

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF ARKANSAS
3 CENTRAL DIVISION

4 THE ARKANSAS STATE CONFERENCE OF
5 THE NAACP, et al.,

6 Plaintiffs,

7 v.

8 THE ARKANSAS Board of
9 Apportionment, et al.,

10 Defendants.

No. 4:21-cv-1239 LPR
February 7, 2022
Little Rock, Arkansas
9:03 a.m.

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13 **TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING**
14 BEFORE THE HONORABLE LEE P. RUDOFISKY
15 UNITED STATES DISTRICT JUDGE
16 VOLUME 4

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24 Proceedings reported by machine stenography and displayed
25 in realtime; transcript prepared utilizing computer-aided
 transcription.

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1	I N D E X - VOLUME 4 (February 7, 2022)				
2	WITNESS FOR PLAINTIFFS: DIRECT CROSS REDIRECT RECROSS				
3	ROY DOUGLAS HOUSE	743	766	773	
4	BETTY DICKEY	775			
5	KYMARA SEALS	823	847		
6	ANDY DAVIS	870	924	1003	1013
7	JOSH BRIDGES	1030	1065	1082	
8	EXHIBITS RECEIVED				
9	Plaintiffs' Exhibits				
10	47				774
11	44				804
12	83				804
13	45				805
14	46				806
15	47				813
16	49				822
17	50				822
18	51				822
19	52				822
20	53				822
21	54				822
22	82-01				864
23	73 and 74				882
24	75 and 76				996
25	77				1015

1	78	1067
2	81	1076
3	79 and 80	1078
4	Defendants' Exhibits	
5	14	871
6	8	1033
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
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20		
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1 P R O C E E D I N G S

2 THE COURT: Morning everybody. I hope you at least
3 had half of a good weekend. Before we start today, do we need
4 to deal with anything administrative?

5 Plaintiffs?

6 MR. SELLS: Not at the onset, Your Honor.

7 THE COURT: Defendants?

8 MS. MERRITT: No, sir.

9 THE COURT: Plaintiffs, the floor is yours.

10 MR. TOPAZ: Call Colonel Doug House, Your Honor.

11 Your Honor, I would make the same request as we did
12 for the previous two staffers about the ability to ask leading
13 questions.

14 THE COURT: And I take it from the defendants that
15 there is the same objection?

16 MS. MERRITT: Yes, Your Honor.

17 THE COURT: Any other objection?

18 MS. MERRITT: No, Your Honor.

19 THE COURT: I'm obviously going to issue the same
20 ruling, so the answer is yes, you may.

21 MR. TOPAZ: Thank you, Your Honor.

22 ROY DOUGLAS HOUSE, PLAINTIFF'S WITNESS, DULY SWORN

23 DIRECT EXAMINATION

24 BY MR. TOPAZ:

25 Q. Good morning, Colonel House. My name is Jonathan Topaz. I

1 represent the plaintiffs in this matter. It's nice the meet
2 you, and thank you so much for taking your time to be here with
3 us today.

4 Would you mind stating and spelling your name for the
5 record?

6 A. My full name is Roy Douglas House, R-O-Y D-O-U-G-L-A-S
7 H-O-U-S-E.

8 Q. And Colonel House, you served as a representative for
9 District 40 in the State House from 2013 to 2021; is that right?

10 A. I believe that's correct. Eight years total. I took
11 office in '13. My last day would have been '20, I think. '21,
12 yes.

13 Q. Thank you. And you're now an attorney for the Arkansas
14 Attorney General's office; is that right?

15 A. I'm on retainer contract now with the attorney general. I
16 expect that retainer contract to end pretty soon, in May, God
17 willing, and be hired as an employee.

18 Q. And correct me if I'm wrong, were you retained to work in
19 the attorney general's office for purposes of the 2021
20 redistricting process in Arkansas?

21 A. I was.

22 Q. And you were retained, in part at least, to assist the
23 Board with insuring that the adopted House map complied with
24 federal law; is that right?

25 A. Yes.

1 Q. And that includes -- concludes compliance of Section 2 of
2 the Voting Rights Act; is that right?

3 A. That's correct.

4 Q. I'm going to show you what's been marked as P 34.

5 Colonel House, have you seen this document before?

6 A. What I'm looking at on this screen doesn't look familiar,
7 but the content -- some of the content does.

8 Q. Steven, can we include the header from the first page?

9 A. Is this off the Board of Apportionment, if I could ask that
10 question.

11 Q. Yes, it is Colonel House.

12 A. Okay. Yes, I have seen the Board of Apportionment website.

13 Q. And these are sort of the nine redistricting criteria that
14 were guiding the Board of Apportionment's redistricting process;
15 is that right?

16 A. That's correct.

17 Q. And so there are nine criteria here, right?

18 A. What I see on my screen says nine.

19 Q. Uh-huh. And so the first three that you see on your screen
20 equal One Person, One Vote, Section 2 of the Voting Rights Act,
21 and Equal Protection Clause of the Fourteenth Amendment. Those
22 first three are legal requirements; is that right?

23 A. Basically. There's a little more to it than what's there,
24 but that is for public consumption, not lawyer stuff.

25 Q. So it is a legal obligation to have the map comport with

1 equal population within the specified deviation; is that right?

2 A. No, sir. That is not a correct statement of the law.

3 Q. Could you clarify for me?

4 A. Well, for state redistricting, the Supreme Court has
5 routinely said substantial equality. There is no acceptable
6 margin ever been established by the Courts. A lot of people say
7 plus or minus 5 percent. All that does is the courts have said
8 that if it's less than 10 percent, there is a presumption that
9 it was done for state policy reasons, but it's not a safe
10 harbor. Substantially equal is the standard.

11 Q. So my understanding of your testimony, it is a legal
12 obligation to comply with substantial -- substantially equal
13 population, but that -- what qualifies as substantially equal
14 might be open to interpretation; is that correct?

15 A. It depends on the circumstances, yes. Perhaps that's the
16 way I would say it.

17 Q. Let's go to the second one. It's a legal obligation to
18 comply with Section 2 of the Voting Rights Act, correct?

19 A. Correct.

20 Q. And the third one is a legal obligation to comply with the
21 Equal Protection Clause of the Fourteenth Amendment; is that
22 correct?

23 A. It's really the Fourteenth and -- Thirteenth and Fourteenth
24 Amendment. Right to vote is in the Fifteenth, and Fourteenth,
25 of course, is equal protection. So it really includes both of

1 those amendments.

2 Q. Understood. But as it pertains to the Equal Protection
3 Clause of the Fourteenth Amendment, that was the legal
4 obligation that the map --

5 A. That's correct.

6 Q. -- complies with that; is that correct?

7 A. Yes. I hope I'm answering your question.

8 Q. Thank you. You are, Colonel House. Thank you.

9 And then you see there are six others there. If I am
10 reading those right, it would be compactness?

11 A. Yes, sir.

12 Q. Contiguity, retaining the core of existing districts,
13 communities of interest, continuity of representation and
14 minimizing partisanship. Did I read that right?

15 A. Yes, sir.

16 Q. Those six criteria are not what you would call legal
17 obligations, is that right?

18 A. I wouldn't call them legal obligations. They are policy
19 directives from the Board itself, the three members of the Board
20 that they wanted done, as much as can be complied with.

21 Q. So those are goals that you need to sort of -- goals or
22 policy directives that you sort of need to balance with?

23 A. Yes, sir.

24 Q. And you need to balance those goals while complying with
25 Section 2 of the Voting Rights Act and the Equal Protection

1 Clause?

2 A. Yes, sir.

3 Q. Correct?

4 So the Board released a draft map on October 29th, 2021; is
5 that right?

6 A. Yes, sir.

7 Q. And then there is a 30-day public comment period; is that
8 right?

9 A. Yes, sir.

10 Q. And then after that 30-day public comment period, the Board
11 approved the adopted house map on November 29th, 2021; is that
12 right?

13 A. There were some slight modifications between October and
14 November that were made with no significant change in the -- but
15 there were some modifications in that 30-day period.

16 Q. So when you were working on the proposed house map, or in
17 conjunction with the redistricting process, you were aware that
18 according to the 2020 census, the statewide black population in
19 Arkansas was about 16 percent; is that right?

20 A. 16 or 16 and a half.

21 Q. To the best of your knowledge, during that same
22 redistricting process, the Board members were aware that the
23 statewide black population was about 16 percent; is that right?

24 A. I can't answer for what they knew or didn't know.

25 Q. So you don't know one way or the other whether the three

1 board members were aware of the black statewide population when
2 they were working on the State House map?

3 A. No, sir. I said I can't answer what the Board members told
4 me or I told them or what was told them or attorney/client
5 affairs, so I cannot answer that question.

6 Q. And when the Board released the draft House map on October
7 29th of 2021, you were aware that the -- that that map contained
8 11 majority black district out of 100 total; is that right?

9 A. I believe that's correct, yes, sir.

10 Q. And at the time you were aware that the 2011 map, the map
11 that was in place before this adopted map contained 12 majority
12 black districts; is that right?

13 A. Yes, sir.

14 Q. And at the time you were aware that the white population in
15 Arkansas had decreased by about 110,000 people since the 2010
16 census; is that right?

17 A. I knew there had been some changes in population. I don't
18 remember the exact figures from up here. That stuff on paper, I
19 would have to read it.

20 Q. Were you aware that the -- let me ask that a different way.
21 Were you aware that -- when you said you were aware of certain
22 population changes, was one of the population changes that you
23 were aware of the fact that the white population statewide had
24 dropped somewhat significantly?

25 A. No, sir. I don't remember the population dropping, the

1 white population dropping. Different racial groups of people
2 increased or decreased, as the case may be, statewide. I know
3 that the overall population of the state increased. Now exactly
4 what those numbers are today right now, I can't -- I can't give
5 you a straight answer.

6 Q. Okay. So when you were working on the redistricting plan,
7 you weren't aware of the fact that the white population had
8 decreased since the 2010 census, that's your testimony?

9 A. We had the population data in front of us off of the
10 census. Whatever it said, I read it, but I don't remember what
11 the numbers are from up here today.

12 Q. And at that time were you aware that the any-part-black
13 population in Arkansas had grown by more than 27,000 people
14 since the last census?

15 A. Any part black. That's a nebulous term, because you have
16 got people declare what they are. I'm black, but I've got some
17 native American in me or Hawaiian in me. I'm white, but I've
18 got some black in me. It's kind of like the old Jim Crow days,
19 one drop of blood, is that any part black? I don't know. I
20 know what the racial categories were in the census data. We had
21 that in front of us. How those numbers total, I can't answer
22 today what you are asking me. I just know what the census said,
23 or whatever the census said is what I was aware of.

24 Q. By the time you were working on the redistricting process,
25 were you aware that the black population in Arkansas had

1 increased statewide since the 2010 census?

2 A. I knew that it had increased statewide, the black
3 population had. Yes, sir.

4 Q. And the Board of Apportionment didn't commission a racial
5 block voting analysis in conjunction with the redistricting
6 process, did they?

7 A. Please ask me that again.

8 Q. Sure. The Board of Apportionment didn't commission a
9 racial block voting analysis in conjunction with this
10 redistricting process, did they?

11 A. Not that I'm aware of.

12 Q. So we just had the Board issue its draft map on October
13 29th, and that map included 11 majority black districts; is that
14 right?

15 A. I believe so, yes, sir.

16 Q. And I think as we said previously, that number is one less
17 than the number of majority black districts that were included
18 in the 2011 map; is that right?

19 A. Yes, sir.

20 MS. MERRITT: Objection, asked and answered.

21 THE COURT: Overruled.

22 BY MR. TOPAZ:

23 Q. In conjunction with your work for the attorney general's
24 office in the redistricting process, you didn't advise the Board
25 of Apportionment as to the minimum number of majority black

1 districts that were needed for the map to comply with the Voting
2 Rights Act, correct?

3 A. I cannot answer a question about what I did or did not
4 advise the Board or advise the members of the staff of the
5 Board.

6 Q. And why is that?

7 A. I'm an attorney. I had an attorney/client relationship. I
8 cannot answer that question.

9 Q. To your knowledge, did anyone advise the Board as to the
10 minimum number of majority black districts that were needed to
11 comply with the Voting Rights Act?

12 A. What was communicated by the Board or their staff members
13 about what they were told or not told, I cannot disclose those
14 conversations. They were given to me as an attorney, and I have
15 to keep those confidential.

16 Q. I'm not asking, Colonel House, just to be clear, I'm not
17 asking about the advice that you gave the Board. Did you
18 discuss with the Board members the fact that the statewide
19 population was 16 or 16 and a half percent, the black population
20 statewide in Arkansas?

21 A. Again, I cannot answer a question about what I advised the
22 Board to do or not do about anything. What my communications to
23 them are confidential.

24 MR. TOPAZ: Your Honor, I think I would ask you to
25 instruct the witness to answer. I don't think that is

1 infringing on privileged information.

2 THE COURT: Defendants, it doesn't strike me that that
3 infringes on the privilege, but I would like to get your view on
4 it. He's not asking him what he advised. He is asking him what
5 they discussed as a factual matter, but tell me -- I guess what
6 I want to know is why does attorney/client privilege cover this?

7 MS. MERRITT: The witness testified that he was
8 engaged as legal counsel to the Board of Apportionment. He
9 wasn't the staff members drawing the lines, he was actually
10 legal counsel to the Board. So in that sense, any of his
11 communications to the Board were as an attorney, not as a staff
12 member. And we have other staff members who have testified and
13 have been subpoenaed to testify regarding other -- you know, so
14 there are other people who could talk about that. Mr. Johnson
15 was here yesterday, or on Saturday.

16 THE COURT: I guess my question is this. And I don't
17 want to be too flip about it. If counsel asked Colonel House
18 whether or not he told, you know, the Board that the sky was
19 blue one day, I'm not sure that would be covered under
20 attorney/client privilege just because they have an
21 attorney/client relationship. So what I think I'm asking for
22 you to help me with is what are the elements here that I have to
23 think about in terms of attorney/client relationship, and why
24 does this fall within that zone.

25 MS. MERRITT: Well, I think to the extent it touches

1 on legal issues in the case, and whether or not they are
2 applying their factors and they're looking at compliance with
3 the law. And I think that, you know, facts that relate to legal
4 issues would touch on legal advice. And so you know, factors
5 such as racial make up, population shifts and things of that
6 nature, those are factual matters that relate to the law and
7 application of law to facts, and those are things that Colonel
8 House was engaged to advise the Board on.

9 THE COURT: Can I ask specifically what the language
10 of the attorney/client privilege rule is here that I have to
11 evaluate? And if you don't know, that's okay, I'll ask the
12 plaintiff. And if nobody knows, that's okay, we'll take a
13 five-minute break and I'll figure it out, but I want to make
14 sure I understand the specific language of the rule.

15 MS. MERRITT: I don't have it handy, Judge and I would
16 love a recess so we could pull it up.

17 THE COURT: Let me ask the plaintiffs. Do you all
18 know -- and again, I don't know it. She doesn't know it. So
19 it's okay if you don't know it. Do you all know the specific
20 language of the rule that I need to apply in this circumstance?

21 MR. TOPAZ: Not offhand, Your Honor.

22 THE COURT: Can we take a five-minute recess?

23 Colonel House, please do me a favor and do not speak with
24 the lawyers from either side while you are still technically on
25 the stand. Just go about your business, and then you all figure

1 it out and tell me what you think the actual language of the
2 rule I need to look at is. Okay?

3 MR. TOPAZ: Thank you, Your Honor.
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1 (Recess taken from 9:21 a.m. until 9:29 a.m.)

2 THE COURT: Mr. Topaz, if you need another five, I'm
3 happy to give it to you, but otherwise let's get going.

4 MR. TOPAZ: I'm not sure I have an exact answer for
5 you, Your Honor, yet. I don't know. We are sort of working on
6 it, but I'm happy to proceed if Your Honor would prefer it.

7 THE COURT: Okay. Let's proceed. And I will tell you
8 all what I have come up with in the last five minutes, and maybe
9 you all can tell me if you agree or disagree with that.

10 My very quick review of the law suggests the following: If
11 you are asking for the advice and the opinions that an attorney
12 has given to the client that's relevant to the legal issues
13 here, that is out and is part of the core privilege. If you are
14 asking simply about other communications, such as factual
15 statements that the lawyer has made to the client, they are
16 mostly going to be in, meaning the privilege doesn't cover them,
17 except to the extent that they would disclose confidential
18 information learned from the client.

19 That's where I am. How do the plaintiffs feel about that
20 position? Do you agree? Do you disagree? And honestly,
21 everybody, I just want to get to the right answer here. It
22 doesn't have to be just Mr. Topaz. If somebody else wants to
23 talk for the plaintiffs, that's fine too.

24 MR. TOPAZ: I think that's fine, Your Honor. The
25 privilege, as I understand it, is for defendants to invoke. And

1 so you know, I guess I would -- I agree with Your Honor's point,
2 but it would be, I believe, on the client and a/k/a, defense
3 counsel to invoke the privilege.

4 THE COURT: I appreciate that. First, before we get
5 into the question of invoking the privilege or not, do you all
6 agree with the position I have just put forth on what the
7 privilege covers and doesn't cover?

8 MS. MERRITT: I think we would object slightly, Your
9 Honor. And perhaps it's just a matter of the way the question
10 is phrased, because the way that we understand the law governing
11 lawyers, and specifically from restatement third of the law
12 governing lawyers, Section 68, it's the communication that is
13 privileged, and perhaps not the facts that are known. So the
14 communication is what's privileged, so if we ask the question
15 about --

16 THE COURT: Let me stop you there for a second. I
17 think I understand though the communication, assuming it is not
18 advice. If we are into legal advice, we are in a different
19 category, but if it's not advice, I think I understand that the
20 communication is only privileged to the extent that it exposes
21 or reveals information from the client. Is that right?

22 MS. MERRITT: I believe -- I believe -- maybe my
23 colleague might want to jump in.

24 MR. JACOBS: I think the way --

25 THE COURT: No, go ahead.

1 MR. JACOBS: -- read the statement, Your Honor, is
2 that if the communication, as a whole, was given for the purpose
3 of legal advice, and whether or not subparts of that were giving
4 factual information upon which the advice may have been premised
5 doesn't make it any less privileged than the advice -- than the
6 legal advice contained within the communication.

7 THE COURT: I appreciate that, Mr. Jacobs. I'm going
8 to stick with the position I had, unless plaintiffs want to tell
9 me I'm wrong for some other reason.

10 MR. STEINER: No. I just wanted to add one additional
11 thing, which is even before you get to that question, the
12 question of whether or not a topic was discussed without what
13 was said about the topic, the foundational question, which I
14 think Mr. House hasn't answered the foundational question about
15 whether or not the topic was discussed is privilege --

16 THE COURT: I agree.

17 MR. STEINER: -- information.

18 THE COURT: Obviously, depending on the question.
19 That is sort of a question-by-question analysis, but I generally
20 agree the simple question of whether something was discussed is
21 a perfectly fine question.

22 Now defendants, are you all invoking on behalf of, I guess
23 in this case the client would be either General Rutledge, the
24 Board, or in some circumstances the other members of the Board.
25 Are you all invoking attorney/client privilege on their behalf?

1 MS. MERRITT: Yes.

2 THE COURT: So given all of that, I was looking at the
3 initial question. I'm not sure if the initial question you
4 asked actually asked for advice and opinions he gave. It may or
5 may not, depending on how you asked it. Why don't we do this.
6 Why don't you ask the question again, and then you all can
7 object and let me think about it for a second, based on how he
8 asked the question. Okay?

9 MR. TOPAZ: Thank you, Your Honor.

10 BY MR. TOPAZ:

11 Q. Colonel House, in your conversations with the Board
12 members, did the topic of the black statewide population come up
13 in those conversations?

14 MS. MERRITT: Objection, privileged.

15 THE COURT: You should answer the question.

16 THE WITNESS: I should answer the question.

17 You asked me the Board members, that is the attorney
18 general, the governor and the secretary of state?

19 MR. TOPAZ: Correct.

20 THE WITNESS: Yes.

21 BY MR. TOPAZ:

22 Q. In your conversations with Board members, did the topic of
23 Voting Rights Act compliance come up in those conversations?

24 MS. MERRITT: Objection, privilege.

25 THE COURT: You should answer the question.

1 THE WITNESS: Yes.

2 BY MR. TOPAZ:

3 Q. And did the topic of whether or not it was permissible
4 under the Voting Rights Act to reduce the number of majority
5 black districts come up in your conversations with Board
6 members?

7 MS. MERRITT: Objection, privilege.

8 THE COURT: I'm going to sustain that objection.

9 MR. TOPAZ: And just so the record is clear,
10 defendants are invoking the privilege as to the content of the
11 conversations regarding Voting Rights Act compliance. Do I have
12 that correct?

13 THE COURT: All I know is they are invoking the
14 privilege as it relates to that question.

15 BY MR. TOPAZ:

16 Q. And Colonel House, what was the content of the
17 communications that were discussed as it pertains to the Voting
18 Rights Act compliance with the Board members?

19 MS. MERRITT: Objection, privileged.

20 THE COURT: Sustained.

21 BY MR. TOPAZ:

22 Q. Colonel House, the ACLU of Arkansas sent a letter to the
23 Board of Apportionment on November 24th, 2021; is that right?

24 A. They sent a letter. I'm not sure of the date without
25 looking at it.

1 Q. Can I show you what's been marked as P 47?

2 A. Yes.

3 Q. All right. Are you familiar with this letter, Colonel
4 House?

5 A. Yes.

6 Q. And so if we go down to the bottom of the first page --
7 actually, excuse me, sorry, this letter was sent on November
8 24th, 2021, correct?

9 A. It is dated that, yes. I don't know when I saw it.

10 Q. And it is addressed to the Arkansas Board of Apportionment,
11 correct?

12 A. That's correct.

13 Q. And it looks like the letter is also addressed to Governor
14 Hutchinson, Secretary Thurston, and Attorney General Rutledge;
15 is that right?

16 A. That's correct.

17 Q. Can we go down to the bottom of the first page? The letter
18 states that it's possible to create 16 reasonably compact
19 majority black house districts out of 100 total statewide,
20 correct?

21 A. That's what the letter states.

22 Q. And shortly thereafter the ACLU of Arkansas sent a
23 potential map that included 16 majority black districts to the
24 governor at his request; is that right?

25 A. I don't know who they sent it to. I know it wound up at

1 the Board of Apportionment. And then later it wound up in the
2 attorney general's office in the GIS office as well.

3 Q. Understood, Colonel House. So if I'm understanding your
4 testimony correctly, it's correct, is it not, that the ACLU of
5 Arkansas sent a proposed map with 16 majority black house
6 districts. And that map made its way to the governor's office
7 and the attorney generals's office?

8 A. I don't know about the governor. I know it didn't make it
9 to the attorney general's office. I think it did, but I don't
10 know for certain.

11 Q. And you saw that map?

12 A. I did.

13 Q. -- of Arkansas, correct?

14 A. I did.

15 Q. And on November 29th, 2021, when the Board adopted their
16 final map, it included only 11 majority black districts; is that
17 correct?

18 MS. MERRITT: Objection, asked and answered.

19 THE COURT: Overruled.

20 BY MR. TOPAZ:

21 Q. Colonel House, on November 29th, 2021, when the Board
22 adopted its house map, it included only 11 majority black
23 districts; is that correct?

24 A. That's correct.

25 MR. TOPAZ: I pass the witness, Your Honor.

1 THE COURT: Can you do me a favor for a second? I
2 want to modify one of my rulings. Can you ask again the
3 question, the last question that I sustained under
4 attorney/client privilege where you asked what was the -- I
5 guess what were the statements. Do you remember the question
6 I'm talking about, or no? If not, we can have the court
7 reporter go back and find the exact question.

8 THE WITNESS: Why don't I try, and if it's close, Your
9 Honor.

10 THE COURT: I tell you what. Let's go back and have
11 the court reporter find it.

12 So -- I think it is.

13 And Colonel House, what was the content of the
14 communications that were discussed as it pertains to the Voting
15 Rights, I guess, Act with the Board members?

16 Does that sound close, Mr. Topaz?

17 MR. TOPAZ: It does, Your Honor.

18 THE COURT: Can you ask that question again? We'll
19 have an objection, and then I'm going to slightly modify my
20 ruling.

21 BY MR. TOPAZ:

22 Q. Colonel House, what was the content of the communications
23 that you discussed with the Board members as it pertains to
24 compliance with the Voting Rights Act?

25 MS. MERRITT: Objection, attorney/client privilege.

1 THE COURT: Okay. Colonel House, I want you to
2 understand this. And if you don't understand it, tell me and
3 we'll talk about it. As to advice you gave to your client on
4 the Voting Rights Act that falls within the privilege, you do
5 not need to answer that question. As to information that the
6 client gave to you on the Voting Rights Act, or what they -- or
7 what they were thinking about the Voting Rights Act or anything
8 like that, that also falls within the privilege. You do not
9 need to talk about it. However, if you can answer that question
10 by saying what you spoke about to the client without exposing
11 anything the client told you, then you need to answer that
12 portion of the question. If you can't, then you just say you
13 can't and we move on.

14 THE WITNESS: I believe I can, Your Honor.

15 THE COURT: You believe you can?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. So would you answer the question
18 with those parameters?

19 THE WITNESS: The conversation I had, not only -- now
20 when you say the Board members talked about the three, there
21 were also conversations with the staff along the same lines. If
22 I am talking to the staff, I'm also, by extension, talking to
23 those Board members. I also made these comments publicly.

24 Complying with the Voting Rights Act involved, first of
25 all, drawing the districts, so that they had equal population,

1 substantially equal population. That's task one. That's
2 fundamental to redistricting. It's the most important thing is
3 to try to get the population substantially equal. And from
4 that, all other requirements flow.

5 Now, how do you comply with the Voting Rights Act, and this
6 is something that I remember speaking of, I think, at -- well,
7 one of the public meetings. Is you take the ratio of data that
8 the Census Bureau gives us and overlay it on the district maps
9 after you have achieved substantial equality. And if those
10 minority populations are sufficient in number and concentration
11 and identifiable, then you modify your existing boundaries, to
12 the extent that you can, in order to achieve the most
13 minority-majority districts that you can. The goal is not a
14 specific number. The goal is as many as possible and reasonable
15 within the other compliance of the law, which is equal --
16 substantially equal population. The other considerations become
17 secondary, such as protecting incumbents or such as -- well, the
18 other criteria. But you can't racially gerrymander. We talked
19 about that publicly. You can't fail to achieve substantial
20 equality. We talked about that publicly, but you still want to
21 try to comply with the Voting Rights Act by overlaying that
22 racial data on top of the district map. Now that was said under
23 public circumstances, which I'm glad, and it certainly was
24 repeated in private.

25 BY MR. TOPAZ:

1 Q. And Colonel House, what advice did you give to the Board
2 members as it pertains to Section 2 of the Voting Rights Act
3 compliance?

4 MS. MERRITT: Objection, privilege.

5 THE COURT: That one is sustained.

6 MR. TOPAZ: I pass the witness, Your Honor.

7 THE COURT: Thank you, Mr. Sells.

8 Defendants?

9 Oh, that wasn't Mr. Sells. Thank you, Mr. Topaz.

10 Defendants?

11 CROSS-EXAMINATION

12 BY MS. MERRITT:

13 Q. Good morning, Colonel.

14 A. Hi.

15 Q. Thank you so much for being here so many days and waiting
16 to testify. We really appreciate your patience, your help in
17 this matter. I don't have many questions for you in follow-up,
18 but I did want to ask you, you talked a bit during your direct
19 examination about substantially equal population. How important
20 was that first of the redistricting criteria to the Board?

21 A. Substantially equal population is the fundamental reason we
22 do redistricting at all. From it, everything else flows. The
23 Voting Rights Act is based on substantially equal voting rights
24 and populations when it comes to districting and redistricting.
25 It's fundamental. You try to achieve substantially equal, as

1 the law calls that.

2 Now, of course the states have more leeway in doing that
3 than the states would in terms of congressional districts, which
4 have to be nearly perfect. Nearly perfect. That's not the
5 legal standard, but that is what it really translates into.
6 There is no percentage of variation, although the courts have
7 said if it's less than 10 percent drawn by state, they'll
8 presume that everything is fine, but that presumption can be
9 overruled. So we try to achieve the best numbers that we can,
10 first of all. That's the most important thing to do.

11 Q. This Board of Apportionment, where did they want their
12 variances to end up?

13 A. As near perfect as we could get them.

14 Q. As close to zero as they could?

15 A. Yes, ma'am.

16 Q. With regard, you talked about the policy directives, I
17 think, the things like compactness and communities of interest.
18 Do you recall that testimony when Mr. Topaz was asking
19 questions?

20 A. Yes, ma'am.

21 Q. How did the board balance and apply those criteria when it
22 drew the maps?

23 A. Well, the process was -- I can tell you the process and
24 maybe that will answer your question. The criteria that was
25 posted on the Board of Apportionment website goes back ten years

1 ago during the administration of Governor Beebe, Secretary of
2 State, Mark Martin, and Attorney General, Dustin McDaniel. We
3 began with that information that was posted ten years ago. It
4 is fundamental, and we began with that.

5 There have been some changes in the law in the last ten
6 years. I, among other lawyers, worked it up and made some
7 changes to bring it up to, for instance, substantially equal.
8 There was a tendency among some to say plus or minus 5 percent
9 is the standard. At least the attorney general's office was
10 very addiment that that's not the standard, it's a go by, at
11 best. And so we made some slight modifications based on recent
12 case law. One of the important considerations was compliance
13 with state law, because of Rucho decision that says you can't
14 partisan gerrymander anymore, or you'll wind up in state court
15 if you get too blatant about it. That's essentially what it
16 said. So those things were all brought up.

17 Now the other criteria that -- there is basically three,
18 maybe four laws, depending on how you count them. And the other
19 standards are to be followed as much as possible, or as much as
20 practical. Now when you are trying to stay inside county lines,
21 and my favorite one is probably Jefferson County, because you
22 have got a long leg of Jefferson County that runs down the
23 highway, and the Arkansas River towards the prisons, and
24 everybody in the room knows that geography. So the county lines
25 follow rivers, and they have roads. You have military

1 installations, national parks and things like that. Sometimes
2 it is kind of hard to get compact when you have to observe those
3 things. So you do the best you can, and that was the
4 instructions to the staff.

5 Q. Sure. And did the Board hold public meetings to solicit
6 feedback from the public about the map?

7 A. There were a total of nine meetings. Eight of them were
8 recorded by PBS. One public meeting was held by myself and
9 another attorney, Brad Knight, Bradley Knight of the attorney
10 general's office in Jefferson County. The incumbents down
11 there, specifically Representative Flowers and Senator Flowers,
12 they're distant cousins, asked us to come down and do another
13 public presentation to civic leaders down there who had missed
14 the Little Rock or Monticello meetings that you all know about.
15 So we held a total of nine, but the other secretary of state and
16 governor's staff didn't come to that one. There were other
17 things going on.

18 Q. So there were nine public meetings for feedback?

19 A. Yes, ma'am.

20 Q. And then were there also -- did the Board members
21 themselves also hold public meetings?

22 A. Well, their meetings, when they made policy decisions, were
23 all public, all televised by PBS, and all are on -- or last I
24 checked, they were on PBS -- Board of Apportionment website.

25 Q. Okay. And from your sense of working with the Board, did

1 they seem to do their very best efforts to fairly apply their
2 criteria in adopting the maps for the House of Representatives
3 for this cycle?

4 A. I can't --

5 Q. I don't want to --

6 A. At least in the public meetings, yes. Everything was out
7 on the table, everything was discussed publicly. Individual
8 attitudes, I mean, I am certain that the governor gave
9 instructions, and the secretary of state gave instructions to
10 their staff as well as the attorney general gave instructions to
11 her staff, and then when we got back in meeting, those
12 instructions were relayed to the rest of the staff members. So
13 yeah, it was quite intense.

14 Q. Right. And after applying the nine redistricting criteria
15 that were on the website, that's how the staff came up with the
16 plan that was adopted; is that right?

17 A. First, follow the law. That is the main thing is to do
18 what the federal law and state law requires us to do. And then
19 do the other criteria as much as we could.

20 Q. And did staff draw, I think you said staff overlayed the
21 race data onto the draft maps and drew as many majority-minority
22 districts as they could while also adhering to the other
23 criteria and the law?

24 A. No, ma'am.

25 Q. Okay.

1 A. Not quite.

2 Q. I think I heard you wrong then. Go ahead.

3 A. The maps were drawn, based on equal population. And then
4 the racial data was overlaid on top of those maps. Anywhere we
5 could find a sufficient concentration of black people and
6 Hispanic people, then we started changing the maps to meet the
7 requirements of the Voting Rights Act. The 16 percent, you'll
8 find pockets of black populations scattered all over the state
9 of Arkansas. Two of my friends in Menifee and Plumerville area,
10 Conway, Mayflower, I've got a substantial black district in my
11 area, but not near enough concentrations to form a district.
12 You would have to run a district from Maumelle all of the way to
13 Atkins in order to get enough people to form a district of those
14 particular settlements, communities. And so you find them, and
15 I have went all over. I can answer for myself, because I know
16 others were doing what I was doing. We looked and looked and
17 looked. I looked and looked and looked to make sure that those
18 concentrations were such that number one, we maintained equal
19 population; number two, we had enough people where we could gain
20 a majority of black people, African-Americans in order to form a
21 district.

22 Q. And was there a certain percentage number you were looking
23 at in terms of the percentage of population that the Board felt
24 they needed to put in a district to make it a majority black
25 district?

1 A. We had to achieve 50 percent if we could -- in order to
2 call that 50 percent population. Not voting-age population, not
3 citizen voting-age population. Just population. That was not
4 always possible, and still maintain equal population of the
5 district as a whole.

6 If I could use an example, one of the districts, beet our
7 heads against the wall for hours and hours, is the one up around
8 Blytheville where Representative Monte Hodges is. Now Monte
9 Hodges is a very close personal friend, and his wife, Rhonda, of
10 myself and my wife. So we wanted to try to maintain his
11 district.

12 First of all, the correct population had been achieved. We
13 searched all around that on the map for data in order to get his
14 numbers up past 50 percent. Bottom line is if you reached out
15 and grabbed black communities or African-American communities to
16 include, you also grab a component of white people. That caused
17 the percentages to shift down below 50 percent. So when it
18 finally came down to it, we had him down like, I want to say, 13
19 to 15 hundred people short in his district, while two adjacent
20 districts were 15 hundred people over. It was wrong, racially
21 gerrymandering, to not balance those districts where that they
22 had substantially equal population in order to achieve a racial
23 result. That runs in the face of the Fourteenth Amendment. And
24 it was racially gerrymandering and we're not allowed to do that.
25 So bottom line is, without just throwing out a bunch of white

1 people out of his district, we could not get above 50 percent
2 African-Americans in his district. So that is the kind of stuff
3 that we spent -- I spent hours on, and I know the others did
4 too.

5 Q. And is that just one example of the kind of exercise you
6 all did across the state?

7 A. Yes, ma'am. You know, there were like nine districts, if I
8 remember my count right, eight or nine districts that were 15;
9 13, 14, 15 hundred people short on the map that I saw that the
10 ACLU ultimately submitted. And I felt like that that was wrong,
11 just drawing out 15, 13, 14, 15 hundred white people out of a
12 district in order to achieve more than 50 percent is racially
13 gerrymandering, in my opinion.

14 MS. MERRITT: Thank you. I don't have any other
15 questions.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Thank you, Ms. Merritt.

18 Mr. Topaz, who is not Mr. Sells?

19 REDIRECT EXAMINATION

20 BY MR. TOPAZ:

21 Q. Just a couple of questions. Colonel House, you are not a
22 mapping expert, are you?

23 A. I don't know. No, I'm not very good at the -- at the
24 program that we used, autoBoundEDGE. No, sir, I'm not an expert
25 on that by any means.

1 Q. And the illustrative plan that you reviewed from the ACLU
2 of Arkansas was able to maintain Representative Hodges' district
3 as a majority black district; is that correct?

4 A. No, sir. I don't agree.

5 Q. So your testimony is that the -- that the district in the
6 illustrative plan that is where Representative Hodges is located
7 is not a majority black district in the illustrative plan,
8 correct?

9 A. No, sir. I disagree.

10 Q. I think you have lost me, Colonel House.

11 A. Okay.

12 Q. Let me ask the question again.

13 In the illustrative plan that you reviewed from the ACLU of
14 Arkansas, that plan was able to maintain a majority black
15 district in the region where Monte Hodges' district in the 2011
16 plan was; is that correct?

17 A. No, sir, I disagree.

18 MR. TOPAZ: Your Honor, I would move to admit P 47,
19 which I brought up in the Direct Examination.

20 THE COURT: Any objection?

21 MS. MERRITT: No.

22 THE COURT: It's admitted.

23 (Plaintiffs' Exhibit 47 was received in evidence.)

24 MR. TOPAZ: No further questions.

25 THE COURT: Thank you for your testimony, Colonel

1 House. You are excused.

2 MR. JACOBS: Your Honor, I believe Colonel House had a
3 question. We don't plan on calling him back as a witness in our
4 case. Mr. House was wondering if he could sit in the courtroom
5 for the remainder of the proceedings. So we would ask if there
6 is any objections to that.

7 THE COURT: Plaintiffs?

8 MR. STEINER: No objection.

9 THE COURT: That's fine.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Plaintiffs, what's next?

12 MR. STEINER: If Justice Dickey is here, she's next.

13 BETTY DICKEY, PLAINTIFF'S WITNESS, DULY SWORN

14 THE COURT: At your leisure.

15 THE WITNESS: Thank you.

16 DIRECT EXAMINATION

17 BY MR. STEINER:

18 Q. Good morning, Your Honor.

19 A. Good morning.

20 Q. Thank you so much for being here. I apologize that you
21 spent, I guess, a good chunk of your Saturday here, and we
22 didn't quite get to you.

23 A. I understand the process.

24 Q. And I understand you had the pleasure of serving for a
25 number of years on the Arkansas Supreme Court. Have you -- I

1 don't know if you -- I don't think that you were a trial judge,
2 is that right?

3 A. That's correct.

4 Q. Have you ever had the pleasure of being a witness before?

5 A. Yes, I have.

6 Q. Okay. So it's not a new aspect of the courtroom for you?

7 A. That's correct.

8 Q. Okay. I'll try and be brief with my questions this
9 morning. You were, if I understand correctly, the appointed
10 coordinator for the Board of Apportionment. Is that right?

11 A. That's correct.

12 Q. And that involved coordinating the Board of Apportionment's
13 activities between the governor and his office, the attorney
14 general and her office, and the secretary of state and his
15 office, is that right?

16 A. Yes.

17 THE COURT: Let me stop you all. Is Justice Dickey's
18 microphone on?

19 THE WITNESS: I don't think it is. Now it is. Thank
20 you.

21 BY MR. STEINER:

22 Q. And if I understood correctly, you originally had a
23 six-month contract to do that. Is that right?

24 A. That's correct.

25 Q. And then at some point that got extended?

1 A. Well, not yet.

2 Q. There was talk in one of the Board of Apportionment
3 meetings about extending it?

4 A. It was a promise, yes.

5 Q. But no one came up with more funds?

6 A. That I would be a contract labor, so I'm here.

7 Q. You are here just as a citizen?

8 A. Yes. That's correct.

9 Q. Hoping that at some point the Arkansas legislature does the
10 right thing and renews your contract; is that right?

11 A. Or you all pay my parking ticket and meetings I'm missing.

12 Q. Now part of your mission and the mission of the Board of
13 Apportionment was to bring fairness and transparency to the
14 redistricting process?

15 A. That was what I'm -- yes, articulated and reminded the
16 drafters they were to do.

17 Q. And that is what you agreed to bring your reputation and
18 good offices to do?

19 A. Absolutely.

20 Q. For the Board of Apportionment, right?

21 And part of how you went about doing that was by publishing
22 what the Board of Apportionment's guidelines would be for the
23 redistricting process, right?

24 A. The criteria or the goals, yes.

25 Q. Exactly. I mean, there were a set of nine goals and

1 criterias that you put out publicly on the Board of
2 Apportionment's website?

3 A. With Colonel House's help, and with the redistricting
4 handbook that we had from the National Conference of State
5 Legislators, yes. That's where we got that. And then compiled
6 it and introduced it at every one of the eight meetings.

7 Q. And if we could just put up, Steve, Exhibit 34. And I'll
8 show you the website. This has already been admitted in
9 evidence. Let's just show Justice Dickey the first page also.
10 So this is the Board of Apportionment website; is that right,
11 that lists the criteria and goals?

12 A. I presume that is a part of it, yes.

13 Q. Does it look familiar to you?

14 A. Yes.

15 Q. And we can keep that up. A couple of questions. Now it's
16 also important to the Board of Apportionment and the political
17 members of the Board of Apportionment not to decrease the number
18 of majority-minority districts in the state; is that right?

19 A. It was a goal, a criteria, you know, part of the criteria
20 was to improve that situation. It was not a commitment not to
21 decrease.

22 Q. Right. But for example, you knew that Governor Hutchinson
23 had announced it was really important to him not to decrease the
24 amount of --

25 A. Yes, and I had also asked for and looked at the migration,

1 as far as minorities, to see how many districts that we could
2 provide. You know, we had a balancing act of not targeting or
3 giving preferential treatment, not just as far as partisan, but
4 as far as any minority.

5 Q. And you knew that the population -- you're really familiar
6 with the demographics of Arkansas, right?

7 A. No. I'm somewhat familiar, but I'm not -- I haven't been
8 in any political races to go to all 75 counties in many years.

9 Q. You have lived in Arkansas for most, if not all of your
10 life?

11 A. Correct.

12 Q. And you knew that the Arkansas population had grown by
13 roughly 100,000 people; is that right?

14 A. Yes.

15 Q. And you knew that since the 2010 census, the population
16 of -- the white population of Arkansas had decreased by about
17 100,000 people?

18 A. Yes. But I also knew that they were classifying them in
19 different ways, because you can be part white, part Cherokee,
20 like I am.

21 Q. And that's all captured in the census information, right?

22 A. I assume it is. Yes. I looked at it.

23 Q. And the Arkansas State Constitution requires the Board of
24 Apportionment to use the census data for its work, right?

25 A. Yes. As far as the number of people.

1 Q. And the census data captures whether people identify as
2 white or Hispanic or --

3 A. Or other.

4 Q. All black, part black, part Asian, part native American, it
5 has all of those classifications, right?

6 A. Yes.

7 Q. And a lot more than that?

8 A. Yes.

9 Q. And the Board considered all of that data as required by
10 the Arkansas constitution, right?

11 A. That's correct.

12 Q. And so you also knew that overall population up about
13 100,000. White population, at least according to the census,
14 down about 100,000. And that corresponded with increases in the
15 black, part black and Latino populations, among others, right?

16 A. I knew there was significant migration from urban -- from
17 rural to urban areas, particularly to the northwest. Migration,
18 as far as both black and white and Hispanic, Latinx

19 Q. And having an appropriate number of majority-minority
20 districts is a key part to improving access and representation
21 for minority populations in Arkansas, right?

22 A. I think that's correct. I mean, it sounds reasonable.

23 Q. And you heard Governor Hutchinson announce that at the
24 official Board of Apportionment meetings, right?

25 A. Yes. Yes. That that's important, proportionality is a

1 problem as far as saying, you know, you're at 16 percent black
2 or 20 percent Hispanic does not quantify or does not mean that
3 you have -- that you are entitled to that many representatives.

4 Q. Right. There could be requirements and there might not be,
5 depending on how the population is concentrated around the
6 state, right?

7 A. Yes.

8 Q. And turning back to the criteria, I think I didn't hear,
9 but I think I read in the transcripts of the Board of
10 Apportionment meetings that in your view, the first three
11 criteria were mandatory, right, those were legal requirements?

12 A. Yes. Following the law was paramount. Those were the most
13 important. And in a sense, these were listed in order of
14 importance, but the first three that were, you know, the law,
15 yes.

16 Q. The first three were legal requirements, and then the next
17 four; Numbers 4, 5, 6, and 7, those you referred to as
18 geographic requirements, right?

19 A. Yes. I think that is straight out of the NCSL handbook.

20 Q. And then -- and then Number 8 was -- there was a goal that
21 you tried to not match -- not put incumbents into the same
22 district, right?

23 A. Well, it was -- it was -- there was legal precedent for
24 that, because incumbents represent the will of the voters. We
25 were not to ignore that.

1 Q. Right. Because it's not that you were trying to protect
2 people who were incumbents, but if they had been selected,
3 voters should be able to continue to choose and not have to
4 choose between two different people that had been previously
5 selected, right?

6 A. It was a consideration not to give either preferential
7 treatment to or target them because they were incumbent.

8 Q. And then the last one, Number 9 was actually minimizing
9 partisanship and not targeting people. That's actually a legal
10 requirement in the state of Arkansas. It's not a federal legal
11 requirement, but it was an Arkansas legal requirement?

12 A. I believe it's now a federal requirement that that, if you
13 are going to challenge that, you do it in state court.

14 Q. State court, right.

15 And turning back to the four geographical principles,
16 Numbers 4 and 7, Steve.

17 You would agree with me that it wouldn't be possible to
18 meet all of these in a single plan, right?

19 A. That's correct.

20 Q. There is some trade offs involved and some judgment?

21 A. You know, our goal particularly on Number 6 of trying to
22 maintain for the sake of those counties, whole counties and
23 whole cities, that was a goal. It was not mandatory and it was
24 not achievable.

25 Q. Right. And the first part of Number 6 is maintaining the

1 core of existing districts. That is sort of saying, you should
2 start with what the current plan looks like and make changes and
3 not draw on a blank slate, right?

4 A. There is consideration, yes, for the existing.

5 Q. You try and keep people in there -- you are trying to keep
6 the population, as well as their representative within their
7 existing district?

8 A. Yes.

9 Q. And not just redraw the map from scratch?

10 A. That's correct.

11 Q. And that was an important criteria in the redistricting
12 process, correct?

13 A. Yes.

14 Q. And -- okay. And the maintaining communities of interest
15 though, that's an important goal, but it is not more important
16 than the first three requirements that we referred to as the
17 legal requirements, right?

18 A. Correct.

19 Q. And you also agree with me that it's not unusual in the
20 redistricting process, or in districting, for cities to be -- to
21 be attached to large rural areas outside of the city into a
22 single district, right?

23 A. Yes. The challenge of communities of interest, as far as
24 rural and cities, were basically opposed, but to -- to achieve a
25 30,100 representative district, we would have had to accumulate,

1 assign four or five or six counties in rural areas. So there
2 was some balancing, as far as urban and rural.

3 Q. That's somewhat commonly done?

4 A. Necessarily.

5 Q. It's necessarily somewhat commonly done to match them -- to
6 match cities with rural areas, right?

7 A. To reach the substantial, you know, equal number.

8 Q. And it's also not unusual for there to be -- for a county
9 to be split into more than one district, right?

10 A. It was a goal not to do that, but it was not unusual that
11 unfortunately we had to.

12 Q. Right. Because yeah, some counties there are 100 districts
13 and 75 counties, so of course some counties are going to be in
14 more than one district, right?

