polarization between blacks and  
25 Hispanics. That's a lot of black crossover and a lot of

1 Hispanic crossover. So I'm not saying it's polarized voting,  
2 but it's certainly not cohesive voting.

3 Q. And is that consistent with your experience in Democratic  
4 primary in Texas?

5 A. Yes. It's consistent with my experience. It's --  
6 everyone who looks at the primaries in this case, or Dr.  
7 Engstrom notably but others as well -- certainly, Dr. Murray  
8 recognizes that but is concerned about what that might mean in  
9 the drawing of particular districts. So this is not -- again,  
10 this entire -- we've discussed this entirely on the basis of  
11 Dr. Engstrom's analysis. This is not my finding. This is  
12 what -- I think everybody who looked at primaries in the case  
13 agrees with this.

14 To the extent people don't agree with it, they are  
15 people who didn't look at primaries and, therefore, won't say  
16 anything about it. But I think the numbers -- again, the  
17 numbers are the numbers. I don't think that's --

18 Q. Well, do we have some exit polling also with respect to  
19 the Democratic primary that tells us something about cohesion?

20 A. We have the -- we have the exit poll for the Democratic  
21 primary in 2008, which is the presidential vote for -- in the  
22 presidential primary. So this would be Obama/Clinton.

23 And what we see there is -- what we see is that  
24 here, rather than the sort of relatively cohesive voting being  
25 on the part of Hispanics in the primary, it's blacks -- 84

1 percent of blacks estimated to vote for Obama. So Obama is the  
2 preferred candidate of blacks. There's some crossover there.  
3 But, again, as we usually see for black voters, not as much  
4 crossover.

5           And then here, the similarity voting, the cohesive  
6 voting is basically Hispanics and Anglos. So both Hispanics  
7 and Anglos are voting majority for Clinton. Again, neither  
8 case is their voting polarized. The Hispanic crossover for  
9 Obama is 34 percent and for -- Anglo crossover for Obama is 43  
10 percent. So lots of crossover there. But it's -- Hispanics  
11 and Anglos -- preferred candidate of Hispanics and Anglos is  
12 Clinton. The preferred candidate of blacks is Obama.

13           And again, those numbers -- if you bring those  
14 numbers down and look at that comparatively, the Anglo  
15 crossover number there for Obama at 43 percent is very similar  
16 to the average Anglo crossover for Hispanic candidates of 45  
17 percent. There's really not much variation there. And then  
18 the black and Hispanic numbers are just flips of each other on  
19 the basis of the fact that we're looking at a black candidate  
20 in the presidential primary and Hispanic candidates in the  
21 remainder of the Democratic primary.

22 Q. I heard -- I believe I heard some testimony in this case  
23 from other experts, or another expert, to the effect that the  
24 inability of Hispanic voters to elect a candidate of their  
25 choice in the Democratic primary can be ignored or cured or

1 something to that effect in the general election when we look  
2 at the general weight of cohesion for any Democratic candidate,  
3 regardless of race in a general election. Do you agree with  
4 that conclusion?

5 A. I mean, I don't think it's an appropriate conclusion. I  
6 think it certainly can be ignored, as it's ignored by a lot of  
7 the experts, who want to ignore it because it's a convenient  
8 thing to ignore. But no, I mean, we wouldn't have the history  
9 of the Voting Rights Act that we have if we ignored this issue.

10 The notion that there's a primary in which you can  
11 elect the candidate of choice, but it's okay because there's  
12 going to be a general election coming up is really an almost  
13 bazaar notion in terms of the Voting Rights Act because, of  
14 course, across the South you essentially had -- the South was  
15 one party Democratic, and blacks couldn't be elected in the  
16 Democratic primary and --

17 Q. And why couldn't blacks be elected in the Democratic  
18 primary?

19 A. Because the polarized voting against blacks was so strong  
20 in the Democratic primary they couldn't be -- they couldn't win  
21 the nomination in the Democratic primary.

22 Q. And was there an all-white Democratic primary?

23 A. Yeah. To the extent that that, you know, was threatened  
24 by the possibility of cohesive black voting, you just had an  
25 all-white primary in which you -- in which you basically made

1 sure of that, the candidate of choice -- the possibility of the  
2 candidate of choice that came out of the primaries might  
3 actually be a black candidate.

4 But, of course, following this logic, that's  
5 really okay because later on blacks got a chance to vote for  
6 the Democrat. And it's true that in general elections in the  
7 South the Democrat was the candidate of choice of black voters.  
8 Black voters were not Republicans anymore by this point.

9 But I think that hardly answers the issue. If it  
10 answered the issue, we wouldn't have a Voting Rights Act. What  
11 motivated the Voting Rights Act was to deal with precisely --  
12 precisely this issue.

13 So it's certainly not irrelevant. It is in modern  
14 politics in the South where you actually have a two party  
15 system where you actually have Republicans and Democrats. It's  
16 not irrelevant that you get -- that a minority group that is --  
17 that a set of minority groups that together can get a candidate  
18 of choice elected in the general election basically don't  
19 support each other's candidates in the -- in the primary. It's  
20 not irrelevant that your second choice candidate can be  
21 elected.

22 Q. Have you heard of the term tension district?

23 A. Well, that's really -- this is what motivates tension  
24 district. If the -- if the -- if the candidate that's going to  
25 be elected is going to be your candidate of choice in the

1 general election, only in the sense -- and we certainly have  
2 seen the evidence of that -- only in the sense that that's the  
3 party you favor, then you're going to -- as you -- as you -- as  
4 you add voters to the district that are -- that are not a part  
5 of a minority coalition, that is, as you -- as you balance  
6 basically black and Hispanic voters, in this case, in the  
7 primary, there -- whoever ends up winning that primary is going  
8 to -- is going to have the chance to elect their candidate of  
9 choice in a racial or ethnic sense in the general election.

10           And so, obviously, that creates a pattern in which  
11 one of those groups is not going to be in the -- is not going  
12 to get their first choice candidate.

13           And I think Dr. Murray said something about this  
14 sort of -- the rise of a two-party system method we -- I mean,  
15 Dr. Martin clearly recognized that you can't just say, it's all  
16 fine because of the general election, because Dr. Murray  
17 actually lived in Texas in the period in which that was going  
18 on, right? And he knows something about the history of Texas  
19 politics. So he would -- I don't think he would ever say  
20 something like that.

21           But sort of his fix for that is, well, maybe if  
22 it's -- maybe if you have real two party -- maybe if the  
23 elections are real, if they really matter, then somehow that  
24 will take care of that problem.

25           But I think if you think through that, it doesn't



1 really take care of the problem. So, first of all, most of  
2 these districts we're talking about are being drawn to be  
3 predominantly, if not exclusively, Democratic districts. So in  
4 some sense they are kind of a microcosm of where we were before  
5 in the sense that -- for example, Democrats do really well in  
6 Sheila Jackson-Lee's district in Houston. The 18th doesn't  
7 elect a lot of Republicans, and is unlikely to.

8           And so the Democratic primary in the 18th or in  
9 the 30th is the election in that sense. There is not going to  
10 be -- you will have a chance to vote for the Democrat or the  
11 Republican, but it's not going to be -- that is not going to  
12 determine who wins that district.

13           As we know, the same is not true for Hispanic  
14 districts. We know that from 2010, that you really could --  
15 you really could see a different result. But if you -- so that  
16 takes us to that -- so what if we made all these districts --

17           MR. GARZA: Your Honor, I object. Could we get some  
18 Q&A going here?

19           JUDGE GARCIA: Okay. Let's do it that way.

20 BY MR. SCHENCK:

21 Q. Yeah. What would happen if we made these districts  
22 competitive, Dr. Alford?

23 A. Well, I think if you were drawing the maps and you made  
24 them all competitive, you -- if you think you got trouble now,  
25 you'd really have trouble if you tried to make all the

1 districts competitive, and probably shouldn't. I mean, I don't  
2 think that's an entirely appropriate approach, although making  
3 some of them more competitive might be useful. I would  
4 certainly favor that for some of the districts.

5 But if you think about what that does to the issue  
6 of whether the -- whether the primary is determinative or  
7 whether electing a candidate of choice is good enough if you  
8 can elect your preferred candidate in the primary. As the  
9 election becomes -- if the election isn't competitive, then the  
10 primary is the election.

11 As the election becomes increasingly competitive,  
12 if we think about Dr. Murray's logic there -- all right. So  
13 I'm in the group -- I'm in the minority group in the primary  
14 that can't elect my candidate of choice. But it's okay because  
15 in the -- in general election I'll be able to vote for my  
16 second choice candidate, which is from the other minority  
17 group. But that's -- I'm okay with that because there's a  
18 substantial chance that my second choice preferred candidate  
19 will also lose. And that's a better situation. That's just  
20 isn't a better situation. I guess it's a different situation.  
21 But if you -- if you assume that --

22 JUDGE GARCIA: Let's do a Q&A again.

23 BY MR. SCHENCK:

24 Q. Well, let me move on to another topic, if I can, Dr.  
25 Alford. Dr. Ansolabehere I believe testified about the

1 concentration of, I believe, white voters and Republican  
2 districts. I think it was 87 percent. Do you find that  
3 surprising?

4 A. I think what he was referring to was the concentration of  
5 voting age Anglo population in Anglo plurality districts.

6 Q. If you --

7 A. So it was 88 percent.

8 Q. If you were to draw these districts randomly in the state,  
9 what would you expect the percent of Anglo majority districts  
10 would be if we were looking at citizen voting age population?

11 A. If we -- if we drew the districts entirely at random on  
12 the basis of -- and then looked at citizen voting age  
13 population, all of the Anglos in the state would live in  
14 districts that were a majority Anglo citizen voting age  
15 population or plurality in his -- he switches between the two.  
16 But his basic point is about, do you end up in a district in  
17 which you're the plurality? And if we drew the districts  
18 without regard to race, it wouldn't be 88 percent. It would be  
19 a hundred percent so --

20 Q. And if we draw some districts with the idea in mind of  
21 protecting a minority opportunity to elect a candidate of  
22 choice by increasing the concentration of, let's say, black or  
23 Latino voters, what would you expect to happen to the  
24 percentage of Anglo population in the remaining districts?

25 A. Well, obviously, the percentage of Anglo population in our

1 main districts goes up. So part of the -- part of the figures  
2 that he's providing for -- I think he provides them only for  
3 C185, the adopted plan. Part of what's going on is that that's  
4 an actual reflection of drawing minority districts, as if we --  
5 again, if we held elections at-large in Texas, all Texans would  
6 live in a district, and -- a statewide district in which Anglos  
7 were the majority of -- or the plurality of the voting age  
8 population and a majority of the -- of the citizen voting age  
9 population and a majority of the registered voters.

10           And so as we draw districts to allow minorities to  
11 elect candidates of choice, we necessarily redistribute the  
12 population down from that number, but we -- there's nothing in  
13 that -- in the process of drawing minority districts that would  
14 suggest that you would get a result that's a lot different from  
15 that.

16 Q. Do you recall whether Dr. Ansolabehere ever identified the  
17 percentage of Anglo population in the districts that he would  
18 propose on his map?

19 A. I don't see the same -- we don't see that same analysis  
20 for any other plan. So we don't know if what he sees as an  
21 unusual situation in terms of population distribution is that  
22 worse than the distribution in C100, for example, the previous  
23 congressional plan? Is it different in C166, the plan that he  
24 prefers? So he moves away from that comparison when he moves  
25 to the other plans.

1                   And so we don't really know if it would be -- if  
2 it would be better or worse. We really have no point of  
3 comparison other than just that 88 seems like a high number.  
4 But I think it seems like a high number because you might think  
5 it ought to be something else. But if we -- if we redistribute  
6 them entirely in a race neutral fashion, it would be. It would  
7 be a hundred percent.

8 Q. Thank you.

9                   MR. SCHENCK: Your Honor, I have one more topic that  
10 I think will take about 20, 25 minutes.

11                   JUDGE GARCIA: Certainly. Go ahead.

12 BY MR. SCHENCK:

13 Q. Dr. Alford, let's now look at Congressional District 23.

14                   JUDGE GARCIA: Let's take a brief recess.

15                   (Recess at 9:47 a.m., change of reporters)

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1 JUDGE GARCIA: Okay.

2 BY MR. SCHENCK:

3 Q. Dr. Alford, Dr. Engstrom has filed a supplemental report  
4 in this case in which he discusses Congressional Districts 23  
5 and 27 under the former congressional plan. Have you studied  
6 his report?

7 A. I have seen his report, yes.

8 Q. Let's talk about Congressional District 23 for a moment.  
9 Dr. Alford, did you testify in the judicial proceeding that  
10 initially led to the drawing of CD-23?

11 A. Yes, I did.

12 Q. And did the Court essentially agree with your proposed  
13 drawing of CD-23?

14 A. They certainly agreed that those existing -- at that time  
15 existing CD-23 was an inappropriate district and withdrew  
16 CD-23.

17 THE REPORTER: Are we having a whispering contest?  
18 If you all would please speak up, both of you all.

19 JUDGE SMITH: Could he just repeat his last answer?  
20 Because I couldn't hear it either.

21 THE WITNESS: Okay. I don't think the Court  
22 followed my advice in redrawing CD-23, in the sense of drawing  
23 the lines, but certainly, the fact that CD-23 was redrawn by  
24 the Court was consistent with my view of what had happened to  
25 CD-23 in the 2003 redistricting.

1 BY MR. SCHENCK:

2 Q. My question, initial question is actually going back to  
3 even earlier. I believe in the year 2001, the Court, rather  
4 than the Texas legislature, was responsible for drawing the  
5 congressional map.

6 Am I misremembering?

7 A. No. You are right. You know, you have to be careful,  
8 because there are so many redistrictings in the -- going back  
9 to the 2000 cycle, so the first set of districts, I would  
10 characterize as the -- easily the best set of congressional  
11 districts that the State of Texas has had since it started  
12 drawing districts, basically.

13 One of the set of districts was drawn by a  
14 three-judge panel, in response to the failure of the State to  
15 pass a congressional redistricting plan, and I provided  
16 some -- as the expert for the Attorney General, I provided  
17 some input into the drawing of that plan.

18 Q. Okay. And then fast-forwarding three years, there was a  
19 mid decade redistricting effort that ultimately resulted in  
20 litigation in the district court called Session versus Perry.  
21 That eventually went to the U.S. Supreme Court in a case  
22 called LULAC versus Perry.

23 Did you participate as an expert in that case?

24 A. Yes, I did.

25 Q. And what was your testimony in that case?

1 A. So we are -- in the earlier case, I was supporting the  
2 Court -- basically, the map the Court eventually drew on  
3 behalf of the State. In the following case, I was supporting  
4 the court-drawn map against the legislative-drawn map that  
5 came by as a result of the effort to shift the court-drawn map  
6 into a more Republican map.

7 Q. Okay. Did you testify that you believed that the  
8 legislature's attempt to redraw CD-23 was contrary to the  
9 Voting Rights Act?

10 A. Yes.

11 Q. And the Supreme Court ultimately agreed with you?

12 A. They ultimately agreed with, I guess, ultimately agreed  
13 with the district court.

14 Q. Now, we have seen a redraw of CD-23 in this round as well,  
15 have we not?

16 A. Unfortunately, we have.

17 Q. Okay. Do you recall from the original litigation what I  
18 am calling the 2003 round what Texas had done in terms of the  
19 Hispanic population that wasn't CD-23 to the revised CD-23  
20 that was at issue in the case called LULAC versus Perry?

21 A. Well, going -- so going back, the CD-23, as it existed at  
22 the time of the -- that we got census data for 2001, CD-23 was  
23 a district that was a Hispanic majority district that was  
24 electing an Hispanic Republican, Henry Bonilla.

25 The -- if you looked at the -- both the



1 congressional elections and the trans and the reconstituted  
2 elections, the district was trending strongly Democratic, so  
3 it was a district that was, most observers believed was about  
4 to begin to elect a candidate of choice, so a Hispanic  
5 majority district about to elect a district -- (Witness  
6 mumbling) -- elect a candidate of choice.

7 And in the -- when that district was -- and so in  
8 that district, in the 2003 redraw, that district was made more  
9 secure for Representative Bonilla by flipping the district  
10 from being a majority Hispanic district to being a majority  
11 Anglo district.

12 Q. Do you recall about what the Hispanic citizen voting age  
13 population was before that redraw after -- does the high  
14 fifties sound about right?

15 A. My recollection is that the district was flipped, in the  
16 sense that it had been sort of a mid fifties majority Hispanic  
17 district, and it was flipped to a mid fifties majority Anglo  
18 district, so it was basically flipped ten percentage points  
19 across the majority line.

20 Q. And do you remember what the testimony was in the case  
21 with respect to the degree of racial polarization in the  
22 district?

23 A. It was -- racial polarization in the district was high,  
24 based on the analysis, I think in the -- clearly, in the 90-10  
25 range.

1 Q. What did the legislature do with CD-23 this time around in  
2 plan C-185?

3 A. Well, they adjusted it. And so here, CD-23 -- and there  
4 is some joking around about why people going after CD-123, but  
5 CD-123 keeps causing the problem and draws attraction --  
6 attracts attention to itself.

7 JUDGE SMITH: I'm sorry. You said 123. You mean  
8 185 or --

9 THE WITNESS: I'm sorry. CD-23.

10 JUDGE GARCIA: CD-23.

11 THE WITNESS: CD-23. Sorry. Yes. So District 23  
12 in the -- in C-100, that is the old --

13 JUDGE GARCIA: Okay.

14 THE WITNESS: Such as it is in Texas, where  
15 districts only last a couple of years. The old 23 was -- the  
16 court-drawn district was not, in fact, a particularly -- so  
17 not a safe district for Democrats and showed increasingly in  
18 reconstituted elections a tendency to vote Republican,  
19 including Republicans voting straight Republican across the  
20 entire statewide ballot.

21 And then what happened in 2010 was that the district  
22 actually flipped Republican, so the 23rd elected a Republican.  
23 So rather than a district -- the old issue with 23 was that it  
24 was electing a Republican but trending toward electing a  
25 Democrat, and then basically flipped into the -- flipped over

1 to being a majority Anglo district.

2 JUDGE GARCIA: By "old," do you mean the current  
3 map?

4 THE WITNESS: By -- I guess I should say, District  
5 23, when Bonilla was the incumbent.

6 JUDGE GARCIA: 2001 map?

7 THE WITNESS: Coming up into 2001 and 2003, right.

8 JUDGE GARCIA: Okay.

9 THE WITNESS: So here, the court-drawn 23 was not  
10 particularly secure for Democrats, probably a competitive  
11 district as drawn, but was trending Republican.

12 BY MR. SCHENCK:

13 Q. Let me stop you right here, if I might, Mr. Alford. You  
14 say CD-23 was court-drawn.

15 It was court-drawn after the remand from the U.S.  
16 Supreme Court in LULAC versus Perry?

17 A. Correct.

18 Q. With the idea in mind that it would have a high  
19 concentration of Hispanic citizen voting age population, so  
20 that Latino voters would have an opportunity to elect a  
21 candidate of their choice, correct?

22 A. So it was drawn to be a Hispanic majority district,  
23 because it was a remedy for taking CD-23 and making it into an  
24 Anglo majority district, so it was turned back into a Hispanic  
25 majority district, but it was not -- and initially, it was

1 probably competitive with a Democratic advantage, over time,  
2 but in the -- immediately upon the district being drawn, it  
3 showed reconstituted election numbers that would indicate that  
4 it was a Republican-leaning district.

5 Q. Could you explain to the Court what you mean when you say  
6 "reconstituted election numbers"? I believe we heard  
7 testimony from Dr. Engstrom about the fact that it had elected  
8 a Democrat twice before.

9 What is a reconstituted election analysis?

10 A. So -- well, certainly, we want to pay attention to what  
11 the district does for the actual congressional candidate in  
12 the district. That just gives us one candidate or one contest  
13 to look at in a year, and that may involve personal issues,  
14 financial things, strength of campaigning.

15 If we want to get a sense of what a district might  
16 look like, in general, this general voting behavior, this is  
17 actually what a candidate would look at in thinking about  
18 running in a district.

19 What kind of a district does this look like? What  
20 advantage, just in party terms, will I have to start with? Or  
21 what kind of a tide will I have to work against to convince  
22 them to vote for me?

23 We can look at any statewide race or, in fact, any  
24 race that takes place in a geography that includes the entire  
25 district, and we can basically add up the votes by precinct

1 for the district, and we can see how the district voted.

2 So we can see if the district -- for example, if the  
3 district had -- had been -- if the governor had been elected  
4 in the district, would the governor have been Rick Perry or  
5 Bill White?

6 So districts that would have elected Bill White  
7 governor are districts where you know you have got some base,  
8 at least, of Democratic voting, and districts that would elect  
9 Perry would be districts that are where voting behavior is  
10 more Republican.

11 We can do that -- so we can do that for the top of  
12 the race. We can do that moving down a race. And in a year  
13 where there are a lot of statewide races on the ballot, like  
14 2006, where you have pretty much the whole set of statewide  
15 races, that gives you lots of points to look at how the  
16 district performs.

17 So the 23rd, for example, in 2006, in all of the  
18 statewide races, the majority of voters in the 23rd voted  
19 Republican.

20 Q. Now, Dr. Alford, was 2006 a very good year for Republican  
21 candidates, generally?

22 A. No. 2006 was Bush's second midterm. I think Bush took a  
23 thumping or something to that effect. So that was -- again,  
24 if that would have been a really good year for Republicans,  
25 you may have said, well, this is a close district. This is a

1 tossup district, and it is leaning Republican in a really good  
2 Republican year.

3 But that was a bad Republican year. The Democrats  
4 gained 31 seats in the House. And so even in that year, where  
5 there is a tide running in favor of the Democrats, the 23rd  
6 was voting -- voting Republican.

7 So it is a district that certainly was capable of  
8 moving around. It is not a completely secure district for one  
9 party or the other. But if I had to characterize the  
10 district, I would characterize it as a district that was  
11 certainly leaning more Republican than Democrat.

