

Exhibit G



Transcript of **Allan J. Lichtman Vol. II**

Sunday, December 5, 2021

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

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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. The Illinois State Board of Elections, et
5 al. Today's date is December 5th, 2021. The time is
6 1:07 p.m. This is the video recorded deposition of
7 Allan Lichtman, volume 2, being taken remotely. The
8 witness is located in Bethesda, Maryland.

9 I am the videographer. My name is Dewey
10 Nelson in association with Trustpoint/Alderson
11 Reporting. The court reporter is Mary Grace
12 Castleberry also in association with
13 Trustpoint/Alderson Reporting.

14 Will all attorneys please identify
15 themselves and the parties they represent beginning
16 with the party noticing this proceeding.

17 MR. PANOFF: This is Tom Panoff for the
18 McConchie plaintiffs. I think what we did last time
19 is stipulate to the appearances that are appearing on
20 Zoom. So unless any counsel has any objection, why
21 don't we just note that for the record.

22 MR. KASPER: No objection.

1 MR. PANOFF: Okay. Thanks, Mike.

2 EXAMINATION BY COUNSEL FOR McCONCHIE PLAINTIFFS

3 BY MR. PANOFF:

4 Q. Dr. Lichtman, good afternoon. How are you
5 doing?

6 A. Good to see you again. It seems like we
7 have these reunions every decade.

8 Q. Just a bit of housekeeping. As we were
9 stating before we went on the record, just as a
10 reminder, your testimony is under oath like it was
11 yesterday.

12 Do you understand that?

13 A. Of course.

14 Q. Okay. And a little bit more housekeeping.
15 As I said at the beginning, I am counsel for the
16 McConchie set of plaintiffs.

17 Do you understand that?

18 A. I do.

19 Q. Dr. Lichtman, when we were talking
20 yesterday, I think we started going back into -- I
21 think Campuzano was probably your first Illinois
22 testimony. I think that was early 2000s, correct?

1 A. Yes. It wasn't my first Illinois
2 testimony though.

3 Q. That's what I was going to get into.
4 You've actually testified in Illinois redistricting
5 cases going back into the 1980s, correct?

6 A. I don't know if they're all redistricting
7 cases. I think some of them were different kinds of
8 cases.

9 Q. Okay. So like Harper versus Chicago
10 Heights, do you remember that case?

11 A. Vaguely. I don't think that was a
12 redistricting case, but it might have been. It might
13 have been an at large case. It's so long ago. But
14 if you want to refresh me, that's fine.

15 Q. No, that's okay. But you've been
16 testifying based in Illinois on election issues since
17 the '80s, correct?

18 A. Yes.

19 Q. So if you count the '80s, the '90s, the
20 early 2000s, the teens, and then this decade, that's
21 now five decades worth of maps that you've been
22 testifying as to in Illinois?

1 A. Yes. Thanks for reminding me how old I
2 am.

3 Q. Dr. Lichtman -- and a little bit more
4 housekeeping -- when I refer to your report, I'm
5 going to ask for you to look at your hard copy, but I
6 will try to share all the other exhibits that I'm
7 using on the screen, okay?

8 A. That really helps a lot because, you know,
9 I've got -- it's over 200 pages. It's a lot to
10 shuffle through.

11 Q. Of course. So could you please turn to
12 page 98 of your report and the conclusions section on
13 that, and let me know when you're there.

14 A. I've got a clip. Okay.

15 Q. And I'm going to read this just because I
16 think it will summarize a lot of what we're going to
17 talk about.

18 And you state on 98 here, "The bottom line
19 is simple. The district-specific analyses of voting
20 patterns presented by plaintiffs' experts themselves,
21 with some obvious corrections, proves that white bloc
22 voting does not usually defeat minority candidates of

1 choice in state legislative districts with Hispanic
2 or black CVAP percentages at or above the lowest
3 range of a MALDEF defined influence district. To the
4 contrary, the analyses prove that white bloc voting
5 almost never defeats Hispanic or black candidates of
6 choice in such districts," and then the paragraph
7 goes on.

8 Do you see that?

9 A. Yes.

10 Q. So are you testifying here that, in your
11 opinion, the plaintiffs have not satisfied the third
12 prong of Gingles?

13 A. The third prong?

14 Q. Yes.

15 A. Yes.

16 Q. That hasn't always been your testimony in
17 Illinois restricting cases, has it?

18 A. I'm not sure. You'd have to refresh me.

19 Q. Okay. All right. Let's take a trip down
20 memory lane for a little bit then. And -- but before
21 we do that, let me introduce an exhibit.

22 (Lichtman Exhibit No. 21 was marked

1 for identification.)

2 BY MR. PANOFF:

3 Q. Is this appearing on your screen yet?

4 A. I see something on my screen, but it looks
5 like just some handwritten note.

6 Q. Right. And I will represent this was an
7 exhibit, if you see at the bottom here, 10 years ago
8 in your deposition that we were both involved in.

9 A. I don't see that. I'm sorry.

10 Q. Okay.

11 A. All I see is "Lichtman testimony from,"
12 and then I see something on the left which says "King
13 1 trial testimony." But that's all I see. Sorry.

14 Q. Okay. Let me maximize my Zoom again. So
15 I'm scrolling down through it right now.

16 Do you see it moving?

17 A. No.

18 Q. Okay. Let me try -- I'm not sure why
19 that's not the case. Let me try to move this. I'm
20 putting it into the chat right now.

21 MR. PANOFF: Could we go off the record
22 for a second and let me just ask the videographer a

1 few questions?

2 THE VIDEOGRAPHER: We are off the record.

3 The time is 1:13 p.m.

4 (Discussion off the record.)

5 THE VIDEOGRAPHER: We are back on the
6 record. The time is 1:15 p.m.

7 BY MR. PANOFF:

8 Q. So Dr. Lichtman, before we get to this
9 actual exhibit, what do you remember from the King
10 litigation in the mid-1990s here in Illinois?

11 A. Not much. There have been 50 cases since
12 then. Anything you want to ask me about, you're
13 going to have to refresh me.

14 Q. Okay. So --

15 A. I remember it was something about an
16 Hispanic district was the controversy being created,
17 I believe, in Chicago. I think that was the issue in
18 those series of King cases.

19 Q. That's right. And you were testifying as
20 to Latino -- the voting rights issues in that case.

21 Does that seem right to you?

22 A. It sounds -- it seems right. I don't

1 remember anything about it. It was too long ago.

2 But that does seem right.

3 Q. So I'll represent this is your direct
4 testimony before the Court and you see at the top
5 here it says "Lichtman - direct," and I want to
6 direct you to page 449 that I'm on here and this
7 highlighted portion.

8 And do you see where it says, "So there is
9 indeed a usual pattern of landslide level voting of
10 Hispanic voters for Hispanic candidates in the 41
11 elections"? Do you see that?

12 A. Yes. Is this from when? Which trial is
13 this?

14 Q. This is the King trial, 1996.

15 A. Okay. I see it. I don't remember it, of
16 course.

17 Q. Do you have any reason to doubt your
18 testimony back then?

19 A. Do I have any reason to doubt that this is
20 an accurate transcription?

21 Q. Yes.

22 A. No, of course not. I have no basis one

1 way or the other.

2 Q. So in 1996, you were testifying that
3 there's this usual pattern of landslide voting for
4 Hispanics for Hispanic candidates in the 41 elections
5 that you analyzed for this case?

6 A. That's what it seems to say.

7 Q. And you don't remember --

8 A. I don't remember saying that, but that's
9 what it says.

10 Q. Again, you have no reason to doubt that?

11 A. I have no reason to doubt this is an
12 accurate transcript, no.

13 Q. And when you say here Hispanic candidates,
14 not Hispanic candidates of choice, correct?

15 A. That's what it says.

16 Q. All right. I'm going to stop sharing that
17 and I'm going to show you the Court's opinion from
18 that case. Give me one minute.

19 Okay. Do you see this?

20 A. It's a little hard to read, but I think I
21 can read it.

22 Q. Let me see if I can blow it up. So you'll

1 see here on the first page where it says King v.
2 State Board of Elections and it has a date of March
3 1996?

4 A. I do. I can read that.

5 Q. Okay. And what I want to point to is if
6 you go to -- and I will scroll down to the page
7 because it's a long opinion. But if you scroll down
8 to the Court's discussion of your analysis, they
9 adopted your reasoning in that case.

10 A. If you want to show -- I don't know.

11 Q. Yeah, I will show it to you.

12 (Lichtman Exhibit No. 22 was marked
13 for identification.)

14 BY MR. PANOFF:

15 Q. So it starts here. And I'll let you read
16 that. Let me know when you've read that.

17 A. Reading what's in highlights?

18 Q. Actually, let me just -- it might be
19 easier, for those who don't have a big screen, if I
20 just read it.

21 And this is, "The results of Dr. Allan J.
22 Lichtman's ecological regression analysis and extreme

1 case performance of 41 elections held between 1983
2 and 1995 establish a definite and continuing pattern
3 of white racial-bloc voting against Hispanic
4 candidates. Dr. Lichtman's analysis reveals that
5 since 1987, Hispanics have been elected in every
6 election district for every type of office with a
7 voting age majority of Hispanics, but not in any
8 district lacking such a majority. Based upon these
9 results, Dr. Lichtman concludes that Hispanics in the
10 city of Chicago would have a reasonable opportunity
11 to elect a candidate of their choice to Congress only
12 in a district with a voting-age majority of
13 Hispanics."

14 Do you see that?

15 A. I do.

16 Q. Okay. And the Court endorsed your
17 reasoning in this case, is that your understanding?

18 THE REPORTER: I'm sorry, you broke up a
19 little bit. Could you repeat that question?

20 THE WITNESS: Yeah, I didn't hear that
21 either.

22 BY MR. PANOFF:

1 Q. The Court endorsed your reasoning in this
2 case, your other analysis, correct?

3 A. Well, I haven't seen the whole context,
4 but it certainly seems to. Are you going to ask me
5 questions about it? Obviously I have some things to
6 say about it.

7 Q. No, that's fine. I'm trying to -- what
8 I'm going to go through in this series of questions
9 is establishing your -- your history of testimony on
10 racially polarized voting and Gingles 3 in Illinois.

11 A. Look, there's context here that is not
12 indicated just by reading this. So do what you want,
13 but I think I should have a -- if you're going to
14 present this to me, I should have an opportunity to
15 talk about it.

16 Q. And we will get to context and why your
17 positions have changed. But before we do that, I
18 want --

19 A. I'm sorry, my positions have not changed,
20 so that's why it's -- all right. Do what you want.

21 Q. No, I -- so there is racially polarized
22 voting in Chicago now?

1 A. I'm sorry, what?

2 Q. So there is racially polarized voting in
3 Chicago now?

4 A. No. But that's not the point. The point
5 is we're talking here about voting age population
6 districts whereas what the plaintiffs are seeking in
7 this litigation is CVAP districts. But if we look at
8 my testimony here and we look at voting age
9 population, all but I think two challenged districts
10 have voting age majority single race Hispanic
11 populations.

12 So that's entirely consistent with what I
13 testified to all these many years ago. That's why I
14 think it's very important we just don't take your
15 gloss that somehow I have changed everything. Now,
16 circumstances may have changed, but I'm looking at
17 the numbers and except for RD 40 and RD 50, they're
18 all majority single race Hispanic VAP. And RD 50,
19 you don't create a single -- I'm not sure you create
20 a single race Hispanic VAP. So, you know, to say
21 I've changed my position isn't -- is not right.

22 Q. So let's go to your position now. You

1 said that the plaintiffs focused on CVAP. Did you do
2 analysis of racially polarized voting in this
3 election based on that?

4 A. I did not use VAP. I used CVAP in my
5 analyses, but I didn't do this kind of analysis --
6 the other thing is, I didn't do this kind of analysis
7 this time. This time I responded to your,
8 plaintiffs', analysis. That's when you read my
9 conclusion, I was talking about the information
10 presented by plaintiffs who have the burden of proof
11 properly corrected. That's why you need context.
12 You can't just put this up and say I've changed.

13 Q. So what -- I wasn't. I was just asking
14 you to affirm this testimony, but you went into the
15 change.

16 So let me ask this question, then. Why
17 didn't you do that analysis this time around?

18 A. Because I was retained by plaintiffs, I
19 believe, in the 1990s. This time I'm retained by
20 defendants and my job is to see whether plaintiffs
21 proved their case, and they didn't come close.

22 Q. So your view is for a Gingles 3 analysis

1 as a defense expert, you only need to determine
2 whether or not the plaintiffs have proved their case
3 on racially polarized voting, not to independently
4 determine whether or not there is racially polarized
5 voting absent rebutting the plaintiffs' presentation?

6 A. That fundamentally misstates what I said.

7 Q. Okay. Please clarify.

8 A. And first of all --

9 Q. Please clarify.

10 A. I'll explain. First of all, prong 3 is
11 not racially polarized voting. You can have racially
12 polarized voting, at least according to
13 Dr. Grumbach's definition. I don't think Dr. Chen
14 even addressed that issue.

15 According to Grumbach's definition, when
16 95 percent of Hispanics vote for a candidate and 90
17 percent of nonHispanics vote for that candidate, he
18 considers that racially polarized voting even though
19 that clearly does not satisfy prong 3.

20 So we're not talking here about racially
21 polarized voting. We're talking about prong 3. And
22 I looked at every election presented by Dr. Chen and

1 Dr. Grumbach and, with appropriate corrections, I
2 showed that in a large corpus of elections, Hispanic
3 candidates of choice almost invariably won. Win
4 rates of 80 percent overall. Much less --

5 Q. You didn't --

6 A. -- white bloc voting usually defeating
7 Hispanic candidates of choice.

8 Q. But you did no independent analysis of
9 majority bloc voting in this case other than in
10 refutation to what the plaintiffs did?

11 A. I don't know what you mean by majority
12 bloc voting. I'm sorry.

13 Q. Prong 3. Prong 3 is whether the majority
14 can usually defeat the minority's candidate of
15 choice, correct?

16 A. In black districts? You used the term
17 "black." I'm a little confused.

18 Q. Bloc voting, bloc.

19 A. Oh, bloc.

20 Q. Majority bloc voting.

21 A. I'm sorry. Please repeat your question.
22 Sorry about that.

1 Q. You did no independent Gingles prong 3
2 analysis in this case, correct?

3 A. Yes and no. That is, I looked at the full
4 corpus of elections and I made sure that the analysis
5 was correct, and the result was Dr. Grumbach redid
6 his analysis and Dr. Chen dropped eight elections
7 from his analysis.

8 I also scrutinized Dr. Chen's attempt to
9 look at challenged districts and showed how flawed it
10 was, how flawed. Didn't even add up to 100 percent.
11 It's like measuring your height and stopping at your
12 shoulder, his analysis. And then I did perform an
13 independent analysis of my own that goes to prong 3
14 and that is the reconstituted elections in five
15 challenged districts. Same thing Dr. Collingwood
16 did.

17 And I found in those five challenged
18 districts, using an appropriate election and an
19 appropriate methodology that looks at all the voters,
20 overwhelmingly the Hispanic candidate of choice
21 prevailed. That's why I say yes and no.

22 Q. We'll get to some of those elements

1 because I don't think that's entirely accurate.

2 We'll get to those questions a little bit later on.

3 (Lichtman Exhibit No. 23 was marked
4 for identification.)

5 BY MR. PANOFF:

6 Q. I want to share another exhibit here. Let
7 me know if you see this document.

8 A. I can read this, yes.

9 Q. What do you understand this document to
10 be?

11 A. I don't remember it, so -- it says, "Final
12 Report of Allan J. Lichtman: City of Chicago racial
13 bloc voting and political consequences, February
14 25th, 1996." I'm sure it's -- you've accurately
15 found my report. I just don't recall it.

16 Q. And do you remember the Bonilla and
17 Barnett cases from 1996 here in Illinois?

18 A. I remember the case. I don't remember the
19 details, yeah.

20 Q. Do you remember --

21 A. I don't remember what was involved in that
22 case.

1 Q. Do you remember your role in that case and
2 can you briefly describe what it was?

3 A. To the best of my recollection -- please
4 correct me if I'm wrong -- I think I was an expert
5 for plaintiffs in that case challenging something in
6 the city of Chicago.

7 Q. Why don't we go to the summary of your
8 opinions and see if that refreshes your recollection.

9 A. Sure.

10 Q. So I'm going to page -- this is page --
11 I'm going to scroll down so you can see it. This is
12 page 3 and I'll read 1. It says, "Voting within the
13 city of Chicago since 1987 is characterized by
14 racially polarized voting in Hispanic versus
15 non-Hispanic elections. Specifically, a cohesive
16 Hispanic electorate usually unites behind Hispanic
17 candidates, whereas Anglo voters usually bloc vote
18 against Hispanic candidates."

19 Do you see that?

20 A. Yes.

21 Q. And this is similar to your testimony from
22 the King case that we just analyzed which would have

1 been a year prior, correct?

2 A. We looked at one paragraph of my King
3 testimony and one paragraph here, so I'm reluctant to
4 make comparisons. But I can say you accurately read
5 snippets of both cases, of both reports.

6 Q. Okay. Let's read summary 3 then at the
7 bottom of this page. It says, "These results
8 indicate that Hispanic voters have a reasonable
9 opportunity to elect candidates of their choice only
10 in Hispanic voting-age majority districts."

11 And do you see that?

12 A. Yes. And we talked about that. Almost
13 all your challenged districts are voting age Hispanic
14 majority. Plus you missed number 2. Maybe you don't
15 want to ask me about that, but that's fine.

16 Q. Do you want to talk about number 2?

17 A. Yes, because it's a very different pattern
18 now, kind of suggesting that looking at the actual
19 results of the election and seeing what happened,
20 which is what I did this time, and found that
21 overwhelmingly Hispanic candidates of choice were
22 being elected in districts even well below the range

1 of the challenged districts.

2 Q. Would you agree that in general, this
3 testimony is consistent with your King testimony,
4 that you found both Gingles 1 and Gingles 3 were
5 satisfied in this case?

6 A. I can't say that. We -- you gave me
7 snippets and even the one you gave me last time was
8 only indirectly related to prong 3.

9 Q. But this is your own summary and your
10 summary lays out both Gingles 1 and 3. Are you
11 saying that that's not accurate?

12 A. Which summary are we talking about?

13 Q. It's called summary of findings that we're
14 looking at now.

15 A. Right.

16 Q. One and 3.

17 A. All right. Let me look at 3 again. I
18 can't see it on the screen now.

19 Q. There.

20 A. That's what I said and that's what I found
21 then.

22 Q. Let's go to the -- I'm going to pull up

1 the Court opinion in that case, too. So this will be
2 24.

3 (Lichtman Exhibit No. 24 was marked
4 for identification.)

5 BY MR. PANOFF:

6 Q. And as I'm pulling up Barnett, you'll see
7 on the first page it says Barnett versus City of
8 Chicago, and I just want to -- again, very long
9 opinion -- but I just want to go down to where the
10 Court discusses you because you're a smaller part of
11 the Court's discussion here. And I will read this,
12 but you can read it along with me to make sure that
13 I'm accurate.

14 But it says, "Through the testimony of
15 Professor Lichtman, the Bonilla plaintiffs
16 successfully established that Latino voters
17 consistently prefer Latino candidates and that, where
18 conditions permit, white bloc voters vote as a bloc
19 sufficiently to defeat usually the Latino preferred
20 candidate. With the exception of the 1991 aldermanic
21 election in the 10th ward, defendants did not offer
22 any alternative explanation for polarized voting

1 wholly unrelated to race of ethnicity."

2 Do you see that?

3 A. Yes. That was then. This is now.

4 Q. Okay. Well, my question was, do you see
5 that?

6 A. Oh, yeah. Sorry.

7 Q. Okay. And do you believe that the Court
8 accurately represented your opinion here in this
9 quote that I read?

10 A. I have no reason one way or the other, to
11 be honest with you, because I don't remember the
12 case, but I can't confirm.

13 Q. You have no reason to doubt the accuracy
14 of the Court opinion, do you?

15 A. I'm sorry, what?

16 Q. You have no reason to doubt the accuracy
17 of this Court opinion, do you?

18 A. No, I don't. Of course not.

19 Q. So that was 1996. We've talked about
20 1995, 1996. Let's talk about 2001 now.

21 A. Before you get off '96, remember those
22 were the decisions. The elections on which those

1 decisions were based are years before that, much
2 earlier.

3 Q. Okay. Just give me a minute and I will
4 pull up another exhibit. And this will be 25, is
5 that right, once I share it?

6 (Lichtman Exhibit No. 25 was marked
7 for identification.)

8 THE WITNESS: Yes, sir.

9 BY MR. PANOFF:

10 Q. Okay. Dr. Lichtman, do you see this first
11 page, which I'll represent -- of Exhibit 25, which
12 I'll represent is titled Illinois Legislative
13 Redistricting Commission: In Re the Matter of the
14 2000 Census?

15 A. Yes.

16 Q. And I am going to scroll down. I will
17 represent this isn't everything. It's just your
18 testimony because it gets to a big -- it's a long
19 record otherwise.

20 A. Are you saying this is my testimony?

21 Q. Do you remember testifying before the
22 redistricting commission in the state of Illinois in

1 2001?

2 A. I do. I don't remember the details of
3 course, but I do remember presenting such testimony.

4 Q. Okay. Well, we'll go through these
5 details. This will help refresh your recollection.

6 A. I just want to make sure this is a
7 transcript of my testimony. Is that what we're
8 looking at?

9 Q. Yes. So you see here where it says
10 "Dr. Lichtman"?

11 A. Yes.

12 Q. Okay. And then you go on for a while?

13 A. I do tend to go on.

14 Q. I know it's shocking for everybody on this
15 deposition, but let me get to page 65 here, Doctor.
16 So I'll highlight it.

17 I'm going to read this again. "The state
18 of Illinois in my view is on special notice to make
19 sure that any redistricting plan does not impede
20 minority voter opportunities."

21 Do you see that?

22 A. Yes.

1 Q. And then on the next page, and I'll
2 highlight it, "So both as a result of scholarly
3 analysis and court opinion, it is established that in
4 the Chicago area, this requisite of polarized voting
5 does, in fact, exist, and it is my understanding that
6 there has not been testimony before this body
7 indicating that there has been some fundamental 'C'
8 change in voting to eliminate such polarized voting
9 in the last few years."

10 Do you see that?

11 A. Yeah. I'm not -- a lot of double
12 negatives in there, so I'm not sure what it says, but
13 I see it.

14 Q. I won't grade you too harshly on that,
15 professor.

16 A. (Laughter.)

17 Q. So you're essentially saying here kind of
18 what you reiterated to the courts in the prior 1995
19 and 1996 litigation that we talked about, that the
20 state is on notice that there is racially polarized
21 voting and that the majority bloc votes usually to
22 defeat the minority's candidate of choice, is that

1 what you're saying here? There hasn't been some sea
2 change?

3 A. I don't see anything in what you just read
4 to me -- it does say there is polarized voting, but
5 it doesn't say it usually defeats the minority
6 candidate of choice and it doesn't say anything about
7 the level of districts that's needed to provide
8 minorities an opportunity.

9 I do remember, because this came up in the
10 last deposition, quite -- there was quite a lot of
11 controversy about District 78, which was 38 percent
12 minority. I think it was VAP back then. And I said
13 this was enough. This district would perform, and
14 indeed it again. So again, you need context.

15 Q. Right. But -- you can have context, but
16 your analysis was still the same, that there's
17 racially polarized voting in the Chicago area in
18 2001?

19 A. That there's racially polarized voting.
20 Leave it at that. I think that's right. But not --

21 Q. Did you opine as to whether -- sorry. Go
22 ahead.

1 A. But this says nothing about kinds of
2 districts that would give minorities an opportunity
3 to elect candidates of their choice. It just says
4 there's racially polarized voting.

5 Q. I'm going to stop sharing this and I am
6 going to show you -- I believe this was marked
7 earlier by Jon. This is going to be the Campuzano
8 deposition testimony, but I'm not sure whether or not
9 it's the same version of it just so -- just -- there
10 might be duplication occasion here, but I'm going to
11 mark it as new Exhibit 26.

12 (Lichtman Exhibit No. 26 was marked
13 for identification.)

14 THE WITNESS: I hope it's not a different
15 version. I hope there's only one version.

16 BY MR. PANOFF:

17 Q. Okay. So let me share this screen. Okay.
18 Do you see where it says in the matter of Yolanda
19 Campuzano v. Illinois State Board of Elections?

20 A. I do.

21 Q. And it has your name and January 5th,
22 2002. Do you see that?

1 A. I had no idea I left such a paper trail in
2 Illinois.

3 Q. Oh, we're just getting started, Doctor.

4 A. Oh, my gosh.

5 Q. So do you have any reason to doubt that
6 this is the transcript of your testimony in the
7 Campuzano case?

8 A. I have no reason to doubt it one way or
9 the other.

10 Q. Okay. And we talked a little bit about it
11 yesterday, but just so everyone is on the same page,
12 do you remember what the Campuzano case was about?

13 A. It was a challenge to the 2001 state
14 legislative redistricting plan.

15 Q. Okay. And I'm going to take you now to
16 page 99 of your testimony, but -- sorry. So you took
17 a break here and you had testified before -- do you
18 remember if you found in this -- if you opined in
19 this case that there was -- Gingles 1 and Gingles 3
20 were met as to the black districts that you looked at
21 in Chicago?

22 A. I have no recollection. That's way too

1 specific for 20 years ago.

2 Q. Okay. Well, let's refresh it, then. Can
3 you see where it says page 91 here? I want to try to
4 make it a little bit bigger.

5 Do you see where it says 91 where my
6 cursor is? And then in the questions, it's asking
7 you, you know, in your opinion -- "Is it your opinion
8 that majority populations are cohesive in Cook
9 County?" You say yes.

10 And you're asked, "Is it your opinion that
11 minority Anglo populations engage in block voting in
12 Cook County?" You say yes.

13 And then the question is, "In your mind,
14 the three Gingles conditions exist in Cook County.
15 And your answer is, "That's my opinion."

16 Do you see that?

17 A. I do.

18 Q. And so -- but you're referring in this
19 context here -- you're referring in this context, and
20 you can see up above where it's talking about the
21 African-Americans populations.

22 Do you see on page 91 --

1 A. Yeah. Let me look at, you know, the
2 proceeding --

3 Q. Sure.

4 A. -- and following just so I get a sense
5 that, you know --

6 Q. Let me know if you need me to scroll up
7 and down and maybe give you that context.

8 A. Thank you. Aha. Let's see. Can you
9 scroll down?

10 Q. Sure. Do you want me to keep going or is
11 that good?

12 A. Keep going. I want to go to the page
13 after the break.

14 Q. That's what I'm going to ask about. Are
15 you good up until the break?

16 A. Go back up because I think there's some
17 contradictions here. I don't remember, you know, how
18 they got resolved, but if you look up above, when
19 they ask me about the three conditions, I said, "I do
20 not believe that condition, however, has been proven
21 by plaintiffs in this case." So I'm not sure, you
22 know -- the tension between the two seems palpable.

1 Q. The tension between your own testimony
2 seems palpable?

3 A. Between these snippets of my testimony.
4 On the one hand, I seem to be saying, no, they
5 haven't proven it. On the other hand, I seem to be
6 saying it's there. So I would need to look at the
7 whole testimony to see what's going on.

8 Q. So right now, you don't remember what you
9 said under oath this time in the Campuzano case?

10 A. No. Of course not, after 20 years. But I
11 do remember, as I said, because this really sticks
12 out in my mind, that I was defending a district that
13 was under 40 percent VAP black and defending all the
14 districts that were much below the African-American
15 population levels that the plaintiffs were seeking.
16 That I remember. But all of this, as I said, there
17 seems to be, you know, some tension here.

18 Q. So to save some time for you, if I were to
19 represent that you testified in the Campuzano case
20 that Gingles 1 and 3 were met at the African-American
21 districts, do you have any reason to doubt that?

22 A. Yes. I'd have to look at the whole

1 context because I seem to be saying the opposite up
2 above. I'm not saying I'm contradicting myself. I'm
3 saying I would like to look at the whole thing to
4 kind of resolve that. So it looks like after this,
5 they went on to something else, but --

6 Q. Yeah.

7 A. -- if you can go to page 93, see if
8 there's more context.

9 Q. Well, the 93, that's the break. So here's
10 what I wanted to ask about. I was really just trying
11 to refresh your recollection, but it sounds like you
12 can't even decipher your own testimony here based on
13 that transcript.

14 A. Whoa, that's incorrect. I said based on
15 those two snippets, not a whole -- we haven't looked
16 at the entire transcript.

17 Q. Okay. I didn't realize it was that hard
18 to decipher the testimony. So let's go to page 99,
19 which is what I wanted to ask about.

20 A. Sure.

21 Q. And you'll see where we -- they resume
22 after the break and the question here -- and I'll

1 highlight it -- is, "Dr. Lichtman, before we took a
2 break, I asked you about whether the three Gingles
3 conditions exist in Cook County with respect to
4 African-Americans. Would your answer be the same
5 with respect to Hispanics?

6 "Answer: Yes."

7 "Question: That was a finding that you
8 made in the Bonilla case, is that correct?

9 "Answer: Yes."

10 Do you see that?

11 A. Yeah. I'd like you to go on, though.

12 Q. Okay. And while you're looking, my
13 question to you is going to be, are you testifying
14 here in 2001 in Campuzano that Gingles 1 and 3 are
15 met as to Hispanics in Cook County?

16 A. I think based on the Bonilla case, because
17 I don't think I did an Hispanic analysis in this case
18 because the only issue ultimately when we got to
19 trial was black districts. Can you refresh me what
20 the Bonilla case is? Was that the case --

21 Q. Do you remember --

22 A. -- '96 --

1 Q. Do you remember -- Bonilla and Barnett
2 were the combined ones about the city of Chicago ward
3 maps.

4 A. So that was the case that was decided in
5 the mid-1990s?

6 Q. Yes. It was decided in 1996. We
7 showed -- I showed you '97, the Barnett opinion, and
8 you cite to Barnett actually in your report.

