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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 13, 2011  
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VOLUME 7

TRANSCRIPT OF BENCH TRIAL

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

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1 (September 13, 2011.)

2 MR. MATTAX: Good morning, Your Honors.

3 JUDGE GARCIA: Good morning.

4 MR. MATTAX: Before we call the next witness, a  
5 couple of housekeeping matters. As the Court is aware, this  
6 afternoon, we are not going to take a full day, so we are  
7 going to use that, the afternoon time, to get together with  
8 the plaintiffs to try to resolve a few issues.

9 JUDGE GARCIA: Okay.

10 MR. MATTAX: First, of course, would be closing  
11 arguments. Does the Court have any guidance on how much time  
12 they are thinking about that? Or is it just kind of up to us?

13 JUDGE GARCIA: Have you all gotten together on how  
14 much time you all need for closing argument?

15 MR. GARZA: Closing argument? Your Honor, I was  
16 under the impression that we were going to do that this  
17 evening or afternoon.

18 JUDGE GARCIA: Okay.

19 JUDGE RODRIGUEZ: I think a lot of it is going to be  
20 dependent upon whether you start closing arguments Thursday,  
21 so I think you just need to take all of that into account.

22 MR. GARZA: Correct. Yes, Your Honor.

23 JUDGE GARCIA: Okay.

24 JUDGE SMITH: Speaking only for myself here, but I  
25 think the closing arguments should be extensive and should

1 carefully cover the law and the facts.

2 MR. GARZA: Exactly.

3 JUDGE SMITH: And what the law says and what needs  
4 to be proven and whether that has happened or not, and calling  
5 our attention to pertinent -- what parts of the record, and I  
6 think the lawyers should expect questions from the Court  
7 during the argument as well.

8 MR. GARZA: Absolutely.

9 JUDGE SMITH: That is just my take on it.

10 JUDGE GARCIA: Right. I agree.

11 MR. MATTAX: Thank you for that guidance.

12 Secondly, Your Honor, what we would like to try to  
13 discuss this afternoon with the plaintiffs is the proffers of  
14 evidence. You will recall we had agreed that on substituting,  
15 to try to reduce trial, there be proffers. I need to sort of  
16 see those, to see if there are any objections.

17 The next issue would be depositions. There have  
18 been discussions throughout the trial that we are going to put  
19 some depositions in entirely. Some have been objected to. We  
20 can work all of that out.

21 JUDGE GARCIA: All right.

22 MR. MATTAX: Suffice it to say that what I am going  
23 to try to do this afternoon is present something tomorrow  
24 morning to the Court to minimize any evidentiary issues the  
25 Court has to rule on.

1 JUDGE GARCIA: Okay.

2 MR. MATTAX: My final point with respect to that is,  
3 the State reserved all relevancy objections on all of the  
4 hundreds of exhibits that have been filed. I don't propose  
5 that I would go through them and make the Court rule on all of  
6 these, unless they are pointed out in some post trial brief or  
7 something like that. I just don't think that is sufficient  
8 use of Court's time.

9 JUDGE GARCIA: All right.

10 MR. MATTAX: With that, I think we are going to call  
11 our first witness.

12 JUDGE GARCIA: All right.

13 MR. COHEN: State calls Chairperson Solomons.

14 COURTROOM DEPUTY: Would you please raise your right  
15 hand.

16 (Oath administered to the witness.)

17 COURTROOM DEPUTY: You can have a seat.

18 \*-\*-\*-\*-\*-\*-\*

19 DIRECT EXAMINATION

20 BY MR. COHEN:

21 Q. Chairman Solomons, why don't you just state your name for  
22 the record and where you live.

23 A. My name is Burt Solomons. I live in Carrollton, Texas, in  
24 Denton County.

25 Q. And you are a state representative from Denton County?

1 A. I am.

2 Q. How long have you been a legislator?

3 A. I am in my 17th year.

4 Q. Now, I referred to you as "Chairman," and that indicates  
5 that you are a chairman of one or more of the committees; is  
6 that right?

7 A. Yes.

8 Q. Talk about the committees that you have been a chair of.

9 A. I have been the chair of the Financial Institutions  
10 Committee, which is now Pensions, Investments and Financial  
11 Services. For three sessions, I was a State Affairs chairman,  
12 which was a senior committee with 15 members, and I am  
13 currently the chair of the Redistricting Committee with 17  
14 members.

15 JUDGE SMITH: You will need to pull that microphone  
16 closer.

17 THE WITNESS: Okay.

18 JUDGE SMITH: You have a soft voice and it is not  
19 projecting very well.

20 THE WITNESS: Oh. Okay.

21 BY MR. COHEN:

22 Q. How many redistrictings have you been a part of before  
23 this session?

24 A. Two. 2001 and 2003.

25 Q. And how did they go?



1 A. How did they go? Well, the 2001 redistricting, state  
2 maps, went to the LRB, Legislative Redistricting Board. And  
3 the congressional map, I don't even remember. And then the  
4 2003 map, we did just congressional during that session,  
5 several special sessions, I think, and I was just a voting  
6 member.

7 Q. So this is your first time on the Redistricting Committee;  
8 is that right?

9 A. Yes.

10 Q. Now, how did you become to be the chairman of the  
11 Redistricting Committee in 2011?

12 A. I was asked by Speaker Straus to chair the Redistricting  
13 Committee. I sort of was expecting to be the State Affairs  
14 chairman again, but I became -- he asked me to be the  
15 Redistricting chairman the Tuesday before we made the  
16 announcements on the committee assignments.

17 Q. And so it was two days before the announcement -- Monday  
18 before --

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

20 MR. COHEN: I'm sorry. It's the Yankee in me. I  
21 will slow down as much as I can.

22 THE WITNESS: The Monday night, the Monday -- we had  
23 committee announcements on, I think, a Wednesday. The Monday  
24 evening before that, I was given a heads-up by the Chief of  
25 Staff, Denise Davis, that the Speaker was probably going to

1 talk to me about that on Tuesday. And Tuesday afternoon, we  
2 had about a little less than an hour meeting in my office, and  
3 he asked me if I would consider chairing a committee, and then  
4 the assignments were announced Wednesday.

5 BY MR. COHEN:

6 Q. Do you consider yourself to have special expertise in  
7 redistricting?

8 A. Absolutely not.

9 Q. What is your profession?

10 A. I am a real estate lawyer by trade, real estate  
11 construction matters, contracts.

12 Q. Can you use Red Appl?

13 A. Not very well. I had one class in it, and during the  
14 session, I actually did not sit at the computer and actually  
15 use Red Appl. That's why I have staff.

16 Q. Gotcha. Well, tell the Court about how you are staffed  
17 for redistricting.

18 A. Well, we knew that -- or when I got appointed, when I  
19 discussed it with Speaker Straus, we knew that there would be  
20 a person out of the Speaker's office that would handle some  
21 redistricting -- all -- a lot of the redistricting issues. I  
22 appointed my personal Chief of Staff, who had committee  
23 background, committee clerk background, to be the committee  
24 clerk, to process the committee work. And I -- we hired  
25 counsel, Ryan Downton. And then the committee actually had an

1 assistant, you know, just for copies and helping with whatever  
2 the committee clerk does.

3 Q. What were your priorities for the redistricting in this  
4 session?

5 A. Pass maps, pass bills. We had the State Board of  
6 Education map. We knew we had the State House map. We knew  
7 that we had the Senate map, and we knew that we had a  
8 congressional map that hadn't been done for 20 years or more,  
9 to try to get all of the maps passed, and my goal was to see  
10 if we could actually get maps passed at the House and Senate  
11 and it could be -- you know, where we wouldn't have to go to  
12 Legislative Redistricting.

13 I mean, I told Speaker Straus that, you know, what I  
14 wanted to do was actually work at trying to get the members to  
15 see if they wanted to pass maps this time, instead of going to  
16 the Legislative Redistricting Board.

17 Q. Now, as a -- first off, you are a Republican?

18 A. Yes.

19 Q. It will be helpful for the Court when we talk about other  
20 legislators to identify them as Republicans or Democrats.

21 A. Okay.

22 Q. But as a Republican, what effect did party or partisanship  
23 have on your beliefs or your thinking for this redistricting  
24 session?

25 A. Well, we had 101 Republicans in the Texas House. That is

1 the last election cycle. 49 Democrats in the House. The  
2 Senate still had a majority of Republicans. We have a  
3 Republican governor.

4 And for me personally, it was really a matter of  
5 ensuring that I had enough votes to pass a map, which seemed  
6 to me to be very clear, after a while, that it probably was  
7 going to take Republican votes to pass a map, because the  
8 Democrats were not going to vote for a map.

9 Q. Well, that is party. What effect did race have on your  
10 thinking with respect to redistricting?

11 A. Absolutely none.

12 Q. When you say "absolutely none," what about the Voting  
13 Rights Act?

14 A. Well, I mean, for me, not being a redistricting lawyer, I  
15 was aware that we had to abide by legalities, which includes  
16 the Voting Rights Act and the Constitution and federal law,  
17 state law. We just needed to make sure that whatever we did,  
18 if I was going to pass a map, I wanted to make sure it was  
19 legal.

20 Q. Now, there were statewide hearings held in the  
21 inter-session between the 81st Legislature and the 82nd  
22 Legislature?

23 A. Yes.

24 Q. Did you take a part in those?

25 A. No.

1 Q. Why not?

2 A. Well, I really -- we are a part-time legislature, and I  
3 have other things to do to try to make a living, as well as  
4 family things, and quite frankly, the one hearing that came to  
5 Dallas, that particular day, I had a scheduling conflict, I  
6 think.

7 Q. And this was all before you were a member of the  
8 committee?

9 A. Yes.

10 Q. What other committees were you involved with during the  
11 82nd Legislature, the most recent one?

12 A. Well, actually, as a Redistricting chair, I was a member,  
13 as a senior member too, I was also on the Calendars Committee.  
14 I was also on the Business and -- House Business and Industry  
15 Committee, and I was also on the State Affairs Committee. So  
16 I was on four total committees, which when I did the House  
17 rules, if I had realized I was going to be -- because we did  
18 the House rules before committee assignments. And if I had  
19 known I was going to be the Redistricting chair, I might have  
20 tried to ensure that the rules meant that I didn't need to be  
21 on all of those committees, but when you have the makeup of  
22 the committees -- make them come out, I had to be on four  
23 committees, or at least three, and I was on Calendars, and  
24 Calendars is a procedural committee.

25 Q. There is a 140-day session of the legislature?

1 A. Yes.

2 Q. Could you explain briefly for the record how the 140 days  
3 work?

4 A. Well, we have -- as everyone knows, I think, we have --  
5 our sessions are 140 days, unless you have a special session  
6 called afterwards by the Governor. We have -- because we  
7 have -- in the Constitution, we have a 60-day limitation on  
8 bills we can pass.

9 The only bills we can pass the first 60 days by the  
10 Texas Constitution is, it is called emergency item by the  
11 Governor. And so we also have 150 members, and it takes a  
12 while to kind of gear up.

13 We usually have a new class. We have committee  
14 assignments that come out after a while. It takes a while to  
15 go through that. And it just takes us a while to kind of gear  
16 up. And depending on the Speaker's time frame on when they  
17 appoint committees, which could be from the time you first get  
18 sworn in, it could be, you know, in February some time before  
19 we actually get committee assignments, and then the committees  
20 can start operating, but we still -- and we can pass bills on  
21 forward from the committees to the Calendars Committee, but we  
22 really can't bring them out on the floor to pass for the first  
23 60 days.

24 Then towards the end, back in the Speaker Laney  
25 days, we instituted -- before I actually got there, but it was

1 already there in '95, my first session. We actually have  
2 calendar time frames where we can start passing bills from the  
3 Texas -- on the House floor, until about the second week in  
4 May, and that is when there is a deadline, it changes by a few  
5 days here and there, when we can actually pass bills on the  
6 second reading on the House floor about the second week in  
7 May.

8           And then we have about two, two and a half weeks  
9 where we have conference committee reports and bills fly back  
10 and forth between the Senate and the House. So we don't  
11 really have 140 days from day one to the end of the day. In  
12 fact, the Senate really doesn't do that either. They can pass  
13 bills in the first day, but we can't do anything with them,  
14 and they really can suspend rules very easily on the Senate.  
15 We can't do that as easily.

16 Q. Chairman, as the chairman of Redistricting, I think the  
17 term is you "carry the redistricting bill." Is that right?

18 A. Yes.

19 Q. What other bills did you carry?

20 A. I carried, I want to say somewhere in the -- around 20-  
21 something bills this session. I had already made some  
22 commitments to carry some bills, because I felt like I was  
23 going to probably be on State Affairs anyway.

24           I carried, well, about 20-something bills. My goal  
25 was to only carry about ten or twelve bills, but I ended up

1 carrying -- you always end up carrying more bills, local  
2 bills, Denton County transportation bill, I carried a  
3 disgorgement bill that took a lot of time.

4 Even though I am not on Sunset, because I have been  
5 chair of State Affairs and been on Sunset and been the chair  
6 of Sunset, when the Public Utility Commission had come up for  
7 Sunset review, I was asked by the Speaker's office if I would  
8 decide to carry that bill, and I agreed to do that, because I  
9 had an interest in that subject. So a variety of bills  
10 involving some local bills and some other issue-type-oriented  
11 bills throughout the session.

12 JUDGE RODRIGUEZ: Representative Solomons, you might  
13 want to slow down a little bit. He will chew out the lawyers,  
14 but he probably won't chew you out.

15 (Laughter.)

16 THE WITNESS: Okay. Well, I am used to talking a  
17 little slower, but I am kind of nervous.

18 BY MR. COHEN:

19 Q. So we are clear on the record, to carry a bill, that means  
20 you are the lead legislator?

21 A. You are the author -- if you carry the bill, you are the  
22 author of the bill. That means that you -- the bill is filed  
23 under your name.

24 Q. Now, we've heard from several witnesses that the  
25 redistricting process, in your mind, was going to be a member-



1 driven process.

2 What does that mean to you?

3 A. It means that I wanted the members to take some individual  
4 responsibility and also have input as to what they thought  
5 their districts should look like, whether they were within  
6 delegations, for example, Dallas County or Tarrant County or  
7 Harris County or whatever.

8 I wanted them to have as much input as possible into  
9 the bill, into the process, and I wanted that process to be  
10 wide open for that purpose.

11 The question always comes up is that, when you carry  
12 a bill, you are the author of a bill, you are always counting  
13 votes. I mean, you know you need 76 votes or, unless you are  
14 carrying a constitutional amendment, 100 votes to pass a bill  
15 off the Texas House floor.

16 So for me, it seemed to me, from watching the 2001  
17 redistricting and the congressional redistricting, is that I  
18 did want members to have as much input as they wanted to have  
19 into that process.

20 And having been a member in 2001, I remember that  
21 our delegation in Denton County actually getting together a  
22 few times, trying to figure out what we thought the lines  
23 would look like or should look like or based on the population  
24 and the base -- base numbers, and talking to our community  
25 people as to what they wanted us to do, and we took input from

1 them.

2 And I wanted that to be -- I wanted it to be like  
3 that, although in 2001, when we submitted that, and we  
4 actually tried to get that done, actually, when the map went  
5 to the Legislative Redistricting Board, they changed it all  
6 around.

7 So my goal was actually to get as much member input  
8 and try to make the maps legal, have a good, fair process, and  
9 basically try to have -- where we didn't have to go to the  
10 Legislative Redistricting Board.

11 Q. What input or consultation did you seek from members of  
12 the Redistricting Committee?

13 A. I told all of the committee members, whether formally or  
14 informally, that, you know, it -- there was an open session.  
15 As a chairman, having been a chairman for a long time, I made  
16 sure -- my -- the way I do things is basically allow members  
17 to have as much input on that committee into legislation. And  
18 the maps, although they are maps, it is a little different  
19 than textual legislation.

20 They -- the idea is, if you have the committee have  
21 as much input as possible, so that they feel like they can  
22 vote -- I realize the seriousness of this versus just a bill,  
23 that you either get the votes or don't have the votes for in  
24 committee.

25 But, you know, if I had to get the bill out -- the

1 bill is out of committee. Each bill had to come out of  
2 committee. That's the process of the Texas House, that you  
3 take the bill out of committee and sent it to the Calendars  
4 Committee.

5 I needed it to pass two committees, and I needed the  
6 members to feel comfortable with what they were going to be  
7 able to vote for.

8 Q. Is that true for other legislators also, besides the nine  
9 members of the Redistricting Committee?

10 A. Yes.

11 Q. Did you ever make it sort of an invitation to all  
12 legislators to talk to you or the committee about the maps?

13 A. I tried to make it as clear as possible, either on the  
14 floor, in private conversations, just let us know what you are  
15 interested in and what you like. In fact, I told most of the  
16 members that -- in fact, all of the members I could think of,  
17 the House, in general -- that tell us what you like, what you  
18 would prefer, what you might have a plan A for for what your  
19 district should look like, and what you -- have a plan B, what  
20 you like, what you don't like, what you absolutely don't like,  
21 what you could live with. Let us know what you think you can  
22 do.

23 Because, I said, at the end of the day, I still have  
24 to make sure the maps meet the legal requirements, but I  
25 wanted the members -- and I really made a point of telling the

1 members, you have to work with your neighbors within the  
2 delegations, or if you are in various nondelegation drop-in-  
3 type counties, you are going to have to work with your  
4 neighbors.

5           It is not an isolated incident. You just don't draw  
6 your district and hand it and say: This is what the district  
7 ought to look like. You end up having to work with your  
8 adjoining neighbors in the districts.

9 Q. Your counterpart in the Senate was Senator Kel Seliger?

10 A. Seliger.

11 Q. Did you work with him on these maps?

12 A. Not on the House map, and we didn't -- and I didn't get  
13 involved in the Senate map. Those are sort of -- by custom,  
14 anyway, they are separate maps, in that context. They both  
15 have to pass both chambers, but usually, the House members  
16 don't interfere with the senators with what they decide they  
17 want to try to do, and the senators try not to interfere with  
18 the House members, at least the committee and others, as far  
19 as I know, with what they wanted the House districts to look  
20 like, even within their own senatorial districts.

21 Q. What about the other two maps, State Board of Education  
22 and Congress?

23 A. The State Board of Education and Congress, Chairman  
24 Seliger and I agreed, after I got the appointment, I went and  
25 talked with him, and we sort of agreed that since I had not

1 been really a part of redistricting, didn't have any real  
2 experience with redistricting, that since I have the Texas  
3 House map and had 150 districts, well, 149 plus mine to deal  
4 with, which is a lot more than 31, and 15 members in the  
5 Senate -- State Board of Education, that I would do the State  
6 Board of Education map first, and that would sort of be my  
7 beta test, my practice run on how this all worked, and so I  
8 would do those two maps, and then he would take on the Senate  
9 map and be working, hopefully, on a congressional map  
10 throughout the session.

11 Q. Did you meet with outside groups or outside advocacy  
12 organizations?

13 A. I had one meeting, that I remember involving one group. I  
14 was briefed, you know, in passing, most of the time, by  
15 Gerardo Interiano, or if somebody talked to Ryan, they would  
16 tell me: So-and-so group came by or dropped -- you know, gave  
17 us a map, or whatever it was.

18 But I had one group -- in fact, it was Ms. Perales,  
19 Nina Perales with MALDEF, actually made an appointment and  
20 came by my office and we had, I thought, a pleasant  
21 conversation for about 30, 40 minutes, and she sort of  
22 talked -- we talked about, you know, what their positions  
23 might would be.

24 Q. Did you put any limitations or instructions on your  
25 staff's communications with outsiders, with outside

1 organizations and advocates?

2 A. No. As a matter of fact, my -- the only thing I ever told  
3 our staffs, Bonnie and working with Aurora and Ryan is that,  
4 the goal here was to get as much input as we could get. We  
5 needed to know what people wanted, what groups wanted. There  
6 was a lot of swirling around going on outside about maps, but  
7 within the industry -- and to me, it is clear there is a  
8 redistricting industry now.

9 And basically, there was a lot of swirling around  
10 going on outside, but no one really -- no groups really made  
11 appointments and I had a series of groups just running through  
12 my office wanting to talk to me about that sort of thing.

13 I had a few members actually come by my office,  
14 legislative members, both Republican and Democrat, come by,  
15 and some of them -- and then I would see a lot of them on the  
16 floor, and they would talk to me in passing.

17 And I was telling them, just let us know what you  
18 want. If you give it to me, I will give it to the staff, or  
19 just give it to the staff.

20 I had to tell several of the members where the  
21 Redistricting Committee was located, because a lot of them  
22 didn't know where the committee office actually was. But I  
23 didn't have a lot of groups coming through my office.

24 Q. Chairman Solomons, how are the census results communicated  
25 to you?

1 A. After I was appointed, I think we got the U.S. Census, the  
2 first set of numbers, about four days later and, in fact, the  
3 staff told me that the numbers had come in.

4 Q. Several decisions had to be made once the census numbers  
5 came in; is that a fair statement?

6 A. Yes.

7 Q. One of the decisions that we heard the most about is how  
8 many legislators, legislative districts would be apportioned  
9 for Harris County.

10 Do you remember that decision?

11 A. Yes.

12 Q. Who made the decision?

13 A. I did.

14 Q. And what did you base that on?

15 A. I based it upon the advice of counsel, and based on what  
16 the numbers were, that we discussed how those numbers would  
17 come back, and I had to make a decision as to how Harris  
18 County would be apportioned, the number of Texas House  
19 members.

20 Q. What was the basis of your decision or the advice that you  
21 received?

22 A. Well, two things. One is, the census numbers came back,  
23 if I recall, 24.41 for -- was the exact number that came back.  
24 And the Constitution, I was reminded of, says you will round  
25 as nearly as may be.

1           And 24.41 is not 24.5. And if we had 24.5, my  
2 decision would have been to round up, but they had not reached  
3 the 24.5. In fact, it had not been 24.5 for a number of  
4 years, and still, in this actual last census, still had not  
5 reached the 24.5 number.

6           And even though they had had 25, I read the  
7 Constitution as you round as nearly as may be, and it seemed  
8 to me that they were getting an extra representative, when  
9 others parts of the state were not getting properly  
10 represented.

11           And I was advised back in a previous redistricting  
12 session that, for example, Tarrant County, it had 10.6, and,  
13 actually, it had been rounded down to their detriment, where  
14 Harris County had not reached the 24.5 threshold and,  
15 actually, had been rounded up.

16           And I decided that just wasn't fair to do that, that  
17 they shouldn't get the extra dec -- the extra legislator, when  
18 other parts of the state, in drawing a map and trying to put  
19 that together, should get that proper representation.

20 Q. Are there any instances, of which you are aware, in which  
21 the decision was made to round up from below .5 or to round  
22 down from above .5?

23 A. I'm sorry. What?

24 Q. You indicated that 24.41 was below .5, so you rounded  
25 down?



1 A. (Nods head.)

2 Q. Are there any instances, that you are aware of, in which  
3 the number was below .5 but was rounded up?

4 A. Not that I am aware of.

5 Q. Okay. So we are clear, you indicated you don't feel you  
6 have a high degree of expertise in redistricting?

7 A. I have actually -- actually, I didn't have any expertise  
8 in redistricting.

9 Q. So if I asked you a question like, "If we compare the SSVR  
10 in Districts 90 and 148 based on the ACS from 2009 versus the  
11 DOJ special tabulation?" you will look at me with a glazed eye  
12 and probably won't be able to answer the question? Is that a  
13 fair statement?

14 A. Yes.

15 Q. Okay.

16 A. It took me a while, actually, to start even figuring out  
17 some of the acronyms with the lettering, how they do SSVR and  
18 some of those, just to start trying to figure out what that  
19 meant.

20 A lot of times, I would just say it, because I  
21 just -- I didn't know it. I had to spend a little time being  
22 briefed several times about -- and being reminded of, what  
23 does that mean?

24 Q. Chairman, I am going to ask a few terms and ask what they  
25 mean to you.

1 A. Okay.

2 Q. Coalition districts?

3 A. It is one of the terms that redistricting attorneys and  
4 redistricting groups use in looking at what they think they  
5 want in certain aspects of what the numbers mean, but it is  
6 kind of subjective, I think.

7 Q. Protected district?

8 A. Protected districts, the way I understood the protected  
9 districts, that they had previously been considered Voting  
10 Rights Act protected districts and they should be continued to  
11 be protected.

12 Q. Minority --

13 A. Under the Voting Rights Act.

14 Q. Minority opportunity district?

15 A. Those are where minorities have an opportunity in which to  
16 elect a person of their choice, and those are general  
17 concepts. And for me, they are just -- they are concepts as  
18 to how they relate to the Voting Rights Act.

19 Q. Let's discuss the House bill and how the bill came along.  
20 You have indicated that you had received input from lots of  
21 legislators.

22 What is a drop-in district, before we go any  
23 further?

24 A. Drop-in district, in our case, is most -- it is several of  
25 the major urban populated areas. The drop-in districts, as I

1 would call them, involve the county line rule, where you don't  
2 go outside of the county line, unless you are having to flow  
3 over, for some particular reason, or you have to have,  
4 absolutely have to have a necessary cut someplace.

5 But when you take census numbers and divide out the  
6 number of delegates in that area, it is clear that they have  
7 a -- would be able to have several members within that county  
8 line, within the county lines of that county.

9 For example, Denton County, we actually -- when you  
10 divided it out, we actually were qualified to have one more  
11 member, and so -- but it all had to be within the county line  
12 of Denton County.

13 Q. One more than you had --

14 A. One more than we had. We had three and we were eligible  
15 for four.

16 Q. Did you hold any public hearings on the map?

17 A. Yes. Well, not -- we had hearings on the -- we scheduled  
18 hearings generally on -- for example, the first one was on  
19 State Board of Education, where people that had an interest in  
20 that would come and testify as to what they thought was  
21 important about us drawing a State Board of Education map.

22 We had a hearing on the House map that way as well.  
23 We had a hearing on the congressional map that way, as to  
24 what -- more in a general concept, we didn't have a hearing so  
25 much on the map that we actually ended up producing. We had

1 formal hearings on that, but we had hearings, trying to take  
2 as much testimony, as much input as we could in a public  
3 forum.

4 Q. What is the difference between a public hearing and a  
5 formal hearing? I think those are the two terms that you  
6 used.

7 A. Well, under the rules, the public can come testify in a  
8 public hearing, and they are eligible to come, you know, be  
9 sworn in, testify as to whatever they want to testify to in  
10 connection -- that is relevant to the subject matter of the  
11 hearing.

12 The formal hearings are really for the members to be  
13 able to discuss, without public testimony, a bill, make  
14 amendments to the bills, you know, decide on whether or not  
15 they want to vote the bill out, so it is really within --  
16 within itself, and it is under the House rules.

17 Q. All right. There was a meeting held in the Agricultural  
18 Museum. Do you recall that meeting?

19 A. Yes, I do.

20 Q. What is the Ag. Museum?

21 A. The Ag. Museum is a rather large room that has historic  
22 con -- it used to be, I guess, the -- it is used for  
23 agricultural, you know, memorandum and, you know, historical  
24 matters.

