

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 11
Honorable Adam Caine, Judge

TERRENCE WISE, et al.,)

Plaintiffs,)

vs.)

Case No. 2516-CV29597

STATE OF MISSOURI, et al.,)

Defendants.)

ELIZABETH HEALEY, et al.,)

Plaintiffs,)

vs.)

Case No. 2516-CV31273

STATE OF MISSOURI, et al.,)

Defendants.)

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
VOLUME III (Of IV)

On February 19 of 2026 the above cause came on for hearing before the Honorable Adam Caine, Judge of Division 11 of the Circuit Court of Jackson County.

PROCEEDINGS

(FEBRUARY 19, 2026)

THE COURT: Good morning, everyone. We'd left off that you all were gonna discuss some kind of logistics about deposition designations and the close of the case.

MR. MULJI: Your Honor, I think our update on the progress on those that it is still in progress, but, at least, we're getting the deposition transcripts ready and we're gonna send those to Defendants as soon as we have them ready to review.

MS. HUNKER: Your Honor, we did consult along with the intervenors and we decided not to proceed with the Rule 73.01(b) Motion.

THE COURT: Okay.

MS. HUNKER: Since we do think the evidence needs to be closed and given the speed of the trial, based on when we expect the designations to be coming in, we're not anticipating that the motion would be able to be given before -- before it would make sense, basically.

THE COURT: Got it. Are you all ready to start calling witnesses?

MS. HUNKER: Yes, Your Honor.

THE COURT: Okay. Go ahead.

MS. HUNKER: State Defendants call Dr. Sean Trende to the stand.

1 THE COURT: If you can please raise your right
2 hand.

3 SEAN TRENDE,
4 having been sworn by the Court testifies as follows:

5 THE COURT: Thank you. Have a seat, please.

6 DIRECT EXAMINATION BY MS. HUNKER

7 Q. Good morning, Doctor Trende.

8 A. Good morning.

9 Q. Can you please state your name for the record?

10 A. Sean Trende; T-R-E-N-D-E.

11 Q. Thank you, Dr. Trende.

12 Can you please tell us a little bit about your early
13 educational background?

14 A. I graduated from Yale University in 1995, with a
15 degree in history and political science. Oh.

16 THE COURT: Sorry. I try to mute it so you don't
17 hit it while you're movin' around, and then I forgot to hit
18 the live button. Go ahead.

19 A. Okay. Yeah. I graduated in 1995, with a degree in
20 history and political science. I went to law school at Duke,
21 where I graduated with a JD, and they had a program where if you
22 went for the summer you could get a Master's degree, as well,
23 and so I got a Master's in political science while I was there.

24 Q. After you graduated from Duke, what did you do?

25 A. I clerked on the 10th Circuit for Chief Judge Tacha

1 out in Lawrence, Kansas. After that I went to Kirkland & Ellis
 2 in DC for a few years. Dan Nelson sends his regards. And then,
 3 went to Hunton & Williams in Richmond.

4 Q. Did you change careers at some point?

5 A. Yes. So in 2010, my oldest son was diagnosed with
 6 autism and we needed someone who could transfer him -- had the
 7 flexibility to transfer him to various therapies and so that
 8 became me. And around that same time, the opportunity at
 9 RealClearPolitics presented itself, and so I got hired by them
 10 as their senior elections analyst.

11 Q. What is RealClearPolitics?

12 A. So RealClearPolitics is a company that produces a
 13 website. It's sort of a one-stop shop for political
 14 information. It -- it's, probably, the most famous for
 15 aggregating poll averages, but it also puts original content on,
 16 as well as news from a -- political news from across the
 17 spectrum.

18 Q. And how many employees does RealClearPolitics have?

19 A. It varies, but around 50.

20 Q. Does it have a physical office?

21 A. It does.

22 Q. What type of content does RealClearPolitics produce?

23 A. RealClearPolitics produces, like I said, a variety of
 24 content, but it's, mostly, related to politics and elections, in
 25 particular.

1 Q. And what's your title at RealClearPolitics?

2 A. It is senior elections analyst.

3 Q. And what do you do as a senior elections analyst?

4 A. Well, what we're -- what mostly goes into it is
5 understanding and analyzing the congressional districts and
6 races across the country. There's, also -- a lot of what we do
7 is rating the competitiveness of races and that's kind of my
8 main job. I also write and produce original content for them
9 regarding elections.

10 Q. Have you continued your education since joining
11 RealClearPolitics?

12 A. Yeah. So in 2016, I enrolled -- I do have to say it
13 this way -- at The Ohio State University -- their PhD program in
14 political science.

15 Q. And did you pursue your PhD while writing for
16 RealClearPolitics?

17 A. I did.

18 Q. Did you pursue any other degrees while enrolled in the
19 PhD program?

20 A. So because I'd already done the statistics track at
21 Duke for my Master's degree, they suggested I go over to the
22 statistics department and do my theory work there. So I did and
23 I enjoyed it, and so about 40 credit hours later I emerged with
24 a Master's degree in applied statistics.

25 Q. Did you take any polling course work in the statistics

1 department?

2 A. I did.

3 Q. Was that graduate-level courses?

4 A. It was graduate-level courses, yes.

5 Q. Was the interpretation of confidence intervals or
6 error margins part of that class?

7 A. Yeah. That was crucial, not just in that class, but
8 classes in general.

9 Q. We'll come back to this one a bit later, but just as a
10 foundational question, what about courses relating to
11 statistical inference?

12 A. Right. So that's the interpretation and
13 appropriateness of confidence intervals or error margins, when
14 to use them and what they mean. We were required to take two
15 semesters of pure statistical theory classes, that was the
16 foundation -- the mathematical foundation, for that. And then,
17 pretty much, every class in the stats department deals with the
18 interpretation of confidence intervals.

19 Q. Okay. Doctor Trende, turning back to your PhD; what
20 was your area of concentration?

21 A. I was a double major. You -- you major within the PhD
22 program and in the areas you're gonna take comprehensive exams
23 in, and so I doubled in political methodology and American
24 politics.

25 Q. And what is "methodology" in this context?

1 A. It's just what we call statistics. Every discipline
2 has its own name for statistics. In economics it's called
3 econometrics. In political science we call it methodology. So
4 it's statistics for political science.

5 Q. And so what does that mean?

6 A. So it was -- a lot of the stuff that I was learning in
7 the stats department but, specifically, as it applied to various
8 political science questions.

9 Q. Did your dissertation involve redistricting?

10 A. It did.

11 Q. When did you receive your PhD?

12 A. I received my PhD in -- oh, gosh, now -- I want to
13 say, 2023. And had a dissertation that involved -- it was about
14 spatial statistics and the application to political science
15 problems and one of the papers was on redistricting simulations.

16 Q. I'd like to shift back to your work experience.

17 Have you taught college level courses?

18 A. Yes.

19 Q. Did you cover redistricting and compactness methods in
20 those classes?

21 A. Yes. In most of the classes we spend at least some
22 time on redistricting, but, in particular, in my voter
23 participation and turn out class, we spend probably two or three
24 weeks on political gerrymandering, compactness measures,
25 simulations, how the various simulation approaches work. We go

1 pretty deep into the weeds in that class.

2 Q. We've talked a lot about your education and career.

3 Changing gears slightly, have you ever drawn maps?

4 A. Yes.

5 Q. Have you testified as -- have you advised
6 redistricting committees?

7 A. Yes. So I was appointed by the Arizona Independent
8 Redistricting Commission to advise on the compliance of their
9 maps with the Voting Rights Act. That came after I had been
10 appointed to draw the probably soon to be defunct congressional
11 districts in Virginia, along with Bernie Grofman, after their
12 independent redistricting commission deadlock.

13 Q. Have you ever testified as an expert in redistricting
14 cases before?

15 A. Yes, many.

16 Q. Have you testified in a Missouri case before?

17 A. I was the expert for the State in the *Faatz v.*
18 *Ashcroft* case.

19 Q. And what was the *Faatz* case about?

20 A. It was a challenge to the state senate districts for
21 their compliance with various provisions of the redistricting
22 code.

23 Q. In that case, did the trial court cite your testimony
24 as part of its opinion?

25 A. Yes.

1 Q. Now, I'll leave it to my friends on the other side to
2 rain on our parade, but have you received criticism, as well?

3 A. Yes. I think, if you do this long enough, you get
4 battle scars, but there are, definitely, some negative opinions,
5 as well, to go with the good.

6 Q. Are the remainder of your qualifications listed in
7 your report?

8 A. They are.

9 MS. HUNKER: Your Honor, the parties have
10 stipulated to Dr. Trende's qualifications in the areas of
11 American politics, with an emphasis on elections,
12 redistricting, and political methodology, as well, as
13 redistricting simulations. Based on that stipulation and
14 based on the testimony about his experience today and the
15 qualifications listed in his report, State Defendants would
16 offer him as an expert in those areas at this time.

17 MR. CHEUNG: Your Honor, no objection; except
18 that -- as I was chatting with Ms. Hunker earlier this
19 morning -- that Mr. Trende's report refers to his CV but
20 the CV is not attached to the report.

21 MS. HUNKER: We are working to correct that, Your
22 Honor; however, at the front of his report he does list a
23 number of his experience, qualifications, particularly,
24 with respect to acting as an expert in redistricting cases.

25 THE COURT: You're not saying he hasn't

1 established a sufficient foundation to give an opinion,
2 correct?

3 MR. CHEUNG: That's right. We would just like to
4 receive the CV.

5 THE COURT: That's fine. I think, considering
6 the testimony I've heard about his background and the
7 stipulation, I'm comfortable with him proceeding to opinion
8 testimony.

9 Do you have any objection to that?

10 MR. CHEUNG: No, Your Honor.

11 THE COURT: Okay. Go ahead.

12 Q. (MS. HUNKER) Doctor Trende, the first issue that I
13 would like to address is the plaintiff's contiguity and equal
14 population claims.

15 A. Okay.

16 Q. At the outset, are you here to testify to legal
17 conclusions?

18 A. No. No.

19 Q. And you don't claim any particular knowledge about
20 Missouri canons of construction?

21 A. That's correct.

22 Q. Have you read the reports of Dr. Cervas?

23 A. I have.

24 Q. And have you reviewed his testimony about the alleged
25 non-contiguous and non-equapopulace district in Johnson County?

1 A. Yes.

2 Q. Can you briefly describe the alleged issue in Jackson
3 County as you've identified?

4 A. Yeah. So there are often names that localities assign
5 to precincts and in Jackson County there are two precincts that
6 have the same name. So when the state was adopting the map and
7 assigning the precincts, the name shows up in two districts.
8 The same name shows up.

9 Q. To clarify, how many district precincts are there at
10 issue?

11 A. So there are two distinct precincts.

12 Q. Are they labeled differently by the census?

13 A. Yeah. So the Census Bureau doesn't necessarily label
14 things according to local practice. It assigns GEOIDs to them,
15 and the two precincts at issue have separate GEOIDs, which, for
16 me, confirms that they are two separate precincts.

17 Q. And how does that manifest here?

18 A. Well, if you look at the GEOID numbers, one of the
19 precincts is in District 4 and one is in District 5.

20 Q. What happens if both are assigned to the same
21 district?

22 A. As Dr. Cervas identifies, the -- one district would be
23 non-contiguous and another would have a hole in it and they
24 would both be -- not be equapopulace.

25 Q. Okay. But is there another option?

1 A. There is.

2 Q. And what is that option?

3 A. Well, one could be assigned to District 5, and one
4 could be assigned to District 4. Again, I don't know Missouri
5 canons of construction on how you would work that out, but if
6 you were to do that, you would end up with two contiguous
7 equipopulace districts.

8 Q. Would the districts be contiguous?

9 A. Yes.

10 Q. Would the districts have equal population?

11 A. They would.

12 Q. Are you aware that Dr. Cervas testified earlier in
13 this trial?

14 A. Yes.

15 Q. Did you have a chance to review the transcript?

16 A. I did.

17 Q. In his testimony, Dr. Cervas stated that the
18 shapefiles he downloaded from the Office of Administration,
19 indicated that the two VTDs labeled 811 were separate VTDs; does
20 this align with your findings?

21 A. It does.

22 Q. Doctor Cervas also stated that the VTDs labeled 811
23 had separate GEOID numbers; do you agree with them?

24 A. Yes.

25 Q. And, I believe, you discussed this just earlier, but

1 what is the significance of them having two separate GEOIDs?

2 A. Well, again, it shows that when the Census Bureau
3 looked at the -- sometimes you do get non-contiguous VTDs -- but
4 for the -- when the Census Bureau does that, both polygons, both
5 chunks, get the same GEOID label. But the fact that they have
6 separate ones, one is 29095K16811, another is 29095000484,
7 they're different precincts.

8 Q. Let's turn to Plaintiff's compactness claim.

9 Before we get started, you spent some time in your report,
10 Defense Exhibit 101, explaining the various compactness metrics
11 and measures. I would like to go through this topic, only
12 briefly, since some of the other experts that testified earlier
13 in the case touched upon it in their testimony.

14 A. Okay.

15 Q. What is the Reock score, generally?

16 A. Yeah. I find when experts talk about these things we
17 kind of throw the names around and, just, assume a level of
18 familiarity, so I try to drill down and give a fuller
19 explanation in the report. And so the Reock score, the idea is
20 that you take the district and you calculate the -- well, the
21 computer calculates the area of the district. And the idea
22 behind it is you then draw a circle, the smallest circle you can
23 draw, around the district without cutting the district. The
24 Reock score then, asks: What percentage of that circle does the
25 district fill?

1 Q. So a Reock score of .23 means what exactly?

2 A. So a Reock score of .23 would mean that the district
3 fills 23 percent of that, what we call, the minimum bounding
4 circle.

5 Q. What aspect of compactness does Reock measure?

6 A. So the Reock score basically measures how distended a
7 district is. And you can kind of think about it as the district
8 gets longer and longer but not fatter and fatter; it's going to
9 expand that minimum bounding circle, but it's not gonna fill
10 much more of it. And so the percent that it fills is gonna
11 drop, the Reock score will drop.

12 Q. Let's pull up the Figure 1 from your report, page 7.

13 What does this show?

14 A. So these are the least and most compact districts in
15 the -- I picked state house, since there's a large number of
16 districts there -- these are the least and most compact
17 districts according to Reock score. So you can see the district
18 down the left is sort of long and distended, it fills very
19 little of that minimum bounding circle, so it gets a poor Reock
20 score. The district on the right is a square, it's pretty
21 compact, and it fills -- well, since it's a square -- it would
22 be around 66 percent of that circle and have a Reock score of
23 around .66.

24 Q. What about Polsby-Popper?

25 A. So Polsby-Popper has a different idea. So what the

1 Polsby-Popper score says is, okay, you can have a district that
2 is kind of stocky, fat, but if it had, you know, a big inlet
3 carved into it, it might still fill a good amount of that
4 minimum bounding circle, but we wouldn't consider it compact
5 because it would have a really weird boundary line to it.

6 And so what the Polsby-Popper score does, is it takes a
7 district and kind of stretches it out without breaking it until
8 it's a circle. It gives you a circle with the same perimeter as
9 the district and asks, okay, what percentage of that circle with
10 the same perimeter of the district would the district fill? And
11 so the -- well, that's what it does.

12 Q. What aspect of compactness does the Polsby-Popper
13 score measure?

14 A. So the Polsby-Popper score, you ask yourself, Well,
15 what would increase the perimeter of a district? Well, having
16 lots of arms that reach out or inlets cut into the district
17 would give the district a larger perimeter. And so the circle
18 would get bigger, the district wouldn't fill as much of it. So
19 as districts get arms and inlets, basically, the Polsby-Popper
20 score gets worse. So it's a different aspect of compactness.

21 Q. I'm going to bring up Figure 3 from your report, it's
22 on page 10. What does this show?

23 A. So this is the same idea. You have, on the left a
24 district, lots of arms and inlets, very irregular boundary; it's
25 the district in the state house with the lowest Polsby-Popper

1 score. You can see it's not the same as the one with the lowest
2 Reock score. That Reock score district actually had fairly
3 normal boundaries. It didn't have a lot of arms and inlets, and
4 it does okay on Polsby-Popper. That is a district with lots of
5 arms and inlets and it doesn't fill much of the circle with the
6 same perimeter.

7 Now, on the right, once again, we see a square, no arms and
8 inlets on that district so, unsurprisingly, it scores very well
9 on Polsby-Popper.

10 Q. The third metric in your report is Convex Hull; can
11 you explain what that means?

12 A. So what the Convex Hull score says is, well, what's so
13 great about circles? And, in fact, we noted earlier, that a
14 square district -- which I think a lot of people would intuit it
15 as extremely compact -- doesn't have a perfect Reock score, it's
16 .65 or so, .66. And so what the Convex Hull says is, Okay.

17 Let's imagine we snap a rubber band around the district. How
18 much of that rubber band would the district fill?

19 And so the square, the rubber band would fit around it
20 perfectly. And so a square gets a Convex Hull score of 1; it's
21 a perfect district. Whereas, the district either becomes a

22 little bit distended or it gets arms and inlets or both -- it's
23 kind of a combo of Reock and Polsby-Popper -- the score falls.

24 Q. Let's bring up Figure 4.

25 What does this figure show?

1 A. So these, again, are examples of a district with a
2 poor Convex Hull score. We see it's the same as the one with
3 the poor Reock score, and we can see that these districts, you
4 know, there's lots of areas that the rubber band doesn't cover.
5 The square, the rubber band snaps around it perfectly and it has
6 a Reock score -- a perfect Reock score.

7 Q. Finally, you have the I Know It When I See It score.
8 Can you please explain the I Know It When I See It score?

9 A. Yeah. You can tell that was named by a political
10 scientist and not a lawyer. The idea behind the I Know It When
11 I See It score is, well, these are fine as mathematical
12 abstractions. It's not necessarily how real people think about
13 compactness. And so what they did was they went and -- a couple
14 of political scientists -- went and showed pictures of districts
15 to lawyers, judges, lay people, experts in the field of
16 redistricting, and asked them what they thought were compact
17 districts.

18 And then, they ran a machine learning algorithm on it to
19 determine, like, what people actually think is important in
20 compactness and rate the scores that way. So it's more
21 reflective of kind of common parlance compactness.

22 Q. What is the benefit of using multiple compactness
23 metrics?

24 A. Well, as we've seen, you know, there are -- there are
25 dozens of compactness measures, but as we've seen, they all

1 measure different aspects of compactness. And so, you know,
2 there's no kind of agreed-upon canonical, this is what you have
3 to look at but multiple measures will give you different looks
4 or different aspects of a plan's or district's compactness.

5 Q. Thank you, Dr. Trende. Let's move on to your general
6 testimony. You start your report with some insights from the
7 *Faatz* case; what were those?

8 A. Yeah. So with the *Faatz* case, one of the things we
9 were confronted with was this idea of what a most compact
10 district would be. And so one of the things that we did -- we
11 actually ran simulations and sort of illustrated what I think is
12 an important point; which is there are -- there are quadrillions
13 of maps out there, I mean, literally a number we can't wrap our
14 mind around.