15 A. Right.

16 Q. And I think in the Board's ultimate plan, about 30 percent
17 of the counties are whole, and about 70 percent of the counties
18 are split to two or more districts, right?

19 A. I don't know that. I don't remember.

20 Q. There is 75 counties, is that right?

21 A. Yes.

22 Q. And I think there were about 22 or 23 whole counties in the
23 Board plan, is that right?

24 A. I'm not sure. I don't have those numbers.

25 Q. And for the same reason, it's often the case that you have

1 to split cities, right?

2 A. Yes.

3 Q. And cities often have weird shapes, is that right, just
4 naturally or how they developed?

5 A. Cities and counties.

6 Q. And then that will sometimes lead to districts that have
7 weird shapes, right?

8 A. Somewhat.

9 Q. And that's not gerrymandering, right?

10 A. That's correct.

11 Q. And talking about that first requirement of substantially
12 equal population, do you see that?

13 A. Yes.

14 Q. So you understood that substantially equal population
15 didn't mean that the population had to be exactly equal, right?

16 A. That's correct.

17 Q. Right. And the guidelines that the Board considered
18 acceptable were having districts that were no more than 5
19 percent more populated, or 5 percent less populated than the
20 idea population size of 30,115, right?

21 A. That's correct.

22 Q. And the Board agreed that the acceptable margin was that
23 plus or minus 5 percent, right?

24 A. Yes.

25 Q. And there was no requirement of zero variation in

1 population, right?

2 A. Correct.

3 Q. And in fact, the Board wouldn't commit to maintaining a 1
4 percent variance or less, right?

5 A. The Board wouldn't commit to basically what's the
6 legislature was bound by, as far as congressional races. The
7 Board of Apportionment did not -- their goal was not 1 percent.

8 Q. Their goal was plus or minus 5?

9 A. Plus or minus 5 or a 10 percent variation or -- from the
10 case law that we studied was -- and from the redistricting
11 handbook that was generally acceptable.

12 Q. Right. And I think there were questions about whether the
13 Board would commit itself to being within a plus or minus 1
14 percent variation, and the answer was no, they're not going to
15 do that, right?

16 A. We were not bound by law to do that.

17 Q. Right. And they wouldn't commit to doing that, whether
18 they were bound by law or not?

19 A. I am sure they didn't.

20 Q. And one of the reasons was if you reduced -- if the Board
21 committed to reducing that population variance, that could be at
22 the expense of some of the geographic interests that we talked
23 about in criteria 4 through 7, right?

24 A. I don't know that that reason was articulated the way you
25 say it.

1 Q. Okay. Well, you don't remember explaining that the Board
2 wouldn't commit to less than a 1 percent variance, because that
3 could come at the expense of splitting counties or splitting
4 cities?

5 A. If you have it on the record, then fine, but I don't
6 remember. I have not reviewed this, or the hearings. If we
7 weren't bound by that 1 percent, and we weren't, it's not -- it
8 wouldn't surprise me that we said no, we were not going to be
9 bound by it.

10 Q. Okay. Why don't we look at the --

11 Let's look at Exhibit 5, Steve.

12 I guess you didn't say this, but I think you were there.
13 You were at this October 24th meeting in Little Rock; is that
14 right?

15 A. Yes.

16 Q. Okay. And if we could go to Page 82 of the transcript,
17 which is probably 83 of the PDF. And you see just at the top of
18 that page starting at Line 1, there was a question about whether
19 it's possible, based on computer science, to equalize districts
20 within 1 percent. Do you see that question?

21 A. That Shelby Johnson answered?

22 Q. And Mr. Johnson answered, right?

23 A. I see it, yes.

24 Q. And you were there for that, right?

25 A. Yes. Also we were -- yes.

1 Q. And Mr. Johnson's answer that it would be technically
2 possible to be within plus or minus 1 percent, but that could be
3 at the expense of potentially splitting a city or splitting an
4 election precinct or county, and those are goals that you try to
5 avoid, that was the Board's position in terms of balancing
6 population deviation within the acceptable limits with the other
7 geographic goals, right?

8 A. That's what Shelby Johnson said. If the Board said it,
9 then you will have to show me where that is. I don't recall
10 saying it.

11 Q. Well, these public meetings were to inform the public about
12 the Board's policies, and to answer questions about the Board's
13 policies, right?

14 A. Yes. And to ask for input from every one of the 8 meetings
15 from the persons affected, as far as how -- what recommendations
16 they made to us there and online.

17 Q. Right. And if you can scroll down, you see that you then
18 chimed in after another question.

19 Let's show, Steve, Mr. Johnson's follow-up questions, so
20 Justice Dickey can see it.

21 A. I just answered.

22 Q. And the response. And right, you say there is no 1 percent
23 requirement. You didn't correct Mr. Johnson's statement, or say
24 that's what Mr. Johnson said isn't the Board's policy or
25 anything like that; is that right?

1 A. You have before you what I said, that that applies to the
2 congressional seats, but not for the state's house and senates.
3 Our burden was that they were substantially equally. That is
4 not 1 percent.

5 Q. Right. It is plus or minus 5?

6 A. Correct.

7 Q. Now the Board did consider race as one of its demographic
8 factors, right, ma'am?

9 A. Yes.

10 Q. Okay. And you understood that it was appropriate for the
11 Board to consider race as one of the demographic factors, right?

12 A. Yes.

13 Q. Because there is this balance between what the Voting
14 Rights Act required and what the Equal Protection Clause
15 prohibited, correct?

16 A. Yes.

17 Q. And part of that, you had to look at race in order to do
18 that balancing?

19 A. It was walking a tight rope. Not discriminating, and not
20 showing preferential treatment based just on race.

21 Q. Right. And so you understood that the equal protection
22 prohibition was that you couldn't do something strictly based on
23 race, right?

24 A. Yes.

25 Q. You could consider race, as long as it didn't cause -- as

1 long as it wasn't the sole or primary motivation for what you
2 were doing, right?

3 A. Correct.

4 Q. And you also knew that the Voting Rights Act, in some
5 circumstances, required you to consider race to determine
6 whether additional majority-minority districts could be drawn,
7 right?

8 A. Yes. And we did that. And that was my goal, my stated
9 goal would be in the public eye.

10 Q. And in doing that, did you see any racial block voting
11 analysis done in connection with that Voting Rights Act work?

12 A. You mean created by either Shelby Johnson of the Geographic
13 Systems or you know, maps?

14 Q. Did the Board of Apportionment that you were the
15 coordinator of, did the Board or -- either create or commission
16 someone to create a racial block voting analysis to assist it in
17 its Voting Rights Act compliance?

18 A. Not to my knowledge, but I do not know what the three
19 individual members asked their drafters.

20 Q. But you never saw one?

21 A. Well, that's correct. I mean, I asked for a minority
22 representation map of Shelby Johnson for me to see, to see where
23 we might create additional minority districts, or create a
24 Hispanic -- 1 or 2 Hispanic districts. So I had asked for that
25 out of curiosity, but not in a meeting and not by -- I don't

1 know if other individuals did or not.

2 Q. And not in terms of an analysis to show you any type of
3 statistical analysis, you asked for maps, is that right?

4 A. I asked to see, yes, because of -- with a goal of achieving
5 more diversity, as far as the minorities, both Hispanic and
6 black minorities, majority-minority district.

7 Q. And did you ever see any maps that were created, statewide
8 maps that were created for purposes of considering or evaluating
9 Voting Rights Act compliance?

10 A. No, but I didn't ask for -- you know, that was not my -- my
11 job was to coordinate. I was not a drafter.

12 Q. Right. I'm not asking for your --

13 A. I didn't vote.

14 Q. I assume you are not a map drawer, right?

15 A. That's correct.

16 Q. That is not part of your --

17 A. I can read a map, sometimes.

18 Q. With Google maps or the old paper kind?

19 A. Or Waze, or yes, navigational. Yes, I can do that. And I
20 looked at these and asked particular questions of the drafters,
21 as far as are we, you know -- the only group that I attended was
22 group meeting of drafters was the first one, and I brought out
23 the goals and said -- and reminded them, and they all knew,
24 because these were men who were trained both at the
25 redistricting conference and from years of experience. So, they

1 knew, but they also knew that was my commitment, as far as that
2 and improving a diverse environment.

3 Q. By the way, who was the person who actually drew the maps
4 for the state, or for the BOA, or the Board of Apportionment?

5 A. I think that was a joint effort of the drafters. You have
6 the list of them, I assume.

7 Q. So there wasn't one person who was the main person who was
8 responsible?

9 A. That's correct. Now the actual -- once they were agreed
10 upon, and with some technical corrections, Shelby Johnson's
11 staff did it.

12 Q. Right. Mr. Johnson's staff did the technical corrections?

13 A. Yes.

14 Q. But not creating the maps in the first place?

15 A. That's correct.

16 Q. And there wasn't a single person who was responsible for
17 creating the maps in the first instance, right?

18 A. That's correct.

19 Q. Just going back to the mapping question. When I was
20 talking about mapping, in terms of redistricting maps, I think
21 we all agree, that's not you?

22 A. Right.

23 Q. You made sure that the right people were involved, but
24 getting on the software program and moving things around, not
25 you?

1 A. Not me. No, it was the goal that -- these goals that we
2 had, that I presented to them having, you know, checked with the
3 appropriate sources, and reminding them that those were our
4 goals, to be fair and transparent, follow the law.

5 Q. And then my question wasn't whether you asked for maps. My
6 other question I just want to circle back to wasn't whether you
7 asked for maps for you to be able to comment or provide input,
8 but whether in your role of coordinating among the three
9 different members of the Board of Apportionment, whether you
10 ever saw any maps that had been created to be able to consider
11 Voting Rights Act compliance?

12 A. Yes. I did see -- and I did ask questions and provide some
13 input, or played the devil's advocate, as far as saying, you
14 know, tell me why this is so, and tell me what you're doing here
15 and why. That was one brief meeting, and then as far as all of
16 the drafting, I was not part of that.

17 Q. And you said you were part of one brief meeting where you
18 saw some of those maps, is that right?

19 A. I saw -- after -- let's see. The first meeting, which was
20 a collection of maps, and not a map that the drafters had agreed
21 on, I brought my list of goals or criteria, discussed that,
22 looked at what they were doing, and had gotten them together,
23 because I was, as I said, the coordinator. I was trying to get
24 them started, because we were under such a time crunch and a
25 pandemic and getting the census information six months late.

1 Then after the first -- after the October 29th map was
2 presented, because there were so many technical errors that
3 Shelby, or Mr. Johnson had to correct, met with them briefly
4 once again to ask about the minority and Hispanic districts.

5 THE COURT: Can I stop you for a second?

6 THE WITNESS: Sure.

7 THE COURT: When you talk about this first meeting
8 where you met with, I guess, what you call the drafters.

9 THE WITNESS: Yes.

10 THE COURT: Can you just explain who was in that
11 meeting, and who you mean by the drafters?

12 THE WITNESS: Yes. And this was a meeting to --
13 because we were -- we were -- and I, you know, I do not have the
14 date of the meeting, but had told them -- we had a time
15 constraints, and we had to, you know, so as a way of saying when
16 can you all meet, and got them together to meet, these were from
17 the attorney general's office, Brad Nye, Douglas House, and Andy
18 Davis. From the governor's office, Andres Rhodes, Nicholas
19 Ortiz, and Rett Hatcher -- I'm not sure Rett Hatcher. Yes, he
20 was there that day. Kevin -- from the secretary of state's
21 office, Kevin Niehaus, Kenneth Burleson -- Kenneth was not
22 there. Richard Bearden, he -- I don't think he was there that
23 day, but I'm not sure. I don't have the list, but those were --
24 those were the drafters. There were several.

25 Q. And are you -- were you reading from notes or something

1 when you were going over the list?

2 A. I was reading from the introduction from every one of the
3 eight meetings about the people involved in the process. I was
4 introducing the men on the podium with me at the eight meetings.

5 Q. You have a stack of papers there, or something that you are
6 looking at. Is that --

7 A. It's the criteria. You have the -- what comes from the
8 Board of Apportionment handbook, and the names, because I
9 haven't seen these guys in a month or so, and so I don't
10 remember their names.

11 MR. STEINER: And Your Honor, I would asked, just
12 before I finish, to be able to look at what she has been using
13 to testify.

14 THE WITNESS: Certainly. You can look at it now.

15 THE COURT: Defendants, any objection?

16 MS. MERRITT: No, Your Honor.

17 MR. STEINER: I'm not going to do it now.

18 THE COURT: Granted. That's a fair request.

19 BY MR. STEINER:

20 Q. And that first meeting, that was sometime between say mid
21 September and mid October, is that right?

22 A. Yes. And it probably was the first of October before, you
23 know, in saying we have to have this done, you have to stop
24 everything else you are doing and get together, and you know,
25 but this was early in the process when apparently the three

1 entities had their own drafts. I didn't look at them closely.
2 I didn't participate in the drawing. It was just the urging
3 them to finish the job.

4 Q. Got it. So the first week or so of October, the three
5 offices came -- you called representatives from the three
6 offices together for a meeting sometime in the first week of
7 October or so, and there were three different maps floating
8 around, and you said guys, you have got to get your act
9 together, we have got to get this done, we need one map, right?

10 A. Basically, and I'm not sure. There may have been nine. I
11 don't know, because I was not focussed on the maps. I was
12 focussed on the process and the criteria. And I don't know
13 that -- I mean, a representative from each of the -- each of the
14 Board of Apportionment offices was there. I don't know that all
15 of them were there, but these were the people who participated
16 sometime or another, I assume, but --

17 Q. You said --

18 A. I was in that meeting, and then again the day or so after
19 the October 29th when the first thing was presented. And the
20 technical changes had to be made, because there were several
21 that were -- several mistakes in it. And I had asked a few
22 questions and then I left the meeting.

23 Q. So, just to make sure, so in that meeting that is the first
24 week of October, essentially you said I'm the coordinator here,
25 you brought me on to do a job. I don't care who shows up, as

1 long as the right people from each of your three offices show
2 up, I want a meeting, because I want this done, right?

3 A. That's in a gentler kind of way.

4 Q. Sorry. I shifted back to my New York.

5 THE COURT: I was going to say you're in Arkansas, not
6 New York.

7 THE WITNESS: And being a woman, I don't -- you know,
8 I have to be particularly humble.

9 BY MR. STEINER:

10 Q. But your soft voice as the former Chief Justice of the
11 State conveys that message, even if you don't need to raise it,
12 right?

13 A. It belies my prosecutor's voice, yes.

14 Q. And everyone got together? You called the meeting an
15 everyone sent their representatives, right?

16 A. That's basically what happened. That was the impetus to
17 get the ball rolling to get the job done.

18 Q. And you walked into the room and there were three
19 different, at least three different sets of maps floating around
20 from the different offices, right?

21 A. Well, there were not physical maps. There was a screen on
22 which the map was projected, the different maps. But I paid so
23 little attention to that that, you know, I'm -- you know, I'm
24 not sure. I know I brought my map of goals and criteria.

25 And --

1 Q. And you quietly and politely said, guys, get this done,
2 right, we have got to stop fooling around, get me a map of the
3 state House?

4 A. Or get it done.

5 Q. And the state Senate, by the way, right, they were working
6 on both maps at that point?

7 A. Yes.

8 Q. And in roughly 10 days or 12 days, by the middle of October
9 they got you those two maps, one map for the house and one map
10 for the senate?

11 A. No.

12 Q. No?

13 A. Maybe by the middle of the night the night before, it was
14 presented on October 29th.

15 Q. Got it. So from the first week of October until October
16 29th?

17 A. You know, I'm not looking at any dates here, so I'm not --
18 it was probably the first week of October. It could have been
19 the last week in September where I said, you have to do this,
20 and we have time constraints and we have to present it. It
21 was -- and I do remember October 29th, and a few days after when
22 we were trying to clean it up, as far as the technical problems.

23 Q. And you don't remember seeing any drafts of maps between
24 that first meeting and right before the meeting on the 29th?

25 A. No, I did not see any.

1 Q. And then you said you briefly attended a meeting after the
2 29th?

3 A. Yes.

4 Q. Who was in that meeting?

5 A. The drafters from the different groups, and we met in
6 Shelby Johnson's outer office, because we were using his
7 projection, and it was his -- he was going through the technical
8 changes, the mistakes that had been made, as far as drawing it
9 on one side of the highway or the other, or you know.

10 Q. Right. And in connection with that, you asked some
11 questions about could you make some other changes around the
12 minority populations, is that right?

13 A. Let's see. I asked a question about Megan Godfrey's
14 district and the Hispanic district. And I asked questions
15 earlier about minority districts. I don't recall doing that at
16 that one. Well, there was one district that I was asking
17 questions about, about how -- how you divide up one district
18 that had incumbents, black and white, and how if they are living
19 in the same town in the same -- basically, the same street, how
20 do you divide that up, you know, there were questions that --

21 Q. And because one of the goals was minimizing the pairing of
22 incumbents, right?

23 A. Yes.

24 Q. And in the new house maps, there were five districts where
25 there would be more than one incumbent in the district, right,

1 five out of the 100?

2 A. Of the House districts?

3 Q. Uh-huh.

4 A. Now I heard what you said, yes, probably. There was one
5 district in the southeast corner where there were three.

6 Q. So there was 11 incumbents that were matched, because four
7 of them were sets of two, and one of them was actually a set of
8 three, right?

9 A. I don't know.

10 Q. Okay.

11 A. I mean, I don't remember.

12 Q. What you remember it was the one in the southeast?

13 A. I do remember that.

14 Q. Because it had a black democrat and two white republicans,
15 right?

16 A. Correct.

17 Q. And you asked about why that had to be a single district?

18 A. I may have, or I may have just asked about the pairing of
19 the incumbents. I knew that the delta, the eastern part and the
20 southern part of Arkansas there was significant migration from
21 there, so I understood why, but I asked a question.

22 Q. Right. You knew that one of the -- the black incumbent was
23 up near the top of the district, and one of the --

24 A. I don't remember where he was.

25 Q. You don't remember.

1 A. It was my understanding he was the most popular of the
2 three, but you know, I didn't take the poll on that either.

3 Q. Okay. That wasn't part of your -- that's more nitty-gritty
4 than your responsibility?

5 A. Yes.

6 Q. Okay. So let's go back. And by the way, in doing its
7 job, the Board of Apportionment recognized and advised the
8 public that it was permissible that deviation from population
9 equality was permissible when it was to comply with the Voting
10 Rights Act, right?

11 A. Are you asking me if I was there when they said that?

12 Q. Yeah. Are you aware of the Board of Apportionment putting
13 that out?

14 A. You know, if you're asking me if I know the date and time,
15 I don't. And I'm sure that sounds reasonable.

16 Q. Could we just show you, I think it's going to be
17 Plaintiffs' Exhibit 83 from the Board of Apportionment website.
18 I don't think we have copies, but they will come up on your
19 screen.

20 MS. MERRITT: I'm sorry?

21 MR. STEINER: I said, I don't think we have copies,
22 but it will come up on your screen. Exhibit 83.

23 THE WITNESS: What is your question?

24 BY MR. STEINER:

25 Q. So, if we do go, Stephen, to halfway down the -- yeah.

1 There we go.

2 So part of what the Board of Apportionment explained on
3 their website was that you could deviate from population
4 equality for, among other reasons, complying with the Voting
5 Rights Act, right?

6 A. That appears to be what it says.

7 Q. And so one of the reasons that you would deviate from
8 having population equality, but stay within say the 5 percent
9 range or maybe even exceed it would be to comply with the Voting
10 Rights Act, right?

11 A. If that's what it says.

12 Q. Okay. Now, turn back to more of your coordination
13 responsibilities, and trying to finish up.

14 THE COURT: Take your time. You're fine.

15 MR. STEINER: I'm trying to not take too much of the
16 witness's time.

17 BY MR. STEINER:

18 Q. One of your roles as coordinator was to invite public
19 comment throughout the process, right?

20 A. Yes.

21 Q. Okay. And you responded to all of the letters, you and
22 your staff responded to all of the letters and inquiries that
23 were received, right?

24 A. Yes. Or the -- yes.

25 Q. And that included letters that were submitted on behalf of

1 the ACLU, and on behalf of the NAACP?

2 A. And individuals, and others. We responded to all the
3 letters, or had that done through -- you know, I had a staff of
4 one, so you know, the attorney general's office staff answered,
5 because they're responsible for this, so they answered some of
6 the letters. I approved them.

7 Q. I think you thanked the person that did most of that at one
8 of the public meetings, right? Probably? I just don't remember
9 her name.

10 A. Oh, Devon Young, who was my administrative assistant, I
11 did.

12 Q. So that was your staff of one?

13 A. Yes.

14 Q. So let's just look at a couple, if we can look at Exhibit
15 44. So this is an August 24th letter from the ACLU; is that
16 right, to the Board of Apportionment?

17 A. Yeah.

18 Q. And this is a letter that you received in part of your
19 duties, right?

20 A. Yes.

21 Q. And you insured that it went to the governor's office and
22 secretary of state and attorney general?

23 A. Devon did, yes.

24 MR. STEINER: So we would offer Exhibit 44.

25 THE COURT: Any objection?

1 MS. MERRITT: No objection.

2 MR. STEINER: And I would offer -- I don't think I
3 did, Exhibit 83, the Board of Apportionment website.

4 THE COURT: Any objection?

5 MS. MERRITT: No.

6 THE COURT: They're Admitted.

7 (Plaintiffs' Exhibit 44 and 83 were received in evidence.)

8 BY MR. STEINER:

9 Q. If we could go, Steve, to Exhibit 45.

10 And you -- this is an October 20th letter from the ACLU to
11 the Board of Apportionment, right?

12 A. That's what it appears to be, yes.

13 Q. And again, this would come in, and you -- or I'm sorry, I
14 don't remember Devon's last name.

15 A. Young.

16 Q. Young. You or Ms. Young would make sure it went to the
17 governor or the secretary of state or attorney general or their
18 representatives, right?

19 A. If they didn't separately send it to them, yes. I mean, we
20 made sure that --

21 Q. That everyone had it?

22 A. Or Devon did, yes.

23 Q. Okay. And if we go, Steve, to Page 2 and 3 of this letter.
24 I think you have the same page up there twice, don't you?

25 A. No.

1 Q. Sorry. 3 and 4 of the exhibit.

2 And you see there the ACLU pointed out that 16 and a half
3 percent of Arkansas' residents were black or any part black?

4 MS. MERRITT: Objection, hearsay.

5 THE COURT: Overruled.

6 THE WITNESS: I can read that. You're back to the
7 proportionality?

8 BY MR. STEINER:

9 Q. That they said you pointed that out in the letter, and you
10 made sure -- you or Ms. Young made sure that got to everyone on
11 the Board of Apportionment, right?

12 A. I'm sure Devon did. She was instructed to do so.

13 Q. You have no doubt that she would do that, that was just a
14 regular part of her job, right?

15 A. Correct.

16 MR. STEINER: We would offer 45.

17 THE COURT: Any objections?

18 MS. MERRITT: Hearsay. Objection, hearsay.

19 THE COURT: Overruled. It is admitted.

20 (Plaintiffs' Exhibit 45 was received in evidence.)

21 BY MR. STEINER:

22 Q. And in fact, you responded to the October 20th letter on
23 October 26th, right?

24 Stephen, will you put up Exhibit 46?

25 A. I responded. I don't remember the date.

1 Q. This is your October 26 letter?

2 A. Yes.

3 Q. And did you draft the letter, or did Colonel House draft it
4 for you?

5 A. I don't know who drafted it from the attorney general --
6 yeah, from the attorney's general's office.

7 Q. But someone from the attorney general's office drafted?

8 A. Had input, yes.

9 Q. And you read it and made any changes and that's your
10 signature, right?

11 A. That's correct.

12 MR. STEINER: So we would offer 46.

13 THE COURT: Any objection?

14 MS. MERRITT: No objection.

15 THE COURT: It's admitted.

16 (Plaintiffs' Exhibit 46 was received in evidence.)

17 BY MR. STEINER:

18 Q. And after this -- this is October 26th, on October 29th the
19 draft maps were released, right?

20 A. That's correct.

21 Q. And the ACLU submitted a letter concerning the draft maps,
22 right?

23 A. I'm sure they did.

24 Q. Can we -- I know you got a lot of letters, right?

25 A. Yes.

1 Q. Maybe a lot of Twitter comments and fewer formal letters?

2 A. That was a month -- 26 days later, yes.

3 Q. So this is Exhibit 47, which is the ACLU's letter on
4 November 24th of 2021. Do you see that?

5 A. Yes.

6 Q. Okay. And that was, I think, the Wednesday before
7 Thanksgiving, does that sound right to you?

8 A. Yes.

9 Q. And so did you see this letter on that Wednesday, or over
10 the Thanksgiving weekend?

11 A. I was out of the state that week.

12 Q. You were out of state through --

13 A. With my family, yes, for Thanksgiving week.

14 Q. And did you -- you came back on Sunday for the Monday board
15 meeting, is that --

16 A. Saturday or Sunday, I'm not sure, but I was.

17 Q. The final Board of Apportionment meeting was on the 29th,
18 which was the Monday after Thanksgiving, right?

19 A. Okay. If you say so.

20 Q. I'll tell you that it was on November 29th, and that's the
21 Monday after Thanksgiving. And my question is just I know you
22 were there, and the question is just does that help you place
23 how far in advance of that you came back, you come back that
24 morning or was it over the weekend?

25 A. Probably Saturday.

1 Q. And when you came back on Saturday, did you see the letter,
2 or not until after the weekend?

3 A. I'm not sure.

4 Q. But again, Ms. Young would distribute this letter to the
5 members of the Board of Apportionment or their staffs, right?

6 A. I'm sure she did.

7 Q. And Steve, if we could blow up the bottom of the first page
8 and top of the second page?

9 And you see the ACLU said again that 16 and a half percent
10 of the total population is black. But there is only 11 majority
11 black districts. Do you see that?

12 A. I do.

13 Q. And the ACLU said it is possible to draw 16 reasonably
14 compact majority black house districts. Do you see that?

15 A. Yes.

16 Q. I take it since you were out of town, you weren't a
17 participant in any discussions about this comment over that
18 Thanksgiving weekend; is that right?

19 A. That's correct.

20 Q. Okay. And then this letter also can go --

21 Steve, on Page 2 to the next paragraph.

22 This letter also talks about the claim that had been made
23 with respect to the October 29th maps with respect to a majority
24 Latino district in the Fayetteville or Bentonville area, right?

25 A. What's your question; minority -- one is a Latino district?

1 Q. Right. There is --

2 A. There was a mistake in the number of majority-minority
3 black districts. There were actually 11 and not 12.

4 Q. Right. So that's -- the ACLU pointed out that mistake in
5 this letter, right?

6 A. Well, we had already seen that. You know, we knew that
7 well -- a month before this.

8 Q. So you knew before November 24th that there were 11 and not
9 12?

10 A. I knew shortly after the October 29th meeting.

11 Q. And how did you learn that?

12 A. I'm not sure. I learned it -- that information.

13 Q. Okay.

14 A. And it perhaps was in the meeting in Shelby's office when
15 we were doing the technical corrections, that mistake was also
16 corrected.

17 Q. Got it. And which district was it that fell below?

18 A. I don't know.

19 Q. Do you know if it was Representative Hodges' district that
20 fell below in the technical correction process?

21 A. No, I do not.

22 Q. You don't know one way or the other?

23 A. That's correct.

24 Q. So you see this letter pointed out two problems with
25 District -- Proposed District 9, which as you knew that the

1 majority Latino district was up in the northwest area, right?

2 A. Yes.

3 Q. And that's Fayetteville and Bentonville, is that right?

4 A. That area.

5 Q. Among others?

6 A. Yeah, Rogers.

7 Q. Somewhere up in that area?

8 A. Yeah.

9 Q. And the ACLU letter pointed out two problems with that
10 proposed district, right?

11 A. That letter went straight to the drafters. So I saw it
12 after the fact.

13 Q. Okay. So it pointed out that the drafters used total
14 population to say there was a majority district, when you really
15 needed to use voting-age population, right?

16 A. I don't know.

17 Q. Have you read this letter before?

18 A. Yes. I'm sure I have. Did I respond to it? I don't know.

19 Q. I haven't seen a response. How's that?

20 A. Then --

21 Q. Okay.

22 A. -- didn't --

23 Q. Well, are you aware that between -- that from October 29th
24 to November 29th, so at some point, whether in response to this
25 letter or not, one thing that the Board did in its final maps on

1 November 29th was add Latino or Hispanic voting-age population
2 to that district?

3 A. As opposed to not having that for the October 29th?

4 Q. Right.

5 A. No, I don't -- I'm not aware of that.

6 Q. Okay. You weren't aware one way or the other?

7 A. Correct.

8 Q. And you weren't involved in any discussions about that in
9 your role as coordinator?

10 A. That's correct. Well, I had been involved in discussions
11 about the Latino and the black majority-minority districts
12 before, but not as a consequence of this letter.

13 Q. And in any of your discussions in your role as coordinator
14 with respect to the majority Latino district, was there any
15 discussion of the fact that when you are looking at Latino
16 districts in particular, it's important to look not just at
17 voting-age population or total population, but at citizen
18 voting-age population, because a lot of the Latino residents are
19 not citizens?

20 A. I assume that that was done. I didn't ask that specific
21 question.

22 Q. But you thought it was common sense that that is how you
23 look at it?

24 A. Well, one of the -- two of the drafters were black and
25 Latino, who, you know, were significantly involved in this. And

1 I would counsel or ask them, you know, are we following these
2 goals, you know, are we able to create more majority-minority
3 districts, do we have one or two Latino districts. So you know,
4 and they were acutely aware of the situation. So that was a
5 delegation.

6 Q. And so just so I understand, from your perspective it makes
7 sense to you that if you are looking at a Latino district you
8 need to make sure that the population is actually able to vote
9 and not just a majority of the population, right?

10 A. Well, those are problems that came up with our prisons, and
11 with that. You know, being citizens. And of course, at one
12 point the question about the Marshallese also came up, but you
13 know, I wasn't drafting. I was setting goals and criteria and
14 trying to be assured that we were following them.

15 Q. And your assumption was that the people who were drafting
16 would understand that you had to look at whether the Latino
17 population was a citizen population or not?

18 A. Shelby, I'm sure you learned Saturday, if you were here
19 questioning him.

20 Q. I was here. Not questioning him.

21 A. Okay. Had a wealth of information and could help us in all
22 of those areas. And in light, those drafters, they were
23 dedicated public servants who were committed to the same goals
24 that I was, as far as following the law, and creating as many
25 minority districts as we reasonably could.

1 MR. STEINER: And I would offer Exhibit 47.

2 THE COURT: Defendants?

3 MS. MERRITT: No objection.

4 THE COURT: Granted. Admitted.

5 (Plaintiffs' Exhibit 47 was received in evidence.)

6 BY MR. STEINER:

7 Q. And were you aware, I know you weren't here, but were you
8 aware that over that Thanksgiving weekend, the governor's staff
9 reached out to Mr. Sullivan from the ACLU, and asked to get
10 copies of the actual map that had 16 majority black districts?

11 A. I believe I was told after I returned about that, but
12 I'm --

13 Q. And if we could put up Exhibit 50? Sorry. Exhibit 49.

14 And did you, after you returned, did you see a copy of the
15 email from Ms. Williams, on the governor's staff, to Mr.
16 Sullivan asking to submit the maps?

17 A. I don't recall seeing a copy of that.

18 Q. But you have no doubt that the governor's office reached
19 out to Mr. Sullivan for copies of the maps, right?

20 A. I don't know.

21 Q. Well, let's look at Exhibit --

22 A. I didn't talk to the governor or the AG or the secretary of
23 state during that period of time.

24 Q. Let's look at Exhibit 50.

25 And did you -- this is Mr. Sullivan's letter then

1 enclosing, or attempting to enclose a set of the maps, right?

2 A. I have not seen that letter. I was not cc'd on it, as you
3 can see.

4 Q. And once you were back, did you see a copy of the letter or
5 hear about the letter?

6 A. No. I don't -- not that I'm aware of.

7 Q. And did you hear that there was a problem with the
8 governor's office's computers accepting the map files, and so
9 one of the lawyers from the governor's office actually went to
10 Mr. Sullivan's home over Thanksgiving weekend to get a copy on a
11 thumb drive. Did that make it back to you?

12 A. No. As I told you, I didn't talk to the governor's office
13 or the governor at all, except to set up meetings.

14 Q. Did you hear that the -- in your role as coordinator, did
15 you hear that the map files, in fact, were provided by the ACLU?

16 A. I may have. I don't remember.

17 Q. Well, at any time between the 26th, which is the Friday of
18 Thanksgiving weekend, I understand you are still out of town,
19 and Monday, the 29th, did you hear that the ACLU had provided a
20 map?

21 A. I don't think so.

22 Q. If you just look quickly at Exhibit 51. This is the email
23 back from Ms. Williams, the Governor's chief of staff to Mr.
24 Sullivan saying the files wouldn't open. Is there another way
25 to get them. You didn't hear about that either, I take it?

1 A. At some point I heard -- I mean, we were trying to prepare
2 the Secretary of State's office where inquiries and suggestions
3 were made. In Spanish we had problems with some of the files in
4 some of the areas, but as far as which ones, because I am not
5 computer savvy, and I had to entrust that responsibility to
6 other people. I don't know.

7 Q. Are you aware of any alternative maps that were considered,
8 or revisions that were made over the Thanksgiving weekend in
9 response to the Board of Apportionment or the members of the
10 Board of Apportionment receiving the maps from the ACLU?

11 A. That would -- no. That wouldn't have been my
12 responsibility.

13 Q. At any time between the ACLU's submission of the maps on
14 that Friday, and the Monday, November 29th meeting, did you hear
15 any comment that the ACLU's maps only contained 13 majority
16 black districts, not 16?

17 A. We had already discussed -- no, not with the ACLU's, not to
18 my knowledge.

19 Q. You didn't hear anyone say wait, the ACLU's letter says 16,
20 but there are actually only 13 majority black districts?

21 A. No, I don't.

22 Q. And at any time over that weekend before the meeting on the
23 29th, did you hear anyone say wait, the ACLU's map only has 99
24 districts, and there is 100 seats in the House, there is a
25 problem with the maps?

1 A. Yes. If that were told to me, I don't remember it.

2 Q. And you certainly didn't go back to the ACLU or have Ms.
3 Young or anyone else go back to the ACLU and say wait, is there
4 a problem with your computer files, because we only got 99
5 districts, and only 13 of which were majority black, you didn't
6 have that conversation, right?

7 A. No, I did not have that conversation.

8 Q. And you are not aware of anyone on behalf of the Board of
9 Apportionment doing that, right?

10 A. I don't know about that. I'm not aware of it.

11 Q. To your knowledge, you are not aware.

12 And then you attended the meeting on the 29th, right?

13 A. Yes.

14 Q. And --

15 THE COURT: Counsel, only because I'm trying to figure
16 out a good time for break, about how much longer do you have?

17 MR. STEINER: Five to ten minutes, possibly less. I
18 don't think more, but I'm happy to break now.

19 THE COURT: I was gonna say, are you okay with
20 breaking now?

21 MR. STEINER: Absolutely. And I'll actually use the
22 break to look at Justice Dickey's notes.

23 THE COURT: That's fine. Obviously, why don't you
24 both look at it together, one from the Plaintiffs', and one from
25 Defendants' counsel table.

1 We're going to take a 10-minute break. Justice Dickey, I
2 am sure of course you are aware of this, but while you are still
3 on the stand, please don't talk to either side about your
4 testimony.

5 THE WITNESS: Except for the lawyers?

6 THE COURT: No. No. Even the lawyers.

7 MR. STEINER: Including the lawyers.

8 THE COURT: Including the lawyers. Do not talk
9 substantively about your testimony until you are done on the
10 witness stand completely.

11 THE WITNESS: Yes, Your Honor.

1 (Recess taken from 11:04 a.m. until 11:21 a.m.)

2 THE COURT: At your leisure, Mr. Steiner.

3 BY MR. STEINER:

4 Q. Thank you, Justice Dickey. We have returned your notes for
5 you, so thank you for letting us look at those. I don't think
6 we need to mark those as an exhibit now.

7 I can do better if I take the mask back off if that's okay.
8 Try and finish up and let Ms. Merritt ask any questions that she
9 has.

10 But you attended the meeting of the Board of Apportionment,
11 or the official meeting on November 29th when the final plan was
12 adopted, right?

13 A. That's correct.

14 Q. And Governor Hutchinson spoke, and Attorney General
15 Rutledge spoke?

16 A. Yes. I believe that's correct.

17 Q. And I think Secretary of State Thurston did as well, right?

18 And there was a lot of fanfare around the announcement that
19 there was a first majority Latino district in the state, right?

20 A. I didn't notice the fanfare.

21 Q. Well, there was -- there was a lot of -- there was an
22 announcement.

23 A. There was an announcement, yes.

24 Q. That for the first time in the state's history there was a
25 majority Latino district, right?

1 A. Correct.

2 Q. And no discussion though at the meeting of the fact that
3 that wasn't a majority voting-age population, that the majority
4 of Latinos wouldn't be able to vote effectively for a candidate,
5 right?

6 A. I don't recall any.

7 Q. And you heard at that meeting Governor Hutchinson say that
8 the ACLU maps only had 13 majority black districts, not 16,
9 right?

10 A. It's a matter of public record. I don't remember. He may
11 have. You know, if you say it.

12 Q. And you remember the meeting minutes are in, so I'm not
13 going to show it to you.

14 A. Okay.

15 Q. Do you remember Attorney General Rutledge saying that the
16 ACLU maps only drew 99 districts, not 100?

17 A. No, I don't remember.

18 Q. But you don't -- and you certainly don't remember any
19 discussion prior to that time about the 13 districts versus 16
20 or 99 versus 100, Right?

21 A. I'm not -- you asked more than one question in there, I
22 think. 99 versus 100 what, house districts or --

23 THE COURT: Let's try not to talk over each other.

24 BY MR. STEINER:

25 Q. Let me try to ask a little bit better question. Whether

1 you remember hearing the 99 house districts versus 100 on the
2 ACLU map prior to the November 29th meeting, or sorry, at the
3 November 29th meeting. I think you said you don't remember
4 that, and you didn't remember hearing that prior to the November
5 29th meeting, right?

6 A. I'm not sure. I mean, there was some confusion about the
7 maps that we had drawn making mistakes, and the proposed maps of
8 the ACLU, but I did not listen nor have I reviewed it.

9 Q. The ACLU wrote to the Board of Apportionment after the
10 November 29th meeting, right?

11 A. I think that's right.

12 Q. So why don't we look at Exhibit 52, which is the ACLU's
13 November 30th letter to the Board of Apportionment. Do you see
14 that?

15 A. Yes.

16 Q. And you got a copy of that letter on or around the 30th,
17 right?

18 A. I don't know. It was sent to them. I don't know that I
19 was cc'd. Our office was, at that point, closing down.

20 Q. Why don't we look at Exhibit 53? Okay. So here is the
21 submission from the ACLU to Ms. Williams, the governor's chief
22 of staff, right, and she acknowledges it. Okay. And then --
23 and if we look at Exhibit 54 quickly, this is Mr. Sullivan's
24 email to Ms. Young and yourself, and then on December 2nd, so
25 that's on Tuesday November 30th, and then on December 2nd, Ms.

1 Young acknowledged receiving the letter, right?

2 A. Okay.

3 Q. And you have no doubt that you got Mr. Sullivan's email on
4 or about the 30th, and is that right?

5 A. I don't know. We weren't receiving mail, I don't think, at
6 that point. If Devon was receiving it, she was -- she was back
7 over at the attorney general's office at that point.

8 Q. And if she receives it, you have no doubt that she would
9 distribute it to the other members of the board, is that right?

10 A. That's correct.

11 Q. And so you don't -- just turning back to Exhibit 52, you
12 don't remember ever receiving Exhibit 52?

13 A. No.

14 Q. And you see if we just go to the second paragraph, the
15 underlined sentence? The ACLU again pointed out that
16 notwithstanding what was said at the meeting, their maps
17 included 100 districts and 16 majority black districts, right?

18 A. I can read it, yes.

19 Q. And as far as -- and you never responded to this letter on
20 behalf of the Board of Apportionment, right?

21 A. I believe that's correct.

22 Q. And as far as you know, no one on behalf of the Board of
23 Apportionment ever responded to that letter, right?

24 A. I don't know that, but -- I don't know what the governor's
25 office or the AG's office or Secretary of State's office did as

1 far as response to that.

2 Q. You are not aware of a response by any of those offices,
3 right?

4 A. I was not cc'd on anything.

5 Q. Whether you were cc'd or not, you have never seen one?

6 A. Not to my knowledge.

7 MR. STEINER: Okay. And I would just like to offer
8 49, 50, 51, 52, and 53 and 54 into evidence.

9 THE COURT: Any objection?

10 MS. MERRITT: No objection.

11 THE COURT: They're admitted.

12 (Plaintiffs' Exhibits 49, 50, 51, 52, 53, 54 were received
13 in evidence.)

14 MR. STEINER: No further questions. Thank you,
15 Justice Dickey.

16 THE COURT: Thank you very much.

17 Defendants, you are up.

18 MS. MERRITT: We have no questions for Justice Dickey.

19 THE COURT: Justice Dickey, thank you for your
20 testimony. You are excused. As Mr. Steiner said at the
21 beginning of this, I know I can say on behalf of both parties,
22 thank you for taking the time to do this, and sorry we ruined
23 your Saturday.

24 MS. MERRITT: May Justice Dickey be excused and
25 relieved from her subpoena, Your Honor?

1 THE COURT: Plaintiffs?

2 MR. STEINER: Yes. We also don't object if she wants
3 to stay and watch.

4 THE COURT: Can I give you some advice?

5 Okay. Plaintiffs, what's next?

6 MR. SULLIVAN: Your Honor, I call Kymara Seals.

7 KYMARA SEALS, PLAINTIFF'S WITNESS, DULY SWORN

8 DIRECT EXAMINATION

9 BY MR. SULLIVAN:

10 Q. Ma'am, would you state and spell your name for the Court,
11 please?

12 A. Good morning. My name is Kymara Seals, K-Y-M-A-R-A
13 S-E-A-L-S.

14 Q. What is your educational background?

15 A. I have a Bachelor of Arts degree in Political Science from
16 the University of Arkansas at Pine Bluff. Graduated magna cum
17 laude in 1994. My upbringing, I graduated in Hamburg High
18 School in -- Hamburg is a small, rural town in southeast
19 Arkansas.

20 Q. That is Ashley County, right?

21 A. Ashley County. Yes, Ashley County.

22 Q. How are you currently employed?

23 A. I am the policy director at the Arkansas Public Policy
24 Panel. Started working there in 2015.

25 Q. Where did you work previously?

1 A. I was the deputy state director for member of congress,
2 U.S. Senator Mark Pryor. And I was with him both terms. So I
3 was his deputy director for 12 years.

4 Q. Where else have you worked?

5 A. I worked for the NAACP, National Voter Fund Headquarters.
6 We were headquartered in Baltimore. Well, the voter fund was
7 actually headquartered in Washington, D.C. So I did that for
8 two years. Prior to that, I was right out of college. I worked
9 in the prosecuting attorney's office under Betty Dickey.

10 Q. That was Jefferson County?

11 A. Yeah. Yeah. It was the 11th Judicial District West, so it
12 was Jefferson and Lincoln Counties.

13 Q. What was your title there?

14 A. I was the victim witness -- victim witness assistant
15 coordinator.

16 Q. Have you been active in the black community regarding
17 voting rights in Arkansas?

18 A. All of my life. Yes. So yes.

19 Q. Give the Court some examples of what you have done in that
20 regard.

21 THE COURT: Mr. Sullivan, I apologize for
22 interrupting. We think your mic is off. I want to make sure.

23 THE WITNESS: I have got to say all of that again?

24 THE COURT: No.

25 THE WITNESS: No.

1 MR. SULLIVAN: If I heard you, everybody can hear you.

2 THE WITNESS: Okay. Okay. It's on now. I can hear
3 me.

4 THE COURT: Sorry, Mr. Sullivan. Go ahead.

5 THE WITNESS: What was the question?

6 BY MR. SULLIVAN:

7 Q. Give us some examples of --

8 A. Oh, yeah, examples. I'll be brief on this, but I have --
9 when I say all of my life, literally all of my life. I started
10 working -- I got my first clipboard, and people who are
11 grassroots know what I mean. I did voter registration with my
12 mom starting at the age of 12 or 13. And so we would go to
13 churches and you know, civic organizations, you name it,
14 registering people to vote, obviously before I could register to
15 vote. So I have done that all of my life. That continued to
16 high school. It continued to college. That's what led me to be
17 an active member of NAACP. I have done that with NAACP for over
18 20 years. I'm a life member of the Pine Bluff branch of NAACP.
19 Did that -- that's just a part of who I am. Other civic
20 organizations that I am a part of, Divine 9 with my sorority
21 specifically, social action, social engagement. It's just what
22 I do. So very, very active.

23 Q. Did you work trying to get people to the polls?

24 A. Yeah. Oh, yeah. Yeah. We did not just voter
25 registration, but we do voter education, voter engagement as

1 much as possible, and voter mobilization. A big component of
2 the work we do, or that I have just done over the years, and not
3 all of it is with an organization. It is volunteer, and then
4 some of it obviously was with where I worked, you know. But
5 yeah, that -- you know, just the engagement part has been a big
6 part of who I am, and you know, kind of what makes me what I do
7 today, and probably why I'm here on this seat today, but yeah,
8 very engaged my whole adult life -- my whole life from about age
9 12 or 13.

10 Q. What part of the states did you go to in that work?

11 A. We -- now, in the work with NAACP, National Voter Fund, we
12 did work at the time, if memory serves me correct, we had 26
13 active branches in the state of Arkansas during that time. And
14 so we had -- we had mobilization -- we had a plan for all of
15 those branches. Okay. And so -- so all of them. Most of my
16 work has been in the -- and I say the Fourth Congressional
17 District, because I was born in the Fourth Congressional
18 District, I went to college in the Fourth Congressional
19 District, and I live in the Fourth Congressional District.
20 Okay.

21 So but I worked in Little Rock for like 20 years of my
22 career. So Pulaski has been a part. But just everywhere around
23 the state where we had branches, we had a plan, because we had a
24 very targeted effort during those two years that I worked for
25 the NAACP, National Voter Fund, very targeted. So everywhere we

1 had a branch.