25 But it is a large room right below, down the stairs,

1 right below the Texas House floor, and it is commonly used for  
2 having formal hearings. And the reason it is used so much, we  
3 use -- a lot of times, we use the Ag. Museum right below the  
4 floor and we use a third floor for formal hearings, because of  
5 convenience to the House floor, because most of the time,  
6 those are being used while we are in session, to be able to --  
7 for committees to, after the proper posts are announced, to  
8 have live hearings to consider legislation, so we can then  
9 move, you know, have a vote and see if the bill is going to  
10 pass or not, to go on to the Calendars Committee or Local and  
11 Consent Calendars Committee.

12 Q. Was the State House map the only bill that was sent to  
13 your committee in the Ag. Museum?

14 A. The only -- yes. We had the State Board of Education map,  
15 I think, done in the Ag. Museum. We had the State House map  
16 there. We had -- we may have taken the Senate map there as  
17 well when it came over, because we still had to pass the  
18 Senate map. The congressional hearing, when we did that, we  
19 did it in, I think, the Appropriations Committee room.

20 Q. All right. The geography of the Capitol is such that the  
21 other hearing rooms --

22 A. Well, you have to remember, we have 17 members of the  
23 hearing. In fact, we had our public hearings in the  
24 auditorium, and we had -- and the Appropriations Committee  
25 room is at the far end of the extension building, far end of

1 the Capitol.

2           And I think we had a congressional -- we had -- we  
3 had -- well, we did have a hearing over there too, I think, on  
4 the state map as well. It happened on a Sunday, I think, but  
5 it was a form -- it was a hearing -- I can't remember if it  
6 was a public hearing or a formal meeting, but I know we had  
7 some members show up for that.

8 Q. Okay.

9 A. The Ag. Museum -- the Ag. Museum, it is referred to as the  
10 Ag. Museum room, is basically a pretty big room, and it is  
11 used by a lot of -- almost all of the committees, at one time  
12 or another, to try to pass bills out when we are having formal  
13 meetings.

14 Q. Were there challenges to the parliamentary procedure of  
15 the meeting? Points of order, that sort of thing?

16 A. There may have been. I know there was some criticism by  
17 one particular reporter, but I don't remember if there was a  
18 specific point of order raised -- it would be in the House  
19 Journal, if it was -- raised on having the meeting there  
20 versus not, having it somewhere else.

21 Q. And what was the problem with the Ag. Museum, from this  
22 reporter's perspective?

23 A. The Ag. Museum is not wired for video and audio, but when  
24 we had our hearings there, obviously, just like in this  
25 courtroom, there were a whole lot of people there, and we had

1 people tape, tape recording meetings, and we had some  
2 people -- I think there were a couple of cameras, but they  
3 weren't state, the state audio or the state video.

4 Q. Once the bill made it to the floor, were there  
5 parliamentary challenges there?

6 A. Yes. Yes. We had several points of order, if I recall.  
7 I don't remember each one, but we had several points of order  
8 called on the various bills, whenever we did a bill, I think.  
9 I am not sure on the State House. The State Board of  
10 Education, there may or may not have been one, but I know on  
11 the House map, there were several, and the congressional map,  
12 there were several.

13 Q. And who rules on the parliamentary procedure?

14 A. Well, the point of order is brought -- is announced from  
15 the back mike, and then it comes -- then they bring it down,  
16 and they give it to the parliamentarian. The parliamentarian  
17 will then advise the Speaker on the ruling on that point of  
18 order. And so it is not the parliamentarian who rules so  
19 much, as advises the Speaker, and the Speaker actually makes  
20 the announcement.

21 Q. Let me just ask you about a few counties and your  
22 particular input with respect to those. The first is Harris  
23 County. Harris County, you already indicated about the 25 to  
24 24.

25 What role did you have in the decision of which

1 districts would be paired in order to bring 25 to 24?

2 A. Absolutely none.

3 Q. Did you discuss --

4 A. Let me say, for all of the counties like Harris County,  
5 dropping -- what I would consider drop-in counties, I asked  
6 the delegations to get together and try to work up a general  
7 consensus as to what they thought their county ought to look  
8 like with their district, and asked those members to work with  
9 their delegations to try to come up with something that they  
10 could give us to work with.

11 And so with Harris County, for example, I never went  
12 to a meeting, I never -- I let them do what they needed to do,  
13 just like I let Tarrant County do that. For the most part, I  
14 let Dallas County do that.

15 My role as a chairman was if they -- if there were  
16 issues that they wanted to bring to me and they had me make  
17 decisions on, then they needed to kind of come to me.  
18 Otherwise, they needed to get together and come up with what  
19 they thought they could get general consensus on. Some  
20 counties signed off in total, others counties, not. Harris  
21 County, apparently, was not.

22 Q. The same with El Paso?

23 A. The same thing with El Paso.

24 Q. What about Cameron and Hidalgo in the Valley? What input  
25 did you have on how Cameron and Hidalgo Counties were



1 reapportioned?

2 A. I let the staff basically work with the South Texas  
3 delegations and members down in South Texas as to what they  
4 wanted to try to propose for the maps. At some point in time,  
5 I had to take something, because we had -- you know, I needed  
6 to get a map to the committee. We had -- I think one of our  
7 members, Aaron Pena, was on the committee, and I would let  
8 them sort of come up with whatever they thought they could  
9 come up with.

10 And so our staff, basically, with Ryan and Gerardo  
11 on the state map, in particular, when we finally came up and  
12 they finally said, "I think they have got something that we  
13 can work with," basically, I guess my -- my decision at the  
14 end was, okay, let's go with it, because if it needs to be  
15 amended, it could be amended on the floor, but I was running  
16 out of time.

17 Q. Speaking of time, let's move on to the congressional map.

18 A. Okay.

19 Q. Why wasn't -- can you explain why the congressional bill  
20 did not pass the legislature during the 140-day regular  
21 session?

22 A. Well, apparently, we ran out of time. By the time we  
23 passed the SBOE map, which passed out of the House, then it  
24 had come back from the Senate slightly modified, and I still  
25 had to get it out of committee again, have a hearing to get --

1 have a hearing to get it -- the votes to kick the bill out of  
2 committee, goes to Calendars and then gets put on the House  
3 floor.

4 By the time we get -- can get to and finally get up  
5 on the floor with the Texas House map, we had just -- from the  
6 House perspective, we were down to the last couple of weeks,  
7 two, three weeks of the session.

8 The Senate, and Senator Seliger, I thought, were  
9 working on some things, but at the end, by the time they did  
10 the Senate map, by the time they could actually pass the House  
11 map, having already passed the SBOE map, we were just out of  
12 time.

13 We were at the end of the session in May. And so we  
14 just didn't feel like, I don't think -- and Senator Seliger,  
15 you know, the general consensus between he and I was that  
16 there just wasn't a lot of time left.

17 Q. Well, who drafted the congressional map?

18 A. The -- for the most part, the Senate, and working with  
19 both staffs, tried to come up with some plans for the  
20 congressional map.

21 Q. What contact did you have with -- we have talked about the  
22 legislators. What about with members of Congress?

23 A. Well, actually, with members of Congress, I had -- you  
24 have to understand, for a lot of people, because of the  
25 interim hearings that had been taking place, a lot of the

1 congressional members and their staffs actually thought  
2 Chairman and Representative Todd Hunter, who was actually the  
3 Calendars chairman, was likely to be the Redistricting chair.

4 And so when I got the appointment, a lot of the  
5 congressional members really didn't know who I was. And so I  
6 had a number of congressional members, as they normally do  
7 during congressional redistricting -- I remember it in 2001, I  
8 remember it in 2003 -- they sort of find time to come down and  
9 visit the Capitol a little more often than they do in the rest  
10 of the decade.

11 And so a number of those folks came by the office,  
12 just to basically meet me, and their staffs -- you know,  
13 sometimes, they would bring a staff member and sometimes they  
14 wouldn't. But I met with a number of them, not all of them,  
15 but a number of them throughout the session, where they would  
16 meet me.

17 Some of them actually knew me a little better, like  
18 Henry Cuellar, who is a Democrat in the south part of the  
19 state. Actually, I had served with him. I had served with  
20 Kevin Brady. I served with Kenny Marchant.

21 Other members stopped by, Neugebauer from West  
22 Texas, McCaul from the Austin area. Most of those people  
23 never really knew me, and they just came by to introduce  
24 themselves and meet. I met with Sheila Lee Jackson.

25 Q. Jackson Lee?

1 A. Jackson Lee. I met with her. She came by the office, and  
2 we had a pleasant 20-minute conversation, and I met Al Green.  
3 I mean, not Al Green, Gene Green. I never met him. I never  
4 met Mr. Poe, Congressman Poe. I met Pete Olson for the first  
5 time.

6 So many of them just stopped by, and they just  
7 wanted -- they wanted to basically meet me and express the  
8 desire to try to pass a map.

9 Q. Of all of those conversations, what did you discuss with  
10 Ms. Jackson Lee; do you recall?

11 A. We sort of had pleasantries and talked a little bit about  
12 the fact that she hoped we would be able to pass a map that  
13 was a good map, a legal map. We talked about Medicaid funding  
14 for a while. We talked about block grants, actually. And she  
15 was very pleasant. She left me her card and she took one of  
16 mine.

17 You know, for all of those members, I basically just  
18 told them: Just tell us what you want. I know that they were  
19 working with Lamar Smith, because he had apparently been  
20 anointed as, somehow, the spokesman for trying to work  
21 together with the delegations and try to come up with some  
22 sort of proposals that they wanted to bring to the  
23 legislature.

24 And I would tell them, just, you know, get with  
25 them. Try to work whatever you can out. Let us know what you

1 want, what you don't like. Just sort of what I was telling  
2 the other members. Let us know what you are interested in for  
3 your district.

4 Q. What role did the locations of the offices or residences  
5 of members of Congress play in your map making?

6 A. Where they lived?

7 Q. Where they officed.

8 A. Well, where they officed is, they usually, I think, office  
9 in their districts. What amazed me in getting involved in  
10 redistricting, I always knew that congressmen didn't always  
11 live in their districts, but the number of members who  
12 actually didn't live in their districts as legislators.

13 But unless they told me, or leg. counsel knew where  
14 they officed or where they resided, that was done -- in fact,  
15 we had that problem come up in the SBOE map. We had it come  
16 up on the House map for a particular member.

17 We had no idea, I would have no idea, unless they  
18 tell us, because the records reflect certain addresses, and if  
19 they had moved and not told us, we had no way of knowing that,  
20 so they would have to kind of tell us where they lived or  
21 where they had their offices, and where they -- you know, as  
22 part of their district.

23 Q. Chairman Solomons, during the legislative process, did you  
24 or any of your staff members act with the intent to suppress  
25 the vote of anyone or hurt anyone on the basis of race or

1 minorities?

2 A. No.

3 MR. BLEDSOE: Object. I don't think he can talk  
4 about all of the staff members. I think he can only talk  
5 about himself.

6 JUDGE GARCIA: You can come back and ask him on  
7 cross.

8 Go ahead.

9 THE WITNESS: No. Absolutely not.

10 MR. COHEN: I have no further questions. Pass the  
11 witness.

12 JUDGE GARCIA: Okay.

13 \*-\*-\*-\*-\*-\*-\*-\*

14 CROSS EXAMINATION

15 BY MR. GARZA:

16 Q. Good morning, Chairman.

17 A. Good morning.

18 Q. On direct examination, Chairman, you talked about the fact  
19 that it was a very busy session, and you yourself were  
20 extremely busy; is that correct?

21 A. Yes.

22 Q. And you carried a number of bills during the session, not  
23 just redistricting?

24 A. I don't even remember all of -- the exact number of bills  
25 I carried, but I know it was in the twenties, and I had hoped

1 to actually -- even as State Affairs chairman, I wasn't  
2 planning on carrying that many bills, but I ended up having to  
3 carry some bills because of the committees I was on too.

4 Q. Sure. Isn't it true that you carried the so-called  
5 Sanctuary Bill, is one of those that you carried?

6 A. Absolutely, yes, I did. Do you want to know why?

7 Q. I think counsel can ask you that.

8 A. Okay. All right.

9 Q. I just want to know if you carried it.

10 A. Yes, I did.

11 Q. Now, you also testified that your overall goal was to pass  
12 a map; is that correct?

13 A. My overall goal was to facilitate the passing of maps,  
14 that we hadn't been able to do in the past, for whatever  
15 reasons, and actually have them not have to go use the LRB, in  
16 particular, although I had known when I got appointed that,  
17 apparently, with all of the lawsuits out there that, you know,  
18 whatever we passed on, at least the congressional map was  
19 going to be litigated.

20 Q. Now, you have also testified that you are a novice to  
21 redistricting, and that you really don't -- you really are not  
22 familiar with legal requirements for what makes a district a  
23 protected Latino district; is that correct?

24 A. Not the elements of it, no. I am not experienced or  
25 knowledgeable about redistricting law.

1 Q. It would be fair to say that you didn't personally apply a  
2 particular number in order to come to your own conclusion  
3 about which districts were Latino opportunity districts?

4 A. I relied on staff.

5 Q. So that would be a yes; is that correct?

6 A. Yes.

7 Q. When you undertook the redistricting of the House, you did  
8 not personally make an effort to determine at the outset how  
9 many Latino opportunity districts ought to be present in the  
10 new plan in order to satisfy the Voting Rights Act; is that  
11 correct?

12 A. I rely on staff, so I guess, yes, the answer is yes. I  
13 relied on staff as to what -- what we currently had as  
14 minority -- as I consider minority protected districts under  
15 the Voting Rights Act. They sort of had to tell me which  
16 districts were and were not.

17 Q. You didn't make an assessment yourself?

18 A. Not -- no.

19 Q. So when you were looking at different parts of the state,  
20 either Dallas or Harris or Bexar or in the Rio Grande Valley,  
21 you didn't personally attempt to determine at an early stage  
22 whether additional Latino opportunity districts needed to be  
23 added anywhere in the map; is that correct?

24 A. Individually, no. I relied on staff to tell me what would  
25 probably need to be done in various areas.



1 Q. And you didn't look into whether there was racially  
2 polarized voting in areas of the state you were developing; is  
3 that correct?

4 A. Correct.

5 Q. Now, although you did have -- you did have a realization  
6 that you knew that there would be some new Latino opportunity  
7 districts needed in the State House plan, right?

8 A. Well, it was a member-driven map, but, yes, I suppose so.

9 Q. Because you knew that there had been a significant  
10 increase in Latino population, minority population throughout  
11 the state; isn't that correct?

12 A. Yes. Very well spread out, according to staff, not so  
13 much concentrated in new areas, but there were a number --  
14 there was an increase, but it was spread out in various areas  
15 of the state.

16 Q. We will talk about the concentrations in a minute.

17 A. Okay.

18 Q. And it was your impression, and you knew that there would  
19 be one or maybe two additional districts that would result  
20 from that population growth; isn't that correct?

21 A. I knew there might be, and it would depend on the numbers  
22 as they came back from the Census Bureau and as they were  
23 analyzed.

24 Q. And you also -- you've also testified -- or your  
25 deposition has been taken in this case; is that correct?

1 A. Yes.

2 Q. And you have testified that it was your belief that Asians  
3 are the fastest-growing group in Texas by numbers; is that  
4 correct?

5 A. I think so. Percentagewise. Percentages make it look  
6 that way.

7 Q. I believe you testified by numbers, but today, you are  
8 clarifying that you meant percentages?

9 A. Well, by percentage, when you look at the percentages, if  
10 I recall, that was a large increase, rather quick. In fact, I  
11 think -- in fact, I think I announced on the floor at one  
12 point that it was Hawaiians that actually percentagewise had  
13 the fastest growth by percentage.

14 Q. Now, during the process, you don't ever recall taking --  
15 looking at a piece of the plan, as it was coming together, and  
16 saying to yourself, "I think that an additional Latino  
17 district ought to be drawn there," and asking somebody to  
18 check into that?

19 You don't remember ever doing that; is that correct?

20 A. No. My role, as a facilitator, was to try to put together  
21 maps, to get members to work on putting together maps and  
22 coordinating and sort of, with the staff, based on what the  
23 staff was telling me needed to be done, to try to facilitate  
24 that and the passage of that.

25 No, I didn't do a lot of individual sitting at my

1 computer, looking at Red Appl and the numbers and trying to  
2 analyze those as -- that's why I had staff.

3 Q. And none of your staff ever told you that that was going  
4 to be required either; is that correct?

5 A. In --

6 Q. Well, with regard to adding additional Latino opportunity  
7 districts.

8 A. As to where?

9 Q. Well, it is your testimony, Mr. Chairman, that you didn't  
10 tell any of the delegations or any members that you looked at  
11 it and it looked like they needed to add another additional --

12 A. I didn't know, that is correct.

13 Q. So whether it was yourself or --

14 A. That is correct.

15 Q. -- as a result of your staff's recommendations, you  
16 never --

17 A. That is correct. I don't remember that.

18 Q. And you didn't offer any changes during the process in the  
19 form of amendments that were intended to influence the number  
20 of Latino opportunity districts in the plan; is that correct?

21 A. Run that by me again.

22 Q. Sure. You did not offer any changes, in the form of  
23 amendments, that were intended to increase the number of  
24 Latino opportunity districts in the plan that was adopted by  
25 the State; is that correct?

1 A. I filed -- I think I had clarifying technical amendments  
2 based on -- from the time the maps actually passed out of  
3 committee, where we did some technical cleanups based on  
4 numbers, so I did offer amendments to the maps to try to  
5 ensure that we were in the correct percentages and what we  
6 needed to do. But as far as specifically your question, I  
7 don't remember that I did that, in particular, but I did have  
8 technical amendments.

9 Q. So you didn't offer any amendment that added additional  
10 Latino opportunity districts; is that correct?

11 A. Not that I am aware of.

12 MR. GARZA: Could we have the Hidalgo and Cameron  
13 County --

14 BY MR. GARZA:

15 Q. Now, one of the plans that was offered by one of the  
16 plaintiffs to this case, the Latino Task Force, is up on the  
17 screen, Mr. Chairman, and it is being shown together with the  
18 plan that was adopted by the State, 283.

19 Do you recognize those?

20 A. Yes.

21 Q. Now, during the redistricting process, you knew that in  
22 Cameron County, there was enough population to comprise two  
23 districts, plus additional population that wasn't enough for a  
24 new district; is that correct?

25 A. I believe so.

1 Q. But the additional population was more than -- and also,  
2 in Hidalgo County, you knew that -- Hidalgo County neighbors  
3 Cameron County; is that correct?

4 A. Okay. Yes.

5 Q. And you knew there was enough additional population in  
6 Hidalgo County that was not enough for an additional whole  
7 district; is that correct?

8 A. Did I know that?

9 Q. Yes.

10 A. Based on staff. Based on what the staff told me, yes.

11 Q. So you knew that there was excess population both from  
12 Hidalgo and Cameron County; is that correct?

13 A. I knew that they had some growth there, yes.

14 Q. And there was never any point in which you came to the  
15 conclusion that such a district did not need to be drawn --  
16 did need to be drawn down there, a new Latino opportunity  
17 district --

18 A. You are assuming --

19 Q. -- between Cameron and Hidalgo County --

20 A. Yes.

21 Q. -- is that correct?

22 A. You are assuming that I sat and drew those districts, and  
23 I didn't draw those districts.

24 Q. No, Mr. Chairman. I am not making any assumptions. You  
25 were chairman of the Redistricting Committee. You were the

1 author of the redistricting bill. I am just asking questions.  
2 And you indicated that you looked at these and instructed  
3 staff to look at these issues --

4 A. And work with the members that were representing those  
5 districts, yes.

6 Q. It is a simple question. There was never any point at  
7 which you came to the conclusion that a district could be  
8 drawn between Hidalgo and Cameron County using the excess of  
9 each?

10 A. Me personally, no.

11 Q. And, obviously, your staff either; is that correct? It  
12 wasn't done?

13 A. I assume you asked my staff that when they testified. I  
14 assume you asked Ryan and Gerardo.

15 Q. So you don't know?

16 A. I don't know.

17 Q. And it also has been your testimony here that there was  
18 not consensus in the Hidalgo County delegation about how those  
19 lines should be drawn; is that correct?

20 A. Apparently not, because they were on the floor arguing  
21 among themselves, for those delegations, as to what those  
22 districts should look like.

23 Q. And this disagreement didn't raise any red flags with you  
24 about whether you ought to look again at what is going on in  
25 Hidalgo and Cameron County --

1 A. Sure --

2 Q. -- is that correct?

3 A. No. That is not correct. Because I asked my staff, if we  
4 are going to -- if we can't get consensus, are we still  
5 meeting what they believed were the requirements that we  
6 needed to meet for drawing the State House maps, in connection  
7 with variances, in connection with the county line rules, in  
8 connection with the Constitution of the State of Texas, and  
9 with the Voting Rights Act.

10 And when I am told that we think that -- the staff  
11 says, "I think we are okay" -- and when I say "staff," I mean  
12 leg. counsel, Attorney General's Office, and my staff -- then  
13 we are going to put that in the map and let the map speak for  
14 itself on the House floor, and if the members of those  
15 delegations in the House decide they want to change it, then  
16 that was fine with me.

17 Q. And you testified earlier that you were aware of the  
18 significant growth in the Latino community over the last  
19 decade; is that correct?

20 A. There has been -- yes. There has been large growth, yes.

21 Q. And you are also aware that Hidalgo County is one of the  
22 fastest-growing counties in the state and that much of that  
23 growth occurred in Hidalgo County; is that correct?

24 A. Not aware that Hidalgo was one of the fastest counties,  
25 but growth, I will take your word for that.

1 Q. And you thought that it was not particularly odd that in  
2 the Valley, in the lower border region of the state, that the  
3 enacted plan did not create any additional Latino opportunity  
4 districts; is that correct?

5 A. I personally, no.

6 Q. Could we have the Nueces County -- so now, we have put up  
7 the map for the Latino Task Force for Nueces County, and also  
8 the enacted plan for Nueces County.

9 Now, it is your testimony that there was a general  
10 consensus that it was hard -- I think your words were very,  
11 very hard to create two Latino opportunity districts in Nueces  
12 County; is that correct?

13 A. Yes.

14 Q. And you can't remember if it would have been possible to  
15 draw two Latino opportunity districts in Nueces County if some  
16 Nueces County population was joined with population in either  
17 San Patricio County or from northern counties; is that  
18 correct?

19 A. Yes.

20 Q. And you can't remember any conversation in which you  
21 learned whether it was possible to create two Latino  
22 opportunity districts if you broke the county line; is that  
23 correct?

24 A. Well, I take the position we weren't going to break the  
25 county line rule unless we absolutely found it necessary to do



1 that, and I would rely on staff to do that. So, basically,  
2 the -- those delegates, that delegation over there worked with  
3 our staff, and there was a discussion about what we could do  
4 and what we couldn't do, and this is what we came up with, as  
5 meeting what we thought we needed to do to ensure at least one  
6 Hispanic opportunity -- well, Hispanic opportunity district,  
7 minority opportunity district.

8 Q. My question was a little different, Chairman.

9 A. Okay.

10 Q. What I am asking is whether you remember any conversation  
11 in which anybody --

12 A. I don't.

13 Q. -- on your staff --

14 A. I don't.

15 Q. Now, it is your position, isn't it, that you need a  
16 federal judge to tell you that the federal Voting Rights Act  
17 trumps the Texas Constitution's county line rule; isn't that  
18 correct?

19 A. More specifically, U.S. Supreme Court, because the county  
20 line rule is not only here in Texas, but it is elsewhere.

21 Q. So it wouldn't be enough if this Court gave you such an  
22 order; you would need the Supreme Court to tell you that?

23 A. I would like the law to tell me what I should do and  
24 shouldn't have done, yes.

25 Q. Until then, in your mind, the county line rule governs in

1 a conflict between the county line rule and the creation of a  
2 Latino opportunity district, pursuant to the Voting Rights  
3 Act; is that correct?

4 A. I don't know that it conflicts. The county line rule has  
5 historical perspective in the state of Texas for integrity of  
6 counties. I think what you do is you work within -- with the  
7 Texas Constitution and the county line rule, and you try to  
8 work with, as best you can, the Voting Rights Act in  
9 connection with what you are doing.

10 Q. I am asking you, in a situation where there is a conflict,  
11 it is your understanding, in your mind, that the county line  
12 rule governs in a conflict between the county line rule and  
13 the creation of a Latino opportunity district pursuant to the  
14 Voting Rights Act?

15 A. In my mind, I am going to follow the Texas Constitution on  
16 the county line rule, yes.

17 Q. And you have testified that when you saw any proposal to  
18 create additional Latino opportunity districts that weren't  
19 consistent with the county line rule, you took the position  
20 that, within the county line rule, you should have what you  
21 need to to meet the requirements of the Voting Rights Act,  
22 within the county line?

23 A. Many of the plans -- the answer to your question is going  
24 to be yes, but many of the plans I saw flat went out of their  
25 way to violate the county line rule.

1 Q. All right. And, in fact, you released a statement, a  
2 public statement declaring that the reason you were rejecting  
3 one of the plans that was presented to the committee was  
4 because it broke county line rules in order to create Latino  
5 opportunity districts?

6 A. It violated the county line rule, yes. Violated the  
7 county line rule.

8 Q. In order to create a Latino --

9 A. It violated the county line rule.

10 Q. In order to create --

11 A. It violated the county line rule.

12 JUDGE SMITH: Come on and answer his question.

13 THE WITNESS: I am.

14 JUDGE SMITH: No, you are not answering his  
15 question.

16 THE WITNESS: Well, I thought I was.

17 JUDGE SMITH: Ask your question again and let's get  
18 an answer.

19 BY MR. GARZA:

20 Q. You issued a statement, Chairman Solomons, in which you  
21 explained why you rejected a plan that was offered to the  
22 committee, because it broke county line rules in order to  
23 create minority opportunity districts; isn't that correct?

24 A. If it was in my statement, yes.

25 MR. GARZA: Could we have the State map 283 from the

1 Red Appl?

2 BY MR. GARZA:

3 Q. Chairman Solomons, you have testified that you know of no  
4 legal justification for the varied deviations within a county  
5 between the districts; isn't that correct?

6 A. Yes.

7 MR. GARZA: If we could look at Harris County.  
8 Focus in on Harris County.

9 TECHNICIAN: Do you want the Red Appl?

10 MR. GARZA: No. Districting is fine.

11 TECHNICIAN: Districting is faster.

12 MR. GARZA: Districting is fine. I apologize.

13 Your Honor, this may take a little while to put this  
14 up, so maybe I can get the chairman to recognize some of these  
15 things without a map.

16 JUDGE GARCIA: Okay.

17 MR. GARZA: If he can't, we will use the map.

18 BY MR. GARZA:

19 Q. Chairman Solomons, isn't it true that in Harris County,  
20 District 127 --

21 MR. GARZA: I apologize. Could you zoom in on  
22 140 -- on the 144, 145, and 143 area.

23 BY MR. GARZA:

24 Q. So, Chairman, you are aware that District 144 is  
25 underpopulated by over 5,700 people?

1 A. Not unless you tell me that.

2 Q. You wouldn't disagree with me that it was?

3 A. I would not disagree with you, if you told me.

4 Q. And it is adjacent to District 145; is that correct?

5 A. Sure.

6 Q. And 147 is adjacent to District 145; isn't that correct?

7 A. 147, isn't it up some?

8 Q. Right there with --

9 A. It is right there? Okay. Sure.

10 Q. So --

11 A. They are joined.

12 Q. They are joined together?

13 A. They are joined.

14 Q. And District -- and you don't disagree with me that  
15 District 144 is, like I say, about 5,700 people  
16 underpopulated, that District 145 is about 3,000 people  
17 overpopulated, and District 147 is about 8,200 people  
18 overpopulated?