12 And, in fact -- so in 2006, when the -- when there  
13 was a special election for that new district base on the  
14 Court's adjustment of the old 23rd, the Democrat was elected.  
15 It was the Democratic incumbent who would be -- who was  
16 defeated in the last election.

17 But that was not in the -- that is not in the  
18 general election ballot. That is in a special election. So  
19 that is essentially a somewhat different electorate than the  
20 electorate that voted in the general elections.

21 It is hard to see -- I mean, it is certainly not  
22 impossible, but it is hard to see how that same result would  
23 have occurred had that taken place in the general election.

24 JUDGE GARCIA: And if I recall correctly, there were  
25 two Hispanic candidates in the special election, right?

1 THE WITNESS: Yes. So --

2 JUDGE GARCIA: Bonilla and Rodriguez?

3 THE WITNESS: Bonilla was still trying to hold on to  
4 that district, and Mr. Rodriguez, who won the election.

5 JUDGE GARCIA: Right.

6 BY MR. SCHENCK:

7 Q. In 2008, did you look at the reconstituted election  
8 analysis for 2008 as well?

9 A. By 2008, which is, again, another good Democratic year,  
10 right, maybe the best ever, a great Democratic year for the  
11 Democrats. There, the district does, in fact, show on -- the  
12 statewide numbers show that it goes slightly Democratic, so it  
13 is a district that has the potential to move back and forth,  
14 but -- so it goes basically -- I would say that -- if we think  
15 about that in terms of general election, what happened in  
16 general elections, is that the Democrat was -- the Democratic  
17 candidate for that congressional district was elected in the  
18 Democratic election, 2008, which is a very good year for  
19 Democrats, and then lost in 2010, which was a very bad year  
20 for Democrats.

21 And I think you might say, well, that means that  
22 this is basically a tossup. It could go one way or the other,  
23 50-50. But if we look back across the reconstituted  
24 elections, it is clear that the -- the odd year out in that is  
25 2008, which is unusual, because the district goes Democratic

1 in 2008.

2 2010 is not unusual. 2010, that district looks like  
3 2006, in that district. It looks -- the district was solidly  
4 Republican.

5 Q. How far did you go in your reconstitution election  
6 analysis?

7 A. Well, you can certainly reconstitute elections in the  
8 district once the district is drawn as it exists, but, of  
9 course, because they are reconstituted, you also can move back  
10 and look at the district in elections in which the district  
11 didn't even exist by just using the precincts that are drawn  
12 into the district.

13 So you can go back to 2004, and 2004, had that  
14 district existed in 2004, it would have voted a majority for  
15 George Bush, for example, in the presidential election.

16 Q. Did you also do reconstituted election analysis for CD-34?  
17 Former -- well, I'm sorry. Former CD-27?

18 A. Yes. So CD-27 also in 2010 elected a Republican  
19 Farenthold. So, again, it is a district that is a majority  
20 Hispanic district and had been electing a Hispanic candidate  
21 of choice, in fact, the same Hispanic candidate of choice in  
22 the entire history of the district going back to '83, some  
23 time in the eighties, when the district was created.

24 2010, that candidate of choice was defeated and  
25 Republicans elected -- 27, the reconstituted numbers of 27 are



1 substantially more Democratic than the same numbers for 23.  
2 So if you had to compare 23 and 27, in terms of reconstituted  
3 elections, 27 is a closer district than 23 in terms of its  
4 tendencies. 23 is a more Republican-leaning district that 27  
5 was.

6 Q. Have you looked at the new replacement district, CD 20 --  
7 34? I'm sorry. Do you think that can be expected to perform  
8 as a Latino opportunity district?

9 A. Certainly, CD-34 is a much more Democratic-leaning  
10 district than CD-27 or CD-23.

11 JUDGE GARCIA: Now, I'm sorry to interrupt you. Go  
12 ahead.

13 THE WITNESS: It should be clear, because I am just  
14 using district numbers without reference to plans, and we have  
15 plans all over the place. So if we looked at CD-34 in the  
16 C-185, in the newly adopted plan, CD-34 is a more Democratic-  
17 leaning district, a more secure district for a Democratic  
18 candidate, than was CD-27 in C-100, the previous congressional  
19 plan.

20 So to the extent that CD-34 is a replacement for  
21 CD-27, it certainly is a more effective district than CD-27.  
22 And, of course, in creating CD-34, CD -- CD-27 in the new plan  
23 has flipped, in almost exactly the same way 23 was flipped  
24 previously, so it is CD-27 this time that is flipped into  
25 being a majority --

1 JUDGE GARCIA: And to refresh my memory --

2 JUDGE SMITH: I'm sorry. In being a majority --  
3 what did you say?

4 THE WITNESS: Anglo district.

5 JUDGE SMITH: Anglo district?

6 THE WITNESS: Right. Sorry.

7 THE REPORTER: I didn't hear him either.

8 JUDGE GARCIA: Where is CD-34?

9 MR. SCHENCK: 34, Your Honor?

10 JUDGE GARCIA: Right. What counties?

11 MR. SCHENCK: 34 is south Texas.

12 JUDGE GARCIA: Okay.

13 MR. SCHENCK: It is where former CD-27 largely --

14 JUDGE GARCIA: That goes from Corpus Christi down to  
15 the Valley; is that right?

16 MR. SCHENCK: Former 27 went from Corpus Christi  
17 down to the Valley.

18 JUDGE GARCIA: And where is 34?

19 MR. SCHENCK: 34 starts in the Valley and goes  
20 north.

21 JUDGE GARCIA: Okay.

22 JUDGE SMITH: Up through Kingsville and Kennedy  
23 County.

24 MR. SCHENCK: Correct.

25

1 BY MR. SCHENCK:

2 Q. And I believe we have the data, ethnic data for CD-34. It  
3 is currently 79-percent Hispanic voting age population and  
4 71.7-percent Hispanic citizen voting age population.

5 Dr. Alford, would you expect that to be a strong  
6 performing district for Latino opportunity?

7 A. Yes. It is clearly -- it is clearly a strong district  
8 that reconstituted election analysis suggests it will be a  
9 secure district for Hispanic candidates of choice.

10 JUDGE GARCIA: Now, of the four new districts, how  
11 many would you say are minority opportunity districts?

12 THE WITNESS: I don't think it is -- (Witness  
13 mumbling) -- one of the issues of which districts are the new  
14 districts. The state has gained four districts. Some of the  
15 new districts are clearly drawn in such a way that they are  
16 sufficiently different, that they would be counted as new  
17 districts.

18 JUDGE GARCIA: But one of them was a tradeoff that  
19 was already a Hispanic opportunity district, 27 to 34; is that  
20 right? They just flipped?

21 THE WITNESS: Right. So if we want to think about  
22 what is the comparison to what the Court was unhappy with the  
23 last time around --

24 JUDGE GARCIA: Right.

25 THE WITNESS: -- I mean, 23 was flipped. 23 was

1 flipped to a majority district. It was replaced with a  
2 district not in the same area and which had other kinds of  
3 issues.

4 JUDGE GARCIA: Right.

5 THE WITNESS: This time, it's -- the actual  
6 appropriate comparison, this time, is 27. It is 27 that has  
7 been flipped into a majority Anglo district, and the district  
8 constructed in the same geog -- basic geography that is the  
9 replacement district.

10 So although that is a new district, in the sense of  
11 its number, it is one of the ones above 32, it is simply a  
12 reconfigured District 27.

13 JUDGE GARCIA: Right. So before, how many are  
14 minority opportunity districts?

15 THE WITNESS: I think I would count 35 as the  
16 district that is the additional -- the additional district.

17 JUDGE GARCIA: And is that the only one, then, of  
18 the four, other than counting the flip districts?

19 THE WITNESS: Right. Which I wouldn't count.

20 JUDGE GARCIA: Right. So you are telling me of the  
21 four, only one is a minority opportunity district, and that is  
22 District 35?

23 THE WITNESS: Yes. And I think -- I mean, even  
24 there, it is probably better than thinking of -- I guess we  
25 are talking about basically the same thing. Is there an

1 increase in districts? And I think, basically, there is -- I  
2 would say there is a gain of about half a district, is what --  
3 how I would see the whole plan.

4 JUDGE GARCIA: Half of one, you mean, or half of  
5 four?

6 THE WITNESS: Half of one.

7 JUDGE GARCIA: Right. And of the current map right  
8 now, the current law, how many minority opportunity districts  
9 are there? Is it ten or eleven?

10 THE WITNESS: I would say ten.

11 JUDGE GARCIA: And under the new map, 185, how many  
12 are minority opportunity districts? And that is going to  
13 count the flip from 27 --

14 THE WITNESS: Right.

15 JUDGE GARCIA: -- to 34.

16 THE WITNESS: So I think you can -- depending on how  
17 you count that, when we really haven't -- there are lots of  
18 disagreement on how to define a minority opportunity district.  
19 But I think depending on how you count that, I think the  
20 best -- my view of the adopted plan is that the adopted plan  
21 basically improves slightly the representation of -- in terms  
22 of Latino districts, based on both changes in the districts  
23 and the 35 and the 34 split, flip, and --

24 JUDGE GARCIA: But 34 is for 27, so you really can't  
25 count that as a gain, right?

1 MR. SCHENCK: Well, unless it wasn't beforehand.

2 THE WITNESS: It is important --

3 JUDGE GARCIA: 27 was beforehand, right, the Corpus  
4 Christi area?

5 MR. SCHENCK: (Shakes head.)

6 JUDGE GARCIA: No?

7 MR. SCHENCK: They just elected Blake Farenthold.

8 JUDGE GARCIA: I understand that.

9 JUDGE RODRIGUEZ: Let's get the witness to testify.  
10 And I think the question is, you said the current plan, plan  
11 100, has ten out of the 32 districts being opportunity  
12 districts, correct?

13 THE WITNESS: And I think, again, by "opportunity"  
14 meaning where there is a population, majority population, that  
15 is really -- that is just simply a matter of looking at  
16 population numbers.

17 I think it was -- ten districts that are likely to  
18 elect minority candidates of choice.

19 JUDGE RODRIGUEZ: So using that same definition, out  
20 of the new plan, how many opportunity districts are created,  
21 in your opinion?

22 THE WITNESS: I'm sorry. You are talking about the  
23 new plan?

24 JUDGE RODRIGUEZ: I think what Judge Garcia and what  
25 I am interested in is comparing the base plan to the newly

1 adopted plan. And so you have given us the numbers on the  
2 base plan.

3 What are your numbers on the adopted plan?

4 THE WITNESS: Right. So if we think about the base  
5 plan, there were seven districts that would -- population  
6 numbers would be counted as Hispanic majority districts. Of  
7 the seven, two had failed to elect candidates of choice in  
8 2010.

9 So you can think of that as there were seven  
10 districts, or you can think of that that there were five  
11 districts that were actually electing candidates of choice.  
12 There is no variation in the black districts. That is --  
13 (Witness mumbling.)

14 JUDGE GARCIA: And under the new plan, how many  
15 minority-majority districts or those districts that  
16 potentially could elect a minority?

17 THE WITNESS: Under the --

18 JUDGE GARCIA: Under 185.

19 THE WITNESS: Under 185, you basically are restored  
20 to the seven districts that will elect candidates of choice,  
21 so you restore it to the seven districts you had before, 27  
22 and 23 flipped in 2010.

23 JUDGE GARCIA: Okay. So, essentially, there is no  
24 gain?

25 THE WITNESS: In terms of -- this is sort of in

1 terms of whole districts and in terms of districts likely to  
2 elect candidates of choice, I think that there is a gain in  
3 the sense that you were electing five candidates of choice in  
4 2010 and will likely elect 2000 -- likely elect seven  
5 candidates of choice under the new plan, so in that sense,  
6 there is a gain.

7 I think it is important to think about where you  
8 start. In terms of just the nature of the districts  
9 themselves, I don't think that is as clear. That's why I  
10 start my analysis by thinking about, you know, what was the  
11 actual situation in the seven districts that the legislature  
12 was faced with.

13 It was -- it had seven minority districts, five of  
14 which performed in the most recent election.

15 JUDGE RODRIGUEZ: Now, you call that a gain. Could  
16 you characterize it as, well, plan 100 was deficiently created  
17 in the first instance?

18 THE WITNESS: I think when -- one of the issues in  
19 both the 27th and the 23rd is that we do definitely see a  
20 trend across time in the district, so the districts trended  
21 Republican, rather than starting out Republican.

22 The 23rd maybe started out a little more Republican  
23 than 27. So I would -- I am not sure I would be critical of  
24 the Court's drawing of the 23rd in that sense, but they  
25 were -- but they were districts that were, in their current



1 location, with their current population, without any changes  
2 in lines, were trending in the direction that would make them  
3 less likely to perform.

4 In fact, in 2010, they did not perform. So I think  
5 that's -- whether those districts were problematic in their  
6 creation or simply became problematic as a result of  
7 population shifts, I just think it is important to recognize  
8 that it is easy to say there were seven districts, but in  
9 those seven districts, there were only five Hispanic  
10 candidates of choice that were elected in 2010.

11 JUDGE SMITH: So one way you are looking at it is  
12 that slightly better means that there would be seven instead  
13 of five? Is that -- I don't mean to oversimplify it, but I  
14 need to be given an explanation. Is that right or --

15 THE WITNESS: Right. So there would be seven  
16 instead of five, but there also would be the 23rd, and I think  
17 that is important. There are ways you can overcompare what  
18 happened before to what happened now.

19 Remember, before the 23rd got flipped into a  
20 majority Anglo district -- (Witness mumbling) -- in the -- in  
21 the -- coming into the court case, where the Court undid that  
22 flip that was designed to protect Bonilla.

23 This time, it was the 27th that got flipped and,  
24 basically, in that flip, the 27th basically became the 34th.  
25 They sit right next -- (Witness mumbling) -- and share the

1 same territory.

2 JUDGE GARCIA: So --

3 THE WITNESS: So what did happen in the 23rd? 23rd  
4 has a replacement, right? So people count, well, the 35th,  
5 and that makes up for the 23rd. But the 23rd is still a  
6 majority Hispanic district. It is majority Hispanic in  
7 registration, right? So that is where there is a half  
8 district.

9 JUDGE GARCIA: Do you think the 23rd is properly  
10 drawn under plan 185?

11 THE WITNESS: I am not sure -- if -- if -- I have to  
12 say, if I was advising the legislature on drawing the 23rd, I  
13 would not have done what was done to the 23rd. I think what  
14 happened to the 23rd is, there is fairly little change in the  
15 23rd.

16 It remains, again, in a technical definition, it is  
17 a majority Hispanic district. Therefore, could it elect a  
18 Hispanic candidate of choice? It could. But quite frankly, I  
19 don't feel much better about -- or any better about the 23rd  
20 as currently drawn, compared to the 23rd that the Court drew  
21 in which, in fact, led to the 2010. I think --

22 THE REPORTER: Sir --

23 THE WITNESS: I'm sorry.

24 THE REPORTER: You are fading out on me. We are  
25 here to make a record. Let's do it.

1 JUDGE GARCIA: All right. Go ahead.

2 THE WITNESS: So I don't think that the 23rd is any  
3 more likely to perform than it was. I think it is probably  
4 less likely to perform than it was, and so I certainly  
5 wouldn't count and don't -- in all of this discussion, I  
6 haven't counted the 23rd as an effective minority district in  
7 the newly adopted plan, but it does remain a majority  
8 district.

9 And if the trends that push the 23rd in a Republican  
10 direction were reversed, continued population growth of  
11 Hispanics in that area, perhaps -- or an increase in either  
12 turnout or cohesion among Hispanic voters, the district has  
13 the potential to elect a candidate of choice, but --

14 JUDGE GARCIA: But it is less now than under the  
15 current --

16 THE WITNESS: It has -- it has slightly better  
17 numbers, so if we were looking only at CVAP or SSRV it would  
18 look like slightly better numbers. It has slightly worse  
19 reconstituted election analysis.

20 And so to be consistent, and I think it is important  
21 to be consistent, it is important to admit that the existing  
22 23rd, based on reconstituted election analysis, independent of  
23 the fact that it was a majority Hispanic district, was  
24 trending in a direction that would make it not perform.

25 It is also important to admit that having added

1 Hispanic population to the new 23rd, that has taken -- that  
2 added population has also made the reconstituted election  
3 analysis marginally worse, and so the 23rd is less likely than  
4 it was previously, but it still remains a majority Hispanic  
5 district, and it has been offset in the creation of the 35th  
6 by a district that does have very good reconstituted election  
7 numbers.

8 JUDGE GARCIA: Well, notwithstanding that, you have  
9 previously testified a few minutes ago that had you been  
10 advising the legislature, you would not have drawn it in the  
11 manner that it is drawn under 185?

12 A. I would definitely -- I mean, my first advice to the  
13 legislature would be just -- you know, in simple -- with a  
14 slight memory of history, do as little as possible to the 23rd  
15 as you can.

16 It really has been a difficult -- it was a difficult  
17 district for the Court to draw. It was a difficult district  
18 for the legislature to draw. But, basically, enough is  
19 enough, right? Don't make this hard on yourself.

20 JUDGE GARCIA: Don't mess with the 23rd.

21 THE WITNESS: Don't mess with the 23rd. That would  
22 be my first rule for drawing the districts.

23 JUDGE GARCIA: Okay.

24 THE WITNESS: If -- obviously, some change had to  
25 take place in the 23rd. If you were going to change something

1 in the 23rd, then I would have advised either making --  
2 either -- rather than creating a replacement district for the  
3 23rd, I would have advised making the 23rd itself a better  
4 performing district in terms of election numbers, or --  
5 basically that, or leaving the 23rd alone.

6 I don't think that what they did, which was really  
7 not change the 23rd around, but just fiddle around with the  
8 23rd enough to cause all of us to be here talking about the  
9 23rd, that is not something I would advise.

10 I am not the legislature. I don't know what kinds  
11 of pressures are involved. I do know in working with drawing  
12 district plans that there are a lot of things that go into  
13 redistricting. So as an advisor or as a consultant, I am free  
14 to say, I would not do that. But --

15 JUDGE GARCIA: Now, one final question. Are you  
16 surprised that given the minority growth in Texas, which  
17 counts for 66 percent of the growth, that Texas -- that the  
18 legislature did not draw more than one minority opportunity  
19 district?

20 THE WITNESS: I think it is very hard to look at  
21 those numbers, and we hear a lot of that number, almost always  
22 based on population growth, to hear that number and not  
23 believe that automatically that would turn into new districts.

24 JUDGE GARCIA: No. Not automatically, but what is  
25 your opinion on it?

1           THE WITNESS: Okay. Well, first -- I mean, my first  
2 thought about that is that automatically, at the very least,  
3 it ought to automatically improve the chances of Hispanics  
4 electing candidates in the districts that are already drawn as  
5 Hispanic districts, because the population was going up.

6           So sometimes people think of the population as  
7 having suddenly appeared in the census and now we get to  
8 redistribute it. It is already in the districts. So if we  
9 look at C-100, if we look at the 32 districts, all of those  
10 districts experience that growth that we have all talked about  
11 in the state.

12           All of those districts experienced Hispanic and  
13 black growth and did not experience much Anglo growth. So the  
14 first thing that would surprise me, and didn't surprise me, is  
15 that with all of that growth across that decade, we go from  
16 seven Hispanic districts electing candidates of choice in 2010  
17 to five Hispanic districts electing candidates of choice.

18           JUDGE GARCIA: Okay.

19           THE WITNESS: That seems to me to be at odds with  
20 this -- with that general pattern. I think what that tells us  
21 about the general trend is two things. One, that we have to  
22 be careful to look -- to focus as much as we can, when we are  
23 thinking about both drawing districts and the performance of  
24 the districts, the state as a whole, on actual voters, on the  
25 composition of voters, because it is voters that make

1 districts work, and so total population numbers may not be as  
2 useful as either CVAP numbers -- and I am no great fan of that  
3 or of SSVR numbers.

4 So that's the first thing. It is not as big a  
5 change in SSVR, by any means, as it is -- would be suggested  
6 by population.

7 JUDGE GARCIA: Okay. Thank you, sir.

8 JUDGE RODRIGUEZ: Let me ask you a follow-up on  
9 that. We keep on hearing about, from 2000 to 2010, Hispanic  
10 population went up by 66 percent, but I am not sure I have  
11 heard anywhere or read anywhere here what we estimate the  
12 HCVAP increase of that was.

13 Do you have any idea what that is?

14 THE WITNESS: My recollection is that the HCVAP  
15 number in 2000 would have been somewhere around 20. And I am  
16 thinking that the currency of that number is somewhere around  
17 24, something like that.

18 So I mean, it is important. First of all, you see  
19 right away that the State is not, in fact, half Hispanic, in  
20 terms of citizen population. You are at a number there that,  
21 in both cases, roughly comports with the number of Hispanic  
22 districts that have been drawn.

23 And second, that that's -- that the growth, while it  
24 is still dramatic, is not as dramatic in those terms. And I  
25 think SSVR, I think you see something that roughly follows

1 that in terms of SSRV.

2 In fact, I may be confusing SSRV and CVAP, which, by  
3 the way, wouldn't matter much in 2000. In 2000, SSRV and CVAP  
4 for Hispanics track each other quite closely. There is very  
5 little difference.

6 SSRV, in the current estimates, in the survey  
7 version, don't track quite as closely, but -- so if we just  
8 thought about this in terms of the change in registered vote,  
9 the change in registered vote shows an increase in the  
10 proportion Hispanic, but it is not anything like the -- what  
11 we would expect from the total population.

12 JUDGE RODRIGUEZ: Thank you.

13 BY MR. SCHENCK:

14 Q. Dr. Alford, I think we have covered CD-23 sufficiently.  
15 The legislature, in your understanding, was faced with  
16 something of a dilemma.

17 We had a district drawn by the courts with a  
18 majority Hispanic population as a remedy after LULAC versus  
19 Perry; is that correct?

20 A. That is correct.

21 Q. Okay. And from the reconstituted election analysis you  
22 have looked at, the district was, nonetheless, trending  
23 substantially Republican?