2 Q. Did you identify any hurdles with the black community when
3 you were doing that work?

4 A. Yes. We had hurdles. You know, one of the biggest things
5 that -- and sad. It's a sad commentary, but one of the biggest
6 things we have challenged is, you know, we have -- there is a
7 lot of -- and I use the word black people. I don't use the word
8 African-American a lot, but I am -- I'm okay with that, but a
9 lot of black people tend to think their vote is not gonna count.
10 And being a -- I'm grass -- I'm a grassroots person. And so
11 when you are out there in the streets with them, when you are
12 talking to people, you get to engage. And you say well, why.
13 And it's like they, air quotes, are gonna do what they want to
14 do anyway. And I said no. You know, and of course I go into
15 this spiel about us having the right to vote, you know, the
16 struggles, you know, the sacrifices people made, like the
17 history of us fighting for this right and how sacred it is. And
18 so I do kind of get on a soapbox about that, but we try to
19 educate people that your vote -- every single vote counts, you
20 know. And during that -- during one of the times, you know,
21 when Kwame and Mfume was the National -- I don't know if he was
22 president, CEO or chairman of the Board. You know, he won like
23 his congressional district with like 10 votes. They had like
24 three recounts. This is many, many years ago. So I could use
25 that as an example of -- at the congressional level. So those

1 are -- and what happens, it leads to apathy, okay. And another
2 part of the problem that I have experienced out there is that
3 there is so much voter suppression, and in one -- can I give an
4 example?

5 Q. Please do.

6 A. You know, in one county during this time, it was Chicot
7 County was the main county. And this was during the time that I
8 worked for the NAACP voter fund. One of the suppression
9 activities, or tactics actually, that was used was to tell
10 people, and this was geared to -- towards black people, that if
11 you had parking tickets or any kind of violations, if you had
12 warrants, any outstanding warrants, or was behind in child
13 support, if you went to vote, you would be arrested. Now, that
14 originated in Chicot County that year. But it did spread out to
15 surrounding counties. We had to deal with that. And it did
16 impact us. It did impact us. After that was over, we had the
17 Department of Justice came down from D.C., because we filed all
18 kind of complaints. Came down from D.C., they held hearings
19 like two -- two, maybe three-day hearings on the campus of UAPB.
20 Of course, you know, the outcomes of the election were what they
21 were, but it's things like that that leads people -- creates
22 obstacles, because that was the question. Those kind of things
23 help create obstacles to this work that I do. And in this work
24 that I do, and hundreds of thousands of others, it is
25 continuing. You know, one of my things my mom told me before

1 she passed away five years ago, because she even -- until her
2 illness, she was still very, very active in her community and in
3 her area and what have you. She says, we never arrive. It will
4 forever be a fight. And she knew I was tired, but she was
5 encouraging me in those moments not to ever quit doing this
6 work. But yeah, the obstacles are there. And we learn to deal
7 with them. We learn to manage them.

8 Q. Have you seen evidence of polarized voting in Arkansas?

9 A. Yes. Yes.

10 Q. What have you seen?

11 A. Black people tend to vote for other black candidates. We
12 vote for candidates of our choice. We vote for candidates who
13 we can relate to, who represent us, who we feel we'll have a
14 voice with. Now we vote for white candidates too, don't get me
15 wrong. But the -- when you say the polarization of it, you
16 know, groups tend to vote in blocks, you know, and so we do
17 see -- you know, we do see that. And so voting is polarized in
18 Arkansas. Across the nation, but we are talking about Arkansas,
19 but absolutely. And I have other examples, but I don't want to
20 be too wordy.

21 Q. Would you say that black candidates get the majority of
22 their votes --

23 A. Oh, yeah.

24 Q. -- from black voters or white voters?

25 A. Wait. Say that again.

1 Q. Would you say that black candidates get the majority of
2 their votes --

3 MS. MERRITT: Objection, foundation.

4 THE COURT: So, I understand the objection. I'm going
5 to overrule it and let the witness get all of this testimony in.
6 I can understand what is and what is not speculation versus
7 personal knowledge.

8 THE WITNESS: Okay. Say that --

9 BY MR. SULLIVAN:

10 Q. The question is; would you say that black candidates get
11 the majority of their votes from black voters or from white
12 voters?

13 A. Oh, from black voters. And I can give an example that I
14 remember real clearly.

15 Q. Please do.

16 A. When Mark Pryor was running, on the ballot was Jimmie Lou
17 Fisher, who was running for governor. Also on that ballot was a
18 black man named Ron Sheffield for constitutional office. When
19 we looked at the numbers, and I don't -- I mean, I didn't --
20 hadn't looked at this in a long time, but this is just an
21 example that came to my head here. Ron Sheffield got the black
22 votes. Okay. What he didn't get was half the votes in the
23 white communities that Jimmie Lou Fisher got when she was
24 running. I mean, on the same ballot. And Mark Pryor. You
25 know, I was on the campaign obviously working for Mark Pryor,

1 because I was on what is called the coordinated campaign. So I
2 had interactions with all of the candidates, but I was at the
3 table for Mark Pryor. So I think that was the -- that was like
4 the ah-ha moment for me when the light came on, because I was
5 expecting him to do much better than what he did. And so -- and
6 that -- I -- that race was in 2002. It was in 2002. And it
7 was -- it was just my ah-ha moment.

8 Q. Thank you. Are you familiar with other issues that are
9 important to black voters?

10 A. Yeah. We have a lot of issues. We, you know, voting
11 rights. Our voting rights are under attack. And when I say
12 that, I want to say access. I mean, we will forever have the
13 right to vote. It is a constitutional right, but we still have
14 to protect that right. Okay. We have to protect access to the
15 ballot. And so that is so important.

16 We just got out of a legislative session where there were
17 17 bills filed that in some way, some directly, some indirectly,
18 that impacted just that process. Now I understand it was a
19 national trend, but it happened in Arkansas. So voting rights,
20 making sure we protect our access to the ballot, number 1.
21 Other issues of concern, mass incarceration. We see -- we see
22 in Arkansas that we are 16.5 percent of the population with --
23 and I think the number is 45 percent of the jail population.
24 I'm not exactly sure, but it's somewhere in there, so give or
25 take.

1 I have personally experienced inequities in bonds, in fees,
2 and things like that. That's why I left the prosecutor's office
3 is because I realized from the inside I couldn't fight it, but I
4 saw the inequities in how black defendants, or at the time just
5 accused of, were treated, compared to the white ones. Okay. I
6 saw that. And that's why I left. Okay. Steve Dalrymple was
7 there. Betty Dickey was gone. It was another prosecutor,
8 because she left to run for office. So -- but anyway, so I have
9 seen that. I have experienced that. So I'm going to say mass
10 incarceration.

11 You know, we deal with racial profiling. My son was
12 racially profiled. You know, we lived in a neighborhood -- we
13 don't live there now, but we lived in a neighborhood, really
14 nice neighborhood. Lived in a two-story house. He was driving
15 his dad's BMW. He had locks like me. Big fellow, football, it
16 was his 12th year, I mean, his senior year of high school. And
17 police followed him around the neighborhood, out of the
18 neighborhood. Pulled him over when he got on the highway. He
19 called me. They didn't believe he lived where he lived. They
20 didn't believe he was -- that was his dad's car, or our car.
21 Okay. It was a sport model BMW. So, they just -- they -- they
22 questioned him about these things. That's profiling, because
23 you know why, they said he was driving too slow. And so we deal
24 with racial profiling all of the time. Okay. Other issues,
25 equity in housing. You know, we're still fighting, and we will

1 continue to fight for fair and equitable housing. And
2 understand, I understand, you know, white people have that issue
3 too. Probably not the profiling, but you know, dealing with
4 equitable housing, but we are disproportionately impacted by it.

5 Okay. We have landlords who can rent houses in Arkansas,
6 houses that aren't even habitable, but they can rent to people.
7 And it is often poor people, and people of color who need that
8 assistance. Okay. And I have firsthand knowledge of that. We
9 have been fighting in the legislature for ten years an implied
10 warrant of habitability. Now I haven't been with the panel for
11 ten years, but since I have been there the fight has been
12 ongoing, but the last three sessions I have been in the fight,
13 you know. And so those are some of the fights. You know, when
14 you look at education, man, the public schools, you know, we --
15 you know, black people want fair funding formulas for public
16 schools, including preK, because what's happening, you have --
17 you have the white kids who are moving out of inner cities into
18 suburbs. Okay. A lot of these school funding formulas,
19 especially in Pine Bluff where I live based on property tax.
20 Well, you don't have enough homeowners, because you have got
21 renters who are putting money into that to go to funding to
22 public education. So it's poor black kids who are getting left
23 behind. And so that's why we -- you -- and I say fight for them
24 in the legislature, you know, what we want is, you know, fair
25 funding for public education. You know, and I could go on.

1 There's a lot of other issues, but that's probably enough
2 examples.

3 Q. On the point of education, what about black history being
4 taught in schools?

5 A. Let me say this, and I'm honest, I said I take an oath to
6 tell the truth and nothing but the truth. Y'all, let me tell
7 you something. Black history ain't taught. I know I'm going to
8 use the word ain't, so you know what I'm saying. Black history
9 ain't taught in public schools in Arkansas. Black history is
10 mentioned. It's mentioned. Okay. Now, we have -- we have --
11 we have this -- or there is this national thing going around
12 talking about critical race theory. And let me just say this
13 about that, because that ties into black history, if I may.

14 Q. Yes.

15 A. Okay. Critical race theory is being used as a wedge to
16 divide us. Critical race theory in Arkansas has never been
17 taught at K through 12, never in any school in Arkansas. I
18 don't mention national, because we're talking about Arkansas.
19 Never. That was a concept that came along in the 70s that was
20 taught at higher levels like law school. And some colleges, not
21 many colleges either, but some, a few. And what they were doing
22 was looking at the relation between the law -- you know, the law
23 and history, and how that has impacted. You know, because like
24 I said, you know, there are some school districts that will
25 teach. I have been told there are some, but most of them just

1 mention black history. And you know when they do it, the month
2 of February, because February is Black History Month. Okay. So
3 we'll take it, but even then they only talk about Dr. King and
4 Rosa Parks. You know, so it's being used. I testified
5 against -- it was -- I believe it was Senator Mark Lowry's bill
6 during this last session. And the name of his bill was so
7 offensive that I was just almost in tears. And it was talking
8 about the 1619 project. And -- but the title of his bill was
9 saving American History Act, as though my history is not part of
10 American history. That's hurtful. That's the kind of things we
11 have to fight -- that's why we need representation in the -- in
12 the legislature. Okay. Just the very title was completely
13 offensive. And what they don't want, and I went and talked to
14 him -- I mean, I went one on one afterwards and had a
15 conversation like look, you don't understand this. You're
16 not -- you're missing it, you know. And what -- what they were
17 trying to do is they really don't want the history of enslaved
18 people being talked about. But it's part of history. It's part
19 of the fabric of this nation. It's who we are. You see what
20 I'm saying. And so that is -- that is problematic for me,
21 personally, for people I have talked to, for the people we
22 represent at the Arkansas Public Policy Panel, for the NAACP.
23 It is offensive. And I got to share with him and other
24 legislators how that made us feel. Just the title. Now they
25 are going to -- it's coming back, but they are going to change

1 the title. You know, it's coming back. But even with the Hate
2 Crimes Bill. That is not a real Hate Crimes Bill. And even
3 when I testified, I said to Speaker of the House, Matthew
4 Shepherd, I said you all have put this together, how many
5 regular black folk have you talked to. He admitted like, you
6 know, yeah, we need to do that. You know, I mean, it's part of
7 the record. You can go look it up. You know, and so you know,
8 we do, we need more representation, because these are the kind
9 of things that we are dealing with.

10 Q. When you mentioned Mark Lowery, were you referring to
11 Representative Mark Lowery?

12 A. Yeah. State Representative. Yeah. He was one of the ones
13 who sponsored one of the bills that I testified against dealing
14 with black history, because this started with black history in
15 public schools. And then not only that, in there there was a
16 penalty that if schools taught it, they would lose some funding,
17 some state funding. So not only was it an insult, it was an
18 insult on top of an insult, you know. And it's just -- it's --
19 yeah.

20 Q. And you have already answered part of my next question, but
21 not all of it. Has the general assembly been responsive to
22 those concerns that are particularly interesting to black
23 voters?

24 A. No, sir. They have not. No. They have not.

25 Q. Can you give some examples that you didn't already give to

1 my last question?

2 A. Well, one of the things I would say, the reason I say no,
3 they haven't been responsive, I have made myself available to,
4 you know, just have a conversation and say hey, let's talk about
5 it. Because you know, it's one thing for them to talk to a
6 colleague who is a legislator. I'm not a legislator. I
7 represent the every day, ordinary black person in Arkansas.
8 Okay. And so -- so yeah, they haven't been responsive. You
9 know, we are getting ready for the fiscal session, starts
10 February 14th. And some, not all, but some legislators are
11 trying to get enough votes to bring critical race theory back,
12 you know, because you have got to have three-fourths votes to
13 bring anything to the agenda that's not part of the fiscal
14 session, right. So for them to do that, and not even have
15 conversations with those of us who said hey, let's talk, let's
16 talk through this, hear what we have -- just hear us. Hear our
17 voices. Hear what we have to say. Yeah. I have just -- I've
18 not -- yeah. And then like with 1619, it's so -- if you read
19 that bill, it's so racially charged. And you know, I just don't
20 know how we -- you know, I don't know how some of the colleagues
21 allowed that bill, but of course I see it through a different
22 lens. You know, I'm looking at it through a different lens.
23 They are looking at it through a different lens. But when I
24 look at it, it's racially charged. I mean, 1619 is -- you know,
25 some of the legislators came to me afterwards and said, we

1 didn't realize that about 1619 Project. You know, it is a
2 series of essays. You know, have any of you read these essays.
3 You know, it is not a course. And so I talked a little bit
4 about that, and even in the process of that, I did have
5 legislators come say thank you, because your testimony was very
6 educational for us, but nothing has changed, you know.

7 Q. Are you familiar with an effort by Senator Joyce Elliot to
8 commission a study?

9 A. Yes.

10 Q. Tell the Court about that.

11 A. So that study -- there is two, there is two studies. The
12 most recent study was this last legislative session, and it was
13 a study on truth and -- truth and reconciliation. And what it
14 would do was to bring together black, white, republican,
15 democrat, okay, to study this plan. Okay. Not to do anything.
16 Just to study it. It was just going to be a study of how can we
17 reconcile some of the issues that we are impacted by. Okay.
18 That, it couldn't make it past committee. And it wasn't asking
19 for anything to be voted on. It wasn't asking for finances.
20 They wasn't trying to do a fiscal impact. They just wanted to
21 bring together senators and representatives from both sides of
22 the aisle, a diverse group of people to have these
23 conversations. And I'm gonna tell y'all, I was so livid when it
24 didn't pass. Afterwards, I talked to Jason Rayport, Senator
25 Jason Rayport. He didn't have a good answer, but he said it was

1 just too many -- moving parts is my terminology. That is what I
2 heard. He didn't say moving parts, because that's something I
3 say, but it was just, you know, they just didn't even want to be
4 bothered. You know, there were no black people on that. There
5 were no black members there to speak up for us. You know, there
6 weren't any. So, it died, you know. Then two sessions ago she
7 brought another one. And this study, all she wanted to do was
8 to study -- call for a study of the impact of some of these
9 bills before it's passed, because sometimes bills are passed
10 that have unintended consequences. We know that, right. I
11 mean, that's just the way the law works. Sometimes they are
12 unintended consequences, and when the bill goes into law, you
13 find out, uh-oh, well, we didn't really mean for that to happen,
14 but here we are. She was wanting an impact study, especially
15 around bills dealing with the justice system. You know, and
16 there were some others, but that's the one that really stood
17 out. And she could not get that passed. And all it was was a
18 study.

19 Q. You have mentioned several times that you have testified in
20 legislative committees. Do you have an approximate number of
21 times you have done that?

22 A. Do you mean just in this last session?

23 Q. All total.

24 A. I really -- I don't know -- I testify a lot. Probably too
25 much. But I know in this last session I testified maybe four

1 times, maybe four times. About four times.

2 Q. The session before that, maybe four times or more?

3 A. Three or four, yeah. Three or four.

4 Q. Have you ever testified at committees that had no black
5 members, or only one black member?

6 A. Oh, yeah. Oh, yes. Yes. I counted up before court Monday
7 when I thought I was gonna testify.

8 Q. Today is Monday. Are you talking about Saturday?

9 A. Saturday. Yeah. Saturday when I thought I was gonna
10 testify, but there are -- I counted up, because we have got this
11 book, and it's a really neat book, because you have got the
12 legislator's picture out beside it, so you can definitely see
13 the black people. So there are five house committees that have
14 one black member on them out of 20. Out of 20. There is five.
15 And then there was one house committee that had seven members
16 and one black, you know. So yeah, and then Senate there is
17 several with none. We only have four members, black members in
18 the senate.

19 Q. You said how many House committees are there?

20 A. Total -- total?

21 Q. House committees.

22 A. I believe 12, I believe it's 12.

23 Q. So you are saying almost half of those have one or less
24 black members on them?

25 A. Right. Right. Right.

1 Q. Tell the Court why you think it's important to have black
2 representatives on these committees?

3 A. Here is what I have been saying for years and years. And
4 it still stands true. Representation matters. It matters. I
5 don't care where you go, what you are doing, representation
6 matters. And so it's important for us to have more diverse
7 diversity on the bench -- I mean, not the bench, the
8 legislature, in the legislature, so that our voices are
9 amplified, our messages are amplified, so that we are
10 represented. Representation matters. You have got what, 10
11 attorneys in here, maybe 8, I don't know. We don't have any
12 representation, you know, black representation, diverse
13 representation, you know, I'm going to stick with black, because
14 I don't know everybody's nationality, but it's important. It's
15 important. And so in the -- you know, and especially in the
16 legislature, y'all these are people who are making laws that
17 impact us every single day. And so it is so serious, you know,
18 and when you look at it, you know, now I'm not a maps and
19 numbers person, so please don't ask me anything about that. But
20 I know based upon our representation of the population, and I
21 know black folks all in this state. I mean, 15 percent
22 voting-age population, you know, 16.5 population, black
23 population. So we are small, but we deserve the representation
24 that we should have. And so -- so my thing is representation
25 matters, representation matters, representation matters.

1 Q. So if there were more black legislators on these
2 committees, do you think that would help bring up the issues,
3 more likely represent black voter issues around Critical Race
4 Theory or the Hate Crimes Bill or even getting a study approved
5 to study differences?

6 A. I think it would be a help. I think it would help. You
7 know, and one of the things a legislator told me, and this is
8 what he said. He said sis, it's just hard. It's just hard. He
9 the only -- you know, the only one on the committee, the only
10 black person. And our cultures are different, you know. See,
11 we need to have like conversations where we can explain, okay,
12 here is -- here is how we feel because of this. Here is my
13 experience. And I believe, you know, legislators could be a
14 little bit more compassionate, but it's gonna take more black
15 legislators at the table to do that, because I can't go to the
16 table like that. I'm not a legislator you know, I can get
17 opportunities to try to get meetings and explain, but you know,
18 we just -- we need the representation that we deserve. And the
19 reason I say deserve is because of our pop -- this population
20 growth for black people is great, you know. I don't know when
21 it came from, but I'm happy they're here, but we need the
22 representation to match that in the state legislature.

23 Q. Were you going to legislative committees and speaking when
24 democrats were in the majority of the house?

25 A. Yeah. Yeah.

1 Q. Did you have these same kind of concerns and issues then?

2 A. Same. Yes, I did. You know, because the way I -- the way
3 we see this, we are looking through a lens of race. You know,
4 just because you are a democrat don't mean you can relate to my
5 issue. You know what I'm saying. Especially if you are a white
6 male, because you have privileges that I don't have. You know,
7 and I'm going to tell you this. I went to the military. I was
8 in the Air Force reserve. They let me know I was at the bottom
9 of the chain, because I was black and I was a female. And guess
10 what, they treated me that way too. I was 18 years old, and
11 that was my introduction to the real world, because parents kept
12 me protected from a lot of this, you know, high school and all
13 of that. We knew it existed, but when I hit the real world they
14 let me know real quick, you are at the bottom of the barrel, so
15 yeah.

16 Q. Let's turn attention now to the Board of Apportionment
17 house map that was approved at the end of 2021. Did you ever
18 express comments to the Board about the map, or proposed maps at
19 that time?

20 A. You know, I did online. I just did -- there was this
21 online portal that people could go in and make comments. And so
22 I did make a comment there. Now the organization I work for,
23 Arkansas Public Policy Panel, we submitted a report and
24 alternative maps and all of that and got that submitted.

25 Q. Did you ever get a response to the comments you put on the

1 website?

2 A. No, sir.

3 Q. Did the Arkansas Public Policy Panel get any kind of
4 response about the proposed maps that it put forward?

5 A. No. None. None.

6 Q. And I think you mentioned you have lived in Pine Bluff most
7 of your life, correct?

8 A. Yes. All of my adult life. Moved there to go to college.

9 Q. Are you familiar with the city of Arkadelphia?

10 A. Very familiar with Arkadelphia.

11 Q. Have you done any voter outreach there?

12 A. Oh, yeah.

13 Q. Have you done voter outreach there?

14 A. I have. Now I didn't attend the college, but I have been
15 to some events.

16 Q. That's what --

17 A. Okay.

18 Q. Are there any similarities at all between Pine Bluff and
19 Arkadelphia?

20 A. Yeah. There are some similarities the way -- yeah. I
21 think there are some similarities. There is communities of
22 interest that align with each other. The main one that I see is
23 the AME church. AME stands for African Methodist Episcopal.
24 AME churches in Arkansas, probably across everywhere have a very
25 unique comradery, because of their structure. They have

1 super -- they have bishops and presided elders and things like
2 that. And so the churches, the AME churches in Pine Bluff and
3 the AME churches in Arkadelphia have a close interaction
4 relationship where they, you know, visit each other. This is
5 all preCOVID now. I don't know what they do right now, but
6 preCOVID. There is just a history, rich history of these
7 churches and their fellowship. Okay. And you know, I was real
8 impressed, because I have a good friend who lives in
9 Arkadelphia. She was an elected official. She's AME. She was
10 once president of the Arkansas Democratic Black Caucus, and so
11 she invited me to a number of events. And so I would, I would
12 go there and then I would go to Pine Bluff to the AME church and
13 you see a lot of the same people. So it's pretty neat how they
14 have that comradery. You have NAACP chapters, branches. We
15 have a branch in Pine Bluff. There is a branch in Arkadelphia.
16 Branches collaborate through what we call the Arkansas state
17 conference of the branches, you know, work together on projects
18 or whatever, you know, whatever is happening or whatever is sent
19 down from the national NAACP. There is that collaboration. We
20 have, you know, you have got -- you know, you have two colleges.
21 They're college towns. You know, we have got UAPB, which I'm an
22 alumni, and you have got several actually in Arkadelphia. Then
23 you have got these -- you have got social -- well, it's not
24 social. Civic organizations, you know, our D 9 have worked with
25 or collaborated with their D 9. And so I'm a member of Delta

1 Sigma Theta Sorority. And so we have a regional -- we have a
2 state -- we have a state chapter, and then we have -- well, not
3 really chapter, but committee, that deals with social justice
4 issues, social action. We call it social action. And so you
5 have got that collaboration. And when I say D 9, I mean, Divine
6 9. You know, Divine 9 through the Pan-Hellenic -- you know what
7 I mean, judge, yeah, he know -- Council. And so it is Divine 9
8 through the Pan-Hellenic Council. And so we have that
9 collaboration. So we -- you know, we're one big family. And so
10 yeah, I say there are definitely similarities.

11 Q. Are black voters in Arkadelphia, do they have the same
12 housing issues as black voters in Pine Bluff?

13 A. Yeah.

14 Q. Do they have the same educational issues as black voters in
15 Pine Bluff?

16 A. Same issues.

17 Q. Mass incarcerations?

18 A. Absolutely.

19 Q. All of the issues you said earlier.

20 A. Right. Now I did get to work, and I will say -- just add
21 this on. I did get to do some work in Arkadelphia on the
22 ground. When I say on the ground y'all, I mean like boots on
23 the ground, grassroots work, that kind of stuff, voter
24 registration. When I worked for -- when I was on staff with
25 NAACP National Voter Fund so we got to, you know, I -- you know,

1 just really kind of engage more with them at that time and be on
2 the ground to get a pulse of the people and that kind of stuff,
3 because I had to travel when I was with that -- when I was doing
4 that, I mean, I traveled around the state. And then when I
5 worked for Mark Pryor, there was some traveling around the
6 state. Not as much, but you know, yeah. So we have dealt with
7 a lot of the same issues.

8 MR. SULLIVAN: I pass the witness, Your Honor.

9 THE COURT: Thank you Mr. Sullivan.

10 Defendants?

11 CROSS-EXAMINATION

12 BY MS. MERRITT:

13 Q. Good afternoon, Ms. Seals.

14 A. Good afternoon.

15 Q. It's nice to see you. My name is Jennifer Merritt, and I
16 think we have met once before.

17 A. We have. You did depositions on me.

18 Q. I did. I took your deposition.

19 A. I thought so. I thought I recognized your face.

20 Q. I thought I recognized you as well.

21 A. Yeah.

22 Q. Nice to see you.

23 A. Well, I don't know about all of that. Let's just keep it
24 real now.

25 THE COURT: You are under oath.

1 THE WITNESS: So I done took that pledge.

2 BY MS. MERRITT:

3 Q. Well, it's nothing personal.

4 A. No, I know. I know. I'm just joking.

5 Q. I know, and I'm here to do my job today.

6 A. I know.

7 Q. I'm a senior assistant attorney general with the office of
8 Arkansas Attorney General Leslie Rutledge, and I need to follow
9 up on just a few questions today.

10 A. Sure. Sure.

11 Q. And I took your deposition in another case. You are a
12 plaintiff in another Voting Rights Act case involving Arkansas
13 appellate judges, right?

14 A. Well, appellate and Supreme Court.

15 Q. Right.

16 A. Is that the same?

17 Q. Yes, ma'am. Supreme Court judges are appellate judges in
18 Arkansas.

19 THE COURT: Can I stop everybody, just as we get
20 started here. Can we make sure that we don't talk over each
21 other, otherwise the court reporter's head is going to explode.
22 Let's make sure we ask questions, wait until the end, then
23 answer them, then wait until the end, and then ask.

24 MS. MERRITT: I will do my very best. Thank you for
25 that reminder, Judge.

1 BY MS. MERRITT:

2 Q. So what we'll do is I'll try to finish my question and then
3 you can give your answer, and I'll do my very best to let you
4 finish your answer before I start my question, so that we make
5 the court reporter's job easier and we have a clean record.

6 A. Okay.

7 Q. So, you testified earlier that you worked for U.S. Senator
8 Mark Pryor for a number of years, right?

9 A. Yes.

10 Q. And so I guess it's safe to say you are a democrat, is that
11 right?

12 A. I'm registered as an independent.

13 Q. Okay. Do you typically affiliate with the democratic
14 party?

15 A. Majority of the time, but I must say I have worked for
16 republican candidates on staff.

17 Q. In your personal experience, so how long do you think you
18 have worked on political issues in Arkansas?

19 A. 30 years.

20 Q. 30 years. And have you ever, for the most of those 30
21 years, do you think you have worked with democratic candidates
22 and issues?

23 A. Not all of the 30 years. I have worked on -- I left my job
24 to go work on staff for a republican candidate statewide.

25 Q. Yes, ma'am.

1 A. So right now I'm supporting a republican candidate
2 statewide. So for the whole 30 years, no. I have worked with
3 some state representatives who were republican candidates. So
4 no, not all of those 30 years were democrat. However, I align
5 more with democrat, with the philosophy, you know, with the
6 philosophy of democrats than I do republicans.

7 Q. Thank you. And my question wasn't the whole time. My
8 question was for the majority of the time.

9 A. Majority of the time. That is correct.

10 Q. Okay. In your personal experience in 30 years in working
11 in politics in the state of Arkansas, would you agree with me
12 that most African-Americans in Arkansas are also democrats?

13 A. Yes.

14 Q. Okay. And so if an African-American in Arkansas is going
15 to run for political office in Arkansas, typically would they
16 run under the democratic ticket?

17 A. Most do. Not all.

18 Q. Right. And that was my question. Typically.

19 A. Most. I just want to make sure the record reflects,
20 because like I said, I'm currently, you know, helping a
21 republican candidate. So I'm not just bound to democrats, you
22 see what I'm saying.

23 Q. Yes, ma'am.

24 A. But the majority, you are correct.

25 Q. Yes, ma'am. And would you agree with me as well, Ms.

1 Seals, that most African-American voters in Arkansas are also
2 democrats?

3 A. Yes.

4 Q. Now, Arkansas today is a majority republican state, right?

5 A. Yeah. For those who are registered and vote.

6 Q. Fair. For those who are registered and who vote?

7 A. Yes, ma'am.

8 Q. And so in the political situation that we find ourselves
9 today --

10 A. Uh-huh.

11 Q. -- would you agree with me that it's a challenge for almost
12 any democrat to win a contested election in Arkansas?

13 A. No. No. No, I don't. I don't agree with you.

14 Q. Okay. So even though we are a majority republican, you
15 think it's still a fair contest?

16 A. Here is the thing about it. It depends on where you are.
17 It depends on where you are in the state.

18 Q. Okay. Fair enough. You talked earlier during your direct
19 examination about an African-American candidate in 2002 --

20 A. Uh-huh.

21 Q. -- for Lieutenant Governor --

22 A. Yeah.

23 Q. -- Ron Sheffield.

24 And if you could, just try to let me finish without
25 speaking over, so that the court reporter doesn't have to write

1 that down. That would be very helpful. Thank you so much. So,
2 do you -- you're aware, aren't you, Ms. Seals, that
3 Mr. Sheffield ran against an incumbent lieutenant governor Win
4 Rockefeller, aren't you?

5 A. Yes.

6 Q. Are you familiar with the Encyclopedia of Arkansas, have
7 you ever heard of that reference material?

8 A. No.

9 Q. I did a little bit of research as you were testifying, and
10 the Encyclopedia of Arkansas reported about that particular 2002
11 race. And it was reported in the Encyclopedia of Arkansas that
12 Democrats persuaded Mr. Sheffield to run against an incumbent,
13 Win Rockefeller, on the promise that sufficient funds would be
14 raised to support his candidacy, but that --

15 THE COURT: Is there a question coming from this?

16 MS. MERRITT: Yes, sir.

17 BY MS. MERRITT:

18 Q. But at the end of the day after he won the primary, those
19 funds didn't come through. Were you aware of that?

20 MR. SULLIVAN: Objection.

21 THE COURT: Hold on. What's the objection?

22 MR. SULLIVAN: The question is based on hearsay.

23 THE COURT: I'm going to overrule it, because I'm not
24 taking it for the truth of the matter. She did ask, are you
25 aware of that. The witness can answer one way or the other.

1 MR. SULLIVAN: Additionally, there is no foundation
2 laid.

3 THE COURT: That is sort of a goose, gander situation.
4 Y'all asked a bunch of questions that might have fit that
5 description on direct.

6 Overruled.

7 BY MS. MERRITT:

8 Q. Are you aware that his campaign was underfunded?

9 A. I wasn't in the conversations or in the room for Ron
10 Sheffield. So, yeah.

11 Q. So in direct answer to my question?

12 A. No.

13 Q. No, you were not?

14 A. No.

15 Q. And did you know that Governor Beebe later appointed
16 Mr. Sheffield to the Arkansas Supreme Court?

17 A. I did.

18 Q. Okay. Now, you talked a little bit on direct about a
19 suppression tactic in Chicot County when you worked for the
20 NAACP Voter Fund. Do you remember talking about that? When was
21 that time frame?

22 A. It was during the 2002 campaign.

23 Q. So about --

24 A. During this -- when we were -- yeah. The one that -- the
25 campaign that I talked about where I worked for Mark Pryor on

1 the campaign.

2 Q. So that was about 20 years ago?

3 A. Yeah.

4 Q. Okay. You also talked about a bill that was sponsored by
5 Representative Lowery?

6 A. Uh-huh.

7 Q. Was that House Bill 1011?

8 A. I don't have that with me. I mean, if you want to read it
9 out. I don't remember the numbers.

10 Q. Sure.

11 A. Just --

12 Q. I did a Google, and I just wanted to see if we were talking
13 about the same thing. Okay. It might be House Bill 1231,
14 Saving American History Act?

15 A. Yes.

16 Q. That was the name of it?

17 That bill did not pass, did it?

18 A. No. We fought.

19 Q. Okay. All right. He withdraw the bill, in fact?

20 A. He did. After our testimony.

21 Q. Very good. Now, you also talked about another bill about
22 Critical Race Theory, I think, another bill about that, or was
23 that the same bill?

24 A. It was looped into that bill. Yeah. It was looped into
25 that particular bill.

1 Q. Okay.

2 A. It was all in there. The 1619 project, Critical Race
3 Theory. They just kind of lumped it all into one.

4 Q. In any event --

5 A. As far as I remember, okay.

6 Q. Nothing passed about Critical Race Theory last legislative
7 session either, did it?

8 A. It did not.

9 Q. Would you agree with me, Ms. Seals, that legislating is a
10 complex activities?

11 A. Yes.

12 Q. And legislators have to balance a lot of different
13 competing interests when they are serving their constituents?

14 A. They do.

15 Q. And would you also agree with me that bills pass or don't
16 pass for a variety of different reasons?

17 A. Sure.

18 Q. And some of those reasons might be political, or they're
19 all political, this is a political office, right?

20 A. Not always.

21 Q. Okay. And that's fair. That's fair. But politicians are
22 elected, they run for public office, right?

23 A. They do.

24 Q. And they represent the constituents that they serve?

25 A. They do.

1 Q. And they are balancing the interests and goals of all of
2 their constituents, as best they can?

3 A. I guess as best they can threw me off. Okay.

4 Q. Well, and if they don't, they're going to have to face
5 reelection?

6 A. Sure.

7 Q. Give me one second, if I could, Your Honor?

8 THE COURT: Sure.

9 MS. MERRITT: I don't think I have anything else for
10 you, Ms. Seals. Thank you very much for your time.

11 THE COURT: Stay up there for one second, and then I'm
12 going to give you a shot to ask more questions. Otherwise,
13 we'll move to Mr. Sullivan for redirect.

14 Ma'am, I understood your testimony about the -- there
15 being some similarities between Arkadelphia -- I shouldn't put
16 it that way. Arkadelphia and Pine Bluff, and also there being
17 similarities, some similarities between the black communities in
18 both of those places. Are there any differences in the black
19 community in Arkadelphia, and the black community in Pine Bluff
20 that stand out to you?

21 THE WITNESS: Differences?

22 THE COURT: Yes.

23 THE WITNESS: Well, we -- well, in Pine Bluff we have
24 a lot more black people. We have more professional people,
25 black people, because you know, we have a college. We have the

1 college, and so we have a lot of retired professional people,
2 and we have -- and I don't know the numbers on this next one,
3 but I'm gonna say it, but we have a lot of retired veterans,
4 veterans. We have a lot of retired veterans, but I don't know
5 the numbers, but I know Pine Bluff has a lot. So that might be
6 a difference, because I don't know about Arkadelphia as far as
7 that. Another difference is that because Pine Bluff is a
8 majority black community, we have more representation on our
9 city council, and our quorum court than Arkadelphia does.

10 THE COURT: You may have just answered this question,
11 but let me try to be just a little bit more specific too. With
12 respect to the particular issues of interest, are there any
13 differences, and if there are, what are they? Between the black
14 community in Arkadelphia and the black community in Pine Bluff?

15 THE WITNESS: No, I don't think there are any
16 differences in the issues. I do not.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Thank you.

19 MS. MERRITT: I have no further questions. Thank you.

20 THE COURT: Mr. Sullivan?

21 REDIRECT EXAMINATION

22 BY MR. SULLIVAN:

23 Q. Ms. Seals, Pine Bluff has one black representative and one
24 black state senator currently, correct?

25 A. No. We have two, but we have -- no, we have -- we have two

1 state representatives and one senator that's black.

2 Q. Okay. Do you know if Arkadelphia has a black senator or
3 black representative.

4 A. No black senator. No black senator. And no black -- no,
5 no black representative.

6 Q. Do you think black voters should have an opportunity to
7 elect candidates of their choice, even if they prefer a democrat
8 candidate?

9 MS. MERRITT: Objection, outside the scope.

10 THE COURT: Overruled. I'll take it for what it's
11 worth.

12 THE WITNESS: Absolutely.

13 BY MR. SULLIVAN:

14 Q. On direct you testified about the legislature trying to
15 bring up a bill that is not related to the physical session?

16 A. Uh-huh.

17 Q. Which bills were you talking about?

18 A. Critical Race Theory. They are just saying CRT. And
19 again, it's Representative Mark Lowery who is the main -- he's
20 not the only one, but he is the main driver of that bill. And
21 if they get the three-fourths votes they need, it's coming back.
22 And the reason is because it did not pass the first time. So
23 that's what -- that is what they're trying to do.

24 Q. Do you happen to recall the margin by which it did not
25 pass?

1 A. Well, what happened -- I don't, because what happened after
2 the testimony, he had a couple of bills, and he withdrew -- you
3 know, and I don't -- I don't -- I kind of get tangled up on some
4 of these bills. I know it didn't pass, and I know he withdrew
5 one or two of his bills. And then there were some bills that
6 were filed in reference to that, but they just became what we
7 call shell bills, because there was no work done on them.

8 MR. SULLIVAN: No further questions, Your Honor.

9 THE COURT: Thank you very much for your testimony.

10 THE WITNESS: Thank you, Judge.

11 THE COURT: I speak for myself, and I am sure I speak
12 for both of the parties when I say I am sorry we kept you here
13 on Saturday. It turned out we were not ready to get to you, but
14 thank you for coming to testify.

15 THE WITNESS: Okay. Thank you. Thank you. It was
16 all good. I'm here for the fight.

17 THE COURT: Mr. Sells, what's next?

18 MR. SELLS: We have a little bit of housekeeping, Your
19 Honor, before we close our case.

20 THE COURT: Okay. Let's do some housekeeping.

21 MR. SELLS: There are two exhibits we would like to
22 offer.

23 THE COURT: Can you get on a microphone, Mr. Sells,
24 just for the record?

25 MR. SELLS: We have two exhibits we would like to

1 offer that were discussed in prior testimony, and I'm trying to
2 get the numbers.

3 THE COURT: Take your time.

4 MR. SELLS: Bear with me.

5 THE COURT: That's fine.

6 MR. SELLS: I'll start with this one while my team is
7 looking for the other one. And I apologize for the delay.

8 THE COURT: Don't apologize. It's perfectly fine.

9 MR. SELLS: So the first one we have marked as P
10 82-01. And this is the additional set of indexes that Lisa
11 Handley testified about during her testimony, and you asked
12 Professor Lockerbie about it on Saturday. And so we thought we
13 would make it's easy for you if you wanted to look at these,
14 just go ahead and put them in the record.

15 THE COURT: Are these essentially, the quote, unquote,
16 check that Dr. Handley testified about, the sort of average of
17 the other candidate races?

18 MR. SELLS. Yes. And I put them on the ELMO and she
19 testified about them, and those numbers are in the record. And
20 you asked Professor Lockerbie about them. I thought I would
21 make it easy for you.

22 THE COURT: Defendants, do you have an objection?

23 MS. MERRITT: Well, we object to her testimony about
24 that really in its entirety, because it wasn't in the report,
25 but she talked about it.

1 THE COURT: So here's -- let's start slowly. I
2 actually agree with you that it wasn't in her report. And if
3 you all had objected at the time, I might well have sustained
4 your objection. Having said that, you didn't object at the
5 time, and so you let her testify about it. So given that, do
6 you all have an objection?

7 MS. MERRITT: May I have a moment?

8 THE COURT: Yes.

9 MS. MERRITT: Thank you, judge.

10 Judge, we still object to this exhibit. She is not
11 here to talk about this, who prepared it. We don't know where
12 this information came from. We object.

13 THE COURT: So I want to explore it a little bit,
14 because I do think it's an important question about whether it's
15 going to come into the record or not. She did talk about it
16 during her examination. She said what it was. She explain --
17 you're right. She didn't say who prepared it, but she said this
18 was the results of her check. So I guess what I'm trying to
19 figure out is what is the basis of the objection.

20 MS. MERRITT: Foundation. Where did the numbers come
21 from? Who prepared it? When? It's not in the report.

22 Is there anything else? This one wasn't my witness.

23 THE COURT: I don't have a problem with other lawyers
24 talking. I would rather get to the right answer. I'll of
25 course let you all respond after I'm done with the defendants.

1 MS. MERRITT: I think the point that we're trying to
2 make, Your Honor, is we don't know that this is the same
3 document that was put on the stand and was discussed at the
4 time. It wasn't moved for admission at the time, so we would
5 just be taking counsel's word. We just don't know what this is.

6 THE COURT: If it was the document that she spoke
7 about that was on the stand, would you have an objection?

8 MS. MERRITT: Well, other than that it wasn't in the
9 report, no. I mean, I think if she had laid the foundation at
10 the time and she said I prepared this, explained where she got
11 the numbers from then that wouldn't be a valid basis for an
12 objection at this point. We are looking at this today without
13 her here to tell me where it came from. I just don't know where
14 it came from.

15 THE COURT: So I will say, and then Mr. Bronni, I will
16 ask you your thoughts, I will say I saw it up on the screen. It
17 looks to me like the exact same document. At least for purposes
18 of a PI hearing, I'm not going to sort of count into the idea
19 that maybe counsel pulled a fast one and changed what looks to
20 be the same document into a different document.

21 Mr. Bronni, another objection?

22 MR. BRONNI: The only thing I would add to the
23 objection, Your Honor, is she testified to, I think, specific
24 things on this chart, not to all of it, so there is no
25 foundation to those specific numbers.

1 THE COURT: And that counsel, that plaintiffs, that I
2 would like to talk to you about, because that objection I agree
3 with. I do think it's fair for what she testified to, given
4 that they didn't object at the time, to come in as a document,
5 but she did not testify to the majority of what's on that list
6 in any way, shape or form.

7 MR. SELLS: So may I respond to a couple of things,
8 Your Honor?

9 THE COURT: Yes. That's what I would like for you to
10 do.

11 MR. SELLS: So I think it's important to note, number
12 one, that Mr. Steinberg is the one who elicited the testimony
13 about the checking that Dr. Handley did on her numbers. That
14 was not part of my direct exam. It was part of Mr. Steinberg's
15 cross-exam when he was trying to undermine the Bland Index that
16 she does use, and she says -- testifies no, actually I do these
17 additional checks. It was on redirect that I showed her an
18 example of the checks, and we talked about all of that. And I
19 think on redirect she actually does lay out a quick foundation
20 for all of the numbers, because she explains how she calculates
21 them all. And you're right that she read off a couple of them.
22 We looked at a couple of districts, in particular House District
23 34. That's a big issue in the case. Frankly, we don't really
24 care about any of these numbers, but we're trying to make it
25 easy on the Court in case the Court cares about the numbers, at

1 least your question to Professor Lockerbie suggests that you
2 might. And so we're not trying to hide the ball here, and just
3 thought we would offer them up. But we do think there is enough
4 foundation for you to look at any of these numbers for what they
5 are.

6 THE COURT: Mr. Bronni, it is a good objection. I'm
7 going to agree with the plaintiffs though. I do think, and I do
8 recall that she did testify that -- that she did testify that
9 these were the checks she ran, and then she testified about
10 specific ones. And so given that testimony, I'm gonna let it
11 in.

12 MR. SELLS: Okay. I want to insure --

13 THE COURT: So yes, it's admitted.

14 MR. SELLS: Thank you. Did you get your copy? Did
15 the Court get the copy? I don't think I did.

16 The next exhibit that we would like to offer into
17 evidence are Mr. Bearden's notes that he discussed during his
18 testimony. We neglected to offer those. And we have created an
19 exhibit marked P 110 A, which contains just the ones that he
20 testified about.

21 THE COURT: So it does not contain all of his notes,
22 just the ones that you asked him questions on, is that accurate?

23 MR. SELLS: Just the ones that Mr. Topaz asked him
24 questions about.

25 THE COURT: The royal you, yes, I understand. Any

1 objection, defendants?

2 MS. MERRITT: Yes, I object to hearsay. I believe
3 these were already in, actually, to be honest, but aren't they
4 in.

5 COURT ROOM OFFICER CLARK: Yes, they are.

6 MR. SELLS: According to our review they weren't, but
7 maybe that was done before we got the transcript in.

8 THE COURT: I'm going to consider your request moot,
9 given that I have just heard that they are already in.

10 MR. SELLS: Okay. Let me do a final check with my
11 cocounsel, but I think that those are all the exhibits we wanted
12 to move in.

13 In the event that it turns out those were not
14 admitted --

15 THE COURT: If it turns out they were not admitted,
16 your objection is hearsay?

17 MS. MERRITT: Yes.

18 THE COURT: What's your response?

19 MR. SELLS: It was the witness's own statement. It is
20 not an out-of-court declarance.

21 THE COURT: I believe you are right, and so I am going
22 to admit them.

23 MR. SELLS: And with that, we rest our case.

24 THE COURT: We're going to take a break for lunch now.
25 We're going to take probably a 45-minute break.

1 Mr. Sells, one thing obviously in my order quashing the
2 motions. Well, in my order granting the defendant's motion to
3 quash the subpoenas related to the three Board of Apportionment
4 members, you all probably saw a footnote where I suggested at
5 the close of evidence, if you would like to submit some written
6 questions to the Court, I will take those under advisement,
7 essentially. I was -- at that point I was meaning at the close
8 of all evidence. If you want to do it now, you are more than
9 welcome to. If you want to talk about it at the close of all
10 evidence, and sort of delay until then. I don't mean delay in a
11 bad sense. It's a perfectly neutral sense. Delay until then,
12 that's fine as well.

13 MR. SELLS: Absolutely, Your Honor. We would like a
14 little bit more time, because Justice Dickey's testimony may
15 impact that quite a bit, and that just happened moments ago.

16 THE COURT: That's fine. I want to know how the rest
17 of the day is gonna go. So who are you all calling?

18 MS. MERRITT: So we are calling Andy Davis,
19 Representative Andy Davis, and then we are calling Josh Bridges
20 from the Secretary of State's office.

21 THE COURT: And if -- and I know this is a hard
22 question to answer, but if you could give me a general estimate
23 of how long you think combined your directs will take?

24 MS. MERRITT: Two and a half hours, maybe three.

25 THE COURT: Okay. I know it's even harder to estimate

1 cross, but do you have a sense?

2 MR. SELLS: I think Mr. Bridges will probably be less
3 than a half an hour, but Mr. Davis could be substantial.

4 THE COURT: I imagine that would be the case. Okay.
5 We are definitely going to get done with the witnesses tonight.
6 Whether or not we do any kind of formal close or anything or
7 save all of that until tomorrow, I think is still up in the air,
8 but no matter how late we have to go tonight, we are getting
9 done with the witnesses. I just want to make sure everybody
10 understands.

11 Plaintiffs?

12 MR. SELLS: We understand. And I just would like to
13 ask that if we do decide to do the formal closing tonight that
14 we have a break, so that we can set up and print out notes and
15 stuff like that.

