

Exhibit F



Transcript of **Allan J. Lichtman**

Saturday, December 4, 2021

*East St. Louis Branch NAACP, et al. v. Illinois State Board of Elections,
et al.*

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Reference Number: 110909

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4 - - - - - X
5 EAST ST. LOUIS BRANCH NAACP, :
6 et al., :
7 Plaintiffs, : Civil Action No.
8 v. : 1:21-cv-05512
9 ILLINOIS STATE BOARD OF :
10 ELECTIONS, et al., :
11 Defendants. :
12 - - - - - X

13 Remote Deposition

14 Saturday, December 4, 2021

15 Deposition via Zoom of ALLAN J. LICHTMAN,
16 a witness herein, called for examination by counsel
17 for Plaintiffs in the above-entitled matter, pursuant
18 to notice, the witness being duly sworn by MARY GRACE
19 CASTLEBERRY, a Notary Public in and for the State of
20 Maryland, taken at 2:21 p.m. EST, Saturday, December
21 4, 2021, and the proceedings being taken down by
22 Stenotype by MARY GRACE CASTLEBERRY, RPR, and

1 transcribed under her direction.

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are now on the
3 record in the matter of East St. Louis Branch NAACP,
4 et al. v. Illinois State Board of Elections, et al.
5 Today's date is December 4th, 2021. The time is 2:21
6 p.m. Eastern Standard Time. This is the video
7 recorded deposition of Allan Lichtman being taken
8 remotely via Zoom videoconference.

9 I am the camera operator. My name is Joe
10 Townsend in association with Trustpoint/Alderson
11 Reporting. The court reporter is Mary Grace
12 Castleberry also in association with
13 Trustpoint/Alderson Reporting.

14 All attorneys present will be noted on the
15 stenographic record. Will the court reporter please
16 administer the oath.

17 Whereupon,

18 ALLAN J. LICHTMAN,
19 was called as a witness by counsel for Plaintiffs,
20 and having been duly sworn by the Notary Public, was
21 examined and testified as follows:

22 EXAMINATION BY COUNSEL FOR PLAINTIFFS

1 BY MR. GREENBAUM:

2 Q. Good afternoon, Dr. Lichtman. As you
3 know, my name is Jon Greenbaum. I represent the
4 NAACP and UCCRO plaintiffs in this case. I want to
5 start by getting right into your report which we're
6 going to mark as Exhibit 1.

7 (Lichtman Exhibit No. 1 was marked
8 for identification.)

9 BY MR. GREENBAUM:

10 Q. And I'll put it in the chat as well. Let
11 me see. And I would like you to go to page 87. I'm
12 going to share screen.

13 A. Yes, I'm on page 87.

14 Q. All right.

15 A. A little awkward, since I have a clip, but
16 I think maybe I'll take the clip off.

17 Q. So that should be your compilation 2,
18 right?

19 A. Yes.

20 Q. And is it correct that when talking about
21 all the contests analyzed in House District 113 and
22 the area around it, there were -- there was racially

1 polarized voting?

2 A. Well, not exactly. There's no racially
3 polarized voting statistics on this chart. The chart
4 simply gives you a compilation of winners and losers
5 in HD 114 and surrounding areas that Dr. Collingwood
6 would think is appropriate.

7 Q. Okay. So I want you to look at that
8 column that's called RPV. What does that stand for?

9 A. Dr. Collingwood indicates that he found
10 RPV, racially polarized voting, in these elections,
11 but as I said, there were no numbers on this table.
12 It was just conclusionary.

13 Q. But you've seen Dr. Collingwood's numbers,
14 haven't you?

15 A. I don't remember them, but I saw them and
16 I don't dispute them.

17 Q. And -- and you don't dispute the fact that
18 he found racially polarized voting in every election,
19 correct?

20 A. I don't recall exactly, but I don't
21 quarrel with that.

22 Q. Would it help if we looked at his report?

1 A. No. I don't quarrel.

2 Q. So you don't --

3 A. In the interest of time, we can move on.

4 Q. Okay. So you don't dispute that there's
5 racially polarized voting in HD 114?

6 A. I don't dispute that there's racially
7 polarized voting in the sense that blacks and whites
8 vote differently. I do dispute whether there is
9 racially polarized voting that usually defeats the
10 black candidate of choice. In fact, this chart shows
11 quite the opposite.

12 Q. And, in fact, with respect to -- strike
13 that.

14 Now, you've said before literature that
15 support at a 60 percent level by racial group for a
16 particular candidate is considered landslide support,
17 is that correct?

18 A. I said a 60 percent is, you know, often
19 considered a landslide victory. So I would regard if
20 a minority group typically is cohesive behind
21 candidate of choice at 60 percent or above, that the
22 minority group is cohesive. I don't dispute that

1 blacks are cohesive in these elections.

2 Q. And that there's in fact black --
3 landslide level black support for black candidates in
4 each election that Dr. Collingwood analyzed, correct?

5 A. Correctly. And that helps explain why
6 blacks with the candidates of choice of black voters
7 almost always win in the elections that
8 Dr. Collingwood chose as probative.

9 Q. Now, let's look at the flip side, that in
10 each of the elections that Dr. Collingwood analyzed,
11 according to his analysis, he found that white voters
12 support white candidates at rates above 60 percent in
13 each contest, correct?

14 A. That's correct. But in each contest but
15 one, there was sufficient white crossover to elect
16 the black candidate of choice.

17 Q. And so in each of these contests, white
18 voters provided landslide support for white
19 candidates, correct?

20 A. Yes. But it didn't matter politically,
21 except in 1 out of 7 elections.

22 Q. Now, I want to move to page 26 of your

1 report.

2 A. All right.

3 Q. Oh, page 25, bottom of page 25.

4 A. Twenty-five, okay.

5 Q. Yeah. Sorry. My notes were one page off.

6 A. I know. We've had issues with pagination
7 before. It doesn't always translate exactly. But I
8 think we can work to make this happen.

9 Q. I want to -- toward the bottom of the
10 page, in a portion of a sentence, you say, "There is
11 no dispute among experts that minorities are
12 overwhelmingly democratic in Illinois," correct?

13 A. Absolutely.

14 Q. And that's true for black voters as well,
15 correct?

16 A. Correct.

17 Q. And you've worked in Illinois now for
18 several redistricting cycles, correct?

19 A. Correct.

20 Q. Has it always been the case, since you've
21 been analyzing elections in Illinois, that black
22 voters vote overwhelmingly democrat?

1 A. Yes. To the best of my recollection, of
2 course. I haven't reviewed --

3 Q. Sure.

4 A. -- what I did 20 years ago, but no doubt.

5 Q. And how many cycles have you worked on,
6 let's say statewide redistricting, in Illinois?

7 A. 2001, I think that was the Campuzano case,
8 and also 2001. There were a couple of cases there.

9 Q. So it's basically the last three
10 redistricting cycles you've worked on statewide
11 redistricting in Illinois?

12 A. This is my third.

13 Q. Yes. Now, have you found that it's pretty
14 well known amongst the people that you've worked with
15 in Illinois that it's assumed that black voters vote
16 overwhelmingly democrat?

17 A. I'm not sure I, you know, explicitly
18 discussed that. Yeah, that's well known. I'm sure
19 all decision-makers know that.

20 Q. Okay.

21 A. Are we finished with page 25?

22 Q. We are finished with page 25.

1 A. Very good.

2 Q. So you mentioned before your work on the
3 Campuzano case, correct?

4 A. That was the 20-year-old case, yes.
5 Correct.

6 Q. And I want to refer you to page 22 of your
7 report.

8 A. Okay.

9 Q. And on page 22, you --

10 A. Hold on. I'm not there.

11 Q. Oh, sorry.

12 A. As I said, I've got to page through a lot
13 of pages. I'm on 22.

14 Q. All right. And on page 22, you actually
15 mention your involvement in the Campuzano case,
16 correct?

17 A. I'd have to look, but I'm sure that's
18 correct.

19 Q. I think it's in a footnote.

20 A. Yeah, yeah. There it is. Yeah.

21 Q. And would you say, in the Campuzano case,
22 that the Court --

1 A. Are we finished with page 22? Can I put
2 it away?

3 Q. For now.

4 A. Okay. Because otherwise I'm going to --

5 Q. Now --

6 A. -- be all tied up here.

7 Q. Sure.

8 A. Give me a minute. I've got my pages out
9 of order. Okeydoke. Go ahead.

10 Q. Would you say that -- in the Campuzano
11 case, did the Court follow your standard for
12 determining what's an effective minority district?

13 A. You're taking me back 20 years. I think
14 the Court agreed with me on my assessment of all the
15 effective black opportunity districts including
16 District 78.

17 Q. Do you recall having your deposition taken
18 in that case?

19 A. I don't. It was too long ago. I've had
20 so many depositions. But if you want to refer me to
21 something and give me the context, I'd be happy to,
22 but I don't recall it at all.

1 Q. Yeah. I'm going to show you a transcript.
2 Unfortunately, I just have the mini version of the
3 transcript.

4 A. Oh, boy. You're going to be trying an old
5 man here.

6 Q. We'll do the best we can here and, you
7 know, if we have to -- we have to -- one of the
8 things that I might be able to do on my screen is
9 show the text a little bit bigger, if we need to do
10 that.

11 A. I know you'll do your best, Jon. I'm not
12 worried.

13 (Lichtman Exhibit No. 2 was marked
14 for identification.)

15 BY MR. GREENBAUM:

16 Q. All right. I'm going to try to move this
17 over to the chat. Have I clicked on that effectively
18 here? Let me see. I'm going to stop share for a
19 minute here. Sorry. A tech -- I've got a lot of
20 things going on technologically here to try to figure
21 this out.

22 A. Well, I can't help you.

1 Q. Yeah. All right. So let me try -- so let
2 me try sharing screen again.

3 MR. GREENBAUM: Did others get the
4 transcript in the chat?

5 THE WITNESS: Are you asking me something?

6 MR. GREENBAUM: No, I'm asking the lawyers
7 something. I just want to see if anyone else --

8 MR. DRAYTON: Yes.

9 MR. GREENBAUM: Okay. Great. Thank you.

10 BY MR. GREENBAUM:

11 Q. Dr. Lichtman, I want to share screen
12 again.

13 A. Sure.

14 Q. And I'm going to page 61 -- no, page 81.
15 Actually, I want to ask you a question first.

16 Does this refresh your recollection at all
17 about having your deposition taken in this case?

18 A. It refreshes my recollection that I had a
19 deposition. It doesn't reflect -- refresh my
20 recollection of anything about it. I just don't
21 recall. It's too long ago.

22 Q. Okay.

1 A. Too many cases since then.

2 Q. All right.

3 A. And I really can't see that, but I'll do
4 my best.

5 Q. All right. We're going to go to the
6 bottom of 81 and the top of 82 and I'm going to read
7 a couple of questions and answers. Let me see. Can
8 you read that or do you need me to --

9 A. What am I supposed to be reading? There's
10 a lot in front of me.

11 Q. I'm going to be --

12 A. I can't read it, so just tell me where I
13 should be reading.

14 Q. Yeah, eight page -- do you see my cursor
15 right there, at the top of page --

16 A. Yes, I do.

17 Q. -- 81, line 18? And I'm going to read
18 until page 82, line 11, okay?

19 A. Yeah. I'll -- of course I'll need to see
20 the whole context.

21 Q. Sure.

22 A. Not just what you read.

1 Q. Right. And if you want -- if there are
2 other portions that you want to look at afterward, we
3 can talk about that, but first --

4 A. Yeah, I'll follow --

5 Q. -- the first thing I'm going to do -- I'm
6 going to do the Q&A and I'm just going to ask you
7 whether I read it correctly.

8 A. Fine. I'm sure you will.

9 Q. All right.

10 "Question: And maybe you've done this,
11 and I apologize if you have, but if you could define
12 for me what you mean by effective opportunity
13 districts.

14 "Answer: Yes. A district that provides,
15 let's say, African-Americans an opportunity to elect
16 candidates of their choice that is something just
17 beyond the 50/50 breaking point.

18 "Question: How far beyond?

19 "Answer:" --

20 A. I don't see the top of the next page.

21 Q. You don't see the top of page 82?

22 A. Oh, I'm sorry. Yes, yes, yes. I'm sorry.

1 I thought you were going -- yeah. I got it.

2 Q. All right. So we'll stop after your
3 answer where it says, "Just the 50/50 breaking
4 point."

5 And then at the top of page 82, line 2:

6 "Question: How far beyond?

7 "Answer: Well, obviously, you wouldn't
8 want it to be, you know, a tick" -- "a hair or a tick
9 beyond if you could avoid that. You would want one,
10 whereas I said, the opportunity is reasonable, but it
11 doesn't have to be a so-called safe seat even though
12 in real political terms there's no such thing as a
13 safe seat. Nothing is a lock in politics. Somewhere
14 in between, you know, a tossup and what some might
15 regard as a safe seat on the other hand."

16 Did I read that correctly?

17 A. Yes.

18 Q. And that -- was that at the time
19 consistent with your view of what an effective
20 opportunity district is?

21 A. Yes. And I go on to explain, quote --
22 this is line 20. I'm not sure what page it is. "So

1 51 is pretty good numbers in a district," so just a
2 tick above 50/50. Because this is my personal view.
3 I'm not expressing a legal opinion here obviously.
4 So 51 is a pretty good number in the district.

5 Q. But that -- but that needs to be over 50
6 percent, correct?

7 A. In my view, it should at least be a tick
8 over 50 percent. But that's my view. As I read your
9 complaint, you say an equal opportunity, and that
10 would be 50/50 or anything above 50/50. This is just
11 my opinion.

12 Q. Okay. And that continues to be your view
13 today?

14 A. What continues to be my view? That 51 is
15 a pretty good number in the district? Yes.

16 Q. That it needs to be somewhere in between a
17 tossup and what some might regard as a safe seat to
18 be an effective opportunity district.

19 A. I think I specified it much better than
20 that when I said -- and I'll repeat -- 51 is a pretty
21 good number in a district.

22 Q. All right. Just a second. All right.

1 Now I want to go to --

2 A. And I also want to explain, this doesn't
3 mean that candidates of choice can't be elected in
4 other districts. One of the points that I made --
5 I'm not sure if it's in this deposition, but it's in
6 the court record, is we had a District 78 House
7 District that was 38.9 percent black and I said that
8 was also an opportunity district based on my analysis
9 of that specific district.

10 Q. And that district is not in Metro east,
11 correct?

12 A. I'm not sure.

13 Q. Do you know if it's --

14 A. You're probably right. I don't remember
15 where it is exactly. But the sense is you've got to
16 look at the numbers and the Metro east numbers in the
17 table you've put up of seven elections show that the
18 black candidates are being elected well below 38.9
19 percent. They're being elected in St. Clair County
20 which is under 30 percent black and in another Senate
21 District, that's somewhere in the mid 30 percent. So
22 it doesn't matter where it is. It matters what the

1 numbers are.

2 Q. All right. So I want to take you to the
3 Campuzano opinion itself.

4 A. All right. I don't remember that either,
5 but I'll be happy --

6 Q. Give me a second --

7 A. Let me finish. We shouldn't talk over
8 each other. I don't recall that in detail either,
9 although I did review it, so I probably am better
10 able to recall that. But all I need is, as you did
11 so ably here, to show me on the screen and I'll be
12 able to answer all your questions.

13 Q. Okay. All right. So I'm going to move
14 that over to the chat. We're going to mark it as
15 Exhibit 3.

16 (Lichtman Exhibit 3 was marked for
17 identification.)

18 MR. GREENBAUM: Can one of the lawyers let
19 me know if you got it in the chat?

20 THE WITNESS: Yeah, I can see this, too.
21 It's not easy, but I can make it out.

22 BY MR. GREENBAUM:

1 Q. All right. So we're going to go to page
2 4.

3 A. Okay.

4 Q. And I'm going to read you a sentence from
5 page 4. And I've highlighted the sentence I'm going
6 to read to you. Can you read that sentence? Or can
7 you see that sentence?

8 A. I can. Give me a minute to read it, but I
9 can see it. Thank you.

10 Q. All right.

11 A. I read it.

12 Q. All right. And I'm going to read it.

13 A. Sure.

14 Q. And this is the sentence. "In effective
15 districts, African-American voters are not guaranteed
16 success at the polls, but such districts do contain
17 sufficient African-American voters so that, more
18 likely than not, African-American preferences will
19 determine the outcome of district elections."

20 Did I read that correctly?

21 A. You did.

22 Q. Do you agree, disagree or have no opinion

1 with respect to what the Court said in that sentence?

2 A. I believe I commented on that in my
3 report, noting, one, in six of seven districts that
4 were looked at, most of which were below HD 114, the
5 African-American candidate of choice, and the
6 reconstituted elections, every one of them, the
7 African-American candidate of choice won. So that
8 was 9 out of 10 in which the African-American
9 candidate of choice won, so that certainly is more
10 likely than not. And 51 percent, as I said, is more
11 likely than not.

12 Q. But --

13 A. Let me finish. But that -- let me finish.
14 But that was generic. I also applied this to the
15 specific analysis of HD 114 under SB 927.

16 Q. All right. But do you agree -- do you
17 agree what the Court -- with what the Court said in
18 that sentence?

19 A. More likely than not?

20 Q. Yes.

21 A. So that would be anything above 50/50,
22 50.1? Yeah, I would agree with that. But, again,

1 that's my personal opinion. I am not giving you a
2 legal opinion on what was said 20 years ago, you
3 know, what you are asking for in your complaint or,
4 you know, any legal conclusions. But, you know, 50.1
5 would be more likely than not. I said 51, but I also
6 said you've got to do a district-specific analysis.
7 And even in a 38.9 percent district,
8 African-Americans were more likely than not to elect
9 candidates of their choice.

10 Q. So in your view, more likely than not
11 means 50.1 percent of the time?

12 A. It means above 50. I think more likely
13 than not is a commonsense definition. The Court
14 doesn't define it here, but more likely than not
15 means above an even chance.

16 Q. All right. So let's move on to -- let's
17 go back to the elections that are -- that were in
18 reconstituted table 8.

19 A. Correct.

20 Q. Now -- strike that.

21 Let's go back and look at what's in the
22 compilation, which is on page 87 in your report.

1 A. Is that the thing we looked at before?

2 Q. Yeah.

3 A. I don't need to go to my report if you put
4 it up on the screen.

5 Q. Well, the question I'm going to ask you
6 is, this compilation, that is not the reconstituted
7 election analysis, correct?

8 A. No. But it bears directly on
9 African-American opportunities to elect candidates of
10 choice in HD 114 because most of the districts in
11 which African-Americans precisely do that are well
12 below the CVAP that for blacks in HD 114.

13 Q. All right. So let's actually go to the
14 reconstituted election analysis itself and let's --
15 and you base that on what was in Dr. Collingwood's
16 report, correct? You didn't do it yourself?

17 A. No, I did not.

18 Q. Okay. So one second here. Sorry. Too
19 many documents in front of me and I'm trying to find
20 Dr. Collingwood's report. Meanwhile, let's --

21 A. Take your time.

22 MR. GREENBAUM: Let's mark that as Exhibit

1 4.

2 (Lichtman Exhibit 4 was marked for
3 identification.)

4 THE WITNESS: I'm not going anywhere, Jon.
5 Take your time.

6 BY MR. GREENBAUM:

7 Q. I can't tell if I put it in the chat or
8 not. Now, in your --

9 A. I don't see the chart.

10 Q. I'm not there yet.

11 A. Oh, okay.

12 Q. Let me -- actually, because it's Exhibit
13 4, do you recognize Exhibit 4?

14 A. Yeah.

15 Q. Okay. Now, do you think that -- I believe
16 that you say in your report that he applied an
17 appropriate standard for assessing black voter
18 opportunities in House District 114 by doing the
19 reconstituted election analysis, correct?

20 A. That's one important fact. The other
21 important fact is the seven elections that
22 Dr. Collingwood chose as probative for assessing

1 black opportunities in and around HD 114. Remember,
2 HD 114 is not going to stay constant. People move in
3 and out and so those St. Clair County elections are
4 very relevant.

5 Q. And you used reconstituted election
6 analysis yourself in Illinois in 2001, correct?

7 A. Yes.

8 Q. And would it be safe to say that
9 reconstituted election analysis provides an estimate,
10 but it's not going to necessarily be exact, right?

11 A. It's our best estimate.

12 Q. So, for example --

13 A. Are you finished?

14 Q. I'm sorry.

15 A. I'm sorry, I didn't realize you weren't
16 finished. Ask your question again, please.

17 Q. Yeah, sure. So, for example, if you have
18 an election in which you're relying on for the
19 reconstituted election analysis and it has the full
20 precinct that's in the district that you're looking
21 for, but that precincts are split in the district
22 itself, that there's going to be some imprecision

1 there, correct?

2 A. To some degree. But, you know, we refine
3 these methods pretty well. I have no question that
4 Dr. Collingwood used appropriate methodology for
5 dealing with that just as we did.

6 Q. And Dr. Collingwood himself says that
7 that's one of the things that's going to make it not
8 exact is that you have split precincts, correct?

9 A. That certainly is possible. I'd have to
10 review exactly how he did it. But certainly
11 estimates are estimates, but these are the best
12 estimates that we have.

13 Q. And I believe that you just referred to
14 something that I was going to say is -- that I'm
15 going to ask you about is that another thing about
16 reconstituted election analysis is to the extent that
17 you're looking at elections in the past, another
18 thing that might make things imprecise is where you
19 have changes in demographics since those elections
20 took place, correct?

21 A. No. I'm not really worried about that
22 because we also have all of those other elections

1 from the broader area where demographic change might
2 take place. So assessment is not just based on the
3 reconstituted elections. It's based on the whole
4 corpus of analyses. You've got to put them together
5 to assess this district. And it's also, when we look
6 at demographic change in St. Clair County, we see
7 that it was a slight increase in black CVAP relative
8 to white CVAP.

9 Plus, as you know, because we've done
10 this, future population projections are not easy, and
11 I didn't see any methodology in Dr. Collingwood's
12 report for projecting future population shifts,
13 particularly among subgroups.

14 Q. Did you look at all at the table in
15 Dr. Collingwood's report regarding the demographic
16 change between 2010 and 2020 with respect to SB 927?

17 A. I did.

18 Q. And that table in fact reflects the fact
19 that the black population, both in terms of total
20 numbers and percentage, went down between 2010 and
21 2020?

22 A. We're going to have to put up the table

1 because the table --

2 Q. Wait. I'm not done yet.

3 THE REPORTER: I'm sorry, this is the
4 court reporter. There is a lot of overtalk. If you
5 could both try to refrain, I would appreciate it.
6 Thank you.

7 BY MR. GREENBAUM:

8 Q. Yeah. Dr. Lichtman, you've got to let me
9 finish my question.

10 All right. Isn't it true that that table
11 reflects the fact that the black population in SB --
12 strike that.

13 Why don't we just bring the table up and
14 I'm going to provide the amended version of the table
15 because there were some minor changes to some of the
16 numbers.

17 A. So the numbers are different from what
18 I've seen before?

19 Q. Yeah, they're slightly different. I'll --
20 you'll get to see them in a minute here.

21 A. Not a problem. As long as I can see them
22 now, I have no problem with changes. Wow.

1 (Lichtman Exhibit 5 was marked for
2 identification.)

3 BY MR. GREENBAUM:

4 Q. We're going to mark it as Exhibit 5.

5 A. Can you make it a little bigger? It's a
6 messy exhibit.

7 Q. Happy to do it.

8 A. Yeah, just a little bit.

9 Q. Let me see.

10 A. I don't need it a lot bigger. Yeah.
11 That's better.

12 Q. Okay. Actually, that might be -- I'm
13 going to have to make this a little bit bigger so we
14 can see the whole page for now. Oops. Here we go.

15 And it shows the original table, the
16 amended table and if you want to see the differences
17 between the two, you can see the differences between
18 the two. They're pretty minor.

19 A. I'm not going to take up our time to see
20 the differences between the two. So which table am I
21 looking at? I see two different tables.

22 Q. Look at the amended table and let's focus

1 on what's -- let's focus on --

2 A. Excuse me, Jon.

3 Q. -- 114. Let's focus on -- excuse me.

4 Focus on 114 and the difference in SB 9272010 and SB
5 9272020, okay?

6 A. So I'm looking at not the table with all
7 the red lines, but the table --

8 Q. No, no, no, no.

9 A. I don't know what table I'm looking at.

10 Q. That's the amended table, the amended
11 table.

12 A. I got it. So just to make it clear, it's
13 not the one with all the red lines. It's the one
14 above it.

15 Q. Don't look at the red lines. It's the one
16 that is at the top of my page that I'm focusing on
17 right here. Do you see that?

18 A. I'm with you.

19 Q. Okay. So, according to this table, the
20 black VAP in 114 within the SB 927 version, between
21 2010 and 2020, the number of black VAP decreased by
22 more than 6,000 people, correct?

1 A. According to this table, yes.

2 Q. And the percentage dropped almost 5
3 percentage points, correct?

4 A. Correct. That of course is not the only
5 things on the table. There are other relevant
6 elements, but you're correct.

7 Q. Okay. So it's about the rate of -- over
8 that -- between 2010 and 2020, about point 5
9 percentage points a year?

10 A. That's correct, according to this table.

11 Q. Okay. And would it be fair to say that,
12 given the polarized voting in the area of 114, that
13 the more that the black population drops, the more
14 difficult it becomes for black candidate -- black
15 voters to elect black candidates of choice?

16 A. Not necessarily because this is VAP. VAP
17 doesn't vote. Citizen population -- voting age
18 population votes. And although you have 33.4 for the
19 VAP, the CVAP in that district is much higher, 38
20 percent. So we don't know what the changes are in
21 CVAP.

22 Q. But we know -- but we know that the

1 changes in black VAP, apples to apples, black VAP
2 over the last 10 years went down by almost 5
3 percentage points, correct?

4 A. But that's not what you asked me. You
5 asked me about voting opportunities which has to be
6 measured by CVAP.

7 Q. And we know that, for example -- well,
8 let's talk about that.

9 Do you know how many white noncitizens of
10 voting age there are in St. Clair County?

11 A. I don't. And I don't know -- there are
12 also Hispanics, Asians, others. So citizenship is
13 not determined solely by whites.

14 Q. Sure. But my point -- let's focus on
15 white people and black people in St. Clair County.
16 Do you know in fact what --

17 A. We can't.

18 Q. What?

19 A. If you want to, go ahead.

20 Q. I'm asking you the question.

21 A. Fine.

22 Q. Did you in fact look at how many white --

1 let's -- let me strike that.

2 Did you look at how many noncitizens there
3 are of voting age of any race or ethnicity in St.
4 Clair County?

5 A. Indirectly, in that I compared the VAP
6 numbers for SB 927 District 114 to the CVAP numbers
7 and found that they were 4.6 percent higher.

8 Q. And that -- that in part might be because
9 the CVAP might be inaccurate, correct?

10 A. Anything is possible, but that's --

11 Q. You're --

12 A. Let me finish. Anything is possible, but
13 that's very unlikely.

14 Q. But you're assuming in your answer that
15 the CVAP numbers in St. Clair County are accurate,
16 correct?

17 A. Everybody's used CVAP numbers, all of
18 them, plaintiffs have asked for a 50 percent plus
19 CVAP district.

20 Q. Okay.

21 A. So I'm doing, as you say, apples to
22 apples.

1 Q. All right. So, in fact, in Illinois, they
2 drew -- strike that.

3 CVAP relies on the ACS data, correct?

4 A. Correct.

5 Q. That CVAP is not something that's
6 calculated as part of the decennial census?

7 A. That is correct.

8 Q. And, in fact, when Illinois first drew its
9 plan, it used ACS instead of the decennial census,
10 correct?

11 A. Correct.

12 Q. Now, did you look at to what degree,
13 when -- after the first plan was drawn, the degree to
14 which Districts 112, 113 and 114 were over or
15 underpopulated when the actual census data came out?

16 A. I don't recall, frankly.

17 Q. Okay, we'll look --

18 A. Let me finish --

19 Q. We'll look at that in a minute.

20 A. Let me finish.

21 Q. I thought you were finished.

22 A. No. Sorry. I did look at, you know,

1 overall deviation comparisons. But honestly, I don't
2 remember specific districts.

3 Q. All right. So let's talk about how the
4 ACS is done. The ACS samples about 1 percent of the
5 population per year, is that right?

6 A. I think it samples about 50,000 in
7 Illinois a year. I don't exactly recall what
8 percentage that is.

9 Q. I think your report somewhere -- and we
10 can look for it if we need to -- mentions something
11 like the ACS samples 3.5 million people per year,
12 correct?