9 A. Yes. So --

10 Q. Do you remember that case? Your current
11 report from this year. Do you not remember Barnett?

12 A. I don't remember citing it, but I don't --
13 I'll take your word for it.

14 Q. We'll get to that later then, too.

15 A. Yeah. Yeah, so this is based on -- please
16 keep it up. I want you to continue.

17 Q. So while you're reviewing, my question --

18 A. Let me review it, yeah.

19 Q. Yeah. But let me tell you what my
20 question is because it might help with your review.

21 A. Sure.

22 Q. My question is, did you testify in 2001

1 that -- in the Campuzano case that Gingles 1 and
2 Gingles 3 are satisfied as to Hispanics in Cook
3 County?

4 A. Based on the Bonilla case, I did, yes.
5 And I'd like you to scroll down a little more just so
6 I get a little more context.

7 Okay. So you can see I said there there
8 isn't a magic number, you have to evaluate various
9 districts in terms of the opportunities that they
10 provide, and that's important context to understand
11 my testimony.

12 Q. But your answer to my question is yes?

13 A. Yes. But, you know, you said I could look
14 at a little more context and I just wanted to add
15 that.

16 Q. Of course. But you're not walking away
17 from your testimony that Gingles 1 and 3 were
18 satisfied as to Hispanics in Cook County as of 2001?

19 A. I said based on the Bonilla case, which
20 would have been elections probably about a decade
21 before that, I did not do an Hispanic analysis for
22 this case.

1 Q. Do you typically offer opinions five years
2 after analyses without doing any new verification?

3 A. Since it wasn't an issue in the case, I
4 said what I based it on. I didn't say it still
5 applies. I said based on the Bonilla case, that's
6 what I found.

7 Q. So, Dr. Lichtman, just to summarize this
8 trip down memory lane here, since the 1990s, you've
9 testified before a three-judge panel, a one-judge
10 panel, the Illinois Redistricting Commission, in your
11 written reports and in deposition testimony that
12 there has been racially polarized voting and, in many
13 cases, the Gingles 3 also has been met in Cook
14 County, correct?

15 A. I think, again, you've got to put the
16 context on it that I gave you.

17 Q. Yes, though?

18 A. Pardon me?

19 Q. Is there any more context that you want to
20 add?

21 A. I think I added in -- we've gone through
22 so many cases. It's one of the cases. My testimony

1 was that plaintiffs hadn't proved it. In this case,
2 my testimony was because I hadn't looked at
3 Hispanics, it was based on elections from 10 years
4 earlier.

5 I also expressed that in one case I
6 thought a voting age population majority would
7 probably suffice. And in this case, I said you've
8 got to look at each individual district. So it's
9 important to put all of this in context.

10 Q. With your context, you still testified as
11 to at least Gingles 1 being met in four separate
12 cases in the 1990s and in 2001 and, for many of those
13 cases as well, at least Gingles 3, correct?

14 A. Based on earlier elections and earlier
15 analyses, yes.

16 Q. Okay. Dr. Lichtman, yesterday Denise
17 asked you in detail about the ecological regression
18 analyses that you claimed that you ran for this
19 report, correct?

20 A. Yes, which are the same as the ones I ran
21 in 2001 and 2011.

22 Q. Has your methodology changed since you

1 started doing the regression analyses post-Gingles,
2 like let's say 1986? Or is the methodology largely
3 the same?

4 A. I think basically the same. The
5 weighted-to regression method that was described in
6 Dr. Grofman's book in which he credited me with being
7 one of the developers and that I described in
8 subsequent articles. I don't think I changed that.

9 Q. And in footnote 40 of your report where
10 you describe your regression methodology, that's an
11 accurate representation of what you did?

12 A. What page are we on?

13 Q. Page 48, footnote 40.

14 A. Yeah.

15 Q. And just to clarify, did you personally
16 run these analyses in SPSS or did you instruct
17 someone to do that for you?

18 A. I did them. But again, I don't run
19 anything. SPSS runs the regression.

20 Q. I --

21 A. I look at the data.

22 Q. I understand.

1 A. Let me finish. I don't perform any
2 regression analyses on my own.

3 Q. I understand. I've run SPSS myself, you
4 know, in college and I'm very familiar with the
5 programming. But you're saying that you were the
6 actual person who input the data that the SPSS then
7 ran, correct?

8 A. Yes.

9 Q. And has that been your practice in your
10 four decades of testifying, that you always run your
11 own analyses by putting it into the program or do you
12 have assistants that put that in for you?

13 A. I'm always reluctant to say "always" when
14 I've been in 100 cases, but it certainly is my
15 practice.

16 Q. And before, I think, you know, when Denise
17 was asking you about this, you said confidence
18 intervals are kind of meaningless in this context for
19 your analysis, is that correct?

20 A. Yes. And I proved that by looking at the
21 EI results. The EI results gave you, even with
22 confidence intervals and possible results, they gave

1 you impossible results numerous times, almost every
2 time for Dr. Grumbach's work. And they never used
3 them. They put them in there, but they used the
4 point estimates to figure out who the candidate of
5 choice is. They have the confidence intervals in
6 there but they don't use them for anything.

7 And then when it's not convenient on the
8 bottom line analysis in table 10, Dr. Chen drops the
9 confidence intervals that he had put in for every one
10 of his other analysis. I have never in 100 cases put
11 in confidence intervals. That would have been
12 misleading. And no Court has ever thrown out my
13 analysis because of that.

14 Q. Well, would, for example, an R squared be
15 important to your analysis to show its accuracy?

16 A. No. R squared would simply indicate that
17 there's a big difference between -- let's just make
18 it simple -- the Latino vote and the white vote or
19 the black vote and the white vote has no bearing on
20 the point estimates or the accuracy of the point
21 estimates. It just has a bearing on the difference
22 between the white vote and the Latino vote or the

1 black vote and that was not what I was looking at in
2 this case. That's all an R squared does.

3 Q. So it would be meaningless to use R
4 squared as a form of testing the accuracy of your
5 model?

6 A. It doesn't test the accuracy of the
7 method. You missed the point. All the R squared
8 does is tell you whether there's a difference between
9 the Latino vote and the white vote. So -- but I
10 wasn't looking at that. I was looking, like they
11 were, at the point estimates of the Latino vote
12 alone.

13 I wasn't necessarily interested, because I
14 was looking at prong 3, in figuring out whether there
15 was, you know, a difference between the white vote
16 and the Latino vote except to verify what they had
17 done in terms of the nonLatino and the white vote.
18 Other than verifying and correcting what your experts
19 had done, that was all I was doing.

20 Q. I think this is an important point.
21 You're saying that R squared would not be important
22 for testing the reliability of your model?

1 A. That's correct. And I have not submitted
2 R squares probably in 20 years. I did not in the
3 Supreme Court case, that I recall, and I don't recall
4 R squares being mentioned -- it was not mentioned in
5 the Supreme Court case. The Supreme Court case just
6 relied on my point estimates.

7 And both in the 2001 and 2011 case, the
8 Court also just relied on my point estimates. As I
9 said, you can have a low R squared, even when you
10 accurately assess the Latino candidate of choice.
11 For example, we have many instances in which we have
12 coalition voting. It's the norm in Illinois, unlike
13 any other place I've looked at. And if the white
14 vote -- again, I'll simplify it.

15 If the Latino vote, the candidate of
16 choice are similar, you're going to get a low R
17 squared. That's because there's not much difference
18 between the two votes, but that doesn't mean either
19 estimate is in any way unreliable.

20 Q. Why did you put the 20-year qualification
21 in your answer about not having submitted R squared
22 in 20 years?

1 A. You know, my memory is not perfect. What
2 can I say?

3 Q. Well, I mean, are there instances when you
4 would think an R squared would be an important
5 measure of reliability for your models?

6 A. There probably was a time. Again, it's
7 not a measure of reliability. You keep misstating
8 and I keep correcting. It is a measure of the
9 difference between -- again, I'll simplify it -- the
10 white vote and the Latino vote.

11 So if you are getting a wide difference,
12 then you should get a high R squared. So if I'm
13 saying, hey, we've got sharp polarization between
14 whites and minorities, you know, you can get a higher
15 R squared and you always do. It's not like it
16 disconfirms anything.

17 But in this case, there were so many
18 coalitional elections where you're not going to get a
19 high R squared, and that does nothing about the
20 reliability of the analysis. And I didn't see any R
21 squares reported by any of your experts either.

22 Q. It measures the proportion of the

1 variance, right, of the response variable that can be
2 explained by the predictor variable, correct?

3 A. Yes. And that -- you're not going to
4 explain much if minorities and whites are voting
5 almost identical, right? That's not going to -- no
6 difference between them is going to account for much
7 of the vote, exactly.

8 Q. That's in dispute, correct?

9 A. What do you mean in dispute? By whom? In
10 what context? As I said, your experts didn't produce
11 any R squares.

12 Q. The degrees of which --

13 A. They didn't ask for it. They didn't say,
14 oh, my goodness, Dr. Lichtman didn't produce R
15 squares. That's a big problem. So I don't know what
16 you mean by "in dispute."

17 Q. The weighting, to the extent that you're
18 weighting variables, that's in dispute?

19 A. That's passive voice. You've got to tell
20 me who disputes it and why. And as I testified
21 yesterday, because there's not a whole lot of
22 difference between precincts, you know, one precinct

1 at 100 and one at 10 or 20,000, it makes very little
2 difference. You don't get any fundamentally
3 different results whether you weight or not. The
4 only point of weighting is to make sure you've
5 adjusted for differences, and it's relatively small
6 for precincts, from one precinct to another.

7 Q. So if I were to -- let's go back to the
8 confidence interval. If I were to say that without
9 the confidence interval, you can't entirely be
10 certain as to -- that the point estimates are
11 correct, is that a legitimate question?

12 A. The confidence intervals do not tell you
13 whether the point intervals are correct or not. What
14 tells you whether the point intervals are correct or
15 not are the reality tests that I talked about.
16 Confidence intervals are internal to any given
17 system. And I showed -- well, the confidence
18 intervals your experts produced, they still produced
19 impossible results. So they didn't establish the
20 reliability.

21 Remember, all I'm doing -- I'm not
22 developing an independent analysis of my own. I'm

1 just checking the candidates of choice of your
2 experts. And in every instance, your experts adopted
3 what I found, either changed their analyses or
4 dropped eight elections.

5 If they thought there was anything
6 unreliable about what I had done, believe me, they
7 would not have fundamentally changed their reports.
8 And they could have done their own ecological
9 regression either following my method or doing what
10 they thought was the best method and check it, but
11 they didn't think it was necessary because they
12 didn't dispute anything. So this is a -- you know, a
13 tempest, you know, even in a thimble, not a teapot.

14 Q. Thank you, Dr. Lichtman. And I think we
15 actually agree because that question that I read to
16 you was Mr. Kasper's question to Dr. Chen. So I
17 think we agree that it probably doesn't add much
18 value and that he shouldn't have asked that to
19 Dr. Chen either.

20 Let me ask you, have you produced any P
21 values for any of your regression analyses?

22 A. P values is statistical significance.

1 Q. Correct.

2 A. And since I'm not assessing the
3 statistical significance between Latino and white
4 voting, those are unnecessary. Again, if Latinos and
5 whites vote similarly, like they do in Illinois, you
6 might not get a statistically significant difference
7 between them. It doesn't matter. It's irrelevant.

8 Q. You agreed yesterday that whether you
9 think it's relevant or not, SPSS would generate a
10 table that would have the R squared and the P values
11 for your regression analysis?

12 A. Any statistical --

13 MR. KASPER: Objection. That
14 mischaracterizes his testimony.

15 BY MR. PANOFF:

16 Q. Did I mischaracterize your testimony?

17 A. I'm sorry, you need to repeat your
18 question.

19 Q. Okay.

20 A. I've lost it in this --

21 Q. Let me ask it this way, Mike. When you
22 ran SPSS, the regression analyses in SPSS, SPSS

1 automatically would generate a table that would have
2 both the R squared and P value, correct?

3 A. Yes. It would have the R squared and P
4 value, but not necessarily the R square that you
5 would look at to establish the differences between --
6 if that's what you're interested in, which I was
7 not -- the differences between -- to show that there
8 was a major difference between white and Hispanic
9 voting -- because remember, I'm doing a double
10 equation -- and therefore each separate R square
11 would be for part of it. You have to do an
12 additional analysis to generate an R square that puts
13 it all together.

14 Q. And it's weighted, too. It's not just a
15 double -- it's weighted as well, correct?

16 A. When you say "it," what do you mean by it?

17 Q. Your model that you run, your equation.
18 Your standard double equation is weighted.

19 A. I thought we already discussed that.

20 Q. I'm just confirming that.

21 A. Yeah.

22 Q. And as I believe, again, we confirmed

1 yesterday that those summary tables of that data that
2 SPSS would generate, we haven't been given?

3 A. They're just internal to the system.

4 Q. I understand SPSS generates those.

5 A. I don't have them. I gave -- let me
6 finish. I gave you the same thing that's reported by
7 your experts. The point estimates of the vote of the
8 Latino candidate of choice, which is what they base
9 their identification of those candidates on. It has
10 nothing to do with confidence intervals, nothing to
11 do with P values, nothing to do with R squares and in
12 every case, not only do they not challenge it -- I've
13 never seen this before -- they totally rewrote their
14 reports.

15 Q. We'll get to that, too, because I don't
16 think that's accurate. But my question was, the
17 tables that SPSS automatically generates for your
18 regression analyses, you haven't provided to us. And
19 I understand your position is you don't think they're
20 relevant, but they haven't been provided to us
21 because you haven't provided them to your counsel,
22 correct?

1 A. I've never provided them in 100 cases to
2 the other side. In every case, we each work up our
3 own and if there are disputes between us, we resolve
4 it.

5 Q. Are you aware that your counsel has been
6 given the code for the plaintiffs' experts in this
7 case?

8 A. I don't know what "the code" means. Have
9 they been given -- let me finish.

10 Q. Okay. Go ahead.

11 A. Have they been given the various
12 iterations of the EI methodology that produces the
13 estimates? Have they been given all the assumptions
14 that go into EI? Because remember, I quoted the
15 mathematician Moon Duchin saying EI is fundamentally
16 dependent upon these -- unlike ecological
17 regression -- is fundamentally dependent on the
18 assumptions that are in there.

19 And obviously, Dr. Chen and Dr. Grumbach
20 have different assumptions because they produced
21 fundamentally different results. So I'm asking you
22 have they given you all the assumptions so we can

1 check and see the differences between Chen and
2 Grumbach? Have they given you all the iterations
3 that produce the EI estimates? So otherwise it
4 doesn't matter. It's not meaningful.

5 Q. You've given us none of the codes that
6 SPSS would generate to be able to replicate your
7 model, correct?

8 A. There is no code. It's just a standard
9 regression which every single statistical program in
10 existence produces, every -- let me finish. Every
11 social scientist uses regression --

12 Q. Are you --

13 A. Let me finish. There's nothing special
14 about SPSS. It could use -- you could use SAS, you
15 could use STATA. It makes absolutely no difference.
16 There's no special code. Unlike EI where every EI
17 analysis has a different -- I call it assumptions.
18 I'm not sure what you mean by code. But clearly,
19 Grumbach and Chen have different assumptions. And
20 the mathematician Moon Duchin said just by slightly
21 adjusting the EI assumptions, you get fundamentally
22 different answers. That's not true of ecological

1 regression.

2 Q. Are you saying that you are unable to
3 export the code for the regression analysis that you
4 ran through SPSS?

5 A. Every university in the world has SPSS.

6 Q. That's not my question.

7 A. If they -- let me finish. If they want to
8 run a regression through SPSS, they can do it. If
9 they want to look at the SPSS manual which says how
10 one does a regression, which has been the same for 50
11 years and it's the same in every statistical program,
12 they can do it. There's nothing secret about what I
13 did.

14 Q. Are you going to answer my question? Are
15 you able to --

16 A. I don't know what your -- I think I did.

17 Q. You --

18 A. I can't give you the code of SPSS. I can
19 give you SPSS and you can run it, but you already
20 have it. And Dr. Grumbach says he perfectly knows
21 well how to run ecological regression.

22 Q. Doctor, have you heard of the Journal of

1 Legal Studies?

2 A. I'm sorry, what's the question?

3 Q. Have you heard of the Journal of Legal
4 Studies?

5 A. Yeah, I think I published some years ago
6 an article in there.

7 Q. That's right. You did. I think you
8 published in 2003 the article, "What really happened
9 in Florida's 2000 Presidential election." Is that
10 the article you're thinking of?

11 A. That sounds right.

12 Q. I'm going to share a document here in a
13 second.

14 THE REPORTER: This will be Exhibit 27.

15 MR. PANOFF: Thank you.

16 (Lichtman Exhibit No. 27 was marked
17 for identification.)

18 BY MR. PANOFF:

19 Q. Okay. Do you see this?

20 A. Yes.

21 Q. And this is the journal that you published
22 in in 2003?

1 A. Yes.

2 Q. And do you see where it says "Instructions
3 for authors"?

4 A. No. Oh, yeah.

5 Q. Right here?

6 A. Sorry. I was looking down. Yes.

7 Q. No worries.

8 A. Bear with me. I'm an old man.

9 Q. Okay. And in the instructions to authors,
10 do you see that -- and I'll read it -- it says, "It
11 is the policy of the JLS that authors of accepted
12 papers that contain empirical work, simulations, or
13 experimental work provide to the journal, prior to
14 the publication, the data, programs, and other
15 details of the computations sufficient to permit
16 replication," and then it goes on?

17 A. I see it.

18 Q. And is this fairly typical for scholarly
19 journals if you're going to publish empirical work?

20 A. Not necessarily at all. I don't recall
21 giving them all this stuff. But your experts have
22 all of this.

1 Q. They have all of this?

2 A. Yeah. They have data. They have the same
3 data. They have the programs, and I gave the details
4 of how I did it. We just went over it in footnote
5 40.

6 Q. They have the details of the computations?
7 They have the summary tables of your regression?

8 A. That's not what that says. That says the
9 details sufficient to permit replication. And they
10 have the details sufficient to produce -- to permit
11 replication. Dr. Grumbach said he could do it. He
12 just didn't. I describe in detail the two-equation
13 method. I put in references to it.

14 So they have the details. They have the
15 same data I did, precinct-by-precinct election
16 returns, precinct-by-precinct demography and
17 everybody has -- every university has SPSS or its
18 equivalent.

19 Q. Are you familiar with Harvard Data
20 Sciences Review?

21 A. Yeah. I think I published something in
22 there more recently.

1 Q. Yeah, last --

2 A. This is a real trip down memory lane for
3 me. Thank you.

4 Q. Last year.

5 A. Yeah. And then I gave a -- I was featured
6 in one of their interviews after I gave them my
7 article that correctly predicted the 2020 election.

8 (Lichtman Exhibit No. 28 was marked
9 for identification.)

10 BY MR. PANOFF:

11 Q. Do you see this document?

12 A. Yep.

13 Q. Does this look familiar to you?

14 A. Nope.

15 Q. But you published there last year?

16 A. Yep. I didn't give them anything other
17 than my results.

18 Q. Really? So where it says, "Full
19 manuscript submissions" here and it says, "The
20 following components should be included for all
21 article submissions, in this order," and do you see
22 that number 10 says, "Data repository/code"?

1 A. I'm not sure what that means, but as I
2 said, they have the data. There's no code. It's
3 just a straightforward regression that's been around
4 for 50 years. So if you're suggesting that somehow
5 what they're requiring here, your experts don't have,
6 that's incorrect. And frankly, you know, I don't --
7 I didn't give them any computer outputs. I never
8 have.

9 Q. You certainly seem to be the exception. I
10 think we agree there, Dr. Lichtman.

11 Your main book on the topic of ecological
12 regression was the Ecological Inference Book in 1978,
13 correct?

14 A. Oh, my God. Published in 1978? I guess
15 so.

16 Q. Well, that's the main book that you rely
17 on. You talk about it in your report.

18 A. Did I cite that book in my report? It's
19 pretty old now. I'm not even sure I had developed
20 the two-equation method back then. I doubt it.

21 Q. Well, let's fast forward 13 years after
22 that, you published, "Passing the test of ecological

1 regression analysis in the Los Angeles County case
2 and beyond in evaluation review."

3 Do you remember that article?

4 A. I do. Again, I don't remember all the
5 details of it, but I certainly remember doing that
6 article.

7 Q. Have you published an article on
8 ecological regression since 1991, a scholarly
9 article?

10 A. Probably not because I thought what had to
11 be said was said there.

12 Q. And --

13 A. It was said.

14 Q. When did Dr. King invent his -- his
15 ecological inference model that's being used now,
16 roughly?

17 A. 1990s.

18 Q. '97, does that sound right?

19 A. That sounds about right.

20 Q. Given that that kind of came on the scene
21 in 1997 and kind of made waves as, you know, the new
22 thing in the field, why didn't you publish after that

1 to talk a little bit more about your model and the
2 way that you do it and articulated in '78 and '91
3 when Dr. King's approach came out in 1997?

4 A. It's a different approach. Didn't
5 invalidate my approach. And although I didn't
6 publish it, I've testified right here that, you know,
7 I have a lot of admiration for Dr. King. I know him.
8 He's a brilliant guy.

9 But as the mathematician Moon Duchin said,
10 it's a black box and it all depends on the
11 assumptions you put in and it has no reality checks.
12 That's why in almost every single one of
13 Dr. Grumbach's analyses, he produced impossible
14 results, 140, 120, 108 above 100 percent, 89, 90, 87
15 below 100 percent, and he gave utterly incredible
16 explanations. Write-in candidates where they didn't
17 exist. Republican primaries that didn't exist.
18 Undercounts and overcounts which are not listed as
19 votes for candidates. And we don't know why we have
20 these errors because we don't know the assumptions
21 that he put into his EI.

22 And I also documented major divergences

1 between Dr. Chen and Dr. Grumbach, including the
2 Berrios 2018 county assessor race that is the
3 hallmark of table 10 of Dr. Chen's -- they disagree
4 by almost 10 points. Depending on what you use, you
5 get completely different answers.

6 Q. Do you think that ecological inference is
7 largely regarded as an improvement on ecological
8 regression?

9 A. Some believe that. Some don't. And, you
10 know, in some ways, it does and in some ways, it
11 doesn't. The problem is the assumptions. And, you
12 know, Dr. Duchin's work is 2021.

13 Q. So which is it --

14 A. So when you slightly adjust the
15 assumptions and you get fundamentally different
16 answers. And we get fundamentally different answers
17 from Dr. Chen and Dr. Grumbach. Who's right?
18 There's no way of knowing because there's no reality
19 checks in EI. It's a brilliant, brilliant system
20 and, you know, I admire Dr. King, but it's got its
21 issues.

22 Q. So in some ways, you said it is an

1 improvement over ecological regression?

2 A. Yeah. The one way it is is it fixes the
3 results so no matter what, you're not going to get an
4 over 100 and under zero. Sometimes you do get that
5 in ecological regression, though, as Dr. Grofman
6 indicated, I develop a method of balance for dealing
7 with that. But that's only in the most extreme cases
8 where you have close to 100 percent African-Americans
9 in the old south or close to zero or even in Chicago
10 at some point.

11 But all that indicates is you're at the
12 extremes. And as I said, in my analysis here, I
13 didn't encounter that.

14 Q. And I believe you testified yesterday that
15 even the Supreme Court, you're claiming, looked at
16 ecological regression in 2006, correct?

17 A. The Supreme Court accepted my ecological
18 regression results in 2006, that's correct.

19 Q. Are you aware of how resent courts have
20 been treating ecological regression as compared to
21 ecological inference?

22 A. I'm not aware of any Supreme Court

1 decision that accepts ecological inference and
2 certainly haven't followed individual decisions. But
3 in -- here in Illinois, in 2011, Dr. Engstrom was
4 using ecological inference. I was using ecological
5 regression and the Court accepted my results.

6 Q. Yeah. So my question wasn't limited to
7 Supreme Court cases. I was actually asking about,
8 you know, if you're aware of other courts that have
9 waded into the battle of ecological inference versus
10 ecological regression.

11 A. I haven't followed other courts, so I
12 can't answer that.

13 Q. Okay.

14 (Lichtman Exhibit No. 29 was marked
15 for identification.)

16 BY MR. PANOFF:

17 Q. I'm sharing with you -- this is the
18 United States of America versus the City of
19 Eastpointe. It's a Michigan redistricting case out
20 of the Eastern District of Michigan from 2019.

21 A. Was I involved in this?

22 Q. No, you were not. It's a case that

1 miraculously you are not in. There are other experts
2 out there, Dr. Lichtman.

3 A. I thought I was in every case.

4 Q. Well, you need to talk to your agent.

5 A. Yeah.

6 Q. So this is page 8 and, again, I won't bore
7 you with all the details, but I did want to get to
8 the discussion of ER versus EI. And I'll blow it up
9 here.

10 And the Court says, "Ecological inference,
11 the second form of statistical analysis applied by
12 the parties' experts, is largely regarded as an
13 improvement upon ecological regression." And the
14 other one that it's talking about is the ER
15 obviously.

16 So do you have any reason to doubt the
17 Court's statement here? And this is a 2019 case.

18 A. I don't doubt what you read, but I think
19 there's some context here. So please --

20 Q. Okay. Tell me how the Court -- yeah. I
21 can zoom out if it's easier for you to read a little
22 more.

1 A. No, just let me read what comes after that
2 because I saw some things that --

3 Q. Okay. You want me to scroll up?

4 A. I want to see the -- can you scroll up? I
5 want to see the bottom of what you've highlighted to
6 see what it goes on to say.

7 Q. There you go.

8 A. Yeah, that's good. And I'll have you
9 scroll on to the next. Scroll up so I can see where
10 it --

11 Q. Yes, apologies.

12 A. -- continues. Keep going. Here we go.

13 Two points when you look at the full
14 context. One, it is superior in the sense that I
15 talked about except the way I developed the method of
16 balance, that it doesn't get below zero or over 100.
17 But as I said, that was not an issue in this
18 instance.

19 Secondly, if you go to the next paragraph,
20 while the parties agree that ecological regression
21 and ecological inference are the best techniques
22 available to assess whether Eastpointe's atlarge

1 scheme for electing city council members, blah, blah,
2 blah, they disagree about the data sets. There's no
3 fundamental disagreement here that both ecological
4 regression and ecological inference are the best
5 techniques.

6 And I agree, in one sense, ecological
7 inference is better, but in other senses, which may
8 not have been brought up in this case, ecological
9 regression is better. And I'm not opining really on
10 saying you can't use EI. But what I am saying is
11 you've got to know the assumptions. And in this
12 case, there was no agreement between the two experts
13 on what their EI results produce. And we have no
14 idea who's right and who's wrong.

15 Q. I want to show you -- and we'll get to a
16 break probably in about five minutes, if that's okay.
17 I just want to show you --

18 A. Sure. Whatever you want.

19 Q. -- one other case as well, a recent one
20 that weighed in on this opinion.

21 (Lichtman Exhibit No. 30 was marked
22 for identification.)

1 BY MR. PANOFF:

2 Q. And this is a California Court of Appeals
3 case from last year. Not even a year old. It's
4 December 30th of last year. And this is the
5 Yumori-Kaku case versus the City of Santa Clara.

6 MR. PANOFF: And I'm sorry, I lost track
7 of what exhibit this will be.

8 THE REPORTER: This is 30.

9 MR. PANOFF: Thank you.

10 THE WITNESS: And this isn't one of my
11 cases either, right?

12 BY MR. PANOFF:

13 Q. No. Again, call your agent.

14 A. So the judge did not hear my analyses of
15 ecological inference here.

16 Q. No, it didn't. But what the appellate --
17 it's actually several judges. The appellate panel
18 here, they were comparing, and I'll represent,
19 ecological regression with weighted ecological
20 regression, which is I believe what you use, and then
21 ecological inference. And the Court says here that
22 political scientists have come to the view that

1 ecological inference -- have come to the view that
2 ecological inference as the most advantageous of the
3 three models. Do you see that?

4 A. Yes. And I explain why. But if you look
5 at the context -- and I'm a little bit familiar with
6 this case. I've done a lot of work in California. I
7 think the Court says the two methods basically
8 produced the same results. So it wasn't as if
9 there's some fundamental conflict between EI and ER.
10 Same in this case. The conflict here is between two
11 EI models, not between ER and EI.

12 Q. How is that not in conflict with your
13 regression analysis as well in this case?

14 A. Because when my regression analysis
15 disagreed with what they found, Dr. Grumbach redid
16 completely through his analyses and Dr. Chen dropped
17 eight elections, something like close to 40 percent
18 of his original corpus. He goes down from 23
19 endogenous elections in his original report. You can
20 go to the appendix and count them if you want. And
21 then in his rebuttal report table 1 where he says
22 elections analyzed by Dr. Chen that are endogenous,

1 we're down to 15. And he says on paragraph 7 of his
2 report that he deleted elections based upon errors
3 that I found.

4 Q. Okay. I was going to deal with this
5 later, but you keep bringing it up, saying that
6 Dr. Chen dropped elections. I think you're missing
7 the point of what Dr. Chen did there. Dr. Chen is
8 not dropping his elections. All he is trying to do
9 is to replicate your table that he had and he's
10 trying to point out special circumstances.

11 Did you catch that part of it?

12 A. That's incorrect. He --

13 Q. That is correct --

14 A. -- is listing -- let's go to the report.
15 That's not what the report title is.

16 Q. I'm --

17 A. It's in the record.

18 Q. No, I want to make sure we're talking
19 about the same thing. This is --

20 A. Table 1 of his --

21 Q. I'm not talking about the same thing,
22 Doctor. I'm talking about the corrected Lichtman

1 table 9 analysis of endogenous elections examined by
2 Dr. Chen.

3 A. Right. Down to 15 because --

4 MR. KASPER: Excuse me, Tom, what are we
5 looking at?

6 MR. PANOFF: So this is documentary 166-1.
7 Let me see if I can share it. Hold on a second.

8 BY MR. PANOFF:

9 Q. Dr. Lichtman, can you see this?

10 A. Yes.

11 (Lichtman Exhibit No. 31 was marked
12 for identification.)

13 BY MR. PANOFF:

14 Q. Dr. Lichtman, I see you're looking at
15 something. I'm showing you something else. Can we
16 look at what I'm showing you?

