Attachment 7

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DOROTHY NAIRNE, ET AL : CIVIL ACTION

VERSUS : NO. 3:22-178-SDD

KYLE ARDOIN, ET AL : DECEMBER 5, 2023

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DAY 7
BENCH TRIAL
BEFORE THE HONORABLE SHELLY D. DICK
UNITED STATES CHIEF DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFFS:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY USING COMPUTER-AIDED TRANSCRIPTION SOFTWARE

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MARVIN P. KING
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10:01a

(DECEMBER 5, 2023)

PROCEEDINGS

(CALL TO THE ORDER OF COURT.)

THE COURT: GOOD MORNING, EVERYONE. BE SEATED.

MS. MCKNIGHT, I THOUGHT YOU WERE FINISHED. YOU'RE NOT FINISHED?

MS. MCKNIGHT: NO. YESTERDAY WHEN YOU ASKED IF --

THE COURT: OH, THAT'S RIGHT. WE TOOK A BREAK AT -- OKAY. THANK YOU FOR HAVING DR. CLARK BACK ON THE STAND.

MS. MCKNIGHT: MAY I PROCEED, YOUR HONOR?

THE COURT: YOU MAY.

MS. MCKNIGHT: THANK YOU.

DIRECT EXAMINATION (CONTINUED)

BY MS. MCKNIGHT:

Q DR. LEWIS, LET'S START WHERE WE ENDED YESTERDAY --

THE COURT: DR. LEWIS. I'M SORRY.

MS. MCKNIGHT: THAT'S OKAY.

THE COURT: IT'S BEEN A LONG WEEK, DR. LEWIS.

THE WITNESS: I KNOW IT HAS.

BY MS. MCKNIGHT:

10:01a

Q LET'S START WHERE WE ENDED YESTERDAY WITH DEMONSTRATIVE LEWIS 4. WE'LL BRING IT UP ON THE SCREEN.

DO YOU REMEMBER TESTIFYING ABOUT THIS YESTERDAY, DR. LEWIS?

A I DO.

Q OKAY. COULD YOU TELL THE COURT: WHAT IS THE AVERAGE PERSON BLACK VAP NEEDED FOR A WIN BY A BLACK-PREFERRED CANDIDATE IN PLAINTIFFS' ILLUSTRATIVE HD 1?

A AS, YOU KNOW, ESTIMATED FROM THESE DATAS -- APPROXIMATELY FROM THESE DATA -- 49 PERCENT.

Q AND WHAT DOES THIS ANALYSIS SHOW ABOUT THAT FIGURE FOR PLAINTIFFS' ILLUSTRATIVE HD 23?

A 45 PERCENT.

Q AND FOR HD 38?

A 35 PERCENT.

Q AND FOR HD 60?

A 34 PERCENT.

Q AND HD 65?

A 48 PERCENT.

Q HD 68?

A 38 PERCENT.

Q HD 69?

A 42 PERCENT.

10:03a

Q SD 17?
A 41 PERCENT.
Q SD 19?
A 13 PERCENT.
Q SD 38?
A 44 PERCENT.
Q HAVE WE COVERED ALL THE FIGURES ON THIS CHART?
A IN THAT COLUMN, YES.
Q FOR ANY OF THE TEN DISTRICTS WE JUST DISCUSSED, ACCORDING TO THIS ANALYSIS, DID ANY OF THOSE DISTRICTS NEED 50 PERCENT BLACK VAP IN ORDER TO ELECT A BLACK-PREFERRED CANDIDATE?
A ON AVERAGE, NO.
Q AND I'D LIKE TO MOVE ON TO ASK YOU ABOUT THE DISTRICTS THAT BORDER THESE TEN DISTRICTS.
NOW, IN CONDUCTING YOUR ANALYSIS YOU RELIED ON DR. HANDLEY'S DATA. CORRECT?
A THAT'S CORRECT.
Q WERE YOU ABLE TO CONDUCT YOUR ANALYSIS ON EVERY SINGLE DISTRICT IN THE PLANS?
A NO, I DID NOT.
Q AND WOULD YOU HAVE BEEN ABLE TO?
A I THINK IT WOULD HAVE BEEN -- IT WOULD HAVE BEEN QUITE TIME-CONSUMING, MOSTLY FOR COMPUTER, TO

10:04a

HAVE ANALYZED EVERY DISTRICT THAN DISTRICT-BY-DISTRICT THE WAY THAT WE DID.

Q SO I'D LIKE TO ASK YOU QUESTIONS ABOUT SOME OF THE DISTRICTS WHERE YOU WERE ABLE TO CONDUCT AN ANALYSIS. WE'RE GOING TO PULL UP TWO DOCUMENTS ON THE SCREEN. ON THE LEFT SIDE LET'S START WITH PLAINTIFFS' EXHIBIT 72. THESE ARE ENLARGED MAPS OF PLAINTIFFS' ILLUSTRATIVE DISTRICTS. WE BELIEVE THIS HAS ALREADY BEEN ADMITTED THROUGH MR. COOPER'S TESTIMONY.

NOW, ON THE RIGHT SIDE OF THE SCREEN, LET'S PULL UP YOUR REPORT, DTH 52. SO IN PLAINTIFFS' ILLUSTRATIVE MAPS, LET'S MOVE TO PAGE PL -- PAGE 22 TO LOOK AT HD 65. AND THEN ON THE RIGHT-HAND OF THE SCREEN IN YOUR REPORT, LET'S MOVE TO PAGE 38 FOR THE FIGURES ON THE DISTRICTS NEAR THIS DISTRICT.

TO START WITH, DID I UNDERSTAND CORRECTLY THAT HD 65 IN PLAINTIFFS' ILLUSTRATIVE PLAN DOES NOT NEED 50 PERCENT BVAP TO WIN, ACCORDING TO YOUR ANALYSIS?

A 65 I'M NOT SURE APPEARS ON THIS PAGE, SO WE SHOULD CHECK. IS IT --

Q LET'S TURN TO PAGE 39. AND LET'S LOOK AT H23-65 AND THE AVERAGE PERCENT BLACK VAP NEEDED FOR WIN. IS THAT FIGURE ABOVE 50 PERCENT OR AT 50

10:06a

PERCENT?

A I -- WITHOUT A PIECE OF PAPER, IT'S A LITTLE HARD TO READ ACROSS THE LINE. IS IT CORRECT THAT THE NUMBER THAT'S -- THAT REGISTERS WITH THAT LINE IS 46?

Q YES. COULD WE --

MS. MCKNIGHT: COULD WE -- MR. WILLIAMSON, COULD WE HIGHLIGHT THE ROW FOR H23-65.

BY THE WITNESS:

A 48. LESS THAN 50.

Q SO I'D LIKE TO ASK THE TRIAL TECH TO PUT A RED CIRCLE AROUND THE NUMBER 65 ON THE LEFT SIDE OF THE SCREEN.

OKAY. LET'S -- ON THE RIGHT SIDE OF THE SCREEN, LET'S TURN BACK TO PAGE 38 AND LET'S START WITH THE DISTRICT BORDERING TO THE WEST OF HD 65. THIS IS PLAINTIFFS' ILLUSTRATIVE DISTRICT 29.

NOW, ON THE RIGHT SIDE OF THE SCREEN IN YOUR REPORT, WHEN YOU LOOK AT THE ROW TITLED -- AND I'D ASK THIS TO BE HIGHLIGHTED AS WE GO -- THE ROW TITLED "H 2329," WHAT IS THE AVERAGE PERCENT VAP NEEDED FOR A WIN IN THAT DISTRICT?

A 42.

Q AND IS THAT BELOW 50?

A IT IS.

Q LET'S PUT A RED CIRCLE AROUND THE NUMBER 29

10:07a

ON THE MAP.

NOW, LET'S MOVE ON TO THE NEXT DISTRICT. I SEE DISTRICT 62 UP IN THE UPPER RIGHT CORNER. ON THE RIGHT-HAND PAGE, LET'S TURN TO PAGE 39 OF YOUR REPORT AT LDTX 52. AND LET'S HIGHLIGHT THE ROW FOR S23 -- I MEAN H23-62.

WHAT IS THE BVAP NEEDED TO WIN FOR H23-62?

A THE ESTIMATE THAT APPEARS THERE IS 39 PERCENT.

Q AND IS THAT BELOW 50?

A IT IS BELOW 50.

Q LET'S PUT A RED CIRCLE AROUND THE NUMBER 62 IN THE MAP ON THE LEFT.

NOW LET'S GO BACK TO THE RIGHT SIDE. LET'S LOOK AT HD 63. COULD WE HIGHLIGHT THE ROW FOR HD 63.

DR. LEWIS, WHAT IS THE PERCENT BLACK VAP NEEDED FOR A WIN IN HD 63 IN PLAINTIFFS' ILLUSTRATIVE MAP?

A THAT ESTIMATE IS 46 PERCENT.

Q AND IS THAT AT 50 OR ABOVE?

A THAT IS BELOW 50.

Q AND THEN IN THE LEFT-HAND SIDE OF THE SCREEN, LET'S PUT A CIRCLE AROUND HD 63, PLEASE.

LET'S MOVE ON TO THE NEXT ONE. WE HAVE -- ROTATING DOWN TO THE SOUTH THERE IS DISTRICT HD 67.

10:08a

DO YOU SEE THAT IN THE MAP, DR. LEWIS?

A I DO.

Q OKAY. SO ON THE RIGHT SIDE, WHAT IS THE BVAP NEEDED FOR WIN IN HD 67 IN PLAINTIFFS' ILLUSTRATIVE MAP?

A THE ESTIMATE IS 26.

Q OKAY. IS THAT BELOW 50?

A IT IS.

Q LET'S PUT A RED CIRCLE AROUND HD 67 IN PLAINTIFFS' ILLUSTRATIVE MAP.

MOVING ON AROUND, I SEE HD 61 IN THE AREA. DO YOU SEE THAT DISTRICT?

A I DO.

Q SO ON THE RIGHT SIDE OF THE SCREEN, LET'S LOOK AT THE BVAP NEEDED FOR WIN IN HD 61 IN PLAINTIFFS' ILLUSTRATIVE 61. WHAT IS THAT FIGURE?

A 20.

Q AND IS THAT BELOW 50?

A IT IS.

Q AND IN THE LEFT SCREEN LET'S PUT A RED CIRCLE AROUND 61.

NOW, I SEE HD 68 BORDERING HD 65. DO YOU SEE THAT, DR. LEWIS?

A I DO.

Q AND ON THE RIGHT-HAND SIDE OF YOUR SCREEN,

10:09a

WHAT IS THE PERCENT BLACK VAP NEEDED FOR WIN IN HD 68?

A 38.

Q IS THAT BELOW 50?

A IT IS.

Q LET'S PUT A RED CIRCLE AROUND THE NUMBER 68 ON THE LEFT-HAND SIDE OF THE SCREEN.

LET'S MOVE ON TO HD 69. IN YOUR REPORT, WHAT WAS THE BVAP NEEDED FOR WIN IN -- IDENTIFIED BY THE ANALYSIS YOU CONDUCTED IN YOUR REPORT?

A THE ESTIMATE IS 42.

Q AND IS THAT BELOW 50?

A IT IS.

Q SO LET'S PUT A RED CIRCLE AROUND HD 69 IN PLAINTIFFS' ILLUSTRATIVE MAP.

NOW, I SEE A DISTRICT ON THE EASTERN BORDER OF HD 65 AS BEING HD 64. DO YOU SEE THAT, DR. LEWIS?

A I DO.

Q WERE YOU ABLE TO CONDUCT AN ANALYSIS ON HD 64 FOR YOUR REPORT?

A I DID NOT.

Q AND NOW LET'S TURN THE PAGE TO PAGE 40 OF YOUR REPORT, LDTX 52 AT PAGE 40. AND I SEE A DISTRICT BORDERING THE SOUTH OF HD 65, DISTRICT NO. 101 IN PLAINTIFFS' ILLUSTRATIVE PLAN.

10:11a

WHAT WAS THE BVAP NEEDED FOR WIN ACCORDING TO YOUR ANALYSIS IN HD 101?

A THE ESTIMATE IS 37.

Q IS THAT BELOW 50?

A IT IS.

Q LET'S PUT A RED CIRCLE AROUND 101 IN THE MAP.

SO, DR. LEWIS, FOR THE SEVEN RED-CIRCLED DISTRICTS AROUND HD 65 IN PLAINTIFFS' ILLUSTRATIVE PLAN, DID ANY OF THESE NEED 50 PERCENT BVAP IN ORDER FOR A BLACK CANDIDATE TO BE -- TO WIN?

A THE ESTIMATED AVERAGE PERCENT NEEDED TO WIN WAS BELOW 50 PERCENT IN EVERY CASE.

Q ALL RIGHT. LET'S STAY ON LDTX 52, BUT IN THE MAP ON THE LEFT SIDE LET'S SWITCH FROM PL 72 TO PL 53.

NOW, DR. LEWIS, WE WERE JUST DISCUSSING AN EXAMPLE IN PLAINTIFFS' HOUSE ILLUSTRATIVE MAPS. I'D LIKE TO ASK YOU ABOUT AN EXAMPLE FROM PLAINTIFFS' SENATE ILLUSTRATIVE MAPS. SO IN PL 53 LET'S TURN TO PAGE 10 ON THE MAP. IN LDTX 52 COULD WE TURN THE PAGE TO THE NEXT PAGE, PLEASE.

MS. MCKNIGHT: THANK YOU, MR. WILLIAMSON.

BY MS. MCKNIGHT:

Q SO STARTING WITH THE DISTRICT AT THE HEART

10:13a

HERE, SENATE DISTRICT 19 IN PLAINTIFFS' ILLUSTRATIVE PLANS, IN LDTX 52 WHAT DOES YOUR ANALYSIS SHOW IS THE BVAP NEEDED FOR WIN FOR S23-19? AND WE'LL HAVE THAT HIGHLIGHTED FOR YOU.

A 30 PERCENT.

Q AND IS THAT FIGURE BELOW 50?

A IT IS.

Q OKAY. SO IN THE MAP LET'S PUT A RED CIRCLE AROUND THE NUMBER 19.

NOW, IT'S A LITTLE HARD TO SEE, DR. LEWIS, BUT THERE IS A NUMBER 3 -- THESE ARE PLAINTIFFS' ILLUSTRATIVE MAPS. THERE IS A NUMBER 3 UNDER THE KEY THAT SAYS "ILLUSTRATIVE SENATE." AND UNDER THE WORD -- NEXT TO THE WORD "MILES," YOU CAN BARELY MAKE OUT A NUMBER 3. DO YOU SEE THAT?

A I HAVE VERY POOR VISION. I'LL TAKE YOUR WORD THAT IT'S THERE.

Q LET'S START THERE, BECAUSE IT'S THE LOWEST NUMBER. WE'LL JUST GO IN NUMERICAL ORDER.

COULD YOU LOOK AT YOUR ANALYSIS IN YOUR REPORT FOR S23-3. THIS IS PLAINTIFFS' ILLUSTRATIVE SENATE MAP 3. AND WHAT IS THE PERCENT VAP NEEDED FOR A WIN IN SD 3?

A 15.

Q IS THAT LOWER THAN 50?

10:15a

A IT IS.

Q SO LET'S PUT A RED CIRCLE AROUND THAT SLIGHTLY SHADED NO. 3 UP NEXT TO THE WORD "MILES" IN THE MAP. SO IN THE MAP -- THERE WE GO. THANK YOU.

SO NOW -- IT'S A LITTLE HARD TO SEE IN THE ILLUSTRATIVE WITH THE KEY OVER IT. BUT LET'S LOOK AT SD 4 AND WHICH -- WHAT THE RESULT IS FOR BLACK VAP NEEDED FOR WIN IN SD 4; S23-4. AND WE'LL HIGHLIGHT THAT FOR YOU.

AND WHAT IS THE BLACK VAP NEEDED FOR A WIN IN SD 4?

A 16.

Q OKAY. AND I'LL REPRESENT TO YOU THAT THE NUMBER 4 IS HIDING JUST BENEATH THE WORD "MSA" IN ILLUSTRATIVE SENATE.

MS. MCKNIGHT: SO, MR. WILLIAMSON, COULD WE PUT A CIRCLE AROUND THAT WORD "MSA" SO IT'S CLEAR WHERE SENATE DISTRICT 4 IS IN PLAINTIFFS' ILLUSTRATIVE MAP. THANK YOU.

BY MS. MCKNIGHT:

Q LET'S MOVE ON TO HD -- TO SD 5. DO YOU SEE SENATE DISTRICT 5 IN THE MAP JUST NORTH OF THE RIVER IN SENATE DISTRICT 7?

A YES, I DO.

Q SO IN YOUR ANALYSIS FOR SENATE DISTRICT 5,

10:17a

WHAT DOES YOUR ANALYSIS SHOW AS THE BLACK VAP NEEDED FOR WIN IN THAT DISTRICT?

A ONE PERCENT.

Q IS THAT BELOW 50?

A IT IS.

Q LET'S MOVE ON TO SENATE DISTRICT 8. WHAT DOES YOUR ANALYSIS SHOW ABOUT THE BLACK VAP NEEDED FOR WIN IN SENATE DISTRICT 8?

A LOOKS LIKE 41 PERCENT.

Q AND IS THAT BELOW 50?

A IT IS.

Q LET'S PUT A RED CIRCLE AROUND SENATE DISTRICT 8. I'LL NEED TO GO BACK TO PUT A RED CIRCLE AROUND SENATE DISTRICT 7 AND SENATE DISTRICT 5.

DR. LEWIS, FOR THE FIVE RED CIRCLES -- FOR THE SIX RED CIRCLES IN THE DISTRICTS IN SENATE DISTRICT 19 AND THE SURROUNDING DISTRICTS, DID ANY OF THESE DISTRICTS NEED 50 PERCENT BVAP IN ORDER FOR A WIN?

A AS ESTIMATED ON AVERAGE, NO.

Q IS IT FAIR TO SAY THAT THERE IS VARIATION IN RACIALLY POLARIZED VOTING PATTERNS WITHIN THE STATE OF LOUISIANA?

A YES.

Q LET'S BRING UP YOUR REPORT ON THE RIGHT-HAND

10:18a

SIDE. AND WE'LL GO TO PAGES 42 AND 43 OF YOUR REPORT. SO THAT'S LDTX 52 AT 42 AND 43.

DO THESE TABLES ADDRESS THIS VARIATION?

A ONE ASPECT OF THE VARIATION, YES.

Q AND WHAT DO THE NUMBERS SHOW ABOUT WHERE THIS VARIATION OCCURRED?

A WE SEE VARIATION IN THE LEFT PAGE IN FIGURE 1. WE SEE VARIATION IN THE DEGREE OF WHITE CROSSOVER VOTING, AS THE PERCENT OF THE DISTRICT THAT IS DESIGNATED BY THE CENSUS TO LIE WITHIN AN URBAN AREA, INCREASES.

Q AND SO IS IT POSSIBLE -- WE WERE JUST LOOKING AT DISTRICTS NEAR AND BORDERING PLAINTIFFS' ILLUSTRATIVE DISTRICTS. IS IT POSSIBLE THAT THERE ARE OTHER DISTRICTS NEAR THOSE PLAINTIFFS' ILLUSTRATIVE DISTRICTS THAT REQUIRE 50 PERCENT OR MORE BVAP ACCORDING TO THE ANALYSIS?

A I'M SORRY. COULD YOU RESTATE THE QUESTION?

Q SURE. WE WERE JUST DISCUSSING VARIATION. AND SO THE QUESTION WAS: IS IT POSSIBLE THAT THERE ARE DISTRICTS NEAR OR AROUND PLAINTIFFS' ILLUSTRATIVE DISTRICTS THAT DO NOT NEED -- WHERE THE ILLUSTRATIVE DISTRICTS DO NOT NEED 50 PERCENT BVAP BUT THERE ARE OTHER DISTRICTS NEARBY THAT MIGHT NEED 50 PERCENT OR ABOVE BVAP?

10:20a

A THAT'S CORRECT, YES.

Q WE CAN TAKE THIS DOWN.

DR. LEWIS, DID YOU UNDERSTAND THERE TO BE CRITICISM BY PLAINTIFFS THAT YOUR ANALYSIS ISN'T CHECKED AGAINST REALITY?

A YES.

Q WHAT IS YOUR UNDERSTANDING OF THAT CRITICISM AND WHAT IS YOUR RESPONSE?

A WELL, I GUESS THE FIRST THING IS THAT I WOULD SAY MY ANALYSIS IS BASED ON THE SAME REALITY AS OTHER EXPERTS AND CERTAINLY AS DR. HANDLEY'S HERE BASED ON THE SAME DATA. IT'S -- IT'S DIFFICULT TO DO A REALLY TRUE REALITY CHECK, BECAUSE IN ORDER TO DO A TRUE REALITY CHECK ONE WOULD HAVE TO KNOW EXACTLY THE THINGS THAT WE'RE HERE OR THAT I'M HERE TO -- TO TALK ABOUT, WHICH CAN'T BE KNOWN. AND SO IN A CERTAIN SENSE I DON'T THINK THAT YOU CAN SAY THAT IT'S POSSIBLE TO DO A TRUE REALITY CHECK; IN OTHER WORDS, WE CAN'T -- YOU KNOW, WE'RE HERE, AS WE TALKED ABOUT BEFORE, TO THINK ABOUT HOW THESE DISTRICTS -- HOW PEOPLE WOULD VOTE IN THEM IN THE FUTURE. WE DON'T KNOW THAT.

WE CAN DO WHAT YOU MIGHT CALL SORT OF SANITY CHECKS TO MAKE SURE THAT IT DOESN'T SEEM LIKE SOMETHING HAS GONE HORRIBLY AWRY. BUT IT'S VERY

10:21a

DIFFICULT TO KNOW BY LOOKING -- YOU KNOW, IN OTHER WORDS, WE APPLY THESE METHODS EXACTLY BECAUSE WE CAN'T KNOW IN SOME OTHER WAY WHICH WE COULD THEN USE AS A BENCHMARK.

Q AND DID YOU UNDERSTAND ANY CRITICISM BY PLAINTIFFS ABOUT THE FACT THAT THERE -- WHERE THERE ARE NO DISTRICTS DRAWN BETWEEN 40 AND 50 PERCENT, WHAT THAT MEANS FOR YOUR ANALYSIS?

A YEAH. I THINK THE CHALLENGE IS IF YOU WERE TO ASK THE QUESTION COULD WE THINK ABOUT HOW DISTRICTS IN CERTAIN PARTS OR IN ALL OF LOUISIANA WOULD PERFORM AT 40 TO 60 PERCENT AND THEN WE DON'T SEE ANY -- THERE ARE VERY FEW THAT ARE IN THAT INTERVAL -- THEN IT'S VERY HARD TO DRAW A CONCLUSION ABOUT WHETHER THEY WOULD PERFORM OR NOT. SO TO SAY WE DON'T SEE SOMEONE OF -- YOU KNOW, A DEMOCRAT OR A BLACK-PREFERRED CANDIDATE GETTING ELECTED IN DISTRICTS THAT WE DON'T SEE VERY MANY OF, IT'S HARD TO KNOW WHAT THAT MEANS.

SO, FOR EXAMPLE, I DON'T THINK IT WOULD BE A VERY COMPELLING ARGUMENT PERHAPS -- AND, YOU KNOW, I'M NOT HERE TO MAKE ARGUMENTS, YOU KNOW. BUT I GUESS IF I WERE TO TRY TO THINK ABOUT JUST ANSWERING THE QUESTION HOW WOULD -- A 40 TO 50 PERCENT DISTRICT, WHAT WOULD BE THE MINIMUM PERCENT NEEDED TO

10:22a

WIN, WHAT WOULD THE WIN RATE BE IN A DISTRICT LIKE THAT IF WE HAVEN'T SEEN ONE, I DON'T THINK THAT IT WOULD BE -- THAT IF, FOR EXAMPLE, WE WERE IN A WORLD IN WHICH THE DISTRICTS HAD BEEN DRAWN IN A WAY THAT THERE WERE NO DISTRICTS BELOW 65 PERCENT BLACK BVAP AND THEN DOWN TO, SAY, 25 OR 30, I DON'T THINK WE WOULD REALLY THINK IT WAS A VERY GOOD SORT OF SCIENTIFIC CONCLUSION; THAT BECAUSE WE ONLY SEE DISTRICTS THAT ARE TWO-THIRDS BLACK OR MORE AND THOSE ARE THE ONLY DISTRICTS THAT ARE ELECTING BLACK-PREFERRED CANDIDATES, THAT A DISTRICT BELOW TWO-THIRDS COULDN'T FUNCTION. I THINK THAT WOULD BE A STANDARD THAT -- OF EVIDENCE THAT WOULDN'T BE VERY COMPELLING.

Q IN YOUR OPINION, ARE CONTESTS WITH A BLACK CANDIDATE ALWAYS MORE PROBATIVE THAN CONTESTS WITHOUT A BLACK CANDIDATE IN DOING THE TYPE OF ANALYSIS YOU DID IN THIS CASE?

A NOT CATEGORICALLY. THAT'S CERTAINLY ONE FACTOR THAT I THINK THE COURTS HAVE THOUGHT ABOUT MAYBE. AND I KNOW THAT IN SOME CASES THAT'S SOMETHING THAT'S FOCUSED ON. SO I PROVIDE THE ANALYSIS THAT'S BROKEN DOWN TO CONTESTS THAT INVOLVE ONLY -- THAT INVOLVE AT LEAST ONE BLACK CANDIDATE SEPARATELY FROM THE LARGER SET.

10:24a

BUT THERE ARE OTHER FEATURES THAT MIGHT MAKE A CERTAIN ELECTION MORE ANALOGOUS TO WHAT WE MIGHT EXPECT A FUTURE STATE HOUSE OR STATE SENATE ELECTION TO LOOK LIKE IN A PARTICULAR DISTRICT. AND SO I THOUGHT IT WAS USEFUL TO PROVIDE THE COURT WITH SOME SENSE OF WHAT THE ANSWER MIGHT BE IF WE WENT BEYOND JUST CASES WITHOUT BLACK CANDIDATES.

I ALSO WOULD JUST QUICKLY SAY THAT YEAH, I MEAN, THERE COULD BE CASES WHERE PROBABLY YOU COULDN'T FIGURE OUT MUCH ABOUT BLACK-PREFERRED CANDIDATES BY NOTING THE FACT THAT THERE IS A BLACK CANDIDATE IN THE RACE. SO, FOR EXAMPLE, I THINK IF WE WERE IN SOUTH CAROLINA, I'M NOT SURE THAT ELECTIONS INVOLVING TIM SCOTT WOULD BE MORE PROBATIVE WITH RESPECT TO -- FOR SENATE -- A BLACK POLITICIAN WOULD BE MORE PROBATIVE THAN OTHER ELECTIONS. THAT WOULD BE AN EXAMPLE.

Q AS A RELATED EXAMPLE, WOULD THE ELECTION OF JOHN BEL EDWARDS HERE IN LOUISIANA BE AN EXAMPLE OF THE COROLLARY POINT TO THAT?

A IT COULD BE, YES. I MEAN, I THINK ONE OF THE ISSUES THAT YOU HAVE IS THAT THERE ARE OTHER -- THERE ARE OTHER FEATURES OF THESE ELECTIONS WHICH YOU WOULD LIKE TO BE SIMILAR WHEN YOU'RE USING THEM AS ANALOGS FOR WHAT WOULD HAPPEN IN THESE DISTRICTS THAT

10:25a

ARE DRAWN IN A WAY THAT'S MEANT TO EITHER BE COMPETITIVE OR -- OR EVEN MORE THAN COMPETITIVE FOR DEMOCRATIC CANDIDATES. AND THE STATEWIDE ENVIRONMENT IN LOUISIANA IS TYPICALLY NOT THAT COMPETITIVE FOR DEMOCRATS STATEWIDE.

AND SO YOU END UP IN SITUATIONS SOMETIMES I THINK WHERE YOU'VE GOT CANDIDATES WITH HIGH NAME RECOGNITION THAT ARE WELL-FUNDED ON ONE SIDE RUNNING AGAINST CANDIDATES ON THE OTHER SIDE THAT DON'T HAVE A LOT OF ELECTORAL EXPERIENCE, THAT DON'T HAVE A LOT OF CAMPAIGN FINANCE BACKING, MAYBE DON'T HAVE A LOT OF NAME RECOGNITION. A NUMBER OF THOSE CANDIDATES AT THE STATEWIDE LEVEL ALSO HERE MIGHT BE BLACK, SO YOU MIGHT WANT TO LOOK BEYOND THOSE CONTESTS TO SEE ALSO IF THERE ARE CONDITIONS -- ELECTORAL CONDITIONS WHERE THE CANDIDATES THAT ARE BEING SELECTED AMONG ARE ONES THAT ARE MORE SIMILAR IN THEIR RELATIVE AMOUNT OF -- THEIR RELATIVE COMPETITIVENESS THAN YOU WOULD SEE IN AN ELECTION THAT MAYBE DID INVOLVE A BLACK CANDIDATE BUT DIDN'T HAVE THOSE OTHER FEATURES OF BALANCE THAT YOU MIGHT EXPECT TO SEE IN A MORE COMPETITIVE ELECTORAL SETTING.

MS. ROHANI: OBJECTION, YOUR HONOR. THERE IS NOTHING IN DR. LEWIS'S REPORT THAT DEALS WITH CANDIDATE FUNDING OR ANYTHING THAT HE RESPONDED IN

10:26a

RESPONSE TO MS. MCKNIGHT'S QUESTION.

MS. MCKNIGHT: I CAN -- I'M HAPPY TO BRING UP THE PORTION OF HIS REPORT WHERE HE ADDRESSES CANDIDATE FUNDING, IF THAT WOULD BE HELPFUL.

THE COURT: WELL, THE QUESTION HAS BEEN ASKED AND ANSWERED, SO I'M GOING TO OVERRULE THE OBJECTION.

BUT I WOULD ASK YOU TO CONFINE YOUR QUESTIONS TO THOSE THINGS THAT ARE DISCUSSED IN HIS REPORT.

MS. MCKNIGHT: OKAY.

BY MS. MCKNIGHT:

Q OKAY. DR. LEWIS, IN GENERAL WHEN YOU ARE CONDUCTING A RACIALLY POLARIZED VOTING ANALYSIS AND YOU'RE FACED WITH AN ENVIRONMENT WHERE THERE ARE NOT THAT MANY CONTESTS WITH A BLACK CANDIDATE, HOW DO YOU ADDRESS THIS ISSUE?

A WELL, SOMETIMES THAT'S JUST A LIMITATION. BUT AGAIN, I WOULD LOOK BEYOND THE CONTESTS THAT INVOLVE A BLACK CANDIDATE TO TRY TO FIND OTHER CONTESTS THAT MIGHT HAVE VALUE IN ESTABLISHING THE ANSWERS TO THE QUESTIONS THAT WE'RE SEEKING HERE ABOUT WHETHER THERE IS AN OPPORTUNITY TO ELECT.

Q DID YOU FIND IN YOUR ANALYSIS THAT SOMETIMES WHITE DEMOCRATS WERE THE CANDIDATE OF CHOICE FOR

10:28a

BLACK VOTERS?

A YES.

Q SO WHAT WILL ANALYZING RACES WITH WHITE DEMOCRATS TELL THE COURT ABOUT WHETHER BLACK VOTERS ARE ABLE TO ELECT THEIR CANDIDATES OF CHOICE?

A WELL, A GREAT DEAL OF I THINK WHAT CHARACTERIZES ELECTIONS IN THE UNITED STATES THESE DAYS IS RIGOR ON PARTISAN LINES. SO IF YOU HAVE AN ELECTION THAT INVOLVES A DEMOCRAT AND A REPUBLICAN, IT'S LIKELY THAT THAT ELECTION WILL GIVE SOME INSIGHT INTO THE PREFERENCES OF VOTERS OF DIFFERENT RACIAL GROUPS.

Q CAN THE COURT STILL LEARN ABOUT RACIALLY POLARIZED VOTING THROUGH ELECTIONS WHERE A BLACK CANDIDATE IS NOT ON THE BALLOT?

A YES.

Q LET'S LOOK AT LDTX 54, TABLE 1.

DR. LEWIS, DOES THIS TABLE ADDRESS THE ISSUE OF CONTESTS WITH OR WITHOUT BLACK CANDIDATES?

A IT DOES.

Q AND WHAT DOES IT SHOW THE COURT?

A IT SHOWS THAT IN THE CONTESTS THAT I ANALYZED HERE, THE ANSWERS ARE GENERALLY SIMILAR. THE QUANTITIES THAT WE TALKED ABOUT THE OTHER DAY ARE GENERALLY SIMILAR ACROSS THE TWO SETS OF CONTESTS

10:29a

THAT I SET FORTH. SO THE SET OF CONTESTS THAT INCLUDES CERTAIN CONTESTS THAT DID NOT HAVE A BLACK CANDIDATE AND THEN, WHEN I DRILL DOWN, TO JUST THOSE THAT DID.

Q AND DO YOU RECALL CRITICISM FROM PLAINTIFFS FOR YOU AVERAGING SOME OF YOUR NUMBERS? DO YOU RECALL THAT CRITICISM?

A I DO.

Q DID YOU RESPOND TO THIS CRITICISM IN YOUR SURREBUTTAL REPORT?

A I DID.

Q LET'S TURN TO PAGE 7 OF LDTX 54.

IS THIS WHERE YOU ADDRESS THE CRITICISM OF AVERAGING?

A YES.

Q OKAY. AND WHAT DOES THIS SHOW THE COURT?

A WELL, YOU KNOW, ONE QUESTION HERE IS, IS THE AVERAGE SORT OF -- YOU KNOW, YOU GET THE SAME AVERAGE IN DIFFERENT WAYS, AND YOU MIGHT BE INTERESTED IN SOMETHING THAT'S MORE ANALOGOUS TO THE WIN RATE THAT WE TALKED BEFORE ABOUT.

AND SO RATHER THAN THINKING ABOUT WHAT THE MINIMUM PERCENTAGE IS REQUIRED ON AVERAGE FOR THE BLACK-PREFERRED CANDIDATES AS ESTIMATED TO WIN BY ONE VOTE, AS WE TALKED ABOUT BEFORE, YOU COULD RATHER

10:30a

WANT TO THINK ABOUT LIKE, WELL, WHAT -- WHAT PERCENTAGE IS REQUIRED TO ELECT DIFFERENT PERCENT -- DIFFERENT FRACTIONS OF THE -- DIFFERENT FRACTIONS OF -- I'M SORRY -- BLACK-PREFERRED CANDIDATES IN DIFFERENT FRACTIONS OF THE CONTEST. SORRY. THERE IS A LOT OF PERCENTAGES GOING BACK AND FORTH HERE. SO THAT'S SOMETHING THAT YOU COULD DO.

AND IF WE WANT TO THINK ABOUT 50 PERCENT, SO YOU WOULD EXPECT -- YOU KNOW, HOW MANY BLACK VOTERS WOULD YOU NEED -- HOW MUCH BLACK POPULATION WOULD YOU NEED IN ORDER TO -- FOR THE BLACK-PREFERRED CANDIDATE TO WIN HALF THE TIME. THAT'S WHAT'S SORT OF SHOWN IN THE 50 PERCENT COLUMN THERE. SO YOU CAN ESTIMATE IT THAT WAY. AND THAT'S ACTUALLY THE MEDIAN OF THE RESULTS ACROSS THE ELECTIONS THAT I'M LOOKING AT HERE. SO SIX ELECTIONS IN THE CASE OF H 4 AND H 69 AND SO FORTH. AND SO REALLY, YOU KNOW, IT'S JUST A COMPARISON OF THE MEAN AND THE MEDIAN HERE.

HERE YOU CAN SEE THAT THE DIFFERENCE BETWEEN THOSE TWO NUMBERS IS GENERALLY SMALL. SO IN THIS CASE, WHETHER YOU'RE LOOKING AT THE AVERAGE OR THE MEDIAN, THE 50 PERCENT NUMBER THERE ON THE NEXT COLUMN YOU GET PRETTY SIMILAR -- YOU GET PRETTY SIMILAR ANSWERS.

Q WE CAN TAKE THIS DOWN.

10:32a

DR. LEWIS, AT WHAT LEVEL OF GEOGRAPHY DID YOU CONDUCT YOUR EI ANALYSIS?

A I FIT THE MODEL THAT -- I CREATED AN ESTIMATE OF BLACK COHESION IN WHITE CROSSOVER VOTING AND ALSO THE SUPPORT FOR THE VARIOUS CANDIDATES AMONG FOLKS THAT DIDN'T IDENTIFY AS BLACK OR WHITE FOR EVERY DISTRICT INDEPENDENTLY.

Q AND WHY DID YOU DO THIS?

A TO RECOGNIZE THAT THERE COULD BE HETEROGENEITY IN THE DEGREE OF COHESION AND THE DEGREE OF CROSSOVER VOTING ACROSS THE DIFFERENT DISTRICTS.

Q DID YOU FIND THAT HETEROGENEITY?

A YES. WE'VE SEEN SOME OF THAT HETEROGENEITY IN SOME OF THE PREVIOUS SLIDES THAT YOU'VE PUT UP.

Q IF YOU CONDUCTED YOUR EI ANALYSIS AT A STATEWIDE LEVEL OR EVEN AT A REGIONAL LEVEL, WHAT COULD YOU MISS OUT ON THAT YOU DETECTED IN YOUR DISTRICT-SPECIFIC ANALYSIS?

A WELL, SOME OF THAT HETEROGENEITY, SO WE WOULD BE AVERAGING EFFECTIVELY ACROSS THAT HETEROGENEITY. AND IT'S ALSO A CHALLENGE IN THESE MODELS -- AS I SAID BEFORE, THEY REST ON THE DATA, BUT THEY ALSO REST HEAVILY ON ASSUMPTION. AND ONE OF THE ASSUMPTIONS IS THAT THE SUPPORT OF WHITE VOTERS

10:33a

FOR THE BLACK-PREFERRED CANDIDATE OR ANY OTHER CANDIDATE IS NOT VARYING AS A FUNCTION OF THE DEMOGRAPHIC COMPOSITION OF THE PRECINCT OR THE DISTRICT. SO IT CAN'T BE THE CASE, IF THESE MODELS ARE TO BE EFFECTIVE, THAT THE BLACKER THE PRECINCT IS -- BY WHICH I MEAN THE MORE HIGHER THE BLACK BVAP -- BLACK VOTER POPULATION IS, THE -- IT CAN'T BE THE CASE THAT THE WHITE VOTERS BECOME MORE LIKELY TO SUPPORT THE BLACK-PREFERRED CANDIDATE.

AND, OF COURSE, WHAT WE'VE SEEN HERE IS THAT IN -- AT LEAST IN SOME CASES, IT IS TRUE THAT IF YOU DRILL DOWN YOU FIND THAT IN SOME OF THESE DISTRICTS THAT HAVE HIGHER BLACK POPULATION, THE WHITE VOTERS ARE CROSSING OVER MORE. SO IF YOU DON'T TRY TO ISOLATE THOSE REGIONS THAT HAVE HIGHER, LOWER BLACK VOTING AGE POPULATION, WHEN YOU APPLY THE ANALYSIS YOU COULD CREATE WHAT'S CALLED AGGREGATION BIAS, WHICH IS A TENDENCY TO MISATTRIBUTE THE BEHAVIOR OF WHITE VOTERS TO BLACK VOTERS, WHICH LEADS TO AN OVERSTATEMENT OF COHESION AND AN UNDERSTATEMENT OF CROSSOVER VOTING IN SOME CASES.

MS. MCKNIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: CROSS-EXAMINATION?

MS. ROHANI: GOOD MORNING. SARA ROHANI ON

10:34a

BEHALF OF THE PLAINTIFFS.

CROSS-EXAMINATION

BY MS. ROHANI:

Q GOOD MORNING, DR. LEWIS. IT'S GOOD TO SEE YOU AGAIN.

A GOOD TO SEE YOU AGAIN. GOOD MORNING.

MS. ROHANI: STEPHEN, CAN YOU PLEASE PULL UP LDTX 52, PAGE B-2 OF THE APPENDIX. THANK YOU.

BY MS. ROHANI:

Q SO, DR. LEWIS, THE ELECTIONS THAT YOU INCLUDE IN YOUR WIN RATE CALCULATIONS IN TABLE 1 ARE PRIMARY ELECTIONS WITH THREE OR MORE CANDIDATES. CORRECT?

A YES.

MS. ROHANI: AND THEN, STEPHEN, CAN YOU PLEASE TURN TO PAGE 6 OF THIS EXHIBIT.

BY MS. ROHANI:

Q AND FOR PURPOSES OF TABLE 1, YOU DEFINE WIN AS A CANDIDATE WHO GAINED OVER 50 PERCENT OF THE VOTE OR WAS AMONG THE TWO CANDIDATES WHO ADVANCED TO THE RUNOFF. IS THAT CORRECT?

A YES.

Q AND THEN NOW GOING BACK TO B 2, FOR EACH DISTRICT IN THIS TABLE IN TABLE 1 YOU LISTED THE NUMBER OF CONTESTS THAT YOU CONSIDERED. IS THAT

10:35a

CORRECT?

A YES.

Q AND SO NOWHERE IN YOUR REPORT DO YOU STATE HOW MANY OF THOSE ELECTION CONTESTS RESULTED IN AN OUTRIGHT WIN. CORRECT?

A I DO NOT.

Q AND NOWHERE IN YOUR REPORT DO YOU STATE HOW MANY OF THOSE ELECTION CONTESTS INVOLVED A CANDIDATE ADVANCING TO A RUNOFF. IS THAT CORRECT?

A I'M TRYING TO THINK IF THAT'S SOMETHING THAT COULD BE INFERRED FROM THESE NUMBERS OR NOT. I DON'T KNOW. I DON'T BELIEVE I EXPLICITLY DISCUSS HOW MANY END IN RUN-OFFS VERSUS OUTRIGHT WINS, IF THAT'S YOUR QUESTION.

Q THANK YOU.

AND A CANDIDATE WHO ADVANCES TO A RUNOFF MAY ULTIMATELY GO TO LOSE THAT RUNOFF ELECTION. IS THAT CORRECT?

A OF COURSE, YES.

Q AND NOWHERE IN YOUR REPORT DO YOU STATE HOW MANY OF THOSE CANDIDATES FROM TABLE 1 WHO ADVANCED TO THE RUNOFF ACTUALLY WON THE RUNOFF. IS THAT CORRECT?

A THAT'S -- NOT EXPLICITLY. IN OTHER WORDS, WE DON'T FOLLOW THEM FROM TABLE 1 FORWARD, OTHER THAN THAT IN TABLE 2 WE ANALYZE THE ELECTIONS THAT ARE

10:36a

RUNOFFS. AND PRESUMABLY THOSE ALL CAME FROM CASES IN WHICH SOMEBODY GOT THROUGH THE PRIMARY TO GET TO THE RUNOFF.

Q BUT JUST TO CONFIRM, THAT THIS TABLE WHICH DOES NOT ADDRESS THAT ISSUE -- NOWHERE IN YOUR REPORT DO YOU STATE THAT IN THIS TABLE HOW MANY OF THE CANDIDATES ADVANCED TO THE RUNOFF AND ACTUALLY WON THE RUNOFF?

A NO, THAT'S CORRECT.

Q SO NOW TURNING TO TABLE 3 ON PAGE B-14 OF THE APPENDIX. SO TABLE 3 WAS CONSTRUCTED IN THE SAME WAY AS TABLE 1 BUT INCLUDED ONLY ELECTIONS WITH BLACK CANDIDATES. IS THAT CORRECT?

A I BELIEVE SO, YES.

Q AND SO THE WIN RATES WERE CONSTRUCTED IN THE SAME WAY AS THEY WERE IN TABLE 1. IS THAT CORRECT?

A THAT'S CORRECT.

Q AND FOR TABLE 3 YOU ALSO DON'T REPORT THE NUMBER OF ELECTIONS THAT RESULTED IN AN OUTRIGHT WIN. IS THAT CORRECT?

A NOT IN THE TABLE, NO.

THE REPORTER: I'M SORRY. "NOT" --

THE WITNESS: NOT IN THE TABLE, NO. I'M SORRY. LET ME MOVE THE MICROPHONE.