16 THE COURT: That's fine. Let me ask you, because we
17 might be able to structure everybody's life a little more
18 neatly. Would you prefer to do the formal close tomorrow?

19 MR. SELLS: I would certainly prefer to do it tomorrow
20 rather than rush through it tonight. And so that's going to
21 depend a lot on when we finish.

22 THE COURT: Well, if we're taking a 45-minute break
23 now, so it's around 12:45. If we're coming back basically and
24 starting up again at 1:30, the way I sort of think I hear things
25 going is we're probably not going to be done with the witnesses

1 until at least 6 o'clock, depending on breaks and things like
2 that. So given that, my inclination is to do the close and then
3 legal argument all day tomorrow. Do you have an issue with
4 that, Mr. Sells?

5 MR. SELLS: I don't think so, but let me double check
6 with cocounsel.

7 We don't have any issue with that.

8 THE COURT: Defendants, do you have any issue with
9 that schedule?

10 MS. MERRITT: No, Your Honor.

11 THE COURT: And I should say obviously, defendants you
12 all know you have the option when you start your case if you
13 want to do an opening to do an opening. You of course also have
14 the option to waive that. And similarly, with the close, you
15 will have the option to do a formal close, but you also have the
16 option to waive that and then just go into legal argument.
17 That's your call.

18 MR. BRONNI: Your Honor, I can address that briefly
19 now. In the interest of time, and given that we are going to
20 basically conclude the case today, we are not going to do an
21 opening for our side of the case.

22 THE COURT: And tomorrow you can tell me about whether
23 you are going to do a formal close or not.

24 Okay. Let's take a break, and we'll meet back here at
25 1:30.

1 (Recess at 12:46 p.m.)

2 REPORTER'S CERTIFICATE

3 I certify that the foregoing is a current transcript from
4 the record of proceedings in the above-entitled matter.

5 /s/Teresa Hollingsworth, CCR
6 United States Court Reporter

Date: February 9, 2022.

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Teresa Hollingsworth, CCR
United States Court Reporter
Teresa_Hollingsworth@ARED.uscourts.gov (501)604-5165

1 (Proceedings resumed at 1:40 p.m.)

2 THE COURT: Everybody be seated. Before we move
3 to the defendants, let me say something for the record.

4 Mr. Sells, you all may know about this already,
5 but after we went off the record, my courtroom deputy
6 checked. And it appears that the exhibit that you were
7 trying to enter actually had not been entered before. And
8 here we're talking about the notes. I told you if that
9 was the case, I would admit it. And so we are admitting
10 the two notes that you spoke about, not obviously the
11 whole thing, but just the two notes.

12 You have an objection for the record. I'll overrule
13 it for the record, but that's where we are.

14 MR. SELLS: Thank you, Your Honor.

15 THE COURT: Mr. Sells, before we get started
16 from the defendants' case, anything else from the
17 plaintiffs' side of the aisle?

18 MR. SELLS: No, Your Honor.

19 THE COURT: Defendants, before we get started
20 with your case, anything administratively we need to talk
21 about?

22 MS. MERRITT: No, Your Honor.

23 THE COURT: In that case, the floor is yours.

24 MS. MERRITT: Thank you, Your Honor. State
25 calls Andy Davis.

1 THE COURT: Before you sit, if you would just
2 take the oath.

3 ANDY DAVIS, DEFENDANTS' WITNESS, DULY SWORN

4 DIRECT EXAMINATION

5 BY MS. MERRITT:

6 Q. Good afternoon. Please introduce yourself to the
7 Court.

8 A. My name is Andy Davis.

9 Q. If you could, Mr. Davis, we are -- the court reporter
10 is here taking down a record, so please do be sure to
11 speak into the microphone. We will do our best not to
12 talk over one other today so that we can have a clean
13 record.

14 Tell the Court a little bit about your educational
15 background and professional experience.

16 A. Professional experience, I'm a professional engineer.
17 I'm a civil engineer. My trade is practice engineering
18 for almost 20 years. Educationally, I have a bachelor's
19 and master's degree in civil engineering from the
20 University of Arkansas.

21 I also worked -- well, I served eight years in the
22 Arkansas House of Representatives, four terms there. I've
23 also worked on state procurement. I build houses.

24 Q. What House district did you represent?

25 I'm sorry. I didn't mean to cut you off.

1 What House district did you represent?

2 A. District 31, which is western Pulaski county and
3 northern Saline county.

4 Q. How long have you lived in Arkansas, sir?

5 A. All my life. 47 years.

6 Q. And I'd like to show you -- and I'd like if we could
7 turn on the ELMO, please -- a document that has been
8 marked for identification as Defendants' Exhibit 14.

9 This is -- do you recognize this document, Mr. Davis?

10 A. Looks like my resume.

11 Q. And I will flip to Page 2. Does that look like the
12 second page?

13 A. Yes, ma'am.

14 Q. And then Page 3, is that your biography?

15 A. Yes, ma'am.

16 Q. Does this appear to you to be a true and correct copy
17 of your resume and biography?

18 A. Yes, ma'am.

19 MS. MERRITT: I move to admit Defendants'
20 Exhibit 14.

21 MR. SELLS: No objection.

22 THE COURT: It's admitted.

23 (Defendants' Exhibit 14 admitted into evidence.)

24 BY MS. MERRITT:

25 Q. Mr. Davis, are you currently serving as a member of

1 the Board of Apportionment staff from the Attorney
2 General's office?

3 A. I am under contract with the Attorney General, yes.

4 Q. Can you tell the Court how you came to be involved as
5 a member of the Board of Apportionment staff?

6 A. The Attorney General's chief of staff at the time,
7 Cory Cox, reached out to me and asked me if I would be
8 interested in serving or working with them on legislative
9 redistricting. He said that they felt like my experience
10 in the House --

11 MR. STEINER: Objection. Hearsay. He's not --
12 someone else called him and he --

13 THE COURT: I don't think this is for the truth
14 of the matter asserted. It's really for just how he ended
15 up here.

16 MR. STEINER: Well, he was about to say he was
17 told something about his experience. And if they're not
18 offering that for the truth, that's fine, but --

19 THE COURT: Are you all offering this for the
20 truth of the matter asserted?

21 MS. MERRITT: No, Your Honor.

22 THE COURT: I didn't think so. Overruled.

23 BY MS. MERRITT:

24 Q. Please continue.

25 A. He just said because I was a former member and my

1 engineering education may be useful in studying maps and
2 deciphering data, so on and so forth.

3 Q. Do you recall when it was that you were first
4 contacted to be involved with the Board of Apportionment?

5 A. Not exactly. It was in January 2020. It was pretty
6 early in the year.

7 Q. I didn't quite hear you. 2021 or 2020?

8 A. '21.

9 Q. And when you agreed to serve as a consultant for the
10 Board of Apportionment, what were your -- what were your
11 duties and responsibilities?

12 A. My duties were to actually draw the maps and also to
13 visit with the legislators and try to learn about their
14 districts and -- I mean, that's it primarily. Those were
15 the two things: Visit with legislators, learn about their
16 districts, what would make them better, and also to be one
17 to actually work with the software and draw maps.

18 Q. What kind of training did you have to be able to be
19 the actual map drawer and draw the lines?

20 A. We didn't have much training. It was kind of a trial
21 by fire, but we did attend a seminar put on by NCSL group,
22 National Conference of State Legislators, in Salt Lake
23 where we spent a few days talking about the criteria and
24 things like Voting Rights Act and those things. And there
25 wasn't much education on exactly drawing the maps. It was

1 more about the guidelines and rules to follow, things like
2 that.

3 Q. And you're referring to the guidelines and things
4 like that. There's already a document in the record
5 that's been admitted as Plaintiffs' Exhibit 34 that has
6 nine different redistricting criteria that were published
7 on the board's website.

8 Is that what you're talking about, Mr. Davis?

9 A. Yes, ma'am.

10 Q. And earlier the Court heard testimony from Shelby
11 Johnson. Do you know Mr. Johnson?

12 A. I do.

13 Q. And he works for the state GIS office. Is that
14 right?

15 A. Correct.

16 Q. Do you recall receiving any training or assistance
17 from the GIS office on how to use the software?

18 A. We did have maybe a few hours via Zoom, I think it
19 was, primarily due to COVID on some -- I would say very
20 basics on how to use the software.

21 Q. What was that software if you don't mind sharing with
22 us?

23 A. We used autoBound.

24 Q. And how does -- and on a high level, can you explain
25 to us how did that work?

1 A. The software itself?

2 Q. Yes, sir.

3 A. Well, you -- we were provided a data set and a -- we
4 were provided base maps of the 2010 legislative districts.
5 So you could load your data set and then begin with no
6 districts or you could begin with existing districts on
7 there and change from where they were.

8 But, essentially, it's a point and click operation.
9 You go in, you have a picture of the state, the districts
10 on the screen. And on the bottom, you have half a dozen
11 or so rows of data that give the population makeup, target
12 population, things like that on the bottom. And you can
13 select areas by census bloc, precinct, whole county. And
14 so you would just go through and select shapes until you
15 could build a district that met the criteria as best you
16 could.

17 Q. Did each Board of Apportionment member have their own
18 staffs?

19 A. Yes.

20 Q. And did each board staff come up with their own maps
21 and their own ideas before they got together as a group?

22 A. Yes. Each one would draw maps and then we would get
23 together periodically and compare them and say, well, you
24 know, I like what you did here, don't like what you did
25 here, I don't think -- I don't think the AG is going to go

1 along with this or I don't think the Governor is going to
2 -- this is their goal here and there, I think we can make
3 this better. It was fairly collaborative.

4 Q. When was your work able to begin in earnest upon
5 receipt of the census data?

6 A. Seems like it was probably sometime in September.

7 Q. Of what year?

8 A. 2021.

9 Q. And so how much time did you have to actually work
10 with the real census data and draw the board map for 100
11 House districts?

12 A. I'd have to go back and look to see specifically, but
13 it was really just a few weeks. I would say that I would
14 have liked to have had more time, but, you know, based on
15 when we got the data, we had what we had.

16 Q. And so when the -- as a staff member, when you were
17 trying to balance those nine different redistricting
18 criteria, were any of the criteria more important to the
19 board members than any others? Can you shed any light on
20 that?

21 A. I wouldn't say that any criteria was given more
22 weight than another. But it became very clear early on
23 when you start trying to draw districts that, you know,
24 any time you improve one criteria to a certain extent, you
25 begin to degrade other criteria. So with every district

1 you draw, there's sort of a tug of war on -- back and
2 forth on, well, I can make it more compact by doing this,
3 but then I lose this variance or, you know, for example.
4 So there is a sort of tug of war between the different
5 criteria, but I don't recall anyone giving more weight to
6 one over another.

7 Q. Do you recall that the board made some public
8 statements that they wanted to achieve as close to zero
9 percent variance as they could --

10 MR. STEINER: Objection. I think that misstates
11 the record.

12 THE COURT: Overruled.

13 You can answer the question. Answer it to the extent
14 you know.

15 THE WITNESS: I don't recall anyone saying that
16 specifically.

17 BY MS. MERRITT:

18 Q. Okay. And earlier when you testified, I'm just not
19 sure if I heard you correctly. Did you say that you would
20 degrade one criteria if you gave a little bit more on
21 another? I'm just not sure if I heard the word that you
22 used correctly.

23 A. I don't know if degrade is the right word, but, you
24 know, it's sort of like -- you've probably mostly seen the
25 kind of economic principle triangle where you have cost

1 and time and quality, and the closer you get to one the
2 further away you get from the others. I think that's a
3 descent analogy for the redistricting criteria. If you
4 had a nine-point star, the closer you get to one the
5 further away you're going to get from others. So that's
6 -- you know, I don't know if degrade is the best word,
7 but, yeah.

8 Q. That helped me. Thank you very much.

9 In your opinion, would you identify yourself as the
10 principal map drawer for the board?

11 A. You know, I always hesitate to say I was the
12 principal map drawer. I was willing to hold the mouse and
13 click it a lot. I enjoyed the process. I kind of enjoyed
14 the problem solving aspect of it. So I was very willing
15 to draw maps, but, again, it was all done collaboratively.

16 Q. Collaboratively with the staff from all three members
17 of the board?

18 A. Correct. Yes.

19 Q. Was it possible in your opinion for the board to meet
20 all of the -- those goals in all 100 of the House
21 districts?

22 THE COURT: Hold on one second.

23 MR. STEINER: Objection. She's now asking him
24 an opinion question which I don't think he's -- I think
25 he's qualified to testify as to what he did and what other

1 people did. But to give opinions, I don't think this
2 witness is qualified for it.

3 THE COURT: Is your point, essentially, you
4 don't think this witness should be treated as an expert
5 witness?

6 MR. STEINER: I don't. I'm not sure if that's
7 what Ms. Merritt is trying to do or not trying to do.

8 THE COURT: So Ms. Merritt -- and this is an
9 important point. I do need to know.

10 When I read the declaration from Mr. Davis, it
11 sounded like you were trying to qualify him as an expert.
12 I think I need some clarity as to whether or not Mr. Davis
13 is going to testify as an expert or whether he's just
14 testifying as a fact witness.

15 MS. MERRITT: I don't know that -- I'm not
16 trying to move to qualify him as an expert. He's
17 testifying based on his experience and his actual work in
18 the case.

19 THE COURT: I just want to make clear. He's
20 testifying as a fact witness. Is that correct?

21 MS. MERRITT: Yes.

22 THE COURT: Let me read the question again.

23 I think it's a close call. I'm going to let it in,
24 but I'm letting it in because I think what you're trying
25 to do is ask him about what his thoughts were as he was

1 drafting. That, I will let in as a fact question. But
2 your opposition -- your friend on the other side has a
3 good point. If we're not trying to qualify him as an
4 expert, which I take it we're not, then he obviously can
5 only testify as a fact witness.

6 MS. MERRITT: Yes, Your Honor. Thank you.

7 MR. STEINER: Thank you.

8 BY MS. MERRITT:

9 Q. Based on your experience in drawing the maps, in your
10 work on the board staff, was it possible for you to meet
11 all the goals in all 100 House districts?

12 A. No. No. If I could expand, I would like to, you
13 know, explain something that I think a lot of people
14 misunderstand about drawing the maps. We commonly say
15 we're drawing the lines. We're not actually drawing
16 lines. We're filling in shapes.

17 The lines are based on political boundaries, county
18 lines, precinct lines, and then census blocs which are
19 mostly based on geographical features smaller than those
20 political subdivisions.

21 If you were trying to get perfect -- you can't
22 control how many people are inside those blocs; you can
23 only pick blocs, so you know you can't draw a line in
24 between different features on a map to put it exactly
25 where you want it. You have to work with the shapes that

1 are available.

2 Q. That makes sense. But in terms of weighing the
3 different criteria -- so you have, for example, quality of
4 population on one the hand and then you have, for example,
5 compactness and then you have, you know, maintaining
6 continuity of representation. You have all of those
7 different goals you're trying to weigh.

8 Could you -- could you meet all nine goals in all 100
9 House districts as you were putting the board's map
10 together?

11 A. I think you could meet -- reasonably meet them. You
12 can't meet them perfectly.

13 Q. Thank you. Now, as the board was working on the
14 maps, did they solicit public feedback to try to get input
15 from the community about what the people wanted?

16 A. Yes.

17 Q. And how did they do that?

18 A. Well, they had several public meetings. They also
19 had a website up throughout the duration of the process
20 where citizens could submit comments online. And then
21 once sort of maps were finished, they were put out for
22 public comment before they were finalized. And then those
23 public comments on actual maps were considered and
24 revisions before they were finalized.

25 Q. And so if I understood your testimony correctly,

1 there was maps that were published, public comments were
2 given, and then there were changes made in response to
3 public comments. Is that right?

4 A. Some, yes.

5 Q. After the drafts were prepared, were efforts made to
6 add more majority minority districts in response to
7 comments?

8 A. Well, when the proposed maps were put out for public
9 comment and there were some errors made in the numbers of
10 majority minority districts that were reported, so there
11 was some effort to try to correct that. Of course, we
12 couldn't correct all of them. I think some of the numbers
13 were reported based on total population rather than voting
14 age population was the error that was made.

15 There was always an effort -- if we knew that there
16 was a possibility for a majority minority district, then
17 there was effort made to try to get it there. I think the
18 question was always to what extent do you -- do you sort
19 of degrade other criteria in order to get there.

20 But, yeah, there was always effort made where we knew
21 there was a possibility -- for instance, in Representative
22 Hodges, Representative Fielding's district, we knew that
23 those were existing majority minority districts, and there
24 was some effort made to maintain that.

25 Q. The board was -- they didn't want to racially

1 gerrymander this district, for example, but they also
2 wanted to try to create --

3 THE COURT: Sustained. Leading.

4 BY MS. MERRITT:

5 Q. Okay. Let me see if I can rephrase.

6 What were the different interests that board was
7 trying to balance in that regard?

8 A. Well, if it was there, then we wanted to have it, but
9 we didn't want to singularly draw districts based on race.

10 Q. Why not?

11 A. Because you're not supposed to racially gerrymander
12 districts.

13 Q. After this lawsuit was filed, Mr. Davis, did the
14 Attorney General's office ask you to review the proposed
15 maps that had been submitted by the plaintiffs in this
16 case as set forth in the preliminary report prepared by
17 Tony Fairfax?

18 A. Yes, they did.

19 Q. And the Court has in the record -- and I'm not going
20 to put it up -- your declaration, but I'm going to ask you
21 some questions about some of the things that were in that
22 declaration. Okay?

23 A. Okay.

24 Q. So I want to talk about a handful of --

25 THE COURT: Hold on, Ms. Merritt.

1 MR. STEINER: So I -- the declaration is not
2 part of the evidence in this proceeding. It sounds like
3 Ms. Merritt's proceeding as if it is. In the interest of
4 efficiency, I don't have a problem, now that we've
5 clarified that he's a fact witness, with anything other
6 than I think a sentence that says -- or part of a sentence
7 that says that the board determined that something
8 couldn't be done without illegally gerrymandering on the
9 basis of race because I think that that crosses beyond him
10 testifying as to what they did and what they looked at and
11 drawing legal conclusions and other professional
12 conclusions that he's not being offered to give.

13 THE COURT: Well, so just to make sure I
14 understand. Number one, although in theory you could have
15 an objection to putting up the declaration, I take your
16 point that in the interest of time -- I mean, he could --
17 he could just testify to all of this and, if he forgets
18 it, she can refresh his recollection with it, so we're not
19 going to worry about it.

20 MR. STEINER: It's a bench trial.

21 THE COURT: But your concern is that one
22 sentence. Could you just tell me where that one sentence
23 is? Because here's why I'm asking. As you read it, it
24 says the board determined that. And it may be that, as a
25 fact witness, he could testify to that if somebody told

1 him that.

2 Now, whether or not Ms. Merritt wants to solicit that
3 testimony and whether it waives anything or doesn't waive
4 anything is an entirely different question.

5 Where is that?

6 MR. STEINER: So that's the last sentence of
7 Paragraph 7.

8 MS. MERRITT: I'm really confused about --

9 THE COURT: Hold on a second. Ms. Merritt, I
10 can come to you after I talk to your friend on the other
11 side.

12 Say that again.

13 MR. STEINER: It's the last sentence of
14 Paragraph 7.

15 THE COURT: The last sentence. So the last
16 sentence of Paragraph 7 that I see is, "the board
17 considered." Is that the -- is that the sentence?

18 MR. STEINER: Yes. And then the conclusion.

19 THE COURT: "But we determined"?

20 MR. STEINER: Correct.

21 THE COURT: I may let that in depending on
22 whether or not he has personal knowledge of that fact, but
23 we'll see. First of all, we'll see if Ms. Merritt
24 solicits that testimony and then we'll see if the witness
25 has personal knowledge of why the board did anything.

1 MR. STEINER: Thank you.

2 THE COURT: Go ahead, Ms. Merritt.

3 BY MS. MERRITT:

4 Q. So Mr. Davis, let's talk about some of the
5 plaintiffs' proposed districts. I'm going to put a few
6 maps up and get your feedback on a few of them. Okay?

7 A. Okay.

8 Q. This is based on your experience working on maps for
9 the board, all right, and your experience as a
10 professional engineer.

11 So the first district I'd like to talk about is
12 plaintiffs' illustrative plan for State House District 5.
13 I'm showing you a document that's document 2-7 in the
14 record.

15 Do you recognize this document, Mr. Davis?

16 A. I do.

17 Q. Okay. Have you had an opportunity to review this
18 proposal before?

19 A. Yes, ma'am.

20 Q. Tell me -- you had some concerns about this proposal.
21 What -- do you recall what some of those were with regard
22 to this particular House district?

23 A. Yeah. So we've got three seat splits here. That's
24 not ideal. Of course, I will, you know, give that
25 Magnolia is split on the board's map as well. There are

1 two incumbents in the city of Magnolia, which kind of
2 forces you to put them together or split the city.

3 You know, a lot of the shapes are just kind of odd to
4 me. If you look at the Camden split, there's that odd
5 little finger that juts down to the south. That's there.
6 I would have to ask, if you're going to split the city,
7 why is it based on that shape, why is it -- you know, why
8 wouldn't you follow a highway or something like that. And
9 I mean, Camden is split, but I will say they do have a
10 pretty good mass in the district going up to Camden as
11 opposed to the El Dorado split where we have this little
12 skinny finger that goes down to El Dorado.

13 And fingers were just one thing we specifically
14 wanted to try to avoid. And when I looked at that in our
15 -- they did provide us shape files, and I looked at this
16 in our software and I wrote in my declaration that, you
17 know, they're splitting precincts to get from Columbia
18 county over to El Dorado and Union county. And, you know,
19 that's just less than ideal. One of the precincts I think
20 had a population of 360-something people. So to split
21 that and create two more ballot styles for the county
22 clerk is -- that's something that we would prefer to try
23 to avoid.

24 Those are primarily the things that I see when I look
25 at this district is just that Camden and El Dorado are, in

1 my opinion, needlessly split and the finger to get down to
2 El Dorado is just not a good -- it's not a compact shape.
3 It's not a shape that would lend itself to voters easily
4 understanding who represented which area, and it's going
5 to create more ballot styles needlessly by splitting
6 precincts to get there.

7 THE COURT: I want to stop everybody just for a
8 second.

9 This is splitting hairs because I think there is an
10 acceptable way to make this testimony work and a not
11 acceptable way to make this testimony work.

12 So given that Mr. Davis is a fact witness, if the
13 question is why as the map drawer or why with the board
14 they didn't draw it this way, that's fine. I think he can
15 testify to that assuming it was in the -- it was in some
16 either the ACLU suggestion or some suggestion that you
17 draw a map looking like this. But if we're just asking
18 the question off of the illustrative map, you really are
19 calling for his quote/unquote expertise because you're not
20 asking a fact question.

21 So if you want to ask, why is the map drawer or why
22 as part of the board they didn't draw it this way, I think
23 that's fine, but not sort of the, what's your opinion on
24 this kind of testimony.

25 MS. MERRITT: Thank you, Judge. I'll ask it

1 that way.

2 BY MS. MERRITT:

3 Q. As the map drawer, Mr. Davis, would a plan -- would
4 the board want to draw a plan that splits El Dorado School
5 District in three different House districts?

6 MR. STEINER: Objection. I don't think she asked
7 the question you said would be permitted.

8 THE COURT: Sustained.

9 BY MS. MERRITT:

10 Q. Let me ask a question a different way because that
11 was on objectionable question.

12 Let me think if I can -- try to rephrase my question.
13 Let me ask it a different way.

14 What about population -- I'll ask a different
15 question.

16 Does the board have concerns about population
17 variances in this particular part of the state?

18 A. Well, I don't know about in this particular part of
19 the state, but, certainly, we want to balance the
20 population between districts and get them as even as we
21 can in terms of variance. This is a part of the state
22 that is declining in population, so, you know, we would
23 probably try not to create a district that was already
24 negative in variants too small because it's likely to just
25 get smaller over the next decennium.

1 Q. As you were drawing lines and if you were looking at
2 a district where you had an overpopulated district on the
3 one hand and then it was surrounded by underpopulated
4 districts, would the board have asked you to go back and
5 equalize that you think?

6 MR. STEINER: Objection.

7 THE COURT: Sustained.

8 MS. MERRITT: Let me ask a different way.

9 BY MS. MERRITT:

10 Q. If you only had one overpopulated district in an area
11 surrounded by underpopulated districts -- did that
12 actually happen when you were drawing the map for the
13 board?

14 A. I'm sure at some point in the process you would end
15 up with an area that was populated more than districts
16 around it. And, yes, I think the board would have
17 expected us to try to even that out as long as you could
18 do it in a way that maintained compactness and the other
19 criteria.

20 MR. STEINER: Objection. I move to strike. The
21 question was an okay question.

22 THE COURT: We're not going to strike it because
23 it's a bench trial and I can know what I can deal with and
24 don't have to deal with. However, I do want to -- the
25 question was an okay question. The problem -- and just so

1 you -- I'm going to explain this the best I can just to be
2 clear what I think is within bounds or without of bounds.

3 The way Ms. Merritt asked her question, you might
4 have been able to answer it by saying something factually
5 you did or the board did that you personally had knowledge
6 of or something the board told you. That would have been
7 fine. The way you answered it though was, essentially,
8 well, if a situation like this had come up, I think the
9 board would have told me to do this. That's obviously not
10 within your personal knowledge and it veers more toward an
11 expert opinion which you're not here to give as I
12 understand it. Okay, sir?

13 THE WITNESS: Okay.

14 MS. MERRITT: Did I understand that the Court
15 was not striking the answer though for that particular
16 answer?

17 THE COURT: I'm not striking the answer, but
18 just to be honest, when I go back and look at the record,
19 I'm also not going to use that answer. I'm not going to
20 strike the answer.

21 BY MS. MERRITT:

22 Q. Was the board's goal to equalize the populations as
23 much as possible?

24 MR. STEINER: Objection. I think this has been
25 asked and answered.

1 THE COURT: Overruled.

2 THE WITNESS: The board's goal is to have as
3 minimal variance, one vote one person.

4 BY MS. MERRITT:

5 Q. Thank you. In your opinion, based on your experience
6 as a lifelong Arkansan and as a legislator, does it --
7 would the board included all of these areas in one
8 district?

9 MR. STEINER: Objection.

10 THE COURT: Sustained.

11 MS. MERRITT: I think where I'm struggling,
12 Judge, is he's worked on the maps and drew the maps. And
13 so my understanding is that, even though he's not a
14 quote/unquote expert, that he can testify based on his
15 actual --

16 THE COURT: He can testify to what he knows
17 about. So, again, let me try to draw the line. And part
18 of this is -- I would have to go back and look at the
19 record. I can't recall offhand.

20 Let's assume for a second with me that this District
21 5 was one of the things that the -- for example, the ACLU
22 provided in their illustrative map -- not the illustrative
23 map in this lawsuit, but their illustrative map that they
24 sent to the Governor or that they gave to the board. In
25 my view, it would be fine to ask Mr. Davis, Mr. Davis, did

1 you see that illustrative map. If Mr. Davis says, yes,
2 you could say, Mr. Davis, why didn't you include District
3 5. He would then tell you as a factual matter why he
4 didn't include District 5.

5 Additionally, let's say it wasn't Mr. Davis who made
6 the call. Let's say it was the Governor -- unlikely, but
7 let's say it was the Governor. In theory -- I don't know
8 whether you would want to do this or not, but in theory
9 you could ask Mr. Davis, did the Governor tell you why he
10 didn't include the map.

11 Now, there may be all sorts of other objections to
12 that and other problems with that, but the point is,
13 Mr. Davis can tell you as a factual matter if he has said,
14 look, I've seen District 5 the way they want it drawn and
15 we didn't do it -- we didn't accept their suggestion for
16 this, this, and this reason, assuming Mr. Davis knows
17 that. Not an assumption, but knows that, right, like
18 someone told him or he did it.

19 But the questions about, based on your experience, is
20 something like this okay or would the board have approved
21 this or any of those, those are all questions for experts.

22 Now, you want to try to qualify Mr. Davis as an
23 expert, I'm sure your friends on the other side will
24 object and we can have a conversation about it. But if
25 you're not qualifying him as an expert, then we have to

1 stick to the fact questions.

2 MS. MERRITT: Do you think I could have just a
3 moment to confer with my colleagues?

4 THE COURT: You may.

5 MS. MERRITT: After conferring with my
6 colleagues, we really think that Mr. Davis should be able
7 to offer his critiques and comments about these districts
8 as set forth in the declaration based on his professional
9 experience as a professional engineer, his lifelong
10 experience living in Arkansas, his experience as a House
11 of Representatives member, and his experience as Board of
12 Apportionment staff member who actually drew the lines for
13 the board.

14 THE COURT: So that sounds to me like you want
15 him qualified as an expert. Is that accurate?

16 MS. MERRITT: Yes, Your Honor. My plan wasn't
17 to move to qualify him as an expert. That's not typically
18 how things are done in Arkansas anyway. So I was not
19 going to move to qualify him as such. I was simply going
20 to ask him to offer his opinions based on his experience,
21 but I get the --

22 THE COURT: No, no. I agree with that. But the
23 point is, if you start asking him for expert opinions,
24 you're friend on the other side has every right to object
25 and, essentially, make what account -- what amounts to a

1 Daubert motion that he's not an actual expert.

2 So if the answer is, you want -- you want him to be
3 an expert, then I'm happy for you to ask any more
4 questions you want of the witness to lay any more expert
5 foundation if you want to, and then I'm going to give your
6 friend on the other side a chance if he wants to to either
7 tell me why he objects or to voir dire and then tell me
8 why he objects.

9 Do you have any questions you think are important to
10 ask Mr. Davis to add to your view of his expertise?

11 MS. MERRITT: I don't think I need to ask any
12 further questions about it.

13 THE COURT: Okay. Then let me ask you, Mr.
14 Steiner -- right?

15 MR. STEINER: Yes.

16 THE COURT: Let me ask you, Mr. Steiner. Do you
17 want to simply argue to me or do you have some questions
18 to voir dire Mr. Davis with before arguing to me?

19 MR. STEINER: I think most of it is out, but why
20 don't I ask just a few to make sure it's clear. May I do
21 this from here?

22 THE COURT: You may.

23 VOIR DIRE EXAMINATION

24 BY MR. STEINER:

25 Q. Good afternoon, Mr. Davis. I think you testified,

1 prior to being retained by the Board of Apportionment, you
2 had no prior mapping experience. Is that right?

3 A. That's correct.

4 Q. And no prior redistricting experience?

5 A. That's correct.

6 Q. You had a few hours of training from the Arkansas GIS
7 department on how to use the map software. Is that right?

8 A. Correct.

9 Q. And you attended one seminar in Salt Lake City put on
10 by the National Conference of State Legislators. Is
11 that's right?

12 A. Yes.

13 Q. Beyond that, no training on the Voting Rights Act.
14 Is that right?

15 A. That's correct.

16 Q. No training on doing racial bloc voting analysis. Is
17 that right?

18 A. That's correct.

19 Q. You haven't taken any courses in school, whether
20 degree or a nondegree program, other than that one seminar
21 in Salt Lake City, right?

22 A. Not specific to redistricting, no, sir.

23 Q. And you haven't published anything on redistricting
24 or on map drawing, right?

25 A. No, sir.

1 Q. And you haven't taught any courses on redistricting
2 or on map drawing?

3 A. No, sir.

4 MR. STEINER: Your Honor, I -- just an argument.
5 I don't think that that qualifies him to give opinion
6 testimony about the redistricting process. I think he's a
7 perfectly acceptable fact witness.

8 THE COURT: I have a couple of questions.
9 How long did you spend on this redistricting process
10 this time around?

11 THE WITNESS: In terms of hours?

12 THE COURT: Yep.

13 THE WITNESS: I didn't track, but I would say
14 40, 60 hours.

15 THE COURT: Of that time, how much time of that
16 was drawing maps?

17 THE WITNESS: Most of it.

18 THE COURT: What was the rest of the time if it
19 wasn't drawing maps?

20 THE WITNESS: A little bit of time speaking to
21 legislators about their district, typically, you know,
22 what would improve your district, what makes sense, what
23 doesn't make sense in terms of communities of interest,
24 things like that, you know, in meetings with other staff
25 members or the Board of Apportionment. But most of my

1 time was spent drawing maps.

2 THE COURT: Other than this go-around, have you
3 had any experience with the redistricting process?

4 THE WITNESS: No, sir.

5 THE COURT: Would you consider yourself an
6 expert in redistricting map drawing?

7 THE WITNESS: Your Honor, having done it one
8 time, I don't know that I would consider myself an expert,
9 but I do believe that my 47 years as an Arkansan, I do
10 believe I can provide some valuable input as to the
11 illustrative map that's provided.

12 THE COURT: Ms. Merritt, argument.

13 MS. MERRITT: Yes, Your Honor. Thank you.

14 THE COURT: Or more questions if you have more
15 questions for the witness.

16 MS. MERRITT: Right.

17 BY MS. MERRITT:

18 Q. I just -- Mr. Davis, in terms of what you actually
19 did for the board, I mean in terms of drawing the maps,
20 did you have occasion to analyze communities of interest,
21 for example?

22 A. They were considered consistently constantly through
23 the process. Yes.

24 Q. And did you have an occasion, as you were drawing the
25 map lines, did you also consider and apply the board's

1 other eight redistricting criteria?

2 A. Of course.

3 Q. Did you work closely with the other staff members?

4 A. Yes.

5 Q. You did that for almost a year?

6 A. Yes.

7 Q. You attended training at the National Conference of
8 State Legislators. Is that right?

9 A. Yes, ma'am.

10 Q. You also received training from the state GIS office?

11 A. Yes, ma'am.

12 Q. And you said that you were the lead person on the
13 Board of Apportionment's staff that was the main person
14 drawing the lines for the board?

15 A. Yes, ma'am.

16 Q. You participated in -- can you ballpark how many
17 meetings you all had to draw these maps?

18 A. Couple of dozen.

19 Q. Do you feel qualified to comment on the issues that
20 were in your declaration?

21 A. Yes, ma'am.

22 Q. And provide meaningful information to the Court?

23 A. Yes, ma'am.

24 THE COURT: Hold on a second. Let me follow up.

25 When I asked you if you thought you were an expert in

1 redistricting map drawing, you said no. When Ms. Merritt
2 asked you if you were qualified to comment on the things
3 you commented on, you said yes. That's really two
4 different ways of asking the same question. If you're not
5 an expert, you're not qualified to comment on them.

6 So given that, what is your answer to that question?

7 THE WITNESS: Well, I guess, Your Honor, I don't
8 have a definition for what an expert is. I guess I feel
9 like, based on my knowledge of the state of Arkansas and
10 my experience through this process, that I can provide
11 comments on the illustrative map. To me, that's not the
12 same thing as saying I could go to another state and be an
13 expert on redistricting.

14 THE COURT: I understand your answer.

15 Keep going if you want, Ms. Merritt.

16 MS. MERRITT: I think, based on the witness's
17 testimony, he's certainly qualified to provide opinions on
18 the illustrative plan and the five specific House
19 districts that he analyzed in his report and that I plan
20 to ask him about today, and the Court can give the
21 testimony the weight it feels is appropriate.

22 THE COURT: Mr. Steiner, one more shot.

23 MR. STEINER: I think in commenting on the
24 specific districts in his report, when, for example, he
25 talks about specific populations and specific precincts,

1 when he talks about specific splits, I don't know that --
2 I think that's fact information. I think that's within
3 his knowledge.

4 When he's going to talk about shapes and
5 hypotheticals and opinions about shapes on the map, about
6 connecting different things, I think if it's specifics
7 that are in his report, that's fine. I think she's trying
8 to expand to opinion testimony beyond what he specifically
9 said and we haven't objected to. I think that that's
10 beyond what he's qualified to do. I think he did it in
11 his report with I think some inaccuracies and I think some
12 slight areas that I noted that we disagree with. I think
13 he's stuck within the facts side of the letter, and that
14 we don't object to, but we do object to this.

15 THE COURT: I'm going to reserve on the
16 question. I'm going to allow you to treat him as an
17 expert witness for now and make the decision, if I need to
18 then.

19 But, again, Ms. Merritt, you have to understand that
20 you're walking a little bit of a tight rope here because,
21 if I end up making the decision that he's not an expert,
22 that means a whole heck of a lot of stuff that you may ask
23 him about is out and I won't consider it.

24 MS. MERRITT: Understood. Thank you, Your
25 Honor.

1 THE COURT: You have one more?

2 MR. STEINER: No. Just so the record isn't
3 constantly interrupted, I'm going to sit down based on
4 that ruling, but I assume that the ruling applies kind
5 of --

6 THE COURT: I will give you a continuing
7 objection to all of the questions that are potentially
8 based on his status as an expert witness.

9 MR. STEINER: Thank you.

10 THE COURT: Go ahead.

11 MS. MERRITT: Thank you, Your Honor.

12 DIRECT EXAMINATION CONTINUED

13 BY MS. MERRITT:

14 Q. So Mr. Davis, turning back to the illustrative plan
15 from the plaintiffs on House District 5. Do you remember
16 in your report you talked about -- or your declaration you
17 talked about the black voting age population of this
18 district is at 50.07 percent? Did that sound right?

19 A. That sounds right.

20 Q. And so what would happen if the plaintiffs eliminate
21 the precinct splits in this plan? Do you remember?

22 A. I'm going to refer to my notes. I have the
23 declaration here.

24 THE COURT: Mr. Davis, is it just the
25 declaration or is there anything else written on it?

1 THE WITNESS: It's just the declaration and I
2 have Mr. Fairfax's rebuttal.

3 THE COURT: Nothing else written on it?

4 THE WITNESS: No, sir.

5 THE COURT: Ms. Merritt, ask your question
6 again. Sorry. You can ask your question again. I
7 interrupted you.

8 MS. MERRITT: Thank you, Your Honor.

9 BY MS. MERRITT:

10 Q. Do you remember what would happen if the plaintiffs
11 eliminated the precinct splits from their proposed
12 District 5?

13 A. If you eliminate those precinct splits, then the VAP
14 would fall below 50 percent. But I want to clarify, I was
15 really speaking specifically to the precincts in Union
16 county because I was looking at, why would you draw this
17 narrow finger all the way down to El Dorado to gather a
18 population because that is such a noncompact shape to put
19 into a district. So, you know, why would you do that.

20 And, you know, if you didn't do that -- again, they
21 said in their rebuttal as well, there's who knows how many
22 ways to draw the maps. But if you eliminated the
23 precincts in the city of El Dorado that are over 50
24 percent and then picked up population somewhere else,
25 maybe in a more compact shape, maybe without splitting

1 precincts, then you don't reach that 50 percent mark.

2 Q. All right. Thank you.

3 Going back to the population issue, is District 5 in
4 the plaintiffs' plan overpopulated or underpopulated as
5 compared with the districts that surround it? Do you
6 recall?

7 A. I have to look again. It seems like it is, yeah,
8 overpopulated. 2.97 percent and all of the adjacent
9 districts are underpopulated.

10 Q. So --

11 A. Two of them.

12 Q. Is this also the only majority minority district in
13 that particular surrounding area?

14 A. I believe so, yes.

15 Q. Okay. Is there any other comments or feedback that
16 you have on that proposal?

17 Okay. Let's talk about District 12. How would you
18 describe the shape of plaintiffs' proposed District 12,
19 Mr. Davis?

20 A. Shape. Very elongate. You know, as a -- I guess,
21 you know, as an Arkansan, when I look at that district, I
22 just think, how do you get from -- you touch Pulaski
23 county and the Mississippi River in one House seat.
24 There's not a good way for a representative to travel that
25 district.

1 And one of the -- I think one of the biggest things
2 that stood out to me was that you take -- it removes all
3 of Phillips county except for Helena-West Helena and puts
4 it into a district -- puts it into a district with a
5 municipal area of Pine Bluff. And that municipal area of
6 Pine Bluff, in terms of population, is greater than what's
7 in that county in between, in Arkansas county and Phillips
8 county combined.

9 When you take a county like Phillips county that's so
10 rural, there's really no other city there other than
11 Helena-West Helena. When you remove that from the rest of
12 the county and then pair that with a more rural part of
13 the county with a city like Pine Bluff, you're really kind
14 of disenfranchising those voters because they're just not
15 going to have a very strong voice in that district.

16 Q. When you say "disenfranchising those voters," which
17 voters are you referring to? The voters in Phillips and
18 Arkansas county?

19 A. Yes, ma'am.

20 Q. Because they're rural voters and there just aren't
21 that many of them? Is that what you mean?

22 A. Rural voters, there's not that many of them. If you
23 had a representative candidate from Pine Bluff, that's
24 going to be very difficult for somebody from Phillips
25 county to be competitive in that seat because the

1 population base is in Pine Bluff and they're just --
2 they're too far separated geographically. They're not --
3 Q. What about the population variance in plaintiffs'
4 proposed House District 12, do you have any concerns with
5 that?

6 A. 4.29 percent low 1,293, in my opinion, is pretty
7 extreme. I know that the legal limit is five percent, but
8 the goal is zero. And so if I, you know, notice the
9 negative 4.29 and then found other districts around it
10 that are overpopulated, then I would certainly wish that
11 they would even that out.

12 Q. What does it mean -- what's the practical effect when
13 there is a population variance of that magnitude in that
14 particular proposed House district? Do the voters in that
15 district have a stronger voice or weaker voice?

16 A. Well, I don't know. That's -- that's -- the goal is
17 one vote one person. So the goal is always to get the
18 variance as low as you can. Even though, you know, the
19 legal limit may be five, the goal is to get it as low as
20 you can.

21 What's the practical effect on representation would
22 be hard to say and probably very dependent on which
23 district you were looking at and where the population base
24 was in that district.

25 Q. You said in your report -- what about -- you have

1 concerns about it's not following a major highway or
2 navigation system. Is that right?

3 A. Yeah. I commented on that in a few districts. I
4 understand Mr. Fairfax's rebuttal says there's no criteria
5 that says you have to have a highway from one end to the
6 other. But as a former representative, it gets to the
7 representative's actual ability to be able to effectively
8 represent the whole district. And if you can't get from
9 one side of the district to the other without leaving the
10 district, it's very inefficient in terms of going to visit
11 constituents and going to meetings and so on and so forth.

12 We had that in the 2010 map. I think, if I recall
13 correctly, Representative Richmond said before in
14 conversation, I can't get from one side of my district to
15 the other without leaving. And it's -- you know, while it
16 may not be a criteria, it's a criteria in terms of
17 providing effective representation in my opinion.

18 Q. This proposed plan, do you have concerns about it
19 splitting school district boundaries as well?

20 A. I mean, you always want to try to avoid it if you
21 can. You can't avoid it, you're going to split -- we
22 split school districts in our maps. But if you can avoid
23 it, then, obviously, you try to do that. I think this is
24 an area too where it's -- you got to really consider
25 whether you're in an urban area or a rural area.

1 In an urban area like Pulaski county, obviously, your
2 House districts are very small and you're going to split
3 up districts. But rural school districts really prefer to
4 stay whole and have one representative for them. They
5 feel like they have a stronger voice if their district is
6 not split up between multiple representatives because,
7 when that representative has multiple school districts, if
8 those school districts have differing opinions, then the
9 representative can be put in a place where maybe they're
10 not as effective for either as they could be because they
11 don't feel like they can have a strong voice in a
12 particular issue if multiple districts are at odds on that
13 issue.

14 So I mean, it's -- it is something that you want to
15 try to avoid. If you don't have to do it, don't do it.

16 Q. Thank you. Let's talk about proposed District 16.
17 Have you seen this plan before?

18 A. I have.

19 Q. What are your thoughts on 16?

20 A. You know, it's -- as an Arkansan, in terms of
21 communities of similar interest, it's surprising to see
22 Pine Bluff and Arkadelphia in the same House district.
23 These two communities, in my mind as an Arkansan, are just
24 -- they're nothing alike. I can't imagine a
25 representative from either one of these cities feeling

1 I like they were in a good place to represent the other.

2 Q. Can I stop you there?

3 Why is that? Can you give us -- the Court a little
4 bit more about that?

5 A. Well, I know that in Mr. Fairfax's rebuttal, he
6 provided some statistics to show that these two cities
7 were similar based on these statistics, but I would say
8 that most cities in Arkansas probably fit those
9 statistics. It's a poor, rural state, say, for half a
10 dozen counties. And the real question that you have to
11 look at is, why are these two cities -- why do they have
12 those statistics?

13 Arkadelphia is a college town. It has two
14 universities; one private, one that's in the ASU system
15 now. You've got a lot of renters, a lot of -- probably a
16 lot of college students that are on SNAP, things like
17 that. Arkadelphia is a very -- it's timber country we
18 would say. It's, you know, just south of the lake region.
19 It's on the foothills of the Ouachita Mountains. It's
20 halfway to Texas.

21 It's just -- in people's mind, Arkadelphia is in a
22 very different place than Pine Bluff, which is kind of the
23 hub of the delta which is a row crop region, not a timber
24 area. It's on the Arkansas River. It's a big hub for
25 commodities and rail and river traffic. It does have a

1 four-year university, but it's very different. It's in
2 the U of A system.

3 I would venture to guess that a lot of people in Pine
4 Bluff that fit those statistics that were presented fit
5 them for different reasons. They're stuck in a cycle of
6 poverty.

7 So representatives from each of those cities, while
8 their constituents may have similar statistics, they're
9 probably going to approach them very differently in terms
10 of policymaking at the capitol.

11 That's what comes to mind when I look at this
12 District 16 connecting those two cities.

13 And, again, you have the same difficulty of
14 representation. There is no -- there is no major state
15 highway connecting the two, which I think goes back to
16 show there is no community of interest here. If Pine Bluff
17 and Arkadelphia did significant commerce together, there
18 would be a highway across there, part of the four-lane
19 grid. There is not.

20 THE COURT: Let me stop you for a second.

21 Mr. Davis, do you have any thoughts on whether
22 specifically the black community in Arkadelphia and the
23 black community in Pine Bluff have similarities or
24 differences or is that something you don't know
25 specifically about?

1 THE WITNESS: I don't know specifically.

2 MS. MERRITT: Thank you.

3 BY MS. MERRITT:

4 Q. Do you have concerns about the population variance in
5 plaintiffs' proposed District 16? I know it's within the
6 five percent, but is it higher than the board would have
7 liked?

8 A. 16. So this is a 4.29 percent. That's -- you know,
9 the board never saw this map. So I'm trying to stay with
10 what the Your Honor's looking for in terms of my
11 testimony, but the board never saw this map.

12 But as a staff member, we would not be satisfied with
13 a variance that low, 4.289 percent. We would try to raise
14 that up and even it out with the districts around it.

15 Q. You would try to get closer to zero?

16 A. Yes.

17 Q. What about the shape of this district? In your mind,
18 is that a compact shape?

19 A. It's not terrible. To the east, you know, it is a
20 little bit of a finger that goes up to Pine Bluff, a
21 little bit of a finger down there below the county name
22 Cleveland. In this map, I suspect that's probably just
23 the way the precincts were drawn. You know, it's not
24 terrible.