17 A. Yes. I think we're looking at the same
18 thing and I am making a different point. Let's start
19 with paragraph 7. The last couple of lines of
20 paragraph 7 --

21 Q. Of what, his report?

22 A. His rebuttal report. "Further, the

1 deletion of these elections that allegedly contain
2 problematic data" -- I don't know if it was data that
3 was problematic. I pointed the results problematic.
4 He changes the word to data, that's okay. "Does not
5 change my minding that Latinos vote cohesively in
6 either Cook County as a whole or in areas in Cook
7 County that are at issue in the five elections."

8 The point is he deleted elections that
9 contain what he calls problematic data, but what I
10 call problematic results. I didn't average that. I
11 just had his results. So he starts with, as he says,
12 23 endogenous elections. He then boils it down to 15
13 in table 1 based on my table 9 which deleted all of
14 his inaccurate results.

15 If he didn't think that my analysis is
16 correct, he never would have deleted elections and
17 this table would have been 23 elections. But he
18 admitted he deleted elections based upon what I
19 found.

20 MR. PANOFF: Could you please read back my
21 last question?

22 THE REPORTER: "Question: How is that not

1 in conflict with your regression analysis as well in
2 this case?"

3 BY MR. PANOFF:

4 Q. Yeah, I'm going to move to strike the
5 answer because I'm not sure what you're answering.
6 But that's fine.

7 A. You asked me a question before that about
8 table 1 and about deletions and I was following up.
9 Your question there was a follow-up to that. That's
10 what I was responding to.

11 Q. Okay. I'm not sure that's accurate, but
12 that's okay. We have our record.

13 Let's go to page 44 of your report. Let
14 me know when you're there.

15 A. Page 44. Okay, I'm there.

16 Q. And at the bottom --

17 A. Are we going to take a break or are we
18 going to do that?

19 Q. Yeah, I need two or three more minutes
20 depending on --

21 A. Sure.

22 Q. Bottom of 44, let's -- do you see where

1 you're talking about Dr. Chen's 2021 Yale Law journal
2 article?

3 A. Yes.

4 Q. And I think the point here is -- what is
5 your point here? It says that, "Ecological inference
6 is highly dependent on model choices, assumptions and
7 unpredictability."

8 Is that what you're saying?

9 A. That -- I've seen this before, that
10 ecological inference can unpredictably blow up. Now,
11 he says -- not in this -- but later he says there
12 were coding issues in New Jersey. I've analyzed
13 elections in New Jersey. I was involved in the big
14 New Jersey case of Page v. Bartels. There were no
15 issues in using New Jersey data. I analyzed scores
16 of elections in Bartels.

17 Q. And when was that case, Dr. Lichtman?

18 A. 2001. And I've analyzed elections since
19 then in New Jersey, not for a case, but I work with
20 the democratic caucus in New Jersey.

21 Q. Did you analyze the data set that Dr. Chen
22 is referring to in his 2021 article?

1 A. I have no way of knowing. But my point
2 was I'm very surprised that he wasn't able to analyze
3 New Jersey data. That's all.

4 Q. Okay. And my question was a simple one.
5 Did you analyze the data that he's talking about in
6 his article?

7 A. No way to tell. I don't know which data
8 he's talking about. He doesn't specify it.

9 Q. That's frustrating, isn't it, Doctor?

10 A. I'm not frustrated.

11 Q. Okay.

12 A. I've been through much worse than this.

13 Q. Okay. So you have no idea of knowing the
14 data that he's referring to and whether the errors in
15 that data would have impaired an ecological
16 regression analysis as well, do you?

17 A. All I'm saying is I'm surprised -- that's
18 all -- that it was a data problem and not an EI
19 problem just from -- I don't know why data would be
20 good in 2001 and -- I don't know when he did this
21 analysis -- and not good 10 or 15 years later. That
22 surprises me. That's all I'm saying.

1 Q. You would agree, though, that if you have
2 bad data, it could impact a regression analysis as
3 well, correct?

4 A. Of course.

5 Q. Okay.

6 MR. PANOFF: Why don't we take a break.
7 How long do you need?

8 THE WITNESS: Five minutes.

9 MR. PANOFF: Okay.

10 THE VIDEOGRAPHER: We are off the record.
11 The time is 2:28 p.m.

12 (Recess.)

13 THE VIDEOGRAPHER: We are back on the
14 record. The time is 2:39 p.m.

15 BY MR. PANOFF:

16 Q. Dr. Lichtman, before I begin the next line
17 of questioning, I did want to follow up on I think
18 one thing you said last time. Did you say that you
19 developed a method of bounds or an equivalent for
20 your regression analysis?

21 A. Yeah. It's nothing complicated. Just set
22 the result at zero and adjust the table accordingly.

1 It doesn't change very much. And I never had to use
2 it here because I didn't encounter the below zero or
3 above 100 issue.

4 Q. And when did you start building in the
5 method of bounds to your regression work?

6 A. Oh, I don't remember exactly, but I think
7 that Grofman book is quite old. So it's been a long
8 time.

9 Q. So you were doing this before Dr. King had
10 method of bounds for his EI analysis?

11 A. I can't be certain, but probably. I
12 cannot be certain.

13 Q. Okay. So let's say, assuming that's the
14 case, you know, from the '90s or so, you haven't had
15 ecological regression analyses where it's exceeded
16 100, for example?

17 A. I didn't say that. I said for this case,
18 that's never happened. I didn't have to use the
19 method of bounds at all.

20 Q. Okay. But I'm saying if you had -- if
21 you'd been using method of bounds, let's say
22 hypothetically, from the 1995s, you wouldn't have any

1 results from any analysis from that point onward
2 where you would have had results where it would have
3 exceeded 100, correct?

4 A. Well, you would set it at 100 or set it at
5 zero and that's the mathematical maximum and
6 readjust. It's the same thing on ecological
7 inference forces the maximum to be zero and the
8 maximum to be 100.

9 Q. Okay. But you can't remember --

10 A. Ecological regression equations don't
11 force it.

12 Q. Right. But again, you can't remember for
13 certain whether this was before or after Dr. King
14 kind of published his seminal work?

15 A. I really can't. I think it was before.
16 But the bottom line is I didn't use it here.

17 Q. Okay. Dr. Lichtman, has your testimony
18 ever been excluded by a Court before?

19 A. Not that I can recall in 100 cases. I've
20 been Dauberted two or three times and each time the
21 Court has rejected it pretty quickly.

22 Q. Oh, so you -- all right. Just to clarify.

1 So you're saying you've been the subject of Daubert
2 motions before, but the Court has always rejected
3 those?

4 A. Yeah, two or three.

5 Q. Two or three times you've been the subject
6 of a motion that's been rejected or two or three
7 times you've been excluded?

8 A. Oh, no, no, no, no. I've not been
9 excluded. Two or three times I've been the subject
10 and the Court has rejected the motion usually pretty
11 quickly. The first one I think was in 2001 in the
12 Pennsylvania redistricting case and I drove to
13 Pennsylvania and on my way back, I heard the Court
14 had rejected the motion.

15 Q. Okay. Has a Court ever criticized your
16 testimony before?

17 A. Oh, my gosh. In 100 cases, you're not
18 going to be without criticism, of course.

19 Q. Do you have a ballpark of how many times
20 you think a Court has rejected your methodology?

21 A. That's not what you asked me. You asked
22 me has a Court criticized me, not has a Court

1 rejected my methodology. Please don't conflate the
2 two. They're quite different.

3 Q. That's a fair point, Doctor. So let me
4 ask you that question. Thank you for leading me
5 there. Has a Court ever criticized your methodology?

6 A. It probably has, but I don't recall a
7 Court rejecting it out of hand. You know, in 100
8 cases, anything can happen. But in the vast majority
9 of cases, win or lose, the Court has not rejected my
10 methodology.

11 Q. Okay. Let me start sharing some documents
12 again.

13 (Lichtman Exhibit No. 32 was marked
14 for identification.)

15 BY MR. PANOFF:

16 Q. This is -- I don't know if it's pronounced
17 Nipper versus Smith. It's an en banc decision by the
18 11th Circuit. Do you remember this case?

19 A. Vaguely. It's what, 27 years ago? Again,
20 you show me things and show them in context and I
21 would answer your questions, but I don't specifically
22 remember details of this case.

1 Q. I will always give you whatever context
2 you believe you need, Doctor. So that's -- it's not
3 a game of gotcha. We want you to have an accurate
4 representation here.

5 A. Yes, you've been very, very generous about
6 that and I appreciate it.

7 Q. So let's go to -- and I will take us to
8 the highlighted text. There's actually a footnote
9 here, but then I'll show you the text that the
10 footnote is referencing. So it's -- let's see.

11 A. It's straining my eyesight again.

12 Q. I will try to make it a little bit --

13 A. I see my name mentioned quite a bit here.

14 Q. You somehow captured the interest of the
15 en banc panel or the en banc 11th Circuit twice,
16 which we'll get to. That's a rarity.

17 A. Oh, my goodness. Twenty-seven years ago
18 when I was a kid.

19 Q. Most of us mortals are relegated to
20 three-judge panels of appellate courts. You've got
21 the en banc twice in two years, so but we'll get to
22 that.

1 A. I hit the jackpot, huh?

2 Q. Yeah. So I'm going to highlight -- this
3 is the text. I'm going to go to this footnote 22.
4 It's referring to you.

5 It says, "He has also analyzed numerous
6 elections for offices not at issue in this litigation
7 (referred to as exogenous elections) that involved
8 black candidates, placing particular emphasis on
9 Justice Hatchett's 1976 Florida Supreme Court
10 reelection bid."

11 Do you see that?

12 A. I see it. Do you have a question about it
13 or just --

14 Q. No, I will. I'm going to get there. I
15 just want to see if you saw that. I want to give you
16 the context that you need.

17 A. Please.

18 Q. Okay. So let's go to actually that
19 footnote 22. Oops, going to too far. And it's
20 talking about the exogenous elections and the
21 highlighted portion here says quote -- and this is
22 referring to the district court, but it's the 11th

1 Circuit reciting what the district court did.

2 It says, "The Court rejected
3 Dr. Lichtman's attempts to tie this race to other
4 exogenous elections, however, suggesting that
5 equating Hatchett's nonpartisan, lower profile,
6 judicial election with Reverend Jesse Jackson's
7 partisan, high profile, Presidential election for the
8 purpose of showing racial polarization in circuit and
9 county judicial elections is misleading."

10 Do you see that?

11 A. I see it.

12 Q. Okay. Do you remember the district court
13 criticizing your use of these exogenous elections
14 because they weren't a good fit as is indicated here?

15 A. I do, but I've got to put this in context
16 as well. You're asking about my methodology and
17 whether courts have -- this has nothing to do with
18 methodology. This has to do with the weight you put
19 on various elections.

20 In fact, if you look at footnote 23, they
21 accepted my ecological regression analysis and used
22 it to show polarization. They just had issues with

1 which elections were relevant and which wasn't. And
2 by the way, your experts turned to exogenous
3 elections as well that in fact cover far more
4 territory than is covered in the challenged
5 districts.

6 So this has nothing to do with
7 methodology. It has to do with the weight you put on
8 elections. And they accepted my methodology.

9 Q. Right. Okay. And you agree, though, that
10 as this indicates, that your elections that you
11 choose for your analysis are very important, right,
12 in terms of the ultimate reliability of your work?

13 A. That's what it suggests here, yes.

14 Q. But do you agree with that?

15 A. As a general rule, but you have to look
16 specifically at each instance. And, you know, I
17 don't necessarily agree with what the Court found
18 here, but that's inevitable. You know, when you've
19 written 100 cases, you're not going to be in
20 agreement with everything that every Court found
21 here, but this was not an issue of methodology. This
22 is an issue of interpretation.

1 Q. Right, because you're -- yeah, you're
2 claiming your methodology has never been criticized
3 or --

4 A. I didn't say that. You're putting words
5 in my mouth.

6 Q. Okay.

7 A. You keep juxtaposing criticism and
8 rejection. Those are two different things. I'm sure
9 I've been criticized. Everybody has been criticized.
10 You can't be in 100 cases and not ever been
11 criticized. But this is not an example of a Court
12 even criticizing my methodology, much less rejecting
13 it. This is an example of a Court interpreting
14 elections differently than I did.

15 Q. So let's just clarify that. Has a Court
16 ever criticized your methodology?

17 A. It probably has, but -- I'm sure they
18 have. You can't go through 100 cases without having
19 everything at some point being criticized. But in
20 the great majority of cases, as even here, the Court
21 has not attacked or certainly rejected my
22 methodology. It may have happened, but not most of

1 the time.

2 MR. PANOFF: And what exhibit is this one?

3 THE REPORTER: This is 32.

4 MR. PANOFF: Okay. I'm going to show you
5 what I will mark as 33 next.

6 (Lichtman Exhibit No. 33 was marked
7 for identification.)

8 BY MR. PANOFF:

9 Q. Has a Court ever criticized your failure
10 to properly account for incumbency before?

11 A. I think in judicial elections it has,
12 probably.

13 Q. And what do you remember from that case?
14 What case are you referring to?

15 A. When you say "that case," I'm not sure. I
16 think it was another one of these southern cases
17 involving judges and I think the Court talked about
18 judge elections having merit selection and things
19 like that which are unique to judge elections.

20 Q. And by one of these southern cases, are
21 you referring to the 11th Circuit en banc?

22 A. I don't recall. But if you bring it up,

1 we can talk about it.

2 Q. I'm sorry. I know you're not a lawyer.

3 Do you know what en banc is?

4 A. Yes.

5 Q. Okay. What's your understanding of an en
6 banc appellate ruling?

7 A. That it's not just a panel, but it's the
8 full court, at least those who are not recused or,
9 you know, not ill or something.

10 Q. Correct. So I'm going to show you what
11 has been marked now as Exhibit 33, which is Southern
12 Christian Leadership Conference of Alabama versus
13 Sessions.

14 So is this the case that, you know, you
15 were talking about with incumbency in judicial
16 elections?

17 A. It might be. I don't remember the
18 specific case, but I do have a vague recollection of
19 judicial elections, according to the Court, being
20 different --

21 Q. Okay.

22 A. -- in the case of merit selection and

1 other factors.

2 Q. And now I'm going to read this highlighted
3 portion. This is on page 10 and 11 of the PDF. Let
4 me make it bigger. It says -- this is again --
5 sorry. This is referring again to the district
6 court's ruling in the 11th Circuit en banc it is
7 referring to.

8 It says, "In its dispositive memorandum
9 opinion, the Court found Dr. Lichtman's analysis to
10 be flawed. Dr. Lichtman's analysis was flawed
11 because he only analyzed elections (both judicial and
12 nonjudicial) involving a black candidate. Moreover,
13 he failed to appropriately consider the effect on
14 judicial election results of the power of incumbency
15 and, with respect to incumbents who had been
16 appointed to office" -- sorry, "and with respect to
17 the incumbents who had been appointed to office the
18 prestige of merit selection."

19 Do you see that?

20 A. Yes.

21 Q. And is this what you were recalling when
22 you were talking about the merit selection?

1 A. Pretty much. Yeah, yeah. And if you have
2 questions about it, I can give you context here, too.

3 Q. Yeah. And what was it that the district
4 court found objectionable when you failed to properly
5 account for incumbency?

6 A. Again, this is not a rejection of my
7 method. They accepted my results. This was a matter
8 of interpretation.

9 First of all, they wanted me to look at
10 white-on-white elections, which nobody does in this
11 instance. So this has no bearing on what's going on
12 in this matter. And then they said, you know, I
13 didn't recognize that judicial elections are
14 different and that in judicial elections with merit
15 selection, there is something special about
16 incumbency, which doesn't apply to nonjudicial
17 elections. So I wanted to give this a little
18 context. Not a rejection of methodology. It's
19 interpretation. They wanted me to look at white
20 versus white candidates and they explained how
21 incumbency is different in judicial elections than in
22 other elections.

1 Q. And I appreciate that context,
2 Dr. Lichtman, and I wasn't suggesting that it was a
3 critique of your methodology. I was suggesting that
4 it was a flawed analysis, which is the Court's
5 opinion here.

6 A. Well, again, when you say flawed
7 analysis --

8 Q. I'm not saying that the Court is. It's
9 saying Dr. Lichtman's analysis to be flawed.

10 A. Yeah. But you keep going back and forth
11 between methodology and interpretation. My analysis
12 was flawed not because there is anything wrong with
13 my methodology or my results. They say my analysis
14 was flawed because -- and we looked at minority
15 elections and I didn't consider the special case of
16 incumbency in judicial elections.

17 Let's be real specific what they mean by
18 flawed. It's interpretation, not methodology. And
19 it's unique to judicial elections. As I said, we all
20 analyze all the elections of minority candidates, so
21 we certainly make mistakes.

22 Q. Dr. Lichtman, to be clear, I'm not

1 bringing up methodology here. You're the who keeps
2 bringing it in. I was just quoting from the Court's
3 opinion where it said analysis to be flawed.

4 Do you see that text?

5 A. Well, we can go around the mulberry bush
6 on this. But I just want to make it clear that when
7 you say flawed, what exactly they mean by flawed
8 because that could mean -- that could cover the
9 waterfront of possibilities. What they found here
10 was very specific and very interpretative, not
11 methodological.

12 Q. Okay. Thank you for providing that
13 context to the 11th Circuit en banc. Let's go to
14 what I'll mark now as Exhibit 34.

15 (Lichtman Exhibit No. 34 was marked
16 for identification.)

17 BY MR. PANOFF:

18 Q. So now I will go to Johnson versus
19 Mortham, which I will make 34 once I open it.

20 Do you recall this case? It was in the
21 Northern District of Florida. This is a year after
22 the two 11th Circuit en banc opinions that we

1 discussed.

2 A. I don't recall this case. I don't even
3 know what it was about.

4 Q. Okay.

5 A. But you can refresh me.

6 Q. Well, the synopsis is talking here about
7 white and Hispanic voters brought an action to
8 challenge constitutionality of African-American
9 majority congressional districts that were created by
10 the federal court.

11 A. Okay. It still doesn't ring a bell with
12 me, but that's all right.

13 Q. Okay. Well, let's -- they had a quite
14 robust discussion of your methodology and I meant to
15 use methodology there, so let's go to that. Let's
16 see, it's on page 13 here. Let me make this a little
17 bit larger. I don't know where the highlighting
18 went, but I made it larger.

19 All right. I'm going to read a little
20 bit, Dr. Lichtman, just so it's easier for everyone.
21 This is on 13 of the PDF, not the case cite. But the
22 quote is, "However, we reject Dr. Lichtman's results

1 because of several critical methodological errors in
2 his analysis. First and foremost, Dr. Lichtman only
3 examined black versus white elections, excluding all
4 black versus black and white versus white elections,
5 even though there was an extensive amount of
6 testimony that the African-American community had a
7 clear candidate of choice in such elections.

8 "Furthermore, in part as a result of his
9 first error, Dr. Lichtman disregarded a number of
10 congressional elections that are highly relevant to a
11 determination of whether racially polarized voting
12 precludes African-Americans from electing their
13 candidate of choice in congressional elections. In
14 fact, Dr. Lichtman considered only four congressional
15 elections - three involving Congresswoman Brown's
16 elections in races against only white opponents.

17 "Finally, Dr. Lichtman failed to consider
18 that differences in white and African-American
19 political party affiliation could explain why
20 racially polarized voting was apparent in a
21 superficial analysis of election results."

22 Have you seen that before, Dr. Lichtman?

1 A. I don't remember it, but it sounds right
2 and I can give you context for this as well if you
3 want me to.

4 Q. Okay. But do you agree, before you give
5 that context, that the Court found, "several critical
6 methodological errors" in your analysis?

7 A. Yes and no. I mean, they said that. But
8 when you look at what they've objected to, it's not
9 methodology. It's again interpretation. For
10 example, they want me to look at white versus white
11 elections, something nobody does in this case and,
12 you know, it's not common practice since the 1990s.
13 And again, all of this is interpretation. I'm not
14 sure what the rest of the quote is. I'm not sure
15 what they're referring to exactly.

16 Can you move down a little bit?

17 Q. Go down?

18 A. Yeah. There's a second thing they said.
19 Keep going up. Concludes. I want to see the last
20 part. They go on to say that they had an
21 interpretative disagreement with --

22 Q. Scroll up there? Okay.

1 A. Yeah. I'm not sure -- again, I guess they
2 wanted me to look at white versus white congressional
3 elections because I looked at the black versus white.
4 And they wanted me to explain political party
5 affiliation, which in my view doesn't detract from a
6 finding of racially polarized voting and something no
7 expert does in this case.

8 So again, these are matters of
9 interpretation. White versus white elections is no
10 longer standard practice. Many -- you know, when I
11 did my analysis for the Supreme Court, I only did
12 minority versus white. When I did my case a couple
13 years ago in North Carolina on the legislative
14 district case where they found ecological regression
15 was a standard method of accepting it, we looked at
16 minority versus white in Illinois. We looked at
17 minority versus white more recently.

18 So again, this is not -- while they call
19 it methodological, they're really interpretative.
20 They don't deny what I found. They just interpret it
21 differently. And the way they interpret it I do not
22 believe is standard practice anymore and it's not

1 standard practice that any expert has followed in
2 this case.

3 Q. It was standard at the time that the Court
4 criticized your methodology, correct?

5 A. I don't think so. I mean, that was the
6 opinion of this Court. Other courts have accepted
7 looking at minority versus white elections as
8 probative.

9 Q. So you think the Court got it wrong?

10 A. I don't find it wrong. They interpret it
11 differently. They didn't say I came up with wrong
12 results. They were just saying I should have looked
13 at these other white versus white elections. It's
14 very different.

15 Q. And you believe they shouldn't have
16 referred to it as "critical methodological errors"?

17 A. Whatever they -- language they used, the
18 exact criticism that they have are not
19 methodological. They're interpretative.

20 Q. Okay. I'm going to mark another exhibit
21 now which will be 35, which is the -- oops. No, not
22 that one. This is the McCory case.

1 (Lichtman Exhibit No. 35 was marked
2 for identification.)

3 BY MR. PANOFF:

4 Q. Are you familiar with that?

5 A. Yeah. There have been -- this is the
6 district court opinion?

7 Q. This is the -- yes, it's the district
8 court's opinion.

9 A. Which was overturned by the court of
10 appeals and then overturned by the Supreme Court. So
11 who knows.

12 Q. Yeah, but not on any grounds related to
13 your testimony. I want to be clear on that. So I do
14 want to --

15 A. That's what you say. I don't -- I can't
16 confirm that.

17 Q. Well, I don't need you to confirm it,
18 Doctor. The case law is very clear on this.

19 So what I do want to go to is the Court's
20 criticism of your methodology again -- or we can call
21 it methodology. We can call it -- actually, this one
22 is really hard to characterize, so why don't we just

1 read it.

2 A. Yeah, I really, you know, have to clarify.
3 You keep using the word "methodology," which you're
4 applying to my ecological regression. You haven't
5 shown me a single case that actually challenges my
6 methodology or finds something different as opposed
7 to interpretations about elections that should be
8 looked at. That's very different.

9 Q. How is it very different? Because when
10 you're looking at elections to be considered and the
11 data that you're putting into your analysis, isn't
12 that all part of your methodology?

13 A. It is part of how you interpret elections.
14 But you kept talking about my ecological regression
15 methodology by which I derived my results for the
16 various ethnic groups and the various candidates.
17 None of these decisions question those results. I
18 just want to make that clear. And --

19 Q. So they're criticizing, what, your
20 analysis, then?

21 A. No. They're criticizing the
22 interpretation we put upon the analysis, you know.

1 Should you consider white versus white elections
2 seems to be the thrust of the criticism here.

3 Q. I'll stick to the --

4 A. Nobody does in this case.

5 Q. I'll stick to the language that the Court
6 uses when they criticize you then, okay? So the last
7 one said critical methodological errors. So that's
8 what I'll use for that one. I'll use the same
9 language that they use in this one.

10 So this is -- I want to cite you -- this
11 is page 117, again, of the PDF, not the -- not the
12 Westlaw cite, but I'm going to quote from the first
13 highlighted portion.

14 And it says, "This Court does not credit
15 Dr. Lichtman's opinions for several reasons. First,
16 although plaintiffs argued otherwise, Dr. Lichtman's
17 ultimate opinions on legislative intent, like those
18 of plaintiffs' two other two experts on legislative
19 intent, Dr. Steven Lawsom and Morgan Kousser,
20 constituted nothing more than his attempt to decide
21 the ultimate issue for the Court, rather than
22 assisting the trier of fact in understanding the

1 evidence or any fact at issue."

2 Do you see that?

3 A. I do.

4 Q. So what the Court is doing here, to
5 paraphrase, is criticizing you for opining on an
6 ultimate issue for the Court, as did the plaintiffs'
7 experts, correct?

8 A. I'm sorry, what? I didn't hear the last
9 part of your question.

10 MS. WIER VAUGHT: You're being
11 argumentative, Mike.

12 MR. PANOFF: Sorry, are you defending this
13 or is Mike? Or Heather or whoever chimed in?

14 MR. KASPER: It's fine, Tom.

15 MR. PANOFF: Okay. Sorry, I'm not sure.

16 BY MR. PANOFF:

17 Q. So in this one here, they're saying that
18 both you and the plaintiffs' experts opined on an
19 ultimate issue of legislative -- on the ultimate
20 issue of legislative intent, correct?

21 A. Which case is this again? Is this the
22 Arizona case?

1 Q. No, this is McCory.

2 A. Oh, this is completely overturned by the
3 Fourth Circuit Court of Appeals which rejected in its
4 entirety Judge Schroeder's opinion and accepted my
5 opinion that indeed the VIVA legislation from 2013 in
6 North Carolina was adopted with the intent to
7 discriminate against minorities. They even used
8 language almost identical to the language I used in
9 my report. So in the other things, you gave me the
10 court of appeals' opinion. This opinion was entirely
11 overturned.

12 Q. Okay. And we can get into what the
13 court -- appellate courts did and didn't do in this
14 case. But what I'm focusing now is on the Court that
15 actually heard your testimony and its impression of
16 your testimony.

17 So, second -- on the next page here -- or
18 the next column of this page, it says, "Second, and
19 independently, the Court disregards Dr. Lichtman's
20 opinions because his approach was single-minded and
21 purposefully excluded evidence that contradicted his
22 opinions."

1 Do you see that?

2 A. I do. But again, I give no weight to this
3 opinion. That was scathingly rejected by the court
4 of appeals.

5 Q. So that's fine. You can have your opinion
6 on what the appellate court did. I'm just going
7 through what the district court who heard your
8 testimony thought.

9 Then on the next page -- well, that one is
10 not as relevant. We don't need to go to the third
11 critique. I mean we can if you want, but in the
12 interest of time, why don't we go through the fourth
13 one.

14 "Fourth, at trial, Dr. Lichtman practiced
15 a propensity to respond to questions not with
16 responsive answers, but with nonresponsive arguments
17 supporting his opinions. He also demonstrated a
18 willingness to obfuscate when detail became
19 important."

20 Do you see that?

21 A. I see that. As I said, this was all
22 overturned and I don't think that was accurate.

1 Q. Since you brought up the Arizona case,
2 let's go to that next, too.

3 A. The what case?

4 Q. You were talking about the Arizona case.

5 A. I wasn't talking about it. I was just
6 asking.

7 Q. Well, you raised -- well, that's okay. I
8 want --

9 A. I didn't know if this was the Arizona case
10 or the North Carolina case.

11 Q. I agree with you, Doctor, context is
12 important. So let's talk about the Arizona case
13 next.

14 A. Okay.

15 MR. PANOFF: What exhibit is this? Is
16 this 36 or 37?

17 THE REPORTER: This is 36.

18 (Lichtman Exhibit No. 36 was marked
19 for identification.)

20 BY MR. PANOFF:

21 Q. This is 36. This is the Feldman versus
22 Arizona Secretary of State case, which I will submit

1 went up on appeal and was -- there was reversed or
2 negative treatment on appeal. But I want to focus on
3 what the district court who actually heard your
4 testimony talked about and I believe the 9th Circuit
5 is referring to what the district court -- this is
6 the 9th Circuit opinion, but I want to reference what
7 the district court found.

8 So it's page 8. Do you see this
9 highlighted portion? And I'll read it. This is
10 referring to you. "Reading his reports reveals
11 several inaccuracies that would clearly justify the
12 district court's decision not to credit it as
13 sufficient to satisfy the Gingles factors."

14 Do you see that?

15 A. I see it. But this was not the en banc
16 decision that overturned this, is it?

17 Q. So this is the appellate court -- this is
18 the appellate court talking about your testimony and
19 with the district court's decision and how it treated
20 it, correct, the first panel?

21 A. I don't know. I just want to make clear
22 that the first -- this is a very complicated string

1 in this case -- that the first opinion by the appeals
2 court we talked about en banc, was overturned by the
3 en banc 9th Circuit. So is this the en banc or is
4 this the one that was overturned?

5 Q. This is the panel ruling that had the
6 dissent by Judge Thomas as well, but the --

7 A. So this was overruled.

8 Q. Not your testimony, though. There were
9 other --

10 A. I don't know about my testimony because --

11 Q. Okay.

12 A. -- having --

13 Q. True. And --

14 A. -- conflated the two -- let me finish.

15 All I know is this decision was overturned. We can
16 agree on that. That's all I recall.

17 Q. That's fine. And if we were going to go
18 into the merits of each case I'm going to show you
19 that you testified into, we would go way over, you
20 know, any sense of timing. So I'm just trying to
21 show you how courts have treated your testimony.
22 That's the purpose of this line of questioning.

1 A. You chose the cases out of 100 cases. So
2 if you're going too much time, that's not my issue.
3 That's your issue. So let's go to that first one
4 again.

5 Q. It's not a too much time thing, Doctor.
6 I'm just -- you were claiming before that, you know,
7 certain representations about your testimony. I'm
8 just trying to go through what your actual testimony
9 is and how it's been treated.

10 A. You're misrepresenting what I said. What
11 I said is of course I've been criticized. You would
12 not be involved in 100 cases without being
13 criticized. That's only human. People are not
14 always going to see eye to eye.

15 But what I was saying was these are
16 interpretative questions, not rejecting the
17 methodology that's at issue in this case, and a lot
18 of those criticisms, most of them, would apply to
19 what your experts are doing in this case.

20 Q. At the bottom of page 8, it says, "Given
21 such errors, and given substantial rebuttal from
22 other experts (one of whom stated that Lichtman's

1 report is single-minded, conclusory, and one-sided,
2 and frequently omits mention of contradictory data or
3 important context), Lichtman's report is insufficient
4 to meet the second prong of the VRA test."