BY MS. ROHANI:

10:37a

Q AND THEN TURNING BACK TO PAGE 6. SO IN TABLE 2 YOU LOOKED AT TWO CANDIDATE CONTESTS. AND THE DEFINITION THAT YOU PRESENT IS: TABLE 2 PRESENTS RESULTS FOR GENERAL ELECTIONS AND TWO-CANDIDATE PRIMARY ELECTIONS THAT INCLUDED A BLACK CANDIDATE. DID I READ THAT CORRECTLY?

A I BELIEVE SO.

Q AND SO WIN FOR PURPOSES OF TABLE 2 MEANS WHOEVER OF THE TWO CANDIDATES ACTUALLY WON THE SEAT. IS THAT CORRECT?

A YES.

Q SO NOW TURNING BACK TO PAGE B-20. B-20 OF THE APPENDIX. THANK YOU.

SO THIS IS TABLE 4. NOW, TABLE 4 WAS CONSTRUCTED IN THE SAME WAY AS TABLE 2 BUT INCLUDED ONLY ELECTIONS WITH BLACK CANDIDATES. IS THAT CORRECT?

A YES.

Q AND SO THE WIN RATES IN TABLE 4 WERE CONSTRUCTED IN THE SAME WAY AS THEY WERE FOR TABLE 2. IS THAT CORRECT?

A YES.

Q NOW, CAN WE PLEASE PULL UP LDTX 54 ON PAGE 3.

SO DO YOU SEE THE SENTENCE THAT BEGINS WITH

10:38a

"THAT IS, TO SUCCEED" --

MS. ROHANI: AND IF, STEPHEN COULD HIGHLIGHT THAT. IT'S "THAT IS, TO SUCCEED IN" -- PERFECT.

BY MS. ROHANI:

Q DR. LEWIS, WOULD YOU MIND READING THE SENTENCE OUT LOUD FOR THE RECORD?

A SURE. "THAT IS, TO SUCCEED IN AN ELECTION IN LOUISIANA, A CANDIDATE MUST SURVIVE THE PRIMARY AND (IF NECESSARY) GO ON TO WIN THE RUNOFF. THE QUESTION IN ESTABLISHING WHETHER A DISTRICT HAS SUFFICIENT BVAP FOR BLACK-PREFERRED CANDIDATES TO WIN ELECTION IS EXACTLY WHETHER BVAP IS SUFFICIENT TO SUPPORT SUCCESS AT BOTH STAGES."

Q THANK YOU.

SO THE BVAP SUFFICIENT -- THE BVAP SUFFICIENT TO SUPPORT SUCCESS AT BOTH STAGES IS THE BVAP THAT WAS PRESENTED IN TABLES 2 AND 4. CORRECT?

A THE -- I'M TRYING TO MAKE SURE THAT I UNDERSTAND THE QUESTION. MAYBE IF YOU COULD JUST TRY AND RESTATE IT ONE MORE TIME FOR ME. I DON'T MEAN TO BE DIFFICULT.

Q NO PROBLEM. SO THE SENTENCE THAT YOU JUST READ --

A YEAH.

Q -- STATED THAT THE -- I'M JUST GOING TO

10:39a

REPEAT IT. THE QUESTION IN ESTABLISHING WHETHER A DISTRICT HAS SUFFICIENT BVAP FOR BLACK-PREFERRED CANDIDATES TO WIN IS EXACTLY WHETHER THE BVAP IS SUFFICIENT TO SUPPORT SUCCESS AT BOTH STAGES.

AND THEN SO MY QUESTION WAS: THAT THE BVAP SUFFICIENT TO SUPPORT SUCCESS OF BOTH STAGES IS ONLY PRESENT IN TABLES 2 AND 4. IS THAT CORRECT?

A WELL, IF IT WERE THE CASE THAT IN TABLES 1 AND 3 THE BVAP REQUIRED TO ESCAPE THE PRIMARY AND REACH A RUNOFF HAD BEEN -- WERE HIGHER THAN THOSE IN TABLES 2 AND 4, THEN I DON'T THINK THAT WHAT YOU SAID WOULD BE CORRECT. IN OTHER WORDS, THE BINDING CONSTRAINT COULD BE THE PRIMARY STAGE.

Q BUT YOU DID JUST STATE THAT -- ARE THERE ANY DISTRICTS LIKE THAT IN YOUR REPORT?

A I DON'T -- I DON'T RECALL. I KNOW GENERALLY SPEAKING THE MINIMUM REQUIRED TO SUCCEED IS HIGHER -- NECESSARY MINIMUM REQUIRED TO SUCCEED IS HIGHER IN THE RUNOFF FOR TWO-CANDIDATE ELECTIONS THAN IN THE FIRST STAGE OR PRIMARY ELECTIONS.

Q SO IS IT FAIR TO SAY THAT THE BLACK-PREFERRED CANDIDATE WOULD WIN IF -- IF WE'RE LOOKING AT WHETHER THE BLACK-PREFERRED CANDIDATE TO WIN IF A RUNOFF IS REQUIRED, YOU WOULD NEED TO LOOK AT THE BVAPs IN TABLES 2 AND 4?

10:41a

A YES. YOU WOULD NEED TO -- WELL, I MEAN, YOU -- IN GENERAL YOU WOULD NEED TO LOOK AT BOTH. AND THEN AS IT IS REQUIRED TO WIN BOTH ELECTIONS IN ORDER TO SUCCEED, YOU COULD LOOK AT THE LARGER OF THOSE TWO NUMBERS AS BEING THE MINIMUM REQUIRED.

Q AND JUST TO CONFIRM, THESE DEFINITIONS OF WIN THAT WE JUST DISCUSSED, THEY APPLY TO YOUR WIN RATES?

A YES.

Q AND DO THEY -- THEY APPLY TO YOUR PERCENT-NEEDED-TO-WIN FIGURES AS WELL. IS THAT CORRECT?

A YES.

Q SO YESTERDAY YOU TESTIFIED ABOUT WHAT YOU CALLED A THOUGHT EXPERIMENT. AND IN THAT THOUGHT EXPERIMENT THAT YOU DISCUSSED YESTERDAY, THE DISTRICTS IN THE ILLUSTRATIVE PLAN THAT ARE OVER 50 PERCENT BVAP, THEY COULD PERFORM AT LESS THAN 50 PERCENT BVAP AS WELL. CORRECT?

A THAT'S WHAT THE ESTIMATES SUGGEST IN I THINK MOST ALL CASES, YES.

Q AND MEANING THAT YOUR PERCENT NEEDED TO WIN IN THOSE DISTRICTS IS LESS THAN 50 PERCENT?

A YES.

Q SO YOU WOULD AGREE THAT IF YOU CHANGED THE

10:42a

BOUNDARIES OF A DISTRICT IN A WAY THAT REDUCED THE BVAP OF THE DISTRICT, THAT WOULD CHANGE WHICH VOTERS ARE IN THE DISTRICT?

A CERTAINLY.

Q AND THEN YOU'D HAVE TO RUN A NEW EI ANALYSIS TO UNDERSTAND THE VOTING PATTERNS IN THAT NEW DISTRICT?

A ONCE YOU DRAW IT, THEN YOU COULD DO THAT, YES.

Q YOU COULD DO THAT OR YOU WOULD NEED TO RUN A NEW EI ANALYSIS?

A WELL, FOR WHAT PURPOSE?

Q IN ORDER TO UNDERSTAND THE VOTING PATTERNS IN THE NEW DISTRICT. BECAUSE YOU JUST AGREED THAT IF YOU CHANGE THOSE BOUNDARIES IN THE DISTRICT WHICH CHANGES THE BVAP, IN ORDER TO UNDERSTAND THE VOTING PATTERNS YOU WOULD HAVE TO RUN A NEW EI ANALYSIS FOR THAT DISTRICT. IS THAT CORRECT?

A YEAH. YOU COULD DO THAT, YES.

Q YOU COULD OR YOU HAVE TO? AGAIN, IN ORDER TO UNDERSTAND THE VOTING PATTERNS IN THAT NEW DISTRICT, WHICH IS DIFFERENT THAN THE PREVIOUS ONE, DO YOU HAVE TO OR COULD YOU?

A IT DEPENDS ON HOW MUCH OF A CHANGE YOU MADE AND WOULD YOU NEED TO ANALYZE IT AGAIN TO MAKE A GOOD

10:43a

INFERENCE ABOUT WHAT THE LIKELY EFFECT WOULD BE. BUT YEAH, I MEAN, ULTIMATELY ONCE YOU'VE DRAWN YOUR DISTRICTS, I THINK I WOULD WANT TO DO THE ANALYSIS ON THOSE DISTRICTS HAVING THEM HAD BEEN DRAWN.

Q TO UNDERSTAND A GOOD INFERENCE, YOU WOULD PERSONALLY DO THAT; RUN A NEW EI ANALYSIS?

A AGAIN, I -- I THINK THAT THE ANSWER TO THAT IS YES. BUT I'M NOT SURE THAT THAT -- YOU KNOW, I'M -- AGAIN, THE THOUGHT EXPERIMENT WOULD DEVIATE VERY MUCH FROM THAT -- FROM THAT ANSWER.

Q AND THEN YOU'D HAVE TO RECALCULATE THE PERCENT NEEDED TO WIN?

A YES. OR YOU CAN RECALCULATE THE -- I MEAN, YOU WOULD. IF YOU GOT NEW ESTIMATES, THEN YOU WOULD HAVE TO RECALCULATE, YES.

Q SO THE PERCENT NEEDED TO WIN IN THAT DISTRICT MIGHT BE DIFFERENT?

A IN ANY DISTRICT THAT YOU DREW IT MIGHT BE DIFFERENT. SO THE THOUGHT EXPERIMENT, AGAIN, AS WE TALKED ABOUT YESTERDAY, HOLDS CERTAIN THINGS CONSTANT THAT IN REALITY MIGHT NOT BE CONSTANT.

Q SO I'D LIKE TO TAKE AN EXAMPLE.

MS. ROHANI: STEPHEN, CAN YOU PULL UP LDTX 52 AT B-21 OF THE APPENDIX. B-21 WOULD BE THE PAGE.

BY MS. ROHANI:

10:44a

Q AND THIS IS YOUR INITIAL REPORT, DR. LEWIS. THANK YOU.

SO I'D LIKE TO LOOK AT -- ACTUALLY, IS IT YOUR UNDERSTANDING THAT ENACTED DISTRICT 69 AND ILLUSTRATIVE DISTRICT 69 OVERLAP?

MS. MCKNIGHT: OBJECTION. BEYOND THE SCOPE OF HIS OPINION; OVERLAP BETWEEN DISTRICTS ENACTED AND SIMULATED IN THE ILLUSTRATIVE.

THE COURT: YOU CAN RESPOND.

MS. ROHANI: YOUR HONOR, THIS IS ABOUT HIS UNDERSTANDING OF HIS NUMBERS THAT HE STATED HIMSELF WERE HIS OPINIONS AND CONCLUSIONS.

THE COURT: I'M GOING TO ALLOW IT. OVERRULED.

BY MS. ROHANI:

Q SO, DR. LEWIS, AGAIN, IS IT YOUR UNDERSTANDING THAT ENACTED DISTRICT 69 AND ILLUSTRATIVE DISTRICT 69 OVERLAP?

A I DON'T KNOW IF THEY OVERLAP OR NOT.

Q SO JUST LOOKING AT YOUR TABLES, ENACTED DISTRICT 69 IS 23.7 PERCENT BVAP. DID I READ THAT CORRECTLY?

A YES.

Q AND ILLUSTRATIVE DISTRICT 69, WHICH WOULD BE ON THE NEXT PAGE -- ON B-23. WE CAN TURN TO THAT,

10:46a

TWO PAGES LATER.

SO ILLUSTRATIVE DISTRICT 69, HOUSE DISTRICT 69, IS 50.2 PERCENT BVAP. IS THAT CORRECT?

A YES.

Q AND THEN TURNING BACK TO B-21, IN TABLE 4 YOUR PERCENT NEEDED TO WIN FOR ENACTED DISTRICT 69 IS 60 PERCENT. IS THAT CORRECT?

A YES.

Q AND THEN TURNING BACK TO B-23 TO TABLE 4, YOUR PERCENT NEEDED TO WIN IN ILLUSTRATIVE DISTRICT 69 IS 42 PERCENT. IS THAT CORRECT?

A YES.

Q AND THAT'S BECAUSE THERE ARE DIFFERENT VOTERS IN ENACTED DISTRICT 69 THAN ILLUSTRATIVE DISTRICT 69. IS THAT CORRECT?

A I ASSUME SO, YES.

Q YOU ASSUME SO?

A WELL, I -- YOU KNOW, I DON'T ACTUALLY KNOW HOW MANY OF THE VOTERS ARE THE SAME VOTERS OR DIFFERENT VOTERS OR --

Q OF COURSE.

A SO THAT WOULD EXPLAIN THE DIFFERENCE, YES.

Q SO IN THE ENACTED PLAN, ARE YOU -- WE CAN PULL THIS DOWN.

ARE YOU AWARE OF ANY DISTRICTS THAT ARE NOT

10:47a

MAJORITY BLACK THAT WHERE THE WIN RATE YOU CALCULATED IS OVER 30 PERCENT?

A I HAVEN'T THOUGHT ABOUT THAT NUMBER, SO I DON'T KNOW. I'M NOT -- ACTUALLY, IT'S FAIR TO SAY I'M NOT AWARE. I DON'T THINK IT'S FAIR TO SAY THAT I -- THAT THERE ARE OR AREN'T ANY ON THE BASIS OF WHETHER I'M AWARE.

Q OKAY. I WILL SUBMIT TO YOU THAT I LOOKED THROUGH YOUR TABLES AND WAS ONLY ABLE TO FIND ONE, WHICH IS HOUSE DISTRICT 91. DO YOU AGREE WITH THAT?

A I BELIEVE THAT YOU WOULD NOT LIE TO ME.

Q THANK YOU.

DO YOU KNOW IF THAT DISTRICT IS MAJORITY WHITE?

A I DO NOT KNOW.

Q AND WOULD IT SURPRISE YOU TO FIND OUT THAT THIS DISTRICT IS ACTUALLY A MAJORITY-MINORITY DISTRICT?

A WOULD IT SURPRISE ME? I GUESS I -- I HAVEN'T GIVEN THAT QUESTION VERY MUCH THOUGHT, EITHER. IT'S CERTAINLY POSSIBLE. I KNOW THAT THERE ARE DISTRICTS WHERE THE OTHER POPULATION -- AND I'D BE LESS FAMILIAR WITH WHAT THE CENSUS BREAKDOWN WOULD BE BECAUSE I WAS MORE IN THE VOTING SIDE OF THE EQUATION HERE AND JUST MAKING SOME ADJUSTMENTS FOR

10:48a

TURNOUT AT THE END.

BUT THERE ARE PLACES WHERE THERE IS A SIGNIFICANT OTHER POPULATION, SO I KNOW THERE TO BE DISTRICTS WHICH ARE MAJORITY-MINORITY BUT NOT MAJORITY BLACK. SO I KNOW SUCH THINGS EXIST. I COULDN'T TELL YOU WHETHER THE ONE YOU'RE REFERRING TO IS ONE OF THEM.

Q THANK YOU.

AND JUST TO CLARIFY, YOU'D AGREE WITH ME THAT A MAJORITY-MINORITY DISTRICT IN LOUISIANA IS ANY DISTRICT IN WHICH A MAJORITY OF THE VOTERS ARE NON-WHITE?

A I BELIEVE THAT YOU COULD DEFINE IT THAT WAY, YES.

Q THANK YOU.

AND SO JUST TO RETURN, ARE THERE ANY HOUSE DISTRICTS THAT ARE NOT MAJORITY BLACK WHERE THE WIN RATE IS ABOVE 30 PERCENT?

A I DON'T KNOW, AGAIN. MAYBE YOU WILL TELL ME THAT THAT'S THE CASE.

MS. ROHANI: JUST ONE MOMENT WHILE I CONFER WITH MY COLLEAGUES.

NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANY REDIRECT?

MS. MCKNIGHT: JUST ONE QUESTION.

10:49a

REDIRECT EXAMINATION

BY MS. MCKNIGHT:

Q DR. LEWIS, ARE YOU AWARE OF ANY EXPERT REPORT IN THIS MATTER THAT STUDIED THE OVERLAP PERCENTAGE OF ENROLLED, THE ENACTED DISTRICTS AS COMPARED TO THE ILLUSTRATIVE DISTRICTS, ON A DISTRICT-BY-DISTRICT BASIS?

A I'M NOT AWARE.

MS. MCKNIGHT: YOUR HONOR, I WOULD LIKE TO LODGE A STANDING OBJECTION TO ANY TESTIMONY OR PROVISION OF EVIDENCE THAT PLAINTIFFS WILL SEEK TO PUT FORWARD IN FINDINGS OF FACT, ET CETERA, THAT COMPARES THE ILLUSTRATIVE DISTRICT TO THE ENACTED PLAN AND THE POPULATION OVERLAP. THAT IS SOMETHING THAT COULD HAVE BEEN DONE BY AN EXPERT. IT WAS NOT DONE HERE. IT REQUIRES A COMPARISON OF PERCENTAGE OF POPULATION AND WHAT IT'S LIKE AND WHAT IT'S LIKE. IT'S DONE IN THESE CASES. IT WASN'T DONE HERE.

THE COURT: DO YOU WANT TO RESPOND?

MS. KEENAN: YES, YOUR HONOR. BECAUSE THIS IS AN OBJECTION TO THE FINDING OF FACT, MEGAN KEENAN FOR THE PLAINTIFFS RESPONDING.

THE COURT: GO AHEAD.

MS. KEENAN: MR. COOPER'S REPORT HAS DETAILED TABLES WITH THE POPULATION OF EACH, IN

10:50a

ADDITION TO MAPS THAT SHOW THE OVERLAPPING OF THE DISTRICTS, SO WE WOULD DEFINITELY DISAGREE ABOUT WHAT WE CAN PUT INTO THE FINDINGS OF FACT AS TO THAT POINT.

MS. MCKNIGHT: TO BE SPECIFIC, YOUR HONOR, WORDS MATTER HERE. I SAID DISTRICT-BY-DISTRICT BASIS, AND THAT'S IMPORTANT HERE. AND THAT WAS NOT -- THAT WAS NOT DONE BY MR. COOPER.

SO WE'LL -- WE NEED TO ASSERT THAT OBJECTION AND MAKE CLEAR ON THE RECORD THAT THAT WAS NOT DONE.

MS. KEENAN: AND, YOUR HONOR, WE CAN POINT YOU TO -- THE TABLES ARE ALL IN THE RECORD. THEY ARE DISTRICT BY DISTRICT AND MAY BREAK DOWN A DECENT AMOUNT OF INFORMATION ABOUT THE POPULATION. ADDITIONALLY, THE MAPS SHOW EACH DISTRICT, OF COURSE, SO YOU CAN SEE IT IN THE PHOTOS AS WELL.

THE COURT: WELL, THE COURT WILL TAKE -- WILL CONSIDER THE OBJECTION AND TAKE IT UNDER CONSIDERATION IN RENDERING ITS RULING.

MS. MCKNIGHT: YOUR HONOR, ONE MORE ISSUE. I NEED -- I WOULD LIKE TO MOVE FOR THE ADMISSION OF THOSE FOUR LEWIS DEMONSTRATIVES. IT'S LEWIS 1 THROUGH 4. THOSE ARE THE DEMONSTRATIVES WE DISCUSSED YESTERDAY. THEY ARE SUMMARIES UNDER RULE 1006 OF

10:51a

VOLUMINOUS DATA. THERE IS NO CHANGE FROM THE INFORMATION FROM HIS REPORT TO WHAT THEY APPEAR ON THE DEMONSTRATIVES.

MS. ROHANI: SUBJECT TO OUR OBJECTION THAT THE INFORMATION ABOUT PERCENT NEEDED TO WIN IS IRRELEVANT, WE HAVE NO OBJECTIONS TO THE EXHIBITS BEING INTRODUCED.

THE COURT: WHAT ARE YOUR EXHIBIT NUMBERS?

MS. MCKNIGHT: SO THIS WOULD BE -- I BEG YOUR PARDON, YOUR HONOR.

THANK YOU, YOUR HONOR. WE WILL SUBMIT THAT AS LDTX 62. AND THOSE ARE LEWIS 1 THROUGH 4 DEMONSTRATIVES.

THE COURT: ADMITTED.

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. THANK YOU, SIR.

THE WITNESS: THANK YOU.

(OFF THE RECORD)

10:52a

THE COURT: OKAY. NEXT WITNESS.

MR. STRACH: WE DON'T HAVE ANY FURTHER WITNESSES AT THIS TIME. WE'LL MOVE THE ADMISSION OF ANY EXHIBITS THAT WE NEED TO MOVE IN, PLUS A PROFFER. WE'LL DO A PROFFER OF SOLANKY'S REPORT. AND I THINK MR. LEWIS WANTS TO ADDRESS THE PROFFER OF PARTS OF THE DOUG JOHNSON REPORT.

THE COURT: OKAY. SO LET'S START WITH WHATEVER EXHIBITS THAT YOU THINK YOU NEED TO MOVE IN.

MS. HOLT: YES, YOUR HONOR. WE HAVE NO FURTHER EXHIBITS FOR THE RECORD AT THIS TIME. BUT WE DO WANT TO MAKE A PROFFER.

MY NAME IS CASSIE HOLT ON BEHALF OF SECRETARY ARDOIN. AND PURSUANT TO RULE 103 AND FOR THE REASONS SET FORTH IN RECORD DOCUMENT 160, DEFENDANTS PROFFER DR. SOLANKY'S THREE EXPERT REPORTS, WHICH WERE PREVIOUSLY UPLOADED TO JERS AT SOS 2, WHICH IS ENTITLED "EXPERT REPORT OF TUMULESH" -- THAT'S T-U-M-U-L-E-S-H -- "K. SOLANKY" -- THAT'S S-O-L-A-N-K-Y -- "PH.D." DATED JULY 28, 2023.

ADDITIONALLY, THAT'S SOS 5, WHICH IS DR. SOLANKY'S REBUTTAL REPORT DATED AUGUST 21, 2023, AND SOS 39, WHICH IS DR. SOLANKY'S SUPPLEMENTAL REPORT DATED OCTOBER 27, 2023.

THE COURT: THE FIRST REPORT -- I'M SORRY, I

10:54a

JUST DIDN'T WRITE THE EXHIBIT NUMBER DOWN. HIS INITIAL REPORT WAS EXHIBIT NUMBER WHAT?

MS. HOLT: SOS 2, YOUR HONOR.

THE COURT: 2.

ALL RIGHT. THE COURT WILL ADMIT 2, 5 AND 39 AS PROFFERS AND THAT --

MS. GIGLIO: YOUR HONOR --

THE COURT: YOU MAY BE HEARD, YES.

MS. GIGLIO: I APOLOGIZE, YOUR HONOR, FOR INTERRUPTING.

THE COURT: GO AHEAD. YOU MAY BE HEARD.

MS. GIGLIO: WE'D JUST LIKE TO MAINTAIN THE OBJECTIONS TO DR. SOLANKY'S REPORTS AS ARTICULATED IN THE MOTION IN LIMINE PRACTICE BEFORE THIS COURT AND AS ARTICULATED IN YOUR HONOR'S DECISION ON DR. SOLANKY'S TESTIMONY.

WE WOULD ALSO FURTHER OBJECT TO THE PROFFER OF DR. SOLANKY'S SUPPLEMENTAL REPORT. THAT'S AT SOS 39 I BELIEVE, AS COUNSEL REPRESENTED. TO THE EXTENT THAT DR. SOLANKY'S SUPPLEMENTAL REPORT GOES BEYOND RESPONDING TO DR. HANDLEY'S SUPPLEMENTAL REPORT WHICH WAS PREVIOUSLY ADMITTED TO THIS COURT AS PLAINTIFFS' EXHIBIT 19 -- 16 THROUGH 19, YOUR HONOR.

THE COURT: OKAY. THE COURT OF APPEAL WILL TAKE UP YOUR OBJECTIONS IN THE EVENT THAT THE COURT

10:55a

DETERMINES THAT THE MOTION IN LIMINE EXCLUDING DR. SOLANKY'S PROPOSED OPINION TESTIMONY WAS EXCLUDED BY THE COURT.

EXHIBITS 2, 5 AND 39 ARE ADMITTED AS PROFFER EXHIBITS. AND COUNSEL FOR THE DEFENDANTS ARE INSTRUCTED TO AMEND YOUR JERS DESCRIPTION TO SHOW "PROFFER," SO THAT WHEN IT GOES TO THE COURT OF APPEAL THERE IS NO CONFUSION ABOUT WHAT'S PART OF THE PROFFER AND WHAT'S PART OF THE RECORD.

SO THE FIRST -- THE FIRST WORDS IN YOUR DESCRIPTION SHOULD SAY "PROFFER" AND THEN SAY, YOU KNOW, "DR. SOLANKY REPORT" OR WHATEVER.

MS. GIGLIO: AND, YOUR HONOR, FOR THE SAKE OF THE RECORD -- MY NAME IS AMANDA GIGLIO ON BEHALF OF PLAINTIFFS. AND I JUST WANT TO BE CLEAR, YOUR HONOR, THAT OUR OBJECTION TO USE DR. SOLANKY'S REPORT OR DR. SOLANKY'S SUPPLEMENTAL REPORT AT SOS 39 IS THAT ANY PORTIONS OF IT THAT GO BEYOND DR. HANDLEY'S -- BEYOND RESPONDING TO DR. HANDLEY'S OWN SUPPLEMENTAL REPORT ARE UNTIMELY.

THE COURT: OKAY. IT'S NOTED FOR THE RECORD.

MS. HOLT: YES. AND, YOUR HONOR, IF I MAY BRIEFLY RESPOND.

THE COURT: YOU MAY.

10:56a

MS. HOLT: SOS 39 IS DIRECTLY IN RESPONSE TO DR. HANDLEY'S SUPPLEMENTAL REPORT, WHICH DEFENDANTS MAINTAIN WAS UNTIMELY. THANK YOU.

THE COURT: OKAY. ANYTHING ELSE THAT THE DEFENDANTS NEED TO TAKE CARE OF IN THE WAY OF HOUSEKEEPING OR PROFFERS BEFORE YOU CLOSE -- BEFORE YOU REST?

MR. LEWIS: YES. YOUR HONOR, PATRICK LEWIS ON BEHALF OF THE LEGISLATIVE DEFENDANTS.

YOUR HONOR, YOUR RULING ON THE MOTION IN LIMINE EXCLUDED PORTIONS BUT NOT THE ENTIRETY OF THE TWO REPORTS OF DR. DOUGLAS JOHNSON AT LDTX 51 AND 58. YOUR HONOR DIRECTED US TO PREPARE A REDACTED VERSION OF THOSE TWO EXHIBITS THAT REDACTED THE EXCLUDED PORTIONS.

I AM PLEASED TO REPORT TO THE COURT THAT WE HAVE MET AND CONFERRED WITH PLAINTIFFS' COUNSEL AND, AS OF ROUGHLY 20 MINUTES AGO, HAVE FINAL REDACTED VERSIONS. WE WOULD PROPOSE TO UPLOAD THOSE AT THE NEXT BREAK.

THE COURT: SO YOUR REDACTED VERSIONS WILL BE 1 AND 58. IS THAT CORRECT?

MR. LEWIS: 51 AND 58. YES, YOUR HONOR.

THE COURT: 51 AND 58. OKAY.

MR. LEWIS: YES, YOUR HONOR.

10:58a

AND THEN I UNDERSTAND -- AND WE WILL VERIFY AT THE BREAK -- THAT THE UNREDACTED VERSIONS HAVE BEEN RELABELED AS LDTX 51-A AND LDTX 58-A. AND THOSE UNREDACTED VERSIONS, YOUR HONOR, PURSUANT TO RULE OF EVIDENCE 103 AND FOR THE REASONS STATED ON THE RECORD, AS WELL AS IN RECORD DOCUMENT NO. 160, WE WOULD PROFFER IS THE TESTIMONY OF AND OPINIONS OF DR. JOHNSON, THE SUBSTANCE OF THAT TESTIMONY AND OPINIONS THAT HE WOULD HAVE PROVIDED IF HE WOULD HAVE BEEN ALLOWED TO TESTIFY AS TO THOSE ISSUES.

THE COURT: DO YOU WANT TO BE HEARD?

MS. KEENAN: YOUR HONOR, I BELIEVE THAT WE MADE THE OBJECTION AT THE TIME THAT THE REPORTS WERE ATTEMPTED TO BE ADMITTED DURING DR. JOHNSON'S DIRECT. WE WOULD STAND AGAIN ON THE MOTIONS IN LIMINE PRACTICE AS WELL AS THE RULINGS ARTICULATED IN YOUR HONOR'S ORDER AS TO WHY THE PORTIONS OF MISTER -- OF DR. JOHNSON'S REPORT SHOULD BE EXCLUDED.

AND I WOULD OTHERWISE JUST REPRESENT THAT MR. LEWIS IS CORRECT THAT WE AGREED TO THE REDACTED PORTIONS THAT CAN BE ADMITTED INTO THE RECORD.

THE COURT: OKAY. SO HERE'S WHAT I WANT YOU TO DO. ON 51-A AND 58-A -- IS IT THE FULL REPORT ALL OVER AGAIN?

10:59a

MR. LEWIS: YES, IT IS LITERALLY THE ORIGINAL VERSIONS OF 51 AND 58 RELABELED.

THE COURT: WHY DON'T YOU JUST PUT THE REDACTED VERSIONS IN SO WE DON'T HAVE SO VOLUMINOUS A RECORD? I'M ACTUALLY JUST TRYING TO SAVE SOME -- WHAT?

THE COURTROOM DEPUTY: I'VE ALREADY MARKED THEM "PROFFERED" AND "UNDER SEAL," THE As.

THE COURT: OKAY. THEY'RE ALREADY IN JERS AS 51-A AND 58-A AS PROFFER AND UNDER SEAL. AND THE SAME NAMING NOMENCLATURE WILL APPLY TO THE DR. JOHNSON PROFFER AS APPLIED TO THE DR. SOLANKY PROFFER. OKAY?

MR. LEWIS: THANK YOU, YOUR HONOR.

THE COURT: YOU'RE WELCOME.

MS. KEENAN: YOUR HONOR, IF I MAY BRIEFLY CLARIFY ONE OTHER THING NOT RELATED TO DR. JOHNSON BUT RELATED TO MS. MCKNIGHT'S OBJECTION RELATED TO THE OVERLAPPING DISTRICTS.

JUST FOR THE CLARITY OF THE RECORD, THE COOPER EXHIBITS AND REPORT THAT I WAS SPEAKING ABOUT CAN BE FOUND AT EXHIBIT 20, PARAGRAPHS 92 AND 120, AS WELL AS EXHIBITS 56, 57, 58, 59, 75, 76, 77 AND 78, JUST SO THE RECORD IS CLEAR ON THAT ISSUE.

MS. MCKNIGHT: YOUR HONOR, I NEED TO

11:00a

WITHDRAW MY OBJECTION. I'VE BEEN CORRECTED, AND I WANT TO MAKE CLEAR THAT I WITHDRAW THAT OBJECTION.

THE COURT: THANK YOU FOR YOUR PROFESSIONALISM.

MS. MCKNIGHT: THANK YOU.

THE COURT: ALL RIGHT.

MR. STRACH: THANK YOU, YOUR HONOR. PHIL STRACH.

ALL OF THE DEFENDANTS REST.

THE COURT: THE DEFENDANTS AND THE INTERVENING DEFENDANTS ARE RESTING?

MR. STRACH: CORRECT.

THE COURT: OKAY.

ALL RIGHT. IS THERE ANY REBUTTAL?

MS. GIGLIO: YES, YOUR HONOR. PLAINTIFFS CALL DR. MARVIN KING TO THE STAND.

THE COURT: I'M SO SORRY. I WAS READING SOMETHING. WHAT -- WHO ARE YOU CALLING?

MS. GIGLIO: PLAINTIFFS CALL REBUTTAL WITNESS DR. MARVIN P. KING TO THE STAND.

(WHEREUPON, MARVIN P. KING, BEING DULY SWORN, TESTIFIED AS FOLLOWS.)

MS. GIGLIO: YOUR HONOR, MAY I APPROACH THE WITNESS TO HAND HIM A COPY OF HIS REPORT?

THE COURT: YOU MAY.

11:01a

THE COURTROOM DEPUTY: WOULD YOU PLEASE STATE YOUR NAME AND SPELL IT FOR THE RECORD, PLEASE.

THE WITNESS: MARVIN KING. M-A-R-V-I-N, K-I-N-G.

MS. GIGLIO: AND GOOD MORNING AGAIN. THIS IS AMANDA GIGLIO, G-I-G-L-I-O, ON BEHALF OF PLAINTIFFS.

VOIR DIRE

BY MS. GIGLIO:

Q GOOD MORNING, DR. KING.

A GOOD MORNING.

Q CAN YOU PLEASE SHARE YOUR EDUCATIONAL BACKGROUND WITH THE COURT, STARTING WITH COLLEGE?

A I HAVE A DEGREE IN GOVERNMENT FROM THE UNIVERSITY OF TEXAS AT AUSTIN AND A PH.D. FROM THE UNIVERSITY OF NORTH TEXAS IN POLITICAL SCIENCE, 2005.

Q SO YOU RECEIVED YOUR PH.D. IN 2005?

A YES.

Q AND WHAT WAS THE FOCUS OF YOUR PH.D. RESEARCH, DR. KING?

A AFRICAN-AMERICAN VOTING BEHAVIOR.

Q WHAT WAS YOUR DISSERTATION ABOUT?

A WHY AFRICAN AMERICANS VOTE THE WAY THEY DO, SPECIFICALLY THEIR PARTISANSHIP, GIVEN THAT IT'S BEEN SO CONSISTENTLY DEMOCRATIC FOR SO MANY YEARS BEYOND

11:02a

THE CIVIL RIGHTS MOVEMENT.

Q WHAT HAVE YOU DONE SINCE RECEIVING YOUR PH.D., DR. KING?

A I HAVE BEEN A PROFESSOR -- ASSOCIATE PROFESSOR OF POLITICAL SCIENCE WITH A JOINT APPOINTMENT IN AFRICAN-AMERICAN STUDIES AT THE UNIVERSITY OF MISSISSIPPI.

Q DO YOU HAVE TENURE AT THE UNIVERSITY OF MISSISSIPPI?

A I DO. I'M A ASSOCIATE PROFESSOR WITH THAT JOINT APPOINTMENT.

Q WHAT ARE YOUR AREAS OF RESEARCH?

A AFRICAN-AMERICAN VOTING BEHAVIOR. AND RIGHT NOW I'M WRITING A BOOK MANUSCRIPT ON ECONOMIC AND WEALTH INEQUALITY AND HOW IT AFFECTS POLITICS BUT SPECIFIC TO BLACK AMERICANS.

Q DO YOU STUDY AFRICAN-AMERICAN POLITICS?

A YES.

Q WHAT IS AFRICAN-AMERICAN POLITICS?

A AFRICAN-AMERICAN POLITICS IS UNDERSTANDING THAT BLACKS AS A NUMERIC MINORITY IN THE UNITED STATES HAVE ALWAYS HAD A DIFFERENT POLITICAL EXPERIENCE. SO WHEN WE THINK OF AFRICAN-AMERICAN POLITICS, AT LEAST IN MY CLASSES I EXPLAIN HOW IT'S BEEN A DIFFERENT POLITICAL ORIENTATION FOR BLACKS

11:03a

GOING ALL THE WAY BACK TO THE CONSTITUTION. WE'LL LOOK AT, FOR INSTANCE, THE IMPOSITION OF JIM CROW, HOW JIM CROW WAS OVERCOME LEGALLY AND THROUGH LEGISLATION AS WELL AS THROUGH THE COURTS, AND THEN CONTEMPORARY POLITICAL AND VOTING ISSUES TODAY.

Q AND ASIDE FROM YOUR DISSERTATION, DR. KING, HAVE YOU PUBLISHED ACADEMIC ARTICLES?

A YES, I HAVE.

Q ARE ALL OF THE ARTICLES THAT YOU'VE PUBLISHED REFLECTED ON YOUR C.V.?

A YES, THEY ARE.

Q WHAT'S THE GENERAL FOCUS OF YOUR ACADEMIC RESEARCH -- OR YOUR ACADEMIC ARTICLES? EXCUSE ME, DR. KING.

A AFRICAN-AMERICAN POLITICS, VOTING BEHAVIOR, DONATIONS, POLITICAL DONATIONS.

Q AND YOU MENTIONED THAT YOU'RE WORKING ON A BOOK MANUSCRIPT, DR. KING. CAN YOU TELL THE COURT A LITTLE BIT MORE ABOUT THE BOOK THAT YOU'RE WORKING ON?

A YES. SO I'M LOOKING AT INCOME AND WEALTH INEQUALITY AND HOW POLITICS AFFECTS THAT. AND SO, YOU KNOW, ONE OF THE POLITICAL MANIFESTATIONS OF POLITICAL INEQUALITY, IF YOU WILL, BEING A NUMERIC MINORITY, CAN MANIFEST ITSELF IN TERMS OF INCOME AND

11:04a

WEALTH INEQUALITY.

Q DR. KING, ARE YOU FAMILIAR WITH THE CONCEPT OF RACIALLY POLARIZED VOTING?

A YES, I AM.

Q CAN YOU BRIEFLY DESCRIBE RACIALLY POLARIZED VOTING FOR THE COURT?

A YES. RACIALLY POLARIZED VOTING IS WHEN YOU HAVE A MAJORITY OF ONE RACE VOTING AGAINST A MAJORITY OF ANOTHER RACE.

Q AND IS RACIALLY POLARIZED VOTING A TOPIC THAT YOU STUDY?

A YES. IT HAS APPEARED IN A COUPLE OF MY PUBLISHED WORKS AND IN THE CLASSES THAT I TEACH.

Q CAN YOU TELL US A LITTLE BIT ABOUT HOW IT COMES UP IN THE CLASSES THAT YOU TEACH?

A SO TWO CLASSES IN PARTICULAR -- I TEACH SEVERAL CLASSES, BUT TWO IN PARTICULAR THAT ARE RELEVANT TO THIS WOULD BE MY AFRICAN-AMERICAN POLITICS CLASS AS WELL AS POLITICS OF THE AMERICAN SOUTH.

Q CAN YOU TELL US A LITTLE BIT HOW ABOUT -- CAN YOU TELL US A LITTLE BIT ABOUT HOW RACIALLY POLARIZED VOTING COMES UP IN YOUR POLITICS OF THE AMERICAN SOUTH CLASS?

A SURE. SO THAT CLASS IS ESSENTIALLY ABOUT

11:05a

PARTY CHANGE. THE AMERICAN SOUTH WAS LARGELY A ONE-PARTY DEMOCRATIC PARTY STRONGHOLD, BUT THEN BEGINNING IN THE 1960s IT TRANSITIONED TO REPUBLICAN PARTISANSHIP.

SO IN UNDERSTANDING AFRICAN-AMERICAN POLITICS HERE, THERE HAS LONG BEEN A RECOGNITION THAT BLACK AND WHITE VOTING BEHAVIOR HAS BEEN DIFFERENT, AND SO THAT HELPS EXPLAIN THE PARTY CHANGE FROM DEMOCRATIC PARTY DOMINANCE TO REPUBLICAN PARTY DOMINANCE IN THE SOUTH. MUCH OF THE LITERATURE ASSERTS THAT YOU HAD A RACE-BASED PARTISAN REALIGNMENT, SO YOU DID HAVE PARTY POLARIZATION BUT IT WAS BECAUSE OF A RACIAL TRIGGER.

Q CAN YOU TELL US A LITTLE BIT ABOUT HOW RACIALLY POLARIZED VOTING COMES UP IN YOUR AFRICAN-AMERICAN POLITICS CLASS?

A SURE. SO IT COMES UP LOTS OF WAYS. BUT JUST AS ONE EXAMPLE: SO IN MY CLASSES I MIGHT EXPLAIN, FOR INSTANCE, THE EXISTENCE OF, SAY, THE CONGRESSIONAL BLACK CAUCUS, OR AT THE STATE LEVEL YOU HAVE LEGISLATIVE BLACK CAUCUSES. AND SO THEN I HAVE TO EXPLAIN TO MY CLASS WHY WE HAVE BLACK CAUCUSES, WHAT TYPE OF DISTRICTS THEY REPRESENT. SO THAT LEADS INTO A DISCUSSION OF MAJORITY-MINORITY DISTRICTS. SO THEN I MIGHT EXPLAIN WHY WE HAVE MAJORITY-MINORITY

11:06a

DISTRICTS.

AND WHEN I SAY "WHY," YOU KNOW, THE PROCESS OF WHERE THE COURTS HAVE ALLOWED THESE TYPES OF DISTRICTS TO BE CREATED. SO ALL OF THAT, THOUGH, IS LAID ON A FOUNDATION THAT THERE IS RACIALLY POLARIZED VOTING AND, THEREFORE, WE HAVE THESE LEGAL, YOU KNOW, LEGISLATIVE AND JUDICIAL, YOU KNOW, EDICTS TO CREATE THESE MAJORITY-MINORITY DISTRICTS.

Q IS RACIALLY POLARIZED VOTING A TOPIC THAT YOU PUBLISH ON?

A YEAH. IT HAS COME UP IN A COUPLE OF THE ARTICLES I HAVE PUBLISHED.

Q CAN YOU POINT THOSE ARTICLES OUT TO THE COURT?

A SURE. SO POLITICAL RACIAL CYCLES, THE ELECTORAL CYCLES IN RACIAL POLARIZATION IN THE 2006 SENATE ELECTIONS, AND THEN THE ELECTORAL GEOGRAPHY OF BLACK ELECTORAL SUCCESS.

Q AND AGAIN, BOTH OF THOSE ARTICLES ARE REFLECTED ON YOUR C.V. IS THAT RIGHT?

A YES, THAT IS CORRECT.

Q DR. KING, ARE YOU FAMILIAR WITH REGRESSION ANALYSIS?

A YES, I AM.

Q HOW DID YOU BECOME FAMILIAR WITH IT?

11:07a

A IN GRADUATE SCHOOL IN A METHODS COURSE.
Q DO YOU USE REGRESSION ANALYSIS IN YOUR WORK?
A YES, IT HAS COME UP IN MY WORK.
Q CAN YOU BRIEFLY DESCRIBE WHAT REGRESSION ANALYSIS IS FOR US?
A SURE. ESSENTIALLY REGRESSION ANALYSIS IS JUST SEEING WHAT THE EFFECTS OF ONE VARIABLE ARE ON OTHER VARIABLES.
Q AND ARE YOU FAMILIAR WITH ECOLOGICAL INFERENCE?
A YES, I AM.
Q IF I REFER TO IT AS EI, WILL YOU UNDERSTAND WHAT I MEAN?
A YES.
Q DO YOU ENCOUNTER ECOLOGICAL INFERENCE IN YOUR WORK?
A YES, ESPECIALLY AND MOST RELEVANT TO, YOU KNOW, UNDERSTANDING THIS SORT OF SPECIFIC WORK THAT WE'RE LOOKING AT IN THIS SORT OF CASE; YOU KNOW, UNDERSTANDING VOTING BEHAVIOR.
Q WHEN YOU SAY "THIS SORT OF CASE," WHAT DO YOU MEAN BY THAT?
A SO REDISTRICTING CASES, YES.
Q AND CAN YOU BRIEFLY DESCRIBE WHAT ECOLOGICAL INFERENCE ACCOMPLISHES TO THE COURT?

11:08a

A SURE. SO ESSENTIALLY YOU'RE JUST TAKING -- YOU'RE TRYING TO UNCOVER INDIVIDUAL LEVEL BEHAVIOR WITH AGGREGATE DATA. SO ESSENTIALLY YOU'VE GOT A POPULATION AND THEN YOU'RE TRYING TO FIGURE OUT MAYBE HOW A SUBPOPULATION BEHAVED. AND SO ECOLOGICAL INFERENCE IS THE TOOL AND IT'S WHAT'S RECOMMENDED FOR USE IN REDISTRICTING CASES INVOLVING RACE, YES.

MS. GIGLIO: YOUR HONOR, AT THIS TIME PLAINTIFFS SEEK TO MOVE DR. KING'S REPORT, WHICH IS PLAINTIFFS 133, AND DR. KING'S C.V., WHICH IS PLAINTIFFS 134, INTO EVIDENCE. PLAINTIFFS ALSO SEEK TO TENDER DR. KING AS AN EXPERT IN POLITICAL SCIENCE, VOTING BEHAVIOR, AND RACIALLY POLARIZED VOTING.