19 A. If you tell me that, that's fine.

20 Q. And District 144 is Representative Legler's district; is  
21 that correct?

22 A. I don't know his district by number, but, yes, I know him.

23 Q. Okay. And you wouldn't disagree with me that that  
24 district was reduced in minority population and it does not  
25 provide a minority opportunity district?

1 A. I don't remember independently, but if you -- I am not  
2 going to disagree with you.

3 Q. And both District 145 and 147 are, in fact, minority  
4 opportunity districts; is that correct?

5 A. I don't know that.

6 Q. So District 147 is a 73-percent minority district?

7 A. It would seem to me to be a minority district, then.

8 Q. And District 145 is a 79 or 80-percent minority district?

9 A. If you tell me that, sure.

10 Q. You don't have any reason to disagree?

11 A. I don't have -- right now, no. I have no reason to  
12 disagree with you.

13 Q. And you have no way to explain to the Court why the  
14 population deviations between those districts overpopulate the  
15 minority districts and underpopulate the Anglo --

16 A. Independently not. I relied on staff. I would assume  
17 that staff would have better knowledge. Gerardo and Ryan  
18 would have a better understanding of that than I would.

19 MR. GARZA: And can we pull up Hidalgo County,  
20 please.

21 BY MR. GARZA:

22 Q. And adjacent to each other, again, you have Districts 41,  
23 40, and 39, and, again, with a wide range of deviation between  
24 the three.

25 And you have no explanation for the Court why there

1 would be a need to have such a deviation between those three  
2 districts; is that correct?

3 A. Correct.

4 Q. And, in fact, there was debate on plan 283 on the House  
5 floor, extensive debate; isn't that correct?

6 A. You tell me there was.

7 Q. And, in fact, several of the members engaged you in a Q  
8 and A during that process; is that correct?

9 A. Probably.

10 Q. And do you recall that Representative Walle from Houston  
11 asked you to explain why minority districts seemed to be  
12 overpopulated and Anglo districts seemed to be underpopulated  
13 in the plan?

14 A. I don't remember that question specifically.

15 Q. And you don't recall that you told him you didn't know why  
16 that was the case?

17 A. I don't remember that conversation on the House floor.  
18 Right now, I don't. I would assume that is in the Journal.

19 MR. GARZA: Pass the witness.

20 JUDGE GARCIA: Anyone else over here?

21 \*-\*-\*-\*-\*-\*-\*-\*

22 CROSS EXAMINATION

23 BY MS. PERALES:

24 Q. Good morning, Chairman Solomons.

25 A. Hi.

1 Q. Do you recall in the House map that was adopted by the  
2 legislature that District 90 in Tarrant County and District  
3 148 in Harris County both had their percentages, their  
4 Hispanic percentages bumped up, so that they would have a  
5 majority of Spanish surname voter registration?

6 A. I believe that is what happened.

7 MS. PERALES: Sarah, can you show Exhibit 227?

8 BY MS. PERALES:

9 Q. I can't recall if we looked at this during your  
10 deposition. I think we might have.

11 A. We did.

12 MS. PERALES: On the second page, Sarah, near the  
13 top.

14 BY MS. PERALES:

15 Q. Do you recall, Chairman Solomons, that while that was  
16 happening in the map that you learned that at least some  
17 people were saying that Districts 90 and 148 were already  
18 Latino opportunity districts; do you recall that?

19 A. Well, we talked about this in my deposition, about this  
20 particular memorandum or letter that you sent, and I didn't  
21 remember the letter independently in that deposition, and that  
22 I assume I received it. I assume I passed it to the staff to  
23 determine -- you know, to make sure that they looked at it.

24 Q. Okay. And you also testified in your deposition, didn't  
25 you, that the changes that you made to Districts 90 and 148



1 were not intended to increase the number of Latino opportunity  
2 districts but, rather, were intended to correct lines or to  
3 increase the percentage numbers in those existing districts?

4 A. I believe that's what we did, yes.

5 Q. And you testified that for those two opportunity  
6 districts, you considered whether you needed to, quote, beef  
7 it up or whether it could come down; is that correct?

8 A. I believe so.

9 MS. PERALES: Sarah, can you show El Paso, side by  
10 side?

11 BY MS. PERALES:

12 Q. I believe you testified earlier, in general, regarding the  
13 drop-in counties, but I wanted to ask you a few questions  
14 about El Paso County specifically.

15 You did not make a decision regarding whether El  
16 Paso County needed to have an additional Latino opportunity  
17 district, did you?

18 A. No.

19 Q. And you don't recall getting a red flag at any point  
20 during the process, either on your own or in consultation with  
21 others, that District 78 ought to be a Hispanic majority  
22 district in Spanish surname voter registration, correct?

23 A. Correct. I let El Paso County -- one of the members on  
24 the committee, on the Redistricting Committee was from El  
25 Paso, and I did ask him to work with the delegation members

1 and had advised the delegation members that whatever they did,  
2 they needed to make -- we would make sure or we would try to,  
3 through staff, try to run whatever analysis and review for the  
4 legalities involving any of those, including El Paso.

5 Q. And we did talk about that during your deposition?

6 A. Yes.

7 Q. And you agreed with me, didn't you, that it is possible  
8 that in El Paso, the delegation came up with a plan that  
9 satisfied each member's individual desires, and that one  
10 member would be happy to see one district continue as not a  
11 Latino opportunity district, and so the drop-in El Paso plan  
12 might be satisfactory to the members, but possibly not  
13 compliant with the Voting Rights Act.

14 Do you remember agreeing that was possible?

15 A. Sure. It is possible. But I know -- I do know that based  
16 on the recommendations of staff that El Paso County seemed to  
17 meet all that we needed to do for the -- to meet the  
18 requirements of the Voting Rights Act.

19 Q. But you didn't personally make an independent  
20 examination --

21 A. No.

22 Q. -- regarding whether five Latino opportunity districts  
23 could be created in El Paso County?

24 A. No. Not independently, not me.

25 Q. And you also, when we talked about this in your

1 deposition, you said you can't explain how the district lines  
2 in El Paso County match up with the neighborhood boundaries;  
3 is that right?

4 A. I don't know El Paso County. I have only been there twice  
5 in my entire life.

6 Q. So you don't know how the lines match up with the  
7 neighborhoods?

8 A. No.

9 Q. With respect to these drop-in counties that we have been  
10 talking about, you don't remember ever independently forming a  
11 concern that one of these drop-in counties did not have enough  
12 Latino opportunity districts, correct?

13 A. Independently, you are correct, yes.

14 Q. And your assumption, as you explained it in the  
15 deposition, was that Voting Rights Act compliance was being  
16 looked at as these maps were being done by the delegations  
17 themselves, because you have members who are in minority  
18 protected districts in those areas, correct?

19 A. Correct. I knew that they were working with staff, and I  
20 was --

21 Q. You also testified you have no idea what the legislative  
22 counsel did independently to examine whether an additional  
23 Latino opportunity district was necessary, correct?

24 A. I don't know what they did. I knew -- I just know they  
25 have various models and run analyses and review the numbers,

1 and they are sort of the eyes to help us try to come up with a  
2 legal map, yes.

3 Q. And you don't remember ever going to any of the county  
4 delegations and telling the delegations that were doing the  
5 drop-in counties that the plan was unacceptable, that they  
6 would have to add another Latino majority district; that is  
7 correct?

8 A. For El Paso?

9 Q. For any of the drop-in counties.

10 A. I don't remember saying that specifically, no.

11 MS. PERALES: Could you put up C-185?

12 BY MS. PERALES:

13 Q. I am going to move for a couple of minutes over to the  
14 congressional map, Chairman.

15 You testified there isn't a numerical, magic number  
16 for a minority opportunity district, that you believe it is a  
17 combination of things, correct?

18 A. I think so, yes.

19 Q. And you agreed in your deposition that one of the elements  
20 for determining whether a district is a minority opportunity  
21 district is an election regression analysis based on previous  
22 elections, correct?

23 A. Correct. That's what I was told.

24 Q. Did you ever get a chance to see one of these regression  
25 analyses or their summaries?

1 A. No. The first time that actually came up with me was when  
2 we did the SBOE map, when we were talking about the district  
3 that runs from El Paso to San Antonio, and those numbers in  
4 connection with what, you know, proposed lines were.

5 And then leg. counsel came back and said: We ran  
6 retrogression analyses, that we think that those numbers  
7 are -- those lines can't stand as they are. You are going to  
8 have to make some adjustments.

9 And that is really the first time I ever really  
10 dealt with that.

11 Q. And you testified in your deposition that if leg. counsel  
12 said you were reducing the minority opportunities, then,  
13 obviously, you didn't want to do that, correct?

14 A. Correct.

15 Q. And you also testified that if a regression analysis  
16 includes ten elections, and a draft plan reduces the number of  
17 wins for the minority-preferred candidate by one, you wouldn't  
18 be sure if that was a problem, correct?

19 A. I wasn't sure if one election would do that, but that  
20 certainly gets your attention to ask, does that do that? And  
21 then you get the opinion of the leg. counsel or the people --  
22 the staff, and you kind of -- for me, I had to go based on  
23 that.

24 Q. And so you also testified that if the draft plan reduces  
25 the number of wins by the minority-preferred candidate by

1 three or four or five, then, in your opinion, that becomes a  
2 greater problem, correct?

3 A. As I have learned the process, yes, that becomes a greater  
4 problem, yes.

5 Q. And you testified that if before a district had six wins  
6 with a minority-preferred candidate and now under the draft  
7 plan it is one win for the minority-preferred candidate, that  
8 would create a problem, yes?

9 A. Yes.

10 Q. And you also testified in your deposition that if the  
11 number of wins for the minority-preferred candidate in the  
12 base plan was three and the draft plan reduced it down to one,  
13 that might be an issue, correct?

14 A. Correct.

15 Q. And, in fact, if the number of wins for the minority-  
16 preferred candidate in the base plan was three and it went  
17 down to one win under the draft plan, you testified that as  
18 chairman of the committee, you would try to adjust that? You  
19 would ask them: We are going to have to make that -- some  
20 adjustment. Correct?

21 A. Yes. And quite frankly, that's what I did on all of the  
22 maps. If there was an issue that was raised by staff, who  
23 were far more knowledgeable about this than I, my role, as  
24 facilitator, would be to go back and say: You are going to  
25 have to make some adjustments. Get with staff and see

1 what adjustments work out, so that you could -- they could get  
2 a consensus.

3 Q. I just have one last question for you that came up for me  
4 while I was listening to your earlier testimony about who drew  
5 the congressional map.

6 When I talked with Chairman Seliger in his  
7 deposition, he mentioned that the Senate was working on a  
8 congressional map during session, and that Ryan Downton and  
9 Gerardo and -- were also working on a congressional map on the  
10 House side, and at a certain point, you compared your  
11 versions, and the Senate realized that the House draft on the  
12 congressional was much more advanced and they deferred to  
13 that.

14 Does that sound about like what happened?

15 A. Yeah. Pretty much.

16 Q. Okay. So the congressional map was -- actually, the one  
17 that became the congressional map was drawn over on the House  
18 side?

19 A. Well, it was drawn -- from what I can remember, we had  
20 some pretty good people working for us. Ryan and Gerardo are  
21 very, very good. Doug is very good. I know Senator Seliger  
22 was working, you know, different ideas that he had.

23 I really didn't have a lot of time to spend on that,  
24 dealing with 150 members and trying to get a House map done.  
25 And towards the end, after that process -- and I guess

1 inbetween, inbetween things, they may have been looking at  
2 different ideas, because, you know, the goal was to see if we  
3 could get to a congressional map, and we didn't want to do it,  
4 necessarily, at the last minute from scratch.

5 And so the staff was working together, but -- you  
6 know, in keeping each other informed, but -- Ryan is a very  
7 good map drawer, and Gerardo sort of seems to be pretty good  
8 at what he does.

9 And so I think they took more of our ideas as to  
10 what those districts might be able to look like than we were  
11 taking from the Senate side, and the Senate, because of time,  
12 if nothing else, instead of trying to labor through another --  
13 we didn't have another two or three months to work on that,  
14 that that was what happened.

15 Q. And you wouldn't be surprised, for example, if Senator  
16 Seliger testified that most of what he saw in the final  
17 congressional map came over from the House side?

18 A. I wouldn't be surprised, but I do know that as we  
19 developed the map, there was input going both to Senator  
20 Seliger's staff and to our staff.

21 MS. PERALES: Thank you. I pass the witness.

22 THE WITNESS: Thank you.

23 JUDGE GARCIA: Anyone else over there?

24 MR. RIGGS: I have a couple of questions.

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



## CROSS EXAMINATION

1  
2 BY MR. RIGGS:

3 Q. Hi. My name is Allison Riggs. Didn't you at a June 2nd  
4 committee hearing not allow questions to be asked of Ryan  
5 Downton because you announced he was your personal counsel?

6 A. In the committee meeting, I think I did.

7 Q. And you said that --

8 A. In the actual, formal hearing, yes. At the formal  
9 meeting, yes.

10 Q. At the formal hearing?

11 A. I think so.

12 Q. And you said that in response to a question from  
13 Representative Alonzo, didn't you?

14 A. I believe so.

15 Q. Do you believe this to be an accurate portrayal of your  
16 relationship with Ryan Downton?

17 A. I believe that he was -- we hired him -- I guess I ended  
18 up, since I am the chair, I hired him. I made the final  
19 decision to hire him to be the general counsel for the  
20 committee, and to -- so in that context, I felt like he was my  
21 general counsel, first and foremost, and the general counsel  
22 for individuals, confidentiality with members; in particular,  
23 you know, if they talked to him, as committee members or  
24 members, that he had confidentiality issues that he had to  
25 abide by with those members.

1           But he was, more or less, yes, general counsel for  
2 me and the committee. And I didn't think it was appropriate  
3 for members of the committee to put Ryan Downton, as a map  
4 drawer and counsel for the committee, to be asking him  
5 questions in that hearing, yes, at the time.

6 Q. Okay. I am sort of paraphrasing what you said earlier,  
7 but I believe you said that Lamar Smith was anointed as the  
8 leader of the congressional delegation?

9 A. Anointed, appointed, general consensus that he was the  
10 lead. They had, among themselves, decided he would sort of be  
11 the facilitator, just as I was the facilitator for the  
12 congressional input.

13 Q. And did he submit plans to you from the congressional --

14 A. He submitted -- I think they finally submitted a plan or  
15 plans to the committee.

16 Q. And you don't remember if it was one or multiple?

17 A. I know there was one. I don't know if there were, you  
18 know, different variations of that.

19 Q. Were you under the impression that that represented what  
20 all of the congressional delegation wanted?

21 A. What I -- my impression was that Congressman Smith was  
22 doing the best job he could to try and get as much general  
23 consensus from both Democratic and Republican members as to  
24 what their districts should look like and producing that input  
25 to the legislature, because I believe in my conversations with

1 Mr. Smith that he understood that no matter what they did --  
2 and I think he even told me he understood that it was still  
3 going to be the legislature's final determination as to what  
4 those districts would eventually look like, if we got to a map  
5 and got to passing a map. And that is my impression of that.

6 Q. So you don't know what the individual members of the  
7 congressional delegation gave to Lamar Smith?

8 A. As to?

9 Q. As to what they wanted for their districts?

10 A. Other than what we saw in those maps, I had no -- I don't  
11 believe that I recall -- well, in fact, I will say, I don't  
12 recall ever getting a -- having a congressman come in to me  
13 and say: Well, here is my map. Here is what I want.

14 I would tell them: You might want to make sure we  
15 know. And they may have submitted information to the staff as  
16 to what they want to do with lines, especially as they saw the  
17 map being developed during the special session.

18 But they weren't individually all coming in with  
19 their versions of the Lamar Smith map or differences. When I  
20 did meet with some of them, they said they sort of -- some of  
21 them said: Yeah, I am happy with what I gave, and what we  
22 have come up with in the Smith proposal.

23 Some of them would say: Well, yeah, I like that,  
24 but, you know, if I could move that line around over here  
25 somewhere there, I might like that too.

1           So they were just concerned that they wanted to get  
2 as much input through Lamar Smith, primarily, as to what they  
3 wanted us to consider.

4 Q. But you testified earlier that more than one member told  
5 you that Lamar Smith would be the, for lack of a better word,  
6 point person?

7 A. Sure. Even Congressman Barton, the one phone call I ever  
8 had from him, he basically told me that he was okay and that  
9 he knew Lamar Smith was leading the charge, so to speak, as to  
10 sort of what -- you know, giving us input as to what their  
11 proposals were.

12 Q. And you took that to mean that their suggestions would be  
13 in what Smith gave you; is that right?

14 A. Yes.

15           MR. RIGGS: No further questions.

16           JUDGE GARCIA: Anyone else over here?

17           MR. BLEDSOE: Yes, Your Honor.

18   \*-\*-\*-\*-\*-\*-\*-\*

19   CROSS EXAMINATION

20 BY MR. BLEDSOE:

21 Q. Good morning, Mr. Chairman.

22 A. Good morning.

23 Q. I have a couple of questions for you. First of all, I  
24 think you indicated that it was extremely important for you to  
25 get the map passed and that, because of that, you understood

1 you would probably get the Republican votes but not the  
2 Democratic votes?

3 A. It was important for me to get a legal map passed. I felt  
4 that was the goal. You know, you sort of have -- you have to  
5 have some sort of goal, so my goal was to try to get a map  
6 passed. Well, as many of the maps as I could pass, anyway.  
7 And, yes, I guess the response is, yes, I wanted to try to get  
8 some maps passed, legal maps.

9 Q. And what were the concerns expressed to you by the  
10 Republican delegation about what they wanted?

11 A. Well, it wasn't so much the Republican delegation. I had  
12 one meeting with the Republican caucus, when we were getting  
13 ready to go to the floor, and explain how that would generally  
14 work.

15 We had so many new members that most of them had  
16 never -- well, a great number of them had not -- maybe 50 or  
17 60 of them had never been through a redistricting session and  
18 didn't have any idea of what that would look like or how that  
19 works.

20 And because redistricting is a little different,  
21 because it is not just legislation in writing, it is maps and  
22 proposals, that I just knew from conversations I had had with  
23 Democratic members that they were not going to vote for any  
24 map.

25 Because of all of the litigation that was going on,

1 they just weren't going to do that. Even if they were happy  
2 with their districts, they were not going to vote for a map.  
3 So it seemed to me, I had to have 76 votes to pass a map, so  
4 most of those votes were probably going to come from the  
5 Republican members of the Texas House.

6 Q. Did a Democratic member tell you they would not vote for  
7 any map?

8 A. Yes.

9 Q. Who told you that?

10 A. Probably half a dozen of them, at least.

11 Q. Names.

12 A. Well, Trey Martinez Fischer, Juan Castro, Mike Villarreal,  
13 Alonzo. I think even Carol Alvarado said probably that the  
14 Democrats would not vote -- end up voting for a map.

15 Q. You are saying "probably"? That's a little bit different  
16 than saying they would not vote for any map. Did she say  
17 "probably"?

18 A. Well, I am trying to recall, in specific, because she is  
19 my desk mate. She sits next to me on the floor. We had  
20 several conversations over a period of time.

21 Q. Now, you are aware too, are you not, that she actually  
22 read a statement into the record from Congresswoman Lee in  
23 reference to the congressional plan, stating that she opposed  
24 the plan that had been proposed?

25 A. I don't remember it, but if you are telling me that she

1 did, I have no reason to object to that.

2 Q. Okay. And did you ask your staff to obtain any special  
3 training on what was required to comply with the Voting Rights  
4 Act?

5 A. To get special training, no.

6 Q. And in making your decision about where to round up or  
7 where to round down, did you consider the estimated undercount  
8 in various areas in making your decision?

9 A. I did rely heavily on staff on the issues of numbers and  
10 variances and percentages, so I relied on leg. counsel,  
11 working with the staff to ensure that what we were doing and  
12 what the members were trying to do, as far as input, and what  
13 I was trying to do met those legal requirements.

14 Q. Did you make the decision in Harris County in reference to  
15 the number of the Republican districts?

16 A. No.

17 Q. So you made no decision at all? You let --

18 A. The only decision I made with Harris County was that  
19 instead of getting 25 legislators this time around, because  
20 they still had not met that threshold of 24.5 or greater, that  
21 they were going to have 24 members, whether they were all  
22 Republicans, all Democrats, a combination of that, which,  
23 obviously, in reality, that is what it is, that I didn't  
24 pay -- I did not tell anyone there that we are going to have X  
25 number of Republican districts and X number of Democrat

1 districts.

2 In fact, I kind of kept asking, wanting them to work  
3 together and try to figure out where those lines and what  
4 that -- what Harris County would come back and look like that  
5 we could put into a Texas House map, to take to the Texas  
6 House floor.

7 Q. What leverage did you exercise over the Republican  
8 delegation?

9 A. None.

10 Q. Is it customary that when a member wants to seek an  
11 amendment to a bill that is being sponsored by another member  
12 that those members go to the members sponsoring the bill to  
13 ask if they will support the amendment?

14 A. Normally, yes.

15 Q. Okay. Isn't it true that many of the Democrats who had  
16 concerns about the bill actually approached you and asked if  
17 you would support changes to the bill?

18 A. I don't recall any members coming to me and asking me if I  
19 would support changes to the bill. I know that when members  
20 came to me, in general, and asked if they filed amendments to  
21 the bill, whether it be on the floor or in the committee, I  
22 said, you have got to have the votes in the committee and you  
23 have got to have the votes on the floor.

24 Q. Okay. So are you telling me that you told them you would  
25 not support any changes to the bill unless they could get



1 enough votes on the floor for it to pass?

2 A. Well, the problem is, even if I agree to something, I  
3 still would have to have the votes to pass whatever I even  
4 agreed to.

5 Q. I am trying to understand, if members came to you and said  
6 the Voting Rights Act requires X, Y or Z --

7 A. Yes. I would change --

8 Q. Let me get the question out.

9 A. Okay.

10 Q. That if they said X, Y and Z was required by the Voting  
11 Rights Act, and you would not accept their recommendation  
12 unless they could show you that there were enough votes on the  
13 House to get that proposed amendment passed?

14 A. That question that you just asked, I would have said that  
15 if they said that that amendment -- that they needed that  
16 amendment to comply with the Voting Rights Act, I would have  
17 told them: Well, you need to check on that by leg. counsel  
18 and me to run it by staff to make sure, because if it does, if  
19 there is an issue, we need to know about it.

20 So, yes, I would have changed the map if, in fact, I  
21 was assured that we had a problem, that we needed to adjust  
22 the map, and I would have agreed to that.

23 Q. Okay.

24 A. But if somebody just wants to propose, make a proposal to  
25 a map, and within -- just because they wanted to change the

1 map, I still -- in fact, in the amendments, they had to be  
2 previewed first, to sort of -- because some amendments didn't  
3 even meet the requirements of variances or percentages or  
4 whatever we needed to do.

5 So in that context, that you have to have votes and  
6 you have to have -- and I had to have some assurances that  
7 there was a problem. If there was a problem, that was my job,  
8 is to try to address those problems of what I was made aware  
9 of.

10 Q. Can you recall any specific member where you were directed  
11 to go to staff and leg. counsel to discuss the issue of  
12 suggested Voting Rights Act violations?

13 A. I don't recall. I recall some members talking to me about  
14 various ideas or issues that they may have, and I asked them  
15 to check with staff and go -- you know, come up with something  
16 that would work that I could -- that I could work with, yes.  
17 I mean, but -- I can't tell you a particular member, but there  
18 were a number.

19 Some of the members actually sort of figured that  
20 out on their own, especially if they weren't freshmen, that  
21 they might want to try to run those numbers by, of what they  
22 were wanting to do in proposals, by Ryan, the committee that  
23 was drawing maps, and Gerardo, in particular, and, if  
24 necessary, leg. counsel.

25 Q. Now, you were told, I think you indicated earlier, that

1 one of the things you needed to do was to guard protected  
2 districts?

3 A. That we needed -- yes.

4 Q. Okay. And were you ever given a list of protected  
5 districts?

6 A. I don't recall getting a list of protected -- I  
7 remember -- I remember somebody giving me a number, like 20  
8 something or whatever it was, in connection with -- under the  
9 current -- under the current maps that we had and where we  
10 were headed, there were at least this many.

11 Q. Okay. Was it your belief that you simply needed to have  
12 that same number of protected districts, but not with regard  
13 to their location?

14 A. No.

15 Q. So did you make a determination as to the location for  
16 each one of those 27 protected districts?

17 A. No. Not -- I didn't sit down on a map and start drawing  
18 a -- you know, looking at those and counting them out and  
19 studying each one of those. No, I didn't.

20 Q. Okay.

21 A. That's why I had staff and I relied on them to do that.

22 Q. If minorities had been able to elect a candidate of their  
23 choice in every previous election within that district or all  
24 but one, did you consider that to be a protected district?

25 A. I guess I would normally perceive that to be.

1 Q. And so in those situations, where that kind of performance  
2 is taking place, do you feel you have an obligation to protect  
3 that district?

4 A. I feel like I have an obligation to protect a district  
5 that I have been advised by staff that that is a district that  
6 involves the Voting Rights Act specifically, and I needed to  
7 make -- we needed -- and, really, it wasn't just me. It was  
8 we needed to make sure that we did the right thing on that  
9 particular district, as far as the maps and how that all  
10 interrelates.

11 Q. Now, that is a discussion in reference to existing  
12 districts. You are aware too that there was a possibility  
13 that it might be necessary for the legislature to draw new  
14 minority-protected districts?

15 A. Sure. We might very well need to have done so.

16 Q. And it is true, is it not, that the Texas Legislative  
17 Black Caucus tendered plans to you that included proposed new  
18 districts?

19 A. No member of the Texas Black Caucus ever came to me in my  
20 office or otherwise and talked to me about what they were  
21 interested in. They may or may not have gone and spoken with  
22 either Gerardo Interiano or Ryan Downton.

23 Q. Okay. Are you saying that that was a requirement, that  
24 they come speak to you, as opposed to --

25 A. No, but I was available, but no one ever talked to me

1 independently and brought that up to me, in particular, about  
2 a particular area, a particular area of a particular county,  
3 and nobody ever brought it to my attention personally. That's  
4 what I am saying.

5           Personally, they never did come talk to me. No  
6 member, Sylvester Turner or any of them, ever really came and  
7 talked to me personally, that I recall, about any issue that  
8 the Texas Black Caucus is having about anything, until we got  
9 to the floor of the House with the map.

10 Q. Well, as the chairperson of the Redistricting Committee,  
11 you wanted to make sure that you were aware of the different  
12 plans that were proposed; isn't that true?

13 A. I wanted to know that we had input from the various groups  
14 that had an interest in it, and I was told on -- we didn't  
15 have a formal meeting as to -- that I got this plan, this  
16 plan, this plan, and you need to look at this plan, this plan  
17 or this plan.

18           What I was told is: Yes, we have got another plan  
19 in. Or occasionally, I would ask: Is anybody else presenting  
20 us anything?