5 Do you see that? I'm sorry, let -- there
6 we go.

7 A. I do. But again, I don't understand that.
8 I didn't meet cohesiveness of the Hispanic community?
9 I'm not sure what they're saying there.

10 Q. That's fine.

11 A. Okay. That's fine. We can go on. As I
12 said, this decision was overturned anyway.

13 Q. Right. And I'm representing not on
14 grounds related to your testimony, but that's fine.
15 We don't need to debate what the procedural posture
16 of the case is.

17 A. Well, this is the problem when you try to
18 parse court decisions in five minutes.

19 Q. Well, I'm not trying to parse the Court's
20 decision. I'm trying to parse its treatment of your
21 testimony. It's different.

22 A. It's snippets.

1 MR. KASPER: Objection. Objection.
2 Objection. Can we perhaps not get into an argument
3 with the witness, Tom? If you want to ask him
4 questions, ask the question.

5 MR. PANOFF: I am. And I'm explaining
6 what I'm doing. I'm trying to give him the context
7 that he wants, Mike.

8 BY MR. PANOFF:

9 Q. So let's go to the next exhibit, which
10 will be the district court's case in the Democratic
11 National Committee versus Reagan in Arizona.

12 THE REPORTER: This is 37.

13 (Lichtman Exhibit No. 37 was marked
14 for identification.)

15 BY MR. PANOFF:

16 Q. And I will submit again that this was
17 reversed and remanded on grounds related to your
18 testimony, but here we go.

19 A. That's your opinion. I haven't read all
20 -- I'd have to read all the cases to make that
21 determination. So I can't confirm that. You're
22 entitled to your opinion.

1 Q. Actually, no, sorry. I take that back,
2 you know. I was wrong. Strike that.

3 This one was actually affirmed. Do you
4 see here where it says, "Opinion affirmed on appeal"?
5 It was just that there was another case that had
6 negative treatment of it. So this case, the district
7 court's opinion was affirmed by the appellate panel.

8 So let's go to what the district court
9 said about you here. Are you familiar with this
10 case, before I get to it?

11 A. I'm sorry, are you asking me --

12 Q. Are you familiar with this case? Do you
13 remember?

14 A. I don't recall it, no. Looks like it's
15 the same case. This looks like the same case with
16 the same quotes.

17 Q. No, I think this one is a little
18 different.

19 A. Which doesn't look different to me. That
20 looks like exactly the same quote by the same judge.
21 Which judge is this?

22 Q. This is Judge Rayes.

1 A. This looks like the same judge, same case.
2 I don't understand. Judge Rayes was the judge in the
3 other case you showed me. So I don't understand what
4 the difference is.

5 Q. Sure. Make sure I'm sharing the right
6 thing. Does this say right here where my cursor is,
7 Democratic National Committee v. Reagan?

8 A. What's your question?

9 Q. Does it say Democratic National Committee
10 versus Reagan?

11 A. That's what it says, but it looks like
12 it's the same case in front of the same judge --
13 that's what I don't understand -- with the same
14 comments you just showed me. That's not something
15 different.

16 Q. Okay. I'm pretty sure I'm not -- the
17 language I'm about to read I have not read before.
18 "Dr. Lichtman applied the law as he interpreted it to
19 data he assembled. In this respect, his opinions
20 presented more like an attorney's closing argument
21 than an objective analysis of data, and the
22 credibility of his trial testimony was undermined by

1 his seeming effort to advocate a position rather than
2 answer a question."

3 Do you see that?

4 A. Yes.

5 Q. Okay.

6 A. The same judge --

7 Q. Let me finish my question. Let me finish.
8 I haven't read that before.

9 A. Sure.

10 Q. And have you seen this critique before of
11 your -- of your testimony?

12 A. Have I seen this before?

13 Q. Yes.

14 A. Not that I can recall.

15 Q. I'd like to show you one more case.

16 A. Sure.

17 (Lichtman Exhibit No. 38 was marked
18 for identification.)

19 BY MR. PANOFF:

20 Q. Are you familiar with this case from
21 almost a year ago today, City of South Miami versus
22 DeSantis?

1 A. Is that the case that just came out --

2 Q. No, it was the --

3 A. -- where the judge spent 20 pages
4 crediting my opinion? And where she immediately
5 rejected the Daubert motion? Or very quickly.

6 Q. Oh, this is where she immediately rejected
7 the Daubert motion?

8 A. I wouldn't say immediately, but very
9 quickly rejected the Daubert motion. And then in her
10 opinion spent page after page after page relying on
11 my testimony.

12 Q. All right. Well, let's examine this.

13 A. So this is a more recent opinion of any of
14 my cases.

15 Q. So this one should be given extra weight?

16 A. Look, I've been in 100 cases. You've come
17 up with five or six where I've been criticism. None
18 of them, none of them relate to the methodology that
19 I've used in this case. You know, you imply that
20 somehow my methodology got criticized or rejected.
21 You know, not a single one of these cases even
22 suggest that.

1 They are either a matter of interpretation
2 or the Court thought I was taking on their role. But
3 let's -- I just want to make clear what the context
4 is for this City of South Miami versus DeSantis case.
5 And if you like, I don't know if you have it, we can
6 go over the opinion in this case. But --

7 Q. This is the --

8 A. I don't want you to be selective here and
9 miss what's really going on.

10 Q. Okay. And again, what's really going on
11 is -- and your remembrance of this is that the Court
12 rejected the Daubert motion and validated your
13 testimony?

14 A. That's correct.

15 Q. Let's examine this a little bit more.
16 This is on the bottom of page 10 of the PDF and top
17 of 11. "Dr. Lichtman's opinion on the legislature's
18 discriminatory intent improperly invades the province
19 of the trier of fact by opining on the ultimate legal
20 question in this case."

21 And at the bottom of the paragraph, "As
22 such, defendants' Daubert motion is granted in part.

1 Dr. Lichtman will be precluded from offering any
2 opinions at trial as to the ultimate issue of
3 discriminatory legislative intent."

4 So, Doctor --

5 A. That's correct.

6 Q. Let my finish my question.

7 A. I did not -- I did not at trial --

8 Q. Doctor, you are fond of saying let me
9 finish.

10 A. I'm sorry.

11 Q. Let me finish my question.

12 A. Sure.

13 Q. Do you still stand by your testimony
14 earlier under oath that you've never had your
15 testimony excluded?

16 A. Absolutely. All -- they did not exclude
17 my testimony. In fact, my testimony was identical to
18 what was in my report that they're discussing here.
19 All that she said was I can present my testimony, but
20 not ultimately decide the issue. I didn't change a
21 single fact or a single interpretation in my
22 testimony. I simply made it clear I'm not opining on

1 the ultimate issue.

2 And when the judge opined on the ultimate
3 issue, it was based on my testimony, which she found
4 persuasive, comprehensive and credible. And on the
5 basis of my testimony, did something courts don't
6 normally do, found intentional discrimination. So
7 this does not contradict what I told you.

8 Q. How does this not contradict your
9 testimony earlier under oath that you've never had a
10 Daubert motion granted against you?

11 A. I don't think this is a Daubert motion
12 granted against me. I remember this because it had
13 no effect on my testimony whatsoever. If you read
14 the full context of her rejection, except this one
15 little piece, which had no impact, she extolls my
16 qualifications, she extolls my ability to testify.

17 All she's saying is, okay, Dr. Lichtman,
18 don't opine on the ultimate issue. That had zero
19 effect on my testimony. Nothing substantive was
20 rejected.

21 Q. Dr. Lichtman, let me be very precise here.
22 Has a Court ever precluded you from testifying based

1 on Daubert grounds?

2 A. They have not precluded me from
3 testifying. They have simply said you shouldn't be
4 opining on the ultimate issue. It had nothing to do
5 with the quality of my work, with my qualifications
6 or anything else. It was just a caution of what I
7 shouldn't do and it didn't affect my testimony one
8 inch.

9 Q. Has a Court ever excluded you on
10 Daubert -- sorry. Let me strike that.

11 Has a Court ever precluded you from
12 offering trial testimony on certain opinions on
13 Daubert grounds?

14 A. Not that I can recall. But if you want to
15 show me something -- and I don't think this fits --
16 go right ahead.

17 Q. I just read it to you. I'll read it
18 again. Quote --

19 A. You can read it 10 times, but it doesn't
20 change what it actually says. I'm not being excluded
21 from testifying. Not a single word of my testimony
22 is being excluded. All the judge is saying -- let me

1 finish -- all the judge is saying, and that's plain
2 as day, don't opine on the ultimate issue.

3 And then when the judge made her opinion,
4 she talked about how comprehensive, persuasive,
5 significant my testimony was and based a very rare
6 finding of intent on my testimony. So to think, you
7 know, that this judge in any way thought, you know,
8 my testimony was unscientific, not comprehensive, not
9 persuasive, is a complete distortion of what went on
10 in this case.

11 Q. Okay. So when the Court says, "As such,
12 defendants' Daubert motion is granted in part.
13 Dr. Lichtman will be precluded from offering any
14 opinions at trial as to the ultimate issue of
15 discriminatory legislative intent," your opinion and
16 your testimony under oath is that you have never had
17 a Court preclude you from offering testimony or
18 opinions on Daubert grounds?

19 A. I didn't say that.

20 MR. KASPER: Objection. Tom, you've asked
21 him -- objection. You asked him this question three
22 times.

1 THE WITNESS: Yeah. And as I said, all
2 this did -- had nothing to do with my qualifications,
3 my methodology, my research, my findings. All she
4 said was don't opine on the ultimate issue. And I
5 did not. And my testimony did not change one word.

6 BY MR. PANOFF:

7 Q. And that was based on Daubert grounds,
8 correct?

9 A. However you technically want to put it, it
10 had nothing to do with what you're implying, that
11 somehow my testimony was unscientific and rejected
12 for that reason. This is strictly legal
13 interpretation, which I accepted.

14 Q. Dr. Lichtman, I'm not going to find --

15 A. Let me finish. It had zero to do with the
16 substance of my testimony as is confirmed by the
17 finding. I don't even remember this because it had
18 no effect on anything.

19 Q. I mean, it's from last year, right? So I
20 would -- yeah. You testified --

21 A. It didn't change my testimony at all. My
22 testimony was the same. My report was the same. I

1 didn't have to change a word of my report.

2 Q. Right, because it was stricken, according
3 to the Court. You were precluded from offering any
4 testimony on those grounds.

5 A. No, that is a complete --

6 MR. KASPER: Objection. Objection.
7 Objection. This is too argumentative.

8 MR. PANOFF: Mike, he keeps changing his
9 answer.

10 MR. KASPER: Why don't you move on.

11 MR. PANOFF: At the beginning -- you've
12 noted your objection, Mike. I'm going to ask the
13 questions I want.

14 At the beginning of this line of
15 questioning, I asked Dr. Lichtman if his testimony
16 had ever been excluded in Daubert grounds. He said
17 no. Now I'm seeing -- giving the Doctor an
18 opportunity to clarify his prior testimony given this
19 ruling that was just from last year and, at the
20 beginning, before I showed it to him, he was lauding
21 saying how the Court endorsed his opinions.

22 MR. KASPER: And he said he was not

1 precluded from --

2 THE WITNESS: I will respond again.

3 MR. KASPER: -- giving the testimony.

4 THE WITNESS: I will respond again.

5 MR. PANOFF: There's no question pending.

6 THE WITNESS: I was not exclude --

7 BY MR. PANOFF:

8 Q. There's no question, Doctor. There's
9 nothing to respond to. Doctor, I haven't asked you a
10 question.

11 A. Yes, you did.

12 Q. You don't get to talk when there's no
13 question.

14 A. You just did.

15 Q. No, I was responding to Mike.

16 MR. KASPER: Can we ask -- excuse me.

17 Let's stop shouting at each other. Could we ask the
18 court reporter to read back the last question?

19 THE REPORTER: "Question: Right, because
20 it was stricken, according to the Court. You were
21 precluded from offering any testimony on those
22 grounds?"

1 THE WITNESS: And I'm responding to that.
2 My testimony was not stricken. Not a word of my
3 testimony was stricken. I -- my report, I did not
4 change a comma. I did not change anything in my
5 testimony. My full testimony was presented. The
6 only thing she asked was that I not opine on the
7 ultimate issue, which I did not.

8 Then, based upon my testimony, she found
9 intentional discrimination, a very rare finding, and
10 spent page upon page upon page upon page leaning on
11 my testimony, saying how comprehensive, persuasive,
12 scientifically sound it was. So to kind of imply
13 that, you know, somehow testimony got stricken
14 because there was some flaw or deficiency
15 scientifically in the testimony is just not correct.

16 BY MR. PANOFF:

17 Q. And just so the record is clear, I'm not
18 implying anything. And my question was simple, that
19 the reason you were prohibited from testifying at
20 trial was on the basis of a Daubert motion, correct?

21 A. I was not precluded from testifying at
22 trial. I testified at length for a full day at

1 trial. I was precluded from one sentence, which is,
2 you know, yes, I found that the legislature acted
3 with discriminatory intent. I simply -- that's it --
4 let the judge decide that. But my testimony wasn't
5 touched.

6 Q. You understand what the word "precluded"
7 means?

8 A. I understand what the word "precluded"
9 means, that all she's precluding is nothing in my
10 report or my testimony, just my saying the ultimate
11 determination which she found based on my testimony.

12 Q. Right. You were precluded from
13 offering --

14 A. But this is no controversy, no
15 consequence.

16 Q. You were precluded from offering an
17 opinion at trial on the issue of discriminatory
18 legislative intent based on Daubert grounds, correct?

19 A. I was precluded from offering only the
20 ultimate conclusion. None of my opinions other than
21 that, or my findings upon which she relied, were
22 excluded. So my full testimony unchanged was

1 presented to the Court. I just was not asked to and
2 didn't include that one last sentence.

3 Q. Pursuant to a ruling on a Daubert motion,
4 correct?

5 A. If you say so.

6 MR. KASPER: Tom, objection. Tom, this is
7 like the tenth time you're asking him the same
8 question.

9 MR. PANOFF: And this is the ninth time
10 that he hasn't answered it. So, yes, I'm going to --
11 okay.

12 BY MR. PANOFF:

13 Q. Doctor, I think the record is clear on
14 that. Do you want to take a break or do you want to
15 keep going?

16 A. Keep going.

17 Q. Let's go to page 72 of your report.

18 MR. KASPER: I'm sorry, Tom, what page?

19 MR. PANOFF: Seventy-two, his table 10.

20 THE WITNESS: Yep, I'm there.

21 BY MR. PANOFF:

22 Q. Which I believe, Dr. Lichtman, is this the

1 one that Heather emailed yesterday that you're
2 supplementing? Is that correct?

3 A. Yeah, I think I had double counted one
4 candidacy there. It didn't change anything beyond a
5 point or so.

6 Q. Sorry, Doctor. So the record is clear, do
7 you want to maybe explain -- because I don't think
8 this came up yesterday -- what your amendment or your
9 supplement from yesterday actually does?

10 A. I had double counted Willis and I dropped
11 the double counting. So I dropped one election from
12 the numerator and one election from the denominator,
13 which is why it did not materially change any of the
14 results.

15 Q. And just so that we're clear, it takes
16 your win rate down from the 91 percent you had down
17 to the 90.5 percent, correct?

18 A. Yeah. A half a percentage point, of no
19 consequence.

20 Q. And then your second one goes down from 83
21 percent to 81 percent, is that correct?

22 A. Yes, again, of no substantive consequence.

1 Q. Yeah, I'm not trying to argue. I'm just
2 trying to understand your amendment, Doctor.

3 A. Yes.

4 Q. So on the prior page of your report, on
5 71, you refer to -- do you see at the top paragraph
6 you refer to 21 of 23 elections?

7 A. Right. So now 20 of 22. That's why the
8 win rate goes down by half a point.

9 Q. Twenty of 22. Okay. Yeah. So where are
10 the 22 elections? Because your new one has 21,
11 right?

12 A. Yeah, I'm sorry. I shouldn't be doing
13 this from memory. Just refer to the corrected chart.
14 It goes down one in the numerator, one in the
15 denominator.

16 Q. Okay. So just because this is a little
17 confusing, I just want to make clear. Your text on
18 71 refers to 73 elections in your report, correct?

19 A. No, it doesn't refer to 73 elections.

20 Q. Sorry, 23 elections.

21 A. Yeah, it shouldn't be 23. Should be 22.

22 Q. Okay. That's what I was trying to

1 understand, the disconnect between your text and the
2 table.

3 A. I think I corrected all that.

4 Q. Okay. And now it's no longer 22. It's
5 now 21, correct?

6 A. That's correct. That's the right number.

7 Q. Okay. So from the 23 in the text to the
8 22 in the table to now the 21 in your new
9 corrected --

10 A. That's right. That's why I gave you my
11 corrections.

12 Q. Thank you, Doctor. And why was it that
13 you chose to -- for this table, the 25 percent Latino
14 CVAP cutoff?

15 A. Yeah. I thought that was a very, very
16 conservative cutoff. I could have made it higher,
17 but I think 25, you know, gave it a very stern test.

18 And I looked at MALDEF's definition of
19 influence district, which they said was a district
20 single race CVAP for Hispanics of 25 to 30 percent.
21 So using the MALDEF definition, I went down to 25
22 percent. I wouldn't go down below 25 percent, but I

1 used the 25 percent cutoff, which I think Dr. Chen
2 then copied in his final report.

3 Q. Doctor, if you could turn to page 30- --
4 just give me a second here. Okay. If you could turn
5 to page 33 of your report.

6 A. Sure.

7 Q. And let me know when you get there. And
8 this is when you start talking about Gingles 3.

9 A. Yeah.

10 Q. And you say here toward the bottom,
11 "Third, the minority must be able to demonstrate that
12 the white majority vote sufficiently as a block to
13 enable it, in the absence of special circumstances
14 such as the minority candidate running unopposed, to
15 usually defeat the minority's preferred candidate."

16 Do you see that?

17 A. I do.

18 Q. Okay. And you refer there specifically to
19 the white majority, correct?

20 A. That's what it says.

21 Q. Is there a reason that you chose white
22 majority when referring to the formulation for

1 Gingles 3 than, for example, nonLatino?

2 A. I didn't choose it. This is a quote from
3 Gingles.

4 Q. Oh, so you're just lifting the language
5 that Gingles used?

6 A. Yeah. This was the standard the Supreme
7 Court said we should follow, white bloc voting, not
8 nonLatino bloc voting. That's all I did. It's not
9 my own interpretation.

10 Q. Is that the formulation of Gingles 3 that
11 you've consistently used through the years?

12 A. Probably so. Again, there may have been
13 some context in which I looked at something
14 differently, but I think it's the same thing that
15 your expert used. He didn't lump together whites and
16 nonLatino minorities. He looked at whites
17 separately.

18 Q. Yeah. No, I'm just trying to understand
19 your formulation of Gingles 3.

20 A. It's not my formulation. It's the Gingles
21 formulation. You know, you can interpret it any way
22 you like, but as I said, your expert interprets it as

1 white, at odds with the Contreras expert,
2 Dr. Grumbach, who lumps all nonLatinos together.

3 Q. In your view, would it be incorrect to
4 phrase Gingles 3 when we're talking about the Cook
5 County area districts as Latino versus nonLatino?

6 A. I'm not sure I understand the question.
7 You can certainly portray the districts in terms of
8 the white and Latino populations. But if we're to
9 believe your expert at all, the whites and nonLatino
10 minorities vote very differently.

11 For example, in the election that he chose
12 for his table 10, the Berrios election, the nonLatino
13 minorities voted for Berrios, I think, at more than
14 double, according to what he did. I'm not validating
15 this thing, this is what he found. The nonLatino
16 minorities voted for Berrios at twice the rate as the
17 whites. So whites and nonLatinos often vote
18 differently.

19 Now, there is some context frankly, you
20 know, where it doesn't matter, where the nonLatino
21 minorities are so small that you can't isolate them
22 and there may be some mixed in with the whites, but

1 that's not the case here. You know, we -- in most
2 cases, we robustly have a white population and a
3 nonwhite, nonLatino minority population.

4 Q. Dr. Lichtman, I want to show you the
5 Court's opinion from 10 years ago in the
6 congressional case that we were both involved in and
7 to show you its formulation of how it framed Gingles
8 3, okay?

9 A. Sure.

10 (Lichtman Exhibit No. 39 was marked
11 for identification.)

12 BY MR. PANOFF:

13 Q. And Doctor, just so we're clear, when I
14 say Gingles 3 to you, I'm referring to the third
15 precondition of Gingles? You understand that,
16 correct?

17 A. I'm sorry, what?

18 Q. When I say Gingles 3 or Gingles 1, I'm
19 referring to the precondition numbers for Gingles.

20 Do you understand that?

21 A. Sure. Sure.

22 Q. Okay. So this is, as you see at the

1 beginning, this is where you were an expert in the
2 congressional redistricting litigation here in
3 Illinois and this is the December 15th, 2011 opinion
4 from the three-judge panel. Do you see that kind of
5 at the beginning?

6 A. Sure.

7 Q. Let's go to the page -- this is page 19 of
8 the PDF, again, not the Westlaw cite, but I want to
9 show you how the Court refers to Gingles 3. And
10 again, it's referring to kind of your testimony.
11 It's crediting your testimony here, Dr. Lichtman.

12 And it says, "As correctly noted by
13 Dr. Lichtman, proof of vote dilution requires two
14 steps. The committee must first show that Latinos
15 and nonLatinos prefer different candidates, and
16 second, that the nonLatino voting bloc is
17 sufficiently strong to usually defeat the Latino
18 candidate of choice."

19 Do you see that?

20 A. Fair enough. But that's not the way your
21 expert formulated it.

22 Q. Okay. Again, my question is, do you see

1 how the Court formulated it 10 years ago?

2 A. Yes. And that's certainly one way to
3 formulate it, as I said.

4 Q. Do you think that's an accurate way to
5 formulate it?

6 A. It -- I think, you know, you could
7 interpret it either way, but I think this would be
8 accurate, yeah.

9 Q. But that's not how you do it now. Now you
10 refer to it as the white bloc in Gingles 3, not the
11 nonLatino, correct?

12 A. I was just looking at what the Supreme
13 Court said in Gingles and looking at how your expert
14 formulated it and the differences between the whites
15 and the nonLatinos which I don't think came out in
16 the 2011 case.

17 Q. So now I'm going to pull up another one.
18 I'm going to pull up your report from 2011, once I
19 can find it here.

20 A. I'm going to need a break very soon.

21 Q. Okay.

22 A. Let's take it now.

1 Q. You want to take it now? Okay.

2 A. I don't know how much time you want to
3 spend on this, but if it's just a couple of minutes,
4 I can wait.

5 Q. Probably about five to 10.

6 A. Pardon me?

7 Q. Five to 10 minutes.

8 A. Okay. Ten minutes.

9 (Lichtman Exhibit No. 40 was marked
10 for identification.)

11 BY MR. PANOFF:

12 Q. Okay. So, Dr. Lichtman, do you recognize
13 this as your opening report in the litigation 10
14 years ago?

15 A. Yes.

16 Q. So let's go to page 2.

17 MR. KASPER: Excuse me, Tom, which case is
18 this? Is this the congressional case?

19 MR. PANOFF: This is the congressional,
20 yes.

21 MR. KASPER: Thank you.

22 BY MR. PANOFF:

1 Q. All right. So page 2, you say in here
2 that there is no polarization in the candidate
3 references of Latinos and nonLatinos, right?

4 A. That's right.

5 Q. Okay. You refer to -- you do the
6 comparison of Latino versus nonLatino?

7 A. That's correct.

8 Q. You don't say Latino versus white?

9 A. I don't think any of us separated out
10 Latinos and whites like your expert did in this case.
11 I think that's right. But if the Latino candidates
12 of choice are winning, then they can't possibly have
13 been defeated by white bloc voting even if you're not
14 parsing out white bloc voting.

15 Q. And this is page 9 of your report and I'm
16 going to read this, too. And this says, "To meet
17 prong 3 of the Gingles test, an analysis must show
18 first that voting is polarized along racial lines in
19 that Latinos and nonLatinos usually prefer different
20 candidates. It also requires showing that nonLatino
21 bloc voting against Latinos is sufficiently strong to
22 usually defeat the candidates of their choice of

1 Latinos in a pattern of elections over time."

2 Do you see that?

3 A. Yes.

4 Q. So again, here you're referring to the
5 Gingles 3 as Latino versus nonLatino as opposed to
6 Latino versus white like you do in the current
7 report?

8 A. That's right. And I don't make a big
9 point of that. All I'm saying is if in fact Latino
10 candidates of choice are winning, it doesn't matter
11 whether you're lumping together the minorities or
12 parceling out the whites. You still can't meet prong
13 3. So it doesn't affect my ultimate analysis and,
14 you know, different courts may have different
15 readings of this.

16 Q. And so you claim it doesn't -- your
17 formulation of it between those two alternatives
18 doesn't matter for our present purposes?

19 A. That's right.

20 Q. Let's turn to page 84 of your report,
21 please. And let me know when you're there. Are you
22 there?

1 A. Yeah.

2 Q. Okay. And on 84 of your report, when you
3 refer to Dr. Chen, you say, when he was looking at
4 the 2015 Chicago mayoral election, that, "Winning
5 candidate Emanuel was not only backed by white
6 voters, but by 59.5 percent of nonHispanic minorities
7 in Chicago according to Dr. Chen's table 6, page 40."

8 Do you see that?

9 A. Absolutely.

10 Q. Okay. So doesn't the fact that
11 non-minorities joined in the white bloc to beat the
12 Latino candidate of choice matter?

13 A. All -- I'm not using this to change any
14 analysis of prong 3. I'm just saying give it a
15 little context. Yes, the Hispanic candidate of
16 choice lost, but the candidate of choice of other
17 minorities won in a jurisdiction that's pretty
18 equally divided between Hispanics, blacks with some
19 Asians and some other races also indicated. So the
20 Court can take that for whatever it's worth. It
21 doesn't affect -- I'm not saying this changes the
22 analysis of prong 3 in any way.

1 Q. And so do you agree with this sentence:

2 "The white majority did not defeat the Hispanic
3 candidate of choice in that race, rather, the
4 candidate was defeated by a coalition of white and
5 nonLatino minorities"?

6 A. Absolutely.

7 Q. And it's referring to --

8 A. That's what happened in a district that's
9 not a Latino opportunity district, but that's divided
10 ethnically and racially. Again, the Court can decide
11 what weight to put on that. I'm just giving it some
12 context. This is not a Latino opportunity district.

13 Q. But this would be an instance though when
14 your formulation of Gingles 3 would matter because
15 the black vote that joined the white minority
16 defeated the Latino candidate of choice, correct?

17 A. It wouldn't affect it at all because the
18 Latino candidate of choice is losing, so I would
19 count that as a loss. But it's of no consequence
20 because the city of Chicago is only 20.7 percent
21 Latino CVAP and that does not, as I explained at
22 great length yesterday, give you any insight into the

1 opportunities to elect candidates of choice in the
2 challenged districts which are typically twice the
3 concentration of Hispanic CVAP.

4 And the whole division between blacks and
5 Hispanics that exists in Chicago -- and it may even
6 be that there is more of a black CVAP. I'd have to
7 double-check that -- I can do that during the
8 break -- in Chicago than there is Hispanics. That's
9 I think very likely. So this doesn't even remotely
10 mirror any of the challenged districts.

11 Q. So given your comment earlier that there
12 is this kind of divergence between Dr. Grumbach and
13 Dr. Chen in terms of how they group folks, how did
14 you decide to formulate your Gingles 3 analysis as
15 white bloc rather than Latino versus nonLatino like
16 you did 10 years ago?

17 A. I don't do that here. What I do is if
18 Latino candidate of choice is winning, then it cannot
19 be white bloc voting is defeating or nonLatino --
20 however you want to put it, it doesn't matter -- is
21 defeating that candidate because that candidate is
22 winning. And of course that's not just Latino race

1 candidate. That's also Latino preferred candidate.
2 That's all I'm looking at. It doesn't turn on any
3 distinction between whites and minorities combined.
4 So you've got conflict between your two experts and I
5 resolve it in that way.

6 Q. But the Latino candidate in this race did
7 not win, correct?

8 A. Yes. But it's not a race in a district at
9 all and it's not a race that gives you any insight
10 into whether or not white bloc or nonLatino bloc,
11 however you want to put it, would usually defeat
12 candidates of choice in districts even roughly
13 comparable to the demographic breakdown of the
14 challenged districts.

15 Q. Well, that's not true, because you
16 criticized Dr. Chen for not using this race and using
17 the assessor race instead, correct?

18 A. That's an entirely different situation.
19 If you want me to go through all the problems with
20 the assessor race, I will. Is that what you're
21 asking me to do?

22 Q. No, I'm asking you why your standard

1 articulation of Gingles 3 changed from 10 years ago.

2 A. I didn't think that was what you asked me.

3 I thought you asked me why I chose this race rather
4 than the Berrios race, and I was about to answer
5 that.

6 Q. No, I wasn't asking -- we'll get to that
7 later. What I'm asking you is why you don't have a
8 consistent articulation of Gingles 3 over the years.

9 A. Again, I don't think it matters. As I
10 said, because your experts are in conflict, I
11 developed a standard that doesn't depend on breaking
12 it down like Dr. Chen does or lumping them together
13 like Dr. Grumbach does.

14 Either way, if a candidate of choice of
15 Latino voters' preferred candidate wins, that
16 candidate by definition could not have been defeated
17 by either nonLatino or white bloc voting.

18 Q. How long would you like for a break,
19 Dr. Lichtman?

20 A. I'm sorry, what?

21 Q. How long would you like for a break?

22 A. I don't know. How much more do you have?

1 We're getting into several hours.

2 Q. Yeah. No, we've got a ways to go.

3 A. Okay. So let me take a 10-minute break,
4 then.

5 THE VIDEOGRAPHER: We are off the record.
6 The time is 3:47 p.m.

7 (Recess.)

8 THE VIDEOGRAPHER: We are back on the
9 record. The time is 3:59 p.m.

10 BY MR. PANOFF:

11 Q. Dr. Lichtman, we -- there were some
12 question that we were disagreeing at the end, so I
13 want to try to focus on one area where I think we do
14 agree. You were responding to the equivalent of nine
15 experts on other side, right?