13 A. That sounds about right.

14 Q. And that would be about 1 percent of
15 the --

16 A. Right.

17 Q. -- population?

18 A. Yeah. So the Illinois population was,
19 what, 12 million to 13 million? So 1 percent of that
20 is about -- close to 140,000. So I was not correct.

21 Q. And over the -- over the -- and a lot of
22 the CVAP estimates take place over five years, right?

1 A. That is correct.

2 Q. So it's roughly about 5 percent of the
3 population that is sampled to come up with the ACS
4 data, correct?

5 A. Right. That sounds like a small number,
6 but 5 percent of the Illinois population is something
7 on the order of 700,000. It's not a small sample.

8 Q. And can you --

9 A. If you look at -- let me finish. If you
10 look at -- you know, you look at polls everybody
11 relies on, they're sampling 1,500 people nationwide
12 and they have a plus or minus 3 percent error.

13 Q. Now, at least at one point when the census
14 report numbers from ACS, they would report it with
15 pluses or minuses, correct?

16 A. That's correct.

17 Q. Reflecting the fact that there is some
18 degree of imprecision and estimating with respect to
19 ACS numbers, correct?

20 A. Correct. But the point estimates are your
21 best estimates that you got by. If you can throw out
22 ACS -- ACS, I don't see how these 50.2, 50.4

1 districts proposed by plaintiffs possibly satisfy
2 their standard.

3 Q. So the decennial census, on the other
4 hand, is 100 percent full count, correct?

5 A. Well, no. No, there's undercounting in
6 the decennial census of various --

7 Q. Well, there is --

8 A. Let me finish. You don't know exactly
9 what it is. But of course there's undercounting and
10 overcounting.

11 Q. All right. Well, in terms of estimating
12 total population in the state, what do you think does
13 a -- and population in order to satisfy one person
14 and one vote -- what do you think does a better job,
15 the decennial census or a CVAP?

16 A. Oh, I would use the decennial --

17 Q. Strike that. Strike that. That is not
18 the question I meant to ask.

19 In terms of trying to figure out, for one
20 person/one vote purposes, the number of people that
21 need to be in each district, what does a better job?
22 What's going to be more accurate, the decennial

1 census or the ACS?

2 A. We rely on the decennial census. The only
3 reason the state used ACS is they didn't have the
4 decennial census, and that was through no fault of
5 their own.

6 Q. And that's because the decennial census is
7 more accurate than the ACS, correct?

8 A. For total population, that's correct. But
9 if you read the documentation, the ACS is routinely
10 used for more detailed analysis than is available in
11 the census, such as CVAP and estimates of --

12 Q. And how --

13 A. Let me finish. Let me finish.

14 Q. I didn't know --

15 A. Such as CVAP or estimates of income,
16 education, poverty, all of which your experts rely
17 on.

18 Q. Okay. So I told you we'd go through what
19 happened when the districts were -- when the
20 census -- decennial census came out and what it
21 showed with respect to some of the districts in Metro
22 east. So we're going to go through that now.

1 And this is a table from one of
2 plaintiffs' -- or actually, we'll start with what the
3 state had when they -- when they reconfigured the
4 districts. And we'll mark that as I believe Exhibit
5 6.

6 A. Okay.

7 (Lichtman Exhibit 6 was marked for
8 identification.)

9 BY MR. GREENBAUM:

10 Q. Let me just make -- let me just get the
11 right document here. So the first page is an email
12 to you from Justin Cox and then the next three
13 pages -- and I will flip these over -- show some
14 data.

15 A. Okay.

16 Q. Do you recall getting the data from
17 Mr. Cox regarding the demographics for the districts
18 of the first plan that Illinois passed this year?

19 A. I don't specifically. I've gotten so many
20 emails and documents. But I don't dispute this.

21 Q. Okay.

22 A. That this is what he said. I don't

1 remember, but I don't dispute it.

2 Q. Okay. I'm going to have to flip it around
3 a little bit. Oops, it's upside down now. Rotate
4 view. All right. Here we go.

5 A. I see it now.

6 Q. All right. I'm going to focus on 112, 113
7 and 114. And I'm just going to ask you to write down
8 some of these numbers so we can keep it in mind when
9 I show you another document. One of the difficulties
10 of not being in the same room is I can't -- we can't
11 look at two different documents at once.

12 And what I want to focus on are the
13 demographics and the total population in 112, 113 and
14 114, okay?

15 A. This is under which plan?

16 Q. This is -- so going back, this email was
17 sent to you in June, so it had to be the first plan.

18 A. That's probably why I didn't focus on it.

19 Q. Okay. So you'll see that in 112 -- and I
20 will -- we'll do this together. In 112, it shows the
21 total population as 108,283, correct?

22 A. That's what it says.

1 Q. And then 113, it shows it at 108,258,
2 correct?

3 A. That's what it shows.

4 Q. And 114, it shows it at 108,174, correct?

5 A. That's what it shows.

6 Q. And then the black demographics, it has
7 112 was at 14 percent; 113 is at 28.1 percent; and
8 114 is at 40.6 percent.

9 A. When you say black demographics, you need
10 to be clear because there are three demographic
11 measures.

12 Q. Oh, my apologies. Black total.

13 A. Then you read it correctly.

14 Q. All right. And we'll put in the CVAP. It
15 has it at 13.3 for 112, 27.0 in 113, and 39.4 in 114,
16 correct?

17 A. That's what it says, correct.

18 Q. Now, in each of these districts, is it
19 fair to say that the CVAP percentage under ACS is
20 lower for blacks than the total population
21 percentage?

22 A. Yes. That doesn't mean it's lower than

1 the VAP, but -- because you've got age differences.
2 Of course that -- between total and CVAP, but you
3 also have citizenship issues coming in as well.

4 Q. Sure. But in each case, CVAP is lower
5 than total. We haven't gotten to VAP because they
6 didn't have VAP for this plan, okay?

7 A. Yeah. Mathematically, you're correct.
8 Not much, but slightly.

9 Q. All right. So do you have all those
10 written -- if you haven't already, can you write all
11 those down because --

12 A. I have not written them down. Every
13 number you just gave me?

14 Q. Yeah. I just want to do that -- look, if
15 we were in the same room together, I could just show
16 you the two documents at the same time. It's
17 unfortunately -- and I will -- I can help you and if
18 I make a mistake, somebody can correct me. So --

19 A. I would much rather flip between the
20 documents than take all the time needed to write all
21 these down in longhand.

22 Q. Okay.

1 A. But if you want me to, I will.

2 THE VIDEOGRAPHER: Counsel, there's a
3 way -- this is Joe. There's a way in Zoom to show
4 two windows at once if that's helpful.

5 MR. GREENBAUM: Okay. All right. Let's
6 see if I can figure out how to do this.

7 THE VIDEOGRAPHER: Sure. If you'll just
8 stop screen sharing first, I can tell you. I can
9 walk you through it.

10 MR. GREENBAUM: Okay. All right. I've
11 got to figure out how to stop screen sharing because
12 I'm looking at a very small window right now.

13 THE VIDEOGRAPHER: Maybe we can go off the
14 record for this part just so the court reporter
15 doesn't have to write all this down.

16 MR. GREENBAUM: Sure.

17 THE WITNESS: If you go off the record,
18 I'll take a quick break.

19 MR. GREENBAUM: Yeah, why don't we all
20 take a quick break.

21 THE VIDEOGRAPHER: Okay. Going off the
22 record at 3:10 p.m.

1 (Recess.)

2 THE VIDEOGRAPHER: Back on the record at
3 3:23 p.m.

4 MR. GREENBAUM: I'm going to mark as
5 Exhibit 7 a document entitled Report of Brian
6 Weichelt.

7 (Lichtman Exhibit 7 was marked for
8 identification.)

9 BY MR. GREENBAUM:

10 Q. Dr. Lichtman, I want to go to -- do you
11 recall ever reading the expert report of
12 Dr. Weichelt? He's one of the NAACP's experts.

13 A. I think this just came in like today or
14 yesterday. So I did look at that table that you
15 directed me to and I looked at the percentages,
16 because this is a new plan I haven't seen before.

17 Q. No, no, no. This was something that
18 was -- in his initial report we amended the numbers a
19 little bit to make some corrections, but his initial
20 report was from back in November.

21 A. I'm confused, then. I thought --

22 Q. All right.

1 A. Let me finish. I thought we just got
2 something yesterday from Dr. Weichelt, which was an
3 amended report that had a new remedial plan. Am I
4 wrong?

5 Q. The new remedial plan would have been in
6 something that we sent Wednesday. But this table was
7 in his initial report from back in November. We did
8 make some changes to -- some corrections to some of
9 the numbers in this table this week.

10 A. So this is uncorrected or corrected?

11 Q. This is corrected. This is the corrected
12 version.

13 A. So this is this week's version which I
14 haven't seen. But that's fine. I'll answer your
15 questions to the best I can.

16 Q. Okay. All right. So he calculates some
17 numbers for -- using -- you know, using the census
18 data, he calculates numbers for the first plan that
19 the state passed, the June -- the HB 2777 plan. Is
20 that your understanding of the June plan is that
21 that's HB 2777?

22 A. If you say so. I don't recall the number.

1 Q. Fair enough. You'll accept my
2 representation on that?

3 A. I will.

4 Q. All right. So what we want to do is
5 compare some of the numbers in this third column
6 here, taking that first plan and using the 2020
7 census data, to what the state believed those numbers
8 were at the time when they were using the ACS data,
9 okay?

10 A. I think -- I'm sorry. I think in your
11 question, you confused apples and oranges. I don't
12 think that -- and neither you nor I can read the mind
13 of the state, but I'm not sure you correctly
14 characterized what they're thinking or know what
15 they're thinking.

16 Q. Okay. Regardless of what their thinking
17 was, what they reported as the data at the time --
18 before the decennial census data came out and when
19 they redistricted using the ACS data, okay?

20 A. Fine.

21 Q. Is this presentation basically a way of
22 comparing what the numbers look like when you use the

1 ACS data and comparing what the numbers looked like
2 for the same districts when you used the decennial
3 data, okay?

4 A. Let me make sure I understand. These are
5 not the same districts. One is HB 2777 districts.
6 The other is SB 927 districts. They're not the same
7 districts.

8 Q. No, what I'm showing you right now is --
9 the one on the right where it says 2021 reconfigured
10 districts, those are actually the districts under the
11 first plan. Because if you look back at the email --
12 I'll show you the first page of this email. It's
13 upside down, but it's dated June 3rd, 2021, okay?
14 And it says, "Please find attached the demographic
15 data you requested." All right?

16 So this is the May/June plan, the data for
17 the May/June plan, okay?

18 A. I take your representation. I'm not going
19 to dispute it.

20 Q. All right. So with respect to 112, it
21 showed, in terms of when you use the ACS data,
22 108,283 people?

1 A. You've read that correctly.

2 Q. Same district, but now under the ACS. Or
3 not -- strike that.

4 Same district, but now under the decennial
5 census shows as 113,336, correct?

6 A. That's what your expert reports. I'm not
7 in a position to dispute that.

8 Q. Okay. So assuming that number is correct,
9 when ACS was used to come up with the district, it
10 was about 5,000 people off. There were about 5,000
11 more people there according to the decennial census
12 than there was using ACS, correct?

13 A. Yeah, about a 4 percent deviation, that's
14 right.

15 Q. Okay. Four percentage points, right?

16 A. No, 4 percent. In other words, if we
17 divide -- I could do it exactly if you want.

18 Q. You're right. You're right. Because it's
19 about 100,000. You're right.

20 A. Yeah.

21 Q. So according -- so using ACS, 112 had a
22 population of about 14,000 -- strike that.

1 According to ACS, 112 had a black total
2 population of about 14 percent, correct?

3 A. You know, I'm looking at these numbers.
4 Give me a minute. I've got to kind of toggle between
5 the two.

6 So which district are we looking at?

7 Q. We're looking at -- it's the same -- we're
8 looking at 112. I don't know -- I'm trying to
9 highlight it, but I'm not doing a very good job here,
10 or my cursor is. See how it says 14 percent for 112?

11 A. Yes.

12 Q. Black total population?

13 And then now I'm going to move over here
14 and you see how for 112, it's about the same. It's
15 14.09 percent. That's black total pop. Shoot.
16 Black or black VAP. Black total pop is 14.63
17 percent, correct?

18 A. You read it correctly. I can't verify
19 these numbers, but you read it correctly.

20 Q. I know you can't. But assuming these
21 numbers are correct, the black pop in -- is a little
22 bit higher when you use percentage -- a little bit

1 higher when you use decennial census compared to ACS.

2 A. A shade, yeah. Less than a point, right.

3 Q. All right. 113 -- all right. According
4 to ACS, 113 had -- or actually, let's go back over
5 here. The population numbers in 113 are about the
6 same for total pop, 108,258 and 108,460.

7 Do you see that?

8 A. Yes, I do. You've read the numbers
9 correctly.

10 Q. The black total pop is -- there's about a
11 5 percentage point difference; 28 percent under the
12 ACS, 33 percent using the decennial census, correct?

13 A. That's what the numbers say.

14 Q. That's what the numbers say.

15 So decennial census has a higher
16 percentage of black total pop in 113. And let's go
17 to 114. 114, ACS has 108,174 as total pop, but
18 decennial census has a 99,346. So ACS has about
19 9,000 more people in 114 than what the decennial
20 census showed, correct?

21 A. That's what the numbers show, yes.

22 Q. Okay.

1 A. I don't dispute that.

2 Q. And then similarly, when we're looking at
3 black pop, ACS has 114 at 40.6 percent and decennial
4 census has black pop at 36.01 percent, correct?

5 A. That's what the numbers say.

6 Q. And assuming these numbers are correct,
7 would it be fair to say that ACS overestimated the
8 black population in 114 according to SB 2777?

9 A. ACS had an underpopulated and a slightly
10 different -- a 4.6 percent difference, which could be
11 accounted for -- pardon me?

12 Q. Oh, you're talking about total pop.

13 A. Isn't that what you just showed me?

14 Q. Isn't the difference 9,000 in terms of
15 total pop between 108,000 and 99,000?

16 A. That's not what I was talking about.

17 Q. It's about a 9 percent -- 9 percent
18 overestimation with ACS?

19 A. It's not 9 percent, I don't think. Let
20 me -- I can tell you exactly.

21 Q. All right. Tell me exactly.

22 A. 8.2 percent, so a little under as I said.

1 Usually I'm pretty good at doing numbers in my head,
2 but not always.

3 Q. All right. So in terms of percentage of
4 black population, ACS -- total population -- ACS
5 overestimated the percentage of black total
6 population in 114 by 4.59 percentage points, correct?

7 A. Yes, which could be the result of
8 underpopulation or overpopulation, excuse me. Or --
9 yeah.

10 Q. So at least with respect to 114, using the
11 ACS data creates some overestimation of black
12 population?

13 A. It's an apples-to-oranges comparison
14 because there's still 9,000 more people that need to
15 be put in there and we don't know how that might
16 affect the black versus other population.

17 Q. At least in terms of the 99,000, there was
18 an overestimation of black population in ACS, right?

19 A. Right, which may not hold when you fully
20 populate the district.

21 Q. Okay. So actually, let's say that every
22 single person that was added between -- let's say

1 that all 9,000 people that were added between SB 2777
2 were black. Wouldn't the number still be -- I'm
3 trying to think. No. Strike the question.

4 All right. Now, with -- let's go back to
5 Dr. -- strike that. Let's go back to what I was
6 asking you before about the population change with
7 respect to the current version, SB 927 version, of
8 District 114.

9 Between 2010 and 2020, at least according
10 to the numbers from the census that plaintiffs'
11 expert used, the black population percentage dropped
12 by, what, 4.5 percentage points, correct? That's
13 what we discussed.

14 A. That's incorrect.

15 Q. What was it?

16 A. It's the black voting age population, not
17 the black population.

18 Q. Okay. Black voting population decreased
19 by about 4.5 percentage points, correct?

20 A. No, it's the black voting age population,
21 not the black voting population. The black voting
22 population is CVAP.

1 Q. But we've seen that when it comes to 114,
2 CVAP overestimated the black population and -- or
3 strike that.

4 But we've seen with respect to 114, at
5 least in terms of the 99,000 people that were in
6 there after the first redistricting plan, that black
7 population was overestimated, correct?

8 A. Black population, you said, not CVAP. So
9 it's not voting --

10 Q. Well --

11 A. Let me finish. It's not eligible voters.

12 Q. So in your view that -- in your view, was
13 114, that total that was -- using the ACS, that it
14 was 39.4 percent CVAP, you think that total was
15 accurate for the first version of 114?

16 A. I have never studied that. I can't answer
17 that question.

18 Q. So you don't know whether the 39.4 percent
19 was accurate or not?

20 A. I just told you I haven't studied, so I
21 can't answer your question -- let me finish. I can't
22 answer your question one way or the other.

1 Q. Okay. And similarly, with respect to SB
2 927 version of 114, you can't tell me whether that
3 overestimates the actual citizen voting age
4 population in the SB 927 of 114 either, can you?

5 A. It's the best estimate we have because the
6 census does not do CVAP. And none of this matters
7 because all that matters is whether the district is
8 giving an equal opportunity for African-Americans to
9 elect candidates of their choice.

10 Q. And in the last two elections, using the
11 reconstituted precincts in the SB 927 version of 114,
12 in 2016, Dr. Collingwood found that the black
13 candidate got 51 percent, correct?

14 A. I have no idea. I'd have to look at --
15 you'd have to show me the chart. I mean, that sounds
16 about right. All I remember is I did -- three of
17 them actually, not two -- and I did an average of the
18 three and it came out to 51.8. I don't remember
19 which is which.

20 Q. So the average came out to 51.8, will you
21 accept my representation that -- we could look at
22 each of them if you want, but would you accept my

1 representation that the last two were in an election
2 in 2016 where the black candidate got 51 percent and
3 in 2020 where the black candidate got less than 51
4 percent?

5 A. I would accept that. That sounds about
6 right to me. I remember the first two were around
7 51. The third one was somewhere around 54. But
8 these were the ones he chose. I didn't choose these.

9 Q. Right, right. So one of the three is over
10 what you call your 51 percent standard. One of the
11 three is right at your 51 percent standard. And one
12 of the three is under your 51 percent standard,
13 correct?

14 A. I'm not sure I caught that, but let me
15 summarize how I see it. Two of the --

16 Q. Let me -- let me reask the question, then,
17 since you didn't -- you didn't catch my question.

18 A. I didn't understand your question.

19 MR. KASPER: He was in the middle of --
20 objection. He was finishing his sentence. Answer
21 the question, Doctor.

22 MR. GREENBAUM: He claimed that he didn't

1 understand my question or he didn't hear my question.

2 THE WITNESS: I'll answer it as best I
3 can.

4 MR. GREENBAUM: So I'm going to reask the
5 question because I want him to answer the question
6 that I am asking and not to just give an answer
7 that's doesn't -- that's not an answer to the
8 question that I've asked, okay?

9 MR. KASPER: Jon --

10 BY MR. GREENBAUM:

11 Q. If you don't understand my question or you
12 didn't -- something wasn't clear, let me reask the
13 question before you answer, okay?

14 MR. KASPER: Okay. And in the future, if
15 you ask a question, let him finish his answer before
16 you interject another question, please.

17 MR. GREENBAUM: He didn't -- he said that
18 he did not hear my -- he did not understand my
19 question clearly.

20 THE WITNESS: I was king --

21 MR. GREENBAUM: If he says he understood
22 my question clearly, I will not interrupt him. But

1 if he says he doesn't understand my question, I want
2 him to answer -- in the deposition, I'm entitled to
3 get answers to the questions that I ask. It's not
4 just the witness saying whatever he wants to say.
5 He's supposed to answer the question that's asked.
6 So give me a chance -- so let me ask --

7 MR. KASPER: And he, on the other hand --
8 and he, on the other hand, is entitled to answer the
9 question completely. So please just afford him the
10 opportunity and the courtesy to do that.

11 MR. GREENBAUM: He -- sorry. Sorry I
12 interjected. But he said he did not understand my
13 question, okay? So let me ask the question again.

14 BY MR. GREENBAUM:

15 Q. So you said that you averaged the three
16 elections that Dr. Collingwood looked at and you came
17 up with an aggregate 51.7 percent for the black
18 candidate, correct?

19 A. Incorrect.

20 Q. What was the average of the three?

21 A. My recollection is 51.8 percent.

22 Q. Okay. 51.8 percent for the three. Now --

1 A. Correct.

2 Q. Let's say -- let's say that number was
3 instead 50.8 percent instead of 51.8 percent. Would
4 that be below your 51 -- you said earlier 51 percent
5 threshold. Would that be below your 51 percent
6 threshold?

7 A. Not rounded. Remember, all I said was I'd
8 be happy with 51 percent, but I also said "more
9 likely than not" means 50 plus .1.

10 Q. But in your deposition in 2002, you said
11 51, correct?

12 A. I didn't say that as an absolute standard.
13 I said I'd be happy with 51. And I think it's
14 cutting it pretty finely to say I would be happy with
15 50.8. I don't think two-tenths of a percent makes a
16 difference.

17 And as I also explained to you, that was
18 generic. And when we look at the specifics of this
19 district, combining the reconstituted elections with
20 the seven probative elections that Dr. Collingwood
21 looked at, you've got to put it all together to
22 determine whether it's an equal opportunity district

1 just as I did with District 78 that we talked about
2 20 years ago that almost had an identical CVAP -- it
3 might have been VAP, but somewhere around 38 percent.

4 Q. And when you did the reconstituted
5 districts for District 78, do you recall whether the
6 number you came up with was above or below 51
7 percent?

8 A. I have no recollection. My only
9 recollection is we had a big dispute about District
10 78. I said it would perform and it did.

11 Q. So would you consider a district that
12 performs at 50.1 percent somewhere in between a
13 tossup and a safe seat?

14 A. It's neither a tossup nor a safe seat,
15 that's right. Slightly above a tossup, but certainly
16 well below a safe seat.

17 Q. Much closer to a tossup than a safe seat,
18 correct?

19 A. Correct. But again, I stress those are
20 generic considerations. Every district must be
21 looked at specifically, which is why I thought a 38.9
22 percent district would perform 20 years ago, since

1 you've asked me a lot about that, and it did.

2 Q. I am not asking you about that particular
3 district. I'm asking you about the analysis you did
4 20 years ago. But let's move to -- I want to -- let
5 me stop this screen share.

6 A. Okay.

7 Q. If I can figure out how to get out. It's
8 not being accommodating in terms of me being able to
9 look at when I'm like -- when I'm sharing screens, me
10 being able to stop that. There we go. Thank you.

11 I want to mark Exhibit 8 a document that
12 is at the top entitled La Raza Law Journal is the
13 source. The document is called "A General Theory of
14 Vote Dilution," and the authors are Allan J. Lichtman
15 and J. Gerald Herbert.

16 (Lichtman Exhibit 8 was marked for
17 identification.)

18 BY MR. GREENBAUM:

19 Q. Do you recognize that document?

20 A. I don't see anything on the screen. I'm
21 sorry.

22 Q. Oh, I haven't screen shared yet.

1 A. Oh, okay, yes. Of course, I recognize the
2 document, such -- until you put it up. But I know I
3 wrote that article with Gerry Herbert.

4 Q. Now I'm seeing where my screen share is.
5 It's now on my other screen. That's -- I'll be able
6 to find it.

7 A. Okay. And it says 1993, right? So that's
8 the 1993 article. I've written others with Gerry.
9 This is the 1993 La Raza article, right?

10 Q. Yes. Correct.

11 So Dr. Lichtman, I want to go to page 17.
12 Before we do that, let me ask you a question. Do you
13 know whether it was the case that the state could
14 have drawn 114 with a black VAP higher than
15 33.41 percent?

16 A. I did not investigate that question. I'm
17 not the right person to ask. You should ask the
18 mapmaker.

19 Q. All right. So you don't know one way or
20 the other?

21 A. I didn't study it, so I can't answer your
22 question.

1 Q. All right. So --

2 A. Let me -- I need to further elaborate,
3 though, because I'm not just doing this because I'm
4 ignorant. Many considerations go into any given
5 district. We're dealing with a legislature, right,
6 where there are political considerations, tradeoffs,
7 compromises, deals.

8 And so while plaintiff can draw a plan any
9 way they want, you've got to understand the
10 legislative process is very different.

11 Q. Sure. Now, Representative Greenwood, do
12 you know that she received about 57 percent in your
13 last election?

14 A. That sounds right. I don't know that for
15 sure, but I won't dispute you.

16 Q. In terms of her or any other black
17 democratic candidate in 114 under the SB 927 plan,
18 would you predict that she would do better, the same
19 or worse than 57 percent under that plan?

20 A. I make no such predictions. I haven't
21 developed a prediction model for that particular
22 district for the next election. So I can't answer

1 your question.

2 Q. All right. So you don't -- you're --
3 strike that.

4 All right. I want to go to page 17 of
5 your article. And you say that competitive districts
6 would be a less preferable remedy than safer minority
7 districts, correct?

8 A. You read that correct.

9 Q. And that competitive districts would
10 generally be acceptable remedies only if it were not
11 possible to draw more effective minority districts,
12 correct?

13 A. As a remedial district, that's correct.
14 That does not refer to state-drawn districts.

15 Q. That does not refer to what?

16 A. State-drawn districts. We're talking
17 about remedial districts. I just want to make clear
18 the distinction.

19 Q. And what's the distinction in your mind?

20 A. Remedial districts, as I said, can be
21 drawn without any other considerations. When you're
22 dealing with state-drawn districts, you've got to

1 deal with all the parameters that I mentioned to you.
2 So we're talk -- just to be clear, we're talking
3 about remedial districts. And my personal -- our
4 personal opinion. We're not making a legal standard
5 here.

6 Q. So let's say from the standpoint of
7 minority voting rights, when you're talking about a
8 state legislative plan, and you've said that there
9 are multiple considerations in a state legislative
10 plan, but I'm talking strictly from a minority voting
11 rights standard or point of view, is it true that it
12 would be less preferable to have a -- if there's a
13 choice between a competitive district and a safer
14 district, that it would be better to have a safer
15 district?

16 A. As a generic matter, yes, but you can't
17 separate out the considerations. For example, my --
18 I just saw this. My understanding is one of the
19 considerations in minority voting rights is not just
20 the district, but the minority incumbent. And I
21 understand, you know, your initial plans paired
22 Ms. Greenwood, who we've been talking about, with a

1 long-term white incumbent, Hoffman, and then we just
2 got a new plan that unpairs it but knocks the
3 district down below the 50 percent mark to -- I
4 forget what exactly it is -- but it's below 50
5 percent. So even in drawing your plan, you
6 understand there are tradeoffs.

7 Q. And to that point, would you agree that in
8 terms of a remedial plan for a section 2 claim, you
9 can have a plan that's a sufficient remedy where
10 the -- where the black voting age population is under
11 50 percent?

12 A. Absolutely. There are lots of blacks
13 elected in the state of Illinois, as I testified, to
14 the legislative in under 50 percent. In fact, if you
15 look at what MALDEF calls an influence district
16 between 25 and 30 percent, there are four of them,
17 the black CVAP in that range -- and five of them --
18 four of them elect a black. Lilly, L-i-l-l-y, in
19 '78, Mayfield, M-a-y-f-i-e-l-d, in '60 -- these are
20 House districts -- West in '67, Gordon-Booth,
21 G-o-r-d-o-n-Booth in '92. And the only white is
22 Hoffman, H-o-f-f-m-a-n in 113.

1 Q. So let's assume for a second that
2 plaintiffs prevailed on their section 2 claim with
3 respect to District 114 and you were -- and you were
4 giving advice either to the defendants or the Court
5 as to what should be the black voting age population
6 percentage in the remedial district, would you advise
7 that BVAP to remedy the vote dilution 114 -- that the
8 BVAP in 114 in remedial district should be under 50
9 percent?

10 A. It could well be under 50 percent,
11 absolutely. That's why plaintiffs' 50 percent-plus
12 standard is meaningless. It has no relation to
13 reality.

14 Q. And you would agree that at least in the
15 case of the NAACP plaintiffs, we have not insisted on
16 a remedial district that's over 50 percent black
17 voting age population?

18 A. Oh, boy. I've got to go back to your
19 original complaint. You've got to show that to me.
20 I thought all three plaintiffs were talking about 50
21 percent-plus districts. But if you want to show me
22 your complaint and rectify that, you know, we're

1 dealing with a lot of plaintiffs here, I would look
2 at it.

3 Q. I'm not talking about our complaint. I'm
4 talking about the remedial plans that our expert put
5 forward.

6 A. But that's my point. Your remedial plan
7 and what you're asking for clash. And there are lots
8 of districts at 45.8 percent that are being -- or
9 around there that are being challenged.