THE COURT: ALL RIGHT. ANY CROSS ON THE TENDER?

MR. LEWIS: NO, YOUR HONOR.

THE COURT: AND NO OBJECTIONS TO THE ADMISSIONS?

MR. LEWIS: THAT IS CORRECT, YOUR HONOR.

THE COURT: THE C.V. AND REPORT ARE ADMITTED.

DIRECT EXAMINATION

BY MS. GIGLIO:

Q DR. KING, WE'RE NOW GOING TO TAKE A LOOK AT THE EXPERT REPORT THAT YOU PREPARED IN THIS CASE.

11:09a

AND CAN WE PULL UP PLAINTIFFS' EXHIBIT 133.

AND IF YOU TURN TO THE FIRST TAB IN YOUR BINDER, DR. KING, IS THAT A COPY OF THE REPORT THAT YOU PREPARED FOR THIS CASE?

A YES, IT IS.

Q AND, DR. KING, WHAT WERE YOU ASKED TO DO?

A I WAS ASKED TO PROVIDE A REBUTTAL REPORT TO DR. ALFORD SPECIFIC TO HIS CONCLUSIONS ON THE EXISTENCE OR NONEXISTENCE OF RACIALLY POLARIZED VOTING AS WELL AS A DISCUSSION ON COHESION AND POLICY PREFERENCES.

Q AND I'M GOING TO TAKE THOSE IN TURN, DR. KING. WHAT DID YOU DO TO REBUT DR. ALFORD'S CONCLUSIONS REGARDING POLITICAL -- OR REGARDING THE EXISTENCE OF RACIAL POLARIZATION?

A SO I RAN A ECOLOGICAL INFERENCE TEST ON AN ELECTION -- THE 2022 U.S. SENATE ELECTION. AND I DID IT SLIGHTLY DIFFERENT THAN SOME OTHER ECOLOGICAL INFERENCE TESTS, BUT -- JUST BECAUSE I WANTED TO RECREATE A DEMOCRATIC PRIMARY, WHICH DOESN'T STRICTLY EXIST HERE IN LOUISIANA BECAUSE OF LOUISIANA'S UNIQUE ELECTORAL SYSTEM.

Q CAN YOU TELL US A LITTLE BIT ABOUT WHY OR HOW LOUISIANA'S ELECTORAL SYSTEM IS UNIQUE?

A SURE. SO, YOU KNOW, HISTORICALLY IT WAS

11:11a

KNOWN AS A JUNGLE PRIMARY WHERE IN LOUISIANA YOU WOULD HAVE CANDIDATES OF BOTH PARTIES, REPUBLICAN AND DEMOCRATS AS WELL AS INDEPENDENTS, ALL ON ONE BALLOT. AND SO THEN VOTERS WOULD BE FACED WITH ANY NUMEROUS NUMBER OF CANDIDATES.

AND SO IN DR. ALFORD'S REPORT, HIS CONCLUSION IS THAT THERE IS EVIDENCE OF PARTY POLARIZATION. AND PARTY POLARIZATION DOES EXIST, BUT THAT DOESN'T MEAN THAT RACIAL POLARIZATION DOESN'T ALSO EXIST. AND SO WHAT I WANTED TO DO ESSENTIALLY WAS SIMULATE A DEMOCRATIC PRIMARY. IN OTHER STATES YOU REALLY WOULDN'T HAVE TO WORRY ABOUT IT. YOU WOULD HAVE A DEMOCRATIC PRIMARY AND A REPUBLICAN PRIMARY. BUT HERE IN LOUISIANA THAT'S NOT THE CASE.

SO ESSENTIALLY WHAT I DID WAS JUST -- IN THE ANALYSIS I RAN THE SAME ECOLOGICAL INFERENCE METHODS. IT WAS JUST A DIFFERENT UNIT OF ANALYSIS. SO I JUST EXCLUDED THE REGISTERED REPUBLICANS AND JUST FOCUSED ON REGISTERED DEMOCRATS. AND THAT WAY PARTISANSHIP IS KIND OF OUT OF THE EQUATION AND NOW WE'RE JUST LOOKING AT: IS THERE STILL A DIFFERENCE IN VOTING AMONG WHITE VOTERS AND BLACK VOTERS, BUT NOW YOU'VE ELIMINATED PARTY. SO THAT'S WHAT I WANTED TO DO.

Q EXCUSE ME. HOW DID THE 2022 U.S. SENATE ELECTION IN LOUISIANA ALLOW YOU TO ACCOMPLISH THIS

11:12a

GOAL?

A WELL, SO THE NICE THING ABOUT A FEDERAL SENATE ELECTION IS IT'S A BIG ELECTION, AND THAT'S IMPORTANT IN THE SENSE THAT YOU'RE GOING TO HAVE THE HIGHEST LEVELS OF TURNOUT WITH YOUR FEDERAL ELECTIONS, ESPECIALLY A STATEWIDE FEDERAL ELECTION. AND THEN ALSO THIS PARTICULAR ELECTION FEATURED A VIABLE BLACK DEMOCRATIC CANDIDATE AS WELL AS A VIABLE WHITE DEMOCRATIC CANDIDATE. SO YOU HAVE GARY CHAMBERS, THE BLACK CANDIDATE, AND LUKE MIXON, THE WHITE CANDIDATE. THERE WERE OTHER CANDIDATES AS WELL, BUT YOU HAD TWO VIABLE CANDIDATES; ONE BLACK, ONE WHITE.

Q WHAT DO YOU MEAN BY "VIABLE"?

A WHAT I MEAN IS THAT THEY RAISED MONEY, THEY HAD NAME RECOGNITION, SO THEY WERE ABLE TO RUN STRONG, CREDIBLE CAMPAIGNS. THERE WERE SOME MINOR CANDIDATES THAT DID NOT RAISE SUBSTANTIAL AMOUNTS OF MONEY, SO THEY WEREN'T ABLE TO REALLY CONDUCT A STRONG CAMPAIGN, AND THEY WERE MINOR CANDIDATES, IF YOU WILL. BUT THIS RACE FEATURED A VIABLE BLACK CANDIDATE AS WELL AS A VIABLE WHITE CANDIDATE.

Q AND, DR. KING, WHAT DATA DID YOU USE TO CONDUCT THE ECOLOGICAL INFERENCE ANALYSIS YOU DID ON THE 2022 U.S. SENATE ELECTION IN LOUISIANA?

11:13a

A SO PLAINTIFFS' COUNSEL PROVIDED ME A DATA SET WITH ALL OF THE INFORMATION. AND THEIR INFORMATION CAME FROM THE SECRETARY OF STATE'S INFORMATION, WHICH HAD THE VOTE RESULTS BY -- WELL, ACTUALLY BY PRECINCT, BUT PARISH. AND IT HAD THE NUMBER OF WHITE REGISTERED DEMOCRATS AND THE NUMBER OF BLACK REGISTERED DEMOCRATS, YOU KNOW, SO THAT INFORMATION IS JUST PROVIDED.

Q AND DID YOU DO ANYTHING TO CONFIRM THE ACCURACY OF THAT DATA?

A SURE. I THEN LOOKED AT THE SECRETARY OF STATE'S DATA JUST TO MAKE SURE THAT THE DATA I RECEIVED FROM PLAINTIFFS COMPORTED WITH THE SECRETARY OF STATE'S DATA. AND IT DID.

Q AND DO YOU THINK THAT ANALYZING ONLY REGISTERED DEMOCRATS AS OPPOSED TO ALL VOTERS AFFECTS THE RELIABILITY OF YOUR ANALYSIS?

A NO. IT'S THE SAME METHOD. IT'S JUST A DIFFERENT UNIT OF ANALYSIS. THEY JUST FOCUSED ON DEMOCRATS, AGAIN, JUST TO TAKE PARTISANSHIP OUT OF THE EQUATION.

BUT THAT'S WHY IT WAS IMPORTANT TO DO A -- YOU KNOW, FOR ME AT LEAST -- A STATEWIDE FEDERAL RACE, BECAUSE THEN YOU HAD A LARGE IN, A LARGE NUMBER OF VOTERS; YOU KNOW, COMBINED -- I DON'T KNOW THE

11:15a

NUMBER OFFHAND. BUT COMBINED, CHAMBERS AND MIXON HAD TWO HUNDRED AND FIFTY-SOMETHING THOUSAND VOTES, SO YOU'RE DEALING WITH A LARGE NUMBER.

Q I'D LIKE TO TURN TO PAGE 5 AND 6 OF YOUR REPORT, WHICH AGAIN IS PLAINTIFFS' EXHIBIT 133 FOR THE RECORD, SPECIFICALLY TABLE 4.

A OKAY.

Q ARE THESE RESULTS OF THE ECOLOGICAL INFERENCE ANALYSIS YOU CONDUCTED ON THE U.S. SENATE ELECTION IN 2022 IN LOUISIANA?

A IT IS.

Q AND CAN YOU JUST DESCRIBE THE DATA THAT IS REFLECTED IN THIS CHART FOR THE COURT?

A SURE. JUST MOVING LEFT TO RIGHT WE HAVE FIVE COLUMNS. THE FIRST COLUMN LIST THE PARISH, AND UNDERNEATH THAT YOU HAVE YOUR CREDIBLE INTERVALS, WHICH IS JUST A MEASURE OF UNCERTAINTY. AND THEN I'VE GOT THE PERCENTAGE OF BLACK SUPPORT FOR CHAMBERS -- THIS WAS THE RESULTS FROM THE EI -- THE PERCENTAGE OF WHITE SUPPORT FOR CHAMBERS, AND THEN THE PERCENTAGE OF BLACK SUPPORT FOR MIXON AND THE PERCENTAGE OF WHITE SUPPORT FOR MIXON.

Q AND CAN YOU REMIND THE COURT OF THE RACES OF THESE CANDIDATES AGAIN?

A SURE. SO CHAMBERS, COLUMNS 2 AND 3, IS THE

11:16a

BLACK CANDIDATE; AND MIXON, COLUMNS 4 AND 5, WOULD BE THE WHITE CANDIDATE.

Q AND, DR. KING, YOU INDICATE THAT YOU SELECTED PARISHES TO ANALYZE HERE. HOW DID YOU SELECT THOSE PARISHES?

A MY UNDERSTANDING IS THAT PLAINTIFFS ARE NOT BRINGING A STATEWIDE CHALLENGE, AND SO THAT THE PARISHES THAT I USED ARE THE ONES THAT ARE MOST RELEVANT TO THE SPECIFIC CHALLENGE IN THIS CASE.

Q AND YOU INDICATED THAT THE -- THAT YOU INCLUDED CREDIBLE -- CREDIBLE INTERVIEWS?

A INTERVALS, YES.

Q CREDIBLE INTERVALS. EXCUSE ME. AND THAT THEY INDICATE A MEASURE OF UNCERTAINTY. CAN YOU EXPLAIN THAT A LITTLE BIT FURTHER TO THE COURT?

A SURE. IT'S JUST A RANGE. SO ESSENTIALLY IF YOU WERE TO RUN THIS TEST A HUNDRED TIMES, 95 PERCENT OF THE TIME YOUR MEDIAN RESULT IS GOING TO BE SOMEWHERE BETWEEN -- SO, FOR INSTANCE, WITH ASCENSION AND BLACK SUPPORT FOR CHAMBERS, THE RANGE YOU'RE GOING TO GET WILL BE SOMEWHERE BETWEEN 71 AND 76 PERCENT.

Q AND, DR. KING, LOOKING AT ALL OF TABLE 4 AS A WHOLE -- AND IF WE COULD JUST PULL THEM UP SIDE BY SIDE -- WHAT DOES THE EVIDENCE REFLECTED IN TABLE 4

11:17a

EVIDENCE?

A WHEN I LOOK AT THIS I SEE EVIDENCE OF RACIALLY POLARIZED VOTING, BECAUSE, AGAIN, WE'RE JUST LOOKING AT REGISTERED DEMOCRATIC VOTERS. AND SO, FOR INSTANCE, WITH ASCENSION YOU SEE 73 -- ALMOST 74 PERCENT OF BLACKS SUPPORTED CHAMBERS BUT ONLY 40 PERCENT OF WHITES, SO THAT'S A 33 PERCENT GAP. AND THEN LIKEWISE SUPPORT FOR MIXON YOU HAVE 25 PERCENT -- ALMOST 26 PERCENT OF BLACKS WHO SUPPORTED MIXON BUT 60 PERCENT OF WHITES SUPPORTED MIXON. SO, YOU KNOW, MORE THAN A TWO-TO-ONE DIFFERENCE. SO WHEN I LOOK AT THAT, I'M SEEING EVIDENCE OF RACIALLY POLARIZED VOTING.

Q WE CAN TAKE THIS DOWN.

SO, DR. KING, YOU INDICATED THAT YOU WERE -- YOU REVIEWED DR. ALFORD'S REPORT IN THIS CASE. IS THAT RIGHT?

A YES, I DID.

Q SO I'D LIKE TO BRING UP DR. ALFORD'S REPORT. THAT'S LDTX 53, AND IT'S BEEN PREVIOUSLY ADMITTED. AND I'D LIKE TO PULL UP TABLE 3, WHICH IS ON PAGE 10 OF THIS REPORT. IF WE COULD BLOW THAT UP, THAT WOULD BE GREAT.

SO, DR. KING, WHAT DO YOU UNDERSTAND TABLE 3 TO REPRESENT?

11:18a

A I AM LOOKING AT A VARIETY OF STATEWIDE ELECTIONS SHOWING THE DATE, THE CONTEST, THE CANDIDATES, THEIR PARTY, THEIR RACE, AND SIMILAR ECOLOGICAL INFERENCE RESULTS.

Q AND I'D LIKE TO FOCUS SPECIFICALLY ON THE DATA CONTAINED IN THE BOTTOM-MOST CHART OF THIS, OF TABLE 3, WHICH IS THE NOVEMBER 2022 SENATE ELECTION.

DR. KING, IS THIS THE SAME ELECTION THAT YOU ANALYZED IN YOUR REPORT?

A YES, IT IS.

Q AND CAN YOU WALK ME THROUGH WHAT DR. ALFORD'S DATA INDICATES TO YOU?

A SURE. SO AGAIN, WE'RE LOOKING AT THE DATE, THE CONTEST, THE CANDIDATES; WE'VE GOT THEIR PARTY AND THEIR RACE AND THEN THE BLACK SUPPORT, AGAIN, WITH THOSE CREDIBLE INTERVALS, AND THEN THE WHITE SUPPORT WITH THOSE CREDIBLE INTERVALS.

Q WHAT WAS THE BLACK SUPPORT FOR MR. CHAMBERS, THE BLACK CANDIDATE IN THIS RACE, AS REPORTED BY DR. ALFORD?

A SO THIS IS 56.8 PERCENT. AND I WOULD JUST NOTE THAT THIS WOULD BE STATEWIDE RESULTS.

Q AND THIS -- THESE RESULTS REFLECT ALL VOTERS?

A YES. YES. WE'VE GOT BOTH DEMOCRATS AND

11:19a

REPUBLICAN VOTERS HERE, YES.

Q UNDERSTOOD. SO WE INDICATE -- YOU INDICATED EARLIER THAT THE BLACK SUPPORT FOR GARY CHAMBERS AS REFLECTED IN DR. ALFORD'S DATA IS 56.8 PERCENT. WHAT ABOUT THE WHITE SUPPORT FOR GARY CHAMBERS AS REFLECTED IN DR. ALFORD'S REPORT?

A 4.3 PERCENT.

Q AND CAN WE TAKE US THROUGH THE DATA REFLECTED FOR MR. MIXON, THE WHITE CANDIDATE?

A SURE. FOR MR. MIXON IT IS 23.9 PERCENT BLACK SUPPORT AND NINE PERCENT WHITE SUPPORT. SO JUST -- YOU KNOW, SO THAT WOULD BE AMONG, YOU KNOW, VOTES FOR THE DEMOCRATS THERE. SO NINE PERCENT OF WHITES VOTED FOR MIXON, FOUR PERCENT OF WHITES VOTED FOR CHAMBERS.

Q AND HOW DID THOSE RESULTS COMPARE?

A SO WHEN I LOOK AT THAT, I'M SEEING A -- ESSENTIALLY LIKE A TWO-TO-ONE DIFFERENCE. SO AMONG VOTE -- AMONG PEOPLE WHO VOTED FOR DEMOCRATS, I'M SEEING A TWO-TO-ONE ADVANTAGE FOR THE WHITE CANDIDATE FROM WHITE VOTERS, SO I'M SEEING RACIALLY POLARIZED VOTING JUST -- WHEN YOU JUST LOOK AT DEMOCRATS.

AND SO WHEN I WAS DOING MY REBUTTAL, ACTUALLY I SAW THIS FIRST AND I THOUGHT, OKAY, THIS IS EVIDENCE OF RACIALLY POLARIZED VOTING. AND SO

11:21a

THEN I JUST WANTED TO LOOK AT THOSE PARISHES SPECIFIC TO THE AREAS THAT ARE BEING CHALLENGED IN THIS CASE.

Q UNDERSTOOD. I'D LIKE TO TAKE ANOTHER -- TAKE A LOOK AT ANOTHER ELECTION CONTAINED IN TABLE 3 OF DR. ALFORD'S REPORT. CAN WE TURN TO PAGE 9 OF DR. ALFORD'S REPORT. AND AGAIN, THIS IS LDTX 53. SO I'D LIKE TO TAKE A LOOK AT THE ELECTION THAT TOOK PLACE IN NOVEMBER 2018 FOR SECRETARY OF STATE.

AND, DR. KING, BASED ON THE DATA IN FRONT OF YOU, HOW MANY DEMOCRATS RAN IN THIS ELECTION?

A I SEE TWO CANDIDATES.

Q AND WHO WERE THEY?

A WE HAVE GWEN COLLINS-GREENUP, WHO IS BLACK, AND RENEE FONTENOT FREE, WHO IS WHITE.

Q WHAT ARE THE -- YOU ALREADY GAVE ME THE RESPECTIVE RACES, DR. KING. WAY TO JUMP AHEAD.

A APOLOGIES.

Q SO LET'S LOOK AT THE PERCENTAGE OF BLACK SUPPORT FOR MS. COLLINS-GREENUP AS REFLECTED. WHAT DOES THAT FIGURE REFLECT?

A SO I SEE 56.3 PERCENT BLACK SUPPORT FOR COLLINS-GREENUP.

Q WHAT WAS THE PERCENTAGE OF WHITE SUPPORT FOR MS. COLLINS-GREENUP?

A 5.4 PERCENT.

11:22a

Q WHAT ABOUT FOR MS. FONTENOT FREE? WHAT WAS THE BLACK SUPPORT FOR MS. FONTENOT FREE?

A 31.1 PERCENT.

Q AND WHAT ABOUT THE WHITE SUPPORT FOR MS. FONTENOT FREE?

A 9.7 PERCENT.

Q AND AGAIN, WHAT CONCLUSIONS CAN YOU DRAW FROM THIS ELECTION?

A WHILE IT'S NOT QUITE A TWO-TO-ONE, IT'S MORE ABOUT -- I CAN'T DO THAT MATH IN MY HEAD, BUT 1.75 PERCENT DIFFERENCE ROUGHLY. SO I'M SEEING EVIDENCE OF RACIALLY POLARIZED VOTING. SO JUST EVEN AMONG THOSE VOTING FOR THE DEMOCRATS, WE SEE WHITE AND BLACK VOTERS DIFFER SUBSTANTIALLY ON THEIR PREFERRED CANDIDATE.

Q AND IN YOUR EXPERT OPINION, DR. KING, WHAT DOES THE EI ANALYSIS THAT WE JUST EXAMINED FROM YOURSELF AND FROM DR. ALFORD TELL YOU ABOUT VOTING BEHAVIOR IN LOUISIANA?

A IT TELLS ME THAT PARTY POLARIZATION IS ONLY PART OF THE STORY, THAT RACIAL POLARIZATION ALSO EXISTS EVEN AMONG COPARTISANS. AND BY "COPARTISANS," I MEAN EVEN PEOPLE WHO SHARE THE SAME PARTY IDENTIFICATION, YOU STILL SEE RACIALLY POLARIZED PREFERENCES. VOTERS CAN SHARE THE SAME PARTY BUT NOT

11:23a

WANT THE SAME CANDIDATE. WE ARE SEEING THIS WITH THE -- SORRY. I WAS GOING TO SAY THE REPUBLICAN PRESIDENTIAL NOMINATION RIGHT NOW. SO YOU CAN SHARE THE SAME PARTY BUT HAVE STRONGLY DIFFERENT PREFERENCES ON WHO YOU WANT.

Q HOW, IF AT ALL, DOES THIS OBSERVATION IMPACT BLACK VOTERS IN LOUISIANA?

A OH. WELL, WHAT IT MEANS IS IN THE ABSENCE OF A DISTRICT DRAWN WHERE BLACKS ARE A NUMERIC MAJORITY, LIKE A MAJORITY-MINORITY DISTRICT OR AT LEAST A STRONG POLARITY, BLACK VOTERS CANNOT COUNT ON WHITE COPARTISANS TO ELECT THEIR PREFERRED CANDIDATE.

Q DR. KING, I'D LIKE TO MOVE TO A DISCUSSION -- THANK YOU SO MUCH, STEPHEN.

I'D LIKE TO MOVE TO A DISCUSSION OF THE CONCEPT OF COHESION. WHAT IS YOUR UNDERSTANDING OF COHESION?

A COHESION IS WHEN YOU HAVE -- YOU KNOW, SO IN THIS INSTANCE WHERE WE'RE DEALING WITH RACIAL GROUPS, COHESION WOULD BE WHERE YOU HAVE MORE THAN 50 PERCENT SUPPORT FOR A PREFERRED CANDIDATE.

Q AND ARE YOU FAMILIAR WITH DR. ALFORD'S PERSPECTIVE ON COHESION?

A YES, I AM.

Q WHAT IS IT?

11:24a

A SO MY UNDERSTANDING OF DR. ALFORD'S -- THE WAY HE REPRESENTS COHESION IS THAT IT'S A CONTINUUM BUT THAT YOU -- IN ORDER TO -- COHESION TO BE OPERATIONAL OR DEFINITIVE, IT WOULD NEED TO BE CLOSER TO 70 PERCENT OR MORE, EVEN CLOSER TO 80 PERCENT. HE DOES NOT -- IN HIS REPORT HE SAYS THAT THERE IS NOT A THRESHOLD OR A CUT POINT, WHICH I WOULD AGREE WITH. BUT I WOULD ARGUE THAT 70 PERCENT IS TOO HIGH TO SAY THAT A GROUP IS VOTING COHESIVELY.

Q YOU INDICATED THAT YOU WOULD AGREE WITH DR. ALFORD THAT THERE IS NO THRESHOLD. IS THERE ANY POLITICAL SCIENCE LITERATURE THAT YOU'RE AWARE OF THAT DISCUSSES A THRESHOLD?

A THERE IS NOT.

Q YOU MENTIONED BEFORE, DR. KING, THAT LOUISIANA HAS A UNIQUE ELECTION SYSTEM. DOES THAT UNIQUE ELECTION SYSTEM AFFECT YOUR UNDERSTANDING OF COHESION?

A SURE. SO PRIMARIES AND GENERAL ELECTIONS ARE GOING TO SEE SOMETHING DIFFERENT, AND THAT'S JUST BECAUSE IN PRIMARIES WHERE YOU'VE GOT LOTS OF CANDIDATES, BY DEFINITION -- I SHOULDN'T SAY BY DEFINITION, BUT ALMOST INVARIABLY YOU'RE GOING TO HAVE VOTES SPREAD OUT AMONG MORE CANDIDATES. AND SO AS A RESULT, YOU'RE LESS LIKELY TO SEE COHESION

11:26a

REACHED. I WOULD STILL SAY IT'S THE SAME -- TO ME COHESION IS ONCE YOU GET TO ABOUT 50 PERCENT.

BUT IN A GENERAL ELECTION WHERE YOU JUST HAVE TWO CANDIDATES, COHESION IS GOING TO LOOK -- IT'S GOING TO BE EASIER TO REACH THAT BAR BECAUSE YOU'RE JUST LOOKING AT TWO CANDIDATES. BUT IN A WIDE-RANGING PRIMARY, ESPECIALLY THE WAY IT'S CONDUCTED IN LOUISIANA WHERE YOU CAN HAVE MANY, MANY CANDIDATES OF BOTH PARTIES, COHESION IS GOING TO LOOK DIFFERENT.

Q AND ARE YOU AWARE OF ANY POLITICAL SCIENCE LITERATURE THAT DISCUSSES THE CONCEPT OF COHESION?

A NO, NOT IN THIS SENSE. THE ONLY -- THE ONLY PLACE WHERE I'VE SEEN VOTING COHESION TALKED ABOUT IN A SIMILAR MANNER IS ACTUALLY IN STUDIES OF LEGISLATIVE BODIES, SO SPECIFICALLY HOW PARTIES VOTE TOGETHER, HOW MAYBE DEMOCRATS VOTE TOGETHER AS A GROUP AGAINST REPUBLICANS IN LEGISLATIVE, SO IN CONGRESS OR IN STATE LEGISLATIVE BODIES. BUT EVEN THEN THERE IS NO DEFINITION OF SAYING HERE'S WHEN COHESION IS MET.

BUT, YOU KNOW, THE CLOSER YOU GET TO 100 PERCENT IN SAYING THAT'S COHESIVE, THEN YOU'RE REALLY ACTUALLY GETTING TOWARDS UNANIMITY, WHICH TO ME IS A DIFFERENT STANDARD THAN COHESION.

11:27a

Q UNDERSTOOD. DR. KING, ARE YOU FAMILIAR WITH DR. MURRAY'S PERSPECTIVE ON COHESION?

A YES. I LOOKED AT A COUPLE OF PARAGRAPHS OF DR. MURRAY'S REPORT, NOT HIS ENTIRE REPORT BUT JUST A COUPLE OF THOSE PARAGRAPHS DEALING WITH COHESION. AND MY UNDERSTANDING OF DR. MURRAY'S REPORT IS THAT IF YOU REDUCE THE NUMBER OF BLACKS, THE BLACK VOTING AGE POPULATION IN A DISTRICT, THAT THAT MIGHT SOMEHOW REDUCE COHESION.

Q AND DO YOU AGREE WITH THAT PERSPECTIVE?

A NO. COHESION IS IRRESPECTIVE OF THE NUMBER OF -- THE BLACK VOTING AGE POPULATION IN A DISTRICT. SO YOU COULD HAVE 50 BLACKS OR 500,000 BLACKS, BUT THAT'S NOT GOING TO CHANGE COHESION OR HOW I WOULD THINK OF WHAT COHESION MEANS.

Q UNDERSTOOD. I'D LIKE TO TAKE A LOOK AT ANOTHER PORTION OF YOUR REPORT, DR. KING. SO IF WE COULD TURN TO TABLE 5, WHICH IS PAGE 7 OF PLAINTIFFS' EXHIBIT 133.

DR. KING, WHAT TABLE -- WHAT DATA IS SHOWN IN TABLE 5?

A SO THIS IS WHITE SUPPORT FOR RECENT DEMOCRATIC PRESIDENTIAL NOMINEES.

Q WHY DID YOU INCLUDE THIS DATA IN YOUR REPORT?

11:28a

A WELL, AGAIN, AS I WAS WRITING A REBUTTAL REPORT TO DR. ALFORD, HE HAD TALKED ABOUT IN HIS REPORT THE PERFORMANCE OF THE CLINTON-KAINE TICKET IN 2016 AND HOW IT PERFORMED POORLY AMONG WHITES. AND HE WAS USING IT TO DEMONSTRATE THAT AN ALL-WHITE TICKET, THAT THERE WAS STILL -- THAT THERE WAS STILL -- HE WAS JUST ESSENTIALLY -- FROM MY RECOLLECTION NOW IS THAT HE WAS CITING THE CLINTON-KAINE TICKET AS A PROXY FOR WHITE SUPPORT FOR -- WHITE VOTER SUPPORT FOR AN ALL-WHITE DEMOCRATIC TICKET.

Q HOW DOES THE DATA THAT YOU INCLUDE IN TABLE 5 ADDRESS THAT CONCLUSION?

A I JUST WANTED TO PUT IT IN CONTEXT HOW WELL CLINTON AND KAINE DID. CLINTON AND KAINE WERE PARTICULARLY ILL-RECEIVED IN LOUISIANA AND OTHER DEEP SOUTH STATES, AND SO I JUST WANTED TO PUT THAT IN CONTEXT. SO DEPENDING ON WHICH CANDIDATE YOU SELECT, YOU CAN ALWAYS DRAW, YOU KNOW, CERTAIN INFERENCES. BUT CLINTON-KAINE WERE PARTICULARLY UNDERPERFORMING, IF YOU WILL, AND SO I JUST WANTED TO ILLUSTRATE THAT WITH THIS.

Q ARE ANY OTHER ALL-WHITE TICKETS REFLECTED ON THIS CHART?

A WELL, SURE. SO IN PARTICULAR IN 2004 YOU HAVE THE KERRY-LIEBERMAN TICKET WHICH RECEIVED 41

11:30a

PERCENT SUPPORT, SO FOUR PERCENT MORE THAN CLINTON-KAINE. AND IN MY REPORT I REFERENCE SOME LITERATURE SPECIFIC TO LOUISIANA AND THE WHITE VOTER SUPPORT FOR THESE -- IN THESE ELECTIONS.

Q WE CAN TAKE THIS DOWN.

SO, DR. KING, I'D LIKE TO MOVE TO A DISCUSSION OF ONE OF THE OTHER ISSUES THAT YOU STATED YOU ADDRESSED IN YOUR REPORT, WHICH IS BLACK AND WHITE ATTITUDES ON POLICY ISSUES.

A OKAY.

Q WHAT DO YOU UNDERSTAND DR. ALFORD'S POSITION TO BE ON THAT TOPIC?

A MY UNDERSTANDING OF DR. ALFORD'S REPORT IS THAT BECAUSE WE ELECTED -- "WE" AS IN AMERICANS -- ELECTED A BLACK MAN, BARACK OBAMA, AS PRESIDENT AND BECAUSE THERE IS SOME PUBLIC OPINION POLLING SHOWING CONVERGENCE ON INTERRACIAL MARRIAGE, THAT BLACKS AND WHITES HAVE LARGELY THE SAME POLICY PREFERENCES.

Q DO YOU AGREE WITH DR. ALFORD'S POSITION?

A I DO NOT.

Q WHY NOT?

A SO FIRST, WHEN IT COMES TO INTERRACIAL MARRIAGE, IT HAS BEEN SETTLED LAW SINCE 1967 WITH THE *LOVING V VIRGINIA* DECISION, AND AS A RESULT IT'S NOT A SALIENT ISSUE. IT JUST MEANS THIS ISN'T SOMETHING

11:31a

THAT PEOPLE ARE THINKING ABOUT WHEN THEY'RE VOTING, BECAUSE IT'S SETTLED LAW. AND SO AS A RESULT, IT'S NOT THE MOST RELEVANT -- IT'S RELEVANT BUT IT'S NOT SALIENT.

MORE IMPORTANTLY, YOU'VE GOT SOMETHING OF A SOCIAL DESIRABILITY BIAS, SO WITH SOME SPECIFIC ISSUES IN INTERRACIAL MARRIAGE WOULD BE ONE OF THEM. SOCIAL DESIRABILITY BIAS JUST SIMPLY MEANS THAT RESPONDENTS TO SURVEYS MAY NOT GIVE THEIR FULLY TRUTHFUL ANSWER FOR FEAR OF OFFENDING OR JUST SAYING SOMETHING THAT THEY MIGHT -- THEY KNOW MIGHT BE CONSIDERED AS LIKE POLITICALLY INCORRECT, IF YOU WILL. AND SO THAT CAN BE AN ISSUE WITH THAT.

BUT MORE IMPORTANTLY, YOU KNOW -- SO BEYOND THOSE SPECIFIC CRITICISMS OF INTERRACIAL MARRIAGE TO ACT AS a PROXY FOR POLICY CONVERGENCE, I WOULD JUST SAY THAT THERE ARE MANY OTHER EXAMPLES OF PUBLIC POLICY ISSUES WHERE WE KNOW THERE IS WIDE POLICY DIVERGENCE BETWEEN BLACKS AND WHITES.

Q SO I JUST WANT TO BREAK THAT DOWN A LITTLE BIT. SO YOU SAID THAT THE CONCEPT OF SOCIAL DESIRABILITY BIAS COULD IMPACT SURVEY RESULTS ON ISSUES LIKE INTERRACIAL MARRIAGE. HOW WOULD THAT POSSIBLY PLAY OUT?

A SO LET ME -- COULD YOU REASK THAT? I JUST

11:33a

WANT TO MAKE SURE I UNDERSTAND WHAT YOU'RE ASKING ME.

Q SURE. SO YOU INDICATED THAT SOCIAL DESIRABILITY BIAS COULD IMPACT POLLING RESULTS ON ISSUES LIKE INTERRACIAL MARRIAGE. HOW WOULD IT IMPACT POLLING RESULTS?

A WELL, SO IF PEOPLE DON'T GIVE THEIR FORTHRIGHT RESPONSE, THERE IS SOME -- IN THE POLITICAL SCIENCE LITERATURE THERE IS SOME RATIONALE WHY PEOPLE MIGHT DO THAT. AND SO IF THEY DO THAT, THEN IT MIGHT -- WE MIGHT HAVE A CONFUSED SENSE OF WHAT POLICIES ARE MOST IMPORTANT FOR BLACK VOTERS AND WHITE VOTERS. AND SO IN THE LITERATURE THERE IS EVIDENCE OF HOW THIS SOCIAL DESIRABILITY BIAS CAN AFFECT OUR UNDERSTANDING OF PUBLIC POLICY PREFERENCES.

Q DOES DR. ALFORD CITE POLLING TO SUPPORT HIS VIEWS ON INTERRACIAL MARRIAGE?

A YES. SO HE CITES A -- YES, HE DOES. HE USES GALLUP, AND I USE GALLUP AS WELL.

Q SO HE USES A GALLUP POLL TO SUPPORT HIS POSITION ON INTERRACIAL MARRIAGE ON CHANGING ATTITUDES?

A I BELIEVE THAT'S WHAT HE USES, YES.

Q AND YOU ALSO INDICATED THAT THERE ARE OTHER POLICY ISSUES THAT ARE MORE SALIENT THAN INTERRACIAL

11:34a

MARRIAGE. CAN YOU DESCRIBE THOSE KINDS OF POLICY ISSUES TO THE COURT?

A SURE. SO, FOR INSTANCE, YOU WOULD HAVE USE OF FORCE BY POLICE. THAT IS WHERE WE SEE -- AN EXAMPLE WHERE WE SEE WIDE DIVERGENCE BETWEEN BLACKS AND WHITES. ALSO WHEN PEOPLE ARE ASKED QUESTIONS ABOUT WHETHER OR NOT BLACKS AND WHITES HAVE EQUAL CHANCES TO SUCCEED, WE SEE WIDE DIVERGENCE. IN FACT, THE POLLING SHOWS THAT THAT DIVERGENCE HAS GOTTEN WIDER OVER TIME, EVEN DURING THE OBAMA ADMINISTRATION. AND THAT'S ONE OF THE REASONS WHY I WANTED TO USE THE GALLUP AS AIDS, INFORMATION THAT DR. ALFORD USED. AND SO BECAUSE I WAS WRITING A REBUTTAL REPORT, I JUST WANTED, YOU KNOW, SIMILAR INFORMATION. BUT ALSO THE GALLUP POLL SPANS THE OBAMA ADMINISTRATION.

AND SO SPECIFICALLY DR. ALFORD HAD SAID -- HAD CITED THE ELECTION OF BARACK OBAMA AS EVIDENCE THAT WE'RE MOVING TOWARDS SOME SORT OF POST-RACIAL AMERICA. BUT I JUST WANTED TO DEMONSTRATE, IN FACT, THAT GALLUP SHOWS THE OPPOSITE.

Q AND IN YOUR OPINION, DR. ALFORD, WHAT MOTIVATES THE GAP BETWEEN BLACK AND WHITE AMERICANS ON THESE POLICY ISSUES?

A SO FOR A LONG TIME THE POLITICAL SCIENCE

11:35a

LITERATURE HAS UTILIZED THIS CONCEPT OF RACIAL RESENTMENT IN EXPLAINING THE VOTING BEHAVIOR OF WHITES.

Q WHAT IS RACIAL RESENTMENT?

A SO RACIAL RESENTMENT IS -- IT'S AN ATTITUDE BORNE OF BOTH SOME ANTI-BLACK SENTIMENT MARRIED WITH CONSERVATIVE VIEWS. AND SO BOTH GALLUP AS WELL AS SOME -- MANY DIFFERENT POLITICAL SCIENCE SPECIFIC POLLS HAVE BEEN ASKING QUESTIONS THAT GET AT RACIAL RESENTMENT FOR MANY, MANY, MANY YEARS NOW.

Q SO IN THE GALLUP POLL THAT YOU REFERENCED, HOW DOES THAT GALLUP POLL SEEK TO MEASURE RACIAL RESENTMENT?

A SO I LIST FOUR DIFFERENT -- ON PAGES -- AT LEAST ON THIS PAPER COPY I'VE GOT IN FRONT OF ME.

Q YEAH, WE CAN PULL IT UP.

A -- PAGES 9 AND 10 OF MY REPORT WHERE IT LISTS --

Q AND THAT WILL BE PAGES -- JUST FOR THE RECORD --

A SORRY.

Q I'M SO SORRY. NO, I'M SORRY, DR. KING. FOR THE RECORD, THAT'S PAGES 10 AND 11 OF PL 133. THAT'S JUST A PDF ISSUE. CAN WE HAVE THAT PULLED UP? 10 AND 11. GREAT.

11:37a

AND SO, DR. KING, I CAN REASK THE QUESTION. SO HOW DOES THE GALLUP POLL MEASURE RACIAL RESENTMENT AS INDICATED ON THESE PAGES?

A OKAY. SO, YOU KNOW, WE'VE GOT HERE -- SO AT THE TOP HERE OF PAGE 10 ON THIS PDF, THAT WOULD BE THE THIRD AND FOURTH QUESTIONS. SO THESE QUESTIONS -- THE NICE THING ABOUT THESE QUESTIONS IS THEY DON'T ASK ABOUT A SPECIFIC POLICY. IT'S JUST MORE ABOUT AN ATTITUDE. AND SO THESE QUESTIONS ASKED IN A VERY SIMILAR FORMAT OVER A NUMBER OF YEARS ALLOW US TO UNDERSTAND IF PEOPLE HAVE DIFFERENT ATTITUDES TOWARDS RACIAL GROUPS.

AND SO, FOR INSTANCE, WITH THIS QUESTION NO. 3: "IN GENERAL, DO YOU THINK THAT BLACKS HAVE AS GOOD A CHANCE AS WHITES IN YOUR COMMUNITY TO GET ANY HOUSING THEY CAN AFFORD, OR DON'T YOU THINK THEY HAVE AS GOOD S A CHANCE?" AND THEN WITH NO. 4: "ARE BLACKS TREATED LESS FAIRLY THAN WHITES?"

SO WHEN WE LOOK AT THESE QUESTIONS AND THEN HOW PEOPLE ANSWER THEM AND THEN SEE HOW THAT AFFECTS THEIR VOTING BEHAVIOR OR IF HOW PEOPLE RESPOND TO THIS IN ANY WAY CORRELATES TO THEIR VOTING BEHAVIOR -- OR IF THERE IS A RELATIONSHIP, I SHOULD SAY -- THAT RACIAL RESENTMENT INDEX CAN TELL US A LOT ABOUT WHO'S LIKELY TO SUPPORT CERTAIN CANDIDATES.

11:38a

Q HOW DOES IT TELL US WHO'S LIKELY TO SUPPORT CERTAIN CANDIDATES?

A WELL, WHAT WE SEE IS WHITE VOTERS WHO EXPRESS RACIAL RESENTMENT ARE LESS LIKELY TO SUPPORT BLACK CANDIDATES EVEN WHEN THEY SHARE THE SAME PARTY.

Q AND, DR. KING, YOU INDICATED THAT THIS IS A GALLUP SURVEY OR GALLUP POLL. WHY DO YOU THINK THAT A GALLUP POLL IS A RELIABLE SOURCE OF THIS DATA?

A GALLUP POLL. GALLUP IS ONE OF THE MOST WIDELY RESPECTED, LONG-USED POLLSTERS. THEY'VE BEEN AROUND FOR DECADES. AGAIN, THERE IS OTHERS: NATIONAL ELECTION STUDIES THAT POLITICAL SCIENTISTS COMMONLY USE ASKS VERY SIMILAR QUESTIONS AND HAVE FOR A LONG TIME. BUT GALLUP IS WIDELY RESPECTED, AND THEY HAVE A GOOD TRACK RECORD. AND AGAIN, DR. ALFORD ALSO USED GALLUP, SO I JUST WANTED TO USE SOMETHING SIMILAR.

Q DOES TABLE 6 OF YOUR REPORT INDICATE THE RESULTS OF THE GALLUP POLL?

A YES. AND --

Q CAN YOU DESCRIBE THEM FOR THE COURT?

A SURE. SO THIS IS JUST LOOKING AT WHITE VOTERS. SO WE SEE THAT THERE ARE SOME LEVELS OF RACIAL RESENTMENT AMONG BOTH BLACK -- EXCUSE ME -- AMONG BOTH DEMOCRATS, INDEPENDENTS AND REPUBLICANS.

11:39a

YOU TEND TO SEE OVER TIME RACIAL RESENTMENT WENT DOWN A LITTLE BIT AMONG WHITE DEMOCRATS, IT STAYED CONSTANT AMONG WHITE REPUBLICANS, BUT WE STILL SEE IT. AND SO THERE IS LOTS OF IMPLICATIONS FOR THIS EXISTENCE OF RACIAL RESENTMENT.

Q CAN YOU TELL US SOME OF THOSE IMPLICATIONS?

A WELL, WHAT IT MEANS IS THAT IF YOU'RE A BLACK CANDIDATE, YOU CANNOT COUNT ON WHITE SUPPORT, EVEN AMONG COPARTISANS, TO THE SAME LEVEL THAT YOU MIGHT BE ABLE TO COUNT ON BLACK SUPPORT. SO WE OFTEN USE THIS TO EXPLAIN WHY YOU MIGHT GET NON-VOTING, SO YOU MIGHT GET A LOT OF PEOPLE WHO JUST STAY HOME ON ELECTION DAY.

SO THE RESEARCH SHOWS THAT IF YOU'VE GOT BLACK CANDIDATES, SAY, IN A BLACK PRIMARY, YOU'RE MORE LIKELY TO HAVE RACIALLY RESENTFUL WHITE DEMOCRATS JUST STAY HOME. THEY MAY NOT VOTE FOR THE REPUBLICAN, BUT THEY MAY JUST NOT VOTE FOR ANYBODY AT ALL, OR THEY'RE LESS LIKELY TO SUPPORT BLACK CANDIDATES. AND THE REASON FOR THIS IS -- AS I REFERENCED EARLIER -- IS PEOPLE CAN SHARE THE SAME PARTY BUT STILL HAVE DIFFERENT PREFERENCES ON WHO THEY WANT TO REPRESENT THEM.

Q WE CAN TAKE THIS DOWN.

DR. KING, YOU TALKED ABOUT HOW RACIAL

11:40a

RESENTMENT CAN IMPACT ELECTIONS. ARE THERE ANY EXAMPLES OF RACIAL RESENTMENT IMPACTING ELECTIONS THAT YOU CAN THINK OF?

A SURE. SO AS I CITE IN MY REPORT, THERE IS RESEARCH SHOWING THAT BARACK OBAMA EVEN IN VICTORY STILL LOST SUPPORT BECAUSE OF RACIALLY RESENTFUL VOTERS; THAT LIKELY HE WOULD HAVE WON BY MORE, ALL THINGS CONSIDERED, HAD IT NOT BEEN FOR RACIALLY RESENTFUL VOTERS. AND WE ALSO KNOW AT -- THERE IS ALSO SOME RESEARCH THAT I CITE AT LOWER LEVELS WHERE YOU SEE SOMETHING SIMILAR, AND IT TENDS TO MANIFEST ITSELF IN NON-VOTING, SO PEOPLE JUST STAY HOME. THEY MAY NOT VOTE FOR THE REPUBLICAN BUT THEY JUST WON'T VOTE AT ALL.