15 And as we ran the simulation longer and longer and longer,
16 we kept identifying the next most compact map. And so it kind
17 of illustrates the purpose, that -- for human purposes -- there
18 isn't a most compact map. It probably exists out there, but in
19 the real world of computer technologies, you can just run the
20 stimulation longer and longer and the chances are you're going
21 to identify an even more compact map.

22 Q. And how does that relate to what you did in the *Faatz*
23 -- *Faatz*?

24 A. Yeah. So the idea, then, becomes, well, what does --
25 and I'm not here to do legal analysis, but just from a common

1 sense perspective -- what does "as may be" mean? Is it maximal?
2 Like, the literal most you can get? And I understand there's
3 some dispute about whether that's really the case being made
4 here, but it just illustrates that it can't be as may be because
5 -- or maximally compact as the standard -- because that's a
6 recipe for endless litigation. You'll always be able to find
7 something a little bit more compact.

8 Q. What's the upshot here?

9 A. Well, again, so if this -- if this case is about just
10 whether you can draw a more compact map than an enacted map,
11 that's not a case that's ever going to end, because an expert
12 can just run the simulation chain a little longer and discover a
13 more compact map.

14 Q. Doctor Stern calls that a straw-man; what's your
15 response?

16 A. I mean, it may be. The experts know -- the
17 plaintiff's experts know what their argument is better than
18 mine. I thought there were times when, you know, the standard
19 suggested by Plaintiffs brushed against that; this idea that
20 you're only allowed to deviate from compactness to the extent
21 that it complies with some other criteria. Well, that says
22 within the bounds of certain criteria, it is a -- to me -- it is
23 a maximal test being proposed. If that's not it, well, then,
24 that's not it, but that's how it sounded to me.

25 Q. So then, what?

1 A. Well, so if it's not maximal -- if you don't have to
2 maximize compactness within boundaries -- it becomes an exercise
3 in trying to decide: Okay. Well, what's acceptable? What's the
4 range of what we do here?

5 Q. Did you take a stab at that?

6 A. I did.

7 Q. And how did you take a stab at that?

8 A. The way I took a stab at it was to look at other maps
9 that -- in other districts that have been drawn in Missouri and
10 determine, you know, what the compactness scores for these
11 districts were and if the districts in the enacted map fell
12 within the range of those. In other words, is this really
13 something unique that's never been tried before in the state in
14 terms of the compactness of the districts? Or, is this
15 something that is -- are these districts kind of within the
16 range of what's been accepted in the past?

17 Q. Is this perfect?

18 A. It's not. I mean, for one thing, if a district falls
19 outside that range you then have to -- you have -- I don't know
20 you have to be perfectly tethered to the past in terms of
21 bounding what the state can do. If it falls outside the range,
22 you start having to fight about, Okay. Well, how far outside
23 the range does it have to be? But, fortunately, that's not an
24 issue here.

25 Q. And that was going to be my next question.

1 Is that an issue here?

2 A. It's not, because, as it turns out, these districts
3 fall within the range of what's been draw in Missouri in fairly
4 recent maps.

5 Q. What about for District 5?

6 A. District 5 also falls within the range of what's been
7 drawn in Missouri, in terms of, just, District 5, Kansas City-
8 based districts.

9 Q. Did you also look at the state senate and state house
10 districts?

11 A. I did.

12 Q. Now, Plaintiffs point out that the state house and
13 state senate districts have different numbers of districts and
14 different considerations.

15 Do you have a response to that?

16 A. Well, I think that is a factually true statement to an
17 extent but, you know, having done the *Faatz* case, the
18 compactness criterias at the top of the list for the state
19 senate and state house districts, just like it would be for the
20 congressional districts, and then there are other criteria that
21 are subordinated to it.

22 Not only that, but the state house and state senate
23 districts have a requirement that they be drawn -- it's actually
24 kind of more restrictive than Congress, because they have to be
25 drawn to be square like or rectangular or hexagonal, which,

1 actually, is the Convex Hull measure. The Convex Hull measure
2 would give a perfect score to a square or rectangular or
3 hexagonal district.

4 Q. Now, the plaintiff's critique, could this be valid?

5 A. I mean, it could. I think, if you went through the
6 districts and showed how they were special cases or something
7 outside the range of, you know, what would be acceptable in
8 congressional districts for some other reason, then, that could
9 be, but it -- that type of analysis didn't happen. It's just
10 sort of asserted, Well, these are different.

11 Q. Did you do some of this checking?

12 A. Well, I did. So that first district, the really non-
13 compact state house district we saw, I looked at it. It's in
14 St. Louis City. It doesn't cross any jurisdictional boundaries,
15 so that wasn't a constraint on it. It runs down the same -- it
16 runs down the Missouri River -- or not the Missouri -- the
17 Mississippi River, but that's Illinois on the other side, so
18 you're not gonna cross over it. It wasn't completely required
19 that it looked like that to comply with other state provisions
20 it's just how they drew the district.

21 Q. Let's talk about Table 1 on page 10 of your report.

22 And can you let me know, what does this table mean?

23 A. So in addition to looking at the individual districts,
24 I also calculated the average score for various Missouri maps
25 for the 2011, 2022, enacted, state house and state senate

1 districts.

2 Q. And what do we see from it?

3 A. So for the Reock score, the enacted map, on average,
4 is more compact than the 2011 map. It is four thousandths of a
5 point less compact than the 2022 map and it's more compact, on
6 average, than the current House or Senate map.

7 Q. And what about the other metrics?

8 A. You can go through it, but the enacted map is more
9 compact using Polsby-Popper, Convex Hull, and this I Know It
10 When I See It score, than any of the -- either of the last two
11 Missouri congressional maps, then the state house map and then
12 the state senate map. It's better on all three of those
13 measures.

14 Q. Can averages obscure things?

15 A. So Dr. Rodden makes this point in his report and,
16 yeah, absolutely. Averages can obscure outliers and that's -- I
17 didn't entirely get the critique, though, because that's why I
18 do both. There is an analysis of individual districts in my
19 report and then there is the analysis of the overall average,
20 which is, in my experience, typical of how you do a compactness
21 analysis.

22 Q. Let's bring up Table 2, located on page 11 of your
23 report. Which, again, for the record, is Defense Exhibit 101.

24 THE COURT: Just, a quick question. I have Table
25 2, but on my exhibit it's on page 19, I think.

1 MS. HUNKER: Oh, thank you, Your Honor.

2 THE COURT: And Table 1 was page 18. It looks
3 the same as what's on the screen, I just wanted to make
4 sure.

5 MS. HUNKER: Yeah. No. I must've just written
6 -- this must be a typo in my outline.

7 THE COURT: Okay.

8 Q. So let's look at Table 2 on page 19 of your report.

9 A. So Dr. Rodden had given some historical look at maps
10 in his report and so rather than, just, doing the last two maps,
11 I also took the average compactness score going back to 1972.
12 So, as you can see, Reock scores, again. The enacted map does
13 worse in 2022; it's better than 2012, and it's better than 1972;
14 it's worse on average than some of the others. When you look at
15 Polsby-Popper the enacted map is better than all the maps going
16 back to 1972; other than the 1982 map, which does score better
17 but it's within the range.

18 And when you look at the Convex Hull score, the enacted map
19 is the most compact map going back to 1972 on average. So, you
20 know, if you have this idea of trying to fall within the range
21 of what Missouri's done in Missouri Congressional Districts in
22 the past, all these maps fall within that range.

23 Q. Doctor Rodden looks at individual districts.

24 What is your reaction to this?

25 A. So I didn't do the individual analysis going back to

1 1972, but Dr. Rodden does. And I thought it was helpful for the
 2 State, because when you look at all the congressional districts
 3 that have been enacted going back to 1972, it turns out that the
 4 maps -- the enacted maps -- all fall within that range. These
 5 aren't the most extreme districts drawn in Missouri, even if you
 6 look at them on the individual district level.

7 Q. But didn't District 5 of the enacted on -- go in the
 8 lower end of the range?

9 A. So it does fall on the other -- on the lower end of
 10 the range of districts that have been implemented in Missouri,
 11 but it's still within the range that's been implemented and
 12 considered an acceptable range by Missouri mapmakers in the
 13 legislature before. It's not some type of special case. The
 14 other thing that, I think is important is that, you know, he
 15 gives the percentiles of what the enacted map falls into. And
 16 it kind of brings to mind -- it's unclear whether this is really
 17 what Dr. Rodden's getting at and I don't want to accuse him of
 18 something he's not doing -- but there's this idea of, like, a 95
 19 percent error margin or a 95 percent confidence interval, that
 20 you hear in polling or in political science a lot.

21 And I think it's important to understand, that is only for
 22 samples. When you're drawing a sample, a political scientist
 23 will look at that 95 percent interval, assuming you have a truly
 24 random sample that draws from the entire field. That's not what
 25 we have here. We have a census. We have all the districts that

1 have been drawn back to 1972. So there is no statistical
2 uncertainty here. We know that the enacted -- as a factual
3 matter -- that the enacted map districts fall within that range
4 that's previously been implemented in Missouri.

5 Q. A couple of Plaintiffs experts, principally Dr. Stern,
6 suggested it's inappropriate to compare the challenged map with
7 prior ones. In your experience, is it unusual for experts to
8 evaluate compactness by looking at earlier maps within a state?

9 A. Yes. I read that and from a mathematics perspective
10 maybe you wouldn't do it that way, but we do this all the time.
11 I mean, I was in Alabama with some of the same attorneys and we
12 were talking about Alabama maps going back to the 1820s in a
13 Voting Rights Acts context about what a reasonably compact
14 district was. We -- it is, in a compactness analysis, not at
15 all unusual to compare to earlier maps within a state to
16 determine whether a map is -- a district is reasonably compact
17 or not.

18 Q. Did you also look at the total number of
19 splits/counties compared to the enacted plan?

20 A. I did.

21 Q. What did you find?

22 A. I found that the -- similar to Dr. Cervas -- that the
23 enacted map reduces the number of split counties and county
24 splits relative to the 2021 map or 2022 map.

25 Q. Can we bring up Figure 7? I believe, this is page 20

1 of Dr. Trende's report, Defense Exhibit 101. Doctor Trende,
2 what does this exhibit -- this figure show?

3 A. So this highlights the areas where the county splits
4 exist within the 2022 map, so I've drawn circles around the
5 county splits.

6 Q. And let's go to Figure 8 on the next page.
7 What does that show?

8 A. So this, again, highlights them for the enacted map,
9 where the split counties exist.

10 Q. And how do the two maps compare? Figure 7 and Figure
11 8.

12 A. Again, you can see, there's fewer split counties in
13 the enacted map.

14 Q. I'm going to have Keith bring up Figure 12, page 25 of
15 your report. What is Figure 12?

16 A. So this is an illustration for Jackson and Clay
17 counties of the municipalities that were split in those counties
18 in the 2022 map. So places I -- I remember from clerking in
19 Lawrence -- these are major suburbs, Independence, and Lee's
20 Summit, Blue Springs -- these were all split under the 2022 map.

21 Q. And what about Figure 13 on page 26 of your report?

22 A. So this shows how the enacted map splits those
23 jurisdictions, which is to say, it doesn't. It splits Kansas
24 City, as we've talked about quite a bit in this matter, but
25 those other cities had their splits removed.

1 Q. And what is the takeaway?

2 A. Well, that the enacted -- and I should say, you can
3 see that there are some areas where the municipalities have
4 splits because they follow along county boundaries; so Lee's
5 Summit way at the bottom. You can see a little bit from
6 Independence where it crosses over into Clay County, but those
7 are all -- there's no population there. So the populations of
8 those municipalities aren't split at all.

9 It tells us that the number of municipal splits in this
10 area has been reduced.

11 Q. Now, Plaintiff's experts in their response seemed to
12 shift to the quality of the splits; is this something that
13 exists in social science?

14 A. It's not something I've seen citations to or a great
15 deal of really any analysis in social science literature;
16 mostly, we're just talking about the shape of the district.

17 Q. Are there other three-way splits of major counties
18 that have previously existed in Missouri?

19 A. Yeah. So if you look at Jefferson County, it has been
20 split three ways in the past.

21 Q. Well, were they just minor splits?

22 A. They weren't. The -- I believe, it was the 2011 map,
23 it was split three ways. It was, like, 20 percent of the
24 population of one district, 30 percent in another district, and
25 then 50 percent in, yet, another district. So this idea of a

1 three-way split, substantial, meaningful split of a county,
2 isn't new.

3 Q. Are there splits across the map?

4 A. There are. We see this in the map that we just showed
5 that highlights the county splits. The -- Boone County is slip
6 right down the middle.

7 Q. Are they always minimal?

8 A. They aren't. So, you know, we have this split in
9 Boone County. You can look and see that Jefferson County, now,
10 is split almost perfectly vertically in that map. So these
11 splits -- this idea of trying to make splits minimal or as small
12 as possible just doesn't seem to pop up.

13 Q. And by "map," you meant the 2022 map?

14 A. Yes. I'm sorry.

15 Q. I would like to shift to a particular expert, starting
16 with Dr. Rodden, and some of your responses to his expert
17 report.

18 In Dr. Rodden's report he suggests that the senate
19 districts cannot provide the basis for splitting Jackson County;
20 do you agree?

21 A. No. So at the end of Dr. Rodden's report, there is a
22 series of sub-county divisions in Jackson -- in Jackson County
23 that Dr. Rodden runs through and says the lines don't match, so
24 this doesn't explain how the district was drawn. And it was
25 really strange to me, because I looked at the state senate lines

1 for Jackson County and they lined up almost perfectly with the
2 enacted map.

3 Q. Let's pull up Figure 9. I believe, it can be found on
4 page 22 of your report, Defense Exhibit 101.

5 What is Figure 9?

6 A. So Figure 9 shows the Jackson County State Senate
7 Districts in black and the congressional districts are
8 illustrated with blue lines.

9 Q. What can we see from this figure?

10 A. Well, the important thing is what you don't see, which
11 is blue lines. And that's because the congressional boundary
12 almost perfectly lines up with the boundary between Districts 8
13 and 11, 8 and 9, and then 7/9. There is one area where about
14 20,000 people are split off at the very top of District 7,
15 that's where you do see the blue lines, but, other than that, as
16 Jackson County gets split that split is following state senate
17 boundaries.

18 Q. What does that mean?

19 A. Well, it means that when Dr. Rodden suggests state
20 senate boundaries don't explain how Jackson County is being
21 split; it just seems wrong to me.

22 Q. So what senate districts are in Congressional District
23 4?

24 A. Those would be 7 and 8.

25 Q. What about District 5?

1 A. Nine and 11.

2 And I should say, most of 7 is in District 4.

3 Q. Let's turn to Figure 10, which is on the next page.

4 What does Figure 10 show?

5 A. So this is the same map, but with the layering order
6 reversed. So now, we see the congressional districts on top in
7 blue and the state senate districts underneath in black. And
8 so, again, that -- you see the blue everywhere and very little
9 black, because those lines are coterminous with each other for
10 the most part.

11 Q. So what does this mean? For example, in terms of the
12 arm jutting up in District 4.

13 A. Well, when you look at District 4 and you see that arm
14 jutting up, it seems weird at first blush, until you see the
15 underlying state senate district and understand that it has that
16 sort of narrow shape to it, as well.

17 Q. Now, Dr. Rodden notes that elsewhere in the map state
18 senate districts are split; what is your response to that?

19 A. Well, again, with Faatz, I have some experience with
20 these state senate districts and that doesn't surprise me,
21 because when you get out to rural Missouri -- or, I guess, there
22 it's "Missour-uh" -- you get these large sprawling districts
23 that cover a vast amount of area. And if the mapmaker out there
24 is focusing mostly on just keeping county boundaries intact,
25 you're going to end up splitting rural state senate districts

1 because the county -- these state senate districts cover
2 multiple -- multiple counties.

3 Q. Well, Dr. Rodden in his report lists a bunch of other
4 lines that the map doesn't follow in Jackson County.

5 How does that reconcile with your observations?

6 A. Well, so if a mapmaker selects the state senate
7 boundaries, that's gonna minimize the extent to which he can
8 follow other boundaries, because, for example, the state
9 assembly lines don't perfectly line up with state senate
10 boundaries. School district lines don't perfectly line with
11 state senate boundaries. So if he's following -- or she, I
12 guess, I don't know -- is following the state senate lines, it's
13 not going to follow these other potential lines, because they're
14 different lines.

15 Q. Now, what about Dr. Rodden's claim that the central
16 business district is split for the first time?

17 A. So that might be true for congressional districts,
18 depending on how you define the central business district, but
19 that doesn't mean it's sacrosanct and never had been split in
20 other areas or other maps.

21 Q. Let's pull up Figure 11, page 24 of your report.

22 What does Figure 11 show?

23 A. So this is zoomed in on the central business district
24 for Kansas City and this is the state house map.

25 Q. Could you have drawn a district that includes all of

1 the central business district here?

2 A. You could've. This -- the central business district
3 has lower population than the ideal population for a state house
4 map. So it didn't have to be split three ways, it's just how
5 the mapmakers drew it. So it's not -- at least, for the state
6 house map -- it's not something they were paying particular
7 attention to.

8 Q. Now, Dr. Rodden shows a lot of other things get split
9 in the enacted map.

10 Do you respond to all of them?

11 A. I didn't. The Census Bureau and Department of
12 Agriculture puts out hundreds, if not, thousands of different
13 data sets for states. Some of which the mapmaker may have paid
14 attention to or been aware of and others they might not have.
15 So I don't know what you take away from the fact that some, you
16 know, that the wheat production is split in a different way than
17 it had to be.

18 Q. Is that why you didn't respond to all of them?

19 A. Yeah.

20 Q. Now, Dr. Rodden suggests a racialized split in the --
21 sorry -- a racialized split in the districts.

22 What is your response?

23 A. So Dr. Rodden notes that Troost Avenue has a racial
24 component to residential patterns in Kansas City. But when you
25 look at how these boundaries appear to be selected within

1 Jackson County, it follows that 7/8 split -- or that -- I don't
2 have my glasses on -- 7/9 split which runs along Troost Avenue,
3 so.

4 Q. What about Dr. Rodden's suggestion that it's unusual
5 to cross the Missouri River?

6 A. Yeah. That was another one that I didn't entirely
7 get, because districts have crossed the Missouri River for a
8 very long time.

9 Q. Doctor Rodden also discusses a metric in his report
10 called district sprawl. Have you ever seen Dr. Rodden's
11 district sprawl metric used in any other case?

12 A. I have not.

13 Q. To your knowledge, has this measure ever been peer-
14 reviewed?

15 A. Not to my knowledge.

16 Q. Are there other peer-reviewed measures of population
17 compactness available?

18 A. Yes. So the kind of go-to for population compactness
19 is the moment of inertia test. It's been used in redistricting
20 since 1960 -- since the mid-1960s.

21 Q. Are there other cases where you and Dr. Rodden both
22 participate in a redistricting case as experts?

23 A. Yes. We were both in a case in California for
24 purposes of the Voting Rights Act -- not Voting Rights Act --
25 for a racial gerrymandering case in California.