24 A. That is correct.

25 Q. And eventually elected a Republican to Congress in 2010?



1 A. Right. The incumbent -- the incumbent in the district  
2 then -- when you are thinking about what the legislature has  
3 to deal with, the incumbent is a Republican, and that presents  
4 two challenges.

5 It presents a challenge for the district as a  
6 minority opportunity district, because incumbents in the House  
7 are hard to unseat, and so now you have a district that was  
8 already trending Republican and now it is trending Republican  
9 and has a Republican incumbent. That makes it less likely to  
10 perform.

11 Second, you have a Republican incumbent in the  
12 district, and incumbency protection is a big part of what is  
13 involved in redistributing, particularly for the minority  
14 party, where protecting your incumbents is something that you  
15 might care to do something about.

16 And then I think, third, the particular Republican  
17 happens to be Hispanic and, therefore, that makes it a  
18 complicated district to deal with, even if it wasn't the 23rd,  
19 which is already, as we know, historically a complicated  
20 district.

21 Q. And to be clear, the legislature did increase the citizen  
22 voting -- Hispanic citizen voting age population in the  
23 district?

24 A. I guess one way of thinking about that is that -- maybe it  
25 is the most charitable. I don't know. One way of thinking of

1 it is sort of dividing the baby, that what you give to your  
2 colleague, the Hispanic Republican, is slightly better  
3 Republican numbers, and then what you give to the Hispanic  
4 population in the district is slightly more Hispanic  
5 population in the district.

6 So one way of thinking, the most charitable way of  
7 thinking about that is that, isn't that a nice compromise? I  
8 happen to think that is often the case in that kind of  
9 compromise, that all of that is a mistake, but I mean, that is  
10 certainly one way to view that.

11 Q. Thank you. Let's talk about -- do you have an opinion on  
12 whether, going back to the data, the data we have seen from  
13 the experts in this case suggests levels of cohesion and  
14 voting patterns that you would describe as polarized?

15 A. I don't think we see in the -- there are sort of three  
16 things there. If we just simply look at the numbers, I don't  
17 think we see numbers that are at the same levels that  
18 historically we thought of as polarized or block voting, so I  
19 don't think we see things that are in the 90-10 range.

20 I think when we start to get into things like 60-40  
21 or 75-25 or 70-30, I think we are clearly in a range where we  
22 need to think about whether we are basically below levels that  
23 would be polarized, or block, that may still reflect  
24 differences in majority vote across categories.

25 Q. Let me ask you a couple of questions here, I think that

1 are consistent with the questions that the bench was asking a  
2 minute ago.

3 And you said historically. Over time, as courts  
4 have tried to draw minority opportunity districts, have we  
5 seen any trends in the levels of concentration of minority  
6 voters that have change over time?

7 A. I mean, there is one -- I think there is one very obvious  
8 trend, and that is the decline in the proportion of black  
9 population that you need to create an effective black  
10 district. So --

11 Q. In the 1980s, if you were drawing or advising the Court to  
12 draw a district that would reliably elect an African-American  
13 candidate of choice, what percentage of African-American  
14 voting age population would be the rule of thumb?

15 A. Sort of the rule of thumb was 65 percent of population,  
16 60 percent of voting age population.

17 Q. Does that come down over time to roughly 40 percent?

18 A. Yes. I think the rule of thumb now is -- and, of course,  
19 now we have some history to go on. But I don't think -- I  
20 can't think of an example of a 40-percent -- a district drawn  
21 to be an effective black district at a level of 40 percent or  
22 above that's ever failed to perform.

23 Q. And we have seen, I believe, very high cohesion among  
24 black voters. So is it the case that white voters have shown  
25 less tendency over time to resist voting for a black candidate

1 of choice?

2 A. I think there is less -- there is less tendency for -- or  
3 more white crossover, I guess, if you can think of it in that  
4 sense. Clearly, that is true in the Republican party, partly  
5 as a result of a change -- or sorry -- in the Democratic  
6 Party, which was really the issue previously; I think partly  
7 because, over time, the party itself was changed, but also  
8 partly because there were simply less, in that case, cohesive,  
9 and opposition, there was less block voting.

10 Q. Now, at the same time, let's talk about the Hispanic  
11 opportunity districts.

12 Have you seen the numbers of Hispanic concentration  
13 of districts go up as courts try to draw districts that will  
14 perform, and yet seen difficulty having those districts  
15 reliably elect candidates of Hispanic choice?

16 A. Of course, we -- I mean -- (Witness mumbling) -- come to  
17 this a little bit later, and if you just start it off, say,  
18 with the same 65-percent rule, I think you would see clearly  
19 that a 65-percent population Hispanic is not likely to be an  
20 effective district in some places, whereas it might be an  
21 effective district someplace else.

22 I think that gets back to that -- one of the  
23 important things out of all of the analysis, which is that  
24 Hispanic cohesion varies from area to area. And so simply --  
25 a simple rule like 65 percent is certainly not likely to work.

1           And certainly, the -- as we see from the 2010  
2 election and the 23rd and in the 27th, or even in the fact  
3 that we can say that the redrawn 23rd, which continues to be a  
4 majority registered vote Hispanic district, is unlikely to  
5 actually elect a candidate of choice.

6           What we see there is that you have to have  
7 substantially higher numbers.

8 Q. And in a district like the 23rd, or somewhere else where  
9 we are talking about largely a rural population, if we are  
10 seeing, in fact, 60-40 Hispanic voting tendencies right now,  
11 or two-thirds-one-third Hispanic voting tendencies, isn't it  
12 true, if you are trying to draw a district in which the  
13 Hispanic population will control the outcome of the election,  
14 that the lower the polarization among -- the higher  
15 concentration of Hispanic population you would have to draw  
16 into the district in order to make it perform?

17 A. That is correct. So if the minority population is highly  
18 polarized, then each time you add -- actually add minority  
19 population, you add, effectively add votes for the candidate  
20 of choice.

21           As you move toward a 50-50 distribution, you add  
22 population and you add basically votes equally -- or certainly  
23 much less unequally for the candidate of choice. So at some  
24 level, if the vote is voting 50-50, adding voters doesn't add  
25 anything to the -- you just basically are adding a vote for

1 and a vote against.

2 At 60-40, you are adding -- every time you add six  
3 votes for, you are adding four votes against, and you can see  
4 that that is going to be -- it is going to make it harder to  
5 get to where you want to be --

6 Q. Likewise --

7 A. -- than 90-10.

8 Q. -- on the other side of the polarization equation, if the  
9 white vote can't be reliably described as a block that is  
10 voting on the basis of race against candidates, isn't it more  
11 difficult to predict what the voting behavior will be, in  
12 terms of drawing a district based on race to ensure its  
13 performance?

14 A. Well, certainly, there are sort of some counterintuitive  
15 things, I guess, to drawing districts. Districts are much  
16 more complicated to draw -- the further you move away from  
17 polarized voting, the more complicated the process of drawing  
18 effective districts becomes.

19 Q. Let me ask two more questions. Do you have an opinion on  
20 whether the patterns that we see of cohesion from the data can  
21 be more reliably attributed to race of candidates or the party  
22 affiliation of voters?

23 A. Certainly, the -- what we see in the primaries I don't  
24 think can be attributed to party identification, because the  
25 candidates all have the same party identification. And when

1 we looked there, we see what we would expect, I guess, to see.  
2 We actually see that black voters disproportionately vote for  
3 black candidates. White voters disproportionately vote for  
4 white candidates. Hispanic voters disproportionately vote for  
5 Hispanic candidates.

6 And so race still matters, in terms of the  
7 connection between voters and candidates. But in both the  
8 Republican and Democratic primary, that is not sufficiently  
9 different to be polarized voting on the basis of race.

10 In the general election, we see numbers that, for  
11 example, for blacks look like -- exactly like historic  
12 polarized voting, or highly cohesive voting in the 90- to  
13 95-percent range, but it turns out that that high level of  
14 cohesion is a function of party identification in the general  
15 and not a function of the race or ethnicity of the candidates.

16 Q. And that would be true also for the other races, Hispanic  
17 and Anglos, from the data we have looked at?

18 A. We see from the tables exactly the same pattern.

19 MR. SCHENCK: Thank you. Pass the witness.

20 JUDGE GARCIA: Ms. Perales.

21 JUDGE SMITH: Could I ask a couple of questions? I  
22 would like to ask, if I may, a question about something that  
23 you touched on more than our other witnesses, and that is  
24 straight party voting, and by that, I mean in Texas, where you  
25 pull a straight party lever or you check a box and that

1 automatically selects the candidate from that party from the  
2 top of the ballot to the bottom.

3 I don't know the extent to which information is  
4 available, so I will ask you: In a given precinct, where I  
5 will say, hypothetically, three-fourths of the voters have  
6 voted straight party for either Republican or Democrat, is  
7 there a way of determining for whom those voters voted  
8 candidatewise, as opposed to how the voters voted who went  
9 down and either didn't vote down the whole ballot, selected  
10 certain candidates to vote for or voted for all of the races,  
11 but selected maybe back and forth between the parties? Is  
12 that information available?

13 THE WITNESS: It's -- I think that would be -- you  
14 certainly know from the precinct results what the proportion  
15 of straight party tickets are cast in the precincts, so you  
16 could look across precincts and see what kinds of things tend  
17 to go with straight party ticket voting, and that is some of  
18 what Dr. Murray was looking at.

19 You don't in -- from the election results  
20 themselves, have very good information that would allow you to  
21 determine what I think you are interested in, which is a more  
22 specific look at sort of what distinguishes the split ticket  
23 voting from the choice of straight ticket voting itself.

24 I think exit polls could be helpful on that. I  
25 haven't actually seen a split ticket analysis of that kind.



1 But potentially, in a sufficiently large exit poll, where you  
2 get -- where one of the things people can do on the ballot you  
3 hand them is choose a straight party ticket -- you could get  
4 some information about precisely that question.

5 JUDGE SMITH: But as far as you know, that  
6 information is not available from the election returns  
7 themselves?

8 THE WITNESS: That is correct.

9 JUDGE SMITH: Do you know of any studies that have  
10 been made of that? I guess if it is not available, it is not  
11 available.

12 THE WITNESS: Yes. And there are people who  
13 specialize in issues like straight ticket voting, which has  
14 been an area people have looked at in political science  
15 historically for a long time, going back to the turn of the  
16 century, in the previous turn of the century, 1800s to the  
17 1900s.

18 But I am not aware of anything in that literature  
19 that looks at the question you are asking.

20 JUDGE SMITH: Now, if you take -- as I understand  
21 it, generally, and I believe you touched on it, but the number  
22 of voters who were voting straight party ticket, either  
23 Republican or Democrat in Texas, is increasing over time.

24 If you have a precinct or district, but let's just  
25 say a precinct in which a super majority of the voters have

1 voted straight party ticket, either Republican or Democrat in  
2 that precinct, let's say it is 75 or 80 percent, then when you  
3 look at the precinct election results for that precinct, that  
4 straight party vote is going to drive the overall results for  
5 the precinct, is it not?

6 In other words, it is going to show voting according  
7 to party overwhelmingly in that precinct, just by the fact  
8 that people voted a straight party ticket? In other words, it  
9 is going to obscure the results that would be shown if we knew  
10 how people voted who didn't vote straight party?

11 THE WITNESS: That's true. The higher the  
12 proportion that vote straight party ticket, the less -- both  
13 the less information and the less variability in the election  
14 result will come from individuals who are making choices  
15 individually as they move down the ballot.

16 So this is the reason that when we look at  
17 reconstituted election analysis, it is usually not very hard  
18 to indicate that a district is basically Democratic or  
19 Republican, because so much of the voting in the district is  
20 straight party ticket voting.

21 But if you see -- I mean, you will often see people  
22 pull a single number. They will say, let's take -- in the  
23 earlier round of the court challenges, the number was Paul  
24 Hobby's performance, when he ran, because it was -- it was  
25 sort of a top Democratic number.

1           So almost all of the analysis that is done here on  
2 reconstituted elections, you can do it by just everybody  
3 agreeing to -- (Witness mumbling) -- agree to Uresti as the  
4 election, and you get basically the same result across all of  
5 this, because so much of the -- of that -- of the vote for  
6 Uresti is also automatically above for every other Democratic  
7 candidate in that race, so there just is not a lot of  
8 variation.

9           MS. PERALES: Thank you, Your Honor.

10                           \*-\*-\*-\*-\*-\*-\*-\*

11                           CROSS EXAMINATION

12 BY MS. PERALES:

13 Q. Good morning, Dr. Alford.

14 A. Good morning, Ms. Perales.

15 Q. It is nice to see you again.

16 A. Always nice to see you.

17 Q. Let's start slow. In this case, your analysis of  
18 individual districts was focused on the congressional  
19 districts, correct?

20 A. That is correct.

21 Q. And you did not discuss any individual House districts in  
22 your report, correct?

23 A. So by "House," you mean state --

24 Q. State House.

25 A. Okay. Yes.

1 Q. And, in fact, you testified in your deposition that you  
2 didn't really look at the State House districts, correct?

3 A. Yes. I did, as we discussed, very early in the process, I  
4 was sent a bunch of House plans, partly as a -- an indication  
5 of exactly what the data was available, because they had it  
6 for House plans.

7 And at some point, I think there was some discussion  
8 early on about the House. I think the initial intention was  
9 that I would do State House, State Senate, everything. And  
10 then as we got to the litigation stage, my focus was shifted  
11 to the congressional, and so of this -- analysis, obviously,  
12 analysis of voters applies to everybody, but I didn't do any  
13 work on -- directly on any of the State House or State Senate  
14 matters.

15 Q. And you also did not do an analysis of voter turnout over  
16 time, did you?

17 A. No.

18 Q. And your own analysis did not compare the percent of  
19 Latinos that turned out to vote in 2010 as compared to prior  
20 years, in some of the districts that you discussed, like 23  
21 and 27, correct?

22 A. That is correct.

23 Q. And you don't recall looking specifically at whether  
24 Representative Ciro Rodriguez, who was the former incumbent of  
25 Congressional 23, whether Ciro Rodriguez was the Latino

1 candidate of choice in 2006, 2008 or 2010, correct?

2 A. Yes. I am assuming that he was the can -- the candidate  
3 of choice, but I don't -- I think that is what Engstrom's  
4 analysis shows, but I didn't analyze that subject.

5 Q. And you testified at your deposition that you couldn't  
6 remember what the State's analysis of Congressional 23 showed  
7 with respect to who was the Latino-preferred candidate in  
8 2010, correct?

9 A. Again, I assume -- I assume -- I am assuming that the  
10 Latino-preferred candidate in 2010 was Representative  
11 Rodriguez.

12 Q. And you also don't recall looking specifically at whether  
13 Representative Solomon Ortiz was the Latino candidate of  
14 choice in Congressional District 27 in 2006, 2008 or 2010, do  
15 you?

16 A. That is correct.

17 Q. Now, when you said that Congressional 23 was trending  
18 Republican, you didn't make an analysis of which specific  
19 geographic areas of the district you think might have been  
20 shifting Republican, did you?

21 A. No.

22 Q. And you didn't make any analysis with respect to  
23 Congressional District 23 regarding whether there were any  
24 changes in the willingness of either Latinos or Anglos to vote  
25 Republican, did you?

1 A. No.

2 Q. And you didn't make any analysis of the factors that might  
3 affect Latino voter turnout in Congressional 23, other than  
4 simply the increase in the Hispanic population over the  
5 decade, correct?

6 A. Correct.

7 Q. And you also testified in your deposition that per your  
8 report, you didn't make any independent analysis of whether  
9 there were lingering effects of past discrimination in the  
10 Latino community, correct?

11 A. Correct.

12 Q. And you also don't offer a conclusion in this case that  
13 there are no lingering effects of prior discrimination in the  
14 Latino community, correct?

15 A. Correct.

16 Q. I am going to move on to Dr. Engstrom now. Now, you  
17 believe Dr. Engstrom is prominent in his field, correct?

18 A. Yes, he is.

19 Q. And you believe that Dr. Engstrom's report is credible,  
20 correct?

21 A. Yes.

22 Q. And you believe that Dr. Engstrom chooses good methodology  
23 to use in his report, correct?

24 A. I have to remind you that I still do not know exactly what  
25 methodology Dr. Engstrom used, and that I am very frustrated

1 by this. But looking across all of the expert reports, I  
2 chose to build my table around Dr. Engstrom's EI analysis, and  
3 that reflects both my faith in Dr. Engstrom and my confidence  
4 that EI would give us the most stable picture we could get,  
5 given the difficulty that we are working with.

6 Q. And we will get to multivariate EI in a minute, but didn't  
7 you testify in your deposition that you believe Dr. Engstrom  
8 chooses good methodology to use in his report?

9 A. Yes, he does.

10 Q. Okay. And you testified in your deposition that  
11 Engstrom's use of the turned-out vote for the 2010 bivariate  
12 portion of his analysis is preferable, correct?

13 A. Yes, it is.

14 Q. And with respect to the various analyses presented in this  
15 case, you testified that you don't reach any conclusion that  
16 requires you to disbelieve anything that they provide, the  
17 other experts in their analysis, correct?

18 A. I would hesitate only slightly because, I -- as I  
19 mentioned earlier, Dr. Lichtman has some analysis that I think  
20 doesn't fit with everybody else's. I haven't had time to  
21 understand exactly why, so I would hesitate on the issue -- on  
22 that issue, but certainly, on -- for everything else, I would  
23 agree, yes.

24 Q. Now, you testified in your deposition that your definition  
25 of a Latino opportunity district is one in which there is an

1 opportunity for Hispanics to constitute the majority of the  
2 turned-out vote in the district and in which Hispanics are  
3 sufficiently cohesive that when they vote cohesively they can  
4 control the outcome of the district. Correct?

5 A. Sounds like a fair definition.

6 Q. And you also testified in your deposition that the term  
7 "opportunity districts" could describe a district that might  
8 or might not perform in a particular election. Correct?

9 A. Correct.

10 Q. And you agree with me that a Hispanic opportunity district  
11 doesn't have to elect the Latino-preferred candidate in every  
12 election, right?

13 A. That is correct.

14 Q. You also testified that if a Latino opportunity district  
15 fails to elect a Latino-preferred candidate in one election  
16 year, it should not automatically be categorized as not a  
17 Latino opportunity district, correct?

18 A. Correct.

19 Q. And you testified that if a district is majority Spanish  
20 surname voter registration, and if Latinos are voting  
21 cohesively and elects a Latino-preferred candidate the  
22 majority of the time, you would classify it as a Latino  
23 opportunity district, correct?

24 A. Correct.

25 Q. Isn't it correct to say, when you observed Congressional



1 District 23, in terms of the shift to the results in 2010,  
2 that that shift was, to some degree, reflecting statewide and  
3 national trends in turnout, correct?

4 A. Certainly, the 2010 result reflects a national -- a  
5 difference in national turnout. But when I am talking about  
6 the trends from 2002, I don't know if that reflects a national  
7 trend in the turnout.

8 Q. All right. It would be a good opportunity for us now to  
9 clarify that after your first report, and when I took your  
10 deposition, your first report only looked at 2010 election  
11 results, correct, for the shift to Republican?

12 You didn't do the reaggregated elections back to  
13 2002 until your -- the report I got yesterday, right?

14 A. So the report -- the original report looked at the 2010  
15 elections, and I was aware of what the -- of the elections  
16 going back to -- going back to -- (Witness mumbling) -- 25,  
17 going back to 2002, but I didn't do a table of that in the  
18 report or, for that matter, in the current report.

19 Q. Okay. But when we talked in your deposition and after I  
20 had your first report -- it might help to turn to page 127 of  
21 your deposition, which I provided to the right of you.

22 Can you look at page 127, lines 10 through 14? I  
23 asked you there, whether what you observed in Congressional 23  
24 in terms of the shift to the results in the year 2010 was, to  
25 some degree, reflecting statewide and national trends in

1 turnout.

2 Can you tell me what your answer was?

3 A. So this is the first answer to the first question or --

4 Q. Line 10. Yes. The question may have been chopped up, but  
5 I usually include the whole thing.

6 A. Okay. This is your question at line 10 and my answer at  
7 line 14?

8 Q. I believe so. What is your answer on line 14?

9 A. Yes. I think clearly so.

10 Q. Thank you. You testified that if a district elected a  
11 Latino-preferred candidate 75 percent of the time that it  
12 would certainly indicate a potential for a district to elect  
13 candidates of choice, didn't you?

14 A. I would agree with that, yes.

15 Q. Now, in your second report, you ran some reagggregated  
16 statewide elections in Congressional District 23 and 27, yes?

17 A. Yes. I looked back at the -- at that set of reagggregated  
18 elections that was -- that is available from the Texas  
19 Legislative Council.

20 Q. Now, there are tons of reagggregated elections that you can  
21 get from the leg. counsel. You can ask them for any  
22 reagggregated election, as long as it occurred, you know,  
23 statewide or in enough geography that you can see it in your  
24 district.

25 And so since you didn't list them in your report,

1 and I only got your report yesterday, can you just tell me  
2 which elections you reaggregated to form your conclusions?

3 A. Okay. So the report I am using, which if you look at  
4 the -- what -- in that, unlike some of the more summarized  
5 reports, these reports are separate for each election, so 2002  
6 would be a single election.

7 And what we show for the 23rd there is a  
8 reaggregation for every election that has any territory at all  
9 in the 23rd, all of the statewide and everything below it,  
10 that touches it in any way.

11 So I am not selecting -- I am not selecting a set of  
12 races and asking the TLC to look at these races. I am looking  
13 at everything they report. And what I looked at were the  
14 races they report that are statewide races, so they are races  
15 that would, therefore, wholly contain both the 23rd and the  
16 27th.

17 So for that particular year, that would be -- if  
18 there is a governor's race, governor, lieutenant governor;  
19 obviously, in a presidential year, there would be a president;  
20 senator, if there is a senatorial race, and then dropping into  
21 the other statewide races, so the Ag. Commissioner, the  
22 Attorney General, the Land Commissioner.

23 And I think -- that then falls with a set of Court  
24 of Criminal Appeals and Supreme Court races going down below  
25 that, and I am not sure sort of how far -- I think I basically

1 was looking down to about the point where we started to get  
2 into the court races, and if there is -- I mean, if there is  
3 nothing else going on in the top, there is probably nothing  
4 else going on below that.