Q AND, DR. KING, IS THERE ANY EVIDENCE OF HOW MUCH -- HOW MANY MORE VOTES PRESIDENT OBAMA MAY HAVE GOTTEN IF NOT FOR RACIALLY RESENTFUL VOTERS?

A IN THE LITERATURE I CITE, THEY ESTIMATE THAT IT'S THE EQUIVALENT OF ABOUT ONE STATE'S WORTH OF ELECTORAL COLLEGE VOTES, SO ON AVERAGE THAT WOULD BE ABOUT SEVEN ELECTORAL COLLEGE VOTES, WHICH HAD IT BEEN A CLOSER ELECTION COULD HAVE BEEN -- WE KNOW HOW MUCH A DIFFERENCE ONE STATE CAN MAKE IN PRESIDENTIAL ELECTIONS.

Q JUST IN SUMMARY, DR. KING, WHAT DOES YOUR

11:42a

ANALYSIS INDICATE ABOUT BLACK LOUISIANANS' ABILITY TO ELECT THEIR CANDIDATE OF CHOICE?

A IN THE ABSENCE OF DISTRICTS WHERE BLACKS ARE A MAJORITY OR CLOSE TO MAJORITY -- A STRONG POLARITY, I GUESS YOU COULD SAY IT -- THAT BLACK VOTERS CANNOT -- EXCUSE ME -- BLACK CANDIDATES CANNOT JUST ASSUME THAT WHITE CROSSOVER VOTES WILL BE THERE; THAT THEY'LL BE IN SUBSTANTIAL ENOUGH NUMBERS FOR EITHER THE BLACK CANDIDATE TO WIN OR FOR BLACK VOTERS TO ELECT THEIR PREFERRED CANDIDATE. RACIAL RESENTMENT WOULD ARGUE THAT THAT IS IN NO WAY GUARANTEED.

Q THANK YOU, DR. KING.

MS. GIGLIO: YOUR HONOR, MAY I HAVE A MOMENT TO CONFER WITH COUNSEL?

THE COURT: YOU MAY.

MS. GIGLIO: YOUR HONOR, JUST QUICKLY, BEFORE I TENDER THE WITNESS, WE NOTE THAT I'M NOT SURE THAT YOU ACTUALLY TENDERED DR. KING AS AN EXPERT WHEN RULING ON OUR TENDER.

THE COURT: ACCEPTING HIM AS AN EXPERT?

MS. GIGLIO: OH, DID YOU?

THE COURT: WELL, LET ME JUST -- I THOUGHT I DID, BUT LET'S JUST MAKE SURE.

MS. GIGLIO: WELL, YOUR HONOR --

THE COURT: THE COURT ACCEPTS DR. KING TO

11:43a

GIVE OPINION TESTIMONY IN THE FIELDS OF POLITICAL SCIENCE, VOTING BEHAVIOR, AND RACIALLY POLARIZED VOTING. IS THAT THE CORRECT FIELDS?

MS. GIGLIO: YES, YOUR HONOR. THANK YOU VERY MUCH. AND WE TENDER THE WITNESS.

THE COURT: MR. LEWIS, ABOUT HOW MUCH TIME DO YOU THINK YOU NEED?

MR. LEWIS: I WOULD HOPE ABOUT 20 MINUTES.

THE COURT: OKAY.

CROSS-EXAMINATION

BY MR. LEWIS:

Q GOOD MORNING, DR. KING.

A GOOD MORNING. IS IT STILL MORNING?

Q IT IS. I JUST WANT TO GO THROUGH QUICKLY SOME OF THE ASPECTS OF YOUR REPORT.

SO LET ME START BY ASKING YOU: YOU WERE ASKED ON DIRECT EXAMINATION ABOUT YOUR EXPERIENCE WITH THE ECOLOGICAL INFERENCE TECHNIQUE. IS THAT RIGHT?

A CORRECT.

Q NOW, YOU'VE NOT CONDUCTED ECOLOGICAL INFERENCE ANALYSES IN YOUR PUBLISHED RESEARCH. IS THAT RIGHT?

A THAT IS CORRECT.

Q AND I BELIEVE YOU TAUGHT YOURSELF HOW TO USE

11:44a

THE SOFTWARE. IS THAT RIGHT?

A YES. I WOULD JUST SAY THAT THE SOFTWARE -- I'M NOT SURE IT EXISTED WHEN I WAS IN GRADUATE SCHOOL. MAYBE IT DID, BUT IT WASN'T FAMILIAR TO ME, SO I DIDN'T REALLY HAVE A CHOICE.

Q OKAY. ALL RIGHT. AND I BELIEVE YOU TESTIFIED ON DIRECT EXAMINATION THAT YOU TOOK -- THE VOTING DATA THAT YOU USED FOR YOUR ECOLOGICAL INFERENCE ANALYSIS, YOU OBTAINED THAT DATA FROM THE ACLU. IS THAT RIGHT?

A YES.

Q AND THEN I BELIEVE YOU INDICATED THAT YOU ENSURED THAT YOUR DATA, QUOTE, COMPORTED WITH THE SECRETARY OF STATE'S DATA. IS THAT RIGHT?

A YES.

Q BUT YOU'D AGREE WITH ME THAT THE SECRETARY OF STATE'S OFFICE REPORTS EARLY AND ABSENTEE BALLOTS AT THE PRECINCT -- OR EXCUSE ME -- AT THE PARISH LEVEL INSTEAD OF THE PRECINCT LEVEL. IS THAT RIGHT?

A THAT'S MY UNDERSTANDING HOW THEY DO IT.

Q AND YOU'D AGREE WITH ME THAT THE DATA YOU OBTAINED FROM THE ACLU HAD ALLOCATED THE CENTRAL ABSENTEE AND EARLY VOTING DATA FROM THE PARISH TO THE PRECINCT LEVEL. IS THAT RIGHT?

A YES, THAT'S MY UNDERSTANDING.

11:45a

Q AND YOU DIDN'T PERFORM THAT ALLOCATION YOURSELF. RIGHT?

A I DID NOT.

Q TURNING TO YOUR ANALYSIS OF THE NOVEMBER 2022 U.S. SENATE ELECTION, AS I UNDERSTAND IT, YOU RAN YOUR ECOLOGICAL INFERENCE STUDY BY COMPARING THE TOP TWO DEMOCRATIC VOTE-GETTERS IN THAT ELECTION AMONG VOTES CAST BY REGISTERED DEMOCRATS. IS THAT RIGHT?

A YES.

Q ALL RIGHT. AND ARE YOU AWARE OF PUBLISHED ACADEMIC RESEARCH THAT USES -- WELL, LET ME TAKE A STEP BACK.

SO DO I UNDERSTAND CORRECTLY THAT THE ECOLOGICAL INFERENCE TECHNIQUE THAT YOU USED IS DESIGNED TO ESTIMATE THE PERCENTAGE OF WHITE AND BLACK SUPPORT FOR A CANDIDATE BECAUSE YOU DON'T KNOW HOW INDIVIDUALS ARE GOING TO VOTE. IS THAT RIGHT?

A YES, RIGHT. SO ECOLOGICAL INFERENCE IS JUST, YOU KNOW, INFERRING, YOU KNOW, THAT VOTING BEHAVIOR. BUT WE HAVE THE DATA OF HOW MANY BLACKS AND WHITES VOTED BECAUSE THAT IS REPORTED.

Q SO JUST AT VERY, VERY HIGH LEVELS, IS IT THE GENERAL IDEA THAT YOU'RE LOOKING THROUGHOUT THE -- YOU'RE COMPARING DIFFERENT PRECINCTS, YOU'RE

11:47a

COMPARING THE ELECTION RETURNS FROM THAT PRECINCT TO THE PERCENTAGE OF THE RACIAL COMPOSITION OF THAT PRECINCT. THAT'S THE BASIC IDEA AS TO HOW YOU'RE ESTIMATING SUPPORT. RIGHT?

A WELL, I JUST LOOKED AT EVERYTHING AT THE PARISH LEVEL, SO I DIDN'T --

Q I SEE.

A SO, YOU KNOW -- BECAUSE I JUST REPORTED IT BY THE PARISHES, SO I JUST COMBINED ALL THE PRECINCT DATA FOR EACH PARISH.

Q OKAY. I SEE. SO YOU JUST USED IT AT THE PARISH LEVEL?

A YES, THAT'S RIGHT. THAT'S RIGHT. SO I DIDN'T NEED TO -- HOW THOSE VOTES ARE ALLOCATED TO THE PRECINCT LEVEL DOESN'T MATTER FOR ME BECAUSE I JUST COMBINED IT ALL IN, YOU KNOW, PARISH TOTALS.

Q I SEE. ARE YOU AWARE OF PUBLISHED RESEARCH THAT USES ECOLOGICAL INFERENCE TO SIMULTAN- -- TO ESTIMATE TURNOUT AMONG BLACK DEMOCRATS VERSUS WHITE DEMOCRATS; IN OTHER WORDS, WHERE YOU'RE CONTROLLING FOR BOTH RACE AND PARTISAN AFFILIATION?

A WELL, I MEAN, THAT'S -- I MEAN, THAT WOULD BE THE PURPOSE HERE, IS JUST TO -- WELL, YOU KNOW, AND SO FOR ME BY RUNNING -- BY EXCLUDING THE REPUBLICAN VOTES AND JUST LOOKING AT THE DEMOCRATIC

11:48a

VOTES, SO THEN I'M JUST FOCUSING ON DEMOCRATIC VOTES.

Q RIGHT. BUT --

A I MAY HAVE MISUNDERSTOOD THE QUESTION, SO IF YOU WANT TO ASK IT AGAIN.

Q SURE. SO YOU DON'T -- YOU'RE NOT ABLE -- IN YOUR DATABASE YOU'RE NOT ABLE TO EXCLUDE SPECIFIC VOTES CAST BY REGISTERED REPUBLICANS. RIGHT?

A NO. I MEAN, THAT'S WHAT I DID, IS -- YOU KNOW, WITH THE DATASET. SO THEN I -- I MEAN, SO ALL OF THAT DATA WAS PRESENTED TO ME, BUT THEN I JUST KIND OF SET THE REPUBLICAN VOTES ASIDE AND JUST FOCUSED ON DEMOCRATIC VOTES, WHITES AND BLACKS WHO ARE DEMOCRATIC, AND THEN THAT WAY PARTY IS OUT OF THE EQUATION.

Q OKAY. BUT YOU HAD TO ESTIMATE THE VOTES AMONG REGISTERED DEMOCRATS IN ORDER TO DO THAT ANALYSIS. RIGHT?

A YEAH -- SO I WAS ESTIMATING THE PERCENT -- I WAS ESTIMATING WHAT PERCENTAGE OF THE BLACK VOTE WENT TO EACH CANDIDATE AND WHAT PERCENTAGE OF THE WHITE VOTE WENT TO EACH CANDIDATE. BUT THE DATA AS PRESENTED -- LIKE FROM THE SECRETARY OF STATE'S WEBSITE THAT THE ACLU USED, IT PRESENTS WHITE DEMOCRATIC VOTES, BLACK DEMOCRATIC VOTES, WHITE REPUBLICAN VOTES. THERE AREN'T MANY BLACK REPUBLICAN

11:50a

VOTES USUALLY BUT THERE IS A HANDFUL AND -- YOU KNOW, AT THE PRECINCT LEVEL. AND THEN I JUST KIND OF AGGREGATED IT TO THE PARISH LEVEL. SO THAT ALL COMES WITH THE DATA. SO I DON'T HAVE TO -- THE ONLY THING I'M INFERRING IS JUST THE PERCENT THAT THE BLACK VOTE WENT TO EACH CANDIDATE OR THE WHITE VOTE WENT TO EACH CANDIDATE.

Q SINCE YOU DON'T KNOW HOW ANY PARTICULAR PERSON VOTED, YOU'RE STILL HAVING TO DRAW AN INFERENCE --

A YES.

Q -- ABOUT HOW WHITE --

A CORRECT.

Q -- ABOUT THE DIFFERENCE BETWEEN A REGISTERED DEMOCRAT AND SOMEBODY THAT MIGHT BE A REGISTERED INDEPENDENT THAT MIGHT ALSO VOTE FOR A DEMOCRAT. RIGHT?

A YES. BUT I JUST LOOKED AT THE REGISTERED DEMOCRATIC VOTERS.

Q AND IN ORDER FOR YOU TO LOOK AT JUST THE REGISTERED DEMOCRATS, YOU HAD TO PERFORM AN ESTIMATION PROCEDURE. CORRECT?

A NO. NO. I MEAN, IT -- THEY TELL YOU WHO'S VOTING -- I MEAN, SO THE DATA TELLS YOU WHO'S -- LIKE HOW MANY WHITE REGISTERED DEMOCRATS VOTED IN EACH

11:51a

PARISH.

Q RIGHT.

A SO I DON'T HAVE TO INFER THAT. THAT JUST COMES WITH THE DATA FROM THE SECRETARY OF STATE.

Q CORRECT. BUT THE SECRETARY OF STATE'S DATA DOESN'T -- IS IT YOUR POSITION THAT THE SECRETARY OF STATE'S DATA IS SAYING THAT THERE WERE -- FOR EXAMPLE, IN ASCENSION PARISH, THAT THERE WERE -- I'LL MAKE UP A NUMBER -- 10,000 VOTES CAST FOR CANDIDATE CHAMBERS BY WHITE DEMOCRATS?

A NO. IT WOULD JUST TELL ME HOW MANY WHITE DEMOCRATS VOTED. SO YES, THE ECOLOGICAL INFERENCE WOULD THEN HAVE TO INFER HOW MANY OF THOSE VOTED FOR CHAMBERS.

Q OKAY. AND IT WOULD HAVE TO INFER THAT FOR BOTH RACE AND FOR PARTY. CORRECT?

A YES.

Q OKAY. AND ARE YOU AWARE OF -- WELL, LET ME ASK THIS. DO YOU CITE ANY ACADEMIC RESEARCH IN YOUR REPORT THAT HAS USED THE ECOLOGICAL INFERENCE TECHNIQUE TO SIMULTANEOUSLY ESTIMATE RACE AND PARTY?

A I DO NOT CITE THAT.

Q OKAY. NOW, BECAUSE OF THE WAY YOU'VE CONSTRUCTED YOUR STUDY, YOUR STUDY WOULD NOT CONSIDER HOW BLACK VOTERS WHO ARE NOT REGISTERED DEMOCRATS

11:52a

WOULD HAVE VOTED IN THAT PRIMARY. IS THAT RIGHT?
A CORRECT.
Q OKAY. AND VICE VERSA; YOU WOULD NOT -- YOU WOULDN'T BE ABLE TO TELL HOW WHITE VOTERS WHO AREN'T REGISTERED DEMOCRATS VOTED IN THE PRIMARY. RIGHT?
A CORRECT.
Q ALL RIGHT. SO IF WE GO TO TABLE 4 ON PAGE 4 OF YOUR REPORT, PL 133, IF WE COULD PULL THAT UP. THERE WE GO.
THIS IS YOUR RESULTS AT THE PARISH LEVEL FOR THIS ELECTION -- FOR THE TWO CANDIDATES IN THIS ELECTION. IS THAT RIGHT?
A YES.
Q SO IF WE JUST LOOK AT CADDO PARISH, AM I LOOKING -- AM I READING THIS CORRECTLY THAT YOU ESTIMATE 43 PERCENT OF WHITE REGISTERED DEMOCRATS SUPPORTED THE BLACK CANDIDATE CHAMBERS? IS THAT RIGHT?
A THAT IS CORRECT.
Q OKAY. AND WOULD YOU VIEW THAT 43 PERCENT AS WHITE CROSSOVER VOTING?
A IT COULD BE VIEWED THAT WAY.
Q OKAY. AND DO YOU VIEW 43 -- AND THAT'S A FAIR AMOUNT OF WHITE CROSSOVER VOTING. WOULD YOU AGREE?

11:53a

A IT DEPENDS ON THE NUMBER. I MEAN, THIS COULD BE 43 PERCENT OF FIVE PEOPLE. IT'S NOT ACTUALLY, BUT I MEAN -- SO IT WOULD JUST DEPEND ON HOW BIG OF A POLL POPULATION YOU'RE TALKING WITH. SO MY OFFICIAL ANSWER I GUESS IS IT DEPENDS.

Q IT DEPENDS, OKAY.

AND YOU'RE NOT OFFERING IN THIS CASE A PARTICULAR CUT POINT OR A MINIMUM OF WHITE CROSSOVER VOTING. IS THAT CORRECT?

A I AM NOT.

Q I'D LIKE TO TURN VERY QUICKLY TO YOUR DISCUSSION OF COHESION. BEFORE I DO, I BELIEVE YOU AGREE WITH DR. ALFORD'S DATA IN THIS CASE. IS THAT CORRECT?

A YES, I DO.

Q OKAY. SO THIS IS REALLY A DISAGREEMENT OVER THE INTERPRETATION OF THE DATA. IS THAT RIGHT?

A CORRECT.

Q OKAY. SO I BELIEVE YOU TESTIFIED THAT YOU -- THAT YOU GENERALLY LIKE TO SEE 50 PERCENT SUPPORT FOR A CANDIDATE TO FIND COHESION. IS THAT RIGHT?

A YES. THAT'S A MAJORITY, SO TO ME THAT MAKES COHESION.

Q OKAY. BUT WOULD YOU AGREE WITH ME THAT AT 50 PERCENT, JUST AS MANY VOTERS OF A GIVEN RACE MAY

11:55a

BE VOTING AGAINST THE, QUOTE, PREFERRED CANDIDATE AS VOTING FOR THAT CANDIDATE?

A IF IT'S 50 PERCENT ON THE NOSE, YES. BUT TO ME, 50 -- YOU KNOW, WHEN I SAY A MAJORITY, I'M ASSUMING THAT IT'S, YOU KNOW, 50 PERCENT PLUS ONE.

Q OKAY. SO AT 50 PERCENT PLUS ONE, THEN THAT ONE EXTRA PERSON IS WHAT DEFINES COHESION FOR YOU?

A IT HAS TO BE SOMEWHERE.

Q IT HAS TO BE SOMEWHERE.

A IT HAS TO BE SOMEWHERE, AND A MAJORITY IS A MAJORITY. AND IN ELECTIONS THE MAJORITY IS WHAT WE'RE LOOKING FOR. YOU KNOW, THAT'S HOW ELECTIONS ARE WON, IS WITH A MAJORITY.

SO THAT TO ME BECOMES THE DECISIVE NUMBER, NOT A SUPER MAJORITY OR TWO-THIRDS OR THREE-FOURTHS. THAT'S -- TO ME THEN YOU'RE GETTING CLOSER TO UNANIMITY, WHICH IS A COMPLETELY DIFFERENT THRESHOLD THAN COHESION.

Q BUT YOU'D AGREE WITH ME THAT 50 PERCENT PLUS ONE COMPARED TO 40 -- WELL, OR 50 PERCENT MINUS ONE --

A SURE.

Q -- IS NOT EXACTLY UNANIMITY. RIGHT?

A MY UNDERSTANDING OF DR. ALFORD -- AND AGAIN, ME JUST WRITING REBUTTAL -- IS THAT HE SAYS COHESION

11:56a

IS A CONTINUUM. AND I WOULD AGREE WITH THAT. BUT AS FAR AS I KNOW, THE -- CERTAINLY NOT IN THE POLITICAL SCIENCE LITERATURE AND I DON'T THINK THE COURTS HAVE SAID THERE HAS TO BE A CERTAIN AMOUNT OF COHESION. IT'S JUST COHESION IS COHESION, SO IT HAS TO BEGIN SOMEWHERE. AND I ARGUE THAT IT'S A MAJORITY.

Q AND AT A 50-PERCENT-PLUS-ONE STANDARD, FAIR TO SAY THAT, YOU KNOW, YOU'D ALMOST ALWAYS FIND COHESION IN A TWO-CANDIDATE RACE. RIGHT?

A IN A TWO-CANDIDATE -- IN A TWO-CANDIDATE RACE, YES. BUT, YOU KNOW, LOUISIANA DOESN'T OFTEN HAVE TWO-CANDIDATE RACES, YOU KNOW, ESPECIALLY WITH ITS UNIQUE PRIMARY SYSTEM.

Q ALL RIGHT. DR. KING, I'D NOW LIKE TO TURN TO YOUR DISCUSSION OF POLICY DIVERGENCE BASED ON RACE. NOW, YOU MENTIONED -- WE HAD THIS DISCUSSION ABOUT ATTITUDES TOWARDS SAME-SEX MARRIAGE. DO YOU RECALL THAT?

A SAME-SEX MARRIAGE OR INTERRACIAL MARRIAGE?

Q I'M SORRY. INTERRACIAL MARRIAGE. IT WAS IN MY NOTES WRONG. IT'S INTERRACIAL MARRIAGE.

A WE CAN TALK ABOUT THAT, TOO.

Q DIFFERENT CASE.

BUT INTERRACIAL MARRIAGE -- WE HAD A DISCUSSION OF INTERRACIAL MARRIAGE. CORRECT?

11:57a

A CORRECT.

Q OKAY. AND I BELIEVE YOU GAVE THE VIEW THAT YOU VIEWED IT AS BEING LESS SALIENT BECAUSE IT HAD BEEN SORT OF SETTLED LAW SINCE THE '60s THAT INTERRACIAL MARRIAGE WAS LEGAL. IS THAT RIGHT?

A THAT IS CORRECT.

Q AND THEN YOU OFFERED AN OPINION IN YOUR REPORT -- I BELIEVE YOU TESTIFIED TO IT -- THAT THERE WAS A WIDE PARTISANSHIP GAP IN OPPOSITION TO INTERRACIAL MARRIAGE EVEN TODAY. IS THAT RIGHT?

A YES.

Q OKAY.

A I DON'T KNOW IF I USED THE WORD "WIDE," BUT -- AND IF I DID, THEN I DID. BUT A PARTISAN GAP, YES.

Q WELL, WE'LL SHOW -- SINCE I'M GOING TO GET INTO THE FOOTNOTES, WE MIGHT AS WELL. IF WE COULD GO TO PAGE 8 OF YOUR REPORT, TOWARD THE BOTTOM. AND I BELIEVE IT ALSO MOVES ON TO THE TOP OF PAGE 9, BUT WE'RE LOOKING AT THAT BOTTOM PARAGRAPH ON PAGE 8.

OKAY. SO I GUESS MY QUESTION FOR YOU IS -- NOW, YOU CITE FOR VIEWS ON INTERRACIAL MARRIAGE THIS ARTICLE BY CHRISTOPHER INGRAHAM. IS THAT RIGHT?

A YES.

Q OKAY. WOULD YOU AGREE WITH ME THAT THAT

11:59a

CITATION INDICATES THAT IN 2021 ONLY SEVEN PERCENT OF AMERICAN ADULTS EXPRESSED OPPOSITION TO A CLOSE RELATIVE MARRYING A BLACK PERSON?

A YES, SEVEN PERCENT.

Q SEVEN PERCENT, OKAY.

AND DO YOU RECALL WHERE THAT SAME -- THAT ARTICLE REPORTED THAT THE SAME PERCENTAGE WAS ABOUT 60 PERCENT IN 1990?

A YES.

Q OKAY. AND YOU HAVE NO BASIS TO DISAGREE WITH MR. INGRAHAM'S CALCULATIONS. IS THAT RIGHT?

A THAT IS CORRECT.

Q OKAY. SO WOULD YOU AGREE THAT A REDUCTION OF SOME 53 PERCENTAGE POINTS OF AMERICANS OPPOSED TO INTERRACIAL MARRIAGE FROM 1990 TO 2021 REPRESENTS A SIGNIFICANT SHIFT IN PUBLIC OPINION?

A YES AND NO. YES, BUT IT'S RELATIVE.

Q OKAY. WOULD YOU AGREE WITH ME THAT THE *LOVING VS VIRGINIA* DECISION WAS JUST AS SETTLED LAW IN 1990 AS IT WAS IN 2021?

A YES. BUT WE ALSO KNOW THAT THERE IS A LONG LAG OF TIME BETWEEN COURT DECISIONS AND PUBLIC ACCEPTANCE OF THOSE COURT DECISIONS. SO, FOR INSTANCE, WITH BUSSING CASES FROM THE COURTS IN THE 1970s, A FULL GENERATION AFTER *BROWN VS BOARD,*

12:00p

SETTLED LAW DOESN'T MEAN ACCEPTANCE.

Q AND SO I BELIEVE THERE WAS ALSO A DISCUSSION IN YOUR DIRECT EXAMINATION ABOUT SOCIAL DESIRABILITY BIAS. DO YOU RECALL THAT?

A YES.

Q OKAY. AND THE WAY THAT QUESTION THAT YOU CITED FROM MR. INGRAHAM WAS PHRASED, THAT TALKED ABOUT AMERICAN ADULTS BEING OPPOSED TO A CLOSE RELATIVE MARRYING A BLACK PERSON. DO YOU RECALL THAT?

A YES.

Q OKAY. AND IS THAT AN EXAMPLE OF A SURVEY DESIGN THAT'S DESIGNED TO MITIGATE THE EFFECTS OF SOCIAL DESIRABILITY BIAS?

A TO THE BEST OF ITS POSSIBILITY, YES.

Q JUST TO BE VERY CLEAR FOR THE RECORD, IS THE IDEA THAT IF YOU ASK SOMEBODY "ARE YOU" -- "WOULD YOU BE WILLING TO BE IN" -- FOR EXAMPLE, "WOULD YOU BE WILLING TO BE IN AN INTERRACIAL MARRIAGE?" THAT PERSON MAY FEEL PRESSURED TO SAY "YES"?

A CORRECT. THAT'S RIGHT.

Q SO THEN THE IDEA IS IF YOU ASK ABOUT THE -- "WOULD YOU BE OPPOSED TO A CLOSE RELATIVE?" THAT THAT MAY OFFER MORE COMFORT TO GIVE THE LESS DESIRABLE OPINION?

12:01p

A THAT IS CORRECT.

Q OKAY. ALL RIGHT. SO I'D LIKE TO NOW TURN TO PAGE 9 OF YOUR REPORT, WHICH IS ALREADY ON OUR SCREEN. AND SPECIFICALLY THAT SECOND -- WELL, FIRST AND SECOND FULL PARAGRAPHS AT THE TOP, IF WE CAN START THERE.

AND HERE YOU TALK ABOUT GALLUP DIVERGENCES ON POLICIES. I JUST HAD A QUESTION FOR YOU ABOUT -- IT'S SORT OF IN THE MIDDLE OF THE PAGE WHERE YOU TALK ABOUT A GALLUP QUESTION ABOUT RACE RELATIONS AND YOU INDICATE THAT THE GAP INCREASED FROM FOUR TO 14 POINTS ON THAT QUESTION.

A YES.

Q DO YOU SEE THAT?

A YES.

Q AND THE QUESTION IS SPECIFICALLY: "DO YOU THINK THAT RELATIONS BETWEEN BLACKS AND WHITES WILL ALWAYS BE A PROBLEM FOR THE UNITED STATES, OR THAT A SOLUTION WILL EVENTUALLY BE WORKED OUT?" IS THAT CORRECT?

A YES.

Q OKAY. IS IT FAIR TO SAY THAT THAT QUESTION IS ATTEMPTING TO MEASURE OPTIMISM VERSUS PESSIMISM?

A I THINK YOU COULD LOOK AT IT THAT WAY, YES.

Q AND WOULD YOU AGREE THAT MUCH OF THE GROWTH

12:03p

IN THAT GAP FROM FOUR TO 14 POINTS BETWEEN 1996 AND 2016 IS EXPLAINABLE BY WHITE RESPONDENTS BECOMING MORE OPTIMISTIC AS TIME PASSES?

A I WOULD HAVE TO GO BACK AND LOOK AT THAT DATA SPECIFICALLY. IT COULD BE WHITES BEING MORE OPTIMISTIC BECAUSE OF THE ELECTION OF OBAMA, BUT THEN IT COULD ALSO BE BLACKS BECOMING MORE PESSIMISTIC. SO I WOULD HAVE TO -- I COULD ONLY QUALIFY MY ANSWER.

Q ALL RIGHT. AND DO YOU RECALL GIVING A DEPOSITION IN THIS CASE?

A YES.

Q OKAY. AND DO YOU RECALL BEING ASKED HOW THAT GAP CAN BE EXPLAINED?

A IF YOU TELL ME.

Q OKAY.

A THERE WERE A LOT OF QUESTIONS.

Q THERE WERE A LOT OF QUESTIONS. ALL RIGHT. SO I'D LIKE TO PULL UP YOUR DEPOSITION ON -- AT PAGE 102.

THE COURTROOM DEPUTY: YOU'RE DOING IT FROM HERE OR BACK THERE?

MR. LEWIS: HE'S DOING IT, BUT WE'RE ON THE SCREEN.

BY MR. LEWIS:

Q AND DO YOU RECALL GIVING AN OATH TO TELL THE

12:04p

TRUTH IN THAT DEPOSITION?
A YES.
Q OKAY. AND YOU DID SO. IS THAT RIGHT?
A YES.
Q OKAY. AND SO I'M JUST GOING TO READ TO YOU THE QUESTION BEGINNING ON LINE 11.
A OKAY.
Q AND IT READS: "IS IT FAIR TO SAY THAT MUCH OF THE GAP THAT YOU DESCRIBED, DR. KING, IS EXPLAINABLE BY WHITE RESPONDENTS BECOMING MORE OPTIMISTIC AS TIME PASSES INSTEAD OF BLACK RESPONDENTS BECOMING MORE PESSIMISTIC AS TIME PASSES?" DO YOU SEE THAT?
MS. GIGLIO: YOUR HONOR, RESPECTFULLY, THIS IS IMPROPER IMPEACHMENT. THIS IS NOT THE QUESTION THAT MR. LEWIS ASKED. AND, FRANKLY, IT REFLECTS THE WITNESS'S RESPONSE.
THE COURT: IT'S NOT EXACTLY THE SAME QUESTION. I'M GOING TO OVERRULE THE OBJECTION. YOU CAN ASK THE QUESTION.
MR. LEWIS: THANK YOU, YOUR HONOR.
BY MR. LEWIS:
Q DO YOU SEE YOUR ANSWER BEGINNING ON LINE 18?
A YES.
Q OKAY. AND DOES IT SAY "I WOULD MOSTLY AGREE

12:05p

WITH THAT, YES"?
A YES.
Q OKAY. THANK YOU. WE CAN TAKE THAT DOWN.
SO, DR. KING, WHEN YOU LOOKED AT THOSE GALLUP QUESTIONS ABOUT RACE RELATIONS, NONE OF THOSE WERE SPECIFICALLY STUDYING AREAS OF LOUISIANA AT ISSUE IN THIS LAWSUIT. IS THAT RIGHT?
A FROM THE GALLUP QUESTIONS?
Q YES.
A NO. I MEAN, SO THIS WOULD HAVE BEEN A NATIONAL SURVEY.
Q OKAY.
A A SURVEY OF NATIONAL RESPONDENTS.
Q SURE. BUT NOT JUST -- IT WAS NOT, YOU KNOW, A SURVEY EXCLUSIVELY OF PEOPLE WITHIN THE AREAS OF LOUISIANA THAT ARE AT ISSUE IN THIS CASE. RIGHT?
A THAT IS CORRECT.
Q ALL RIGHT. SO, DR. KING, I'D NOW LIKE TO TURN TO THE -- THIS ANALYSIS OF RACIAL RESENTMENT THAT YOU PERFORMED. AND I'D LIKE TO TAKE A LOOK AT THE QUESTIONS. SO IF WE COULD GO TO -- LOOKS LIKE THE BOTTOM OF PAGE 9 AND THE TOP OF PAGE 10 OF YOUR REPORT. IF WE COULD PUT THOSE UP SIDE BY SIDE.
AND SO WE LOOK AT THE VERY FIRST QUESTION, AND IT READS, QUOTE, IN GENERAL DO YOU THINK THAT

12:06p

BLACKS HAVE AS GOOD A CHANCE AS WHITES IN YOUR COMMUNITY TO GET ANY KIND OF JOB FOR WHICH THEY ARE QUALIFIED, OR DON'T YOU THINK THEY HAVE AS GOOD A CHANCE. IS THAT RIGHT?

A YES.

Q OKAY. AND SO AS I UNDERSTAND IT, IF THE -- IF A RESPONDENT WERE TO ANSWER "YES" TO THAT QUESTION, THAT WOULD COUNT AS A FINDING OF RACIAL RESENTMENT. IS THAT RIGHT?

A YES.

Q OKAY. AND DO I UNDERSTAND YOUR POSITION -- AND WHY IS THAT?

A SO RACIAL RESENTMENT IS AN INDEX. SO WHEN YOU COMBINE THE ANSWERS TO ALL OF THESE, WHAT -- AS RACIAL RESENTMENT IS DEFINED AND ARTICULATED IS YOU HAVE WHITES WHO FEEL THAT BLACKS DO HAVE AS GOOD OF A CHANCE AS WHITES. AND FOR BLACKS TO SAY THAT THEY DON'T MEANS THAT THEY ARE NOT PUTTING IN MAYBE FULL EFFORT OR TRYING AS HARD AS WHITES AND THAT THEY HAVE ALL THE ADVANTAGES THAT THEY NEED AND SO THEY DON'T NEED ANY ADDITIONAL HELP FROM GOVERNMENT.

Q BUT THEY DON'T -- THERE IS NOTHING IN THIS QUESTION THAT ACTUALLY SAYS THAT ANYONE NEEDS HELP FROM THE GOVERNMENT. RIGHT?

A THAT IS CORRECT. AND AGAIN, THAT'S WHY THE

12:08p

RACIAL RESENTMENT SCALE IS -- IT'S AN ADDITIVE INDEX, SO IT'S LOOKING AT THE RESPONSES TO A VARIETY OF QUESTIONS.

Q AND THEN IS THE IDEA THAT IF SOMEBODY ANSWERS "NO," THAT THEY MAY UNDERSTAND, FOR EXAMPLE, THAT THERE ARE SOCIETY LEVEL INFLUENCES THAT MAY MAKE CHANCES FOR SUCCESS FOR BLACK AMERICANS MORE DIFFICULT? IS THAT THE IDEA?

A YES, I WOULD AGREE WITH THAT.

Q OKAY. AND THEN IF THE PERSON ANSWERS "YES," AM I UNDERSTANDING YOU TO TRY TO DRIVE IT, THE RESPONDENT MAY BE LOOKING AT MORE INDIVIDUAL LEVEL FACTORS? IS THAT RIGHT?

A CORRECT.

Q OKAY. AND SO THE IDEA THAT SOCIETY LEVEL INFLUENCES THAT MIGHT IMPACT CHANGES FOR -- OR OPPORTUNITY FOR BLACK SUCCESS, THAT'S THE IDEA OF SYSTEMIC RACISM. IS THAT CORRECT?

A YES.

Q NOW, YOU'D AGREE THAT SOMEONE WHO ANSWERS "YES" TO, FOR EXAMPLE, THIS QUESTION MAY NOT NECESSARILY BE RACIALLY RESENTFUL. RIGHT?

A YES. BUT I'M -- I MEAN, YOU'RE ASKING ME -- I MEAN, I'M NOT SURE I CAN GET INTO THE HEAD OF INDIVIDUAL RESPONSES. SO AGAIN, THIS IS WHY IT'S

12:10p

JUST AN ADDITIVE INDEX LOOKING AT, YOU KNOW, THE CUMULATIVE RESPONSES TO SEVERAL QUESTIONS, SO -- BUT I WOULD AGREE WITH YOU IN PRINCIPLE, IF I UNDERSTAND YOU CORRECTLY.

Q SURE. OKAY. ALL RIGHT. NOW, IF WE LOOK AT THE RESULTS -- IF WE COULD PULL BACK FROM THIS AND THEN LOOK AT TABLE 6. SO YOU HAVE SOME -- YOU HAVE SOME VALUES HERE ON THE PAGE. DO I UNDERSTAND THAT WHERE YOU HAVE THE .87 FOR REPUBLICANS -- WELL, I GUESS YOU HAVE TWO .87s FOR REPUBLICANS. BUT THAT THAT VALUE MEANS THAT -- DO I UNDERSTAND CORRECTLY THAT THAT MEANS 87 PERCENT OF REPUBLICANS ANSWERED "YES" TO AT LEAST ONE QUESTION ON THE BATTERY?

A THAT IS CORRECT. AND IF I COULD, EARLIER YOU ASKED -- YOU PHRASED THIS AS MY ANALYSIS. AND JUST TO BE CLEAR, THIS IS GALLUP ANALYSIS. I'M JUST RE- -- REPRINTING, CITING WHAT THEY HAD USED. SO THIS ISN'T MY ANALYSIS. THIS IS JUST ME REPORTING GALLUP ANALYSIS. BUT YES, THAT IS CORRECT.

Q OKAY. ALL RIGHT. SO THEN IF WE COULD GO BACK TO -- AND I DON'T MEAN -- YOU KNOW, I DON'T THINK WE HAVE TO BELABOR THIS. BUT I BELIEVE OF THE EIGHT QUESTIONS ON THIS BATTERY, WOULD YOU AGREE WITH ME THAT ONLY THE VERY LAST QUESTION ABOUT DEALING WITH THE POLICE IS DIRECTLY ASKING A SURVEY

12:11p

RESPONDENT ABOUT RACIAL DIFFERENCES AND HOW THE GOVERNMENT TREATS BLACK AMERICANS?

A YES. AND I WOULD JUST SAY, AGAIN, THIS IS -- IT'S JUST A FUNCTION OF WHICH SOURCE YOU USE. THE NES, THE NATIONAL ELECTION STUDIES, THEY HAVE DIFFERENT QUESTIONS THAT GET TO THE SAME EFFECT, BUT -- AND AGAIN, I JUST WANTED TO USE GALLUP BECAUSE DR. ALFORD HAD USED GALLUP, SO I JUST WANTED TO USE SIMILAR DATA.

Q SURE. AND AGAIN, YOUR RACIAL RESENTMENT SCALE DOES NOT MEASURE RACIAL RESENTMENT AMONG LOUISIANA -- WHITE LOUISIANA RESIDENTS ALONE. IS THAT CORRECT?

A CORRECT.

Q OKAY. AND NOT WHITE LOUISIANANS WITHIN THE AREAS OF LOUISIANA STUDIED IN THIS LAWSUIT. RIGHT?

A THAT IS CORRECT.

Q OKAY. NOW, IS THE RACIAL RESENTMENT INDEX THAT YOU REPORT IN YOUR EXPERT REPORT THE ONLY ONE USED IN THE ACADEMIC LITERATURE?

A NO.

Q ALL RIGHT. SO, FOR EXAMPLE, IF WE GO TO PAGE 10 OF YOUR REPORT -- AND I'M LOOKING AT THE FIRST SENTENCE UNDER TABLE 6 WHERE IT SAYS, "THERE ARE ELECTORAL CONSEQUENCES TO RACIAL RESENTMENT WITH

12:13p

MULTIPLE RESEARCH FINDINGS OF EVIDENCE THAT WHITE VOTERS DISCRIMINATE AGAINST BLACK CANDIDATES." DO YOU SEE THAT?

A YES.

Q OKAY. AND I BELIEVE THE CITATION FOOTNOTE 15 AT THE BOTTOM IS TO AN ARTICLE FROM JACK CITRIN AND OTHERS IN "PUBLIC OPINION QUARTERLY." DO YOU SEE THAT?

A YES.

Q THERE WE GO. SO WE HAVE A COPY OF THAT ARTICLE, AND I'D LIKE TO PUT THAT UP NOW ON THE SCREEN AS -- THE FIRST PAGE OF WHICH I BELIEVE IS LDTX KING 4. IF WE CAN GO TO THAT.

OKAY. SORRY FOR THAT DELAY, DR. KING. DO YOU RECOGNIZE THIS ARTICLE?

A YES.

Q OKAY. AND SO I'D LIKE TO TURN TO -- LOOKS LIKE THERE IS A COUPLE OF TITLE PAGES, SO WE'RE GOING TO GO TO PAGE 3 OF THE EXHIBIT, WHICH I UNDERSTAND IS PAGE 1 OF THIS ARTICLE. THERE WE GO.

ALL RIGHT. AND JUST LOOKING AT THE ABSTRACT, DO I UNDERSTAND CORRECTLY THAT THIS STUDY EXAMINED THE 1982 CALIFORNIA GUBERNATORIAL ELECTION?

A I BELIEVE IT DOES, YES.

Q AND SPECIFICALLY THE ONE WITH TOM BRADLEY

12:15p

WHO WAS A BLACK CANDIDATE. IS THAT RIGHT?
A YES.
Q OKAY. AND THIS PARTICULAR STUDY ALSO LOOKED AT THE CONCEPT OF RACIAL RESENTMENT. IS THAT RIGHT?
A I BELIEVE SO, YES.
Q OKAY. SO I'D LIKE TO TURN TO PAGE 11 OF THE ARTICLE, WHICH UNDER THEIR NUMBERING IS -- I THINK IT'S PAGE -- NUMBERED PAGE 82. THERE WE GO. ALL RIGHT. THIS IS TABLE 2.
AND THIS TABLE IS REPORTING RACIAL OPINIONS EXPRESSED AMONG WHITE CALIFORNIA VOTERS. IS THAT RIGHT?
A YES.
Q AND SO LIKE THE FIRST QUESTION ASKED, QUOTE, THE GOVERNMENT SHOULD NOT MAKE ANY SPECIAL EFFORT TO HELP BLACKS AND OTHER RACIAL MINORITIES BECAUSE THEY SHOULD HELP THEMSELVES. DO YOU SEE THAT QUESTION?
A I DO, YES.
Q AND IS THAT A QUESTION THAT COULD MEASURE RACIAL RESENTMENT?
A IT COULD.
Q AND IS IT FAIR TO SAY THAT A QUESTION LIKE THAT IS MEASURING RESENTMENT BASED ON QUESTIONS TESTING WHAT PEOPLE THINK ABOUT HOW THE GOVERNMENT TREATS MEMBERS OF ONE RACIAL GROUP VERSUS ANOTHER?

12:16p

A YES.
Q OKAY. AND IF WE THEN GO TO -- I FEEL LIKE IT'S THE NEXT PAGE. LET'S SEE IF I'M RIGHT -- PAGE 83, THERE IS THEN ANOTHER CATEGORY OF QUESTIONS THAT THIS STUDY IS ALSO LOOKING AT UNDER THE HEADING "PERCEIVED TRAITS OF BLACKS." DO YOU SEE THAT?
A YES.
Q OKAY. AND SO THE FIRST QUESTION ASKS WHICH OF THE FOLLOWING GROUPS ARE THE LEAST LAW-ABIDING, AND THEN IT LISTS A SERIES OF GROUPS. DO YOU SEE THAT?
A YES.
Q OKAY. AND IS IT FAIR TO SAY THAT QUESTIONS LIKE THAT ONE ARE TESTING IF SURVEY RESPONDENTS AGREE WITH A RACIAL STEREOTYPE?
A YES. I WOULD -- I WOULD ALSO -- YES.
Q OKAY. AND WE CAN TAKE THAT DOWN.
SO IS IT FAIR TO SAY THAT THE QUESTIONS LIKE THOSE USED IN THE CITRIN ARTICLE THAT YOU CITE IN YOUR EXPERT REPORT ARE MEASURING DIFFERENT RACIAL ATTITUDES AND VIEWS THAN THE BATTERY OF QUESTIONS THAT YOU SELECTED IN YOUR STUDY?
A THAT 1982 GUBERNATORIAL RACE IN CALIFORNIA IS OFTEN CITED AS THE PROTOTYPICAL EXAMPLE OF SOCIAL DESIRABILITY BIAS, BECAUSE TOM BRADLEY LED IN ALL THE

12:18p

POLLS BUT THEN LOST. AND SO I WOULD HAVE TO REREAD THAT ARTICLE PROBABLY IN ITS ENTIRETY TO UNDERSTAND IF THEY'RE TRYING TO -- IF THAT ARTICLE IS SPECIFICALLY FOCUSED ON THE RACIAL RESENTMENT OR THE SOCIAL DESIRABILITY.

Q BUT THOSE QUESTIONS ARE MEASURING RACIAL ATTITUDES AND VIEWS VERY DIFFERENTLY THAN YOUR QUESTIONS IN THIS CASE. IS THAT RIGHT?