25 I'm aware that all the districts in the board's map

1 are not perfect either. But, you know, it's just very
2 interesting that you start in -- I mean, in Pine Bluff,
3 not outside of Pine Bluff in Jefferson county, but a
4 significant portion of the municipal area of Pine Bluff
5 and then have this finger down to Dallas county, all of
6 Dallas, and then up to a point in Arkadelphia. It's a
7 little odd.

8 Q. Thank you. Let's talk about District 48. Does this
9 appear to be a true and correct copy of the plaintiffs'
10 illustrative plan for House District 48, Mr. Davis?

11 A. Yes, ma'am.

12 Q. And do you recall reviewing that in connection with
13 this case?

14 A. Yes, ma'am.

15 Q. As the principal map drawer for the Board of
16 Apportionment, can you comment on this plan and any
17 concerns that come to your mind when you look at District
18 48?

19 A. Yes, ma'am. The things that concern me about this
20 district as it's drawn, you know, its compactness is not
21 terrible. It's pretty decent actually. Big blocs -- even
22 though it does have three split counties, there are big
23 blocs of those counties. You've got all of Lee county.

24 The problem with this district in my mind is the
25 inclusion of Helena-West Helena, which is essentially the

1 only municipality in Phillips county, with Lee county,
2 Monroe, and Woodruff. You know, I think I wrote in my
3 declaration that if you take the population of the county
4 seats -- so 48 includes the county seat of Woodruff,
5 Monroe, and Lee, which are Marianna, Clarendon, and
6 Augusta. But those three county seats combined are still
7 lower in population than Helena-West Helena.

8 So Helena-West Helena having, you know, the
9 population base of the district being in a separate county
10 than the others, again, it's going to get too difficult
11 for a representative to, you know, weigh the desires and
12 policy initiatives of the seat of Phillips county versus
13 the seats of three other counties when Helena-West Helena,
14 obviously, has a population advantage over them.

15 And then again, as I stated on the other districts,
16 there's -- Helena-West Helena is only connected to Lee
17 county and the rest of District 48 via the St. Francis
18 National Forest, which is probably more like a swamp than
19 a forest. My wife is from Marianna. My mom is from
20 Helena. I'm very familiar with this area. I don't think
21 it would be too difficult to include a few more precincts
22 in 48 so that you could actually travel state highways all
23 through the district. It's just interesting that they
24 didn't do that.

25 And, again, I think -- I think that we would have not

1 wanted to include -- not necessarily include, but we would
2 not have wanted to separate Helena-West Helena from the
3 rest of the Phillips county like that.

4 Q. Do you know what the percentage of black voting age
5 population is in Helena that the plaintiffs' plan included
6 in House District 48?

7 A. Based on the data we had, it's 72.77 percent.

8 THE COURT: Let me ask a question.

9 Mr. Davis, and my understanding of Arkansan geography
10 is probably less erudite than yours is, so I would
11 appreciate it if you could help me out and push back if
12 I'm wrong. But what is essentially the difference between
13 putting Helena-West Helena together with the rest of
14 Phillips county, which I take is pretty rural other than
15 Helena-West Helena, versus putting it with the rest of Lee
16 and up there, which I also take it is fairly rural? It
17 seems like either way you're combining an urban center
18 with a bunch of rural area.

19 THE WITNESS: Yeah. I think what you may be
20 getting to, are they really dissimilar in interest.
21 Probably not that dissimilar in interest. They are both
22 very rural. They're both predominantly row crop counties.

23 The issue in terms of representation would probably
24 come to funding issues. Is a representative who lives in
25 Helena-West Helena going to equally fight for funding in

1 Woodruff, Monroe, and Lee when they're a resident and
2 their voting base is in Phillips county or, you know, are
3 they going to be in situation where they perhaps favor
4 Phillips county more than the others.

5 The other big difference, you know, where Helena-West
6 Helena may be different from Lee and the others is
7 Helena-West Helena is a harbor on the Mississippi River.
8 They're actually doing significant redevelopment there.
9 So their economic interests in -- you know, again, in
10 terms of funding, hey, if we're trying to fund something
11 in District 48, we want to fund, we want to help build a
12 new, whatever, fuel station in the harbor in Helena-West
13 Helena, well, Woodruff county may want an electric
14 charging station on Highway 62 or something like that.
15 Well, you know, how do you balance the two? Helena-West
16 Helena is very dependent on that harbor.

17 You know, you can't completely eliminate situations
18 like that as the population drops and districts get larger
19 and larger, but that to me is where Helena-West Helena is
20 going to be really different than Lee, Woodruff, and
21 Monroe, that Helena-West Helena and really all of Phillips
22 county is really more dependent on that Mississippi River
23 traffic than the others.

24 THE COURT: Thank you. Go ahead, Ms. Merritt.

25 MS. MERRITT: Thank you.

1 BY MS. MERRITT:

2 Q. Mr. Davis, did you have any other comments or
3 concerns about District 48 that we haven't talked about?

4 A. I don't think so. No, ma'am.

5 Q. Let's talk about District 55. Does the plaintiffs'
6 illustrative plan for House District 55 look familiar to
7 you, sir?

8 A. Yes, ma'am.

9 Q. How would you describe the shape of this district?

10 A. Very odd, not compact. To expound, I mean, in their
11 rebuttal, there are -- true that, even on our map, the
12 district is kind of long and narrow and follows the
13 Mississippi River, up through there.

14 Is it okay if I refer to the rebuttal?

15 THE COURT: Plaintiffs, do you have any concern?

16 MR. STEINER: Well, I don't think it's
17 responsive to the question he was asked, but I don't have
18 a problem with him testifying about it.

19 THE COURT: I think it's fine, as long as you
20 make clear to everybody what in the rebuttal you're
21 responding to.

22 THE WITNESS: Yes, sir. So I have two primary
23 concerns with the way District 55 is drawn. One is the
24 western boundary, which I understand that they have mostly
25 followed precinct lines here, but this, in my opinion in

1 rural area like this, is a place where you probably want
2 to go with geographic features such as Interstate 55 over
3 a precinct line because it can be extremely difficult for
4 voters in that area to know which side of the precinct
5 line they're on. There is not a lot of geographical
6 features in this area, Interstate 55 and Mississippi River
7 probably being the two most significant.

8 You know, they comment on the board map that it did
9 -- I think we do cross the interstate a few places. But
10 the point I want to make in the rebuttal is, they do show
11 maps of this district in 2001 and 2011. The difference is
12 on both of those maps and on the board map, the interstate
13 is either the edge of the district or it is in the
14 district, but that -- another way to say that is, in this
15 case, 54 never goes east of the interstate. So you have a
16 pretty defined line there for an edge of the district.

17 The main thing that I don't think we would have found
18 acceptable on the district is the two precincts in the
19 extreme northeast corner of the state east of Blytheville
20 that are in District 54 and only connected to District 4
21 by a piece that I scaled at one and a quarter miles there
22 at the very tip. I just -- I don't know why you wouldn't
23 go ahead and include those two precincts into District 55
24 unless, you know, as I wrote in my declaration, if you put
25 those two precincts into this District 5, then your VAP

1 falls below 50 percent.

2 The variance between these two districts is
3 significant. 55 is -- I have to look at my notes. One of
4 them is well over and the other is well under. 55 is 3.56
5 percent under, but 54 is 4.85 percent over, which, again,
6 I understand five percent is the limit, but 4.85 percent
7 is extremely close -- extremely close to the limit. And I
8 think that it would be better for those two districts to
9 equalize that variance, place that -- use the interstate
10 as more of a geographic boundary on the east side and not
11 have 54 with this little hook around the top of 55, but
12 instead put those two precincts in the District 5 -- I
13 mean 55. Sorry.

14 Q. Thank you.

15 MS. MERRITT: May I have just one moment, Your
16 Honor?

17 THE COURT: You may.

18 BY MS. MERRITT:

19 Q. Mr. Davis, a few minutes ago you talked about having
20 family from the Helena-West Helena area. Is that right?

21 A. Yes, ma'am.

22 Q. And based on your experience, did that inform some of
23 your opinions in this case about splitting the Helena-West
24 Helena from the rest of Phillips county?

25 A. I mean, I don't have family now -- over there now,

1 but I would say that, yes, it has adds to my just general
2 familiarity with where people work and live and go to
3 school and sort of where their communities are based over
4 there. Sure.

5 Q. Have you spent quite a bit of time in that part of
6 the state in your life?

7 A. Yes, ma'am.

8 Q. And also you talked about when we were discussing
9 plaintiffs' illustrative plan for House District 55 and
10 about jumping over the highway. As a former elected
11 official who's traveled the state quite a bit, do you
12 think that you have a basis for talking about voter
13 confusion when it talks about splitting up the district in
14 that way?

15 MR. STEINER: Objection, Your Honor. Now, I
16 think she's asking a different type of maybe expert
17 testimony, maybe not.

18 THE COURT: Sustained.

19 MS. MERRITT: I'll change it change ask it a
20 different way.

21 BY MS. MERRITT:

22 Q. Can you describe for the Court the basis for your
23 testimony about why this -- splitting the line in the way
24 it does and including portions of House District 54 to the
25 east of Interstate 55 might be confusing to voters?

1 I want the Court to be able to understand the basis
2 for that based on your factual knowledge and not based on
3 your quote/unquote expertise.

4 A. I think I can explain it by -- let's talk about
5 voters for a second. As a former representative, I've
6 worked with voters a lot, campaigned. I had three --
7 three campaigns where I had opponents and I had to
8 actively campaign and go out and visit with voters and
9 all.

10 You know, in -- we sort of talk about this outside
11 the capitol phenomenon, where you get outside the capitol,
12 you have to remember that your voters are not out there
13 right now thinking about redistricting. They're not
14 thinking about where these lines are. They're just going
15 to work, going to school, and living their lives, so on
16 and so forth. When an election comes around for a few
17 weeks maybe, particular on something like a legislative
18 race, they think about, okay, who am I going to vote for.
19 And, you know, if they're anywhere around a line, they may
20 call, may reach out, maybe they see you at an event and
21 say, hey, I'm in your district or not.

22 And if you don't have lines on -- that are on very
23 sort of definitive geographical features they can think of
24 -- in this case, hey, if you're east of 55, you're in my
25 district. If you can't do that, then it can confuse

1 voters.

2 You hear every election voters say, I thought I was
3 in your district, but when I went to vote, I didn't see
4 your name, things like that. To me, as an Arkansan, as a
5 former representative, I think that we should effort to
6 try to eliminate that as much as possible when we draw
7 these -- these districts, make it easier for voters to
8 understand who is their legislator, who is their
9 representative. The best way to do that is with -- you
10 know, if you have an opportunity to use a very
11 well-defined geographic boundary that you can use in a
12 quick, simple explanation, then that's a good thing to do.
13 Obviously, you can't do it everywhere, but, to me, this is
14 a case where that would have been easy to do.

15 Q. And did that principle make its way into the Board of
16 Apportionment's redistricting criteria in terms of
17 minimizing splits of geographic boundaries and things of
18 that nature?

19 A. It fits into the criteria in terms of not splitting
20 municipal boundaries and also in terms of just maintaining
21 communities of interest. That's a -- you know, you can
22 have communities that are very definitive on two sides of
23 an interstate, for instance. You can have communities
24 that are very different on two sides of a river in the
25 river valley when you're drawing districts through there

1 and you don't want to put an area in a district where
2 there's no physical connection across the river, things
3 like that. I think it fits in the criteria in that sense.

4 MS. MERRITT: Thank you. I don't have any
5 further questions.

6 THE COURT: Mr. Davis, you may not know the
7 answer to this, but if you took 34 -- which could we put
8 34 back up on the screen?

9 MS. MERRITT: Yes, Your Honor. Give me one
10 moment to get it.

11 THE COURT: I guess what I'm talking about is
12 House District 34 which I know in the illustrative plan is
13 I think 55.

14 THE WITNESS: Okay.

15 THE COURT: Well, sorry. So that's the
16 illustrative exhibit.

17 MR. STEINER: It's illustrative 55 and current
18 District 55, proposed --

19 THE COURT: Can we -- I want to look at board
20 plan District 34. So the 2021 board plan 34 which,
21 essentially, is illustrative plan -- illustrative District
22 55.

23 MR. STEINER: If you want to switch from the
24 ELMO I think --

25 THE COURT: Yeah, that's fine. That map is

1 okay.

2 So Mr. Davis, if you'll recall, on the board plan --
3 the 2021 board plan follows the interstate basically all
4 the way up until you get around Blytheville and then sort
5 of goes straight north.

6 You with me so far?

7 THE WITNESS: Yes, sir. I think so.

8 THE COURT: If that district simply followed the
9 interstate all the way up to the northern edge, do you
10 know -- do you have any sense of whether or not that would
11 be a majority black voting age population district?

12 I understand it would split or partially split
13 Blytheville, but if it did it that way, do you know what
14 the result would be?

15 THE WITNESS: I don't, Your Honor. You would
16 lose a significant amount of population because you would
17 be losing most of the city of Blytheville. And so whether
18 or not it was still majority black would depend on where
19 you pick that population up from.

20 THE COURT: Okay. And the reason I ask is
21 because I think I understand in the -- in the board plan,
22 the 2021 board plan, the percentage deviation of the
23 population is just 1.38. So you'd obviously have some
24 ability to lose some before you go under zero and then you
25 would have some ability to lose some before you go under

1 negative five. So I -- but the answer I think is, you
2 don't know.

3 THE WITNESS: Yeah. I don't know.

4 THE COURT: Okay. That's fine. That's all I
5 wanted to know.

6 I'm good if you are, Ms. Merritt.

7 MS. MERRITT: I'm good. Thank you, Judge.

8 THE COURT: Plaintiffs.

9 CROSS-EXAMINATION

10 BY MR. STEINER:

11 Q. Now, Mr. Davis, I think you testified early on -- I'm
12 not going to go back over your background, but I think you
13 testified early on that you spent somewhere between 40 and
14 60 hours on redistricting. Is that right?

15 A. That's an estimate. Yes, sir.

16 Q. Most of that was on drawing the maps, right?

17 A. Correct.

18 Q. I wasn't sure whether you said you were or weren't
19 the principal map drawer.

20 A. There wasn't an official designation, so it's
21 subjective. I probably spent more time clicking the map
22 than anyone else did.

23 Q. In practice, it was mostly you. Is that right?

24 A. Probably fair to say.

25 Q. Those 40 to 60 hours included both the Senate maps

1 and the House maps. Is that right?

2 A. Correct.

3 Q. And it included kind of familiarizing yourself with
4 the new 2020 census data when that came out and getting
5 that all loaded up. Is that right?

6 A. Yes, sir.

7 Q. And then I think in terms of the criteria, do you
8 agree with me that some of the criteria -- if we need to
9 put up Exhibit 34, we can -- some of the criteria are
10 mandatory and others are goals. Is that right?

11 A. I never heard it expressed that way.

12 Q. Did you attend the board of elections -- I'm sorry --
13 the board of administration public meetings?

14 A. I did not.

15 Q. Now, you talked about the substantially equal
16 districts, right? You remember that? In drawing
17 substantially equal districts, you understood that the
18 board's guidelines were -- were to be plus or minus five
19 percent. Is that right?

20 A. That's correct.

21 Q. And you said, but you would like for the numbers to
22 be lower -- to be a lower deviation than that, right?

23 A. Well, the goal is to be one vote one person.

24 Q. So your goal -- so the Board of Apportionment put out
25 the guidelines that said plus or minus five percent is

1 acceptable, correct?

2 A. Yes, sir.

3 Q. But you had within that as a goal to be -- to be less
4 than the five percent that was allowed. Is that right?

5 A. We wanted the variance to be as low as possible, but
6 not necessarily weighted above the other criteria.

7 Q. Would you agree that, if you could have a district
8 that was a 4.9 percent variance -- that was a majority
9 minority but at a 4.9 percent variance on either side of
10 -- on either side of the ideal population, that if you
11 have a majority minority district at 4.9 percent, that the
12 board was required to draw such a district over reducing
13 the variance to, say, two and a half percent but not being
14 majority minority?

15 MS. MERRITT: Objection. Calls for legal
16 conclusion.

17 THE COURT: Overruled.

18 THE WITNESS: I agree that, if we would have
19 seen a district that was as much as 4.9 percent in
20 variation but was majority minority district but also did
21 not -- but was also compact and met other criteria, then
22 we would have included that district.

23 BY MR. STEINER:

24 Q. And would you agree that you had an obligation to
25 look for such districts at 4.9 percent before finalizing

1 the map. Is that right?

2 A. Yes, sir.

3 Q. And if you could, make changes to districts to do
4 that?

5 A. We would.

6 Q. Now, I would like to just -- do you have your
7 declaration in the case? We can put it up on the screen.
8 I think it's in as Defendants' Exhibit 14 possibly with or
9 without one sentence. Let's see if we can put that up.

10 Now, you, in Paragraph 4 of your declaration, listed
11 the board's criteria. Is that right?

12 A. Yes.

13 Q. And have you seen the criteria that are on the
14 board's website?

15 A. Sure.

16 Q. I think they're listed slightly differently on the
17 board's website. Is that right?

18 The order is the same, but the wording is different
19 in some of them.

20 A. It appears so.

21 Q. And in doing your work drawing maps on behalf of the
22 board, did you use -- well, did you write the 1 through 9
23 in your declaration?

24 A. Did I write that?

25 Q. Yes.

1 A. No, sir.

2 Q. Who wrote that?

3 A. That was included by the AG's office.

4 Q. So let me just understand. For your declaration, the
5 AG's office wrote something up and sent it to you to look
6 at. Is that right?

7 A. It is accurate and -- yes.

8 Q. So they wrote something up and they sent it to you to
9 see if it was accurate or not accurate?

10 A. Yes.

11 Q. And then you signed it?

12 A. Yes.

13 Q. And was there anything that you added to what they
14 wrote up for you?

15 A. Not that I recall.

16 Q. Was there anything that they had written up that you
17 took out?

18 A. Not that I recall.

19 Q. So they got it right the first time?

20 A. Yes, sir.

21 THE COURT: Let me stop you there. Did you have
22 a conversation with them about what should be in your
23 declaration before they wrote it up and sent it to you or
24 did they just draft it up and send it to you and then ask
25 you if it was right?

1 THE WITNESS: I drafted -- I wrote I would say
2 everything after -- after and including -- after item 9.
3 They wrote everything before 9, sent it to me and asked me
4 if it was correct.

5 THE COURT: Go ahead.

6 BY MR. STEINER:

7 Q. Then you physically typed up everything that was
8 after 9 and sent it to them?

9 A. Yes, sir.

10 Q. And so when the Attorney General's office sent the
11 list to you, you didn't go compare it to what the board
12 actually put out. Is that right?

13 A. I didn't go to the website and look at their
14 language, no, sir.

15 Q. When the board did its work and you did the map
16 drawing, did you follow the list that's in your
17 declaration or did you follow the list that's on the
18 board's website?

19 A. The website.

20 Q. And so, for example, where you say in Paragraph 1 or
21 the Attorney General's office says in Number 1 of
22 Paragraph 4, draw districts with populations meeting the
23 one person one vote requirement compared to what the
24 website says about substantial equality being plus or
25 minus five percent, you drew it to the plus or minus five

1 percent. Is that right?

2 A. Yes, sir. That was the requirement.

3 Q. And how about with respect to Number 3 where what the
4 Attorney General wrote for you says, comply with the
5 limits of the Equal Protection Clause as to redrawing
6 boundaries based on race, whereas the guidelines say
7 strictly based on race?

8 A. Strictly based on race.

9 Q. So you understood that you were required to take race
10 into consideration, right?

11 A. Yes, sir.

12 Q. And with respect to Number 6, the board's guidelines
13 start with, maintaining the core of existing districts.
14 Do you see that?

15 A. Yes, sir.

16 Q. And that's left off of what's in your declaration
17 prepared by the Attorney General's office. Is that right?

18 A. That's correct.

19 Q. And when you drew the map, I think you said you could
20 start with a blank slate, you could start with existing
21 boundaries, right?

22 How did you go about drawing the map?

23 A. We draw variations of both, but we did consider core
24 of existing districts for sure.

25 Q. Could you explain what you mean by you tried

1 variations of both?

2 A. Some staff members would bring up the existing map
3 and try to just adjust them so that they met the new
4 population numbers. Others would start with a blank map
5 and just start drawing new districts, difference being you
6 would just have to refer back. Instead of having the
7 existing districts on the screen, you could refer to them
8 off the screen, things like that.

9 Q. Which did you then do to produce the final map?

10 A. It's not a straight line from there to the final map.
11 I mean, final maps are pieces of -- several different
12 iterations that then would be brought together and
13 combined.

14 Q. So I guess what you didn't do is start with the
15 existing map and make changes based on population shifts.
16 Is that right?

17 A. On my iterations primarily I started with existing
18 maps and drew to try to meet the changes in population.

19 Q. Sorry. When you were scrivener clicking for the
20 Board of Apportionment, that's not what the Board of
21 Apportionment did, right?

22 A. Board of Apportionment -- I mean, Board of
23 Apportionment didn't draw the maps. We drew them.

24 Q. Right. The maps that were drawn by the staff of the
25 Board of Apportionment, you said when you did it, you

1 started with the existing, right?

2 A. I did, yes.

3 Q. But other staff members appointed by other members of
4 the Board of Apportionment started with a blank slate,
5 right?

6 A. They may have.

7 Q. What I'm saying is -- and then you were the scrivener
8 to move things around here and there, right?

9 A. (Nods head).

10 Q. And that map that you put together with people
11 calling out different things, that wasn't strictly from
12 where are the old boundaries and can we make changes based
13 on population shifts, right?

14 A. I couldn't say for sure where all of those maps
15 initiated from.

16 Q. And that's why the new map for 2020 or 2021 starts
17 with a whole new renumbering of the system, right?

18 A. It's my understanding that the renumbering is a --
19 sort of a very administrative function. GIS did the
20 renumbering after the districts were drawn.

21 Q. And they renumbered starting kind of in the northeast
22 corner of the state and then kind of going snaking across
23 the state from east to west and back west to east on the
24 next row. Is that what happened?

25 A. That sounds right. It's fairly arbitrary, to be

1 honest with you, where they start and which direction they
2 go.

3 Q. And would you agree with me, more than which side of
4 a highway does someone live on, having a whole new
5 numbering system is more confusing to voters as to what
6 district they're in or not in than what side of a highway
7 or a park they're on?

8 A. No, sir. I would strongly disagree. Voters do not
9 know the number of the district they live in.

10 Q. From one election to the next, they don't know that
11 they've been in District, say, 55 for the last 40 years?

12 A. No, sir, they don't know, not unless they're very in
13 tuned and following the political process extremely
14 closely. But I would say, by and large, the vast majority
15 of voters do not know the number of their House or Senate
16 districts.

17 THE COURT: Mr. Steiner, I'll admit it's more
18 confusing to the poor federal judge.

19 THE WITNESS: We joke about it as legislators
20 because we tend to introduce ourselves, I'm Representative
21 Davis from District 31. Nobody knows what that means.

22 BY MR. STEINER:

23 Q. Now, in Paragraph 7 of your declaration, this is one
24 of the paragraphs that was written for you by the Attorney
25 General's office, right?

1 A. Correct.

2 Q. So that says, around the week of October 14, you met
3 -- the board members met and compared map proposals and
4 voted to try and reach a consensus. Is that right?

5 A. The staff met.

6 Q. And it says, initial drafts were completed the week
7 before that. So I guess the week of October 7. Is that
8 right?

9 A. I presume so, yes.

10 Q. It says that those initial maps were done using the
11 nine agreed-upon criteria. Is that right?

12 A. Yes.

13 Q. That's not entirely accurate, right, sir?

14 A. I don't agree.

15 Q. Well, the nine criteria require you to consider race,
16 right?

17 A. But not strictly.

18 Q. Right, but they require, to judge compliance with the
19 Voting Rights Act, you have to consider race, right?

20 A. Yes.

21 Q. So in the second sentence of that paragraph where it
22 says, initial drafts were completed using the nine
23 agreed-upon criteria, that can't be reconciled with the
24 next sentence that said, at that point you first began to
25 overlay race data, right?

1 A. That sentence is not completely accurate. At that
2 point, staff began to overlay race data from the Census
3 Bureau onto the drafted maps. That sentence is not
4 completely accurate.

5 Q. How would you fix it?

6 A. Race data was present the entire time we were drawing
7 districts. In the bottom of the screen on the autoBound
8 software where I described several rows of data, the
9 columns were target population, the current population of
10 the district as drawn, as well as Hispanic and black
11 population numbers in terms of total and VAP.

12 Q. Did you tell anyone -- when you read Paragraph 7, did
13 you tell anyone at the Attorney General's office, that's
14 not accurate, we had the race data on the whole time?

15 A. I explained that. And they said, fair enough, you
16 can explain that here.

17 THE COURT: Time out. This an important point,
18 so please make sure you're recollecting correctly. And if
19 you're not, just tell us you don't know or whatever.

20 When you said that, are you talking about before this
21 affidavit was filed -- or this declaration was filed or
22 are you talking about between the time the declaration was
23 filed, meaning after you signed it, and this hearing?

24 THE WITNESS: Your Honor, I don't recall if it
25 was before they had filed it or not.

1 THE COURT: Was it right after they sent it to
2 you the first time or did they send it to you and then you
3 signed it and only later you figured this out?

4 THE WITNESS: No. I think I commented on it
5 before I sent it back.

6 THE COURT: Okay.

7 BY MR. STEINER:

8 Q. Who did you give that comment to?

9 A. I think it was Brad Nye.

10 MR. STEINER: Your Honor, I think this would be
11 a good time for an afternoon break.

12 THE COURT: I think that's a good idea.

13 Mr. Davis, first of all, thank you so far for your
14 testimony. What I'd ask is that, as you're on the stand,
15 meaning, still even though we're at a break because you're
16 on the stand, please don't talk to your attorneys about
17 this case. Obviously, don't talk to the other side about
18 this case. Basically, talk to nobody about this case.
19 And I think we'll take a 15-minute break.

20 (A recess was taken at 3:15 p.m. until 3:36 p.m.)

21 THE COURT: We're back on the record.

22 MR. STEINER: Thank you, Your Honor. I would
23 like, before I resume with Mr. Davis, to -- I guess to
24 preserve the record. I don't know if you want me to do
25 that here or not.

1 THE COURT: No, but let's do it with Mr. Davis
2 out of the room.

3 Mr. Davis, I apologize for you having to come in and
4 out. Normally, this doesn't happen, but sometimes there
5 are legal matters that we're required to talk about
6 without the witness present.

7 THE WITNESS: So you want me to leave?

8 THE COURT: Yes.

9 MR. STEINER: It will be brief, sir. My part
10 will be brief.

11 THE COURT: Thank you, Mr. Davis.

12 Go ahead, Mr. Steiner.

13 MR. STEINER: What I would like to do -- we're
14 considering what the proper remedies, if there is one, are
15 and whether that's striking all or part of his testimony,
16 whether it's just an issue of credibility.

17 In the meantime for efficiency, I'd like to continue
18 the exam but reserve the right that we may come back with
19 a more formal motion.

20 THE COURT: That is fine.

21 Hold on, Ms. Merritt. I'll come to you in a second.

22 Pending what Ms. Merritt argues, I think that will be
23 fine in terms of going ahead and we'll deal with the other
24 things later. After the witnesses are done for the day, I
25 am going to want to -- as I indicated off the record, I am

1 going to want to talk to Mr. Nye. Obviously, you all will
2 be here for that. Again, that's I think not a
3 merits-based questioning, but we'll talk about what
4 actually happened and what the evidence shows. And that
5 may or may not be folded into whatever request you want to
6 make.

7 Now, Ms. Merritt, what do you have to tell us?

8 MS. MERRITT: I'd just say, first of all, we
9 haven't offered Mr. Davis' declaration into the record at
10 all. We can offer some of this on redirect and hopefully
11 explain. Mr. Nye is also here who can answer any of the
12 Court's question. He's arrived.

13 So we would certainly say that this issue should go
14 to weight and not the admissibility of the testimony.
15 Hopefully, we can clarify. I think it's just literally a
16 misunderstanding about the word choice that's used and,
17 hopefully, we can clear it up.

18 THE COURT: Mr. Steiner, do you want to do that
19 now or do you want to do it later?

20 MR. STEINER: I'll do that later.

21 I would like to respond to that in two respects.
22 One, when I stood up and said -- when she said -- I think
23 that Ms. Merritt's question to the witness was, your
24 affidavit is in the record and so we're not going to go
25 over all of it. And I stood up and said, well,

1 technically it's not. I wouldn't object to it being part
2 of the record other than this sentence. So I don't know
3 whether it's in or out because we then moved on from that.

4 I would also just note, in addition to the
5 conversation with Mr. Nye, very clearly both from the
6 witness' testimony and off the record, this was known and
7 certainly could have been corrected affirmatively on
8 direct.

9 THE COURT: We're not going to spend a lot of
10 time on this right now. We will have Mr. Nye talk to us
11 after the rest of the fact witnesses go.

12 I do want to say this. Number one, it matters not at
13 all whether or not the declaration is in the record. This
14 is a declaration that was filed by the attorneys at the
15 Attorney General's office. If there was something wrong
16 with the declaration, first of all, meaning if there was
17 something inaccurate before it was filed and an attorney
18 at the Attorney General's office knew about that, that is
19 an incredibly serious professional responsibility problem.

20 Number two, if the error was learned about after the
21 declaration was filed, the question I'm interested in is,
22 how long was it learned. Because if it was learned right
23 after the declaration was filed, I still have significant
24 concerns about that not being brought to the Court and
25 opposing counsel's testimony in a timely way.

1 And then number three, and Ms. Merritt and -- I think
2 everybody knows this. If everybody doesn't know this,
3 I'll just say it for the record. Obviously, Ms. Merritt,
4 we've worked together before in my previous iteration at
5 the Attorney General's office. So take this for what it's
6 worth. And I don't want to be unduly harsh. But if it is
7 true, which I think it is because I think you told me this
8 off the record, that the witness in preparing for today
9 told you that there was a problem with his declaration,
10 I'm not sure I understand why, after introducing the
11 witness, that wasn't the first thing out of both your and
12 his mouth. That is significantly concerning to me.

13 I will not go so far to say it's a professional
14 responsibility problem. That's a different type of issue
15 than the first two issues I identified, but I will just
16 say, if there is a correction that needed to be made on a
17 declaration like this, that should have been the first
18 thing on direct brought to the Court's attention, not
19 something that just happened to come out on
20 cross-examination.

21 Having said that, we're going to deal with the issue
22 when we have a chance to after we're done with what I'll
23 call the merits witnesses.

24 MR. STEINER: Understood, Your Honor. We're
25 perfectly prepared to proceed.

1 THE COURT: Let's get Mr. Davis back.

2 Thank you, Mr. Davis, for your patience.

3 BY MR. STEINER:

4 Q. Mr. Davis, I believe we were on Paragraph 7 of your
5 declaration -- if we can put that back up -- when we
6 stopped.

7 And you say that, after the initial maps -- I'm going
8 skip over the sentences we've been talking about before
9 the break -- you then looked to determine -- or the Board
10 of Apportionment looked to determine whether additional --
11 there were opportunities to add additional majority
12 minority districts. Is that right?

13 A. Once the maps were substantially complete, then we
14 went back to look at the data and see if any districts
15 could be made majority minority.

16 Q. You concluded that there was an additional majority
17 minority district in central Arkansas. Is that right?

18 A. That's correct.

19 Q. And is that Pulaski county when you say "central
20 Arkansas"?

21 A. Yes, sir.

22 Q. And then you considered whether there was ability to
23 add -- or determined that you could add a majority
24 Hispanic district in northwest Arkansas. Is that right?

25 A. Yes, sir.

1 Q. And you say you considered whether additional
2 districts could be added in the northeast and in south
3 Arkansas. Is that right?

4 A. Yes, sir.

5 Q. Did you consider whether more -- well, let me take a
6 step back.

7 So by adding the additional majority -- when you say
8 majority minority district in central Arkansas, is that a
9 majority black district in Pulaski?

10 A. That one would be black, yes, sir.

11 Q. And that brought the total on the board's map to 11
12 majority black districts. Is that right?

13 A. I think that's right.

14 Q. So that was still one district -- one majority black
15 district fewer than the old maps from -- or the current
16 maps from the 2011 redistricting. Is that right?

17 A. I don't specifically recall the old maps numbers.

18 Q. You don't remember -- there were no -- was there any
19 discussion when you were drawing the maps that the
20 existing maps from the 2011 redistricting had 11 -- sorry
21 -- had 12 majority black districts?

22 A. I don't remember discussing number specifically, just
23 generally that, if there was an opportunity to create one,
24 then we would try to do that.

25 Q. And so the initial map that the board had put

1 together only had ten -- before you looked to see if you
2 had one, only had ten majority black districts?

3 A. I don't remember that number specifically.

4 Q. Well, it had 11 after you added the one in Pulaski,
5 right?

6 A. Okay.

7 Q. When you're discussing whether there were any more,
8 was there any discussion done of how many majority black
9 districts there had been under the 2011 maps that were
10 currently -- that are currently in effect?

11 A. I don't recall any discussion about that.

12 Q. And was there any discussion about the population
13 change in Arkansas over the last decade?

14 A. There was a lot of discussion about population
15 change.

16 Q. Was there a discussion about the fact that the white
17 population of Arkansas had decreased by about 100,000
18 people in the last decade?

19 A. I don't recall discussion about that specifically.

20 Q. Was there a discussion that the overall population
21 had gone up by about 100,000 people?

22 A. We were aware that it had gone up.

23 Q. Were you aware that the black, any part black, and
24 Latino populations had gone up by almost 200,000 people
25 combined?

1 A. I seem to recall Mr. Shelby telling us it had
2 increased. I don't recall any specific numbers being
3 discussed.

4 Q. Was there a discussion about the fact that the
5 Arkansas population was 16 and a half percent black in the
6 2020 census?

7 A. No, sir.

8 Q. That wasn't discussed at all in the map drawing
9 process at the Board of Apportionment?

10 A. I don't recall any discussion about a 16 percent
11 black population number, no, sir.

12 Q. Was there a percentage that was discussed?

13 A. Not that I recall.

14 Q. And I take it there was no racial bloc voting
15 analysis done in the map drawing process or consulted in
16 the map drawing process?

17 A. Not that I'm aware of.

18 Q. Are you familiar with what that is?

19 A. Not exactly, no, sir.

20 Q. Is it a term that you heard at the seminar that you
21 went to out in Salt Lake?

22 A. I've heard the term yes.

23 Q. But to the best of your knowledge, you didn't see one
24 in connection with your process of drawing the maps?

25 A. No, sir.

1 Q. Now, after you concluded that an additional majority
2 black district could be drawn in Pulaski, did you consider
3 whether a second majority black district could be drawn in
4 Pulaski?

5 A. I don't recall an additional district in Pulaski
6 county, no, sir.

7 Q. And are you aware that the plaintiffs' illustrative
8 map has two additional majority black districts in Pulaski
9 county over the old maps?

10 A. Yes, sir.

11 Q. And the Board of Apportionment never considered
12 whether there could be a second additional majority black
13 district in Pulaski. Is that right?

14 A. I would say that -- I would say that we as staff did
15 not see that potential and, therefore, didn't present the
16 board with that possibility.

17 Q. And after seeing that the plaintiffs could draw two
18 additional, you didn't do any -- you didn't go back and
19 reconsider it I take it?

20 A. We didn't see that until after the maps were
21 finalized. This map is not the same one that was provided
22 during the comment period.

23 Q. Did you review the map that was provided in the
24 comment period?

25 A. Briefly. If I recall correctly, it was provided on

1 the last day of the comment period.

2 Q. And did you review it over that Thanksgiving weekend?

3 A. I don't remember specifically.

4 Q. You remember it had 100 districts though, right?

5 A. It did have 100 districts.

6 Q. And you knew that Attorney General Rutledge announced
7 on November 29 that it only had 99 districts?

8 A. That was my fault, sir. I'm the one that had told
9 her it was 99. It was a translation error when we brought
10 in their state file from their software to ours. But
11 that's my mistake.

12 Q. And are you also responsible for the Governor's
13 mistake saying there were only 13 majority black districts
14 in what the ACLU had presented, not 16?

15 A. No, sir.

16 Q. Who do you know who was responsible?

17 A. I do not.

18 Q. You knew that there were 16 majority black districts
19 in the map that was provided Thanksgiving weekend, right?

20 A. I don't recall counting them specifically, no.

21 Q. You knew that the ACLU said that there were 16?

22 A. I don't remember the number. No, sir.

23 Q. Do you remember, when you reviewed the maps, seeing
24 any discrepancy with the number that the ACLU said that
25 there were?

1 A. No, sir. I just -- no.

2 Q. And now you said you added a majority Hispanic
3 district in northwest Arkansas, right?

4 A. Correct.

5 Q. And that's proposed District 9. Is that right?

6 A. I don't remember the number.

7 Q. And you remember that the -- one of the comments from
8 the ACLU was that that district had -- that proposed
9 District 9 had a majority Latino total population but not
10 a majority Latino voting age population, right?

11 A. I think that's correct, if I remember correctly.

12 Q. And that's one of the changes that was made between
13 October 29 and November 29 was to add Latino voting age
14 population. Is that right?

15 A. I think so.

16 Q. Now, were you also aware that the ACLU had explained
17 that having a majority voting age population and Latino
18 district wasn't enough, you needed to look at the citizen
19 voting age population?

20 A. No. I'm not aware of that.

21 Q. Can we look at Exhibit 47? This is the letter where
22 the ACLU submitted its proposed map -- or said that it
23 could draw 16 districts, right? If we go on page -- I
24 think the bottom of Page 1, top of Page 2, Steve.

25 This is a letter from the Thanksgiving weekend. Is

1 that right?

2 A. I assume so.

3 Q. And then if we go -- and then I think you said you
4 saw it at some point over the weekend.

5 A. I saw it at some point.

6 Q. If we go to the next paragraph on Page 2, Steve.

7 And there it talks about both the fact that the
8 voting age population of the proposed District 9 wasn't
9 above 50 percent, right? And that you made some changes
10 to get that district above 50 percent, right?

11 A. Mm-hmm.

12 Q. But then it also said that the Hispanic citizen
13 voting age population was only 27.8 percent, right?

14 A. That's what the letter says.

15 Q. Right. And you and the people at the -- working on
16 the maps for the board understood that a significant part
17 of the Hispanic population aren't citizens, right? They
18 might be green card holders, permanent residents, but
19 they're not citizens so they can't vote, right?

20 A. I don't remember discussing that, no.

21 Q. So that wasn't discussed at all at the Board of
22 Apportionment before you finalized the maps?

23 A. I was not a party to the discussion about that.

24 Q. And so if we can go to Exhibit 7C, Steve.

25 The district we're talking about is House District 9

1 up in the northwest corner. Is that right?

2 A. The Hispanic district?

3 Q. Yeah.

4 So let's blow up the population. This is the
5 population data for that -- for that district. If you see
6 for District 9, slightly overpopulated, right?

7 A. Yes, sir.

8 Q. 1.69 percent. Perfectly acceptable?

9 A. That's pretty low.

10 Q. And you see that the Hispanic 18-plus population --
11 you understand that to be voting age population?

12 A. Yes, sir.

13 Q. Is 50.2 percent, right? 50.21.

14 A. Yes, sir.

15 Q. But if you go a couple columns over to the percent
16 citizen voting age population -- are you familiar with the
17 CVAP acronym?

18 A. I'm familiar with it now.

19 Q. As a result of this case or as a result of the
20 process of drawing the maps?

21 A. More the case. We didn't have that data in our --
22 when we were drawing maps.

23 Q. So you didn't look at the citizen voting age
24 population when you were drawing the maps?

25 A. We didn't have CVAP on there, no.

1 Q. Because you understand that only citizens can
2 actually participate in voting, right?

3 A. Yeah.

4 Q. Okay. And so if you go a couple of columns over, you
5 see that citizen voting age population for Hispanics.

6 One more over, Steve.

7 If you go down to District 9, it's 29.84 percent. Do
8 you see that?

9 A. Yes, sir.

10 Q. And in terms of citizens, the district's still
11 overwhelmingly white at 56.89 percent, right?

12 A. According to this.

13 Q. And if this data is right, you would agree that the
14 29 percent or almost 30 percent Latino voters in the
15 district couldn't elect the candidate compared to the 57
16 percent white voters, right?

17 MS. MERRITT: Objection. Calls for speculation,
18 outside of his expertise as well.

19 THE COURT: Overruled.

20 THE WITNESS: I don't know that I could say that
21 for certain, no, sir.

22 BY MR. STEINER:

23 Q. And if we just go, Steve, to the next page. Then
24 this shows the -- the other districts. And actually,
25 Steve, if we go one page forward.

1 These are ten of -- the ones that are highlighted in
2 yellow, those are ten of the 11 majority black districts.
3 Is that right?

4 A. Yes, sir.

5 Q. And if we look, for example, at District 64, that's a
6 district around Pine Bluff, right?

7 A. I don't recall where the district numbers are.

8 Q. But if we look at 64 and 65, those are both more than
9 two-thirds black voting age population, right?

10 A. Appears so.

11 Q. And so that's ten of the 11. And if we go up to the
12 prior page, District 35, that's the other majority black
13 district in the board's plan, right?

14 A. Mm-hmm.

15 Q. Yes?

16 A. Yes.

17 Q. And you would agree with me that District 49, which I
18 think is in the Fort Smith area, was there talk about
19 trying to create a majority Latino or majority nonwhite
20 district in the Fort Smith area?

21 A. I think it was looked at.

22 Q. But you would agree with me that that district, from
23 a people eligible to vote perspective, is almost 55
24 percent white, right?

25 A. 40 percent, 18-plus white.

1 Q. Yeah, 40 on the 18-plus. But if you look at the
2 citizen 18-plus white, that's 54.7 percent, right?

3 A. Okay.

4 Q. So you would agree with me that's a white majority,
5 right?

6 A. Yeah.

7 Q. Likewise 34, that's Monte Hodges' old district. Is
8 that right?

9 A. Again, I don't remember the number specifically.

10 Q. That's the new number for the northeast delta; is
11 that right, for the district that you talked about with
12 Ms. Merritt?

13 A. If you say that's Representative Hodges' old
14 district, I agree.

15 Q. From a citizen voting population, that's now 51.7
16 percent white. Is that right? Almost 51.8.

17 A. That's what the chart says.

18 Q. You have no reason to dispute what's reflected in the
19 chart. Is that right?

20 A. That's correct.

21 Q. Now, just going back to your declaration Paragraph 7.
22 You say you considered whether to -- additional majority
23 minority districts could be added in northeast Arkansas.
24 Is that right?

25 A. Yes, sir.

1 Q. So that again is Representative Hodges' district that
2 went from being majority black to majority white, correct?

3 A. Correct.

4 Q. And you couldn't figure out a way -- is that right;
5 you couldn't -- when you looked at the data, couldn't
6 figure out any way to draw that district that would be --
7 maintain its majority black status?

8 A. That's correct. Using our data.

9 THE COURT: Sorry. I didn't hear that last part
10 of your answer.

11 THE WITNESS: I said "using our data" because,
12 again, we didn't have citizen voting age and we didn't
13 have part black. We had all black.

14 BY MR. STEINER:

15 Q. You had the census data, right?

16 A. The software we were using in our data table, it was
17 all black.

18 Q. You understood the Arkansas constitution requires you
19 to use census data, right?

20 A. Sure.

21 Q. And you know that the census data includes any part
22 black, right?

23 A. I'm not familiar with that.

24 Q. I don't remember what exhibit it is, so I'm hoping
25 someone on my team does, but can we pull up the 2020

1 census data? If we can go to the first page of it, Steve.

2 So this is the -- does this go -- it's all in one
3 exhibit? So this is -- we're going to scroll down a
4 few until we get to 2020.

5 So here is -- did you ever see any information like
6 this in your role doing the mapping for the State of
7 Arkansas? This is race for the population 18 years and
8 over United States Census Bureau.

9 A. No, sir.

10 Q. And if we scroll down to the next page, do you see
11 how it says, population of one race, and it has white
12 alone, black or African-American alone, and continues
13 down, and then population of two or more races?

14 A. No, sir. I didn't see that.

15 Q. And whether you've seen it in this format or not, do
16 I understand that, with you as the principal drafts person
17 or principal clicker of the map, this data broken down at
18 this racial level was not data that was used by the Board
19 of Apportionment?

20 A. We had -- we didn't have -- to my knowledge, we
21 didn't have part black numbers in the software.

22 THE COURT: Let me stop you here for a second.

23 This is an incredibly important question. If you
24 don't know, you need to say you don't know. Don't assume
25 something. If you know, tell us one way or the other.

1 Do you know whether the Board of Apportionment was
2 using all black or part black to calculate the -- either
3 the total black population or the total black voting age
4 population or the total black citizen voting age
5 population?

6 THE WITNESS: I do not know for certain.

7 THE COURT: What -- when Mr. Steiner asked you,
8 you said that you were using all black, not part black.
9 If you didn't know for certain, what made you say that?

10 THE WITNESS: It's my understanding that the
11 column of voting age population for each race that we had
12 was all black, but --

13 THE COURT: Where did you get that
14 understanding?

15 This is not a trick question. Did somebody tell you
16 that? Is it from something you read? Is it from your
17 training? Where did that come from?

18 THE WITNESS: I couldn't say something specific,
19 Your Honor. I mean, that's just my general understanding
20 of the numbers we had. Back to his original question of,
21 could we get a particular district -- Representative
22 Hodges' district over 50 percent. And I would say we
23 attempted and we could not get it over 50 percent.

24 THE COURT: Okay.

25 BY MR. STEINER:

1 Q. Would you agree with me that, if you had better data,
2 including the any part black data, you might have been
3 able to?

4 A. If there was a different data set that should have
5 been reviewed and it could have got there, I guess it's
6 possible.

7 Q. If the wrong data set was used, that's something that
8 should be fixed, right?

9 A. That's probably not for me to decide.

10 Q. That's for the Court to decide.

11 Now, you say, just looking back at Paragraph 7 of
12 your affidavit, that you also considered whether a
13 majority minority district could be added in south
14 Arkansas.

15 A. Represent Fieldings' district.

16 Q. Where is that?

17 A. Southeast Arkansas.

18 Q. That's southeast.

19 So I take it -- and that's the -- Steve, could we go
20 to Exhibit 1, please? So if we can draw kind of that
21 corner.

22 So you're talking about is where 62, 94, and 95 are.
23 Is that right?

24 A. I'm sorry if I said southeast. It's southwest,
25 Magnolia. Where the illustrative map has District 5, I

1 think it was.

2 Q. Okay. So the equivalent of District 5 on the 2011
3 map and the illustrative map. Is that right?

4 A. District 98 on this map.

5 Q. And I take it then, sir, there wasn't consideration
6 -- Steve, if we can just go back. Sorry. To Exhibit 1
7 but I want to go back to southeast. Can you make it a
8 little bit farther north?