1 Q. Did Dr. Rodden use this method of district sprawl in
2 the California case?

3 A. Not in December, he didn't.

4 Q. All right. Let's talk about Dr. Stern now.

5 What was your main critique of Dr. Stern?

6 A. So Dr. Stern has an ensemble of maps and to the extent
7 this is just more examples of how maps could've been drawn in
8 Missouri, I mean, it kind of is what it is. To the extent it
9 just builds on what Dr. Cervas did, you know, the implication of
10 that is just whatever the implication of Dr. Cervas' maps
11 would've been. I mean, some -- a lot of Dr. Stern's maps are
12 very similar.

13 The only difference is kind of how you carve out a small
14 population in Jackson County, but, again, it kind of is what it
15 is. But there's a suggestion in it, when he starts talking
16 about the percentile that the enacted maps fall into. And to
17 the extent that the Court's supposed to draw some type of
18 conclusion about the extremism of the maps based upon what Dr.
19 Stern's ensemble drew, I don't think that's a valid inference to
20 draw at all.

21 Q. Why do you not think it's a valid inference?

22 A. Because, these -- I'm trying to think of how to
23 explain this in -- in English. But these simulation methods
24 that generate the ensembles don't draw from the entire range of
25 maps that could be drawn in Missouri. As a matter of fact, the

1 most extreme maps, they just won't draw. It's not in their
2 nature is kind of the best way to put it. So I mentioned
3 earlier, talking about confidence intervals; that for confidence
4 intervals to be valid, you have to have something that will
5 sample from the full available distribution, right?

6 When you do a poll, it has to theoretically be possible
7 that you would draw every respondent in Missouri from that poll
8 for it to be a good poll. If for some reason it won't talk to
9 any residents of rural Missouri, you're not gonna get a good
10 poll result from it; it's going to be skewed. In the same way,
11 if you have something -- and this is one of the benefits in
12 other contexts of the gerrychain approach -- if it won't draw
13 from the full range of maps -- if it cuts off the most extreme
14 maps just to start with, then you can't draw any inferences
15 about the extremeness of the districts being drawn by the
16 legislature.

17 Q. Does he concede that his program will not draw the
18 full range of maps?

19 A. That's my read, is that -- there's this kind of image
20 in his report of three different types of maps and there's one
21 really ugly map in the middle of it, just an absurd looking map,
22 that doesn't get drawn. Which, when you're doing a political
23 gerrymandering case, like, that's really good because you're
24 trying to imitate what the mapmaker would be doing. But when
25 you're actually trying to test compactness, that's not good;

1 like, you have to be able to draw something like the spaghetti-
2 mander over in Illinois.

3 If you're -- if your ensemble just won't draw something --
4 like the Illinois map because it's not in its nature -- then
5 you're cutting off a whole range of non-compact maps that the
6 legislature might have chosen to draw. And so what you're left
7 with is just -- these districts are less compact than what the
8 computer thinks is a map that it would draw. And I don't know
9 that that really tells us anything, because humans aren't
10 computers.

11 Q. Is it a conscious decision not to draw the maps?

12 A. So as Dr. Stern explains it -- I have no reason to
13 disagree with him -- it's not. It's just something that's in
14 the nature of the redistricting algorithm that doesn't produce
15 extreme maps. Somewhere between that awful map in the middle
16 panel of his map and the least compact map that he's drawn, is
17 where it's just not going to go. And I don't know where it is,
18 but the fact that that line exists somewhere is a problem.

19 Q. And I want to hone in on this; why is it a problem?

20 A. Again, it gets back to this idea that to do -- the
21 whole idea of ensembles is you're trying to pull maps, in
22 essence. You're having a computer draw a lot of maps that
23 would've been available to the mapmaker and then, just like with
24 the poll, you examine statistical -- you do a -- you draw
25 statistical inferences from it. Say, it's extreme, because

1 it's, you know, less Republican than 99.9 percent of the maps.

2 But for that to be a valid inference -- just like the poll

3 has to theoretically be able to talk to everyone in Missouri for

4 it to be a valid inference, otherwise you skew it -- if you're

5 talking about politics, all of the -- all the political maps

6 have to be available and there's actually been a lot of work

7 done to establish that these techniques will draw political --

8 politically available maps. If you're trying to draw

9 conclusions about compactness, though, it has to be able to draw

10 all the non-compact maps, as well as the compact maps.

11 Q. Have you done simulations for political

12 gerrymandering?

13 A. I have.

14 Q. How does what Dr. Stern did compare -- actually, I'm

15 gonna take that back.

16 How did what you did for political gerrymandering compare

17 to what Dr. Stern did in this case?

18 A. So when you do a political gerrymandering case with

19 ensembles, the way you do it is you have the enacted map and so

20 you look at it and you say, Okay. These districts have, like, a

21 Polsby-Popper of .35 and you generate your ensemble and you try

22 to make sure, based on the parameters you put in, that the --

23 that the ensemble is doing what the mapmaker did. That the

24 ensemble that's generated has a similar compactness score to

25 what the mapmaker produced.

1 And if there's other things, you -- if the mapmaker was not
2 crossing county boundaries, you make sure that the ensemble
3 doesn't cross county boundaries. And if the mapmaker wasn't
4 double bunking incumbents, you make sure that the ensemble
5 doesn't double bunk incumbents. Doctor -- and then you can draw
6 your inference, because, you say, Okay. These are all the
7 things the mapmaker cared about, having established that, I can
8 make -- I can start to draw inferences, because I'm going to
9 make sure that my ensemble is doing what the mapmaker could have
10 done if they were blind to politics.

11 The problem is when you're then doing a -- and I see the
12 appeal of trying to do this with respect to compactness -- but
13 we know within the constraints that the mapmaker is bound by
14 that the computer ensemble will draw from a full range of
15 political outcomes. There's a sample of precincts that we know
16 all potential outcomes from and these ensembles are tested
17 against that. What we don't know is whether they'll draw every
18 -- from the full range of Missouri -- of all the compact and
19 non-compact maps that are available. As a matter of fact, Dr.
20 Stern's suggest that it will not, because it won't draw extreme
21 maps, however that's defined.

22 Q. Does Dr. Stern ever define the range of maps that the
23 software just refuses to draw by its nature?

24 A. I don't know if he did that in his testimony, but I
25 didn't see it in the reports.

1 Q. What is your takeaway from that observation?

2 A. So, again, to the extent that Dr. Stern's ensemble is
3 just trying to illustrate other maps that could be drawn under
4 the parameters, you know, fine, that is what it is and it has
5 the same impact as whatever Dr. Cervas' maps would have. But to
6 the extent he's trying to prove that the enacted maps are
7 outliers, it doesn't do that, because, again, this isn't a
8 random sample. This is just the enacted maps are not within the
9 range of whatever gerrychain is going to tend to draw because of
10 its nature and, I guess, it's a legal conclusion how interesting
11 that is but I don't think that's a terribly interesting
12 conclusion.

13 Q. In your opinion, does that limit the significance of
14 his findings?

15 A. It really does. The fact that this -- that the
16 enacted map, one of the districts is in the lower 2 percent of
17 what the computer program draws, well, the computer program by
18 its nature is drawing districts within certain compactness
19 range, so.

20 Q. Thank you very much. I pass the witness.

21 MR. GORE: I have one quick question.

22 THE COURT: Okay.

23 **CROSS-EXAMINATION BY MR. GORE**

24 Q. Good morning, Doctor Trende.

25 A. Morning.

1 Q. I'm John Gore. I represent the intervenor in this
2 case.

3 As I understand, your report, you reported that a total of
4 five counties were split seven times; is that correct?

5 A. Correct.

6 Q. And in a map with eight districts, would you expect
7 that total of seven splits to be the minimum number of splits
8 possible in a plan of eight districts?

9 A. Yeah. So there's actually a paper -- some really good
10 authors -- about the -- it's the M-1 rule; that generally
11 speaking -- and some people have found exceptions to it, where
12 things work out perfectly -- but generally speaking, that you
13 need to have, with one person, one vote, one -- at least, one
14 fewer splits than the number of districts. So if there are
15 eight districts, seven splits is the fewest you can achieve.
16 Like I said, there are outlying examples to the contrary, but.

17 Q. So there might be a plan somewhere where a combination
18 of whole counties just magically lands on equal population; is
19 that your testimony?

20 A. Exactly. There's an example in Montana where you can
21 actually draw perfectly two districts with whole counties but
22 that's the exception.

23 Q. And barring that exception, a plan with eight
24 districts, you would expect to see a minimum of seven times that
25 county was split?

1 A. That's right.

2 Q. Thank you. No further questions.

3 MS. MENG MORRISON: Just for the record, Your
4 Honor. We'd like to move to strike this testimony. This
5 is not anything that Dr. Trende or Intervenors have
6 offered. Doctor Trende was not one of their experts and it
7 wasn't obtained in his expert report.

8 MS. HUNKER: Your Honor, the number of county
9 splits, as well as his analysis, was disclosed in the
10 reports. Also, Counsel had plenty of opportunity to ask
11 Dr. Trende questions about those observations at
12 deposition. I don't believe Missouri case law prevents Dr.
13 Trende from expanding on those observations.

14 THE COURT: I -- I don't know if I completely
15 understand your request to strike.

16 MS. MENG MORRISON: The analysis that he just
17 testified to was not ever disclosed in his expert report.

18 The topic of splits certainly was, but the analysis that
19 Intervenor's Counsel just talked about was not and he's not
20 Intervenor's expert.

21 THE COURT: Well, but they can -- I don't think
22 he has to be their expert for him to testify about a topic.
23 In terms of, you know, Missouri law, I don't know about
24 Missouri law requiring the testimony to be in the report.
25 If there's a discovery question, that's kind of a separate

1 issue, but I don't -- I'm unaware of everything that is in
2 his testimony has to be in some sort of report.

3 I think it's whether or not he's qualified to give
4 testimony on an issue, is certainly the relevant question,
5 and I don't think that's your argument. It seems like your
6 argument is this wasn't, necessarily, spelled out in his
7 report; is that the argument you're making?

8 MS. MENG MORRISON: Yes, Your Honor.

9 THE COURT: Okay. And I don't think -- you all
10 can correct me if I'm wrong as we go forward here -- I
11 don't think that's a requirement that it has to be in his
12 report under Missouri law. I think the relative question
13 is: Is he qualified to give testimony on it? You can
14 certainly cross-examine him about, you know, where that
15 came from and whether he could have put that in his report.

16 But I think the fact that there's the general
17 conversation, at least from my recollection of looking in
18 the report, about counties splits, I don't think that's a
19 bar to the testimony. I think it's stuff you can certainly
20 cross-examine on. So I'm not inclined to strike it from
21 the record.

22 MS. MENG MORRISON: Thank you.

23 MS. HUNKER: Your Honor, that aligns with our
24 understanding of Missouri law, as well.

25 MS. MENG MORRISON: Thank you, Your Honor.

1 THE COURT: Are you ready?

2 MS. MENG MORRISON: Yes.

3 THE COURT: Okay. Go ahead.

4 **CROSS-EXAMINATION BY MS. MENG MORRISON**

5 Q. Good morning, Doctor Trende.

6 A. Good morning.

7 Q. It's nice to meet you in person.

8 A. Good to meet you, as well.

9 Q. Just for the record, my name is Tina Meng Morrison on
10 behalf of the Healey Plaintiffs.

11 Doctor Trende, have you published any peer-reviewed
12 articles?

13 A. Yes.

14 Q. And what was the title of that publication?

15 A. Oh, gosh. I don't remember the exact title of it. It
16 had to do with bellwether counties.

17 Q. So can we pull up demonstrative -- I believe, it's
18 307. And -- yes?

19 MS. KHANNA: Three hundred eight.

20 MS. MENG MORRISON: Three hundred eight?

21 Q. Sorry. Plaintiff's Demonstrative 308.

22 And Dr. Trende, this is an expert report that you submitted
23 in a case in California; is that correct?

24 A. Correct.

25 Q. And could we just put the header for the date that

1 this was submitted to the Court? And this document was filed on
2 December 11, 2025; is that right?

3 A. Correct.

4 Q. So about two months ago?

5 A. Correct.

6 Q. And could we go to the last page and can we zoom in on
7 the publications?

8 So Dr. Trende, is this the publication that you're
9 referring to?

10 A. Yes.

11 Q. And it says, Forthcoming, and it's dated 2022; is that
12 still accurate?

13 A. Yeah. No. That should be updated or should have been
14 updated a while ago. It's been published.

15 Q. And so there are no other publications that you're
16 referring to that is not listed in this CV from two months ago?

17 A. Correct. You asked me if I'd published anything; this
18 is the only thing I've published.

19 Q. And this is a peer-reviewed article?

20 A. Yes. That's my understanding.

21 Q. Can you clarify by what you mean by this is your
22 understanding?

23 A. My understanding -- you're asking me that, I presume,
24 for a reason. My understanding is it's peer-reviewed, but.

25 Q. Doctor Trende, prior to drafting your report you never

1 spoke with any member of the General Assembly about the 2025
2 map; is that right?

3 A. Correct.

4 Q. And you never spoke to the governor or any member of
5 his staff either?

6 A. Correct.

7 Q. In preparing your report, you didn't know what
8 considerations motivated a map drawer, legislators, the
9 governor, or anyone else involved in adopting the 2025 map; is
10 that right?

11 A. Correct.

12 Q. And you have not reviewed any complaints that have
13 been filed in this case when you were preparing your report?

14 A. Correct.

15 Q. You did not review any cases in preparing your report,
16 as well; is that right?

17 A. Correct.

18 Q. Prior to your deposition, you were not familiar with
19 the case *Pearson v. Koster*; is that right?

20 A. Correct.

21 Q. And so in preparing your report, you did not read or
22 review that case?

23 A. Correct. That was just responding to Plaintiff's
24 experts.

25 Q. And, in fact, you did not believe that *Pearson* is

1 relevant to the analysis in this case; is that right?

2 A. Not to mine, because I was just responding to your
3 experts.

4 Q. And so, just to clarify, you didn't believe that
5 Pearson was relevant to your response to our experts in creating
6 your report; is that right?

7 A. Correct. I was just responding to their analysis.

8 Q. You were never asked to analyze whether certain
9 districts in the 2025 map were closely united territory; is that
10 right?

11 A. Only in so far as I'm responding to your experts who
12 are attempting that analysis.

13 Q. And so as you just mentioned, in putting together your
14 report in this case, you said that your task was to respond to
15 Plaintiff's experts; including Dr. Rodden?

16 A. Correct.

17 Q. Now, I just want to hand you a binder that contains PX
18 27, so that you have it in front of you and this is Dr. Rodden's
19 report. It's quite a large binder.

20 A. Thank you.

21 Q. Yep. And there are tabs so you should be able to
22 find --

23 A. Which number?

24 Q. PX 27.

25 A. Okay.

1 Q. So I'm gonna ask you about several portions in the
2 report and it's available for you to flip through or consult if
3 you need to.

4 Dr. Rodden's report analyzes the congressional
5 redistricting history of Kansas City from the 1800s to present-
6 day. You offer no response or opinion about his analysis on
7 this topic, correct?

8 A. I think the maps are accurate representations of what
9 the district lines are.

10 Q. You don't dispute Dr. Rodden's analysis of how Kansas
11 City grew based on those maps either?

12 A. Correct.

13 Q. You do not dispute Dr. Rodden's analysis of how
14 congressional district lines in the Kansas City area have
15 changed over time?

16 A. Correct.

17 Q. You also don't respond to or dispute any of the
18 historical population data offered in Dr. Rodden's Figures 4, 5,
19 and 6, right?

20 A. Correct.

21 Q. Doctor Rodden also examines a metric called core
22 retention; is that right?

23 A. Correct.

24 Q. And you're familiar with that term?

25 A. Yes.

1 Q. It's something that experts use in redistricting
2 commonly in their examinations?

3 A. Yes.

4 Q. But you offer no opinion on core retention in your
5 report; is that right?

6 A. Correct.

7 Q. You don't dispute Dr. Rodden's numbers that he
8 calculated?

9 A. That's right.

10 Q. Doctor Rodden also examines population density in
11 Missouri's congressional maps; you offer no opinions on this
12 topic either?

13 A. I think that's right.

14 Q. In fact, you don't offer any alternative ways of
15 looking at population density either?

16 A. I don't calculate any, but I think I testified that
17 the peer-reviewed way to do it would be the moment of inertia.

18 Q. The phrase, "moment of inertia," however, doesn't
19 appear anywhere in your report; is that right?

20 A. That's correct.

21 Q. And so you don't offer any analysis under the moment
22 of inertia in your report?

23 A. I don't. That's right.

24 Q. Doctor Rodden also examines various demographic
25 factors, such as, renter and owner-occupied housing, transit

1 patterns, occupational sectors; is that something you recall?

2 A. Yes.

3 Q. And you do not offer any opinions on these topics
4 either, right?

5 A. Correct.

6 Q. Now, Dr. Rodden also presents an analysis called
7 district sprawl, which you just discussed with Counsel.

8 You don't offer any opinion on the metric as he's defined
9 it in his report, correct?

10 A. Yeah. I've never heard of it before, so I don't have
11 a very well developed one.

12 Q. And so you don't dispute any of his calculations that
13 he presents under district sprawls?

14 A. Oh, that's correct.

15 Q. Are you familiar with the term medium population
16 center in your work as an expert?

17 A. If that's the centroid, then, yeah.

18 Q. And have you used it to analyze other maps in other
19 cases?

20 A. Yeah. The population centroid is usually the basis
21 for some type of sprawl metric.

22 Q. But you didn't use that concept in your report in this
23 case; is that right?

24 A. That's correct.

25 Q. Doctor Trende, your report -- which I believe you have

1 in front of you, as well -- first begins by discussing several
2 compactness scores that you discussed with Counsel earlier.

3 You would agree that all of these metrics are based on the
4 physical shape and size of a district; is that right?

5 A. That's right.

6 Q. Now, if we could pull up your report which is DX 101;
7 is this your report?

8 A. It appears to be.

9 Q. And, I believe, just for the record, this is the
10 original report you submitted and not the amended report that
11 came a couple of days later that fixed one scrivener's error; is
12 that right?

13 A. That's right.

14 Q. So if we could go to page 6 of your report.
15 Can you please read the highlighted sentences?

16 A. Plaintiff's experts discuss two commonly used
17 compactness measures in their reports, Reock and Polsby-Popper.
18 I add two more, Convex Hull and IKIWISI scores. These are
19 probably the most commonly used compactness measures, but,
20 importantly, they are but a sample of dozens of metrics that
21 have been proposed over the years. In other words, there is no
22 one compactness measure, rather, different measures emphasize
23 different aspects of what we might consider compact.

24 Q. So in your report, Dr. Trende, you examined
25 compactness scores on these four metrics, correct?

1 A. Correct.

2 Q. But, as you say, there are dozens of other metrics
3 that you don't examine?

4 A. Correct.

5 Q. And you're not offering any opinion in your report or
6 today on the stand about which of these metrics is the best
7 measure of compactness, right?