A AS I SAID, THERE ARE MANY DIFFERENT SURVEYS LOOKING AT RACIAL RESENTMENT; FOR INSTANCE, THE NATIONAL ELECTION STUDIES THAT POLITICAL SCIENTISTS OFTEN USE, SO THEY'RE GOING TO ASK SIMILAR QUESTIONS BUT THEY WILL BE WORDED SLIGHTLY DIFFERENTLY.

SO I WOULD AGREE THAT YES, THESE QUESTIONS ARE DIFFERENT, THEY'RE GETTING AT THE SAME ATTITUDE, BUT YES, THEY ARE ASKED DIFFERENTLY AND YOU MIGHT GET SOME SPECIFIC DIFFERENCES, YES.

Q SURE. OKAY.

AND SO TO WRAP THIS UP, I WANT TO -- AND I'M SORRY TO HAVE TO KIND OF REWIND A LITTLE BIT. BUT I WANT TO JUST KIND OF CONCLUDE WITH YOUR REVIEW OF THE 2018 SECRETARY OF STATE ELECTION. SO I'D LIKE TO GO INTO YOUR REPORT ON PAGE 7. I BELIEVE IT'S THE SECOND PARAGRAPH. DID I GET THAT RIGHT? THE FIRST FULL PARAGRAPH. EXCUSE ME. IF WE COULD JUST ZOOM IN

12:19p

ON THAT. OKAY.

SO DO I UNDERSTAND YOUR POSITION THAT YOU'RE LOOKING AT A MEASURE OF DIFFERENCE BY RACE BECAUSE YOU'RE LOOKING AT HOW THE -- AMONG WHITE DEMOCRAT -- AMONG WHITE VOTERS THE BLACK DEMOCRATIC CANDIDATE RECEIVED FIVE PERCENT OF THE WHITE VOTE AND THE OTHER RECEIVED 9.7. IS THAT RIGHT?

A YES.

Q OKAY. AND SO FOR YOU, THE -- YOU'RE FINDING POLARIZATION BECAUSE YOU'RE SEEING THAT NINE PERCENT IS HIGHER THAN THE FIVE. IS THAT RIGHT?

A YES. MY INTERPRETATION OF DR. ALFORD'S ANALYSIS.

Q AND SO JUST TO MAKE SURE WE'RE LOOKING AT THE WHOLE THING, I'D LIKE TO PULL UP DR. ALFORD'S REPORT ADMITTED AS LDTX 53. AND WE'RE GOING TO GO BACK TO PAGE 9, WHICH I THINK WE LOOKED AT IN YOUR DIRECT. OKAY. AND IF WE COULD JUST HIGHLIGHT THAT BOTTOM ELECTION, NOVEMBER 2018 SECRETARY OF STATE. THERE WE GO. ALL RIGHT.

SO DO YOU AGREE WITH ME, JUST AS I'M READING THIS TABLE, THAT AT THE BOTTOM OF THE PAGE, THE BOTTOM OF THIS TABLE, IT'S SUMMARIZING THE TOTAL PERCENT OF BLACK SUPPORT FOR DEMOCRATIC CANDIDATES AT 87 PERCENT?

12:21p

A YES.
Q OKAY. AND FOR THE PERCENTAGE OF WHITE SUPPORT FOR DEMOCRATIC CANDIDATES AT 15 PERCENT. IS THAT RIGHT?
A YES.
Q AND SO IS IT FAIR TO SAY THAT YOU'RE LOOKING AT RACIAL POLARIZATION IN THIS ELECTION BY LOOKING JUST AT THE 15 PERCENT OF THE WHITE VOTES CAST FOR DEMOCRATIC CANDIDATES. IS THAT RIGHT?
A YES, THAT IS CORRECT.
Q OKAY. SO YOU'RE NOT ABLE TO EVALUATE THE VOTE -- RACIAL POLARIZATION SEPARATE FROM PARTY POLARIZATION IN THIS ELECTION FROM 85 PERCENT OF WHITE VOTERS. IS THAT RIGHT?
A I'M JUST -- YES. SO IN MY INTERPRETATION OF DR. ALFORD'S DATA, YES, THAT IS CORRECT. I'M JUST LOOKING AT THE COPARTISANS, JUST THE DEMOCRATS.
Q I SEE. OKAY. AND SO IF WE LOOK AT THE 15 PERCENT AND YOU LOOK AT THE 5.4, WOULD YOU AGREE THAT IN THIS ELECTION THAT THE BLACK CANDIDATE -- THE BLACK DEMOCRATIC CANDIDATE WAS RECEIVING ABOUT A THIRD OF THE WHITE VOTE -- WHITE DEMOCRATIC VOTE?
A YES.
Q OKAY. AND SO YOU'RE UNABLE -- JUST FROM LOOKING AT THIS, YOU'RE NOT ABLE TO EXCLUDE THE

12:22p

POSSIBILITY THAT PARTISAN POLARIZATION RATHER THAN RACIAL POLARIZATION IS INFLUENCING THE VOTING BEHAVIOR OF THE 85 PERCENT OF THE WHITE VOTERS THAT VOTED FOR A REPUBLICAN CANDIDATE IN THIS ELECTION. IS THAT RIGHT?

A TWO THINGS CAN EXIST AT THE SAME TIME WHEN I LOOK AT THIS. SO AMONG THE DEMOCRATS, AMONG THE WHITES WHO VOTED FOR DEMOCRATS, THERE'S RACIAL POLARIZATION. AMONG THE WHITES WHO VOTED FOR THE REPUBLICANS, I'M NOT MAKING ANY CHARACTERIZATION ON WHY THEY VOTED FOR THE REPUBLICAN.

MR. LEWIS: THANK YOU, YOUR HONOR. I HAVE NO FURTHER QUESTIONS.

THE COURT: ANY REDIRECT?

MS. GIGLIO: NO REDIRECT, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

YOU MAY STEP DOWN, SIR.

OKAY. AS A MATTER OF HOUSEKEEPING, I HAVE SOME GOOD NEWS. AND THE GOOD NEWS IS THAT THE COURT REPORTER WHO WAS HERE YESTERDAY CAN FILL IN TODAY FROM TWO TO FIVE, SO WE CAN GO THIS AFTERNOON MAYBE UNTIL COMPLETION, IF YOU-ALL ARE PREPARED FOR THAT. I REALIZE THAT I'M KIND OF DOUBLE-CROSSING YOU, BUT I JUST FOUND OUT THIS MORNING.

12:23p

MS. KEENAN: YES, YOUR HONOR, PLAINTIFFS ARE PREPARED TO CALL THE REMAINDER OF THEIR WITNESSES TODAY. WE WOULD LIKE TO INQUIRE ABOUT WHETHER THERE IS ANY ADDITIONAL LEGAL ARGUMENT YOUR HONOR WOULD LIKE SO WE CAN PREPARE IN THE REMAINING TIME.

THE COURT: I WAS GETTING TO THAT.

MS. KEENAN: SURE.

THE COURT: SO NO CLOSING ARGUMENTS. AND FINALLY, I AM GOING TO -- I HAVE RECONSIDERED MY STATEMENTS AT THE INITIAL -- AT THE OUTSET OF THIS TRIAL ABOUT TRIAL BRIEFS. THE COURT WILL ACCEPT TRIAL BRIEFS FROM BOTH PARTIES BUT THEY'LL BE SIMULTANEOUS FILINGS; PAGE LIMIT OF 40 PAGES AND A TIME DEADLINE. I DON'T -- I'M TRYING NOT TO MAKE YOU-ALL HAVE A BRIEF RIGHT DURING THE HOLIDAY SEASON, BUT I'LL LISTEN TO WHAT YOU HAVE TO SAY.

MS. KEENAN: YOUR HONOR, MAYBE WE CAN CONFER WITH OUR COUNSEL DURING THE BREAK AND THEN LET YOU KNOW WHAT TIME WORKS FOR EACH SIDE.

THE COURT: YES, WHY DON'T YOU DO THAT.

MR. LEWIS: WE AGREE WITH THAT.

MR. TUCKER: AND, YOUR HONOR, ONE OTHER QUESTION THE -- WE HAD DISCUSSED AT THE BEGINNING OF TRIAL ABOUT UPDATING THE FINDINGS OF FACT. WOULD THE COURT STILL WANT UPDATES WITH CITATIONS TO THE RECORD

12:24p

AND --

THE COURT: I THINK NOT. I THINK THAT'S GOING TO BE PROBABLY MORE LABORIOUS AFTER HAVING GONE BACK AND LOOKED AT THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW. I'M SORRY TO DOUBLE-CROSS YOU, MR. TUCKER, BUT IT'S MY PREROGATIVE.

MR. TUCKER: THAT'S FINE, YOUR HONOR. WE JUST WANTED TO KNOW WHAT THE COURT WOULD BE LOOKING FOR.

THE COURT: I'M REALLY LOOKING FOR TRIAL BRIEFS SIMULTANEOUSLY FILED, NOT TO EXCEED 40 PAGES, AND CITATIONS TO THE RECORD WHERE HUMANLY POSSIBLE. I REALIZE THAT -- YOU'VE GOT A REALTIME REPORTER SO YOU SHOULD BE ABLE TO CITE TO THE RECORD, BUT, YOU KNOW, DO THE BEST YOU CAN.

MR. LEWIS: AND, YOUR HONOR, WE WILL MEET AND CONFER. I THINK ONE QUESTION I'M SURE WE'LL DISCUSS IS, YOU KNOW, CITATIONS TO THE ROUGH VERSUS THE FINAL TRANSCRIPTS. I SUSPECT THE COURT MAY PREFER US TO CITE TO FINALS, BUT I WILL -- WE WILL OBVIOUSLY DEFER TO YOUR HONOR.

THE COURT: OKAY. WELL, YOU MEAN THE CERTIFIED RECORD FROM THE COURT?

MR. LEWIS: THAT IS CORRECT, YOUR HONOR.

THE COURT: NO. I DON'T WANT TO DELAY THIS

12:25p

THING THAT LONG, SO YOU CAN CITE TO ROUGH TRANSCRIPT TESTIMONY. AS YOU WELL KNOW, WE HAVE A RECORDING OF THIS AND I CAN LISTEN TO THE RECORDING, SO I CAN -- I MEAN, IF YOU BLATANTLY MISREPRESENT SOMETHING FROM A ROUGH TRANSCRIPT OR IF -- IT WOULDN'T BE NECESSARILY A MISREPRESENTATION. IF THE ROUGH TRANSCRIPT IS JUST REALLY ROUGH, I'M GOING TO BE ABLE TO TELL THAT. OKAY?

MR. LEWIS: YOUR HONOR, WE APPRECIATE THAT. I KNOW WE HAVE PEOPLE WORKING. I KNOW THE COURT REPORTERS HERE HAVE BEEN WORKING VERY HARD TO GET US DAILIES. THERE ARE SOME, YOU KNOW, PEOPLE MISIDENTIFIED AND LITTLE MISTAKES HERE AND THERE. THAT'S THE ONLY REASON WE WERE ASKING. THAT HAPPENS WHEN PEOPLE ARE WORKING VERY QUICKLY. BUT AGAIN, PERHAPS WE CAN MEET AND CONFER WITH COUNSEL.

THE COURT: YES. AND, YOU KNOW, WHEN YOU'RE CITING TO THE ROUGH TESTIMONY AND IF YOU WANT TO BRACKET SOMETHING AND THEN DRAW UP A FOOTNOTE THAT SAYS "IT WAS TRANSCRIBED AS THIS BUT COUNSEL RECALLS IT TO BE THAT," THAT'S FINE. IF YOU POINT THAT OUT TO ME, I WILL LISTEN TO THE RECORDINGS, OKAY? SO -- AND THEN WE'LL KNOW.

ALL RIGHT. SO LET'S BE IN RECESS UNTIL 1:30.

01:33p

(WHEREUPON, A LUNCH RECESS WAS TAKEN.)

THE COURT: BE SEATED.

ALL RIGHT. BEFORE WE GET STARTED, DID Y'ALL MAKE ANY DECISIONS ABOUT PRETRIAL OR POST-TRIAL BRIEFING?

MS. KEENAN: YES, YOUR HONOR. MEGAN KEENAN FOR THE PLAINTIFFS.

OUR TEAM HAS CONFERRED. WE THINK WE'D BE ABLE TO GET THOSE TO YOUR HONOR BY NOT THIS FRIDAY BUT THE FOLLOWING FRIDAY, THE 20TH. I BELIEVE THE DEFENDANTS HAVE A DIFFERENT TIMELINE IN MIND. I'M HAPPY TO LET MR. LEWIS REPRESENT THAT.

THE COURT: MR. LEWIS, WHAT'S YOUR PROPOSAL?

MR. LEWIS: YOUR HONOR, THE DEFENDANTS WOULD PROPOSE FRIDAY, DECEMBER 22ND. I BELIEVE PLAINTIFFS ARE -- WELL, YOU SAID THE 20TH AND FRIDAY. I THINK YOU MEANT THE 15TH.

MS. KEENAN: THAT'S MY FAULT, YOUR HONOR. IT'S FRIDAY, THE 15TH. AND THE DEFENDANTS ARE PROPOSING FRIDAY, THE 22ND.

THE COURT: OKAY. WE'RE GOING TO SPLIT THE DIFFERENCE. THEY'LL BE DUE ON TUESDAY, THE 19TH.

MR. LEWIS: THANK YOU, YOUR HONOR.

MS. KEENAN: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT.

01:34p

OKAY. NEXT WITNESS.

MS. BRANNON: YOUR HONOR, SARA BRANNON FOR THE PLAINTIFFS. AND I CALL DR. CORY MCCARTAN.

(WHEREUPON, CORY MCCARTAN, BEING DULY SWORN, TESTIFIED AS FOLLOWS.)

MS. BRANNON: YOUR HONOR, MAY I APPROACH THE WITNESS TO GIVE HIM A COPY OF HIS REPORT?

THE COURT: YES.

SIR, IF YOU'LL STATE AND SPELL YOUR NAME FOR THE RECORD, PLEASE.

THE WITNESS: SURE. IT'S CORY MCCARTAN. C-O-R-Y, M-C-C-A-R-T-A-N.

MS. BRANNON: FOR THE RECORD, DR. MCCARTAN'S REPORT IS EXHIBIT PL 135.

VOIR DIRE

BY MS. BRANNON:

Q DR. MCCARTAN, IS THE C.V. ATTACHED TO YOUR REPORT?

A IT IS.

Q CAN WE SEE DR. MCCARTAN'S C.V. ON THE SCREEN. I BELIEVE IT IS EXHIBIT A IN HIS REPORT.

IS THIS A COMPLETE AND ACCURATE SUMMARY OF YOUR BACKGROUND AND PROFESSIONAL EXPERIENCE?

A IT IS.

Q WHAT IS YOUR EDUCATIONAL BACKGROUND?

01:35p

A I HAVE A BACHELOR'S IN MATH FROM GRINNELL COLLEGE AND A MASTER'S AND PH.D. IN STATISTICS FROM HARVARD.

Q WHAT IS YOUR CURRENT EMPLOYMENT?

A I'M A DATA SCIENCE ASSISTANT PROFESSOR, A FACULTY FELLOW AT THE CENTER FOR DATA SCIENCE AT NYU.

Q WHAT ARE YOUR FUTURE EMPLOYMENT PLANS?

A THIS NEXT SUMMER I'LL START ON THE TENURE TRACK AS AN ASSISTANT PROFESSOR OF STATISTICS AT PENN STATE.

Q APPROXIMATELY HOW MANY PEER-REVIEW ARTICLES HAVE YOU PUBLISHED?

A MAYBE A DOZEN OR SO.

Q CAN YOU DESCRIBE SOME OF YOUR ACADEMIC WORK THAT YOU HAVE DONE ON THE TOPIC OF REDISTRICTING AND THE USE OF SIMULATIONS?

A SURE. SO THE FIRST THING I DID THERE IS I WROTE AN ARTICLE DEVELOPING A REDISTRICTING SIMULATION ALGORITHM TO GENERATE REDISTRICTING PLANS. AND THEN IN WORK SINCE THEN I'VE APPLIED THAT TOOL TO STUDY --

THE REPORTER: I'M SORRY. A LITTLE SLOWER. "TO STUDY" --

THE WITNESS: I'M SORRY. PARTISAN GERRYMANDERING, CENSUS DATA, AND OTHER TOPICS.

01:36p

BY MS. BRANNON:

Q ARE YOU FAMILIAR WITH THE REPORTS THAT DR. BARBER PROVIDED IN THIS CASE?

A I AM.

Q DID YOU REVIEW THOSE REPORTS?

A YES.

Q WHAT SOFTWARE DID DR. BARBER USE IN CONDUCTING THE ANALYSIS IN HIS REPORTS?

A HE USED THE REDIST SOFTWARE, WHICH IS SOFTWARE THAT I HELPED WRITE THAT IMPLEMENTS THIS ALGORITHM THAT I WAS JUST TALKING ABOUT.

Q ARE THERE PEER-REVIEWED ARTICLES ABOUT THE WORK YOU HAVE DONE IN CREATING THIS SOFTWARE?

A YES. SO I THINK IT'S ACTUALLY THE FIRST ONE THERE IN MY LIST: "SEQUENTIAL MONTE CARLO FOR SAMPLING BALANCED AND COMPACT REDISTRICTING PLANS" THAT DEVELOPED THIS ALGORITHM. AND AS PART OF THAT WE ALSO RELEASED THE SOFTWARE THAT IMPLEMENTS THAT.

MS. BRANNON: PLAINTIFFS MOVE TO ADMIT DR. MCCARTAN AS AN EXPERT IN THE FIELD OF REDISTRICTING AND THE USE OF SIMULATIONS IN REDISTRICTING.

THE COURT: ANY OBJECTION OR CROSS ON THE TENDER?

MS. HOLT: NO OBJECTION, YOUR HONOR.

THE COURT: DR. MCCARTAN WILL BE PERMITTED

01:37p

TO GIVE OPINION TESTIMONY ON REDISTRICTING AND THE USE OF -- I'M SORRY. CAN Y'ALL NOT HEAR ME -- AND THE USE OF SIMULATIONS IN REDISTRICTING.

DIRECT EXAMINATION

BY MS. BRANNON:

Q WHAT DID THE PLAINTIFFS ASK YOU TO DO IN THIS CASE?

A I WAS RETAINED TO STUDY DR. BARBER'S REPORT AND THE EVIDENCE HE PRESENTED THERE.

Q CAN YOU DESCRIBE IN VERY GENERAL TERMS WHAT ANALYSIS DR. BARBER DID IN THESE REPORTS?

A SURE. SO IN HIS FIRST REPORT DR. BARBER ATTEMPTED TO RUN A SIMULATION ANALYSIS GENERATING RANDOM PLANS AND COMPARING THEM AGAINST THE ILLUSTRATIVE MAP, THE ENACTED PLAN. HE ALSO PERFORMED A NUMBER OF WHAT HE CALLED REGIONAL ANALYSES TO FURTHER EXAMINE THOSE TWO PLANS.

Q AND DID THESE SIMULATIONS USE A PARTICULAR SOFTWARE?

A YES. HE GENERATED THOSE SIMULATIONS WITH THIS REDIST SOFTWARE THAT I HELPED WRITE.

Q DID THOSE -- DOES THAT SOFTWARE IMPLEMENT AN ALGORITHM?

A YES. SO AS PART OF THAT SOFTWARE YOU CAN RUN THIS -- WE CALL IT THE SMC ALGORITHM, SEQUENTIAL

01:38p

MONTE CARLO. IT'S A WAY OF GENERATING RANDOM REDISTRICTING PLANS.

Q SO IF WE CALL IT SMC THROUGHOUT TODAY'S PRESENTATION, YOU'LL KNOW WHAT WE'RE TALKING ABOUT?

A YES.

Q CAN YOU DESCRIBE WHAT THE ALGORITHM DOES?

A SURE. SO AS WE SAY, ITS GOAL IS TO GENERATE A REPRESENTATIVE RANDOM SAMPLE OF REDISTRICTING PLANS THAT -- FROM THE SET OF ALL THE PLANS THAT MEET VARIOUS CRITERIA OR SATISFY OR FOLLOWS CERTAIN PRINCIPLES. SO THE WAY IT DOES THAT IS IT STARTS WITH A BLANK MAP OF WHATEVER STATE YOU'RE IN. IT DRAWS DISTRICTS ONE AT A TIME ON THAT MAP. AND IT DOES THIS ACTUALLY FOR MANY, MANY MAPS AT A TIME. AND BY KEEPING TRACK OF HOW IT'S DRAWING ALL THESE DISTRICTS ON THE MAPS, IT'S DESIGNED THEN TO GUARANTEE THAT THE ULTIMATE SAMPLE YOU HAVE IS REPRESENTATIVE.

Q IS THE REDIST SOFTWARE AVAILABLE FOR PUBLIC USE?

A YEAH. SO IT'S WHAT WE CALL OPEN SOURCE, MEANING THAT THE CODE AND THE SOFTWARE ITSELF ARE FREE TO USE AND AVAILABLE, YOU KNOW, FROM OUR WEBSITE. ANYONE CAN GO AND INSTALL IT VERY QUICKLY AND EASILY. AND IT COMES ALONG WITH SOME PLAIN

01:40p

ENGLISH DOCUMENTATION THAT EXPLAINS WHAT THE SOFTWARE IS, HOW TO USE IT, AND HOW TO RUN PARTICULAR CODE TO ACCOMPLISH CERTAIN OBJECTIVES.

Q AND YOU JUST MENTIONED CREATING A REPRESENTATIVE SAMPLE. HOW DO YOU DETERMINE THAT A SAMPLE IS REPRESENTATIVE?

A RIGHT. SO WHEN I SAY "REPRESENTATIVE," I THINK -- THE GOOD ANALOGY IS LIKE A POLL. YOU HAVE A BIG POPULATION. IN THE CASE OF A POLL, IT'S LIKE U.S. VOTERS. IN THE CASE OF THIS ALGORITHM, IT'S ALL THE PLANS POSSIBLE OUT THERE THAT MEET THESE CRITERIA OR FOLLOW THESE PRINCIPLES. AND YOU CAN'T ACTUALLY GO AND CHECK ALL OF THE WHOLE POPULATION. YOU HAVE TO ONLY LOOK AT A SUBSET, AND YOU CAN LOOK AT A SAMPLE. AND FOR THAT EXERCISE TO BE USEFUL, THAT SAMPLE HAS TO BE REPRESENTATIVE SO THAT THE CONCLUSIONS YOU DRAW FROM THE SAMPLE ALSO HOLD IN THE POPULATION.

SO THE GOAL OF THE ALGORITHM IS TO PROVIDE A REPRESENTATIVE SAMPLE, JUST LIKE THE GOAL OF A POLL IS TO TALK TO A REPRESENTATIVE SAMPLE OF THE VOTERS SO YOU CAN MAKE CONCLUSIONS. AND OBVIOUSLY IF YOU ARE NOT LOOKING AT A REPRESENTATIVE SAMPLE, YOU CAN MAKE CONCLUSIONS THAT ARE GOING TO BE FAULTY. SO LIKE FAMOUSLY WRITE IN, IN 2016 ELECTION POLLING, YOU

01:41p

KNOW, HAD HILLARY CLINTON WINNING THE ELECTION AND THEN THAT DIDN'T HAPPEN, THAT WAS BECAUSE THE SAMPLES WEREN'T REPRESENTATIVE.

SO IN OUR SOFTWARE, UNLIKE IN POLLING, WE ACTUALLY HAVE CONFLICT WAYS TO TRY TO HELP USER IDENTIFY WHEN THEY'RE IN THOSE SCENARIOS AND ACTUALLY KNOW IN ADVANCE THAT WHETHER OR NOT THEY ARE SAMPLES REPRESENTATIVE OR NOT.

Q AND ARE THOSE THE STANDARD DIAGNOSTICS?

A RIGHT. SO THE WAY WE DO THAT -- AND YOU CANNOT BE A HUNDRED PERCENT SURE. BUT WE'VE COME UP AND WE THEN DEVELOPED WHAT WE CALL DIAGNOSTIC MEASURES. THESE ARE BASICALLY FORMULAS. THEY PRODUCE A NUMBER AND THAT NUMBER TAKES ON CERTAIN VALUES THAT'S INDICATIVE OF PROBLEMS LIKE A RED FLAG, IF YOU WILL, THAT THE SAMPLE YOU'VE GENERATED IS NOT REPRESENTATIVE.

Q SO WE'RE GOING TO DISCUSS THE IMPLEMENTATION OF THE STANDARD DIAGNOSTICS AND A FEW OF YOUR OTHER OPINIONS ABOUT THE STEPS DR. BARBER TOOK TO IMPLEMENT YOUR SOFTWARE SHORTLY. BUT LET'S START WITH THE BIG PICTURE.

DID YOU REVIEW DR. BARBER'S CONCLUSIONS?

A I DID.

Q IN VERY GENERAL TERMS, CAN YOU DESCRIBE YOUR

01:42p

UNDERSTANDING OF DR. BARBER'S CONCLUSIONS?

A RIGHT. SO AS WE TALKED ABOUT, HE ATTEMPTED TO FIRST RUN THIS SIMULATION STUDY, GENERALLY WHAT HE CALLED A RACE-NEUTRAL BASELINE OF PLANS, WHICH HE THEN COMPARED AGAINST THE ILLUSTRATIVE MAP AND THE ENACTED. ON THE BASIS OF THAT SET, DR. BARBER CONCLUDED THAT RACE PLAYED A ROLE IN THE DRAWING OF THE ILLUSTRATIVE MAP.

DR. BARBER THEN ALSO PERFORMED WHAT HE CALLED THESE REGIONAL ANALYSES. AND PUTTING THOSE THINGS TOGETHER HE CONCLUDED THAT RACE PLAYED A SIGNIFICANT ROLE, MORE SO AND ABOVE THESE OTHER TRADITIONAL REDISTRICTING PRINCIPLES.

Q DO YOU AGREE WITH DR. BARBER'S CONCLUSIONS?

A I DON'T.

Q DO YOU THINK DR. BARBER ESTABLISHED -- DR. BARBER'S SIMULATIONS ESTABLISHED THAT -- LET ME REPHRASE THE QUESTION.

DO DR. BARBER'S SIMULATIONS ESTABLISH A MORE SIGNIFICANT FACTOR IN THE ILLUSTRATIVE MAP OTHER THAN REDISTRICTING PRINCIPLES?

A NO, THEY DON'T.

Q WHY NOT?

A WELL, REALLY -- SO DR. BARBER ONLY RAN WHAT WE CALL ONE SIMULATION STUDY. HE GENERATED ONE SET,

01:43p

IN THIS CASE A HUNDRED THOUSAND PLANS. AND THAT ONE SET IS ACTUALLY NEVER GOING TO BE ENOUGH TO MAKE A -- EVEN IF YOU RUN THAT SET CORRECTLY, IT'S NEVER GOING TO BE ENOUGH TO ESTABLISH THAT ONE FACTOR DOMINATED OR OVERWHELMED OTHER FACTORS, BECAUSE FUNDAMENTALLY IT'S ABOUT HOW FACTORS ARE PLAYING AGAINST EACH OTHER. AND ALL YOU CAN DO WITH A SINGLE STUDY IS MEASURE THE IMPACT OF ONE FACTOR ON A PARTICULAR OUTCOME.

Q THE HUNDRED THOUSAND RUNS THAT YOU JUST MENTIONED, THAT'S THE SIMULATION STUDY THAT DR. BARBER DID IN HIS FIRST REPORT. IS THAT CORRECT?

A THAT'S RIGHT.

Q IN GENERAL TERMS, WHAT IS YOUR OPINION OF THE VALUE OF THAT FIRST SIMULATION STUDY?

A SO AS I SAID, YOU KNOW, WHEN DONE CORRECTLY, THESE SIMULATIONS CAN COME UP WITH A REPRESENTATIVE SAMPLE, THEY CAN MEASURE THE IMPACT OF MAYBE ONE FACTOR. BUT DR. BARBER DIDN'T PERFORM THIS FIRST SET OF SIMULATIONS CORRECTLY. AND SO REALLY, AS FAR AS I'M CONCERNED, THAT FIRST SET REALLY IS KIND OF USELESS FOR ANSWERING THE QUESTIONS HE WAS TRYING TO ASK.

Q SO WITH HIS SECOND SIMULATION STUDY BEING OF MORE VALUE, WHICH WE'LL GET TO, HE ESSENTIALLY ONLY

01:44p

RAN ONE SIMULATION STUDY, IN YOUR OPINION?

A THAT'S RIGHT. BECAUSE THE FIRST ONE, LIKE I SAID, WAS -- DIDN'T HAVE ANY VALUE.

Q IN YOUR OPINION, CAN SIMULATIONS BE USED TO CREATE A REPRESENTATIVE SAMPLE OF PLANS THAT COMPLY WITH CERTAIN REDISTRICTING PRINCIPLES?

A YEAH. SO WHEN USED CORRECTLY, THAT'S ONE OF THE THINGS THEY'RE DESIGNED TO DO.

Q HAVE YOU DONE ANY WORK IN ANOTHER STATE USING THE SMC ALGORITHM TO EVALUATE REDISTRICTING MAPS?

A YEAH. SO AS I MENTIONED, WE -- IN A LOT OF MY ACADEMIC WORK WE'VE USED THIS ALGORITHM. WE HAD A PROJECT WHERE WE WERE TRYING TO MEASURE THE IMPACT OF PARTISAN CONSIDERATIONS OR PARTISAN GERRYMANDERING IN ALL 50 STATES' CONGRESSIONAL MAPS WHERE WE USED THIS ALGORITHM THROUGHOUT.

Q AND WHAT STEPS WERE INVOLVED IN THAT WORK?

A SURE. WELL, MAYBE IT'S EASY TO GIVE YOU AN EXAMPLE. SO ONE STATE WE LOOKED AT OBVIOUSLY WAS FLORIDA. AND AS I SAY, THERE WE'RE TRYING TO MEASURE THE IMPACT OF THIS PARTISANSHIP FACTOR, SO THAT INVOLVES COMPARING THE PLAN THAT WAS ACTUALLY ADOPTED IN FLORIDA WITH A SET THAT INCLUDES ALL THE OTHER FACTORS AND PRINCIPLES THAT YOU WANT IN CONGRESSIONAL

01:46p

MAPS IN FLORIDA EXCEPT PARTISANSHIP. SO WE STILL WANT TO CONSIDER THE COMPACTNESS OF THE DISTRICTS, THE POPULATION, MAYBE PRESERVING COUNTIES, MUNICIPALITIES. THE VOTING RIGHTS ACT IS OBVIOUSLY A CONSIDERATION IN THAT STATE.

SO TO INCORPORATE ALL THOSE FACTORS INTO A SIMULATION, YOU KNOW, YOU START WITH THE FACTORS IN PLAIN ENGLISH. YOU NEED TO SOMEHOW TRANSLATE THOSE TO CODE OR MATH THAT THE ALGORITHM CAN ACTUALLY UNDERSTAND AND WORK WITH. AND THAT'S NOT, YOU KNOW, A SIMPLE OR ONE-TO-ONE PROCESS. THERE IS CHOICES YOU CAN MAKE AS TO HOW TO DO THAT INTERPRETATION.

AND IN PARTICULAR, YOU KNOW, FOR MANY OF THESE PRINCIPLES, YOU HAVE TO SORT OF DECIDE HOW STRONG OF AN INSTRUCTION YOU WANT TO PROVIDE TO THE ALGORITHM; HOW MUCH SHOULD IT PRIORITIZE THIS PRINCIPLE AND THIS FACTOR. AND THERE IS NO WAY A PRIORITY TO REALLY KNOW EXACTLY HOW TO MAKE ALL THE SETTINGS. WHAT YOU HAVE TO DO IS TRY SOME VALUES, SOME SETTINGS, SOME WAYS OF INCORPORATING THESE PRINCIPLES. YOU CAN TRY THAT OUT, PRODUCE A SIMULATED SET, AND THEN LOOK AT IT AND STUDY IT AND SAY, OKAY, DID THIS MEET -- DID THIS INCORPORATE THE PRINCIPLES I WANT? ARE THESE PLANS SATISFACTORY? YOU MIGHT WANT TO TRY WRITING THE ALGORITHM MULTIPLE

01:47p

TIMES, JUST CHANGING ONE THING AT A TIME TO EVALUATE THE IMPACT OF A SINGLE FACTOR, A SINGLE CHANGE. THESE TYPE OF EXPERIMENTS ARE LIKE REALLY CRUCIAL FOR COMING UP ULTIMATELY WITH A SET OF PLANS THAT INCORPORATES OTHER PRINCIPLES THAT YOU WANT TO INCORPORATE.

SO IN THE CASE OF FLORIDA, I THINK IT TOOK US ON THE ORDER OF MONTHS REALLY TO RUN ALL THE EXPERIMENTS WE WANTED, TRY THINGS OUT, STUDY THE RESULTS AND COME UP WITH ULTIMATELY A FINAL SET OF INSTRUCTIONS OR PARAMETERS FOR THE ALGORITHM THAT WE WERE HAPPY WITH.

Q HAVE YOU RUN ANY SIMULATION STUDIES YOURSELF RELATED TO THE LOUISIANA STATE LEGISLATIVE MAPS?

A NO, I HAVEN'T. I WASN'T RETAINED TO DO SIMULATIONS SPECIFICALLY, AND REALLY I DIDN'T NEED TO DO SIMULATIONS MYSELF TO EVALUATE THE SIMULATION WORK THAT DR. BARBER DID AND THE OTHER EVIDENCE HE PRESENTED.

Q AND WHY NOT?

A WELL, I LIKE I SAY, YOU KNOW -- YOU KNOW, WHEN YOU'RE DOING A SIMULATION ANALYSIS, THAT INVOLVES, YOU KNOW, A CERTAIN PROCEDURE AND STEPS. IT'S NOT A FORMULA, BUT THERE IS A WORKFLOW ISSUE YOU GENERALLY FOLLOW. AND THERE IS ALSO THINGS YOU CAN

01:48p

DO AS PART OF THAT WORKFLOW LIKE CHECKING THESE DIAGNOSTICS THAT WE'VE BEEN TALKING ABOUT. AND SO IF YOU'RE NOT CHECKING THESE DIAGNOSTICS OR IF YOU'RE NOT FOLLOWING THE WORKFLOW PROPERLY, YOU KNOW, YOU -- I WAS ABLE TO, YOU KNOW, SEE IF THOSE STEPS WERE BEING FOLLOWED, WHERE THE DIAGNOSTICS WERE APPROPRIATE WITHOUT HAVING TO GO AND DO MY OWN SIMULATION WORK.

Q AND DO YOU KNOW HOW LONG IT MIGHT TAKE TO RUN REPRESENTATIVE SIMULATION STUDIES FOR THE LOUISIANA STATE LEGISLATIVE MAPS?

A YEAH. WELL, YOU KNOW, IT DEPENDS WHAT WE MEAN BY "REPRESENTATIVE." AND WHAT I MEAN BY THAT IS IT DEPENDS WHAT CONSTRAINTS AND PRINCIPLES AND CRITERIA WE'RE TRYING TO INCORPORATE INTO THE ALGORITHM, THE SIMULATIONS. YOU KNOW, SOMETIMES IT'S -- YOU CAN JUST ASK TOO MUCH. YOU KNOW, THESE ALGORITHMS AREN'T LIKE A MAGIC BULLET. IT'S POSSIBLE TO SAY -- TO TRY TO PUT TOO MUCH IN. AND IT COULD ACTUALLY JUST NOT EVEN BE POSSIBLE TO GENERATE A REPRESENTATIVE SAMPLE WITH CERTAIN COMBINATIONS OF CONSTRAINTS OR PRINCIPLES. THE ONLY WAY YOU CAN KNOW FOR SURE IS BY TRYING OUT AND GOING THROUGH THE SORT OF ITERATIVE EXPERIMENTAL PROCESS THAT I STARTED TALKING ABOUT WHAT WE DID IN FLORIDA. AND SO JUST

01:49p

SITTING AT THE START YOU CAN'T ALWAYS KNOW IF IT'S POSSIBLE OR, IF IT IS POSSIBLE, HOW LONG IT WOULD TAKE.

Q DID YOU REVIEW THE REPORTS THAT DR. BARBER ENTERED INTO THIS CASE?

A I DID.

Q AFTER REVIEWING DR. BARBER'S FIRST REPORT, DID YOU DRAFT A REPORT REFLECTING YOUR OPINIONS?

A YES, I DID.

Q CAN WE SEE PL 135.

IS THAT -- IS THIS THAT REPORT?

A IT LOOKS LIKE IT.

Q CAN WE TURN TO PAGES 5 AND 6.

ARE YOU FAMILIAR WITH THESE PAGES?

A YEAH. THIS IS A SECTION WHERE I SUMMARIZE MY OPINIONS.

Q CAN WE HIGHLIGHT LANGUAGE IN THE FIRST BULLET POINT? IT STARTS -- CAN YOU READ THE HIGHLIGHTED LANGUAGE?

A SURE. "DR. BARBER DID NOT FOLLOW BEST PRACTICES IN USING THE SMC ALGORITHM AND REDIST SOFTWARE. IN PARTICULAR, HE DIDN'T CHECK STANDARD DIAGNOSTICS THAT WOULD HAVE IDENTIFIED NUMEROUS PROBLEMS IN BOTH THE SIMULATED SETS OF SENATE AND HOUSE PLANS."

01:50p

Q WHAT DO YOU MEAN BY THIS SENTENCE?
A SURE. SO WE'VE TOUCHED ON SORT OF IN GENERAL TERMS THERE IS NUMERICAL DIAGNOSTICS THAT INDICATE OR THAT A SIMULATION SAMPLE YOU'VE GENERATED IS LIKELY NOT REPRESENTATIVE. AND IT'S AN IMPORTANT PART OF PERFORMING THESE SIMULATION ANALYSES TO RUN THOSE DIAGNOSTICS AND CHECKS SO THAT YOU KNOW IF THERE IS PROBLEMS THAT YOU CAN TAKE STEPS TO ADDRESS.
DR. BARBER DIDN'T DO THAT, ALTHOUGH HE COULD HAVE. HE DIDN'T CHECK THESE DIAGNOSTICS AND, THEREFORE, DIDN'T FIX PROBLEMS THAT TURNED OUT TO BE PRESENT.
Q DR. MCCARTAN, WERE YOU HERE YESTERDAY WHEN DR. BARBER TESTIFIED?
A I WAS.
Q WHEN YOU'RE TALKING ABOUT THE STANDARD DIAGNOSTICS, IS THAT THE SAME THING AS THE CONVERGENT DIAGNOSTICS DR. BARBER WAS DISCUSSING YESTERDAY?
A OH, YES. SO I THINK FOR OUR PURPOSES THESE ARE PRETTY MUCH SYNONYMOUS. SO WHEN WE SAY A SAMPLE IS REPRESENTATIVE OR THAT THE ALGORITHM IS CONVERGED, THOSE ARE REALLY GETTING AT THE SAME THING: YOU KNOW, CAN WE TRUST THE RESULTS. SO THESE DIAGNOSTICS ARE DESIGNED TO CHECK CONVERGENCE OR ESTABLISH REPRESENTATIVENESS. IT'S TWO SIDES OF THE SAME COIN.

01:51p

Q DID YOU HEAR DR. BARBER TESTIFY YESTERDAY THAT HE PROVIDED STANDARD DIAGNOSTICS FOR HIS FIRST SET OF SIMULATIONS?

A I DID.

Q AND DO YOU BELIEVE HE ACTUALLY CHECKED THESE DIAGNOSTICS?

A NO. WHAT I UNDERSTOOD HIM TO MEAN WHEN HE SAID "PROVIDED THE DIAGNOSTICS" IS THAT -- SO THE DATA THAT ARE NEEDED TO CALCULATE THESE DIAGNOSTICS ARE ACTUALLY SAVED AUTOMATICALLY BY THE SOFTWARE SO THAT WHEN THE FINALS WERE TURNED OVER TO ME, I GUESS THROUGH THE DISCOVERY PROCESS, THAT DATA WAS STILL INCLUDED. BUT TO ACTUALLY CHECK AND RUN THE DIAGNOSTICS REQUIRES THAT THE ANALYST, YOU KNOW, RUN SOME CODE -- RUN A LINE OF CODE AND LOOK AT THE RESULTS AND EVALUATE THEM.

AND THE CODE THAT DR. BARBER TURNED OVER THAT I REVIEWED, THERE WERE NO SUCH INSTRUCTIONS TO CHECK THESE DIAGNOSTICS. IN FACT, IF HE HAD RUN THE CODE, THERE WOULD HAVE BEEN -- THE DIAGNOSTICS WOULD HAVE IDENTIFIED SEVERAL PARTICULAR ISSUES AND ACTION STEPS THAT IT RECOMMENDED SHOULD BE TAKEN. SINCE DR. BARBER DIDN'T, YOU KNOW, ADDRESS THOSE ISSUES, I CAN ONLY ASSUME THAT HE DIDN'T ACTUALLY CHECK THE DIAGNOSTICS EVEN THOUGH, AS WE SAID, THEY WERE -- THE

01:53p

DATA WERE THERE TO CALCULATE THEM.

Q DID YOU CHECK THE DIAGNOSTICS?

A I DID.

Q CAN WE SEE PAGES 22 AND 23 FROM DR. MCCARTAN'S REPORT, WHICH --

AND THEN WHAT DO THESE PAGES SHOW?

A SURE. SO THIS SECTION A HERE IS THE ACTUAL OUTPUT FROM THE COMPUTER YOU'D GET IF YOU RAN THIS CODE TO PRODUCE THE DIAGNOSTICS FOR HIS SENATE SAMPLE.

Q CAN WE JUST HIGHLIGHT THE LANGUAGE THAT'S ON PAGE 23 ABOVE THE B BULLET POINT.

CAN YOU TELL US IN VERY GENERAL TERMS WHAT THAT LANGUAGE IS?

A SURE. SO EVERYTHING ABOVE THAT IS A BUNCH OF NUMBERS THAT ARE SORT OF -- CONSTITUTE THE DIAGNOSTICS. AND THEN WHAT THE COMPUTER DOES IS IT GOES THROUGH AND SORT OF CHECKS THOSE NUMBERS ACCORDING TO SOME SORT OF RULES OF THUMB AND FIGURES OUT IF IT THINKS THERE IS PROBLEMS. AND IF THERE ARE PROBLEMS, IT SUMMARIZES THOSE HERE AT THE BOTTOM IN THESE BULLET POINTS.

SO HERE THERE IS SORT OF THREE -- THREE POTENTIAL PROBLEMS THEY IDENTIFIED. THESE ARE ALL INDICATIVE OF A SAMPLE THAT'S NOT REPRESENTATIVE. SO

01:54p

FOR EACH OF THESE PARTICULAR PROBLEMS, SOMETIMES IT WILL RECOMMEND STEPS THAT YOU COULD TAKE TO TRY TO ADDRESS THEM. THE GOAL ISN'T NECESSARILY, YOU KNOW -- THESE AREN'T LIKE -- THESE ARE SYMPTOMS. BUT THE REAL PROBLEM IS A LACK OF REPRESENTATIVENESS.

Q AND HOW WOULD A PERSON WHO IS USING YOUR REDIST SOFTWARE KNOW ABOUT THESE STANDARD DIAGNOSTICS?

A OH, SURE. SO IN THE PAPER THAT WE TALKED ABOUT IN MY C.V. THAT INTRODUCED THIS ALGORITHM, WE ACTUALLY HAVE A WHOLE SECTION TITLED "DIAGNOSTICS" THAT EXPLAINS WHY THESE ARE IMPORTANT AND RECOMMENDS PARTICULARLY FORMULAS TO USE IN CALCULATING THESE DIAGNOSTICS. AS I THINK I MENTIONED, THE SOFTWARE ALSO COMES WITH DOCUMENTATION. SO IN ADDITION TO CODE, THERE IS ACTUAL, YOU KNOW, ENGLISH WRITE-UPS OF HOW TO USE THE SOFTWARE, ET CETERA. AND THOSE CONTAIN MULTIPLE REFERENCES ABOUT THE IMPORTANCE OF USING THE DIAGNOSTICS AS WELL AS THE ACTUAL CODE YOU WOULD RUN TO CHECK -- TO CHECK THEM. AND THAT'S -- LIKE I SAY, THAT DOCUMENTATION IS ACTUALLY BUNDLED WITH THE SOFTWARE, SO WHEN YOU INSTALL IT IT'S -- A COPY OF THAT IS DOWNLOADED TO YOUR COMPUTER AND IT'S REAL EASY TO GO AND VIEW THAT.