9 I take it there wasn't consideration as to whether
10 62, 94, and 95, whether those could be configured in a way
11 to have a second majority black district. Is that right?

12 A. Are you talking about specifically in the time period
13 after the -- like during the comment period?

14 Q. Well, when you're talking in Paragraph 7 when you
15 said you looked to see -- I guess after October 14 and
16 before October 29, when you looked to see whether
17 additional districts could be drawn, did you -- you said
18 you looked at one in south Arkansas. We now talked about
19 that was old District 5, right?

20 A. Mm-hmm.

21 Q. Did you look and see whether in this district you
22 could do anything?

23 A. I don't recall looking to see if you could create
24 more in this area, no.

25 Q. And why didn't you do that?

1 A. I think that was pretty thoroughly evaluated during
2 the initial map drawing and determined that it wasn't
3 possible.

4 Q. You were aware that there were two majority black
5 districts there in the 2011 plan, right?

6 A. I'm not aware of that, no.

7 Q. Can we put that side by side with Exhibit 65, Steve?
8 And what we have on so that and then the same -- if we can
9 do the same area of that.

10 Right. And so you understood that both 11 and 12 of
11 the old map were majority black districts, right?

12 A. I don't recall knowing that, but I'm not going to
13 disagree with you.

14 Q. Well, in deciding whether additional districts could
15 be drawn there, you didn't go back and consult and say,
16 well, what did we have before in 2011, right?

17 A. We would have, yes. If they were previously, we
18 would have gone back to look to see if we could have
19 created that again.

20 Q. In your affidavit, you don't talk about anything that
21 you looked at in that area. Is that right?

22 A. We would have done that in the initial map drawing.

23 Q. Before you came up with the consensus map?

24 A. As part of the process in coming up with the
25 consensus map.

1 Q. Well, it says -- if we can go back to Exhibit -- the
2 declaration exhibit -- Paragraph 7.

3 So you see here you say, initial drafts have been
4 completed back the week of October 7, right?

5 And I understand there's some issues with saying, at
6 that point, you began to overlay race. But at that point,
7 you looked for additional districts, right?

8 A. Yes, sir.

9 Q. And at that point that you're looking for additional
10 majority -- opportunities to create additional majority
11 minority districts, you didn't look to see whether you
12 could do one in the southeast part of the state, right,
13 southeast delta?

14 A. I can't remember specifically. If there were old
15 districts there, then we wouldn't look there.

16 Q. You don't remember anything enough to put it in your
17 affidavit of having done so, right?

18 A. No.

19 Q. And I don't see any mention of Pine Bluff here. Did
20 you look to see whether additional majority black
21 districts could be created in and around Pine Bluff?

22 A. We looked to create them anywhere we could.

23 Q. Well, you say you considered whether there could be
24 one in the northeast, and concluded there couldn't, and in
25 south Arkansas, which we now understand to be the kind of

1 El Dorado area. But you didn't mention southeast and you
2 didn't mention Pine Bluff, right?

3 A. So it's not an exclusive statement.

4 Q. So it's your testimony now that you considered
5 additional districts that you didn't think to mention in
6 your declaration to the Court. Is that right?

7 A. Yes.

8 Q. Did you tell anyone from the Attorney General's
9 office when you reviewed your affidavit that there were
10 additional districts that you considered that should be
11 added to the list?

12 A. No. I didn't comment on that.

13 Q. And let's just look at the Pine Bluff area.

14 If we can go back, sorry, Steve, to Exhibit 1. Let's
15 blow up the Pine Bluff area. You might need to start a
16 little bit higher north so we get all of Jefferson county.

17 So those are the three districts, right, 64, 65, and
18 93, that are -- I think 64 and 65 are in Pine Bluff and
19 then 93 is around Pine Bluff. Is that right?

20 A. Looks right.

21 Q. And I think 93 actually comes in and picks nine
22 voters in Pine Bluff. Is that right?

23 A. I don't remember that specifically.

24 Q. Is that because of the third incumbent that's there?

25 A. I don't remember that specifically.

1 Q. Now, how would you describe -- since we're into
2 shapes, how would you describe the shape of Exhibit 93?

3 A. It's got a finger on the top of it.

4 Q. Sort of like a closed fist with a long index finger.
5 Is that --

6 A. I guess you could describe it like that.

7 Q. Now, we talked about 64 and 65 were both about -- one
8 was a little under 67 percent black and one was a little
9 under 68 percent black. Was there any analysis that's not
10 mentioned in your affidavit done to see whether you could
11 unpack some of that black population and create a third
12 district in or around Pine Bluff?

13 A. Not that I recall.

14 Q. Just when we talk about the southeast part of the
15 state, District 11 might have been majority black or might
16 have been majority minority if you combine black and
17 Latino voters. Is that right?

18 A. I don't remember that.

19 Q. You don't know whether you looked one way or the
20 other as to whether it could be either majority black or a
21 majority minority if you combine black and Latino?

22 A. I don't remember that.

23 Q. And after you saw the state -- sorry.

24 After you saw the ACLU's proposed maps, you didn't go
25 back to look to see whether an additional black district

1 could be created either -- majority black district could
2 be created either in the southeast delta or around Pine
3 Bluff. Is that right?

4 A. I personally did not, no.

5 Q. You were the person who had the mouse for the State,
6 right?

7 A. Again, don't put too much into that. A lot of people
8 had the software and the maps, were able to verify things.

9 Q. You didn't do it and you're not aware of anyone else
10 doing it?

11 A. They could have and I'm just not aware of it.

12 Q. And then in Paragraph 8 of your declaration, you say
13 that you were asked to offer your observations and
14 responses, I think you used the word "opinion," with
15 respect to Mr. Fairfax's report. Is that right?

16 A. Yes, sir.

17 Q. And you reviewed his report?

18 A. Yes, sir.

19 Q. And what you put -- you wrote the part of the -- the
20 part of your declaration that follows Paragraph 8, right?
21 Sorry. Paragraph 9.

22 A. That's right.

23 Q. That was your observations on his report?

24 A. Correct.

25 Q. And in doing that, you tried to be as best you could

1 to be accurate in what you wrote, right?

2 A. Yes, sir.

3 Q. You tried to be complete in what you wrote?

4 A. Yes, sir.

5 Q. So if there is something in Mr. Fairfax's report that
6 you disagreed with, you put it in your declaration, right?

7 A. I wouldn't say it was an exhaustive review, but it
8 was a review, yes.

9 Q. If there was something in Mr. Fairfax's report about
10 his maps or his comparisons to the State maps that you
11 believed was erroneous, you use this opportunity to
12 provide your opinion on it, right?

13 A. Not necessarily. I primarily looked at his map and
14 then wrote my opinions of his map.

15 Q. Why don't we look at Mr. Fairfax's report Exhibit 7,
16 Page 19, please, Steve.

17 In your review of Mr. Fairfax's report, did you
18 review the chart that he presented comparing the
19 illustrative map and the board's maps on a variety of the
20 redistricting criteria?

21 A. I reviewed the report. I did not necessarily comment
22 on the report. I was really more commenting on the map
23 itself.

24 Q. And so you don't take issue with any of Mr. Fairfax's
25 conclusions in terms of comparing the two maps, right?

1 A. No, sir.

2 Q. And as far as you know, his comparisons there are
3 accurate, right?

4 A. As far as I know.

5 Q. And for example, all of the board's districts and all
6 of Mr. Fairfax's districts fall within the plus or minus
7 five percent variation from ideal, right?

8 A. As far as I know.

9 Q. We won't go through all of it, but I do have a
10 question on the compactness factors. Do you see that, the
11 number on compactness?

12 A. I do.

13 Q. Would you be able to explain what those various
14 compactness measurements are and how they're calculated?

15 A. Not exactly, no, sir. I seen explanations, I've seen
16 the GIS office would do the compactness calculations.

17 Q. Okay. But you personally --

18 A. I personally can't explain to you how you arrive at
19 those numbers.

20 Q. And then you see on most of the criteria, you know,
21 some are slightly -- some there's more splits in one plan
22 or slightly more splits in the other plan, other than
23 voting tabulation districts. Do you see that, those
24 splits?

25 A. I do.

1 Q. And those -- Mr. Fairfax's plan has 98 splits and the
2 board plan has 282. Is that right?

3 A. According to the report.

4 Q. And you have no reason to dispute that?

5 A. I've not counted them myself.

6 Q. And were you aware that there were 282 VTD splits in
7 the board plan?

8 A. No, sir. I've not counted them or heard that
9 statistic.

10 Q. You're familiar with the term VTD, voter tabulation
11 district?

12 A. Yes, sir.

13 Q. That's the same thing as a precinct?

14 A. Basically, yes.

15 Q. And there are -- am I right that there are roughly
16 2400 precincts in Arkansas?

17 A. I don't know.

18 Q. Well, did you ever hear that the board's plan split
19 something more than ten percent of the precincts in the
20 state?

21 A. No, sir.

22 Q. And would you agree with me that, when you split
23 precincts, it requires the precinct clerk who is carrying
24 out the election or the election clerk in that precinct to
25 have multiple different ballots for that one precinct?

1 A. I would agree with that.

2 Q. And so the more splits among precincts there are, the
3 more local level election administrators who have to deal
4 with multiple different ballots, right, sir?

5 A. Yes. But I would also say, when you consider whether
6 or not to split a precinct, you have to consider the other
7 criteria as well. Precincts are all over the map. There
8 are precincts that are -- oh, what's the word? They're
9 separate blocs. They're not even contiguous.

10 Precincts themselves don't follow themselves the
11 redistricting guidelines. There's some very odd shapes.
12 So particularly in urban areas where you got higher
13 population, you know, precincts splits may be more
14 warranted so that you get a more compact shape or follow
15 geographic boundary or something like that.

16 Q. Would you agree with me that, even though it's not on
17 the nine criteria, that one goal of the Board of
18 Apportionment was to minimize the number of new ballots
19 that would have to be created around the state?

20 A. Sure.

21 Q. And the fewer precinct splits there are, the fewer
22 additional ballots that would have to be created, right?

23 A. That's true.

24 Q. And in finalizing its plans, did the board consider
25 the number of split precincts that were required?

1 A. I don't remember discussing exactly how many split
2 precincts there were, no.

3 Q. I take it that, when you were using the mapping
4 software with other members of the Board of Apportionment
5 staff, you were adding and subtracting areas at the census
6 bloc level rather than at the precinct level. Is that
7 right?

8 A. Well, we would start on the precinct level and then,
9 if we felt it needed to be split up the census bloc to
10 meet other criteria, then we did.

11 Q. So you would start at the census bloc --

12 A. Precinct.

13 Q. You would start with the VTD?

14 A. Precincts, yes.

15 Q. And then you would break that down sometimes and
16 intentionally split the precincts at least 282 times?

17 A. We didn't count how many times, but if we felt it was
18 necessary to meet other criteria, yes.

19 Q. When you did it, it was an intentional choice that
20 we're going to move from looking at the precinct to
21 looking at the census bloc and intentionally split this
22 one?

23 A. Yeah.

24 THE COURT: Can I stop you for a second? I want
25 to make sure I understand testimony.

1 Was the board using VTDs or were you using actual
2 precincts?

3 THE WITNESS: Our map showed actual precincts.
4 We could draw -- we could select shapes based on a county,
5 a voting precinct, or a census bloc.

6 BY MR. STEINER:

7 Q. And I think there's been various testimony on VTDs
8 and precincts, but you understood that they're actually in
9 Arkansas the same thing, right?

10 A. If the VTD is different than a precinct, I was not
11 aware of that.

12 Q. Right. And could we actually look at Defendants'
13 Exhibit 3?

14 So this is -- I'll just represent to you this is a
15 illustration or map put together by Shelby Johnson.

16 Can we actually see it before you focus on that? Go
17 back.

18 Looking at I think it was old District 355 from the
19 2011 plan, but don't hold me to that.

20 And you see if we can blow up the legend that
21 Mr. Johnson put together. That says 2020 voting
22 tabulation districts (precincts). Do you see that?

23 A. Mm-hmm.

24 Q. And then -- oh, I'm sorry. This is actually for the
25 proposed District 34 or the House plan -- the Board of

1 Apportionment plan District 34 because what it says is,
2 prepared by Shelby Johnson, analyzed identified precinct
3 split by House District 34. Do you see that?

4 A. Yes.

5 Q. And that's consistent with your experience on the
6 board -- on the staff of the Board of Apportionment that
7 VTD and precinct was used interchangeably. Is that right?

8 A. We didn't use the term VTD very much. We primarily
9 spoke about precincts.

10 Q. Your understanding was that they were the same thing?

11 A. That's my understanding.

12 Q. So like to spend a little bit of time on the -- your
13 comments on some of the specific districts. We can start
14 with District 5.

15 And, Steve, if we can pull up the -- what had been
16 the side-by-side one comparison.

17 So if -- the map on the left, Mr. Davis, is that 2011
18 map and then the map on the right is the plaintiffs'
19 illustrative map for 2020. Do you see that?

20 A. Yes.

21 Q. Would you agree with me that, if you started -- blow
22 those up a little bit, Steve, the two areas of 5.

23 If you start with the core of the old District 5,
24 that explains much of the shape of this district, right?

25 MS. MERRITT: Objection. Calls for speculation.

1 THE COURT: Overruled. He can answer it if he
2 feel likes he can.

3 THE WITNESS: I feel like that's a pretty
4 subjective question. I mean, that's an opinion, mine
5 versus yours.

6 BY MR. STEINER:

7 Q. But, of course, the board sometimes started with the
8 old and sometimes started -- some members were using blank
9 slate, right?

10 A. (Nods head).

11 Q. And I think you commented in your declaration about
12 District 5 being somewhat overpopulated and surrounding
13 districts being somewhat underpopulated. Is that right?

14 A. I think that's right.

15 Q. We're talking about -- but they're all -- all of
16 those districts are within the plus or minus five percent,
17 right?

18 A. Right.

19 Q. And when we're talking about plus or minus five
20 percent, we're talking about no more than 1500 people out
21 of 30,000 people, right?

22 A. Right.

23 Q. So you're talking about someone's -- if you're
24 talking in terms of voting, you're talking about being one
25 of maybe 21 or 22,000 eligible voters in a district

1 compared to being one of maybe 20,500 eligible voters a
2 district, right?

3 A. Sure.

4 Q. So when we talk about how much it between districts
5 dilutes voting strength or makes a vote unequal, those are
6 the numbers that we're talking about in terms of potential
7 voters, right?

8 A. Mm-hmm.

9 Q. And, of course, when we create districts that have
10 that size population but are heavily Latino, noncitizens,
11 then the white voters in those districts have a
12 proportionately much greater than that percentage more
13 voting power, right?

14 A. Could you restate that?

15 Q. Yeah. When -- that's when you're talking about
16 districts where most of the adult -- most of the
17 population are citizens but -- and having the five percent
18 variation. But the process also permits drawing maps that
19 have equal numbers of population -- I think requires
20 drawing maps that stay within the plus or minus five
21 percent population even when particular districts have
22 significant noncitizen population, right?

23 A. Yeah. You have to draw the districts based on actual
24 population.

25 Q. You have to draw based on actual population, right?

1 A. Yes.

2 Q. And when some districts have a significant number of
3 noncitizens, it means the citizens in those districts by
4 necessity and as required have a proportionately stronger
5 vote than a neighboring district that is overwhelmingly
6 citizen population, right?

7 A. Perhaps in theory I guess.

8 Q. And you talk in this district, aside from population
9 -- by the way, so one of the things you talk about, aside
10 from population, is that this district splits a number of
11 boundaries; right, city boundaries and county boundaries?

12 A. Mm-hmm.

13 Q. But you agreed with me, with respect to Mr. Fairfax's
14 comparisons of the overall maps, that putting aside the
15 VTD split numbers, the rest of the numbers were pretty
16 comparable, right?

17 A. Mm-hmm.

18 Q. That's a yes?

19 A. Yes.

20 Q. Sorry. I know it's getting somewhat late in the
21 afternoon. It's hard at this time. But for the record,
22 we need you to answer verbally.

23 And, likewise, I think you say that this pairs parts
24 of three cities with a large rural population in between.
25 Is that right?

1 A. Yes.

2 Q. Of course, you understood that it was common in the
3 redistricting -- in the districting or redistricting
4 process that rural areas would be paired with cities or
5 parts of cities, right?

6 A. Sure.

7 Q. And then I think you say that this map -- that this
8 map, you know, that it's inconsistent or it doesn't score
9 well on the goal of minimizing new ballot creation. Is
10 that right?

11 A. I commented on the precinct splits to get to
12 El Dorado, yes.

13 Q. Right. You talked about population, some of those
14 precincts splits having populations as low as 362 people.
15 Is that right?

16 A. Yes.

17 Q. Of course, the board's plan around Pine Bluff had a
18 split that was as low as -- as few as nine people, right?

19 A. I was commenting on this district specifically, not
20 the plan overall.

21 Q. So that's something in this district that features in
22 this district, I'm sure in other districts on this plan,
23 and throughout the board's plan as well, right?

24 A. Yes.

25 Q. And in fact, if you include the precincts splits, the

1 board's plan has nearly three times the number of precinct
2 splits as the illustrative plan, right?

3 A. That's correct.

4 Q. Let's talk for a minute about District 16. I think
5 this is starting on Page 6 of your declaration. And,
6 again, you talk about -- you talk about the population
7 variance of this district being minus 4.29 percent. Is
8 that right?

9 A. Yes.

10 Q. And, again, that's within the plan, right?

11 A. Barely.

12 Q. And I think you talked about your experience serving
13 in the State House. Is that right?

14 A. I did.

15 Q. You've never -- you represented a district in Pulaski
16 county that's a primarily white district. Is that right?
17 When you served in the house -- I'm sorry --

18 A. Yes.

19 Q. -- you represented the district. Is that right?

20 A. Pulaski and Saline.

21 Q. And that district is an overwhelmingly white
22 district. Is that right?

23 A. I don't know the numbers, but I would assume so, yes.

24 Q. And you haven't campaigned in Pine Bluff in
25 Arkadelphia?

1 A. I haven't campaigned there, no.

2 Q. And you haven't represented either of those areas of
3 the state, right?

4 A. No.

5 Q. And you talk about the driving distance between them,
6 right?

7 A. I did.

8 Q. And the fact that you would have to drive -- it could
9 be an hour and a half drive between Arkadelphia and Pine
10 Bluff?

11 A. I think I put it on Google Maps out of curiosity to
12 see how it would map from one to the other, yes.

13 Q. Did you do that with any of the districts in the
14 Board of Apportionment's plan?

15 A. I did not.

16 Q. Well, why don't we look at a couple of those.

17 So, Steve, if we can start with Exhibit 61, the
18 driving distance. I can give you a paper copy if you need
19 it, but I'm putting on the screen what's been marked as
20 Plaintiffs' 73. Steve, could we put up next to it Exhibit
21 1 which is the board's plan. Focus in on 61 which I think
22 the tall yellow district. Yeah.

23 So this is one of the districts that the board
24 created, right?

25 A. Yes.

1 Q. And this is one where the district -- that district
2 has very little resemblance to the district in the 2011
3 plan, right?

4 A. Probably so.

5 Q. And when you created this district, did you look to
6 see the distance from the northern and southern parts of
7 the district?

8 A. I didn't look for the distance. My comment in my --
9 my comment was more about having to leave the district
10 more than it is about the distance.

11 Q. Why in your view is it significant that someone would
12 have to leave the district?

13 A. Just inefficient for a representative, if they're
14 trying to travel their district of campaign or visit
15 constituents and meeting and so on and so forth, to have
16 to leave the district where they can't do representative
17 work, if you will, to get to another part of the district,
18 that's a -- you'll say it's not a criteria. I'll say it's
19 just a hassle for a representative.

20 Q. It's not a criteria, right?

21 A. To be able to drive from one end to the other staying
22 in a district is not criteria, no.

23 Q. And with respect to this district -- by the way, we
24 didn't go all the way to the southern end of the district,
25 right, it starts in Almyra, which is, essentially, where

1 the current incumbent is represented by the star on the
2 House plan. Is that right?

3 A. Yes.

4 Q. Going up to the upper reaches in Amagon. Is that
5 right?

6 A. Yes.

7 Q. And you would agree with me -- this is from Google
8 Maps. You don't dispute that it would take about two
9 hours to make that drive. Is that right?

10 A. I don't dispute that it would be a long drive, no.

11 Q. But that might be -- it's not clear. It might be all
12 within that district. Is that right?

13 A. It might be. It could be close.

14 Q. All right. Well, why don't we look at Exhibit 27?
15 If we can put the -- this has been marked as Exhibit
16 Plaintiffs' Exhibit 74. So this is a district, -- again,
17 this was stretched out quite a bit from where the district
18 was in the 2011 plan. Is that right?

19 A. Yes.

20 Q. And so this is District 27. And the current
21 incumbent is up kind of in the Compton area in the
22 northwest. There is a little star there -- Steve, I don't
23 know if you can highlight it -- part of the district,
24 right? That's where the current incumbent is. Is that
25 right?

1 A. Yes, sir.

2 Q. And if that current incumbent wanted to reach his or
3 her constituents across the district in Mount Pleasant, it
4 would be roughly 120 miles and take two hours and 20 or
5 two hours and 30 minutes. Is that right?

6 A. I don't doubt it.

7 Q. And either way, whether you take the northern route
8 or the southern route, you have to travel outside of the
9 district. Is that right?

10 A. Probably so, yes, sir.

11 Q. I think you have to cross either three or four other
12 districts to make that drive either north or south. Is
13 that right?

14 A. I haven't counted, but I don't dispute it.

15 Q. And I take it that looking at that was not something
16 that you did when you drew that part of the map. Is that
17 right?

18 A. I did not do that analysis on that district, no.

19 Q. And, again, I think we were talking about this in
20 relation to your comment about the Pine Bluff to
21 Arkadelphia. But regardless of whether that proposed
22 District 16 in the plaintiffs' illustrative plan is the
23 way you drew something, the board didn't do anything to
24 look at whether they could split the black population of
25 Arkadelphia to create a third majority black district in

1 the area. Is that right?

2 A. I don't recall considering a district that would go
3 from Arkadelphia to Pine Bluff.

4 Q. Right. I'm saying, aside from whether you considered
5 that, you didn't look at if there were other ways to split
6 Pine Bluff to have an additional majority black district.
7 Is that right?

8 A. I guess -- we attempted to draw as many as we could
9 out of Pine Bluff. But, I mean, I feel like there is a
10 time component to your question and I'm not sure I know
11 how to answer that.

12 Q. Let's go back to Exhibit 1 and look at the Pine Bluff
13 area. Right.

14 So the District 65 and District 64 are both roughly
15 two-thirds or a little bit more than two-thirds black
16 population. Is that right?

17 A. I think that's correct.

18 Q. And 93 is overwhelmingly white. Is that right?

19 A. I don't recall specifically.

20 Q. But given your knowledge of Arkansas, it wouldn't
21 surprise you looking at those area that that's
22 overwhelmingly white district, right?

23 A. Yes.

24 Q. You agree with me?

25 A. I agree with you.

1 Q. And you see there is an incumbent just outside --
2 it's actually the red line of the circle around Pine Bluff
3 is going through a third star there. That's the incumbent
4 in District 93. Is that right?

5 A. Yes, sir.

6 Q. So Pine Bluff in the board's plan is split among
7 three different districts, which you had to do because
8 there are three incumbents there, right?

9 A. Yes.

10 Q. And I think the plaintiffs' illustrative plan splits
11 Pine Bluff into I think it's five districts, right?

12 A. That sounds right.

13 Q. And I don't know if it was one of your -- you
14 wouldn't have a problem doing that. Is that right, sir?

15 A. Five districts?

16 Q. Mm-hmm.

17 A. I wouldn't necessarily have -- I personally wouldn't
18 necessarily have a problem doing it if that created more
19 majority minority districts.

20 Q. Right. Because there were certainly cities smaller
21 than Pine Bluff where the board's plan created -- split
22 the city into four districts, right?

23 A. I don't recall that potentially.

24 Q. You would agree with me that Benton is smaller than
25 Pine Bluff?

1 A. Yes.

2 Q. Would you agree that the board split Benton into four
3 districts?

4 A. I would have to look at the map again.

5 Q. Why don't we look at 7C, Steve?

6 This is some of the data that Mr. Fairfax put
7 together. If we can go to Page 134.

8 And so this is the splitting of cities among
9 districts in the Board of Apportionment. You see at the
10 top the plan is the ARHD BOA final. It's the board's plan
11 for the House. Do you see that?

12 A. I see it.

13 Q. Do you see that Benton, Arkansas, is -- has four
14 different districts, 78, 81, 82, and 83?

15 A. I see that.

16 Q. And you don't dispute that there were four splits in
17 Benton?

18 A. No. I would assume this is accurate.

19 Q. Likewise, you'd agree with me that Hot Springs is
20 smaller than Pine Bluff. Is that right?

21 A. I would want to look at the numbers to verify that.

22 Q. They're at least close, if it's not smaller?

23 A. Probably so, yeah.

24 Q. And I'll tell you from my Google, it's a city or two
25 below, but that's only Google and it could be wrong.

1 A. You know.

2 Q. But would you agree with me if we go to Page 137 that
3 Hot Springs is split to four on the board's plan.

4 A. Yes.

5 Q. And then likewise, Sherwood is smaller than Pine
6 Bluff. Is that right?

7 A. Probably.

8 Q. And Sherwood is also split into four?

9 Steve, we go to Page 140?

10 A. Yes.

11 Q. And then if we just go up to Page 139 just one page
12 before and look at Pine Bluff, the board's plan just
13 splits Pine Bluff into three, including just having as
14 little as nine people from Pine Bluff drawn into District
15 93. Is that right?

16 A. According to this data, yes.

17 Q. You don't have any reason to dispute this data?

18 A. No, sir.

19 MR. STEINER: I would like to admit 73 and 74.

20 THE COURT: Any objection?

21 MS. MERRITT: No objection.

22 THE COURT: They're admitted.

23 (Plaintiffs' Exhibit 73 and 74 admitted into evidence.)

24 BY MR. STEINER:

25 Q. Now, let's look at District 12. This is the district

1 that you talked about splitting off --

2 A. Helena.

3 Q. -- Helena and West Helena. Is that right?

4 A. Yes, sir.

5 Q. And Helena-West Helena is a population, give or take,
6 10,000, maybe a little bit less. Is that right?

7 A. A little less.

8 Q. And but it's along the Mississippi, along with the
9 rest of Phillips county, the rest of Lee county, right?

10 A. I'm sorry. You said Phillips?

11 Q. Yeah. Phillips county.

12 A. Phillips and Lee are along the Mississippi, yes.

13 Q. And, again, you comment on the population variance.
14 I think this is the highest in the plan at 4.98, but
15 that's still under the five percentage guideline that the
16 board put out as acceptable, right?

17 A. Yes.

18 Q. And then you say, if we look at Paragraph 26 of your
19 declaration, that -- that District 12 is dominated by Pine
20 Bluff, which is three counties away, right, with little
21 community connection. Is that right?

22 A. That's what it appears to me, yes, sir.

23 Q. If we can go back to the map, Steve, Exhibit 2, I
24 think it is, and look at District 12.

25 And Pine Bluff is not three counties away, right?

1 The district would comprise three counties, right?

2 A. You get a portion of Monroe county in there.

3 Q. So from Phillips county though, you have Arkansas
4 county and then Jefferson county where Pine Bluff is,
5 right?

6 A. I probably counted Monroe then Arkansas then
7 Jefferson.

8 Q. And you say that there's little community connection.
9 Is that right?

10 A. Yes.

11 Q. Now, I'll grant you my knowledge of Arkansas is below
12 the Judge's, which is certainly below yours -- or my
13 knowledge at least is certainly below yours. But my
14 understanding was that -- and I think you might have
15 mentioned it -- that Pine Bluff is the hub for the row
16 crop industry that characterizes the delta, right?

17 A. Yes.

18 Q. Right. And Pine Bluff is kind of known and suited
19 for barge traffic of commodities that come up the
20 Mississippi River, right?

21 A. Yes.

22 Q. And that's connections to the coastal areas that
23 extend out in the district, right? I mean, that's -- I
24 think it's your own testimony that that's the business of
25 Pine Bluff, right?

1 A. Yeah. I'm not necessarily saying that Phillips
2 county and Jefferson county are dissimilar communities of
3 interest. They're just disconnected.

4 Q. You would agree with me that that's a contiguous
5 district, right? No question about that.

6 A. It's contiguous, yeah.

7 THE COURT: When you say "disconnected," what do
8 you mean?

9 THE WITNESS: I mean people in Phillips county
10 don't go shopping in Pine Bluff. They don't -- there's
11 not a -- that I'm aware of anyway, a -- any economic or --
12 I shouldn't say economic, but people don't go from
13 Helena-West Helena to Pine Bluff. They didn't go --
14 people in Helena-West Helena, when they go shopping, they
15 go to Memphis, they go to West Memphis, Marianna, they
16 come to Little Rock. People in Pine Bluff come to Little
17 Rock. There's a lot of commuting back and forth through
18 there.

19 I just -- it's hard for me to believe there is any
20 one -- you know, other than actually -- I started to say,
21 other than if a farmer is taking his goods to market,
22 maybe he takes them to Pine Bluff, maybe -- no. Probably
23 he's just taking them to Helena or to West Helena or to
24 West Memphis. Those locations are a lot closer.

25 I'm sorry, Your Honor. May be hard for me to

1 describe because it's less of a statistical thing. It's
2 just more of a -- you know, it's hard to get from Phillips
3 county to Jefferson county.

4 BY MR. STEINER:

5 Q. And I do actually just want to ask you quickly -- I
6 think you made both in -- with respect to District 16 and
7 maybe with respect to District 12 as well some comments
8 about, if you removed parts of the population, you would
9 get further underpopulated, right? I think -- is that
10 right?

11 A. Yes.

12 Q. And I think you specifically talked about in District
13 16, three of the precincts that were the farthest west
14 precincts had about 45 or 4700 people. Is that right?

15 A. Mm-hmm.

16 Q. Between the three precincts?

17 A. Yes.

18 Q. You say, well, if you remove those, you would be at a
19 negative 15 percent, right?

20 A. Population, yes.

21 Q. But if you removed 45 or 4700 people from any
22 district on the map no matter where you started, you would
23 be at an underpopulated district outside of the range,
24 right?

25 A. Yeah. I think the point I'm trying to make is, why

1 do you go all the way to Arkadelphia to a community that
2 has no similar interest with Pine Bluff to get that 4700
3 people? Why not get those 4700 people in Jefferson
4 county.

5 Q. But you could look at any precinct on any --

6 A. Yeah. You can do that to any district.

7 Q. On any boundary of any district, you could look and
8 say, well, if we took 4,000 or 4700 people out, we would
9 necessarily have an underpopulated district because the
10 maximum variation, if you were at five -- plus five or
11 minus five and went to the other extreme, would be 3100
12 people, right?

13 A. Yes. Again, I just think the question goes to why do
14 you get those 4700 and not 4700 that are closer.

15 Q. I think we were on 48.

16 THE COURT: Mr. Steiner, just for planning
17 purposes, about how much longer?

18 MR. STEINER: I think not that much more, Your
19 Honor. Probably 15 minutes. I was actually wondering. I
20 don't know if the court reporter is okay.

21 THE COURT: That's what I'm wondering.

22 MR. STEINER: If that changes and my 15 becomes
23 45, stop me.

24 THE COURT: Don't worry about that.

25 MR. STEINER: I've been known to --

1 BY MR. STEINER:

2 Q. Now, on District 48, I think you said your comment
3 here really was having Helena and West Helena in with the
4 district that was -- you know, the biggest county was Lee
5 county. Is that right?

6 A. Yes. It's really more about taking Helena-West
7 Helena away from Phillips county, yeah.

8 Q. But Helena-West Helena does -- it geographically
9 connects to Lee county and the rest of that district,
10 right?

11 A. True.

12 Q. And I think you talked about it's right there on the
13 Mississippi, on the delta, right?

14 A. Yes.

15 Q. And you say in Paragraph 33 that the representative
16 of Helena-West Helena is a -- is a resident of Marvell,
17 Arkansas. Is that right?

18 A. Yes.

19 Q. And you say that, under the plaintiffs' proposed
20 plan, he'd be drawn into District 12. Is that right?

21 It's the second sentence of paragraph --

22 A. What's that I said.

23 Q. He's already in District 12, right?

24 A. He is? Can you put the map up?

25 Q. Yeah. Let's look at -- let's look at exhibit -- I'm

1 not sure which one is easiest. Let's look at 65. You
2 might not be able -- you'll be able to tell from this.

3 Marvell is in Phillips county. Is that right?

4 A. Yes. I believe that's right.

5 Q. And so he's already in District 12 because, in the
6 current plan, that's all of -- that's all of Phillips
7 county, right?

8 A. Yes. I think the point of the comment is that his
9 current district's population base would be essentially
10 Helena-West Helena and Phillips county, and under this
11 plan, that base would be moved to Pine Bluff.

12 Q. Let's blow up a bigger piece of existing 12.

13 If we look at existing 12, that is Phillips county,
14 right?

15 A. Yes.

16 Q. And then what's right below the dash line of
17 Phillips? Is that part of Desha?

18 A. That's a little piece of Desha county.

19 Q. Desha county. Sorry.

20 And then it includes a big chunk of Arkansas county,
21 right?

22 A. Mm-hmm.

23 Q. And it actually stretches currently into Lincoln
24 rather than up into Jefferson. Is that right?

25 A. Mm-hmm.

1 Q. And the Helena-West Helena, I think we said, is
2 something between nine and 10,000 people out of a roughly
3 30,000 person district. Is that right?

4 A. Correct.

5 Q. And so but the rest of Phillips county and that chunk
6 of Arkansas county -- if we could put that side by side
7 with Exhibit 2.

8 A big part of that district stays the same, right?

9 A. Sure. Yes.

10 Q. And the representative there is -- and so your
11 complaint isn't that he's being separated from his
12 residents; it's -- from his voters; it's that roughly 30
13 percent of the district is being reconfigured in another
14 district which happens around the state, right?

15 A. Yes.

16 Q. And the representative there is David Tollett. Is
17 that right?

18 A. Yes.

19 Q. And so that's -- so that district is a majority black
20 district under the current plan. Is that right?

21 A. I think that's right.

22 Q. And it's a majority black district under the
23 plaintiffs' plan. Is that right?

24 A. Yes.

25 Q. And he would also be included in a large majority

1 black district under the House plan, right?

2 A. I think that's right.

3 Q. And Mr. Tollett is a white Republican. Is that
4 right?

5 A. That's correct.

6 Q. And Mr. Tollett was elected not actually winning his
7 race, right?

8 A. That's correct.

9 Q. He ran in the election in 2020 against the black
10 Democrat. Is that right?

11 A. I don't remember the race of his opponent to be
12 honest.

13 Q. And the opponent won 52 percent of the vote, right?

14 A. I don't remember the number, but his opponent won,
15 yes.

16 Q. Then the Arkansas Supreme Court ruled his opponent
17 ineligible for office, right?

18 A. That's my understanding.

19 Q. Because he had been convicted of a crime but then
20 pardoned by -- I don't know whether it was -- it was when
21 he was Governor Clinton or when he was President Clinton.
22 But he had been pardoned, but the Arkansas Supreme Court
23 said that didn't restore his right to public office. Is
24 that right?

25 A. If you say so.

1 Q. But that's the -- that's the representative that
2 we're talking about here being separated from his
3 district. Is that right?

4 A. Yes. Representative Tollett.

5 Q. Under the board's plan, Representative Tollett would
6 be one of three incumbents drawn into the majority black
7 proposed District 62. Is that right?

8 A. I think that's correct.

9 Q. So let's -- you said you think it is correct?

10 A. Mm-hmm.

11 Q. Let's look at -- I think it's Exhibit 1, and then if
12 we could focus on --

13 And would you agree with me that that District 62 is
14 a pretty massive district along -- in the delta. Is that
15 right?

16 A. Yes.

17 Q. And so you see up toward -- I think Marvell is right
18 above the Number 62 if that's -- right?

19 A. Marvell, yes, sir.

20 Q. Sorry. I'll never get the pronunciations right. I
21 hope I'm not embarrassing myself too much. But aside from
22 that.

23 THE COURT: The transcript works in your favor.

24 MR. STEINER: Of course. That's why I always
25 prefer paper transcripts to video.

1 BY MR. STEINER:

2 Q. And then I had here the other two incumbents who
3 would be in that district, but down in -- you'll help me
4 again with the county.

5 A. Desha.

6 Q. Desha county, who's that representative there?

7 A. I think that's Representative McElroy.

8 Q. McElroy is right?

9 A. Yes, sir.

10 Q. That's another white Republican. Is that right?

11 A. Yes, sir.

12 Q. And then is it Murdock? Is that the third one that's
13 in that district?

14 A. That's right.

15 Q. And he is up in Lee county. Is that right?

16 A. In Marianna, correct.

17 Q. He would be in 48. He's currently the Representative
18 of 48 in the current 2011 plan?

19 A. Correct.

20 Q. He would still be the representative of 48 in the
21 plaintiffs' illustrative plan?

22 A. Correct.

23 Q. He's drawn into this district with the two white
24 Republicans. Is that right?

25 A. That's correct.

1 Q. And can we look -- did you look to see -- and by the
2 way, you would expect Representative Murdock to win that
3 district, right?

4 A. I don't feel like I should pontificate on who is
5 going to win an election.

6 Q. But he's pretty well liked up in his district?

7 A. He is.

8 Q. And did you do anything to look at how far he would
9 have to drive to visit his constituents?

10 A. I did not.

11 Q. Let me show you -- I think Steve's a little ahead of
12 me so it's already up on the screen.

13 Why don't we look at the driving distance for
14 District 62, and that is -- you said he's up in Marianna.
15 Is that right?

16 A. That's correct.

17 Q. And then this district stretches all the way down to
18 Arkansas City on the south, right?

19 A. That's correct.

20 Q. And would you agree with me that it would be over a
21 two-hour drive for Representative Murdock?

22 A. Yes, sir.

23 Q. And I know it's a little hard to tell, but would you
24 agree that he passes out of the district for much of the
25 drive into at least two if not three other districts?

1 A. Yes, on the route that you selected, yeah.

2 Q. Well, are there other routes that would be faster
3 that you know of?

4 A. Not that I know of. I haven't analyzed it.

5 Q. You might be able to take kind of small roads through
6 the delta and get there and stay within the district, but
7 it'd certainly take you a lot longer than two hours. Is
8 that right?

9 A. Yes, sir.

10 Q. And let's just see -- I take it you also didn't look
11 -- Representative McElroy. Is that right?

12 A. That's correct.

13 Q. He's the current 11. He's down in Rohwer. I'm sure
14 I'm mispronouncing. Is that right?

15 A. Rohwer?

16 Q. R. Let's put it up. R-o-h-w-e-r.

17 A. I'm not even familiar with that one.

18 Q. He's in that area. Is that right?

19 A. We call that outside of Dumas.

20 Q. Outside of what?

21 A. Outside of Dumas.

22 Q. So he's outside of Dumas, right?

23 A. Yes, sir.

24 Q. And Wheatley is in the district up on the northern
25 part. Is that right?

1 A. Yes.

2 Q. And do you see that -- you don't disagree that it
3 would take him about two hours and a hundred-plus miles to
4 get up to Wheatley, right?

5 A. I wouldn't disagree.

6 MR. STEINER: I'd like to admit 75 and 76.

7 THE COURT: Any objection?

8 MS. MERRITT: No objection.

9 THE COURT: They're admitted.

10 (Plaintiff's Exhibits 75 and 76 admitted into evidence.)

11 BY MR. STEINER:

12 Q. Almost done. I might --

13 A. Promise?

14 Q. I might need my 15 minutes.

15 And lastly, you talked about is 55 is that right?

16 It's the old --

17 A. Illustrative 55?

18 Q. Illustrative 55, the old 55, the new proposed 34.

19 A. Yes.

20 Q. This is Representative Hodges' district, of course,
21 right?

22 A. Correct.

23 Q. So if we can look at -- Steve's always ahead of me --
24 Paragraph 34 of your affidavit.

25 And you say it's an extremely oddly shaped district.

1 Is that right?

2 A. Mm-hmm.

3 Q. We've talked about that a lot of that is the
4 Mississippi River, right?

5 A. Yeah, on the east side -- on the east boundary, yes.

6 Q. You would be happier if it followed the highway
7 rather than the precincts on the west side of the
8 district, right?

9 A. Yes, sir.

10 Q. And you agree that the Mississippi on the east,
11 nothing you can do that about, right?

12 A. No.

13 Q. Now, you say it's only one precinct wide nearly the
14 entire length of the district that runs from Missouri to
15 Mississippi, right?

16 A. Yes, sir.

17 Q. And that was intended to convey that this is a really
18 long, skinny district, right?

19 A. Yes.

20 Q. Now, I'll grant you that your Arkansas geography,
21 along with the rest of your Arkansas knowledge, is a lot
22 better than mine, but that doesn't run all the way from
23 Missouri to Mississippi, right?

24 A. Okay.

25 Q. Well, when you wrote this, did you look to see where

1 the boundaries were?

2 A. That was probably just off the top of my head.

3 Q. And it's -- by the way, it's not that far from the
4 Missouri border to the Mississippi border, right? The
5 closest points from the Mississippi border and the
6 Missouri border, it's not that long a distance, right?

7 A. It's not that far, no. I mean, generally, it goes
8 down to West Memphis, correct? And it's got Marion, West
9 Memphis in the district which is across the river from
10 Tennessee which is a hop, skip, and jump down the
11 Mississippi.

12 Q. But the whole district is not that long, right?

13 A. No. Not specifically, no.

14 Q. It's certainly nothing compared to 62, right?

15 A. Yeah. My comments were not necessarily, you know,
16 meant to -- no, not as long as 62.

17 Q. And, again, you comment on the population variants in
18 this district and 54, but they're both within the plus or
19 minus five percent, right?

20 A. They're within the five percent. They're just
21 opposite sides of zero.

22 Q. By the way, there are districts in the board's plan
23 where there's --

24 A. True.

25 Q. -- districts that are next to each other and one is

1 over and one is under and you didn't adjust those, right?

2 A. Sure. Yeah.

3 Q. And let's just look at the map -- not 34, Steve. If
4 we can put up 77, which is district -- and if we can put
5 next to it Exhibit 2. If we can blow up the northeast
6 part. Yep. We can go down past 51. Perfect.

7 So now you would agree with me that 51 is West
8 Memphis, right?

9 A. That looks correct, yes.

10 Q. And so 55 starts somewhere north of West Memphis,
11 right?

12 A. Yes.

13 Q. And it runs up along the Mississippi line we talked
14 about?

15 A. Mm-hmm.

16 Q. And then you agree with me that Blytheville is the
17 upper reaches there, which is a mile or mile and a half
18 from the Missouri border, right?

19 A. Mm-hmm.

20 Q. And would you agree with me that getting all the way
21 down to West Memphis, which is past the southern part, is
22 less than an hour drive?

23 A. Yes.

24 Q. And you would also agree with me, of course, that if
25 the district -- I can't figure out in there where the

1 district ends, but if it ends somewhere north of West
2 Memphis, it doesn't go all the way to Mississippi, right?

3 A. That's correct.

4 Q. And I think we talked about the fact that the
5 population was within the plus or minus five percent,
6 right?

7 A. We did.

8 MR. STEINER: If you can just give me a minute,
9 Your Honor, let me just confer --

10 THE COURT: Before you go back, just stay up
11 there for a second in case this jogs anything for you.

12 I'm asking this, Mr. Davis, because I want to make
13 sure that I understand the numbers in your declaration.

14 THE WITNESS: Okay.

15 THE COURT: At some parts of your declaration --
16 and I will give you just a couple of examples -- you talk
17 about VAP black, so black voting age population. For
18 example, in Paragraph 16 you say, the area of Union county
19 in El Dorado included in District 5 has a black voting age
20 population of 50.07 percent. Later on in that same
21 paragraph, you say, if the split is eliminated, then the
22 voting age population of Union county precincts in
23 District 5 falls from 50.07 to 49.573.

24 Then -- and, again, I'm just giving you this by way
25 of example for the question I'm about to ask you.

1 For example, on Page 7 in Paragraph 22, you give a
2 bunch of numbers about, for example, the racial
3 composition of Arkadelphia. One of the things you say is
4 that it has 1,018 I think that's black population, but I'm
5 not clear if it's total population or VAP. Then you say,
6 51.125 percent VAP. And you do that for precinct 2 and
7 precinct 3 as well.

8 What I'm trying to figure out given the testimony
9 you've already given is, are those numbers using part
10 black from the census or all black, which I think may be I
11 understand from your testimony is what the board was
12 using? But, again, I'm a little unclear. That's why I'm
13 struggling asking the question.

14 THE WITNESS: My -- I'm going to say my
15 understanding is that those would be all black numbers
16 because I would have just pulled those off the table
17 that's presented in autoBound.

18 THE COURT: Okay.

19 MR. STEINER: Give me just one moment.

20 No further questions.

21 THE COURT: We are going to take a 15-minute
22 recess, after which we will do redirect.

23 And then Mr. Steiner or Mr. Sells, whichever one of
24 you wants to answer this question. Part of me thinks that
25 we should address the legal issue we're sort of dealing

1 with today before Mr. Davis leaves because there may be
2 some question about he said she said, and I'm not sure I
3 want to let Mr. Davis go. So that means we'll deal with
4 that issue before we get to the final witness.

5 Do you all have any concerns about that? We're still
6 going to definitely get to the final witness tonight, but
7 this might be a better way to proceed.

8 MR. STEINER: That's fine with us, Your Honor.

9 THE COURT: Defendants, do you have any concerns
10 with that?

11 MS. MERRITT: No. I think that makes sense,
12 Your Honor.

13 THE COURT: We're going to take a 15-minute
14 break.

15 (A recess was taken at 5:07 p.m.)

16 * * * * *

17 REPORTER'S CERTIFICATE

18 I, Valarie D., Flora, CCR, certify that the foregoing is a
19 correct transcript of proceedings in the above-entitled matter.

20 Dated this the 8th day of February, 2022.

21 /s/ Valarie D. Flora, CCR

22 -----

23 United States Court Reporter

24

25

1 (Proceedings continuing in open court at 5:30 PM.)

2 THE COURT: Defendants, you're up.

3 REDIRECT EXAMINATION

4 BY MS. MERRITT:

5 Q So Mr. Davis, let's go back to the issue about the
6 affidavit and the word "overlay" that was in there. And we did
7 not put the affidavit in in our exhibit list, but if we could
8 pull up that paragraph 7. I believe you testified on your
9 direct examination that you did not write this paragraph of the
10 declaration. Is that right?