8 A. I don't really think -- I mean, I think one of the
9 inferences from this -- I don't really think there is a best
10 measure. They all emphasize different things.

11 Q. So -- and I believe you testified to this earlier -- a
12 district that scores poorly on one compactness metric can score
13 better on another compactness metric, right?

14 A. Correct.

15 Q. And so depending on which metric you choose, one could
16 come away with a different understanding about the compactness
17 of any given district?

18 A. That's right.

19 Q. In your report you look at whether there are districts
20 from a variety of different maps that score lower than District
21 5 in the 2025 map on these four compactness metrics, right?

22 A. Correct.

23 Q. Is it your opinion that a district is compact so long
24 as it scores higher than one or more other comparator districts?

25 A. I don't know if I actually go that far, because I

1 think that starts to get into the job of the Court, to determine
 2 what's compact and what's not compact. It's -- the idea is just
 3 that they fall within a range of maps that have been accepted or
 4 used in Missouri in the past.

5 Q. So was the guiding principle in your report that if it
 6 falls within a range then a district is compact?

7 A. I think if it falls within -- I think it's useful that
 8 it -- to determine whether or not it falls within the range of
 9 maps that have been used before. It's something that the map
 10 drawers can draw upon certainly, but there may be exceptions. I
 11 don't -- I don't know.

12 Q. And when you refer to a range of compactness metrics,
 13 as we just discussed, districts can score differently on each
 14 metric. So is the range any number across any of the metrics
 15 that you look at?

16 Can you just describe that a little bit more? So that I
 17 can understand.

18 A. No. I think if it falls within -- I think when you
 19 get into this universe where it starts to fall outside some of
 20 them or even outside all of them, the inquiry becomes more
 21 demanding. But as I understood it, this district falls within
 22 the range for all four of these measures.

23 Q. In your report, you report average compactness scores
 24 for the 2011 map, the 2022 map, the 2025 map, as well as the
 25 current house and senate maps; is that right?

1 A. I think I also did the average scores going back to
2 '72.

3 Q. Yes. I believe, that's correct, and if you would like
4 pull up the table --

5 A. No. No. I'm pretty sure that's right.

6 Q. You would agree that a statewide average can mask the
7 existence of highly non-compact districts in a given map; is
8 that right?

9 A. Sure. That's why you want to do it both ways.

10 Q. So you list out the districts that are less compact
11 than the District 5 -- than District 5 in the 2025 map, correct?

12 A. Correct.

13 Q. But you don't actually list out the districts that are
14 more compact than District 5 in that map; is that right?

15 A. Right. Because, the idea is to see if it falls within
16 the region and if so, if there are districts on the lower end,
17 then it falls within the range of what's been enacted.

18 Q. But you haven't flagged the top end of that range in
19 your report; is that right?

20 A. Right. Because, I don't think that's relevant. I
21 think you're only looking to see whether it falls within range
22 of what's been used in Missouri before. And, like I said, since
23 we have an actual census, it's not a sample that's been drawn.
24 The percentile just isn't that interesting.

25 Q. You don't report the lowest or highest compactness

1 metrics for an individual district in the 1972, 1982, 1992, or
2 2002 maps, correct?

3 A. That's correct. Doctor Rodden went and did that.

4 Q. Doctor Trende, you report out the raw number of county
5 splits within the 2022 and 2025 maps?

6 A. Correct.

7 Q. But other than the pictures that you produced on, I
8 believe, pages 20 and 21 of your report, you offer no analysis
9 of any of these county splits; is that right?

10 A. Right. It's the count of county splits.

11 Q. So you would agree your report itself does not look at
12 how many individuals are impacted by any of the county splits
13 that you report?

14 A. Yeah. Yeah. I testified in my deposition about, for
15 example, the split of Jefferson County, and we produced the code
16 for that to Plaintiffs. So for example, Jefferson County had
17 been split three ways before with a 20/30/50 split.

18 Q. And Dr. Trende, you would agree that different
19 counties have different population densities, right?

20 A. Correct.

21 Q. So depending on where a county is split, that split
22 can either impact a sparsely populated or a densely populated
23 area?

24 A. Sure.

25 Q. But you're not offering any opinions about the impact

1 of the type of county split or whether the district is in a
 2 closely -- on whether the district is a closely united
 3 territory?

4 Let me repeat that question for you.

5 A. Please.

6 Q. You are not offering any opinions about the impact of
 7 the type of county split on whether a district is a closely
 8 united territory; is that right?

9 A. Correct.

10 Q. Now, I'm going to ask you about Dr. Rodden's rebuttal
 11 report; which, if you need to refer to is PX 28.

12 A. Okay.

13 Q. You do not dispute any of Dr. Rodden's calculations of
 14 Jackson -- Jackson City residents excluded from the CD5 under
 15 the 2012, 2022, and 2025 maps, right?

16 A. Correct.

17 Q. You also analyze municipality splits in Jackson County
 18 and Clay County in the 2022 and 2025 maps, right?

19 A. Correct.

20 Q. And just like with the county splits, you only look at
 21 the raw number of splits in each plan; is that right?

22 A. Yeah.

23 Q. And similar to counties, you would agree that
 24 municipalities have different population densities, as well?

25 A. Right. But because it's not splitting any of the

1 jurisdictions, we know that the enacted map doesn't impact any
2 of that.

3 Q. Sorry. Could you clarify that?

4 Are you saying no municipalities are split under the 2025
5 map?

6 A. No. We're talking about the Jackson County splits
7 that are in my report and what I calculated, at least, that was
8 my understanding.

9 And so with respect to the municipalities illustrated in my
10 report, the enacted map doesn't split them. To the extent
11 they're split -- so there is some of the analysis you suggest,
12 actually -- to the extent it splits those municipalities, it's
13 where the cross-county splits exist and the cross-county
14 portions of those municipalities are unpopulated.

15 Q. So you just referenced portions of municipalities that
16 are unpopulated. In your report, do you offer any analysis
17 about how many individuals are impacted by where the splits
18 currently exist under the 2025 map?

19 A. Well, yeah. Because, the only way those
20 municipalities I discussed are split are unpopulated splits.

21 Q. And can you point to where you mentioned that in your
22 report?

23 A. Sure.

24 On page 26, there are cross-country splits for Sugarcreek
25 and -- sorry -- there are cross-county splits for Sugarcreek and

1 Independence, but these are unpopulated.

2 Q. And can you just describe how this relates when -- in
3 talking about cross-county splits with municipalities?

4 A. Well, so the idea is that these municipalities are
5 generally made whole under the enacted map, but when you look at
6 Figure 13, you can see a portion of Independence that is, in
7 fact, cut by the map; it kind of sticks out at the bottom. And
8 so I looked at that cross-county split -- there's a similar one
9 for Sugarcreek, where it goes into Clay County -- and I looked
10 at the split and the split is in an unpopulated portion of the
11 city.

12 Q. Now, Dr. Trende, I believe earlier in your testimony
13 today you had said that you had never heard of a social
14 scientist analyzing how district splits affect people living in
15 the district; is that right?

16 A. I don't think I was asked anything. No. I don't
17 think so.

18 Q. Have you heard of social scientists analyzing district
19 splits by looking at the number of people impacted?

20 A. I actually don't know if that -- if I've seen that in
21 peer-reviewed literature or not.

22 Q. Have you seen it in any of your expert work?

23 A. I don't know.

24 Q. You do not dispute any of Dr. Rodden's calculations in
25 his rebuttal report about the impact of municipality splits in

1 Jackson County; is that right?

2 A. I don't think so.

3 Can you point me to that? I just want to double check.

4 Q. Sure. Page 12 of his report.

5 A. I'm assuming you got me in the deposition answering
6 that, so I'm inclined to agree, but.

7 THE COURT: Which page 12?

8 MS. MENG MORRISON: PX 28, Your Honor.

9 THE COURT: Okay. Thank you.

10 A. Yeah. Okay. So I see that on page 12 and he's
11 talking about Kansas City. So, no, I don't dispute his
12 calculation.

13 Q. Doctor Trende, you also examined the extent to which
14 the 2025 map follows senate district lines, right?

15 A. Correct.

16 Q. But you have no opinion on whether you believe a
17 senate district is a political subdivision?

18 A. Yeah. That's right. I mean, one thing that I've
19 learned in state court cases is that process and definitions
20 change radically from state to state, sometimes in ways you
21 wouldn't expect. I never would've expected in New York a civil
22 case was a beyond a reasonable doubt standard, so I don't know
23 how Missouri defines political subdivisions.

24 Q. But you would agree that unlike county and
25 municipality lines, state senate district lines can change every

1 10 years just like congressional district lines; is that right?

2 A. Oh, sure. Yeah.

3 Q. You do not dispute that under the 2022 map, CD5 splits
4 three state senate districts, right?

5 A. Correct.

6 Q. So you also don't dispute that under the 2025 map, CD5
7 splits eight state senate districts?

8 A. Correct.

9 Q. You don't dispute that in prior maps only three or
10 four additional state senate districts were added to District 5;
11 is that right?

12 A. Yeah. That, I don't know, so I -- I don't dispute it.

13 Q. So when you were looking at senate splits in your
14 report, you only focused on the Jackson County area?

15 A. Well, right, because, on page 37, there's a -- this
16 report, there's a zoom-in for Jackson County. And Doctor Rodden
17 is suggesting it doesn't follow the state senate boundaries, and
18 I look at the blow up of Jackson County and it pretty clearly
19 does, so I thought that was worth pointing out.

20 Q. And just for the record, you're looking at PX 27, not
21 28; is that right?

22 A. That's right. Sorry. Page 37 of PX 27.

23 Q. So you did not look at how district lines --
24 congressional district lines correspond with county splits in
25 any other part of the state; is that right?

1 A. That's right. The focus of Dr. Rodden's report has
2 been on -- generally been on Jackson County and that's what I
3 spent most of my time on.

4 Q. But earlier in your report, when you presented
5 statewide compactness metric averages, there you were looking at
6 the entirety of the 2025 map, right?

7 A. Correct.

8 Q. And Dr. Trende, you would agree that you did not
9 examine the extent to which the 2022 map adheres to state senate
10 district lines in any part of the state?

11 A. Correct. I'm responding to Dr. Rodden suggestion on
12 page 37 of his report, that it doesn't follow any type of
13 boundary within Jackson County, because it looks like it follows
14 the state senate boundaries pretty closely. I'm just responding
15 to Dr. Rodden.

16 Q. Doctor Rodden puts forth the calculation of how many
17 residents are carved out of the dominate portion of the state
18 senate districts under the 2022 and 2025 maps; you don't dispute
19 any of those calculations, right?

20 A. I don't dispute any of Dr. Rodden's calculations.

21 Q. Now, Dr. Trende, in your report wherever you state
22 you're asked to do a certain thing, you said that that indicates
23 that those analysis were suggested to you by Counsel; is that
24 right?

25 A. Yes.

1 Q. So based on that, according to your report, Counsel
2 asked you to run the compactness scores that you report?

3 A. Correct. Well, I don't think they selected the
4 compactness measures, but they asked to run compactness scores,
5 yes.

6 Q. And when you mean "compactness measures," you mean of
7 the Polsby-Popper? Reock?

8 A. Right. It was a general analysis I was asked to
9 undertake, but they weren't saying, you know, These are the
10 measures you shall use.

11 Q. Counsel also asked you to provide the statewide
12 average compactness scores for different maps?

13 A. Correct.

14 Q. Counsel asked you to calculate the average compactness
15 metrics for congressional districts going back to 1972?

16 A. Correct.

17 Q. Counsel also asked you to count up the number of
18 county splits across the 2020 -- 2012 and 2022 maps; is that
19 right?

20 A. Yes.

21 Q. As well as municipal splits for those maps?

22 A. Correct.

23 Q. Counsel asked you to produce a map highlighting county
24 splits in the 2022 and 2025 maps?

25 A. Correct.

1 Q. And Counsel pointed out to you that the MKC Airport is
2 now in District 6; is that right?

3 A. Right.

4 Q. You did not look into what impacts might otherwise
5 exist with municipal splits under the 2025 map because Counsel
6 did not ask you to, right?

7 A. Generally -- well, no, because, I'm also -- I was also
8 asked generally to respond to Plaintiff's experts. But,

9 generally the role of an expert is to answer questions that the
10 Court would find helpful. The lawyers know the law much better
11 than I do, so if there are suggestions on things -- on questions
12 to answer, if I can answer them honestly, I'll answer them.

13 Q. So your failure to look at how municipal splits -- the
14 impacts of municipal splits under the 2025 map, that decision to
15 not look into it, was discretionary on your part?

16 A. I suppose I could've.

17 Q. But it wasn't something you were asked to do?

18 A. That's right.

19 Q. You also did not look at how the 2025 map follows
20 state senate district lines elsewhere in the state, because

21 Counsel did not ask you to, right?

22 A. No. You make that sound like it's a -- it was a
23 conscious choice; if they don't ask me to do something, I'm just
24 not going to do it, because there are lots of things in
25 responding to Doctors Rodden and Cervas and Stern that weren't

1 directly suggested by Counsel.

2 Honestly, the main constriction on this report was that, I
3 believe I got your reports December 22 and the response was due
4 January 7, which was a day I was testifying in a case, so I got
5 done what I could get done. But I was -- there was never
6 anything, Don't do anything we don't ask you to do.

7 Q. And you also didn't look at state senate district
8 lines in the 2022 map, because Counsel did not ask you to,
9 right?

10 A. Can you ask me that again?

11 Q. You didn't look into how state senate district lines
12 in the 2022 map follow state district lines -- apologies. Let
13 me rephrase.

14 You also did not look at how the congressional lines in the
15 2022 map follow state senate district lines, because Counsel did
16 not ask you to, right?

17 A. No. That would have nothing to do with it, because
18 the idea of looking how state senate lines correspond with the
19 enacted map was from reading Dr. Rodden's report and responding
20 to it; that had nothing to do with Counsel. That was probably
21 just a limitation on how much time I had writing this over the
22 holidays.

23 Q. Doctor Trende, when you testify as an expert in
24 litigation you don't report to offer legal opinions; is that
25 right?

1 A. I do my best. I mean, you do enough VRA cases, for
 2 example, and you kind of understand at least some of the
 3 parameters of what you're allowed to do legally, but I try to
 4 stay away from it.

5 Q. Would you agree that experts are often required to
 6 operate under legal assumptions or understandings in order to
 7 carry out their examination in a case?

8 A. Sometimes you're given an assumption or an
 9 understanding of the law. For example, I've done, under the VRA
 10 population -- I'm imagining this will come up at some point --
 11 population compactness analysis. Where the appropriateness of
 12 it depends entirely on what the interpretation of compact within
 13 the meaning of the VRA is. So if I'm told to just assume
 14 population compactness is important and how do the compactness
 15 analysis, okay. And if the Court disagrees with the legal
 16 interpretation, they disagree, and the analysis is unhelpful.

17 Q. In the course of your expert work over the years, have
 18 you familiarized yourself with case law in order to understand
 19 how a given jurisdiction might evaluate certain metrics for
 20 redistricting?

21 A. Well, so, again, when -- when you're doing a lot of
 22 expert work, for example, in the VRA. Okay. I know *Gingles I*
 23 requires the minority group to be 50 percent plus one of the
 24 population, that's just something you learn along the way. And
 25 in federal court, you know, I teach some of these cases in my

1 class, so I have a pretty good understanding of how the law
2 works.

3 In state court, I mean, there's -- you have 50 states that
4 all do these things differently. One thing I learned from
5 practicing law, is that you don't shoot from the hip on what
6 state court -- on what the law is in a jurisdiction. You spend
7 a lot of time researching it and running it to ground, so I'm a
8 little more cautious there.

9 Q. So if we could pull up Plaintiff's Demonstrative 309.

10 Now, Dr. Trende, this is an expert report you submitted in
11 a case in the Central District of California; is that right?

12 A. Right.

13 Q. And if I could go to page 21 -- page 6 of your report.
14 Doctor Trende, you said, I'm aware of case law from the Ninth
15 Circuit suggested that CVAP is the proper measure.

16 Did I read that correctly?

17 A. Correct.

18 Q. And if we could pull up Demonstrative 30 -- 310. This
19 is also an expert report you submitted in a case in the Middle
20 District of North Carolina; is that right?

21 A. Correct.

22 Q. Can we go to page 20 in your report?

23 Doctor Trende, can you, just, repeat that -- can you, just,
24 read the heading of this subsection?

25 A. Yeah. And so real quickly on the last question and

1 then I will do this. But, to give a fuller answer, I have been
2 the -- as I mentioned earlier -- I've been the VRA expert
3 counsel for the Arizona Redistricting Commission on the VRA. So
4 I have a pretty good understanding of Ninth Circuit case law as
5 it relates to the VRA. Again, that's one of those areas where
6 you pick things up and I had a unique experience there.

7 Now, on this is, As a threshold matter, the
8 substantive --

9 Q. Sorry. Not to cut you off -- just the heading.

10 A. The Rodden report overstates the Court's ruling in
11 *Cooper*.

12 Q. Can you finish the rest of that?

13 A. Oh.

14 *V. Harris and Alexander v. South Carolina Conference of the*
15 *NAACP*, regarding the county envelope approach.

16 This is another one where I specifically say I'm not
17 telling the Court how it needs to rule on the law. I'm going
18 through expert reports in cases I was involved in and saying
19 what it was the experts had done, which is different from how
20 Dr. Rodden had interpreted it. I mean, I was the expert in
21 *Alexander*.

22 Q. So just to be clear, *Harris* and *Alexander* are two
23 court cases; is that right?

24 A. Yeah. They're federal racial gerrymandering cases.
25 They're cases that I teach in class, so I understand those cases

1 very well.

2 Q. And can we go to the last paragraph on this page?

3 Can you just read the first three sentences here?

4 A. Yeah.

5 At the same time, interpreting *Harris* is crucial for
6 structuring the response here. The Rodden report proceeds under
7 one interpretation of *Harris* and *Alexander* -- again, this is
8 relating to how the experts are supposed to do their work -- I
9 have a very different understanding of those cases having
10 reviewed the record, because that different understanding
11 affects the way I structure my report and because I would be
12 reluctant to criticize the county envelope method had it fully
13 been briefed and cleanly ruled upon as the Rodden report
14 suggests. I describe my understanding below.

15 Q. And you proceed to then, describe your understanding
16 of the *Harris* and *Alexander* cases; is that right?

17 A. Right. So as they ruled on evidentiary issues
18 regarding the county envelope approach, I was the expert in
19 *Alexander*. I'm pretty sure Dr. Rodden got it wrong and I'm
20 pretty -- I'm comfortable stating that for a sort of unique
21 Missouri compactness analysis, as may be or closely united
22 territory, I'm not gonna testify on what that means without
23 doing a lot of research -- the type of research I've done for
24 federal court. I'm just not gonna do it; that's basic
25 lawyering.