10 Q. No, my point is -- I'm talking about with
11 respect to the NAACP plaintiffs, you understand we're
12 only challenging one district, correct?

13 A. Yes, but this is all of a piece. You
14 know, I don't care -- let me finish -- I don't care
15 who the plaintiff is. Doesn't matter to me if
16 that -- you know, you just clarified that for me. I
17 care about the substance of the analysis.

18 Q. And the substance of the analysis with
19 respect to the NAACP plaintiffs is that our expert
20 has put forward remedial plans that are under 50
21 percent black voting age population, correct?

22 A. As a factual matter, that is correct.

1 Q. Okay. Thank you. Would you call HD 113
2 and 112 -- strike that.

3 Are you aware of, with respect to the
4 Illinois statehouse, any districts other than HD 114
5 that have elected a black member in the time that
6 you've been studying redistricting in Illinois?

7 A. There are dozens of districts that have
8 elected black members. I think at this point, it's
9 north of 20 black members in the Illinois state
10 legislature, many of them elected from districts
11 below the CVAP or VAP of HD 114.

12 Q. I'm cringing because that was not the
13 question I intended to ask. Here's the question I
14 intend to ask. With respect to --

15 A. I can only answer the question you ask me.

16 Q. Fair enough. With respect to the Metro
17 east part of Illinois, are you aware of, in your
18 three decades you've worked on redistricting in
19 Illinois, any district or statehouse other than 114
20 that has elected a black member?

21 A. No, but I think there is potential for it
22 under SB 927 in the next round.

1 Q. So would you call -- strike that.

2 And you think that -- where do you think
3 that potential lies?

4 A. I'll be very precise. Under SB 927, 113
5 has a black VAP of 29.6 percent. Under your remedial
6 plan, the black VAP is cut by more than a half, down
7 to 12.5 percent. The 29.6 percent is well within
8 what MALDEF calls influence districts, documented in
9 my report, 25 to 30 percent.

10 I just mentioned to you, except for
11 Hoffman, which is lower than 29.6 percent in the
12 current plan, districts in that range have been
13 electing black representatives. You've destroyed the
14 chance of a black representative getting elected in
15 that district by slashing it by 17 percentage points.

16 Hoffman may win that district, but you
17 don't draw districts just for one person. Hoffman is
18 not going to be there forever. And I think what
19 we've done in SB 927 is to create options for
20 African-Americans to win, too, whereas you've
21 destroyed the option in 113.

22 Q. So you just said you don't draw districts

1 for one person and you referred to Representative
2 Hoffman. So is it fair to say you don't draw
3 districts for the incumbent?

4 A. Yes and no. Hoffman is a bit of a special
5 case because he's been around so long. But we have a
6 very unique situation in Illinois. In Illinois --
7 these are all Democrats that we're talking about.

8 The democratic caucus, when an incumbent
9 steps down, appoints a new incumbent. Your experts
10 talk about, you know, the extent to which that
11 happens. And what the democratic caucus has done
12 every time, when a minority steps down, put another
13 minority in place. They've even put minorities in
14 place when whites stepped down.

15 So because of the special situation in
16 Illinois, it might not be the same person, but you
17 can put in an appointed incumbent of the same race,
18 whereas Republicans never appoint any minorities to
19 their vacant positions where they have an
20 opportunity. So districts with minority incumbents
21 are not a special circumstance in Illinois. They are
22 the norm in Illinois because Illinois is so unique in

1 this regard.

2 Q. Have you done any analysis to determine
3 the likelihood that a black candidate could win in
4 District 113?

5 A. Yes. I haven't done a detailed analysis,
6 but I've shown there are five such districts now,
7 including 113, which is about four points lower than
8 it will be under the new plan, and African-Americans
9 have been elected in four of five of those districts.
10 That certainly shows that there is quite a potential
11 for an African-American to be elected in a 29.6
12 percent VAP district.

13 Since also -- you talk about incumbents.
14 Given the track record of the democratic caucus in
15 appointing minorities, I think it's extremely likely
16 that if Hoffman were to step down -- and he's been
17 around forever -- that they would appoint an
18 African-American in that district.

19 Q. Do you have any specific knowledge of
20 that?

21 A. Yes. Not obviously of what they're going
22 to do next in that district so that it doesn't

1 happen. But every single time -- let me finish --
2 every single time a minority has stepped down,
3 they've appointed a minority. And just within the
4 last year, when you had two retirements in the
5 Senate, both of white senators, the democratic caucus
6 appointed minorities, Mike Simmons and Doris Turner.

7 So based on the track record, I think it's
8 overwhelmingly likely that they would put a minority
9 in that district if and when Hoffman retires.

10 Q. And do you have -- do you have -- do you
11 know of any instances in which the Metro east area --
12 in the Metro east area where there has been a white
13 incumbent that has stepped down and has been replaced
14 by somebody who is black?

15 A. Hoffman has been there forever. So that's
16 an opportunity to do that.

17 Q. I'm saying are you aware of any time in
18 which it's happened in the past?

19 A. You'd have to go back a long way and I
20 haven't gone back that long.

21 Q. So you're --

22 A. So I don't even know if there was a

1 retirement or what happened in that district 20 years
2 ago.

3 Q. So --

4 A. During a break, if you want, I can see how
5 long Hoffman's been in office. It's a long time.

6 Q. Well, the question I'm asking you is, are
7 you aware of any instance, and I didn't hear you say
8 that you were, is that correct?

9 A. Yeah. But I had to give you an
10 explanation that as far as I know, you know, over a
11 long stretch, there was that opportunity to do that.
12 But we have a track record and we have a track record
13 updated even now with the democratic caucus replacing
14 retiring white members with African-Americans in
15 districts much lower than 29.6 percent to
16 African-American VAP.

17 Q. But in no place -- can you identify a
18 place geographically close to Metro east where that's
19 happened?

20 A. There hasn't been an opportunity for that
21 to happen, so it's a meaningless question.

22 Q. Well, isn't it true that with respect to

1 assessing electoral opportunities and racially
2 polarized voting, that you can have -- it's going to
3 be dependent on where you -- or it can be dependent
4 on where you are in a state, that just because
5 something is true in Cook County doesn't necessarily
6 mean it's going to be true Metro east, correct?

7 A. If it was limited to Cook County, you're
8 probably right. But the democratic caucus has
9 appointed African-Americans far beyond Cook County.
10 The two most recent appointees, Doris Turner and Mike
11 Simmons, are nowhere near Cook County. So they've
12 done it --

13 Q. I didn't ask --

14 A. Let me finish. So they've done it across
15 the state.

16 Q. All right. My question wasn't about
17 appointments. My question was about when you are
18 assessing the likelihood that the district is an
19 opportunity district, that there can be differences
20 in a particular state based on things like there
21 might be differences in the degree of racially
22 polarized voting, correct?

1 A. Which district are you asking me about?

2 I'm now confused.

3 Q. I'm asking as a general matter, you're
4 talking about what's happened where blacks have been
5 able to get elected in certain populations in other
6 areas of the state, okay.

7 A. Incorrect. That's incorrect.

8 Q. Well --

9 A. I was very specific about District 114. I
10 referred to the seven elections that Dr. Collingwood
11 thought was probative in District 114 or surrounding
12 areas, the win rate of 6 out of 7, and most of those
13 districts were below the CVAP or VAP in HD 114. Add
14 that to the three wins in the reconstituted elections
15 and in the elections that Dr. Collingwood thought was
16 probative and the methodology he used specific to
17 District 114, it's a 90 percent win rate.

18 Q. But isn't it true that -- strike that.

19 In terms of black elected officials for
20 statehouse getting elected to districts 33.4 percent
21 BVAP or below, that to date, that has happened in
22 areas of the state other than Metro east only?

1 A. Yes, because there hasn't been much of an
2 opportunity beyond 114 up to this point, but now the
3 opportunity has opened up.

4 Q. So isn't it the case that when you're
5 looking at a particular state, you can't just simply
6 assume that the opportunity to elect is going to be
7 uniform based on black voting age population
8 throughout the state?

9 A. That's certainly correct. But we have far
10 more than just black voting age population to go on
11 in the St. Clair County. We have all those St. Clair
12 County elections, which would pertain not just to
13 114, but to 113 as well with only a -- something like
14 a 29 percent black VAP and most of the time the black
15 candidate of choice is winning. So in fact, we've
16 got a lot of information specific to the area you're
17 talking about.

18 Q. Although that makes the assumption that
19 white voters within St. Clair County behave the same,
20 correct?

21 A. I did not make that assumption.
22 Dr. Collingwood did. These were the elections

1 Dr. Collingwood chose as probative for understanding
2 what's happening in HD 114. These are not elections
3 that I chose.

4 Q. All right. I understand you didn't choose
5 the election, but you are making the assumption that
6 there might not be portions of St. Clair County where
7 white voters are less likely to vote for black
8 candidates than other portions?

9 A. That's possible, but we have lots of other
10 evidence as well, such as St. Clair County, we have
11 114. We have the Senate District as well. And to
12 the extent, you know, if you want to speculate about
13 this -- this is pure speculation -- that there might
14 be some pockets of white voters who are less likely
15 to vote for blacks, they're more likely to be in the
16 more rural, less minority concentrated areas. That's
17 certainly my experience in Illinois.

18 Q. So your experience would be that in more
19 suburban areas, white voters are going to be more
20 likely to vote for black candidates than in areas
21 that are more rural?

22 A. Not exactly. And that's a very general --

1 my point was when you -- in the more concentrated
2 areas where you're drawing these districts, I don't
3 think it's likely that the white voters there are
4 going to be less inclined to support a black than
5 what you see in St. Clair County overall.

6 And that's buttressed by the fact that we
7 have the Senate District and District 114 where black
8 candidates are winning and that covers a much broader
9 swath than just District 114 because the Senate
10 District is twice as large.

11 Q. All right. I'm going to move on to a
12 different set of questions now.

13 A. Sure.

14 Q. All right.

15 MR. GREENBAUM: The next exhibit, I think,
16 is 9.

17 (Lichtman Exhibit 9 was marked for
18 identification.)

19 BY MR. GREENBAUM:

20 Q. Dr. Lichtman, if I scroll through this
21 document, your signature is on the last page. I'll
22 go back to the first page. I'll ask you if you

1 recognize it.

2 A. Yeah, I think it's the contract I signed
3 to do work in Illinois. It's the same thing I signed
4 the past two times, too.

5 Q. And you signed it on February 5th?

6 A. That's what it says. I don't remember,
7 but I don't dispute that obviously.

8 Q. How long after you signed the contract did
9 you get to work?

10 A. Oh, boy. I don't recall.

11 Q. All right.

12 A. I think the first thing I did -- and it
13 might have been -- you know, I don't recall exactly,
14 but I think the first issue that arose that I was
15 dealing with had to do with this whole one person/one
16 vote and what do you do without census data. And I
17 think I might have testified about that in May.

18 (Lichtman Exhibit 10 was marked for
19 identification.)

20 BY MR. GREENBAUM:

21 Q. All right. I'm going to mark as Exhibit
22 10 another document. It's an email with an

1 attachment. And there is an email -- the first email
2 talks about "For our call Monday" and then the next
3 email reflects a conversation that you had with
4 Mr. Kasper, is that correct?

5 A. I don't recall, but I don't dispute you.

6 Q. Okay. Now, the fourth paragraph of your
7 portion of the email I've tried to highlight it. I
8 don't know if you can see it on your screen. These
9 were materials you requested.

10 Do you recall requesting materials from
11 Illinois?

12 A. Yes.

13 Q. Do you recall requesting returns for
14 statewide, countywide, citywide, and legislative and
15 congressional district elections in which minority
16 candidates are running against white candidates?

17 A. I do recall that.

18 Q. And why in particular are you interested
19 in elections in which minority candidates are running
20 against white candidates?

21 A. I knew we were going to get sued. Happens
22 every cycle.

1 Q. In order to do an analysis under the
2 Voting Rights Act in terms of compliance?

3 A. I wanted to be ready with the data to
4 respond to whatever lawsuits cropped up. And of
5 course, as I knew they would, they did.

6 Q. So did you feel like you needed to be
7 ready for the data, with the data, as part of the
8 preparation of the redistricting plan or only for the
9 litigation that would follow?

10 A. I was not involved in the preparation of
11 the redistricting plan other than generic testimony,
12 I believe, in May.

13 (Lichtman Exhibit 11 was marked for
14 identification.)

15 BY MR. GREENBAUM:

16 Q. Okay. The next document is an email. I
17 think it's 11. We'll mark it as Exhibit 11. It's an
18 email dated March 16th. And let me rename this.

19 A. So Jon, these emails with the attorney,
20 they're not privileged?

21 Q. Your counsel produced them.

22 A. Oh, okay. I'm just asking. I'm not a

1 lawyer, but I --

2 Q. Okay.

3 A. -- haven't seen before emails just with
4 the attorney produced.

5 Q. And this was an email that you sent on
6 March 16th, 2021?

7 A. Yes.

8 Q. And again, you're interested in the racial
9 identification of all candidates in precinct-level
10 demography, correct?

11 A. That's what you need to defend against a
12 voting rights suit.

13 Q. Okay. I'm going to mark as Exhibit 12 --
14 it starts with an email that's dated Tuesday, March
15 16th at 11:11 a.m. The first page is DemDefs 1566.

16 (Lichtman Exhibit 12 was marked for
17 identification.)

18 BY MR. GREENBAUM:

19 Q. Dr. Lichtman, I'll scroll through this.
20 Mr. Randazzi -- or Randazzo sent you name, party and
21 racial identification for the candidates and said he
22 would get the precinct-level demographic data to you.

1 And then there's a long list of elections.

2 Do you recall getting this information
3 from Mr. Randazzo?

4 A. Eventually. It took a long time.

5 Q. Yeah.

6 A. I think we turned this all over to you, as
7 far as I know.

8 Q. Those little numbers at the bottom, at
9 least in terms of this document, you did -- the
10 numbers on the bottom reflect that. And you notice
11 that included in there were elections involving St.
12 Clair County, including the countywide elections
13 between black and white candidates that
14 Mr. Collingwood analyzed, correct?

15 A. If you say so. I don't recall, you know,
16 which area. But, yes, it's labeled St. Clair County,
17 so that's right.

18 Q. By the way, leaving aside the fact that
19 you reached different conclusions, do you have any
20 issues with the methodology that Dr. Collingwood
21 employed?

22 A. Yes.

1 Q. With respect --

2 A. Do you want me to explain?

3 Q. Yes.

4 A. With respect -- let me finish -- with
5 respect to population projections, because he didn't
6 do any methodology for population projections. He
7 just speculated.

8 Q. Okay.

9 A. Other than that, I don't have an objection
10 with his selection of elections. I did find an error
11 in his results, which he accepted. And the one other
12 minor -- maybe not minor. I don't want to
13 characterize it -- difference I might have is I don't
14 think he did enough to combine the two sets of
15 evidence which bear on the same issue and that is the
16 seven elections and the projections.

17 MR. GREENBAUM: Next will be another
18 email, Exhibit 13, DemDefs 1633 to 35.

19 (Lichtman Exhibit 13 was marked for
20 identification.)

21 BY MR. GREENBAUM:

22 Q. Dr. Lichtman, I'm going to sort of start

1 in the middle here. And there's an email dated May
2 12th that says, "Allan, could we have a call on
3 Thursday or Friday to discuss what you are seeing?"
4 Dated May 12th. And it's from Mr. Randazzo to
5 yourself, Mr. Kasper and Mr. Cox.

6 And then if you want, I can show you
7 some -- another email that actually sets the Zoom.
8 Do you recall having a Zoom call with Mr. Kasper,
9 Mr. Randazzo and Mr. Cox around May 13th, May 14th of
10 this year?

11 A. I don't, but I don't dispute. We've had a
12 lot of calls.

13 Q. Now, there's the particular question about
14 "to discuss what you are seeing." Do you recall back
15 in the May time frame having a call to discuss what
16 it was you were seeing?

17 A. I don't, but I don't dispute it. We've
18 had a lot of calls.

19 Q. Had you in the mid-May period actually
20 done an election analysis at that point?

21 A. To some extent. And I think I shared that
22 in my May testimony before the redistricting

1 committee. I believe I presented some findings. By
2 no means have I done a complete election analysis of
3 any kind, but I had some results which I presented
4 and basically said the same thing I had said 10 years
5 ago.

6 Q. So was there -- other than what -- and
7 we'll get to what you testified about on May 25th.
8 Was there anything else that you had done prior to
9 May 25th other than what you testified about at that
10 hearing?

11 A. There might have been. I might have
12 started looking at elections, sure, in anticipation
13 of a possible lawsuit, but I hadn't, you know,
14 prepared any reports or, you know, reached any final
15 determinations about any elections. It's an ongoing
16 process.

17 Q. Up until today, have you done an
18 ecological regression analysis or -- related to HD
19 114 or Metro east at all in 2021?

20 A. I don't believe so. But I had no dispute
21 with Dr. Collingwood, you know. I don't recall doing
22 it. I've done a lot of analyses, but I don't recall

1 doing that and I just accepted what Dr. Collingwood
2 had done. I had no reason not to.

3 Q. So nothing that the legislature would have
4 done in May with respect to 114 would have been
5 performed -- would have been based on any ecological
6 regression analysis that you had done with respect to
7 114, correct?

8 A. That's correct. I don't think I presented
9 any district-specific analyses at all -- not that I
10 can recall -- to the state legislature. Just generic
11 results which are not irrelevant to 114. But, no,
12 nothing specific that I can recall presenting to the
13 legislature on 114.

14 Q. And is that true both with respect to the
15 May plan and SB 927, prior to those plans being
16 enacted?

17 A. You broke up for the last part of your
18 question. Can you repeat it, please?

19 Q. Yes. What I wanted to know is whether you
20 had either done ecological regression or a
21 reconstituted precinct analysis with respect to HD
22 114 or Metro east, whether you had provided any

1 analysis to the legislature in advance of the
2 enactment of the May plan and in advance of the
3 enactment of the September plan?

4 MS. YANDELL: This is Libby Yandell. I
5 just want to object and caution Dr. Lichtman not to
6 divulge anything that would be privileged or that
7 was -- the content or substance of anything that was
8 created in anticipation of legislation.

9 THE WITNESS: Believe me, I won't. All I
10 was going to say is the entirety of what I presented
11 to the legislature was in that one hearing, as I
12 recall, and I did not have any involvement in the
13 drawing of either the first or the second state
14 legislative plans. And I do not recall -- and if I'm
15 wrong, you can show it to me -- talking about
16 individual districts in my testimony. I may have
17 been asked about them, but I don't recall presenting
18 information on HD 114.

19 BY MR. GREENBAUM:

20 Q. All right. I'm going to show you another
21 email. I think this will be 14.

22 (Lichtman Exhibit 14 was marked for

1 identification.)

2 BY MR. GREENBAUM:

3 Q. Dr. Lichtman, this is a series of emails
4 that reference a call that you had. And we can
5 flow -- we can go through them. This is right before
6 you testified. It referenced having a call with at
7 least Mr. Cox, Mr. Randazzo, Mr. Kasper with respect
8 to your testimony.

9 A. The three attorneys? That's right. I
10 don't recall the substance of the conversation, but
11 I'm sure I talked to the attorneys.

12 Q. Okay. Do you recall anything with respect
13 to -- strike that.

14 Did you provide any analysis with respect
15 to compliance with the Voting Rights Act or
16 compliance with the Constitution regarding --
17 regarding redistricting at that time?

18 MR. KASPER: Objection.

19 THE WITNESS: The lawyers --

20 MR. KASPER: Jon, are you referring to
21 during a call with me?

22 BY MR. GREENBAUM:

1 Q. Well, was there anybody other than a
2 lawyer that was on that call?

3 A. You're asking me or Mike?

4 Q. I'm asking you, because you're --

5 A. Not that I can recall.

6 Q. Okay. Fair enough. All right. And
7 then --

8 A. Jon, I'm going to need a quick break.

9 Q. Sure.

10 A. Thanks.

11 MR. GREENBAUM: Why don't we take 10
12 minutes. I'm not that far away from being done.

13 THE WITNESS: Hey, if you're close to
14 being done, I can --

15 MR. GREENBAUM: Well, you know what? Why
16 don't you go to the bathroom. Let's make sure we're
17 off the record.

18 THE VIDEOGRAPHER: Going off the record at
19 4:29 p.m.

20 (Recess.)

21 THE VIDEOGRAPHER: Back on the record at
22 4:46 p.m.

1 BY MR. GREENBAUM:

2 Q. Dr. Lichtman, when did you first
3 anticipate litigation in connection with your work in
4 Illinois in 2021?

5 A. Probably the day after we finished
6 litigation in 2011.

7 Q. Okay.

8 A. There's always litigation.

9 Q. Did you have conversations with anybody
10 who wasn't a lawyer working for the state prior to
11 the passage of the May 2021 map?

12 A. Let me think. I don't know who we showed
13 who is a lawyer but I don't think so.

14 Q. Did you ever look at a draft of the May
15 2021 map or a final version of the May 2021 map
16 before it was enacted?

17 A. No, not that -- I may have, but not that I
18 could recall. I worked on the enacted map.

19 Q. How about --

20 A. Let me finish. Someone may have sent me a
21 draft, but I don't remember. And if it was a draft,
22 I didn't pay it any heed because I had no involvement

1 in the drawing of the plan.

2 Q. With respect to the 927 plan, did you see
3 that plan or a draft of that plan prior to it being
4 enacted?

5 A. Not that I can recall. And again, I had
6 no role in enacting that plan.

7 Q. Were you asked to do an analysis with
8 respect to any particular districts or area of the
9 state prior to the enactment of the May 2021 plan?

10 A. Not that I can recall. It would have been
11 a lawyer discussion anyway.

12 Q. How about with respect to the 927 plan.
13 Did you provide any analysis in terms of looking at
14 issues regarding racially polarized voting or
15 opportunity districts in any part of the state prior
16 to the enactment of that plan?

17 A. Not that I can recall. And if I did
18 anything, it would have been in formal conversations
19 with the lawyers. I did not present any additional
20 testimony to the state legislature after that.

21 Q. Did you provide any sort of written
22 analysis prior --

1 A. Not that -- yeah, I did. I did. And
2 that's what I presented to the state legislature.

3 Q. There was written analysis that you
4 presented to the state legislature?

5 A. Well, I don't know if -- I don't know if
6 they turned it over, but I talked about it to the
7 state legislature. I don't know what the lawyers
8 actually did with it. It was mostly, as I recall,
9 exit poll data, because we were dealing generically
10 with the whole state, not with individual districts.

11 Q. Okay. So I want to differentiate the --
12 strike that.

13 I want to get an understanding of what
14 analysis you provided, in what form, when, in May.
15 Did you provide any written analysis to anybody in
16 connection with your May testimony?

17 A. I believe I did, to the lawyers only. And
18 I believe -- I don't know if they turned it over, but
19 I talked about it in the testimony.

20 Q. Was there -- so let's get to your
21 testimony.

22 A. Okay.

1 MR. GREENBAUM: We'll mark that as Exhibit
2 15.

3 (Lichtman Exhibit 15 was marked for
4 identification.)

5 BY MR. GREENBAUM:

6 Q. I'm going to see if I can get this. All
7 right. I think I figured it out, how to get an
8 exhibit in the chat.

9 A. Awesome.

10 Q. All right. Just looking at this, is this
11 the transcript of when you spoke in front of the
12 legislative committee on May 25th?

13 A. I haven't looked at it recently, but it
14 looks like it.

15 Q. And in that testimony which starts on page
16 21, you go through your background and then you talk
17 about polling data.

18 A. Yep. I think the 2008 data is what I
19 started with. I'm not sure. I don't recall exactly,
20 but it was a -- there was a good bit of polling data.

21 Q. There are different types of polling data
22 that you mention from pages 20 to 28. Other than

1 that polling data, did you provide any -- strike
2 that.

3 Did you provide any sort of ecological
4 regression or any type of district-based analysis in
5 that testimony?

6 A. Not that I can recall, but if you show me
7 something, I'd be happy to respond, but I don't
8 recall that.

9 Q. Did you -- outside of maybe the Chicago
10 area, did you do any sort of regional analysis?

11 A. I don't believe so. It was pretty generic
12 testimony.

13 Q. I'm not going to ask you at this point for
14 the specifics to what it is, but in what you
15 provide -- strike that.

16 Did you provide a written document in the
17 May period to the lawyers discussing your analysis?

18 A. I'm sure I discussed my analysis with the
19 lawyers.

20 Q. I'm talking about in written form. I'm
21 not talking about over the phone --

22 A. I think I did give them these polls.

1 Q. Did you give them anything other than the
2 polls?

3 A. It's possible. I might have given them
4 some preliminary other analysis, but I don't
5 remember. Not that I can recall, but I can't rule it
6 out.

7 Q. Give me a second here. Let me go back to
8 your report.

9 A. What page?

10 Q. Seven.

11 A. Okay. I don't think I need to go to my
12 report. I think I can work with what you're showing.
13 Maybe I better just to get the full context. You
14 know, we can show a limited amount at a time. Okay.

15 Q. You say at the bottom of page 7, "All but
16 one of their" -- you're referring to plaintiffs here.

17 A. Yes.

18 Q. -- "challenged districts is
19 majority-minority, not majority white, in its citizen
20 voting age population."

21 A. Correct.

22 Q. Is the one exception District 114?

1 A. House District 114, correct.

2 MR. GREENBAUM: I'm going to mark as the
3 next exhibit, which I think is 16, an email followed
4 by an analysis that starts at DemDefs 1122.

5 (Lichtman Exhibit 16 was marked for
6 identification.)

7 THE WITNESS: Are we still on my report or
8 are we going to something else?

9 BY MR. GREENBAUM:

10 Q. We're going to something else.

11 A. Okay. Gotcha. No problem.

12 Q. Sorry. I just have to find this exhibit
13 on -- here it is.

14 MR. GREENBAUM: Is this 16?

15 THE REPORTER: Yes, sir.

16 MR. GREENBAUM: Thank you. What I'm
17 putting in the chat now is 16. I can't actually
18 change the name of the document because I have it
19 open.

20 BY MR. GREENBAUM:

21 Q. The first page is an email from you to
22 Mr. Kasper, Mr. Randazzo and Mr. Cox saying, "Please

1 arrange a call to discuss." And then do you
2 recognize what follows?

3 A. Yes.

4 Q. And what is this document?

5 A. It was a preliminary, very early analysis
6 of minority representation in the Illinois state
7 legislature.

8 Q. And was this something that was requested
9 of you to do?

10 A. I don't recall. I mean, there were so
11 many back and forths between myself and the lawyers.
12 What's the date of this?

13 Q. It's June 21st, 2021.

14 A. I think, if I'm not mistaken, at that time
15 we may have already commenced litigation.

16 Q. Okay. I'm going to -- we're on page 3 of
17 the document and at the top it notes that there are
18 40 percent-plus black districts under the 2011
19 plan and then 17 40 percent-plus black districts
20 under the 2021 plan with -- it says plus 1, 39.4
21 percent. Is that meant to indicate that there was an
22 18th district at 39.4 percent black?

1 A. Yeah, that it was, you know, statistically
2 insignificantly different or substantively, I should
3 say substantively. It's not a sample here.
4 Substantively not different.

5 Q. Was that District 114?

6 A. I don't recall. But if you want to show
7 it to me, that's very possible.

8 Q. So I don't think we necessarily need to go
9 back, but if --

10 A. I don't dispute it. That looks like the
11 right number for 114.

12 Q. Okay.

13 A. And that's why I have 18 wins or 17 wins,
14 whatever it is, because a black won that district.

15 Q. Do you recall testifying in 2011 in
16 Illinois?

17 A. I definitely testified in 2011. I don't
18 recall the details, but if you want to show me
19 something, I'd be happy to look at it.

20 MR. GREENBAUM: Mark that as Exhibit 17.

21 (Lichtman Exhibit 17 was marked for
22 identification.)

1 BY MR. GREENBAUM:

2 Q. Do you recall getting that transcript from
3 2011 sent to you earlier this year?

4 A. Probably so. I don't think I read it,
5 though. I had too much to do.

6 Q. Do you recall why there was a need to send
7 you the transcript from 2011?

8 A. I don't. There might have been an issue
9 raised, but I don't recall. But if you want to show
10 me something from that transcript, I'm happy to look
11 at it. You know, I have somewhat of a recollection
12 of my testimony.

13 Q. All right. I want to ask you about
14 something specific that's on page --

15 A. Sure.

16 Q. -- 22. And if you want me to go further
17 back to see that this is in fact you talking, I'm
18 happy to do that.

19 A. I believe it's me talking, but it looks
20 like you're beginning with -- in the middle of a
21 sentence. So I'll see if I need you to go back or
22 not.