16 A. In part, and in part presenting my own
17 information, too.

18 Q. Shouldn't your hourly rate be \$4500 rather
19 than 500?

20 A. I never comment on my rates.

21 Q. You may want to talk to Mike about that
22 afterwards.

1 A. Yeah. But if you want to contribute to
2 the kitty, I would accept it.

3 Q. It's pocket change for Mike, but for us,
4 it's real collars.

5 MR. KASPER: It's only half my rate. Why
6 not?

7 BY MR. PANOFF:

8 Q. Okay. Thank you, Doctor, for your
9 patience as we go through this. I want to talk a
10 little bit about incumbency. It's a subject we
11 talked about yesterday, but I want to deal with it in
12 some other nuances.

13 You're aware that the Supreme Court listed
14 incumbency as a special circumstance in Gingles,
15 correct?

16 A. I don't recall that because I recall
17 Gingles, as I quoted to you yesterday, actually
18 accepting the analysis of Dr. Grofman on incumbency
19 and showing in fact even with incumbents, you've got
20 the same behavior, white sub bloc voting against
21 black incumbents even when there are only two
22 candidates for three positions, even in democratic

1 elections when normally back in those days whites
2 voted overwhelmingly democratic.

3 So to the extent that might be true, I
4 don't recall it, but I recall the Supreme Court
5 dealing extensively with incumbencies and showing it
6 didn't make much difference.

7 Q. Doctor, my question was a simple one,
8 whether the Supreme Court talked about incumbency and
9 you said -- your answer was you don't recall whether
10 they did or not?

11 A. They did talk about incumbency. And I
12 just told you how they talk about incumbency, that
13 is, they found similar white bloc voting against
14 black candidates when they're incumbents and when
15 they're not. That was their discussion of
16 incumbency.

17 If there's something else on incumbency in
18 Gingles, I'm not aware of it, but I'd be happy to
19 look at it if you could show it to me. You've been
20 very generous in sharing your screen with me.

21 Q. How many times in your report do you refer
22 to special circumstances, do you know?

1 A. How many times what?

2 Q. Do you refer to special circumstances as
3 used in Gingles in your report?

4 A. How many times do I refer to special
5 circumstances? I can't -- I can't tell you. I think
6 I developed this analysis of the Gingles case after I
7 saw your rebuttal report. So I did not have an
8 opportunity obviously to comment on the rebuttal
9 reports. But Gingles is what it is. It says what it
10 says. It's not something I, you know, analyzed
11 independently.

12 Q. Can you turn to page 33 of your report,
13 please?

14 A. Certainly.

15 Q. Let me know when you're there.

16 A. I'm there.

17 Q. Okay. Do you see at the bottom part of
18 it, you have a paragraph that begins, "Third"?

19 A. Yes.

20 Q. And you talk -- and in the middle of that
21 sentence or that paragraph it says, "In the absence
22 of special circumstances, such as the minority

1 candidate running unopposed"?

2 A. Yes.

3 Q. Do you see that?

4 A. Yeah. Yeah, they cite that as a special
5 circumstance, but they deal with incumbency and find
6 it's not special.

7 Q. Okay. Let's pause there a little bit.
8 But you understand that the Supreme Court counts
9 incumbency as a special circumstance to be
10 considered, correct?

11 A. You'd have to show me that. As much as
12 you try to paraphrase things accurately, and I know
13 you try, we've had some differences in how things are
14 paraphrased. So if you want to cite me to a Supreme
15 Court decision, you've got to show it to me and show
16 the exact language because, as I said, you call
17 things methodological that I think are
18 interpretative. So let's go to it.

19 Q. It should be there for you. This is
20 Gingles. And do you see the highlighted portion
21 where it says --

22 A. Yeah.

1 Q. -- special circumstances, such as the
2 absence of an opponent, incumbency, or the
3 utilization of bullet voting, may explain minority
4 electoral success in a polarized election"?

5 A. Yeah, that's correct. They mention it.
6 But as I said, then they analyze and find it's no
7 different. They don't just throw them out.

8 Q. Okay. We're going long because I feel
9 like there's a lot of commentary that's not directly
10 responsive to the question that I'm asking. You can
11 answer whatever you want, but we will go longer with
12 longer answers.

13 So my question was --

14 A. I thought my answer was pretty short.

15 Q. Okay. My question is, you agree that the
16 Supreme Court listed incumbency as a special
17 circumstance to be considered as part of Gingles
18 prong 3, correct?

19 A. Correct.

20 Q. Okay. You do not list incumbency in your
21 report when discussing special circumstances on page
22 33, correct?

1 A. I don't know. All I -- no, no. All I did
2 here was quote the three prongs of Gingles. I get
3 into incumbency as a special circumstance in other
4 parts of my report showing that, just as in the
5 Gingles case, you've got to look at it. You can't
6 just throw out incumbencies, that the plaintiffs do
7 not prove that incumbency is a special circumstance.
8 In fact, it's a normal circumstance.

9 Nor do they quantify any incumbency
10 advantage or explain why so many incumbencies lose.
11 In fact, when your expert, Dr. Chen, based on
12 criteria I guess you gave him, boiled down in his 23
13 elections to five, four of them had incumbents in
14 them. Four of the five elections that he thought
15 were most probative for drawing his opinions had
16 incumbents and three of those incumbents lost.

17 Q. Dr. Lichtman, why, when you referred to
18 special circumstances in your report, did you only
19 list running unopposed rather than the other ones
20 articulated by the Supreme Court?

21 A. You're comparing apples to oranges. All I
22 did there -- I wasn't discussing special

1 circumstances. I just quoted the exact language of
2 prong 3 from Gingles. And then when I was asked
3 about incumbency, I explained how the Gingles court
4 dealt with incumbency showing it didn't make a
5 difference.

6 Q. To be clear, there's no quotation in your
7 paragraph 3 we were citing from.

8 A. I'm sorry, I don't understand the
9 question.

10 Q. You said you're directly quoting Gingles,
11 but you don't directly quote Gingles when it talks
12 about special circumstances. There's no quotation in
13 your paragraph anywhere there.

14 A. You know, we can keep going around the
15 mulberry bush. This is not my discussion of special
16 circumstances. This is just what Gingles says on
17 prong 3. If you want to check it, we can check it
18 and see if I got it right and I think I did. This is
19 exactly what they say about prong 3.

20 Q. But in your report, by only listing
21 running unopposed, you weren't trying to suggest that
22 there aren't other special circumstances, correct?

1 A. I wasn't making any commentary one way or
2 another about special circumstances. I was just
3 quoting prong 3.

4 Q. You did no numerical analysis of
5 incumbency as part of your report, correct?

6 A. Nobody did. In other words, your expert,
7 Grumbach, who talked about incumbency advantage,
8 never quantified incumbency advantage anywhere, much
9 less in Illinois. And your expert, Dr. Fowler, in
10 fact said incumbency advantage comes from having won
11 an election and appointed incumbents in number one,
12 an election in Illinois. It's not my task to do what
13 your experts didn't do or how your experts
14 contradicted one another.

15 Q. So your position is that no expert has
16 done a numerical analysis of incumbency?

17 A. No expert has given me a number.
18 Incumbency advantage is worth 5 percent, incumbency
19 advantage is worth 7 percent, incumbency advantage is
20 worth 9 percent. The only thing I saw was an
21 analysis from Dr. Fowler saying incumbents usually
22 win. Of course, because in Illinois this is exactly

1 why it's not a special circumstance. You have these
2 coalitions forming that create the win.

3 If you look at any of those sets of
4 elections, you see that coalition voting is occurring
5 most of the time in Illinois uniting behind these
6 candidates. Incumbency would not create coalitions
7 by themselves. Nothing in any of your reports, any
8 literature, would obviously suggest that.

9 Moreover, incumbency is not special. It's
10 the norm because the democratic caucus invariably
11 appoints minority incumbents. You know, you might
12 worry about incumbency in other contexts. What
13 happens if the incumbent steps down and you have an
14 open seat? That's not going to happen in Illinois.
15 They even appoint minorities to seats previously held
16 by whites, which is the exact opposite of what the
17 Republicans do. They never appoint minorities in
18 open seats. They just appointed Sally Turner, a
19 white to an open seat. The democrats just appointed
20 two minorities, Mike Simmons and Doris Turner.

21 Q. Doctor, I'll be honest, I forgot what my
22 question was after listening to that. So --

1 A. It was about how I analyzed incumbency.
2 That's not the full analysis. I've given you some of
3 my analysis.

4 Q. You just refreshed my recollection that
5 you didn't analyze incumbency. Thank you.

6 A. I'm sorry. That's not what I said. You
7 can say whatever you want, but that's not -- I
8 analyzed incumbency in many different ways. If you
9 like, I'll go over them again.

10 Q. You've done no empirical analysis of
11 incumbency.

12 A. Tell me what you mean by empirical.

13 Q. You ran no numerical analysis of
14 incumbency. You just kind of give opinions on it.
15 You've done no regression analysis to show power of
16 incumbency. You've done no numerical analysis,
17 survey, study like Dr. Fowler did in the original
18 instance. You've done none of that?

19 A. Yeah, Dr. Fowler -- you know, I have to
20 comment on what you say Dr. Fowler did because it's
21 not accurate. Dr. Fowler did not even cite his own
22 article, which was the empirical study of incumbency

1 in electoral studies in 2018.

2 And what Dr. Fowler found -- and we went
3 over this I think the other day -- very specifically
4 is that previous analyses of incumbency were
5 unsatisfactory and not compelling, and that what he
6 found was compelling and satisfactory was that
7 incumbency advantage occurs from winning a prior
8 election. Appointed incumbents had not one a prior
9 election.

10 Moreover, preferred Hispanic or Latino
11 candidates, if they weren't appointed, would still
12 have to win a prior election, just as we saw in four
13 of five of the elections Dr. Chen chose as probative
14 incumbents losing.

15 I also pointed to the many instances in
16 which incumbents lost, gave numerical estimates. But
17 in terms of what Dr. Fowler found, he found that
18 incumbency advantage would not apply here in
19 Illinois.

20 Q. We'll get to Dr. Fowler in a minute but
21 let's get back to what you said that you did. Let's
22 go to page 78 of your report.

1 While you're looking for that, the lead-up
2 will be I think you said, "I documented many
3 instances in which incumbents have lost." That's
4 what I want to ask about, is your analysis on page 78
5 in that context.

6 A. Right. These are examples of where
7 incumbents have lost, and I give the margins.

8 Q. How many instances do you show of
9 incumbents losing here? How many?

10 A. I don't know. I haven't counted. And
11 again, these are not meant to be exhaustive. These
12 are just examples, most of which involve -- not all
13 of them but most of which involve minorities. Let's
14 see: One, two, three, four, five, six, seven
15 examples. But as I said, these are not meant to
16 be --

17 Q. Right. And that's seven, seven looking at
18 races from 2014 to the present, is that right? Or
19 seven 2014 through -- when is the end date?

20 A. I think they go from -- I think I got to
21 2020 but they go from -- this is just in a four-year
22 period, yeah.

1 Q. Okay. So in the case of four years, you
2 show examples of seven incumbents who have lost,
3 correct?

4 A. That's correct. As I said, this is not
5 exhaustive. It's just an example. And most of these
6 I tried to pick -- not all of them, but most of them
7 involved are minorities.

8 Q. Did you do a broader analysis to quantify
9 how many times incumbents have lost over that same
10 time period?

11 A. No. My only point was incumbency is no
12 lock. And when incumbents are winning, the point I
13 made was they're winning by far larger a margin than
14 any incumbency advantage. It's not my responsibility
15 to quantify. Your side never quantifies an
16 incumbency. Is it 3 percent, 4 percent, 2 percent?
17 We don't know.

18 But they're winning by wide margins and
19 they're forming coalitions. Incumbency cannot
20 explain why whites, other nonLatino minorities and
21 Hispanics are coming together behind the same
22 candidate of choice. That was not what was found in

1 Gingles and that's not been my experience elsewhere.

2 Q. And you're able to extrapolate from at
3 least seven losses that incumbency is no lock in
4 Illinois? His words, "incumbency is no lock for
5 victory."

6 A. You can certainly say it's no lock. I
7 have one example that would show it's no lock, but
8 certainly seven examples over four years show that
9 incumbency is not a lock.

10 And the incumbents who are winning, as I
11 said, are not winning marginally. They're winning
12 overwhelmingly and forming coalitions. That's what's
13 made Illinois unique. And none of your experts
14 respond or seem to understand or even know what is
15 unique about appointed incumbencies in Illinois.

16 Q. I think this is where numbers can be
17 misleading so I want to drill down on it a little
18 bit, Doctor.

19 You say seven examples over four years.
20 How many elections were there for these offices that
21 you cite from during that four-year period?

22 A. I didn't count. There were a lot. But

1 my -- again, my objective was just to show it's not a
2 lock.

3 Q. But you would agree --

4 A. -- comprehensive percentage of analyses
5 with incumbencies versus elections with
6 nonincumbencies.

7 Q. Given that you look at legislative races
8 here, county assessor, governor, U.S. Senate, you
9 would agree that over that four-year period, there
10 were hundreds of elections in that pool, then, right?

11 A. I'm sure there were.

12 Q. And you picked seven incumbent losses,
13 correct?

14 A. I don't know how many losses there were
15 for incumbents. My point was not to quantify the
16 percentage of losses by incumbents, but just to show
17 incumbency -- I say it right here -- incumbency is no
18 lock for victory in Illinois.

19 And your own expert confirms that. His
20 five most probative elections, three incumbents lose.

21 Q. But you would agree, wouldn't you, that --
22 let's say there were seven losses out of 600 races.

1 That would have a different value than if there were
2 seven losses out of ten races, for example, correct?

3 A. Correct mathematically. But, again, I'll
4 keep repeating my point and I say it right here in my
5 report. Incumbency is no lock. I'm not trying to
6 quantify the number of incumbency losses. I'm just
7 trying to show it's no lock in Illinois. Incumbents
8 lose and they lose big.

9 Q. And of those seven races that you cite to
10 for incumbents losing, only two of those are
11 endogenous, correct?

12 A. Three of them.

13 Q. Right. What's the third? I saw two
14 House --

15 A. Tony Berrios' defeat, Asian candidate
16 Denyse Wane Stoneback, defeat of Yehiel Kalish, and
17 Hispanic candidate, Aaron Ortiz, defeated incumbent
18 Daniel J. Burke.

19 Q. I think you got three out of seven.

20 A. Okay. Lock, and in even in state
21 legislative elections. That's my only point.

22 Q. Regardless of what the denominator is?

1 A. A lock is a lock. I mean, if you want to
2 do a different kind of analysis, you can do a
3 different kind of analysis. All I'm trying to do
4 here is prove it's not a lock.

5 Q. So, for example, when Dr. Fowler told you
6 about when he ran a study, how many races he looked
7 at, you didn't do a similar one as part of your
8 rebuttal to try to quantify it. You just said, you
9 know, seven enough -- is enough to show it's not a
10 lock.

11 A. His analysis does show that incumbents win
12 most of the time but they win by forming -- this is
13 what he never understands -- by forming interracial
14 coalitions. They're not winning just with minority
15 votes. Incumbents form interracial coalitions.

16 Plus his analysis throughout is flawed
17 because he doesn't look at Hispanic candidates of
18 choice. He only looks at Hispanic candidates.

19 Q. Do you have scholarly literature in your
20 past saying that when given a choice, minority
21 candidates vote for candidates of their own race?

22 A. Most of the time that's certainly true

1 but, again, it varies from context to context. And
2 in Illinois, which is all we care about at the
3 moment, there are a number of Hispanics voting
4 plurality or majority, either for white or Asian
5 candidates. And Dr. Fowler never takes that into
6 account.

7 Even after I criticized his initial report
8 for not doing that, he continues. So he tells us
9 Hispanic candidates only win 14 of 31 elections in
10 districts between 40 and 50 percent. But he misses
11 five elections by candidate of choice, Mike Madigan,
12 by Hispanics overwhelmingly. He misses five
13 elections by candidate of choice Willis. He even
14 mentions Willis, even though I criticized him for
15 leaving Willis out. That's number 10. He leaves out
16 the one election in which Theresa Mah was the
17 candidate of choice of Latinos.

18 You add those 11 to his 14, it's now 25 of
19 31. You're now talking about well north of an
20 80 percent, I think. Figure that out for a moment
21 here. Well north of -- I believe it's north of
22 80 percent but I don't want to speculate.

1 Q. And what are you calculating?

2 A. 21 -- I'm just doing 21 of 35. I'm sorry,
3 25 of 31. I'm a little dyslexic. Excuse me. Yeah,
4 it's 81 percent. And I don't even know what those
5 other six elections are.

6 The other problem throughout Dr. Fowler is
7 he never tells you his elections. He says 14 of 31.
8 Well, what are these 31 elections? But when you add
9 in at least three candidates of choice who are not
10 Latinos, then we go up to a win rate in those
11 districts of 81 percent, which is consistent --
12 exactly what I found in my initial report. And your
13 other experts do -- certainly Dr. Chen talks about
14 Hispanic-preferred candidates.

15 So throughout there is this -- even after
16 I criticized him for it, Dr. Fowler continues to go
17 ahead with not recognizing that these candidates are
18 Hispanic-preferred candidates. And not by small
19 margins. And MALDEF is quite clear, and I quote them
20 in my report. You know, the leading Latino advocacy
21 organization in America says, yes, white candidates
22 can be the candidates of choice of Latinos.

1 Q. Will you please -- are you done? Sorry.

2 Are you done?

3 A. I'm done.

4 Q. Okay. Can you please turn to page 14 of
5 your report?

6 A. Certainly.

7 Q. And at the top, do you see where you refer
8 to plaintiffs' generic 50 percent-plus single race
9 automatic threshold?

10 A. I do.

11 Q. Do plaintiffs ever say that it has to be a
12 50 percent district or are you inferring that from
13 the districts that they drew?

14 A. My memory is they said it but clearly, as
15 I at great length document in my report, they take
16 districts that are just under 50 percent and pump
17 them up to get 50.2, 50.4, 51. So I do believe they
18 said it and, clearly, the way they've formulated
19 their plans prove that.

20 Q. Do you remember your testimony 10 years
21 ago in the congressional case in Illinois here?

22 A. I'm sorry. I didn't hear that.

1 Q. Do you remember your testimony 10 years
2 ago in the congressional case here on the issue of
3 50 percent?

4 A. I don't.

5 Q. Okay. Do you remember you critiquing the
6 plaintiffs there because the two districts that they
7 were trying to draw when splitting that earmuff
8 congressional district did not get to 50 percent, and
9 that being the basis of your opinion for saying why
10 that wasn't a sufficient proposal?

11 A. I don't recall that and, you know, I would
12 have to look at my testimony and see what the
13 analysis was above and beyond that. And I don't
14 think I was -- I have to look at it. I'm not going
15 to try to recall from 10 years ago exactly what I
16 said. If you want to show me something, I'll respond
17 to it but I'm not going to accept a paraphrasing
18 and -- of something of 10 years ago that I don't --
19 that I don't remember.

20 Q. So it would be fair to say you don't
21 recall whether 10 years ago or not your argument was
22 that if a district doesn't get to 50 percent CVAP,

1 then it's not a proper district under Gingles?

2 A. I don't recall saying that. Normally, I
3 analyze districts beyond just the percentage. And
4 that was a big issue with -- I don't remember that
5 being a big an issue in 2011. That was a huge issue
6 in 2001 when plaintiffs were adamantly calling for an
7 arbitrary -- I guess we were using VAP back then.
8 And I extensively argued against it and the Court
9 agreed that you cannot -- and I think I quote them
10 here -- you cannot rely on an automatic demographic
11 threshold.

12 Q. So here's your report from -- I'll go to
13 the cover page so you can see it.

14 A. This is my report from -- okay.

15 Q. And I'm sorry. I do not recall what
16 exhibit it was previously marked. But let's go to
17 page 9. And in the context of prong 1, you say here,
18 where my cursor is, "Plaintiffs' alternative plan
19 fails to meet this threshold in that it creates an
20 additional district that is only 46.5 percent Latino
21 in its voting age population."

22 Do you see that?

1 A. Yes, but I'm quoting Bartlett there. I'm
2 not saying that I believe that, you know, a district
3 has to be 50 percent. I'm saying what I believe is
4 the Bartlett standard for meeting prong 1. And of
5 course I'm not a lawyer. That's just my opinion.

6 Q. So it was your understanding of Bartlett
7 that Bartlett requires 50 percent?

8 A. Voting age, not CVAP. I'm very clear.
9 And every district that you challenge, except two,
10 are 50 percent-plus minority VAP already.

11 Q. So this is page 12 of your same report and
12 this is in the context of rough proportionality.
13 There you're quoting Barnett. See your quotation to
14 it there. And then you quote the Court saying the
15 Court further held, "We think that citizen voting-age
16 population is the basis for determining equality of
17 voting power that best comports with the policy of
18 the statute."

19 Do you see that?

20 A. I do. And I know exactly what that means.

21 Q. I'm sorry, what did you say? You said you
22 do know what --

1 A. I do know -- I do recall it. I know what
2 that means, if you want to ask me about it. That's
3 all. I'm not going to tell you I don't remember.

4 Q. Okay. But what you're doing there is you
5 are citing your interpretation of the 7th Circuit in
6 Barnett, correct?

7 A. I might be doing more than that, but I
8 think I'm also quoting Johnson v. DeGrandy case where
9 I was an expert. But I can clarify if you want to
10 ask me about this, but you read it correctly.

11 Q. Let's go to page 27 of your report in this
12 case.

13 A. Gotcha. That's my table.

14 Q. So just briefly, what does this table
15 summarize?

16 A. I'll try to be brief. You know, I'm a
17 professor. I like to lecture.

18 It looks at minority versus white
19 statewide elections in Illinois since 2008. I
20 understand these are not, you know, state legislative
21 elections. But the point I'm making is that when you
22 look at these minority versus white elections, in all

1 of them, the minority candidate prevails in an area
2 where the highest race single CVAP for a minority
3 candidate is 15 percent. And I believe the total
4 minority CVAP in the state of Illinois is under a
5 third.

6 So my point was this is extraordinary.

7 I've never seen this in a state that's two-thirds or
8 more nonHispanic white that you're getting this kind
9 of success from minority candidates and then follow
10 this up with the consequences, showing that minority
11 representation in Illinois for statewide elected
12 officials is vastly greater, greater than the sum of
13 five comparable states.

14 Q. You would agree that in general, if you
15 could choose endogenous over exogenous for comparison
16 purposes, you should?

17 A. Well, you can't -- it's very hard in going
18 across states to do -- compare endogenous elections
19 because, you know, the districts are entirely
20 different, the rules are different. But it's very
21 easy to compare statewide elected officials. There's
22 a common base, whereas there isn't a common base for

1 elections.

2 Now, you could do it for endogenous
3 elections. And what I did was, where I could find
4 comparability, was to compare, similarly to this, the
5 representation of blacks and Hispanics in the
6 Illinois statehouse and Senate and similarly found it
7 was far ahead of other states. But here we could
8 actually zero in on states with comparable minority
9 CVAP and, as I said, show that you had more minority
10 statewide elected officials in Illinois than in
11 Alabama, Delaware, Louisiana, North Carolina, South
12 Carolina and Virginia combined. Almost double.

13 Q. Dr. Lichtman, the 2018 general for
14 lieutenant governor, do you see how you have Evelyn
15 Sanguinetti there?

16 A. Yeah.

17 Q. And you list her as white?

18 A. Yes.

19 Q. Do you know if that's accurate?

20 A. Yeah, I think that was probably a mistake,
21 but still get a black -- if you want to strike that
22 one. You know, there was -- I went kind of back and

1 forth on that because you have a lieutenant governor
2 running in tandem with the governor. So is it really
3 separate? But it is a black elected official. So if
4 you want to take that out, it's 16 of 16 instead of
5 17 of 17. But she's in office and all I looked at in
6 other states was who's in office.

7 Q. Okay. I thought before yesterday in the
8 testimony, you weren't aware that the two elections
9 between lieutenant governor and governor were paired.
10 But you -- so you were aware of that before you
11 issued this report?

12 A. I don't know if I took that into account
13 when I first set up this table. Frankly, I didn't
14 think about it.

15 Q. And when did you --

16 A. Let me finish. I think Dr. Chen went over
17 all the errors he found in my report, and it's in
18 footnote 2. And this was the only error he found in
19 207 pages. And, you know, he made a legitimate point
20 here. You know, one could argue I should take that
21 out. Fair enough. I don't see a big difference
22 between 16 out of 16 and 17 out of 17.

1 Q. What's the debate about why it should be
2 taken out or not with a -- with a Cuban mother and
3 Ecuadorian father, why wouldn't she be Latina?

4 A. I'm not arguing one way or the other.

5 Q. Okay.

6 A. I'm not saying she isn't Latina, believe
7 me. I'm just saying, you know, if you want to take
8 that out for either of these reasons, that's fine.

9 Q. You don't --

10 A. That's the only error in 207 pages that
11 Chen cited and it has zero consequence.

12 Q. Well, in addition to not taking into
13 account that the lieutenant governor race is paired
14 with the governor, correct?

15 A. Yeah. It was all on this one entry, 1 of
16 17 entries, and I'm indifferent whether you take it
17 out or not. Fine. If you want to take it out, I'll
18 go with 16 of 16.

19 Q. And to be clear, you might disagree with
20 Dr. Chen, but since you brought up his approach, he
21 does disagree with your methodology here, and I'm
22 using that intentionally, that he thinks you should

1 have included incumbency and over 50 percent CVAP as
2 special circumstances. You might disagree with that,
3 but you understand that's a critique he has of you,
4 correct?

5 A. No, I don't accept that. But what I said
6 was factual error. That's interpretation. And we
7 can get to interpretation. I don't think you've
8 stated his position correctly.

9 But because, in fact, of the five
10 probative elections he picked, four of them involved
11 incumbencies. How can he be criticizing me who
12 wrote, you know, for including incumbency. That
13 makes no sense. But my point was this is the only
14 factual error that he found in 200 and some-odd pages
15 and it is minor and of zero consequence.

16 Q. Okay. Turn to page 161, please, of your
17 report. Do you see at the bottom how you were
18 referring to Professors Duchin and Spencer? You've
19 referred to them several times in your testimony
20 today?

21 A. Correct.

22 Q. And you quote them for saying CVAP is

1 clearly the litigation standard when working with
2 Hispanic VRA claims in particular, correct?

3 A. I do.

4 Q. Do you see that?

5 A. I do.

6 Q. And what is your understanding of what
7 they're saying there? Why is it the litigation
8 standard?

9 A. But because of citizenship issues, CVAP
10 better represents eligible minority -- excuse me,
11 eligible Hispanic voters.

12 Q. Do you understand that that's opposite of
13 what counsel for the defendants are arguing in this
14 case? I want to cite to you docket entry 160, which
15 is their response brief where they say, "If CVAP is
16 the benchmark" -- and they say "which to be clear, it
17 should not be, this fails to meet Bartlett's 50
18 percent threshold."

19 A. Yeah, let me comment on that. Plaintiffs
20 can't have it both ways. If they want to use VAP and
21 they say CVAP shouldn't be the standard, fair enough.
22 That's what your expert used. Then, as I said, all

1 but two of your districts are already over the 50
2 percent voting age population threshold for
3 Hispanics.

4 Q. I'm sorry, you're saying plaintiffs are
5 trying to have it both ways. But aren't defendants
6 trying to have it -- by your saying that the
7 litigation standard is CVAP, but then your -- the
8 counsel for the defendants in their same brief say,
9 no, it's VAP?

10 A. Look, plaintiffs have the burden of proof
11 and plaintiffs can't have it both ways. They can't
12 say, well, our standard is CVAP, but we think VAP is
13 superior and we're going to use VAP for all our
14 analyses. In fact, I don't know if it's your expert,
15 but Dr. Weichelt cautioned in his view you should use
16 VAP for assessing districts. And if you do that,
17 there are only two districts left that you're
18 challenged. So I don't see how you can do it the two
19 ways. These are your experts, not something lawyers
20 are arguing.

21 Q. Well, to be clear, when I asked you about
22 this earlier, you said that you weren't sure if we

1 were advocating for specific 50 percent threshold,
2 but our districts appeared that way, is that fair?

3 A. I remember your advocating for 50 percent
4 threshold in your complaints, plus it's quite clear
5 from the way you've formulated your remedies that
6 whenever you can, even if it's just a tenth of a
7 fraction above or a few tenths of a fraction above
8 50 percent and just involves a few percentage points,
9 you move it up to above the 50 percent CVAP
10 threshold, without ever explaining how moving a
11 district a few points is going to suddenly magically
12 transform it from a district that can't elect
13 Hispanic candidates of choice to a district that can,
14 you're just mechanically moving it over 50 percent.

15 Q. Let's go to pages 166 and 167 of your
16 report. This is where you talk about plaintiffs
17 supposedly targeting minority income --

18 A. Hold on. Before you tell me what I'm
19 talking about, let me find it. What page?

20 Q. 166. Let's start there.

21 A. All right. Give me a moment here. I'm
22 getting messed up with my pages. When I messed them

1 up yesterday, I had to get my son to straighten them
2 out.

3 All right. I'm on 166, did you say?

4 Q. Yes.

5 A. Yes.

6 Q. So I'm not going to -- I'm not going to
7 ask you specific questions about lines. I just want
8 to say this is, in general, where you claim that our
9 remedial maps, so plaintiffs' remedial maps targets
10 minority incumbents, correct?

11 A. I absolutely do, much to their detriment.

12 Q. How many members of the Illinois senate
13 are Democrats, do you know?

14 A. I couldn't tell you the exact number but
15 it's a supermajority, I believe, of Democrats.

16 Q. Ballpark range, if you were to guess, what
17 it would be?

18 A. I'm not going to guess. I'm sorry.
19 It's -- I think it's fair enough to say it's a
20 supermajority.

21 Q. Okay. If I told you that it was 41, does
22 that sound accurate?

1 A. This is the senate?

2 Q. Yes.

3 A. That would be a supermajority, yeah.

4 Q. How many members of the Illinois senate
5 democratic caucus, you know, the democratic members,
6 how many of them are designated as leaders?