1 Q. Can we go to page 23 of your report? And can you just
2 read the --

3 THE COURT: I'm sorry. I just want to be clear,
4 you're talking about page 23 of the demonstrative that your
5 showing?

6 MS. MENG MORRISON: Correct. Still the same
7 demonstrative. I believe it's 310, Your Honor.

8 Q. Can you just read the first sentence here?

9 A. The trial court opinion spends little time on the
10 county envelope report.

11 Q. And can we jump to the next section titled 5.1.5
12 Supreme Court ruling?

13 And could you read the first three sentences here?

14 A. Sure.

15 The Supreme Court does not appear to have directly ruled
16 upon the validity of the county envelope approach, either in
17 *Harris* or in *Alexander*. In fact, the Supreme Court was not
18 asked to rule directly on the merits of the county envelope
19 approach in *Harris*. *Harris* went to the Court on an abuse of
20 discretion standard, as the appellee's attorneys made clear.

21 Q. And on the following page, page 24 of Demonstrative
22 310, can we go to the last paragraph in -- before subsection
23 5.1.6? And can you just read the three -- first three sentences
24 here?

25 A. The Supreme Court's opinion in *Cooper v. Harris*,

1 attached as Exhibit 9, does not weigh the pros and cons of the
2 county envelope approach. Instead, it concludes that the
3 evidence cleared the bar of clear error review. The closest the
4 Court came to commenting on the methodology was in a footnote,
5 where the majority observed that registered voting data could be
6 preferable to Doctor Hillfellers -- or Hofeller's response on
7 the -- reliance on the 2008 presidential election -- that is a
8 long sentence -- because the 2008 election involved a Black
9 presidential candidate.

10 So, again, this is a situation where Dr. Rodden had said
11 the Supreme Court had indorsed his approach. I was involved as
12 the expert in a case that he was citing and I knew exactly what
13 the record was and how the Supreme Court had dealt with it in
14 previous cases. I'm comfortable putting all that evidence
15 before the Court with the sentence that we haven't talked about
16 saying, I'm not trying to do the legal analysis for the Court,
17 this is just -- this is just stuff that's left out of Dr.
18 Rodden's opinion.

19 I'm not going to opine on the meaning of a Missouri State
20 Constitutional provision without doing extensive research on the
21 case law in Missouri. I don't know that off the top of my head,
22 like I do this stuff.

23 Q. You said that you were an expert in *Alexander*; was
24 your expertise related to the prior case law that that case
25 depended on?

1 A. I believe so, yeah. That's how I knew this.

2 Q. So you were --

3 A. I mean, the Supreme Court -- the Supreme Court cites
4 me in *Alexander*.

5 Q. So you were certified as an expert to offer legal
6 opinions in *Alexander*?

7 A. No. No. I wasn't certified as an expert to offer
8 legal opinions here either.

9 Q. You were not an expert in *Harris*, though; is that
10 right?

11 A. I'm trying to remember, because there's a weird thing
12 -- the first case I did was *Dickson v. Rucho* and it lost in the
13 state court and then it got brought -- almost the identical same
14 complaint -- in federal court. And I can't remember if -- and I
15 didn't do the federal case, but I had done the state case, and I
16 don't remember if that was *Covington* or *Cooper v. Harris* that
17 was the revived state case. I just don't remember.

18 Q. Could we pull up what we'll mark as Demonstrative 311?
19 This is an expert report you submitted in a state court case
20 called, *Republican Party of New Mexico v. Oliver*; is that right?

21 A. Correct.

22 Q. And if we go to page 7, can you read the sentence that
23 starts, The first principal?

24 A. Sure.

25 The first principle on which this report relies is one that

1 all nine justices agreed upon in *Rucho*. Judges should not be
 2 striking down maps left, right, and, center on the view that
 3 every smidgen of politics is a smidgen too much.

4 It's a nice quote from a case that I teach that is meant to
 5 reassure the Court that the idea behind the political science
 6 techniques is not to exclude everything that a jurisdiction
 7 might implement.

8 Q. Were you an expert involved in *Rucho*?

9 A. Yes.

10 Q. Can you read the sentence on the same page that
 11 starts, Second?

12 A. Second, Justice Kagan identifies a three-part test for
 13 measuring a gerrymander: intent, effects, and causation.

14 Q. And can we go to page 9? Can you read this sentence?

15 A. Yeah.

16 Justice Kagan also endorsed a more qualitative analysis
 17 noting that in the *Lamone v. Benisek* case arising out of
 18 Maryland, which was consolidated with the *Rucho* case for
 19 purposes of appeal, the plaintiffs lacked the North Carolina
 20 Plaintiffs fancy evidence.

21 Q. So Dr. Trende, is it fair to say that you've seen fit
 22 to review case law in order to guide your expert analysis in
 23 both federal and state court cases?

24 A. Well, they're all federal cases and they're cases that
 25 I've been involved in that I teach in class and that I know

1 well. And in that circumstance, I'm comfortable saying, Yeah.
 2 That -- this is how the Court's approached things to try to
 3 illustrate.

4 There is no -- there is no way that any lawyer would appear
 5 in court and shoot off about some type of state law provision
 6 without having done extensive research, which I just didn't have
 7 the time and authorization to do here.

8 Q. But, just to be clear, this expert report in this case
 9 is a state court case?

10 A. Well, sure. But the State Supreme Court had endorsed,
 11 literally, endorsed Justice Kagan's dissent as what was going to
 12 guide the definition of a gerrymander and I know Justice Kagan's
 13 dissent very well.

14 Q. And so you reviewed the New Mexico Supreme Court cases
 15 to know that they had adopted this?

16 A. Yes.

17 Q. But you've reviewed no Missouri case law or Missouri
 18 Supreme Court cases for your work in this case; is that right?

19 A. That's right.

20 Q. Thank you, Dr. Trende. I'll pass the witness now to
 21 my colleague, representing the Wise Plaintiffs.

22 MR. CHEUNG: Your Honor, is this time for a
 23 break? Or --

24 THE COURT: We can take one if you'd like.
 25 That's fine.

1 MR. CHEUNG: I'm also happy to start whenever.

2 THE COURT: No. We can take one. That's fine.

3 It's -- let's see -- 10:09, let's try to start at -- well,
4 we'll say 10:25, just plan on one break for the morning.

5 Okay. Thank you.

6 (COURT WAS IN RECESS.)

7 THE COURT: All right. Welcome back, everybody.

8 Looks like you're ready to begin.

9 MR. CHEUNG: Thank you, Your Honor.

10 **CROSS-EXAMINATION BY MR. CHEUNG**

11 Q. Good morning, Doctor Trende.

12 A. Good morning.

13 Q. My name is Ming Cheung. I'm from the ACLU, and I
14 represent the Wise Plaintiffs in this case.

15 A. Good morning.

16 Q. And I'm sorry for inadvertently referring to you as
17 "Mr. Trende" earlier. I had seen you testify and -- that's,

18 obviously, another case in South Carolina -- and I think at that
19 time you were still under the "Mr." title.

20 A. I'm not offended.

21 Q. I apologize.

22 Based on your exchange with Ms. Meng Morrison earlier, I
23 take it that you did not affirmatively assess whether the 2025
24 congressional districts consist of closely united territory in
25 this case?

1 A. Certainly, not directly. If -- if the testimony I
2 give is relevant to that question, then, I guess, it's built-in,
3 but I didn't do any research to what that means in Missouri.

4 Q. Okay. And so you've not provided any opinion on
5 whether CD4 under the 2025 plan consists of closely united
6 territory?

7 A. Only in so far as I'm responding to Plaintiff's
8 experts.

9 Q. And the same for CD5?

10 A. Same for CD5.

11 Q. And you've not offered a definition of closely united
12 territory that's different from what Plaintiff's experts have
13 used in this case?

14 A. I haven't offered any definition, no.

15 Q. You've reviewed Dr. Ari Stern's additional and
16 rebuttal reports in this case; is that correct?

17 A. Correct.

18 Q. You don't dispute any of the calculations in either of
19 Dr. Stern's reports?

20 A. That's right.

21 Q. And you don't dispute the reliability of any data that
22 Dr. Stern used?

23 A. The data itself, that's right; the interpretation is
24 where we have a disagreement.

25 Q. And you don't dispute the way that Dr. Stern defines

1 and describes the various compactness metrics in his reports?

2 A. Not that I can recall.

3 Q. Okay. You also did not dispute the data or
4 calculations provided by Dr. Jonathan Cervas?

5 A. Correct.

6 Q. And the same for Dr. Cromartie?

7 A. Correct.

8 Q. Doctor Stern used a ensemble analysis in this case; is
9 that correct?

10 A. Correct.

11 Q. You sometimes refer to an ensemble analysis as a
12 simulation analysis?

13 A. Correct.

14 Q. And you've conducted ensemble or simulation analyses
15 yourself?

16 A. Correct.

17 Q. For instance, you did that in a Maryland partisan
18 gerrymandering called *Szeliga v. Lamone*?

19 A. Correct.

20 THE COURT: I'm sorry. Can you spell that for
21 us?

22 MR. CHEUNG: Sure. Szeliga is S-Z-E-L-I-G-A;
23 Lamone is L-A-M-O-N-E.

24 Q. You also conducted an ensemble analysis in the New
25 York partisan gerrymandering called *Harkenrider v. Hochul*?

1 A. Correct.

2 Q. Harkenrider, H-A-R-K-E-N-R-I-D-E-R; Hochul is H-O-C-H-
3 U-L.

4 In the *Harkenrider* case you created an ensemble of 5,000
5 maps; does that sound right?

6 A. There were multiple ensembles. I think the expert --
7 the opposing expert complained about the number of observations
8 being too small, and so in the reply we -- I can't remember --
9 we did more.

10 Q. In your rebuttal you did another 35,000; does that
11 sound right?

12 A. I believe you.

13 Q. Okay. And you've written in the past that ensemble or
14 stipulation analyses are widespread in political science?

15 A. Yes.

16 Q. And you've also written that ensemble or stipulation
17 analyses have been accepted by multiple courts?

18 A. Yes. I believe you.

19 Q. And you specifically used a ReCom algorithm before in
20 your own work?

21 A. I have.

22 Q. And so, in general, you would agree that the ReCom
23 algorithm is a reliable way to draw maps for an ensemble
24 analysis?

25 A. Yes.

1 Q. In your amended report in this case, you describe the
2 ReCom algorithms natural preference for compactness as a, quote,
3 soft preference; is that right?

4 A. I believe you.

5 Q. And you would agree that Dr. Stern could have pushed
6 his algorithm to draw even more compact maps than those that
7 appear in his ensembles?

8 A. That's my understanding.

9 Q. But he did not do so?

10 A. Correct.

11 Q. And similarly, Dr. Stern did not push the algorithm to
12 draw the maximally compact districts possible?

13 A. That's my understanding.

14 Q. And in your report, you also stated that if Dr. Stern
15 had required his ReCom algorithm to draw less compact maps, he
16 would have produced more maps that looked like the enacted map?

17 A. I think that's right, yes.

18 Q. But generating maps that look like the enacted map
19 would not be a useful comparison; would you agree?

20 A. Well, I agree, but maybe not for the reason you

21 suggest.

22 I don't think it's useful, because, even if you push the
23 compactness down, it's still not gonna be a complete random
24 sample of what's available and all it tells you is that the
25 enacted map falls within a given range of what the algorithm's

1 been told to do.

2 Q. But you would agree that if the question is to
3 determine whether the map could've been drawn in a more compact
4 manner, you would have to compare that map to more compact
5 possibilities?

6 A. Yes. So to the extent that Dr. Stern is doing the
7 computerized version of what Dr. Cervas did, like I said, I
8 think it is what it is.

9 Q. Earlier, you described an extreme map that appeared in
10 Dr. Stern's rebuttal report as an example of a map created by
11 the SLIP algorithm; do you recall that?

12 A. I thought it was in his rebuttal.

13 Q. Yeah.

14 A. What tab -- do you know what tab it is?

15 Q. Twenty-two.

16 A. All right.

17 Q. And we can pull up exhibit -- Exhibit 22?

18 Do you recognize this as Dr. Stern's rebuttal report?

19 A. Yes.

20 Q. Can we turn to page 11 of the exhibit?

21 THE COURT: I think you may have said it, but
22 this is Exhibit 22, as well?

23 MR. CHEUNG: Yes.

24 A. Ten?

25 Q. Eleven.

1 A. Okay.

2 Q. Or, I mean, it's 11 of the PDF but page 10 of the
3 numbering of the report.

4 A. Okay.

5 Q. The map in the middle labeled B, is the extreme map
6 that you were describing, right?

7 A. Right.

8 Q. And you described this map as "absurd"?

9 A. Yes.

10 Q. Do you believe that a legislature would enact an
11 absurd looking map like this one?

12 A. That's probably more extreme; although, increasingly,
13 our maps seem to be pushed towards that in some of the states.
14 But that would be beyond what's been enacted, so somewhere
15 between that and what we see in Panel C, the map -- the
16 algorithm tends not to draw.

17 Q. Yeah. But you would agree, you have not seen a map,
18 in your experience, that looks like the staticky map in the
19 middle?

20 A. That's right.

21 Q. And earlier, I believe you testified that it's
22 important for an algorithm to be able to theoretically sample
23 from the range of possibilities -- a full range of
24 possibilities?

25 A. Correct.

1 Q. Is it your understanding that the ReCom algorithm has
2 a hard compactness cut off at some point where the map won't be
3 drawn? As opposed to, more extreme maps, simply, being less
4 likely to be drawn?

5 A. If you drew it an infinite amount of time it would
6 maybe draw this. But, the point is that there is a tendency --
7 in what this was meant to illustrate -- there's a tendency for
8 it to draw more like what you see in C.

9 Q. Yes. But you agree that a map like B is theoretically
10 possible to obtain from the algorithm?

11 A. I suppose, it's theoretically possible, but the point
12 is -- so I now remember the pop culture reference we were
13 talking about from my deposition at the break. There is an old
14 Rush song that has a line that, If you choose not to decide, you
15 still made a choice.

16 The fact that he hasn't put in a parameter, a thumb on a
17 scale one way or other, doesn't mean that there's not a default
18 type of map that it draws and its preference, because of the way
19 it draws things, unlike the flip approach, is what you see in C.

20 Q. As you said, it's a tendency, not a hard cut off; is
21 that right?

22 A. I don't know if it would actually ever draw something
23 like B, one way or the other, but the preference for this is for
24 C. And so what you get with the ReCom algorithm is a sample
25 that looks like the default preferences of the ReCom algorithm,

1 not necessarily what a human being would attend to draw. It's
2 just not interesting.

3 Q. Earlier, you also testified about some of Dr. Stern's
4 maps being conceptually similar; do you recall that?

5 A. Yeah.

6 Q. And you have drawn duplicate maps when you've run
7 simulations in the past, correct?

8 A. Sure.

9 So if you're sampling from a distribution about -- just
10 like if we were sampling adult male heights in the US, you would
11 get a lot of 5'11"s -- but the fact that it repeats isn't a
12 mathematical problem. It's more to illustrate I think when you
13 tell someone for the time there's 100,000 maps, the default
14 understanding is 100,000 configurations, and that -- we -- if
15 one precinct is different, it's going to count it as a different
16 map.

17 So that's not a mathematical critique of what Dr. Stern has
18 done. It's more of a understanding, from a lay perspective,
19 what it is these ensembles are and aren't doing.

20 Q. You would say that drawing a set of 100,000 is, in
21 part, intended to address the possibility of duplicates and non-
22 representative samples?

23 A. That's right.

24 So one of the ways -- at least -- so there's a competing
25 approach I tend to use more called "re-discs" and it will

1 actually flag an error if you get too many duplicates. And so
 2 one of the ways to address that is to increase the number of
 3 maps drawn. Again, I'm not saying -- and if I was unclear on
 4 this, I didn't mean to be.

5 This isn't meant to be a mathematical or methodological
 6 critique of Dr. Stern. It's just trying to make clear what it
 7 is these algorithms are doing. That when it says 100,000 maps,
 8 that doesn't necessarily mean 100,000 unique maps or 100,000
 9 radically different maps; it can just mean precincts flipped.

10 Q. And in the past when you've drawn ensembles, you are
 11 almost certain that some duplicative plans would appear; is that
 12 right?

13 A. Oh, yeah. Yeah.

14 From a methodological perspective, when you're doing
 15 statistical inference, the duplicates are actually beneficial.

16 Q. And in those cases, you did not always know what
 17 percentage of your computer generated maps were duplicates?

18 A. That's right.

19 Q. And when you've run simulations in the past, you do
 20 not set the algorithm to achieve perfect population equality; is
 21 that right?

22 A. That's right.

23 Q. And it's your opinion that you can, nonetheless, draw
 24 conclusions from the results of those simulations?

25 A. Yeah. So for partisanship, which is how I've

1 typically run them, if you have a district of 700,000 people
2 that is off the ideal population by 1,000, there's literally no
3 way that moving around 500 people or whatever to make it
4 perfectly populace, is going to change the partisanship of that
5 district in a meaningful way. So I don't worry about it there.

6 Q. And what levels of population deviation tolerance have
7 you used in your own work?

8 A. I think it's typically 1 percent.

9 Q. Plus or minus 1 percent?

10 A. I don't remember.

11 I think we had a dispute about that in Utah. So I don't
12 remember if it's plus or minus 1 percent or 1 percent total.

13 Q. So either plus or minus 1 percent?

14 Or plus or minus half a percent?

15 A. Yes.

16 Q. What other levels of population tolerances have you
17 seen in other experts' simulations or ensembles work?

18 A. So in the Utah case, Joey Chen was drawing them with
19 his algorithm with zero population deviation. The -- Joey
20 Chen's 2013 report or article on it, I think, it was maybe 5
21 percent so it's varied.

22 Q. You're aware that Dr. Stern's ensemble only changed
23 the boundary line between CD4 and CD5; is that right?

24 A. That's my recollection.

25 Q. And that means the lines outside of that CD4 and CD5

1 boundary would be kept identical to the rest of the 2025 plan?

2 A. That's my understanding.

3 Q. On page 27 of your report, you provided a potential
4 justification for why the Kansas City airport should be kept in
5 CD6; is that right?

6 A. Yeah.

7 Q. Under Dr. Stern's maps, the airport will always be
8 kept in CD6?

9 A. Correct.

10 Q. And, I believe you testified earlier, that you have
11 not spoken with any legislators in Missouri about the 2025 plan?

12 A. Correct.

13 Q. And your report does not identify any other
14 considerations that legislatures may have had that are not
15 accounted for in Dr. Stern's ensembles?

16 A. Correct.

17 Q. You also testified earlier, that the split of Jackson
18 County follows state senate boundaries, particularly, the
19 boundaries between Senate District 7 and Senate District 9; is
20 that right?

21 A. Yeah. I think I -- if I ever said that categorically
22 it should be largely, but, yes.

23 Q. But you're aware that Senate District 7 has a three-
24 way split between CD4, CD5, and CD6?

25 A. Right.

1 Q. And that's within Jackson County?

2 A. Correct.

3 Q. When you were conducting that analysis, did you
4 consider if Senate District 9 was drawn the way it was because
5 of a need to comply with Section 2 of the Voting Rights Act?