5 So as to my recollection, I am looking at the -- all  
6 of the statewide races above the level of like, I guess, the  
7 court races, probably.

8 Q. Okay. So it sounds like a lot of races. Would it be fair  
9 to say that the vast majority of those races did not include a  
10 Hispanic candidate, that they were white-on-white elections?

11 A. I would assume that they would be, yes.

12 Q. Would it be fair to say that when you were looking at all  
13 of these elections that you did not run EI on these elections  
14 within CD-23 and CD-27 to determine the Latino candidate of  
15 choice?

16 A. That is correct.

17 Q. So you assumed that the failure of the Democratic  
18 candidate in any of those reagggregated elections meant that  
19 Latinos failed to elect their candidate of choice, correct?

20 A. That is correct.

21 Q. And you didn't present any analysis of endogenous  
22 selections in CD-27 and CD-23 since 2006 to see whether  
23 Latinos were electing their preferred candidate to Congress,  
24 correct?

25 A. Correct.

1 Q. And it might be useful here to explain to the Court what  
2 an endogenous selection is. Can you do it in one sentence?

3 A. Yes, but it will be a very long sentence. So the  
4 endogenous selection, sometimes called the election on all  
5 fours, is, if we are talking about a congressional district,  
6 the first thing to talk about is the congressional district.  
7 If it is an existing district and it has held an election,  
8 talk about the election that is held.

9 So in 2010, there was -- the first thing you look at  
10 in 2010 is, there was a congressional election, and you can  
11 look at the voting in that election, and that is -- that is  
12 the endogenous or the election on all fours.

13 And then you go beyond that, particularly if you  
14 don't have an election, and talk about, what about these  
15 districts we are drawing, how do they work? We have no  
16 endogenous selection, because they haven't held elections yet,  
17 and there, we are forced to look only at reconstituted  
18 elections.

19 Q. Thank you. Now, you also present no analysis in either of  
20 your reports showing that Dr. Engstrom's turnout estimates for  
21 Latinos in Congressional 27 and Congressional 23 general  
22 elections in 2010 are incorrect, right?

23 A. That is correct. I actually looked at the turnout data,  
24 his turnout data, and I get the same -- it sums up for me just  
25 the way it sums up for Dr. Engstrom.

1 Q. Thank goodness. And with respect to your analysis, you  
2 testified in your deposition, didn't you, that, quote: You  
3 can look at Democratic results independent of whether the  
4 candidates are minorities or not, and then you can assess the  
5 degree to which the district is likely to elect a minority  
6 candidate of choice.

7 Isn't that right?

8 A. I think -- I'm certain that I would say that, and I think  
9 that is what all of the discussions today would confirm.

10 Q. Okay. And so with respect to your analysis of  
11 performance, as opposed to opportunity districts, but with  
12 respect to your analysis of performance of Latino majority  
13 districts, isn't it correct that you testified, quote: What I  
14 am looking at when I am looking at performance in a district  
15 is based on the proportion Democratic vote across a variety of  
16 races how likely is the district to elect Democrats.

17 Yes?

18 A. That is correct.

19 Q. And when you were asked about the term "effective minority  
20 district," isn't it correct that you said, quote: What I am  
21 looking at is how likely is this district to routinely elect  
22 minority candidates of choice, which in Texas at present means  
23 Democrats, so that is what I am looking at.

24 You testified to that?

25 A. It sounds like something I would say.

1 Q. And when you included Bill White versus Rick Perry, that  
2 race as one of the races you used for determining whether a  
3 district is performing for Latino voters, you didn't analyze  
4 the degree to which Anglo voters might have been voting  
5 Democrat for Mr. White, but then might have crossed over to  
6 vote Republican in other lower ballot races, like  
7 Chavez-Thompson and Uribe, did you?

8 A. No, I did not.

9 Q. And you testified that you didn't consider the possibility  
10 that Representative Canseco might be the candidate of choice  
11 in Congressional 23, because he is Republican, correct?

12 A. That is correct.

13 Q. And you assumed, without performing EI, that Bill White  
14 was the preferred candidate of Latinos, because Bill White was  
15 the Democratic candidate, yes?

16 A. Well, in -- I mean, I know exactly what you are asking in  
17 a narrow sense, but in a broader sense, of course, it is the  
18 EI analysis that -- in which we see no difference between Bill  
19 White's performance and anyone else's that leads us to be able  
20 to conclude in any particular district that focusing on the  
21 Democratic candidate is effectively focusing on the candidate  
22 of choice for the Hispanic vote.

23 Q. Okay. So to break that down, because statewide, you saw  
24 that Bill White, in your estimates, was the preferred  
25 candidate for Latinos around Texas, you assumed that he would

1 be the preferred candidate of Latinos in Congressional  
2 District 23? Yes?

3 A. Yes.

4 Q. Now, you included races in which both candidates are  
5 white, and I will refer to them in the lingo as white-on-white  
6 races.

7 You included them in your analysis that concludes it  
8 is difficult to identify ethnic voting as determined.

9 But isn't it true that white-on-white elections  
10 don't allow us to observe the impact of ethnic voting, since  
11 Latino voters are confronted with two candidates who are both  
12 Anglo?

13 A. That's exactly why we used that election. I am so pleased  
14 you understand that.

15 Q. I do.

16 A. So to think about where we would normally start in an  
17 analysis, we would start with, let's remove the variable of  
18 interest, so that we kind of have a control. So let's look at  
19 how people vote when they have no -- no chance to express an  
20 ethnic or racial preference, and that could be a Hispanic-  
21 Hispanic race, a white-white race, a black-black race.

22 So let's look at that and see what happens. And  
23 then let's add in Hispanic on the Republican side and Hispanic  
24 on the Democratic side, black, so forth. Let's add in those  
25 things.



1           So that race is in there precisely because you can  
2 think of that as sort of your baseline. Look at that and then  
3 look at any other race, and it will tell you how much  
4 difference it makes when you bring in the race or ethnicity of  
5 a candidate, to what otherwise would be simply the effect of  
6 partisanship.

7 Q. And so what I want to clarify for the Court is that,  
8 putting aside the analysis that you did, using white-on-white  
9 elections, wouldn't you agree with me that white-on-white  
10 elections don't tell us anything about the impact, by  
11 themselves, of ethnic voting, because Latinos cannot express  
12 an ethnic preference when you have two white candidates  
13 running against each other?

14 A. Right. So a single white-on-white race tells you nothing  
15 about that effect, and, of course, a single -- a single one of  
16 any of the others also doesn't tell you anything. You have  
17 nothing to compare it to.

18 Q. But even ten white-on-white elections are still not going  
19 to help us understand the impact of ethnic voting, because  
20 there is simply no ethnic queue for Latinos? There is no  
21 choice for Latinos in white-on-white elections?

22           It cannot teach us what the impact is of ethnic  
23 voting, as it is termed in your conversation with Mr. Schenck;  
24 isn't that right?

25 A. I agree, but I don't see how ten white-on -- or Anglo-on-

1 Hispanic races would teach us anything either.

2 Q. All right. But I am just focusing on white-on-white  
3 elections that you included in your analysis.

4 Wouldn't it be true that -- in your table 1 in your  
5 report, you only have one race in this list of races in which  
6 a Hispanic Republican is running in the general election, and  
7 that is the Guzman race in 2010?

8 A. I don't recall exactly, but if that is what -- that is how  
9 it counts, yes.

10 Q. Now, going back to Congressional District 27 and 23, in  
11 your first report, you base your conclusion that Congressional  
12 District 27 showed Republican tendencies on the fact that Mr.  
13 Farenthold won the election in 2010, and the district went  
14 Republican in three statewide races in 2010. Correct?

15 A. Yes.

16 Q. And you didn't discuss the fact that Solomon Ortiz had  
17 been elected, since the creation of that district, for almost  
18 30 years, until the election in 2010; isn't that correct?

19 A. I don't know if I discussed it, but, yes, that's -- he is  
20 the only person, up until 2010, to ever hold that office, and  
21 it is not a newly-created district like the 23rd, so he is a  
22 long-time incumbent in an established district.

23 Q. Using your analysis, wouldn't you agree with me, then,  
24 that Congressional District 27 performed from the time of its  
25 creation right up until that one election in 2010?

1 A. Subject to the fact that you seem to be upset that I  
2 didn't do ecological regression analysis going back to 1984 on  
3 Mr. Ortiz's district, my belief is that that district  
4 performed throughout his career.

5 Q. Thank you. I am not upset about anything, Doctor.

6 A. I know that.

7 Q. Now, you agree -- Mr. Schenck mentioned in his  
8 conversation with you that you participated in the litigation  
9 in 2003, challenging the legislature's congressional  
10 redistricting plan. That was the mid decade remap. And you  
11 testified with respect to certain things you noticed in  
12 Congressional District 23 at that time that led you to  
13 conclude that there was a problem with 23. Do you remember  
14 that?

15 A. Yes.

16 Q. And he said that the Court agreed with you; isn't that  
17 correct?

18 A. That's what he said.

19 Q. The Court agreed with us both, didn't it?

20 A. I think the Court agreed with you and I was just around.

21 Q. That is too modest, Dr. Alford. In your deposition, you  
22 identified six Hispanic opportunity districts in the adopted  
23 plan that you feel are opportunity districts, 16, 20, 28, 15,  
24 34, and 35, and those are the ones in South Texas. Do you  
25 recall that?

1 A. No.

2 Q. Go to page 141 of your deposition.

3 JUDGE GARCIA: Well, is that what it says?

4 MS. PERALES: Yes.

5 JUDGE GARCIA: Okay.

6 MS. PERALES: We can move on.

7 THE WITNESS: Okay. I just wasn't sure if we  
8 were -- you were talking about going back to the DeLay map. I  
9 wasn't sure if you were -- or if we were still talking about  
10 that or --

11 BY MS. PERALES:

12 Q. No more DeLay for now. We will get back to it.

13 A. Okay.

14 Q. But I wanted to get us to the adopted plan, which is  
15 C-185.

16 A. Right.

17 Q. And your identification of certain districts as Latino  
18 opportunity districts in the south and -- south and central  
19 Texas area, and you identified 16, 20, 28, 15, 34 and 35,  
20 correct?

21 A. Yes. And I'm sorry. I wasn't -- what confused me was you  
22 said six districts, and I was thinking there were seven  
23 districts, but you are not talking for now about the 29th in  
24 Houston?

25 Q. That's right. Just south and central Texas. Now, going

1 back to the benchmark, you testified with respect to Districts  
2 23 and 27, and especially, because in the year 2010 they had  
3 not elected the Latino-preferred candidate, do you recall  
4 testifying: These are two districts that are not electing  
5 candidates of choice in the most recent election and so maybe,  
6 maybe that is fine. Maybe you leave them alone. Maybe you  
7 make them weaker. Maybe you make them stronger. All I am  
8 saying is that helps us look to districts that might or might  
9 not be problematic.

10           Isn't that correct?

11 A. That is correct.

12 Q. Now, a Latino can vote for a Republican in one election  
13 and Democrat in the next, can't she?

14 A. I think that is something we -- we can clearly infer about  
15 Latino voting behavior from all of this analysis. There is  
16 much more movement across party lines, in terms of how Latinos  
17 are distributed, and I suspect probably part of the reason  
18 that our results are not as stable is there is also more  
19 flexibility in terms of individual choices.

20 Q. And you and I discussed in your deposition, didn't you,  
21 that in Texas, we have seen other groups, we have seen Anglo  
22 voters shifting from Democrat to the Republican party in the  
23 past couple of decades, haven't we?

24 A. I think it's -- I think that is largely generational, but  
25 there are also some -- there are also some individual

1 shifting, but also a very large generational shift. So, yes,  
2 the current domination of the Republican Party in Texas is a  
3 consequence largely of a shift, either individual or  
4 generational, from Anglos from the Democratic Party to the  
5 Republican Party.

6 Q. And you also agreed with me in your deposition, didn't  
7 you, that a Latino who is socially and fiscally conservative,  
8 that that person could feel, as we talked about it then, that  
9 the Republican Party had walked away from him for the past few  
10 years, because of certain policy positions, and he might even  
11 find himself voting Democratic.

12 Isn't that right?

13 A. Yes.

14 Q. And you said earlier in your testimony today that, in your  
15 opinion, the political -- that racial animosity in the  
16 political system had declined.

17 Do you remember that?

18 A. Yes.

19 Q. Is it also possible for that same conservative Latino  
20 voter to believe that in the past few years racial animosity  
21 in the political system had increased and not declined?

22 A. Yes, it could be.

23 Q. And you haven't done any analysis of opinion polling in  
24 the Latino community regarding the issues that they have rated  
25 fairly high on their concern list, have you?

1 A. No.

2 Q. Let's talk about Congressional District 23 for a bit. In  
3 your deposition, when you and I talked about the 2006 Supreme  
4 Court decision, in the redistricting litigation, that ended up  
5 invalidating Congressional District 23, you testified, quote:  
6 There are some obvious parallels between what happened  
7 previously and what happened this time.

8 Do you recall that?

9 A. Yes.

10 Q. And then you further testified that, in your view,  
11 Congressional District 35 is basically a swap, and then the  
12 question becomes, is it a legal swap or not?

13 Do you remember that?

14 A. That sounds familiar.

15 Q. Okay. Now, 35 would have been a swap for 23, wouldn't it?

16 A. Yes. And I guess certainly, it is not -- excuse me. It  
17 is not a swap in the sense that we see in 27 and 34, where you  
18 simply reconfigure adjacent districts, but in the sense that  
19 there is some -- that there is something in the plan that I  
20 think might address the weakness of 23, I think would be the  
21 creation of 34.

22 Q. And so --

23 A. I'm sorry. 35. I'm sorry. The creation of 35.

24 Q. 35.

25 MS. PERALES: If you wouldn't mind putting up C-100

1 for me, in the southern part.

2 BY MS. PERALES:

3 Q. If we can't get it up, I might do the modern interpretive  
4 dance version of all of the districts. I might wave my arms  
5 around, Dr. Alford.

6 A. You are going to hurt yourself.

7 Q. No. It will be okay. The districts that are in the  
8 benchmark plan, there are six of them across the southern  
9 and -- southern portion of the state. They start with  
10 District 16 in El Paso, big West Texas 23, and then there is  
11 congressional 28, which comes up out of Laredo and ends up in  
12 San Antonio.

13 Then there is Congressional District 15, which comes  
14 up out of Hidalgo County, there is 20 inside San Antonio, and  
15 27 along the coast. Hurrah.

16 MS. PERALES: Don't cut off 16, if you wouldn't  
17 mind.

18 BY MS. PERALES:

19 Q. Okay. So here they are. Here is one, here is two, three,  
20 four, five and six, yes?

21 A. Yes.

22 Q. And two of them, you mentioned in your prior testimony,  
23 have not elected a Latino candidate of choice in 2010? That's  
24 23 here and 27, right?

25 A. Right.



1 Q. Okay. So, and there was -- and you even described, since  
2 there is another district up here in Harris County that makes  
3 the seventh district that you were describing to the Court,  
4 when you said there are seven Hispanic opportunity districts,  
5 it is the six we have identified, plus the seventh in Harris  
6 County, correct?

7 A. Correct.

8 JUDGE SMITH: You mean the 9th?

9 THE WITNESS: No. The 27th.

10 JUDGE SMITH: Or the seventh district in Harris  
11 County?

12 MS. PERALES: Yes. The 29th Congressional  
13 District --

14 JUDGE SMITH: 29th.

15 MS. PERALES: -- as the seventh district.

16 JUDGE SMITH: Excuse me.

17 BY MS. PERALES:

18 Q. And so you mentioned that in the new plan, Congressional  
19 District 23 slightly increased in Spanish surname voter  
20 registration, but it decreased in its election performance; do  
21 you recall that?

22 A. That is correct.

23 Q. So if you are going to take 23 and 27 out of the equation  
24 in the benchmark and say, well, there are really five here --  
25 because the number five was kind of floating around. If you

1 are going to take out 23 and 27, then if 23 is slightly better  
2 in Spanish surname voter registration but worse in election  
3 performance, you would have to subtract it out of the ultimate  
4 number of plan C-185, wouldn't you?

5 A. I -- I don't count 23 as one of the seven performing  
6 districts when I evaluate C-185.

7 Q. All right. Thank you. You mentioned that CD-23 in the  
8 new plan --

9 MS. PERALES: If you wouldn't mind putting up C-185.

10 BY MS. PERALES:

11 Q. And you described it very, very well as having slightly  
12 higher Spanish surname voter registration, but lower election  
13 performance.

14 When we say "lower election performance," we mean  
15 winning one out of ten elections; isn't that right?

16 A. Which ten elections? Wait a minute. Election years?  
17 Election contests?

18 Q. Ten racially contested elections, there has been some  
19 prior testimony that with respect to a reagggregated election  
20 analysis that was provided on plan C-185 that Congressional  
21 District 23 elected one out of ten times in racially contested  
22 elections.

23 You mentioned the election performance had gone  
24 down. Was this based on just your own analysis of  
25 reagggregated elections?

1 A. Yes. I was looking at the larger set of -- the full set  
2 of reaggregated, not on selected elections, so I wouldn't -- I  
3 don't know, but I am assuming, if that is what the TLC number  
4 shows, that that would be correct.

5 Q. So you hadn't heard that one out of ten elections before?

6 A. Well, I have heard people mention the one out of ten  
7 before, but I was not precisely certain of what they were  
8 referring to.

9 Q. And so you were talking about the compromise in  
10 Congressional 23 in plan C-185 here make it safer for the  
11 incumbent by increasing the Republican numbers, but also sort  
12 of compromised with the Latino community to increase the  
13 Spanish surname voter registration a little bit.

14 You referred to it as a nice compromise, and I  
15 wanted to know if you thought that the opportunity to win one  
16 out of ten elections was a particularly nice compromise for  
17 Latinos in that district.

18 A. I think I may have prefaced it by saying that this is  
19 probably the most, you know, positive way you can look at how  
20 those forces were compromised in the 23rd. I don't think --  
21 again, I would not recommend changing the 23rd in the way it  
22 was changed.

23 I do think that the increase in the proportion of  
24 Hispanic in the district is also potentially a change also to  
25 benefit the Republican incumbent, so the Republican incumbent

1 also has to be worried about getting renominated in the  
2 Republican primary.

3 So if I was that Republican in a primary, and  
4 someone told me there was a way to both boost Republican  
5 performance and increase the number of Hispanic voters in the  
6 district, that's exactly what I would want.

7 Q. Did you do any analysis of reaggregated Republican primary  
8 elections involving a Hispanic candidate in CD-23 in plan  
9 C-185?

10 A. No.

11 Q. Okay.

12 MS. PERALES: If you don't mind switching over to  
13 the Elmo now.

14 BY MS. PERALES:

15 Q. Your deposition there has your report from the Session v.  
16 Perry litigation in 2003. That's it. Tab 4. And there it  
17 is. But it is in your deposition behind tab 4. It is at  
18 page 15.

19 And we are going to read, basically, this area here,  
20 where it says: All of this ethnicity based districting.

21 A. Yes.

22 Q. And isn't it correct that you wrote: All of this  
23 ethnicity based redistricting is related to the decision to  
24 shore up the reelection prospects of Congressman Bonilla at  
25 the cost of weakening the power of Hispanic voters in the 23rd

1 District.

2 A. That is correct.

3 Q. And you agreed with me in your deposition that with  
4 respect to the adopted plan, C-185, that changes have been  
5 made to CD-23 to shore up the reelection chances of Mr.  
6 Canseco, yes?

7 A. That is correct.

8 Q. And you noted in your 2003 report -- it is in that same  
9 paragraph -- that part of the change to Congressional District  
10 23 was adding overwhelmingly Anglo and Republican Hill Country  
11 population of Kerr, Kendall and Bandera Counties, while  
12 splitting the city of Laredo and Webb County.

13 Do you recall that in your report, just right in  
14 that same paragraph?

15 A. Yes.

16 Q. And you testified in your deposition with me that you  
17 weren't aware that the adopted map, 185, adds seven  
18 predominantly Anglo West Texas counties and part of an eighth  
19 to Congressional 23, correct?

20 A. At that time, I was not familiar with exactly how the  
21 changes, in a map sense, had been made to 23, just what the  
22 numerical effect was.

23 Q. Okay. And you testified in your deposition that you had  
24 read, you were aware that some folks were upset about the fact  
25 that in the adopted plan, Congressional District 23 now splits

1 the city of Eagle Pass and Maverick County, correct?

2 A. Yes.

3 Q. And you testified in your deposition that you were  
4 thinking the issues of partisanship and race conscious  
5 redistricting are going to come up in this case, right? It is  
6 at page 200 of your deposition.

7 A. They are going to come up in this case?

8 Q. In this case, yes.

9 A. Yes.

10 Q. You discussed with Mr. Schenck a few minutes ago that  
11 after the 2006 Supreme Court decision, when Congressional  
12 District 23 was redrawn by the Court into what we know it now  
13 in the benchmark, that the 2006 general election was not the  
14 election in which Ciro Rodriguez was elected to Congress from  
15 that district; isn't that right?

16 A. That's my recollection, yes.

17 Q. It was kind of an open election where lots of different  
18 people ran, Bonilla ran, Rodriguez ran, and what ended up  
19 happening was that there was a special runoff, wasn't there?

20 A. So there was a special election and a special runoff.

21 Q. Yes. And that was held in December, wasn't it?

22 A. I don't recall when it was held.

23 JUDGE GARCIA: Yes, it was.

24 BY MS. PERALES:

25 Q. And it was held, in fact, on the date of the Virgin of

1 Guadalupe, which was a day of -- a very serious religious  
2 observance for many Catholics in San Antonio; did you know  
3 that?

4 A. I did not know that.

5 Q. Now, typically -- I know you know this, and I haven't  
6 asked you this, but isn't it true that typically minority  
7 voter turnout is lower on unusual election dates, like special  
8 elections days, that are not on regular election dates?

9 A. Yes. Reports of voter turnout, in general, is lower, but  
10 that drop in turnout is typically larger for minority voters.