11 A That's correct.

12 Q Do you know who did?

13 A I don't know for certain.

14 Q Somebody at the attorney general's office?

15 A Yes.

16 Q And I think I must have been doing something else because
17 I didn't quite hear. But tell us again who did you talk to
18 about that sentence that says, At that point, staff began to
19 overlay race data from the census bureau onto the drafted maps
20 to make sure they complied with the VRA. And I believe you
21 explained on direct that that wasn't quite right and you told
22 somebody at the AG's office. Talk to us about that and
23 explain.

24 A So I hate to go back on what I said. I know that I named
25 Mr. Nye. I've had a lot of conversations about this day in

1 preparation, so I probably can't say for certain who it was
2 exactly or whether it was before it was filed or after, but it
3 may just be a difference in -- it may be semantics, but when I
4 hear overlay, what I think of is in the software adding another
5 layer or a shape file or something else that brings that data
6 in. That's what I mean by -- it's not like it wasn't there
7 when we were drawing districts and then we -- you know, we
8 didn't draw districts completely void of race data and then
9 bring it in at the last minute. It was there.

10 But so we drew maps and as we were drawing, we had an
11 idea of which ones could be majority minority and then once
12 they were substantially complete, then we began to really focus
13 on the -- I don't know if I should say focus, but pay more
14 attention to the race data and look at, okay, can we get this
15 over 50 percent or can this one be adjusted to be minority
16 majority. But what I mean when I say there wasn't an overlay,
17 it's not -- it wasn't there and then we brought in a separate
18 file later on. It was there. It was just not -- it wasn't
19 used as I'm trying to remember the word used earlier today, but
20 it wasn't like the only thing used to draw a district.

21 Q Do you remember meeting with me to prepare for your
22 testimony in this case?

23 A Yes.

24 Q And do you remember that that meeting took place on the
25 afternoon of Friday, January 28th, 2022?

1 A That sounds about right.

2 MS. MERRITT: If you could give me a little bit of
3 leeway, Judge, it might help it go a little quicker. It might
4 be a little bit leading, but I think it might help.

5 THE COURT: Plaintiffs?

6 MR. STEINER: I definitely object to her leading the
7 witness through the mistakes in his affidavit.

8 MS. MERRITT: Not about the mistakes in the
9 affidavit.

10 THE COURT: I agree. This is not an appropriate
11 time for leading questions.

12 BY MS. MERRITT:

13 Q Do you remember when we were talking about your
14 affidavit?

15 A Yes.

16 Q And do you remember you told me that that wasn't --

17 MR. STEINER: Objection.

18 THE COURT: Sustained. That is a leading question
19 or at least it was about to be.

20 MS. MERRITT: I haven't even asked the question yet,
21 so let me see if I can rephrase the question.

22 MR. STEINER: Objection.

23 THE COURT: Ms. Merritt, I think why your friend in
24 opposition is jumping up is the "do you remember" suggests that
25 you're about to ask him a question that he's going to answer

1 with a "yes, I remember that." That is, in my view, the
2 textbook definition of a leading question. If you're going to
3 ask him what, if anything, do you remember telling me, that's
4 fine, that's open ended, he can answer it. But if you're going
5 to suggest to him what it is he told you and ask if he
6 remembers that, that's leading. And that you can't do.

7 MS. MERRITT: Okay. Thank you, Judge.

8 BY MS. MERRITT:

9 Q What do you remember telling me about when you began to
10 consider race information when you were drawing the maps?

11 A I remember telling you that the data was there while we
12 were drawing the maps and that, I mean, I do remember telling
13 you that it was not something that was brought in after maps
14 were substantially complete like a new layer or new shape file
15 or something like that.

16 Q I'm trying to phrase my question. What does it mean to
17 you to overlay data onto the map?

18 A To me if you overlay data, you're bringing in almost like
19 a separate new data set.

20 Q So when you read that in your declaration and reread it
21 in preparation to testify, did it strike you that that wasn't
22 quite right, the right way to describe it?

23 THE COURT: Objection, sustained.

24 BY MS. MERRITT:

25 Q How would you best describe the way that the Board

1 utilized the race data that was always there?

2 A I would say that once districts were substantially
3 complete, then the race data was reviewed to analyze whether or
4 not the majority minority districts could be created in various
5 places.

6 Q How did the Board consider that data in reviewing the
7 draft maps?

8 A How did they consider it? It was part of the data set we
9 had loaded in the autoBound so we would look at a district and
10 look at the racial makeup and if we had a voting age population
11 that was say over 45 percent, then we would start to adjust the
12 districts if we could get it over 50 or not, and just kind of
13 work through each district that was in that range through that
14 process.

15 Q What was the purpose of considering race data at that
16 stage of the map drawing process?

17 A We were trying not to draw districts based on race, but
18 yet create majority minority districts where we thought they
19 would be required based on the numbers we were looking at. So
20 we drew districts substantially complete and then there were
21 other things you're doing, you're trying to work down variants,
22 can we -- a district may have a odd finger, can we get that
23 off, make this more compact, things like that. And then one of
24 the things was look at the race numbers and let's look at each
25 district and can we get this to be majority or minority or not,

1 you know, and still considering the other criteria because you
2 get it there or not.

3 Q So if we replace the word "overlay" with the word
4 "consider", would that fix the problem in the declaration?

5 THE COURT: Sustained.

6 BY MS. MERRITT:

7 Q Why didn't -- did you consider this to be a substantive
8 error in the declaration?

9 A I didn't consider it to be this substantive because I
10 felt like the intent was the same. My word would have been
11 "analyze" because to me it gives less impression that some new
12 piece of information was added.

13 Q Okay. And so earlier when you told the Court that you
14 told Mr. Nye about this and then I think I just heard you say
15 you're not really sure if you did so, I'm trying to pinpoint
16 your testimony. Did you tell Mr. Nye about this specific
17 error?

18 MR. STEINER: Objection.

19 THE COURT: So that one I'm going to overrule
20 because that's actually about the testimony he gave before and
21 she's asking him to explain the discrepancy. I will say I
22 understand Mr. Steiner's frustration. A couple of accidental
23 leading questions is one thing, but we have to stop leading.
24 That one I don't think is objectionable because of how it was
25 asked. And I think we can go on. I think Ms. Merritt, who is

1 a very good lawyer, can understand the line I'm trying to draw.
2 You can answer that question which I'm going to paraphrase.

3 Essentially, I asked you before, telling you it was
4 really important who you talked to and when. You gave an
5 answer and now you're walking it back a little bit. Can you
6 explain that discrepancy?

7 THE WITNESS: Yes, sir, and I apologize for doing
8 so. But I felt like I needed to give a name. I can't say for
9 certain that it was Mr. Nye. It may have been in my
10 conversation with Ms. Merritt. As I said, I've had, you know,
11 a lot of conversations. I've never been in a courtroom to
12 testify before and I had a lot of questions about what to
13 expect and how are things going to go, so on and so forth, so I
14 can't say for certain who it was.

15 THE COURT: Okay. And Ms. Merritt, I'm going to let
16 you follow up in a second. That's one thing, I understand the
17 point you're making right now. In addition to asking who,
18 though, I asked when, and at least the way I understood your
19 testimony was that at that point your recollection was this was
20 around the time, either right before or right after you filed
21 your declaration. I'm trying to figure out, but it now sounds
22 like your testimony might be that this only came out from you
23 to the attorney general's office well after that and sort of
24 shortly before this hearing. I'm trying to figure out which
25 one is right.

1 THE WITNESS: I understand. And considering the
2 weight of the consequence of my answer, I just don't feel like
3 I can say for sure what that time frame was. Was it before it
4 was filed or after, I don't feel like I can say for certain.

5 THE COURT: Okay.

6 BY MS. MERRITT:

7 Q Do you have a specific recollection of speaking with
8 anyone about this issue prior to your meeting with me on
9 January 28th to prepare to testify in court today?

10 A No.

11 Q Do you recall that before you did sign your declaration,
12 you were provided a draft in Word format?

13 A I was, yes.

14 Q Were you able to edit that document?

15 A I could have.

16 Q Did you provide edits in red line?

17 A Not that I recall.

18 Q Okay. You don't recall providing edited track changes in
19 Word format?

20 THE COURT: Sustained. Ms. Merritt, you got to stop
21 leading him. If he gives testimony that you happen to think is
22 wrong, that's just too bad. I mean, he's the witness, you're
23 not.

24 MS. MERRITT: Understood, Judge.

25 THE WITNESS: I did.

1 THE COURT: I'm going to strike the answer.

2 BY MS. MERRITT:

3 Q You did have an opportunity to review your draft
4 declaration before you signed it, Mr. Davis?

5 A I did.

6 Q You could have made any changes that you felt were
7 needed?

8 A I could have, yes.

9 Q And you did not change that word at that time; is that
10 right?

11 A I don't think that I changed that word, no.

12 Q Okay. Did you consider the word discrepancy to be a big
13 substantive difference?

14 THE COURT: Sustained. We're done. Let's move on.

15 BY MS. MERRITT:

16 Q So you were talking about the list of the Board's
17 redistricting criteria and goals that the attorneys typed in a
18 different paragraph of your declaration, and it didn't quite
19 exactly match the Board's redistricting criteria that were
20 listed on the website. Do you remember that?

21 A Yes.

22 Q Do you consider the list that was in the declaration to
23 be a summary of the Board's criteria?

24 A Yes, it's a summary.

25 Q I think you testified that you personally spent about 40

1 to 60 hours working on redistricting. Did I hear that right?

2 A That's a estimate. I didn't keep track.

3 Q How long did the process take for the board staff to
4 prepare the draft maps after the release of census data?

5 A I mean, up until -- I have to look back at the dates, but
6 from the time we got the data, we started working and we worked
7 up until probably a day before they were released.

8 Q So how long was that? Days, weeks, months?

9 A It was a couple months.

10 Q Let's take it step by step. Do you know when the data
11 was released?

12 A September 16th.

13 Q When did the Board publish the draft map?

14 A I think it was October 29th.

15 Q How would you characterize the process of working on the
16 maps? Was it leisurely or rushed?

17 MR. STEINER: First part of the question was okay,
18 but now she's starting to give options.

19 THE COURT: Sustained. Just ask the first part of
20 the question.

21 MS. MERRITT: Do I need to re-ask the question?

22 BY MS. MERRITT:

23 Q How would you characterize the time frame that the Board
24 had to work on the maps?

25 A It was compressed. I consistently felt like I wish we

1 had more time.

2 Q Why was it so compressed?

3 A Because the late date that the census data was made
4 available and then the deadline that was set to complete.

5 Q You were asked some questions about the city of Pine
6 Bluff. Do you consider Pine Bluff to be in south Arkansas?

7 A I probably do think of it as south Arkansas.

8 Q Southeast Arkansas?

9 A Southeast for sure.

10 Q You were asked some questions about some House districts.
11 I think District 61 and 27 that has some long driving times.
12 Can you explain why the Board drew such long districts?

13 A Certainly wasn't done intentionally. Nobody was trying
14 to draw long districts. Sometimes you would get a area of the
15 state where you had good districts that were nice, square
16 compactness, so on and so forth, and they were just really
17 good, and then you had some area that had not been assigned
18 yet. And if you had 12 districts and 11 of them were great and
19 one was long and skinny, you didn't throw out the 11 good ones
20 to try to, you know, make them all perfect. You're not going
21 to get them all perfect, so it's not done intentionally, but
22 some of them, it's just how they work out when you start
23 assigning the population to different areas and, like I said,
24 you get an area where a bunch are good and then you've got one
25 that's elongated and maybe that's unfortunate for that district

1 but, again, you can't make them all perfect.

2 Q How do you think the Board did in terms of complying and
3 meeting their criteria goals?

4 MR. STEINER: Objection.

5 THE COURT: What's the objection?

6 MR. STEINER: If he's giving opinion testimony, you
7 know, that sounds to me like an opinion question on how they
8 complied and she's already said not being offered as an expert.

9 THE COURT: I thought now he's conditionally offered
10 as an expert subject to your objection.

11 MR. STEINER: Apologies.

12 THE COURT: Go ahead.

13 MS. MERRITT: Thank you, Your Honor. You may answer
14 the question if you understood it.

15 THE WITNESS: I think they're better than the 2010
16 maps. I think they did a pretty good job considering the time
17 they had.

18 MS. MERRITT: Thank you. I don't have any further
19 questions.

20 THE COURT: Thank you for your testimony. I'm going
21 to ask you to get off the stand, but to remain in the courtroom
22 for a little while. We're going to deal with one legal issue
23 and then when we are done with that, unless the plaintiffs have
24 an issue with it, you are free to go. Is that okay,
25 Mr. Steiner?

1 MR. STEINER: I think that's fine. I think there
2 was new questioning that I might follow up on about the edits,
3 but I'll stop where we are. I think that's okay. The one
4 administrative thing that I did wrong before is I think that I
5 stopped without offering 77 as an exhibit, which I think your
6 clerk pointed out to me.

7 THE COURT: Which is 77?

8 MR. STEINER: The last of the maps.

9 THE COURT: Were those the Google maps?

10 MR. STEINER: Yeah.

11 THE COURT: The drive-time maps?

12 MR. STEINER: The first four are in --

13 THE COURT: Any objection to the admission of those?

14 MS. MERRITT: No, Your Honor.

15 THE COURT: They're admitted. Do you all have an
16 objection to Mr. Steiner, if he chooses to, going another round
17 in which case you all would get a redirect from that? Or do
18 you have an objection to that?

19 (Plaintiffs' Exhibit 77 received in evidence.)

20 MS. MERRITT: Another round?

21 THE COURT: He wants to question the witness again.
22 Mr. Steiner's point is you asked some questions on redirect
23 that brought out potentially some new information and
24 Mr. Steiner wanted a chance to follow up on that. I think it's
25 a fairly reasonable request, but I'd like your views on it.

1 MS. MERRITT: I think sure, if we can -- can we do
2 it now?

3 THE COURT: Yeah. Do you want to follow up,
4 Mr. Steiner?

5 MR. STEINER: Please.

6 THE COURT: Okay. Mr. Davis, you're back up here.
7 Mr. Steiner is just making sure you'll never want to be a
8 witness anywhere again.

9 MR. STEINER: But maybe having sold your business,
10 you want to go to law school.

11 THE WITNESS: No thanks.

12 THE COURT: Mr. Steiner, obviously the briefer you
13 can keep it, the better.

14 MR. STEINER: I'll do my best.

15 RECCROSS-EXAMINATION

16 BY MR. STEINER:

17 Q In explaining paragraph 7, you talked about considering
18 data that perhaps had been there all along, is that right,
19 after the initial maps were drawn?

20 A Yes.

21 Q Did you see these maps at the right there that are
22 different shades to show different percentages of black
23 population?

24 A Yes.

25 Q Did you consider maps like that or overlays like that?

1 MS. MERRITT: I'm going to object. This is totally
2 outside the scope.

3 THE COURT: I think what Mr. Steiner is doing is
4 trying to figure out what exactly the witness meant by overlay.
5 So I'm going to allow it.

6 THE WITNESS: No, we didn't have maps like that.
7 BY MR. STEINER:

8 Q It was just the numbers on the screen?

9 A Just the numbers.

10 Q When you went through that process at that stage, you
11 talked about looking at say 45 percent or more districts to see
12 if you can get above 50. Did you also look at districts that
13 were above say 60 or 65 percent to see if those could be
14 unpacked into multiple districts?

15 A I think we did on one in Pulaski County. I don't recall
16 doing that through Pine Bluff.

17 Q So just in one district in Pulaski County you looked at
18 that?

19 A If I remember correctly, yes.

20 Q But not anywhere else?

21 A No.

22 Q And I just want to make sure I understand your testimony
23 about the drafting and review of the affidavit. So the
24 affidavit was filed on July -- on January 19th. Is that right?
25 I think we pulled it up.

1 A That's the date on it, yes.

2 Q And how long in advance of that were you provided the
3 affidavit, the draft?

4 A The 19th.

5 Q It was filed on the 19th, so how much earlier than that
6 were you provided the draft?

7 A I was provided the draft on the 19th.

8 Q You were provided the affidavit the same day it was
9 filed?

10 A Yes.

11 Q And you didn't have conversations about it prior to that
12 time; is that right?

13 A Not that I recall.

14 Q Did you have conversations with members of the attorney
15 general's office on the 19th?

16 A About the affidavit?

17 Q Sure.

18 A Yes, I talked to them on the 19th.

19 Q How many conversations did you have on the 19th about the
20 affidavit?

21 A I don't remember.

22 Q More than one?

23 A Probably.

24 Q Who were those with?

25 A I think Mr. Nye, Asher, I'm sorry I can't remember your

1 last name. That's all I remember.

2 Q And it was more than one conversation with -- were they
3 on the phone together or were some of them separate
4 conversations with one or the other?

5 A Separate conversations.

6 Q And how many times did you talk to Mr. Nye that day?

7 A I don't remember.

8 Q And how many times did you talk to Mr. Steinberg?

9 A I don't remember.

10 Q To the best --

11 A A couple.

12 Q It was more than one with each of them?

13 A Probably.

14 Q And so to the best of your memory, what did you discuss
15 with Mr. Nye on the 19th?

16 A To the best of my memory, probably how much time do I
17 have to get this written, who do I send it to, things like
18 that.

19 Q Did you have conversations with Mr. Nye on the 19th after
20 you received the draft affidavit but still on the 19th?

21 A I don't remember specifically.

22 Q And how about with Mr. Steinberg, did you have
23 conversations with him after you received the draft and before
24 it was filed that day?

25 A Yes.

1 Q And to the best of your memory, what did you discuss with
2 Mr. Steinberg on that day?

3 A I think there were a few grammatical changes or a couple
4 words that I asked if we could change.

5 Q Anything else with Mr. Steinberg?

6 A Not that I recall.

7 Q I take it you didn't discuss paragraph 7 with
8 Mr. Steinberg?

9 A I don't recall doing so, no.

10 Q And I know you haven't talked to -- well, I assume you
11 followed the Court's instruction not to talk to any of the
12 lawyers during breaks while you've been giving testimony,
13 right?

14 A I certainly did not.

15 Q Did you talk to anyone else other than any of the lawyers
16 that are in the courtroom during any of the breaks?

17 A No.

18 Q Did you check any messages or texts?

19 A No. I don't have my phone in the building.

20 Q No further questions.

21 THE COURT: I have one question, or so far, one. I
22 think I understand putting all of your testimony together that
23 you received the affidavit which you say was only from when the
24 attorney general's office drafted it, was only paragraphs 1
25 through 7 on the 19th. And then this was filed on the 19th.

1 Does that mean you wrote all of the remaining paragraphs of
2 this affidavit on the 19th?

3 THE WITNESS: No, I wrote it over the course of a
4 few days before that.

5 THE COURT: So before the 19th?

6 THE WITNESS: Yes.

7 THE COURT: So that must have meant that before the
8 19th, you at least talked to the attorney general's office
9 about what they were asking you to do; is that correct?

10 THE WITNESS: Yes.

11 THE COURT: When did you -- when was the first
12 conversation you had with them about what they wanted you to do
13 in this case if you recall?

14 THE WITNESS: I don't recall a specific date.

15 THE COURT: When did you start drafting this, do you
16 know? And by this, I mean what ended up being paragraphs 9
17 through the end of the affidavit.

18 THE WITNESS: Probably a week before the 19th.
19 Maybe just four or five days, somewhere around there.

20 THE COURT: Okay.

21 MR. STEINER: I don't have follow-up.

22 THE COURT: Y'all have anything?

23 MS. MERRITT: No, Your Honor.

24 THE COURT: We'll try this again. Take two, you can
25 sit in the back. Is Mr. Nye around?

1 MS. MERRITT: Yes, Your Honor.

2 THE COURT: I'm not going to call him up to the
3 stand. I'm going to talk to him up at the podium. Mr. Nye,
4 come forward. Just come to the podium. So, first of all, I
5 totally get this is probably a stressful situation and you
6 don't know why you got called to the court, I get it. Let me
7 try to give you the preview here and then ask you some
8 questions. On one hand, you're not under oath, but of course,
9 on the other hand, you're an officer of the court, so I
10 obviously expect full and honest answers.

11 So an issue has come up and the testimony is less than
12 clear on it, but I want to make sure I get your perspective.
13 It appears from testimony, at least as far as I can understand
14 the testimony at this point without sort of going back over the
15 transcript and sort of concentrating on each word, the
16 understanding I have at this point is that the attorney
17 general's office drafted paragraph 1 through 7 in the affidavit
18 for Mr. Davis, sent it to Mr. Davis on the 19th of January.
19 Mr. Davis added a part that he had been working on, sort of
20 paragraph 8 to the end. And then it is a little bit unclear at
21 this point whether or not Mr. Davis identified to somebody at
22 the attorney general's office, perhaps you, perhaps somebody
23 else, that there was an error or a really vague word that he
24 thought conveyed an incorrect message in paragraph 7 of the
25 affidavit.

1 And particularly what we're talking about is whether or
2 not the -- whether or not race data was sort of always up on
3 the programs that they were using to draw the maps or whether
4 they drew it in some sense without the race data being up or
5 maybe even the race data was up, they didn't look at it, and
6 then the declaration said, and then after that point, we
7 overlaid the race data. And the best I can understand it is
8 Mr. Davis now is saying, look, the word "overlay" was wrong.
9 We didn't take the race data and put it on there, but
10 essentially we considered race at that stage in the process and
11 not as much beforehand, although we had that, although we had
12 those statistics open.

13 That's the best I can do right now to understand the
14 testimony I've heard. What I want to know from you is whether
15 Mr. Davis ever discussed with you his declaration, the draft
16 declaration, potentially having an error like that or
17 potentially being misleading like that.

18 MR. NYE: So I did speak with Mr. Davis when he was
19 reviewing the declaration, and I don't remember specifics, Your
20 Honor, specifically not to that question about racial data.
21 But Mr. Davis did express to me, I'm going to have to
22 paraphrase, but he said, if I knew that this was going to be
23 taken down verbatim from my notes, I would have liked to have
24 cleaned up the language a little bit. And I took that to mean
25 more of a question as to the narrative style of the declaration

1 and less as to the substance. And I encouraged Mr. Davis, I
2 said, if there's anything in your affidavit that you're
3 uncomfortable with, I said, feel free to push back and do what
4 you need to do.

5 So that was the extent of my involvement. He and I had
6 discussions around his affidavit when he was making notes in
7 preparation for it, but as to the final product, Your Honor, it
8 was very limited discussion.

9 THE COURT: So talk to me a little bit about when he
10 told you that he would have rather used some other words or
11 style.

12 MR. NYE: Well, again, Your Honor, I apologize, this
13 was -- I don't remember the exact week that this occurred, but
14 when he spoke with me, he simply said to my knowledge or to my
15 memory was if I knew this was going to be taken verbatim from
16 my notes, because I know Mr. Davis had taken notes as he was
17 preparing a response to the illustrative map, he said, if I
18 would have known they were going to take verbatim notes, then I
19 would have liked to have clarified my wording. And I took that
20 to mean style, not necessarily substance. But I did encourage
21 him, if you have any issues, please feel free to push back.

22 THE COURT: When you said push back, was that push
23 back to you or push back to somebody else?

24 MR. NYE: To someone else in the office that was
25 working to prepare those affidavits.

1 THE COURT: Would that be Mr. Steinberg?

2 MR. NYE: I know there were several attorneys in the
3 office that were working on different declarations for the
4 case, and I think some attorneys were working on different
5 portions of the same declaration, so I'd have to speculate.

6 THE COURT: So you don't know?

7 MR. NYE: I don't know.

8 THE COURT: Okay. Just to make clear, Mr. Davis
9 never said to you that there was something factually wrong or
10 misleading about his affidavit?

11 MR. NYE: I do not recall him saying anything being
12 factually wrong or misleading.

13 THE COURT: Look, I don't want to slice this too
14 thinly, but I've been on that side of the bench, and if
15 somebody told me that there was something factually wrong with
16 an affidavit that I prepared for them and this was only a month
17 or month and a half ago, I would remember, so I'm having a
18 little bit of trouble with the 'I don't recall'.

19 MR. NYE: You're correct, Your Honor. If he had
20 said there is something that is factually inaccurate in my
21 declaration, that would have set off a red flag. Nothing in
22 our conversation got me to that level. I think the most
23 specific thing I remember was a conversation, I don't even know
24 if it made it into the final affidavit about the distance
25 between Arkadelphia and Pine Bluff. He said, I didn't

1 necessarily have that in my statement. I said, Can you go into
2 Google maps and confirm it? If it's correct, do you have a
3 problem with it? I was, like, if you do have a problem with
4 it, push back and let them know.

5 THE COURT: I appreciate it. Could you just sit
6 down for a little while while I talk to some of the lawyers
7 here?

8 MR. NYE: Sure.

9 THE COURT: Mr. Steiner or whoever wants to speak on
10 the plaintiffs' behalf, I understand you all are probably still
11 considering what, if anything, you want to do and what steps
12 you want to take. Having said that, this is a sort of fair
13 juncture if you have any thoughts to give them to me. If you
14 don't, obviously you all can take it back and sort of still
15 consider what, if anything, you want to do.

16 MR. STEINER: I think, Your Honor, that we'd like to
17 consider when we have the transcripts to review tonight because
18 I also think we want to review Colonel House's testimony
19 because I think Colonel House testified on one of these same
20 issues and I think what's now come out from Mr. Davis's
21 testimony may be somewhat inconsistent with Colonel House's
22 testimony also. So certainly I think part of what will go into
23 summation tomorrow, but whether we want to make a more formal
24 motion to strike anything or exclude anything, I think we want
25 the benefit of the transcript if that's okay.

1 THE COURT: Okay. For the defendants, two things.
2 Number one, and Ms. Merritt, I said this to you before up here,
3 but I want to say it again. I think you are a good lawyer, I
4 know at least from all the experience I've had with you that
5 you try to be your best and your fairest and all of that. You
6 may or may not agree with me, I will just tell you I think it
7 was a mistake not to bring this all up right at the beginning
8 on direct, I wish you had. I hope in the future you do it.
9 Given what we've heard while obviously I'll wait to hear what
10 the plaintiffs think. Given what we've heard, my inclination
11 is that this was more a, you know, tactical slash rush mistake
12 than it was any kind of professional responsibility problem.
13 But just take that for whatever it's worth. And I certainly,
14 Ms. Merritt, will let you say something for the record if you
15 want. I would like to ask, and I don't know who wants to do
16 this on the defendants' side, I would like to ask if you all
17 have anything more you want to say. Ms. Merritt, you
18 personally, I'm happy if you want to make a statement, but in
19 terms of the defendants, and I don't know if it's going to be
20 Ms. Merritt or Mr. Bronni or somebody else, if you all want to
21 add anything for the record, now is the time to do it.

22 MS. MERRITT: I'd like to say this because my
23 personal reputation is now on the line here, and I will say
24 when I met to prepare this witness, he told me that overlay to
25 him was the wrong -- he wouldn't have picked that word, he

1 didn't like that particular word because it suggested that that
2 data wasn't there, and it was there the whole time but they
3 didn't really consider it until that point. So "consider"
4 would have been a different word, but he basically considered
5 that to be the same thing, so to me, it was kind of like
6 potato/potato. I didn't really consider this to be a big
7 issue. I think that they have more than, you know, impeached
8 the witness with this on cross-examination and that's the
9 proper remedy, so I don't -- you know, I believe that the
10 remedies have already been achieved in this matter. And so I
11 apologize to the Court. I understand what the Court has
12 instructed me and I will certainly make sure to address that in
13 my future going forward because my understanding might not be
14 the same as the Court's and I certainly wouldn't want to even
15 have a suggestion that I would mislead. And I apologize.

16 THE COURT: Don't need to apologize. I know that to
17 be true, I just thought it important to let you know.
18 Mr. Bronni, anything further? And Mr. Bronni, it's okay, the
19 microphones are at a weird level. If you want to sit down,
20 it's perfectly fine.

21 MR. BRONNI: I feel more comfortable standing up,
22 Your Honor, but I just want to make sure the record's very
23 clear on this point given the amount of confusion here.
24 Mr. Jacobs wanted to correct something just so Your Honor's
25 fully aware of it and opposing counsel is fully aware of it.

1 THE COURT: That's fine.

2 MR. JACOBS: Thank you, Your Honor. So like Mr. Nye
3 mentioned, multiple attorneys were working on this declaration.
4 I was the one who personally drafted paragraph 7 of Mr. Davis's
5 declaration. My word choice was the word choice overlay. It
6 was based on other conversations with people. I don't know if
7 that's particularly important. This was sent in a final Word
8 document to Mr. Davis. We received red line changes from
9 Mr. Davis that had certain items in other areas of the document
10 change. That was not one of them. I have that red line saved
11 in an email, it has metadata showing those changes were made by
12 Andy Davis. I can provide that to the Court if the Court would
13 like.

14 THE COURT: I will take your representation on that.

15 MR. JACOBS: That's all I would like to say.

16 THE COURT: Mr. Bronni, anything else?

17 MR. BRONNI: That's it, Your Honor. I just wanted
18 to make sure we were clear.

19 THE COURT: I appreciate that clarification. Mr.
20 Steiner.

21 MR. STEINER: I just want to say we weren't -- I
22 know we've spent a lot of time on this now. When I was asking
23 the questions and the follow-up, we certainly weren't trying to
24 suggest any type of intentional misrepresentation by the
25 lawyers in the attorney general's office. That certainly

1 wasn't the intent of any of the path that the afternoon took
2 us, and I don't think that there was intentional misleading or
3 misrepresentation. Obviously the Court deals with people all
4 the time and you can draw your conclusions, but that wasn't our
5 suggestion and it's not -- that's not what we're trying to
6 suggest.

7 THE COURT: I understand. I think they understand.
8 I appreciate that. Obviously I have my own responsibilities
9 and obviously the rules of professional conduct are not just
10 about misrepresentation, they're about doing things the right
11 way. Like I said, it sounds to me based on all of what's come
12 out that this really isn't ultimately a full blown professional
13 responsibility issue. I think probably things could have been
14 handled in a better manner. Quite frankly, both for ethical
15 reasons and perhaps even more for tactical reasons, but that's
16 sort of life and we'll all go on from here. Who is our next
17 witness?

18 MR. JACOBS: Your Honor, the defendants will call
19 Josh Bridges.

20 **JOSH BRIDGES, DEFENDANTS' WITNESS, DULY SWORN**

21 **DIRECT EXAMINATION**

22 BY MR. JACOBS:

23 Q Evening, Mr. Bridges. Thank you for being here. I
24 believe that the Court has been allowing witnesses to remove
25 your mask. Would you go ahead and state your name for the

1 record, please.

2 A Josh Bridges.

3 Q Where are you currently employed?

4 A I'm employed with the secretary of state's office.

5 Q Could you tell us your educational background?

6 A Yes, sir. I attended college at Arkansas State
7 University Beebe for two years. Graduated with my associates
8 degree, liberal arts. I then transferred to the University of
9 Central Arkansas in Conway, graduated with another associates
10 degree in liberal arts and a Bachelor of Science in History.

11 Q Would you tell us how long you've been employed with the
12 secretary of state's office and the positions that you've held?

13 A I'm coming up on nine years of employment with the
14 secretary's office. I became employed February 26th of 2013.
15 I started as a business services representative in our business
16 office which handles accounts payable, accounts receivable type
17 duties. I was designated as an inventory specialist for assets
18 in the office. November of 2013, I transferred from that
19 position to the elections division as an election services
20 representative. I worked in our election library and I
21 assisted with financial disclosure reporting, boards and
22 commissions, and other various duties. I believe it was 2014,
23 I was promoted to administrative rules coordinator in the
24 elections division. I handled the filings for rules and
25 regulations for state agencies and then other various duties

1 within the division. 2015, I was promoted to an election
2 coordinator.

3 Election coordinators assist county clerks and county
4 commissioners with procedural duties for elections, we train on
5 election hardware, election software, voting equipment. We
6 also -- during my time as election coordinator the decision was
7 made to absorb our voter registration division which is also in
8 the elections division into the role of election coordinator,
9 so we began assisting county clerks and county clerks' staff
10 with troubleshooting questions and enhancements on the voter
11 registration database that is used at each county. In 2020, I
12 was promoted to election systems analyst which is the current
13 role I hold now. My involvement with assisting counties with
14 the voter registration database was enhanced.

15 I also manage any other internal databases that our
16 division has such as our candidate filing database. I'm also
17 the lead for electronic ballot delivery for the state, the
18 software that's used for that. And then other various duties
19 as assigned.

20 Q What state agency or office is responsible for keeping
21 historical records of election results in Arkansas?

22 A Secretary of state's office.

23 Q Are you familiar with how those records are kept in the
24 secretary of state's office?

25 A I consider myself familiar, yes.

1 Q This is marked as Defendants' Exhibit 8 and it's also
2 just for the Court, it's docket 78. The ticker isn't on this
3 document. Mr. Bridges, do you recognize this document?

4 A Yes, sir.

5 Q What is this?

6 A This is the declaration that was submitted to this case
7 concerning my declaration.

8 Q You see the information that's contained in paragraph 5
9 of the declaration, can you read that? You don't have to read
10 it, but I mean, is it legible to you?

11 A Yes, it is.

12 Q Is information like that election results and vote
13 tabulations the sort of information that the secretary of
14 state's office regularly keeps in its operations?

15 A Yes, it is.

16 Q And did the information contained in paragraphs 5 and 6
17 and 7 -- paragraphs 5, 6, and 7 come from those records?

18 A Yes, sir.

19 Q And you have personal knowledge of this information?

20 A Yes, I do.

21 Q We move to admit this as Defense Exhibit 8.

22 THE COURT: Any objection?

23 MR. SELLS: No objection.

24 THE COURT: It's admitted.

25 (Defendants' Exhibit 8 received in evidence.)

1 BY MR. JACOBS:

2 Q Can you give us a brief overview of the functions and
3 responsibilities of the secretary of state's office as it
4 pertains to elections in Arkansas?

5 A Yes, sir. The secretary is the chief election official
6 of the state. He chairs the state board of election
7 commissioners which is a separate agency considered from us.
8 Our office handles the filing of election results for state and
9 federal elections. We are responsible for maintaining
10 certificates of election and oaths of office for elected
11 officials. We also receive candidate petitions for state and
12 district level candidates. We're responsible for verifying the
13 sufficiency of those candidates' petitions. We're responsible
14 for holding and maintaining candidate filing records for the
15 state and district level candidates. I'm sure I'm forgetting
16 plenty.

17 Q It's perhaps not an exhaustive list, but it's a long one?

18 A Yes, sir.

19 Q As part of your job responsibilities, are you familiar
20 with the various dates and deadlines that make up Arkansas's
21 election calendar?

22 A Yes, sir.

23 Q So let's talk about those. So what is the next upcoming
24 statewide election?

25 A It's going to be the May 24th preferential primary.

1 Q So I want to talk about dates leading up to that that are
2 pertinent for the May 24th primary election. So I'll start
3 going sequentially, and we're in February now, but let's go
4 back to January. Are there any pertinent dates in January that
5 pertain to the May 24th preferential primary election?

6 A There is one date in particular that pertains to the 2022
7 election cycle and it is based off of a deadline that is in
8 May. It concerns independent candidate petitions. Independent
9 candidates for state, county, district, and township levels
10 could begin circulating their petitions beginning January 31st,
11 and that's based off of the May 1st deadline for those
12 individuals to submit their petitions.

13 Q You said that period begins on January 31st and ends on
14 May 1st? Did I get that right?

15 A Correct.

16 Q Let's go to -- now we'll move to February. What's the
17 next pertinent date on Arkansas's election calendar?

18 A The candidate filing period begins February 22nd and ends
19 March 1st. That will entail state, district, county, and
20 township offices filing. Their candidate filing paperwork with
21 the entity they need to file with, whether it's our office or
22 the county clerk's office.

23 Q Who would a candidate for the state House file their
24 paperwork with?

25 A They would file with our office.

1 Q Moving on to the next date in March after the filing
2 period ends, what would that be?

3 A The next pertinent date after the filing period ends
4 would be the certification of candidates. The secretary of
5 state's office is responsible for the certification of
6 candidates to the counties that file with our office so that's
7 going to include state House, state Senate, federal candidates,
8 judicial candidates that are paying the fee rather than
9 circulate a petition. We have to certify that by just a few
10 days after the close of candidate filing.

11 Q But you don't remember off the top of your head what date
12 that is?

13 A I believe it's March 10th.

14 Q Can you explain when you say the secretary of state's
15 office certifies the candidates to the counties, what's the
16 purpose of that? What does that mean practically speaking?

17 A The certification of candidates is the official candidate
18 list that our office produces and sends to the counties.
19 That's going to include the position of the candidate, that's
20 going to include how the candidate wishes for their name to
21 appear on the ballot as well. So at that point, counties, once
22 they receive that list, can begin the process of creating and
23 coding their ballots.

24 Q After March 10th when you said the secretary of state's
25 office certifies the candidate list, what's the next date?

1 A The next deadline would be the draw for ballot position.
2 That's a deadline that is held at the county level just a few
3 days after the deadline for our office to certify the
4 candidates. That process entails the county election
5 commission of every county not only publishing the time and
6 place of that public meeting but also performing that duty of
7 holding that public meeting and drawing names for ballot
8 position for each position.

9 Q After that March 24th deadline for ballot draw, what's
10 the next date?

11 A Without --

12 Q Do you know the deadline for county election officials to
13 change precinct boundaries for this election cycle?

14 A Yes, sir, that deadline is 60 days prior to the date of
15 the election. I believe it falls end of March sometime. I
16 have an election calendar with me if I could refer to it, but
17 if not, that's okay.

18 Q I don't think that's necessary at the moment. So after
19 the deadline for county election officials to change the
20 precinct boundaries, what's the next date on the election
21 calendar?

22 A If I remember correctly, the absentee ballots are going
23 to be due to the county clerk's office I believe 47 days prior
24 to the date of the election. I memorize election deadlines
25 based off the date of the election. It's a bad habit. But the

1 absentee ballots are going to be due in the office of the
2 county clerk I believe 47 days prior to the date of the
3 election.

4 Q And absentee ballots, can you explain the various
5 categories of that? Is there one kind, is there multiple
6 kinds?

7 A Yes, there were multiple ballot styles in each county and
8 it's going to vary based off of the different number of
9 precincts and precinct parts that each county has. The process
10 of creating those ballot styles is within a short window of
11 time. It also entails other deadlines that are set by the
12 vendor that is used typically. So after the certification of
13 candidates and after the draw for ballot position, the counties
14 begin the process of entering that information into a software
15 provided by the vendor that codes the ballots.

16 Q I think we'll get to that. Let me back up just a hair.
17 Are you familiar with the term "UOCAVA"?

18 A Yes.

19 Q Can you explain what that is?

20 A UOCAVA is the state and federal deadline and category of
21 absentee ballots that concern uniformed military and overseas
22 citizens. Our office is responsible for ensuring that that
23 deadline is met.

24 Q When you say that deadline, what do you mean by that
25 deadline?

1 A There is a deadline in place 46 days prior to the date of
2 any election where absentee ballots must be delivered to those
3 voters by that deadline.

4 Q Who set that deadline, the state of Arkansas or someone
5 else?

6 A The state of Arkansas has its own deadline at the state
7 level, but it's also a federal deadline. Arkansas's deadline
8 happens to be the day before the federal deadline.

9 Q Did you recall how many days prior to the election it is
10 for Arkansas to send those?

11 A 46 days prior.

12 Q So after April 7th when those ballots are supposed to be
13 delivered, what's the next pertinent date on the election
14 calendar?

15 A I believe shortly after that will be the process of logic
16 and accuracy testing, which entails the testing of the voting
17 equipment, ensuring that it is tabulating votes properly.

18 Q When does early voting start for the 2022 preferential
19 primary election?

20 A 15 days prior to the date of the election.

21 Q So if the election's on May 24th, does that mean that
22 early voting starts on May 9th?

23 A I believe so, yes.

24 Q So you discussed this a little bit prior, but are you
25 familiar with the responsibilities of county election officials

1 for Arkansas elections?

2 A Yes, sir.

3 Q And when I say county election officials, could you tell
4 me who the county election officials are?

5 A Yes, sir, that includes the county election commission.
6 It also includes the county clerk's office. The county clerk
7 themselves. They are considered the election officials for the
8 county.

9 Q Could you briefly describe what the duties of a county
10 board of election commissioners and a county clerk are?

11 A County board of election commissioners are ultimately
12 responsible for the conduct of the election in the county.
13 They set the polling places, they hire and train their poll
14 workers. They ensure that their voting equipment is properly
15 working as mentioned before. The county clerk's office is
16 ultimately responsible for the conduct of early voting and
17 absentee voting, so the two entities are in a perfect world
18 consistently working very close with each other to ensure that
19 the election is run smoothly.

20 Q So are you aware of any steps that the county election
21 officials in Arkansas have had to take in response to the 2020
22 census and the subsequent reapportionment?

23 A Their steps are similar to the state level redistricting.
24 It was a hurry up and wait game for the census data to be
25 released. A lot of counties, the majority of counties secured

1 a redistricting vendor during that time and then began the
2 process of redistricting their quorum court districts.

3 Q And what about the responsibilities, if any, of county
4 officials was affected as far as state elections by the
5 redistricting, statewide elections?

6 A One of the responsibilities that I touched on previously
7 of the county clerk's office is maintaining the voter register
8 station database. They are ultimately responsible for the
9 maintenance and accuracy of the database as they are the
10 official registrar of voters in their county, so as a result of
11 state level redistricting, the county clerk's offices were
12 responsible for making all necessary changes to that program to
13 where their voters were in the correct districts, and that is a
14 very strenuous process.

15 Q Is that done in a software program or on paper, how does
16 that work?

17 A There is a software program that entails the voter
18 registration database. It's called, internally, Power Profile.

19 Q Are you familiar with that software?

20 A Yes, sir.

21 Q How familiar?

22 A I consider myself novice.

23 Q Okay. So can you explain for us sort of the
24 on-the-ground process of how a county election official goes
25 about actually updating the information that you were just

1 talking about?

2 A The software program is not geographic at all in nature.
3 The precinct and the parts and how they're built are in system
4 tables and street segments, so for a county to make drastic
5 changes to what they're doing now to a database that's built on
6 segments and tables requires a lot of time, a lot of attention
7 to detail, and really good reports. The majority of the
8 counties, as mentioned before, have contracted with GIS
9 vendors, private vendors, that have the ability to provide
10 decent reports with address points, that eases some of the
11 tension and pressure that the counties are under, but it is a
12 very tedious, laboring process to go precinct by precinct to
13 ensure that each district is properly assigned.

14 Q When you say each district, are there multiple offices in
15 the program to which a voter is assigned in this information,
16 is that what you mean?

17 A Yes, sir. And I'm happy to list those out if you'd like.

18 Q By all means.

19 A Congress, House, state House, state Senate, court of
20 appeals, circuit judge, quorum court districts, school boards,
21 city wards if applicable, school zones, water boards, fire
22 boards. There are a number of what we call political
23 subdivisions that counties maintain and update as needed.

24 Q So let's talk about state House districts in particular.
25 Can you just specify what these county election officials have

1 to do in response to the state House districts being
2 reapportioned before this election cycle?

3 A The first step is for the state, our office, to give them
4 access to the political subdivisions that they need, and during
5 the redistricting process, since the numbering of House and
6 Senate districts were completely changed statewide, our office
7 had to go in and apply or grant access to each county's new
8 House districts. The county must go in to a maintenance window
9 and more or less remove the old House districts from their
10 precincts and precinct parts and then go back in and reapply
11 the new House districts to their precinct and precinct parts.

12 Q You mentioned earlier that there was a deadline for
13 counties to change or update their precincts. Can you explain
14 why a county might decide to update its precincts?

15 A Yes, sir. During the redistricting process, obviously
16 boundary lines move. And one of the results of that are
17 precincts at the county level that are now out of whack
18 basically with the new boundary lines, whatever they may be.
19 So one of the reasons why a county would update their precincts
20 is to realign precinct boundaries with currently existing
21 election districts such as House districts, Senate districts.
22 Another reason would be that by law, the population of a
23 precinct is not supposed to exceed 3,000 voters. So with the
24 new census data coming out, the counties had that new
25 information at their disposal to where they could then update

1 their precincts for that reason as well.

2 Q Are you aware if any counties in the state have, in fact,
3 updated their precincts in response to the census and
4 reapportionment?

5 A Yes, sir, we've had a small handful of counties that have
6 completed the process of updating their precincts and have
7 filed plans with our office for that.

8 Q Do you know if there are going to be any more counties
9 that are going to do that?

10 A We have heard that other counties are considering
11 updating their precincts, but we don't have a timetable on that
12 or how many or when that'll happen.

13 Q So when did the counties start working on reassigning
14 voters to the correct precincts after the census and
15 reapportionment?

16 A I don't have an exact date as to when they began work.
17 But it was very shortly after the House and Senate maps were
18 officially approved by the Board of Apportionment.

19 Q When you say officially approved, do you mean when the
20 Board voted on them to approve them on November 29th or do you
21 mean some other time?

22 A November 29th when the Board voted to approve them.
23 Shortly thereafter is when county work began for House and
24 Senate.

25 Q Did the secretary of state's office give any advice to

1 counties on the time frame during which they ought to complete
2 this process?

3 A Yes, sir. We advised the counties that all redistricting
4 duties in the voter registration database needed to be
5 completed on or before January 31st.

6 Q And have all counties completed that process as far as
7 you're aware?

8 A No, sir, they have not.

9 Q Do you have any ballpark estimate of how many of
10 Arkansas's 75 counties have yet to complete that?

11 A As of last Thursday, we had nine counties officially
12 report that they were done with their changes in the database.

13 Q So how if at all would a county's decision to redraw some
14 of its precincts affect when they could complete their voter
15 registration lists?

16 A It would greatly affect it because just like state level
17 redistricting, any changes to precinct boundary lines must be
18 accounted for in the voter registration database. So that is
19 another wrinkle in working with system tables and address
20 points as opposed to some type of a GIS program.

21 Q We've discussed these voter registration lists and how
22 those are made. Let's talk about the process of how ballots
23 are -- let me back up. These voter registration lists, assume
24 for me if tomorrow for some reason the House district maps
25 changed from what they currently are, how much of the work that

1 these county officials have completed or are in the process of
2 completing would be undone?

3 A Anything that has to do with work with House district
4 political subdivisions, it would be back to the drawing board.
5 And I think it's important for the Court to know that it's not
6 only House and Senate district boundaries that have changed
7 during this process during this time. It's not only House and
8 Senate district boundaries that were held up by the delay of
9 the census data, we also have school boards that are and have
10 completed the process of redistricting, we have cities that
11 have chosen to redistrict their wards. So simply stating,
12 there are several different levels of government that are
13 submitting these plans to the clerk's office to be updated in
14 the voter registration database. So it literally would be back
15 to the drawing board in that one aspect of the county clerk's
16 work.