21           And somebody would say -- Gerardo, for example,  
22 would say: Well, I met with so-and-so, of whatever group.

23           But my -- I don't independently recall any  
24 particular group coming and talking to me about the Texas  
25 House map or even the congressional map, other than

1 Ms. Perales.

2 Q. Now, you are aware, are you not, that the Legislative  
3 Black Caucus tendered two plans, H-202 and H-214?

4 A. I don't know if it was two or three or four. I assume  
5 there was at least one, so, you know, it may have been two.  
6 If you tell me it is two, I believe you.

7 Q. Now, isn't it true that they proposed a new  
8 African-American opportunity district in Bell County?

9 A. I don't recall that individually.

10 Q. And so in Bell County, would you agree with me that there  
11 is not really a delegation plan that was to come out of Bell  
12 County?

13 A. I don't even remember it individual -- I don't remember it  
14 specifically at all.

15 Q. Okay.

16 A. Right now. I really don't.

17 Q. And what about Dallas County? They proposed a new  
18 African-American district in Dallas County? Are you aware of  
19 that?

20 A. I am trying to think. I don't recall that specifically,  
21 no, sir. I remember that I had told Ms. Giddings and I  
22 believe Ms. Davis that you all just work together, wanted to  
23 figure out what you all needed to do, as far as adjustment of  
24 lines.

25 And I know that they had some discussions among

1 themselves, because I asked at one time: Have you been  
2 talking?

3 Yes.

4 And I know Carol came in one time and talked about  
5 some things that she was interested in, and we gave it to the  
6 committee staff to keep on file and see what they finally came  
7 up with.

8 Q. And it is true, is it not, that Ms. Garroway was very  
9 displeased about what ultimately came out?

10 A. I don't know if she was very displeased. I don't think  
11 she was thrilled with it.

12 Q. And Sylvester Turner, in Houston, it is true, is it not,  
13 that he was displeased with what the plan did to his district,  
14 and he actually discussed that on the floor of the House?

15 A. I believe he discussed it on the floor of the House, and  
16 he may also have discussed it on the -- his office is on the  
17 first floor of one end, and my office is on the other floor --  
18 on the same floor at the other end, and I think one time in  
19 the hallway, he mentioned that he wasn't happy with his  
20 district.

21 Q. And, Chairman, it is true, is it not, that you didn't  
22 have -- you made a distinction about the legislative formal  
23 hearings and the public hearings, so I think it is true that  
24 you did not have any public hearings that were offered to the  
25 public after the plans were released; is that correct?

1 A. I don't believe that we did. I don't believe that we did.  
2 And maybe we did on that Sunday on the House map, because I  
3 know that we had some people -- I couldn't be there on that  
4 Sunday, but I think we had some testimony from members and  
5 maybe some other folks on that Sunday.

6 I don't remember if it was a public hearing or  
7 formal hearing, is what I am saying, on that particular one  
8 meeting time, but we were -- as you well know, because you  
9 have been around the process a long time, we were starting to  
10 run out of time as well, as far as trying to produce a map  
11 that could get out of committee, go to Calendars and get to  
12 the House floor.

13 Q. And there was a session -- and I acknowledge that you were  
14 moving in terms of time, but do you think that might have  
15 improved the perception of transparency if one had been able  
16 to try to conduct some public hearings after the map had been  
17 tendered to --

18 A. I think we were very transparent. You know, we produced  
19 the maps as soon as we could produce the maps. We put them  
20 out publicly. We also knew that there were a variety of  
21 groups of people who had an interest in the subject matter,  
22 were keeping track of what we were doing.

23 We tried to give notice, announced from the floor  
24 that we were going to be releasing maps later than afternoon.  
25 We tried to be as transparent as we could under the time



1 frames that we had.

2 Q. I know one of your members, I think Ms. Dukes, had  
3 complained about the map being released the day before the  
4 formal hearing. Is that what you recall?

5 A. I don't remember that specifically, but I think I do  
6 recall Ms. Dukes making some statement about thinking there  
7 wasn't enough time.

8 Q. And, in fact, these maps can be complicated, and there are  
9 many other things on the legislator's agenda, so it is  
10 important, is it not, to get the maps to the members as early  
11 as possible, so that they can have adequate time to study it  
12 and --

13 A. I think you are trying to get the maps with as much time  
14 as possible, understanding the time constraints and the  
15 framework in which we have to live in in doing this. It is  
16 not that we have, you know, a session that goes on a year and  
17 you have a year to go through and have -- and lay out maps and  
18 leave them pending for weeks on end, and go around the state  
19 or have a number of hearings.

20 We are constrained considerably by the session time  
21 frames. And you have been around the process a long time.  
22 You know that sort of filters down and squeezes down towards  
23 the end, and you try to get everything done as quickly as  
24 possible, as fairly as possible, with as much transparency as  
25 you can, but you are constrained considerably by the time

1 frames if you are intending on trying to pass a map.

2 And you know as well as I do that if you don't pass  
3 a map and you end up before the Legislative Redistricting  
4 Board, it is not like -- they have a certain time frame too  
5 in which to do business, and they are not going to produce  
6 maps and have hearings and go through the whole process as  
7 well.

8 So I thought we were trying to do the best we could  
9 in transparency, understanding those time frames that we were  
10 under. And so as soon as we got maps that we thought we could  
11 produce those and send them out to the public and make them  
12 available on Red Appl, we did so.

13 Q. Of course, the special session option was there prior to  
14 the Redistricting Board meeting, so --

15 A. That is the congressional map, yes.

16 Q. But that could have been made available also for the House  
17 maps too?

18 A. I'm sorry?

19 Q. If one had not passed during the regular session, there  
20 was an option to have that considered as well?

21 A. If we don't pass the maps, then the Redistricting Board  
22 rises from the ashes, because, really, they don't have a  
23 redistricting -- you don't have a Redistricting Board until  
24 they are actually needed.

25 You know who is supposed to be on it, but you don't

1 have -- they have their process and their time frames, if, in  
2 fact, the legislature does not pass a Senate map and a House  
3 map, and it is after the fact. After the sessions are over,  
4 then they would do what they are required to do.

5 Q. So you are saying LRB is automatically created if they are  
6 not passed during the regular session?

7 A. We have a process, a statutory process whereby they come  
8 into being upon the end of session if we have not passed maps  
9 that can be considered by the governor.

10 Q. You mentioned you had a conversation with Congresswoman  
11 Lee?

12 A. Sheila Jackson Lee, yes.

13 Q. And it is true, is it not, that though you may have talked  
14 about other things, you did talk about redistricting?

15 A. I believe we did, yes.

16 Q. Okay.

17 A. We had some pleasantries at the beginning, and then we had  
18 some brief conversation about redistricting, not anything  
19 specific, not anything in specific to her district, but in  
20 general, and then we talked about some other things, and that  
21 was the end of the meeting.

22 Q. And it is clear that she did like the current  
23 configuration of her district and the things that had been a  
24 part of that district traditionally?

25 A. I guess so. I mean, I don't recall specific -- the

1 specific conversation, but I think she generally was happy  
2 with what she had, basically.

3 Q. Now, getting back to the House map, when that was first  
4 tendered, that was in the middle of April; is that correct?

5 A. Yes. I think so, yes.

6 Q. And that was passed a short time later; is that correct?

7 A. We did the Senate bill -- we did -- I'm sorry. We did the  
8 SBOE map first, and we produced that first, and we took that  
9 to the floor well before we actually were able to get to  
10 the -- put together the finalizing towards the end to get to  
11 the State House map.

12 Q. They both passed in April; is that correct?

13 A. April -- end of April, first of May, somewhere in that  
14 time frame.

15 Q. And, of course, the legislature didn't end until the end  
16 of May; is that correct?

17 A. Correct.

18 Q. So there actually was a little more time where one might  
19 have had some opportunity to have public input after the maps  
20 were released?

21 A. We -- very little. We have -- as you are aware, the last  
22 couple of weeks, the first couple of weeks in May, we have a  
23 number of pieces of legislation that have to go to the House  
24 floor.

25 That seemed to -- it just invariably comes up. So

1 we had decided that we probably, by around the first week of  
2 May, we needed to get as many of these maps done as we could  
3 get done, and a large part of that was done, finalizing,  
4 previewing, having hearings, going to the House floor towards  
5 the end of April, first of May.

6 Q. Okay. Did you get any advice on the need to create new  
7 districts?

8 A. The need to create? I don't recall. I really don't  
9 recall specifically as to, "Do we need to create X number of  
10 districts?" or whatever. What we were going to do --

11 JUDGE SMITH: Are you asking about opportunity  
12 districts?

13 MR. BLEDSOE: Yes, Your Honor.

14 THE WITNESS: To create new opportunity districts?

15 MR. BLEDSOE: Yes, sir.

16 THE WITNESS: I don't recall us having that specific  
17 conversation. The conversation revolved around what the U.S.  
18 Census numbers would show, as to where and how those districts  
19 needed to be done; and so if, in fact, there seemed to be  
20 that -- to me, it was just assumed that if the numbers  
21 reflected what we needed to do, then that is what we were  
22 going to do, and that staff was going to help ensure that we  
23 did what we needed to do to make the map as legal as possible.

24 BY MR. BLEDSOE:

25 Q. Did you get any advice on the obligation to create an

1 opportunity district that would be a combined minority  
2 district?

3 A. I don't recall that I got that kind of -- or ever had that  
4 specific kind of conversation with anyone.

5 Q. So that was a conversation that did not happen?

6 A. Not that I remember.

7 Q. So there was no advice from anyone in regards to that?

8 A. The need to create new opportunity districts?

9 Q. Combined opportunity districts.

10 A. (Shakes head.) Not specifically. I mean, the process  
11 really was one where if -- the goal was to try to pass a fair  
12 and legal map, and that was -- I stated that on a number of  
13 occasions. That, you know, we take the numbers, you let the  
14 members have as much input, you have staff review what they  
15 are producing, and seeing where we needed to make whatever  
16 adjustments were necessary, based on those numbers, and  
17 whatever happened would happen.

18 Q. Now, it is true, is it not, that out of the 49 Democratic  
19 members in the House that probably over 80 percent of them are  
20 a minority?

21 A. I guess so. There is a large Hispanic number. There  
22 is -- I don't remember how many African-American members of  
23 the Black Caucus there are. I don't remember the absolute  
24 numbers, but I would assume -- if you say 80 percent,  
25 somewhere in that range, probably.

1 MR. BLEDSOE: Thank you. Pass the witness.

2 JUDGE GARCIA: Thank you.

3 Anyone else over here? Okay.

4 JUDGE SMITH: May I ask a question of the witness?

5 THE WITNESS: Sure.

6 JUDGE SMITH: There has been testimony from more  
7 than one state witness to the effect -- of course, I will have  
8 to paraphrase this a little bit, but that one of the primary  
9 goals -- and I am talking about congressional and House vote.  
10 One of the primary goals was to give the members as great an  
11 opportunity as possible to be reelected.

12 My question is kind of a broad one. Was that one of  
13 your purposes? And do you recall conversations or concerns or  
14 instructions to staff or anything like that to that effect,  
15 such that that would have, in fact, been one of the primary  
16 goals or maybe the main goal of the redistricting in the House  
17 and the Congress?

18 THE WITNESS: For me personally, Judge?

19 JUDGE SMITH: For you personally, or whether  
20 instructions were given to staff or whether --

21 THE WITNESS: I never.

22 JUDGE SMITH: Excuse me. Let me finish.

23 THE WITNESS: Oh, I'm sorry.

24 JUDGE SMITH: I am almost through.

25 THE WITNESS: I'm sorry.

1           JUDGE SMITH: Or whether you heard concerns from  
2 members about that. To what extent was that a consideration  
3 during the process?

4           THE WITNESS: I think Republican members wanted it  
5 to be what they would consider a good Republican-type map.  
6 You have to remember, we had 101 Republicans, and we were in a  
7 redistricting session, and a member-driven map. You are going  
8 to take as much input from those Republicans, as well as  
9 Democrats, understanding what the law -- or trying to  
10 understand what the law is, because I don't think -- I, for  
11 one, don't know the details of the law.

12           But by the nature of protecting incumbents or for  
13 reelection, by the very nature of an incumbent-driven map, you  
14 are going to have members who think that this is where they  
15 would really like to have their districts, to where they think  
16 that they have a good chance of being reelected.

17           For example, in my own district, you know, I had to  
18 shed about 54,000, 56,000 people. I am certainly not going to  
19 shed the good voters for the bad voters, in connection with  
20 that, but I want to make sure it is balanced, where we could  
21 draw, you know, a fair Denton County kind of delegation map,  
22 reflecting Denton County as we broke it up.

23           So subconsciously, if nothing else, members are  
24 probably thinking in those terms, but the only conversation I  
25 ever heard from Republican members was: Is it going to be a



1 pretty good Republican map?

2 And my general response would have been: Well, I  
3 think it is. We have 101 Republicans, and I think it is going  
4 to be a pretty, you know, reflective map of the House in the  
5 state of Texas, based on the last election.

6 JUDGE SMITH: And what about on the congressional  
7 side, where they are talking about someone else's lines and  
8 not their own?

9 THE WITNESS: I can't speak on behalf of Senator  
10 Seliger, but from the standpoint of the congressional map,  
11 that I knew we needed to pick up four seats. I don't know  
12 most of the congressional members, and from the standpoint  
13 of -- my feeling is, it is not a matter of what they  
14 particularly wanted or didn't want.

15 I wanted to know what they wanted, what they really  
16 didn't like, but at the end, that really wasn't that important  
17 to me. What was important to me was to come up with a map  
18 that I thought at least made some sense and that hopefully we  
19 could pass -- the Senate and the House would pass a map that  
20 reflected where those new districts would be, understanding it  
21 is sort of like a member-driven map. Tell us what you like  
22 and what you don't like. But you really don't have a lot to  
23 say about it.

24 I don't need your vote. I don't need their vote to  
25 pass a congressional map. I just need to know what they like

1 and don't like, because I think that is a fair thing to do.  
2 But at the end, I knew that because Texas picked up four  
3 congressional seats, that my role in facilitating a  
4 congressional map was to try to meet the legal requirements  
5 and try to figure out where those districts should be, based  
6 on the numbers, and based on the staff that is advising me of  
7 what we can do and not do, and -- but they weren't as  
8 important to me as members of the Texas House were, because I  
9 don't need their vote to pass a map.

10 In fact, we had several amendments proposed on the  
11 floor of the House, and sometimes the members would go: Yeah,  
12 we will vote for that, because we are just -- we are okay with  
13 that.

14 But we had several amendments that I think were  
15 suggested, carried by Texas House members from probably  
16 congressional members or groups basically wanting the Texas  
17 House to pass something that they wanted to pass, but at the  
18 end, we get to make that final decision.

19 JUDGE SMITH: All right, then. And this is somewhat  
20 repetitive, but more specific, I hope.

21 Did you give any instruction to staff or are you  
22 aware of any instruction that was given to staff that one of  
23 the primary considerations for the State House lines and the  
24 congressional was to give the greatest chance as possible for  
25 incumbents to be reelected?

1 THE WITNESS: I never said that. I don't believe  
2 that I said that to anybody.

3 JUDGE SMITH: And did you hear about anyone else  
4 giving that instruction?

5 THE WITNESS: I don't recall that at all, Judge.

6 JUDGE SMITH: The reason I am asking is, your staff  
7 was apparently under the impression that that was one of the  
8 primary goals, and that's why I am giving you an opportunity  
9 to indicate where that might have come from.

10 THE WITNESS: I don't recall individually saying:  
11 Oh, you need to do this because of this reason for the  
12 congressional members, or the House members, in particular. I  
13 just think that there was a general understanding by the  
14 staff, and myself, that based on the political environment and  
15 the last election cycle that it was going to probably be more  
16 political in context than maybe it might have been the session  
17 before, where we only had 70 -- 74 Democratic members and 76  
18 Republican members.

19 I mean, it is inherent in the process that it is  
20 political, in some degree. It is. That is all there is to  
21 it. There is -- but I don't -- to answer your question more  
22 specifically, Judge, I don't recall ever specifically making  
23 statements in specific sentences that: You need to do this  
24 because we need to protect these incumbent members.

25 No, I don't recall that. I think it was a general

1 understanding that most of those folks are going to draw maps  
2 and we are probably going to look at that, that we are going  
3 to try to protect existing membership as a part of that  
4 process in redistricting, is the way we do it.

5 JUDGE GARCIA: Anything from the State?

6 MR. COHEN: Very briefly, Judge.

7 JUDGE GARCIA: Of course. Go ahead.

8 \*-\*-\*-\*-\*-\*-\*

9 REDIRECT EXAMINATION

10 BY MR. COHEN:

11 Q. Chairman Solomons, first, why did you carry the Sanctuary  
12 Bill?

13 JUDGE RODRIGUEZ: That is not relevant.

14 MR. COHEN: It was certainly raised by Mr. --

15 JUDGE RODRIGUEZ: That is not relevant.

16 MR. COHEN: All right, Your Honor.

17 JUDGE SMITH: I think it is relevant. I would like  
18 to hear it.

19 JUDGE RODRIGUEZ: The Sanctuary Bill?

20 JUDGE SMITH: Yes. Why did he carry it? He was  
21 asked without objection, did he carry --

22 JUDGE RODRIGUEZ: I will defer to my colleague.

23 MR. COHEN: Thank you, Your Honor.

24 JUDGE GARCIA: Go ahead.

25 THE WITNESS: Well, I had -- the reason I carried

1 the bill is that -- and it turned out to be the bill that sort  
2 of went through the process -- is that the session before this  
3 last session, I was the chair of State Affairs.

4 We had a number of immigration bills, including  
5 sanctuary cities came up in that session. One of the avenues  
6 by which they were doing that was, there were proposals that  
7 allowed anyone in the state of Texas to sue any entity in the  
8 state by perception that they thought they had a, quote,  
9 sanctuary-type policy.

10 And I was trying to be a city attorney and city  
11 manager, and I just didn't think that was right. So during  
12 the session before this last one, I had proposed, through one  
13 of the authors of one of those bills, that they consider  
14 having some other type of process, maybe a complaint process  
15 through the Attorney General's Office, you know, try to -- try  
16 not to allow that to occur, where it was a wide open,  
17 everybody sue everybody, if there was a conception that there  
18 was a district, city, county, whatever, that had that type of  
19 policy.

20 I had made a commitment to myself, actually,  
21 beforehand that if that bill came up again, that is what I  
22 wanted to see in a bill of that sort.

23 So in legislation, you are a legislator, sometimes  
24 the way you control an issue is to actually file a bill, so  
25 you are a part of that discussion. So I filed a bill

1 initially that set up that process, where if you had this kind  
2 of sanctuary policy, you had to file and go -- you had to file  
3 a complaint with the Attorney General's Office. They would  
4 have a chance to investigate it, get with the city or the  
5 county or the district and to -- in order to help have  
6 something to say about that issue.

7 So I had suggested that to the Governor's office,  
8 that any bill that looked like it might move, they may want to  
9 consider that. The Governor's office actually came to me and  
10 asked, and they said they liked that process. They thought  
11 that was the correct process, and would I consider carrying  
12 the Sanctuary City bill, along with Senator Williams over in  
13 the Senate.

14 So I said: Okay. I would like to do that. Because  
15 I felt like I could try to come up with a reasonably fair  
16 sanctuary city-type bill and have that process in it.

17 So in context, the reason I carried it is because of  
18 my concern over that particular issue, and the Governor's  
19 office asking me to carry that legislation, along with Senator  
20 Williams in the Senate, to see if we could come up with a  
21 reasonably fair sanctuary city bill that had that process in  
22 it, and that's why I carried it.

23 BY MR. COHEN:

24 Q. Chairman Solomons, you discussed, I think, when  
25 Ms. Perales was in cross-examination, the drop-in county

1 process for El Paso County. And you said that there was a  
2 representative from El Paso County on the district -- I mean,  
3 I'm sorry, on the Redistricting Committee.

4 A. Yes. Chairman Joe Pickett.

5 Q. Is Mr. Pickett a Democrat or a Republican?

6 A. He is a Democrat.

7 Q. And then you also discussed Travis County, I think with  
8 Mr. Bledsoe, and discussions regarding Representative Dukes.

9 Who was the point person for Travis County?

10 A. Excuse me. I am not exactly sure who was the point person  
11 for Travis County. The Travis County delegation, I had made  
12 it clear to the various delegations that: Just figure out  
13 among yourselves how you want to do this.

14 And just by human nature, usually, one or two people  
15 usually take a lead. Ms. Dukes may have been one of the ones  
16 that took a lead.

17 I know that Representative Strama basically said:  
18 Whatever they come up with is fine. He liked a different  
19 process for redistricting. He wasn't going to vote on any of  
20 the maps, anyway. He was going to white light those maps.  
21 Whatever they came up with was fine.

22 Q. What does "white light" mean, sir?

23 A. It means they don't take a position on that particular  
24 vote. They are present, but they are not taking a position on  
25 a particular vote.

1 I don't know who finally came up and who took the  
2 lead, but at the end, all of the Travis County members seemed  
3 to sign off on the Travis County map, including Eddie  
4 Rodriguez, including Ms. Dukes, including everyone, as far as  
5 I knew.

6 I don't know -- and it is mostly Democrats and there  
7 is one Republican, I think, Mr. Workman, and I think they  
8 all -- whether they all loved it in all of their districts,  
9 they all -- there seemed to be a general consensus for Travis  
10 County, and after we went through the review process and  
11 whatever adjustments, if any, were made, that's when we  
12 dropped in for Travis County.

13 Q. Again, Mr. Strama is a Democrat, sir?

14 A. He is a Democrat. They are all -- all of the Travis  
15 County delegation are Democrats, except Mr. Workman.

16 Q. One final question, and it relates to the numbers that  
17 Ms. Perales went over with you.

18 During the process of redistricting in the session,  
19 if a question came up about whether a district is electing  
20 three out of ten or five out of ten in the last series of  
21 elections, are those analyses that you ran yourself, or is  
22 that something that staff undertook?

23 A. From my understanding, leg. counsel, Mr. Hanna, Mr. Archer  
24 ran those kinds of model retrogression analyses, or they had  
25 people do that, they reviewed them, however that works. But



1 they are the ones that advised us whether or not they thought  
2 there were problems, maybe the Attorney General's Office as  
3 well.

4 It just sort of came down from the sources behind  
5 us, who are supposedly the experts, that we ran some of the  
6 regression analyses on a particular district, and there may  
7 be -- and there may be an issue.

8 And I don't know if it was so much absolute, in all  
9 cases, but they would say, there could be a Voting Rights Act  
10 issue because of the analysis of the retrogression analysis  
11 that we ran. You are going to have to fix that.

12 MR. COHEN: Okay. I have got no further questions,  
13 Your Honor.

14 JUDGE GARCIA: Mr. Garza?

15 MR. GARZA: No questions, Your Honor.

16 JUDGE GARCIA: Mr. Bledsoe? Ms. Perales?

17 MS. PERALES: No questions.

18 JUDGE GARCIA: Anyone else?

19 Okay. Thank you, Chairman. You are excused. Have  
20 a good day.

21 Call your next witness.

22 JUDGE RODRIGUEZ: Could we take a break?

23 JUDGE GARCIA: Yes. Let's take a break.

24 (Change of court reporters.)

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

1 JUDGE GARCIA: You may proceed.

2 MS. COLMENERO: Your Honor, my name is Angela Colmenero  
3 on behalf of the State. The State calls Representative Larry  
4 Gonzales as our next witness.

5 JUDGE GARCIA: Okay.

6 LARRY GONZALES,  
7 having been first duly sworn, testified as follows:

8 EXAMINATION

9 BY MS. COLMENERO:

10 Q. Good morning, Representative Gonzales.

11 A. Good morning.

12 Q. Please state your full name for the Court.

13 A. Larry Dean Gonzales.

14 Q. And where do you live?

15 A. I live in Round Rock, Texas, in Williamson County.

16 Q. What do you do for a living?

17 A. I am a graphic designer.

18 Q. Prior to becoming a graphic designer were you involved in  
19 politics?

20 A. I was. I have been a political consultant as well as a  
21 legislative staffer going back since about 1992.

22 Q. And where are you from originally?

23 A. Alvin, Texas.

24 Q. And tell the Court where Alvin, Texas is.

25 A. Alvin, Texas is between Houston and Galveston.

1 Q. Did you attend college in Texas?

2 A. I did.

3 Q. And what degree -- what college did you attend in Texas?

4 A. Undergraduate, University of Texas at Austin.

5 Q. And what degree did you receive at the University of Texas?

6 A. A bachelor of arts in government.

7 Q. Are you an elected official in Texas?

8 A. I am.

9 Q. And what position do you hold?

10 A. State representative for House District 52.

11 Q. And where is District 52 located in Texas?

12 A. Central Texas. We're going to be just north adjacent to  
13 Travis County, so my district I represent is the southern portion  
14 of Williamson County.

15 Q. And how long have you represented District 52?

16 A. Sworn in on January 11th of this year.

17 Q. And for the record are you Latino?

18 A. I am.

19 Q. And were you elected as a Republican or a Democrat in the  
20 2010 election?

21 A. Republican.

22 Q. And in the Republican primary did you have any opponents?

23 A. We had three opponents.

24 Q. And were you the only Latino candidate in the primary when  
25 you were elected?

1 A. I was.

2 Q. And what was your margin of victory in the primary?

3 A. The runoff, the margin of victory, was 72 to 28.

4 Q. And then you eventually prevailed in the general election;  
5 is that correct?

6 A. That's correct.

7 Q. Tell us about the district that you represent. What's the  
8 demographic makeup of that?

9 A. Very diverse.

10 Q. When you say "very diverse" what do you mean?

11 A. In Williamson County we're home to a lot of high-tech jobs:  
12 Dell, Samsung, Emerson, and people come from literally all over  
13 the world. Williamson County and Round Rock, Texas is a melting  
14 pot of what you see worldwide. At my kids' schools,  
15 every -- every race. I mean, it's amazing to watch.

16 Q. And when you were elected to office in District 52 did you  
17 receive votes from Latinos within your community?

18 A. Absolutely.

19 Q. And did you also receive crossover votes from Democrats in  
20 the community?

21 A. We did. We knew -- the very first day of polling, election  
22 day itself in November, the very first polling location I had  
23 gone to from 7:00 to 9:00 that morning there were four Hispanic  
24 females, late 40s, early 50s, who walked up to me after voting  
25 and told us that they were Democrats but they were voting for me

1 in November.

2 Q. And based on your experience working in politics and now as  
3 a legislator serving in the Texas House, do you believe that  
4 people within your district vote on the basis of race?

5 A. No. You know, what we did was we ran a race that was as  
6 colorblind as we could. We focused on the issues. This is a  
7 trend we've seen, I guess, for the last six to eight years  
8 perhaps. It's increasingly trending toward a scenario where  
9 Latino voters are looking very carefully at the candidate,  
10 looking very carefully at the issues. Two in particular, jobs  
11 and education, not unlike everybody else, are two issues that  
12 they care deeply about and that was the message that we were  
13 delivering.

14 Q. And I want to talk about the 2011 redistricting process and  
15 your experience as a member of the Texas House. During this  
16 trial we've heard some testimony that the Texas House of  
17 Representatives redistricting plan that was passed--it was House  
18 bill 150--was a member-driven map. And as a member of the Texas  
19 legislature would you agree with that characterization?