6 A. No.

7 Q. And do you believe that CD4 or CD5 under the 2025 plan
8 was drawn to comply with the Voting Rights Act?

9 A. I'd be surprised.

10 Q. Earlier, I believe you also testified about KC 811; do
11 you recall that?

12 A. I'm sorry. What?

13 Q. You testified about two geographic areas labeled KC
14 811.

15 A. Oh, the precincts; yes, or VTDs.

16 Q. Those VTDs are both labeled KC 811 but have two
17 different GEOIDs?

18 A. Correct.

19 Q. Have you reviewed the text of HB1 enacting the 2025
20 districts?

21 A. I think I did the outset of the case, but not since.

22 Q. HB1 does not identify geographic areas by GEOID; is
23 that right?

24 A. Correct.

25 Q. And as you say in your report, you're not comfortable

1 opining on the amount of discretion that agency officials have
2 to decide how to assign those two areas labeled KC 811?

3 A. Not at all.

4 You're right. I did say that. I'm not at all comfortable.

5 Q. Thank you. Dr. Trende, are you familiar with the
6 concept of cracking?

7 A. Yes.

8 Q. In the context of redistricting?

9 A. Yes.

10 Q. What does "cracking" mean?

11 A. Cracking means splitting up a group.

12 Q. And what is the effect of splitting up a group?

13 A. Well, it depends -- and this is one of the problems
14 with the concepts of cracking and packing -- because, sometimes
15 it's suggested that you want to split up a group to maximize
16 their impact on multiple districts; sometimes it's suggested you
17 don't want to split a group because the desire of one side or
18 the others is to maximize their impact.

19 Q. But you agree that if a group is split it tends to
20 have less opportunity or less certainty of electing their
21 preferred candidate as opposed to not cracking them?

22 A. I -- I understand what you're getting at. I just
23 can't agree with that so completely, because sometimes the
24 suggestion is you want the group split across multiple
25 districts, so that the member would be responsive to them,

1 multiple members would be responsive. So, like, sometimes --
2 you want -- if there's no particular reason you would want Army
3 bases in multiple jurisdictions, so that you have multiple
4 members of Congress fight for them.

5 Q. But, within a district, more people tends to translate
6 into more electoral influence?

7 A. Can you try that again?

8 Q. Within a given district more people tends to translate
9 into more electoral influence?

10 A. Again, I don't know that's right, because sometimes a
11 suggestion in cases is that you want to split up, say, a
12 minority group across multiple districts instead of putting them
13 into one. So, again, just the way you're wording these
14 questions, I don't think I -- I get what you're getting at, but
15 I don't think I can agree. This transcript's gonna follow me
16 for the rest of my life, so I have to be careful. Sorry.

17 Q. You do have a lot of transcripts following you.

18 A. I imagine we're gonna see some examples of this.

19 Q. Cracking in an urban population can divide their
20 voting power in your experience?

21 A. Cracking an urban -- it can, yes.

22 Q. I believe you testified earlier that your report
23 looked at four compact -- compactness metrics?

24 A. Correct.

25 Q. And that's Reock, Polsby-Popper, Convex Hull, and the

1 I Know It When I See It scores.

2 A. Correct.

3 Q. And you testified earlier that all four were designed
4 to measure physical shape and size?

5 A. Correct.

6 Q. So those four do not account for whether a district is
7 following natural boundaries?

8 A. Correct.

9 Q. And they do not account for population or population
10 density?

11 A. Correct.

12 Q. You did not look at the Schwartzberg score, because it
13 would be duplicative of the Polsby-Popper score?

14 A. Yeah. It's the square -- I think it's the square root
15 of the inverse with the Polsby-Popper's score.

16 Q. So if an expert in this case analyzed compactness
17 based only on Reock, Polsby-Popper, and Schwartzberg, you would
18 say that expert, essentially, analyzed two compactness scores
19 and not three?

20 A. There's some differential between Polsby-Popper and
21 Schwartzberg, but, for me, they're duplicative and I don't see
22 -- I used to do both and I don't anymore.

23 Q. As part of your analysis of those compactness metrics
24 you compared the 2025 map to the 2012 map?

25 A. Correct.

1 Q. You would agree that the 2012 map was drawn using data
2 collected from the 2010 census?

3 A. Correct.

4 Q. The 2022 map was drawn using data collected from the
5 2020 census?

6 A. Correct.

7 Q. And same for the 2025 map?

8 A. Correct.

9 Q. The population data from the 2010 census would be
10 different from the population from 2020 census?

11 A. Correct.

12 Q. You also analyzed average compactness scores for
13 Missouri Congressional Districts going back to 1972?

14 A. Correct.

15 Q. And each of those maps would've been drawn using
16 population data from their preceding census?

17 A. Correct.

18 Q. And you would agree that the population in Missouri
19 has changed over time?

20 A. Yes.

21 Q. People also move over time?

22 A. Yes.

23 Q. And are you aware that Missouri has been losing
24 congressional seats over time?

25 A. Yes.

1 Q. Following the 1970 census, Missouri had ten
2 congressional districts?

3 A. That's right.

4 Q. And it currently has eight?

5 A. Correct.

6 Q. And in the 80s, 90s, and 2000s it had nine.

7 A. Yes. Yes.

8 Q. You also compared these compactness scores for the
9 2025 map to the state senate and senate -- and the state house
10 maps in Missouri; is that correct?

11 A. Correct.

12 Q. And as you acknowledged earlier, there's a different
13 number of state senate districts and state house districts in
14 the state versus congressional districts?

15 A. Correct.

16 Q. There are 34 state senate districts in Missouri?

17 A. That sounds right.

18 Q. Do you recall how many house districts there are?

19 A. A lot.

20 Q. One hundred sixty-three; does that sound --

21 A. I was gonna say 168 so, good.

22 Q. You'd agree that if you were dividing Missouri into
23 163 districts versus 8 districts, the size and shape of each
24 district would be different?

25 A. Yeah. So if you're doing an area based measure

1 compactness, you would get a -- that isn't relative to itself by
 2 changing the shape of the area of the circle around it -- you'd
 3 get something different. If you were looking at the total areas
 4 of the districts.

5 Q. And the metrics you used, some of them are based on
 6 area, right?

7 A. Well, yes. But the shape of the district shape or the
 8 area of the bounding circle is proportional to it. If you have
 9 a square that is one square mile and a square that's a thousand
 10 square miles, the Reock scores will be identical. The -- two
 11 identically shaped districts, regardless of their area, will
 12 have the same Reock score, so it's not sensitive to area that
 13 way.

14 Q. But the size of the districts would be different?

15 A. Yeah.

16 Q. And you also understand that different constitutional
 17 standards govern congressional redistricting versus house's and
 18 their redistricting in a state?

19 A. Yes.

20 Q. There are more requirements in the state legislature
 21 redistricting context?

22 A. Yes.

23 Q. And in your report, you rely on average compactness
 24 scores across historical plans?

25 A. In part.

1 Q. And you would agree that a maps average statewide
2 compactness score can mask the existence of highly non-compact
3 districts?

4 A. Sure. That's why I started out by looking at all the
5 districts and listing them. Doctor Rodden has come back and
6 done a complete analysis for 70s -- going back to '72 and I
7 don't think it is inconsistent with any of my analyses.

8 Q. So in looking at individual districts, you testified
9 earlier that you looked at one specific district in the St.
10 Louis area that was particularly unusual looking?

11 A. Yes.

12 Q. Do you recall which house district that was?

13 A. No.

14 Q. Does 76 sound right?

15 A. I'll believe you.

16 Q. Other than looking at House District 76, did you look
17 at any other districts to analyze whether any local or specific
18 factors explain the shape of that district?

19 A. No.

20 Q. For House District 76 in the St. Louis area, you
21 testified that part of the border is the Mississippi River; is
22 that right?

23 A. I think that's right.

24 Q. Following natural geographical lines, like a river,
25 can impact geometric scores like Polsby-Popper; is that right?

1 A. Yeah. But that one doesn't score poorly on Polsby-
2 Popper. It scores poorly on Reock; which isn't -- which isn't
3 sensitive to geographic boundaries like that.

4 Q. I'm saying, as a general matter.

5 A. Well, yeah. For Polsby-Popper, you're right.

6 Q. And did you conduct a Section 2 analysis to determine
7 if House District 76 was required to be drawn that way because
8 of federal law?

9 A. It's a uniformly democratic area where the Black
10 candidate of choice is going to win no matter what, so it
11 doesn't matter.

12 Q. But did you conduct that analysis?

13 A. Yes.

14 Q. And you determine that it's a majority Black district?

15 A. I believe it is a majority Black district, but I think
16 is -- I would actually agree with many of your counsel on this
17 -- that the Voting Rights Act doesn't require a specific target,
18 a racial target, even of 50 percent for the actual district
19 that's drawn. In other words, the Voting Rights Act doesn't
20 require cross-over districts, but you can satisfy it versus
21 cross-over districts.

22 Q. So in that area, if that house district did not
23 provide an opportunity for Black voters to elect a preferred
24 candidate that would be a Voting Rights Act violation?

25 A. Correct.

1 Q. Going back to state senate district for a minute.

2 Doctor Trende, you had testified that state senate district
3 boundaries were a potential explanation for the boundary between
4 CD4 and 5 in Jackson County; is that right?

5 A. Correct.

6 Well, it was more -- Doctor Rodden had said it doesn't
7 follow state senate boundaries and I don't think that's correct.

8 Q. The boundary between CD4 and CD5 extends far outside
9 of Jackson County in the 2025 map, right?

10 A. Correct. But Doctor Rodden had a specific blow --
11 again, this is a response report to Dr. Rodden, and so he has --
12 oh, boy -- PX 27, page 37. Yeah. He has a specific blow-up of
13 the Jackson County area. So that's -- since he's focusing on
14 it, I focused in on it.

15 Q. But you agree that the boundary between CD4 and CD5
16 goes beyond Jackson County?

17 A. Yes.

18 Q. It goes all the way out to Pulaski County?

19 A. I believe you.

20 Q. It extends to rural counties and a central part of the
21 state?

22 A. Yes.

23 Q. And along the way it splits Miller County from Camden
24 County?

25 A. I'm sorry?

1 Q. It splits Miller County from Camden County?

2 A. I'll believe you.

3 Q. Benton county from Morgan County?

4 A. Again, I'll believe you.

5 Q. In other words, the boundary now extends across the
6 state splitting what was once a largely rural district?

7 A. Well, it doesn't go all the way across the state, 6
8 does that. And if you're referring to 4 -- the previous version
9 of 4, that is split. I don't know if 3, if the old 3, which,
10 kind of, went from St. Louis to rural areas then back around to
11 the St. Louis suburbs and split that -- I don't know if that
12 would've been considered a rural district or not.

13 Q. And as I believe you stated in your report, you don't
14 consider whether the 2025 map respects senate district
15 boundaries outside of Jackson County?

16 A. Correct.

17 Q. And if you were to do that you would find, as Dr.
18 Cervas notes in his rebuttal, that the 2025 map splits a greater
19 number of senate districts than the 2022 map?

20 A. Yeah. Again, it doesn't surprise me that as you get
21 into rural areas -- if you're adhering to county lines -- that
22 you end up splitting more senate districts that way.

23 Q. Doctor Trende, you testified earlier that you are not
24 offering an opinion in this case on whether a given district is
25 compact; do you recall that?

1 A. Correct.

2 Q. But you have opined on compactness of districts in
3 other cases?

4 A. Yeah; Voting Rights Act cases.

5 Q. And in your direct with Ms. Hunker, I think you've
6 acknowledged taking a few hits in your career as an expert
7 witness?

8 A. Oh, yeah.

9 Q. Do you recall how many cases have criticized or
10 questioned your analysis?

11 A. No.

12 Q. More than a half-dozen cases?

13 A. I think I've done 50, so I'd believe that.

14 Q. More than a dozen?

15 A. I don't know.

16 Q. And you previously analyzed compactness in a 2022 case
17 in Maryland State Court regarding the state's legislative
18 redistricting?

19 A. Oh, that's right.

20 Q. That case involved a challenge under Maryland's
21 Constitutional compactness requirement?

22 A. Yeah. I didn't give an opinion. I didn't give an
23 opinion, period. All I did was list out Polsby-Popper and Reock
24 scores and draw some maps, because that's what I was I asked to
25 do.

1 Q. And according to the Maryland State High Court, your
2 testimony attempted to have the Court assess the degree to which
3 the challenged districts deviated from what one might expect
4 for a compact district; does that sound right?

5 A. I don't -- that sounds familiar. I don't -- yes. I
6 believe you, that that's what the opinion says.

7 Q. And you tried to show that the challenged districts
8 were not compact by comparing the compactness scores to the
9 score of districts from around the country?

10 A. I don't remember, but I believe you.

11 Q. The state court found that your comparisons, quote,
12 Were not those that would have been helpful, closed quote; is
13 that right?

14 A. Again, I'll believe you.

15 Q. The Court also responded to your analysis by saying,
16 quote, It seems odd to compare the shapes of the districts in a
17 state like Maryland, which, itself, resembles a paint splatter
18 that someone half heartily tried to wipe up, with districts in
19 the many states that are relatively rectangular in shape.

20 A. Yeah. So this is one where I -- yes, I got that
21 opinion. I tried a similar argument in the Alabama case and the
22 Court decided it liked comparisons to other states. But, here,
23 I just compared to within Missouri, precisely, because it's a
24 fair point the Court made there about doing cross state
25 comparisons.

1 Q. The Court also criticized your work because you,
2 quote, Did not do anything other than compute and compare
3 compactness scores, closed quote. And, quote, Provided no
4 opinions for analysis of the other districting factors, closed
5 quote, set forth under the Constitution.

6 A. That's right. All I was asked to do in that case was
7 to compact -- was to calculate compactness scores and draw some
8 maps, and so that's what I did.

9 Q. And, ultimately, the Court found that your, quote,
10 Number crunching had the appearance of rigger, but contributed
11 little to meeting the petitioner's burden.

12 A. Sure. Yeah. I like to think I've learned from that
13 case.

14 Q. You also testified in a redistricting case in
15 Washington State called *Soto Palmer v. Hobbs*?

16 A. Yes.

17 Q. And in that case, the Court criticized the data
18 visualization you made as misleading?

19 A. Yeah. And I don't -- that one, I don't understand
20 because on the next -- I agree with what the Court said about

21 the data visualization. It doesn't show what the Court
22 suggested it shows, but there's a table on the next page that
23 provides that information.

24 I agree, you can't use a map to show the number of people
25 that are impacted.

1 Q. You also testified in a Louisiana redistricting case
2 called *Nairne v. Ardoin*?

3 A. Right.

4 THE COURT: Can --

5 MR. CHEUNG: Yeah.

6 THE COURT: *Soto Palmer v. Hobbs*, I think we're
7 okay on, but can you help me with this one?

8 MR. CHEUNG: Sure. N-A-I-R-N-E; A-R-D-O-I-N.

9 THE COURT: Thank you.

10 Q. And in *Nairne*, you offer an opinion on rather a
11 district is reasonably compact under the *Gingles* framework for a
12 Section 2 case?

13 A. I think *Nairne*, was about population compactness, not
14 the compactness of the district, itself. As a matter fact, that
15 was the entire dispute.

16 Q. But regardless, the Court described your compactness
17 analysis as, quote, Fundamentally flawed and completely useless?

18 A. Well, it's not regardless, because in that case I was
19 doing a population compactness analysis. The Court found that
20 you can use district compactness, which are the numbers we're
21 talking about here, more or less as a proxy for population
22 compactness. And I hate to say it, but I kind of agree that if
23 you're going to use district compactness shape as the proxy for
24 population compactness, it's useless to do a population
25 compactness analysis. The Court's right, under those

1 circumstances.

2 Q. The Court also described you as having relied on a
3 novel approach referred to as the moment of the inertia to
4 measure compactness.

5 A. Correct.

6 THE COURT: I'm sorry, a what approach?

7 MR. CHEUNG: Novel.

8 THE COURT: Novel approach. Okay.

9 Q. The Court also goes on to say, Trende admits that the
10 moment of inertia has never been employed in a redistricting
11 case and that the methodology does not produce entire districts
12 or maps and does not consider traditional redistricting
13 principals.

14 A. Correct.

15 Q. You also recently testified in a Utah congressional
16 redistricting case?

17 A. Correct.

18 Q. You are also the map drawer retained by the Utah
19 Legislature in that --

20 A. Correct.

21 Q. --in that case?

22 A. Correct.

23 Q. And then you served as an expert in that case?

24 A. That's right.

25 Q. The Utah State Court invalidated the map that you

1 drew.

2 A. Correct.

3 Q. And the Court found that the map you drew violated the
4 State's prohibition on partisan gerrymandering?

5 A. Correct. And under the standards the Court ended up
6 adopting, that's probably right.

7 Q. And the Utah State Court said that you, quote,
8 Generally, admitted the many errors in his report and in
9 analysis he conducted as part of the legislative process. The
10 sheer number and magnitude of these errors, however, gives the
11 Court pause and leads the Court generally to give little weight
12 to Dr. Trende's analysis.

13 Does that sound right?

14 A. I believe you.

15 MR. CHEUNG: No further questions, Your Honor.

16 THE COURT: Okay.

17 MS. HUNKER: Can you give me one second, Your
18 Honor?

19 THE COURT: Sure.

20 **RE-DIRECT EXAMINATION BY MS. HUNKER**

21 Q. Doctor Trende, did you testify in the *Faatz* case?

22 A. Yes.

23 Q. You were an expert in that case?

24 A. That's right.

25 Q. And did you testify on behalf of the State?

1 A. I did.

2 Q. Was that in defense of the maps?

3 A. Yes.

4 Q. And was that case based in Missouri?

5 A. It was.

6 Q. Did that case involve Missouri's compactness
7 requirement?

8 A. It did.

9 Q. And did it involve the requirement that the map be as
10 compact as may be?

11 A. I think that's right.

12 Q. Did the trial court in that case find your testimony
13 helpful?

14 A. Yes.

15 Q. And did it cite your -- did the trial court cite your
16 testimony and -- as grounds for its opinion?

17 A. Yes.

18 Q. And do know if that case was upheld by the Supreme
19 Court of Missouri?

20 A. It was.

21 Q. And do you know if the Supreme Court of Missouri cited
22 your expert report, as well?

23 A. Yeah. There's a -- I think, it just refers to me as
24 the expert, but there was only one expert for the defense and
25 that was me.

1 Q. And did that opinion by the Missouri Supreme Court
2 also confirm that your testimony was helpful?

3 A. Yes.

4 MS. HUNKER: No further questions, Your Honor.

5 THE COURT: Okay.

6 MR. GORE: No questions for Intervenor.

7 THE COURT: Go ahead.

8 MS. GAMBHIR: None from --

9 THE COURT: Sorry. You're both lined up there.

10 MS. GAMBHIR: Yep.

11 THE COURT: No questions for the Healey

12 Plaintiffs?

13 MS. GAMBHIR: No, Your Honor.

14 MR. CHEUNG: No questions, Your Honor.

15 THE COURT: All right. Thank you. You can step
16 down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. If you'd like to call
19 your next witness.