THE COURT: MS. BRANNON, CAN I JUST

01:55p

INTERRUPT FOR ONE SECOND?

THERE WAS SOMETHING YOU SAID THAT I DID NOT -- I DID NOT EITHER CATCH OR DID NOT UNDERSTAND. YOU SAID THAT -- I APOLOGIZE.

MS. BRANNON: OF COURSE, YOUR HONOR.

THE COURT: YOU SAID THAT THE DATA NEEDED TO RUN THE DIAGNOSTICS IS PRESERVED IN THE DATA FILES AND THAT YOU GOT THOSE THROUGH YOUR COUNSEL FROM -- ON THE DATA THAT DR. BARBER RAN.

THE WITNESS: THAT'S RIGHT.

THE COURT: OKAY. BUT THEN YOU SAID THERE WERE NO DIAGNOSTICS RUN BY DR. BARBER. I MISSED THE PART OF HOW YOU MADE THAT -- HOW YOU MADE THAT FINDING.

THE WITNESS: OH, SURE. SURE. SO WHEN YOU'RE WRITING AN ANALYSIS LIKE THIS, LIKE WHAT YOU DO IS -- THAT INVOLVES WRITING CODE AND YOU PUT THE -- ALL THE CODE YOU RUN IN A FILE, LIKE A SCRIPT WE CALL IT. THAT WAY IF YOU NEED TO GO BACK AND CHANGE THINGS LATER OR RERUN THE ANALYSIS, IT'S ALL SAVED. RIGHT? SO IT'S LIKE YOU DON'T JUST WRITE IT AND FORGET ABOUT IT. YOU'RE ACTUALLY BUILDING A RECORD OF WHAT YOU RAN. SO THAT SCRIPT FILE WAS ALSO INCLUDED IN THE DISCOVERY OF EVIDENCE.

AND SO I TOOK THAT TO BE, YOU KNOW, A

01:56p

COMPLETE AND ACCURATE SORT OF TRANSCRIPT, IF YOU WILL, OF THE CODE THAT DR. BARBER RAN AS PART OF HIS COMPLETE ANALYSIS. AND NOWHERE IN THAT SCRIPT, THAT COMPUTER CODE, WAS WITH THE INSTRUCTIONS TO RUN THESE DIAGNOSTICS.

IN ADDITION, IT'S -- YOU KNOW, IT'S ALWAYS POSSIBLE, I SUPPOSE, THAT HE RAN THEM WITHOUT RECORDING THEM IN THE SCRIPT. BUT AS WE SEE HERE, YOU KNOW, IF HE HAD RUN THEM, THERE WOULD HAVE BEEN, YOU KNOW, STEPS RECOMMENDED THAT HE SHOULD HAVE TAKEN. AND SINCE THERE WERE NO EFFORTS TO ADDRESS ANY OF THESE ISSUES IN HIS CODE THAT HE TURNED OVER, IT HELPED ME SORT OF ALSO CONCLUDE THAT HE HADN'T CHECKED.

THE COURT: THANK YOU.

PARDON THE INTERRUPTION.

MS. BRANNON: OF COURSE, YOUR HONOR.

BY MS. BRANNON:

Q JUST TO CLARIFY FOR THE RECORD, THE SCRIPT WAS PROVIDED BY DEFENDANTS IN THE DISCOVERY IN THIS CASE AND GIVEN TO YOU BY COUNSEL?

A THAT'S MY UNDERSTANDING, YES. YEAH.

Q OKAY. TURNING BACK TO YOUR REPORT, CAN WE GO BACK TO PAGES 5 AND 6 OF PL 135. AND CAN YOU READ THE SECOND HIGHLIGHTED SENTENCE?

01:57p

A YEAH. "HE" -- DR. BARBER -- "ALSO FAILED TO PERFORM MULTIPLE INDEPENDENT RUNS OF THE ALGORITHM, WHICH PREVENTED THE CALCULATION OF IMPORTANT ADDITIONAL DIAGNOSTICS AND MARGINS OF ERROR."

Q WHAT DO YOU MEAN BY THIS STATEMENT?

A SURE. SO I'VE BEEN USING DIAGNOSTICS AS SORT OF AN UMBRELLA TERM. THERE'S A NUMBER OF THEM; YOU KNOW, DIFFERENT FORMULAS. AN IMPORTANT SET OF DIAGNOSTICS CENTER AROUND BASICALLY CHECKING THAT THE RESULTS OF THE ALGORITHM ARE RELIABLE. SO I MENTIONED THIS ALGORITHM IS RANDOM; IT USES RANDOM NUMBERS. AND SO IF YOU RUN THE ALGORITHM WITH THE EXACT SAME INSTRUCTIONS TWICE, YOU MIGHT GET SLIGHTLY DIFFERENT RESULTS.

AND SO AN IMPORTANT THING TO DO IS ACTUALLY TO DO THAT; TO RUN IT WITH THE EXACT SAME INSTRUCTIONS TWICE OR MORE AND CHECK THAT THE RESULTS ARE SIMILAR. AND WE HAVE A PARTICULAR WAY OF MEASURING THAT. AND THAT CHECK IS AN ADDITIONAL IMPORTANT SET OF DIAGNOSTICS THAT I'M REFERRING TO HERE. AND IF YOU DO THAT, YOU CAN HAVE A LOT MORE CONFIDENCE THAT THE RESULTS YOU HAVE ARE REPRESENTATIVE AND THE ALGORITHM IS CONVERGED.

IF YOU DON'T DO THESE MULTIPLE INDEPENDENT RUNS, THEN YOU'RE NOT EVEN ABLE TO RUN THOSE

01:58p

DIAGNOSTICS AND YOU'RE LACKING AN IMPORTANT PIECE OF INFORMATION AROUND CONVERGENCE, REPRESENTATIVENESS.

IN THIS CASE DR. BARBER DID NOT RUN MULTIPLE INDEPENDENT RUNS AND SO HE DIDN'T EVEN HAVE ACCESS TO THIS IMPORTANT SECOND SET OF DIAGNOSTICS.

Q AND DO YOU BELIEVE THAT WAS A MISTAKE THAT HE DIDN'T RUN THE SECOND SET OF INDEPENDENT -- AN INDEPENDENT RUN OF THE ALGORITHM?

A YES. CERTAINLY, YOU KNOW, LIKE IN THE PAPER THAT WE TALKED ABOUT, WE ARE VERY CLEAR THIS IS PROBABLY THE MOST IMPORTANT OF THE DIAGNOSTICS, IS THIS ONE THAT REQUIRES MULTIPLE INDEPENDENT RUNS. WE MADE CLEAR THAT'S OUR STRONG RECOMMENDATION FOR ANYONE USING THE ALGORITHM.

Q AND YOU TESTIFIED EARLIER ABOUT THE VALUE AND NEEDING TO DO MULTIPLE ADDITIONAL VALID SIMULATIONS. CAN YOU EXPLAIN THE DIFFERENCE BETWEEN THAT CONCEPT AND THIS CONCEPT THAT WE'RE TALKING ABOUT DOING AN INDEPENDENT RUN OF THE SAME ALGORITHM?

A SURE. THE ALGORITHM IS PROBABLY A LITTLE CONFUSING. SO A SIMULATION STUDY, WHEN I SAY THAT, THAT'S -- YOU'RE PRODUCING A SET OF THE RANDOM PLANS -- TEN THOUSAND, A HUNDRED THOUSAND, WHATEVER -- AND THAT'S TO ANSWER -- MAKE A PARTICULAR COMPARISON, ANSWER A PARTICULAR QUESTION WITH A

01:59p

PARTICULAR SET OF CRITERIA, PRINCIPLES, WHAT HAVE YOU.

SO WE TALKED ABOUT WHEN YOU'RE DOING THESE ANALYSES LIKE I DID IN FLORIDA, YOU HAVE TO DO THAT WHOLE SIMULATION STUDY PROCESS MANY TIMES -- OFTEN ITERATIVELY, EXPERIMENTALLY -- TO ARRIVE AT A SET OF INSTRUCTIONS, PARAMETERS, CRITERIA THAT YOU'RE HAPPY WITH THAT PROVIDES THE EVIDENCE YOU'RE TRYING TO, YOU KNOW, LOOK FOR. WITHIN ANY SINGLE SIMULATION STUDY, THIS PRACTICE OF -- WITH THE EXACT SAME INSTRUCTIONS AND NUMBERS, RUNNING THE ALGORITHM MULTIPLE TIMES, IS AN IMPORTANT DIAGNOSTIC, YOU KNOW, TECHNICAL CHECK. SO THAT'S HAPPENING WITHIN EACH OF THESE STIMULATION STUDIES. BUT DOING MANY STUDIES IS PART OF SORT OF THE SCIENCE PROCESS OF ALL THIS THAT'S IMPORTANT.

Q DO YOU BELIEVE, BASED ON YOUR EXPERIENCE AND EXPERTISE, THAT THE SIMULATION STUDY IN DR. BARBER'S FIRST REPORT HAS ANY VALUE?

A TO BE HONEST, NO. I THINK IT'S BASICALLY USELESS FOR THE QUESTIONS HE WAS TRYING TO ANSWER.

Q DID YOU REVIEW DR. BARBER'S REBUTTAL REPORT?

A I DID.

Q AND WHAT'S PROVIDED IN DR. BARBER'S REBUTTAL REPORT?

A SO IN HIS REPLY OR REBUTTAL REPORT, HE DID A

02:01p

NEW SET OF SIMULATIONS TO ADDRESS SOME OF THE CONCERNS I RAISED IN MY REPORT. SO HE DOES ONE ADDITIONAL SET OF SIMULATIONS WHERE HE CHANGES A NUMBER OF THINGS ABOUT HOW HE RAN IT, AND THEN HE CONCLUDES THAT NOTHING REALLY CHANGED AS FAR AS HIS CONCLUSIONS OR, YOU KNOW, QUANTITATIVE RESULTS BETWEEN THE FIRST AND SECOND SET.

Q AND DID HE CORRECT SOME OF THE MISTAKES THAT WE HAVE BEEN DISCUSSING TODAY IN HIS SECOND SIMULATION STUDY?

A YEAH. SO SOME OF THESE LIKE TECHNICAL ISSUES WE'VE BEEN TALKING ABOUT WITH THE DIAGNOSTICS, WITH THE MULTIPLE INDEPENDENT RUNS, HE DID ADDRESS THOSE CONCERNS IN THE SECOND SET. SO HE REPRESENTS IN HIS SECOND REPORT THAT HE DID MULTIPLE INDEPENDENT RUNS, RAN ALL OF THE DIAGNOSTICS, AND THAT NONE OF THOSE INDICATED ANY TECHNICAL ISSUES WITH HIS SECOND SET OF SIMULATIONS.

Q CAN WE STILL -- WE HAVE PAGE 5 AND 6 UP. CAN WE HAVE -- CAN YOU READ THE SECOND HIGHLIGHTED BULLET POINT?

A SURE. "DR. BARBER DID NOT CORRECTLY IMPLEMENT A 'CORE RETENTION' CONSTRAINT FOR HIS SENATE SAMPLES, MEANING THAT THEY DO NOT 'RESPECT PRE-EXISTING DISTRICT BOUNDARIES' BY DESIGN AS

02:02p

REQUIRED BY JOINT RULE 21."

Q WHAT DOES THIS SENTENCE MEAN?

A SURE. SO IN HIS FIRST REPORT DR. BARBER WROTE THAT HE INSTRUCTED THE ALGORITHM TO FOCUS ON PRESERVING THE CORES OF THE 2011 DISTRICTS IN THE NEW MAP THAT HE WAS DRAWING. THE WAY HE WENT ABOUT DOING THAT -- BECAUSE THAT'S JUST -- YOU KNOW, THE CORE OF THE DISTRICTS, THAT'S JUST AN ENGLISH SENTENCE. TO ACTUALLY PUT THAT INTO CODE, YOU HAVE TO COME UP WITH A WAY OF TRANSLATING WHAT "CORES" MEANS FOR THE ALGORITHM.

THE WAY HE DID THAT IS BY INSTRUCTING THE ALGORITHM TO MEASURE CORE RETENTION AS FOLLOWS: LOOK AT A 2011 DISTRICT AND SEE WHETHER OR NOT A NEW DISTRICT YOU'RE DRAWING IS CONTAINED ENTIRELY WITHIN IT OR IF IT IS SPLIT OR CROSSES THE 2011 DISTRICT. ONLY IF IT'S -- IT ALL CROSSES, UNLESS IT'S ENTIRELY CONTAINED WITHIN THE 2011 DISTRICT, HE HAS THE ALGORITHM TO RECORD THAT AS ZERO CORE RETENTION. AND THEN HE TELLS THE ALGORITHM: USING THIS DEFINITION OF CORE RETENTION, TRY TO MAXIMIZE THIS CORE RETENTION OR PLACE MORE WEIGHT ON DISTRICTS THAT RETAIN CORES.

SO WHAT I DID IS I ACTUALLY WENT THROUGH ALL 100,000 SENATE MAPS IN HIS SAMPLE AND I LOOKED AT THE

02:04p

CORE RETENTION USING THE DEFINITION THAT HE GAVE THE ALGORITHM AND FOUND THAT ACTUALLY ALL 100,000 PLANS HAD ZERO CORE RETENTION USING THIS DEFINITION. SO WHAT THAT MEANS IS, EVEN THOUGH HE TOLD THE ALGORITHM TRY TO MAXIMIZE YOUR -- OR PLACE MORE WEIGHT USING THIS DEFINITION OF CORE RETENTION, ALL OF THE PLANS WERE ZERO. SO THIS INSTRUCTION WAS ACTUALLY HAVING NO EFFECT ON THE PLANS THAT HE SIMULATED AND, THEREFORE, HIS CONCLUSIONS.

Q AND YOU HEARD DR. BARBER TESTIFY YESTERDAY THAT IN HIS FIRST SET OF SIMULATIONS HE IMPOSED VERY LOW CORE RETENTION CONSTRAINTS OR NO CORE RETENTION CONSTRAINTS. CORRECT?

A THAT'S WHAT I REMEMBER, YEAH.

Q SO DO YOU AGREE THAT HE IMPOSED NO CORE RETENTION CONSTRAINTS IN HIS FIRST SET OF SIMULATIONS, PARTICULARLY IN THE SENATE MAP?

A I DO.

Q AND THIS IS BECAUSE OF THE REVIEW THAT YOU HAVE JUST REVIEWED TO THE COURT OF THE RESULTS?

A THAT'S RIGHT.

Q DO YOU THINK IT WAS A MISTAKE TO NOT IMPLEMENT ANY CORE RETENTION IN HIS FIRST SET OF HIS FIRST SIMULATION STUDY?

A I THINK IF YOU SAY THAT YOU'RE TRYING TO

02:05p

GENERATE SAMPLES THAT RESPECT THE CORES OR PRESERVE THE CORES, IT WOULD BE A MISTAKE TO IMPLEMENT IT THIS WAY BECAUSE IT'S -- AS WE'VE SEEN, IT ENDED UP NOT ACTUALLY HAVING ANY EFFECT.

Q DID HE CORRECT THIS MISTAKE IN HIS SECOND SIMULATION STUDY DISCUSSED IN HIS REBUTTAL REPORT?

A WELL, HE COMPLETELY CHANGED HOW HE IMPLEMENTED THIS CORE RETENTION PRINCIPLE OR OBJECTIVE IN HIS SECOND SET.

Q DID YOU HEAR DR. BARBER TESTIFY ABOUT HIS DEFINITION OF CORE RETENTION YESTERDAY?

A YES.

Q AND WHAT'S YOUR UNDERSTANDING OF HIS DEFINITION OF CORE RETENTION?

A IF I REMEMBER RIGHT, HE SAID THAT HE MEASURES CORE RETENTION AS LOOKING AT THE PERCENT -- PERCENTAGE OF THE POPULATION IN AN OLD DISTRICT THAT'S MAINTAINED INTO A NEW DISTRICT.

Q IS THIS THE MEASUREMENT OF CORE RETENTION THAT DR. BARBER ACTUALLY USED IN HIS SECOND SET OF SIMULATIONS?

A NO. SO IN HIS SECOND -- SO IN THE FIRST SET HE DID THIS THING WITH THE SPLITS. IN THE SECOND SET HE -- BEFORE HE EVEN RAN THE SIMULATIONS, HE SORT OF PREDEFINED WHAT HE MEANT BY THE CORE OF EACH

02:06p

DISTRICT. SO HE DID THAT BY BASICALLY TAKING EACH PRECINCT AND SAYING, YOU KNOW, THIS PRECINCT BELONGS TO THE CORE OF A PARTICULAR DISTRICT OR THIS PRECINCT DOESN'T BELONG TO THE CORE. AND THE WAY HE DEFINED THESE CORES WAS BY ANY PRECINCT THAT WASN'T ON THE BOUNDARY OF A DISTRICT. SO IF A PRECINCT TOUCHED A PRECINCT IN ANOTHER DISTRICT, IT WASN'T IN THE CORE. OTHERWISE IT WAS IN THE CORE OF THE DISTRICT. SO ACTUALLY MOST OF THE PRECINCTS IN THE STATE ENDED UP BEING IN ONE OF DR. BARBER'S CORES BASED ON THE 2011 DISTRICTS.

SO ONCE HE PREDEFINED THESE CORES, HE THEN TOLD THE ALGORITHM TO GUARANTEE THAT ALL THE CORES WOULD REMAIN TOGETHER, SO ALL THE PRECINCTS IN THE CORE WOULD HAVE TO END UP IN THE SAME NEW DISTRICT THAT WOULD BE SIMULATED. SO THIS IS ACTUALLY -- THIS IS ACTUALLY -- THIS TYPE OF APPROACH WHERE YOU PREDEFINE THE CORE AND THEN TRY TO HOLD THOSE TOGETHER, THAT'S ACTUALLY AN APPROACH THAT I'VE USED IN SOME OF MY ACADEMIC WORK. IT'S A SORT OF GENERAL APPROACH IN THAT YOU CAN DECIDE HOW BIG YOU WANT THESE CORES TO BE, RIGHT? SO YOU CAN HAVE THE CORES GO ALL THE WAY TO THE BOUNDARY OR YOU CAN HAVE THE CORES JUST BE MUCH SMALLER AND JUST BE IN THE CENTER OF EACH DISTRICT. SO YOU SORT OF HAVE TO CHOOSE HOW

02:07p

STRONG YOU WANT THIS CORE CONSTRAINT TO BE IMPLEMENTED. WHAT DR. BARBER DID WAS TO JUST MAKE IT AS STRONG AS POSSIBLE, SO HE MADE THE CORES AS LARGE AS POSSIBLE.

Q AND DO YOU HAVE AN OPINION ABOUT THE IMPACT ON OUTCOME OF HIS SECOND SIMULATION STUDY OF THIS APPROACH OF IMPLEMENTING A STRONG CORE RETENTION CONSTRAINT?

A YEAH. WE CAN'T KNOW FOR SURE BECAUSE DR. BARBER ONLY PROVIDED THIS ONE ADDITIONAL SET OF SIMULATIONS WHERE HE CHANGED A NUMBER OF OTHER THINGS, INCLUDING THIS WAY OF DOING CORE RETENTION. SO WE DON'T HAVE A SIDE-BY-SIDE WHERE ALL HE CHANGED WAS THIS CORE RETENTION AND WE CAN MEASURE THE IMPACT OF THAT, SO WE DON'T KNOW FOR SURE.

YOU WOULD EXPECT, ESPECIALLY IF WE HAVE A STRONG CORE CONSTRAINT, THAT WOULD TEND TO PRODUCE DISTRICTS THAT LOOK MORE LIKE THE 2011 MAP, WHICH THE CORES ARE BASED ON. TO THE EXTENT THAT THE ENACTED PLAN LOOKS LIKE THE 2011 MAP, IT WOULD ALSO TEND TO MAKE THE DISTRICTS LOOK MORE LIKE THE ENACTED MAP. BUT AGAIN, LIKE I SAY, HOW MUCH OF AN EFFECT THAT HAD, HARD TO KNOW. WE DO KNOW THAT THE CORE CONSTRAINT WAS ON THE STRONG END OF THE SCALE.

Q DID DR. BARBER EVALUATE THE IMPACT OF THIS

02:08p

APPROACH TO IMPLEMENTING A CORE RETENTION CONSTRAINT IN HIS SECOND SET OF SIMULATIONS?

A NOT TO MY KNOWLEDGE. AS I SAID, HE WOULD HAVE HAD TO, YOU KNOW, RUN THIS WHOLE SIMULATION STUDY WITH AND WITHOUT A CORE CONSTRAINT OR VARYING THE STRENGTH OF HIS CONSTRAINT AND THEN REPORT THOSE RESULTS. HE CERTAINLY DIDN'T REPORT ANYTHING. AND SO, YOU KNOW, WE JUST DON'T KNOW WHAT THE EFFECT WOULD HAVE BEEN.

Q AND WHAT ARE SOME OTHER OPTIONS FOR IMPLEMENTING A CORE RETENTION CONSTRAINT THAT YOU MIGHT RECOMMEND?

A WELL, I THINK -- AS I SAID, YOU KNOW, I DON'T NECESSARILY OBJECT TO THIS GENERAL STRATEGY THAT HE HAD FOR THIS CORE CONSTRAINT. BUT IT'S UP TO THE ANALYST TO DECIDE HOW STRONG YOU WANT THAT CONSTRAINT TO BE. IF IT'S TOO STRONG, IT COULD ACTUALLY OVERWHELM OTHER PRINCIPLES OR FACTORS YOU'RE TRYING TO INCORPORATE IN THE MAPS.

AND SO AS FAR AS I'M CONCERNED, THE PRACTICE AN ANALYST SHOULD FOLLOW INVOLVES TRYING MULTIPLE LEVELS OR STRENGTHS OF HIS CONSTRAINT AND EVALUATING THAT. I'M SURE THERE IS OTHER WAYS THAT ONE COULD IMPLEMENT A CORE CONSTRAINT. THERE IS NOT NECESSARILY EXACTLY ONE WAY. BUT IF YOU'RE GOING TO

02:10p

GO DOWN THIS ROUTE, YOU HAVE TO HAVE SOME REASON FOR PICKING THAT PARTICULAR STRENGTH OF A CONSTRAINT THAT YOU SETTLE ON.

Q CAN WE GO BACK TO PAGE 5 AND 6 OF YOUR REPORT. AND CAN YOU READ THE NEXT HIGHLIGHTED SENTENCE IN THE BULLET POINT?

A SURE. "DR. BARBER GENERATED HOUSE PLANS BY DIVIDING LOUISIANA INTO THREE SEPARATE DIVISIONS, DEFINED BY ARBITRARY GROUPINGS OF PARISHES, AND THEN GENERATING PLANS WITHIN EACH DIVISION."

Q AND HOW DOES THAT WORK?

A SURE. SO DR. BARBER LITERALLY TOOK THE STATE OF LOUISIANA AND DREW TWO LINES ACROSS IT ALONG PARISH BOUNDARIES, AND THAT CREATED THREE SEPARATE REGIONS OF THE STATE. I THINK I HAVE A MAP IN MY REPORT ACTUALLY OF WHAT THAT LOOKS LIKE. BUT WITHIN EACH DIVISION, THEN, HE RUNS A COMPLETELY SEPARATE RUN OF THE ALGORITHM TO PRODUCE ROUGHLY A THIRD OF THE TOTAL DISTRICTS, AND THEN HE PUTS THOSE ALL TOGETHER TO FORM A STATEWIDE MAP.

Q WHAT IMPACT DOES DIVIDING THE STATE INTO PARTITIONS HAVE ON THE OPTIONS THAT MIGHT BE GENERATED BY A SIMULATION STUDY?

A YEAH. SO AS YOU CAN IMAGINE, IF I'M GENERATING DISTRICTS WITHIN EACH REGION SEPARATELY,

02:11p

NO DISTRICT THAT I GENERATE CAN POSSIBLY CROSS THE LINES THAT, YOU KNOW, DELINEATE THESE REGIONS. AND SO IT'S IMPOSSIBLE, ONCE YOU'VE DEFINED THE REGIONS AND TAKE THIS APPROACH, TO COME UP WITH A PLAN THAT HAS ANY DISTRICTS CROSSING THESE LINES. YOU'RE GUARANTEED TO HAVE ALL THE DISTRICTS SORT OF STICK TO THEIR OWN REGION.

NOTABLY, THE ENACTED PLAN IS ONE OF THE PLANS THAT WOULD ACTUALLY BE IMPOSSIBLE TO GENERATE UNDER THIS APPROACH.

Q DR. MCCARTAN, WHAT DOES IT MEAN TO HAVE TRANSPARENCY WHEN YOU'RE IMPLEMENTING CONSTRAINTS INTO AN ALGORITHM BEING RUN BY THE REDIST SOFTWARE?

A SO IN PERFORMING ANY SIMULATION ANALYSIS, AS YOU MAKE THE TRANSLATION FROM SORT OF A PLAIN-LANGUAGE UNDERSTANDING OF A PRINCIPLE OR A CRITERIA, AS YOU TRANSLATE THAT INTO CODE YOU HAVE CHOICES. THERE IS NUMBERS YOU HAVE TO SET, THERE IS DIFFERENT STRATEGIES YOU CAN TAKE TO IMPLEMENT IT, AS WE SAW WITH CORE RETENTION. AND BECAUSE THOSE CAN HAVE AN EFFECT ON YOUR RESULTS, I THINK IT'S IMPORTANT TO BE TRANSPARENT IN REPORTING YOUR RESULTS ABOUT WHAT THOSE PARAMETERS WERE OR AT LEAST SORT OF THE CRITERIA YOU PUT IN AND THE DECISIONS YOU MADE AND MAYBE WHY YOU MADE THOSE DECISIONS.

02:12p

IT WOULD NOT BE, IN MY VIEW, APPROPRIATE OR SURELY NOT TRANSPARENT TO PUT IN SOME KIND OF INSTRUCTION OR CRITERIA AND THEN NOT REPORT THAT, BECAUSE IT COULD HAVE AN EFFECT ON THE RESULTS.

Q WOULD YOU CHARACTERIZE DR. BARBER'S REPORTS AS TRANSPARENT?

A I WOULDN'T, ESPECIALLY -- YOU KNOW, THE FIRST REPORT, THIS DIVISION OF THE HOUSE INTO THREE REGIONS WASN'T DISCLOSED AT ALL, DESPITE IT, YOU KNOW, AFFECTING WHAT TYPES OF MAPS COULD EVEN BE DRAWN. I ONLY DISCOVERED THAT BY GOING THROUGH THAT TRANSCRIPT OF THE CODE HE RAN. YOU KNOW, THAT -- THERE'S JUST ONE EXAMPLE OF SORT OF THE LACK OF TRANSPARENCY AROUND THE INSTRUCTIONS HE PROVIDED TO THE ALGORITHM.

Q DID DR. BARBER IMPLEMENT PARTITIONS OF THE STATE IN THE HOUSE AND SENATE MAPS IN HIS SECOND SET OF SIMULATIONS?

A YEAH. SO IN THE FIRST SET THE SENATE WAS DONE STATEWIDE. THERE WERE NO REGIONS. THE HOUSE WAS DIVIDED INTO THREE. IN THE SECOND SET HE DIVIDED THE STATE INTO SEVEN REGIONS FOR THE HOUSE AND FOUR FOR THE SENATE.

Q HAVE YOU EVER RUN SIMULATIONS WHERE YOU PARTITIONED A JURISDICTION INTO SUBPARTS?

02:14p

A I THINK I HAVE. SO SOMETIMES -- YOU DO IT FOR VARIOUS REASONS. BUT THERE IS NOT JUST MAYBE ONE WAY TO DO THIS. SO I THINK SOMETHING I PROBABLY DO NOW IS -- MOST OFTEN OR A BEST PRACTICE -- WOULD BE YOU CAN CREATE THESE DIVIDING LINES, BUT THERE IS A WAY TO ACTUALLY SORT OF ERASE THEM PARTWAY THROUGH THE WAY THE ALGORITHM IS RUNNING. SO YOU CAN DRAW SOME OF THE DISTRICTS AND THEN FORGET ABOUT THESE DIVISIONS AND FILL IN THE REST. REGARDLESS OF WHAT, YOU KNOW, SPECIFIC APPROACH YOU'RE TAKING WITH THE LINES AND ALL -- YOU KNOW, IT'S KIND OF TECHNICAL, BUT -- I'M GOING TO SOUND LIKE A BROKEN RECORD HERE -- IT'S ALWAYS IMPORTANT TO UNDERSTAND THE EFFECT THAT THESE CHOICES ARE HAVING.

VERY RARELY ARE THESE -- YOU KNOW, THESE DIVISIONS THAT YOU IMPOSE, SOMETHING YOU'RE GOING TO FIND IN STATE CRITERIA OR IN A LAW OR SOMETHING, SO THIS IS ALMOST ALWAYS AN ADDITIONAL SORT OF CONSTRAINT YOU'RE IMPOSING. SO THERE YOU ESPECIALLY WANT TO BE CAREFUL THAT THAT CHOICE IS NOT GOING TO INFLUENCE YOUR RESULTS. AND SO, FOR INSTANCE, YOU COULD -- YOU MIGHT WANT TO TRY DIVIDING THE STATE A DIFFERENT WAY, INTO FOUR PIECES OR THREE PIECES AND MAKING SURE THAT YOUR CONCLUSIONS ARE THE SAME.

SO WHEN WE DIVIDE STATES, IF WE DIVIDE

02:15p

STATES, YOU KNOW, WE'LL TRY TO FIRST OF ALL BASE THE GROUPS ON SOMETHING OBJECTIVE LIKE A METROPOLITAN AREA, AND THEN WE'LL ALWAYS MAKE SURE TO TRY TO EVALUATE THE EFFECT THAT THAT'S HAVING ON OUR CONCLUSIONS.

Q AND DID DR. BARBER EVALUATE THE EFFECT OF HIS DECISIONS TO PARTITION THE STATE IN HIS SECOND SIMULATION RUN?

A NOT TO MY KNOWLEDGE. HE ONLY HAS THIS SINGLE SIMULATION STUDY. AS FAR AS WE CAN SEE, HE ONLY DIVIDED THE STATE IN ONE PARTICULAR WAY. HE DOESN'T RECORD ANY OTHER EXPERIMENTS THAT HE RAN.

Q DR. MCCARTAN, DID YOU HEAR DR. BARBER TESTIFY YESTERDAY THAT HE USED THE BOUNDARIES OF THE ILLUSTRATIVE MAP AS THE BOUNDARIES OF HIS SUBPART HE CREATED IN THE SECOND SIMULATION STUDY?

A YES, I DID.

Q DID YOU HEAR HIM TESTIFY THAT HE IMPLEMENTED THE SUBPARTS IN THIS WAY BECAUSE HE BELIEVED IT WOULD PROVIDE THE BEST CASE FOR THE ILLUSTRATIVE MAP?

A I DID HEAR THAT.

Q DO YOU AGREE?

A WELL, I DON'T THINK DR. BARBER OR MYSELF OR ANYONE CAN REALLY KNOW EXACTLY WHAT THE EFFECT WOULD BE. AGAIN, THAT'S BECAUSE DR. BARBER DIDN'T JUST

02:16p

CHANGE THIS REGIONAL DIVISION THING IN HIS SECOND SET. HE ALSO CHANGED THE CORE RETENTION. HE CHANGED A NUMBER OF PLANS. HE CHANGED A LOT OF STUFF. SO WE DON'T HAVE THE SIDE-BY-SIDE THAT WOULD LET US EVALUATE THE IMPACT OF THIS PARTICULAR CHOICE.

THAT BEING SAID, I WOULD PROBABLY AGREE WITH DR. BARBER TO THE EXTENT THAT THERE MIGHT BE A TENDENCY TO MAKE THE DISTRICTS LOOK A LITTLE MORE LIKE THE ILLUSTRATIVE MAP WHEN YOU'RE DEFINING THESE REGIONS ON THE BASIS OF THE ILLUSTRATIVE MAP. AGAIN, THE EXTENT TO WHICH THAT'S HAPPENING, I DON'T THINK ANYONE CAN KNOW BECAUSE WE DIDN'T RUN A SIDE-BY-SIDE THAT MEASURED THAT.

Q AND YOU JUST MENTIONED, AND WE HAD DISCUSSED EARLIER, THAT THERE IS A POTENTIAL UNKNOWN IMPACT OF DR. BARBER'S IMPLEMENTATION OF A STRONG CONSTRAINT FOR CORE RETENTION; AND, THEN, ALSO IT'S AN UNKNOWN IMPACT WHAT IMPACT THE PARTITIONS HAD ON THE SIMULATIONS.

WHAT IMPACT DOES IT HAVE ON THE MAPS CREATED BY THE SECOND STIMULATION TO BOTH THESE CONSTRAINTS IMPOSED TOGETHER?

A RIGHT. SO ONCE AGAIN, WE CAN'T KNOW FOR SURE BECAUSE WE HAVEN'T BROKEN OUT THE PIECES SEPARATELY. BUT AS WE SAID, ON THE ONE HAND YOU HAVE

02:17p

THE CORE CONSTRAINT THAT ANYTHING IS GOING TO PULL DISTRICTS TO LOOK LIKE THE 2011 MAP; AND THEN ON THE OTHER HAND YOU HAVE THIS WAY HE DIVIDED THE STATE, WHICH, IF ANYTHING, IS GOING TO PULL THE DISTRICTS TO LOOK MORE LIKE THE ILLUSTRATIVE MAP. SO THAT POSSIBLY CREATES A TENSION. IT CERTAINLY SORT OF REDUCES YOUR OPTIONS. RIGHT? YOU'RE TRYING TO SATISFY BOTH THESE THINGS AT THE SAME TIME.

AND SO, IF ANYTHING, THAT SORT OF TENDS TO NARROW, YOU KNOW, THE RANGES OF OUTCOMES YOU MIGHT EXPECT. BUT THE OVERALL IMPACT REALLY IS NOT KNOWABLE BECAUSE HE CHANGED ALL THESE THINGS AT ONCE AND DIDN'T EVALUATE THEIR IMPACTS SEPARATELY.

Q DID YOU HEAR DR. BARBER TESTIFY YESTERDAY THAT IN HIS OPINION THERE WAS VERY LITTLE DIFFERENCE IN THE RESULTS OF HIS TWO DIFFERENT STIMULATION STUDIES?

A I DID.

Q CAN WE CALL UP FROM DR. BARBER'S ORIGINAL REPORT, WHICH IS EXHIBIT SOS 1, PAGE 56, AND CALL OUT FIGURE 17; AND THEN ALSO FROM DR. BARBER'S REBUTTAL REPORT, WHICH IS, FOR THE RECORD, SECRETARY OF STATE EXHIBIT 4 AT PAGE 5; AND THEN CALL OUT THE HOUSE MAP THAT IS ON THE RIGHT SIDE OF THE PAGE.

DR. MCCARTAN, ARE YOU FAMILIAR WITH THESE

02:19p

FIGURES THAT WE'VE JUST PUT ON THE SCREEN?

A YES. SO THEY'RE SHOWING THE RANGE OR THE DISTRIBUTION OF BVAP-MAJORITY HOUSE DISTRICTS. AND ON THE LEFT I THINK THIS IS A FIRST SIMULATION SET, AND ON THE RIGHT IS HIS SECOND SIMULATION SET. AND THEN ALSO PLOTTED ARE THE BVAP DISTRICTS IN THE ENACTED AND ILLUSTRATIVE MAPS.

Q AND DO YOU AGREE WITH DR. BARBER'S OPINION THAT THERE IS VERY LITTLE DIFFERENCE BETWEEN THE OUTCOMES OF HIS TWO STIMULATION STUDIES?

A I DON'T.

Q CAN YOU EXPLAIN?

A WELL, JUST EVEN EYEBALLING, THESE ARE PRETTY DIFFERENT DISTRIBUTIONS. SO THE LEFT IS THE FIRST SET. THE RANGE OF BVAP DISTRICTS RUNS FROM NINE TO 18, 19, AND THE AVERAGE IS MAYBE 13, 14. IN THE SECOND SET THE RANGE GOES FROM TEN OR 11 TO I THINK 25, AND THE AVERAGE IS 18. SO IN THE AVERAGE OF THE NEW SET WAS BASICALLY THE UPPER END OF THE FIRST SET. SO I WOULD DEFINITELY NOT DESCRIBE THAT AS VERY LITTLE DIFFERENCE.

Q IN YOUR OPINION, THERE WAS A SIGNIFICANT DIFFERENCE?

A YEAH.

Q WHAT'S YOUR UNDERSTANDING OF DR. BARBER'S

02:20p

ULTIMATE CONCLUSIONS IN HIS SECOND REPORT?

A AS I UNDERSTOOD IT, HE, AS WE TALKED ABOUT, CHANGED A NUMBER OF THINGS, RERAN SIMULATIONS. BUT HE MADE THE SAME CONCLUSION; THAT THERE WAS NOT -- THAT BASICALLY THE SECOND REPORT WAS -- HAD THE -- MADE THE SAME CONCLUSIONS AS THE FIRST REPORT.

Q WHAT'S YOUR OPINION ABOUT THOSE CONCLUSIONS?

A I DON'T THINK IT'S FAIR TO CHARACTERIZE THE SECOND REPORT AS MAKING THE SAME CONCLUSIONS AS THE FIRST REPORT BECAUSE OF THESE CHANGES IN BOTH THE HOUSE AND THE SENATE. YEAH.

Q AND DO YOU HAVE AN OPINION -- JUST GOING BACK TO REPEAT SOMETHING I THINK THAT YOU SAID BEFORE, DO YOU HAVE AN OPINION AS TO WHETHER DR. BARBER'S SIMULATIONS ESTABLISHED THAT ONE FACTOR WAS MORE SIGNIFICANT IN THE ILLUSTRATIVE PLAN THAN OTHER REDISTRICTING PRINCIPLES?

A RIGHT. SO WE TALKED ABOUT IN -- ON THE BASIS OF HIS FIRST SET OF SIMULATIONS AND THE REGIONAL ANALYSES, I DON'T THINK THAT CONCLUSION WAS SUPPORTED, PRIMARILY BECAUSE THE FIRST SET OF SIMULATIONS IS USELESS. THE SECOND SET I STILL THINK IS NOT SUFFICIENT TO REACH THE CONCLUSION THAT DR. BARBER DRAWS THERE, MOSTLY, AGAIN, BECAUSE A SINGLE SET OF SIMULATIONS, A SINGLE SIMULATION STUDY, CAN'T

02:21p

EVER REALLY BE SUFFICIENT TO ESTABLISH THAT ONE FACTOR, YOU KNOW, OVERWHELMINGLY WAS MORE SIGNIFICANT THAN OTHER FACTORS, BECAUSE FUNDAMENTALLY THAT'S ABOUT COMPARING MULTIPLE FACTORS OR HOW THOSE TWO FACTORS INTERSECT OR BUMP UP AGAINST EACH OTHER. AND A SINGLE STUDY CAN ONLY LOOK AT THE IMPACT OF ONE FACTOR, SO YOU CAN'T MAKE OR STUDY HOW THOSE FACTORS, YOU KNOW, RUN INTO EACH OTHER.

Q AND I JUST WANT TO ASK ONE FINAL QUESTION FOR A POINT OF CLARIFICATION. WHEN YOU'RE TALKING ABOUT MULTIPLE ADDITIONAL VALID SIMULATIONS AND THEN A SIMULATION STUDY THAT HAS, FOR EXAMPLE, A HUNDRED THOUSAND MAPS OR FIVE HUNDRED THOUSAND MAPS, THOSE ARE TWO DISTINCT THINGS. CAN YOU JUST EXPLAIN?

A YEAH.

Q I JUST WANT THE RECORD TO BE CLEAR.

A YEAH. SO AGAIN -- SORRY. IT'S ALL A LITTLE CONFUSING. BUT WHEN YOU RUN A SINGLE RUN OF THE ALGORITHM OR SINGLE SIMULATION STUDY, YOU ALSO GET TO PICK HOW MANY PLANS ARE GOING TO BE IN YOUR SAMPLE. IN HIS FIRST SET, THAT WAS A HUNDRED THOUSAND; IN THE SECOND SET, THAT'S 500,000. ALL 500,000 ARE STILL FOLLOWING THE VARIOUS CRITERIA AND PRINCIPLES THAT HAD BEEN INSTRUCTED. SO, FOR EXAMPLE, WHEN HE MAKES THE DIVISIONS OF THE STATE, YOU KNOW, ALL 500,000

02:22p

PLANS ARE GOING TO HAVE NO DISTRICTS THAT CROSS THE LINES HE'S DRAWN IN THE STATE AND SO ON.

SO IT'S IMPORTANT TO HAVE ENOUGH -- A HUNDRED THOUSAND, FIVE -- IT'S IMPORTANT TO GENERATE ENOUGH PLANS TO GET A REPRESENTATIVE SAMPLE. BUT, SAY, GOING FROM A HUNDRED THOUSAND TO 500,000 DOESN'T MAGICALLY PRODUCE SORT OF MORE EVIDENCE AROUND YOUR ULTIMATE QUESTION. IT'S STILL JUST ONE SIMULATION STUDY.

MS. BRANNON: YOUR HONOR, CAN I JUST CONFER WITH MY ASSOCIATES?

THE COURT: YES, YOU MAY.

BY MS. BRANNON:

Q IS IT POSSIBLE THAT THE CORE RETENTION CONSTRAINT IN THE SECOND SIMULATION COULD MAKE IT IMPOSSIBLE FOR THE COMPUTER TO GENERATE ILLUSTRATIVE -- THE ILLUSTRATIVE PLAN?

A YEAH, IT'S CERTAINLY IMPOSSIBLE. I -- YOU KNOW, NEITHER DR. BARBER OR MYSELF, YOU KNOW, PERFORMED EXPERIMENTS TO SORT OF DETERMINE WHETHER THAT -- WHETHER OR NOT THAT'S POSSIBLE. BUT AGAIN, GIVEN SORT OF THE FACT THAT THE WAY HE DID THE CORE CONSTRAINT IN THE SECOND SET WAS SORT OF THE STRONGEST POSSIBLE WAY YOU COULD TAKE THAT PARTICULAR APPROACH, YEAH, IT WOULDN'T SURPRISE ME IF IT WAS, IN

02:24p

FACT, NOT POSSIBLE TO GENERATE THE ILLUSTRATIVE MAP USING THAT APPROACH.

MS. BRANNON: AND PLAINTIFFS MOVE TO ADMIT DR. MCCARTAN'S REPORT, PL 135.

THE COURT: ADMITTED.

CROSS.

MS. BRANNON: I PASS THE WITNESS.

CROSS-EXAMINATION

BY MS. HOLT:

Q GOOD AFTERNOON, DR. MCCARTAN. MY NAME IS CASSIE HOLT. I'M WITH THE LAW FIRM NELSON MULLINS, AND WE REPRESENT THE LOUISIANA SECRETARY OF STATE IN THIS MATTER. IT'S NICE TO MEET YOU.

A NICE TO MEET YOU.

Q DR. MCCARTAN, YOU RECEIVED THE BACK-UP DATA FOR DR. BARBER'S REPORT. CORRECT?

A HIS -- YES, I DID.

Q AND THE PARAMETERS THAT DR. BARBER USED WERE DISCLOSED IN HIS BACK-UP MATERIAL THAT WAS RECEIVED BY YOU?

A THE PARAMETERS HE SET WERE IN THE CODE THAT WAS PROVIDED, YES.

Q ARE YOU AWARE THAT SOME EXPERTS IN THIS FIELD HAVE WHOLLY REFUSED TO DISCLOSE THE PARAMETERS USED IN SIMILAR SIMULATIONS?