20 A. Absolutely.

21 Q. And can you describe for the Court how that process was  
22 member-driven?

23 A. Sure. I mean, what we did was we were able to work with  
24 other members across the entire Central Texas delegation. When  
25 you start drawing the maps, the lines, of course, there's kind of

1 the domino effect as it moves across Texas. So it was important  
2 that we were looking at not just the three counties that were  
3 affecting where I was but the counties outside of that. So we  
4 would talk and meet with several members around the area many  
5 times, many hours, just going over what that looked like. And  
6 that was the process by which you could address the committee or  
7 the chairman and walk through what you as a delegation had been  
8 discussing and what worked best for your community, you know,  
9 collectively.

10 Q. And the delegation you're referring to, would you consider  
11 that to be the Central Texas delegation that you worked with?

12 A. Yes.

13 Q. And did you also work with members who were part of your  
14 local constituent base in terms of creating a proposal to present  
15 to the House Redistricting Committee?

16 A. Yes. I had drafted an amendment to the as-filed version and  
17 we were able to work with our local business community leaders.  
18 I think we had had a total of 36 letters of support that we had  
19 received, working very carefully with our cities, a lot of our  
20 elected officials and business leaders and civic leaders,  
21 explained to them what the amendment did, how it worked, why we  
22 had done it. And they were very favorable to jump in and to talk  
23 us through what that looked like. And then when I testified in  
24 committee I think we had 36 letters of support.

25 Q. And so you mentioned that you filed an amendment while the

1 bill was pending in committee. When the first initial plan was  
2 revealed did you have a problem with the way your district was  
3 configured?

4 A. Yeah. The way it looked was there were several of our major  
5 cities that had been split several times. So the city of Round  
6 Rock was in three districts. The city of Cedar Park was in two  
7 districts. The city of Hutto was in two districts. The city of  
8 Taylor was in two. And even Thrall, Texas was in two.

9           And so the premise was -- we started from the very  
10 beginning was we looked at city limit boundaries and we looked at  
11 ISD boundaries. The purpose of the amendment was to put our  
12 constituencies back together so that if you were in a taxing  
13 district for Round Rock Independent School District that you were  
14 in the same taxing district with other people of similar  
15 location.

16           So the very first premise that we ran with was putting  
17 the communities back together, making the cities whole again and  
18 making sure that everybody had like voting.

19           What that did, I guess, to the numbers was we did so --  
20 my amendment actually had me in a less Republican area than the  
21 committee map, but at some point doing the right thing matters.  
22 And so we were able to gather support for the amendment even  
23 though it was less, I guess, in Republican favor, but putting the  
24 cities back together was the aim. That was the -- that was the  
25 goal.

1 Q. And so after the initial plan was revealed by Chairman  
2 Solomons and the House Redistricting Committee you had plenty of  
3 time to present an amendment to the -- before the House  
4 Redistricting Committee?

5 A. Absolutely. We had plenty of time to work on it. We had  
6 plenty of time to engage our elected officials via phone,  
7 facsimile, e-mails. The back and forth was certainly timely and  
8 testified in committee with the letters in hand. So there was  
9 nothing that was pressing us as far as time-line.

10 Q. And after the plan was ultimately voted out of the House  
11 Redistricting Committee, did you feel that members of the Texas  
12 House had adequate time in which to prepare floor amendments  
13 before the bill went to the House floor?

14 A. Sure, absolutely.

15 Q. And why do you believe that?

16 A. Well, you know, anecdotally you're on the floor. There was  
17 nothing that was coming at you that was a surprise. You knew  
18 essentially what things were looking like. You had the  
19 opportunity in the committee process. You were vetting a lot of  
20 things the entire time. So it's not like, you know, the bill  
21 comes to the House floor and there's a calendar rule set. I  
22 mean, you know ahead of time what that looks like. You know  
23 ahead of time how to work it.

24 As a prime example that's exactly what we did. I'm  
25 going to just use myself as an example. But on the House floor



1 anecdotally you know that everybody is working on it. You can  
2 see the maps, you can see the screens up and everybody was always  
3 working toward that goal.

4 Q. And so given the process that you just described and given  
5 the schedule that the House redistricting bill was on, do you  
6 believe that the process in which the House considered the  
7 redistricting bill complied with all procedural House rules?

8 A. Oh, absolutely.

9 Q. And do you feel that the process that was used by Chairman  
10 Solomons as well as the House Redistricting Committee to create  
11 the House plan, do you believe that that process was fair?

12 A. Oh, yeah. It was wonderful. The chairman is completely  
13 accessible. The committee was accessible, you know, via phone  
14 call or walk in, or just the chairman at his desk. Many  
15 conversations. I mean, it was -- the process was as  
16 user-friendly and member-friendly as it could have been.

17 Q. And as a Latino legislator do you feel that the process was  
18 intended to exclude any minority groups from the decision-making  
19 process?

20 A. No, not at all.

21 Q. And why not?

22 A. I mean, you can see on the floor just, you know, your  
23 colleagues. I mean, everybody is talking about it. You know,  
24 the members are talking about having spoken to the chairman and  
25 the members are talking about having presented the maps. The

1 members are sharing on the floor the different stories of kind of  
2 what's happening.

3           You always knew from just being on the floor that  
4 everybody was working toward making sure that their maps were the  
5 best for their community. So you had that constant conversation  
6 on the floor which tells you that everybody was working and  
7 having the same conversations we were.

8 Q.   And are you a member of the Mexican American Legislative  
9 Caucus?

10 A.   I am.

11 Q.   And do you feel as though the Mexican American Legislative  
12 Caucus was adequately represented in the House Redistricting  
13 Committee?

14 A.   Absolutely.

15 Q.   And why do you believe that?

16 A.   Well, you've got -- you know, members of MALC, the  
17 Mexican American Legislative Caucus, were on the committee. I  
18 spoke to a couple there after my personal testimony. Many  
19 conversations with -- with the members of MALC during the  
20 process. I mean, everybody knew kind of what was happening and  
21 how it was working out. Everybody has their opportunity. To my  
22 knowledge everyone took that opportunity because that's what  
23 you're talking about on the floor.

24 Q.   And as a member of the Mexican American Legislative Caucus  
25 did you ultimately vote in favor of the redistricting bill?

1 A. I did.

2 Q. And why did you ultimately vote in favor of the bill?

3 A. I thought it was fair.

4 Q. And why did you believe it was fair?

5 A. Because everybody had access to that same process so, you  
6 know, not everybody would be happy for different reasons, right?  
7 But ultimately what you're looking at, there's a thousand  
8 variables in there, but when you have the opportunity and when  
9 the committee process works and when the amendment time-line  
10 works and when the floor rules work and everybody is a part of  
11 that process and everybody is in that process, that's what you're  
12 asking for. You're asking for the process to just be open and  
13 accessible. It certainly was for me on the House floor. You  
14 could see it in the other members. Everybody is working. It  
15 certainly was for them. At the end of the day when the map was  
16 done, fair.

17 Q. Great. And turning to the congressional plan for just a  
18 second, were you involved at all in the drawing of the lines for  
19 the congressional plan that was ultimately passed by the Texas  
20 House?

21 A. Not at all.

22 (Cell phone rings.)

23 JUDGE GARCIA: You want to turn that off or should we  
24 take a break? Well, whoever has it.

25 MR. RICHARDS: That was me. I'm sorry.

1 JUDGE GARCIA: And I was being facetious about taking a  
2 break. Are you going to turn it off or should I get a marshal to  
3 get it for you?

4 MR. RICHARDS: I'm trying very hard to get it off.

5 JUDGE GARCIA: Okay. Thank you.

6 MS. COLMENERO: May I proceed, Your Honor?

7 JUDGE GARCIA: Yes, you may.

8 Q. (BY MS. COLMENERO) And, Representative Gonzales, you  
9 mentioned earlier that you have experience in politics as being a  
10 political consultant and also as a staffer in various capacities.  
11 And now you're also a member of the legislature and you also  
12 mentioned that you are a Latino. Can you describe for us in your  
13 opinion how Latinos have progressed politically in Texas?

14 A. I think it's been wonderful. The Latino population is very  
15 diverse. I think with the election of myself and several other  
16 Latinos across the state the representation is diverse. There's  
17 not some, you know, monolithic definition of what a Latino is or  
18 what a Latino believes. We are as diverse as anybody else.

19 And so you look at the representation and I think  
20 it's -- it's dead-on accurate for what we hold as our values.  
21 You know, where I live there's certain conservative ideals that  
22 we live by.

23 I've been a member of that community for 15 years, very  
24 active in the civic and educational side of things. And, you  
25 know, you have that understanding, you know, that I think the

1 Hispanic population is well represented in diversion of views.

2 Q. And in your experience in working in politics have you  
3 observed that more Latinos as well as other minorities in Texas  
4 are being elected to public office?

5 A. Absolutely.

6 Q. And are you familiar based on your prior experiences with  
7 voting patterns for Latinos across the state?

8 A. Yeah. Let me go back a little bit too because you're  
9 looking at --

10 JUDGE RODRIGUEZ: Just answer her question.

11 THE WITNESS: Okay. Please ask the question again.

12 Q. (BY MS. COLMENERO) I'll reask the question. Based on your  
13 prior experience working in politics as well as being a  
14 legislator, are you familiar with voting patterns for Latinos  
15 across the state?

16 A. Yes.

17 Q. And what have you observed?

18 A. In the last, I would say six, eight, maybe 10 years there's  
19 been a -- there's been a movement, there's been a trend that the  
20 Latino population is looking for an ideals-based candidate.  
21 They're looking for something, someone that they fundamentally  
22 believe in. It's not so much based on the race anymore.

23 My election itself is part of that. There were five  
24 other Hispanic Republicans elected to the House this past session  
25 as well. And so you're seeing this trend toward the



1 and more to ideas-based or candidate-based voting; is that  
2 correct?

3 A. Yes, sir.

4 Q. Now, in reaching those conclusions, Representative, have you  
5 done any statistical analysis on the issue?

6 A. Just anecdotal, sir.

7 Q. Just anecdotal?

8 A. And from being in the process, being a consultant from that.

9 Q. So you have no evidence to dispute the statistical analyses  
10 that have been done by all the experts that have come before the  
11 Court?

12 A. Just anecdotal.

13 MR. GARZA: Just anecdotal. No more questions.

14 JUDGE GARCIA: Ms. Perales.

15 EXAMINATION

16 BY MS. PERALES:

17 Q. Good morning, Representative.

18 A. Good morning. Good to see you.

19 Q. Are you a founding co-chair and member of the steering  
20 committee of the Hispanic Republicans of Texas?

21 A. Yes.

22 Q. And tell me, who does this organization do outreach to?

23 A. We -- well, we outreach to -- we recruit Latino Hispanic  
24 Republicans to run for office.

25 Q. And do you encourage voters then to vote for the folks that

1 you've recruited to run for office?

2 A. Yes, ma'am. For the candidates that we've been recruiting.

3 Q. And you reach out to conservative Latinos and encourage them  
4 to vote for these Republican candidates?

5 A. We reach out to everybody to encourage them to vote for the  
6 candidate, yeah.

7 Q. Okay. Do you believe that Latinos in Texas are willing to  
8 vote for both Democratic and Republican candidates?

9 A. Yes.

10 Q. And you mentioned a moment ago about some ladies who had  
11 approached you --

12 A. Right.

13 Q. -- and said that they voted for you.

14 A. Right.

15 Q. And these ladies had crossed over from voting Democratic to  
16 voting Republican for you?

17 A. That's correct.

18 Q. And did you say they were Latino ladies?

19 A. Yes.

20 Q. Do you think part of their decision to cross over and vote  
21 for you had to do with the fact that you are also Hispanic?

22 A. They didn't say anything specific toward that. They just  
23 said that you are our guy or something along that -- "we agree  
24 with you" kind of comments.

25 Q. And I'm going to hand you one exhibit. It's Plaintiff's



1 Exhibit 388. I'd like you to turn to the second page where  
2 there's a pink tag. This is a transcript of an interview on  
3 National Public Radio. And I wanted you to look at the quote  
4 from Representative Aaron Pena talking about the legislative  
5 session and some of the debates around immigration where he says,  
6 "The tone of the debate is basically saying, 'We don't want you.  
7 This is a war over our culture. These people bring diseases to  
8 our country.'"

9 Do you see that?

10 A. I see that. Yes, ma'am.

11 Q. What do you think that Representative Pena was trying to  
12 express here in talking about the tone of the debate during this  
13 session?

14 A. I'm sorry. What's the context here? What are we talking  
15 about all this time prior to that?

16 Q. It's a news -- it's a newspaper -- not a newspaper, radio  
17 interview --

18 A. Radio interview.

19 Q. -- regarding the Texas legislative session and some of the  
20 debates that went on around immigration.

21 A. Okay.

22 Q. Do you know what Representative Pena was trying to express  
23 there?

24 A. I'm not even certain who he is talking to or about in this  
25 quote.

1 Q. Okay. Well, let me ask you more generally and this will be  
2 my last question. Do you think that some of the legislative  
3 debate this past session particularly with respect to immigration  
4 may have upset some Latinos who have conservative values but who  
5 might have taken that debate in somewhat personal tones?

6 A. I think that's a very personal conversation for several  
7 people, absolutely. That's a -- that's a conversation that we  
8 had some very long discussions about on the House floor, kind of  
9 off-line member to member.

10 Q. And so member to member you were trying to talk to some of  
11 your fellow members about the tone of the debate; is that right?

12 A. Tone of the debate. My role was mostly listening. It's  
13 kind of the role that I took on the floor. A lot of the members  
14 would talk to me, come to me. They saw me as somebody that was  
15 very pragmatic and they could visit with. So most of my tone  
16 seemed to be in just providing an ear and just kind of walking  
17 through a couple of things, but it was mostly just listening and  
18 being there with them and for them, just kind of showing that it  
19 was something more than just politician based, that there was  
20 nothing that was personal for me with this. That we were just  
21 having a discussion about the policy.

22 Q. Did you talk with those members at all in trying to  
23 communicate with them how some Latinos who would otherwise have  
24 conservative values and be inclined to vote Republican might have  
25 some issues with the tone of the debate? Did you communicate any

1 of that?

2 A. Yes. Yes.

3 Q. Can you express to me how you communicated that to them?

4 A. Yeah, just to various members just to let people know that  
5 when you have that dialog on immigration that it can be very  
6 personal for people. And even if you weren't talking to maybe  
7 the first generation, it was the second generation or somebody  
8 who knew somebody.

9 So it was just a conversation about being able to have  
10 a very open dialog with a tone that was more welcoming, just  
11 listening and being able to carry on that conversation and just  
12 in a way that --

13 I've done it my whole life, right? So for me it's very  
14 easy to be that guy that just stands there and just has that  
15 dialog. That's been my role as a staffer for 18 years. It just  
16 continued as a member, as a Latino Republican member. That was  
17 kind of that -- that bridge for me. And it was a role that quite  
18 frankly that I relished because it was an opportunity to be that  
19 guy.

20 MS. PERALES: Thank you. I'll pass the witness.

21 JUDGE GARCIA: Mr. Bledsoe, anything?

22 EXAMINATION

23 BY MR. BLEDSOE:

24 Q. Representative Gonzales, how are you?

25 A. I'm just fine. Thank you very much.

1 Q. I just have a couple of questions for you.

2 When you were elected you -- your first campaign was  
3 against a Hispanic female, is that correct, in the  
4 Democratic -- who was a Democratic nominee?

5 A. In the general election?

6 Q. Yes.

7 A. Yes, sir.

8 Q. And, in fact, you're not telling the Court that you received  
9 the majority support of Latinos in Williamson County, are you?

10 A. I have no statistical knowledge of that.

11 Q. And it's true, is it not, that your district is a Republican  
12 district, that it's -- that you would expect a Republican to win  
13 in your current district because of its voting patterns in other  
14 races?

15 A. To be clear, as currently drawn?

16 Q. Yes.

17 A. Okay. Because the Democrat had just won in '08 and then it  
18 was a Republican before that, then a Democrat and then a  
19 Republican. So in that sense it was pretty -- pretty evenly  
20 split.

21 Q. And in reference to -- did you have a chance to vote on the  
22 voter ID bill this last session?

23 A. I did.

24 Q. And how did you vote?

25 A. Yes.

1 Q. Okay. Did you have a chance to vote on Chairman Solomons'  
2 sanctuary cities bill?

3 A. I did.

4 Q. And how did you vote on that?

5 A. I voted yes.

6 MR. BLEDSOE: Thank you. Pass the witness.

7 JUDGE GARCIA: Anyone else on the plaintiff's side?

8 JUDGE SMITH: Let me ask a question if I may.

9 Representative Gonzalez, you said you had worked with  
10 the Central Texas delegation. Did you -- were you involved in  
11 any discussions or were you aware of any concerns about Bell  
12 County, which is in Central Texas?

13 THE WITNESS: That's to my north?

14 JUDGE SMITH: Yes. And let me be more specific --

15 THE WITNESS: Okay.

16 JUDGE SMITH: -- because there's been some discussion  
17 and some testimony about whether there was a possibility of  
18 creating an opportunity district in Bell County perhaps because  
19 of the presence of Fort Hood or maybe not. But in any event  
20 there's been a substantial amount of discussion about that and  
21 since you have said that you were working with the Central Texas  
22 delegation I'm just wondering whether you -- if you don't know  
23 you can just tell us, but do you recall anything at all about  
24 Bell County and redrawing districts there?

25 THE WITNESS: No, sir, I don't. Our conversations were

1 more if you go to the west of Burnet County, headed that way  
2 through Sid Miller and through Harvey Hilderbran's kind of area  
3 and then more to the east. So you're talking about Central Texas  
4 east, counties going that way. So I don't know that we ever went  
5 north at all. All of our conversations took us central and kind  
6 of, you know, southeast.

7 JUDGE GARCIA: Anything else?

8 MS. COLMENERO: The State passes the witness.

9 JUDGE GARCIA: Thank you, Representative. You're  
10 excused.

11 THE WITNESS: Thank you very much.

12 JUDGE GARCIA: Have a good day. The State will call  
13 its next witness.

14 MR. COHEN: Your Honor, the State calls Dr. Norfleet  
15 Williamson Rives. And direct will be conducted by my colleague,  
16 John McKenzie.

17 JUDGE GARCIA: Okay.

18 MR. MCKENZIE: John McKenzie for the state of Texas.  
19 May it please the court.

20 NORFLEET W. RIVES,  
21 having been first duly sworn, testified as follows:

22 EXAMINATION

23 BY MR. MCKENZIE:

24 Q. Dr. Rives, please state your name for the record.

25 A. My name is Norfleet W. Rives, Jr. and I go by Bill.

1 Q. Okay. And can you describe for me briefly your educational  
2 background?

3 A. I did my undergraduate working in economics at the  
4 University of Missouri at Columbia. I have a master's and Ph.D.  
5 degrees in economics with a specialization in demography from  
6 Duke. And then I spent two years as a post-doctoral fellow in  
7 demography at the Office of Population Research at Princeton.

8 Q. Okay. And what do you do today?

9 A. I'm a senior lecturer in the department of finance in the  
10 Fisher College of Business at Ohio State University in Columbus.

11 Q. How long have you worked as a demographer?

12 A. 40 years.

13 Q. And what does a demographer do?

14 A. A demographer analyzes the size, the growth, the  
15 characteristics, the geographic distribution of population.

16 Q. And what kinds of methods do demographers use to make their  
17 conclusions?

18 A. There are methods that are peculiar to the field of  
19 demography and then there are statistical methods that are used  
20 by demographers to analyze data.

21 Q. Okay. And have you ever published any articles on  
22 demography?

23 A. Yes.

24 Q. And have you ever assisted state or local governments in  
25 drawing maps?

1 A. Yes.

2 Q. And have you ever offered expert testimony on demographics  
3 in a redistricting case?

4 A. Yes.

5 JUDGE RODRIGUEZ: There's no objection to  
6 qualification.

7 MR. MCKENZIE: Okay. In that case, Your Honors, I  
8 would like to have the Court designate Dr. Rives as an expert in  
9 the field of demography.

10 JUDGE GARCIA: He'll be so designated. Go ahead.

11 Q. (BY MR. MCKENZIE) Have you ever worked for the United  
12 States Census Bureau?

13 A. Yes. I was a consultant to them for much of the 1970s and  
14 was full time there for two years in the late 1970s.

15 Q. And what did you do for the United States Census Bureau?

16 A. I worked on the completeness of census coverage and I also  
17 worked on a companion project developing estimates and  
18 projections for state and local population.

19 Q. Okay. Based on your experience is accuracy important to the  
20 United States Census Bureau when it conducts its annual census?

21 A. It's centrally important.

22 Q. How accurate is the United States census generally speaking?

23 A. Well, considering that in April of 2010 there were just over  
24 300 million people in the United States, the Census Bureau made  
25 every conceivable effort working with other agencies, federal



1 agencies, state agencies, community groups and the like to count  
2 as many people as possible.

3           The census always works on the front end to try to  
4 improve the coverage. And given the level of effort and the  
5 resources available to the census I'd say they do a pretty good  
6 job for the -- for the resource base they have.

7 Q.   Okay. And there are claims in this case that the census  
8 undercounts Hispanics in Texas. Are you familiar with undercount  
9 problems with the United States census?

10 A.   Yes, I am.

11 Q.   Can you describe for the Court how the Census Bureau deals  
12 with undercount problems generally?

13 A.   The census -- the census prefers to -- to work proactively  
14 to try to improve the completeness of coverage of the census on  
15 the front end making sure that they've identified all the housing  
16 units, they have complete maps, they have interviewers if they  
17 need them who are trained. They have mail -- mailed out  
18 questionnaires in the right languages for potential respondents.  
19 So all of the effort goes in on the -- on the front end.

20           During the time the census is in the field there is a  
21 district office operation, there's a regional office operation  
22 and issues that arise in the field can be addressed at that  
23 point. Once the census comes out of the field for the most part  
24 the numbers are the numbers.

25 Q.   Okay. And so in your experience does the census ever make

1 adjustments on the back end?

2 A. No. Not broad undercount adjustments, but they do from time  
3 to time find processing errors that need to be addressed. And so  
4 there are -- there were small changes made to -- to select  
5 accounts over time.

6 Q. And why doesn't the census make adjustments after the fact  
7 for undercount issues?

8 A. There is no empirical evidence that is sufficient to  
9 persuade the Census Bureau that adjusting census counts across  
10 the United States -- not just in certain areas but across the  
11 United States there is no empirical evidence to persuade the  
12 bureau that by adjusting the numbers they are moving closer to  
13 the actual population.

14 Q. So is it fair to say that most of the efforts of the census  
15 in terms of accuracy are focused on coverage rather than  
16 adjustments after the fact?

17 A. Yes.

18 Q. Okay. If someone raises a coverage issue while the census  
19 is being conducted does the Census Bureau investigate these  
20 alleged coverage issues?

21 A. They're supposed to. There's an elaborate logistical  
22 operation that goes into the field in advance of the decennial  
23 enumeration, and there are people trained at the bureau and  
24 thousands of people who are hired otherwise to -- to collect the  
25 information and to deal with issues along the way.

1 Q. Are you aware if the Census Bureau has discovered a  
2 methodology more accurate than the one it already uses to count  
3 population in Texas?

4 A. No, I'm not aware of anything.

5 MR. GARZA: Your Honor, I object to this line of  
6 questioning. I don't think any party in this case has asked for  
7 an adjustment. This is not an adjustment case. We've not  
8 alleged that --

9 JUDGE GARCIA: We'll go ahead and hear it anyway.

10 Q. (BY MR. MCKENZIE) Are you personally aware of any method  
11 for counting Hispanics or making adjustments to Hispanic  
12 population counts that would be more accurate than the census?

13 A. No.

14 Q. In light of potential census undercount issues do you have  
15 confidence that the Texas legislature could underpopulate Texas  
16 House districts in such a way that voting power is divided more  
17 accurately than it is divided under the decennial census?

18 A. No. That would presume that the census numbers being used  
19 were something different from what's published and that would  
20 require some kind -- at least an implicit adjustment.

21 Q. Are Hispanics the only group of people that are undercounted  
22 in the census?

23 A. No.

24 Q. What other groups are undercounted?

25 A. Across the -- across the board. All racial and ethnic

1 groups, Latinos, blacks, Anglos, non-Hispanic white -- across the  
2 board people are missed in the census. Sometimes they are missed  
3 because their housing unit was missed. Sometimes they're missed  
4 because they don't want to be counted. I was missed in the 1980  
5 census. After spending an entire decade at the bureau working on  
6 completeness of coverage I didn't get a questionnaire. I had to  
7 call the district office to get one.

8 Q. Okay.

9 A. So it -- there were misses on the downside and in some cases  
10 people are double-counted and these are often picked up in  
11 processing the census, but -- but undercount happens.

12 Q. And what would you have to do to make sure that every group  
13 is properly adjusted?

14 A. You'd have to make adjustments across the board for the  
15 entire United States all the way down to the census block level  
16 so that there was a completely separate decennial census that  
17 would consist of revised estimates or revised numbers.

18 Q. Okay. And would the adjustments apply to non-racial groups  
19 as well?

20 A. To everything.

21 Q. Okay. Now, can you tell the Court who is responsible for  
22 collecting and publishing SSVR?

23 A. The Spanish surname registered voter data I understand come  
24 from the county election department. The Spanish surname coding  
25 is done with a list of Spanish surnames and a methodology that

1 the Texas secretary of state has adopted.

2 Q. And can you tell the court who is responsible for collecting  
3 and publishing HVAP and BVAP?

4 A. The Hispanic voting age population and black voting age  
5 population is produced in -- by the Census Bureau in the  
6 decennial enumeration.

7 Q. And can you tell the Court who is responsible for collecting  
8 and publishing HCVAP data?

9 A. The citizen voting age population generally, and Hispanic in  
10 particular, is now produced on the American Community Survey.

11 Q. Is it true that any citizenship estimate from the  
12 United States Census Bureau depends on the American Community  
13 Survey?

14 A. Would you repeat the question?

15 Q. Sure. Is it true that any citizenship estimate from the  
16 United States Census Bureau ultimately comes from the American  
17 Community Survey?

18 A. Yes. Starting -- starting with the 2010 round of the  
19 census, citizenship, which was on the 2000 census along with a  
20 number of other socioeconomic subject items, was relegated to the  
21 American Community Survey.

22 Q. For the record, in my questioning I might use the term ACS  
23 interchangeably with American Community Survey.

24 A. Okay.

25 Q. Can you explain census jurisdictions from largest to

1 smallest?

2 A. The Census Bureau uses a geographic hierarchy that combines  
3 statistical areas the Census Bureau designates for the collection  
4 of data with political subdivisions. And so the nation is  
5 divided into four regions, the four regions are divided into nine  
6 divisions, the nine divisions are further cut into 51 state  
7 areas, the states are divided into counties, the counties are  
8 divided into minor civil divisions or census county divisions  
9 depending on where you live, which state you're in. And those  
10 areas in turn are divided into census tracts which are supposed  
11 to be neighborhoods that are fairly permanent boundaries over  
12 time. The tracts are further subdivided into block groups and  
13 then the block groups are divided into blocks, which are the  
14 smallest geographic units for which census data are reported.