20 MS. HUNKER: Yes. The State Defendants will be
21 calling Mr. Shawn Kieffer. He's coming into the courtroom
22 now.

23 THE COURT: If you can please raise your right
24 hand.

25 **Shawn Kieffer,**

1 having been sworn by the Court testifies as follows:

2 THE COURT: Thank you. Have a seat, please.

3 THE WITNESS: Thank you.

4 **DIRECT EXAMINATION BY MS. LANSDELL**

5 Q. Good morning, Mr. Kieffer. Thank you so much for
6 being here for today. I know we met very briefly in the
7 hallway, but I am Madeline Lansdell, counsel for the state
8 defendants.

9 Would you please state your name and spell your name for
10 the record?

11 A. My name is Shawn Kieffer; S-H-A-W-N, K-I-E-F-F-E-R.

12 Q. Thank you. I am going to ask you a few questions
13 about your background to provide the Court with some reference
14 for your testimony.

15 Will you tell us a bit about your current occupation?

16 A. I am the director of elections for the Kansas City
17 Election Board. It's a bipartisan position that I share with --
18 with another person.

19 Q. And is this the only role that you've held at the
20 Kansas City Election Board?

21 A. No. Prior to that, for the first 20 years of my
22 career there, I was the finance manager. I handled all the
23 accounting and finance transactions. At the 20th year my boss
24 had left and they moved me up to the director position. I've
25 been there 18 and a half years.

1 Q. And how many redistricting cycles have you seen during
2 your tenure as director?

3 A. I've been directly involved in a few of 'em, 2012, and
4 the 2022, and then we had a couple others that just dealt with
5 the Kansas City School District. So I'd say probably four to
6 five of 'em.

7 Q. And how many of those would you say involved
8 congressional redistricting?

9 A. Two.

10 Q. Would you tell us what the Kansas City Board of
11 Elections does?

12 A. Yeah. We do a lot of things.

13 We -- first of all, we conduct all the elections in the
14 Kansas City portion of Jackson County. Do everything from
15 recruit judges; I do the registration for all the different
16 voters; we do absentee. We train poll workers. We find poll
17 worker. We find polling places. We program the computers. We
18 test the computers. We do administrative duties, of course,
19 just, everything a manager would do for a place of employment.

20 Q. And are these responsibilities part of your role as a
21 director of the Kansas City Elections Board?

22 A. Yes.

23 Q. Thank you. Before we turn to what your role is in
24 implementing new redistricting plans, I want to ask a few
25 questions about this year's election cycle.

1 How many elections is your office responsible for this
2 year?

3 A. We anticipate having three elections; April 7, I
4 believe, August 4, and one in November. I'm not sure about the
5 November date right now.

6 Q. That's all right. I'm going to have Keith pull up
7 Exhibit DX 114. Do you recognize this exhibit?

8 A. Yes. This is the Missouri election calendar.

9 Q. And could you tell us about the different deadlines
10 associated with the August 4th primary?

11 A. Okay. The big one -- well, we have one that comes up
12 next week, where candidates file; that starts on the 24th I
13 think it ends on March 31. And, but they do that down in Jeff
14 City. The big date that we're looking for is May 26, that's
15 when everybody's supposed to turn in their certifications into
16 us on exactly what they want on the ballot, but that's the big
17 date for us.

18 Q. And you just explained a little bit about what the
19 candidate filing period is, but would you expand on that a
20 little bit? What is the candidate filing period?

21 A. That's where people that want to run for office or
22 statewide office or federal law, they go to Jeff City to the
23 Secretary of State's Department and they would file at that
24 place; that's basically what I know about that.

25 Q. In your experience, have you observed candidates

1 making decisions on whether to run for office based on district
2 lines?

3 A. Yes; I have no solid proof. It's just -- it's just
4 part of the business, that people look and see who they'd be
5 running against and see what kind of chances they would have,
6 that's my opinion, the way I see that.

7 Q. And, in your experience, how does changing district
8 lines impact congressional candidates?

9 A. Just people are, of course, they're looking to see who
10 they'd be running against and if they think they have an
11 opponent that they would -- put them in a favorable spot, then
12 they may want to run in a particular district. So, yeah, that's
13 the big thing of it.

14 Q. And if those lines change, they may alter their
15 decisions?

16 A. It could.

17 Q. Thank you. I -- we can take this down. I want to
18 turn to the certification deadline for the August 4th primary.
19 You mentioned that on that date you all receive certification.
20 Can you explain a little bit more about what it is your

21 office receives from the Secretary of State?

22 A. Okay. First of all, we know that we're gonna have
23 three entities, at least, participate in that election. One,
24 being the City, one being the County, and one being the State of
25 Missouri. So those are the three certifications I'm looking

1 for. Other people can jump on that election, they generally
2 don't but they can, because it's a primary election. They
3 generally hold their questions till November. So we anticipate
4 three entities coming on. They will give us a list of
5 candidates and questions that they want us to put on the ballot.

6 Q. And once you receive that certified candidate list,
7 what steps does your office take to administer an election?

8 A. We start by deciding what polling places we want to
9 use. Of course, all the lines, sort of, dictate what ballot
10 styles go to what particular areas. Based on how many people
11 that you have in a particular precinct, we'll decide on how many
12 polling places we need for that election.

13 Q. And could you tell us about the process that your
14 office goes through to design the ballots for -- for your
15 jurisdiction?

16 A. Yeah. We design our ballots based on our actual
17 polling places. So for this particular election, that we're
18 havin' in April, we have -- I think, we have 70 roughly polling
19 places. So I have 70 different ballot styles. Everybody that
20 goes to that particular polling place generally votes on one
21 ballot; however, we can't have multiple ballots at a particular
22 poll.

23 Q. And after the ballots are prepared does your office
24 perform any logic or accuracy testing?

25 A. Yes. Yes. Every different ballot style is tested to

1 make sure it tabulates correctly.

2 Q. Is this testing done prior to printing the ballots?

3 A. Yes.

4 Q. And how long does it usually take to print the
5 ballots?

6 A. Probably, a couple weeks, I'd guess.

7 Q. Okay. So two weeks-ish?

8 A. Yeah. Probably, two to three weeks.

9 Q. Two to three weeks.

10 Can your office make changes to the ballots after they've
11 been printed?

12 A. We could, but it would be very expensive for it. In
13 excess of, probably, \$100,000.

14 Q. So it would be difficult for your office to make these
15 changes?

16 A. And expensive, yes.

17 Q. When must the ballots, after they've been printed, be
18 distributed to voters?

19 A. Generally we distribute ballots with the election --
20 with the other election equipment the week prior to election

21 day. It could go up to just a couple days before; however, it's
22 usually the week before.

23 Q. Is there a 45-day requirement for ballots in, ballots
24 out?

25 A. The 45-day requirement is actually the military

1 portal, where we have to have a portal set up -- a matter-a-
2 fact, tomorrow is actually the day for the April election that
3 our portal has to be ready -- and anybody from the military can
4 access our portal and bring their ballot down and vote on it and
5 send it back to us.

6 Q. So the ballots need to be completed by this date?

7 A. Yes.

8 Q. And the -- for the general public, when do ballots
9 need to be available?

10 A. For absentee voting --

11 Q. Yes.

12 A. -- that would be at the 42-day mark, so next Tuesday
13 for the April election.

14 Q. And is that 45-day mark and the 42-day mark, are those
15 legal requirements?

16 A. Yes.

17 Q. We've discussed a lot of different responsibilities
18 that your office goes through to accomplish before printing
19 these ballots. We talked about preparing the ballots, you said,
20 over 70 for the -- is that for the April -- the 70, is that for
21 the April election? Or is that --

22 A. Yes.

23 Q. -- for the August?

24 A. No. That's just for the April.

25 Q. How many do you anticipate for the August election?

1 A. It could be several hundred, maybe, up to five or six
2 hundred, because we'll have different parties and each party
3 will have their own ballots. So a particular polling place,
4 depending on the number of parties, we might have up to five or
5 six different ballot styles.

6 Q. So for preparing that massive number of ballots and
7 accuracy testing all of them, how long does that need to be done
8 ahead of the 45-day mark for the military portal?

9 A. We start probably two to three weeks prior to that 45-
10 day mark.

11 Q. And can your office make changes to the ballots once
12 they've been distributed to voters?

13 A. No.

14 Q. Let's shift -- let's shift gears and discuss a little
15 bit how your office implements redistricting plans, including
16 House Bill 1.

17 A. Okay.

18 Q. When the legislature enacts new congressional
19 districts, what are the responsibilities of the Kansas City
20 Elections Board?

21 A. Well, we have to change our lines. We -- first, we
22 have to actually download our shapefiles. Then, we layer new
23 lines over our old map to see where we have split precincts,
24 then we determine exactly how many people we have to move over
25 from -- in this case, it'd be from Congressional District 5 to 6

1 and 4 -- then we have to make those changes, could be up to
2 100,000 people. Then, after that, then we got to change our
3 maps, because now we'll -- since we have four split precincts,
4 every single map -- which, we have about, probably, about 11
5 different maps have to change.

6 Then, we have to go into our tabulation equipment and make
7 sure all those changes are into our tabulation equipment. And
8 then, also whenever we make a change into our MCVR, we have to
9 send out new voter ID cards to every single voter that was
10 affected, and then we canvas those cards.

11 Q. And how -- you talked about your office assigning
12 voters to different districts.

13 How does your office do this?

14 A. We do it based off -- on lines. We have all these
15 different set of lines from the City, the County, the State,
16 federal lines, school district lines. They will all come
17 together and form precincts, those will be our boundaries. And
18 then, we assign the different precincts according to whatever
19 race is being run and those are actually the ones that are
20 assigned to that particular ward and precinct that votes on that
21 ballot.

22 Q. You mentioned shapefiles, has your office received the
23 shapefiles for the new redistricting plan, the 2025
24 congressional plan, from -- have you all received them?

25 A. Yes.

1 Q. And who did you receive them from?

2 A. The Secretary of State's Office.

3 Q. Was this the first time that you had viewed the
4 shapefiles?

5 A. No. Prior to the trial, we went on the State of
6 Missouri website and we downloaded those same files. Not
7 knowing those were actually the ones were going to be used, but
8 we just wanted to get some type of jump on it, sort of, seeing
9 what we had in store for us, and so we did download those same
10 exact files from their website.

11 Q. To do some preliminary work?

12 A. Yes.

13 Q. I want to wrap up by asking a few questions about your
14 review of those files.

15 First, are -- those files that you downloaded to review,
16 where they the same as were delivered to you from the Secretary
17 of State?

18 A. Yes.

19 Q. And are you familiar with voting tabulation districts?

20 A. We don't use that terminology. I am guessing this --
21 that, maybe, they're referring to something like what we call
22 precincts. Like I said, that's the best -- the best analogy
23 that I could use or what I think it is.

24 Q. Have you read through the text of House Bill 1?

25 A. Yes.

1 Q. And have seen the voting tabulation districts
2 mentioned in the text?

3 A. (Nonverbal response.)

4 Q. Are you aware of the voting tabulation districts
5 called -- labeled KC 811?

6 A. Yes.

7 Q. Are you all right if I refer to them as KC 811 even if
8 we're using lightly different terminology?

9 A. Sure.

10 Q. Perfect. Are these KC 811 districts within the
11 jurisdiction of the Kansas City Elections Board?

12 A. Yes.

13 Q. And you mentioned you did some preliminary work; could
14 you tell us about the research that you've done on these two
15 districts?

16 A. The 811 district?

17 Q. The 811 districts.

18 A. Okay. Yeah. We looked at our 2022 map, our most
19 recent redistricting map, and 811 was complete within the Fifth
20 District and in Ward 8 and it was exactly, in our opinion,
21 exactly where it should be, and there was no controversy, no
22 whatsoever, on its placement there.

23 Q. What have you discovered about the 2025 plan and --
24 what have you discovered about the 2025 plan and how it assigns
25 the 811 districts?

1 A. Yeah. It would still stay in the same area, which, I
2 believe, is in the Fourth District.

3 Q. Are these two separate districts? Or a single
4 district?

5 A. This issue would be only one district and that'd be in
6 the Fourth District.

7 Q. Is there a KC 811 that is mislabeled?

8 A. There -- there could be. I mean, this is something --
9 I have not investigated potential errors, but I think there is
10 an error in this situation. I think there is potentially a
11 wrong map that was used. The map that I was shown during my
12 deposition looked like it was an old map, not the current one.
13 I think, there's been some mislabeling and I think there's an
14 error in the -- in the data file.

15 Q. In drawing -- in the shapefiles, does that same error
16 persist?

17 A. The shapefiles are much more generic and don't go to
18 that kind of detail. They just give us the actual lines and
19 they don't go into the precinct detail.

20 Q. Would your office assign two distinct geographic areas
21 to a single -- as a single district precinct?

22 A. Well, that situation would not come up.

23 Like I said, in this particular situation I think
24 something's been mislabeled; 811 would go in the Fourth. Given
25 what I've seen of the maps, there's not -- there should not be

1 an 811 in the Fifth. I think that is where the labeling error has occurred.

3 Q. What will your office do about that?

4 A. It'll -- it'll be processed in the Fourth, only.

5 Q. So you will relabel the other district -- the one that's in the Fourth?

7 A. Yeah. We don't have -- we -- the one that's in the Fourth is the correct one. The one that you guys have or

9 whoever drew the lines has in the Fifth, we'll ignore that one.

10 Or, like I said, I think there's another label that goes to that and they'll be put in the Fifth.

12 Q. When implementing a redistricting plan, does your office seek to comply with the Constitution?

14 A. Yes.

15 Q. Thank you for your time today, Mr. Kieffer.

16 MS. LANSDELL: No further questions, Your Honor.

17 THE COURT: Okay. Any questions from the intervenor?

19 MR. GORE: No questions, Your Honor.

20 THE COURT: All right.

21 **CROSS-EXAMINATION BY MR. CAMPBELL-HARRIS**

22 Q. Good morning, Mr. Kieffer.

23 A. Good morning.

24 Q. Pleasure to see you, again.

25 A. Thank you. Good seeing you.

1 Q. Thank you. I want to talk a little bit more about
2 your role as Director of the Kansas City Board of Election
3 Commissioners.

4 The Kansas City Board of Election Commissioners is the
5 election authority for Kansas City within Jackson County,
6 correct?

7 A. Correct.

8 Q. And the board plays a role implementing new
9 apportionment plans, correct?

10 A. Correct.

11 Q. And when you and the board are implementing new
12 congressional districting plans, you manually assign voters in
13 your jurisdiction to their congressional district, correct?

14 A. Correct.

15 Q. And other than your office, you don't know anyone else
16 who could accomplish that task of assigning voters to the
17 correct precincts and districts, correct?

18 A. I -- people try, but I know of nobody, other than us,
19 that I would trust with that information.

20 Q. Thank you. And you're not aware of anyone outside of
21 the Kansas City Board of Election Commissioners with the
22 knowledge, training, and tools to reassign precincts in the
23 Jackson County portions of Kansas City, correct?

24 A. Correct.

25 Q. Mr. Kieffer, do you recall at your deposition that we

1 spoke about your role implementing districting plans?

2 A. Yes.

3 Q. And according to your understanding of state law, the
4 Kansas City Board of Election Commissioners can change precinct
5 boundaries any time you all feel it is necessary to do so,
6 right?

7 A. Correct.

8 Q. There's no law requiring your office to begin
9 implementing HB1 by a certain time, correct?

10 A. There was never a timeframe that was actually given to
11 us.

12 Q. Okay. But there's also no law, that you're aware of,
13 requiring your office to begin implementing HB1 by a certain
14 time?

15 A. Correct.

16 Q. When you start implementing HB1 is within your
17 discretion, correct?

18 A. Correct.

19 Q. Now, the voter information currently in MCVR is based
20 on the 2022 congregational lines, correct?

21 A. Yes.

22 Q. And for the record, MCVR is the Missouri Centralized
23 Voter Registration data base?

24 A. Yes.

25 Q. And it took your office very little to no time to

1 implement the 2022 congressional districts in Kansas City,
2 correct?

3 A. Correct.

4 Q. And you discussed on direct steps you take to
5 implement congressional districting lines, correct?

6 A. Yes.

7 Q. Your office already took those steps to implement the
8 2022 congressional districting plan, correct?

9 A. We've taken -- yes.

10 Q. MCV -- the MCVR system has restrictions on when you
11 can implement a districting plan, correct?

12 A. Yes.

13 Q. Those restrictions are set by the Secretary of State's
14 Office?

15 A. To the best of our knowledge, it is.

16 Q. Okay. You're not aware of any legal requirement that
17 forbids you from implementing a districting plan at other times,
18 correct?

19 A. No. Yeah. That is correct.

20 Q. When an election cycle starts, your office is not
21 allowed to change district lines until that election cycle ends,
22 correct?

23 A. Correct.

24 Q. An election cycles final certification day is when
25 your office considers an election cycle has started, correct?

1 A. That's correct.

2 Q. The Secretary of State's Office -- I believe, on
3 direct it was referenced, sent you the -- well, scratch that.

4 The Secretary of State's Office sent you, the Kansas City
5 Board of Election Commissioners, shapefiles for HB1 on January
6 9, 2026, right?

7 A. Yes.

8 Q. Your office didn't have enough time to update the
9 districts in the MCVR then, correct?

10 A. Correct.

11 Q. And that was because the certification date for the
12 April 7 election was on January 27, correct?

13 A. Yeah. We actually contacted the Secretary of State's
14 Office and they asked us to hold until we had more clarity on
15 exactly what to do with the lines.

16 Q. Okay. The election certification date of January 27
17 resulted in the MCVR being locked down, which prevented your
18 office from making changes to district lines in the system,
19 correct?

20 A. Correct.

21 Q. Now, your office cannot make adjustments to district
22 lines until the April 7 elections are over, correct?

23 A. Correct.

24 Q. And you have about two weeks to wrap up the April 7
25 elections, right?

1 A. That is correct; however, there's an asterisk to it,
2 if there are re-counts, then that extends that timeframe.

3 Q. Okay. Unless there are re-counts, then you have about
4 two weeks to wrap up those April 7 elections, correct?

5 A. Correct.

6 Q. Okay. Now, on direct you discussed a certified list
7 of candidates that you've received from the Secretary of State's
8 Office, correct?

9 A. For what particular election?

10 Can you rephrase?

11 Q. I can rephrase.

12 Your office receives a certified list of candidates from
13 the Secretary of State's Office 10 weeks prior to election days,
14 correct?

15 A. For the -- both -- for the primary and general
16 elections, yes, not for the April.

17 Q. Okay. And that is the final certification date?

18 A. Yes.

19 Q. The final certification date for the August 4 primary
20 elections is May 26, 2026, right?

21 A. Yes.

22 Q. And implementing the new congressional districts --
23 well, scratch that.

24 Working overtime can -- well, let's scratch that, too.

25 The next window for your office to implement new districts

1 won't open until, at least, April 21; is that correct?