7 A. I don't know.

8 Q. Would it surprise you --

9 A. But not -- not that many can be the
10 majority conference chair, the speaker, the, you
11 know, majority leader. Yeah, some of them I'm sure
12 have like committee heads, when you're talking about
13 incumbents here who have very important positions.

14 Q. All right. So let -- let me just ask,
15 Doctor. So I'm not even -- I'm not even talking
16 about committee chairs. Just how many have a
17 leadership position, they're -- they're designated as
18 some type of leader by their caucus in the Illinois
19 senate?

20 A. What do you define as leader?

21 Q. If they're listed as majority leader,
22 assistant leader, anything, if they have leader as

1 part of their title by the caucus.

2 A. I can't -- I can't answer that.

3 Q. Would it surprise you if there was 14 of
4 the 41 members?

5 A. No, that wouldn't surprise me. And it
6 wouldn't surprise me if a lot of those 14 were
7 minorities.

8 Q. So 34 percent of the democrat -- Illinois
9 democratic caucus in the senate are considered
10 leaders. Over a third.

11 A. That's what you say. I haven't seen proof
12 of that.

13 Q. Do you have any reason to doubt that?

14 A. -- argue it.

15 Q. Do you have any reason to doubt that?

16 A. I have no reason to opine on it either
17 way. But my point was I'll bet a lot of -- since we
18 don't know who those 14 are, you haven't specified
19 them, I'm willing to at least guess, since we're
20 guessing here, but an educated guess that a lot of
21 them are minorities.

22 Q. And how many committees are there in the

1 Illinois senate?

2 A. I don't know exactly but there are a lot.

3 Q. If I told you it was 31, does that sound
4 right?

5 A. I don't know but it wouldn't surprise me.
6 Committees proliferate.

7 Q. Right. So, I mean, a good portion of the
8 democratic caucus is either a leader or a committee
9 chair, correct?

10 A. That is correct. But as I said, let's
11 look at the 14 leaders that you profess and see how
12 many of them are minorities, because that is above
13 and beyond being a committee chair.

14 Q. I'm just focusing on the basic premise of
15 leadership --

16 A. Fine.

17 Q. -- and finish them first.
18 Let's go to the House.

19 A. Gotcha.

20 Q. How many democratic members are there in
21 the Illinois House?

22 A. I couldn't tell you exactly but it's also

1 a supermajority.

2 Q. And you don't want to guess, I assume,
3 since you didn't want to guess for Senate?

4 A. I do not guess percentages but I know it's
5 a supermajority.

6 Q. Oh, I'm not even talking percentage.
7 Yeah, we could talk percentages but I was talking
8 about absolute numbers.

9 If I told you it was 73 members of the
10 House were Democrats, does that sound right?

11 A. Yeah. That's a supermajority.

12 Q. Good. And how many of them are designated
13 leaders by the caucus?

14 A. I don't know how many are designated
15 leaders by the caucus.

16 Q. If I told you that it was 12 of the 73,
17 does that -- do you have any reason to doubt that?

18 A. I don't have a sense about that. It
19 wouldn't surprise me.

20 Again, I would like to know, of those 12,
21 how many are minorities.

22 Q. And that's approximately 16 percent,

1 though, 12 of 73, right?

2 A. Yes.

3 Q. Okay. And how many committees are there
4 in the House?

5 A. A lot. I couldn't give you an exact
6 number.

7 Q. I will represent that it's 46.

8 Does -- and if you count that and the 12
9 of the 73 who are leaders, a good portion of the
10 democratic caucus in the House also has either a
11 committee chair or a leadership title, correct?

12 A. That's right --

13 MR. PANOFF: I see Mike smiling so I'm
14 sure he's enjoying this line.

15 THE WITNESS: That's right.

16 MR. KASPER: I am shocked to learn that
17 there are 46 committees.

18 THE WITNESS: I would like to know, since
19 you're peeling off these numbers, you know, of the
20 leadership positions, how many are held by minorities
21 in a state that's 31-plus percent minority.

22 BY MR. PANOFF:

1 Q. I'm just trying to, you know, put your
2 premise in context of where you're saying that we are
3 targeting leaders, that leaders is a very loose term
4 as used by the caucus.

5 A. Yeah, but you're not really getting at the
6 essence of it. You're telling me there are 12
7 leadership positions. Well, what really matters is
8 how many of them are held by minorities, and you
9 haven't given me that information. I'll bet, you
10 know, quite a few.

11 Q. All right. We'll get to that in a minute,
12 Doctor.

13 A. Sure.

14 Q. So let's turn to table 3 on the next page,
15 on page 167.

16 A. Wasn't that the table we were just talking
17 about?

18 Q. Well, we were talking about the text
19 before, I believe.

20 A. Oh, okay.

21 Q. So, for example, here you state that
22 Representative Delgado was first elected in 2020. Do

1 you see that?

2 A. Yes.

3 Q. Okay. But do you realize that she was
4 appointed in November of 2019 after Representative
5 Arroyo was indicted.

6 A. Yes.

7 Q. And then you state later on here that
8 Representative Edgar Gonzales, Jr. was first elected
9 in 2020, correct?

10 A. Yes.

11 Q. Was he initially appointed or elected to
12 the general assembly?

13 A. Probably -- most of these get appointed.
14 But they don't accrue much seniority from just
15 getting appointed a year before the election.

16 Q. So you're not -- you're not sure on him,
17 though?

18 A. I'm not sure. I'm not going to -- I'm
19 not -- I'm not going to speculate.

20 Q. But if I represented he was appointed in
21 January of 2020 after Representative Villanueva was
22 appointed to a vacant senate seat, you don't have any

1 reason to dispute that, correct?

2 A. No, but that's my point. He didn't accrue
3 very much seniority by 2020.

4 Q. Got it. And you state also in here that
5 Representative Cyril Nichols was first elected in
6 2020. Do you see that?

7 A. Yes.

8 Q. And was he initially elected or appointed?

9 A. I'm trying to -- I -- I'm trying to
10 remember. You're asking me to remember all these
11 details. I remember most of them but I think he was
12 appointed.

13 Q. And where was he appointed?

14 A. I don't remember the exact time. Sorry.

15 Q. If I represented he was actually appointed
16 in April of this year, does that --

17 A. Right, that's my point. Doesn't have much
18 time to accrue seniority.

19 Q. But you have in here that he was elected
20 in 2020. How could he --

21 A. Which is correct. Which is correct.

22 Q. How is that correct?

1 A. That's when he was first elected.

2 Q. And then he was appointed after he was
3 elected in 2021?

4 A. I'm sorry. I thought you said he was
5 appointed in April 2020.

6 Q. No. April this year, 2021.

7 A. Oh, so he was never elected. Sorry. That
8 makes it even less in terms of accruing seniority.
9 Again, these are things you're representing to me, I
10 think.

11 Q. And then let's go to row 17, Karina Villa
12 here where you say first elected in 2022. 2022
13 hasn't occurred yet, Doctor.

14 A. Right. That's a typo. Obviously, I'm not
15 talking about 2022.

16 Q. I didn't know if this is like you're
17 predicting like you did the Presidential election,
18 you're giving us an inside glimpse here or something.

19 A. No, I'm not predicting. But if I had to
20 guess -- well, Karina Villa is an interesting case
21 because she's in a district with very few Hispanics.
22 And, you know, if we adopt one of these remedial

1 plans that packs Hispanics and, you know, suggest
2 that Hispanics can only elect candidates of choice in
3 segregated districts, who knows what the fate of the
4 Karina Villas of the general assembly might be. But
5 obviously I'm not projecting here.

6 Q. Okay. I want to go through some of the
7 actual districts that you claim were targeted. Are
8 you good or do you want to take a break?

9 A. No, let's -- I can go another 15 minutes
10 or so.

11 Q. Okay. I'm going to try to pull up, unless
12 you have it, the democrats -- or sorry, the
13 defendants' response brief. Do you have that? If
14 not, I can try to pull it up.

15 A. No, I don't have it.

16 Q. Okay.

17 A. Now, my understanding is -- tell me if I'm
18 wrong -- that there's three plaintiffs here
19 challenging districts, right?

20 Q. Yes. So we tried to describe that
21 yesterday. So there's the McConchie plaintiffs, who
22 I represent, there's the plaintiffs represented by

1 MALDEF and then plaintiffs in the East St. Louis area
2 are represented by the East St. Louis Branch of the
3 NAACP, among --

4 A. That's my understanding. I just want to
5 make clear, when we're talking about challenged
6 districts, who we're talking about.

7 Q. Right. And I'm just going to kind of
8 refer to -- let's see. This is your report. Hold
9 on. Let me get to some of the maps here.

10 All right. So you claim in table 3 here
11 that representative -- in your report, that
12 Representative Sonya Harper in HD 6 was -- was
13 targeted, right?

14 A. I don't recall using that exact language,
15 but I think what I said was you are redoing her
16 district. And I'd have to look -- we'd have to go to
17 the page of my report where I talk about District 6
18 because --

19 Q. I'm relying on your table. Your table is
20 titled districts with minority incumbents or minority
21 candidates of choice who voted for SB 927 targeted by
22 MALDEF or the McConchie plaintiffs.

1 A. Yes, so I think her district is targeted.
2 Yes. It's changed.

3 Q. Her district remains a majority black
4 district and she lives in it and there are no other
5 incumbents in it. How is it that she was targeted?

6 A. I'd have to look at -- I had a table on
7 that and I don't know what page it's on. But we'd
8 would have to find the section where I talk about it
9 because, again, you're paraphrasing things that may
10 not be accurate.

11 Q. I'm not paraphrasing anything. I'm just
12 reading your title -- your table. By being included
13 on that table, you agree that you're claiming they're
14 targeted, right?

15 A. Yes. But then we have to see what
16 happened in District 6. And I do have a table that
17 deals with District 6 and I have discussion of it,
18 but I'm not sure where it is at the moment. I can
19 find it during the break.

20 Q. Okay. Well, this line of questioning,
21 we're going to focus on several. So Representative
22 Barbara Hernandez, do you see that she's listed here

1 as well? It's HD 50, prior HD 83, right? That's why
2 you list it?

3 A. Yes. Is that the Aurora district?

4 Q. It's 53. Let's go to the map here. Show
5 you. This is on page 82 of the brief. I'll show you
6 the brief. It will help. Eighty-two. And then you
7 see --

8 A. There's 50.

9 Q. -- 50, see?

10 A. I think 50 quite clearly is a district
11 that you targeted.

12 Q. There's no other incumbent who lives in
13 this district, correct?

14 A. Not that I can see, but you --

15 Q. And she lives in this district, correct?

16 A. Correct.

17 Q. Okay. How is it that she's being targeted
18 when she's not paired with another incumbent and the
19 Latino VAP increased its share?

20 A. It's changing her district. And as I
21 quote from MALDEF, it's very important for Latino
22 candidates to retain the core of their previous

1 districts. That's all I meant by targeting. You are
2 challenging and changing a district in which there's
3 an existing minority incumbent. We can then discuss
4 the ways in which you're changing the district.

5 Q. That's helpful. I appreciate that context
6 because I don't think that that nuance is apparent
7 from your report, that you're limiting the target to
8 essentially changing -- changes based on an old
9 district.

10 A. This isn't an old district.

11 Q. No, but you're saying her district changed
12 from the prior cycle, correct?

13 A. No. I think we're talking about changing
14 the SB 927 district. You're not keeping the SB 927
15 district. The old districts have already been
16 changed. So any changes you're going to make, unless
17 I'm wrong, and you can clarify, are based on SB 927
18 districts.

19 Q. Let's get at it this way. You have a list
20 of 18 people who you claim that we targeted. What is
21 your definition of being targeted? How do you --

22 A. Affecting their districts.

1 Q. In what way?

2 A. Changing the core, moving the district,
3 pairing. There are many ways in which --

4 Q. So pairing and changing the core?

5 A. And basically what I'm saying is that
6 these incumbents are sitting in these districts and
7 in one way or another you're affecting these
8 districts. That's all.

9 Q. Well --

10 A. Pairing, core, things of that nature.

11 Q. Did you do any core analysis for this
12 district?

13 A. I did a lot of core analysis. I don't
14 recall whether I did it for this district or not. I
15 may have. It's in the record. But I don't -- I'd
16 have to go through the report to decide whether I did
17 a core analysis on this one or not. I did a lot of
18 core analysis, showed how districts were shredded,
19 but I don't recall this one one way or the other.

20 Q. Because I'm trying to understand, you said
21 affecting a district could be a form of targeting.
22 So I'm wondering to what degree. Obviously if you

1 changed two blocks of a district, that's probably not
2 targeting, correct?

3 A. I'm sorry, if what?

4 Q. I'm trying to understand the degree to
5 which a district has to be changed before you
6 consider them to be targeted.

7 A. I didn't have a, you know, fixed standard.
8 I'm just saying usually when you challenge districts,
9 it's very rare that you challenge a district that
10 already has a minority incumbent. I almost never see
11 that, rather, that you challenge these districts with
12 white incumbents or no incumbents.

13 I am saying however you change or alter or
14 affect these districts, it is incredibly unusual --
15 I've never seen it -- to affect the districts of so
16 many minority incumbents who voted for the plan.
17 I've never seen that anywhere. If you can give me an
18 example, I'm happy to stand corrected.

19 Q. But you have no numerical threshold or
20 metric to use to determine the amount of effect
21 before you put it into the targeted category?

22 A. I did not determine a statistical

1 standard. But, as I said, it is incredibly unusual
2 in any way to target a district with a minority
3 incumbent. That almost never happens, particularly
4 one who voted for the plan.

5 Q. I'm sorry. Okay. Let's go to District 8,
6 which is Representative La Shawn Ford. District 8
7 was barely changed at all. It remains a majority
8 black district and he lives in it and there's no
9 other incumbent who lives in that district. On what
10 basis are you claiming that he was targeted?

11 A. What page is that?

12 Q. He's on your 167, but here's the map that
13 shows his district which is 8.

14 A. Hang on. Hang on.

15 Q. Eight, this is a kind of a peculiar-shaped
16 one here that starts up here where my cursor is. It
17 keeps going west, west, west and then goes up close
18 toward --

19 A. Yeah, I'd have to look. I might not have
20 done a core analysis of HD 8, just that, you know,
21 there was a minority in it. I might stand corrected
22 on that one.

1 Q. Okay. Let's go --

2 A. That still leaves quite a few.

3 Q. Let's go to Senator Patricia Van Pelt who
4 is in Senate District 5, which is comprised of the
5 nested House Districts 9 and 10. There was no change
6 to Senate District 5. How was she targeted?

7 A. I'd have to look. You might be right
8 about that one. I'm not sure.

9 Q. Let's go to Senator Kim Lightford who's in
10 Senate District 4.

11 A. Yes.

12 Q. There's barely any change to District 4
13 which is comprised of House Districts 7 and 8. House
14 District 7, which is nested in there, which is
15 Speaker Welch's, was not changed at all, and House
16 District 8 was Representative Ford's which we just
17 talked about that wasn't changed at all. Senator
18 Lightford continues to live in her district and no
19 other incumbent does. How was she targeted? This
20 would be on page 73.

21 A. I'd have to look. You may be right. You
22 may be right. I'd have to look.

1 Q. Okay. Let's go to, on the same page,
2 Senator Jones in Senate District 14. There was no
3 change to Senate District 14. It's comprised of
4 nested House Districts 27 and 28, which are not
5 changed at all. How is Senator Jones --

6 A. Not changed at all under SB 927?

7 Q. I don't believe, no. I mean --

8 A. You're looking I think at old districts.
9 You're not looking at SB 927.

10 Q. This is the defendants' map right here.
11 This is -- sorry, the defendants' brief right here
12 where it's talking about the proposed pairing and
13 there's been no change. How was Senator Jones
14 targeted?

15 A. I'd have to look. You may be right about
16 some of these. I simply looked at districts that
17 were included in reports and, you're right, some of
18 them I'd have to rethink. Fair enough.

19 Q. Let's go to Senator --

20 A. I'm not going to stick to things where,
21 you know, you have a legitimate point.

22 Q. Let's go to Senator Jacqueline Collins on

1 the same page. She's in Senate District 16. I'm
2 sorry, not -- is this 73? Yeah. Senator Collins.
3 She continues to live in her district and is the only
4 incumbent in this district.

5 A. And it hasn't been changed at all from
6 SB 927? I don't know. I would have to look at all
7 of these because, you know, maps ripple. And you may
8 be right. I may need to make some modification to
9 this table but not without looking.

10 Q. Let's turn to page 169 of your report.

11 A. Okay.

12 Q. And this might just be a typo but I want
13 to try to get it clarified. On the last sentence on
14 page 169, you say the McConchie plaintiffs propose
15 raising HD 3 by 2.6 percentage points to just 5.04
16 percentage Hispanic CVAP.

17 A. Yeah. Is that a typo? You tell me.

18 Q. And -- that's what I'm asking you. I
19 assume it's a typo but would you like to verify that?

20 A. What should it be? I don't have it in my
21 head. I'll take your representation. It's not 5.04.
22 It's what?

1 Q. In our plan, we have it as 50.8 percent.

2 A. Okay. Fair enough. It's of no
3 consequence. I'll make that change.

4 I'm not -- I'm sure that's a typo. 50.04
5 doesn't look right at all.

6 Q. On page 172 of your report, this is where
7 you talk about -- well, go ahead and get there first.

8 A. Where I talk about what?

9 Q. This is where you talk about Dr. Chen's
10 performance analysis based on the Berrios versus
11 Kaegi race. Do you see that?

12 A. Yeah. This would be a good time for a
13 quick break if we're going to get into a whole
14 different area of --

15 Q. Let me see how much I have.

16 A. Okay. If you have very little, I'll stick
17 with you but if you've got like an hour, I'll need a
18 break.

19 Q. Yeah. Why don't we take a break.

20 A. All right.

21 THE VIDEOGRAPHER: We are --

22 THE WITNESS: Five minutes is fine, until

1 5 of 5:00.

2 THE VIDEOGRAPHER: We are off the record.

3 The time is 5:00 p.m.

4 (Recess.)

5 THE VIDEOGRAPHER: We are back on the

6 record. The time is 5:09 p.m.

7 BY MR. PANOFF:

8 Q. Dr. Lichtman, can you please turn to

9 page 172 of your report?

10 A. Yes.

11 Q. And you'll see here -- are you there?

12 Sorry.

13 A. Yes.

14 Q. Okay. You'll see here that at the middle

15 of the page, this is unlike the discussion that we

16 were having earlier about the assessor versus the

17 mayoral race. Do you see that?

18 A. Yes.

19 Q. And you claim in your report here that, in

20 terms of Dr. Chen's performance -- performance

21 analysis, the better race to use would have been the

22 mayoral race rather than the assessor race that he

1 used, correct?

2 A. I claim two things. One, this was a
3 better race, but regardless, he used the wrong
4 methodology.

5 Q. Well, let's deal with the first part of
6 your answer.

7 A. Sure.

8 Q. Of the 11 Latino opportunity districts
9 that Dr. Chen looked at for his performance analysis,
10 how many of them are fully within the city of
11 Chicago?

12 A. Something like five of them, I think, I
13 was able to analyze.

14 Q. And if five of them were within the city
15 of Chicago and six of them, you know, were not, do
16 you still think that the mayoral election with a
17 primary was a better race to use than -- sorry, the
18 mayoral election that's -- the mayoral election was a
19 better race to use than the assessor race?

20 A. You're miss -- you're misstating. A lot
21 of his elections that he looked at in table 10 -- I'm
22 trying to find it, if I have it -- were not

1 challenged districts, like 1. Here we go. 1 is not
2 a challenged district. 2 is not a challenged
3 district. 19 is not a challenged district. 23 is
4 not a challenged district. So I was able to look at
5 most of his challenged districts. 3, 4, I believe 24
6 and 39.

7 Plus the fact that it covers more
8 territory doesn't make it a good election. You have
9 a bad election, no matter where you apply it, it's a
10 bad election.

11 Q. But you would agree that for 6 of the 11
12 districts, they have portions that wouldn't cover the
13 city of Chicago.

14 A. You missed my point. My point is a lot of
15 those are not challenged districts and are not
16 relevant. This is the only analysis of challenged
17 districts. It doesn't matter what happens in
18 district 1, which it says it's 62 percent for
19 Berrios -- or district 23 which he says is 63 percent
20 of district 22. What matters is the challenged
21 districts and my analysis does cover most of the
22 challenged districts.

1 Q. You keep saying your analysis. What
2 analysis are you talking about?

3 A. The reconstituted elections from the 2010
4 mayoral runoff.

5 Q. Okay. And where is your performance
6 analysis?

7 A. It's throughout my report as I go through
8 each individual district. As I go through
9 district 3, District 4, district 24, district 39.
10 And one of the two senate districts, which is also
11 relevant, even though you're not challenging it, I
12 present tables which somehow Dr. Chen missed these
13 big, brightly colored tables and says Dr. Lichtman
14 didn't present any analysis of his own. That's
15 fundamentally false. I presented a different
16 analysis, but it was right there prominently in my
17 report.

18 Q. This is a key point, Doctor, because I
19 don't think there is a meeting of the minds here. So
20 point me to where your performance analysis is. What
21 pages?

22 A. I have to find it. It's going to take a

1 few minutes because my pages are all messed up. I've
2 been pounding through this throughout.

3 All right, can I give you just one example
4 rather than going through every one of them, and if
5 you want, I'll go through more because I did find one
6 right away.

7 Q. You can start -- you can start with one
8 but, you know, as you've said before, context is
9 important. So why don't we go through a few.

10 A. Sure. We can go through all of them. It
11 just might take me some time to dig them up.

12 But I found one right away. It's on
13 page 175 and it's for challenged House Districts 3
14 and 4.

15 Q. Wait, you ran a regression analysis here
16 for these?

17 A. No. You misunderstand.

18 Q. Okay. So walk me through what your --

19 A. I'll explain what I did.

20 Q. Explain your performance analysis.

21 A. Let me tell you what I did rather than you
22 trying to characterize it. I did the same thing

1 Dr. Collingwood did and that I've done many times
2 before that's absolute standard in the profession,
3 unlike what Dr. Chen did that I've never seen done.
4 What we did was we took the precincts from the 2015
5 mayoral runoff that were in HD 3 and 4 and simply
6 counted up the votes for Emanuel and the votes for
7 Garcia.

8 That's what reconstituted election
9 analysis does. It does not depend on EI estimates or
10 regression estimates or anything like that. This was
11 what I did here. It is exactly the same as what
12 Dr. Collingwood properly did for House District 114.

13 Q. Okay. So to be clear, there is no
14 regression analysis. You took the vote totals by
15 precincts that would fit within the area and just
16 simply added them?

17 A. Right. So there is no regression, no EI,
18 no confidence intervals, none of that.

19 Q. And where do you provide the underlying
20 support for this analysis?

21 A. You showed it to me. Not you but --

22 Q. Denise?

1 A. Denise showed me the underlying support.
2 You have it.

3 Q. So that Excel sheet that she showed you,
4 that's -- that's what your underlying data was for
5 this table?

6 A. I believe that's right. I'm not sure
7 every single election was recorded on that Excel
8 spreadsheet, but I think it was and you've had it for
9 quite some time. And you could do it yourself if you
10 wanted to, but you didn't do --

11 Q. Again, I'm just trying to understand
12 because I think there was a disconnect so I
13 appreciate the additional context here.

14 And that's what you did for all of your
15 analyses that you're going to show me now? You
16 simply added the vote totals in these precincts?

17 A. That's the way you do reconstituted
18 election analysis, yes. I follow the standard -- let
19 me finish. I followed the standard method in the
20 social sciences that is also used by one of the
21 plaintiffs' experts in this case.

22 Q. But to be clear, it wasn't one of the

1 McConchie plaintiff experts, correct?

2 A. It doesn't matter to me who, you know,
3 who -- who hired them. Experts are experts.

4 Q. Okay. But for the parties, it might
5 matter. So it wasn't Dr. Chen who did that kind of
6 performance analysis, the reconstitution?

7 A. No. Dr. Chen did his own analysis,
8 flawed, that I've never seen before.

9 Q. And Dr. Fowler didn't do that either,
10 correct?

11 A. No, Dr. Fowler didn't do any either
12 reconstituted elections or EI estimates on any
13 individual challenged districts. I'm not sure he
14 deals with challenged districts at all. He created
15 these curves for existing districts that, as I showed
16 in my report, were extremely inaccurate and
17 misleading.

18 Q. So can you point me to a couple other
19 examples where you did this reconstitution?

20 A. All right. They look the same. I'll try
21 to find them. Yeah, there is another one on page
22 182.

1 Q. And again, your methodology was the same
2 where you're just summing the vote totals by precinct
3 for the challenged district?

4 A. Every one of these followed the same
5 standard social science method of reconstituted
6 elections. I didn't change the method for any of
7 these.

8 Q. And have you used this methodology in
9 prior reports?

10 A. Absolutely. I used it in 2001 and here.
11 I used it in Texas. Yes. And in Texas, in fact, way
12 back when, seems like a thousand years ago, when
13 section 5 was still around and we were looking at
14 retrogression, both sides agreed, you know, that one
15 standard method that we would use is reconstituted
16 election analysis.

17 Q. Could you have done a regression analysis
18 here too?

19 A. I'm sorry, I didn't hear that.

20 Q. Could you have done a regression analysis
21 here too?

22 A. I'm not sure. For the purposes of what?

1 Sure you could do regression analysis, but for
2 purposes of assessing whether the district provides
3 an equal opportunity for Hispanic voters to elect
4 candidates of choice, that's not the method you would
5 use. That's a method you would use to assess voting
6 patterns within the district based upon some larger
7 election that encompasses the district. So you would
8 see how voting patterns in the district might compare
9 to voting patterns citywide. But that's a different
10 analysis.

11 This analysis is checking whether the
12 districts you challenged is not providing an equal
13 opportunity for Hispanics to elect candidates of
14 choice, really does or doesn't, and I found it not
15 only doesn't. We're not talking 51 percent here.
16 We're talking 57 to 60 percent.

17 Q. Okay. So to be clear, you're saying that
18 what I'm calling kind of performance, that to see if
19 the district performed, you're claiming that it would
20 not make sense to do a regression analysis here, but
21 instead just to use the reconstitution method that
22 you used?

1 A. For this purpose. You could do a
2 regression analysis for another purpose, but --

3 Q. For the performance?

4 A. -- for this purpose, reconstituted
5 election analysis like Dr. Collingwood agreed and did
6 is the standard method.

7 Q. And obviously Dr. Chen you claim did a
8 different method?

9 A. Not just a different method, a
10 fundamentally flawed method that doesn't even add to
11 100 percent. It leaves out a huge chunk of the
12 population in each district. And I said it's like
13 measuring heights and stopping at the shoulder.

14 Q. Are there any other methods besides what
15 Dr. Chen did, which I know you disagree with, and the
16 reconstitution method that you could do to test the
17 performance of the district -- of the proposed
18 district?

19 A. Well, the reconstituted election method is
20 the standard method that Dr. Collingwood and I did.
21 I've never seen the Dr. Chen method before anywhere.

22 Q. Other than those two, are there any other

1 methods by which you would be able to test
2 performance?

3 A. I'm not sure I -- again, I don't accept
4 Dr. Chen is testing performance, so --

5 Q. With that caveat --

6 A. -- I'm not going to buy into the premise
7 of your question. But I think reconstituted
8 elections is the appropriate methodology to use. I
9 mean, as I said, you could do a regression on this to
10 see the patterns of voting. You know, it's a
11 different analysis, but it's not directly testing the
12 way a reconstituted election is, whether or not an
13 Hispanic preferred candidate could prevail in the
14 districts.

15 Q. So Dr. Chen's, which I understand you
16 disagree with, reconstitution and potentially a
17 regression analysis, are there any other methods that
18 you could use to test performance of a district?

19 A. Again, I don't think Dr. Chen's is a
20 standard method. But leaving that aside, I don't
21 think there's a method -- I mean, anyone can come up
22 with any method like Dr. Chen did, but the standard

1 method is reconstituted election analysis. You could
2 do a regression on it, but that's not quite for the
3 same purpose.

4 Q. Would you agree -- you've talked in your
5 report several times about crossover -- white
6 crossover voting, correct?

7 A. Yes, yes. The answer is yes.

8 Q. And you would agree that if you were to
9 analyze white crossover voting in the city of Chicago
10 versus white crossover voting in Cook County as a
11 whole, there could very well be differences in the
12 crossover percentages or amounts, correct?

13 A. Are you talking about differences between
14 voting within Chicago and within the broader Cook
15 County? That's certainly true, but the broader Cook
16 County would include in more voters who are not in
17 the challenged districts.

18 Q. Correct. But, for example, of the white
19 crossover voting, between these two different
20 geographies, you could have less white crossover
21 voting in parts of Cook County as opposed to the
22 parts of just within Chicago, correct?

1 A. That's possible. That's not what
2 Dr. Chen's results or Dr. Grumbach's results show.
3 But, sure, anything's possible.

4 Q. But you didn't study that, did you?

5 A. I did, actually. Using their results,
6 what I pointed out was that the Cook County assessor
7 primary is in fact an outlier when it comes to white
8 crossover vote for the Latino preferred candidate.
9 Dr. Chen estimates it's only 18.3 percent, whereas in
10 the Chicago election, it's 28.8, a little over 10
11 percentage points higher, and in the comptroller
12 general election, it's 30 percent higher.

13 Dr. Grumbach comes up with a crossover
14 vote that's 10 points higher. Again, you've got
15 these differences. And he has a meta analysis of an
16 average crossover vote of 37.5 percent. So this 18.3
17 percent, no matter how you slice it, is an outlier
18 for anything else we've looked at.

19 Q. Okay. I'm not done with this part, but I
20 do want to switch gears. I want to talk about some
21 of the senate factors, Dr. Lichtman.

22 A. Can I take a minute just to rearrange my

1 pages here?

2 Q. Sure. Let me know when you're situated.

3 A. Yeah. All right. I'm not sure I'm
4 situated, but it's getting late and I don't want to
5 hold anything up. I'm ready.

6 Q. Okay. You --

7 A. If I can't find it, I'll let you know.

8 Q. You critique the plaintiffs because you
9 claim that their assessment of the senate factors are
10 spread across multiple different experts, correct?