11 Q. Let's go ahead and show on the Elmo Table 1 from  
12 Dr. Alford's second report. And we are going to have to slide  
13 it up and down, because we can't see the whole thing, but this  
14 is what we were looking at earlier when you were talking with  
15 Mr. Schenck.

16 I have one question for you about the labeling on  
17 the bottom of the table, since I just got it yesterday.

18 MS. PERALES: Sarah, if you could move that up.

19 BY MS. PERALES:

20 Q. The 4 lines that are at the button, Democratic primary  
21 mean, parentheses, Hispanic candidates. Do you see that?

22 A. Yes.

23 Q. And then Republican primary mean?

24 A. Yes.

25 Q. And then general mean? It says Hispanic Democrats there

1 in parentheses. Do you mean Hispanic Democrat candidates?

2 A. Yes. That is not clear. The cand, cand, from the first  
3 should repeat all the way down there, but when it did, it made  
4 the table bigger than one page, and so -- in each case, this  
5 refers to -- in the focus on both ethnicity and on  
6 partisanship to the candidates in the contest that we are  
7 looking at, and then the remaining data we look at by looking  
8 to the -- across the top of the chart to see the voters. So  
9 the voters are represented going across the chart, and  
10 contests are represented going down.

11 Q. All right. I just wanted to clarify for the Court, these  
12 are not estimates of support by Hispanic Democrats? It is  
13 estimates of support by various racial groups for Hispanic  
14 Democratic candidates, correct?

15 A. Yes. And so in the general election, that reflects both  
16 Hispanic Republicans, Hispanic Democrats, and Hispanic  
17 independents. All Hispanics are reflected, but the focus --  
18 the percentage is simply the percentage of votes that all of  
19 those types of Hispanics cast for the Hispanic Democrat  
20 running in that contest.

21 Q. All right. And so the parentheses does refer to  
22 candidates, then?

23 A. Yes, it does.

24 Q. Okay. Now, in this first column where it says EI state  
25 bivariate SSRV, the very first column after the names of the



1 candidates and their races, this is your EI analysis, correct?

2 A. Correct.

3 Q. Okay. Then it is followed by Engstrom and then Kousser  
4 and then CNN, yes?

5 A. That is correct.

6 Q. Okay. Now, you testified in your deposition that you have  
7 never been involved in a case in which there is a true EI  
8 multivariate analysis, didn't you?

9 A. I don't -- yes, I don't recall in any case I have been  
10 involved in where there were -- a multivariate analysis of  
11 this sort was presented.

12 Q. And when you say "of this sort," you mean by Dr. Engstrom,  
13 yes?

14 A. Yes. Correct.

15 Q. Okay. And you have also testified that you yourself have  
16 never run a true multivariate analysis in EI, have you?

17 A. Prior to this case, no.

18 Q. And you did testify that you are aware that one can use  
19 this software package known as "R" to perform true  
20 multivariate analysis in King, but you have never done it  
21 before, correct?

22 A. I have never done that, a multivariate, as opposed to a  
23 bivariate EI, and -- so in my original report, talk about  
24 reproducing that, in terms of the analysis for -- I think it  
25 was for Bexar County, so that was -- there, we were looking at

1 doing precisely that.

2 Q. Thank you. I know you reported the CNN exit poll here.  
3 Did you look up the number of Hispanics that were actually  
4 polled to get these results?

5 A. I don't know the numbers.

6 Q. Okay. Let's talk about your EI, your EI bivariate  
7 estimates for Victor Carrillo in the 2004 Republican primary  
8 for Railroad Commissioner.

9 Do you see that you estimated that Mr. Carrillo  
10 garnered about 50 percent of the Latino vote and 51 percent of  
11 the nonLatino vote?

12 A. Yes.

13 Q. Okay. Now, those numbers can't be exactly right, because  
14 Mr. Carrillo didn't win his election. He ended up having to  
15 go to a runoff, right?

16 A. I think he would prefer our estimate to the election  
17 count. Perhaps he would have had a chance to fight that in  
18 court.

19 Q. That's right. In fact, he ended up getting less than  
20 50 percent in that election, right?

21 A. That is my recollection, yes. Otherwise, the race below  
22 it -- the contest below it wouldn't be there.

23 Q. And then the runoff, you estimated that Mr. Carrillo got  
24 about 67 percent of Hispanic support and 72 percent of the  
25 nonHispanic support. Do you see that?

1 A. Yes.

2 MS. PERALES: And, Sarah, can you put up for the  
3 Republican primary runoff the runoff page?

4 BY MS. PERALES:

5 Q. Now, in the Secretary of State's election results,  
6 Mr. Carrillo is reported to have gotten only 62 -- 63 percent  
7 of the vote; isn't that right?

8 A. That is correct.

9 Q. So that is lower than either estimate, really, in the EI,  
10 and one would presume that if Hispanics supported him at 67  
11 and nonHispanics at 72, that this overall vote would have been  
12 higher than 67, but it wasn't, was it?

13 A. That's right. So we can see basically, where although --  
14 remember, we talked about the Republican primaries. These are  
15 the least stable of our estimates. The confidence intervals  
16 around these are quite wide. I suspect the -- the actual  
17 results, I suspect, are within the confidence intervals, but  
18 they just aren't -- they just don't match the point estimates.

19 JUDGE RODRIGUEZ: What are the confidence levels?

20 THE WITNESS: I don't actually have the confidence  
21 intervals in the report. I can -- I can go back and see what  
22 the confidence intervals would be. But in general, there is  
23 substantial variation in all of the estimates. In the  
24 Republican primary, there is less variation, more along the  
25 lines of what Engstrom shows in his report for the Democratic

1 primary.

2 BY MS. PERALES:

3 Q. Dr. Engstrom -- Dr. Alford. You can tell I haven't had  
4 enough sleep.

5 A. You are not the only attorney today who has called me Dr.  
6 Engstrom.

7 Q. You can take it as a compliment.

8 A. I do.

9 Q. In your first report, page 15, table 3, all the way down  
10 to the bottom, you reported a Democratic primary election mean  
11 for others at 43 percent, correct?

12 A. So we are going back to the --

13 Q. First report, page 15. It is also on the screen. So for  
14 the -- actually, you reported them as Anglos; Anglo Democratic  
15 primary election mean at 43 percent, yes?

16 A. Yes.

17 Q. And so that was basically an estimate of how much Anglo  
18 crossover we would see across all of these averaged Democratic  
19 primaries, yes?

20 A. Yes.

21 Q. Okay. And your next table, you do report them as others,  
22 but I heard you testify earlier today that others are  
23 basically Anglos, yes?

24 A. They are -- they are largely Anglos, but -- but they are  
25 obviously not a -- right, not Anglos broken out from other

1 categories. And particularly, since this was intended to be a  
2 fairly faithful representation of Dr. Engstrom's analysis, and  
3 he labeled "other" in his table, I changed that, so that he  
4 wouldn't be angry with me.

5 Q. He wasn't. He knew also that "others" are basically  
6 Anglos here.

7 Now, we are back to your second report, and I wanted  
8 to follow down the page, again, going all the way down to your  
9 estimate.

10 MS. PERALES: Sarah, can you move the page, please?

11 BY MS. PERALES:

12 Q. To get to about here, with these elections. Now, you have  
13 a Democratic primary mean, where Hispanics -- mean Hispanic  
14 candidates, about -- other support or crossover of about  
15 45 percent across these elections, right?

16 A. That is correct.

17 Q. Okay. Now, you reached this number by averaging the  
18 percent of votes cast by others for particular candidates  
19 across the five counties in Engstrom's analysis, right?

20 MS. PERALES: We need to go back to the top of the  
21 page, please, Sarah.

22 BY MS. PERALES:

23 Q. So up here, Engstrom actually reported these numbers for  
24 five different counties, right? And so you averaged all of  
25 the counties together to get this number and this number and

1 this number and this number, correct?

2 A. That is correct. So that you can look at any one of those  
3 particular numbers, and that is just simply an average of the  
4 five counties. Then you can -- you can easily go to  
5 Engstrom's table for those five counties, and you can pick out  
6 the numbers that made up that 21, or whatever that number is.

7 Q. Yes. And then to get your Democratic primary mean, then  
8 you averaged them up and down, to -- page down, please -- you  
9 average them up and down to get to your 45, right?

10 A. Correct.

11 Q. Okay. All right. I want to look with you at just one  
12 number in your table. It is up near the top. It is for Linda  
13 Chavez-Thompson in the 2010 Democratic primary. You have  
14 "other" or, as we understand it, Anglo crossover support to be  
15 about 37 percent for Ms. Chavez-Thompson in that primary.

16 Do you see that?

17 A. Yes. That is correct.

18 MS. PERALES: Show the next one, please. Can you  
19 make it smaller? Okay. There we go.

20 BY MS. PERALES:

21 Q. So if we looked back into Dr. Engstrom's, he reports that  
22 Linda Chavez-Thompson, in terms of her support by "others," is  
23 actually getting a high of 60-percent support in Bexar, and a  
24 low of 21 support in Travis, with some of these other numbers  
25 in the thirties; is that right?

1 MS. PERALES: If we can go back to Dr. Engstrom's  
2 table.

3 THE WITNESS: You know, his tables are separated by  
4 county, so if you are saying these are the numbers that came  
5 out of those separate tables by county, then I would accept  
6 that.

7 BY MS. PERALES:

8 Q. So if they are, you added them up and you divided by five  
9 to get 36.8, which is the 37 from your table, yes?

10 A. Yes.

11 Q. Okay. But you are aware that these counties vary in their  
12 registered voter population, and you didn't do a weighted  
13 average, did you?

14 A. No. I certainly could have weighted the average by any  
15 number of county level things that could have been used to  
16 weight the average. If our purpose was to think about  
17 basically pulling together those counties at the voter level,  
18 that might have been of some advantage.

19 It adds a level of complexity, and also, I think  
20 adds -- makes -- it suggests, maybe, that there is something  
21 more scientific about the result, and what I did not want to  
22 suggest was that that number there for -- because it is the  
23 average, and then later the average of a set of averages, that  
24 I was adding some false precision to that.

25 I am intending only to be able to provide a table that

1 gives us a guide we can look back and see the actual numbers,  
2 so you would get a slightly different number if you weighted,  
3 depending on what you weighted on.

4 This number tells you, on average, what happened in  
5 the counties. A weighted number would tell you, on average,  
6 what happened with voters or population or precincts,  
7 depending on what you want to weight it on.

8 MS. PERALES: Sarah, can you go to the next one?

9 BY MS. PERALES:

10 Q. We made a demonstrative here of the difference in the  
11 number of people voting in the 2010 Democratic primary, which  
12 is that race that included Linda Chavez-Thompson.

13 And would you agree with me that Harris County at  
14 99,420 people participating in the 2010 Democratic primary is  
15 more than twice the size of the Bexar County participants;  
16 isn't that right?

17 A. Yes.

18 Q. And Travis County is even smaller than that, isn't it?

19 A. That is correct.

20 Q. So because of this, isn't it possible that when you didn't  
21 weight -- when you didn't weight these levels of support that  
22 that number 37 is, in a sense, overrepresenting, for example,  
23 crossover you might find in Travis County and  
24 underrepresenting that 30-percent support we saw in Harris  
25 County, with so many voters; isn't that right?



1 A. That is certainly correct. And I think that is -- I mean,  
2 you see very clearly what the tradeoff is in that graphic. It  
3 is a nice graphic. That if we weight by, for example,  
4 population, then we are going to get it bigger, that maybe  
5 fits better with Dr. Murray's precincts in Harris County. But  
6 if we weight by population, then we are going to be saying, to  
7 a large degree, this number will be -- will follow Harris  
8 County more than maybe it would move across.

9 And then, again, because I am wanting to sort of  
10 characterize -- and because -- I hope this doesn't obscure. I  
11 want to very much make the point that that number varies a  
12 lot, and it is why that Hispanic number and estimate is less  
13 stable.

14 I think that makes this point very clearly. That  
15 number varies a lot, and that means that it is not a one size  
16 fits all, but at some point, in pulling together the  
17 information into a table, we have to do that, and I think that  
18 is where -- at least my feeling is, that if we are weighting  
19 that number, it would have suggested that we were doing  
20 something or would have given us an answer that was less  
21 representative, in the sense of just looking at how things  
22 vary across the state versus something that was weighted, for  
23 example, for Harris County.

24 Q. Okay. But this 37 is, in fact, an average number? It is  
25 an aggregate number? It is a number suggesting that in these

1 five areas, Anglos, others, crossed over at the rate of  
2 37 percent.

3 You characterized some of these numbers as more  
4 polarized or less polarized, but isn't it your testimony --  
5 and we had this conversation in your deposition -- that you  
6 don't know what that number is, if you weight it by turnout;  
7 isn't that correct?

8 A. That is correct. I did not weight the number by turnout.

9 MS. PERALES: I pass the witness.

10 JUDGE GARCIA: Mr. Garza.

11 Let me ask, how many plaintiffs are going to be  
12 making inquiry of Dr. Alford?

13 MR. GARZA: First of all, Your Honor, I just have --

14 JUDGE GARCIA: Everybody? Three others? Okay. All  
15 right.

16 Okay. Go ahead, Mr. Garza.

17 MR. GARZA: I have just a very few questions.

18 JUDGE GARCIA: Okay.

19 MR. GARZA: And one of them was already asked, so it  
20 is stricken out.

21 \*-\*-\*-\*-\*-\*-\*-\*

22 CROSS EXAMINATION

23 BY MR. GARZA:

24 Q. You didn't perform the exit poll that is referenced on  
25 your table 1, the CNN poll, correct?

1 A. That is correct.

2 Q. And you don't know what questions were asked or how they  
3 were asked; is that correct?

4 A. No. You know, I am just mostly reproducing Dr. Murray's  
5 reproduction of CNN's production.

6 Q. Right. And in answer to Ms. Perales' question, you don't  
7 know how many Latinos were included in the poll; is that  
8 correct?

9 A. That is correct.

10 Q. And you don't know how CNN defines Latino?

11 A. I wouldn't want to say I knew for certain, but I am fairly  
12 sure that that is self -- in the CNN poll, that is a question  
13 that the individual is allowed to make that designation,  
14 rather than CNN making a designation.

15 Q. And --

16 A. But exactly how they asked the question, I don't know.

17 Q. Okay.

18 JUDGE GARCIA: But in any event, we don't know how  
19 many were asked, regardless of how they defined it?

20 THE WITNESS: I don't -- I don't know.

21 JUDGE GARCIA: Okay.

22 THE WITNESS: It is on the CNN web site.

23 JUDGE GARCIA: Okay. You don't know?

24 THE WITNESS: Yes.

25 JUDGE GARCIA: CNN may have it, but you don't know?

1 THE WITNESS: Yes.

2 JUDGE GARCIA: Okay. All right. Go ahead.

3 MR. GARZA: Pass the witness.

4 JUDGE GARCIA: All right. Mr. Rios, do you have any  
5 questions? And take your time. We are not going to be  
6 adjourning right now for lunch, so don't worry about the time,  
7 so take your time.

8 MR. RIOS: I just have a few questions, Your Honor.

9 JUDGE GARCIA: Go ahead.

10 \*-\*-\*-\*-\*-\*-\*

11 CROSS EXAMINATION

12 BY MR. RIOS:

13 Q. Dr. Alford, in your direct testimony, you talked about  
14 how, because of the realities in Texas, and the voting  
15 patterns, that if the whole Texas legislature was elected at  
16 large, then 100 percent of the legislature would be  
17 Republican; is that true?

18 A. Thinking about the state as one --

19 Q. Yes.

20 A. Potentially, the state -- right. Potentially, the state  
21 as a single district could potentially elect an entirely  
22 Republican legislature.

23 Q. And you would agree with me that most minorities in Texas  
24 vote Democrat?

25 A. I think the analysis shows that, yes.

1 Q. And you would agree with me also that most Republicans are  
2 white, nonminorities?

3 A. The majority of Republicans in Texas are Anglos.

4 Q. So in that hypothetical that you posed, you posed where  
5 all of the elected officials would be Republican, at large,  
6 the choices of the minority community, in that hypothetical,  
7 would be defeated?

8 A. Yes. I think that is exactly the issue with an at-large  
9 system, that you would -- you would -- in that hypothetical,  
10 you would not be electing candidates of choice, not just not  
11 as many or a few less, but not any candidates of choice.

12 Q. And you would agree with me that, in that hypothetical,  
13 whites vote as a block to defeat the choice of the minority  
14 community, regardless of party?

15 A. In that example, we would -- we would have to know, like  
16 we would have to know what the voting is. I don't have any  
17 analysis, or even --

18 Q. I am talking about your hypothetical, when you said that  
19 if the whole legislature was elected at large, it would end up  
20 with nothing but Republicans.

21 And you would agree with me that most Republicans  
22 vote -- most whites vote Republican and most minorities vote  
23 Democrat.

24 I am just asking you whether or not, in that  
25 hypothetical, whites vote as a group to defeat the choice of

1 the minority community.

2 A. Okay. Well -- (Witness mumbling) -- asking me whether the  
3 voting was racially polarized in that --

4 Q. Well, we are talking about Republican, Democrat.

5 A. In that example, the -- there is -- the candidate of  
6 choice of Anglos, in my example, would be the Republican, the  
7 candidate of choice for minorities would be the Democrat, and  
8 the candidate of choice of minorities, even assuming there  
9 was -- there could be substantial Republican crossover, for  
10 example, or that all of the Republican candidates could be  
11 Hispanic, for all I know, you still would have a difference in  
12 majority preference --

13 Q. We are talking about your hypothetical.

14 A. Yes.

15 Q. And we know that, in your hypothetical, most minorities  
16 are Democrat and most whites vote Republican?

17 A. But -- I mean, again, candidate of choice is 50 percent  
18 plus one, so maybe in my hypothetical -- I mean, you keep  
19 mixing my hypothetical with some vision you have of the state  
20 of Texas.

21 But you talk -- that hypothetical doesn't assume  
22 that, because we have differences in the relative preferences,  
23 that one is 100 percent and the other is 100 percent.

24 Q. The only point I am making to you is that regardless of  
25 the effect of party on an election, when you have a situation

1 like you do here in Texas, and most minorities vote Democrat,  
2 most whites vote Republican, whether you explain it as a party  
3 issue, the fact is that the choices of the minority community  
4 get defeated by the choices of the white community, because  
5 they mostly vote Republican, and your hypothetical was that  
6 the election would be at large and the whole legislature would  
7 be elected by Republicans?

8 A. So --

9 Q. You would agree with me?

10 A. I agree that that is, in the hypothetical, that would be  
11 one way you could characterize those elections, and I would  
12 hope that that would be an example of why we would not have  
13 at-large elections in the state of Texas under the Voting  
14 Rights Act.

15 Q. Because the choices of the minority community would be  
16 defeated by the white voting block?

17 A. Again, it illustrates nicely that -- the distinction  
18 between at-large and single-member systems.

19 Q. I am not talking about that. I am just talking about  
20 voting behavior.

21 A. All right.

22 MR. RIOS: Thank you.

23 JUDGE GARCIA: Yes, ma'am. Go ahead.

24 MR. RIGGS: Thank you, sir.

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

## CROSS EXAMINATION

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BY MR. RIGGS:

Q. Good morning, Dr. Alford.

A. Good morning.

Q. My name is Allison Riggs. In your report, you noted that in plan C-100, three districts were intended to be effective black districts; is that right?

A. That is correct.

Q. And you testified in your deposition that by intended to be effective districts you meant intended to successfully meet the State's obligations under Section 5 and Section 2; is that right?

A. That sounds like a terribly technical response, but I probably said that.

Q. Okay. Can you tell me what you meant by -- or what you defined to be the State's obligations under Section 2?

MR. SCHENCK: I am going to object to this. It calls for a legal conclusion. I am fine with his answering to the extent, within his expertise --

JUDGE GARCIA: I will sustained that.

BY MR. RIGGS:

Q. Can you explain what you meant when you gave that answer in deposition?

A. In -- you know, without, obviously, being a lawyer, what I meant was, in Section 2 terms, that where it was -- where it



1 would be possible to find a sufficiently numerous and compact  
2 black population, such as you could draw a majority district,  
3 the State would be obligated under Section 2 to draw that  
4 district.

5 And then secondly, where those districts had been  
6 drawn and were in previous plans, then the State would have  
7 some, at least some -- explaining to do if those districts  
8 disappeared.

9 Q. Okay. Going back to the effective black districts that  
10 you mentioned in your report, you were referring to  
11 Congressional Districts 9, 18 and 30, correct?

12 A. 30 in Dallas and then 18, that original black district in  
13 Houston, and then District 9, which is partly in Harris,  
14 partly in Fort Bend, I think.

15 Q. Okay. And in your report, you noted that each of these  
16 districts were drawn in C-100 to be above 40 percent of the  
17 black voting age population?

18 A. That is correct.

19 Q. And you concluded that these black districts were very  
20 effective throughout the 2000s; is that correct?

21 A. That is correct.

22 Q. Meaning that voters had success -- meaning that black  
23 voters had success in electing their candidate of choice; is  
24 that right?

25 A. Right. Both in the primary and the general.

1 Q. Even though African Americans made up significantly less  
2 than 50 percent of the voting age population, correct?

3 A. Correct.

4 Q. And you testified earlier today that you thought this was  
5 part of a trend where, while 65-percent black voting age  
6 population used to be the target for an effective district, it  
7 was now 40 percent?

8 A. In Texas, we -- certainly, 40 percent is -- I think if you  
9 get much above 40 percent, people would think you might be  
10 packing a district, and probably below 35 percent, unless you  
11 had some very good election numbers, people might think you  
12 were getting a little bit low.

13 Q. In your earlier testimony, you attributed this ability to  
14 succeed at 40 percent to white crossover voting; is that  
15 right?

16 A. I think the question was: Was that part of what might be  
17 leading to that? I think it is part of it.

18 Q. A substantial part of it?

19 A. I think it is probably not -- I don't know exactly --  
20 obviously, we haven't analyzed that over time. That would be  
21 complicated. But my own personal view would be that that is  
22 probably not the most important part of it.