1 Q. And this is the sentence I'm sort of
2 interested in. "I advised the attorneys and staffers
3 that the key elections in these districts are the
4 Democratic primary elections."

5 And then if you want to go back, you can
6 look at what you're talking about, which includes 114
7 at the time.

8 A. Okay, I'm good. You can ask your
9 questions.

10 Q. Why did you consider the key elections in
11 2011 with respect to District 114 in the primary
12 elections?

13 A. Because it's a heavily democratic
14 district.

15 Q. Would you consider the democratic
16 elections in 114 to be the -- strike that.

17 Would you consider in 2021 the democratic
18 primaries in 114 to be the key election?

19 A. I haven't looked at that. Dr. Collingwood
20 would be in a much better position. He's the one who
21 did the analysis.

22 Q. So in 2011, did you do the analysis at the

1 time that you testified?

2 A. I don't recall, but most likely. But I
3 certainly wouldn't have looked at the performances of
4 the district, but I don't recall exactly what I did.

5 Q. Do you recall advising anybody that with
6 respect to this redistricting cycle, that the key
7 elections regarding District 114 were the primary
8 elections?

9 A. I don't recall advising anyone
10 specifically about any districts. My testimony was
11 generic. Now, what I might have talked about with
12 the lawyers, that might be something else.

13 Q. All right. I'm going to show you -- I
14 don't know if it makes sense to mark this as an
15 exhibit because it's an Excel spreadsheet that we got
16 from the state. If somebody feels the need for me to
17 mark it, I will, but, you know, because it's a
18 spreadsheet, it's a little bit different. I need to
19 find where I have an Excel document here. Let me
20 stop screen sharing for a second. Let me see if I
21 can -- here we go. It actually shows up now as a
22 PDF. I'll just describe it to you and I'm happy to

1 try to unearth the document on Excel if I can.

2 A. I can see what it is actually. It's
3 pretty self-evident.

4 Q. Yeah, you know, you -- here it is.

5 MS. HULETT: Jon, it's after 4 o'clock.
6 Can you tell me how much longer you have?

7 MR. GREENBAUM: We're very close.

8 BY MR. GREENBAUM:

9 Q. All right. Let me share screen. Okay,
10 this was produced to us as part of your data set.

11 A. Okay.

12 Q. I don't know. You can tell me otherwise.
13 It appears to be a bunch of primary elections for
14 democratic elections for U.S. Senate and maybe some
15 other offices.

16 A. That's what it appears to be.

17 Q. And it has a whole bunch of districts at
18 the bottom that include 114. Did you ever analyze
19 these primary elections in 114?

20 A. I don't think so because there are so many
21 candidates involved that I didn't feel I could rely
22 on them.

1 Q. For 114 or more generally?

2 A. More generally. I don't think I used any
3 of these elections anywhere.

4 Q. Okay.

5 A. You know, there do seem to be fewer in the
6 U.S. Senate. It looks like there's only three.

7 There's many, many -- yeah. It seemed to be
8 mislabeled, too. I don't think that other primary
9 was U.S. Senate.

10 Q. But in any event, you didn't analyze these
11 primary elections to your recollection?

12 A. I didn't rely on any of this, that's
13 right. I don't think I even mention it in my report.

14 MR. GREENBAUM: Okay. No further
15 questions at this time. I'm going to turn it over to
16 Ms. Hulett.

17 EXAMINATION BY COUNSEL FOR CONTRERAS PLAINTIFFS
18 BY MS. HULETT:

19 Q. Hello, Dr. Lichtman. My name is Denise
20 Hulett and I work for MALDEF, who is the law firm
21 representing the Contreras plaintiffs in this
22 litigation.

1 Do you need a break or are you okay to
2 proceed for a bit?

3 A. Let's proceed. I may need a break soon,
4 but for the moment, I'm just fine. And of course I'm
5 well familiar with MALDEF.

6 Q. I want to ask you a few questions.

7 A. Can we take that off the screen? It's
8 kind of distracting.

9 Q. That's a great idea. There you are.

10 A. Much better, yeah.

11 Q. Yes. You would agree with me that the
12 Latino citizen voting age population in Illinois is a
13 little over 11 percent?

14 A. I believe it's 11.2 percent.

15 Q. All right. And do you know how many
16 Latino majority citizen voting age population
17 districts there are in the assembly?

18 A. I don't.

19 Q. Would you --

20 A. Not off the top of my head. There are a
21 few.

22 Q. Do you have any basis to disagree with me

1 if I told you that there were four of 118 House seats
2 that are majority Latino CVAP and two Senate seats
3 that are majority Latino CVAP?

4 A. I don't have a reason to agree or disagree
5 with you, to be honest with you.

6 Q. All right. And if that's so, it means
7 that if you're counting Latino majority CVAP
8 districts, they constitute a little over 3 percent --
9 3.3 percent of the assembly?

10 A. Are you just asking me for the math?

11 Q. Sure.

12 A. Let me see. How many did you say there
13 were?

14 Q. Four of 118 House seats.

15 A. That sounds about right, yeah.

16 Q. All right. So you would agree --

17 A. I'm sorry, which plan are we talking about
18 now?

19 Q. Oh, I'm sorry. You're correct. I'm glad
20 you asked me that. We're talking about SB 927.

21 A. All right. During the break, I can
22 probably double-check those numbers.

1 Q. Okay.

2 A. But I'm not going to argue with you at the
3 moment.

4 Q. So if that's so, that Latino CVAP majority
5 seats are about 3.3 percent of the assembly, you
6 would concede then that the Latino majority CVAP
7 seats in the assembly is not proportional to the 11.2
8 Latino CVAP population in Illinois?

9 A. As a pure mathematical comparison, of
10 course there's a difference.

11 Q. You're going to like my next question
12 better. So in your opinion, how many Latino
13 ability-to-elect districts are there in SB 927?

14 A. It's something on the order of 14.

15 Q. And how do you determine whether a
16 district is a Latino ability-to-elect district?

17 A. Look at the history of the districts. You
18 see if in fact there is a record of white bloc voting
19 defeating minority candidates of choice in prior
20 districts and then, when available -- and I had it
21 available for five 927 districts, I think none of
22 them were over 50 percent -- you do the kind of

1 reconstituted election analysis that we had been
2 discussing at great length during the NAACP
3 examination.

4 I was able to do that in a two-person
5 election for five districts, Hispanic opportunity
6 districts under SB 927, using the runoff between Rahm
7 Emanuel and Jesus "Chuy" Garcia. Garcia lost by
8 about 12 points. And I found that in every one of
9 those districts, it wasn't just 50 plus 1. It was
10 somewhere around 57 percent to 60 percent wins for
11 Garcia, swings of, you know, somewhere on the order
12 of 25 percentage points or more.

13 So we had double powerful confirmation of
14 the challenged districts being minority opportunity
15 districts. You cannot go, as we had a lengthy
16 discussion about that previously, by an arbitrary
17 demographic number.

18 Q. I saw the reconstituted election that you
19 did for the 2015 Rahm Emanuel/Chuy Garcia. Is there
20 a reason that you chose that over the 2019, I think
21 it was, mayoral election that Susan Mendoza was in?

22 A. Yeah, because the same reason I didn't use

1 those other elections that we looked at. One of the
2 criticisms I had of Dr. Chen's work is he had a
3 three-person election. So you never know what might
4 have happened in the election if that person wasn't
5 involved.

6 In the case of Garcia versus Emanuel, we
7 had a much cleaner situation. We had a two-person
8 election and we had a very clear win for Emanuel, so
9 it was a very stern test. I wasn't taking an
10 election, you know, where the Latino candidate had
11 done so well.

12 Q. I saw in that document where you
13 reconstituted, that you did have results for the 2019
14 election, but you didn't have totals for anything. I
15 assume you have that on a different document.

16 Did you run the totals for the 2019
17 mayoral election even though it was three candidates
18 and you had the data?

19 A. It was not three candidates in the 2019
20 mayoral election.

21 Q. Or it was more than two candidates?

22 A. It was way more than two candidates.

1 Q. Did you nonetheless run that or did you --
2 you had the data. Did you do anything with the data
3 and run the data or did you just ignore it?

4 A. I don't recall if I ran the data. I don't
5 recall even looking at it. And I certainly would
6 never have relied on it because of the scattering of
7 the vote.

8 Q. Okay.

9 A. I did, however -- I think I might have
10 even presented this to the legislature. I don't
11 recall exactly. Look at the poll. And the poll
12 showed the Latino vote scattered all over the place.
13 There wasn't even a majority for the Latino
14 candidates.

15 Q. Did you produce that poll?

16 A. I don't -- it's a public poll. Anyone can
17 get it if -- you know, I don't recall. I gave it to
18 the attorneys. I don't produce anything. I give
19 things to the attorneys. They produce them.

20 Q. Did you give the poll to your attorneys?

21 A. I'm pretty sure I did. And I presented
22 it. Talked about it anyway. Yeah, I'm pretty sure I

1 gave it. It's a public poll. Anyone can look at it.

2 It's not something I worked up.

3 Q. And you said that SB 927 has -- I think
4 you said 14 Latino opportunity --

5 A. I think that's -- I'm doing it by
6 recollection. I think that's correct.

7 Q. And I just want to make sure for the
8 record, you mean Latino opportunity to -- I'm sorry.
9 Latino opportunity to elect districts, not minority
10 opportunity to elect districts?

11 A. That's correct.

12 Q. And did you identify those, which 14 they
13 are in your report?

14 A. I don't recall. I may have.

15 Q. All right. Let's move on. On page 8 of
16 your report -- by the way, do you have your report
17 and Dr. Lichtman's reports in front of you?

18 A. I am Dr. Lichtman.

19 Q. I mean Dr. Grumbach's reports in front of
20 you. I'm sorry.

21 A. I do.

22 Q. Okay. I do that with my kids all the

1 time.

2 A. I do, too. Not a problem.

3 Q. Now, on page -- let me get my cursor over
4 here. I'd like you to look at page 8 of your report.
5 And when I cite the page numbers, I'm talking about
6 the page numbers at the bottom of the page.

7 A. All right. Are we putting something up on
8 the screen?

9 MR. KASPER: We all have to look at the
10 report?

11 MS. HULETT: I'm sorry, you were both
12 talking at the same time, so I don't know what
13 either --

14 MR. KASPER: I'm sorry, Denise, this is
15 Mike. Are you going to screen share the pages you
16 want us to look at or --

17 MS. HULETT: No, because I assume
18 everybody has his report in front of them, including
19 Dr. Lichtman, right?

20 MR. KASPER: I'm just asking.

21 MS. HULETT: Okay.

22 BY MS. HULETT:

1 Q. So the last sentence in the second
2 paragraph, the last sentence begins with, "Yet" and
3 it says, "Yet the 24 minority victories in these
4 districts comprise 46.2 percent of all 52 minority
5 candidate victories in the latest 2020 cycle."

6 Do you see where it says that?

7 A. I do. I'm not sure what you're referring
8 to it. I would have to look at the whole page. But
9 I see that.

10 Q. So if 46.2 percent of all the minority
11 candidate victories in the 2020 cycle were in
12 districts that are below 50 percent --

13 A. Yes, all the way down to, I think, 10
14 percent.

15 Q. Yes. And they were below 52. So it's
16 your opinion then that conversely, the majority of
17 the 52 minority candidate victories in the latest
18 cycle happened in majority-minority districts?

19 A. Yes. But this goes all the way down, as I
20 said, to 10 percent. I'm not looking at 40 to 50
21 like where the districts fall.

22 Q. Do you have a list of those --

1 A. So -- let me finish -- it's not an
2 appropriate comparison.

3 Q. What's not an appropriate comparison?

4 A. What you just said about, you know,
5 comparing the 46.2 to the 53.8.

6 Q. Why not?

7 A. Because I'm going all the way down to 10
8 percent, way below what you would expect in a -- to
9 be a crafted minority opportunity district. That's
10 all.

11 My only point was to respond to the notion
12 that you needed 50 percent-plus single race CVAP to
13 elect a minority candidate of choice. Plus, this is
14 only minorities. This is not referring to minority
15 candidates of choice and there are many minority
16 candidates of choice elected in below 50 percent
17 districts, such as Willis and Mah and Madigan.

18 Q. I understand your clarification of your
19 point. My point was that over half of the victories
20 took place in majority-minority districts, and I just
21 want to know if you agree with that or not.

22 A. I don't because I don't know what you mean

1 by majority-minority districts.

2 Q. Same thing you mean.

3 A. They're all majority-minority districts --
4 or many majority-minority districts below 50 percent
5 Latino CVAP.

6 Q. Well, we're not talking about Latino CVAP
7 here. We're talking about majority-minority
8 districts --

9 A. No, we're not.

10 Q. -- that you divided into below 50 and
11 above 50.

12 A. No. You're incorrect.

13 Q. And you said that below 50 percent
14 majority, there were 24 minority victories in those
15 districts.

16 MR. KASPER: Objection. Objection.

17 THE WITNESS: That's not what --

18 MR. KASPER: Wait. Objection.

19 Ms. Hulett, if you would like to ask Dr. Lichtman a
20 question, please ask him a question. Don't argue.

21 THE WITNESS: I'm fine to answer. The
22 fallacy that you exhibited in your question was

1 majority-minority. These are 50 percent single race
2 CVAP minority districts. Many districts below 50
3 percent single race minority could be
4 majority-minority.

5 BY MS. HULETT:

6 Q. All right. Let's move on.

7 Would Latino voters who were moved from a
8 district in which they constitute 37 percent of the
9 citizen voting age population to a district where
10 they constitute the majority of the citizen voting
11 age population, would they have more or less
12 opportunity to elect?

13 A. You'd have to do a district-specific
14 analysis. That's too generic. Because what happens
15 in Illinois -- and I haven't really seen this
16 anywhere else -- is you get coalitions that is quite
17 frequently a majority or plurality of Latinos and a
18 plurality or majority of nonLatinos vote for the same
19 candidate or you get more than enough crossover to
20 elect a Latino candidate of choice.

21 Q. Would your answer be the same if I asked
22 you whether Latino voters in a district that is 58

1 percent Latino CVAP, if they were moved to a district
2 where they constitute 48 percent of the Latino CVAP
3 have more or less opportunity to elect?

4 A. Again, I'd have to do a district-specific
5 analysis. Even the numbers you just gave me, they
6 would have far more than an equal opportunity to
7 elect candidates of their choice in both of those
8 districts. And you would also have to look at the
9 effects of packing Latinos into 58 percent districts
10 on the whole districting plan and on overall Latino
11 representation. You can't look at this in isolation.

12 Q. So because it's an isolated question or a
13 generic question, you can't say whether they'd have
14 more opportunity to elect, less opportunity or the
15 same, correct?

16 A. I don't think that's a meaningful
17 question. I think they would have a very substantial
18 opportunity in both of those districts and --

19 Q. I suspect you might --

20 A. Let me finish.

21 Q. All right.

22 A. Beyond that, I'd have to do a

1 district-specific analysis.

2 Q. I suspect there's going to be questions
3 that all of us ask you that you might not think are
4 meaningful and nonetheless, I'd like you to try to
5 answer them. And the question --

6 A. I'm answering the best I can.

7 Q. Oh, I --

8 A. You're giving me hypotheticals.

9 Q. I appreciate that. So I'm going to ask
10 that one again.

11 Because my question is generic and it only
12 has CVAP percentage in it, you cannot tell me whether
13 Latinos in a district in which they constitute 58
14 percent of the Latino CVAP, if they are moved to a
15 district where they constitute 48 percent, you can't
16 tell me if that would give them more opportunity to
17 elect, less opportunity to elect or the same
18 opportunity to elect?

19 MR. KASPER: Objection. By your own
20 admission, you've already asked this question.

21 MS. HULETT: Are you instructing him not
22 to answer?

1 MR. KASPER: You can answer the question.

2 THE WITNESS: As I said, leaving aside the
3 district-specific analysis, from everything I've done
4 in analyzing Latino districts and looking at the
5 reports of your experts, moving from 48 to 58 percent
6 would be packing. It wouldn't necessarily in any
7 substantial way improve Latino opportunities to elect
8 candidates of their choice, nor would moving down
9 from 58 to 48 materially affect Latino opportunities
10 to elect candidates of their choice. But that's very
11 generic.

12 BY MS. HULETT:

13 Q. When you are -- so if I understand it, you
14 looked at -- you do look at the CVAP, though, right,
15 when you're trying to determine whether it's an
16 opportunity to elect district, among other factors?

17 A. That is one factor, yes.

18 Q. Okay.

19 A. But just one factor.

20 Q. And you look at reconstituted elections?

21 A. That's another factor.

22 Q. And you look at the history of who has won

1 in the district?

2 A. Yes.

3 Q. Do you look at circumstances surrounding
4 those wins?

5 A. Of course.

6 Q. What circumstances do you look at?

7 A. For example -- well, this is a loss. A
8 couple of losses really are the specific
9 circumstances.

10 Q. I'm sorry. I was asking about wins.

11 A. Oh, okay. Just wins.

12 Q. Wins, yes.

13 A. Yeah. One thing I look at that's very
14 important is not just a win. And this is reflected
15 in my report because I do both. Whether or not there
16 are coalitions, whether or not Latino candidates have
17 been able to form coalitions of Latino voters and
18 nonLatino voters. That's very important. And I've
19 discussed this kind of thing for 20 years and more
20 now because that's the way you expand opportunities
21 of minorities. You expand it through coalitions.
22 You can't expand it by packing minorities into

1 districts. That restricts it, not expands it.

2 Oh, by the way, I would also look at
3 margins. You know, that matters, too.

4 Q. Margins of victories?

5 A. Yeah.

6 Q. And when you say it restricts it, you mean
7 restricts opportunity to elect?

8 A. Absolutely. And we've seen this in New
9 Jersey, we've seen this in North Carolina, we've seen
10 this in Virginia, we've seen this in Alabama, we've
11 seen this in Florida. Absolutely.

12 I've been involved in all of those
13 litigations and I've heard the same arguments, you
14 know, that we need to pack minorities so heavily into
15 these districts, and that's not only restrictive, but
16 as I point out in my report, it also sustains the
17 stereotype that minorities can only elect candidates
18 of their choice with their own votes. You know,
19 they're these insular groups.

20 And in fact that's utterly contradictory
21 to the recent history in Illinois where I've seen
22 more coalitions, you know, 70 percent in -- you know,

1 analyzing the districts that I've ever seen in any
2 other state.

3 Q. How many Latinos currently serve in the
4 assembly?

5 A. I'm sorry, I can't -- I didn't hear that.

6 Q. How many Latino members are there in the
7 assembly currently?

8 A. Ten. That sound about right?

9 Q. Do you know how many of the
10 currently-serving Latinos were candidates of choice
11 of the Latino voters in their district?

12 A. I did not see evidence that any of the
13 current-serving Latino members of the statehouse were
14 not candidates of choice. I'm not sure if every one
15 of them has been subject to analysis because some of
16 them may have been uncontested during this cycle.
17 But I've not seen any evidence that these 10 were not
18 candidates of choice of Hispanic voters.

19 Q. All right. I'd like you to look at page
20 10 of your report, table 1.

21 A. Yes.

22 Q. Those are members of the state legislature

1 elected from below 50 percent-plus single race CVAP
2 districts, correct?

3 A. Yes.

4 Q. And if you scroll down a little bit, in
5 the middle of the chart are the Hispanic state
6 legislators that fall into that category?

7 A. There are eight, which I believe is half
8 of the 16 serving Hispanic legislators in the
9 Illinois state legislature. Half of them are being
10 elected in districts where plaintiffs say they
11 shouldn't be elected.

12 Q. Which plaintiffs say they shouldn't be
13 elected?

14 A. Look, as far as I have read all the
15 reports, what the Contreras plaintiffs are saying is
16 we need 50 percent-plus CVAP Hispanic districts.
17 Correct me if I'm wrong.

18 Q. I just wondered where you read that.

19 A. Correct me if I'm wrong. Show me a
20 document where you say that's not what you're asking
21 for. In fact, not only did I read that, I saw it in
22 your plan matrix. You're pushing up -- even if it

1 just takes a couple of points. Even if it's just
2 50.2 or 50.4, you're pushing it up over 50 percent
3 CVAP when you can.

4 Q. Thank you.

5 A. So is McConchie.

6 Q. Let's talk about this chart. Omar Aquino
7 in Senate District 2, he was appointed in 2016, is
8 that correct?

9 A. I don't know, but I wouldn't dispute that.

10 Q. Okay.

11 A. I talked -- let me finish. I talked quite
12 a bit about appointments in the last segment.

13 Q. And Cristina Pacione-Zayas, she was
14 appointed in 2020, correct?

15 A. Quite likely. I won't argue with any of
16 your representations. But I don't recall --

17 Q. And she --

18 A. Let me finish. But I don't recall
19 specifically --

20 Q. She isn't --

21 A. -- when she was appointed.

22 Q. If I'm correct that she was appointed in

1 2020, she hasn't run for election at all, right?

2 A. I don't know. She may have run in 2020.

3 It depends when she was appointed, because after all,
4 the election's in November. We can check that during
5 the break if you like.

6 Q. If she hasn't run, her position wouldn't
7 contribute to your conclusion regarding electoral
8 opportunity in districts less than 50 percent single
9 race CVAP districts?

10 A. That's false. That's false. Because we'd
11 have to look and see who was in that district before
12 her and whether it was also a Latino, which probably
13 was.

14 Q. No, I meant her presence.

15 A. I'm sorry, what?

16 Q. I meant her presence in the assembly.

17 A. It's a distinction without a difference.

18 Q. There's no difference in being appointed
19 or elected?

20 A. That's not what I said.

21 Q. Oh.

22 A. What I said was -- you said because she

1 may or may not have run. Having a Latino in that
2 district doesn't count as a district that's elected a
3 Latino, and I said that's false because it's quite
4 likely whoever was elected in that district before
5 her, presuming she didn't run in 2020 -- and we don't
6 know that -- was likely a Latino as well, so that
7 district will count. It doesn't depend upon her in
8 particular. It depends on having a Latino in the
9 seat.

10 Q. And Barbara Hernandez, she was appointed
11 in 2019. You don't have any basis of questioning
12 that, do you?

13 A. I'm not going to question any of your
14 representations, although, you know, obviously I
15 don't recall when folks are appointed and I don't
16 think it matters anyway.

17 Q. All right. I'm going to go through the
18 rest of them very quickly anyway. Jaime Andrade
19 Andre da was appointed first in 2013 and, like the
20 others, has only run as an incumbent. You don't
21 question that, I assume?

22 A. An appointed incumbent. There's a big

1 difference. You can't lump incumbents and appointed
2 incumbents together because there is a very sharp
3 distinction between them. And I'm quoting here from
4 an article by -- I don't know if he's your expert or
5 the McConchie experts -- and that is Anthony Fowler,
6 a bayesian explanation for the effective incumbency
7 electoral studies, 2018.

8 And what he said was one particular
9 informative signal about candidate quality is
10 incumbency. If one of the candidates is an
11 incumbent, then the voter knows that she won a
12 previous election, which could be an informative
13 signal about quality in the same way that academy
14 awards and Michelin stars are informative signals
15 about movies and restaurants. Each signal, while
16 surely imperfect and error prone, informs the voter
17 or the consumer that many other people at some point
18 in the recent past thought this candidate, movie or
19 restaurant was better than a set of alternative
20 options."

21 Q. Okay.

22 A. "And suggests that if two candidates are

1 of comparable quality, then the voter will naturally
2 favor the incumbent because the previous election
3 provides an additional positive signal."

4 He says past studies of incumbency lack
5 compelling explanation, and this is the explanation.
6 So she sharply distinguishes between appointed
7 incumbents and elected incumbents. You can't lump
8 them together.

9 Q. Okay. So Jaime Andrade Andre da, he
10 wasn't recently elected -- I mean, appointed. He was
11 appointed in 2013 and he's run as an incumbent ever
12 since, correct?

13 A. Right. But as his first election, he ran
14 as an appointed incumbent and run. Obviously, you
15 run later as an incumbent, but you've still got to
16 win that first election when you don't have
17 incumbency advantage.

18 Q. Do you know how long Fred Crespo has been
19 representing HB 44?

20 A. I think Crespo has been around for a
21 while, but I couldn't tell you exactly when he
22 started.

1 Q. So you wouldn't have any reason to doubt
2 that he's run as an incumbent since 2006?

3 A. Yes. But again, I'm not sure what the
4 importance of that is.

5 Q. And Dagmara Avelar in HD 85, she's much
6 more recent, she was first elected in a democratic
7 primary in 2020 when she was unopposed, is that
8 correct?

9 A. I don't remember, but I wouldn't dispute
10 you. A lot of these democratic primaries are
11 unopposed because other candidates make the decision
12 that these Latino candidates are strong enough, that
13 the calculus that candidates make indicates that
14 there was no point in opposing them. And I don't
15 recall whether she had opposition in the general
16 election. We can check that, but she may have well
17 have. You've got to win two elections.

18 Q. And Karina Villa, that's in SD26, she
19 first ran uncontested in the primary in 2018 as well
20 and the 2020 primary, is that correct?

21 A. Right. It's quite extraordinary and a
22 testament to how voters and candidates regard these

1 Latino candidates that even in these districts that
2 barely register, Latino CVAP, these candidates are
3 running unopposed. They're not running unopposed
4 because they're in a 60 percent Latino CVAP.

5 But again, this illustrates my bigger
6 point, that you have coalitions, you have whites and
7 Latinos coming together behind the same candidate,
8 whether it -- you know, the 70 percent of the time
9 when they run, they vote the same or, you know, white
10 candidates even in the low Latino CVAP districts, I
11 believe you can see the election to Latinos. That's
12 extraordinary.

13 Q. All of the people we've been talking about
14 were elected in districts that are majority democrat,
15 correct?

16 A. Oh, yeah. These are generally majority
17 democrat.

18 Q. And once you make it past the primary, the
19 democratic majority will usually prevail in those
20 elections, correct?

21 A. Well, that's another really important
22 point, because it shows that voters are not voting

1 against minority candidates in general elections
2 because they are minority. You know, we've seen
3 Gingles. The landmark Gingles case, which I'm very
4 familiar with and just wrote an article about it.
5 The Court talks about this and talks about
6 incumbents. I'll quote exactly what he says.
7 Justice --

8 Q. Dr. Lichtman, I've read Gingles, thank
9 you, and I can look that up later.

10 A. No, no, no. This is directly in response
11 to your question.

12 Q. I didn't ask you about Gingles.

13 A. I mean, you can stop me and, you know,
14 Mike can ask me about me later it.

15 Q. But if a candidate is unopposed in the
16 democratic party and therefore -- I mean, democratic
17 primary and therefore goes on to the general, it's
18 more likely than not that they will prevail in that
19 general election, true?

20 A. Yes, with a big caveat, elsewhere. Even
21 in democratically inclined elections, whites bloc
22 vote were democratic against the minority -- what

1 Gingles pointed out, as I said, even in
2 democratic-leaning districts where it's historically
3 tantamount to election, 55 percent of whites declined
4 to vote for the democratic black candidate in each
5 general election. You don't see that in Illinois
6 when minority candidates run even in
7 democratic-leaning districts like that one.

8 Q. And there are other current Latino
9 representatives who are not in this table because
10 they were elected in majority Latino CVAP districts,
11 right? So they --

12 A. I think I told you this is half of the
13 minorities -- not minorities -- Latinos serving in
14 the state legislature who were elected in below 50
15 percent Hispanic CVAP districts.

16 Q. I'd like you to look at page 13 of your
17 report. I think it's 13.

18 A. Let me straighten out my report before I
19 do that, if I may. It gets messed up every time I do
20 this.

21 All right. What page are we looking at?

22 Q. Page 13, table 3.

1 A. I'm there.

2 Q. What point are you making in this table?

3 A. Yeah. That there's an inconsistency in
4 plaintiffs' approach. On the one hand, they're
5 arguing that we need -- and apropos of your
6 questions -- we need 50 percent-plus majority CVAP to
7 give Latinos an equal opportunity to elect candidates
8 of their choice, but in fact -- this is not you --
9 but, you know, we're talking about Latino
10 opportunities, McConchie plan, has a remedial
11 district that's only 46.7 percent.

12 And my point is that there are at least
13 three districts that are equal or greater than that
14 percentage that are being challenged as having
15 insufficient single race Latino CVAP to elect
16 candidates of their choice. And they're not on this
17 table, but there are others that are not quite 46.7,
18 but within a couple of points of that.

19 So there's a fundamental inconsistency
20 that runs through the approach taken by plaintiffs.
21 That's the point of this table.