11 A. That's one problem.

12 Q. Yes, that's one of your critiques,
13 correct?

14 A. Yes. We don't have a -- anyone
15 synthesizing the full range of the senate factors and
16 therefore no one synthesizing the totality of
17 circumstances that minorities face in Illinois.

18 Q. But you would agree that there's no
19 requirement that one expert has to address all of
20 them, correct?

21 A. When you say requirement, required by
22 whom?

1 Q. By anyone, by the Court, by the scientific
2 community, by anyone. You don't have to have one
3 expert address all of the senate factors, correct?

4 A. I can't speak to the legalities of it.
5 I'm not a lawyer. But in terms of social science, if
6 you're looking at a series of factors, you would want
7 to look at the factors in totality. And the very
8 term "totality of circumstances" means you're not
9 looking at this piecemeal, you're looking at it as a
10 whole. And as I think I explained in my report, it's
11 not like these factors are isolated from one another.
12 They interact and intertwine with one another.

13 Q. But you would expect an expert to address
14 all of the factors to be able to opine on totality?

15 A. I think -- you know, I don't know what I
16 expect from experts, but I think that's the best
17 approach.

18 Q. Okay. I'm going to share my screen again.
19 This was previously marked as an exhibit, but let's
20 look at your report from 10 years ago, Doctor. I
21 will go to the beginning so you can see it, but see
22 this is your same report that we marked as an exhibit

1 previously?

2 A. Yeah, it looks like my report again.

3 Q. Let's scroll down to totality here. Let's
4 scroll down to the senate factors part. See how it
5 says, "the totality of circumstances"?

6 A. I do.

7 Q. Okay. Well, let's start -- we'll do a
8 little counting exercise. You have one factor here
9 in bold. Do you see that, history of official
10 discrimination?

11 A. Correct.

12 Q. Okay. Scroll down to the next one. Two,
13 you have the extent of -- to which voting in
14 elections of the state or the political subdivision
15 is racially polarized.

16 Do you see that?

17 A. I do.

18 Q. So that's the second factor you addressed?

19 A. Correct.

20 Q. Then here you have the extent to which
21 members of the minority group have been elected to
22 public office in the jurisdiction.

1 Do you see that?

2 A. I do.

3 Q. So that's the third one you've addressed?

4 A. Fourth or third. I'm not sure.

5 Q. That's fair. Do you want to go back and
6 count again? One --

7 A. It doesn't matter what you count.

8 Q. -- two --

9 A. I can explain this anyway.

10 Q. -- three. And then factor, you have rough
11 proportionality, which is -- is that one of the
12 senate factors?

13 A. I'm not sure I put this as a senate
14 factor, but I thought it was worth looking at. I'm
15 not -- it might be because did I already examine the
16 extent to which minority members are elected?

17 Q. Here, I'll go through -- I'll go through
18 all four pages because your whole totality 10 years
19 ago analysis is four pages. So let me just show you
20 the whole thing so there's no hiding of the ball or
21 anything.

22 A. I'm not arguing with you. That's fine.

1 Q. Let me -- so, yes.

2 A. It is what it is.

3 Q. You start with totality. Here's the first
4 one you address.

5 A. Right.

6 Q. Here's the second one you address.

7 A. Right.

8 Q. Here's the third one you address at the
9 bottom of the page.

10 A. Right.

11 Q. Here's -- I'll give you credit for this.
12 We'll say it's the fourth one, whether it's a factor
13 or not. You list it as a factor, so that's four.
14 And then you're done.

15 A. You want to know why I did that?

16 Q. I would love to, particularly with your
17 testimony earlier that you would expect an expert to
18 address all the factors.

19 A. I'm not plaintiffs. If plaintiffs are
20 trying to show that the totality of circumstances
21 impedes minority voting opportunities and they have
22 the burden of proof on that, then it's up to

1 plaintiffs to analyze all of the factors.

2 I focused on these because these were the
3 ones in controversy last time. I was responding to
4 what plaintiffs were doing. I was not doing an
5 independent analysis of my own and it's -- you know,
6 it's up to plaintiffs to prove the totality, not
7 defendants to not prove them.

8 Q. Okay. But you agree that a plaintiff need
9 not satisfy a majority of the factors, correct?

10 A. When you say "need not," I don't -- that's
11 passive voice. Are you asking for a legal decision
12 or a social scientific analysis?

13 Q. You used that phrase throughout here.
14 Let's go to your -- go to page 102 of your report.

15 A. Fair enough. We can see if we're talking
16 about a legal standard.

17 Q. I'm just quoting your own language,
18 Doctor.

19 A. Fine, fine, fine, fine.

20 Q. Top of page 102, you say, "The senate
21 factors are neither exclusive nor comprehensive and a
22 plaintiff need not prove any particular number of

1 the -- or a majority of these factors in order to
2 succeed in a vote dilution claim."

3 Do you see that?

4 A. Yeah. It's not my words. I'm quoting
5 there. And, you know, if that's the legal standard,
6 that's the legal standard. Nonetheless, from the
7 point of view of a social scientist, if you're
8 looking at the totality of circumstances, it would be
9 best to look at the full range of totality of
10 circumstances, not pick and choose.

11 Q. Okay. So setting -- setting aside your
12 dislike for the passive voice, you stand by your
13 recitation of the standard here at the beginning on
14 page 102, correct?

15 A. Yes. That's what -- that's -- either the
16 court said it or the senate report said it.
17 Nonetheless, if you're plaintiff, I think the best
18 practice, and it's one I always follow, is to look at
19 every senate factor. Some may apply. Some may not.
20 But unless you're looking at them all, the Court has
21 no way of knowing which apply and which don't and,
22 then weighing the pros and cons of the ones that do

1 and the ones that don't. That's not inconsistent
2 with what the senate report said.

3 Q. So your position is your preference as a
4 plaintiff would be that you have to satisfy all of
5 them but you're not required to do so?

6 A. I'm not sure I would formulate it quite
7 like that. The best practice, in my view if your
8 plaintiffs, is to look at them all and tell the Court
9 which apply and which don't, and then the Court can
10 decide whether it's enough or not. But to only
11 present the Court with selected ones I don't think is
12 the best practice.

13 Q. In your report here, you list nine
14 factors. Do you believe that there are nine factors?

15 A. Yes.

16 Q. Okay. And do you think that the last two
17 are treated any differently, the ones you list as
18 factor 8 and 9, are treated any differently than the
19 first through seven?

20 A. The Court does say you can consider these,
21 and I do, and I think they're relevant. I think, in
22 fact, you know, how responsive the government is to

1 minority needs is very relevant, particularly given
2 that your experts so vehemently claim the opposite.

3 Q. Let's get into the substance a little bit.
4 Let's start with factor 1. You would agree that --

5 A. What page? What page?

6 Q. It's just in general. It's not a page.

7 A. Oh, okay. We're not referring to my
8 pages.

9 Q. We will in a little bit but my question
10 isn't limited to that.

11 So you would agree, though, historically
12 there has been a history of official discrimination
13 in Cook County, correct?

14 A. Historical, you know, but what's most
15 relevant to the totality of circumstances facing
16 minorities today is the more recent events. And in
17 fact, I'm not making a legal decision but the courts
18 have chided experts for focusing on past history and
19 not looking at recent events.

20 Q. And same question. Historically, there
21 has been official discrimination in the Aurora area
22 too, correct?

1 A. There has been some historically in the
2 past, that's correct.

3 Q. And the same thing for --

4 A. Not recently.

5 Q. And the same thing for the Metro east
6 community down state, correct?

7 A. Again, in the past, but you would have to
8 reference me your specific evidence from your experts
9 on exactly when you're talking about this
10 discrimination. My recollection is a lot of your
11 experts stopped in the '70s or '80s.

12 Q. So let's focus on factor 1, though. It
13 says, "The extent of any history of official
14 discrimination."

15 And so it says history there clearly,
16 right, Doctor? As a history professor, you
17 appreciate that saying, history?

18 A. What page are we on? I need to look at
19 it.

20 Q. That's your recitation of it on page 102.
21 We're still on 102. I'm quoting from your report.

22 A. Yeah, and history -- hey, I'm a

1 contemporary historian. A lot of my books that I've
2 written recount history right up to the present.
3 History doesn't mean medieval history. It means
4 anything ongoing to the present.

5 And as I've said, you know, as an expert
6 in this field as a historian, what's relevant is
7 what's happened more recently because that is most
8 relevant to the totality of circumstances affecting
9 minorities and voting.

10 Q. But the factor doesn't say contemporary
11 history. It says history, correct?

12 A. History includes contemporary history.
13 I'm a historian. I don't say I'm a contemporary
14 historian. I say I'm an historian. I write about
15 things that are more distant than the past and I
16 write about things that are right up to date. That's
17 what historians include.

18 Q. It includes contemporary. It also
19 includes older history as well too, right?

20 A. Right. But my point is what's most
21 relevant to the totality of circumstances facing
22 minorities in Illinois today is the more recent

1 stuff. I'm not just talking about, in my report, as
2 you know, stuff that was passed this year. I'm
3 talking about the full panoply of measures over the
4 course of the 21st century.

5 Q. Okay. And one of your critiques in your
6 report is that the plaintiffs' experts don't focus
7 on, in your view, history by the state. They only
8 talk about history of political subdivisions,
9 correct? Is that fair?

10 A. A little more than that. I'm not saying
11 it's totally irrelevant to talk about subdivisions.
12 Think about it. 1,200 municipalities under the
13 counties. But they only talk about one subdivision
14 in the last 20 years, and that's Cicero where they
15 found where they were trying to put into effect a
16 residency requirement, which never happened,
17 orchestrated by the republican political machine. I
18 don't think that demonstrates any kind of significant
19 discrimination by localities.

20 Q. So, I'm sorry, your position is that
21 plaintiffs' experts have only focused on Cicero, they
22 haven't talked about Cook County or the city of

1 Chicago?

2 A. Not in recent years, no. Again, that's --
3 you know, if you look at the city of Chicago, every
4 single position elected citywide in the city of
5 Chicago is held by a minority, two African-Americans,
6 one Latino. Minorities hold a majority of the city
7 council.

8 If you look at Cook County, minorities
9 hold a majority of the county-wide elected
10 officialdom. Minorities hold a majority of the,
11 whatever it's called, board of commissioners.

12 So, yeah, you know, maybe way back when
13 there was issues but, in fact, you know, minorities
14 have had enormous success in Cook County and in the
15 city of Chicago, and we have seen voting measures by
16 the state that, according to I guess the Contreras
17 experts, Dr. Grumbach, have vaulted Illinois from the
18 middle of the pack of facilitating voting and
19 registration to the top, to number 3. And he points
20 out this is particularly beneficial for vulnerable
21 groups like minorities. Another independent study
22 found the same thing. I think they ranked Illinois

1 fourth.

2 And so whether you look at how minorities
3 have done in Chicago and Cook County, or you look at
4 what the state has done over the last 20 years, it's
5 the opposite of discrimination against minorities.

6 Q. Dr. Lichtman, on page 107, you start kind
7 of listing or cataloging examples beginning in 2005
8 of efforts by the state to address some of this
9 history of discrimination that we've talked about.
10 Do you see that?

11 A. I don't think I say it's addressed to deal
12 with the history of discrimination. I just say these
13 are the policies adopted. And these are the policies
14 that vaulted Illinois to the top of the pack. And
15 the ones in 2021 aren't even considered in the two
16 studies because they were adopted after the studies.

17 Q. And is it your view that these measures
18 from 2005 and onward to the present have cured the
19 history of official discrimination that we talked
20 about at the beginning?

21 A. We didn't talk about it. You talked about
22 it in vague terms. I asked you to specify what

1 history of discrimination your experts are talking
2 about because my recollection is it's either long
3 outdated or very thin like Cicero.

4 Please point me to examples, particularly
5 since this is state policy. I don't remember a
6 single example except a redistricting plan back in
7 the 1980s that your experts pointed to prior to 2005
8 that represented official discrimination by the state
9 of Illinois. If I'm wrong, please point me to where
10 your experts specified that.

11 Q. So is it your position that there's no
12 longer any official discrimination in any of the
13 challenged regions at issue in this litigation?

14 A. I'm not going to prove a negative and say
15 there's no discrimination in 1,200 municipalities or
16 102 counties. What I am saying is it's your burden.
17 Your experts did not show discrimination. And to the
18 extent we can analyze what's going on in the state of
19 Illinois, at least over nearly a 20-year period, not
20 only isn't there discrimination in voting, there's
21 the opposite.

22 Illinois has been a model for the nation

1 in facilitating registration in voting. Not just my
2 opinion, but proven by plaintiffs' own experts,
3 Dr. Grumbach, other independent studies. Illinois
4 has become a model for facilitating registration in
5 voting, which is particularly beneficial to
6 vulnerable populations like minorities.

7 Q. So you're not in a position to say one way
8 or another whether official discrimination still
9 exists in any of the challenged regions in this
10 lawsuit?

11 A. Official discrimination does not exist at
12 the most important level because it covers the whole
13 state in the state of Illinois. Whether official
14 discrimination might or might not exist in one or
15 more of 1,200 municipalities, 102 counties, I haven't
16 seen a shred of proof from any of your experts to
17 show that's still the case.

18 Q. And your position is we should focus to
19 more contemporary history than older history to
20 analyze that question, is that correct?

21 A. Absolutely. And I think that's the
22 standard social science division. As I said, I'm not

1 taking a legal position here, but I've seen courts
2 chide experts for focusing on past history and not
3 looking at the current set of circumstances facing.

4 And this isn't just, as I said,
5 contemporary. We're talking about a 20-year --
6 nearly 20-year span of what the state of Illinois has
7 done. And we're not talking about my opinion. We're
8 talking about documented studies.

9 Q. Okay, Dr. Lichtman, I'm going to -- I've
10 lost track.

11 (Discussion off the record.)

12 THE VIDEOGRAPHER: We are off the record.
13 The time is 5:45 p.m.

14 (Recess.)

15 THE VIDEOGRAPHER: We are back on the
16 record. The time is 5:45 p.m.

17 (Lichtman Exhibit No. 41 was marked
18 for identification.)

19 BY MR. PANOFF:

20 Q. Dr. Lichtman, I'm showing you what I'll
21 mark as Exhibit 41, which is the Anti-Racism
22 Commission Act, which I'll represent was passed and

1 signed into law and became effective on April 27th of
2 this year.

3 A. I think that's right. I think you're
4 right there.

5 Q. Oh, you've seen this before?

6 A. I think I have. I've seen so many
7 documents. But I think I might have seen this
8 before. Maybe not completely, but at least part of
9 it. So I know this is a recent law and so I'm not
10 disputing it.

11 Q. Okay. And this is a law, you would agree,
12 that was enacted for the state of Illinois, not a
13 particular subdivision, correct?

14 A. Correct.

15 Q. And because it was -- you know, became
16 effective only several months ago, from a historian
17 standpoint, you would view this as, you know, fairly
18 good evidence of -- of the current state of affairs,
19 correct?

20 A. I don't know if I view it as evidence of
21 the state of affairs, because that's not what's
22 necessarily indicated here, but it's certainly good

1 evidence of continuing efforts on the part of the
2 state of Illinois to advance the interests of
3 minorities.

4 Q. And it says here in the highlighted
5 portion on page 4 of this printout that, "The
6 Anti-Racism Commission Act is hereby created to
7 identify and propose statewide policies to eliminate
8 systemic racism and advance equitable solutions for
9 black and brown people in Illinois."

10 Do you see that?

11 A. Yes. Do you have a question about it?

12 Q. I'm just asking if you see that. I'm
13 going to explain to you how the Act works and address
14 your findings based on this Act. So that's that.
15 And then if you go to the section 130-5, which is
16 entitled Findings, and it says, "The general assembly
17 finds and declares all of the following."

18 Do you see that?

19 A. Yes. But -- so you're not asking me any
20 questions about the previous clause. You're just
21 saying --

22 Q. No, I just wanted you to see this. I

1 wanted to explain to you how this Act works and the
2 findings of fact and policy that were made here by
3 the general assembly. And then you see in
4 subparagraph 3 of that provision, it talks about lots
5 of things here.

6 It says that according to the CDC, that
7 the state of Illinois has an exacerbated health
8 divide, resulting in black residents having lower
9 life expectancies than white citizens and the state
10 being far more likely than other races to die
11 prematurely.

12 And it goes on in subsection 4 here where
13 it says, "Black and brown people are more likely to
14 experience poor health outcomes as a consequence of
15 their social determinants of health, health
16 inequities stemming from economic instability,
17 education, physical environment, food, and access to
18 healthcare."

19 And then it goes on, and this is
20 subparagraph 6 here, "Racism is a social system with
21 multiple dimensions in which individual racism" --

22 A. I'm sorry, where are we? Oh, I see.

1 Q. Section 6.

2 A. You're going through this so quickly and
3 it's getting late, but I'm with you.

4 Q. Trying to be respectful of our time.

5 "Racism is a social system with multiple dimensions
6 in which individual racism is internalized or
7 interpersonal and systemic racism is institutional or
8 structural and is a system of structuring opportunity
9 and assigning value based on the social
10 interpretation of how one looks; this unfairly
11 disadvantages specific individuals and communities,
12 while unfairly giving advantages to other individuals
13 and communities; and it saps the strength of the
14 whole society through a waste of human resources."

15 Do you see that?

16 A. Are you just asking me if I see that or
17 are you asking me a question about it?

18 Q. Do you see that?

19 A. I see it.

20 Q. Okay. So if you believe that, as a matter
21 of Illinois state, not as political subunits, but
22 state, that there's no official discrimination in the

1 system anymore, why is the general assembly passing
2 an act as recently as this year to address issues
3 that no longer exist in your view?

4 A. I never said that. You are not
5 correctly -- first of all, I thought we were on prong
6 1, which had to do with voting. And my point was in
7 terms of voting, Illinois has in fact led the nation
8 in facilitating registration in voting, which is
9 especially helpful to vulnerable groups like
10 minorities. And that's not my opinion. It's been
11 established by Dr. Grumbach and other scholars.

12 So if we're now moving away from prong 1
13 into something else, into general discrimination or
14 socioeconomic disparities, I've got a few comments on
15 that.

16 Number one, as I said in my report, and I
17 can refer you to two government publications,
18 Disparities in Wealth and Race and Ethnicity, and
19 then 2019 Survey of Consumer Finances and Economics
20 and Social Status, Bureau of Labor Statistics, which
21 demonstrate these things apply nationwide. They are
22 not unique to Illinois. And you can just go online

1 to the census, which has great, you know,
2 single-click information and you can see all of these
3 issues apply nationwide.

4 Number two -- can we keep that up?

5 Q. Yeah, let me go back to it. Hold on one
6 second. You can keep talking. I'll pull it back up.

7 A. Yeah. I do kind of need to look at that.

8 Number two, you've gone through this whole
9 litany of issues and, indeed, you know, like
10 everywhere else, unfortunately there are these
11 socioeconomic divides. And unfortunately, like
12 everywhere else -- I've been fighting this all my
13 life. I'm a voting rights advocate. There is
14 racism.

15 And I have yet to see, in any of these
16 seven points you just made, a single example of
17 discriminatory policy on the part of the state of
18 Illinois or discriminatory policy on the part of any
19 major subdivision, all of which are controlled by
20 minorities. Nothing pointing specifically saying,
21 boy, this policy that Illinois adopted is just
22 terrible, it discriminates against minorities. It

1 talks about racism, it talks about systematic racism,
2 it talks about socioeconomic disparities, none of
3 which I disagree with and none of which makes the
4 point that I was discussing.

5 Q. Do you think that racism has an effect on
6 voter participation rates among minorities?

7 A. Where does it say that?

8 Q. No, it doesn't. I'm asking you, do you
9 believe -- do you believe that systemic racism has an
10 impact on voter participation rates by minorities?

11 A. What do you mean by systematic racism? Do
12 you mean in government? Do you mean in institutions
13 like health insurers, employers? See, you're
14 muddling up -- and your experts do the same thing --
15 actions by the federal government red lighting
16 private individuals like restrictive covenants or
17 racial steering with policies of the government. And
18 in terms of government policy, Illinois leads the
19 nation in opening up voting opportunities for
20 minorities. So I'm not sure what you're driving at
21 here.

22 Q. Let me build on your last comment. I'll

1 go in reverse order. You said racial covenants and,
2 you know, that's merely between private parties.
3 Were racial covenants ever recorded with Cook County
4 recorder of deeds?

5 A. They probably were. They were recorded
6 probably all over the country until the U.S. Supreme
7 Court outlawed them in 1948.

8 Q. Do you know if they're still on the books
9 with the Cook County recorder --

10 A. I have no idea. It doesn't matter.
11 They're outlawed by the Supreme Court. And they're
12 private parties.

13 Q. They're private -- Cook County recorder's
14 office that's recorded it?

15 A. Recording it is different from putting it
16 into effect.

17 Q. It just gives them -- could matter for
18 like record notice to defeat subsequent claims. That
19 could only be granted by the government, correct?

20 A. I'm sorry, I don't understand your
21 question. It was outlawed in 1948, so I'm not sure
22 what claims we're talking about in the modern era.

1 Q. No, I don't doubt that, but you also don't
2 dispute that they're still on the books and they
3 haven't been summarily expunged or anything or
4 there's no notice that's been put in those files to
5 say that this deed -- you know, this restrictive
6 covenant is no longer in force?

7 A. I can't answer that one way or another.
8 But restrictive covenants, as I said, has been a
9 nonissue for more than 70 years.

10 Q. So let's go to -- actually, do you know
11 whether or not Illinois law still allows restrictive
12 covenants in the context of religious exemptions?

13 A. I can't answer that. I'm not a lawyer.

14 Q. If Illinois had a specific statutory
15 provision that allowed you to maintain a restrictive
16 covenant in the context of a religious purpose, that
17 would still be government enforcement of a
18 restrictive covenant, wouldn't it?

19 A. I have no idea. I'd have to look at the
20 exact law, and I don't remember any of your experts
21 making any reference to that. So I --

22 Q. No, I --

1 A. -- have no position to respond since it's
2 the first I've heard of it.

3 Q. So going back to the first part of your
4 answer that led to this, the systemic racism that the
5 Illinois general assembly found as a matter of state
6 policy here in the findings, that systemic racism,
7 does that have an effect on voter participation rates
8 by minorities?

9 A. You misstated what they found. They did
10 not find that systemic racism was a matter of
11 official policy in the government of Illinois. They
12 just said systematic racism exists in Illinois just
13 as it exists everywhere in the country and, in terms
14 of voting, except for two or three mail-in --
15 complete mail-in voting states, Illinois has made
16 voting and registration more accessible than any
17 other state in the union.

18 Q. You say in our -- in your expert report in
19 factor 2 that none of the McConchie plaintiffs'
20 experts address racially polarized voting, correct?

21 A. I don't remember. I'm getting really
22 late. You're going to have to --

1 Q. Yea. Let's go to your discussion -- let's
2 go to your discussion of factor 2.

3 A. What page?

4 Q. I'm trying to find it.

5 A. Sure. I'll try to find it too to try to
6 facilitate.

7 And, you know, you've been very helpful.
8 I have no issues. It's sometimes hard to find
9 things.

10 Q. Page 121.

11 A. Gotcha.

12 Q. This is where you begin your discussion of
13 factor 2. Do you see that?

14 A. Yep, I do. And now I understand what
15 you're saying, that I found following Grumbach,
16 talked about racially polarized voting using the
17 wrong definition, at a definition that conflicts with
18 the MALDEF definition and Dr. Collingwood's
19 definition, yes. I'm on that now.

20 Q. So on page 121, you start critiquing both
21 Dr. Fowler, and then later in the section, Dr. Chen
22 as well, correct?

1 A. I'm sorry, I missed that again.

2 Q. If --

3 A. -- is which factor 2, page 121.

4 Q. For factor 2, you address Dr. Fowler
5 extensively and then on page 127, you start talking
6 about Dr. Chen, correct?

7 A. I don't know. I've got to look at
8 page 127.

9 Q. Let's look at the last paragraph of 127.

10 A. Okay. I do finally deal with Dr. Chen,
11 yes. That's correct.

12 Q. So let's kind of keep a little marker
13 there but flip back to page 103 of your report.

14 A. Back to 103?

15 Q. Yes.

16 A. Okay.

17 Q. And in the second to last paragraph, you
18 say that the submission cites no proof from any
19 expert report regarding either of these two factors.
20 You're talking about factors 2 and 7, because that's
21 what --

22 A. What paragraph am I -- is that?

1 Q. The one that begins, "However, the
2 submission cites no proof."

3 A. Which submission are we talking about?

4 Q. McConchie plaintiffs' submissions.

5 A. That's what I found at the time. You may
6 have changed your submission since that. I don't
7 know.

8 Q. No, we haven't changed our submission.
9 We've got the rebuttal reports.

10 But my point is you're faulting us, the
11 plaintiffs, McConchie plaintiffs, for not addressing
12 factors 2 and 7, yet you spend multiple pages
13 addressing Dr. Fowler and Dr. Chen on prongs 2 and 7.
14 So is it accurate to say that we're not addressing
15 factors 2 and 7?

16 A. In your brief, you're not. If you thought
17 Fowler or Chen had persuasive findings on 2 and 7, I
18 presume you would have mentioned it. So it speaks --
19 you know, it certainly speaks something, that despite
20 you having two quantitative experts, you omit it.

21 Q. If you claim Dr. Fowler and Dr. Chen
22 didn't address factors 2 and 7, why are you

1 addressing both Dr. Fowler and Dr. Chen in your
2 discussion of factors -- factor 2?

3 A. You're mixing apples and oranges. I said
4 your report or your submission did not address
5 factors 2 and 7 and perhaps because the information
6 presented by Dr. Chen and Dr. Fowler really didn't
7 establish anything.

8 Q. So what submission are you talking about,
9 our brief with the court or the report?

10 A. Whatever was available, you know, a month
11 ago when I completed this report. I honestly don't
12 remember. I think I cited, you know, what page it's
13 from. We can --

14 Q. I'm trying to understand --

15 A. If you look at where Bone Shirt vs.
16 Hazeltine, H-a-z-e-l-t-i-n-e. So that might orient
17 you where in your submission you talk about the
18 senate factors.

19 Q. Yeah, I'm not sure I follow. What are you
20 saying doesn't address factors 2 and 7, our filing
21 with the Court or the expert reports?

22 A. Your filing. I'm talking about your

1 submission, you're not -- the expert reports. And
2 I'm pretty clear about that, the submission cites.

3 Q. So you agree that our experts have
4 addressed 2 and 7. Your view of our filing with the
5 Court, though, is that we don't address it in our
6 filing with the Court?

7 A. Remind me what 7 is again.

8 Q. 7 is extent to which members of the
9 minority have been elected to public office in the
10 jurisdiction.

11 A. No, you're -- I don't recall your experts
12 addressing that at all. I do recall -- you know, in
13 my view they've addressed factor 2 but not in a
14 dispositive way and I don't recall them addressing
15 factor 7 at all. If you want to look at their
16 reports and show me where they did, I don't think
17 they did.

18 Q. Let's turn to factor 6 which is the --

19 A. What page?

20 Q. I don't know yet. I think it's 141 and
21 143.

22 A. 141?

1 Q. Yeah. That's where it starts. This is
2 the overt or subtle use of race in political
3 campaigns.

4 A. Oh, yeah. I always love that one because,
5 you know, these things are so much fun.

6 Q. Let's see if you still love it 10 minutes
7 from now.

8 A. I'm sorry. I may not. Who knows?

9 Q. Okay.

10 A. I'm hoping we'll have some time for fun
11 during this whole lengthy process but I don't think
12 so.

13 Q. Let me try to paraphrase and you tell me
14 if this is fair or not. So your primary conclusion
15 is that there's no -- this factor isn't met because
16 there aren't subtle or overt appeals to race in
17 campaigns, but to the extent there are any, it is
18 only done by the Republicans, not the Democrats,
19 correct?

20 A. The second half is correct. I don't think
21 the first half is correct. There are quite a number
22 of racial appeals all done by Republicans, which is

1 consistent. Whether I found that, the major divide
2 on matters of interest to minorities is between
3 Republicans and Democrats.

4 Let's look back at what Dr. Grumbach
5 found, that nationwide, racial politics of the
6 National Republican Party drives what the republican
7 parties do in the states and that's manifest here.

8 That's why I told you at the very
9 beginning that these factors are not isolated.
10 They're tied together.

11 Q. Let's say hypothetically that this factor
12 was met but it was met by Republicans. Well, that
13 doesn't mean that the factor hasn't been satisfied.
14 You're just saying it's only because one party has
15 satisfied it, correct?

16 A. Yes, but that's, you know, a distinction
17 that makes all the difference. It is the Republicans
18 who are challenging what the Democrats are doing in
19 Illinois who are responsible for these racial appeals
20 and who also voted against the voting opportunity
21 measures, who want to insert voter ID in the state,
22 who want to purge registration roles, who voted

1 against Medicaid expansion, who voted against
2 immigration reform. It all ties together. It is
3 relevant, not irrelevant, that it is Republicans.

4 Q. And what is your support that the factor
5 can only be met if it's by the party who passed the
6 map? Do you have any scholarly support for that?

7 A. No, but I've analyzed this many times
8 myself. And this is -- this is a very unusual
9 situation, to be honest with you. Usually it's the
10 other way around, you have plaintiffs challenging a
11 Republican plan and the Republicans are the ones
12 making the racial appeals.

13 But I think in terms of understanding the
14 totality of circumstances. That's why I say it's so
15 important to look at them together, not just
16 piecemeal. This fits everything else that we see in
17 the totality of circumstances.

18 The obstacles to minority advancement and
19 minority voting in the state of Illinois and
20 nationwide are the Republicans. Your own expert,
21 Dr. Grumbach, documents that at length. That then
22 gets manifest in Republicans and only Republicans

1 making appeals to race because, as Dr. Grumbach
2 explains, Republican politics is driven by race at
3 the national level and that drives it at the state
4 level.

5 Q. So let's go to the -- you looked at two
6 websites, right, that are databases of campaign
7 appeal -- campaign ads, is that correct?

8 A. Yes.

9 Q. Okay.

10 A. I -- I looked a little more broadly than
11 that but I said these are the two main sources that
12 they put it together.