23 Q. And why is that not the most important part?

24 A. I think the most important part has actually to do with  
25 the population composition of the districts, more than the

1 behavior of voters in the -- districts.

2 Q. Exactly. So you are aware, aren't you, that each of the  
3 effective black congressional districts that you mentioned  
4 contain substantial Latino populations, aren't you?

5 A. Yes.

6 Q. You are aware that the combined black and Hispanic  
7 population in each of those districts is about 75 percent of  
8 the voting age population, right?

9 A. That sounds about right.

10 Q. And you are aware that the combined black and Hispanic  
11 population of each of those districts is about 70 percent of  
12 the citizen voting age population, right?

13 A. I don't know the exact number, but that sounds like the  
14 right range.

15 Q. And that if you consider other minority groups in the  
16 area, those numbers, the combined minority numbers are even  
17 higher?

18 A. Yes. Presumably, they would go up.

19 Q. And you are aware that Anglos make up only about  
20 15 percent of the voting age population in each of those  
21 districts, aren't you?

22 A. Again, I don't know the exact number, but that wouldn't  
23 surprise me.

24 MR. RIGGS: Can we have posted up on the screen  
25 table 1 from the -- report. .

1           TECHNICIAN: I'm sorry. My computer is crashing.

2           MR. RIGGS: That's fine.

3 BY MR. RIGGS:

4 Q. You reviewed Dr. Murray's homogeneous precinct analysis  
5 for Harris County and Dallas County elections, right?

6 A. I saw that in his report, yes.

7 Q. And you noticed that he found high levels of polarization  
8 between white and black voters in those counties, didn't you?

9 A. In the limited number of precincts that we looked at, yes.

10 Q. And similarly, he found a high number -- a high level of  
11 coalition voting between Hispanic and African-American voters,  
12 correct?

13 A. In the general election?

14 Q. Yes. Well, in 2008, 2010 general elections.

15 A. Yes.

16 Q. And that white voters were not voting the same way as  
17 African-American and Hispanic voters in Harris and Dallas  
18 County in general elections?

19 A. That is correct.

20 Q. Okay. So if we look at those exit poll numbers --

21 A. Yes.

22 Q. -- where there is a nonHispanic candidate -- so there are  
23 three different ones, up top, in the middle and then the  
24 bottom got cut off. We can just go down to the button, if you  
25 don't mind. Oh, I'm sorry.

1           This would indicate to you that white voters are not  
2 substantially voting the same way as African-American voters,  
3 wouldn't it?

4     A. I mean, they clearly are not voting the same way, but I  
5 don't know about what you mean by "substantially." It is  
6 about 30-percent crossover, which I think is substantial  
7 crossover.

8     Q. But Hispanic voters are providing -- are voting the same  
9 way African-American candidates are twice as often?

10    A. I am not sure twice as often, but the percentage, the  
11 proportion of Hispanic voters that are reporting voting for --  
12 in the general election would be twice the proportion of Anglo  
13 voters making that same -- casting the vote in the same  
14 direction.

15    Q. So looking at these numbers, would you agree that  
16 African-American voters in the congressional districts that  
17 you were talking about, the black congressional districts,  
18 have an effect -- have a reasonable opportunity to elect their  
19 candidate of choice more because of the support of Hispanic  
20 voters than white voters?

21    A. I am not sure that is -- that certainly could be true. We  
22 don't really know -- we haven't talked much about the  
23 proportion of the registered vote that is Anglo and Hispanic,  
24 so we would want to take that into account.

25           But in the general election, it could -- it would

1 depend on the turn-down proportion of the register vote in the  
2 general election, but it wouldn't surprise me under a lot of  
3 ways that that could work out, particularly if the -- if the  
4 number of turned-out voters in the general election in the  
5 district that are Hispanic substantially exceeds or equals the  
6 Anglo proportion.

7           Then if we see these kind of numbers, then it would  
8 be true that in the general election, there was more support  
9 coming from, in vote total, coming from Hispanics than from  
10 Anglos.

11           I am just cautious, because I think -- when you get  
12 to turnout in those districts, the difference in turned-out  
13 vote between the Anglos and Hispanics is sometimes not very  
14 different.

15 Q. But given those cautionary notes, that would indicate  
16 African-American and Hispanic voters are working in coalition  
17 in those three districts?

18 A. In the general election, I think, yes, that they  
19 definitely vote together in the general election in those  
20 three districts.

21           MR. RIGGS: Pass the witness.

22           JUDGE GARCIA: Mr. Hicks. Go ahead.

23                           \*-\*-\*-\*-\*-\*-\*-\*

24                           CROSS EXAMINATION

25 BY MR. HICKS:

1 Q. Dr. Alford, Renea Hicks for the Rodriguez plaintiffs.

2 A. Good to see you.

3 Q. When you testified in response to the Judge, I will call  
4 it collectively the Judges' questions, you said that you  
5 thought plan C-185 effectively added half a new district.

6 Do you recall that testimony?

7 A. Yes.

8 Q. That was Hispanic?

9 A. Yes.

10 Q. What is the half district?

11 A. I guess the half district is a way of saying that -- it  
12 isn't just as simple as counting up seven districts, because  
13 if we just count up districts, it still depends on how we are  
14 counting them up.

15 So I think you have to think about -- I mean, the  
16 23rd, obviously, is the big question here. How would you  
17 count the 23rd?

18 If you count districts on the basis of majority  
19 citizen population, then the 23rd is going to count as a  
20 district. And I -- as you know from the earlier discussion  
21 with Ms. Perales, I still think there is the possibility that  
22 the 23rd might elect a candidate of choice, might even elect a  
23 candidate of choice as a Republican, at some point.

24 So those are all live possibilities, but I don't  
25 think it is -- I guess I just don't think it is helpful to

1 count that as one of the districts and then claim that you are  
2 adding a district.

3 So I think you have got a district there that is --  
4 however you want to think about that, half a district, part.  
5 It is something more, right?

6 I think the existing plan, given that two of the  
7 districts had elected Republicans that I think were not  
8 candidates of choice, I think it would be fairly characterized  
9 as something less than seven districts, but I don't know  
10 exactly what less than seven.

11 The current plan should be characterized as  
12 something more than seven districts, but I don't know exactly  
13 what more than seven.

14 Q. Are you saying that the districts -- under C-185 may be  
15 half way to a district?

16 A. Well, if I was just thinking about 23, I probably wouldn't  
17 get all the way to half way, but the other part of this is  
18 that, in addition to the issue of 23, that both 35 and 34 are  
19 better-performing districts than either the swap or the  
20 add-on, right?

21 So it is a little hard to say exactly how you  
22 should -- again, I am not -- I don't -- I probably shouldn't  
23 have said a half, because it sounds like there is a real  
24 number there.

25 I think, on reflection, I think there are more than



1 seven districts now, and there were less than seven districts  
2 before, but I certainly wouldn't say eight or six.

3 Q. Switching directions just a little bit, or topics. You  
4 testified on direct that the Democratic Party itself has  
5 changed over time.

6 Do you recall that testimony?

7 A. That is correct.

8 Q. In connection with that, in the Democratic primaries,  
9 let's say in Dallas and Harris County, would you say that now  
10 minority voters dominate those primaries?

11 A. I haven't actually looked at the turned-out vote numbers,  
12 but I would say that wouldn't surprise me.

13 Q. And what about in Tarrant County? I understand you may  
14 not have looked, but would it surprise you?

15 A. I mean, in the sense that I have no idea, anything would  
16 be a surprise, but I just don't know about Tarrant County.

17 Q. And speaking of parties, it is fairly obvious, I suppose,  
18 but race, you understand race to be, essentially, an immutable  
19 characteristic, correct?

20 A. That is correct.

21 Q. And your political affiliation is not immutable, is it?  
22 Not immutable.

23 A. You can undo -- people can undo a change there, so you  
24 tend to inherit both your race, your ethnicity and your party  
25 from your parents, but people can and do change their party

1 identification.

2 Q. Rick Perry, our governor, was born a Democrat, was a  
3 Democrat for a long time, switched parties around 1990 to  
4 become a Republican, right?

5 A. To become president.

6 Q. We will see about that, but -- but he switched parties,  
7 correct?

8 A. And I would say, you know, in his case, relatively late,  
9 so, obviously, as part of this shift from the south being all  
10 Democratic, including Texas, statewide, to the south being  
11 more Republican, there were probably, as a proportion, more  
12 politicians shifting party than there were voters actually  
13 shifting party. So he -- his shift is not an unusual one in  
14 the south. There are lots of successful southern politicians  
15 who shifted parties.

16 Q. But you can't quit being white, right?

17 A. Not even if he tried.

18 Q. And what is your familiarity or what -- from your  
19 familiarity with national surveys, what percentage of people  
20 identify themselves with a political party?

21 A. It depends on how you ask the question, but generally, you  
22 end up with something like around half, maybe a little less,  
23 that are party identifiers, and then you have got a group of  
24 people that consider themselves independents.

25 In aggregate, there are people who call themselves

1 independents but actually lean toward one party or another.  
2 So historically, for example, people who don't consider  
3 themselves Republican but lean Republican actually are better  
4 Republican voters than weak Republicans.

5           So there is some debate about exactly where you draw  
6 those lines, but I think if you think -- I think of the  
7 electorate as roughly composed of about 60 percent of people  
8 for whom -- who either have a partisan identification or take  
9 strong partisan queues and something -- (Witness mumbling) --  
10 maybe around 40 percent of people who are less dependable in  
11 their party behavior.

12 Q. And these are kinds of shades of gray, at the ends of  
13 these identifications, right? They shift in and out, to some  
14 degree?

15 A. There is some -- there is some shifting in and out, but it  
16 depends on what you mean by sort of at the edges. For people  
17 who consider themselves strong Republicans and strong  
18 Democrats, there is very little -- very little change, other  
19 than maybe moving from strong to moderate, and there is almost  
20 never a change over their lifetime.

21           For people who consider themselves to be weak  
22 partisans, it is not uncommon over time to see them become  
23 independents. Even there, it is unlikely they will ever  
24 actually consider themselves to be a member of the opposite  
25 party.

1 Q. And isn't it true that in -- people self-identify in the  
2 census with respect to race; is that correct?

3 A. That is correct.

4 Q. And isn't it true that they self-identify with one race in  
5 roughly the 95-percent range?

6 A. What --

7 Q. Would you question that? That is, about 95 percent of the  
8 people who self -- I didn't ask the question well. You are  
9 being a good professor.

10 Ninety-five percent of the people who self-identify  
11 their race, people -- 95 percent of the people in the census  
12 who self-identify with one race, of the people who do that,  
13 who self-identify with one race, 95 percent of them -- you can  
14 answer the question.

15 A. I can answer --

16 Q. The Court has wore me out, and so I can't say I am at my  
17 sharpest.

18 A. I will answer the question I know you are trying to ask,  
19 which is --

20 Q. That's good.

21 A. The census originally only allowed you to choose one  
22 racial category. The census then added the possibility of an  
23 ethnic category, in which you could be both, have both race,  
24 ethnicity independently.

25 That's why the census numbers don't add up. We

1 always see this. People always have a footnote about how  
2 Hispanic and black don't add up, because a person can be both  
3 black and Hispanic.

4 And then more recently, the census has developed a  
5 much broader and much more complex set of options for people  
6 to choose a variety of multirace options reflecting, I think,  
7 obviously both changes in the population and changes in  
8 attitudes.

9 But by all of that, you are correct that most people  
10 answer the census question, perhaps as high as 95 percent, are  
11 comfortable choosing a single racial or ethnic option.

12 Q. Thank you. I needed that help. Now, switching topics  
13 again. And I think this series will be the last topics. I  
14 see Judge Garcia looking at the clock.

15 JUDGE GARCIA: No, no. Take your time.

16 BY MR. HICKS:

17 Q. In 2001, you testified in the congressional redistricting  
18 case that we all kind of call the "remedy case." That was --

19 A. This was the court-drawn map?

20 Q. Yes.

21 A. Yes.

22 Q. And in connection with your testimony as an expert there,  
23 you opined that there was racially polarized voting in the  
24 state of Texas, didn't you?

25 A. Yes.

1 Q. And then in 2003, you testified again as an expert, again  
2 in connection with congressional redistricting, but you  
3 testified on partisan gerrymandering and racial gerrymandering  
4 issues, not racially polarized voting issues, correct?

5 A. That is correct. Mostly, it was partisan gerrymandering.

6 Q. But some on racial gerrymandering?

7 A. There was some, yes.

8 Q. And you are aware of the LULAC v. Perry decision in 2006  
9 that threw out the appeal from that testimony, correct? That  
10 case?

11 A. Correct.

12 Q. And in that, you are aware that the Supreme Court in the  
13 opinion by Justice Kennedy opined that there was, based on the  
14 record, that there was racially polarized voting across the  
15 state of Texas, right?

16 A. I haven't actually read the opinion --

17 Q. Well --

18 A. -- in years, but whatever the opinion says I am sure is  
19 what Justice Kennedy intended to say.

20 Q. So, now, in connection with that, I want to turn to your  
21 testimony about partisanship and race.

22 Given your approach to analyzing the voting patterns  
23 coming out of whichever method of analysis you choose,  
24 ecological regression, whatever, tell me if this is so.

25 If the intent in drawing a congressional plan were

1 to design districts to lessen voting opportunities for  
2 minority voters in Texas, given your approach, the best way to  
3 mask this intent would be to engage in what, to all outward  
4 appearances, is an overtly partisan gerrymandering, wouldn't  
5 it? Because it would align perfectly with your numbers and  
6 you would say it is partisanship?

7 A. That's -- yes. Certainly, you could -- you basically  
8 could dispense with the racial numbers entirely. It would be  
9 excessive, what I would view as an excessive partisan  
10 gerrymander. And it would have that effect and, therefore,  
11 potentially, it could have been your intent to do that and  
12 then to cleverly make it look like it was all partisan. And  
13 it is possible that the voters are doing the same thing and  
14 are voting in a partisan way and cleverly disguising their  
15 intent as well.

16 I mean, that is just -- those two are conflated, and  
17 when they are conflated, we are going to have a tough time  
18 judging what is going on on the voter side and have a tough  
19 time judging what is going on in the legislature.

20 Q. And under your suggested analytical approach, if that  
21 happened, the legislature that did that, that had that intent  
22 to discriminate against minority voters and lessen minority  
23 voting opportunities, would be immune from a Section 2 voting  
24 rights challenge under the effects test, wouldn't it?

25 A. I --

1 Q. You just couldn't get there?

2 A. I don't know whether you could get there or not, quite  
3 frankly. I -- I am much less certain about how you get  
4 anywhere in voting rights since I was a young person in 2003,  
5 so I don't know -- I really don't know whether you would get  
6 there or not.

7 Q. Well, how could you possibly get there, if you say the  
8 partisan explanation effectively trumps the racial  
9 explanation?

10 A. Under an effects test?

11 Q. Yes. You couldn't, could you?

12 A. I guess -- I mean, maybe I am misunderstanding the  
13 hypothetical, and maybe I just don't understand the law here,  
14 or both, but I thought we were talking about masking our  
15 intent by pretending to be partisan. Certainly, that would  
16 make it difficult to establish intent, and so where do we end  
17 this --

18 Q. My next question was, given your analysis, if they had the  
19 intent and it had the effect -- let's assume that it had the  
20 intent, legislature had the intent to racially discriminate  
21 and to lessen minority voting opportunity. And let's assume,  
22 taking out your causation analysis, take that out -- and you  
23 have the racially polarized voting analysis of all of our  
24 experts, and the conclusion of that was that the effect was to  
25 lessen the minority voting opportunities, right?



1 Under your approach, there could not be a Section  
2 violation in that situation because you would inject a  
3 causation analysis into it and say: Well, partisanship  
4 explains it?

5 MR. SCHENCK: Your Honor, I am going to object. The  
6 Fifth Circuit has spoken on this issue, and Dr. Alford is not  
7 a lawyer or --

8 JUDGE GARCIA: I will sustain that. Let's just move  
9 on.

10 JUDGE RODRIGUEZ: I would like to hear the answer.

11 MR. HICKS: I was asking about his, not his lawyerly  
12 approach, but under his analysis of this.

13 JUDGE GARCIA: Okay.

14 JUDGE SMITH: It's okay for him to answer?

15 JUDGE GARCIA: Yes.

16 THE WITNESS: Okay. Yes. Not in a lawyerly sense,  
17 but, obviously, it is going to have to, in some way, relate to  
18 the law. I wouldn't -- I mean, I guess my reading is that  
19 there are still lots of things that we have not worked out  
20 about how we adjust the purposes and the value of the Voting  
21 Rights Act to what has evolved into an area where in the past  
22 we can easily distinguish racial voting, and now we see this  
23 conflated partisan and racial voting.

24 I think one answer might be that, that simply if it  
25 is partisan, and you can't show the in -- separate and

1 significant impact of race, that you would -- you simply would  
2 leave it at that.

3 I think there are other -- I mean, there are other  
4 possibilities in terms of how you would -- how you would  
5 incorporate that into some -- my assumption on all of what we  
6 are seeing here is that the facts are the facts, and I  
7 appreciate that a great deal, so the facts aren't evolving,  
8 but that the law is going to have to evolve.

9 BY MR. HICKS:

10 Q. You are not offering the Court any analysis that helps  
11 them solve that dilemma under your approach, correct?

12 A. My -- I am trying, both in my analysis and bringing in the  
13 analysis of the other experts, to make it as clear as possible  
14 that this is not a problem we can solve through the Court, but  
15 that this is a problem the Court has to solve with the law.

16 And I think the problem now is either a legal issue  
17 or perhaps a legislative issue. I don't think -- and I think  
18 that is why we see agreement across the experts -- that it is  
19 a factual issue.

20 It would be nice if a factual dispute could make  
21 this go away, but I think it is real and I think the law that  
22 was primarily made to deal with the kind of cohesion we see  
23 and still see in Texas, for example, for black voters, is  
24 going to have to be adjusted to deal with the reality, and  
25 that reality is going to continue to evolve.

1           And I think -- I mean, personally, I believe it is  
2 very important to find a way to make the Voting Rights Act  
3 work in -- with this set of facts, continue to be useful,  
4 but -- but I don't see that that can happen without some --  
5 without some evolution and some work on the part of the Court.

6 Q. But you have no political scientist analysis that you are  
7 offering the Court to resolve the problem; is that correct?

8 A. That is correct.

9           MR. HICKS: Thank you, sir. No further questions.

10          JUDGE GARCIA: Any other plaintiff?

11          Let me ask you, Doctor, earlier, you told me, had  
12 you been advising the legislature, you would have told them or  
13 suggested or advised them not to mess with District 23, right?

14          THE WITNESS: Yes.

15          JUDGE GARCIA: Okay. Now, if District 23, which was  
16 a stronger minority opportunity district, was converted to 35,  
17 which presumably is going to make a minority district, and if  
18 District 27, which was a strong minority opportunity district,  
19 has merely been converted or swapped with District 34, and  
20 given the substantial Hispanic gain in Texas, where is the --  
21 if I could say this right -- where is the real new district in  
22 Texas?

23          THE WITNESS: I think that's -- I think that is a  
24 question that -- the first time I looked at the maps, that's  
25 the question that occurred to me, is where -- where had

1 that -- where was that growth in the map?

2 JUDGE GARCIA: And did you discover, in your review  
3 of the map -- and I don't mean that facetiously. Did you  
4 discover in reviewing the map where the real new Hispanic  
5 district is, other than these swaps?

6 I mean, obviously, we presume 35 and 34 are going to  
7 be Hispanic opportunity -- well, opportunity districts, but  
8 that is not a gain. That is just a swap. So where is the  
9 real new district, given the substantial Hispanic growth,  
10 minority growth in Texas?

11 THE WITNESS: Okay. I think there are two things.  
12 One is that the -- the 34, 27 swap would not be anything but a  
13 swap.

14 JUDGE GARCIA: Right.

15 THE WITNESS: If -- if 27 was, in fact, performing  
16 in the way 34 will.

17 JUDGE GARCIA: Well, 27 was substantially  
18 performing. At least you had an incumbent Congressman Ortiz  
19 up there from '84, whenever, to two months ago. That was a  
20 performing district, and so is 23, given that you had  
21 Congressman Rodriguez there, subsequent to the change by the  
22 Supreme Court.

23 So that is merely a swap. But you had this  
24 tremendous growth in Hispanic community. So my question -- I  
25 think you told me, you asked yourself the same question --

1 THE WITNESS: Yes.

2 JUDGE GARCIA: -- that I am asking. So after your  
3 review and analysis, where is the new Hispanic district?

4 THE WITNESS: Okay. So some of the -- some of that  
5 increased population, registered voter population, Hispanic,  
6 goes into making the 34th a more secure district than 27. So  
7 I agree that the 27th is not as poorly performing as the 23rd,  
8 but it certainly -- in comparison, the 34th is a more secure  
9 district for Hispanic voters than the 27th, and that takes up  
10 part of that new population.

11 JUDGE GARCIA: Well, it can't take 2 million people.

12 THE WITNESS: Right. It can't take all of it. Some  
13 of it goes -- and certainly, in the 2 million people, you have  
14 to remember that if we are going to put this in the districts  
15 that work, we are going to have to put in registered voters  
16 and not just people.

17 So part of it is that we are increasing the strength  
18 of that district. Part of it is in the 35th. However, you  
19 think of it with regard to the 23rd, it involves new Hispanic  
20 population.

21 JUDGE GARCIA: Okay.

22 THE WITNESS: Part of it is in Dallas-Fort Worth and  
23 Tarrant.

24 JUDGE GARCIA: But there is not a new district in  
25 Dallas.

1           THE WITNESS: Exactly. So where did the population  
2 go? A lot of that population went into that area, but not  
3 enough of that population in a concentrated way that there  
4 actually is a -- what I think, at least, is a legally compact  
5 district that is majority Hispanic. So there is population  
6 there that has increased, but it hasn't reached the level  
7 that --

8           JUDGE GARCIA: And you don't think one can be drawn?

9           THE WITNESS: A Gingles 1 district that is not -- is  
10 not a district that would be an effective Hispanic district,  
11 but a district that would show that you could draw a district  
12 in which a majority of the registered voters or a majority of  
13 the citizen population is Hispanic and still be reasonably  
14 compact, I don't think anybody has drawn a district, and I  
15 don't think it is for lack of trying. I don't think it can be  
16 drawn.