15 And then we separately report data for cities,  
16 incorporated places, school districts and the like that are not  
17 really subdivisions of the political hierarchy.

18 Q. Okay. And what is the DOJ special tabulation?

19 A. The Department of Justice, as I understand it, in 2010  
20 requested a special tabulation of the five-year 2005-2009  
21 American Community Survey--it's the latest five-year version of  
22 the survey available--to provide information at the block group  
23 level for citizen voting age population by race and Hispanic  
24 origin. This was information that was not otherwise publicly  
25 available. You can get -- you can get citizen voting age

1 population for total population but not for race and Hispanic  
2 populations off of the ACS summary file which is the major  
3 publicly-released database that is accessible through the Census  
4 Bureau's website. And so we have this tabulation of citizen  
5 voting age population down to the -- to the block group level.

6 Q. And based on your understanding is the DOJ special  
7 tabulation the data that the Texas Legislative Council uses?

8 A. That's what I understand, yes.

9 Q. Why is it important to get down to the block group level?

10 A. Well, it provides tremendous flexibility in drawing. There  
11 are boundaries that you want to follow that cut across counties  
12 in some cases and cities. And you want to be able to fine-tune a  
13 district plan as much as possible. And the block group gives you  
14 the smallest geographic unit for which citizenship data are now  
15 reported to help you do that.

16 Q. Okay. How did the Census Bureau collect HCVAP data prior to  
17 the American Community Survey?

18 A. In the 2000 census, and in previous censuses for much of the  
19 last half of the 20th Century, citizenship was one of the subject  
20 items on the Census Bureau's long form which is known as the  
21 Census Bureau's -- the census sample. And the citizenship  
22 information was provided by respondents in one of every six  
23 households nationwide. So it's about a 17 percent sample in the  
24 2000 census that was around 18 million households.

25 Q. Okay. And can you describe the process by which the Census

1 Bureau collects data for the American Community Survey?

2 A. The main function of the American Community Survey is to  
3 provide information on the characteristics of the population.  
4 The ACS doesn't really count people like the decennial census  
5 does.

6 The Census Bureau starts with independent estimates of  
7 total population, total housing units and then population by age  
8 group, by sex or gender, by race and by Hispanic origin. And  
9 these become control totals. These are outside the American  
10 Community Survey.

11 They are produced in each state typically by the state  
12 data center under an arrangement with the Census Bureau, which is  
13 called the Federal-State Cooperative Program For Population  
14 Estimates. All states participate in this and we get these  
15 independent estimates and they become control totals.

16 The ACS combines the characteristic detail. And so  
17 what you get out of ACS is the percent distribution of households  
18 by income, the percentage distribution of adult population by  
19 educational attainment and the like.

20 And to turn those into numbers of people you merge the  
21 percentage distributions from the ACS with the independent  
22 estimates of population and that's what produces the numbers that  
23 you see in ACS data files and reports.

24 Q. And I believe you testified earlier that the long form used  
25 to go to one out of every six households; is that correct?



1 A. Yes, that's correct.

2 Q. And how many -- what's the sampling rate for the American  
3 Community Survey?

4 A. The American Community Survey is -- is much smaller. The  
5 overall sampling rate, or sampling fraction is it's known, is  
6 about two and a half percent nationwide. The census targets  
7 about three million addresses each year and out of that they  
8 probably produce maybe two-thirds, two million  
9 completed -- completed household interviews. And so they have  
10 information on the people who live in those -- in those surveyed  
11 households. So the ACS sampling rate is maybe a seventh or an  
12 eighth of the sampling rate that was used in 2000.

13 Q. Okay. I believe you alluded to this earlier but I just want  
14 to make it clear. Is the ACS by count or percentages?

15 A. The ACS doesn't count people. The ACS produces information  
16 on characteristic detail. The American Community Survey is not  
17 part of the decennial census. It is a stand-alone federal survey  
18 program. It's one of a number of survey programs the Census  
19 Bureau runs during the year. It's arguably the best known survey  
20 program at this point, but it is completely separate from the  
21 decennial census.

22 Q. Okay. And does the ACS supply an estimate of the  
23 distribution of characteristics within a population?

24 A. Yes. That's its principal function.

25 Q. Are two of these characteristics race and citizenship?

1 A. They are.

2 Q. Can you briefly describe what sampling is?

3 A. Sampling is a procedure that involves collecting information  
4 on a group of people or a group of housing units perhaps in a  
5 larger population with the objective of making statements about  
6 the characteristics of the larger population which you infer from  
7 the sample. And if the sample is drawn correctly the sample will  
8 tend to emulate the characteristics of the population from which  
9 it's drawn and that becomes the basis for inferring those  
10 characteristics but only looking at possibly a very small  
11 fraction of the population.

12 Q. Does the accuracy of sampling increase based on the size of  
13 the sample?

14 A. That's what you would expect, yes.

15 Q. Okay. So just by way of example if you had a population of  
16 a thousand and a sample survey of 100 people and a sample survey  
17 of 10 people, the sample survey of 100 people would be more  
18 accurate?

19 A. Well, you would have more confidence in it because you would  
20 expect that the estimates you got from the sample of 100 would be  
21 closer to the unknown parameter, being the percent that you were  
22 trying to estimate for the larger population than the sample of  
23 just 10.

24 Q. Okay. Can you explain the averaging process that the  
25 American Community Survey does across the years to estimate

1 population and demographic information?

2 A. Okay. When the ACS first started earlier in the previous  
3 decade and moved to a national level, the objective was to  
4 produce annual updates because what we did with ACS was basically  
5 trade statistical precision, which we got out of the decennial  
6 census and the long form for the convenience of frequent updates.  
7 And there were a lot of people who want frequent updates. They  
8 don't want to wait every 10 years to get information.

9           And so for areas in excess of 65,000 total population  
10 the ACS determined or the Census Bureau determined that the ACS  
11 was large enough to produce reliable estimates, statistically  
12 reliable estimates for a wide range of characteristics. And so  
13 we started with annual data for areas of 65,000 or larger.

14           But a lot of people want information on smaller areas,  
15 all the way down to block groups. And so the Bureau decided that  
16 they could string together a series of annual samples that would  
17 give them enough household observations or cases to produce  
18 statistically reliable estimates for either small geographic  
19 areas or small populations in larger geographic areas.

20           And so if you are above 20,000 but less than 65,000,  
21 which covers a lot of cities in the United States, then you can  
22 get ACS estimates off of the three-year file which strings  
23 together, for example, 2007, 2008 and 2009 annual survey data.

24           And then people said, well, what about areas below the  
25 county level, what about the census tracts and block groups that

1 we love to work with? And the Bureau said, well, we believe that  
2 we can produce something that is reliable enough for you to use,  
3 but you'll have to make the call, by stringing together five  
4 years, five consecutive years.

5           And so what we have right now at the five-year level --  
6 we have 2005 to 2009. And what will happen is as we do the  
7 annual updates of ACS we will lop off the oldest year, which  
8 would be 2005, add the latest year which is almost as we speak  
9 2010, and we will go to the 2006 to 2010. Then we'll go to 2007,  
10 2011 and we'll keep rolling forward. The same thing will happen  
11 with the three-year data.

12 Q.    So when you speak about areas are you speaking of census  
13 jurisdictions? By that I mean when you say an area has to have  
14 65,000 people or more to get annual data do you mean a census  
15 jurisdiction or something else?

16 A.    Well, it would be whatever geographic area the Census Bureau  
17 reported data for. It could be a small county. It could be an  
18 incorporated place, a city. Whatever the geographic area is,  
19 whether it's a political subdivision or possibly a statistical  
20 area like a labor market area, we need 65,000 people to produce  
21 annual estimates.

22 Q.    Okay. And why does a smaller community need a five-year  
23 average?

24 A.    Would you repeat it again? I'm sorry.

25 Q.    I'm sorry. I'm speaking real quickly. Why do the smaller

1 communities need a five-year average?

2 A. Well, you want data for smaller communities and -- and  
3 subsets of those communities like block groups and census tracts.  
4 A lot of demographic work involves those areas not only in  
5 redistricting but in other applications. And so the Census  
6 Bureau made an effort to figure out how to produce that  
7 information so that demographers and other analysts would have it  
8 available.

9 Q. Is the Census Bureau concerned about sampling error in  
10 smaller communities?

11 A. Yes. The ACS publications -- whether it's hard copy or  
12 whether you get the data off of a file, the ACS estimates are  
13 always produced with a companion margin of error. There's no  
14 estimate that comes out of ACS, unless it's a control total, that  
15 doesn't have a margin of error associate with it. This is very  
16 different from what we've been accustomed to at these levels of  
17 geography in previous censuses.

18 Q. So is one of the -- is the sampling error concern addressed  
19 in part for smaller communities by taking survey data from  
20 several years to create a larger sample?

21 A. If you don't have enough household cases or observations in  
22 one year, but you could get to the threshold that the Census  
23 Bureau determines you need to get to in three years then we'll  
24 string together three consecutive samples.

25 And so your -- you give ground on the currency of the

1 data because if your annual survey is 2009, which today is still  
2 the most recent one out, you're going to have to step back to  
3 three years which is 2007 to 2009. So you're going to give  
4 ground on the currency of the information, but you'll be able to  
5 get an estimate that the Census Bureau believes is statistically  
6 reliable.

7 Q. Okay. There's been some testimony in this case that the  
8 2005 through 2009 ACS HCVAP data actually reflects a 2007  
9 estimate of data; is that correct?

10 A. No. And it's not my judgment. I -- I might be inclined to  
11 say it's the midpoint. What the heck. But the Census Bureau has  
12 come forward and said these -- these five-year estimates, which  
13 are called period estimates, represent averages over the five  
14 years. So when you use them you want to carry forward the -- the  
15 years that define the period. And they specifically use in their  
16 technical documentation the example of 2005, 2009 to say there  
17 might be a tendency to attribute all of this to 2007. We  
18 discourage that.

19 Q. What is the reliability of trends in ACS data?

20 A. Trends can be assessed most easily using the annual survey  
21 data for these areas above 65,000, but once again, even though  
22 the areas are larger, they're still sample-based estimates. They  
23 still carry margins of error. They may not be as large but  
24 they're still there.

25 And what you have to worry about in using the annual

1 data to assess trends is the annual fluctuations in these  
2 estimates that could be due to sampling error. And so there are  
3 statistical tools that will allow you to try to weed out the  
4 sampling error to say do these annual fluctuations really reflect  
5 an underlying longer-term trend or is this just the year-to-year  
6 noise in the data that's produced by random sampling.

7 Q. And does the reliability of trends fluctuate depending on  
8 the length of time that the data covers? So, for instance, would  
9 a five-year data sample be less reliable for trending purposes  
10 than a one-year data sample?

11 A. Well, the three-year and five-year samples are sort of like  
12 moving averages the way they work. And the problem with both of  
13 them on the downside is that they obscure the year-to-year  
14 changes that you might be interested in, but that's the price you  
15 pay to get the estimate.

16 Q. Okay. And I believe you testified earlier that there are  
17 margins of error in the American Community Survey. Do you know  
18 what the ranges are for these margins of error?

19 A. Not specific numbers. The margins of error, which are a  
20 reflection of the degree of sampling error to which an estimate  
21 is subject, are larger the smaller the geographic area you work  
22 in or the smaller the population you work in. And I make that  
23 distinction because you can have a small population in a large  
24 geographic area, but it's really a function of the size of the  
25 population. So the margins of error go up as you step down in

1 size of population and in geographic area.

2 Q. Okay. Does the accuracy of American Community Survey's  
3 demographic data vary depending on the size of the population to  
4 which the demographic data applies?

5 A. Yes.

6 Q. So is the HCVAP data fairly accurate at the statewide level?

7 A. If it's going to be accurate at any level it's going to be  
8 at the statewide level. There will be margins of error for Texas  
9 as a whole. And the Bureau publishes these margins of error with  
10 the state estimates to remind you that these are sample estimates  
11 and to hope that you will factor in these margins of error in  
12 your analysis. The margins of error at the state level are  
13 relatively small.

14 Q. Okay. And would you feel confident in the HCVAP data for a  
15 population of 698,000, which is approximately the size of the  
16 ideal congressional district in the newly enacted congressional  
17 plan?

18 A. It's 10 times larger than the 65,000 threshold, so the  
19 margins of error are -- should be relatively small and the  
20 estimates should be well within the range that the bureau  
21 considers statistically reliable.

22 Q. Okay. And would you feel confident in the HCVAP data for a  
23 population of 167,000 which is approximately the ideal House  
24 district size?

25 A. Somewhat less confident than the previous one, but still the



1 total population is well above the 65,000 threshold.

2 JUDGE GARCIA: Why are you less confident?

3 THE WITNESS: Well, there's going to be a difference in  
4 the extent of the sampling error between an area that has 700,000  
5 people and an area that has 165,000 people. But both of those  
6 areas were larger than the 65,000 threshold so you would expect  
7 to see a larger margin of error for the smaller district. And  
8 it's something you need to pay attention to, but you may find  
9 that that margin of error is acceptable for your work.

10 JUDGE GARCIA: All right. Go ahead.

11 Q. (BY MR. MCKENZIE) If I were to tell you that there are  
12 approximately 8400 precincts in Texas for an average precinct  
13 size of approximately 3,000 people would you feel comfortable  
14 with the accuracy of the HCVAP data for the population of an  
15 average precinct?

16 A. No.

17 Q. Okay. So if a district in a map were to split a precinct,  
18 would it be difficult to calculate the effect of this split on  
19 HCVAP for the entire district?

20 A. It would be because the only -- the smallest geographic  
21 building blocks you have directly from the ACS with the  
22 citizenship data are the block groups. And so if you split an  
23 area you're going to have to work with the block groups to try to  
24 match the pieces of the area that you've split and that's -- that  
25 can be challenging. Doable but challenging.

1 Q. Are you aware of any published demographic reports or  
2 studies that are both current and contain HCVAP estimates that  
3 are more accurate than the American Community Survey?

4 A. No.

5 Q. In light of the potential inaccuracies with the ACS data do  
6 you think it would be prudent for the purposes of redistricting  
7 for legislators and their staff to consult SSVR in addition to  
8 HCVAP when attempting to create a district where Latinos have an  
9 opportunity to elect a candidate of choice?

10 A. When demographers prepare estimates of population and there  
11 is some uncertainty surrounding the initial estimates you  
12 prepare, we always look at alternatives.

13 And in the redistricting work that I've done the  
14 Spanish surname registered voter file has always been there to  
15 provide a comparison with the understanding that Hispanic and  
16 Spanish surname are not the same thing. And we've -- we've  
17 always looked at -- at the Spanish surname numbers in relation to  
18 the -- in relation to citizen voting age population numbers.

19 So they're a great resource. They're not sample based.  
20 They're field counts. And because they have address  
21 information -- addressing information on them you can geocode  
22 them to census blocks, so you've got a lot of flexibility in  
23 using those numbers.

24 Q. Based on your review of other expert reports do you think  
25 that these reports properly rely upon ACS data?

1 A. No, I don't. No, I don't. I think when you're using  
2 ACS -- ACS data for comparison purposes you need to be aware of  
3 the impact of margin of error on the comparisons that you're  
4 making.

5 Q. And can margin of error be pretty dramatic in some cases?

6 A. Down at the block group level the margins of error are huge.

7 Q. Okay.

8 A. And the Census Bureau has decided to publish those data in  
9 the DOJ file and let the users decide whether the range of error  
10 that's created by sampling at that level is acceptable or not.  
11 The Bureau has not come out and said, you know, we're not going  
12 to publish it if the margin of error is above this number. They  
13 have other criteria for determining whether to release the  
14 information to the public.

15 But once released, if the margin of error is large, and  
16 I'm just looking for a ballpark estimate, that may be fine with  
17 me. But if someone else is looking for a more precise measure,  
18 that margin of error may be too large. So it really is up to  
19 the -- to the analyst or to the demographer and to the particular  
20 application of the data as to whether the margins of error for  
21 these small geographic units are too big to be useful.

22 Q. Okay. Is it possible for the margin of error in some cases  
23 to exceed the mean estimate?

24 A. It can.

25 Q. And can you describe --

1 A. When that happens you wind up with negative population and  
2 this is something that -- you know, if you had an estimate of 500  
3 and a margin of error of 600 the lower limit is a minus 100.  
4 It's just something that the Census Bureau was aware of and is  
5 working on and will come forward with recommendations on how to  
6 deal with this.

7 But for the block group data, especially in the DOJ  
8 file -- and this is not DOJ's issue. This is the citizen voting  
9 age population out of ACS for these really small samples, really  
10 small samples where the citizen voting age population over a  
11 five-year period for a block group might be based on 15 or 20  
12 responses. These are really small samples, but, you know, they  
13 pass muster with the Bureau, and the Bureau just says you decide  
14 if they're acceptable for your purposes.

15 Q. And we've heard testimony that a net migration of Latino  
16 non-citizens after the great recession of 2008 may have resulted  
17 in an oversampling of non-citizens in the pre-2008 years. Is  
18 that correct?

19 A. Are you referring to the -- to the recession and to the  
20 displacement that was caused?

21 Q. Yes. That basically there's been a big demographic change  
22 after 2008 that may have resulted in inaccurate citizenship  
23 figures because the ACS data goes back to 2005.

24 A. Right. This was probably the most challenging census that  
25 this country's ever taken. And at the same time you've got this

1 five-year ACS straddling one of the worst set of economic  
2 conditions in a generation.

3           So you've got natural disaster disruptions from Katrina  
4 and other storms. You've got the recession which emptied out a  
5 big piece of southern Louisiana. Moved many of these New Orleans  
6 residents to South Texas, Houston in particular I remember and  
7 certainly other areas. Just tremendous disruptions.

8           And then you've got the economy which has produced  
9 foreclosures, people who are out of work and can't find jobs,  
10 younger people of voting age who can't afford college because  
11 it's too expensive, people who can go to college, graduate and  
12 can't find a job. It is the most challenging set of  
13 socioeconomic circumstances that has ever confronted the  
14 decennial census.

15           And I have heard and read in popular press accounts of  
16 these concerns. If you Google this you'll read about it. People  
17 are concerned about this and I think rightfully so. It's a fair  
18 concern. It's a fair concern to wonder what impact these  
19 disruptions have had on the counting process both in the survey  
20 and in the -- and in the census itself.

21           But it's one thing to be concerned about it and a very  
22 good thing to be concerned about it. It's another thing to turn  
23 what amounts to an assertion or a hypothesis into a testable  
24 outcome, to say here is empirical evidence of this and not just  
25 what is sometimes anecdotal. But the concern is -- is -- is well

1 placed and I think very well intended.

2 MR. MCKENZIE: Pass the witness, Your Honor.

3 EXAMINATION

4 BY MR. GARZA:

5 Q. Dr. Rives, good morning.

6 A. Good morning.

7 Q. Are you familiar with the study that was done by the --  
8 commissioned by and conducted by the Bureau of the Census  
9 regarding the undercount for the 2000 census?

10 A. For the 2000 census. I'm sure I ran across it, but I'm not  
11 recalling the particular study at this point.

12 Q. So you don't recall that it was a fairly comprehensive study  
13 that initially was -- the census was contemplating a potential  
14 adjustment because of the undercount which was later -- that  
15 decision was later scrapped, but the outcome of that study was  
16 released. Do you recall that?

17 A. I do recall the potential adjustments, I do recall it being  
18 scrapped and I'm sure the study you're referring to was certainly  
19 part of that avenue, so -- but I -- I didn't look at the study.  
20 I don't recall the particular details of it.

21 Q. And do you recall that the study revealed that there had  
22 been a substantial undercount of Latino population and an  
23 overcount or a double count of non-Hispanic white population?

24 A. I mean, that's an outcome. I don't recall or don't know  
25 what methodology was used to establish that.

1 Q. All right. As I understood your testimony, Dr. Rives,  
2 your -- and correct me if I'm wrong because I might be wrong. I  
3 was having difficulty sort of meshing the two together, but it  
4 sounds like you're suggesting that in evaluating the citizen  
5 makeup of a district and in particular the Hispanic citizenship  
6 of a district that the court ought to combine or that the parties  
7 should combine or that the experts should have combined some sort  
8 of weaving together the data from the ACS and SSVR?

9 A. I think you need -- I think you need to start with the ACS  
10 because that's a direct measure of citizenship when you're  
11 talking about a pool of eligible voters. Because of the issues  
12 with ACS, the margins of error for these small geographic -- even  
13 when you put block groups together the margins of error are still  
14 there.

15 I think that it's worth looking at Spanish surname  
16 registered voters because it is a -- it is a good source of data.  
17 It's not sample. It's a field count. It can be fine-tuned for  
18 small areas. And it is not an alternative to ACS, but I think it  
19 is an alternative source of information that you should look at  
20 to see whether that can shed any light on concerns you might have  
21 about the -- about the CVAP data.

22 I think as a demographer, you know, I would  
23 be remiss -- most demographers would be remiss if that data were  
24 there and we didn't look at it. We've always relied on the  
25 Spanish surname registered voter data as a sometimes -- usually

1 as a fallback to say, well, let's look at that.

2 Q. And you are aware, Dr. Rives, that, for instance,  
3 Dr. Kousser looked at a number of factors before he made any  
4 determinations about whether a particular district was a minority  
5 opportunity district?

6 A. You're referring to which report now?

7 Q. Dr. Kousser. You didn't review Dr. Kousser's report?

8 A. No, I didn't. I didn't.

9 Q. Now, you indicate that SSVR, the Spanish surname voter  
10 registration data, is a good source of data, but you've testified  
11 before federal courts challenging the accuracy of the -- of the  
12 Spanish surname voter registration data that's produced by the  
13 secretary of state; isn't that correct?

14 A. That's correct. There are -- there were some  
15 definition -- not definition issues. Well, there's a difference  
16 between Spanish surname and Hispanic.

17 Q. I understand.

18 A. And then there are issues tied to the data of a file, has  
19 the file been purged, how many inactive voters and so on. So  
20 there are -- I'll call them accounting issues with the file that  
21 can limit its usefulness and -- and you need to look at that,  
22 yes.

23 Q. All right. And in prior testimony in other courts you've  
24 indicated that before you use that data you ought to geocode it  
25 to test its reliability; is that correct?



1 A. That's correct.

2 Q. And do you know if the state in this case has geocoded any  
3 of the SSVR data or any of the parties have geocoded to test its  
4 reliability here?

5 A. I'm unaware of that. I wasn't asked to look into any of  
6 that.

7 Q. I understand, but you did make a statement that you didn't  
8 feel like the experts had properly used or relied on ACS in this  
9 case, so I was assuming that you were talking about the blending  
10 of SSVR data.

11 A. No. I was really referring to the use of ACS data to  
12 compare characteristics of Latino and non-Latino populations.

13 Q. And, in fact, you were not offering an opinion about whether  
14 the ACS data understates Hispanic citizen voting age population  
15 in the state; is that correct?

16 A. That's correct.

17 Q. Okay. And you've done no independent study of that as well;  
18 is that correct?

19 A. Not for this matter, no.

20 MR. GARZA: Okay. Pass the witness.

21 EXAMINATION

22 BY MR. HICKS:

23 Q. Dr. Reeves, Renea Hicks.

24 A. Good morning.

25 Q. Good morning. With regard to the HCVAP, to use the

1 shorthand term, versus or in correlation with SSVR you've not  
2 undertaken any study to see whether there was any statistical  
3 correlation between those two, have you?

4 A. Between the --

5 Q. HCVAP.

6 A. -- HCVAP and the Spanish surname registered voter --

7 Q. At the precinct level.

8 A. Not for this matter, and I can't recall doing that for other  
9 matters.

10 Q. So you're aware of no correlation?

11 A. I am -- I'm aware of no correlation, no.

12 MR. HICKS: No further questions.

13 JUDGE GARCIA: Anyone else from the plaintiff's side?  
14 The State, Mr. McKenzie?

15 MR. MCKENZIE: No further questions.

16 JUDGE GARCIA: Thank you, Doctor. You're excused.  
17 Thank you for being here today.

18 Does the State have another witness?

19 MR. COHEN: Your Honor, we have one further witness.  
20 It's going to take a few minutes to set up. We need a brief  
21 recess.

22 JUDGE GARCIA: Of course. Let's do that.

23 (Recess.)

24 JUDGE GARCIA: All right. You may be seated. And  
25 let's begin.

1 (Witness sworn.)

2 MS. JORDAN: At this time the defense would like to  
3 offer into evidence Defense Exhibits 56, which is the slides  
4 regarding Texas's tracking of participation goals in higher  
5 education among total Hispanic and African Americans.

6 JUDGE GARCIA: Any objection?

7 MS. PERALES: Yes, Your Honor, to the black and white  
8 copies which are misleading in terms of the trend line and  
9 achievement line, but if the defense counsel is willing to offer  
10 them in color in all of the copies we do not object.

11 MS. JORDAN: Your Honor, we do have them in color and  
12 we do plan to offer them in color.

13 JUDGE GARCIA: Okay. All right.

14 MS. PERALES: Thank you.

15 MS. JORDAN: The State would also offer into evidence  
16 Defendant's Exhibit 57, which is Closing the Gap's progress  
17 report 2011.

18 MS. PERALES: No objection.

19 JUDGE GARCIA: All right. That's in.

20 DAVID GARDNER,  
21 having been first duly sworn, testified as follows:

22 EXAMINATION

23 BY MS. JORDAN:

24 Q. Good afternoon, Mr. Gardner. Would you state your full name  
25 for the record, please.

1 A. David Gardner.

2 Q. And how are you employed?

3 A. I work at the Texas Higher Educational Coordinating Board.

4 Q. Can you describe what the Texas Higher Education  
5 Coordinating Board is?

6 A. The Coordinating Board was designed to provide coordination  
7 for higher education in the state of Texas, to be certain that  
8 all regions of the state were considered in terms of having  
9 access to higher education, that the resources of the state are  
10 used appropriately and that no single institution really  
11 overrides all the others in terms of resources.

12 Q. And when was the coordinating board created?

13 A. 1965.

14 Q. What is the mission of the coordinating board?

15 A. The mission of the coordinating board is really to provide  
16 access to education to all people of Texas with the understanding  
17 that -- that, you know, access to mediocrity is not true access.  
18 So the idea is to provide access to all the people of Texas, so a  
19 good quality education.

20 Q. And does that include to Hispanics, to the Hispanic  
21 population?

22 A. Absolutely.

23 Q. And access to the African American population also?

24 A. Absolutely.

25 Q. What is your current position with the coordinating board?

1 A. I'm deputy commissioner for academic planning and policy.

2 Q. I'm sorry?

3 A. Deputy commissioner for academic planning and policy.

4 Q. How long have you held that position?

5 A. I believe five years, six years.

6 Q. And how long have you been with the coordinating board in  
7 total?

8 A. Since 1985.

9 Q. Can you describe your educational background for the Court?

10 A. I have a bachelor's from the University of Houston and a  
11 master's and Ph.D. from Texas A&M University.

12 Q. Mr. Gardner, do you have an opinion as to whether minorities  
13 are participating in higher education at levels higher than they  
14 were in 2000?

15 A. We've had an increase of 87.5 percent in participation by  
16 Hispanics since 2000 and an increase of 78.6 percent in  
17 African Americans since the year 2000.