13 Q. Let's go to that CLC website which you
14 claim in your report -- now tell me if I'm wrong --
15 the only instances it has of Illinois examples would
16 be by Republicans, correct?

17 A. Correct. I'm not saying I didn't miss one
18 of them. I'm human. But I would like to see what
19 you're showing me.

20 Q. Is this the -- let me share. Is this the
21 website that you sent to, CLC race -- looks like -- I
22 took your URL from the report. And then it goes

1 through nationwide and then by state?

2 A. I'm not sure, but let's go through it
3 anyway.

4 Q. Well, let's -- here. You're going to
5 follow along. I'm doing a control F. It's really
6 long, about three states, but I'm going to type in
7 Illinois, okay? And we're going to Illinois.

8 A. Yes.

9 Q. And it gets us to, you know, this
10 congressional ad.

11 A. Right. That's not by Democrats.

12 Q. This is the gubernatorial one
13 that involving Governor Rauner that I think you
14 actually cite to in your report, correct?

15 A. Right. Not by Democrats. And you're at
16 the end.

17 Q. And did you go to Chicago City Council?

18 A. I think Chicago City Council is
19 nonpartisan.

20 Q. Okay.

21 A. So this is not relevant.

22 Q. Okay. Did you see this entry, though?

1 A. Yeah, but it's not relevant. It's
2 nonpartisan. I'm looking at Republicans and
3 Democrats. And you said you're going to find me
4 examples from Democrats. Well, this isn't one.

5 Q. Do you know who Alderman Pat O'Connor is?

6 A. I have no idea and it doesn't matter.
7 These are nonpartisan, not partisan.

8 Q. Do you believe that if this were an
9 election, the Republican would be able to win in this
10 ward?

11 A. I don't think the ward elects Republicans
12 or Democrats.

13 Q. And Dr. Lichtman, I understand you're
14 drawing a hard line here because it helps you to be
15 able to exclude this example by saying that it's --

16 A. No, I'm sorry, I don't accept that
17 insinuation.

18 Q. Okay. Okay.

19 A. I'm not excluding anything --

20 Q. I'll strike that question -- I'll strike
21 that question, Dr. Lichtman.

22 Do you know if Alderman Pat O'Connor has

1 ever run for partisan office before?

2 A. I have no idea. All I see here is Chicago
3 City Council, a nonpartisan position. I don't know
4 who these people are.

5 Q. You don't know if in 1990 he ran for
6 state -- state's attorney in the democratic primary?

7 A. I have no idea what he was doing 20 years
8 before this, no.

9 Q. And you don't know if --

10 A. Let me finish. Or what he's been doing in
11 the 20 years since this.

12 Q. Okay. That's fair. Do you know what he
13 did in 1992, just two years later, that he ran in
14 that race again in the democratic primary?

15 A. I just told you I didn't know what he was
16 doing in the 20 years before this. I just saw that
17 this was a nonpartisan election. I have no idea who
18 these people were or anything about their background.

19 Q. And that's -- fine. If you can't remember
20 20 years, you didn't investigate 20 years ago. Let's
21 go 12 years ago. Do you know in 2009 he ran in the
22 democratic primary for Congress here in Illinois?

1 A. You can keep asking me and I told you I
2 didn't know what he was doing in the 20 years in any
3 period prior to the Chicago City Council.

4 Q. Okay.

5 A. And the only reason I didn't put it in is
6 because it's a nonpartisan election. If you think it
7 should be included, you can make your argument. None
8 of your experts put this in. They had the access to
9 these same sources and the only one I saw from any of
10 your experts was Republican Jim Oberweis. If any of
11 your experts thought that this was relevant to
12 include, they could have included it. They didn't
13 touch it.

14 Q. I'm just trying to understand why you
15 excluded one of the three that it shows here for
16 Illinois. And you're saying that you did that
17 because it was a nonpartisan election even though the
18 candidate had thrice run for partisan office in the
19 past and afterwards as well.

20 So you're saying that because he ran this
21 time in a nonpartisan election, by running three
22 times before in democratic primaries, he's not a

1 Democrat?

2 A. I'm not saying any of that. You're
3 putting a host of words in my mouth. What I said was
4 I looked at this. I saw it was a nonpartisan
5 election. You couldn't identify Republican -- I have
6 no idea if these guys are Republicans or Democrats.
7 Maybe they're both Democrats. I don't know. You
8 know, maybe they're independents. I don't know.
9 None of your experts cited this. You want to chide
10 me for not citing it? That's fine.

11 MR. PANOFF: Okay. I'm going to mark that
12 website as 42.

13 (Lichtman Exhibit No. 42 was marked
14 for identification.)

15 BY MR. PANOFF:

16 Q. All right. Let's talk about an easier
17 one --

18 MR. KASPER: Before we move on, Tom, can
19 we get the time count? I think we've come up on 10
20 hours.

21 THE WITNESS: I think we're at 10 hours.

22 THE VIDEOGRAPHER: We are off the record.

1 The time is 6:12 p.m.

2 (Recess.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 6:20 p.m.

5 BY MR. PANOFF:

6 Q. Dr. Lichtman, I'm not going to ask you
7 about it, but I'm going to make as Exhibit 43 -- this
8 is a PDF of that website entry that we just talked
9 about.

10 Do you see that?

11 A. Sure. And as I said, if you want to
12 include that, that's, you know, 1 out of 6 or
13 something, fine.

14 Q. Okay.

15 MR. PANOFF: So that's Exhibit 43.

16 (Lichtman Exhibit No. 43 was marked
17 for identification.)

18 BY MR. PANOFF:

19 Q. Let's talk about our current President
20 back when he was running for office in 2008. And
21 this is going to be Exhibit 44.

22 (Lichtman Exhibit No. 44 was marked

1 for identification.)

2 THE WITNESS: Are you talking about Joe
3 Biden? I didn't know he was from Illinois.

4 BY MR. PANOFF:

5 Q. No, but he was talking about a politician
6 from Illinois, our senator, Barack Obama. So let's
7 talk a little bit about that. And this is an article
8 that I've made as Exhibit 44, but do you remember
9 when, in 2007, as the primary was going on, getting
10 ready for 2008, President -- Senator Biden at the
11 time said at the time of Barack Obama, "I mean, you
12 got the first mainstream African-American who is
13 articulate and bright and clean and a nice-looking
14 guy. I mean, that's storybook, man."

15 Do you remember that?

16 A. I do. Foot in mouth was right. You know,
17 Biden is prone to gaffes. That's not a racial
18 appeal. That's Biden gaffe. That's not appealing to
19 any race.

20 Q. Okay. So let's go later on in this
21 article to where Jesse Jackson says, "Those are
22 loaded words." And he said that they could be

1 divisive. Do you see that?

2 A. Sure. Jackson -- I know Jesse real well.
3 We've written articles together. And he's a strong
4 partisan of Obama back then and sure, he's going to
5 try to jump on this and make political hay out of it,
6 but --

7 Q. Do you see here in this paragraph where
8 Donna Brazile criticizes it as well --

9 A. Yes.

10 Q. -- and says that it's like this is
11 something out of the 1960s?

12 A. Sure. You know, I'm not defending it. I
13 think it was a big mistake on Biden's part, but I
14 don't equate that with the kind of racial appeals
15 I've documented here. As the headline says, another
16 Biden gaffe, another Biden foot in the mouth. I
17 don't think he was trying to stir up racial voting
18 for Hillary Clinton with that, particularly given how
19 important the African-American community is in
20 primary elections. That couldn't possibly be his
21 motive.

22 Q. Well, to be clear, it wasn't just a Barack

1 and Hillary race at this point. It was a wider
2 field. And you understand that Barack Obama was a
3 U.S. senator from Illinois at the time, correct?

4 A. Yeah, but this was not a racial appeal
5 directed within Illinois. Joe Biden is not an
6 Illinois politician. I don't see how this casts
7 light on how politicians in the state of Illinois use
8 racial appeals and how it ties into the other
9 factors. This is kind of an outlier.

10 Q. Let's go to Exhibit 45 now.

11 A. And again, by the way, none of your
12 experts cited this.

13 (Lichtman Exhibit No. 45 was marked
14 for identification.)

15 BY MR. PANOFF:

16 Q. Let's go to 45. This is a Chicago Tribune
17 article talking about a lawsuit that was filed
18 against our current governor, J.B. Pritzker, during
19 the 2018 campaign where nine of his African-American
20 staffers and one Latino staffer sued the governor
21 claiming in the lawsuit that they were "herded into
22 race-specific positions where they were expected to

1 interact with the public, offered no meaningful
2 advances or chance of advancement and so forth," and
3 it goes on.

4 So did you examine this lawsuit as part of
5 your analysis at all?

6 A. No. I don't see this as a racial appeal.
7 This is something internal -- whether it's true or
8 not, I have no idea -- something internal to
9 Pritzker. It's not a racial appeal the same way as
10 the five or six that I cite in my report on racial
11 appeal. I don't see how this fits.

12 Q. Okay. So during this litigation, if there
13 is an allegation that one of the plaintiffs was told
14 to round up 40 blacks to attend an event so that you
15 would have a higher black turnout, that wouldn't be a
16 racial appeal during a campaign?

17 A. Please, you have a whole page in front of
18 me. Orient me to what you're quoting.

19 Q. I'm going to go to a different exhibit
20 then. I'll show you. This I will mark as 46 now?

21 THE REPORTER: Forty-six.

22 (Lichtman Exhibit No. 46 was marked

1 for identification.)

2 BY MR. PANOFF:

3 Q. Sorry. I'm going to do a search.

4 A. Take your time. You've got your 20
5 minutes.

6 Q. So this is from the summary judgment
7 ruling in that case where I'll represent that
8 Tinsley, who's one of the plaintiffs, was ordered by
9 one of his white supervisors -- he alleges that he --
10 midnight before day off, he instructed Tinsley to
11 round up 40 African-American men for an event the
12 next day. Now -- and then he also had them hop in a
13 dumpster and so forth.

14 Did you examine this as any part of your
15 review?

16 A. No, it's not a racial appeal. It may be
17 very unfortunate. It may be bad things happening
18 behind the scenes in the Pritzker campaign, but
19 that's not the same kind of racial appeal that I've
20 documented here.

21 Q. Let's go back to this prior article
22 involving our current governor. And are you aware on

1 a wiretap, as part of Governor Pritzker's comments to
2 then Governor Blagojevich, that he -- and this is the
3 article here -- that he referred to the senate
4 president who's black -- who was black at the time as
5 crass and referred to Jesse Jackson, Jr. as a
6 nightmare?

7 A. Again, that's not conversation. That's
8 not a racial appeal in a political campaign. It's
9 unfortunate, but --

10 THE REPORTER: I'm sorry, you're talking
11 at the same time.

12 MR. KASPER: You're talking over each
13 other.

14 THE WITNESS: I was giving my answer.
15 I'll give it again. This is not a racial appeal in a
16 political campaign. This is a behind-the-scenes
17 conversation. I may not like it, but it's not of the
18 same order as what I was looking at.

19 And, again, this isn't -- remember,
20 plaintiffs are trying to prove this point and they
21 didn't cite this and it's not relevant to cite.

22 BY MR. PANOFF:

1 Q. Okay. This came out during the
2 gubernatorial campaign. I showed you the date of the
3 article was October of 2018. So the fact that this
4 issue and this discussion was being had weeks before
5 an election occurred you think is irrelevant?

6 A. I didn't say it was irrelevant. I said
7 it's very unfortunate and I don't like it, but it's
8 not the same as a racial appeal in a political
9 campaign.

10 In fact, rather than Pritzker using this
11 as a racial appeal -- I'm sure he was very unhappy
12 that this private conversation came out. This wasn't
13 something he was positively promoting like these
14 other candidates who were using race to advance their
15 political fortunes.

16 (Lichtman Exhibit No. 47 was marked
17 for identification.)

18 BY MR. PANOFF:

19 Q. I'll mark this as the next exhibit, which
20 this is the Illinois democratic committee in Kankakee
21 County where the chairman of that committee posted
22 this on the county's Facebook page with the phrase,

1 "Make America hate again." And as the article says,
2 the text is, "What's the difference between a klan
3 hood and a MAGA hat? The clan hood was made in
4 America."

5 Did you study this?

6 A. I didn't see this and maybe this should
7 be -- you know, this is the one that you cited that,
8 you know, your experts missed and, frankly, I didn't
9 see it on those other websites. And I'd have to look
10 at it a little bit further to see if this really
11 is -- who these -- what this democratic group is.
12 But if it really is the Illinois Kankakee County
13 democratic committee, I think it should be included,
14 yes.

15 Q. Dr. Lichtman, let's talk -- let's get away
16 from this factor and I want to talk to you about
17 briefly factor 5, which is the extent to which
18 minority groups have borne the effect of
19 discrimination in areas of education, health and so
20 forth.

21 A. What page?

22 Q. I don't know. It's not relevant for my

1 purposes.

2 A. You're just going to talk about this
3 generally, not what I specifically say about it?

4 Q. Correct.

5 A. Okay.

6 Q. So I'm going to share another, one which
7 is a prior one. I don't remember the exhibit, but
8 this is the Court's opinion from the 2011 litigation
9 that you testified in. And let me go to that. Hold
10 on one second. This is on page 18.

11 Do you disagree here that the Court found
12 that there was a history of discrimination against
13 Latinos, in the highlighted portion?

14 A. I have to look.

15 Q. You can read it to yourself.

16 A. Sure. Yes, I remember that. And if you
17 want me to comment on it, I will. If you just want
18 me to say I see it, I'll say I see it. But I would
19 have several comments about it.

20 Q. Okay. Dr. Lichtman, I'm good with this
21 exhibit for now. Let's go back to when you were
22 talking about your reconstituted election analyses

1 that you did. Remember that discussion?

2 A. Yes. Are we going to a specific page
3 again or just talking generally?

4 Q. Just in general. So the only underlying
5 data that you used for your analyses for those
6 reconstituted elections was this spreadsheet that was
7 shown as an exhibit yesterday, is that correct?

8 A. When you say underlying data would be the
9 election returns, and I don't recall the spreadsheet
10 exactly. And I didn't do it, you know, as I said,
11 the mapmakers did it. But I think that's the same
12 data that I used. I can't verify it. Looked like
13 it.

14 Q. The mapmakers for the democratic caucus
15 did the reconstitution analysis that you relied on?

16 A. Yes.

17 Q. What did you do to test the accuracy of
18 that model or their calculations?

19 A. There's no model here and there's no
20 calculations. It's just adding up numbers.

21 Q. And did you check to see if the
22 calculations were correct?

1 A. There's no calculations. All they did was
2 give me numbers and which you just add up. It's not
3 like what Dr. Chen did where you're dependent upon
4 the reliability of a whole bunch of calculations.

5 Q. So, Dr. Lichtman --

6 A. Let me finish. This is addition and
7 division.

8 Q. Did you check that addition and that
9 division?

10 A. Yes, I checked the addition and division.

11 Q. You checked all the mathematical accuracy
12 of everything that you were provided by the
13 democratic caucus for that -- for those
14 reconstitution analyses?

15 A. You've asked me something differently now.
16 Did I go behind what they gave me? No. I have no
17 basis for going behind it.

18 Q. So all you did is check the addition and
19 the division in terms of checking the accuracy?

20 A. That's correct.

21 MR. PANOFF: Okay. Let's go off the
22 record. I just want to make sure there's nothing

1 else. How much do we have left of the 20 minutes, to
2 the extent there is anything else?

3 THE VIDEOGRAPHER: We are off the record.
4 The time is 6:33 p.m.

5 (Recess.)

6 THE VIDEOGRAPHER: We are back on the
7 record. The time is 6:39 p.m.

8 BY MR. PANOFF:

9 Q. I thank you, Dr. Lichtman. Just a few
10 more questions here.

11 A. Sure.

12 Q. On the reconstitution analysis that we've
13 been talking about, were any of the precincts that
14 were analyzed broken up?

15 A. You have to ask Mr. Maxson. I think
16 that's what I told everyone yesterday. I don't know.
17 There's a chance that there are and there are methods
18 for dealing with it that both Dr. Collingwood and I
19 used.

20 Q. Sorry. You don't know, but if there were,
21 there are methods that you have to correct for it?

22 A. Not that I have. I'm not a mapmaker. I'm

1 not a demographer. I don't do this. But there are
2 methods for dealing with it because this is a
3 standard methodology that's been in use for decades.
4 But I don't -- let my finish. I don't do it myself.
5 So if you want to ask about that, you should ask
6 Mr. Maxson.

7 Q. And what were you talking about that you
8 and Dr. Collingwood both do to account for if it was
9 broken up?

10 A. We both do reconstituted election analyses
11 and we both know that there are methodologies for
12 dealing with split precincts. And it's not an issue
13 in the ones I did because I'm not -- these results
14 are very robust.

15 Q. And how is it that you know that they're
16 robust?

17 A. Because we're talking about projected
18 vote -- not projected -- reconstituted votes for the
19 minority candidate of choice ranging from about 57 to
20 a little over 60 percent.

21 Q. You would agree if the precincts were
22 broken up, there would have to be some type of

1 disaggregation process that would be done, correct?

2 A. Yes. There is some process. As I said,
3 this methodology has been around for a very long time
4 and there are processes for dealing with that.

5 Q. But you just -- you don't know because the
6 data was given to you, but you don't know how the
7 data was formulated, correct?

8 A. I think I told you I don't do this. I'm
9 not a mapmaker. The mapmaker did it and there are
10 standard ways of dealing with this.

11 Q. Did you do a reconstitution analysis using
12 the Berrios versus Kaegi race to compare SB 927
13 versus the remedial plan?

14 A. I thought that the Berrios race was
15 inappropriate and I would not look at a
16 reconstitution for the Berrios race. And if you want
17 me to recount all the reasons why I think it's the
18 wrong race, I will, but I think it has no meaning.

19 Q. I just -- I wanted to clarify that you
20 didn't do one, regardless of the reason, you didn't
21 do one using the Berrios versus Kaegi race, correct?

22 A. I didn't look at it. I think one was

1 done, but I decided I'm not going to look at it
2 because it's irrelevant.

3 Q. One was done by whom?

4 A. It would not have been done by me. It
5 would have been done by Mr. Maxson. But I didn't
6 look at it because it's irrelevant.

7 Q. If you didn't look at it, how did you know
8 one was done?

9 A. I was told one was done. And I think I
10 might have even asked, do you want to look at this?
11 And I decided no.

12 Q. Who asked if you wanted to look at it?

13 A. No, no, I thought about it myself and I'm
14 thinking, do I want to look at it? No, because it's
15 totally misleading and I'm not going to take it into
16 account in any of my analyses.

17 Q. Okay. So you thought one would be done,
18 you asked them to do it, but then you decided you
19 didn't want to look at it?

20 A. Correct. That's exactly right. You know,
21 I thought about this a lot and decided, no, I don't
22 want to give any credence to the use of the Berrios

1 election, so I didn't look at it at all. Didn't take
2 it into account in any of my -- well, it came in
3 after my reports, but I didn't take it into account
4 in any of my deposition testimony, no.

5 Q. Okay.

6 MR. PANOFF: Thank you, Dr. Lichtman. I
7 believe that's all that I have. But before we close
8 it out, I just want to check in with our
9 co-plaintiffs to make sure that there's nothing they
10 have on their end. So I think Denise and Jon are --
11 I don't know if Jon is still on the line, but
12 Denise -- yeah, Jon is. I see him now there, too.
13 See if there's anything that they have.

14 MR. GREENBAUM: I don't have any further
15 questions unless the defendants decide they want to
16 ask the witness some questions.

17 MR. PANOFF: Denise, anything on your end?
18 Is there anyone else there from MALDEF?

19 MS. HULETT: I'm here. I'm sorry. I was
20 searching for my unmute button. No, I don't have any
21 questions.

22 MR. PANOFF: Mike, is there anything

1 you're going to do?

2 MR. KASPER: Yes, I'm going to ask a few
3 questions, just a few.

4 MR. PANOFF: Okay.

5 MR. KASPER: Okay. Everybody ready?

6 EXAMINATION BY COUNSEL FOR THE WITNESS

7 BY MR. KASPER:

8 Q. Dr. Lichtman, I just have a couple of
9 questions. Do you remember yesterday when you
10 were -- seemed like a long time ago now -- that you
11 were talking about, with Ms. Hulett, this notion of
12 50 percent plus 1? Do you recall that?

13 A. I do.

14 Q. And what do you remember about that?

15 A. I remember -- we're not talking about CVAP
16 or VAP. What I'm talking about are demographic
17 number there. We're talking about the probability of
18 a district electing a minority candidate of choice
19 and my --

20 Q. So when you talk about --

21 A. Pardon?

22 Q. No, go ahead.

1 A. And my point was -- you know, we went back
2 and forth a lot about this -- more likely than not is
3 something above 50/50. 50/50 is an equal
4 opportunity. And I think I said I'd be very happy if
5 we even reached 51, but I didn't put that as an
6 absolute requirement.

7 Q. And I'm trying to get my screen set up and
8 I'm having difficulties as well. And Mr. Panoff,
9 when he was talking to you a little while ago, he was
10 talking about targeting and the table that you used.
11 I believe it was table 8 --

12 A. Correct.

13 Q. -- where you were talking about districts
14 that were targeted?

15 A. Correct.

16 Q. Do you recall that?

17 A. I do.

18 Q. And he showed you a couple of maps. Did
19 you have an opportunity to review those maps?

20 A. I have no idea what those maps were. It
21 would take me quite some time to review them.

22 Q. And you've said a couple of times you

1 might be right about this or that might be a mistake.
2 Did you know that you had made mistakes or were you
3 just admitting it was possible?

4 A. No, I had no idea whether I was mistaken
5 or not. And he brought two or three out of the many
6 I had. But, you know, as I said, you find a real
7 error, I'm not going to -- I'm not going to stick to
8 what I did. I'm willing to say, yeah, I'll make the
9 correction. But even if I wiped out those few, it
10 would still be quite a very large number of
11 minorities still targeted.

12 Q. Okay. And then finally, I want to talk a
13 little bit more about, you had a fairly lengthy,
14 somewhat circular conversation with Mr. Panoff about
15 the City of South Miami case.

16 Do you recall that conversation?

17 A. I surely do. And as I said, I don't even
18 remember that little snippet from --

19 Q. I'm going to try to share my screen if I
20 can here.

21 A. Okay.

22 Q. Do you see this? Can everybody see this?

1 A. I can see it.

2 Q. Okay.

3 A. Not easily. But I can see it.

4 Q. This is the court order regarding the City
5 of South Miami where your qualifications as an expert
6 were challenged.

7 A. Yes, I'm familiar with that.

8 Q. I know that I'm going to regret reading
9 this sentence to you. Do you see the sentence that
10 I've highlighted that says, "Dr. Lichtman has been
11 recognized as an expert across a wide variety of
12 different subjects, including historical analysis,
13 statistical analysis, political analysis,
14 discriminatory legislative intent and impact, racial
15 animus, race relations, voting rights, redistricting,
16 and data analysis."

17 Do you see that?

18 A. Yep. That's what happens when you get old
19 enough.

20 Q. Right. And you go on to the section 2
21 regarding reliability and the Court said, "Defendants
22 also maintain that Dr. Lichtman must be precluded

1 from testifying because his opinions are not based on
2 any reliable methodology."

3 Do you see that?

4 A. I do.

5 Q. And do you remember that challenge?

6 A. I do.

7 Q. And then the Court goes on to say,
8 "Instead, defendants challenge Dr. Lichtman's
9 opinions on the basis that he fails to specifically
10 explain the methods or principles utilized in
11 selecting, interpreting, and weighing sources, and he
12 fails to explain what statistical methodology he uses
13 in quantitative statistical analysis."

14 Do you see that sentence?

15 A. Yeah, I do.

16 Q. And finally, the Court concludes, "Upon
17 review of Dr. Lichtman's report and deposition
18 testimony, the Court concludes that Dr. Lichtman's
19 opinions are sufficiently based on reliable
20 methodological principles. At the outset, the report
21 explains in detail the sources of information or data
22 relied upon, the underlying principles and methods

1 used, the relevant analytical steps taken, and
2 Dr. Lichtman's experiences and credentials, all of
3 which serve as the foundation for his opinions."

4 Do you remember that?

5 A. I do remember that.

6 Q. And were you permitted to testify in that
7 case?

8 A. At great length I testified in that case
9 and I didn't change anything that I had produced
10 prior to this Court's ruling on this.

11 Q. And do you know when the Court issued its
12 ruling?

13 A. Pretty recently. A month ago or so ago,
14 yeah.

15 Q. And do you recall what happened?

16 A. Yes. The Court credited my testimony on
17 the very difficult issue of intentional
18 discrimination and found my testimony comprehensive,
19 persuasive, sound, and relied on my testimony in
20 reaching her opinion and spent considerable amount of
21 time, page after page after page, citing my
22 testimony.

1 Q. Okay. I'm going to go to that decision a
2 little bit if I can. This is your report. Sorry
3 about that. There you go.

4 Do you see this document? Can everybody
5 see this?

6 A. Yeah.

7 Q. Is this the decision you're talking about?

8 A. Yep. Maybe it's a little more than a
9 month ago, but recently.

10 Q. Yeah, I believe it was in September.

11 A. Yeah.

12 Q. And I'll get to the highlighted part.

13 Sorry, folks. And this I'm really -- I know I'm
14 going to regret. But if I recall correctly, you get
15 your own heading in this decision by the Court.

16 A. Yes, that's correct.

17 Q. I believe on page 47. Page 47, you get
18 your own heading, number 16, Dr. Allan Lichtman.

19 A. I can't see the page, frankly. All I can
20 see is page 109.

21 MR. KASPER: Can everybody see that?

22 MR. PANOFF: Mike, we can only see the

1 signature block on the opinion.

2 MR. KASPER: Oh, no.

3 THE WITNESS: Maybe you need to go off the
4 record for a minute and have --

5 MR. KASPER: Yeah, give me a second to
6 figure this out.

7 THE VIDEOGRAPHER: We are off the record.
8 The time is 6:52 p.m.

9 (Discussion off the record.)

10 THE VIDEOGRAPHER: We are back on the
11 record. The time is 6:54 p.m.

12 BY MR. KASPER:

13 Q. All right. Dr. Lichtman, I'm referring
14 your attention to what's on the screen here, which is
15 the final decision in the City of South Miami case.
16 Do you see that? And there's a paragraph 16 or
17 subsection 16 that lists --

18 A. I see it.

19 Q. -- your name, Dr. Allan Lichtman?

20 A. That's me. They even spelled my first
21 name right, which often doesn't happen.

22 Q. Yeah. The Court begins by saying,

1 "Dr. Allan Lichtman testified at trial and his
2 comprehensive expert report was admitted into
3 evidence. Dr. Lichtman is a distinguished professor
4 of history at American University with significant
5 expertise on the topics of American history,
6 political history, voting rights, quantitative
7 methodology, civil rights, historical methodology,
8 social science, racial animus, and race relations.
9 He has been recognized as an expert across a wide
10 variety of different subjects and fields, including
11 historical analysis, statistical analysis, political
12 analysis, discriminatory legislative intent and
13 impact, racial animus, race relations, voting rights,
14 redistricting, and data analysis."

15 Do you remember that?

16 A. I remember it well.

17 Q. Then she goes into -- the Court goes in to
18 talk about your reports. And then I'll draw your
19 attention to a little bit further.

20 And so, Dr. Lichtman, did you testify at
21 this case?

22 A. I testified I think all day.

1 Q. And --

2 A. And as I said, the same report that I had
3 before they filed their motion.

4 Q. Okay.

5 MR. KASPER: All right. Thank you. I
6 have no further questions.

7 MR. PANOFF: I think we're good. Thank
8 you for your time, Dr. Lichtman. We appreciate it.

9 MR. GREENBAUM: No, no, no, we're not
10 good.

11 MR. PANOFF: Sorry, Jan.

12 MR. GREENBAUM: I've got a question. I
13 said I might have something if they --

14 THE WITNESS: You guys are going to --

15 MR. GREENBAUM: You went there. You went
16 there.

17 EXAMINATION BY COUNSEL FOR PLAINTIFFS

18 BY MR. GREENBAUM:

19 Q. All right. I need a screen share. This
20 is Exhibit 2 from yesterday. This goes to the issue
21 of reconstituted election districts. This was your
22 deposition in Campuzano in 2001, page 83, line 4 to

1 line 21.

2 I'm going to read the question and answer
3 and then I'm going to ask at the end whether it read
4 it correctly, okay? Can you see it?

5 A. No, I don't see anything.

6 Q. Oh, I didn't hit the share button. How
7 about now? Do you see it?

8 A. Yes.

9 Q. All right. Sorry. I've got to clear some
10 other things from my screen.

11 A. I think we already went over this.

12 Q. Not -- no, I think you characterized it a
13 little bit differently, both yesterday and then a few
14 minutes ago.

15 A. I don't think so, but --

16 Q. Are you ready?

17 A. -- saying stuff I saw.

18 Q. Are you ready?

19 A. I'm ready. Go ahead.

20 Q. You're ready.

21 "Question: And is there a minimum number
22 that you use in determining whether or not a

1 majority-minority district is in your view an
2 effective opportunity district?

3 "Answer: Again, I don't use arbitrary
4 numbers, but let's take some of the methodologies.
5 The recompiled elections, unless there are special
6 circumstances, I look for an average vote for
7 minority candidates in districts that we are
8 analyzing over 50 percent. I would be suspicious of
9 a district if it comes in under 50 percent; and
10 obviously you would be more comfortable if it was not
11 just 51, but something over that; but I am looking
12 for basically over 50 percent. And even a 51 might,
13 depending on how the candidate does statewide, for
14 example, in Texas we a candidate who had 18 percent
15 statewide. So 51 is pretty good numbers in a
16 district."

17 Did I read that correctly?

18 A. You did, just as we did yesterday.

19 MR. GREENBAUM: All right. No further
20 questions.

21 THE WITNESS: All right.

22 THE VIDEOGRAPHER: We are off the record.

1 The time is 6:59 p.m.

2 (Whereupon, at 6:59 p.m., the taking of
3 the instant deposition ceased.)

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CERTIFICATE OF REPORTER

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STATE OF MARYLAND)

I, MARY GRACE CASTLEBERRY, RPR, the officer
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typewriting under my supervision; and that I am
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My commission expires: 7/18/2023

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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.

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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.

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