17           I think you can draw -- you could draw, I could draw  
18 a district in Dallas-Fort Worth that would be an effective  
19 Hispanic district. So I think the question is not could you,  
20 and we see that in the discussion of the legislature, people  
21 knew you could draw a working district there.

22           JUDGE GARCIA: Now, how do you know they knew? Or  
23 should have known?

24           THE WITNESS: Well, I mean, I think there is some  
25 discussion that you have a senior Republican Congressman

1 saying: Let's draw a district in Dallas-Fort Worth.

2 JUDGE GARCIA: But it's not Hispanic?

3 THE WITNESS: Well --

4 JUDGE GARCIA: Or minority?

5 THE WITNESS: You can draw -- you can -- all right.  
6 You can -- you can draw a district that will, in the general  
7 election, elect a candidate of choice of minorities in  
8 Dallas-Fort Worth, but I don't think you can draw a majority  
9 Hispanic district that will -- that -- so I don't think that  
10 you are required -- the State, I don't believe the State was  
11 required to draw a district in that area.

12 I don't think we have seen a proposed district that  
13 would suggest that they were required to draw it. I do think  
14 they could have drawn it. I am not sure it would have been a  
15 bad idea to draw a minority district in that area.

16 But, again, if -- if -- if one of the notions about  
17 the population growth is that the population growth simply  
18 inevitably should produce these districts, and unless the  
19 population growth is concentrated, where it is -- first, Dr.  
20 Murray talked a lot about the very rapid growth of Hispanic  
21 population in the suburbs around Houston, and this is clearly  
22 the story in Houston, is the Hispanic growth.

23 He talked about the growth to Alief, but I mean,  
24 look at all -- to the north, you will see exactly the same  
25 pattern and growth. Look to the east and you will see that

1 pattern. That population is large. It is growing. It is a  
2 voter population.

3 JUDGE GARCIA: Right.

4 THE WITNESS: But it is not sufficiently compact  
5 that you can -- that you can be -- either can be compelled to  
6 draw a district or, in much of the state, that you can  
7 actually draw that district.

8 JUDGE GARCIA: But all that growth is not in the  
9 35th or 34th, and what you are suggesting or saying is that,  
10 yes, there was substantial grow, but not enough in a small  
11 area or compact area to have drawn a district? That is what  
12 you are saying?

13 THE WITNESS: Yes. And I think -- and, again, I  
14 don't think that means that if your goal was -- so if -- if  
15 two years from now, four years from now, Democrats should take  
16 over control of the state of Texas, allowed now by the Court  
17 to do mid decade redistricting, something I definitely opposed  
18 at the time, they could do a DeLay plan, and in the DeLay  
19 plan, there would be a lot more districts that would be  
20 effective districts, because after all, every Democratic  
21 district in the state is a district that elects a candidate of  
22 choice of the majority of the minorities inside that district,  
23 given the way that people vote in Texas now. So it could be  
24 drawn.

25 JUDGE GARCIA: Right.



1           THE WITNESS: But I do think that the two things  
2 that -- to keep in mind with the growth in population is, one,  
3 that the growth in population only seems huge if you think  
4 about total population, and it seems smaller as you move to  
5 voting age, as you move to citizen voting age, and as you move  
6 to registered voter.

7           And second, and Dr. Murray, I think, did a good job  
8 of expressing this, both the new population and probably, more  
9 likely, the existing population that is being displaced, as  
10 new population moves in, is spreading out in ways that make it  
11 difficult to draw a geographically compact district.

12           JUDGE GARCIA: Okay. Mr. Vera, go ahead.

13           JUDGE RODRIGUEZ: One second. Mr. Vera has  
14 questions. I think Mr. Bledsoe has questions. Who else has  
15 questions from that side?

16           MR. VERA: I'm sorry, Judge.

17           JUDGE RODRIGUEZ: I know you have questions. I  
18 think Mr. Bledsoe has questions. I am just trying to figure  
19 out timing here.

20           MR. VERA: I have probably two questions, at the  
21 most. I am not sure about Mr. Bledsoe.

22           JUDGE RODRIGUEZ: Mr. Bledsoe, how much time do you  
23 think you are going to need?

24           MR. BLEDSOE: I have a few, Your Honor. Not unduly  
25 long, but --

1 JUDGE GARCIA: And is there going to be redirect?

2 MR. SCHENCK: I am hoping none.

3 JUDGE RODRIGUEZ: Okay. I just want to see where we  
4 are headed here.

5 MR. VERA: Should we keep going, or did you want to  
6 break? It doesn't matter to me.

7 JUDGE SMITH: What do we have this afternoon?

8 JUDGE RODRIGUEZ: Do we have witnesses this  
9 afternoon after this?

10 JUDGE SMITH: Let's just ask about --

11 JUDGE GARCIA: You only have two or three questions?

12 JUDGE RODRIGUEZ: One second. We know that answer.

13 MR. SCHENCK: We have no further witnesses after Dr.  
14 Alford.

15 JUDGE RODRIGUEZ: So after this, this will be it?

16 MR. GARZA: Then we should finish.

17 JUDGE RODRIGUEZ: Yes. Let's truck on, then.

18 JUDGE SMITH: Let's finish with this witness,  
19 without pressing anyone --

20 JUDGE GARCIA: Sure.

21 JUDGE SMITH: -- in terms of time. We want to  
22 thoroughly finish this witness.

23 MR. SCHENCK: Just as long as the witness is okay.  
24 You don't need a break for the restroom or --

25 THE WITNESS: No. Thank you.

1 JUDGE GARCIA: Okay. Go ahead.

2 MR. VERA: Thank you, Your Honor.

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

4 CROSS EXAMINATION

5 BY MR. VERA:

6 Q. Dr. Alford, I am Luis Vera with LULAC. I never had an  
7 opportunity to meet you?

8 A. No.

9 Q. Maybe I did a couple of years ago in the last case?

10 A. Yes, I think, but you are not as familiar as --  
11 unfortunately, in these things, I mostly see all of the same  
12 lawyers in all of the same -- so it is good to see someone  
13 new.

14 Q. You see us over so many years?

15 A. Every ten years. We all get older.

16 Q. And I want to take you back to the discussion you had  
17 earlier with Ms. Perales, and also with the Court. You said  
18 earlier in cross-examination with Ms. Perales, said this 2010  
19 redistricting plan had parallels to the 2002 plan. Of course,  
20 it was criticized by the United States Supreme Court.

21 And one of the parallels, of course, you discussed  
22 was 23 and how, of course, at that time, Congressman Bonilla,  
23 they, you know, took away Latino votes, added votes.  
24 Everything was done just to benefit Congressman Bonilla. In  
25 this case, everything was done strictly to benefit Congressman

1 Canseco.

2 And we agree to that? Yes?

3 A. Okay.

4 Q. I think the testimony shows that.

5 A. I mean, I think I would agree that in both cases, most of  
6 the changes -- I am sure there were other people involved --  
7 (Witness mumbling) -- but I think the changes were driven  
8 predominantly by the interests of Congressman Bonilla, and  
9 this case driven dominantly by the interests of Representative  
10 Canseco.

11 Q. Okay. Well, the Supreme Court talked about that. Justice  
12 Scalia talked about that in his opinion. You read the case,  
13 haven't you?

14 A. Yes.

15 Q. Okay. Now, what was the other parallel that you -- or  
16 other parallels that you saw here in 2010 that were in 2003  
17 that, apparently, you may have criticism for or don't like?

18 A. Well, I think, I mean, the broadest parallel is that this  
19 is a -- this is a very effective and partisan gerrymander.

20 Q. Okay.

21 A. I objected to that in the 2003 plan, and I would object to  
22 the same thing here. This is -- this is a partisan  
23 gerrymander, and I think it is illustrative of the problems  
24 for sort of running an unreasonable district and election  
25 system.

1           Districts have done a lot for improving our election  
2 system, but redistricting, when it is allowed to be as  
3 partisan as this, is really not an ideal way to run a  
4 democracy.

5       Q. In 2003, though, you had the same opinion about -- at that  
6 time, it was Congressional District 25, and where they  
7 fractured the minority community in Austin and took it all the  
8 way down to the Rio Grande Valley.

9           I mean, the numbers were there, right? I mean, all  
10 of the numbers to form a so-called majority-minority district  
11 were there, both in population and voter registration and all  
12 with accurate numbers?

13           But yet what did Justice Kennedy do? He severely  
14 criticized or strongly criticized what the legislature did in  
15 25 and said it could not and would not be a replacement  
16 district for what they did in 23?

17       A. Yes. I would agree that was the decision on --

18       Q. That's what happened, right?

19       A. That's what happened. And, so, yes. I think -- but,  
20 again, that is part of the reason that we are -- that we feel  
21 like we are all having deja vu --

22       Q. Now --

23       A. -- is that now you are talking about 35, and --

24       Q. And now 27, they completely fractured up the Latino  
25 community, spread them out everywhere.

1           Are you -- and not only in 35, they fractured the  
2 community again in Austin and fractured the community down in  
3 San Antonio, but yet the numbers are there.

4           A. But --

5           Q. Is that a parallel?

6           A. There is a parallel, but I mean, I think we have to look  
7 at the maps. I mean, there is no question that District 35  
8 going from Travis to Bexar is not my favorite district in the  
9 world, but I also remember that the district -- that you are  
10 talking about, the so-called replacement district there, the  
11 23 swap, that was a much, much more extreme district.

12           And there, as opposed to the 27-34 swap, which is  
13 really just, basically, a renumbering of the main part of the  
14 district, that swap was a swap -- excuse me -- of populations  
15 across very different areas of the state, drawing Travis  
16 County population into what was supposed to basically be a  
17 replacement for what had happened to the 23rd.

18           So two things happened that are important  
19 differences. One is that the redrawing of the 23rd this time  
20 is simply not -- some -- many people would continue to count  
21 the 23rd as not only a performing or -- I'm sorry -- an  
22 opportunity district, but an improved opportunity district,  
23 simply because the Hispanic voting numbers and citizen numbers  
24 have gone up, so the 23rd has not been flipped, as it was  
25 previously.

1           And then the second difference is, to the extent  
2 that the 35th is a -- I mean, it can't really be, in that  
3 sense, I think a replacement for the 23rd, because the 23rd is  
4 still there.

5           But I think it is -- it is -- it is a new performing  
6 Hispanic district. It is not a district that goes -- that has  
7 the geographic and compactness issues that are as extreme as  
8 was the case in the previous.

9           Q. But yourself and almost every expert that has looked at  
10 this says 23, as drawn, is a nonperforming district for Latino  
11 voters.

12           Even though the numbers may look, appear so, in the  
13 end, it is a nonperforming district for Latinos?

14           MR. SCHENCK: I object, to the extent that raises a  
15 legal question again.

16           JUDGE GARCIA: Well, in his analysis.

17           MR. VERA: It is in his report.

18           THE WITNESS: I would just say, I would -- if we are  
19 talking about my opinion, I -- I think we agree completely. I  
20 don't believe that the 23rd, as it existed, as it was drawn by  
21 the Court, or as it is redrawn, is a -- is going to be a very  
22 effective performing Hispanic district.

23           I would have to disagree about sort of everybody  
24 else, because lots of people are giving me a hard time for  
25 claiming that the 23rd was -- as you know, this sort of two

1 out of three, one out ten.

2 I can't keep track of it, but a lot of people don't  
3 like the characterization that coming into this round of  
4 redistricting that the 23rd was already a problematic  
5 district.

6 BY MR. VERA:

7 Q. And I understand that, Doctor. But it is true, though,  
8 that this Court or a court similar to this one drew the 23rd  
9 as a performing district, and now, as it has been drawn now,  
10 every expert, just like yourself, believe that it is a  
11 nonperforming district for Latinos?

12 A. It is important to remember that if we look at the general  
13 election in 2006, in the general election of 2006, that newly  
14 drawn 23rd District performed just as badly as it performs  
15 today.

16 So I don't think that it is entirely fair to say  
17 that it was drawn to be a performing -- or it was drawn as a  
18 performing district. It was drawn to be an opportunity  
19 district on the basis of its population numbers, which it  
20 still is.

21 I don't think it was drawn very -- I don't think it  
22 was drawn very carefully, or with sufficient care to  
23 understand why it is that the 23rd keeps coming up, and the  
24 reason it keeps coming up is because you have to be careful  
25 how you draw the 23rd.



1           And so I don't -- I think I am agreeing with you  
2           about the 23rd, in general, but -- and I don't believe the  
3           Court intentionally drew the 23rd to not be a performing  
4           district, but I think the 23rd, as it was intended to remedy  
5           the problems with the old, old 23, I would think it would not  
6           and, in fact, has not remedied the problems.

7           That's why we are still talking about the 23rd, not  
8           just because the legislature did something in the 23rd, but  
9           because the 23rd did something. Previously, the 23rd was  
10          about to not elect Henry Bonilla, and this time, the 23rd  
11          failed to reelect Representative Rodriguez. And so it is  
12          about elections on the ground in the 23rd that continue to  
13          make this an issue.

14          MR. VERA: Thank you. No more questions.

15          JUDGE GARCIA: Mr. Bledsoe.

16          MR. BLEDSOE: Thank you, Your Honor.

17          JUDGE GARCIA: Go ahead.

18          THE WITNESS: I was going to say good morning, but I  
19          guess we are past that.

20                           \*-\*-\*-\*-\*-\*-\*-\*

21                           CROSS EXAMINATION

22          BY MR. BLEDSOE:

23          Q. I have a few questions for you, and I guess one of those  
24          is: Now, you are familiar with, I guess, Kevin Phillips, the  
25          author, that has written about the Southern Strategy?

1 A. Yes.

2 Q. And you know Dr. Murray talked about the Southern Strategy  
3 in his report?

4 A. Yes.

5 Q. Okay. And the Southern Strategy was a scheme whereby  
6 there was a design to put a division between voters to move  
7 voters of one race into one party and voters of another race  
8 into another party?

9 A. I mean, I think there is that -- there is -- part of that  
10 is all in there, in that. I mean, that is some people's view  
11 of the strategy. I mean, we are getting past sort of -- I  
12 read this, but it was a long time ago, so I don't want to -- I  
13 mean, I am not disagreeing with your characterization, but I  
14 am not sure that I should be the authority to endorse it.

15 Q. But would you agree with Dr. Murray that over time, this  
16 is a strategy that has been implemented, and it has been one  
17 of the reasons why we have seen a change in the shape of the  
18 political parties?

19 A. I just -- I am not enough of a specialist on the southern  
20 politics to be certain if the strategy itself was the cause of  
21 that, or if, basically, if the change has taken place, it kind  
22 of made the people that thought of the strategy look smart by  
23 it changing in the direction that they were hoping things  
24 would move.

25 I know there was -- I mean, certainly, there were

1 some people who were actively pursuing -- I was -- I was  
2 approached in the early eighties, I suppose, by a group of  
3 people associated with the Republican Party to look at drawing  
4 minority districts, and it was fairly clear that the aim there  
5 was that drawing minority districts would be an effective way  
6 of packing Democratic voters. So as far as I know, there has  
7 been a partisan aspect to this going all the way back, and it  
8 is partisan politics.

9 Q. Okay. But in terms of the design to draw a racial wedge  
10 and move people of different races into different parties, you  
11 have not analyzed that, so you really don't know whether or  
12 not that has an impact on the changes in the two parties?

13 A. You know, I am not -- I guess I am not exactly sure that I  
14 understand. And, again, I don't want to -- I am not trying  
15 not to answer, but I don't want to answer in a way that's --  
16 where I misunderstand the question.

17 I am not sure exactly what you mean by pushing  
18 people of different races into different parties. Are we  
19 talking about pushing Anglos into the Republican party?

20 Q. That's part of it, yes.

21 A. No. There is no question that there was a substantial  
22 effort on the part of the Republican Party to attract Anglo  
23 voters in the south. They -- they got nothing in the south,  
24 basically, in the old southern south, and certainly, the  
25 central -- the central impetus of the Southern Strategy was to

1 attract Anglo voters in the south to the Republican Party.

2 Q. And one of the reasons -- one of the methods would be to  
3 use wedge issues that would relate to minority interests to do  
4 that, as Dr. Murray discusses in his report, and this is  
5 something that started about the time of Barry Goldwater?

6 A. I will have to confess to having skimmed that part of  
7 Dr. Murray's report. There were, as I mentioned, a lot of  
8 materials in this case, a lot of experts I had to respond to.  
9 I looked pretty carefully at the part of Dr. Murray's report  
10 that had to do with analysis I was interested in.

11 I did not look very carefully at the historical part  
12 of his report. And it is -- I am not a historian, and so I --  
13 I mean, I am not saying I don't -- I am not disputing what you  
14 are saying.

15 I am just saying, I don't know much more about that,  
16 in an expert sense, than -- I just don't feel comfortable  
17 indicating as an expert that I know that to be true.

18 Q. And when individuals cast a vote, they cast a vote to, you  
19 believe, to further their individual interests and the  
20 interests of their community?

21 A. That is probably a substantial part of their motivation.

22 Q. Okay. And would you agree with me that one of the more  
23 important issues that people are concerned about and is such a  
24 major issue in American politics today is race?

25 A. The -- certainly, the issue of race varies in importance

1 in American politics over time. Like other things, it is up  
2 or down. Sometimes the economy is the major issue. Sometimes  
3 it is the war on drugs. Sometimes it is foreign policy.  
4 Sometimes it is race.

5 There have been periods when, as was true in the  
6 sixties, when race was a larger part of the dispute in  
7 American politics.

8 I think there are two things that sort of, I think,  
9 bring race back, I mean, sort of -- or increase the position  
10 of race in the current American political debate now. One of  
11 those is the election of President Obama, and one of those is  
12 sort of the current disarray over immigration policy. I think  
13 those -- so we see both race in the case of the election of  
14 President Obama, ethnicity in the case of immigration policy  
15 becoming an issue.

16 I think there, I would agree with Dr. Murray that,  
17 particularly the immigration side of that, is, at least some  
18 part, maybe not -- I may not feel as strongly as he does, but  
19 at least some part of what is motivating some segments, maybe  
20 the most vocal segments of the Tea Party Movement, where we  
21 see something that looks very much like a populist kind of  
22 political appeal, and often populist appeals do have issues or  
23 planks within them that relate to issues like immigration.

24 Q. And in Dr. Murray's report, he talked about 43 percent of  
25 whites nationwide voting for President Obama, 26 percent of

1 whites in Texas voting for President Obama.

2           Would you agree with me that is a pretty substantial  
3 difference?

4 A. That is a substantial difference, and we live in a  
5 Republican state. And fortunately for President Obama, at  
6 that moment, we had a Democratic nation. So, again, I agree  
7 those are differences, but I am not sure that we can say that  
8 that difference is -- reflects much more than the fact that we  
9 live in a Republican state.

10           Nebraska, you probably would get the same break in  
11 Nebraska. This is my point about Travis County. It is not  
12 that -- it is not that Anglos in Travis County are special in  
13 any sense, other than the sense that they are Democrats.

14           There aren't a lot of Anglo Democrats in Texas, and  
15 if you put them all in one place, they look different. Well,  
16 they just look different because they are -- they actually  
17 have gathered together, instead of just living out in  
18 isolation, like the majority of the Republican population.

19 Q. And on the other hand, because you haven't analyzed it, it  
20 could be that it was race that made the difference; isn't that  
21 correct?

22 A. I've -- I mean, I -- I have certainly seen no analysis  
23 that would suggest that the differential voting between Texas  
24 and the rest of the country is a function of race.

25 Q. The numbers of individuals who support a candidate is

1 sometimes reflective of the kind of campaign that they run; is  
2 that correct?

3 You just can't look at a race and say, an African  
4 American is running, and look at that as an example of the  
5 level of support or the lack of support for an  
6 African-American candidate?

7 A. That is correct. It is particularly true as you move down  
8 the ballot, where you may have people who are not serious  
9 candidates or people who have no political experience, so  
10 forth.

11 You see this a lot in local elections, where you  
12 have some perennial candidates, people who run but that never  
13 really run a campaign. So one of the things I like about --  
14 it is certainly true of congressional elections, in general,  
15 but also of the statewide, reconstituted elections, is that  
16 you can easily see -- I mean, when you look at numbers there,  
17 you can easily see that you are looking at serious candidates  
18 or running serious campaigns. So if Noriega is running a  
19 serious campaign for the Senate -- running a serious campaign  
20 for governor, so you don't -- you often don't have those same  
21 issues.

22 Q. So you just can't look at the race or ethnicity of someone  
23 on the ballot and make a judgment, based on how voters support  
24 that candidate, because you don't know about the legitimacy of  
25 their candidacy, do you?

1 A. Again, we know a lot about the legitimacy of statewide  
2 candidacies, and as long as we have multiple -- we are looking  
3 at multiple races, that increases the likelihood that what we  
4 are seeing is actually a real pattern in the data and not just  
5 something to do with a particular campaign.

6 Q. And would you agree with me that in the lower -- below  
7 Bill White and the Democratic side that there wasn't a lot of  
8 money in a few of those campaigns?

9 Those campaigns were severely underfunded, compared  
10 to the Republican campaigns?

11 A. I am more familiar -- excuse me. I am more familiar with  
12 Bill White's campaign than the other campaigns. I don't  
13 think -- I mean, if Bill White's campaign suffered for lack of  
14 funding, that is Bill White's fault. He had a checkbook.  
15 So -- and my guess is that there are not a lot of other people  
16 on that ballot that had the checkbook that Bill White had, so  
17 it wouldn't surprise me if they had less money.

18 Q. So you didn't really look at that to see how viable their  
19 candidacies were, to see how much money they had to run a  
20 statewide election?