02:25p

A I AM NOT.
Q DR. MCCARTAN, DR. BARBER RAN YOUR DIAGNOSTICS AND CHECKED THEM IN HIS SECOND SET OF SIMULATIONS. IS THAT CORRECT?
A HE REPRESENTED THAT HE DID IN HIS REPORT.
Q OKAY. AND IT'S YOUR UNDERSTANDING FROM REVIEWING HIS REPORT THAT THEY ALL CAME BACK OKAY?
A HE SAID THAT THEY DID.
Q AND I UNDERSTAND YOUR TESTIMONY TO BE -- TO CRITICIZE DR. BARBER FOR FAILING TO PERFORM MULTIPLE INDEPENDENT RUNS OF THE ALGORITHM. CORRECT?
A THAT WAS ONE OF THE PROBLEMS IN HIS FIRST SET OF SIMULATIONS, BECAUSE IT PREVENTED HIM FROM CALCULATING THAT IMPORTANT SECOND ROUND OF DIAGNOSTICS.
Q "MULTIPLE" MEANS AT LEAST TWO. RIGHT?
A RIGHT. SO IT'S IMPOSSIBLE TO COMPUTE THESE DIAGNOSTICS WITH JUST ONE. BUT TWO WOULD BE SUFFICIENT.
Q THANK YOU, DR. MCCARTAN.
AND DR. BARBER DID PERFORM INDEPENDENT RUNS OF THE ALGORITHM IN HIS SECOND SET OF SIMULATIONS. IS THAT CORRECT?
A YES.
Q AND IN YOUR REPORT YOU DID NOT FORM AN

02:26p

OPINION ON WHAT REGIONS MIGHT BE NECESSARY TO RUN SIMULATIONS IN LOUISIANA. IS THAT CORRECT?

A SORRY. WHAT DO YOU MEAN BY, LIKE, REGIONS THAT MIGHT BE NECESSARY?

Q SURE. SO YOU DID NOT DEFINE REGIONS IN LOUISIANA THAT WOULD BE DIFFERENT THAN WHAT DR. BARBER PROPOSED IN THE HOUSE. IS THAT CORRECT?

A LIKE WHAT KIND OF REGIONS? SORRY.

Q SURE. SO MY UNDERSTANDING IS THAT DR. BARBER SET A PARAMETER DIVIDING THE STATE OF LOUISIANA INTO THREE REGIONS. AND CORRECT ME IF I'M WRONG, BUT I BELIEVE YOUR TESTIMONY WAS THAT YOU HAD PERFORMED SIMILAR ANALYSES IN OTHER STATES. IS THAT CORRECT?

A IN OTHER STATES AT SOME POINT I BELIEVE I HAVE DIVIDED THE STATE INTO DIFFERENT REGIONS.

Q OKAY. AND YOUR REPORT HERE DOES NOT CONTAIN ANY RECOMMENDATIONS ON HOW TO SIMILARLY -- EXCUSE ME -- DIVIDE THE STATE OF LOUISIANA. IS THAT CORRECT?

A RIGHT. AS I EXPLAINED, MY OBJECTION TO WHAT DR. BARBER DID WAS NOT THE CREATION OF THE REGIONS PER SE BUT IN FAILING TO EVALUATE THEIR IMPACT OR DISCLOSE THEIR PRESENCE OR THE IMPACT THAT THAT WOULD NECESSARILY HAVE ON THE TYPES OF MAPS THAT THE

02:28p

ALGORITHM WOULD GENERATE.

Q AND IN DR. BARBER'S FIRST REPORT HE PERFORMED 100,000 SIMULATIONS. IS THAT CORRECT?

A IN EACH OF THE HOUSE AND THE SENATE, YES.

Q YES. AND THEN 500,000 IN HIS REPLY REPORT?

A YEAH. HE DID 250,000 FOR TWO INDEPENDENT RUNS. SO PUT THOSE TOGETHER, HALF A MILLION.

Q AND ARE YOU AWARE OF OTHER EXPERTS IN THIS FIELD USING AS LITTLE AS 5,000 TO 10,000 INDIVIDUAL MAPS?

A FOR WHAT KIND OF ANALYSIS?

Q FOR SIMULATION FOR PARTISAN REDISTRICTING ANALYSIS.

A I GUESS THE REASON I ASK IS THERE IS NOT LIKE A THRESHOLD MAGIC NUMBER. THE APPROPRIATE NUMBER OF PLANS TO GENERATE IN ANY ANALYSIS IS DEPENDENT ON THE PARTICULARS OF THAT ANALYSIS; THE DIFFICULTY, THE PROBLEM, HOW MANY DISTRICTS ARE PRESENT, THE TYPE OF -- THE CONCLUSIONS OR NUMERICAL SUMMARIES YOU'RE TRYING TO DRAW. AND SO OUR RECOMMENDATION -- AND YOU'LL FIND THIS IN THE PAPER THAT WE WERE DISCUSSING -- IS TO USE THE DIAGNOSTICS TO GUIDE YOU IN DETERMINING WHETHER OR NOT YOU HAVE ENOUGH PLANS.

AND SO IF YOU DON'T -- IF THE DIAGNOSTICS

02:29p

ARE INDICATING PROBLEMS, ONE OF THE BEST STEPS YOU CAN TAKE AT THAT POINT IS TO INCREASE THE NUMBER OF RANDOM PLANS YOU'RE GENERATING. AND SO AS WE SAW IN THE DIAGNOSTICS THAT WERE AVAILABLE BUT NOT CHECKED BY DR. BARBER IN THE FIRST SET, A HUNDRED THOUSAND WAS NOT SUFFICIENT FOR THE ANALYSIS HE WAS TRYING TO RUN IN THAT FIRST SET OF SIMULATIONS.

MS. HOLT: YOUR HONOR, IF I MAY HAVE A MOMENT TO CONFER WITH MY CO-COUNSEL.

THE COURT: YOU MAY.

MS. HOLT: THANK YOU, DR. MCCARTAN. NO FURTHER QUESTIONS.

THE COURT: ANY REDIRECT, MS. BRANNON?

MS. BRANNON: NO REDIRECT, YOUR HONOR.

THE COURT: THANK YOU, DR. MCCARTAN. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

THE COURT: SO YOU HAVE ONE MORE WITNESS. IS THAT CORRECT?

MS. BRANNON: YES, YOUR HONOR. WE CALL DR. LISA HANDLEY TO THE STAND. AND JUST GIVE ME A MINUTE.

THE COURT: OKAY.

DR. HANDLEY, YOU HAVE -- GO AHEAD AND SWEAR HER IN AGAIN.

02:31p

(WHEREUPON, LISA HANDLEY, BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS.)

THE COURT: IT'S JUST A FORMALITY. I MEAN, TECHNICALLY YOU'RE PROBABLY STILL UNDER OATH, BUT THAT WAS SEVERAL DAYS AGO, SO...

MS. BRANNON: YOUR HONOR, WE HAVE A BINDER I THINK FOR DR. HANDLEY WITH COPIES OF HER REPORT THAT MY PARALEGAL IS ABOUT TO GO GET, BUT I'M HAPPY TO START IF YOU DON'T MIND THE INTERRUPTION.

THE COURT: IF YOU DON'T MIND GOING AHEAD AND STARTING, AND THEN WHEN SHE GETS HERE SHE MAY CERTAINLY APPROACH AND PROVIDE HER WITH HER REPORTS.

IF THERE IS SOMETHING THAT YOU CAN'T ANSWER BECAUSE OF YOUR REPORTS, WE'LL JUST -- WE'LL TAKE A MINUTE.

MS. BRANNON: I THINK IT WON'T BE NECESSARY FOR THE FIRST PART OF THE DIRECT.

DIRECT EXAMINATION

BY MS. BRANNON:

Q DR. HANDLEY -- WE'LL COME BACK TO THE REBUTTAL REPORT THAT YOU DRAFTED. DR. HANDLEY, YOU DID REVIEW THE REPORTS THAT DR. LEWIS PROVIDED IN THIS CASE. CORRECT?

A I DID.

Q AND YOU WERE PRESENT WHEN DR. LEWIS

02:32p

TESTIFIED TODAY AND YESTERDAY. CORRECT?

A YES.

Q AND DO YOU KNOW IF DR. LEWIS PROVIDED --

MS. BRANNON: YOUR HONOR, CAN I APPROACH THE WITNESS?

THE COURT: YOU MAY APPROACH.

MS. BRANNON: WE'LL COME BACK TO THE REPORT, BECAUSE IT'S MORE RELEVANT TO THE LATER LINE OF QUESTIONING.

BY MS. BRANNON:

Q DR. HANDLEY, DO YOU KNOW IF DR. LEWIS PROVIDED WHAT HE IS REFERRING TO AS WIN RATES IN HIS REPORTS?

A YES. AMONG THE THINGS HE PROVIDED IN HIS TABLES WERE WHAT HE CALLED WIN RATES.

Q AND WHAT'S YOUR UNDERSTANDING OF HOW DR. LEWIS IS DEFINING A WIN RATE?

A IN TWO OF THE TABLES, TABLES 1 AND 3, WITH MORE THAN -- WITH THREE OR MORE CANDIDATES, A WIN, ACCORDING TO HIS DEFINITION, WAS SIMPLY EITHER MAKING IT TO A RUNOFF OR WINNING OUTRIGHT.

Q AND DO YOU AGREE WITH HIS DEFINITION?

A NO. I THINK MAKING IT TO THE RUNOFF IS MAKING IT TO THE RUNOFF. YOU STILL HAVE TO WIN THE ELECTION IN THE RUNOFF TO ACTUALLY WIN THE SEAT.

02:33p

Q CAN WE SEE PLAINTIFFS' ILLUSTRATIVE AID 41.

MS. BRANNON: YOUR HONOR, WOULD YOU LIKE A PAPER COPY OF THIS?

THE COURT: IS THIS THE SAME ONE THAT WAS USED WITH DR. LEWIS?

MS. BRANNON: NO. THIS IS A NEW ONE.

THE COURT: YES, I'D LIKE A PAPER COPY.

MS. BRANNON: JUST FOR THE RECORD, YOUR HONOR, THIS IS AN ILLUSTRATIVE. WE DON'T HAVE ANY INTENTION TO ENTER THIS INTO THE EVIDENCE.

THE COURT: OKAY.

BY MS. BRANNON:

Q DR. HANDLEY, WOULD YOU LIKE A PAPER COPY?

A THIS IS PERFECT. I'M GOOD.

MS. BRANNON: OKAY. DOES DEFENSE COUNSEL WANT A PAPER COPY?

MS. MCKNIGHT: THANK YOU.

BY MS. BRANNON:

Q DR. HANDLEY, DID YOU CREATE THIS CHART?

A I DID.

Q WHAT INFORMATION -- WHAT IS THE SOURCE OF INFORMATION PROVIDED IN THIS CHART?

A I HAVE PROVIDED THE PERCENT BLACK VAP FOR A SET OF DISTRICTS AS WELL AS THE PERCENT NEEDED TO WIN. THIS IS FROM -- DIRECTLY FROM DR. LEWIS, HIS

02:34p

TABLE 1 THROUGH 4. I'VE ALSO INCLUDED THE WIN RATES FROM DR. LEWIS' TABLES 1 THROUGH 4. AND THEN THE EFFECTIVENESS SCORES COME FROM MY EXPERT REPORT.

Q AND FOR THE RECORD, THAT'S PLAINTIFFS' EXPERT EXHIBIT 1.

DO YOU KNOW HOW DR. LEWIS DEFINES WINNING IN HIS TABLE 1?

A IN HIS TABLE 1, FOR BOTH THE WIN RATE AND THE PERCENT NEEDED TO WIN, THAT WAS, AGAIN, WHETHER THE BLACK-PREFERRED CANDIDATE EITHER WON OUTRIGHT OR PROCEEDED TO THE RUNOFF.

Q AND WHAT ABOUT IN HIS TABLE 2?

A IN TABLE 2 HE FOCUSED ON TWO CANDIDATE RACES SO THAT THE WINNER WOULD ACTUALLY BE THE WINNER OF THE SEAT.

Q AND WHAT ABOUT TABLE 3?

A TABLE 3 LOOKS LIKE TABLE 1, IN THAT HE LOOKED AT THREE OR MORE CANDIDATES; AND THE CANDIDATE MERELY HAD TO PROCEED TO THE RUNOFF FOR HIM TO CONSIDER IT A WIN.

Q AND WHAT ABOUT TABLE 4?

A TABLE 4, AGAIN, WAS TWO-CANDIDATE CONTESTS, SO THE WINNER WAS SOMEBODY WHO WOULD -- WAS THE CANDIDATE WHO RECEIVED AT LEAST 50 PERCENT OF THE VOTE AND ACTUALLY OBTAINED THE SEAT.

02:36p

Q IS -- IN TABLE 3 -- IN TABLE 1 AND TABLE 2, IS THE METHODOLOGY THAT DR. LEWIS USED HOW YOU WOULD CALCULATE A WIN RATE?

A NO. I THINK THAT A WIN RATE MEANS THAT YOU HAVE TO HAVE WON THE SEAT.

Q AND HOW DID YOU SELECT THE ENACTED DISTRICTS THAT YOU HAVE INCLUDED IN THIS CHART?

A COUNSEL SUGGESTED THAT THOSE ARE THE -- THOSE ARE THE DISTRICTS THAT I SHOULD LOOK AT.

Q LET'S WALK THROUGH AN EXAMPLE. CAN WE HIGHLIGHT ENACTED DISTRICT 8.

CAN YOU WALK US THROUGH WHAT'S SHOWN IN EACH COLUMN THAT HAS BEEN HIGHLIGHTED FOR ENACTED DISTRICT 8 IN THIS CHART?

A SO FOR ENACTED DISTRICT 8, IN THE SECOND COLUMN I REPORT THE PERCENT BLACK VOTING AGE POPULATION. AND THEN THE NEXT FOUR COLUMNS ARE THE PERCENT-NEEDED-TO-WIN ESTIMATES THAT DR. LEWIS PRODUCED IN HIS REPORT.

SO IN THE THIRD ROW -- IN THE THIRD COLUMN WE SEE THAT HE ESTIMATES THAT BASED ON CROSSOVER AND COHESION AND TURNOUT RATES, THAT A 25 PERCENT BLACK VAP DISTRICT WOULD BE SUFFICIENT FOR THE BLACK-PREFERRED CANDIDATE TO WIN. IN TABLE 2 WE ARE LIMITING IT TO TWO CANDIDATES, AND NOW THE PERCENT

02:37p

BLACK VAP NEEDED TO WIN RISES TO 38 PERCENT. IN TABLE 3 WE'RE GOING BACK TO THREE OR MORE CANDIDATES, BUT ONE OF THE CANDIDATES AT LEAST HAS TO BE A BLACK CANDIDATE; AND WE'RE AT 24 PERCENT. AND FINALLY IN TABLE 4 WE'RE CALCULATING OUR PERCENT NEEDED TO WIN BASED ON TWO CANDIDATES, ONE OF WHOM IS BLACK; AND WE'RE UP AT 40 PERCENT FOR THE PERCENT NEEDED TO WIN.

SO YOU CAN SEE WE HAVE A VERY LARGE DIFFERENCE WHEN WE MOVE FROM TABLE 1 AT 25 PERCENT TO TABLE 4 AT 40 PERCENT.

Q DR. HANDLEY, YOU DID NOT DO ANY PERCENT-NEEDED-TO-WIN ANALYSIS IN THIS CASE. CAN YOU EXPLAIN TO THE COURT AGAIN WHY NOT?

A BECAUSE I ACTUALLY HAD DISTRICTS THAT I COULD LOOK AT TO DETERMINE IF THEY WERE EFFECTIVE OR NOT. I DIDN'T NEED TO CALCULATE A PERCENT NEEDED TO WIN IN TERMS OF IDENTIFYING SOME HYPOTHETICAL DISTRICT THAT MIGHT OR MIGHT NOT WORK.

Q NOW, LET'S TURN TO THE WIN RATES SPECIFICALLY. AND AGAIN, GOING BACK TO ENACTED DISTRICTS -- ENACTED SENATE DISTRICT 8, WHAT IS THE WIN RATE IN DR. LEWIS' TABLE 1 FOR CD 8?

A THE WIN RATE IS ACTUALLY AKIN TO MY RECOMPILED ELECTION RESULTS, SO THIS IS NOT A HYPOTHETICAL AT THIS POINT. THIS IS LOOKING AT A SET

02:39p

OF CONTESTS RECONSTITUTED FOR THIS ENACTED DISTRICT. AND IT'S TELLING US THE PERCENTAGE OF CONTESTS THAT DR. LEWIS EXAMINED, IN WHICH IN TABLE 1 THE CANDIDATES EITHER WON OUTRIGHT OR PROCEEDED TO THE RUNOFF. IN TABLE 2 WE'VE GOT TWO CANDIDATES AGAIN, SO THE WINNER IS THE OUTRIGHT WINNER OF THE SEAT. IN TABLE 3 WE'RE BACK TO THREE OR MORE CANDIDATES, ONE OF WHOM -- AT LEAST ONE OF WHOM IS BLACK. SO AGAIN, IT'S A MATTER OF IS THE CANDIDATE GOING TO PROCEED TO THE RUNOFF OR WIN OUTRIGHT. AND FINALLY IN TABLE 4 WE HAVE TWO CANDIDATES, AT LEAST ONE OF WHOM IS BLACK.

Q CAN YOU EXPLAIN HOW THE WIN RATES IN DR. LEWIS REPORTS -- DR. LEWIS' REPORT RELATE TO YOUR EFFECTIVENESS SCORE NO. 1?

A MY EFFECTIVENESS SCORE NO. 1 LOOKS CONSISTENTLY AT ALL 16 CONTESTS THAT I ANALYZED STATEWIDE AND JUST DETERMINES IF THE CANDIDATE PREFERRED BY BLACK VOTERS PROCEEDED TO THE RUNOFF -- EITHER WON OUTRIGHT OR PROCEEDED TO THE RUNOFF. SO IT'S SIMILAR TO TABLE 3, EXCEPT IN DR. LEWIS' TABLE 3 HE ONLY LOOKS AT CONTESTS WITH THREE OR MORE CANDIDATES. MY EFFECTIVENESS SCORE LOOKS AT ALL CONTESTS THAT I EXAMINED, WHETHER THERE WAS TWO OR THREE CANDIDATES.

02:40p

THE SECOND SCORE, SCORE NO. 2, IS MORE SIMILAR TO HIS TABLE NO. 4 BECAUSE IT'S LOOKING AT TWO CANDIDATES, ONE OF WHOM MUST BE BLACK. BUT YOU CAN SEE WE HAVE SLIGHTLY DIFFERENT RESULTS, AND THAT'S BECAUSE WE'RE LOOKING AT A DIFFERENT SET OF ELECTIONS. WE HAVE THE SAME DEFINITION AT THIS POINT; THE BLACK-PREFERRED CANDIDATE WAS INEVITABLY BLACK IN THESE -- IN MY CONTEST ANYWAY. I DON'T KNOW ABOUT HIS CONTEST. BUT IT'S BLACK IN MY INSTANCE. AND YOU CAN SEE THAT I HAVE SCORES OF ZERO TO 25 PERCENT.

HE LOOKS AT A DIFFERENT SET OF ELECTIONS AND COMES UP WITH A DIFFERENT SCORE. I DON'T KNOW WHAT SET OF ELECTIONS HE'S LOOKING AT. AND IT VARIES, BECAUSE YOU CAN SEE -- LOOKING AT THE TOP WE'VE GOT 7, 7, 6, 6, 7. I'M NOT SURE WHAT THOSE CONTESTS ARE.

BUT OTHER THAN THE DIFFERENCE IN THE CONTESTS WE'RE LOOKING AT AND, THEREFORE, GETTING SLIGHTLY DIFFERENT RESULTS, THAT TABLE 4 WIN RATE COMES THE CLOSEST TO MY EFFECTIVENESS SCORE OF 2.

Q WHAT'S YOUR UNDERSTANDING OF HOW DR. LEWIS SELECTED THE ELECTIONS THAT ARE USED IN HIS WIN RATE CALCULATIONS?

A IT'S A LITTLE BIT PUZZLING. HE DOES LIST A SERIES OF ELECTIONS THAT HE LOOKS AT BUT THEN

02:42p

LATER -- I THINK IT WAS IN THE DEPOSITION -- SAYS HE NARROWED THEM DOWN AT SOME POINT FOR SOME PURPOSE. HE -- IT'S UNCLEAR AND IT CHANGES.

AND ANOTHER THING ABOUT THE ELECTIONS THAT HE LOOKS AT IS SOME OF THE DISTRICTS -- SOME OF THE ELECTIONS ARE WHAT WE CALL DISTRICTED ELECTIONS. SO HE COULD LOOK AT A STATE SENATE ELECTION THAT DOESN'T COMPLETELY OVERLAP WITH EITHER THE ENACTED OR THE ILLUSTRATIVE PLAN. BUT SO LONG AS ONLY 75 PERCENT OF THE VOTERS ARE IN THAT DISTRICT, THE PLAN -- THE ORIGINAL PLAN DISTRICT, HE WILL TELL YOU WHETHER THEY WON OR NOT. SO IT'S THESE DISTRICTED CONTESTS INCLUDED. WE DON'T KNOW WHERE AND WE DON'T KNOW IF ALL OF THE VOTERS ARE, IN FACT, OVERLAPPING SO THAT YOU COULD ACTUALLY GET A TRUE WIN RATE.

Q THAT'S BECAUSE AT THE TIME THAT HE DID THIS ANALYSIS THERE WERE NO ELECTIONS THAT HAD BEEN RUN IN ANY OF THE ACTUAL ENACTED DISTRICTS. CORRECT?

A THAT'S CORRECT.

Q AND DO YOU HAVE ANY CONCERNS ABOUT HIS POLICY OF USING -- HIS PRACTICE OF USING DISTRICTED ELECTIONS THAT OVERLAP 75 PERCENT IN HIS WIN RATE CALCULATIONS?

A SURE. THE OTHER 25 PERCENT COULD HAVE MADE A DIFFERENCE IN TERMS OF WINNING OR LOSING.

02:43p

Q AND THEN DID DR. LEWIS LIST SPECIFICALLY THE ELECTION CONTESTS HE LOOKED AT FOR THE WIN RATE IN CD 8?

A NO.

Q DID HE LIST SPECIFICALLY ANY OF THE ELECTION CONTESTS HE LOOKED AT FOR THE WIN RATES FOR ANY OF THE ENACTED DISTRICTS THAT ARE REFLECTED ON THIS CHART?

A NO.

Q AND THEN I THINK YOU MAY HAVE ALREADY ADDRESSED THIS. BUT JUST TO MAKE SURE IT'S CLEAR FOR THE RECORD, HOW DOES DR. LEWIS' DEFINITION OF WINNING IN TABLE 4 COMPARE WITH YOUR EFFECTIVENESS SCORE IN TABLE 2?

A AGAIN, THAT IS THE MOST COMPARABLE IN TERMS OF HIS WIN RATE IN TABLE 4 AND MY SCORE TOO, WITH THE EXCEPTION OF THE FACT THAT DIFFERENT CONTESTS ARE BEING CONSIDERED.

Q AND THEN CAN WE JUST TAKE -- ALSO TAKE A LOOK AT THE WIN RATE FOR ENACTED SENATE DISTRICT 38. AND CAN YOU TELL US WHAT THE WIN RATES ARE FOR SENATE DISTRICT 38?

A THE WIN RATES, ACCORDING TO TABLE 1, IS 43 PERCENT. BUT IN TABLE 2 IT'S ZERO PERCENT. IN TABLE 3 IT'S 50 PERCENT. BUT IN TABLE 4 IT'S AT ZERO

02:45p

PERCENT.

Q AND WHAT ARE THE PERCENT NEEDED TO WINS REFLECTED FOR TABLE 2 AND TABLE 4 IN DR. LEWIS' REPORT AS IT'S SHOWN IN THIS CHART?

A I'M SORRY. CAN YOU REPEAT THAT? FIRST START WITH THE DISTRICT. WHAT DISTRICT --

Q WE'RE GOING BACK TO DISTRICT THIRTY -- SENATE DISTRICT 38, WHICH HAS BEEN HIGHLIGHTED. AND I JUST WANT TO KNOW THE PERCENT NEEDED TO WIN AS REFLECTED IN TABLE 2 AND TABLE 4.

A THE PERCENT NEEDED TO WIN UNDER TABLE 2 IS 51 PERCENT; IN TABLE 4, 55 PERCENT.

Q AND, DR. HANDLEY, DO YOU THINK THESE DISTRICTS ARE OPPORTUNITY DISTRICTS, GIVEN THE RESULTS SHOWN ON THIS CHART?

A I DO NOT.

Q DR. HANDLEY, WAS YOUR RPV ANALYSIS A REGIONAL ANALYSIS?

A I CALLED IT AN AREA OF INTEREST. IT WAS, I THINK, NARROWER THAN A REGION. IT WAS ONE-TO-FOUR PARISHES WIDE.

Q AND WHY DID YOU CONDUCT YOUR RPV ANALYSIS USING THAT METHOD?

A WELL, BECAUSE WE DON'T KNOW WHAT REMEDIAL DISTRICTS WILL LOOK LIKE IF THERE ARE REMEDIAL

02:46p

DISTRICTS. WE COULD DO THE ENACTED, WE COULD DO THE ILLUSTRATIVE. BUT WHAT WE REALLY WANT TO KNOW IS: IN THAT AREA IN GENERAL, IF YOU WERE GOING TO CREATE REMEDIAL DISTRICTS, WHAT -- WHAT THE VOTING PATTERNS ARE A LITTLE MORE BROADLY THAN THE VOTING PATTERNS IN THESE ILLUSTRATIVE DISTRICTS FOR CERTAIN.

Q BECAUSE YOU HEARD -- DID YOU HEAR DR. LEWIS TESTIFY THIS MORNING THAT DOING A REALITY CHECK OF HIS PERCENT NEEDED TO -- PERCENTS NEEDED TO WIN WAS DIFFICULT?

A YES.

Q DO YOU HAVE ANY OPINION ABOUT WHETHER IT WOULD BE POSSIBLE TO DO A REALITY CHECK?

A IT DEPENDS ON WHAT TABLES YOU'RE TALKING ABOUT. IF YOU'RE TALKING ABOUT TABLES 2 AND 4 WHERE HIS PERCENT NEEDED TO WINS FELL WITHIN THE RANGE OF, SAY -- I THINK IT WAS ABOUT 30 AND 50 PERCENT -- THE -- THERE ARE VERY FEW, IF ANY, DISTRICTS THAT ACTUALLY FALL WITHIN THAT RANGE IN BOTH THE 2011 PLAN AND THE TWO THOUSAND TWENTY -- WHATEVER IT WAS -- 2021 PLAN.

BUT IF YOU'RE TALKING ABOUT TABLES 1 AND 3 WHERE HE FOUND PERCENT NEEDED TO WINS IN THE AREA OF LIKE 15, 17, 22 PERCENT, CERTAINLY HE COULD HAVE DONE WHAT I WOULD CALL A REALITY CHECK AND SEE IF

02:47p

DISTRICTS COMPOSED OF, SAY, 22 PERCENT BLACK VOTING AGE POPULATION WERE ELECTING BLACKS TO OFFICE. AND YOU WOULD FIND THERE WERE NO BLACK LEGISLATORS ELECTED FROM OFFICES -- FROM DISTRICTS WITH LESS THAN 50 PERCENT, INCLUDING DISTRICTS AROUND 19 OR 27 OR 31, ET CETERA.

Q AND, DR. HANDLEY, YOU DID PREPARE A REBUTTAL REPORT IN THIS CASE. CORRECT?

A YES.

Q AND THAT REBUTTAL REPORT REFLECTS SOME OF YOUR OPINIONS ABOUT DR. LEWIS' INITIAL REPORT?

A YES.

Q AND THAT REPORT, FOR THE RECORD, IS PL 12.

CAN YOU TURN TO YOUR BINDER. AND I BELIEVE IT'S THE VERY FIRST TAB. AND CAN WE SHOW PL 12 ON THE SCREEN.

IS THIS THE REBUTTAL REPORT THAT YOU DRAFTED IN THIS CASE?

A IT IS.

Q DOES THIS REPORT ALSO DISCUSS THE REBUTTAL REPORT THAT DR. ALFORD PRESENTED IN THIS CASE?

A DO YOU WANT TO REPEAT THAT?

Q SORRY. DOES THIS -- YOUR REBUTTAL REPORT ALSO DISCUSS THE REPORT THAT DR. ALFORD PRESENTED IN THIS CASE?

02:49p

A YES.

Q DR. HANDLEY, WHAT IS YOUR DEFINITION OF RACIALLY POLARIZED VOTING?

A I BELIEVE A CONTEST IS POLARIZED IF BLACK AND WHITE VOTERS VOTE DIFFERENTLY SUCH THAT, CONSIDERED SEPARATELY, BLACK VOTERS WOULD HAVE ELECTED A DIFFERENT CANDIDATE THAN WHITE VOTERS.

Q DR. HANDLEY, DID YOU HEAR DR. ALFORD'S TESTIMONY LAST WEEK?

A I DID.

Q AND WHAT IS YOUR UNDERSTANDING OF DR. ALFORD'S APPROACH TO DETERMINING IF THERE IS RACIALLY POLARIZED VOTING?

A I WOULD SAY THAT WE DIFFER IN AT LEAST TWO WAYS ON HOW WE APPROACH THIS. THE FIRST IS, HE SEEMS TO -- HE DOES INSERT A REQUIREMENT THAT BLACK VOTERS BE VERY COHESIVE BEFORE HE WILL DETERMINE THAT A SINGLE -- THAT A CONTEST CONSIDERED ALONE IS RACIALLY POLARIZED. I LOOK AT COHESION AS A SEPARATE INQUIRY RELATED TO THE SECOND PRONG OF *GINGLES* AND DON'T INSERT IT INTO MY DETERMINATION OF WHETHER A CONTEST IS RACIALLY POLARIZED.

BUT MORE IMPORTANTLY, HE BELIEVES THAT IF, US HERE IN LOUISIANA, BLACK VOTERS USUALLY SUPPORT DEMOCRATS AND WHITE VOTERS USUALLY SUPPORT

02:50p

REPUBLICANS, THAT YOU COULD ONLY CONCLUDE YOU HAD RACIALLY POLARIZED VOTING IF WHITE VOTERS WHO WERE SUPPORTING DEMOCRATS SUPPORTED BLACK DEMOCRATS AND WHITE DEMOCRATS UNEQUALLY; DIDN'T PROVIDE THE SAME SUPPORT FOR BLACK AND WHITE DEMOCRATS.

Q DR. HANDLEY, DID YOU DO ANY ANALYSIS TO REBUT DR. ALFORD'S OPINIONS ABOUT VOTING PATTERNS OF WHITE AND BLACK DEMOCRATS AND ASSIST YOU IN EVALUATING WHETHER WHITE VOTERS WHO VOTE FOR DEMOCRATS ARE VOTING FOR WHITE AND BLACK CANDIDATES EQUALLY?

A I DID DO SUCH AN ANALYSIS.

Q CAN WE SEE PL 13.

DR. HANDLEY, IS THIS AN EXHIBIT THAT WAS ATTACHED TO YOUR REBUTTAL REPORT?

A YES.

Q DO YOU RECOGNIZE THIS TABLE?

A YES.

Q IS THIS -- CAN YOU EXPLAIN WHAT INFORMATION IS PROVIDED IN THIS TABLE?

A WHAT I WANTED TO DO WAS TO SEE IF WHITE VOTERS AND BLACK -- AND BLACK VOTERS, AS A MATTER OF FACT, WERE SUPPORTING WHITE DEMOCRATS AND BLACK DEMOCRATS AT DIFFERENT RATES. AND I DID THIS USING THE ESTIMATES PRODUCED BY DR. ALFORD'S REPORT. AND I

02:51p

DID IT FOR EACH AREA. SO THIS IS JUST THE AVERAGE VOTE FOR -- THE AVERAGE, SAY, PERCENT SUPPORT FROM BLACK VOTERS FOR BLACK DEMOCRATS AND THE AVERAGE PERCENT OF BLACK VOTER SUPPORT FOR WHITE DEMOCRATS. AND I COMPARED IT TO THE AVERAGE PERCENT SUPPORT FROM WHITE VOTERS FOR BLACK DEMOCRATS AND WHITE DEMOCRATS. AND AGAIN, THIS IS USING DR. ALFORD'S EI ESTIMATES AND SIMPLY AVERAGING THEM ACROSS THE SEVEN AREAS.

Q THE SEVEN AREAS THAT ARE REFERENCED IN THIS TABLE ARE THE SAME SEVEN AREAS THAT YOU CREATED FOR YOUR INITIAL REPORT AND HAVE ALREADY TESTIFIED ABOUT IN THIS CASE?

A THEY ARE. AND DR. ALFORD ALSO USED THOSE AREAS, WHICH IS WHY I WAS ABLE TO USE HIS ESTIMATES.

Q DO YOU HAVE ANY OPINION -- DO YOU HAVE AN OPINION, IF ANY, AS TO WHETHER WHITE VOTERS IN LOUISIANA WHO VOTED FOR DEMOCRATS, IN THE AREAS OF INTEREST IN THE ELECTIONS ANALYZED AND INCLUDED IN THIS TABLE, ON AVERAGE VOTED FOR BLACK CANDIDATES AND WHITE CANDIDATES EQUALLY?

A YOU CAN SEE LOOKING AT THIS TABLE THEY DID NOT. THE DIFFERENCES ARE VERY -- THEY'RE SMALL, BUT THEY'RE VERY CONSISTENT. IN EVERY AREA IN ALL INSTANCES WHITE VOTERS GAVE MORE SUPPORT TO THE WHITE DEMOCRATS THAN THE BLACK DEMOCRATS. AND CONVERSELY,

02:53p

AT LEAST IN THE LARGER SET, BLACK VOTERS GAVE MORE SUPPORT TO BLACK DEMOCRATS THAN WHITE DEMOCRATS.

THE FIRST TWO ROWS ARE LOOKING AT ALL BLACK DEMOCRATS AND WHITE DEMOCRATS. AND THEN IN THE SECOND TWO I'M LOOKING AT BLACK AND WHITE DEMOCRATS WHO WERE RUNNING IN CONTEST WITH ONLY TWO CANDIDATES. AND FINALLY, THE THIRD IS BLACK DEMOCRATS AND WHITE DEMOCRATS IN CONTESTS WITH THREE OR MORE.

Q AND THERE IS NOT A SINGLE EXAMPLE REFLECTED IN THIS TABLE WHERE WHITE VOTERS SUPPORTED BLACK DEMOCRATS AND WHITE DEMOCRATS EQUALLY?

A THAT'S CORRECT.

Q CAN WE SEE PL 14. AND I THINK THIS IS TAB C IN YOUR BINDER.

DO YOU RECOGNIZE THIS TABLE?

A YES.

Q THIS IS AN APPENDIX THAT WAS CREATED AS PART OF YOUR EXPERT REBUTTAL REPORT. CORRECT?

A CORRECT.

Q CAN YOU DESCRIBE WHAT'S IN THIS TABLE?

A I ESSENTIALLY JUST PULLED OUT TWO CONTESTS TO LOOK AT -- BECAUSE THESE TWO CONTESTS HAD BOTH A BLACK AND A WHITE DEMOCRAT RUNNING FOR THE SAME OFFICE AT THE SAME TIME -- TO SEE IF BLACK AND WHITE VOTERS WERE SUPPORTING THE BLACK AND WHITE DEMOCRATS

02:54p

AT EQUAL AMOUNTS.

Q I THINK YOU JUST SAID IT, BUT CAN YOU EXPLAIN AGAIN, JUST SO IT'S CLEAR, WHY YOU THOUGHT THESE TWO ELECTIONS WERE PARTICULARLY IMPORTANT TO LOOK AT?

A BECAUSE THERE WAS A WHITE DEMOCRAT AND A BLACK DEMOCRAT RUNNING IN EACH OF THESE ELECTIONS AT THE SAME TIME.

Q DO YOU HAVE AN OPINION IF WHAT -- DO YOU HAVE AN OPINION, IF ANY, AS TO WHETHER WHITE VOTERS IN LOUISIANA WHO VOTED FOR DEMOCRATS IN THE NOVEMBER 2022 SENATE ELECTION CONTEST, IN THE AREAS OF INTEREST ANALYZED BY YOU AND DR. ALFORD, DID NOT SUPPORT BLACK AND WHITE CANDIDATES EQUALLY?

A THAT'S CORRECT. YOU CAN SEE THAT IN THAT PARTICULAR ELECTION WHITE VOTERS DIDN'T SUPPORT EITHER DEMOCRAT VERY MUCH. BUT IN ALL INSTANCES IN ALL AREAS THAT I LOOKED AT, THEY SUPPORTED THE WHITE DEMOCRAT TO A HIGHER PERCENTAGE THAN THE BLACK DEMOCRAT.

Q AND DO YOU HAVE AN OPINION, IF ANY, AS TO WHETHER WHITE VOTERS IN LOUISIANA VOTED FOR DEMOCRATS IN THE NOVEMBER 2018 SECRETARY OF STATE ELECTION CONTEST, IN THE AREAS OF INTEREST ANALYZED IN THIS CASE BY YOU AND DR. ALFORD, DID NOT SUPPORT WHITE AND

02:55p

BLACK CANDIDATES EQUALLY?

A AGAIN, THEY DID NOT SUPPORT WHITE AND BLACK DEMOCRATS EQUALLY. AGAIN, THE DIFFERENCES ARE SMALL BUT CONSISTENT. IN EVERY SINGLE AREA IN THIS CONTEST WHITE VOTERS PROVIDED THE WHITE DEMOCRAT WITH A HIGHER PERCENTAGE OF THE VOTES THAN THE BLACK DEMOCRAT. THE RELATIONSHIP WAS REVERSED FOR BLACK VOTERS.

Q DR. HANDLEY, DID YOU DO ANY ADDITIONAL ANALYSIS RELATED TO YOUR OPINION THAT WHITE VOTERS IN LOUISIANA, IN THE AREAS OF INTEREST ANALYZED IN THIS CASE BY YOU AND DR. ALFORD, WHO VOTE FOR DEMOCRATIC CANDIDATES DO NOT SUPPORT WHITE AND BLACK CANDIDATES EQUALLY?

A I THINK I GOT THE QUESTION. I DID DO ANOTHER TABLE, AND THAT MIGHT BE WHAT YOU'RE REFERRING TO.

Q YES.

A YES.

Q LET'S TURN TO -- CAN WE TURN TO PLAINTIFFS' EXHIBIT 15.

IS THIS THE ADDITIONAL TABLE THAT YOU DID AS PART OF YOUR REBUTTAL REPORT?

A YES.

Q DO YOU RECOGNIZE THIS -- THIS IS A

02:56p

SPREADSHEET, I THINK. DO YOU RECOGNIZE THIS SPREADSHEET?

A YES.

Q AND WHAT ANALYSIS IS REFLECTED ON THIS SPREADSHEET?

A HERE I WANTED TO DETERMINE IF WHITE DEMOCRATS -- NOT JUST WHITE VOTERS IN GENERAL -- BUT IF WHITE DEMOCRATS VOTED DIFFERENTLY FOR WHITE DEMOCRATS AND BLACK DEMOCRATS. SO I'M LOOKING SPECIFICALLY AT WHITE VOTERS WHO ARE REGISTERED AS DEMOCRATS IN THIS ANALYSIS. THIS IS AN EI ANALYSIS, THE SAME STATISTICAL TECHNIQUE THAT I USED TO DRAW ALL OF MY ESTIMATES OF VOTING PATTERNS. AND I LOOKED AT ALL OF THE VOTERS, AND I'M REPORTING HERE HOW BLACK REGISTERED DEMOCRATS AND WHITE REGISTERED DEMOCRATS VOTED IN THESE CONTESTS ACROSS THE SEVEN AREAS.

Q AND JUST TO CLARIFY FOR THE RECORD, HOW DOES THIS ANALYSIS DIFFER FROM YOUR ANALYSIS IN TABLE 1 AND 2 WE WERE JUST LOOKING AT?

A HERE I'M JUST FOCUSING ON VOTERS WHO ARE REGISTERED AS DEMOCRATS RATHER THAN ALL BLACK VOTERS AND ALL WHITE VOTERS.

Q AND CAN YOU WALK US THROUGH IN GENERAL TERMS WHAT SPECIFIC ANALYSIS IS REFLECTED ON THIS TABLE 3?

02:58p

A LET'S TAKE AREA 1. YOU SEE THE GUBERNATORIAL AND THE LIEUTENANT GOVERNOR'S CONTEST HERE. THIS IS THE NOVEMBER 2015 RUNOFF. AND I AM ESTIMATING THE PERCENTAGE OF BLACK VOTERS WHO ARE REGISTERED AS DEMOCRATS WHO SUPPORTED THE CANDIDATES FOR -- HOW THEY SUPPORTED THE CANDIDATES FOR GOVERNOR AND LIEUTENANT GOVERNOR. I PROVIDED THE COMPETENCE INTERVALS. AND THEN I HAVE THE PERCENTAGE OF WHITE REGISTERED VOTERS -- REGISTERED DEMOCRATS WHO SUPPORTED EACH OF THESE CANDIDATES AND THE ASSOCIATED COMPETENCE INTERVALS.

Q WHAT FOUR ELECTIONS DID YOU INCLUDE IN THIS TABLE ALTOGETHER?

A SO WE HAVE THE NOVEMBER 2015 RUNOFF FOR GOVERNOR AND LIEUTENANT GOVERNOR AND WE HAVE THE 2019 RUNOFF FOR GOVERNOR AND SECRETARY OF STATE.

Q AND WHY DID YOU SELECT THESE FOUR ELECTIONS?

A BECAUSE ALTHOUGH THEY WEREN'T RUNNING FOR THE SAME OFFICE, WE HAVE A TWO-CANDIDATE CONTEST THAT INCLUDES A WHITE DEMOCRAT FOR GOVERNOR AND, IN 2015, A BLACK DEMOCRAT FOR LIEUTENANT GOVERNOR; IN NOVEMBER OF 2019, A BLACK CANDIDATE FOR SECRETARY OF STATE -- A BLACK DEMOCRAT.

Q JUST FOR THE RECORD, KIP HOLDEN WAS THE BLACK CANDIDATE RUNNING FOR LIEUTENANT GOVERNOR.

02:59p

CORRECT?

A CORRECT.

Q AND COLLINS-GREENUP WAS THE BLACK CANDIDATE RUNNING FOR SECRETARY OF STATE IN THE NOVEMBER 2018 SECRETARY OF STATE -- 2019 SECRETARY OF STATE -- LET ME REPHRASE THIS.

COLLINS-GREENUP WAS THE BLACK CANDIDATE RUNNING FOR SECRETARY OF STATE IN THE NOVEMBER 2019 SECRETARY OF STATE RACE?

A CORRECT.

Q DO YOU HAVE AN OPINION, IF ANY, AS TO WHETHER WHITE VOTERS REGISTERED AS DEMOCRATS ARE SUPPORTING JOHN BEL EDWARDS AT THE SAME RATE AS THEY ARE SUPPORTING KIP HOLDEN IN THE NOVEMBER 2015 RUNOFF ELECTION?

A NO. WHITE REGISTERED VOTERS ARE SUPPORTING EDWARDS AT A HIGHER RATE THAN THEY ARE SUPPORTING HOLDEN ACROSS ALL OF THE DISTRICT -- ALL OF THE AREAS.

Q DO YOU HAVE AN OPINION AS TO WHETHER WHITE VOTERS REGISTERED AS DEMOCRATS ARE SUPPORTING JOHN BEL EDWARDS AT THE SAME RATE AS THEY SUPPORTED COLLINS-GREENUP IN THE NOVEMBER 2019 RUNOFF ELECTION?

A AGAIN, THE WHITE REGISTERED DEMOCRATS SUPPORTED EDWARDS AT A HIGHER RATE THAN THEY

03:01p

SUPPORTED COLLINS-GREENUP IN EVERY AREA. ACTUALLY, NOT EVERY AREA IS UP HERE, BUT I BELIEVE IT'S EVERY AREA. THERE IS ANOTHER PAGE THAT HAS MORE AREAS.

Q JUST FOR THE RECORD, CAN WE TURN TO THE SECOND PAGE OF TABLE 3. OR THERE'S -- I THINK THERE ARE THREE PAGES OF TABLE 3.

A THAT'S WHY YOU DIDN'T PUT THEM UP.

Q THERE ARE THREE PAGES OF TABLE 3.

BUT THIS REFLECTS THE SAME EI ANALYSIS FOR ALL OF THE AREAS OF INTEREST THAT YOU HAVE USED THROUGHOUT YOUR ANALYSIS IN THIS CASE FOR THESE TWO RUNOFF ELECTIONS WE'VE BEEN DISCUSSING. CORRECT?

A CORRECT.

Q OKAY. DR. HANDLEY, WHAT DID YOU CONCLUDE ABOUT THE BEHAVIOR OF WHITE REGISTERED DEMOCRATS IN THESE ELECTIONS ACROSS THE AREAS OF INTEREST?