22 Q. And if Omar --

1 A. You can't have it both ways.

2 Q. If Omar Aquino ran unopposed, what does it
3 matter what the Hispanic CVAP is in his district, in
4 your mind?

5 A. You're missing the point of my table.

6 Q. All right.

7 A. The point of my table is to say he has a
8 46.7 percent CVAP. That's being challenged. They're
9 challenging it. But one of your remedial districts
10 is also 46.7 percent. So why are you saying a 46.7
11 percent district works when it's in your remedial
12 plan, but doesn't work when it's in SB 927. There's
13 a fundamental inconsistency here. It's nothing to do
14 with Omar Aquino running unopposed.

15 Q. Do you have any reason to believe he would
16 have won in that district had he been opposed --

17 A. Absolutely.

18 Q. -- in the primary?

19 A. Absolutely.

20 Q. What's your reason?

21 A. Districts at that level, when there is an
22 opposed primary, elect Latino candidates of choice.

1 Q. Generically in Illinois?

2 A. Yes. Well, it has to be generically
3 because he is running opposed in this district.

4 Q. How about this particular district. Do
5 you have any reason that he would have won in this
6 particular district at 46.7 percent?

7 A. Absolutely. Because Latinos have won --
8 routinely won primaries in districts below 46.7
9 percent. Plus if you can't win in this district
10 that's 46.7, how is it you can win in a remedial
11 district that's 46.7.

12 Q. I get it.

13 A. The point of my table is the comparison to
14 show that there is a fundamental contradiction within
15 the position taken by plaintiffs here.

16 Q. The last person on this table, Eva Dino
17 Delgado.

18 A. Okay.

19 Q. When she ran in 2020, if I'm not mistaken,
20 HD3 was 58 percent Latino.

21 A. This is 927. In other words, you're
22 missing the point. This is not to go back and see

1 the electoral history of these candidates. This is
2 to say a remedial plan which is defended as providing
3 Latino voters the opportunity to elect candidates of
4 their choice is 46.7 percent. But we have three
5 districts that are being challenged that have either
6 the same or higher Hispanic CVAP percentages under SB
7 927.

8 How can it be that when it's remedial,
9 46.7 is just fine, but when it's under the state's
10 plan, it's not? Even higher, it's not.

11 Q. I understand you don't agree with the list
12 of districts we've challenged and I understand why.
13 Thank you. What is your --

14 A. That has nothing to do with that.

15 Q. What is your understanding of whether
16 there's any difference, if any, between what's
17 required for plaintiffs to demonstrate compliance
18 with prong 1 of Gingles and what's required to
19 demonstrate effectiveness of a district or
20 effectiveness of a remedy in a section 2 case?

21 A. That's a legal question. I, you know,
22 will let the lawyers hash that out.

1 Q. You have legal conclusions and you cite
2 Gingles and you were just about to read from it to
3 me. So I think this is fair game honestly,
4 Dr. Lichtman.

5 What's your understanding of the
6 difference between what's required to prove prong 1
7 Gingles and what's required to prove an effective
8 district?

9 MR. KASPER: Objection. That asks the
10 witness -- hold on. That asks for Dr. Lichtman to
11 give a legal conclusion.

12 MS. HULETT: Are you instructing him not
13 to answer?

14 MR. KASPER: No. No, I'm fine.

15 MS. HULETT: Okay.

16 MR. KASPER: You can answer.

17 MS. HULETT: Okay.

18 THE WITNESS: Let me clarify a false
19 premise in your question and then you can ask me --
20 BY MS. HULETT:

21 Q. Okay.

22 A. -- the question again.

1 Q. Okay.

2 A. And the false premise is I did not cite
3 Gingles for any legal conclusion.

4 Q. Okay.

5 A. I just quoted Gingles for the substance of
6 what Dr. Grofman found with his ecological regression
7 and what the Court said about it. I did not draw any
8 legal conclusions from my citation to Gingles. I
9 just want to clarify.

10 And I think I've pretty carefully avoided
11 not drawing legal conclusions in my report. I even
12 think I say, when I cite Court cases, I cite them for
13 the substance, not to say this is what's required
14 under the law. So with that caveat, please reask
15 your question.

16 Q. That's fair. What, in your opinion, is
17 required for plaintiffs to demonstrate compliance
18 with prong 1 of Gingles?

19 A. As I recall, prong 1 -- I didn't look at
20 it here -- that minorities are sufficiently
21 concentrated to form a compact majority district,
22 which I understand -- and again, take my opinion for

1 what it's worth. I'm not a lawyer -- is 50
2 percent-plus.

3 But, again, my opinion, this is unclear.
4 You know, I'm thinking about the Bartlett decision.
5 Is it 50 percent VAP? Is it 50 percent CVAP? That
6 makes a big difference. Those are, you know, very
7 different metrics. So I can't say I'm sure what the
8 standard is.

9 Q. And what about --

10 A. Maybe you can help me.

11 Q. What about the standard to prove
12 effectiveness --

13 A. Prove what?

14 Q. The standard to prove whether or not your
15 remedy is an effective district.

16 A. Well, that's different. That's not just a
17 numerical standard. Well, numbers obviously matter.
18 You're obviously contending, when you present
19 remedial plans, that this is what you want to put
20 into effect. This is what you want the state to do,
21 and then you -- you know, you are arguing that your
22 district provides an equal opportunity -- I'll call

1 it Latinos, but it's generic. Latino voters to elect
2 candidates of their choice. That's why I pointed out
3 the inconsistency in your remedial plan -- or maybe
4 not yours -- but plaintiffs' remedial plan and
5 plaintiffs' challenged districts.

6 Q. Okay. I'd like to move on from this topic
7 to page 25.

8 A. Give me a minute. I need a drink. Not --

9 Q. Me too.

10 A. -- gin, just Pepsi. All right. What page
11 did you say?

12 Q. Page 25. I'm looking at the very last
13 paragraph, the last three lines on the page.

14 A. The one that begins, "Since 2008"?

15 Q. Yes.

16 A. Okay.

17 Q. And it says that, "Since 2008, minority
18 democratic candidates" -- and by minority, you mean
19 what?

20 A. Asian, Hispanic, black. And it could also
21 mean Native Americans, Pacific Islanders, but I don't
22 think there are any such candidates.

1 Q. "Since 2008, minority democratic
2 candidates in Illinois have participated in 17
3 statewide democratic primaries and general
4 elections."

5 Were any of those elections uncontested?

6 A. Some of them. Most of them were not, but
7 some of them were.

8 Q. Do you know how many?

9 A. Yes.

10 Q. How many?

11 A. One, two, three, four, if I'm counting
12 correctly, out of 17.

13 Q. And do you know how many ran unopposed in
14 their primary?

15 A. I don't. I know some didn't. It's quite
16 possible some did, but I don't have that listed here.
17 But if you've got the data, I'd be happy to look at
18 it. I know there's a mix.

19 Q. And on page 27, table 4, is a list of
20 those candidates, correct?

21 A. That is correct.

22 Q. How many of those candidates are Latino?

1 A. Susan Mendoza, Susana Mendoza.

2 Q. And she's one of the ones that was
3 unopposed in her primary, is that correct?

4 A. That's right. In fact, I think we have --
5 how many were unopposed in the primary, you had asked
6 me before. One, two, three.

7 Q. I'm sorry to interrupt.

8 A. Yeah, three unopposed. She's one of the
9 three, but she was opposed in the general.

10 Q. Okay. I'm sorry. I didn't mean to
11 interrupt you.

12 A. Yeah, no problem.

13 Q. So if she was unopposed in the primary,
14 that's -- her particular case is not a case that
15 demonstrates coalition building, is it?

16 A. Absolutely. Look, you've got a Hispanic
17 candidate in a state that we've agreed is 11.2
18 percent Hispanic. If nonHispanic candidates --
19 excuse me -- nonHispanic voters were, what, 89
20 percent or so, are unwilling to support a Latino
21 candidate, you would never have gotten an unopposed
22 primary. You would have had a white challenger who

1 likely would have defeated her.

2 So while this doesn't give you insight
3 into polarized voting per se, it certainly gives you
4 insight into coalition formation, which, as I've
5 stressed throughout, is one of the hallmarks, unique
6 hallmarks of politics in Illinois, racial politics.

7 Q. But it doesn't give you any insight into
8 the coalition of votes cast, coalition of voters that
9 are casting votes in that election, right?

10 A. Well, as I said, it doesn't give you
11 insight into polarized voting. But candidates make
12 their decision based on what they think the voters
13 are going to do. And if, you know, no one from the
14 89 percent nonLatino majority CVAP is opposing an
15 Hispanic candidate, that's extraordinary. You don't
16 see that very often.

17 And that certainly indicates that this
18 Hispanic candidate, you know, has been able to at
19 least indicate that to people and the candidates in
20 Illinois, I've got broad support along racial groups.
21 You couldn't possibly be elected just with Latino
22 votes.

1 Q. So it's extraordinary because, as I
2 understand it, I'm trying to understand -- it's
3 extraordinary because Latinos are only 11.2 percent
4 of the CVAP. So you wouldn't expect this to happen.
5 That's why it's extraordinary, right?

6 A. Exactly. You would certainly not expect
7 this to happen. And it's of a piece with all the
8 other coalition building that we've identified in
9 Illinois. Again, these are all pieces of the larger
10 mosaic.

11 Q. Do you know how many statewide offices
12 there are?

13 A. I think there are eight.

14 Q. Including the two senator --

15 A. Yeah. So if you take them out, I think
16 there might be six.

17 Q. Right. So by my calculation, and tell me
18 if you agree, there have been, for the six statewide,
19 not counting senator elections, there have been three
20 election cycles since 2008. 2010, '14 and '18. And
21 that's 18 elections, 36 if you count primaries. Not
22 even counting senatorial races, then, there's 36

1 elections since 2008. And there was one Latino who
2 won a contested general election, Mendoza, right?

3 A. That's correct.

4 Q. My math says that amounts to a little over
5 2 percent, about 2 and a half percent. In your
6 opinion, then, does it still demonstrate a Latino
7 record of success in statewide offices?

8 A. Let's see, Latino -- there were six
9 statewide offices. Latinos hold one of them. That's
10 one divided by six. 16.7 percent. So Latinos are
11 overrepresented. And you don't see that very often
12 anywhere else where Latinos are such a small
13 percentage of the CVAP in the state.

14 In fact, I have a table 6 which says, "In
15 comparable states with comparable CVAP, there are
16 only" -- out of one, two, three, four, five -- six
17 states, only three minorities of any kind, whether
18 Latino, Asian or black. So the record is pretty good
19 in Illinois.

20 Q. I want to ask you about that --

21 MR. KASPER: Hold on a second. This is
22 Mike. I'm going to interject here. There's six

1 statewide offices, but two of them run together.

2 So --

3 THE WITNESS: What I looked at here is the
4 number of minority officeholders, not elections, in
5 table 6.

6 BY MS. HULETT:

7 Q. Yeah, I'm going to ask you about table 6
8 in a minute. But what I'm really asking you about is
9 the number of elections that took place since 2008.
10 So if what Mike is saying is there's really only
11 five, because I assume that he may be saying a
12 lieutenant governor and the governor run together. I
13 don't know.

14 MR. KASPER: Correct. Correct.

15 BY MS. HULETT:

16 Q. But let's say there are only five times
17 three elections cycles times two, you know, primary
18 and a general for each election, so then we have 30
19 elections since 2008.

20 A. Well, you're lumping together primaries
21 and generals. You don't get to the general unless
22 you get through the primary. So in terms of the

1 essential gateway elections, it's 15.

2 Q. But there were no -- there were no
3 racially contested primaries because she was
4 unopposed. She only was opposed in the general,
5 correct? So actually, if you want to say that, there
6 was zero out of 15 primaries where a Latino won
7 against another candidate and won --

8 A. We just went -- we just went through that.
9 It's in fact maybe even a stronger indication of
10 coalitions in the state of Illinois, that in an 11
11 percent Latino state, that a Latino candidate should
12 be unopposed in a statewide election. If you had
13 racially polarized voting, you would have no -- it
14 would be impossible for a Latino --

15 Q. I understand --

16 A. Let me finish -- it would be impossible
17 for a Latino to win statewide. Impossible.

18 Q. Unless they ran unopposed?

19 A. If there was racially polarized voting,
20 they wouldn't be unopposed. You're missing the whole
21 point here. Yes, you can't quantitatively assess
22 racially polarized voting in an opposed election.

1 But the fact that with only 11 percent CVAP of the
2 same ethnicity in a two-thirds white state, no white
3 candidate sought to oppose, so that speaks volumes.
4 I haven't seen that anywhere else in a state with
5 such a low Hispanic CVAP percentage.

6 Q. And excuse me for being tedious and I know
7 you think I'm missing the point.

8 Is it not true that out of 15 primary
9 statewide elections, there are zero Latinos who won
10 in a contested election since 2008?

11 A. That's probably true. But it's beside the
12 point, as I've explained.

13 Q. And that out of 15 general elections,
14 there is only one Latino --

15 A. Correct.

16 Q. -- who won. Okay.

17 A. That's correct. And as I said, if there
18 was racially polarized voting, you would expect none.

19 Q. Let's look at table 6, page 29, which is
20 the one that you were talking about a few minutes
21 ago.

22 A. Yeah.

1 Q. Let me scroll down here. And you told me
2 what it demonstrates. Did you produce a list of all
3 the states that you looked at and what their CVAP
4 was?

5 A. It's right there in the table.

6 Q. So you only looked at these states?

7 A. No, I looked at all states and I chose
8 states that have comparable minority CVAPs to
9 Illinois. I mean, there's no point in doing North
10 Dakota that hardly has any minority CVAP or
11 California, which is a majority -- I don't know if
12 it's a majority CVAP, but certainly a
13 majority-minority state. If you want to compare
14 apples to apples, you compare states with minority
15 CVAP comparable to that of Illinois.

16 Q. My question is simpler than that. Did you
17 choose all states out of 52 whose minority CVAP was
18 in the range of 30 to 40 percent?

19 A. No.

20 Q. What was your criteria?

21 A. I was looking at minority CVAP within the
22 range of no more than 5 -- or less than about 3 to 5

1 points. So I didn't get anywhere near as high as 40
2 percent or anywhere near as low as 25 percent.

3 If you look at -- let's just look at them.
4 30.8. That's within .6. 30.7. That's within .7.
5 34.7, that's higher. That's within 3.3. 30.4,
6 within 1. 32, within .6. 32.1 within -- these are
7 real close.

8 Q. So these were -- you selected states that
9 had a minority CVAP that was within a 3 percent plus
10 or minus range of Illinois or a 5 percent plus or
11 minus range, do you remember?

12 A. Approximately, yeah. There were no other
13 states that were within this range, that's right. It
14 would be against deviation. And that's higher so it
15 biases it the other way.

16 (Interruption.)

17 THE WITNESS: The biggest deviation is 3.3
18 percent in Louisiana, but it's higher, so it would
19 bias it the other way, towards having more minority
20 representation than less. But I did not select these
21 states according to what I thought about these
22 states. I selected them on the numbers.

1 BY MS. HULETT:

2 Q. Did you perform the same exercise for
3 Latino CVAP?

4 A. I don't recall doing it because it's so
5 low. But we could do it. It's so low. What was it
6 in Illinois? One out of 6, you said? 16.7 percent.
7 We could look at districts that are 10 percent
8 Latino -- states that are 10 percent Latino CVAP and
9 I doubt if you're going to get an average of 16.7
10 percent.

11 Q. Okay. Let's look at page 32 of your
12 report.

13 A. All right. Hang on.

14 Q. And Dr. Lichtman, be sure and stop me if
15 you need to take a break or anything. I'm fine.

16 A. I much appreciate that. For the moment,
17 I'm okay. I do have a question, though.

18 Q. Okay.

19 A. About the break. It's 6:03 my time. Are
20 we going to take a dinner break at some point? And
21 if so, when?

22 Q. Well, how late do you think you want to

1 go?

2 A. I could -- you know, I'll take a break
3 soon. I could probably go to close to 7:00. Will
4 you be done by then or --

5 Q. I don't know.

6 A. Another 45 minutes --

7 Q. I don't know. I can't tell.

8 A. Okay. Obviously, I can't hold you to
9 that. Of course.

10 Q. No, I generally go pretty quickly, but I
11 can't tell. But I'm willing to defer to you both as
12 to when you want the break or how long you want the
13 break to be.

14 A. At the moment, I'm fine.

15 Q. Okay.

16 A. In the next five or 10 minutes, I may need
17 just a three-minute break.

18 Q. Okay.

19 A. And then by 7:00, we need to break for
20 dinner. I can't keep going without eating after
21 7:00.

22 Q. Okay. I want to look on page 32 of your

1 report at table 7.

2 A. Yes.

3 Q. There's only one, as I see it, Chicago
4 city officeholder of the three, correct?

5 A. Right.

6 Q. That is Latino.

7 A. Right.

8 Q. I'm sorry, that's Latino.

9 A. But that's a third. And Chicago is 20.7
10 percent Latino CVAP. So it's way above proportion.

11 Q. Because 33 is way above 27?

12 A. 20.7, not --

13 Q. Oh, 20.7. Okay.

14 A. Yes, that's way above.

15 Q. Yeah. I don't mean to argue with you. I
16 just want to confirm that that's what you meant to
17 say.

18 A. Yeah. And they're all minority by the
19 way.

20 Q. Is the fact -- I think I know what you're
21 going to answer to this one, but the fact that she
22 ran as an unopposed incumbent, do you still think

1 that her position there is informative of Latino
2 electoral opportunity in Chicago?

3 A. Absolutely. I don't know if she was
4 appointed or got elected the first time. I assume
5 she -- I don't know if she won an election before
6 this. Do you know?

7 Q. She was appointed --

8 A. Okay.

9 Q. -- in December 2016 to replace Susana
10 Mendoza.

11 A. So we already had a Latino who won the
12 treasurer position. That's the point. It's not the
13 particular person. It's that in a city that's 20.7
14 percent Latino CVAP, Latinos are winning. They're
15 getting appointed, which is indicative of the
16 commitment of the city of Chicago to Latino
17 representation.

18 And even though nonLatinos comprise nearly
19 80 percent of the city, they're not either block
20 voting in an election against a Latino or even
21 bothering to contest a Latino.

22 Q. Can we move on now? I'm going to ask you

1 a few questions about your racially polarized voting
2 opinion and I want to start on -- I skipped it. I'm
3 scrolling. Page 40, table 2. I understand what
4 you're saying --

5 A. Yes, I'm there.

6 Q. I understand what you're saying with this
7 table because it's in your report. I just have a
8 quick question as to whether you doubt that
9 Dr. Grumbach's analysis showed a statistically
10 significant difference between the Hispanic vote for
11 the Hispanic candidate of choice and the nonHispanic
12 vote for Hispanic candidate of choice in each of
13 those four elections.

14 A. I don't doubt it, but I didn't look at it
15 because it's irrelevant because they have the same
16 candidate of choice. And even under MALDEF's
17 definition, which I put in my report, that does not
18 constitute racially polarized voting.

19 Q. All right. Can you look at page 42, the
20 last paragraph?

21 A. Yeah, I can.

22 Q. You say here that you were able to

1 verify -- the first sentence in the last paragraph --
2 you were able to verify nearly all of Dr. Grumbach's
3 EI results with an inconsequential margin of
4 difference using my independent method of ecological
5 regression, but it was after admitting nonprobative
6 districts.

7 What makes an election nonprobative?

8 A. It's so low in Hispanic CVAP that it
9 doesn't even remotely resemble a challenger. He's
10 got one in there that's 8 percent CVAP. That gives
11 you zero insight into challenged districts. I think
12 all but one is 42 percent Latino CVAP or more.
13 There's another one at 19 percent. That gives you
14 zero insight.

15 For example, let's say there really is
16 sharp racial polarization and 75 to 80 percent of
17 Latinos vote for Latino-preferred candidates and only
18 40 percent of whites. Even in a district that's 35
19 to 40 percent Hispanic, the Hispanic candidate of
20 choice would win, but they're not going to win in a
21 19 percent or an 8 percent Hispanic CVAP district.
22 That's what I mean by nonprobative.

1 Q. The other election that you discounted as
2 nonprobative was the 2020 H 19 democratic primary,
3 and your problem with that was that his Latino
4 estimates added up to 141 percent.

5 A. I had two problems with it. One, it's too
6 low. I think in Dr. Grumbach's report, he
7 identified that 19.2 percent. Too low to give you
8 any insight. And anything you draw to that election
9 is going to be misleading, not informative.

10 And two, as with many other of his
11 results, they added to an impossible number.

12 Q. What's the LCVAP in HD 19 that is too low?

13 A. What did Dr. Grumbach say it was? It says
14 HD 19 is 19.2. It's on page 3. And SV6 is 7.7.
15 It's on page 3, the last paragraph of the Grumbach
16 rebuttal.

17 Q. So a 19.2 percent share of the CVAP in a
18 district is too low to do a polarized voting analysis
19 on?

20 A. Incorrect. That's not what I said.

21 Q. Okay. Please explain it to me.

22 A. Using his definition of polarized voting

1 analysis. What I did say was wins and losses in that
2 district not only don't inform you at all --

3 Q. Can I interrupt you for one minute? I
4 understand the win/loss and we'll get to that, but
5 I'm asking you why you eliminated HD 19 and you said
6 because it was too low and we've just determined it
7 was 19 percent. And I'm asking you, you think that's
8 too low to do a reliable analysis or what is it?

9 A. I'm trying to explain what it is and I
10 said it before.

11 Q. Okay.

12 A. I'll say it again. You cannot draw any
13 conclusions about Hispanic voter opportunities in the
14 challenged districts from a district that is as low
15 as 19 percent. All the other districts are about
16 twice as much or even more than twice as much Latino
17 in their CVAP. And the example I gave you indicated,
18 you know, in the range of CVAP even below most
19 challenged districts, the Hispanic candidate of
20 choice would win, but not in a 19 percent district.

21 Secondly, I found that his results blew up
22 into an impossible result. You can't have -- when

1 you look at a percentage of the vote cast by either
2 nonLatinos or Latinos for all candidates, that's got
3 to add up to 100 percent. And throughout his report,
4 his results don't. I think this was the biggest
5 deviation, but there were other deviations of over 10
6 percent.

7 Q. Right. And I'm going to talk about --

8 A. That was another problem I had.

9 Q. If you understand Dr. Grumbach, I'm going
10 to talk about that one 41 percent, but I'm going to
11 ask you why you didn't feel HD 19 was probative and
12 you said two reasons.

13 One, you just explained, it added -- the
14 Latino support added up to 141 percent. But the
15 other was that 19 percent was too low, and I think
16 what you just said is you can't draw conclusions
17 regarding Hispanic voter opportunity from a 19
18 percent Latino CVAP district.

19 My question is, can you perform reliable
20 polarization analysis in a district that is 19
21 percent, not opportunity, but --

22 A. No, I don't think so. And the fact that

1 his results blew up may well indicate that. We went
2 through that and I checked District 19. You know,
3 Dr. Grumbach talked about the need for homogeneous
4 Latino precincts. There were no homogeneous Latino
5 precincts in HD 19. There'S not even a 50 percent
6 Latino precinct CVAP in HD 19. So --

7 Q. So you don't think you can get reliable
8 estimates from a -- reliable polarization estimates
9 in a district that is 19 percent Latino?

10 A. That's not what I said.

11 MR. KASPER: Objection. Please --

12 BY MS. HULETT:

13 Q. That's what I need you to answer.

14 MR. KASPER: Please stop interrupting the
15 witness when he's in the middle of an answer.

16 BY MS. HULETT:

17 Q. That's what I need you to answer, though.

18 A. Yeah. Generically, that may or may not be
19 true. I'd be suspicious of any 19 percent CVAC
20 district giving you reliable results. But we all
21 could do it generically. You know, Dr. Grumbach
22 testified you need homogeneous Latino precincts.

1 Well, there aren't any. There aren't any even close
2 to being homogeneous Latino precincts in HD 19.

3 Q. Did you see the explanation in his
4 rebuttal report that he had made a coding error and
5 that's why it added up to 141 percent for Latino
6 support and he had corrected the 2020 HD 19
7 democratic primary in his rebuttal report?

8 A. That is one issue that I highlighted and
9 he admitted my analysis and made the change, but that
10 doesn't mean his internal numbers are reliable.

11 Q. Okay. And so do you still believe that HD
12 192020 primary is a nonprobative election for this
13 purpose?

14 A. When you say "this purpose," what do you
15 mean, because I said --

16 Q. For -- for --

17 A. Let me answer -- I can answer your
18 question. It is absolutely not probative for prong
19 3, where white bloc voting usually defeats Latino
20 candidates of choice in the challenge districts for
21 the reasons I just explained. It might be probative
22 for a very different question of whether Latinos and

1 nonLatinos vote differently.

2 And by the way, Dr. Grumbach never looks
3 at white bloc voting. He lumps together whites and
4 other minorities, so he can never answer the question
5 anyway. But that's another matter.

6 But whether or not it is internally
7 reliable, I don't think so because it lacks even
8 majority Latino precincts. And this is the problem
9 with EI. It's why he gets 141 percent and didn't do
10 anything about it until I pointed it out. EI will
11 spit out results no matter what. It forces results
12 even when we know you shouldn't be doing any kind of
13 statistical estimation.

14 There's one even lower, SD 6, which is 8
15 percent, and is nothing remotely close to homogeneous
16 Latino precinct. So, yeah, you'll get the result,
17 but the result doesn't mean anything. And the
18 confidence intervals don't mean anything because
19 they're internal to the system. They don't tell you
20 this is in the real world what the confidence is.

21 Q. So you could or could not now verify
22 Dr. Grumbach's results for HD 19?

1 A. I don't have to because for the question
2 I'm answering -- this is my section on prong 3 -- it
3 doesn't matter. And of course I couldn't do it
4 because he only did it in his rebuttal report.

5 Q. It matters to me, Dr. Grumbach. Can you
6 or can you not verify the HD 19 corrected
7 Dr. Grumbach's report? It does matter to me.

8 A. I don't know whether it corrects it or
9 not. I do not trust any results -- and I wouldn't do
10 it myself -- coming out of a district with not even a
11 majority Latino and most Latino precincts way below
12 that.

13 Q. You did an ecological regression analysis
14 on that district, no?

15 A. Absolutely not. I didn't think it was
16 appropriate. And, you know, the bizarre thing, too,
17 here is he says, you know, because there aren't any
18 homogeneous precincts, you're going to get these
19 enormously wide confidence intervals.

20 Well, because it's so uncertain and that
21 even prevents you, if you believe that, from
22 identifying a Latino candidate of choice because the

1 Lindsey LaPointe, who I guess is a white candidate,
2 at the high CI is 38.51 and Patty Bonnin, who's a
3 Latino candidate, who he says is a Latino candidate
4 of choice, at the low end is 31.3.

5 So yeah, if he's going to say, well, maybe
6 the point estimates aren't reliable, but we can rely
7 on the confidence intervals, that prevents even any
8 kind of identification of candidates of choice or a
9 computation of any polarized voting in this district.

10 Q. So in a sentence -- that's the first
11 sentence of the last paragraph on that page where you
12 say you were able to verify nearly all of his results
13 with an inconsequential margin of difference, and
14 then you say -- you explain ecological regression,
15 you didn't mean to say there that you did an
16 ecological regression analysis on all of his
17 elections?

18 A. I didn't do it where it wasn't
19 appropriate. Plus I didn't need to here because his
20 results were on their face erroneous. You cannot --

21 Q. How did you verify his report?

22 A. Let me finish. You cannot have

1 141 percent of Latinos voting. Maximum
2 mathematically is 100. And I do not believe it is
3 appropriate or informative to look at HD 19. And
4 even aside from all those problems, identifying the
5 candidate of choice has no meaning because wins and
6 losses for candidates of choice in a 19 percent or
7 even a 20, 21, 22 percent district has no bearing on
8 the challenge districts.

9 Q. How did you verify --

10 A. In terms of prong 3.

11 Q. How did you verify nearly all of
12 Dr. Grumbach's EI results?

13 A. I did an ecological regression. I did
14 independent analyses where I thought it was
15 appropriate, not in an 8 percent or a 19 percent
16 district, but in most of the others. An ecological
17 regression is a methodology I've used in north of 50
18 cases. It's the methodology Dr. Grofman used in the
19 Thornburg versus Gingles case that was accepted by
20 the United States Supreme Court.

21 I cite Dr. Grofman's book in which he
22 gives me credit as one of the developers of the

1 ecological regression methodology. The United States
2 Supreme Court in 2006 accepted my ecological
3 regression analysis to invalidate Congressional
4 District 23 using my point estimates in southwestern
5 Texas. The Court here in 2011 accepted my ecological
6 regression estimates to show that Congressman
7 Lipinski was the candidate of choice of Latinos.