21 A. I mean, I guess now we are moving into an area that -- of  
22 sort of multivariate that I think the courts have been fairly  
23 clear that they are not particularly interested in these  
24 cases, which is to try to come up with a set of  
25 characteristics that might explain racial voting on the basis



1 of, well, they didn't spend much money, or this person had a  
2 bigger name recognition, or whatever; that is, basically  
3 taking what might be considered to be Senate factors and  
4 actually turning them against minorities in looking at racial  
5 voting.

6 So it is not something I would think that would  
7 either be necessary to look at or necessarily would be  
8 appropriate, if what you are trying to do is basically  
9 diminish the importance of racial voting, simply on the basis  
10 of campaign characteristics.

11 Q. Let me ask you about Victor Carrillo's campaign in 2010.  
12 Would you agree that Victor Carrillo had a very viable  
13 campaign and was an incumbent commissioner on the Railroad  
14 Commission?

15 A. I know he was an incumbent. If he was an incumbent  
16 commissioner, I don't know. I don't know about his campaign,  
17 so I am taking races from TLC and trying to aggregate enough  
18 of them that we can get a general picture.

19 And some of those, because I -- because I know Bill  
20 White personally and know something about his campaign, I  
21 don't -- I don't know about all of these campaigns at that  
22 level.

23 Q. Would you believe that if a well-funded Hispanic incumbent  
24 loses a campaign to someone who doesn't have an effective  
25 organization or significant funding, he is of a different

1 race, that that could be a race that might have been decided  
2 by reasons of race?

3 A. So now we are talking about in the primary?

4 Q. Yes.

5 A. There are -- there are clearly remaining differences in  
6 voting behavior in the primary. There are -- that we see vote  
7 in the Republican primary. We have some indication of weaker  
8 Hispanic cohesion, and we see substantial crossover, but not  
9 complete crossover.

10 So, yes -- and maybe we should be clear. This  
11 analysis doesn't suggest that race has somehow disappeared  
12 from voting. It suggests that where partisanship is available  
13 as a queue, we can't see the effect of race anymore, but we  
14 clearly can see the effect of race in both the Democratic and  
15 Republican primary.

16 And certainly, I think that is -- that is an example  
17 where you could argue that the -- that in the Republican  
18 primary that that may have made a difference in the outcome of  
19 the election.

20 Q. Well, you have not done -- when you talked about cohesion  
21 earlier, and when you talked about the Supreme Court race, and  
22 you talked about Guzman and Bailey, and you suggested that it  
23 seemed to be more like partisan voting, and you were  
24 discussing this in terms of cohesive voting, is there anything  
25 in the definition of cohesion that distinguishes between

1 partisanship and values?

2 A. I am not sure how it is related. You mean, how you would  
3 compute?

4 Q. Could individuals be voting for a candidate of a certain  
5 party that exemplified their values?

6 A. They could.

7 Q. And you talked earlier about ideology and party matching  
8 up, but they are not identical, are they?

9 A. They are not.

10 Q. And when we talk about race and politics, there are things  
11 that are still used, is that correct, such as code words?

12 A. I am sure there are.

13 Q. There are messages that are communicated in campaigns  
14 still today to convey a message to the voters that: I am the  
15 white candidate and he is the candidate against the white  
16 community?

17 A. Are we talking about primary elections? General  
18 elections? I mean, I don't -- I don't have any -- I can't  
19 give you specific examples of that. I mean, it -- it -- it  
20 would not surprise me if there were candidates -- I guess I  
21 should say, I wouldn't be at all surprised to find out that  
22 there were candidates in Texas or anywhere in the United  
23 States who were -- who would still be willing to use race or  
24 ethnicity as a campaign tool.

25 Q. And that kind of voting is intended to direct voters to

1 vote for a particular political party; is that correct?

2 A. I mean, if it is something a candidate is doing, it is  
3 intended to direct a vote for that particular candidate.

4 Q. So it could be that within that figure of 75 percent for  
5 one party of the white community, that part of that is brought  
6 about by race being directly injected into campaigns?

7 A. I suppose that is possible.

8 Q. Would you agree with me that, with the immigration issue  
9 that you discussed earlier, that if you put the Mexican flag  
10 on the lapel of a candidate through photo shopping, that that  
11 might be an appeal to race to have people vote in a certain  
12 way?

13 A. Again, there might -- so that -- that could be appeal to  
14 have people vote on the basis of that issue, on the issue of  
15 immigration. It could be an appeal to have people vote on the  
16 basis of race or ethnicity, either for or against the  
17 candidate.

18 As you move into -- when you move into an issue like  
19 immigration, that issue is going to -- is going to have  
20 implications for -- is going to implicate ethnicity in a  
21 variety -- of discussions that are going to cut across,  
22 presumably, across party lines.

23 Q. If you darken a candidate's skin and you put them in a  
24 color photograph with Barack Obama, the president, and say  
25 this person is an Obama Democrat, that could be suggesting, at

1 least lease subliminally, an issue of race; is that correct?

2 A. I think -- I mean, putting a candidate in a photo with the  
3 president is -- I mean, that is not a new technique and that  
4 is not a racial technique, so you get -- you put -- there were  
5 lots of candidates who got put in a photo with George Bush  
6 too.

7 So identifying the candidate with the head of the  
8 party -- after all, the midterm losses, for example, in a  
9 party are highly correlated to the popularity of the  
10 President.

11 So linking a local candidate to the president is a  
12 way of both increasing the motivation, the motive of people  
13 who are not happy with the state of the country, with the  
14 president or with the party that the president is from.

15 If, in addition to that, you are trying to change  
16 the racial appearance of the opponents, of your opponent, I  
17 think that is a different issue than putting a picture of your  
18 opponent with the president.

19 Q. Well, let me ask you this. Is darkening one's skin a  
20 typical technique that is used?

21 A. I don't know if it is a typical technique that is used,  
22 but if someone is taking a picture and photo shopping it to  
23 make the candidate look more African American or more  
24 Hispanic, then I would think that would be a racial appeal in  
25 a campaign.

1 Q. And what about the use of the Chinese flag as a backdrop  
2 on a photograph that suggests that there is some connection  
3 between the candidate and the Chinese flag? Is that a racial  
4 appeal?

5 A. I would -- I am not really sure -- I am not sure I would  
6 recognize the Chinese flag, so -- there may be -- I am not --  
7 it may be an inept appeal. It may be a public policy appeal,  
8 certainly among union voters -- (Witness mumbling.)

9 It would depend on how you are -- I guess there are  
10 a lot of ways you could use that particular queue. I mean, so  
11 I don't want to say it couldn't be used for that, but I am not  
12 aware that it is.

13 Q. Would suggesting that someone supports people on welfare  
14 and getting a Cadillac, isn't that one of the old code words  
15 that was used in --

16 A. I mean, that's -- I mean, I guess different people could  
17 take that differently. I would take that as a racial appeal.

18 Q. And there were races in Waco, in Arlington, Fort Worth,  
19 and a number of places, they had these kinds of activities,  
20 and so it would be important to look at those type of races  
21 and see what impact those races might have had on the white  
22 vote and understanding the white vote?

23 JUDGE GARCIA: I'm sorry. Yes. Hold on.

24 MR. SCHENCK: I have an objection, on the basis that  
25 this is assuming facts in evidence that are not, in fact, in

1 evidence. It is asking for testimony that I don't believe is  
2 relevant --

3 MR. BLEDSOE: I think that Ms. Guerra did testify --

4 JUDGE GARCIA: I will sustain that. Anything else,  
5 Mr. Bledsoe? If you have some more, go ahead.

6 MR. BLEDSOE: Okay. Yes, sir.

7 BY MR. BLEDSOE:

8 Q. In a general election, when you are about to vote, you are  
9 voting to benefit yourself and your community in the general  
10 election, when you cast a vote?

11 A. I mean, that certainly is part of it, but you are also --  
12 there are a lot of other things going on, and I guess my --  
13 maybe my hopeful inclination is that people are voting less to  
14 benefit themselves than they are to benefit their community or  
15 their country or something like that.

16 Q. But there is a choice that you have at that time in how to  
17 vote?

18 A. That is correct.

19 Q. Okay. And so when you cast the vote, you are casting a  
20 vote in that particular election for the candidate of your  
21 choice; is that correct?

22 A. Right. The candidate you vote for is, I think, definitely  
23 your candidate of choice.

24 Q. Okay. And it is important to be able to have an effective  
25 choice in the general election; isn't that correct?

1 A. I -- and this touches on an issue earlier about partisan  
2 gerrymandering. I think it is very useful for people to have  
3 an effective choice in their congressional district. And I  
4 think, for the most part, we don't have effective choices in  
5 congressional districts, because of the extent of partisan  
6 gerrymandering around the country.

7 I would much prefer Texas to be redrawn by a  
8 nonpartisan redistricting commission, similar to what is done  
9 in Iowa or -- I think Arizona uses that method. So my  
10 preference would be, basically, that we do this in a  
11 nonpartisan way, and do our best to -- in that process, to  
12 almost automatically reduce some of the tendency of districts  
13 to be so solidly Republican and solidly Democratic, find a way  
14 to do that within the context of the Voting Rights Act, which  
15 will mandate that some districts be more heavily Democratic  
16 than they might otherwise be. But, again, it would be very  
17 nice if people had more effective choice in the congressional  
18 elections.

19 Q. And it wouldn't be -- it would be harmful to that  
20 individual or their community to take away that choice because  
21 someone said that the election in the primary was more  
22 important?

23 A. I am not sure I am following you.

24 Q. Well, in the -- if, for example, you just mentioned the  
25 type of district where you don't have a choice. But if



1 getting a district where your vote would be meaningful can be  
2 conditioned upon whether or not your candidate comes out of  
3 the primary, then that is not going to lead to an ultimate  
4 benefit for your community, is it?

5 A. That is correct. So if you -- if you -- if ultimately  
6 there is a nice, healthy competition in your district between  
7 two candidates, neither of which could be your candidate of  
8 choice, then for that voter, that competition hasn't really  
9 improved their situation, because it is, after all, a  
10 competition between two candidates, neither of which is their  
11 preferred candidate.

12 Q. Now, it is true, is it not, that sometimes there is a  
13 campaign between two white candidates, and one may be  
14 perceived to be the candidate of the white community and one  
15 may be conceived, to be seen as a candidate of a more diverse  
16 community?

17 A. I think, typically, when Republicans run against  
18 Democrats, that is often the case.

19 Q. Okay. And so in looking at such an election and seeing  
20 how people vote, it does have some meaning in terms of  
21 determining whether or not individuals of choice for the  
22 minority community are actually getting support from the white  
23 community?

24 A. There are a lot of ways in which we can think about how  
25 things might contribute to what is ultimately a partisan

1 choice, and race could be contributing to that -- to that  
2 choice. We just don't have -- we just can't say what exactly  
3 that contribution is, using the methodology that courts  
4 typically use to assess these cases.

5 Q. Okay. And you can't say anything has changed in the last  
6 ten years at some defining moment that reduced race on the  
7 political scene in Texas, can you?

8 A. I think if you are -- if you are asking, is there some  
9 shocking event or some critical moment when we can suddenly  
10 see a change, I am not just thinking of what has happened over  
11 the last ten years. I am not sure that I would know that. On  
12 the other hand, I just -- I mean, I grew up in the sixties and  
13 seventies, mostly in the south, and so a lot has changed. I  
14 mean, that's -- I mean, President Obama is the president of  
15 the United States. I think that is remarkable. And Texas  
16 didn't secede. That is very remarkable too.

17 Q. Now, the Tea Party, would you agree with --

18 JUDGE GARCIA: Not yet.

19 BY MR. BLEDSOE:

20 Q. Would you agree that the Tea Party has made the Republican  
21 Party in Texas even more conservative?

22 A. Perhaps in the short-term, but, you know, the Republicans  
23 have got a tiger by the tail with the Tea Party, and I am not  
24 sure that the long run effect of that is going to be to  
25 make -- I mean, I was -- I was a crazy liberal Democrat in the

1       sixties and seventies, and what crazy liberal Democrats in the  
2       sixties and seventies did was basically produce the Democratic  
3       Party of someone like Bill Clinton, a triangulating centrist.

4                So I mean, ultimately, the Democratic Party went  
5       very far to the left and then swung back, I think very much to  
6       the center. And partly because the party needed to get away  
7       from the kinds of crazy image that people like me had given  
8       the party, and -- (Witness mumbling) -- quite frankly.

9                I mean, you think about that. We were talking about  
10       Lyndon Johnson. I was -- you know, I wanted Lyndon Johnson  
11       out of office. Lyndon Johnson has probably done more for  
12       social policy in this country than any president since  
13       Lincoln. That is pretty remarkable. The liberal Democrats  
14       pushed Lyndon Johnson out of office --

15               JUDGE GARCIA: Okay. Let's have some Q and A. Go  
16       ahead.

17               MR. BLEDSOE: Yes, Your Honor.

18       BY MR. BLEDSOE:

19       Q. But now, you haven't done any analysis to disaggregate why  
20       whites support the Republican party; is that correct?

21       A. All I am doing is looking at what -- what we see in the  
22       vote totals as we swap in and out different types of  
23       candidates and different pairs -- mandates across these  
24       elections.

25       Q. And there are important indicators of support for minority

1 interests, such as report cards that different groups like the  
2 NAACP put out in reference to what happens in Congress?

3 A. Yes.

4 Q. Okay. And if members of a certain party are not doing  
5 very well in those report cards, that is something that might  
6 be injurious to the interests of that community, without  
7 regard to whatever political party that person represents?

8 A. The choices the representative makes in representing the  
9 constituency can be, more or less, of benefit to lots of  
10 different types of groups in the constituency, and that  
11 certainly varies across representatives.

12 Q. Now, when we talk about compact districts, when you say  
13 the district ought to be compact, that should be -- an Anglo  
14 district should be compact in the same way as a minority  
15 district; is that correct?

16 A. My preference would be that all districts, yes, would be  
17 much more compact than they are.

18 Q. Okay. And you haven't had an opportunity, have you, to  
19 actually look at the NAACP proposed districts for African  
20 American-Latino -- districts, have you?

21 A. What would -- do you have a C number for that?

22 Q. 193 and 194.

23 A. I think I have seen -- I think I have seen those plans. I  
24 don't -- I haven't looked at them. I haven't studied them  
25 carefully or included them in my report, but I think I have

1 seen them.

2 Q. Okay. And I think Dr. Murray indicated that there was not  
3 an office around that he was familiar with where African  
4 Americans were at least 35 percent that did not perform? And  
5 I think you indicated that in your testimony on direct; is  
6 that correct?

7 A. That is correct. I think districts in the 35 to  
8 40-percent range, if they are drawn to be performing  
9 districts, that they perform.

10 Q. And I think you testified that he thought 30 percent would  
11 be an effective district for African Americans. Have you ever  
12 analyzed that?

13 A. I haven't analyzed it, but I mean, it is certainly  
14 possible. I mean, I can draw you a district like that that  
15 would work. I can draw a district below that that would work.  
16 The kinds of things you will have to do in drawing that  
17 district are going to raise lots of other concerns.

18 MR. BLEDSOE: Thank you. I will pass the witness.

19 JUDGE GARCIA: Thank you. Any other plaintiff?

20 Okay. If not, any redirect?

21 MR. SCHENCK: No, Your Honor.

22 JUDGE GARCIA: Thank you, Doctor. You are excused.

23 And so this was your last witness, right?

24 MR. SCHENCK: Yes, sir.

25 JUDGE GARCIA: So the State has concluded?

1 MR. SCHENCK: Yes, sir.

2 JUDGE GARCIA: Is the defendant going to have any --  
3 not the defendant. The plaintiffs, are they going to have any  
4 rebuttal witnesses?

5 MR. GARZA: I don't believe we have any rebuttal  
6 witnesses.

7 JUDGE GARCIA: From nobody? Okay. Then we will --  
8 okay. Each party will have a period of time not to exceed 45  
9 minutes, unless the Court chooses or directs or permits  
10 otherwise.

11 Now, are we going to have opening and closing?

12 JUDGE SMITH: Well, I think they wanted a follow-up.  
13 You wanted a rebuttal argument.

14 JUDGE GARCIA: Right. So you are going to divide  
15 those 45 minutes, then, right, each party?

16 MR. GARZA: Well, no. Well, we can do whatever the  
17 Court wants us to do. What we had suggested is that  
18 collectively we would have an additional 30 minutes at the  
19 end, so a time period that would not exceed 30 minutes is  
20 rebuttal.

21 JUDGE GARCIA: Okay. And who is going to make that  
22 argument?

23 MR. GARZA: Well, it depends on the argument of the  
24 State. I don't think that --

25 JUDGE RODRIGUEZ: Individually or collectively,

1 utilize 30 minutes?

2 MR. GARZA: Exactly.

3 JUDGE RODRIGUEZ: Right.

4 JUDGE GARCIA: How much time would the State want?

5 MR. SCHENCK: I would think not more than an hour.

6 JUDGE GARCIA: Okay.

7 MR. SCHENCK: It would depend on -- depending on the  
8 questions.

9 JUDGE GARCIA: Yes. We will play it by ear, an  
10 hour, an hour and 15 minutes.

11 JUDGE SMITH: I mean, it is only fair that you get  
12 something --

13 JUDGE GARCIA: And if everyone uses their 45 minutes  
14 and the State goes an hour, we are going to exceed beyond the  
15 day and, if necessary, we will have to come in the morning, of  
16 course, since we had planned on staying until 1:00 o'clock on  
17 Friday.

18 In any event, does anyone here think they are going  
19 to use all of their 45 minutes? Rather, is anyone here going  
20 to use less than their 45 minutes?

21 MR. GRAY: I anticipate I will use less than 45  
22 minutes, Your Honor.

23 MR. RIOS: Me too, Your Honor.

24 MR. VERA: Yes, Judge. I think 15. Probably about  
25 15, 20 minutes, maximum.

1 JUDGE GARCIA: So we might be able to finish  
2 tomorrow. Okay.

3 MR. HICKS: Your Honor, I think -- I am speaking in  
4 front of Jose, Mr. Garza here. I think, I am fairly confident  
5 we are going to finish tomorrow. We will be -- commit to the  
6 Court that we can finish tomorrow.

7 JUDGE GARCIA: Well, that will be the plan, but if  
8 necessary, we can go into the next day. Okay. Oh. We are  
9 going to change the briefing schedule. It is two weeks. Now,  
10 the plaintiffs are going to submit additional evidence or  
11 testimony?

12 MR. GARZA: Yes, Your Honor. We are going to be  
13 submitting proffers to the State no later than the end of the  
14 day -- today is Wednesday? Thursday. And --

15 JUDGE GARCIA: Okay. But are you going to need any  
16 additional time before we begin the period of time for the  
17 trial briefs? Or have you concluded all of your testimony?

18 MR. GARZA: And the way that would be impacted, Your  
19 Honor, is after the State reviews the proffers, if they decide  
20 they want to take depositions, that wouldn't occur until next  
21 week.

22 JUDGE GARCIA: Okay.

23 MR. GARZA: In which case, then we would need the  
24 time period to begin at the conclusion --

25 JUDGE GARCIA: Okay. In any event, whenever that



1 begins, there would be two weeks for the plaintiffs --

2 JUDGE SMITH: For both sides, simultaneously.

3 MR. GARZA: Right.

4 JUDGE SMITH: Simultaneous briefs.

5 JUDGE GARCIA: Okay. But we were going to give the  
6 State a little bit more time?

7 JUDGE SMITH: Well, we were going to have  
8 simultaneous, both sides respond, and we said one week, but I  
9 believe we were going to change that to two weeks. Mr.  
10 Schenck particularly indicated to me he needed more time, and  
11 it sounds reasonable.

12 MR. GARZA: So two weeks and then two weeks.

13 JUDGE SMITH: So both sides, after two weeks, and  
14 then two weeks more pass, and both sides file a response. Is  
15 that --

16 MR. GARZA: (Indicating.)

17 JUDGE RODRIGUEZ: Is everybody aware of when the two  
18 weeks start? Do we need to give a date certain?

19 MR. SCHENCK: Maybe if we propose a joint order --

20 JUDGE RODRIGUEZ: Judge Smith, why don't we just  
21 give them a date certain.

22 JUDGE SMITH: We could do that, sure, but do we want  
23 to wait until the end of argument tomorrow, so everyone  
24 knows --

25 JUDGE GARCIA: Yes. Let's do that.

1 JUDGE SMITH: -- and then we can set the dates.

2 JUDGE GARCIA: Does the State have any further  
3 knowledge about the status of the preclearance?

4 MR. SCHENCK: Yes. I am sorry. I was in and out a  
5 little bit earlier. We are filing the motion for summary  
6 judgment today in that case. We are going to have a  
7 conference call with the Court early next week to discuss  
8 whether we have anything beyond an additional briefing  
9 schedule, if the case --

10 JUDGE GARCIA: Any idea of when the Court possibly  
11 might rule on that case?

12 MR. SCHENCK: Well, I think that is what we are  
13 discussing in the conference call. We are urging strongly for  
14 a final determination that will not require adjustment of the  
15 filing period, which begins on November 12th.

16 JUDGE GARCIA: Okay.

17 MR. GARZA: So just to clarify, Your Honor, the  
18 State's motion for summary judgment is due this week. On the  
19 19th, the answer from the Department of Justice is due. And  
20 then on the 21st, there will be a conference call of the  
21 litigants in Washington, D.C. to discuss summary judgment  
22 briefing and trial schedule.

23 JUDGE GARCIA: Further briefing and schedule. Okay.  
24 Just keep us posted, as soon as you know, as things occur; if  
25 you can file an advisory or something to that effect.

1           In any event, thank you all, and we thank the  
2 Legislative Council again. We will reconvene at 8:00 in the  
3 morning.

4                   \*-\*-\*-\*-\*-\*-\*-\*

5 UNITED STATES DISTRICT COURT )  
6 WESTERN DISTRICT OF TEXAS    )

7           I certify that the foregoing is a correct transcript  
8 from the record of proceedings in the above-entitled matter.  
9 I further certify that the transcript fees and format comply  
10 with those prescribed by the Court and the Judicial Conference  
11 of the United States.

12 Date signed: September 14, 2011.

13  
14                                   /s/ Karl H. Myers

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