18 Q. So we're going to talk about the basis for that increase.  
19 But before we do that could you --

20 JUDGE RODRIGUEZ: I'm sorry. What does that increase  
21 mean? Is that students enrolling or is it just matriculation or  
22 graduation rates or what is that?

23 JUDGE GARCIA: It's the raw numbers.

24 THE WITNESS: It's the number of increased students  
25 since 2000. So if you look at the Hispanic participation in 2000

1 we have 87.5 percent more Hispanics enrolled in 2000 than we  
2 did -- in 2010 than we did in 2000. And for African Americans we  
3 have 78.6 percent more African Americans enrolled than we did in  
4 2000, so this is not related to graduation rates.

5 JUDGE RODRIGUEZ: Okay. Thank you.

6 Q. (BY MS. JORDAN) And we are going to talk about that in more  
7 detail, but before we do I'd like to ask, did the coordinating  
8 board prepare a report in this case?

9 A. We did.

10 Q. Okay. And does that report discuss the history of the  
11 coordinating board and the efforts since its inception to improve  
12 the educational levels of Texas students including those of  
13 Hispanic and African American decent?

14 A. It does.

15 Q. Okay. Can you turn to Volume 4, exhibit notebook, and it's  
16 Exhibit 20, I believe.

17 A. Yes.

18 Q. Is that the report that the coordinating board prepared --  
19 prepared in this case?

20 A. It is.

21 Q. And does your CV also appear at that tab?

22 A. It does.

23 Q. Okay. Now, I don't intend to cover all of the programs that  
24 are contained within the report, but I will ask that you discuss  
25 some of the more important or crucial programs that the

1 coordinating board has developed that has an impact on the  
2 Hispanic and African American populations in terms of higher  
3 education. Okay?

4           So let's talk about closing the gaps. Can you tell the  
5 court what is meant by closing the gaps?

6 A. Closing the gaps means that the state needs to close the  
7 difference of participation levels between the Hispanic  
8 population, African American population and the Anglo population  
9 in terms of raising participation to the same levels.

10 Q. When was that program initiated?

11 A. It was adopted by the board in October 2010.

12 Q. The program?

13 A. I'm sorry. October 2000.

14 Q. Okay. October 2000. All right. Now, if you turn to  
15 Exhibit 57 --

16           JUDGE GARCIA: I don't have that.

17           MS. JORDAN: May I approach the bench?

18           JUDGE GARCIA: Sure. If you'll give them to Jessica,  
19 please.

20 Q. (BY MS. JORDAN) Mr. Gardner, if you'll turn to table A-1,  
21 which is located at the appendix of that progress report. Now,  
22 can you describe or explain for the Court what appendix A-1  
23 shows?

24 A. Appendix A-1 shows the enrollment levels at years from 2000  
25 through 2010. It shows it by the public two years, by public

1 four years and independent institutions. It also shows it  
2 separated by ethnicity so you would see the African American  
3 enrollments at public two years, public four years and  
4 independents for each of those years as well as Hispanics and  
5 whites.

6 Q. So in 2000 what was the Hispanic enrollment number?

7 A. 237,394.

8 Q. And the enrollment number we're talking about is for public  
9 and higher education institutions; is that correct?

10 A. That number also includes independent colleges, the total  
11 number, so it includes 25,271 students at independent colleges.

12 Q. Okay. So you said that in 2000 the Hispanic enrollment  
13 number was 237,394. By 2010 what is the number of Hispanic  
14 enrollment?

15 A. 445,183.

16 Q. So what was the percentage of increase between 2000 and 2010  
17 for Hispanic Students?

18 A. 87.5 percent.

19 Q. Okay. And for African Americans, what was the enrollment  
20 rate in 2000?

21 A. Well, the enrollment --

22 Q. I'm sorry. The enrollment number.

23 A. The enrollment was 108,463.

24 Q. And what was the enrollment number in 2010?

25 A. 193,734.



1 Q. And what was the percentage of increase between 2000 and  
2 2010 for African American students?

3 A. 78.6 percent.

4 Q. Okay. So what does this data tell us in terms of  
5 enrollments for African Americans and Hispanics in higher  
6 education?

7 A. Well, in terms of numbers we've had really a dramatic  
8 increase in enrollments and also in percentage increase, so both  
9 the numbers and percentage.

10 Q. And why is enrollment important?

11 A. Enrollment is really vital to the interest of the state and  
12 all the individuals in Texas. So one of the reasons that we  
13 created Closing Gaps is it became evident that we didn't have  
14 full participation in higher education. And for Texas to have a  
15 bright future it was clear and it was definitely part of the  
16 mission of the coordinating board that we do everything we could  
17 to ensure that all people in the state were participating.

18 We knew that there were demographic changes. We had  
19 seen the changes in the Hispanic population. We knew that if we  
20 did nothing we would have about 200,000 more students by 2015,  
21 but that would actually mean that we would have fewer people  
22 participating in higher education and our income levels would go  
23 down. We knew that it was important that we -- as we add each  
24 generation to college the succeeding generations are more likely  
25 to participate, to be fully empowered in the state. So it was

1 really critical that we make sure that everyone in the state had  
2 the opportunity to participate and succeed in higher education.

3 Q. And why is it important for Texas if the Hispanic population  
4 and African American populations participate in higher education?

5 A. It's important for the same reasons. We need to really have  
6 everyone empowered in the state. We need people to be educated  
7 so they can participate in the economy, to have good jobs, to  
8 participate in all aspects of society. The Hispanic population  
9 was growing when we began the plan, and about six years into the  
10 plan with new demographic projections we saw that the Hispanic  
11 population would be the majority by 2015.

12 We needed to -- so we adjusted the goals of the plan  
13 from an increase of 500,000 students to over 600,000 students  
14 because we knew that if we didn't adjust the goal that we really  
15 wouldn't have the people of Texas in place that we needed to be  
16 to be a successful -- a successful state.

17 Q. So is it fair to say that because Texas -- the demographics  
18 showed that Hispanics are going to be, in 2015 or close to it,  
19 the majority of Texans at that time that we make sure that we  
20 have an educated population?

21 A. Absolutely.

22 Q. And what has the coordinating board done to ensure that  
23 Hispanics are entering and participating and succeeding in higher  
24 education?

25 A. I do think that the first step was really establishing

1 Closing the Gaps to begin with and staying the course and  
2 reexamining it. So if you would listen to us as we went around  
3 the state, we spent -- we spent really more than a decade  
4 educating the state about the importance of participation and  
5 having all -- all people participate in higher education.

6 I think it's encouraging that when we go into various  
7 groups that they actually use the phrase "closing gaps" and know  
8 how important it is to close the gaps and so that all people of  
9 Texas are participating.

10 And then we're constantly measuring ourselves. We're  
11 looking at the numbers. We're seeing where we were succeeding  
12 and making adjustments as best as we can.

13 Now, shortly before establishing Closing the Gaps the  
14 state established the TEXAS Grants, which have been very  
15 important because it provides the means for students to go to  
16 college regardless of their ability to pay. And we did not have  
17 a similar program in place for that. The state has increased  
18 those dollars available.

19 The challenge has been as we've increased the  
20 participation --

21 JUDGE RODRIGUEZ: I thought TEXAS Grants were cut this  
22 last legislative session?

23 THE WITNESS: I'm sorry?

24 JUDGE RODRIGUEZ: I thought TEXAS Grants were cut this  
25 last legislative session.

1 THE WITNESS: TEXAS Grants weren't increased at the  
2 level we needed to to keep up with the participation level.

3 JUDGE RODRIGUEZ: Well, wasn't there an actual cut of  
4 about 33 percent?

5 THE WITNESS: I don't recall the exact number, but we  
6 didn't have as much as we proposed. One of the challenges with  
7 the grants is to keep up with the increased participation levels.  
8 And as we vastly increased the numbers of students in higher  
9 education the legislature has had some difficulty keeping the  
10 dollars in line with the increases in enrollments.

11 JUDGE RODRIGUEZ: So if we look at pages 23 and 24 of  
12 Exhibit Number 57, although there's been enrollment increases of  
13 both Hispanics and blacks, retention and graduation rates are  
14 off?

15 THE WITNESS: The retention and graduation rates have  
16 flagged for a number of years. They are improving but they're  
17 not improving fast enough.

18 JUDGE RODRIGUEZ: And so you're not going to be on  
19 target?

20 THE WITNESS: That's our concern. That's why we have a  
21 number of programs in place with -- we've worked to establish  
22 bridge programs across the state which -- at two different  
23 levels. One is between the junior and senior years of high  
24 school to help students be better prepared by their senior year.  
25 We've also established bridge programs in the freshman year or --

1 prior to the freshman year of college similar to the boot camp  
2 program that Prairie View A&M has in place that has been so  
3 successful.

4           We're closing the gaps -- one of our strategies was  
5 that we needed to -- all citizens in Texas to have access and  
6 enroll in the college prep curriculum in high school. And we're  
7 seeing a marked difference in that so that students entering  
8 college are better prepared. A year ago 90 plus percent of the  
9 students enrolling in our universities had completed the  
10 recommended high school program and we're pleased to see that  
11 more than 80 percent of those students enrolling directly from  
12 community colleges from high school had completed the recommended  
13 high school program. We hadn't expected to see that impact at  
14 that point.

15           But that was a program intended to make sure that prior  
16 to higher education the students had the preparation to be  
17 successful in higher education and ultimately improve retention  
18 rates and graduation rates.

19 Q.    (BY MS. JORDAN) You said that the coordinating board  
20 actually changed its goals at some point. Can you tell the Court  
21 about what that -- what you meant by that?

22 A.    Yes. One thing the board has done is that they get a report  
23 on one aspect of closing gaps at each of its quarterly meetings.  
24 And the original idea was that you would review all the goals and  
25 targets to make sure they still make sense as we went forward.

1 But when we received an updated population forecast from the  
2 state demographer--and I'm not sure of the precise date,  
3 somewhere between 2005 and 2007--the population forecast for  
4 Texas had increased a great deal and the vast majority of that  
5 increase was Hispanics.

6 So the board looked at its goal to have 5.7 percent of  
7 the population participating in the higher education and agreed  
8 that for the board to achieve its ultimate goal of closing the  
9 gaps that they needed to raise that goal to over 600,000.

10 Q. Now, if you go back to table 1 of Exhibit 57, in 2015 what  
11 is the goal that the coordinating board set in terms of the  
12 enrollment numbers for Hispanics?

13 A. It's 676,100.

14 Q. And for whites what is the CTG goal for 2015?

15 A. 671,300.

16 Q. So is it the coordinating board's goal to make sure that  
17 Hispanics by 2015 are actually enrolling in larger numbers than  
18 whites by that time?

19 A. Yes.

20 MS. JORDAN: Okay. I'd also like to show Defendant's  
21 Exhibit 56 on the ELMO.

22 Q. (BY MS. JORDAN) Mr. Gardner, can you describe for the Court  
23 what Defendant's Exhibit 56 -- which is being shown to the Court  
24 through ELMO, what does this show?

25 A. This shows the actual -- excuse me, the target trend line

1 for overall participation goals. This includes all groups and it  
2 shows our actual -- where we actually stand in terms of  
3 participation at this time.

4 Q. So is the target above or below what the actual -- what the  
5 actual numbers are? I believe --

6 A. I'm trying to make sure I'm reading the lines correctly, but  
7 the actual is -- is below where we hope to be, but we really have  
8 just a little under 29,000 a year that we need to increase to  
9 reach our participation target.

10 MS. JORDAN: May I approach the witness, Your Honor?

11 JUDGE GARCIA: Yes, you may.

12 Q. (BY MS. JORDAN) I'm going to show you these copies.

13 A. Thank you. Ah, okay. We've actually exceeded our target.  
14 I'm sorry. We've primarily focused on our Hispanic numbers and  
15 African American numbers.

16 Q. Right. So statewide the coordinating board has actually  
17 exceeded its target goal, correct?

18 A. Correct.

19 Q. Let's go to the next slide. So in terms of Hispanic  
20 enrollment can you tell us what this slide shows?

21 A. It shows that we've fallen below our trend line. And I  
22 think this reflects that increase in demographics that we  
23 reacknowledged by increasing our goal. And so between now and  
24 2015 we -- we need to increase our Hispanic participation by  
25 about 52 percent.

1 Q. Now, if the coordinating board had maintained the original  
2 goal, would the coordinating board have gotten closer to the  
3 target at this point?

4 A. Considerably -- considerably closer.

5 Q. Okay. Now, can you tell the Court do you understand why  
6 there is this difference between meeting the actual goal -- I  
7 mean meeting the goals by the coordinating board?

8 A. Well, I mean, it would have been helpful had we known that  
9 the increase was going to be much more dramatic in terms of  
10 population five or six years earlier because we could have  
11 pursued additional resources and done some things earlier than we  
12 have at this point.

13 I can't say whether we would have had access to those  
14 resources or not, but there is -- participation  
15 reflects -- reflects both, you know, first-time enrolling  
16 students, getting students back in school and keeping students in  
17 school through degrees. So when the question was asked earlier  
18 about participation and graduation rates, that affects this  
19 number.

20 And so we haven't made as much progress with success  
21 once students are in college as we would have liked. So I think  
22 when a number of our programs are more fully developed such as  
23 the bridge programs, our improvement in developmental education  
24 that we're currently working on to -- to get more students  
25 through college that weren't as well prepared when they entered,



1 that we should see an improvement in this.

2 Q. And certainly this graph shows that the Hispanic enrollment  
3 numbers are increasing; is that correct?

4 A. Oh, yes. Yes.

5 Q. And they are -- to your knowledge those numbers will  
6 continue to increase, there's no signs that they're going to  
7 decrease in the near future, correct?

8 A. No.

9 Q. Okay. Next slide.

10 JUDGE RODRIGUEZ: That was kind of an ambiguous answer.  
11 There are no signs or no, they're -- I'm not sure the record is  
12 clear on what your answer is.

13 THE WITNESS: Well, there are several factors. One,  
14 the Hispanic population is increasing so I would expect even if  
15 we could continue with our current levels of participation that  
16 we would have increased enrollments.

17 Two, improving Hispanic participation is a major focus  
18 of the board. We have a number of efforts underway and --  
19 underway such as our Generation Texas campaign that we're trying  
20 to be sure that the communities across Texas really know the  
21 importance of first going to college, but then be prepared for  
22 college before you get there so you're more likely to succeed.  
23 The board continues to focus on trying to find ways to enable  
24 students financially.

25 JUDGE RODRIGUEZ: And that's what I wanted to focus on.

1 I think your response gave the impression -- you said no,  
2 enrollments had not decreased, but given -- I thought the numbers  
3 for this latest academic cycle was that because of the financial  
4 crisis enrollments are decreasing across all sectors. Am I  
5 wrong?

6 THE WITNESS: We don't have those reports yet. I have  
7 seen mixed reports from -- from different schools. We've seen  
8 scattered reports from some schools that enrollments are  
9 increasing and some are decreasing, but we don't have those final  
10 reports yet. They'll be coming perhaps this week or next week.  
11 I'm not sure when those arrive.

12 But early reports are difficult because students enroll  
13 in school and sometimes drop later and some schools enroll late,  
14 so we have to wait a while before we have official numbers on  
15 that, but we are hearing that we are continuing to have increases  
16 at least statewide.

17 Q. (BY MS. JORDAN) But sometimes when the economy is bad and  
18 there are no jobs a lot of people turn to school and start  
19 enrolling in school in high numbers; isn't that correct?

20 A. That is, in fact, correct. In the early years of 2000 when  
21 we had an economic downturn we had a large enrollment increase.  
22 And we looked at that and we found a couple of things happening.

23 Number one, students were going to school because there  
24 were no jobs; students who were returning to school who lost  
25 their jobs. We had a fair number of students who appeared to

1 have been working for the tech industry who left school before  
2 their degrees who came back. We actually had an increase in  
3 enrollments both in the freshman level and the junior and senior  
4 levels.

5           Then the last two years we had dramatic enrollment  
6 increases during a time of, you know, economic difficulties for  
7 the state.

8 Q.    (BY MS. JORDAN) Okay. Now this slide. Can you describe  
9 this slide for the Court, please?

10 A.    Yes. This shows the trend line for the African American  
11 enrollment and the fact that we've had a spike in  
12 African American enrollments, we've been pleased to see, in the  
13 last three years.

14 Q.    So for African Americans the actual numbers are actually a  
15 lot higher than the target goal, correct?

16 A.    Yes, they are.

17 Q.    For African Americans.

18           Next slide. Can you describe this slide for the Court,  
19 please?

20 A.    Yes. This addresses our target to increase the number of  
21 credentials earned by students, specifically baccalaureate  
22 degrees, associate degrees and certificates. And it shows that  
23 our actual number reached 176,000 and was above the target. And  
24 this was primarily due to an increase in associate degrees.

25 Q.    The next slide, please. And what does this slide show?

1 A. This shows the increase in the academic awards to Hispanics  
2 since the inception of Closing Gaps.

3 Q. Okay. I'm sorry. Is that African American or Hispanics?

4 A. I'm sorry. I was looking at the Hispanic part. It's for  
5 African Americans.

6 Q. Okay. Can you tell the Court a little bit about the  
7 difference between the target and the actual numbers and maybe  
8 the reason for the difference.

9 A. Well, the reason for the difference is in terms of the  
10 success as soon as -- once they enter college, are they being  
11 retained at the same level, are they graduating.

12 Q. So this shows that African Americans are enrolling but not  
13 necessarily graduating with the degrees?

14 A. That's correct.

15 Q. And do we know why?

16 A. Well, I think it's important to differentiate between  
17 African American men and women. The African American women are  
18 highly successful amongst various groups. They're one of our  
19 most successful groups of students in terms of both participation  
20 rates in higher education and graduating.

21 The men were -- we actually -- we have developed an  
22 accelerated plan for Closing the Gaps in which we've  
23 identified -- this is not a specific target of Closing the Gaps,  
24 but we've tried to break down goals. And when we break it down  
25 we realize that we need to put some additional effort into

1 African American males so that we get that level up at least to  
2 our average figure, if not to the level of African American  
3 women.

4 JUDGE SMITH: Do you know whether that's a -- and if  
5 you don't know just say so, but do you know whether that's a  
6 national phenomenon, that is the difference between  
7 African American males and African American females?

8 THE WITNESS: It is. I don't know if the difference in  
9 the gap is the same nationally but it is nationally. Yes, sir.

10 Q. (BY MS. JORDAN) Next slide, please. Can you explain what  
11 this slide shows?

12 A. Yes. This is a similar chart that shows that -- Hispanic  
13 baccalaureates grew by more than 8,000 students, but it still  
14 falls below our target for African American -- I'm sorry, for  
15 Hispanic credentials.

16 JUDGE RODRIGUEZ: I'm sorry. You're saying  
17 "baccalaureates," but --

18 THE WITNESS: Baccalaureates, associates and  
19 certificates.

20 JUDGE RODRIGUEZ: And so it's not just bachelor's  
21 degrees?

22 THE WITNESS: Yes, sir.

23 JUDGE RODRIGUEZ: And this graph, do you know whether  
24 it's primarily due to associate degrees as well?

25 THE WITNESS: It's -- we've had an increase in

1 associate degrees across the state. Many community colleges have  
2 not made the same type of efforts to be sure the students  
3 actually apply for the associate degree. And so they're doing  
4 better to make sure that students actually get the credential  
5 when they leave rather than an accumulation of hours. And it  
6 also reflects increased enrollments.

7 Q. (BY MS. JORDAN) Well, what's the difference between a  
8 bachelor's degree, associate's degree and a certificate?

9 A. Well, a certificate can be of different lengths between very  
10 short-term to approximately a year. A certificate is -- falls  
11 short of an associate degree and very often can lead to a very  
12 high-paying job, particularly in the area of technology. It's  
13 not uncommon for students to receive a certificate in some type  
14 of, say, Microsoft certification. And so it's a point of fact  
15 that many students will return and get an additional certificate  
16 once they've left.

17 And associate degrees are of two types. One is  
18 primarily designed for transfer to universities and the other is  
19 considered a credential -- stand-alone credential in and of  
20 itself in technology.

21 Q. Now, you spoke earlier about Generation Texas. Can you tell  
22 the court about the campaigns that the coordinating board has  
23 developed to create a culture of going to college for populations  
24 in Texas?

25 A. We've had two campaigns. The first campaign was established

1 early in the 2000s and it developed. It was a Go campaign and it  
2 was established around the state to develop an understanding of  
3 the importance of going to college, the credentials one needed to  
4 go to college and to -- and established a number of what were  
5 call Go centers in high schools in which students could go within  
6 those Go centers and learn about various colleges in the state,  
7 what was required to go to the state.

8           A part of that campaign, a critical part as well, is to  
9 inform people about cost and financial aid. Many people don't  
10 realize that education is much more accessible financially than  
11 they might realize. And part of that was to make that clear to  
12 people. They may not be aware of the grants available such as  
13 the Texas grants or loans, and that was a way to enable that.

14           Our campaign that we've just recently started is called  
15 Generation Texas and it's based on developing communities,  
16 developing the same type of knowledge but doing it at more of a  
17 local level to reflect the local communities and that culture  
18 to -- so that students really understand what's available to them  
19 and the importance and the different roads available and informs  
20 the various community groups, parents, teachers and at a local  
21 level.

22           And that's really only been going now for, I think, a  
23 year and a half. It's funded by money from college access grants  
24 from the federal government. And we see a great deal of promise  
25 in that, but there's a lot of work still to do on that campaign.

1           JUDGE RODRIGUEZ: Were you making a reference to Pell  
2 grants? I wasn't sure what your last comment was making  
3 reference to.

4           THE WITNESS: No. College access grants are dollars  
5 provided by the federal government to help increase the  
6 participation in higher education. Pell grants is something  
7 different. The college access grants are provided in a lump sum  
8 to each state.

9           JUDGE RODRIGUEZ: So it's not provided to the student.

10          THE WITNESS: It can be in different -- in different  
11 ways. Last year four and a half million dollars was provided for  
12 grants to students who had need through this program as well. So  
13 it's everything from the Generation Texas campaign to the funding  
14 of bridge programs. The funding of a program that's called Added  
15 we'll fund this year, which has been in place at colleges to  
16 provide support services to students who are first time in  
17 college and may be at risk, which we see as a very promising  
18 program that we're expanding through the college access grants.

19          JUDGE RODRIGUEZ: Many in the academic community are  
20 preparing for cuts in the Pell grants. If those cuts take place  
21 are you going to meet all those projections you've been talking  
22 about?

23          THE WITNESS: It's hard to know. The Pell grants are  
24 very important. We all know they're very important. There are  
25 other means available to the state. Not every state has access



1 to the TEXAS Grants. We've got a wide range of grant programs.

2 I think that -- that we will continue to have the  
3 participation. We're fortunate in Texas that compared to most  
4 states the cost of tuition fees--so it's gone up in Texas--is  
5 much lower than at the university level. We're at about the  
6 middle of the states in terms of tuition fees for colleges and  
7 universities.

8 But we are looking at -- the commissioner has said that  
9 we really looked -- need to look at ways to use the existing  
10 monies differently to make sure that -- that they're used wisely  
11 to make sure that everyone does participate in higher education,  
12 that we use the dollars to get more people through school.

13 Q. (BY MS. JORDAN) Who is currently the commissioner of the  
14 Texas Higher Education Coordinating Board?

15 A. Raymund Paredes.

16 Q. How long has Dr. Paredes been the commissioner?

17 A. I believe six years, seven years.

18 Q. Now, when you were talking about the Generation Texas and Go  
19 campaigns you talked about them being created at the local level.  
20 Particularly when you're talking about counties like Hidalgo,  
21 Cameron, Nueces or -- I'm sorry, the South Texas region, what do  
22 you mean when you talk about campaigns in those areas that are  
23 designed to create the culture of going to college? How do you  
24 do that? How does the state do that?

25 A. We're working with a group called Milkshake. And the real

1 purpose of Milkshake is to really do research to understand local  
2 communities, what's the best way to communicate the message of  
3 the importance of higher education, the importance of preparation  
4 for higher education and developing support for all those in the  
5 community to achieve that as the goal, that they go forward and  
6 that each generation can have more success in terms of going  
7 forward.

8           So, you know, Texas is a very large state with, you  
9 know, many different communities and cultures that are, you know,  
10 very different from one part of the state to another. Even  
11 within the same regions of the state there can be different  
12 cultures that we want to make sure that the message is  
13 communicated. And it was important to have a group like  
14 Milkshake to help be sure that we better communicated in  
15 communities across the state.

16 Q.   How is the message communicated to the Hispanic population  
17 in those areas that are largely populated by Hispanics? Are the  
18 campaigns in Spanish?

19 A.   Yes. I mean, when -- in communities where Spanish is spoken  
20 the campaigns are always in Spanish. In fact, our original  
21 campaign, if you look at our College for All Texans website, we  
22 have a version that's completely in Spanish.

23           MS. JORDAN: Your Honors, I have a video that I would  
24 like to show the court.

25           JUDGE GARCIA: How long is it?

1 MS. JORDAN: It's not very long. It's the website  
2 Texas Generation -- Generation Texas.

3 JUDGE GARCIA: What is it? Just about the campaign?  
4 What is the video about?

5 MS. JORDAN: Yes, sir. It's a website talking about  
6 Generation Texas. It's an inspirational story given by a Latino  
7 student.

8 JUDGE GARCIA: Sure. If --

9 JUDGE SMITH: Were you signaling three minutes or --

10 MS. PERALES: Your Honor, I've just had a chance to  
11 view it. It is about three minutes long. We are not going to  
12 object as long as the Court takes it as it is and not to  
13 represent all Latino high school students in Texas.

14 JUDGE GARCIA: Well, let me ask you now that  
15 you -- we'll go ahead and watch it here in a moment.

16 Dr. Gardner, here for 2010 according to table A-1 it says the  
17 total college enrollment, which includes the two-year, four-year  
18 independent schools, is 1.5 million; and of that the Hispanic  
19 enrollment is 445,000 which is slightly less than a third.

20 Let me ask you, what percentage of students are  
21 enrolled in any kind of remedial education? Like I know it's  
22 pretty high among community colleges; is that right?

23 THE WITNESS: The bulk of our students who are in  
24 development education are in community colleges though we have  
25 them at universities as well.

1 JUDGE GARCIA: Okay. We have about what? 32, 33  
2 community colleges in Texas?

3 THE WITNESS: We have actually 50 community college --

4 JUDGE GARCIA: Oh, 50.

5 THE WITNESS: -- districts and then more campuses than  
6 that.

7 JUDGE GARCIA: Okay. And what percentage of community  
8 college students are enrolled in some form of remedial education?

9 THE WITNESS: I'm sorry. I don't remember that percent  
10 now.

11 JUDGE GARCIA: Is it a high percentage? Over 50?

12 THE WITNESS: No, no, no.

13 JUDGE GARCIA: 30? Oh, well, if you don't know.

14 THE WITNESS: It's somewhere in that range, but we have  
15 had actually a reduction in the number of semester credit hours  
16 students have been enrolling in --

17 JUDGE GARCIA: Okay.

18 THE WITNESS: -- in developmental ed, and we believe  
19 it's because of the improved access to the recommended  
20 high-speed program.

21 JUDGE GARCIA: Okay. Let me ask you if we have 1.5  
22 million, do you know how many 12th graders we have in the state  
23 of Texas enrolled in public and private high school?