8 Just a couple of years ago in the
9 North Carolina state legislative case, the
10 three-judge court accepted my ecological regression
11 methodology and said it was a standard method. One
12 of your experts in one of their reports said EI is a
13 standard method.

14 I describe it in great detail in my
15 report. I gave you my data, something I almost never
16 do, gave you all our data and I describe it in great
17 detail. I refer to Grofman's book. I refer to an
18 article where I described it in great detail. And I
19 used it for one purpose and one purpose only. Not to
20 develop an independent analysis of my own, but
21 because we're dealing with prong 3 of Gingles, just
22 to make sure Dr. Chen and Dr. Grumbach correctly

1 identified the Hispanic candidate of choice and
2 basically got the correct numbers.

3 And, in fact, as you see, Dr. Grumbach
4 redid some of his results based upon what I found.
5 And Dr. Chen dropped eight, eight of his elections
6 based upon my critique of what he had done. He went
7 down from 23 in his original report to 15 in table 1
8 of his rebuttal report.

9 So the bottom line is --

10 Q. Dr. Lichtman --

11 A. -- there was no challenge to anything I
12 did and it was all accepted and changed.

13 Q. Dr. Lichtman, I understand that you have a
14 long history in voting rights and you could really
15 regale me with stories all night and I understand
16 your points.

17 I need you to focus on the question that
18 I'm asking and I'm trying to determine whether those
19 two elections were the only ones that you did not
20 perform -- verify Dr. Grumbach's results by doing an
21 ecological regression analysis on.

22 A. I'm trying to recall. I had problems with

1 most of his results, but I didn't find a difference
2 in the identification of the Hispanic candidates of
3 choice, to the best of my recollection, except for
4 these two.

5 Q. So he did 19 -- and you're only talking
6 about endogenous elections here, correct?

7 A. That's correct.

8 Q. And you did not do an ecological
9 regression analysis on those two elections, but you
10 did it on the 17 others?

11 A. That's incorrect.

12 Q. How many did you do it on?

13 A. I didn't do it on SD 6 or HD 19 because
14 they didn't have the requisite distribution and
15 concentration of --

16 Q. Any others?

17 A. I don't recall not doing it on any others.
18 If I can refer to his table, it might refresh me.

19 Q. Did you compare your estimates to his?

20 A. Only in the sense that I was looking to
21 see if he correctly identified the Latino candidate
22 of -- oh, there was one other, HD2, where I could not

1 verify who the Latino candidate of choice was.

2 Q. And --

3 A. HD2 2012 primary. So it was a --

4 Q. But you did an ecological regression on
5 HD2?

6 A. Yes. And I think I did them on all of
7 them except SD 6 and SD -- SD 6 and HD 19 where it
8 was not appropriate to do anything with an ecological
9 regression or ecological inference. Looking at all
10 the others, I think I did.

11 Q. Okay.

12 A. And we didn't differ in our candidates of
13 choice except for the three I mentioned.

14 Q. And when you were comparing his estimates,
15 you had his estimates on his report on a piece of
16 paper, correct?

17 A. That's right.

18 Q. And you had your estimates to compare them
19 to where?

20 A. I just did it on the screen.

21 Q. On the screen.

22 A. And where we differed, I put it in my

1 report.

2 Q. Okay.

3 A. But there was no point in putting anything
4 out or there was no dispute.

5 Q. But you relied on your estimates to
6 determine whether you could verify his, correct?

7 A. An independent check using a
8 well-established method that I've used, as I said,
9 north of 50 times and has been blessed by the Supreme
10 Court. I don't recall the Supreme Court ever
11 blessing ecological inference.

12 Q. And you didn't print out your estimates,
13 did you?

14 A. I did, when they differed. If they're --
15 if they didn't differ, I didn't -- I didn't see the
16 point.

17 Q. But we've determined that you did at least
18 16 ecological regression -- I'm sorry, that you
19 performed ecological regression on at least 16
20 elections in order to compare your estimates with
21 Dr. Grumbach's?

22 A. That's right. And I reported where we

1 differed and I --

2 Q. But you did not --

3 A. Let me finish.

4 Q. All right.

5 A. I reported where we differed. And, in
6 fact, when Mr. Kasper was questioning Dr. Grumbach
7 about his impossible estimates, he said, well, I have
8 confidence in these because Dr. Lichtman verified
9 them.

10 Q. And when you compared your estimates to
11 verify them, you did that on the screen. You didn't
12 print them out.

13 A. No. There was no need to print them out
14 because there was no dispute.

15 Q. So you just relied on them on the screen
16 and then what?

17 A. I did some calculations on a calculator,
18 yeah. And then I said, okay, this is his candidate
19 of choice. It's my -- what I find to be my candidate
20 of choice. I'm not going to dispute him. And he
21 seemed pretty grateful that I didn't.

22 Q. Did you save the estimates anywhere,

1 yours?

2 A. The ones where we differ are in my report.
3 The ones where we didn't differ, I didn't. Why?

4 Q. Did you generate confidence intervals on
5 your estimates?

6 A. Absolutely not. Because, as I said,
7 confidence intervals can be very misleading because
8 they're internal to the system. But leave that
9 aside. I didn't need to because his selection of the
10 candidate of choice was based upon what we call the
11 point estimates. And point estimates are your best
12 estimate of the vote of each racial group for each
13 candidate. So all I did was compare my point
14 estimate to his point estimate.

15 Q. Okay.

16 A. End of story.

17 Q. We just finally agreed on something. Did
18 you test the reliability of your estimates?

19 A. No need to, except where we differed, and
20 I certainly did, you saw me -- not so much with
21 Dr. Grumbach because I thought what I had to say was
22 definitive, but I talked a lot about reliability

1 tests when it came to some of my challenges to
2 Dr. Chen. Ecological regression. You check and make
3 sure it adds to 100 percent. It always does. You
4 look at whether it actually replicates the actual
5 results of the election. You look at heavily
6 homogeneous, or not even sort of heavily minority,
7 one race or white precincts. And there was no need
8 to do that where there was no disagreement.

9 Q. Okay.

10 MS. HULETT: I'm about to change topic.

11 Is it time for a break for you or not?

12 THE WITNESS: It's a good time for a break
13 for me. I just need five minutes.

14 MS. HULETT: Okay. Thank you.

15 THE VIDEOGRAPHER: Going off the record at
16 6:29 p.m.

17 (Recess.)

18 THE VIDEOGRAPHER: Back on the record at
19 6:41 p.m.

20 BY MS. HULETT:

21 Q. We might not need to look at the report
22 from this because I think you've referred to it a

1 couple of times. One of the criticisms that you have
2 of Dr. Grumbach's study is that he groups nine
3 Latinos together in his racially polarized voting
4 analysis rather than generating separate estimates
5 for Hispanics, whites, black voters, others, is that
6 correct?

7 A. In the sense that you can racially
8 polarized voting any way you want. But Remember,
9 this is my prong 3 section. And that doesn't tell
10 you anything about prong 3 because prong 3 talks
11 about white bloc voting, not bloc voting by other
12 minorities.

13 Q. In Dr. Grumbach's nonLatino group, there
14 are both black voters and white voters, correct?

15 A. Black voters, white voters, Asian voters
16 and other voters, all nonHispanic whites and all
17 other nonHispanic minorities.

18 Q. And black voters tend to vote democratic
19 in Illinois, is that the case?

20 A. Yes. Yes.

21 Q. Is that also true of Latino voters?

22 A. Yes.

1 Q. Correct me if I'm phrasing this wrong, but
2 it's a question about the degree of racial
3 polarization that an analysis would produce.
4 Wouldn't lumping the white voters and the black
5 voters together tend to mask the extent of racial
6 polarization between Latinos and whites?

7 A. Not necessarily in primaries. As we saw,
8 for example, because it's on my mind because it's so
9 prominent, in the mayoral elections, we see black
10 voters voting for the white candidates.

11 Q. It wouldn't --

12 A. -- that's one of the reasons why Chuy
13 got --

14 Q. In your mind, it wouldn't -- lumping black
15 voters and white voters together wouldn't exaggerate
16 the extent of racial polarization between Latinos and
17 whites, would it?

18 A. Probably not in general, no, I wouldn't
19 say.

20 Q. And it's reasonable --

21 A. But again, that's generic. Since he
22 didn't --

1 Q. And --

2 A. Let me finish. Since he didn't separate
3 it, we don't know.

4 Q. But you know.

5 A. As a generic matter, I answered your
6 question.

7 Q. When you did the ecological regression
8 analysis, you separated out black voters, white
9 voters, Asian voters, Latino voters or not?

10 A. Not necessarily. I was only interested in
11 Latino candidates of choice and I wouldn't have
12 parsed it out that finely into Asians and others
13 because they're too small.

14 Q. So you did Latino/nonLatino, like --

15 A. But mostly I did Latino/white. But again,
16 that was really all I needed to verify the candidate.
17 Remember, all I'm looking at is the Latino candidate
18 of choice. I wasn't looking at polarized voting or
19 anything like that.

20 Q. And when you say you did the ecological
21 regression analysis on Latino and white, does that
22 mean you just -- you didn't count the voters that

1 were neither Latino nor white?

2 A. It might have been a byproduct. All I
3 focused on was the comparison of the Latino vote. So
4 in a two-person election, if you're looking at the
5 Latino vote, if it's a majority, that's it. If it's
6 a multiple-person election, it's a plurality. That's
7 it. That's all I looked at.

8 I was not trying to look at polarized
9 voting. I was doing prong 3. You know, what was the
10 fate of the Latino candidates of choice? Was white
11 bloc voting defeating them? And if they're not
12 losing, if they're winning, obviously they're not
13 being defeated by white bloc voting or anything else.

14 Q. On page 46 of your report --

15 A. Should I go to it?

16 Q. Yes, please. You are discussing in this
17 paragraph at the last --

18 A. Can you hold on --

19 Q. Yes.

20 A. -- until I get to it, please?

21 Q. Sure.

22 A. I'm slow. I'm old. All right. I'm

1 there. Which paragraph?

2 Q. The last paragraph where you are
3 discussing the multi-candidate HD 40 2014 democratic
4 primary.

5 A. I'm sorry, I'm a little lost. As I read
6 it, the last paragraph starts with, "These
7 divergences between the Chen and the EI estimates
8 matter. In the multi-candidate HD 2014 primary" --
9 is that what you're focusing me on or something else?

10 Q. Yes.

11 A. Oh, okay. So --

12 Q. And --

13 A. That's the first sentence of that
14 paragraph. That's the paragraph you want me to look
15 at.

16 Q. And in the fourth line from the bottom,
17 you talk about that you looked at the confidence
18 levels for the Hispanic vote for Paseika and noted
19 that it was still 21.6 percent points below the
20 lowest confidence level for Chen's results, correct?

21 A. Just to show even within the system -- I'm
22 not saying these confidence intervals mean anything

1 beyond the system. But even within the system, you
2 have this enormous divergence between two experts
3 supposedly using the same method that they
4 continually say is precise and exact and gives you
5 these reliable results.

6 Q. I understand. You have looked at their
7 confidence levels. What was your confidence level
8 for your estimate for Paseika?

9 A. I don't recall, to be honest with you.
10 And it wasn't necessary because it was -- all I was
11 doing here -- I don't think I even, in this
12 paragraph, did anything on my own. I was just
13 pointing out the differences.

14 And my recollection is that Chen's
15 estimates for Paseika were impossible. You couldn't
16 get these kinds of numbers for a candidate who -- I
17 forget what he got, 5, 6 percent of the vote,
18 something along those lines.

19 Q. Well, the second-to-the-last line on that
20 page says, "My independent verification" --

21 A. Ah, okay.

22 Q. -- "using ecological regression and the

1 accompanying reality checks." What were those
2 reality checks? What do you mean?

3 A. To see if you correctly replicated the
4 actual results of the election, which Dr. Chen's
5 results did not.

6 Q. How do you do that?

7 A. By -- if you have a candidate who's got,
8 say, 5 percent of the vote and your estimates are
9 above 5 percent, that can't be right.

10 Q. Oh. So you weren't doing any reality
11 checks about your ecological regression. It was all
12 Chen's --

13 A. I may have, but it wasn't necessary.
14 Clearly, Dr. Chen's results were off. He took -- and
15 if he dropped this election, as he said he deleted it
16 based on my critique. And I probably did do an
17 ecological regression showing Paseika was not getting
18 these kinds of numbers.

19 Q. All right. And on table 4 on the next
20 page, page 47, this is where you lay out the
21 differences between Dr. Chen's and Dr. Grumbach's
22 estimates in a couple of elections.

1 A. These are two examples. That's just
2 examples. They're not exhaustive, that's correct.

3 Q. Did you consider putting your ecological
4 regression estimates in that table as well to show if
5 they were close or far?

6 A. No. The whole purpose of this was to show
7 that -- and I elaborate on this at great length in my
8 report quoting the mathematician Moon Duchin.
9 Depending on the assumptions you put into your EI,
10 you get very different results.

11 And the sole purpose of this analysis was
12 to show two examples in which -- two experts
13 supposedly using exactly the same methods came up
14 with widely divergent results. I picked the Paseika
15 one because it was so big. I picked the Berrios one
16 because that's central to Dr. Chen's analysis. He
17 tries, and I think fails, to use the vote for Berrios
18 to project likely outcomes in challenged districts.

19 Q. And who had the best estimates in each of
20 these elections, Dr. Grumbach, Dr. Chen or you?

21 A. I did not adjudicate between Dr. Chen and
22 Dr. Grumbach or create my own because my sole purpose

1 here was to show the divergence between two experts
2 supposedly using the same method which should have
3 given you the same answers.

4 Q. What's the last column? Is it literally
5 the percent of vote that was received by the
6 candidate in that race?

7 A. Correct.

8 Q. What has that got to do with the Latino
9 estimate?

10 A. Because, as I said, Dr. Chen's results
11 greatly overestimate the vote for Paseika, which is
12 why he dropped it, whereas Dr. Grumbach's estimate is
13 much more in line.

14 Q. In line with --

15 A. The actual result of the election, one of
16 the reality checks, the many reality checks. And
17 Dr. Grumbach's results in this case fit the reality
18 check. In many other cases, don't.

19 Q. Maybe it's just me and the math of it, but
20 if the last column is telling you that Paseika got 5
21 percent -- 5.2 percent of the vote -- of the total
22 vote, how is that a reality check on Grumbach's

1 estimate of the percent of the Hispanic vote?

2 A. Because when you look -- the total vote
3 for Paseika is the Hispanic vote and the nonHispanic
4 vote. And I found that when you put the two
5 together, it didn't exactly come out to 5.2, but
6 pretty close, whereas Chen's were way off.

7 Q. When you put the Hispanic vote and the
8 nonHispanic vote together, it came out to 5 percent?

9 A. Approximately. I don't recall exactly
10 what it came out to, but it came out close to that.
11 And again, you can't do it exactly because neither
12 Chen nor Grumbach produced turnout numbers. So the
13 turnout is not in their reports, but at least
14 approximately the Grumbach numbers fit reality. The
15 Chen's number didn't.

16 And as I said, he dropped it. So whatever
17 I found in the end didn't matter because Chen deleted
18 it along with seven other elections where I found
19 problems. He went from 23 in his original report
20 down to 15 in table 1 of his rebuttal report entitled
21 endogenous elections analyzed by Dr. Chen. Well, it
22 was 15 of the original 23.

1 Q. Let's move to page 50.

2 A. Okay. Hang on. I'm going to have to
3 straighten this out before the next hour. All right.
4 Where are we?

5 Q. I'm looking at the second full paragraph,
6 the one that begins, "However, Dr. Grumbach's
7 results." And the third line down in that paragraph,
8 it says, "With respect to the 2012 democratic primary
9 in HD2, I could not verify that candidates Temoc
10 Morfin was the candidate of choice of Hispanic
11 voters."

12 Who was the candidate of choice in your ER
13 analysis?

14 A. I couldn't tell. They were so close
15 substantively that you couldn't distinguish them.
16 And Dr. Grumbach does not come back in his rebuttal
17 and challenge this.

18 Q. What were the confidence intervals in your
19 estimate?

20 A. It's not the confidence. And you keep
21 harping on that. Confidence intervals are
22 meaningless because they're internal to the system.

1 And I showed that in my report. What I looked at was
2 the estimates and they were essentially identical.
3 And it was two Hispanic candidates.

4 Q. So your confidence levels in your ER
5 analysis don't tell you anything about your
6 estimates?

7 A. They tell you internally about your
8 estimates, but in terms of the real world, no. And I
9 don't recall in any of the cases I've been involved
10 with, including the Supreme Court case, the --

11 Q. All right. I'm going to share --

12 A. -- analysis of the courts --

13 Q. I'm sorry.

14 A. -- doing anything but the point estimates.

15 Q. I am going to -- Huh-oh. I need to open
16 something and share this screen with you. It might
17 take me a minute.

18 A. I'm not going anywhere.

19 Q. Miscellaneous. No. Oh, here they are.

20 Okay. I've got it up on here. Now I need to share
21 screen. Let's see. Share screen. Yay.

22 All right. I want to mark this --

1 MS. HULETT: What exhibit are we up to?
2 Seventeen?

3 THE REPORTER: Eighteen will be the next
4 exhibit.

5 MS. HULETT: All right. Can we mark this
6 Exhibit 18? And I'm going to send it to you.

7 (Lichtman Exhibit 18 was marked for
8 identification.)

9 BY MS. HULETT:

10 Q. And I'll represent to you that the first
11 page is a list of the endogenous elections that
12 Dr. Grumbach analyzed.

13 A. Okay.

14 Q. And the second page are the exogenous
15 elections that Dr. Grumbach analyzed.

16 A. Okay.

17 Q. And we sent this to you -- I'm not sure if
18 you got them from your lawyers. We sent them to your
19 lawyers before the deposition. And I don't want to
20 go through every single one. My purpose in showing
21 you this is to ask you whether you contest the last
22 column that I have put in this chart that contains --

1 A. Yes. Because I certainly would not verify
2 the rest of this. You're only looking -- it's hard
3 for me to see because it's covered by the screen
4 there. If you could move it a little bit to the
5 left.

6 Q. Move the -- you know you can --

7 A. I just want to see the last column. It's
8 partly blocked.

9 Q. Yeah, it's actually -- I'm sorry, Doctor.
10 It's that you're going to have to move your screen
11 over because I don't think moving mine is going to do
12 any good.

13 THE VIDEOGRAPHER: Yeah, Dr. Lichtman, is
14 it blocked by the Zoom screen?

15 THE WITNESS: It's blocked by the Zoom
16 screen.

17 BY MS. HULETT:

18 Q. I can make it smaller. Does that help?

19 A. No.

20 THE VIDEOGRAPHER: You can minimize that
21 screen, Doctor, if you just look near the top of that
22 sort of panel showing everyone's faces --

1 THE WITNESS: I think someone just
2 minimized it. Now it's not minimized.

3 THE VIDEOGRAPHER: If you just look at the
4 top on the left of that column, there's a little
5 minus for hide thumbnail videos.

6 THE WITNESS: Okay. Set it up again and
7 I'll try the minus. Yeah. Now it's totally
8 obscured. Now I can't see it at all. If you can go
9 back to the original.

10 BY MS. HULETT:

11 Q. All right. I can, but if you can minimize
12 your Zoom screen, you'll be able to see that.

13 A. I'll try that. I'm going to try that now.
14 Perfect. You won't be able to see me, though.

15 Q. I can see you.

16 A. I can't see you.

17 Q. Oh. Okay.

18 A. And I do want to get back to seeing you,
19 believe me, but --

20 Q. Okay.

21 A. -- at least for the moment, if we're just
22 dealing with this table, ask your question about that

1 last column. I now can see it.

2 Q. The question is, in the last column, we
3 have inserted whether each one of these candidates
4 that are the candidate of choice were incumbents when
5 they ran or in some cases --

6 A. I can't see the whole thing again.

7 Q. I'll have to scroll down for you. Or in
8 some cases --

9 A. No, keep scrolling.

10 Q. -- in some cases, that they ran in a
11 majority district. In some cases, both. In some
12 cases, appointed.

13 A. Keep going. Are you asking me to verify
14 whether he's correct in that?

15 Q. Yes. I'm asking if you have any basis to
16 disagree with that last column.

17 A. Yes. I disagree with the title. I don't
18 necessarily disagree with what he put in there.
19 These are not special circumstances, as I explained
20 in detail previously.

21 Q. I imagine you do. You don't have to agree
22 with the words "special circumstances." It is simply

1 that I would like you to tell me whether you have any
2 basis to disagree with what is in that, other than
3 the title, what's in the last column for each one of
4 these races?

5 MR. KASPER: May I clarify? Is this a
6 document that Dr. Lichtman has ever seen before?

7 MS. HULETT: I sent it before the
8 deposition, but I don't know if --

9 THE WITNESS: I've never seen it.

10 MS. HULETT: I don't know if you gave it
11 to him.

12 MR. KASPER: I -- if it was sent to us
13 before the -- how much before the deposition? I
14 haven't seen it.

15 MS. HULETT: It is -- well, it is from --
16 it's taken directly from our reply brief. So you
17 have seen these tables if you read the reply brief.

18 MR. KASPER: I see. Okay.

19 THE WITNESS: I haven't seen it. I have
20 to tell you the truth. But I'm not going to argue
21 with you.

22 BY MS. HULETT:

1 Q. Okay.

2 A. I think none of these are special
3 circumstances, but that's a different discussion
4 which we already had.

5 MR. KASPER: Well, I would point out I
6 notice at least one error in them.

7 THE WITNESS: Oh, okay. You're more up on
8 these than I am.

9 MS. HULETT: What's that?

10 THE WITNESS: Maybe I should look at it
11 more carefully.

12 I mean, I'd have to go back to the data.
13 You can't ask me out of the blue to verify something
14 I haven't checked.

15 BY MS. HULETT:

16 Q. I'm not talking about --

17 A. I can't verify any of this.

18 Q. I'm not talking about the data. I was
19 just talking about whether you had -- I was trying to
20 avoid going through every election and asking you
21 whether you have any reason, for example, to believe
22 that Mah did not run as an incumbent in HD2 in 2020,

1 for example.

2 A. I do know that she did. I don't know
3 about Soto. You know, I would have to go -- you're
4 asking me by memory to memorize every election, you
5 know, that's taken place and --

6 Q. Okay.

7 A. -- I'm not going to do it.

8 Q. Okay. Then I'm going to refer you to --
9 well, wait a minute. I do have another couple more
10 questions about that.

11 A. If I can answer them. I don't think I can
12 answer any questions about this.

13 Q. Maybe. In this endogenous elections
14 analyzed, as I understand it, HD 19 that we've talked
15 about before, the 2020 race, because of the coding
16 errors that you pointed out for Dr. Grumbach and he
17 fixed, the point was no longer the Hispanic choice of
18 candidates, but Bonnin was.

19 A. You're misstating my testimony. I had two
20 problems --

21 Q. Okay.

22 A. -- with HD 19. One was the impossible

1 result, which he said was the result of sticking in a
2 Republican. And I had a similar problem with another
3 election where he didn't stick in a Republican. But
4 I don't believe you can reliably do analyses for the
5 reasons I've explained. There's not even a majority
6 Latino precinct in there, much less a -- much less
7 homogeneous precincts which Dr. Grumbach said were
8 needed to do a reliable analysis.

9 Q. Okay.

10 A. So I can't verify anything on here.

11 Q. Ernest, I'm trying to --

12 A. Yeah, I see a mistake already. It's
13 obvious.

14 Q. What mistake?

15 A. Berrios was an incumbent in 2014. I mean,
16 that one I know because we've made such a big deal
17 out of those Berrios elections.

18 Q. Berrios was not an incumbent?

19 A. She was an incumbent, and you have her not
20 as an incumbent. I mean, that's an obvious one
21 that's wrong. I don't know what else is wrong.

22 MS. HULETT: Ernest, I'm trying to stop

1 sharing my screen. Can you help me?

2 MR. HERRERA: Oh, the red stop share at
3 the top of the screen. The very top.

4 MS. HULETT: Oh, up here. Okay. We're
5 back.

6 THE WITNESS: Okay, cool.

7 BY MS. HULETT:

8 Q. I'm going to show you on page 51, table 5,
9 and again, I want to direct your attention to HD
10 192020. You left LaPointe as the Hispanic candidate
11 of choice, right?

12 A. Well, what else could I do? I didn't have
13 his rebuttal report at the time I wrote my report. I
14 just had his original erroneous results.

15 Q. Who did your -- what did your ecological
16 regression show who was the Latino candidate of
17 choice?

18 A. I don't think I did it because I said, you
19 know, his results are impossible. And we've gone
20 over this at least five times. I did not think you
21 can do reliable analysis on HD 19 because the
22 distribution of the precincts doesn't allow it in

1 terms of their concentration, nor do I think HD 19
2 has any relevance to prong 3.

3 But all I did here was, as I said,
4 unaltered, uncorrected, just left it exactly as
5 Dr. Grumbach had put it. I didn't add on any of the
6 elections he missed, and there are many. I just
7 replicated.

8 Q. Well, you did make a change to correct
9 Dr. Grumbach's estimate of the Hispanic vote for
10 Jaime Andrade in the 2020 democratic primary,
11 correct, in House District 40?

12 A. I did not in this chart. Again, we seem
13 to be misunderstanding one another. All I did in
14 this chart was replicate, repeat, copy what
15 Dr. Grumbach had done. I did not make any changes.
16 I did not make any additions, even though I believed
17 some of these results were incorrect and even though
18 I knew there were at least a half a dozen elections
19 he didn't look at.

20 Q. So if I told you that Dr. Grumbach's
21 estimate was different than what you have for Jaime
22 Andrade in the 2020 democratic primary, you would

1 disagree with me?

2 A. No, I agree. It was different and he
3 corrected it. We went over this in his deposition.
4 I got 72 percent and I think when he corrected his
5 EI, he got 72.7. So this is a big point.

6 Q. Have you --

7 A. Let me finish. Let me finish. If you --
8 you opened this up. This is a big point.

9 Every time I pointed out an error, it was
10 never challenged by either Dr. Grumbach or Dr. Chen.
11 They never said, oh, we were right initially,
12 Dr. Lichtman was wrong. Now what they did was they
13 made corrections and they made deletions.

14 So at this point, it wouldn't even matter
15 if you took out all my -- I hate to rain on my own
16 parade -- ecological regression estimates because
17 they've all been taken into account by Chen dropping
18 eight elections and Grumbach changing his results.

19 Q. So if I told you that Dr. Grumbach's
20 initial mistaken estimate that you said you just
21 copied to put in this table was -- you know what?
22 It's not worth it. Let's just move on because it's

1 late.

2 Let me ask you a couple of questions about
3 incumbency. Have you ever done an analysis as to
4 incumbency advantage in Illinois specifically?

5 A. To an extent, yes, in that I looked at the
6 fact that even if there was some incumbency
7 advantage, incumbents were winning by a vastly wider
8 majority typically than would be expected from any
9 kind of incumbency advantage.

10 Two, I looked at the fact that quite a few
11 incumbents had lost and lost by pretty wide
12 majorities. In fact, Dr. Chen's report, when he
13 boiled it down to five elections, two of the five
14 involved incumbents who lost, Joseph Berrios in the
15 2018 Cook County assessor and Tony Berrios in the
16 2014 democratic primary in HD14.

17 And so I also looked at -- I think we
18 discussed this in the last -- I don't remember any
19 more which came with you and which came with
20 Mr. Greenbaum. But I also looked at Dr. Fowler's
21 most recent article in which he says incumbency
22 advantage -- previous explanations are unsatisfactory

1 and not compelling and what really distinguishes the
2 incumbency advantage is winning a previous election.

3 And since in Illinois we have this unique
4 situation where so many incumbents are appointed,
5 they did not win a previous election. So appointing
6 incumbents are not a special circumstance. They are
7 a normal circumstance. And the evidence indicates,
8 you know, that there's no special advantage that
9 comes from being an appointed incumbent. And if
10 you're not an appointed incumbent, that means you
11 must have won an election in the district at some
12 point.

13 Q. And where might I find that analysis of
14 incumbency advantage?

15 A. I think because -- I'm not sure I
16 discussed the Fowler article in the report. I'll
17 look. But if we can take a break --

18 Q. No, I don't mean the Fowler -- I mean
19 yours. I don't mean Fowler.

20 A. I understand. And it's in here. But it
21 would take me -- because my pages have gotten all
22 messed up. It would be better if I gave it to you

1 after dinner. That way we won't spend 10 minutes
2 right now. And I'm pretty hungry. It's 11 minutes
3 after 7:00. I promise you I will tell you exactly
4 the pages where it is.

5 Q. Oh, so you're just referring to the pages
6 in your report. I'm talking about is there
7 underlying documentation of this overall analysis
8 that you did about incumbency?