A WHITE DEMOCRATIC VOTERS ARE WILLING TO SUPPORT A WHITE DEMOCRAT IN -- IN FACT, IN 2015 -- IN ALL -- AT LEAST SIX OF THE SEVEN AREAS A MAJORITY OF WHITE DEMOCRATS SUPPORTED EDWARDS, BUT IN NO INSTANCE DID A MAJORITY SUPPORT THE BLACK DEMOCRAT THAT WAS RUNNING AT THE SAME TIME.

MS. BRANNON: PLAINTIFFS MOVE TO ADMIT DR. HANDLEY'S REBUTTAL REPORT AND RELATED EXHIBITS. SO THAT IS PLAINTIFFS' EXHIBITS 12, 13, 14 AND 15.

03:02p

MS. MCKNIGHT: NO OBJECTIONS, YOUR HONOR.

THE COURT: ADMITTED.

MS. BRANNON: AND THEN LET ME JUST CONFER WITH MY CO-COUNSEL.

BY MS. BRANNON:

Q CAN WE SEE PLAINTIFFS' ILLUSTRATIVE AID 41 AGAIN.

AND, DR. HANDLEY, CAN YOU JUST WALK THROUGH WHICH ENACTED DISTRICTS ARE INCLUDED ON THIS TABLE?

A SENATE DISTRICTS 8, 19 AND 38, HOUSE DISTRICTS 7, 60, 68, 69 AND 70.

Q AND IT'S YOUR OPINION THAT NONE OF THESE DISTRICTS THAT YOU HAVE JUST LISTED OUT ARE OPPORTUNITY DISTRICTS?

A I DO NOT BELIEVE THAT ANY OF THESE DISTRICTS ARE BLACK OPPORTUNITY DISTRICTS.

MS. BRANNON: LET ME JUST CONFER AGAIN.

BY MS. BRANNON:

Q AND ALSO, DR. HANDLEY, FOR THE RECORD, CAN YOU TELL US IF ANY OF THOSE ENACTED DISTRICTS THAT ARE LISTED ON THIS TABLE, THIS CHART, ARE MAJORITY-BLACK DISTRICTS?

A NONE OF THESE DISTRICTS ARE MAJORITY-BLACK DISTRICTS.

Q THE PERCENTAGE BLACK BVAP IS REFLECTED ON

03:04p

THE TABLE?

A THAT'S CORRECT.

MS. BRANNON: AND, YOUR HONOR, WE DID SAY WE WEREN'T GOING TO MOVE THIS INTO EVIDENCE. BUT GIVEN THAT DR. LEWIS' ILLUSTRATIVE DEMONSTRATIVE EXHIBIT WAS MOVED INTO EVIDENCE, WE ARE GOING TO REQUEST THAT WE CAN MOVE PLAINTIFFS' ILLUSTRATIVE AID 41 INTO EVIDENCE. ALL OF THE INFORMATION COMES FROM DR. LEWIS' TABLES, WHICH ARE IN EVIDENCE, AND DR. HANDLEY'S TABLES, WHICH ARE ALSO IN EVIDENCE.

THE COURT: IS THERE ANY OBJECTION?

MS. MCKNIGHT: NO OBJECTION, YOUR HONOR.

THE COURT: WHAT'S YOUR EXHIBIT NUMBER?

MS. BRANNON: THIS IS -- WHAT'S OUR FINAL EXHIBIT NUMBER? JUST GIVE US ONE MINUTE. SO THIS WILL BE EXHIBIT 257.

THE COURT: EXHIBIT 257 IS ADMITTED.

MS. BRANNON: AND I PASS THE WITNESS.

THE COURT: MS. MCKNIGHT?

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MS. MCKNIGHT:

Q GOOD AFTERNOON, DR. HANDLEY.

A HELLO.

Q DR. HANDLEY, I JUST HEARD YOU TESTIFY ABOUT

03:05p

DR. LEWIS' REPORTS. HOLD ON ONE MOMENT. LET ME -- I THINK WE NEED TO -- THANK YOU.

I HEARD YOU TESTIFY ABOUT DR. LEWIS' REPORT. DO YOU RECALL THAT?

A YES.

Q OKAY. AND YOU DON'T REPORT ANY QUALMS ABOUT THE ACCURACY OF DR. LEWIS' REPORT. CORRECT?

A I WONDER IF YOU COULD -- DO YOU MEAN ABOUT HOW HE'S CALCULATED THE PERCENT NEEDED TO WIN OR THE WIN RATES? I DON'T KNOW WHAT YOU MEAN BY "ACCURACY."

Q OKAY.

A IF YOU COULD SPECIFY.

Q YOU DIDN'T REPORT ANY QUALMS ABOUT THE ACCURACY OF DR. LEWIS' CALCULATIONS. CORRECT?

A CORRECT.

Q AND YOU RECEIVED BACK-UP DATA FOR DR. LEWIS' REPORT. ISN'T THAT RIGHT?

A CORRECT.

Q LET'S BRING UP PLAINTIFFS' EXHIBIT 14.

DR. HANDLEY, DO YOU RECALL TESTIFYING ABOUT THIS WITH PLAINTIFFS' COUNSEL JUST A MOMENT AGO?

A YES.

Q FOR ANY OF THE AREAS IS THE PERCENT SUPPORT FROM WHITE VOTERS ZERO?

A NO.

03:07p

Q AND THE PERCENTAGE POINTS OF SUPPORT FROM WHITE VOTERS IN THESE AREAS, WOULD YOU CONSIDER THAT CROSSOVER VOTING?

A REPEAT THE QUESTION.

Q SURE. THE PERCENTAGE NUMBERS UNDER PERCENT SUPPORT FROM WHITE VOTERS IN THE DIFFERENT AREAS, WOULD YOU CONSIDER THAT CROSSOVER VOTING?

A I WOULD DEFINE CROSSOVER VOTING AS CONTESTS THAT WERE -- THE PERCENTAGE OF WHITES WHO WERE VOTING FOR THE BLACK-PREFERRED CANDIDATE IN A CONTEST THAT WAS POLARIZED. IF WE UNDERSTAND THE DEFINITION THE SAME, THEN I WOULD SAY THOSE PERCENTAGES WOULD REPRESENT THE PERCENTAGE -- THAT WOULD BE CROSSOVER IN MY DEFINITION.

Q OKAY. DR. HANDLEY, WOULD YOU AGREE WITH ME THAT IT IS THE RACE OF THE CANDIDATE, NOT THE RACE OF THE VOTER THAT IS RELEVANT TO A VOTE DILUTION CLAIM?

A NO. YOU SAID THE RACE OF THE CANDIDATE IS -- I'M GOING TO MAKE SURE. YOU SAID DO I THINK THE RACE OF THE CANDIDATE IS RELEVANT?

Q I'LL SAY IT AGAIN.

A OKAY.

Q YOU WOULD AGREE WITH ME THAT IT IS THE RACE OF THE CANDIDATE, NOT THE RACE OF THE VOTER THAT IS RELEVANT TO A VOTE DILUTION CLAIM. CORRECT?

03:08p

A NO.

MS. BRANNON: SO I'M GOING TO OBJECT, YOUR HONOR. I THINK THAT THAT'S CALLING FOR A LEGAL CONCLUSION.

MS. MCKNIGHT: YOUR HONOR, DR. HANDLEY HAS COME BEFORE THE COURT AND SAID THAT CERTAIN ELECTIONS ARE RELEVANT TO YOU AND CERTAIN ARE NOT. WE HAVE HER SWORN TESTIMONY PRIOR TO TODAY WITH THIS EXACT STATEMENT. I'M TRYING TO CONFIRM THAT THAT'S WHAT SHE BELIEVES BEFORE EXPLORING SOME OF THE ELECTIONS THAT SHE CHOSE TO PUT BEFORE THIS COURT AND SOME OF THOSE THAT SHE CHOSE NOT TO PUT BEFORE THIS COURT.

I'M USING DR. HANDLEY'S WORDS IN RELEVANT. I'M NOT LOOKING FOR A LEGAL CONCLUSION. I'M LOOKING TO FOR WHAT SHE BELIEVES IS RELEVANT TO HER ANALYSIS FOR THIS COURT.

THE COURT: WHICH IS ULTIMATELY WHAT'S RELEVANT FOR THE TRIER OF FACT. I'M GOING TO ALLOW IT, BUT I THINK IT'S VERY MARGINALLY IRRELEVANT.

MS. BRANNON: THANK YOU.

THE COURT: OVERRULED. GO AHEAD.

BY THE WITNESS:

A YOU'RE ASKING ME IF I -- ARE YOU SUGGESTING THAT I BELIEVE THAT THE RACE OF THE VOTERS ARE IRRELEVANT IN THIS KIND OF CASE?

03:09p

Q I'M SIMPLY ASKING IF YOU WOULD AGREE WITH ME WITH THIS STATEMENT -- AND I CAN READ IT AGAIN. WOULD YOU AGREE WITH ME THAT IT IS THE RACE OF THE CANDIDATE, NOT THE RACE OF THE VOTER THAT IS RELEVANT TO A VOTE DILUTION CLAIM?

A I WOULD NOT AGREE WITH YOU.

Q OKAY. SO IT'S YOUR TESTIMONY TODAY THAT THAT IS NOT -- YOU DO NOT AGREE WITH THAT STATEMENT?

A I BELIEVE THAT WE'RE LOOKING AT HOW BLACK VOTERS AND WHITE VOTERS ARE VOTING AND WHETHER THEY'RE VOTING DIFFERENTLY. SO THAT'S THE RACE OF THE VOTER, YES.

Q OKAY. AND SO PARDON ME, DR. HANDLEY, I HAVE TO TAKE THIS IN BABY STEPS AND MAKE SURE I GET A "YES" OR "NO" ANSWER TO THIS QUESTION.

IS IT YOUR TESTIMONY TODAY THAT YOU DO NOT AGREE THAT THE RACE OF THE CANDIDATE AND NOT THE RACE OF THE VOTER IS WHAT IS RELEVANT TO A VOTE DILUTION CLAIM?

A I DO NOT AGREE WITH THAT STATEMENT.

Q DO YOU RECALL BEING DEPOSED IN THIS MATTER?

A I WAS DEPOSED. IF YOU'RE GOING TO ASK ME SPECIFIC QUESTIONS ABOUT IT -- BUT YES, I WAS DEPOSED IN THIS CASE.

Q OKAY. AND DO YOU RECALL MAKING THIS

03:11p

STATEMENT DURING THAT DEPOSITION?

A I WOULD HAVE TO SEE THE CONTEXT.

Q LET'S BRING UP THE HANDLEY DEPOSITION TRANSCRIPT, PAGE 48, LINES 1 THROUGH 5.

THE COURT: MS. MCKNIGHT, HOLD ON JUST A MINUTE.

(OFF THE RECORD)

THE COURT: ALL RIGHT. I HAD A MOMENTARY PANIC ATTACK ABOUT THE COURT REPORTER. GO AHEAD. I'M SORRY.

BY MS. MCKNIGHT:

Q AND PARDON ME. I THINK WE NEED TO GO TO THE LINE -- TO THE PAGE BEFORE THIS. COULD WE TURN TO PAGE 47.

DR. HANDLEY, IT SEEMS THAT YOU WERE DISCUSSING HERE A SUPREME COURT CASE?

A RIGHT.

Q I WANT TO GIVE YOU THE CONTEXT, SO WE CAN TURN THE PAGE TO PAGE 48.

A I'M GUESSING. I -- BUT I THINK THAT THIS IS PROBABLY THE *GINGLES* CASE, AND I'M TALKING ABOUT MY MENTOR, DR. BERNIE GROFMAN, WHO WAS AN EXPERT IN THAT CASE.

MS. BRANNON: YOUR HONOR, I JUST WANT TO OBJECT. I THINK THAT THIS LINE OF QUESTIONING DOES

03:13p

CROSS OVER THE LINE ABOUT -- INTO ASKING DR. HANDLEY FOR A LEGAL OPINION. SHE'S DISCUSSING THE *GINGLES* CASE.

THE COURT: THE QUESTION ASKED HER IF SHE WAS DISCUSSING A SUPREME COURT CASE. I WILL SUSTAIN THE OBJECTION.

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

BY MS. MCKNIGHT:

Q LET'S MOVE ON. DR. HANDLEY, YOU ANALYZED 16 ELECTIONS -- CORRECT? -- IN THIS CASE?

A YES.

Q OKAY. AND OF THOSE 16 ELECTIONS, ONLY TWO HAD BOTH A BLACK DEMOCRATIC CANDIDATE AND A WHITE DEMOCRATIC CANDIDATE. CORRECT?

A YES; ALTHOUGH THERE MIGHT HAVE BEEN WHAT I WOULD CALL A NONVIABLE BLACK OR WHITE CANDIDATE IN SOME OTHER CONTESTS. THESE WERE THE ONLY VIABLE BLACK AND WHITE CANDIDATES, YES.

Q OKAY. LET'S TAKE A LOOK. LET'S BRING UP LDTX 53 AT PAGE 9. THIS IS TABLE 3 IN DR. ALFORD'S REPORT TITLED "RACIALLY CONTESTED STATEWIDE ELECTIONS INCLUDED IN THE HANDLEY REPORT - AVERAGES OF EI RXC ESTIMATES ACROSS HANDLEY'S SEVEN AREAS OF INTEREST." DO YOU SEE THAT?

A I DO.

03:14p

Q AND THE NOVEMBER 2018 SECRETARY OF STATE CONTEST -- LET'S FOCUS ON THAT ONE. SO THIS CONTEST IS AN EXAMPLE WHERE IT INCLUDED BOTH A BLACK DEMOCRAT AND A WHITE DEMOCRAT. CORRECT?

A THAT'S CORRECT.

Q AND THIS IS THE NOVEMBER 2018 SECRETARY OF STATE RACE. AND HERE THE WHITE SUPPORT FOR THE BLACK DEMOCRATIC CANDIDATE WAS 5.4 PERCENT. DO YOU SEE THAT?

A YES.

Q AND THAT WOULD BE CROSSOVER VOTING, WOULDN'T IT?

A THAT IS, YES.

Q AND WERE YOU AWARE THAT THE BLACK DEMOCRATIC CANDIDATE HERE, GWEN COLLINS-GREENUP, MOVED ON TO THE RUNOFF WITH THE WHITE REPUBLICAN CANDIDATE, NOT THE WHITE DEMOCRAT CANDIDATE?

A YES.

Q LET'S LOOK AT THE SECOND EXAMPLE. WE'LL TURN THE PAGE TO PAGE 10 AND GO TO THE NOVEMBER 2022 SENATE RACE.

THIS IS AN EXAMPLE OF A CONTEST THAT INCLUDES BOTH A BLACK DEMOCRAT AND A WHITE DEMOCRAT. CORRECT?

A YES.

03:16p

Q HERE WHITE VOTER SUPPORT FOR THE BLACK DEMOCRATIC CANDIDATE WAS 4.3 PERCENT. IS THAT RIGHT?

A YES.

Q AND THAT'S CONSIDERED CROSSOVER VOTING?

A YES.

Q AND THE TWO ELECTIONS WE JUST DISCUSSED ARE THE ONLY TWO OF THE 16 ELECTIONS THAT INCLUDED A BLACK DEMOCRAT AND A WHITE DEMOCRAT. IS THAT RIGHT?

A AGAIN, THE ONLY TWO VIABLE I THINK, BUT THERE WERE SOME INSTANT POSSIBLY -- I'M NOT SURE ABOUT THIS, BUT THERE MIGHT HAVE BEEN A BLACK DEMOCRAT IN THE CONTEST THAT GOT SOMETHING LIKE ONE PERCENT OF THE VOTE. BUT THESE ARE THE TWO CONTESTS THAT INCLUDED BLACK AND WHITE DEMOCRATS THAT RECEIVED SOME PORTION OF THE VOTE.

Q I SEE. SO IF THERE WAS AN ISSUE WITH VIABILITY, YOU WOULD NOT HAVE INCLUDED IT IN THIS ELECTION LIST?

A IF THE CANDIDATE GOT, SAY, LESS THAN ONE OR TWO PERCENT OF THE VOTE, I CAN'T GET RELIABLE ESTIMATES. QUITE OFTEN I WILL GET ESTIMATES THAT ACTUALLY EXCEED THE AMOUNT OF VOTE THE CANDIDATE GOT. SO I GROUP THOSE CANDIDATES TOGETHER AND RUN AN ANALYSIS AND CALL THEM OTHERS.

Q I SEE. NOW, LET'S GO BACK TO THE FULL-PAGE

03:17p

VIEW. ONE OF THE CONTESTS YOU ANALYZED AND WHICH SUPPORTED YOUR CONCLUSIONS IN THIS CASE WAS A CONTEST IN OCTOBER OF 2019 FOR ATTORNEY GENERAL. DO YOU SEE THAT?

A YES.

Q AND IT WAS BETWEEN IKE JACKSON AND JEFF LANDRY. DO YOU SEE THAT?

A YES.

Q I'M GOING TO HAVE SOME QUESTIONS FOR YOU LATER ON. I JUST WANT TO RECALL THAT THIS ELECTION IS PART OF YOUR ANALYSIS, SO THANK YOU.

NOW I'D LIKE TO TURN TO AN ELECTION THAT YOU DID NOT INCLUDE IN YOUR ANALYSIS. LET'S BRING UP YOUR REBUTTAL REPORT. THIS IS PLAINTIFFS' EXHIBIT 12. AND WE'RE GOING TO GO TO PAGE 10. WE'RE GOING TO LOOK AT FOOTNOTE 17.

IN THAT FOOTNOTE -- AND I'D LIKE YOU TO CORRECT ME IF I MISREAD THIS -- YOU STATED THERE WAS A CONTEST YOU HAVE NOT COMPARED HERE. IT WAS FROM AN OCTOBER 2019 ELECTION FOR COMMISSIONER OF AGRICULTURE. IT INCLUDED TWO WHITE DEMOCRATS AND A BLACK DEMOCRAT. IN THIS CONTEST BLACK AND WHITE VOTERS BOTH SUPPORTED ONE OF THE WHITE DEMOCRATS OVER THE OTHER WHITE DEMOCRAT AND THE BLACK DEMOCRAT. DO YOU SEE THAT?

03:18p

A I DO.

Q LET'S TURN TO LDTX 53. THIS IS DR. ALFORD'S REPORT ON PAGE 13, AND LET'S TAKE A LOOK AT THIS CONTEST.

MS. MCKNIGHT: PAGE 13. THANK YOU, MR. WILLIAMSON.

BY MS. MCKNIGHT:

Q NOW, DR. HANDLEY, I SEE ON HERE THAT THE RACE IS INCLUDED IN DR. ALFORD'S REPORT. IT IS THE OCTOBER 2019 COMMISSIONER OF AGRICULTURE RACE. DO YOU SEE THAT?

A YES.

Q AND THE NUMBERS SHOW THAT OF DEMOCRATIC VOTERS, WHITE AND BLACK DEMOCRATIC VOTERS BOTH SUPPORTED THE WHITE DEMOCRAT MARGUERITE GREEN. DO YOU SEE THAT?

A I'M SORRY. SAY THAT AGAIN. YOU SAID THAT WHITE VOTERS SUPPORTED MARGUERITE GREEN? THEY SUPPORTED --

Q I'LL SAY IT AGAIN, BECAUSE I WANT TO MAKE SURE IT'S CLEAR.

I'M FOCUSED NOW ON THE TOP THREE ROWS OF DEMOCRATIC PARTY VOTERS. SO OF DEMOCRATIC VOTERS, WHITE AND BLACK DEMOCRATIC VOTERS BOTH SUPPORTED THE WHITE DEMOCRAT MARGUERITE GREEN WITH THE MOST AMOUNT

03:20p

OF THEIR SUPPORT. ISN'T THAT RIGHT?

A I'M NOT SURE THAT THEY'RE DEMOCRATIC VOTERS. BUT OF THE WHITES WHO VOTED FOR DEMOCRATS, THE DEMOCRAT WHO GOT THE MOST VOTE WAS MARGUERITE GREEN.

Q AND WHITE AND BLACK DEMOCRAT VOTERS ALSO SHARED THE SAME CANDIDATE AT THE -- WITH THE SECOND-MOST AMOUNT OF VOTES, MEANING WHITE SUPPORT OF THE SECOND AMOUNT -- MOST PERCENTAGE OF VOTES FOR WHITE DEMOCRATS AND THE BLACK SUPPORT PERCENTAGE FOR THE SECOND-MOST WAS -- THEY WERE BOTH FOR CHARLIE GREER, A WHITE DEMOCRAT. ISN'T THAT RIGHT?

A I'M NOT SURE THAT YOUR PHRASING IS RIGHT, BUT CHARLIE GREER WAS THE SECOND DEMOCRAT. I MEAN, HE GOT 4.8 PERCENT OF THE WHITE VOTES. WE DON'T KNOW IF THEY'RE DEMOCRATS. BUT HE WAS THE DEMOCRAT WHO GOT THE SECOND-MOST VOTES OF THE DEMOCRATS FROM WHITE VOTERS. IS THAT RIGHT? I'M NOT SURE IF I'M GETTING THAT RIGHT. BUT I SEE WHAT YOU'RE SAYING.

Q THANK YOU.

A HE GOT 4.8 PERCENT OF THE VOTE.

Q AND SIMILARLY, ON THE BLACK SUPPORT SIDE OF BLACK VOTERS, BLACK SUPPORT, THE CANDIDATE THAT GOT THE SECOND-MOST PERCENTAGE OF BLACK SUPPORT WAS ALSO CHARLIE GREER. CORRECT?

A YES.

03:21p

Q OKAY. AND THEN GOING DOWN TO THE THIRD CANDIDATE, WHITE AND BLACK DEMOCRATIC VOTERS GAVE THE SAME CANDIDATE, PETER WILLIAMS, THE LEAST AMOUNT OF VOTES OF THEIR SUPPORT; MEANING BLACK SUPPORT FOR PETER WILLIAMS WAS 19.8 PERCENT AND WHITE SUPPORT WAS TWO PERCENT. DO YOU SEE THAT?

A YES.

Q AND YOU DID NOT INCLUDE THIS CONTEST IN YOUR ANALYSIS. CORRECT?

A I DID NOT INCLUDE IT IN MY AVERAGES, AND I EXPLAINED WHY. BUT I ALSO EXPLAINED THAT IT FOLLOWED THE SAME PATTERN AS THE OTHER CONTEST. BUT IN THIS PARTICULAR CASE THE BLACK DEMOCRAT WAS NOT THE BLACK-PREFERRED CANDIDATE.

Q AND BY "SAME PATTERN," YOU MEAN THAT BLACK SUPPORT PERCENTAGE WAS HIGHER THAN WHITE SUPPORT PERCENTAGE FOR THESE CANDIDATES. RIGHT?

A FOR THE BLACK CANDIDATE.

Q OKAY. BUT THE BLACK CANDIDATE CAME IN THIRD FOR BOTH BLACK VOTERS AND WHITE VOTERS. ISN'T THAT RIGHT?

A YES.

Q DR. HANDLEY, WOULD YOU AGREE WITH ME THAT DISTRICTS DRAWN -- AND WE CAN TAKE THIS DOWN -- THAT DISTRICTS DRAWN BETWEEN 40 AND 50 PERCENT BVAP CAN

03:23p

OFFER BLACK VOTERS A BETTER THAN EQUAL OPPORTUNITY TO ELECT THEIR CANDIDATES OF CHOICE?

A AS A GENERAL PROPOSITION, YES. WE'VE SEEN THAT IN A LOT OF STATES.

Q AND YOU HAVE WRITTEN WITH COAUTHORS ABOUT FINDING THE SO-CALLED SWEET SPOT FOR MINORITY CANDIDATE SUCCESS IN NON-MAJORITY-MINORITY DISTRICTS. RIGHT?

A YES.

Q AND YOU CONCLUDED WITH YOUR COAUTHORS THAT CAUTION MUST BE EXERCISED. DETERMINING WHETHER A MINORITY CANDIDATE CAN WIN ELECTION IN A GIVEN DISTRICT REQUIRES A DISTRICT-SPECIFIC ANALYSIS. CORRECT?

A I DON'T HAVE IT IN FRONT OF ME, BUT THAT --

MS. BRANNON: YOUR HONOR, I'M JUST GOING TO OBJECT. I THINK THIS QUESTION IS BEYOND THE SCOPE OF THE REBUTTAL PRESENTATION.

THE COURT: DO YOU WANT TO RESPOND?

MS. MCKNIGHT: THE REBUTTAL PRESENTATION IS A REACTION TO DEFENDANTS' EXPERT REPORTS THAT TALK ABOUT ABILITY OF CANDIDATES TO BE ELECTED. SHE HAS COME IN WITH HER REBUTTAL REPORT AND TOLD THE COURT THAT DEFENDANTS' REPORT SHOULD BE IGNORED; THEY DON'T GIVE THE COURT MEANINGFUL INFORMATION.

03:24p

AND THIS GOES TO SHOWING THAT SHE HERSELF UNDERSTANDS THAT THE CANDIDATES CAN WIN IN THESE ELECTIONS AT LOWER PERCENTAGES AND THAT SHE'S DONE THE ANALYSIS BEFORE OF WHAT IS REQUIRED TO DRAW DISTRICTS THAT PERFORM. SO IT'S ABSOLUTELY RELEVANT TO HER REBUTTAL REPORT AND WHAT DEFENDANTS' REPORTS HAVE SAID.

MS. BRANNON: I THINK, YOUR HONOR, DR. HANDLEY WAS GIVING A FAIRLY NARROW REBUTTAL PRESENTATION OF SOME VERY SPECIFIC ELECTIONS IN LOUISIANA THAT SHE ANALYZED AND SPOKE TO. THIS IS A VERY GENERAL STATEMENT OF A ARTICLE DR. HANDLEY MAY HAVE WRITTEN THAT WE DID NOT ADDRESS AT ALL IN HER DIRECT. AND I THINK HER DIRECT WAS PRETTY LIMITED TO SPECIFIC ANALYSIS OF LOUISIANA ELECTIONS.

MS. MCKNIGHT: YOUR HONOR, WE'RE NOT LIMITED TO DIRECT. WE ARE ABLE TO EXAMINE HER ON HER REBUTTAL REPORT IN THIS MATTER.

THE COURT: OVERRULED.

BY MS. MCKNIGHT:

Q WOULD YOU LIKE ME TO READ IT AGAIN, DR. HANDLEY?

A I DON'T HAVE IT IN FRONT ME. BUT IF YOU'RE READING SOMETHING, YOU COULD SHOW ME OR I COULD GUESS THAT YOU'RE TELLING -- YOU'RE READING IT CORRECTLY.

03:25p

I'M NOT SURE WHAT TO DO HERE.

Q IT'S LESS ABOUT WHETHER IT'S ACCURATE. DO YOU DISAGREE WITH IT?

A TELL ME AGAIN WHAT YOU WANT ME TO AGREE WITH.

Q SURE. THAT CAUTION MUST BE EXERCISED DETERMINING WHETHER A MINORITY CANDIDATE CAN WIN ELECTION IN A GIVEN DISTRICT BECAUSE IT REQUIRES A DISTRICT-SPECIFIC ANALYSIS.

A I AGREE WITH THAT.

Q WOULD YOU ALSO AGREE THAT A DISTRICT-SPECIFIC ANALYSIS THAT INCLUDES AN ANALYSIS OF VOTING PATTERNS WOULD PROVIDE AN INDICATION OF HOW TO ADJUST A MODEL TO ACCOUNT FOR LESS THAN PERFECT MINORITY VOTING COHESION, LESS THAN 100 PERCENT WHITE DEMOCRATIC CROSSOVER VOTING FOR THE MAJORITY-MINORITY CANDIDATE, AND LESS THAN EQUAL MINORITY AND WHITE VOTING AGE PARTICIPATION?

A IT WOULD BE EASIER IF YOU JUST SHOWED ME THIS. THIS IS KIND OF LENGTHY. IF YOU'RE READING SOMETHING THAT I'VE WRITTEN, CAN'T WE JUST LOOK AT IT AND AGREE OR DISAGREE THAT I WROTE IT?

Q SURE. BUT AS YOU SIT NOW -- I'M HAPPY TO PUT IT UP. BUT AS YOU SIT NOW, DO YOU DISAGREE WITH ANYTHING I JUST SAID?

03:27p

A I DOUBT IT. BUT COULD WE DO IT PIECE BY PIECE THEN?

THE COURT: IT WAS COMPOUND. THERE WERE THREE DIFFERENT STATEMENTS. AND HER STATEMENT MAY HAVE BEEN COMPOUND, BUT IT IS RATHER DIFFICULT. I HAVE A HARD TIME FOLLOWING IT. SO BREAK IT INTO THREE SEPARATE SEGMENTS.

MS. MCKNIGHT: OKAY.

BY MS. MCKNIGHT:

Q I'LL BREAK IT INTO THREE SEPARATE SEGMENTS AND LET'S SEE IF YOU AGREE WITH ME.

A DISTRICT-SPECIFIC ANALYSIS THAT INCLUDES AN ANALYSIS OF VOTING PATTERNS WOULD PROVIDE AN INDICATION OF HOW TO ADJUST A MODEL TO ACCOUNT FOR, FIRST, LESS THAN PERFECT MINORITY VOTING COHESION. IS THAT RIGHT?

A YES. I THINK WE'RE TALKING ABOUT ADJUSTING THE BLACK VOTING AGE POPULATION. WE WOULD ADJUST IT IF BLACK VOTERS WERE LESS COHESIVE OR MORE COHESIVE DEPENDING ON THE LEVEL OF COHESION. IS THAT WHAT WE'RE TALKING ABOUT?

Q I WAS ASKING IF YOU WOULD AGREE THAT A DISTRICT-SPECIFIC ANALYSIS WOULD ALLOW YOU TO ADJUST IN CIRCUMSTANCES WHERE YOU HAVE LESS THAN PERFECT MINORITY VOTING COHESION.

03:28p

A I DON'T EVEN KNOW WHAT YOU MEAN BY "DISTRICT-SPECIFIC" IN THIS PARTICULAR INSTANCE. I MEAN, HERE IF WE WANTED TO DO A DISTRICT-SPECIFIC ANALYSIS, WHICH I DID DO, WE KNOW IF IT'S EFFECTIVE OR NOT. I GUESS -- CAN WE JUST LOOK AT THE ARTICLE?

THE COURT: SHOW HER WHAT YOU'RE READING FROM.

MS. MCKNIGHT: SURE. LET'S BRING UP SECRETARY OF STATE EXHIBIT 36 AT PAGE 19.

THE COURT: DID YOU SEE WHICH ARTICLE IT WAS?

THE WITNESS: YES.

MS. MCKNIGHT: PARDON ME. COULD YOU START WITH PAGE 1, MR. WILLIAMSON. LET'S GET THIS ON THE RECORD.

BY MS. MCKNIGHT:

Q DR. HANDLEY, THIS IS A 2020 ARTICLE TITLED "MINORITY SUCCESS IN NON-MAJORITY-MINORITY DISTRICTS: FINDING THE SWEET SPOT." AND YOU COAUTHORED IT. IS THAT RIGHT?

A YES.

Q LET'S TURN TO PAGE 19, WHICH IS PAGE 293 OF THE ARTICLE. AND HERE I'M LOOKING AT THE VERY LAST SENTENCE ON THE PAGE IN THIS CONCLUSION SECTION.

DR. HANDLEY, YOU WROTE HERE -- AND MAYBE WE

03:29p

COULD GET THAT BOTTOM PAGE CONNECTED WITH THE NEXT PAGE SO WE CAN READ THE WHOLE QUOTE. YOU WROTE HERE THAT A DISTRICT-SPECIFIC ANALYSIS THAT INCLUDES AN ANALYSIS OF VOTING PATTERNS WOULD PROVIDE AN INDICATION OF HOW TO ADJUST A MODEL TO ACCOUNT FOR LESS THAN PERFECT MINORITY VOTING COHESION, LESS THAN 100 PERCENT WHITE DEMOCRATIC CROSSOVER VOTING FOR THE MINORITY CANDIDATE, AND LESS THAN EQUAL MINORITY IN WHITE VOTING AGE PARTICIPATION. CORRECT?

A YES. PARTICIPATION RATES, YES.

Q DR. HANDLEY, IN YOUR REPORT, THE ANALYSIS YOU CONDUCTED IN THIS CASE, DID YOU REPORT OUT NUMBERS ON MINORITY VOTING COHESION ON A DISTRICT-BY-DISTRICT BASIS?

A YES.

Q DID YOU REPORT OUT MINORITY VOTING COHESION ON A DISTRICT-BY-DISTRICT BASIS IN PLAINTIFFS' ILLUSTRATIVE PLAN?

A THEY'RE INCORPORATED IN THE ANALYSIS, BUT THERE ARE NOT SPECIFIC ESTIMATES.

Q AND IN YOUR REPORT DID YOU REPORT OUT WHITE DEMOCRATIC CROSSOVER VOTING FOR PLAINTIFFS' ILLUSTRATIVE PLAN ON A DISTRICT-BY-DISTRICT BASIS?

A THEY'RE INCORPORATED IN THE EFFECTIVENESS ANALYSIS, BUT THEY'RE NOT REPORTED INDIVIDUALLY.

03:32p

Q AND THEY'RE INCORPORATED IN THE EFFECTIVENESS ANALYSIS BECAUSE YOU USED RECOMPILED ELECTION RESULTS TO CREATE THAT EFFECTIVENESS ANALYSIS. IS THAT RIGHT?

A YES.

Q SO WHEN YOU SAY IT'S INCORPORATED, IT'S A RESULT OF ELECTION RESULTS BEING RECOMPILED WITHIN DISTRICTS. IS THAT RIGHT?

A THAT'S CORRECT.

Q ACTUALLY, IS IT NOT DISTRICTS? IT'S BY REGION. ISN'T THAT RIGHT?

A NO.

Q OKAY. AND SO WITHIN THESE DISTRICTS YOU NEVER IDENTIFIED THAT SEPARATE WHITE DEMOCRATIC CROSSOVER VOTING ON A DISTRICT LEVEL. CORRECT?

A NOT FOR THE ILLUSTRATIVE DISTRICTS, BUT IT IS ON A DISTRICT LEVEL. YOU WOULD BE INCORRECT.

Q WELL, I WANT TO MAKE SURE WE'RE CLEAR HERE, WHEN YOU'RE PRESSING BACK ON "IT'S ON A DISTRICT LEVEL." I'M INTERESTED IN UNDERSTANDING IF YOU REPORTED ANY OF THESE NUMBERS FOR PLAINTIFFS' ILLUSTRATIVE PLAN ON A DISTRICT LEVEL. I BELIEVE THE ANSWER IS "NO." CORRECT?

A THAT'S CORRECT.

Q THANK YOU.

03:33p

AND NOW ON A DISTRICT-BY-DISTRICT BASIS, DO YOU -- YOUR REPORT DID NOT IDENTIFY FOR PLAINTIFFS' ILLUSTRATIVE PLAN WHETHER THERE WAS EQUAL MINORITY IN WHITE VOTING AGE PARTICIPATION. CORRECT?

A AGAIN, IT INCORPORATES IT BUT NOT -- NO INDIVIDUAL -- THEY WOULDN'T HAVE TO HAVE BEEN ESTIMATES. THEY COULD HAVE BEEN ACTUAL FIGURES. BUT NO, THEY WEREN'T DONE ON AN INDIVIDUAL DISTRICT BASIS.

Q THANK YOU.

NOW, AT THE END OF THIS STATEMENT IN THIS ARTICLE THERE IS A FOOTNOTE 22. DO YOU SEE THAT INDICATION THERE?

A I SEE THE 22.

Q LET'S GO TO FOOTNOTE 22. AND THIS IS ON PAGE 296. AS I READ THIS FOOTNOTE, IT SAYS: "WHETHER ANY SPECIFIC CANDIDATE CAN WIN A GIVEN GENERAL ELECTION IS ALSO DEPENDENT ON CONSIDERATIONS THAT CANNOT BE INCLUDED IN THE MODEL, SUCH AS HOW WELL-QUALIFIED THE CANDIDATES ARE AND HOW MUCH MONEY THE CANDIDATES ARE ABLE TO RAISE." DID I READ THAT CORRECTLY?

A YOU DID.

Q DO YOU AGREE WITH THAT?

A I DO.

03:34p

Q OKAY. AND SO DID YOU CONDUCT ANY KIND OF ANALYSIS IN THIS CASE ON HOW WELL-QUALIFIED CANDIDATES WERE OR HOW MUCH MONEY THE CANDIDATES WERE ABLE TO RAISE?

A I DID NOT.

Q SO YOU DECIDED TO INCLUDE IN YOUR ANALYSIS AN ELECTION -- I'D LIKE TO LOOK AT AN EXAMPLE OF AN ELECTION YOU INCLUDED: THE 2019 ATTORNEY GENERAL RACE BETWEEN JEFF LANDRY AND IKE JACKSON. DO YOU REMEMBER DISCUSSING THAT A FEW MOMENTS AGO?

A YES.

Q AND YOU INCLUDED THAT CONTEST IN YOUR ANALYSIS TO PROVIDE THE COURT CONCLUSIONS ABOUT RACIALLY POLARIZED VOTING. CORRECT?

A CORRECT.

Q NOW, CANDIDATE FUND-RAISING IS A MATTER OF PUBLIC RECORD. CORRECT?

A POSSIBLY.

Q YOU COULD HAVE LOOKED UP HOW MUCH MONEY JEFF LANDRY AND IKE JACKSON RAISED IN THEIR CONTEST?

A IF IT'S PUBLICLY AVAILABLE, I SUPPOSE I COULD HAVE.

Q BUT YOU DIDN'T IN THIS CASE?

A CERTAINLY NOT.

Q WOULD IT SURPRISE YOU TO KNOW THAT CANDIDATE

03:36p

JEFF LANDRY RAISED CLOSE TO TWO MILLION AND CANDIDATE IKE JACKSON RAISED LESS THAN $5,000?

A I HAVE NO IDEA.

MS. BRANNON: YOUR HONOR, I JUST WANT TO OBJECT TO THIS LINE OF QUESTIONING, WHICH IS ABOUT INFORMATION THAT'S NOT IN EVIDENCE AND IS ALSO, I THINK, CLEARLY BEYOND THE SCOPE OF DR. HANDLEY'S REBUTTAL AND PERHAPS EVEN BEYOND THE SCOPE OF DR. HANDLEY'S OPINIONS IN THIS CASE.

MS. MCKNIGHT: I'M MOVING ON, YOUR HONOR. BUT IT IS RELEVANT BECAUSE DR. HANDLEY IS TELLING THIS COURT THAT CERTAIN CANDIDATES AND THEIR LOSS -- THEIR WIN OR LOSS IS TELLING -- TELLS THIS COURT -- IS PROBATIVE FOR THIS COURT TO EXAMINE WHETHER CANDIDATES COULD WIN.

HERE DR. HANDLEY -- IT'S IMPEACHMENT. SHE'S ALREADY TOLD THE COURT THAT IT'S IMPORTANT TO UNDERSTAND IN CERTAIN CASES HOW WELL-QUALIFIED THE CANDIDATES ARE, HOW MUCH MONEY THEY WERE ABLE TO RAISE, THAT THAT AFFECTS WHETHER -- HOW PROBATIVE AN ELECTION IS.

SO IT IS RELEVANT TO WHETHER -- TO HER ANALYSIS, THE ELECTION SHE CHOSE, WHAT -- AND WHAT ANALYSIS SHE DECIDED TO DO AND OFFER THE COURT AND WHAT ANALYSIS SHE WITHHELD.

03:37p

THE COURT: YOU CAN PUT ALL OF THAT IN YOUR BRIEF. IT IS BEYOND THE SCOPE OF BOTH HER REPORTS AND THE DIRECT AND THE CASE-IN-CHIEF AND THE DIRECT ON REBUTTAL. THE QUESTION HAS BEEN ASKED AND ANSWERED. IT'S ON THE RECORD. THE COURT WILL CONSIDER IT AS TO WEIGHT.

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

BY MS. MCKNIGHT:

Q DR. HANDLEY, I HEARD YOU TESTIFY EARLIER THAT 25 PERCENT OF VOTERS WITHIN A PLAN, WITHIN A DISTRICT, COULD MAKE A DIFFERENCE IN WINNING OR LOSING. DO YOU REMEMBER THAT TESTIMONY?

A YES.

Q ARE YOU AWARE THAT THE AVERAGE FOR THE ELECTION YEARS THAT YOU STUDIED, ON AVERAGE APPROXIMATELY 30.6 VOTERS VOTED EARLY OR BY ABSENTEE?

A I KNOW IT VARIED BY YEAR. I DON'T KNOW -- SOMEWHERE I HAVE THAT INFORMATION. I DON'T KNOW OFF THE TOP OF MY HEAD.

Q NO FURTHER QUESTIONS. THANK YOU, DR. HANDLEY.

THE COURT: IS THERE ANY REDIRECT?

MS. BRANNON: I JUST HAVE ONE QUESTION ON REDIRECT.

REDIRECT EXAMINATION

03:38p

BY MS. BRANNON:

Q DEFENSE COUNSEL WAS SHOWING YOU AN ARTICLE THAT YOU WROTE I THINK IN 2015 THAT DISCUSSES A NUMBER OF ELECTIONS AND CHANGES AND A NUMBER OF THINGS.

BUT IS IT ACCURATE TO SAY THAT THAT ARTICLE IS DISCUSSING OPPORTUNITIES FOR BLACK-PREFERRED CANDIDATES IN DISTRICTS THAT HAVE BVAPs BETWEEN 40 AND 50 PERCENT?

A IT'S ACCURATE TO DESCRIBE IT THAT WAY, YES.

Q ARE THERE DISTRICTS IN THE STATE OF LOUISIANA IN THE ENACTED MAP THAT HAVE BVAPs BETWEEN 40 AND 50 PERCENT?

A THERE MIGHT BE ONE IN THE HOUSE. THERE IS CERTAINLY NONE IN THE SENATE.

Q SO IT'S FAIR TO SAY THERE IS ALMOST NO DISTRICTS IN THE ENACTED MAP IN LOUISIANA THAT HAVE BVAPs BETWEEN 40 AND 50 PERCENT?

A THAT WOULD BE CORRECT.

MS. BRANNON: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. THANK YOU, MA'AM.

ARE THERE ANY FURTHER WITNESSES?

MS. KEENAN: NO, YOUR HONOR, NO FURTHER WITNESSES FROM THE PLAINTIFFS.

03:39p

THE COURT: SO BOTH PARTIES HAVE RESTED?

MS. KEENAN: YES, YOUR HONOR.

MS. MCKNIGHT: YES, YOUR HONOR.

THE COURT: THE COURT WILL TAKE THIS MATTER UNDER SUBMISSION. WE'VE DISCUSSED THE POST-TRIAL BRIEFS. I'VE FORGOTTEN THE DATE NOW. DO Y'ALL HAVE THE DATE?

MS. KEENAN: DECEMBER 19TH. I THINK IT'S THE TUESDAY.

THE COURT: DECEMBER 19TH. SIMULTANEOUS BRIEFS, NO REPLIES, LIMITED TO 40 PAGES.

ARE THERE ANY OTHER MINISTERIAL MATTERS THAT WE CAN TAKE UP?

MS. MCKNIGHT: YES, YOUR HONOR, BRIEFLY, JUST ONE.

DEFENDANTS MUST RENEW THEIR RULE 52(C) MOTION FOR THE REASONS DETAILED IN OUR MOTION PAPERS AND DURING ARGUMENT. THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. AND I WILL ADDRESS IT MOST LIKELY AS ITEM NO. 1 IN THE WRITTEN RULING.

ANYTHING ELSE?

MS. MCKNIGHT: YOUR HONOR, BRIEFLY. WE JUST WANT TO THANK EVERYONE, COUNSEL FOR THEIR PROFESSIONALISM, THE COURT AND THE STAFF. THANK YOU VERY MUCH.

03:40p

MS. KEENAN: SAME FROM PLAINTIFFS. NOTHING FURTHER. THANK YOU, YOUR HONOR.

THE COURT: Y'ALL DID A REMARKABLE JOB, DOWN TO THE LAST PERSON, SO I THANK YOU FOR YOUR PROFESSIONALISM, YOUR COURTESY AND ALSO YOUR PATIENCE.

ALL RIGHT. WE WILL STAND ADJOURNED.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED NUMBERED MATTER.

S:/NATALIE W. BREAUX

NATALIE W. BREAUX, RPR, CRR

OFFICIAL COURT REPORTER