24 THE WITNESS: I don't know the numbers. Probably about  
25 somewhere between 250,000 and 300,000, I would think.

1 JUDGE GARCIA: And what's the -- if you know, what's  
2 the dropout rate among Hispanic and African American students; do  
3 you know?

4 THE WITNESS: I know that the Texas Education Agency  
5 calculates the dropout rate. I don't know that number.

6 JUDGE GARCIA: Okay. All right. Let's go ahead and  
7 watch the video then.

8 MS. JORDAN: Wait a minute. Can we do the page first  
9 so that -- okay.

10 Q. (BY MS. JORDAN) Mr. Gardner, can you describe for the Court  
11 what we're seeing on the screen?

12 A. This is a page created for us by Milkshake. It's part of a  
13 website which is a home base for Generation Texas. And we have a  
14 series of vignettes from students and others which is meant to  
15 inspire other students.

16 Q. And this is just one of the vignettes that is available on  
17 the website to be viewed by students, including Hispanic  
18 students, in Texas?

19 A. Yes, yes.

20 MS. JORDAN: Okay.

21 (Video played.)

22 Q. (BY MS. JORDAN) Mr. Gardner, can you tell us what the  
23 message is the State of Texas wants to convey through  
24 testimonials given by Rogelio Esparza in the video?

25 A. Well, it's important to communicate that you can participate

1 in higher education, that this is what you need to do and to give  
2 every encouragement possible to pursue that because, you know,  
3 everyone needs encouragement. And there are always going to be  
4 obstacles presented and we want to make sure that they have the  
5 belief and the motivation to continue and that their parents know  
6 why it's important.

7           It's always -- especially for students who are first  
8 generation in college, they don't always know how to navigate the  
9 ropes, what to do. As someone who has been in higher education  
10 all my life I can tell you even for me it's difficult to give  
11 good advice to my own daughters.

12           And so I think everyone needs this. And part of this  
13 campaign is really to let people know what they need to know, how  
14 they can engage with their teachers in high school to make sure  
15 they're learning what they need to know, to make sure they're  
16 taking the right curriculum and they're pursuing the right course  
17 to be successful.

18 Q. One last question. Can you describe for the Court what the  
19 10 percent rule -- what the 10 percent rule does in terms of  
20 admission into university -- Texas colleges?

21 A. Well, the 10 percent rule was -- and is very important  
22 because it sends a message to a student no matter which  
23 high school they graduate from in Texas that if they do well  
24 within their school that they can enroll and -- and graduate in  
25 the top 10 percent that they can enroll in a public university in

1 Texas. That's regardless of the type of school, whether it's a  
2 wealthy school, whether it's a poor school, where they have all  
3 the resources available to everyone else, that that student who  
4 does well at that local school can enroll in public higher  
5 education in Texas.

6 And that's a really critical difference and we -- when  
7 we looked early on we saw that many institutions had more  
8 high schools represented than they had ever had represented  
9 before.

10 JUDGE GARCIA: Was that modified, that rule, this last  
11 session?

12 THE WITNESS: It was modified for the University of  
13 Texas at Austin.

14 JUDGE GARCIA: Only at UT Austin?

15 THE WITNESS: Yes.

16 JUDGE GARCIA: And what's the rule there?

17 THE WITNESS: You know, I can't tell you the details of  
18 that one. It's -- it has some moving parts to it.

19 JUDGE GARCIA: Okay. And how many students have been  
20 enrolled under the 10 percent -- in any given year of all the  
21 freshman entering class, what percent of those students were  
22 admitted pursuant to the 10 percent rule?

23 THE WITNESS: It would vary by each institution. We  
24 have the information on that. It could be provided for each year  
25 since inception --

1 JUDGE GARCIA: Okay. All right.

2 THE WITNESS: -- of that law.

3 JUDGE GARCIA: Thank you.

4 Anything else, Counselor?

5 MS. JORDAN: No, Your Honor. I'll pass the witness.

6 JUDGE GARCIA: Mr. Garza? Ms. Perales?

7 EXAMINATION

8 BY MS. PERALES:

9 Q. Good afternoon, Dr. Gardner. How are you?

10 A. Good. How are you?

11 Q. Good. Thank you. It's good to see you again. I'll see how  
12 fast I can talk without getting yelled at by the court reporter.

13 Isn't it true that in your report that you prepared for  
14 this case you observed that Hispanics still face gaps in  
15 enrollment from the State of Texas's colleges and universities as  
16 compared to non-Hispanic whites?

17 A. That's correct.

18 Q. And Texas Hispanics still fall behind Anglos in attainment  
19 of higher education in terms of graduation rates, correct?

20 A. That's correct, but it is improving.

21 Q. Is it correct to say that Hispanic persistence and  
22 graduation rates in universities are lower than for their Anglo  
23 counterparts?

24 A. Yes, but they are improving.

25 Q. Is it true that Latino adults in Texas currently are less



1 likely to have a college degree than their Anglo counterparts?

2 A. I'm sorry. I didn't hear the first part of the question.

3 Q. Is it true that Latino adults in Texas currently are less  
4 likely to have a college degree than their Anglo counterparts?

5 A. Yes, I agree. Our educational attainment overall isn't at  
6 the level it should be.

7 Q. But with respect to my question, Latino adults in Texas  
8 currently are less likely to have a college degree than their  
9 Anglo counterparts.

10 A. Yes.

11 Q. You testified that was true, didn't you?

12 A. Yes.

13 Q. Okay. Because you and I have met before in your deposition.

14 A. Yes.

15 Q. Isn't it true that the higher education coordinating board  
16 identified Hispanic participation in higher education and  
17 Hispanic receipts of degrees and awards as one of the areas that  
18 continue to be below the targeted goals for the plan?

19 A. Correct.

20 Q. And the target for Hispanics for higher education is  
21 currently, according to the Closing the Gaps report, at 5.7  
22 percent of the total population for 2015?

23 A. The target?

24 Q. Yes.

25 A. Yes.

1 Q. Isn't it true that Hispanics are not progressing in terms of  
2 attainment of higher education at the rate that the state has set  
3 as its desired goal?

4 A. Yes. It falls slightly below.

5 Q. And it would be correct to say that for Hispanics to reach  
6 the 2015 enrollment target that you've set out, Hispanic  
7 enrollment needs to grow by 52 percent?

8 A. That's correct.

9 Q. Now, the charts that you just went through with Ms. Jordan,  
10 they didn't show the number of students who were graduating from  
11 high school, do they? There's not a line there for how many  
12 Hispanic students are graduating from high school --

13 A. No.

14 Q. -- and possibly eligible to go to college; is that correct?

15 A. Correct.

16 Q. And it doesn't show the trajectory of that line, how quickly  
17 the population is increasing of Hispanic students graduating from  
18 high school, correct?

19 A. No, those charts do not.

20 Q. All right. So we're not really able to measure how well  
21 students are doing in terms of increasing their enrollment in the  
22 context of the increasing population; is that right?

23 A. Not from those charts. You can find it in Exhibit 57.

24 Q. In the Closing the Gaps report?

25 A. Yes.

1 Q. Okay. But it wasn't on the charts you went over?

2 A. No.

3 Q. And isn't it true that the Closing the Gap progress report  
4 says things will only get more challenging for Hispanics in the  
5 next five years as the CTG target trend line for enrollment  
6 growth gets steeper?

7 A. Yes. That's why we developed the accelerated plan.

8 Q. Now, also with respect to these targets that we're seeing in  
9 the Closing the Gap report and on the charts, those targets have  
10 different numbers set for different races, don't they? So  
11 there's a target for Hispanics, there's a target for  
12 African Americans, and those are different numbers, correct?

13 A. The numbers are different but the percent of the population  
14 is the same so they're each for 5.7 percent.

15 Q. All right. And so progress towards making the target isn't  
16 the same thing as progress towards matching the rate for Anglos;  
17 isn't that correct?

18 A. The -- for each group we've set a target of 5.7 percent.  
19 Are you talking -- I'm not sure -- could you rephrase the  
20 question?

21 Q. Well, the target as it's expressed in terms of a number, if  
22 that were met at that moment would that mean that Latinos would  
23 be participating at the same rate as Anglos for whatever that  
24 chart is showing?

25 A. No.

1 Q. Okay. Thank you.

2 Now, the Closing the Gap's 2011 report that is  
3 Exhibit 57, Defendant's Exhibit 57, it doesn't make any findings  
4 about the causes in the disparities of educational attainment  
5 between Hispanics and Anglos, does it?

6 A. No.

7 Q. And it doesn't make any findings about the causes and the  
8 disparities, the gaps in Latino enrollment in higher education  
9 compared to Anglos, does it?

10 A. No.

11 Q. And it doesn't make any findings about whether the gaps in  
12 Latino enrollment are related to past discriminatory findings,  
13 does it?

14 A. No.

15 Q. And your report doesn't make any findings about whether the  
16 gaps in Latino persistence and graduation rates have a  
17 relationship to past discriminatory practices, does it?

18 A. No.

19 Q. Isn't it true that according to the Texas Education Agency's  
20 academic excellence indicator system, Hispanic students are  
21 reported to have graduated at a rate of 72.5 percent and Anglo  
22 students at a rate of 89.7 percent with respect to the four-year  
23 completion rates of grades 9 through 12 for the class of 2009?

24 A. I don't have that before me, but that sounds about like the  
25 figures you've showed me during the deposition.

1 Q. And you agreed to them then, right?

2 A. Yes.

3 Q. And did you also agree with me then that the Texas Education  
4 Agency academic excellence indicator report states that Hispanics  
5 are shown to be at 37.5 percent and Anglos at 61.7 percent on the  
6 AP/IB results on the examinee's criteria, correct?

7 A. Again, if those are the numbers you showed me during the  
8 deposition, yes.

9 Q. And isn't it true that Hispanics lag behind Anglos in the  
10 TSI--Texas Success Initiative--readiness categories of English,  
11 language arts, mathematics, SAT and ACT results; in every  
12 category in fact, yes?

13 A. Yes.

14 Q. Okay. Isn't it true--this goes to some of the questions  
15 from the bench--that the Texas legislature in 2009, during the  
16 81st regular session, enacted legislation to cap the top  
17 10 percent plan at the University of Texas at Austin?

18 A. Yes.

19 Q. And you agreed with me when we discussed this in your  
20 deposition that the top 10 percent plan is a way for Hispanic  
21 students to close the gap, correct?

22 A. Yes, it is.

23 Q. And a moment ago you had a conversation about funding for  
24 TEXAS Grants. In your deposition do you remember agreeing with  
25 me that the Texas legislature reduced funding for TEXAS Grants

1 and other financial aid for this biennium?

2 A. Yes.

3 Q. And are you aware that the TEXAS Grant funding is reduced by  
4 11 million for 2011/2012?

5 A. I believe that's the figure.

6 Q. And do you recall as we were discussing during your  
7 deposition that Texas A&M University affirmatively ended its race  
8 conscious admissions policy in 2004, correct?

9 A. Correct.

10 Q. And you testified in your deposition that you were aware  
11 that Texas has a Hazlewood program which pays the tuition of  
12 honorably discharged members of the military when they attend  
13 Texas universities, correct?

14 A. I'm aware of it, yes.

15 Q. All right. And you also recalled some discussion in your  
16 deposition about the fact that the higher education coordinating  
17 board issued rules barring veterans from the tuition benefit in  
18 2006 if they had entered the military as legal permanent resident  
19 immigrants. Do you recall that?

20 A. I recall the discussion. I'm not, as I said then, as  
21 familiar with the financial aid program details.

22 Q. And were you aware that the Texas Higher Education  
23 Coordinating Board rescinded the rule in 2008 following a  
24 lawsuit?

25 A. Yes.

1 Q. Okay. Now, just a couple of questions on the video. You're  
2 not suggesting that most Latino high school students in Texas are  
3 immigrants, are you?

4 A. No.

5 Q. Okay. And this shows a student in high school who aspires  
6 to go to college; is that correct?

7 A. Correct.

8 MS. PERALES: Thank you. No more questions.

9 JUDGE GARCIA: Anyone else on the plaintiffs' side?

10 MR. BLEDSOE: Yes, Your Honor.

11 JUDGE GARCIA: Okay.

12 EXAMINATION

13 BY MR. BLEDSOE:

14 Q. A couple of questions. In reference to the TEXAS Grants  
15 program isn't it true that the fund is currently at 365 million?

16 A. I believe that's about right. Again, I'm not as familiar  
17 with the financial aid numbers as I am with other programs.

18 Q. And that there has been a 40 percent decrease in that  
19 program as a result of what occurred this last session that will  
20 lead to covering -- providing 40 to 43,000 fewer grants?

21 A. I don't -- I don't know that number. I'm sorry.

22 Q. Okay. And isn't it true that there has been a ceiling  
23 placed on the number of actual students who will be eligible to  
24 receive those grants?

25 A. I think that -- I can say that there -- you can only fund so

1 many students depending on the grant dollars you have available  
2 and at the same time renew existing grants to students. I don't  
3 know what those numbers --

4 JUDGE RODRIGUEZ: But there is a ceiling. The question  
5 is: Is there a ceiling?

6 THE WITNESS: There's a relationship between the  
7 dollars funded and the number of students currently enrolled and  
8 whether you're able to fund new students, so --

9 JUDGE RODRIGUEZ: No. The question from counsel, if I  
10 understood correctly, is is there an income ceiling imposed for  
11 eligibility of receiving one of these grants.

12 THE WITNESS: Oh, I'm sorry. It's \$4,000 at UFC.

13 Q. (BY MR. BLEDSOE) 49,000 a year or what have you; is that  
14 correct?

15 A. It's in that range. Yes, sir.

16 Q. But the numbers of students who would be eligible is going  
17 to be decreased because of the decrease in the fund?

18 A. The number of students that would actually be able to attain  
19 the funds, that would be eligible -- the problem is whether there  
20 are enough funds for all those students eligible.

21 Q. And, in fact, that number has been placed at 30 percent  
22 starting in 2013; isn't that correct?

23 A. I believe that's correct.

24 Q. Okay. And, in fact, you're not going to be covering  
25 incoming students who will be attending college; is that correct?



1 A. I don't think that's correct.

2 Q. Okay.

3 A. Again, I don't work directly with financial aid so, I'm  
4 sorry, I don't know the specifics, but we could certainly provide  
5 that.

6 Q. Okay. And in reference to the grants it's true, is it not,  
7 that some of the gains that minorities have made in terms of  
8 higher education have been directly due to the TEXAS Grants  
9 program?

10 A. We've believe that the TEXAS Grants has been a critical  
11 program in improving access to higher education for students that  
12 don't have the economic means otherwise, yes.

13 Q. And the cuts in that grant program will obviously negatively  
14 impact any trend upwards in terms of closing the gap?

15 A. Well, we're going to work very hard to do what we can to  
16 make sure that we minimize that, but we are concerned about  
17 having enough dollars available, yes.

18 Q. Isn't it true that the Closing the Gap program received a  
19 13 percent reduction or about 24.9 million this past legislature  
20 session?

21 A. Yeah, our college readiness programs -- yes. We don't  
22 refer -- we call it Closing the Gaps program, but that's a  
23 reduction in essentially our outreach programs. Yes.

24 Q. And isn't it true that you actually have in place a  
25 strategic plan that is to be followed to try to implement your

1 Closing the Gap program?

2 A. Yes.

3 Q. Okay. And isn't it true that because of the funding that  
4 has been cut you will not be able to follow the strategic plan  
5 that's currently outlined?

6 A. We are going to follow the plan to the best extent we can.  
7 We're actively seeking external dollars from various foundations  
8 across the country and within Texas to pursue the plan. One  
9 advantage that we have had is we've evaluated many of the  
10 programs funded through the legislature earlier to identify those  
11 that are most effective. And so we're going to make sure we  
12 focus our resources on those programs. We're committed to doing  
13 everything we can to achieving the goals of Closing the Gaps.

14 Q. And wasn't there an across-the-board cut with most colleges  
15 of 7.5 percent?

16 A. The colleges are funded through a formula which reflects  
17 their enrollments and so there is not really an across-the-board  
18 cut for individual institutions. But there was a cut for  
19 overall, but it would be reflected differently depending on the  
20 enrollment trends at each institution.

21 Q. Okay. And the formula under which the colleges are funded  
22 does encourage the colleges to graduate the students within a  
23 certain time period?

24 A. The board has presented a proposal to do that. The current  
25 program -- the current funding emphasizes enrollment in colleges.

1 It doesn't -- the formula doesn't address the actual outcomes.

2 Q. Now, isn't it true that recently there's been 19 to 22  
3 percent growth in community college attendance or enrollment?

4 A. It depends on what time period you're referring to. We've  
5 had dramatic increases in community college enrollments, yes.

6 Q. But there was a decrease of 7.5 percent of funding that  
7 would be provided to the community colleges last session?

8 A. I don't remember the precise figure for the community  
9 colleges, but they did not get as much as we proposed they get.

10 Q. Now, isn't it true that you also came up with particulars  
11 that you recommended from the coordinating board in terms of  
12 differentiating between students who are eligible for the TEXAS  
13 Grant program?

14 A. We did. We developed a program to add a priority model so  
15 that the dollars would remain the same, the allocation would  
16 remain the same at each individual institution, but those  
17 students who were better prepared would be first in line to get  
18 those dol -- excuse me -- to get those dollars.

19 Q. And so it's true in terms of being better prepared one of  
20 the criteria that you were using is whether or not they had  
21 actually taken college level courses and gotten credit; isn't  
22 that correct?

23 A. Yes.

24 Q. Okay. And most students in Texas high schools don't have  
25 access to those courses in their high school; isn't that true?

1 A. No, that's not true. It's a recommended high school program  
2 that's available in all the high schools in Texas.

3 Q. You're telling us under oath that that program is available  
4 today at every program -- at every high school?

5 A. That -- that is what I've been told.

6 Q. Okay. And is it your understanding that it's available at  
7 the same level at each high school or do some high schools have  
8 more of such programs than others?

9 A. There are differences between high schools in terms of  
10 courses they have available.

11 Q. Okay. And isn't it true, too, one of the other criteria  
12 you're using is whether or not the students took -- had more  
13 credit in advanced or gifted and talented classes?

14 A. I don't -- we didn't address gifted and talented.

15 Q. And test scores -- in terms of their college test scores, is  
16 that another criteria that you used?

17 A. There were multiple criteria from which they did not have to  
18 meet all of them. And one of the reasons that it's important  
19 that this is done by each individual high school is, for example,  
20 there was -- how they perform in their own high school so it will  
21 represent where they graduated from. So they're not having to  
22 achieve these in comparison to students at other schools across  
23 the state but only within their individual high school.

24 Q. So you're saying that there's a quota or a number set out  
25 for each individual high school and that there's not a statewide

1 competition?

2 A. No. What I'm saying is that students slated to achieve  
3 their performance level have to achieve that within their own  
4 high school, not in comparison to another high school across the  
5 state. In terms of an allocation of dollars, the dollars that  
6 are being allocated to each individual institution will remain  
7 the same as before this program had been proposed. Again,  
8 financial aid is not one of my responsibilities at the  
9 coordinating board.

10 Q. The -- let me give you more specific information than what  
11 I've just given you. The TEXAS Grants were cut by 55 million, a  
12 10 percent cut from the 2010/11 levels. Does that sound accurate  
13 to you?

14 MS. JORDAN: Your Honor, I'm going to object to this  
15 line of questioning. Mr. Gardner has already testified that  
16 financial aid is not a part of his duties.

17 JUDGE GARCIA: Right. I'll sustain that. Anything  
18 else?

19 Q. (BY MR. BLEDSOE) Maybe financial aid is not, but you're  
20 aware, are you not, that there will be about 28,700 fewer  
21 students that will be able to be served by this program starting  
22 in 2012/2013?

23 A. I'm not aware of specific numbers, no.

24 Q. But that is the reality. It will be a substantial number  
25 that won't be covered; is that correct?

1 A. There may be fewer students. I don't know the number.

2 Q. You received complaints from a number of the colleges that  
3 the students attend about their ability to continue to fund the  
4 education for those students, haven't you?

5 A. The coordinating board has always encouraged the increase in  
6 the dollars available to TEXAS Grants students and has testified  
7 to the legislature that we would like an increase in funding.

8 Q. Okay. Now, there's a Be on Time loan program too. And are  
9 you familiar with whether or not that program was cut?

10 A. No, I don't know the numbers associated with that.

11 Q. And -- and was there a cut in top 10 percent scholarships?

12 A. Again, I know there were cuts to a number of programs, but  
13 I'm just not familiar with the numbers and by program.

14 Q. And in reference to the changes for the eligibility under  
15 the TEXAS Grants program, if you're using standardized tests and  
16 a student goes to a school where there is high performance on  
17 standardized tests, that might negatively impact the students who  
18 attend that particular school; isn't that correct?

19 A. That's the reason why they provided a series of options to  
20 select and so one would not have to meet that criteria.

21 Q. And isn't it true that there was already an existing merit  
22 program for the TEXAS Grants whereby each student had to maintain  
23 a 2.5 grade point at their college to continue to receive the  
24 TEXAS Grants?

25 A. The original program required that the student complete the

1 recommended high school program and maintain a grade point once  
2 they enrolled in college, yes.

3 Q. Okay. And the student on the video talked about having a  
4 valuable education until middle school but then the instruction  
5 was in English. Is it your understanding that there was an  
6 obligation to provide him education in the language that he  
7 understood at the middle school level as well?

8 A. I'm not familiar with what's required in the public schools  
9 in terms of bilingual education.

10 JUDGE GARCIA: Anything else, Mr. Bledsoe?

11 MR. BLEDSOE: No, Your Honor.

12 JUDGE GARCIA: Good. Thank you.

13 Anyone else on the plaintiff's side? What about the  
14 State, any redirect?

15 MS. JORDAN: No, Your Honor.

16 JUDGE GARCIA: Okay. Thank you, Dr. Gardner, very much  
17 for being here.

18 We're going to recess in a moment, but let me get  
19 some -- let's get some clarity here. How many more witnesses  
20 does the State have in addition to -- is it Dr. Alford?

21 MR. SCHENCK: We're hopeful this afternoon when  
22 Mr. Mattax meets with the plaintiffs that we're going to be able  
23 to simply submit some more -- evidence by agreement and then just  
24 call Dr. Alford tomorrow.

25 JUDGE GARCIA: You're calling Dr. Alford tomorrow?

1 MR. SCHENCK: Yes, sir.

2 JUDGE GARCIA: And what do you want to do this  
3 afternoon? I didn't hear you.

4 MR. SCHENCK: Hopefully working out our agreements on  
5 housekeeping in terms of submission of written exhibits and --

6 JUDGE GARCIA: Okay. You'll work on that.

7 And, Mr. Garza --

8 How long will Dr. Alford take? I'm not trying to limit  
9 you. I just want to get an idea.

10 MR. SCHENCK: I think it will be a while because --

11 JUDGE GARCIA: An hour or so?

12 MR. SCHENCK: Yeah, at least. And then we're going to  
13 have, I assume, an enthusiastic cross.

14 JUDGE GARCIA: Any rebuttal witnesses that you have  
15 perhaps this afternoon?

16 MR. GARZA: No, Your Honor.

17 JUDGE GARCIA: Okay.

18 MR. GARZA: We probably will not call rebuttal  
19 witnesses. It looks like at least from the MALC position we're  
20 going to be submitting the balance of our testimony through the  
21 proffers.

22 JUDGE GARCIA: Okay. Will any other plaintiff be  
23 having or presenting rebuttal witnesses?

24 MR. HICKS: Renea Hicks for the Rodriguez plaintiffs.  
25 Since we haven't -- I haven't had a chance to review Dr. Alford's



1 supplemental report.

2 JUDGE GARCIA: Right.

3 MR. HICKS: There's a chance--low, I think--that we  
4 might ask Dr. Ansolabehere to return. It may be difficult for  
5 him to get here is one of the problems. But there's a slight  
6 chance if he did it would be at most 30 minutes. I will let you  
7 know that by the end -- I will let them know that by the end of  
8 the day.

9 JUDGE GARCIA: Okay. As long as he's here by tomorrow  
10 afternoon, by 2:00 o'clock or earlier.

11 MR. HICKS: Yes, I understand.

12 MR. GARZA: And as long as we're not surprised by  
13 Dr. Alford.

14 JUDGE GARCIA: Well, I'm sure you might be a little  
15 surprised.

16 Okay. So it looks then we could possibly conclude with  
17 everything by noon tomorrow; is that about right?

18 MR. SCHENCK: Maybe. I hope so. It really depends on  
19 the cross I think we're going to have.

20 JUDGE GARCIA: Okay. And then this afternoon you're  
21 going to visit again as to who will be presenting -- who on the  
22 plaintiffs' side will be presenting arguments.

23 MR. GARZA: Closing arguments, Your Honor?

24 JUDGE GARCIA: Closing.

25 MR. GARZA: I think all the different parties.

1 JUDGE GARCIA: Okay. And that's how many again?  
2 That's six or five? Seven?

3 MR. HICKS: Eight.

4 JUDGE GARCIA: Eight. Okay.

5 MR. GARZA: Eight.

6 JUDGE GARCIA: Then this afternoon you'll confer to see  
7 how much time you think you will be requesting and then we'll let  
8 you know tomorrow. Okay. So you'll let us know -- so I guess we  
9 have nothing -- yes, sir.

10 MR. HICKS: Are Your Honors thinking -- assuming if we  
11 finish at noonish tomorrow with everything and there is no  
12 rebuttal witnesses, are Your Honors thinking we might do  
13 arguments on Thursday or Friday?

14 JUDGE GARCIA: Thursday.

15 JUDGE SMITH: We wouldn't start before Thursday but  
16 that we would want to be able to start on Thursday. Is that --

17 JUDGE GARCIA: Right. Right.

18 MR. HICKS: Okay.

19 JUDGE GARCIA: So that Thursday morning at 8:00 we can  
20 begin argument and that may take us into Friday of course.

21 JUDGE SMITH: Mr. Hicks says no.

22 MR. HICKS: That's just me.

23 JUDGE SMITH: I think he has Friday plans. I don't  
24 know.

25 MR. HICKS: My Friday plans are here.

1           JUDGE GARCIA: Well, if we can finish Thursday that  
2 would be great, but like Judge Smith said earlier we want to give  
3 you a good amount of sufficient time to permit the Court to  
4 inquire of you. You know, this case is -- obviously every case.  
5 This case is important and you-all have spent a number of hours,  
6 weeks, days, months --

7           MR. GARZA: Piece of cake, Your Honor.

8           JUDGE GARCIA: Okay. Then we'll give you five minutes.

9                               (LAUGHTER.)

10          JUDGE GARCIA: Okay. Good. Then we'll, I guess,  
11 reconvene in the morning at 8:00 o'clock. And if you'll let  
12 Jessica know later today what you have reached in terms of  
13 argument time and give her the order of the persons who are going  
14 to be arguing.

15          MR. GARZA: Okay.

16          JUDGE GARCIA: Okay.

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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )

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5 I certify that the foregoing is a correct  
6 transcript from the record of proceedings in the above-entitled  
7 matter. I further certify that the transcript fees and format  
8 comply with those prescribed by the Court and the Judicial  
9 Conference of the United States.

10 Date signed: September 13, 2011.

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/s/ Karl H. Myers

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