9 A. It's in my report. That's what I'm
10 saying. I will steer you to the pages of my report
11 where I talk about incumbency and I will -- I can
12 give you right now, I think --

13 Q. No, you don't have to do it right now.
14 I've read it. I understand that your conclusions are
15 in there. It's the analysis that I'm interested in.

16 A. There is analysis in there.

17 Q. Okay.

18 A. And I think I gave the citation to the
19 Fowler article and quotes from the Fowler article
20 already in this deposition. So that's on the record.
21 And after the break, I will refer you to the points
22 at which I discuss incumbency advantage in Illinois

1 and also point out if that's in my report or not.

2 Yeah, I'll steer you to the right pages, but let's do
3 it after dinner.

4 Q. Yeah, I recall reading that. Do you know
5 if incumbency advantage is any more or less marked in
6 Illinois than it is anywhere else?

7 A. You know, I looked at all the citations to
8 incumbency advantage that were presented by
9 plaintiffs. A, I didn't see anything in Illinois
10 specific that says there's an incumbency advantage in
11 Illinois. I didn't see any quantification. And
12 except for the Fowler article, which says appointed
13 incumbents don't have an incumbency advantage, I
14 didn't see anything, you know, that would inform you
15 about appointed incumbency in Illinois, but the
16 Fowler piece was very informative.

17 Q. All right. I'd like you to look at page
18 54. We are moving right along.

19 A. I've got to have a dinner break soon.
20 It's almost a quarter after 7:00 my time.

21 Q. I just have a couple of questions about
22 this.

1 A. Okay.

2 Q. Or we can take a dinner break now if you
3 want since I'm changing topics.

4 A. If you only have two questions.

5 MS. HULETT: Well, no, let's take our
6 break now.

7 THE WITNESS: Okay. And what time are we
8 coming back?

9 THE VIDEOGRAPHER: Let's go off the record
10 first, if you don't mind. Going off the record at
11 7:13 p.m.

12 (Recess.)

13 THE VIDEOGRAPHER: We are going back on
14 the record at 8:02 p.m.

15 BY MS. HULETT:

16 Q. Dr. Lichtman, at this point, I wanted to
17 direct you to page 54 of your report where you
18 express that counting -- the last three lines in that
19 page where you say, "Any counting of assessment of
20 wins and losses for Hispanic candidates of choice in
21 these" -- meaning Dr. Grumbach's exogenous
22 elections -- "is unavailing for assessing Hispanic

1 voter opportunities in challenged districts."

2 Why do you think that?

3 A. Because I think all but one of the
4 challenged districts is 42 percent or more Latino
5 CVAP. The lowest one is about 35 percent. Cook
6 County is 17.7 percent CVAP Latino, even lower than
7 HD 19.

8 And as I explained to you, even under
9 conditions of polarized voting, I gave you an
10 example, Latino candidates of choice can win in the
11 challenged districts, but they're not going to win in
12 a district that's under 18 percent Hispanic CVAP. So
13 whether or not an Hispanic candidate wins in Cook
14 County provides no insight into whether Hispanic
15 candidates can win in challenged districts and, in
16 fact, would be highly misleading in terms of whether
17 Hispanic candidates could win in challenged
18 districts.

19 Same thing in the city of Chicago. It's
20 only 20.7 percent. All but one of the challenged
21 districts is more than double that. In fact, I
22 proved how unavailing it is to look at wins and

1 losses, even in Chicago, which has a higher Latino
2 CVAP than Cook County, in my reconstructions of the
3 Garcia/Emanuel runoff in 2015.

4 Garcia lost in Chicago by about 12 points.
5 He won in the challenged districts in reconstruction
6 by about 15 points and more. That's a perfect
7 illustration of the difference. You can't say, oh,
8 my God, Garcia lost, that means you're going to lose
9 in the challenged districts. The opposite is true.

10 Q. So it is simply the counting of assessment
11 of wins and losses that's unavailing in terms of
12 exogenous elections. You're not saying, are you,
13 that analyzing racially polarized voting in exogenous
14 elections is unavailing, are you?

15 A. I didn't say that. But, as you know, I
16 have a standing objection.

17 Q. You do? What is that?

18 A. I'm about to get to it. Thank you.

19 Dr. Grumbach's definition of racially polarized
20 voting, which is any statistical difference. You
21 could have 95 percent of Latinos voting for the same
22 candidate as 90 percent of nonLatinos have the

1 confidence intervals don't overlap, which they may
2 not, particularly in a big district like Cook County,
3 big jurisdiction. He would call that polarized
4 voting.

5 That's at odds completely with MALDEF's
6 definition, which I print in my report, which is
7 minorities and whites have to prefer different
8 candidates. You can't just look at the magnitude of
9 the difference. So while certainly you can compute
10 racially polarized voting numbers any way you want,
11 Dr. Grumbach's definition doesn't help us to
12 understand racially polarized, particularly in
13 Illinois where we have so many coalitions.

14 Q. Okay. I understand that. What I'm really
15 asking you is do you have any opinion -- you are not
16 saying that exogenous election should not be included
17 in a racially polarized voting analysis, are you?

18 A. No, I don't think they're as probative as
19 endogenous, properly defined and properly understood.
20 You certainly could look at racially polarized voting
21 that tells you nothing about whether white bloc
22 voting would usually defeat the Latino candidate of

1 choice in challenged districts. My example of the
2 Garcia/Emanuel race directly refutes that.

3 Q. And now I would like you to turn to page
4 61 of your report, table 7.

5 A. I hope I can find it. It got scrambled
6 again. Table 7. I'm with you.

7 Q. Did you perform an ecological regression
8 analysis on all of those elections in table 7?

9 A. Absolutely not. A lot of them are totally
10 inappropriate, like SB 6 and House District 19 and
11 there are some black districts analyzed by Chen, but
12 not by Grumbach. So no.

13 Q. Can you tell me which ones exactly did
14 not?

15 A. Oh, I'm not sure I can do that from
16 memory, but I think I have a table in my report where
17 I look at 22 elections, I think, something along
18 those lines, 21, that I think are appropriate for
19 analysis. It might be a correction in one of those
20 tables. I think I sent some minor corrections to --

21 Q. Is there somewhere you can retrieve your
22 ecological regression analysis?

1 A. No. I told you I had one purpose for my
2 ecological regression analysis and that was to check
3 Dr. Grumbach and Dr. Chen. And after the checks,
4 they redid or dropped their analysis in response to
5 my ecological regression result. So at this point,
6 it's all done.

7 Q. And you're --

8 A. Let me finish. Don't interrupt, please.
9 It's all done. They accepted my results. They
10 responded to them. They dropped elections or redid
11 elections. If they thought I was wrong, they
12 certainly would have said so. They're not shy. And
13 of course they could have done their own ecological
14 regression. Dr. Grumbach says he knows how to do it.
15 He has my data. He has his own data. But at this
16 point, there's no dispute. It's over. It's done.

17 Q. My question is a little less charged than
18 that. There's no way you can retrieve your analysis
19 at this point, your estimates?

20 A. No. I mean, I could go back and redo
21 everything, but I'm not going to do that. No point.

22 Q. Do you think that all of the elections in

1 this table 7 are probative of the issues in this
2 case?

3 A. Not all of them. I think I identified a
4 bunch that were not probative. By the way, to finish
5 my answer to your question, I got nothing from
6 plaintiffs' experts on any of their output, which is
7 vastly more complicated and vastly more detailed than
8 ecological regression. And I never got their base
9 data, and I gave them my base data.

10 Q. And I have to -- because you've said that,
11 Dr. Lichtman, I do have to say for the record that we
12 turned over to your attorneys all of the underlying
13 data, the output and everything that Dr. Grumbach
14 relied on. So I do have to say that for the record.

15 A. I haven't seen --

16 Q. I don't know what you have.

17 A. It may be true. It doesn't matter.

18 Q. Okay.

19 A. At this point, there's no disagreement
20 among any experts on the numbers. The numbers are
21 done. They've responded to my criticisms. They've
22 changed their reports and I have no quarrel with

1 their new results, with the caveats that I think they
2 picked some inappropriate districts.

3 Q. I understand that you have some quarrel
4 with some of the districts that were chosen by
5 Dr. Grumbach for analysis, but do you know what his
6 criteria was for choosing which elections to analyze?

7 A. No, because while he included some
8 inappropriate elections, he excluded some entirely
9 appropriate elections, like the democratic primary in
10 Senate District 22, which by the way didn't have an
11 incumbent, but elected a Latino candidate of choice,
12 the general election, in Senate District 22. House
13 District 40, 2012 general.

14 So there were elections that he didn't do
15 that were entirely appropriate and a couple of
16 elections anyway that he did do that were not
17 appropriate.

18 Q. Are you aware -- I think we've covered the
19 ones that you thought were not appropriate and it had
20 to do with the size of the Latino CVAP in the
21 district, correct, for two districts?

22 A. That's one problem. The other problem was

1 the lack of homogeneity of the Latino precincts in
2 those districts as well.

3 Q. All right. You say --

4 A. Two separate problems -- let me finish.
5 Two separate problems. One substantive, one
6 methodological.

7 Q. You say he should have -- he should have
8 analyzed HD40 from --

9 A. I don't see why not.

10 Q. -- in 2012. Do you know that that
11 election did not include a Latino candidate?

12 A. Oh, maybe you're right. I'm just looking
13 at this and seeing that's one of the challenged area
14 districts. But certainly Senate District 22 where
15 there were two elections in it and House District 77,
16 I think, would certainly be appropriate to analyze.
17 That's three there. I can't from memory go through
18 every one of them.

19 Q. Do you know that his criteria was to
20 select racially contested elections that overlapped
21 with the districts challenged by the Contreras
22 plaintiffs as opposed to any other plaintiffs?

1 A. Where is that in his report? I'd like to
2 see that. I don't recall that and he didn't follow
3 that.

4 Q. In what way didn't he follow that?

5 A. I don't think SD 6 is substantially
6 overlapping the challenged districts. But I don't
7 recall seeing that in his report. Please direct me
8 to the page.

9 Q. Well, the exhibits to his report contain
10 the maps that show all the districts that overlap. I
11 can find you in his report where he speaks to --

12 A. Yeah, I'd like to see because I don't
13 remember him saying that and didn't follow it anyway.

14 Q. Well, again --

15 A. Please --

16 Q. -- in which case did he not follow it?

17 A. I read it with care and I don't recall him
18 saying that. Please show it to me. I have his
19 report right in front of me. Just tell me what page.

20 Here it is. And it's not what you say,
21 unless it's somewhere else. "I merged the
22 precinct" -- this is page 4 -- "I merged the precinct

1 level election returns data with the precinct level
2 demographic." We all do it.

3 Page 4. This is the second paragraph from
4 the bottom and it begins in, "I merged."

5 Q. Dr. Lichtman, I found it. On page 5, his
6 criteria --

7 A. It's my page 4. You know, our pages don't
8 always match.

9 Q. His criteria is in the top paragraph.

10 A. It's under data and methods.

11 Q. Yeah, and --

12 A. Under data. Page ID, 2114. I'll read it
13 to you. "I merged the precinct level election
14 returns data with the precinct level demographic. I
15 exclude elections in which a candidate runs unopposed
16 and elections that are not racially contested in
17 which there was not at least one Latino candidate and
18 one nonLatino candidate. Once finalized, data for
19 the analysis includes 19 total elections for the
20 following state legislative districts."

21 I'm not going to read them all off.

22 Q. Yeah, please don't. Can you look at the

1 next page?

2 A. Let me finish. I need to finish this
3 paragraph. "Election cycles covered included 2012 to
4 2020 to the best of my analysis. Knowledge of my
5 analysis covers all state legislative elections in
6 the past decade in which at least one Latino
7 candidate running against at least one nonLatino
8 candidate in an endogenous election, i.e., those that
9 involve elected offices at issue in this case."

10 We know that's not true. We know there's
11 at least two -- at least three that he didn't do.

12 So there's nothing in here that says he's
13 only looking at endogenous elections that
14 substantially overlap the challenged elections.

15 Q. Can I direct you to the top of page 5?

16 A. Okay. Maybe it's there. I was asking you
17 to direct me.

18 Q. He's referring to -- at the top of page 5,
19 he's referring to exogenous elections. And at the
20 end of the first paragraph, he says, "To the best of
21 my knowledge, the exogenous elections I analyzed
22 include all of the elections in the past decade in

1 which at least one Latino candidate ran against at
2 least one nonLatino candidate for a federal,
3 statewide or county office that overlaps the
4 endogenous districts."

5 A. Yeah, that's for his exogenous elections,
6 not for his endogenous elections. For his endogenous
7 elections, the state legislative elections, he says
8 nothing about overlap.

9 Q. Well, do you contend that any of these
10 elections in this table 7 that you contend were not
11 analyzed by him improperly, do you contend that any
12 of them overlap the challenged districts?

13 A. Doesn't matter. That's not his criteria.

14 Q. That's not my question.

15 A. I didn't -- let me finish. I didn't look
16 for that. Why should I? That's not his criteria.
17 There are election -- let me finish. There are
18 elections that he didn't analyze that didn't fit --
19 that fit his criteria. If we're going to throw out
20 elections that he didn't analyze because they didn't
21 overlap, we have to throw out elections that he did
22 analyze. But I know House District 77 at least

1 certainly overlaps, and there may be others, but I
2 didn't look to that because that's not how he chose
3 his elections.

4 MS. HULETT: Can you pull up the
5 overlapping districts, please?

6 BY MS. HULETT:

7 Q. I want to show you something on my screen.

8 A. Sure.

9 Q. And it is something that I sent to your
10 attorneys just before --

11 A. I mean, I saw it.

12 Q. No, it doesn't --

13 A. I'll do my best to Respond.

14 Q. It's easy to look at, though.

15 A. Sure. Are we done with -- excuse me. Are
16 we done with page 61?

17 Q. Yeah, that was --

18 A. I can reorder my pages. I possibly can.
19 That's impossible.

20 Q. Okay.

21 MS. HULETT: And I would like to mark this
22 as Exhibit 19.

1 (Lichtman Exhibit 19 was marked for
2 identification.)

3 BY MS. HULETT:

4 Q. And the green district 77 up there is --
5 do you see it's district 77, House District 77 that
6 you've been talking about?

7 A. I certainly do. It's a challenged
8 district.

9 Q. The blue districts drawn there are the
10 house districts that we are challenging and they do
11 not overlap district 77, or they're not even close,
12 correct?

13 A. District 77 is challenged by other
14 plaintiffs. It doesn't matter to me which plaintiff
15 is which.

16 Q. But it matters to Dr. Grumbach. He was
17 analyzing districts that overlap the districts that
18 Contreras plaintiffs are challenging.

19 A. That's fundamentally incorrect. He never
20 said he was analyzing only endogenous districts that
21 overlapped challenged districts. He never mentions
22 that. Let me finish. Never says that.

1 What he does say, something entirely
2 different, that when he looks at endogenous
3 elections, he looks at elections that encompass
4 challenged districts, like Chicago and Cook County,
5 but he never says he is looking at endogenous
6 elections that overlap, and certainly not endogenous
7 elections that only overlap the MALDEF plaintiffs.

8 Q. And the second page in this exhibit is
9 Senate District 22. And do you see that it does not
10 overlap the senate districts that are challenged by
11 the Contreras plaintiffs in this election?

12 A. I don't think I ever said it did.

13 Q. What page is this?

14 A. And again, my point is he analyzed other
15 districts that didn't overlap and he never had a
16 criteria for overlap.

17 Q. All right. Can you hang on a minute?

18 A. District -- let me finish. Okay. I'm in
19 the middle of a sentence but I'll hang on.

20 Q. Does district 77, House District 77,
21 involve a district that the Contreras plaintiffs are
22 challenging?

1 A. I'm not positive. I know the McConchie
2 plaintiffs are challenging it, but that's irrelevant
3 to Dr. Grumbach's analysis. You're not challenging
4 House District 19, you're not challenging Senate
5 District 6 that he analyzed.

6 So this has nothing to do with the
7 criteria that Dr. Grumbach has adopted. And my point
8 is, given his criteria, not what you're trying to
9 push me to, he left out elections that he should have
10 analyzed and that would change his results.

11 Q. So it's your view that -- you accept the
12 fact that his exogenous elections criteria had to do
13 with overlapping the districts we were challenging
14 but what you don't accept is that his endogenous
15 elections involved the elected offices that we were
16 challenging?

17 A. It's not what I would accept. That's not
18 correct. It's what he wrote. And he was very clear.
19 I read the whole paragraph.

20 Q. Can I read it --

21 A. None of his --

22 Q. Can I read it to you again?

1 "To the best of my knowledge, my analysis
2 covers" --

3 A. What page? What page? What page?

4 Q. Page 4.

5 A. I want to follow along.

6 Q. Same paragraph you were reading from, last
7 sentence.

8 A. I need to get to it, though. My memory,
9 you know, I'm old. My memory is not that great.

10 Q. And the last sentence in that paragraph
11 says, "To the best of my knowledge, my analysis
12 covers all state legislative elections in the past
13 decade in which at least one Latino candidate ran
14 against at least one nonLatino candidate in
15 endogenous elections, i.e., those that involved the
16 elected office at issue in this case."

17 And you agree that House District 77 does
18 not involve the elected offices at issue in the
19 Contreras case?

20 A. Of course it does. You don't understand
21 the meaning of an endogenous election. An endogenous
22 election is not necessarily one in a challenged

1 district. An endogenous election is an election, as
2 he said, for the offices at issue, which are state
3 legislative offices. Otherwise, why would he include
4 Senate District 6, which is nowhere near here, in his
5 analysis. He never says that he is only including
6 districts that are being challenged. And he doesn't.

7 Q. Senate District 6 does overlap the
8 districts we're challenging.

9 A. I would like to see that.

10 Q. It's attached to his report. But I
11 actually think we should move on. But I'll keep this
12 marked.

13 A. But it doesn't matter. He does not say
14 only endogenous elections that overlap the challenged
15 districts. An endogenous election is an election for
16 the office at issue.

17 And in fact, his analyses have nothing to
18 do with the challenged districts. They're based on
19 existing districts.

20 Q. And you understand that the McConchie case
21 and the Contreras case are two different cases, don't
22 you?

1 A. For legal purposes, but not necessarily
2 for my purposes.

3 Q. Oh, well, that explains it. Okay.

4 A. No, it doesn't explain it. He is not
5 saying he is only dealing with districts that overlap
6 the challenged districts. He is saying he is dealing
7 with those that involve the elective offices at
8 issue.

9 And he couldn't be more distinct from the
10 way he describes exogenous elections. He uses the
11 much more clear term that overlaps the endogenous
12 districts. He does not use that terminology when
13 talking about endogenous elections.

14 Q. On page 67 of your report, last paragraph.

15 A. Hang on. I'm not there. My pages got a
16 little scrambled.

17 Okay, now I'm there.

18 Q. The last paragraph, "This comprehensive
19 database of 23 probative state legislative
20 elections" --

21 A. Okay --

22 Q. -- "is more than sufficient for concluding

1 whether white bloc voting usually defeats Hispanic
2 preferred candidates."

3 A. Okay. What's the question?

4 Q. Theoretically, hypothetically, would 20
5 races be enough for that purpose?

6 A. Let me back up. I'm not trying to prove
7 something. It is the plaintiffs who are trying to
8 prove. And these are the elections that the
9 plaintiffs analyzed and these are the ones they
10 thought were probative.

11 Based on the 22 elections, it is
12 overwhelming that that's not the case. If it was
13 real close, maybe. But this is more than sufficient.
14 Again, this is their full corpus of relevant
15 elections.

16 Q. And hypothetically, if 23 are enough,
17 would 20 be enough?

18 A. That's not a question you can answer in
19 the abstract. Probably. But you would have to look
20 at the context of the 20 elections. But that's a
21 pretty good run of endogenous elections.

22 Q. How about 15 elections?

1 A. Again, I'm not going to give you a hard
2 and fast line. There's no such thing. It's all
3 context-dependent.

4 And again, I'm not trying to prove. I am
5 responding to the proof of the plaintiffs' experts.
6 And yes, these are enough elections that if in fact
7 white bloc voting usually defeats the Latino
8 candidate of choice, it would show up, and it
9 doesn't.

10 Q. All right. I'm going to ask you a few --
11 I'm changing topics for a moment.

12 A. Sure.

13 Q. And I would like you to look at
14 footnote 40 on page 48 and read it carefully.

15 A. Is this my report or --

16 Q. Your report, yes. Sorry. Your report.

17 A. My pages have gotten really scattered.
18 I'll try to find it.

19 I see it.

20 Q. So we've established before that you
21 performed an ecological regression at least on some
22 elections for this case?

1 A. For the sole purpose of verification, not
2 for an independent analysis, that's correct.

3 Q. All right. And that you relied on that
4 standard double-equation-weighted procedure, is that
5 right?

6 A. That's right.

7 Q. Now I'm going to be a little Rachel Maddow
8 on you. I am going to ask you -- I'm going to
9 describe kind of how that's done and I'm going to ask
10 if I'm saying it correctly.

11 You used an SPSS program, is that right?

12 A. Yes, but I could have used any program.
13 Nothing special about SPSS.

14 Q. Right.

15 A. I could use SAS, STATA, any. Every
16 program --

17 Q. But you used --

18 A. Let me finish. Every statistical program
19 in the world does regression, and they're basically
20 available in every universe. So I don't want anybody
21 to think I called out some arcane software package.

22 Q. Right. You go about doing this by loading

1 separately into the program the election --

2 A. I'm loading what? I'm sorry, I didn't
3 hear that.

4 Q. You go about doing that using the SPSS
5 program by loading separately each election -- data
6 from each election file for each -- I'm sorry. Let
7 me say that again.

8 You load separately the election files for
9 each election into the program, is that true?

10 A. That's correct.

11 Q. And then for elections that are not
12 uniformly formatted, you have to arrange them in the
13 way that you need them to be arranged, is that
14 correct?

15 A. That's incorrect. The data was given to
16 me by the staff I think of the democratic caucus, and
17 I told them how to arrange it. And this is nothing,
18 again, arcane.

19 Q. Okay.

20 A. Let me explain how it's arranged.

21 Q. No --

22 A. You asked me the question.

1 Q. I'm going -- you know what I'm going to
2 do, Dr. Lichtman? I'm going to show you what you
3 asked for and I'm going to show you the sample that
4 you gave them and I think we can make this move along
5 very quickly.

6 A. Sure.

7 Q. Can we pull up Exhibit -- I think it's
8 Exhibit 10 that Mr. Greenbaum was using.

9 A. I don't remember it, but that's fine.

10 Q. Yeah, we're going to pull that up right
11 now.

12 A. I can only see a small piece of that.

13 Q. I know. I'm having difficulty. There we
14 go. Let me scroll down.

15 I believe this is the email where you were
16 asking them for what you need to run that ecological
17 regression analysis.

18 A. I don't remember, but --

19 Q. And you said, "I have enclosed an example
20 of what this election and demographic data would look
21 like for each election." And then you gave them this
22 example.

1 A. I'm not sure I gave you that example, but
2 it's not -- let me finish -- it's not a complete
3 example. It's just election data. And you can see
4 it's election data for the two candidates by
5 precinct. But I would also have, on each of these
6 precincts, and when I put it into my computer, what I
7 was given -- oh, there it is.

8 Q. Yep. See, I'm way ahead of you. So you
9 had -- this is an example of what statisticians refer
10 to sometimes as cleaned data, correct?

11 A. I don't know what necessarily cleaned data
12 means. This is a kind of data. But usually it was
13 CVAP, not VAP.

14 Q. But it's complete --

15 A. It doesn't matter. The rows look the
16 same, sure.

17 Q. Right. Because it -- it's complete
18 because it has both election results, which I was
19 showing you first, by precinct, by candidate, and it
20 has racial data for each precinct?

21 A. Correct.

22 Q. And in this case, it was VAP, it looks

1 like data, that you had not CVAP, not registration
2 but VAP, is that correct?

3 A. I never used registration. I used CVAP.

4 Q. Okay.

5 A. I'm not sure why this example has -- but
6 it's the same. It looks the same.

7 Q. Right. So in your ecological regression,
8 it's the same as this, but you used CVAP, correct?

9 A. I believe that's right. I think that's
10 right.

11 Q. So there was a -- for each election that
12 you analyzed, there was data that looked like this,
13 that was this complete?

14 A. Pretty much, yeah. And then always have
15 registration, but I didn't use it for anything.

16 Q. Did you give that data that you had for
17 each election to your attorneys?

18 A. The attorneys gave it to me. It was
19 prepared by the staff of the democratic caucus. I
20 didn't put it together. What I did have to do in a
21 lot of cases is they would give me the election
22 returns matched to precincts and they would give me

1 the precinct demographics and I would just put them
2 together in a format like this.

3 Q. So the staff --

4 A. But I didn't -- I didn't do it.

5 Q. So the staff gave you the data that you
6 needed for each election that you wanted to run an
7 ecological regression on, correct?

8 A. That's correct. There may be one or two
9 where I worked it off myself. I don't remember. But
10 the vast majority was given to me by the staff,
11 that's right.

12 Q. And after you ran the ecological
13 regression, what did you do with that data?

14 A. What data? The data -- my results --

15 Q. The data that -- the data --

16 A. Every number that I found that was
17 relevant -- remember, I'm not doing an independent
18 analysis. I'm just doing a check. And every time I
19 found a difference, I reported the number generated
20 by my ecological regression.

21 Q. I get that.

22 A. And all of those numbers were accepted and

1 both Dr. Chen and Dr. Grumbach revised their analyses
2 based on what I had found. It's done. It's over.
3 It's complete.

4 Q. I understand that. I understand that it's
5 done. For each election that you did an ecological
6 regression on, you had a set of data that looks like
7 Exhibit 10 that you loaded into the SPSS program,
8 correct?

9 A. That is correct.

10 Q. What did you do with that election data
11 for each election --

12 A. I ran --

13 Q. -- fed into the SPSS program?

14 A. I did something that is absolutely
15 standard statistical analysis. I ran a regression.
16 I did not redo the computations. That's why I have
17 SPSS. SPSS does the regression analysis based upon
18 whatever it is you've inputted in this kind of
19 format.

20 Q. And you received this data from who?

21 A. I already told you. From the staff of the
22 democratic caucus. I assume that's who they are.

1 Q. Do you still have --

2 A. Justin and Gio.

3 Q. Do you still have this data for each
4 election?

5 A. I'm sure I do. I wouldn't have thrown it
6 away. And by the way, you have the same data because
7 you have to. This is the only data that -- by which
8 you can do either EI or ER. And Dr. Grumbach said he
9 had the data by which he could do EI or ER. So this
10 isn't new to me.

11 And I believe -- let me finish -- and I
12 believe -- again, I don't get involved in this. The
13 attorneys do. But the attorneys -- my understanding
14 was that the data that was given to me was shared
15 with plaintiffs. But plaintiffs also worked up their
16 own data in this same format. That's my
17 understanding. I can't prove that.

18 Q. For the record, I have to say we don't
19 have that data, Dr. Lichtman. I'm not faulting you.
20 I'm saying we don't have it and I'm glad you still
21 have it.

22 So now you've loaded it into --

1 A. Let me say you may not have it from me,
2 but you have it in that -- Dr. Grumbach could not
3 have done his analysis without the same thing. The
4 analyses may be a little different in terms of what
5 you get after you input it into the computer, but
6 we're basically inputting the same thing. Election
7 returns by precinct and demography by precinct.

8 Q. Yes. And we -- just for your information,
9 we obtained that information from various sources,
10 city clerk, county clerk, state elections board.
11 Dr. Grumbach made the data uniform so that it could
12 be fed into the SPSS. He then got registration
13 racial data, Spanish surname data, and he formatted
14 that and that's what he used.

15 I'm simply trying to find out where is the
16 data you used? And you say you have copies of it and
17 I'm telling you we don't.

18 A. Let me say, you know, you've given a nice
19 description there, but his results are filled with
20 impossible results. So whatever he did misfired,
21 whether it's data that misfired, his program that
22 misfired or something misfired because he's getting

1 anywhere from 41 percent, 20 percent, 14 percent
2 impossible results. And he gave us four explanations
3 for it in his depo, none of which are valid.

4 There were no write-in candidates in these
5 elections. Under votes are not counted, over votes
6 are not counted. And the ones with the biggest
7 divergence, there was no Republican primary. So
8 something went awry somewhere with what Dr. Grumbach
9 did.

10 Q. All right. So you fed the data into the
11 SPSS -- SPSS and what the SPSS does is allow you to
12 run a linear regression where the --

13 A. Yes.

14 Q. -- X is the Latino share of precincts.
15 Let's just -- for purposes of our conversation, let's
16 say we're just doing Latino/nonLatino. X is the
17 Latino share of precincts and Y -- the Y there is the
18 percent support for each candidate, is that correct?