17 Q Let's move on to the process of ballots being generated.
18 Are you familiar with that process?

19 A Yes.

20 Q Who is responsible for ultimately generating the ballots?

21 A It does fall on the county election officials to go
22 through the process of generating their ballots. I believe it
23 falls on the county election commission to do that. However,
24 it does vary from county to county. Some county election
25 commissions perform those duties. Some county clerks perform

1 those duties. So it just varies as to who does it.

2 And then as far as the process is concerned, I briefly
3 talked about this earlier, but once the certification
4 candidates and ballot draw has been completed, the counties are
5 responsible for entering the information for all of their
6 county races for their entire election into what's known as the
7 ES&S portal. ES&S stands for Election Systems & Software.
8 That is the main vendor in the state for several different
9 election services. So counties are responsible for entering
10 this information into the provided portal to where the vendor
11 can begin the process of coding the software for voting
12 equipment and actual paper ballots for absentee.

13 Q Can any of that start before counties have completed
14 their voter registration lists?

15 A It can't because everything is driven off of precincts
16 and precinct parts. That's how a county determines their
17 ballot styles. Because this goes back to the disconnect with
18 GIS and system tables, but the voter registration database will
19 determine where your boundary lines -- where your boundary
20 lines are in terms of precinct parts. If a House and Senate
21 district overlap perfectly when they have the same boundary
22 line going to -- let's say it just cuts a county in half, then
23 there are two ballot styles, one on one side of the line, one
24 on the other.

25 But if House and Senate don't match up perfectly and

1 there are slivers of geography where there are let's say three
2 geographic sections, that's another split. So in order to
3 ensure that each voter receives a correct and accurate ballot,
4 the voter registration database must be completed and accurate
5 before ballot styles can be generated.

6 Q So does each split precinct result in an additional
7 ballot style in a county?

8 A Yes.

9 Q I believe you just said voter registration lists have to
10 be completed before counties can start generating ballots.
11 What about the ballot draw meeting, does that have to be
12 completed before counties can begin generating ballots?

13 A I have seen over the years where some counties will begin
14 entering their information into the portal before ballot draw
15 takes place and simply going in and updating the order of their
16 candidates, some counties like to get an early jump on entering
17 that information. That is another tedious process, so while it
18 is ideal for ballot draw to be complete before that information
19 is entered, some counties do get a head start and begin at
20 least entering information in.

21 Q What about receiving the candidate, the certified
22 candidate list from the secretary of state's office. Does that
23 have to happen before counties can begin generating ballots?

24 A For any position that files with our office, absolutely.
25 They'll have to wait until we certify that list down to them

1 before they can enter that information.

2 Q That includes state House districts?

3 A Yes.

4 Q So you mentioned ES&S earlier. Was that the name of a
5 software vendor?

6 A Correct.

7 Q Is that used by every county in the state to generate
8 ballots?

9 A Yes, it is. With the caveat that we have around eight or
10 nine counties that purchase the coding software from ES&S that
11 allows them to code and program their own elections locally
12 without entering that information into the ES&S portal. But
13 every county in the state does have the same vendor in terms of
14 voter registration and election services voting equipment.

15 Q Are you aware if ES&S has any of its own deadlines that
16 it provides to counties?

17 A Yes, sir, they do. They generate a calendar similar to
18 ours with their own predetermined deadlines for ballot layout,
19 ballot coding, blocing down their forms, their races. That
20 calendar is sent to the counties once it's generated by the
21 company, that allows ample time for the vendor to be able to
22 code and process each county's election as quickly as possible
23 and within time to get that information back down to the
24 county.

25 Q Let's talk about the process once a state has or, excuse

1 me, once a county has all this information and provides it to
2 the vendor who's going to generate the ballot. So the county
3 clicks the submit button on the mouse. Are they done?

4 A No.

5 Q What happens next?

6 A What happens next is a round of proofing. The vendor
7 codes the election as mentioned before, the way that the county
8 lays it out in the system. Once that process is complete,
9 ballot proofs are sent down to the counties for proofing. If
10 there are mistakes on those ballot proofs, the county must let
11 the vendor know as soon as possible so that those mistakes can
12 be corrected. Those mistakes can range from a misspelling of a
13 name, misspelling of a position, wrong ballot style assignment,
14 or probably a great other number of things. Once those
15 mistakes are caught and sent back up to the vendor, another
16 round of proofing begins at that point until the county quote,
17 unquote, signs off on their ballots.

18 Q Do you know how long that process typically takes between
19 counties and vendors?

20 A I don't know. It just depends on, if any, how many
21 mistakes are caught or noticed, how many rounds of proofing.
22 It could take a couple weeks in order to get those forms
23 completely locked down and finalized.

24 Q So would a county know on the front end how long it's
25 going to take to complete this proofing process?

1 A I don't believe so because it's important to note that
2 this is not the only job that county election commissioners or
3 county clerks have. County election commissioners are
4 virtually volunteer. They do get paid a stipend, I believe,
5 and then county clerks have other hats that they have to wear
6 as well. So we don't know how long that process would take
7 and, again, it just depends on the accuracy on the front end of
8 how accurate their information is put into the system.

9 Q So once the proofing is completed and the ballot styles
10 are all generated, what's the next step in the process?

11 A The next step at that point would be to perform logic and
12 accuracy testing on the voting equipment with the provided
13 election media as we call it in the election realm from the
14 vendor. Election media is encrypted flash drives that hold the
15 various ballot sometimes for the county that only work with
16 that voting equipment. They're souped up flash drives that
17 counties will use in order to check the accuracy of the
18 electronic ballot and check the accuracy of the tabulation that
19 comes out of their machines. The other aspect of this is for
20 county election commission to turn over absentee ballots to the
21 clerk so paper ballots would come to the clerk's office for
22 distribution to absentee voters.

23 Q How do those paper ballots come into existence?

24 A Typically the vendor, ES&S, prints those ballots and
25 sends them from Omaha, Nebraska to the clerk's offices. There

1 are a handful of clerk's offices that contract with a local
2 printer in order to print their ballots so there are some that
3 are printed locally.

4 Q Based on your experience as an election official in
5 Arkansas, and the elections that you've been involved in, could
6 you tell us what the effects would be if say tomorrow the state
7 were required to switch to a different set of House district
8 maps?

9 A I would venture to say catastrophic. The amount of
10 stress and pressure that counties are currently under
11 throughout this process as it stands today has been absurd in
12 my words, in my opinion. If things were to be switched around
13 in a certain area throughout the entire state, then there would
14 be absolutely no way counties would be able to get this done
15 before candidate filing begins February 22nd. We're hard
16 pressed at this time as it stands today to get all 75 counties
17 done by that day.

18 Q What happens if a county or multiple counties don't get
19 that done by candidate filing?

20 A Well, it's never happened before. But candidates would
21 not be able to determine which district they reside in so they
22 would not know how to file or what to file for in terms of
23 House districts, so it would really gum up the works of
24 candidates even being able to file.

25 Q You said candidate filing starts on February 22nd?

1 A Correct.

2 Q So that's two weeks from tomorrow, right? Yes. If the
3 candidate filing period were pushed back by a week, what would
4 you say the effects are going to be down the line?

5 A If candidate filing is pushed back a week or any longer,
6 then it would create a ripple effect in all other election
7 deadlines to where certification of candidates would be late,
8 the draw for ballot position would be late, counties wouldn't
9 be able to publish notices of ballot draw. We would be hard
10 pressed to ensure state and federal compliance with UOCAVA
11 ballots going out as well, and that's not to mention the ballot
12 proofing process is probably out the window, you have to roll
13 with what you got at that point.

14 Q So I asked you this a few minutes ago what the effects
15 would be if tomorrow the state House maps were changed. What
16 if they were changed a week from tomorrow, any difference in
17 your answer?

18 A It would be the same answer if not even worse. And
19 another aspect of this that just came to mind actually, I
20 mentioned earlier that counties have -- most counties have
21 contracted with a GIS vendor. There's also financial
22 repercussions at the county level because the work that's
23 already been done would be basically a waste of tax dollars at
24 the county level. And another aspect if things were pushed
25 back would be the acquisition of new contracts with those

1 vendors to continue to work on whatever proposed House
2 districts are on the table at that point, so there are
3 financial repercussions at the county level with their vendors
4 as well to think about.

5 Q If Arkansas were forced to use different House maps than
6 the ones that were approved by the Board of Apportionment, are
7 you confident that the election could happen and everything
8 would go smoothly?

9 A No, sir, I'm not.

10 Q Is it possible in your experience as an election official
11 to move or change just one deadline for an election and have it
12 not affect any other dates or deadlines?

13 A I would be hard pressed to figure out which deadline you
14 could move and it not have direct effect on any other deadline
15 after that. Honestly it's a domino effect because of the
16 entire process, which is not known to the general public from
17 day one of an election cycle to certification of election
18 results. It all builds on top of each other. Once one
19 election -- once one deadline occurs, you have another one to
20 worry about that could be directly impacted by your compliance
21 with the previous deadline.

22 Such as if our office doesn't certify candidates on time,
23 how are counties supposed to conduct their ballot draw for
24 those positions? If counties are not able to perform their
25 ballot draw, how are they going to know how to code their

1 ballots? So it's important to note that election deadlines and
2 their construct, it's all built on top of each other and one
3 follows after another.

4 Q Would you say -- I want to go to a different topic.
5 We've been talking about the secretary of state's office's role
6 in elections. Is that the only function that the office
7 performs?

8 A Within the elections division?

9 Q Are elections the only thing that the secretary of
10 state's office does as a whole?

11 A No, sir.

12 Q For example, if a nonprofit organization wanted to
13 register to do business in Arkansas, what state agency would
14 they do that with?

15 THE COURT: Mr. Jacobs, are we essentially leaving
16 the election deadline issue at this point?

17 MR. JACOBS: I think so, Your Honor.

18 THE COURT: I have a question, and before I ask it,
19 I want to say to the attorneys, please try to fight the urge to
20 tea leaf read because I can guarantee you at this point, there
21 are no tea leaves to read. I have not made a decision and I do
22 not intend to until after closing and after full arguments
23 tomorrow. Having said that, let me ask you this question.
24 Assume with me that there's a violation of Section 2 of the
25 Voting Rights Act. The questions you've been asked and the

1 argument that the defendant or at least one of the arguments
2 that the defendant is making is, look, there's just too tight
3 of a schedule to go back and redraw the maps even if there's a
4 Section 2 violation. This time around. Next time two years
5 from now, maybe there's time.

6 A cynic would say that essentially that means every ten
7 years whatever party is in power gets one free pass for an
8 election, right, they could essentially intentionally rig the
9 map. Not to say that's what's going on, but they could
10 intentionally rig the map knowing that they'd get one House
11 election out of it or one Senate election out of it, and that
12 only then, they'd be forced to go back and draw a reasonable
13 map or a map that's in compliance with the law, whatever term
14 you want to use. If that's the rule, that presents a whole lot
15 of problems and angst and it doesn't seem very fair. I don't
16 think anybody would think it's very fair.

17 Is there something unique about this census process that
18 makes this sort of out of the norm? Here's the reason I'm
19 asking. I get a whiff from the record that there's something
20 about the delayed census that has brought us closer to the
21 election than we otherwise would be, but I don't know if that's
22 true, and so I want to ask you is that accurate, and if it is,
23 could you just explain narratively what happened and why we're
24 in a more unique situation than we would be say ten years prior
25 or ten years in the future?

1 THE WITNESS: Absolutely, yes, sir, I can. That's a
2 very good question. We all know -- everybody in this room
3 knows about the delay in the census data. That is
4 unprecedented. We are in unprecedented times, whether it's
5 here in this room or down at the county level, city level, what
6 have you. In the huge delay, it has greatly reduced the number
7 of working hours that redistricting can happen, and as a
8 result, counties can reup their voter registration databases.
9 When our office found out about the delay, the second or third
10 delay, I can't remember now, in the census data, we began
11 reaching out to county clerk's offices that we knew had been
12 around in 2011, during the 2011 redistricting process.

13 There was one county in particular that I spoke with
14 about hypotheticals. We asked how much time would you guys
15 need to redistrict and how much time would you guys need to
16 update the voter registration database. Her response was the
17 redistricting process doesn't concern me. And just to put in
18 perspective here, she's talking about the quorum court
19 redistricting process that happens at the county level. She
20 said that the quorum court process of redistricting doesn't
21 concern her, it's the VR database that concerns her. I said,
22 How much time would you need? She said, At least two months,
23 and that's being generous.

24 That's coming from a county clerk that has been around
25 for a while and was around during the 2011 redistricting

1 process where they had a normal amount of time, normal being
2 subjective, but a normal amount of time to account for all
3 levels of redistricting in the voter registration database. So
4 to answer your question, the months' delay of the census data
5 has indeed made this uncharted waters for all and especially
6 the county election officials in my opinion.

7 THE COURT: Okay. Either Mr. Jacobs or other
8 counsel may well have more questions for you on that, but I
9 appreciate your answer.

10 THE WITNESS: Sure.

11 BY MR. JACOBS:

12 Q So you mentioned that the particular county person you
13 were talking about was around in 2010 for the prior census. Do
14 you know about how many of, say, the county clerks in Arkansas
15 that are serving today were serving back in 2010?

16 A I do not know the answer to that. But I can tell you
17 with confidence county clerks' staff has a very high turnover
18 rate and typically it's not necessarily going to be the actual
19 elected county clerk that performs the duties of voter
20 registration. A lot of them do, especially more rural
21 counties, but some of them -- most of them will have staff
22 designated for that. The turnover rate for that staff is very
23 high, so there are training issues that come into play which,
24 side note, our office does conduct training for county clerks'
25 offices and county clerks' staff for the voter registration

1 database, we have that yearly if we can.

2 So I don't know how many county clerks were around
3 in 2010 or 2011, but I can tell you that the staff has greatly
4 changed across the state.

5 Q Speaking of staffing levels, are all county clerks'
6 offices staffed similarly?

7 A No.

8 Q What would the differences be?

9 A Well, let's take Pulaski County for instance. They have
10 two rooms full of people that are dedicated to voter
11 registration. Arkansas County has two people that I'm aware
12 of, one of them being the clerk. One of them being her deputy
13 clerk, so the contrast is great and does vary from county to
14 county.

15 Q If it were six months earlier than now, and I am not a
16 lawyer, so I don't do math but that would be one, two, three,
17 four, five, six, if you were sitting there on the stand in
18 August and we were discussing the possibility of having to
19 redraw new House district maps, and by this I mean August of
20 2021, and we were talking about having to change House district
21 maps in 2022, can you compare the level of concern that you'd
22 have as to the concern that you have right now?

23 A I would still have concern. I would still have heartburn
24 over it. But my specific concerns would probably be a little
25 bit different. Obviously that's eight months' worth of

1 additional time that counties have to account for that. So,
2 number one, my concern would be how long will it take for the
3 new maps to come out, when can they get them approved and
4 finalized and down to the counties. My next concern would be,
5 and it holds weight with current -- current situation as well.
6 Backing out House districts and then reapplying new House
7 districts, concerns with accuracy of the database itself.

8 Q If we were having this conversation six months ago and
9 you were informed that there were new House maps the following
10 day, would you describe that as catastrophic if this were six
11 months ago?

12 A No, sir.

13 Q If we were talking about six months ago and I asked you
14 the question of are you confident that even with this change in
15 the House maps that the 2022 primary election can go off
16 smoothly, what would your answer be?

17 A I would be more confident that the election and all
18 corresponding deadlines could stand as they are, that the
19 counties would have heartburn and some headaches over backing
20 information out and putting more in, but it would be, in my
21 opinion, doable.

22 Q I want to change topics. I believe the question I was
23 going to ask earlier was if a nonprofit organization wanted to
24 register to do business in Arkansas, what state agency or
25 office would they do that with?

1 A They would conduct that business with our business and
2 commercial services division, which is one of the divisions
3 under the secretary of state's office.

4 Q Could you give us a few examples of the kinds of things
5 that our nonprofit organization might file with the business
6 services division?

7 A They are required to file a yearly statement with our
8 office that includes the name of the organization, the officers
9 of that organization, I believe there's jurisdiction
10 information also on that requirement.

11 Q If someone in Arkansas wanted to find out information,
12 just some citizen, if they wanted to find out information about
13 what records the secretary of state's office has on a nonprofit
14 organization, what could they do?

15 A They could search for that information on our website.
16 It is publicly available.

17 Q Were you asked to look at the secretary of state's
18 nonprofit organization records in connection with this case?

19 A Yes, sir.

20 Q What were you asked to look for?

21 A I was requested to provide information on the Arkansas
22 State NAACP Conference.

23 MR. SELLS: Objection. This is not the witness who
24 can testify about this. It's not part of his job description,
25 it's a different section of the secretary of state's office.

1 Anybody can look up the database that Mr. Jacobs is talking
2 about. His trying to get this in through this witness is
3 improper.

4 THE COURT: Overruled.

5 BY MR. JACOBS:

6 Q Who asked you to look at that information?

7 A You did.

8 Q And as a result of that request, what did you do? What
9 did you look for?

10 A I passed that information along to a colleague of mine in
11 the business and commercial services division to see what they
12 could find internally as far as any records or filings
13 associated with that naming convention.

14 Q Did you look personally at any records that came about as
15 a result of that?

16 A I looked at the records that were found as a result.

17 Q What was that record of?

18 A The search results indicated that the NAACP organization
19 that was searched for filed documentation back in 1991. They
20 have not filed anything since then according to what we were
21 able to find.

22 Q Do you remember the name of the organization in the
23 record that you looked at?

24 A I believe it was State Conference NAACP or something to
25 that regard.

1 Q If you saw it written out, would that refresh your
2 recollection of that?

3 A Yes, sir.

4 Q Is that the name that you're trying to recollect?

5 A Yes, sir, that's it. Thank you.

6 Q Did you see what that name was?

7 A Yes, Arkansas State NAACP Incorporated.

8 Q Tell us again the date of the filing that you were
9 mentioning before.

10 A They filed the required form back in 1991.

11 Q And what was the registration status of this entity? And
12 by registration status, I mean was the entity in good standing
13 or was this registration not current?

14 A At the time they were in good standing until new
15 legislation was passed, I believe, in 2009 that required
16 organizations to file a similar statement annually by
17 August 1st. At that point since no other filings had come from
18 that organization, they were considered not in good standing.

19 Q Was this organization registered as a domestic or foreign
20 corporation?

21 A I don't recall for sure.

22 Q Were you asked to look for any other organizations along
23 this line?

24 A I was asked to look for other iterations of the name of
25 the organization.

1 Q Did you find any that were registered as a foreign
2 nonprofit corporation?

3 A Not that I recall.

4 Q Let me ask you this way. What other NAACP organizations
5 came up in this information?

6 A I believe there were a couple other hits on the search
7 that was conducted. I don't recall the names of those entities
8 or whether or not they were foreign or domestic.

9 Q But to the best of your knowledge, were there any other
10 Arkansas NAACP entries that came up as a result of what you
11 looked at?

12 A That's correct, to the best of my knowledge, no, sir,
13 there were not.

14 MR. JACOBS: If I could have a moment, Your Honor.

15 THE COURT: You may.

16 MR. JACOBS: No further questions.

17 THE COURT: Do I understand correctly this is our
18 last witness?

19 MR. JACOBS: Yes, Your Honor.

20 THE COURT: We are going to take a ten-minute break
21 and then we will come back and finish this witness. Sir, while
22 we are on break, please do not talk to your attorneys or anyone
23 else's attorneys or anybody about this case. Basically just go
24 out, come back in and get back on the stand, okay?

25 THE WITNESS: Will do. Thank you, sir.

1 (Recess from 7:16 PM until 7:31 PM.)

2 THE COURT: Mr. Sells, at your leisure.

3 CROSS-EXAMINATION

4 BY MR. SELLS:

5 Q If it's really at my leisure, we might be here all night.
6 I'll try to be quick. Good evening, Mr. Bridges. I'm Bryan
7 Sells one, of the attorneys for the plaintiffs in this matter.
8 It's nice to meet you on a late Monday evening.

9 A You as well.

10 Q I want to start with your employment background. You
11 said that you've been an employee of the secretary of state's
12 office since 2013, do I have that right?

13 A Yes, sir.

14 Q And I understand that some or all of the secretary of
15 state's office is located in the Capitol; is that correct?

16 A The majority of the employees are located in the Capitol,
17 yes, sir.

18 Q Is that where you're located?

19 A Yes, sir.

20 Q How long have you worked in the Capitol?

21 A Since the beginning of my employment.

22 Q So that would be about eight and a half, nine years?

23 A Yes, sir.

24 Q And during the time that you have worked in the capitol,
25 you ever seen or perhaps participated in the Arkansas NAACP

1 annual Juneteenth march to the capitol?

2 A No, sir, I have not.

3 Q Have you ever seen or participated in any other of the
4 Arkansas NAACP's events such as the ones commemorating Martin
5 Luther King Day?

6 A No, I have not.

7 Q Are you suggesting that the Arkansas NAACP does not exist
8 as an organization?

9 A No, sir, I'm not suggesting that at all.

10 Q I'd like to show you what has been marked as Plaintiffs'
11 Exhibit 78. If it's all right with Your Honor, I'd like to
12 give the witness a paper copy of it.

13 THE COURT: It's fine with me. Any objections,
14 Defendants?

15 MR. JACOBS: No, Your Honor.

16 BY MR. SELLS:

17 Q Mr. Bridges, can you identify that document?

18 A Yes, this is the 2022 election that our calendar
19 produces.

20 Q Did you have a hand in producing that?

21 A I have a hand in proofing and double checking it, yes.

22 MR. SELLS: Plaintiffs offer Exhibit 78 into
23 evidence.

24 THE COURT: Any objection?

25 MR. JACOBS: No.

1 THE COURT: It's admitted.

2 (Plaintiffs' Exhibit 78 received in evidence.)

3 BY MR. SELLS:

4 Q This is the complete 2022 election calendar, correct?

5 A Yes.

6 Q It's about 52 pages long?

7 A Correct.

8 Q Are you aware of any deadlines that are not included in
9 this election calendar?

10 A I like to think we have nearly all election related
11 deadlines included here, but we are not perfect by any stretch.

12 Q Now, in your testimony, you mentioned that ES&S calendar,
13 correct?

14 A Yes, sir.

15 Q Are those deadlines reflected in this document?

16 A No, sir, they're not.

17 Q Where could I go to find a copy of the ES&S calendar?

18 A I don't know that that calendar's obtainable by the
19 general public. That is a calendar produced by the vendor
20 provided to its contractees as a guide in order to ensure
21 proper and accurate and efficient ballot delivery.

22 Q And do you have a copy of it?

23 A Currently on me, no, I do not. I have one in my office.

24 Q You don't have one here in the courthouse?

25 A No, sir.

1 Q The state of Arkansas uses a majority vote rule in party
2 primaries, right?

3 A Yes, sir.

4 Q And what happens if a party primary candidate does not
5 get majority of the vote in the preferential primary election?

6 A If a candidate doesn't receive majority vote, there's a
7 run-off election for that position.

8 Q When does that run-off election take place?

9 A Specifically for the May primary that's coming up, the
10 run-off will be June 21st.

11 Q And there's a series of dates prior to June 21st that
12 lead up to that election date just as there is before the
13 primary election, correct?

14 A Correct.

15 Q June 21st to May 24th is approximately four weeks, is
16 that right?

17 A That is correct.

18 Q So Arkansas's election machinery is able to have a
19 secondary election four weeks after the primary election,
20 correct?

21 A It does have that capability, yes, sir.

22 Q So, in other words, county clerks have to certify the
23 candidates, build their ballots, get their ballots printed, all
24 of the things that you mentioned with Mr. Jacobs on direct,
25 correct?

1 A I wouldn't say all of the things mentioned, no, sir. One
2 thing that I would like to point out is the vendor is already
3 generating potential run-off ballots in order to maintain
4 UOCAVA compliance. So any potential run-off races, so if there
5 is a race with more than two candidates, that would be
6 considered a potential run-off race. So that information is
7 already parsed out into let's say a separate bucket ready to go
8 in the event that there is indeed a run-off. Because I will
9 come back around to your question, but in order to maintain
10 UOCAVA compliance, there's absolutely no way our office or the
11 county's office could turn back around a run-off ballot within
12 four weeks to people living on the other side of the world.

13 So the process of potential run-off ballots is in place
14 with the vendor in order to be able to send a UOCAVA voter
15 their normal primary election ballot in addition to a potential
16 run-off ballot that they can complete in the event of a
17 run-off. And submit at the same time their primary ballot is
18 submitted. So that data is already captured and parsed out
19 into a separate bucket in other words.

20 Q There are other steps that take place between the primary
21 election and the secondary election, correct?

22 A That's correct, yes.

23 Q Can you list some of those for the Court, please?

24 A Sure. Logic and accuracy testing has to take place.

25 Election media, as mentioned before, has to be submitted to the

1 vendor, coded and returned. The early voting, the beginning of
2 early voting is seven days prior as opposed to 15 days prior,
3 so that time is shortened as far as early voting is concerned
4 which allows the counties to have a little bit more time to
5 ensure proper calibration of the equipment and tabulation of
6 the results. There is no ballot draw in between a primary and
7 a run-off or a general and a run-off.

8 The candidates will be listed in the same order they were
9 listed for the primary election minus the losing candidate or
10 candidates, of course, so ballot draw is not a factor.
11 Certification of candidates is not a factor either, so those
12 are deadlines that don't play a factor in between the primary
13 and the primary run-off.

14 Q So in addition to run-off elections, Arkansas sometimes
15 has special elections too, correct?

16 A That's correct.

17 Q In fact, Arkansas law provides that a special election
18 can be held on the first Tuesday of any month. Isn't that
19 right?

20 A That is incorrect actually. There was legislation passed
21 last legislative session that limited the number of days in a
22 given year that special elections could be held.

23 Q And what are those dates?

24 A I don't know the specific dates, but they're quarterly.
25 There are basically four stand-alone dates within a given year

1 that special elections can be held if they're not to be held in
2 conjunction with an already scheduled primary or general
3 election.

4 Q And those dates include dates in an off year like 2023 or
5 2021?

6 A Yes, sir, that's correct.

7 Q So there are four special election dates predetermined
8 throughout the year, and that's new legislation you said?

9 A Yes, sir, that's correct.

10 Q Was that passed in the 2021 session?

11 A Yes, sir.

12 Q Is that still Section 711-105?

13 A Yes, sir.

14 Q Thank you, that's helpful. And before any special
15 election, there are also dates that back up to that if you
16 will, correct?

17 A That is correct, yes, sir.

18 Q And what are those dates?

19 A Those dates and deadlines are very similar in nature to a
20 normal primary election. There are deadlines as far as
21 certification -- well, excuse me, not certification of
22 candidates necessarily, but draw for a ballot position if it is
23 a special election for a candidate race, there are vendor
24 deadlines as far as getting everything turned back in an
25 orderly manner. So very similar makeup of deadlines for a

1 special election.

2 Q Is the law structured in such a way that if the need for
3 a special election arises within a certain number of days of
4 one of those election dates, it has to be scheduled at that
5 time? Like is there a lead-up period if you will?

6 A There is a lead-up period of, I believe, 70 days before a
7 special election can be held. For example, just for
8 clarification, if a city wishes to call a special election on a
9 tax issue, they have to call that 70 days out from when they
10 wish to hold that election, so yes, there is a lead-up time.

11 Q Just to be clear for the record, it has to be at least 70
12 days and if the need for a vacancy arises less than 70 days,
13 then you have to go to the next election date?

14 A I believe I follow you. I believe that is correct, yes.

15 Q And does that law, as you understand it, also have
16 quarterly special election dates in an even numbered year like
17 the one we're in right now?

18 A I believe it does, yes.

19 Q Do you recall what those dates are in this year?

20 A I know that the first date a special election can be held
21 was February 8th. I don't recall the upcoming three additional
22 dates off the top of my head.

23 Q Are those in the election calendar that is Plaintiffs'
24 78?

25 A No, sir, they're not.

1 Q How is the election administration process for primary
2 elections different if a primary is uncontested?

3 A If a primary position is uncontested, then that
4 individual gets an automatic bid to the general election. I
5 don't know that that answers your question, but that's my
6 response to your question.

7 Q Let me drill down on that for a moment. County election
8 administrators don't have to prepare a ballot with an
9 uncontested candidates' name on it for a primary election,
10 right?

11 A There are requirements in law for unopposed candidates
12 depending on the position and depending on the election whether
13 or not they must appear on the ballot. However, those would
14 not necessarily be individual ballot styles generated. That
15 could be on all ballot styles since it is an uncontested race.

16 Q Does that vary by office?

17 A Yes, sir, it does.

18 Q Do you know the rules with respect to House uncontested
19 primary elections?

20 A I don't recall the specific rules because the law has
21 changed just about every legislative session on unopposed
22 candidates for the past election cycles.

23 Q Would it be fair to say that uncontested elections
24 particularly in primaries are easier for election
25 administrators to handle?

1 A I believe that would be a fair statement, yes, because
2 that's one less ballot style, one less race to account for in
3 the system.

4 Q And do you know what percentage of Arkansas's primary
5 elections have been uncontested over let's say the last three
6 election cycles?

7 A I do not know that percentage, no, sir.

8 Q Let me ask it a different way. Would it be fair to say
9 that most of them are not contested?

10 A I can't agree to that or disagree with that because I
11 just don't know.

12 Q Have you reviewed the primary election returns over the
13 last three election cycles?

14 A Reviewed would be a relative term. I don't necessarily
15 look at and delve into and scrutinize the election returns to
16 see which races are opposed or unopposed so I wouldn't be able
17 to give a whole lot of information specific to that.

18 Q You reviewed the primary election returns for the
19 information that you put on Defendants' Exhibit 8, didn't you?

20 A Yes, sir, I did.

21 Q And you just don't remember from that review whether
22 there are many uncontested or contested primary elections over
23 the last three election cycles, correct?

24 A That is correct, because I was requested to review
25 particular races during particular election cycles so I

1 reviewed that information only. Our office, nor do I,
2 necessarily delve into the statistics of opposed or unopposed
3 races for each position. We have that data available for those
4 that scrutinize that type of information, but our office is not
5 in the business of tracking actively that aside from the
6 election results as they stand.

7 Q Would it refresh your recollection if I showed you the
8 election returns from the last three primary elections?

9 A Possibly.

10 MR. JACOBS: I'm going to object to that. He didn't
11 testify that he ever had any particular recollection of which
12 of those elections were uncontested. There's nothing to
13 refresh.

14 THE COURT: I'm going to give Plaintiffs a wide
15 berth here. Quite frankly, I think the Court could take
16 judicial notice of this in terms of whether somebody ran or
17 wasn't, so if he wants to ask the question, I'm fine with it.

18 MR. SELLS: In the interest of time, Your Honor, I'd
19 be happy to just make these exhibits.

20 THE COURT: No, I actually want to hear about this.
21 And given that I could take judicial notice of it anyway, I
22 think it's fine if you show it to the witness and ask whatever
23 questions you want to ask.

24 MR. SELLS: Let's put on the screen first what has
25 been marked as Plaintiffs' Exhibit 81. And, again, I think I'd

1 like to give the witness a copy so he can page through. I
2 think it'll be a little faster.

3 THE COURT: That's fine.

4 BY MR. SELLS:

5 Q Mr. Bridges, can you identify this document? Does this
6 look like the election returns from your office's website?

7 A Yes, sir, this does appear to be the 2016 preferential
8 primary election results from our website.

9 Q Okay. Plaintiffs offer Exhibit 81 into evidence.

10 THE COURT: Any objection?

11 MR. JACOBS: No, Your Honor.

12 THE COURT: It's admitted.

13 (Plaintiffs' Exhibit 81 received in evidence.)

14 BY MR. SELLS:

15 Q I'd like you to take a moment and review. And the first
16 thing I'd like you to look at is about how many contested
17 primary elections were there in this year, 2016. And I'd also
18 like you while you review that to see if you notice that most
19 of the contested ones are in or around Pulaski County. If I
20 wasn't clear, we're talking about House primaries.

21 THE COURT: Mr. Sells, given the time of night and
22 where we are on this, if you'd like to tell the witness how
23 many contested primaries you think there were and ask him if
24 he's willing to agree with you, I'm okay with that.

25 MR. SELLS: I count 19, Your Honor.

1 BY MR. SELLS:

2 Q Does that sound about right to you?

3 A I count 19 House races contested, yes, sir.

4 Q That's out of 200 possible if you figure it's a hundred
5 districts, Democrat and Republican, correct?

6 A I believe so.

7 Q There could be two primaries in any district, and there
8 are a hundred districts, right?

9 A That is correct in terms of party primary, yes.

10 Q So there's about 10 percent of the possible primaries are
11 contested, correct?

12 A Specifically for this election, yes, sir.

13 Q And did you notice how many are located in and around
14 Pulaski County?

15 A No, sir, I didn't. There are no county notations on
16 those races, only the representative districts, so unless the
17 county notations are there, I do not know.

18 Q Fair enough.

19 Your Honor, I could walk him through the 2018 and 2020,
20 they show the same thing, about 10 percent of contested
21 primaries.

22 THE COURT: As long as it's okay with the
23 defendants, I'm willing to just take judicial notice of it and
24 I'll look at it later.

25 MR. JACOBS: We don't have any objection to that,

1 Your Honor.

2 THE COURT: I'm fine doing that. Obviously if you
3 want to ask him questions, you can, but I'm okay just taking
4 judicial notice of it.

5 MR. SELLS: I'm sure opposing counsel will check my
6 math if I'm off on that. For the record, the plaintiffs will
7 offer Exhibits 79 and 80 as well.

8 THE COURT: It's admitted. Both of them.

9 (Plaintiffs' Exhibits 79 and 80 received in evidence.)

10 THE COURT: Can I assume, Mr. Sells, I think you
11 said this, but can I assume it's about 10 percent contested
12 primaries?

13 MR. SELLS: Yes, Your Honor. That's an approximate
14 figure. About 20 -- I think on average it comes out to 20.

15 THE COURT: Okay.

16 BY MR. SELLS:

17 Q I won't go over this with you in similar fashion, but in
18 any given year since you've been at the secretary of state's
19 office, the number of primary run-offs is even smaller than
20 that, correct?

21 A I would think that the amount of primary run-offs that
22 are held are minimal. There are not very many of those at the
23 state level.

24 Q Less than a handful every year, correct?

25 A Correct, I believe.

1 Q The legislature, which I understand is convening just in
2 a matter of days, could change the primary election date,
3 correct?

4 A I don't know that for a fact since this will be fiscal
5 session. I don't know what entails for or allows for the
6 legislature to make any other changes to regular law. I'm not
7 sure. I'm not an attorney, so I don't know.

8 Q You don't know the legislature procedure. I'll ask you
9 to assume with me that the legislature could make changes at
10 its session if it got the sufficient number of votes to do so.
11 If the legislature were to do that, would your office do
12 everything in its power to comply with the legislature's
13 changed election date?

14 A It is our goal to comply with any state, local, federal
15 election deadlines regardless of how strenuous they may be. So
16 that would be our goal is to comply with whatever the will of
17 the legislature is.

18 Q If the legislature were to move the date of the primary
19 closer to the general election, that would ease the burden on
20 your office and county clerks of getting everything ready
21 following this redistricting process, wouldn't it?

22 A In theory, yes, it would ease the burden between now and
23 the date of whatever proposed primary. However, that's
24 speculative in my opinion because it's not been done in my time
25 here in this office so I don't know what other ramifications in

1 moving a primary date would have on the election cycle as a
2 whole. I just don't know.

3 Q A federal court could also move a primary date if it
4 determined it was necessary to do that to comply with federal
5 law, right?

6 A I would take your word at that, that that is the case.

7 Q If a federal court did that, your office would do
8 everything in its power to comply with that, correct?

9 A Everything in our power.

10 Q In fact, you would help any small counties that needed
11 help in complying, which you already do now, correct?

12 A That is correct. To a certain extent, we assist as much
13 as we possibly can. However, the liability and the burden does
14 lie on the county to perform the duties.

15 Q You have lived in Arkansas most or all of your life,
16 correct?

17 A All of my life.

18 Q Are you familiar with -- strike that.

19 Do you know whether Arkansas has a history of racial
20 discrimination against African-Americans?

21 A I do not whether that is true or not. I do not know.

22 Q You don't?

23 A No, sir. I understand the generics of the fact that
24 Arkansas was -- is in the South and part of the Civil War. I
25 know, I was a history major, so I know all that. Yes, sir.

1 But I can't speak necessarily to racial discrimination. I've
2 never been a part of that. I'm sure it's here, I'm sure it's
3 everywhere, but I don't know any specific instances of racial
4 discrimination that I've seen with my own eyes.

5 Q You ever heard of the Little Rock Nine?

6 A Yes, sir, absolutely. I'm a history major.

7 Q Right. And that is part of Arkansas's history of racial
8 discrimination against African-Americans, isn't that right?

9 A I would agree with you.

10 Q It's not a trick question.

11 A Sure.

12 Q Let me ask you this. You think black Arkansans are
13 entitled to equal electoral opportunity?

14 A Yes, sir, absolutely.

15 Q Do I understand that you're not testifying -- do I
16 understand correctly that you're not testifying that the
17 administrative or financial burdens on your office or county
18 offices should outweigh the fundamental right to vote for black
19 Arkansans? Is that correct?

20 A I would agree that the ability and the right to vote for
21 any Arkansan regardless of their skin color is the most
22 important thing to me personally as my job. I hold a very high
23 standard in the process of voting. The sanctity of elections
24 for every Arkansan regardless of skin color, gender, any of
25 that, political affiliation. That's number one goal for me

1 personally, so I would agree.

2 Q You understand that that is precisely what this case is
3 about, correct?

4 A I understand that this case is about the redistricting
5 process being allegedly discriminatory against race, yes.

6 Q Those are all my questions.

7 THE COURT: Thank you. Redirect?

8 REDIRECT EXAMINATION

9 BY MR. JACOBS:

10 Q I believe that you testified a few minutes ago that there
11 are few primary run-off races in a given election. Did I hear
12 that right?

13 A At the state level, yes. I can't necessarily account for
14 local level run-offs. Those returns aren't always given over
15 to us as a method of election results.

16 Q As far as statewide elections, we're talking about
17 primary run-offs, how difficult -- not how difficult, how
18 involved is that process as compared to the preferential
19 primary in terms of the jobs that election officials have to
20 do?

21 A It's still very much involved. Because of the timetable
22 being only four weeks, honestly less than that if you count in
23 seven days of early voting, the timetable is exponentially
24 smaller. However, and I believe it was -- I mentioned earlier
25 in my testimony there are several of those election deadlines

1 that don't play a factor necessarily in between a primary and
2 its run-off such as certification of candidates' ballot draw.

3 Q What about voter registration lists between a
4 preferential primary and a general primary run-off, do counties
5 have to come up with new voter registration lists?

6 A No.

7 Q What about what the counties are having to do right now
8 with regard to precinct reassignment, is that something that
9 counties would have to do between a preferential primary and a
10 general primary?

11 A No, sir.

12 Q What about for a special election, do counties have to
13 come up with a new voter registration list to hold a special
14 election?

15 A If it were in the normal course of business, no. If it
16 were a special election being held with no redistricting
17 involvement whatsoever, then no, absolutely not, it would be
18 precinct lists, voter registration lists as it stands unless
19 there are precinct boundary changes that the election
20 commission wishes to happen, but then they have that 60 days
21 prior deadline.

22 Q Compared to holding a statewide preferential primary, how
23 does that compare to holding a special election?

24 A The workload does decrease, ballot styles are isolated to
25 either city wide, county wide ballot measure, or a district

1 with limited number of candidates, whoever would file. So the
2 coding of ballots, the assembling of ballot styles would
3 dramatically decrease in compared to a primary election.

4 Q Going back to primary run-offs, I believe you were
5 talking earlier about for UOCAVA ballots and I guess maybe for
6 absentee ballots, maybe not, you can tell me, that ballot
7 styles are already completed for any potential run-offs in
8 advance. Is that what you said earlier?

9 A Yes, sir, that's correct.

10 Q Is it easier to create a ballot style generally speaking
11 for a primary run-off than for a preferential primary?

12 A Yes, because the work has basically been done in that
13 regard. If you are creating a ballot style for a preferential
14 primary, say House District 1, and there are three Democratic
15 candidates that file for that office, you put that information
16 into the portal as mentioned before, any potential run-off
17 would -- that information is already captured, it's already
18 there, you just have to remove the loser of the race and let
19 the winners go forward to the run-off. So it is easier.

20 Q Do we know right now how many state House races in the
21 2022 preferential primary are going to go opposed or unopposed?

22 A We do not know that because candidates have not filed
23 yet.

24 Q Remind me what date that filing period ends.

25 A Filing period ends March 1st.

1 Q Do counties have to come up with a voter registration
2 list that would be used for races whether or not they're
3 contested? Let me strike that and ask it a different way. The
4 counties -- the voter registration lists the counties are
5 working right now to create, are those lists going to be used
6 for the House elections for the preferential primary?

7 A Yes, they will be.

8 Q Does it make a difference whether that election ends up
9 being contested or not as far as those counties having to
10 complete their voter registration lists?

11 A Whether a race is contested or not contested, that
12 information still needs to be done as soon as possible before
13 the candidate filing period because it's used for other various
14 things. Candidates need to know what district they reside in.
15 Independent candidates need to know today technically how many
16 signatures they would need to gather for their House district
17 that they're going to be running for since they can begin
18 circulating today if they wish. Candidates also request
19 information for campaign purposes, they wish for lists of
20 registered voters within their district. So that information
21 is needed to be accurate as soon as possible regardless of a
22 contested race.

23 Q Remind me again what the date that the secretary of state
24 advised counties that they ought to have their voter
25 registration lists completed by.

1 A We advised counties to complete their changes by
2 January 31st. And as of last Thursday, I believe we had nine
3 counties report to us that they have completed that process.

4 Q This may sound like a weird question. Are you able to
5 predict the future?

6 A Not that I recall.

7 Q So if I were to ask you some crazy hypothetical about two
8 thirds of the Arkansas General Assembly deciding to move an
9 election and what ramifications that unheard of event might
10 have for Arkansas, could you predict what would happen?

11 A No, sir, for two reasons. Number one, I can't predict
12 the future, but number two, as I had stated previously, during
13 my time here, that hasn't happened, so I don't know what those
14 ramifications would be, and I don't know how it'll affect the
15 remainder of the election cycle being the general election.

16 Q No further questions.

17 THE COURT: Thank you, Mr. Jacobs. Sir, thank you
18 for your testimony. I appreciate it. I don't know if you were
19 here on Saturday, but if you were, I'm sorry we ruined your
20 weekend.

21 THE WITNESS: I was on call, so no worries.

22 THE COURT: Thank you for testifying. You're
23 excused. Defendants, do I take it that you rest?

24 MR. JACOBS: That's the close of our evidence, Your
25 Honor.

1 THE COURT: Let me say to everybody that I
2 appreciate very much the hard and quick and long work. I know
3 that we spent a significant amount of time in terms of hours
4 per day and days doing this. I wanted to thank you all for
5 presenting well in a way that I could understand the evidence.
6 Obviously we still have tomorrow. My plan for tomorrow will be
7 get together at 9:00 a.m., Plaintiffs want to do a formal
8 close, so they will have the opportunity to do a formal close.
9 Defendants, you all, if you want to do a formal close, will
10 have the opportunity to do a formal close or you can wait until
11 we get into legal argument. After the formal closing period,
12 we will take a break, probably a half an hour break or
13 something on that order and then we will move into legal
14 arguments.

15 As I've said, I will split the legal arguments into two
16 sections. One section being the standing slash private right
17 of action questions and one session being what I guess I will
18 call, for lack of a better term, the merits questions. I don't
19 think I have anything else for you all tonight. Plaintiffs, do
20 you all have anything administratively for me?

21 MR. SELLS: Just a follow-up on that last point,
22 Your Honor, on the legal arguments section. Are you looking
23 for presentations from us or we just stand up and answer your
24 questions?

25 THE COURT: You can do it either way. Obviously if

1 you're giving a formal close that you feel covers the sort of,
2 you know, the whole scene, then I can just ask questions and we
3 can just start to have a conversation and that's fine. If, on
4 the other hand, you would like to sort of start presenting and
5 then I will interrupt you with questions along the way, that's
6 okay as well. Really your preference. I will tell you at
7 least in my head before closing given the number of questions I
8 have, I don't think you will have nothing to say even if you do
9 your full close, so it's up to you.

10 MR. SELLS: We'll figure that out.

11 THE COURT: Any questions, Defendants,
12 administratively?

13 MR. BRONNI: One question, Your Honor. Do you have
14 a preference for whether we do a formal close or launch back
15 in? Whatever's helpful for the Court.

16 THE COURT: I do not have a preference. I will tell
17 you that I think I have a good grasp on the factual evidence.
18 Of course, just because I think that doesn't mean you all can't
19 be enlightening in a formal close. If I were in your shoes, I
20 might just do argument, but that's got to be your choice and in
21 part, of course, you know, whoever ends up winning and losing,
22 I'm guessing somebody's taking this up to the Eighth Circuit, I
23 don't know that, but I'm guessing. And if that's the case,
24 then you may want to do a formal close just for the record, and
25 that's your right. I'm going to let you have that opportunity.

1 If it was me, I would probably just do legal argument, but I
2 don't want to -- whatever you want is fine with me.

3 MR. BRONNI: Understood, Your Honor.

4 THE COURT: Anything else? Mr. Sells, evidence has
5 closed. So in terms of written questions for the three Board
6 of Apportionment witnesses or nonwitnesses as the case may be,
7 where are we on that?

8 MR. SELLS: Give me just one moment, if you will,
9 Your Honor. So for purposes of this motion, Your Honor, we
10 believe that we elicited the testimony we wanted from the lower
11 level witnesses and don't need to proffer any questions for the
12 constitutional officers.

13 THE COURT: When you say this motion, you mean the
14 motion for preliminary injunction?

15 MR. SELLS: Correct, reserving the right for
16 depositions and so on.

17 THE COURT: 100 percent. And I hope I was clear in
18 my order on the motion to quash, that my order was limited to
19 the preliminary injunction and should we end up in discovery in
20 this case, there may well be a different weighing of the
21 balances under undue burden. And obviously if I have to get to
22 it, I will deal with the legislative privilege and any other
23 type of privilege question. I appreciate that.

24 I'm going to say this just for the professional courtesy
25 and benefit of the lawyers who have been inside here all day,

1 and I want to preface this by saying this is hearsay, I don't
2 know this is true, I just know it because my clerk just handed
3 me a note saying it. But apparently the Supreme Court stayed
4 the Alabama Voting Rights Act preliminary injunction. I
5 haven't read anything, I haven't seen anything. I tell you all
6 because I'm guessing you may want to look at that if that does
7 shed any light on tomorrow or not. Okay? We are adjourned.

8 (Recess at 8:17 PM.)

9 REPORTER'S CERTIFICATE

10 I certify that the foregoing is a correct transcript of
11 proceedings in the above-entitled matter.

12
13
14 /s/ Karen Dellinger, RDR, CRR, CCR

15 United States Court Reporter

Date: February 9, 2022