19 A. That's right.

20 Q. And then the program spits out a
21 coefficient, which is the estimate of the percent of
22 Latinos that voted for a particular candidate, is

1 that correct?

2 A. With a little bit of arithmetic.

3 Q. Okay.

4 A. It's a little bit more nuanced than that.

5 It gives you a slope and a coefficient. It's $Y = A + BX$ where A is the slope and B is the
6 coefficient. And you've got to do a little bit of
7 arithmetic to get at the estimates. That's all. But
8 you're basically right.

10 Q. And then for each coefficient value, it
11 also spits out a standard error, is that correct?

12 A. Yes, it can do that.

13 Q. And then it also gives you a confidence
14 interval?

15 A. You have to compute that. And again,
16 that's just internal to the program. It's not real.

17 Q. And you can --

18 A. Let me finish. It was not relevant here
19 because I wasn't dealing with confidence intervals.
20 I was just checking point estimates.

21 Q. And you can see on the screen the
22 confidence interval, the standard error and the

1 estimates, correct?

2 A. You can see everything on the screen. But
3 I didn't even look at the confidence intervals
4 because all I was doing was computing point
5 estimates, which was all that Dr. Grumbach and
6 Dr. Chen were using to identify their Latino
7 candidates of choice.

8 Q. And if you wanted to, you could print that
9 out, correct?

10 A. I could what?

11 Q. Print out what you see on the screen, the
12 estimates, the standard errors, the confidence
13 intervals, you could print all that out if you wanted
14 to?

15 A. I can print out anything I want, but
16 there's no point. I'd just paper my house.

17 Q. And you didn't print it out?

18 A. No.

19 Q. Can you retrieve any of that now?

20 A. I mean, could I go back and rerun my
21 ecological regressions?

22 Q. Yes. Or was there any way to --

1 A. Is there a dispute over them?

2 Q. -- save them? Was there any way to save
3 it or --

4 A. I could re-input the data and rerun
5 things.

6 Q. All right.

7 A. But I don't see the point of it since
8 there's no dispute among the experts anymore, if
9 there ever was.

10 Q. And the SPSS output -- I won't -- I'm not
11 going to spend too much longer on this, but I wanted
12 to ask you a couple more things. The SPSS output
13 also contains R and R squared values, is that right?

14 A. That's correct.

15 Q. All right. I'd like you to look at page 6
16 of your report. Way at the beginning.

17 A. Yeah.

18 Q. Under data and methods.

19 A. Yeah.

20 Q. Third line. And you are -- let me just
21 read it, actually, the first three lines so I
22 understand the verb involved here.

1 "The report draws upon sources standard in
2 historical and social scientific analysis. The
3 sources include scholarly books, articles and
4 reports, newspaper and other journalistic articles."

5 Those would be the things that you cited
6 in your report, correct?

7 A. Yes.

8 Q. And then the demographic information would
9 be the things that we've been talking about, plus
10 maybe district data. What would be in that
11 demographic information?

12 A. I think you've got it right, whatever
13 demographic measures one was looking at, VAP, CVAP --

14 Q. And then election --

15 A. Let me finish -- total population --

16 Q. Sorry.

17 A. VAP, CVAP, total population for the
18 districts.

19 Q. And then election returns, that's what we
20 were just talking about, correct?

21 A. Right. Along with demography by precinct
22 to go with the election returns.

1 Q. And the next one is exit polls. What exit
2 poll did you rely on?

3 A. For example, one flaw I found in all the
4 plaintiffs' analysis had to do with turnout. And I
5 wasn't disputing their numbers from the self-reported
6 CCES -- excuse me, CPS survey, a current population
7 survey, that in general elections in Illinois,
8 minorities turn out lower than whites.

9 But as we discussed, you know, a very
10 important election in these heavily minority areas is
11 the primary, and nobody looked at primaries. So I
12 looked at the 2008 exit poll for the democratic
13 primary, which was very good because we had it
14 statewide, and it was a black and a white and it
15 showed that compared to their CVAP, minority
16 participation was much higher. The turnout in the
17 primary was much higher for Hispanics and blacks than
18 it was for whites.

19 Q. Did you give that exit poll to your
20 attorneys?

21 A. It's right in my report. Anyone --
22 everyone has it. Along with a URL so if you want to

1 make sure I got it accurate.

2 Q. What do you mean it's in your report? A
3 cite to it or --

4 A. Both.

5 Q. -- your opinion about it?

6 A. Both. I've got to check. You're asking
7 me to do too much by memory. I am going to get off
8 the Zoom for a moment because I'm not going to page
9 through 200 pages. I'm going to go to my computer
10 and search for that primary. So hang on.

11 Yes, the actual white minority -- ah, I
12 lost it now. Sorry. I think I've got several tables
13 on this.

14 Q. Okay.

15 A. One table is on page -- it's table 4 on
16 page 128 which shows that -- slightly different
17 purpose for this one, but it's the same exit poll.
18 It's showing that the crossover vote for Obama, the
19 black candidate, was vastly -- 18 percentage points
20 higher in Illinois than nationwide. Again, making my
21 point that you've got coalitions in Illinois that you
22 don't find elsewhere.

1 And I think I may have another table using
2 this.

3 Q. The data that you got --

4 A. Yep, the -- I can't find the other table,
5 but this is an example of the use of that primary.

6 Q. Okay.

7 A. The other one I may just have reported not
8 fully.

9 Q. No, that's fine. As long as what you were
10 referring to is only something that is publicly
11 available, then we can get it.

12 A. Oh, anyone can get this.

13 Q. Okay. So --

14 A. I'm surprised you didn't get it already
15 since this was weeks ago in my report.

16 Q. We've been busy.

17 A. I've been busy, too. I sympathize and
18 understand. I'm not criticizing.

19 Q. Okay.

20 A. I just want to make sure you weren't
21 implying I was hiding anything.

22 Q. No. No, not you. No.

1 So the racial precinct data -- I'm going
2 to go back for a minute to the data that you feed
3 into the SPSS.

4 A. Sure.

5 Q. You've got that from legislative staff.
6 Do you know where they got that data?

7 A. I know where they got the election returns
8 that, you know, they reported by the state.

9 Q. But what about the racial precinct data?

10 A. I'm not sure where they got the racial
11 precinct data. But this is consistent with what I've
12 been doing in Illinois for 20 years. This is exactly
13 the same thing. I got the election breakdowns, the
14 demographic breakdowns from staff, people who know
15 the state, know the stuff, and used them.

16 Q. Sure, but you --

17 A. Let me finish. It would have been a vast
18 -- given how busy we are and how compressed the
19 schedule is -- for me to try to work this up.

20 Q. Right. But you understand that we might
21 be interested in that since there's probably
22 different ways of estimating what the racial

1 composition of each precinct is.

2 A. I pointed out, you know, and I think we
3 asked this in the depo of Dr. Grumbach, you can do
4 it. You have the data. You have your own data.
5 That's fine. You know how to do ecological
6 regression. You want to independently check what
7 I've found, go right ahead. He didn't do it because
8 he had no quarrel with what I found. So there's no
9 secret here.

10 Q. In the footnote that we were just looking
11 at, footnote 40 on page 48, I think you say you
12 weighted by CVAP to adjust for differences in
13 precinct population.

14 A. Yeah. It doesn't make much difference
15 when you're dealing with precincts because there's
16 not great variation in the, you know, precinct
17 population, one in 10,000 and one in 100. But to be
18 most accurate, I used the weighted procedure. But it
19 wouldn't have made much difference.

20 Q. Can you explain how you did that?

21 A. SPSS has a weight variable. I just
22 entered total CVAP into the weight variable.

1 Q. And does that print out on the output from
2 SPSS so that you know what weight it's applying?

3 A. The weight that applies is the weight I
4 decided. In other words, it's not like SPSS is
5 weighting itself. There's a weight box that says
6 weight by and I put in total CVAP as my weight
7 factor.

8 Q. And you did that for every election?

9 A. I believe that's right. I don't see why I
10 wouldn't have as far as I recall, yes.

11 Q. The other thing it says in this footnote
12 is that you used CVAP as the denominator -- let me
13 read it off. There. The very next phrase. "And use
14 of CVAP is the denominator for candidate percentages
15 to adjust for turnout differentials."

16 Can you tell me how you did that?

17 A. Yeah, arithmetic. Remember, our base data
18 is CVAP. It's not voters. Nobody has data
19 demographics on voters.

20 Q. Uh-huh.

21 A. And so what any statistical program, I
22 don't care what it is, will give you is data based on

1 what you put in the CVAP. So we get from SPSS, with
2 a little bit of arithmetic I explained to you, is the
3 percent not of voters, but of the CVAP turning out
4 and voting for each candidate.

5 So let me give you a simple example. Two
6 candidates. Candidate 1 and candidate 2. Ten
7 percent of the CVAP that's Latino turns out and votes
8 for candidate 1. Twenty percent of the Latino CVAP
9 turns out and votes for candidate 2. So the total
10 CVAP that's voting is 30 percent.

11 The total CVAP that's voting for candidate
12 1 is 10 percent. So I divide 10 percent by 30
13 percent and get an estimate that 33 percent of those
14 who voted -- that were Latino voted for candidate 1.
15 And I take 20 percent and divide it by 30 percent and
16 that's the percentage of those who voted for Latino,
17 turned out for candidate 2. And that's 67 percent.

18 That's why I don't get the problem that is
19 pervasive in Dr. Grumbach's work and that is
20 percentages of the Latino vote for all the candidates
21 that add to less than or more than 100. The
22 methodology assures that you're always going to get

1 100 percent because the sum of the numerators equals
2 the denominator.

3 Q. Did you give your lawyers any documents
4 that describe or demonstrate that arithmetic you just
5 explained to me?

6 A. I think when the lawyers -- it's all of
7 course in my -- I described this method in detail in
8 the sources. But I think when the lawyers asked me
9 about it, I described it just as I described it to
10 you. It's nothing mysterious about this. It's
11 absolute, you know, arithmetic.

12 Q. And I want to talk about -- move on and
13 talk about the reconstitution work that you did. I
14 just have a couple of questions about that. The
15 election results that you used for reconstitution,
16 your reconstitution analysis, did you get them from
17 the same place, from the legislative staff?

18 A. Absolutely. And I believe -- I didn't do
19 it. I didn't do the map work. A guy -- my
20 understanding, you know, correct me if I'm wrong, but
21 I'm pretty sure I'm right. The guy who drew the
22 maps, Jon Maxson, was much better qualified to deal

1 with maps than I am.

2 Q. Are they all in the E data file that I
3 sent this morning? I'm not sure if that has been
4 mark as an exhibit. Has it? No.

5 A. I'm not sure what you're talking about.
6 You have to show it to me. I didn't do this.

7 Q. All right. I'm going to pull up another
8 exhibit.

9 A. Sure.

10 MS. HULETT: And we'll mark it as Exhibit
11 20.

12 (Lichtman Exhibit 20 was marked for
13 identification.)

14 THE WITNESS: I can't see it. It's way
15 too small.

16 BY MS. HULETT:

17 Q. Too small.

18 A. Oh, wait a minute. I've got to get out of
19 what I was doing and into -- yeah. Hang on.

20 Q. Can I make this bigger? I should be able
21 to.

22 A. You're dealing with someone who's very

1 technologically challenged here. Can you take that
2 off the screen? Because it seems to be covering
3 up --

4 Q. Take it off.

5 A. Yeah.

6 Q. Stop sharing for a second.

7 A. I'm trying to get back to where we were.

8 Yeah, I think I'm back. Yeah. I'm back now. So now
9 you can put it up.

10 Q. Okay. We're getting this down.

11 A. Yep. That's not it.

12 Q. It's not what?

13 A. Not what I used.

14 Q. What is this?

15 A. We talked about this before. These are
16 different elections that I didn't use.

17 Q. These are different -- but this is not the
18 reconstituted --

19 A. This is not the Garcia/Emanuel election.

20 Q. Oh. Oh, I -- so you didn't -- did you
21 reconstitute elections in any of these districts?

22 A. No, because they're too many candidates.

1 So I relied just on the Garcia/Emanuel race.

2 Q. What did you use this data for?

3 A. I didn't. There it is. I think you've
4 got the runoff. Yeah.

5 Q. Okay. And that's the only one that you
6 reconstituted and you reconstituted in -- it's in a
7 tab that says RD -- I assume, I better check with
8 you -- that that's representative district, RD?

9 A. This is not in a representative district.
10 This is in a Chicago mayoral election.

11 Q. I know, but --

12 A. I mean, yeah, RD is house district, yeah.
13 The staff uses RD. I'm not sure why.

14 Q. Right. And you've reconstituted the
15 Chicago election in RD 1, not in RD 2, I guess.
16 Probably it didn't overlap or something.

17 A. I don't think so, yeah.

18 Q. RD 3.

19 A. Whatever I did is reported in my report.

20 Q. All right.

21 A. I don't remember exactly which districts
22 we were able to do it in, but we did it in every

1 district that we could. I know it's 3, 4, 39, maybe
2 77 and maybe one more, 24, something like that.

3 There were five districts. And I have a -- I don't
4 have a report on it. I have a table for each.

5 Q. Were -- my question is pretty simple.
6 When you say RD 1, 2, 3, RD 77, the ones that you
7 reconstituted elections in, were they the SB 927
8 districts that you were reconstituting?

9 A. Yes.

10 Q. Okay.

11 A. And I didn't -- remember, I didn't do
12 this. I used it, but I believe Jon Maxson actually
13 did it or his staff. I wouldn't do this because I'm
14 not a mapmaker.

15 Q. So do you -- oh. So then I think I know
16 the answer to this question because I thought you did
17 this. So I was going to ask you if you had done this
18 kind of analysis for the Contreras or McConchie
19 proposed districts.

20 A. No.

21 Q. No, okay. And forgive me if -- I'm not
22 sure if Jon asked you this question. Did you perform

1 any kind of reconstitution analysis for the
2 legislature prior to this case being filed?

3 A. Oh, yes. Many times. I did it in
4 Illinois. That was a big part of my testimony in
5 2001. In Texas litigation back -- way back when,
6 seems like 100 years ago when section 5 was still
7 around, reconstituted elections was the standard used
8 by both plaintiffs and state defendants to assess
9 districts, you know, proposed Texas districts. And I
10 may well have used it in other cases. I don't
11 recall. But certainly here and in Texas.

12 Q. I should have been more precise. I meant
13 the Illinois legislature, prior to the filing of this
14 case.

15 A. In prior litigation, not prior -- not --
16 SB 927 in the interim between the passage of SB 927
17 and the filing of the case nor, again, did I have
18 anything to do with the formation of the plan. I
19 didn't do this and give them results or talk about it
20 or anything like that. This was all post.

21 Q. Do you know when Maxson did this
22 reconstitution?

1 A. I'm sorry, what?

2 Q. You said Maxson did this reconstitution.
3 Do you know when?

4 A. During the litigation process, after the
5 passage of SB 927, sometime in that interim.

6 Q. Did you do anything to verify his work,
7 the accuracy of it?

8 A. There's really nothing I could do to look
9 behind it, but he's the most qualified person to do
10 this because he drew the districts. So I had no
11 reason to look behind it.

12 Plus, you know, even when you don't do the
13 base work yourself, one of the things you look for is
14 consistency. This is true of any kind of social
15 scientific analysis. And the results district by
16 district were very consistent. It wasn't like they
17 were jumping around markedly. So that gave me
18 additional confidence in the results.

19 And again, this is something, if they had
20 a quarrel with, plaintiffs' experts could have done.
21 In fact, plaintiffs' expert Warren Collingwood did it
22 in proposed District 114. And Dr. Grumbach,

1 Dr. Chen, if they had an issue with this, certainly
2 could have done this in any district, new challenged
3 district in the Hispanic side of the case. Again,
4 there's nothing mysterious about this.

5 Q. Yeah, I just -- I was asking when you had
6 it because we didn't see it until the end of November
7 when you filed your report.

8 A. I can't -- you know, again, you know, I
9 don't directly deal with plaintiffs. So you've got
10 to talk to the attorneys.

11 Q. I get that.

12 A. And again, you had a chance to do a
13 rebuttal report. If you had a problem, you could
14 have done it yourself. I don't mean you. I mean
15 your experts obviously. Not only didn't any expert
16 try to redo it. No expert quarreled with it or even
17 addressed it.

18 In fact, Dr. Chen misrepresented it in his
19 rebuttal report where he says, you know, I did this
20 projections on to challenged districts, which for
21 many reasons was not successful, but Dr. Lichtman
22 didn't do anything to question that. In fact, I did

1 five reconstituted election analyses on challenged
2 districts.

3 Q. All right. I want to show you one more
4 thing.

5 MR. PANOFF: Denise, before you do that,
6 I'm actually going to move to strike that last
7 answer. I don't think Dr. Lichtman was responding to
8 a question. I think he was just talking.

9 THE WITNESS: You're accusing me of
10 talking?

11 MS. HULETT: I was going to say, exactly
12 how are you distinguishing this from -- let's see.
13 Okay.

14 THE WITNESS: Go ahead.

15 BY MS. HULETT:

16 Q. Let me pull up something else.

17 A. I'd be happy to distinguish this from
18 anything else you want me to.

19 Q. Have you seen this before?

20 A. I have no idea.

21 Q. Why does it look like that? You don't
22 know if you've seen it before?

1 A. It looks like a generic table. Without
2 more information, I've seen so many tables.

3 Q. So you don't specifically recall
4 legislators or legislative staff providing this to
5 you?

6 A. They may -- I'm not denying that they did,
7 but they provided so much stuff and I've looked at so
8 much other stuff that I don't have specific
9 recollection of this, but I'm not disputing that they
10 gave it to me. I, you know, am just saying I don't
11 have specific recollection.

12 Q. The name of this document is Existing
13 District Demographics. I'm not sure you can answer
14 this if you're not familiar with it, but do you know
15 whether that refers to the districts as they were
16 before any plan was passed in 2021?

17 A. Make sure I know how to answer that.

18 Q. Like the 2011 plan?

19 A. I know what you're talking about. Without
20 a better label, it's hard to say. And as I said,
21 I've seen so many tables that I can't -- I don't want
22 to guess.

1 Q. Okay. That's all right, then. We don't
2 need to make that an exhibit.

3 I want to look at your report again. And
4 we can stop screen sharing, I think. Get back to
5 normal. On page 185 -- I really am getting very
6 close here.

7 A. You must be. That's right toward the end
8 of my report.

9 Q. There.

10 A. All right. I'm there.

11 Q. And I want to look at the section where
12 you're talking about House District 24 which --

13 A. In District 2?

14 Q. Yeah.

15 A. Okay.

16 Q. And you say that our proposal -- down at
17 the bottom of the page -- that our proposal cuts
18 Asian CVAP to 22.1 percent.

19 A. That was my understanding at the time I
20 wrote the report. I know there may have been new
21 plans, but that's what I had at the time.

22 Q. No, that's correct, I think.

1 A. Okay. That's correct. All right. I
2 thought you were suggesting some new plan that
3 changes that.

4 Q. It's a three-point reduction because
5 before it was 23.6. Is that significant in your
6 mind?

7 A. Could be. We're dealing with Asians here
8 and you don't have big concentrations of Asians. You
9 really can't do much more than around 25 percent. So
10 when you're dealing with Asians, a three to four
11 percentage point cut could make the difference, could
12 matter, yes.

13 Q. So --

14 A. Let me, by the way, also say, you know, I
15 don't know if it's your plan or the McConchie plan
16 that blended my mind because it doesn't matter to me.
17 But in a number of cases, you're pushing up the
18 Latino CVAP by about that same margin, by about 2 to
19 3 points and claiming it makes a difference.

20 If it's going to make a difference between
21 47 or 48 and 50.4 for Latinos, it's certainly going
22 to make a difference for cutting down from 23.6 to

1 20.1 for Asians.

2 Q. So it could make a difference and it could
3 mean that Asians would have less opportunity to elect
4 a candidate of choice, is that what you're saying?

5 A. Ordinarily, you know, that wouldn't
6 matter, but for Asians specifically -- I'm not saying
7 bloc but I think because of the special case of
8 Asians, it would make it more difficult. That's all.

9 Q. All right. I want to talk --

10 A. Excuse me. Are we close to finishing?

11 Q. Yes.

12 A. Because if you have a ways to go, I would
13 take a break. But if we're close, I'll hold.

14 MS. HULETT: Why don't you take a quick
15 break and we'll come back and I have maybe 15 more
16 minutes. Ten to 15 more minutes.

17 THE WITNESS: That sounds perfect. I'll
18 be back in three minutes.

19 MS. HULETT: Okay.

20 THE VIDEOGRAPHER: We are going off the
21 record at 9:09 p.m.

22 (Recess.)

1 THE VIDEOGRAPHER: We are going back on
2 the record at 9:15 p.m.

3 BY MS. HULETT:

4 Q. I'm going to ask you about only one more
5 district.

6 A. Okay. What page?

7 Q. That is Landek Senate District on 194.

8 A. That's Senate District 11, is that right?

9 Q. Yes. And as you indicated in the heading
10 on page 194, it used to be Senate District 12.

11 A. Twelve, right. Just a number change.

12 Q. Do you agree that it wasn't just the
13 number, that Senate District 11 was substantially
14 changed?

15 A. I didn't draw maps, so I can't answer
16 that.

17 Q. Do you know which two house districts made
18 up SD 12 in the 2011 plan?

19 A. I'd have to look. I'm not -- I don't want
20 to guess. I mean, I could probably figure it out,
21 you know, from 1 to 2 to 3 to 4. Just tell me.

22 Q. I'm going to represent this district is

1 Zalewski's district where now SD 11 is Zalewski and
2 Guerrero-Cuellar because it was re-nested.

3 A. Okay.

4 Q. Did you yourself conduct any analysis on
5 SD 11 as it is in SB 927?

6 A. Yes.

7 Q. And where is that?

8 A. 195, the reconstituted election. Oh,
9 that's SD 2. Sorry. It's getting late. I've got to
10 look. Let's see what I've said here. Slightly
11 greater than the Hispanic CVAP in the District 50
12 remedial plan that the McConchie plaintiffs claim
13 will provide Hispanics such an opportunity. Landek
14 needed no protection. He is the candidate of choice
15 of Latino voters. He prevailed against Montes, Jr.
16 even in a district that was much higher than Latino
17 CVAP. Above the 50 percent threshold. The Hispanic
18 percentage is the second highest in the state
19 district.

20 During the post-2010 cycle, Landek
21 prevailed overwhelmingly by 30 percentage points in
22 the 2012 primary. He was a coalitional candidate who

1 won 57 percent of the Hispanic vote and 82 percent of
2 the nonHispanic vote. It's the majority-minority
3 district comprising 55 percent minority CVAP. That's
4 pretty much what I said, I think.

5 Q. Okay. And all of that --

6 A. I don't think I said anything more. I
7 don't think so, but as I said, it's getting late.

8 Q. All of the analysis that you did was
9 conducted on prior Senate District 12, correct?

10 A. Yes. I don't think we were able to do a
11 reconstituted election analysis on Senate District 11
12 for the Garcia/Emanuel race.

13 Q. Then you don't know how Latinos perform in
14 the new Senate District 11, do you?

15 A. Well, I don't know. No one knows. But I
16 have a very good idea that this is clearly a district
17 that a Latino candidate of choice is far more likely
18 to win than a nonLatino candidate of choice based on
19 how the district performed previously and it's just a
20 shade below 50 percent Latino CVAP.

21 Q. And when you say based on how it performed
22 before, you mean based on how Senate District 12

1 performed before, correct?

2 A. That's right. And also, I don't recall
3 seeing anything from any plaintiff suggesting that
4 this district does not give Hispanic voters an equal
5 opportunity to elect candidates of their choice.

6 The only district-specific analysis I
7 recall from any plaintiffs' expert dealing with
8 Hispanics was Dr. Chen's and he didn't do this
9 district. And as I said, his analysis was not valid
10 anyway.

11 Q. Do you think the new Senate District 11 in
12 SB 927 is a coalition district?

13 A. I don't -- you mean can Hispanics elect
14 solely with Hispanic votes or they have to get some
15 votes from other groups, is that what you mean?

16 Q. You -- no. I mean, by your definition of
17 what a coalition district is and how important
18 coalitions are to Latinos, is Senate District -- the
19 new Senate District 11 a coalition district?

20 A. I don't think I used the term "coalition
21 district." I think I used the term "the formation of
22 interracial coalitions." Do I believe there will be

1 interracial coalitions in new Senate District 11
2 based on what happened previously? Absolutely. The
3 last contested election involving a Latino, you did
4 get the formation of very strong interracial
5 coalition. It wasn't from a Latino candidate. It
6 was for the white candidate.

7 But as MALDEF has pointed out in its
8 redistricting guide, candidate of choice may not be a
9 candidate of the same race or the same ethnicity.
10 And that's what also Gingles prong 3 says. It
11 doesn't say the candidate of the same race. It says
12 the preferred minority candidate. And Landek was
13 clearly the preferred minority candidate.

14 Q. This is my last topic. I realize that we
15 met each other way before Texas actually when I was a
16 baby lawyer working on Garza.

17 A. I probably wasn't as baby as you are,
18 being so old.

19 Q. One of our -- one of your lawyers brought
20 that up to me this afternoon and I looked back, and I
21 know it's a long way back, but in Garza, you provided
22 the Court with estimates of voter support for

1 candidates in several elections, correct?

2 A. Yes, using exactly same methodology that I
3 used here with MALDEF as a coplaintiff. Absolutely,
4 I gave them point estimates on which the Court
5 relied.

6 Q. Right.

7 A. And we were plaintiffs there, not
8 defendants.

9 Q. That's right. And you gave the point
10 estimates for all of the elections and all of the
11 candidates, right?

12 A. When you say all of the elections --

13 Q. The elections you analyzed.

14 A. Yes, of course, the point estimates for
15 the individual candidates, that's right.

16 Q. Okay. Did you also give like
17 credibility -- I understand from looking back at the
18 district court opinion findings that you also gave --
19 I don't know if it was confidence intervals or some
20 reliability check so that you were able to convince
21 the Court that your estimates were reliable?

22 A. I certainly do not recall giving them

1 confidence intervals. I probably did the same thing
2 I did here, you know, making sure that the numbers
3 added up, looking at heavily concentrated white and
4 Latino districts, looking at graphs, things of that
5 nature. But I don't recall -- I mean, what are we
6 going back now, three-plus years?

7 Q. I know. It's too long.

8 A. Yeah.

9 Q. Too long.

10 A. I don't recall the confidence intervals.
11 But again, let me finish. The purpose in Garza,
12 because we were plaintiffs, was entirely different
13 than my purpose here. My purpose here was just to
14 check the point estimates of your experts. When I
15 say your, I mean plaintiffs generically.

16 Q. But you're not saying that because you
17 work for defendants, you don't have to verify your
18 own work, right?

19 A. I did verify my own work but, again, my
20 purpose was simply to look at point estimates to see
21 if the point estimates by Dr. Chen and Dr. Grumbach
22 were accurate. And if, you know, my work was

1 inaccurate, believe me, they would have said so.

2 They would not have changed their reports based on my
3 work.

4 MS. HULETT: All right. I have no further
5 questions. So we're done for the evening.

6 THE WITNESS: So we're done for tonight
7 and we're going to reconvene at 1:00 my time?

8 MR. KASPER: Yes. That's my
9 understanding, everyone, right?

10 MR. PANOFF: 1:00 Eastern, noon Central
11 tomorrow.

12 THE WITNESS: Thanks, good.

13 MR. KASPER: Thanks, everyone.

14 THE VIDEOGRAPHER: This concludes today's
15 deposition given by Dr. Allan Lichtman. We are going
16 off the record at 9:25 p.m.

17 (Whereupon, at 9:25 p.m. EST, the
18 deposition adjourned, to reconvene at 1:00 p.m. EST
19 on Sunday, December 5, 2021.)

20

21

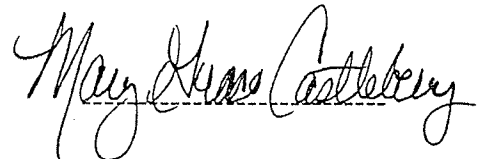
22

CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA) ss.:

STATE OF MARYLAND)

I, **MARY GRACE CASTLEBERRY**, RPR, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties for the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

A handwritten signature in cursive script, reading "Mary Grace Castleberry". The signature is written in dark ink and is positioned above the printed text of the notary's title.

Notary Public in and for

the State of Maryland

[illegible]

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me. Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this _____ day of _____, 20__, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

County Name

MY COMMISSION EXPIRES:

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