2 A. At the soonest.

3 Q. At the soonest. And as of right now, the 2022
4 congressional district information is in MCVR, correct?

5 A. Correct.

6 Q. If a court rules that the 2025 districts are unlawful,
7 your office will not implement HB1, correct?

8 A. Correct.

9 Q. And you can implement a new map up until at least May
10 26; is that fair?

11 A. That's correct.

12 Q. And if the Court rules that the 2025 congressional
13 plan is unlawful, you don't need to change any lines, correct?

14 A. That's correct.

15 MR. CAMPBELL-HARRIS: Moment to confer with
16 Counsel?

17 THE COURT: Sure.

18 MR. CAMPBELL-HARRIS: No more questions, Your
19 Honor.

20 Q. Thank you so much Mr. Kieffer. And, again, thank you
21 for your service.

22 A. Thank you.

23 MS. LANSDELL: Just a brief --

24 THE COURT: Sure.

25 MS. LANSDELL: -- redirect.

REDIRECT EXAMINATION BY MS. LANSDELL

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Q. Mr. Kieffer, do you recall earlier when we discussed KC 811?

A. Yes.

Q. You discussed a map, correct?

A. Yes.

Q. Is the map that you were referring to a map that was shown to you during your deposition?

A. Yes.

Q. Are you aware that that map was drawn for Plaintiff's petition and is not an official map for the State of Missouri?

MR. CAMPBELL-HARRIS: Objection, Your Honor.

This is beyond the scope of the cross.

MS. HUNKER: Your Honor, it's my understanding that there is no limitation based on your order.

THE COURT: There's not a limitation on the direct -- on the cross-examination from the direct. There typically is for a redirect coming from cross-examination. And so I do think that it's outside the scope of the cross-examination, and for that purpose, I would sustain the objection.

MR. CAMPBELL-HARRIS: Thank you, Your Honor.

MS. LANSDELL: A moment to confer?

THE COURT: Sure.

MS. LANSDELL: No further questions, Your Honor.

1 THE COURT: Okay. Any questions for the
2 intervenor?

3 MR. GORE: None, Your Honor.

4 THE COURT: Any final questions?

5 MR. CAMPBELL-HARRIS: None from Plaintiffs, Your
6 Honor.

7 THE COURT: All right. You can step down. Thank
8 you.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: If you all would like to call your
11 next witness.

12 MS. HUNKER: Yes. Your Honor, if we could, the
13 State would like to move its exhibits into evidence. I
14 believe that all but State Exhibits 111, 113, and then,
15 140, have been admitted.

16 THE COURT: Let's see. Let me make sure,
17 because, I think we may have some additional marked
18 exhibits that we started from, but --

19 MS. HUNKER: Yeah.

20 THE COURT: -- I -- so my recollection from our
21 beginning record, was that all of the defense exhibits, at
22 that time --

23 MS. HUNKER: At that time.

24 THE COURT: -- besides 111 and 113 were admitted.

25 MS. HUNKER: That's correct, 111 and 113.

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THE COURT: Is that right?

Let me make sure everybody's on the same page with me here.

MR. MULJI: Yes, Your Honor. That was correct.

THE COURT: Okay. And so --

MR. MULJI: If you don't mind, Your Honor, if Counsel doesn't mind restating the evidential list, again, so we can be sure.

MS. HUNKER: Sure; 111 and 113 are the two that I want to discuss, particularly.

THE COURT: Okay. Those are not --

MS. HUNKER: Those are not admitted, as far as I understand.

THE COURT: Everybody agrees, those are not in evidence so far?

MR. MULJI: That's correct.

MS. HUNKER: That's right.

THE COURT: Okay. Yes?

MS. HUNKER: And so Ms. Lansdell is going to briefly explain why we believe Exhibits 111 and 113 are objected to and she was going to give an examination of why we think they should be admitted.

THE COURT: Okay. So you're gonna ask right now as part of your case to admit 111 and 113?

MS. HUNKER: That's correct.

1 THE COURT: Okay. And --

2 MS. HUNKER: I'm assuming their objection still
3 remains, and if that's the case, I was going to ask if Ms.
4 Lansdell could give a quick explanation of our position on
5 those two exhibits.

6 THE COURT: Sure. And I'm assuming but I'll just
7 clarify my assumption being correct, your position is going
8 to be that you don't need a separate witness to admit these
9 exhibits? That just the paper and the exhibits is
10 sufficient?

11 MS. HUNKER: That is correct, Your Honor. I had
12 conferred with Counsel and they agreed that they did not
13 have an objection on authentication. The objection is,
14 instead, hearsay.

15 THE COURT: Okay.

16 MR. MULJI: At least, hearsay, Your Honor.

17 MS. HUNKER: At least, hearsay.

18 THE COURT: All right.

19 MS. HUNKER: At the very least, there is no
20 authentic objection.

21 MR. MULJI: Oh, I'm sorry. Your Honor, 111 is
22 the -- is the -- is the objection to it -- we don't -- or
23 we -- is the exhibit to which we don't have an
24 authentication objection, but do have other objections.

25 MS. HUNKER: Okay. Well, we move for Exhibits

1 111 and 113 to be added into evidence.

2 I would ask that you accept them.

3 MS. KHANNA: Well, and just to be clear, Your
4 Honor, 113, we do object on authentication grounds, as well
5 as the other grounds.

6 THE COURT: Okay. Well, let's hear arguments. I
7 don't know much about them yet, so I'll let Ms. Lansdell
8 tell me about them and then we'll work through it here.

9 MS. LANSDELL: Your Honor, would it be most
10 helpful, first, to hear the plaintiff's objections to the
11 exhibits? Or would you like me to give an affirmative?

12 THE COURT: I'll give everybody as much time as
13 you want, so why don't you -- they're your exhibits --

14 MS. LANSDELL: Sure.

15 THE COURT: -- so why don't you tell me about
16 them and we'll go back and forth as long as everybody needs
17 to.

18 MS. LANSDELL: Your Honor, the first exhibit,
19 Exhibit 111, is an email from the Governor's Office to the
20 Secretary of State's Office. And I believe that
21 Plaintiff's objection is on hearsay, they say among other
22 things, as well, but I will address the hearsay issue,
23 first.

24 Your Honor, we are not offering this email for the
25 truth of the matter asserted. The email is just being

1 offered to confirm -- or it is not being offered, rather,
2 to confirm or deny the existence of an ambiguity in the map
3 nor is it being offered to prove that 811 is, in fact, two
4 separate districts. We do not need it to function in this
5 capacity.

6 We have Plaintiff's expert stating that the shapefiles
7 used by election authorities have the VTD 811s marked as
8 separate and distinct geographical districts. Instead, we
9 are just presenting this exhibit as a window into the
10 State's interpretation of the alleged issue and the State's
11 interpretation and construction of House Bill 1 is relevant
12 in this case.

13 MR. MULJI: Your Honor, if the purpose is not to
14 bring this in for the truth of the matter asserted, it's
15 hard to see what could possibly be the reason. We would
16 add a relevance objection. This is an email between, I
17 believe, the -- a staffer, who I don't think was disclosed
18 on any exhibit -- on any witness list, to a number of other
19 individuals, it looks like, from the Secretary of State's
20 Office and that was later forwarded to some individuals
21 from the AG's Office. It's an internal email of the State.

22 None of these -- none of the -- the author of this --
23 the State hasn't presented a single witness to bring this
24 -- to bring this exhibit in, and if they're not even
25 authoring it -- offering it for the truth, I don't see how

1 it's relevant to the case at all. In so far, as it's,
2 just, about the State's internal discussions about the
3 lawsuit, it actually includes extremely prejudicial
4 statements describing the nature of the lawsuit, the nature
5 of the law firms that have brought the lawsuit on behalf of
6 the plaintiffs that have brought the lawsuit.

7 And so we would seek to exclude it, if it's not
8 necessary to prove the truth of any matters related to KC
9 811; most of the facts are stipulated, and they haven't
10 presented a witness to bring it in. There's really no
11 basis to let this in.

12 THE COURT: I'm going to get back to you in a
13 second. I think we clarified at the beginning, you all are
14 not making a authenticity or foundational objection. It's
15 just about the hearsay or --

16 MR. MULJI: That's correct, Your Honor.

17 THE COURT: -- relevance, admissibility of it?

18 MR. MULJI: Right. The relevance, there's no
19 witness who could speak to the relevance of this of this
20 document. And we've heard from the State that it's not
21 about the truth of any material facts related to the KC 811
22 claim. And I can only imagine the reason here is to bring
23 in prejudicial statements that the State has been making
24 among -- among its own staffers. I don't see any other
25 reason why this exhibit would be relevant to the claim.

1 MS. LANSDELL: The relevance here, Your Honor, is
2 it's legal. It's a legal relevance argument. There are
3 two claims related to the constitutionality of House Bill 1
4 -- or, sorry -- there are two questions that are related to
5 the constitutionality of House Bill 1 that are related to
6 the claims surrounding 811. The first is whether the bill
7 double assigns a district. This is not being offered for
8 that purpose.

9 The second question is the application. And part of
10 the application is -- and how the bill is going to be
11 applied -- is how the state election authorities are going
12 to interpret and understand House Bill 1. So long as the
13 State is not going to interpret a statute in an
14 unconstitutional manner, there is no injury. This exhibit,
15 merely, demonstrates the State's interpretation. It's a
16 window into the State's interpretation of House Bill 1,
17 rather than, it's not being offered for the facts inside.

18 THE COURT: Anything else you want to add?

19 MR. MULJI: We've been told, Your Honor, in
20 response to discovery requests directed to the State, that
21 the State is not an entity that can -- that can take a
22 position on any of the interrogatories we sent, that could
23 produce documents. These are statements of staffers, who
24 can't make authoritative legal conclusions about the
25 meaning of the statute. They're also emails from the

1 Governor's Office to the Secretary of State's Office.

2 The Secretary of State, per the Court -- per the

3 defense omission, is the official responsible for

4 implementing elections under the map. Their interpretation

5 would be, perhaps, you know, relevant, but this is -- this

6 is, just, the -- sort of, the discussion about the lawsuit

7 among staffers who are not happy about having to deal with

8 this lawsuit.

9 MS. LANSDELL: The Secretary of State is the

10 chief election officer and the person that all of the

11 election authorities contact with questions, as will be

12 shown in the designations to the depositions. This email,

13 again, it does demonstrate the effect on the listener or in

14 this case the reader, who is -- are individuals in the

15 Secretary of State's Office, individuals responsible for

16 the -- informing the opinions of the Secretary of State's

17 Office. Thus, this is providing a window into how the

18 secretary -- what information the secretary's received, and

19 what will inform the secretary's interpretation.

20 MR. MULJI: Last thing I'll note, Your Honor,

21 perhaps. We've gone back and forth a number of times.

22 THE COURT: That's the risk of saying I'll let

23 you do it as long as you want. So go ahead.

24 MR. MULJI: I think -- I think that what I'm

25 hearing actually is they're seeking to, essentially -- it's

1 hard to imagine that this is not being provided for the
2 truth of the matters asserted here. If it is, then,
3 hearsay. I don't think I've actually said that on the
4 record yet, but that is -- that is our objection.

5 And to the extent, you know, this opens a window into
6 what the governor thinks proper interpretation of HB1 is,
7 they should produce a witness to come speak to that. A
8 document that is just immediate reaction circulating among
9 a group of staffers is hearsay. And if the State wants to
10 produce a representative -- a corporate representative of
11 his office -- they could do that, but they didn't.

12 MS. LANSDELL: This is the last thing I'll say,
13 Your Honor.

14 THE COURT: That's fine.

15 MS. LANSDELL: This -- this court is presumed to
16 only consider evidence for its proper purpose and would be
17 able to give the evidence the appropriate weight.

18 THE COURT: Okay. The intervenors or other
19 plaintiffs have anything else you want to say?

20 MS. KHANNA: We join with the Wise Plaintiffs on
21 this one.

22 MR. GORE: We join with the State.

23 THE COURT: Okay. So for this particular exhibit
24 -- I think there's a reason for bench trials, why the Court
25 has 73.01(a) -- for me to let stuff in unless I think it's

1 absolutely, clearly inadmissible but give it what weight I
2 think it deserves. I take them at their word that they're
3 not offering for its truth. I do not plan to consider it
4 for its truth. But given I have the ability to give it
5 what weight it may need, I'm going admit 111 over
6 objection.

7 MR. MULJI: Fair enough, Your Honor. Thank you.

8 THE COURT: Okay. Let's talk about 113.

9 MS. LANSDELL: Sure. Your Honor, Exhibit 113,
10 it's been discussed a few times. This is the first time we
11 are moving it into evidence or requesting to move it into
12 evidence. This is the memo from Adam Kincaid. A bit of
13 history on this document, Plaintiffs produced the black and
14 white copy of this memo in their reliance files for their
15 experts to Defendants. It was the first time that
16 Defendants had seen this memo.

17 In order to ensure authenticity, State Defendants
18 obtained -- obtained the copy being offered into evidence
19 from the House of Representatives, and State Defendants
20 also have an affidavit from the Custodian of Records of the
21 office of Representative Dirk Deaton, District 159, of the
22 Missouri House of Representatives.

23 THE COURT: I've got the -- a digital copy of it,
24 but --

25 MS. LANSDELL: It --

1 THE COURT: -- I assume, that's the original?

2 MS. LANSDELL: Is it an original?

3 THE COURT: It looks like the original or
4 something close to it.

5 MS. LANSDELL: This affidavit is not in our
6 digital copy.

7 THE COURT: Okay.

8 MS. LANSDELL: It is in Intervenor IX --

9 MR. SULLIVAN: That's the one I give you, 206.

10 MS. LANSDELL: -- 206, but we can hand this to
11 Plaintiffs if they would like to --

12 MS. MENG MORRISON: Your Honor, we are familiar
13 with the affidavit. Counsel is correct that it is attached
14 only to Intervenor's version which I believe is 206 -- is
15 that right? -- and not to 113. So if we're just discussing
16 113, there is no affidavit attached to that version. If
17 we'd like to discuss Intervenor's version we can -- we can
18 happily to do that.

19 MS. LANSDELL: We will move to submit the
20 affidavit in conjunction.

21 THE COURT: Okay. And let me just zoom out here
22 and try to guide our discussion a little bit, because this
23 one may be helpful to get a little bit of their objection
24 and then hear your response to it. Because this is one
25 you'd plan to make a foundational objection to, in addition

1 to the actual, kind of, other matters that may be
2 evidentiary issues, correct?

3 MS. MENG MORRISON: Correct.

4 THE COURT: Okay.

5 MS. MENG MORRISON: Would you like me to list out
6 the reasons we're objecting, so --

7 THE COURT: Go ahead. And just assume the
8 affidavit is part of the exhibit, because I don't know that
9 it matters where they grab it from, just to expedite that
10 discussion.

11 MS. MENG MORRISON: Sure, Your Honor. So, yes,
12 we do object on foundational grounds. There is a affidavit
13 attached, but for reasons related to hearsay, as well;
14 Representative Deaton has not been called to testify to the
15 mode of preparation of this document and he's claiming it
16 was a business record. Which, we also object that it is
17 hearsay, that does not fall within the business record
18 exception.

19 And separately from that, the document itself, if you
20 were to flip through, reads like an expert report. Mr.

21 Kincaid was never disclosed as an expert. There were
22 disclosure deadlines that the Court and the parties had
23 agreed to. The expert -- that report was not disclosed.
24 Mr. Kincaid was never listed as an expert and, frankly, we
25 weren't -- we did not find out about this exhibit until a

1 week before trial, so we would say that this is also
2 untimely.

3 THE COURT: Let me clarify the timeliness issue
4 because --

5 MS. MENG MORRISON: Sure.

6 THE COURT: -- there's 490 -- the business
7 records statute, has it's own timing requirement on
8 disclosure.

9 MS. MENG MORRISON: Yes.

10 THE COURT: You're not saying that that wasn't
11 timely; you're just complaining about when it was provided
12 to you?

13 MS. MENG MORRISON: Well, the -- so the -- we do
14 have certain arguments about that, as well, Your Honor. I
15 believe the memo is dated September 10. To the extent that
16 the memo was written contemporaneously with the drafting of
17 HB1, the bill was introduced, I believe, a week before the
18 memo is even dated and, in fact, was voted on by the house
19 by September 10 -- September 9. And so the memos actually
20 post-date the house passing this map.

21 THE COURT: And I don't think I was being clear
22 probably with my question.

23 Generally, a business record in Missouri, if they're
24 gonna rely on an affidavit, it has to be provided to you
25 within a certain period of time. You're not making that

1 statutory objection to the use of the affidavit. It's more
2 of whether or not this business record affidavit is
3 sufficient to use this exhibit; is that correct?

4 MS. MENG MORRISON: Correct.

5 THE COURT: Okay. All right. That's --
6 sometimes there's a complaint that the affidavit wasn't
7 timely, and I didn't think that was your objection, but I
8 wanted to make sure.

9 Go ahead.

10 MS. LANSDELL: Yes, Your Honor. I do want to
11 clarify that we did receive -- just, for the record,
12 because there was some confusion on the timing -- we did
13 receive the memo, originally, from Plaintiffs. But I do
14 believe that this, that Exhibit 113, falls under the
15 hearsay exception permitted under Section 490.680 of the
16 Missouri Rights Statutes, that business records exception
17 used in the ordinary course.

18 The memo is a record that was made and transmitted in
19 the ordinary course of business, that information is
20 contained in the affidavit. This court has wide discretion
21 to accept these records into evidence once that requirement
22 is satisfied. We've provided an affidavit. We have the
23 document here. It was used in the ordinary course; the
24 affidavit contains that information. It was used,
25 additionally, for the Senate but this affidavit is

1 specifically from the House.

2 MS. MENG MORRISON: Your Honor, on the timing
3 piece, Counsel is correct that one of the plaintiff's
4 experts included this in their underlined files. That was
5 handed over to Counsel far in advance of their disclosure
6 deadline, which was January 7. So this idea that they
7 found out about it through us, but then didn't have the
8 time to, if they wanted to, disclose Mr. Kincaid as an
9 expert, such that we could cross-examine him, depose him,
10 read his report, analyze it -- which was the agreed upon
11 schedule between the parties -- that did not occur.

12 On the business record exception, the statute and the
13 Missouri Supreme Court had made clear there are three
14 requirements that the party offering the exhibit has to
15 meet. The first is that there is a qualified witness that
16 is able to testify to the identity and mode of preparation.
17 The affidavit itself does not have any discussion about the
18 mode of preparation of the memo. And, honestly, I don't
19 know how Representative Deaton would be able to, because
20 he's not the one who drafted the document. It's fairly
21 clearly stated on the memo header that this is a memo
22 written by Adam Kincaid who -- according to his CV, which
23 is also the first page of the document -- does not work for
24 Representative Deaton.

25 That is also the reason why Counsel cannot satisfy the

1 second requirement under the statute. Which is that the
2 document was made in the regular course of business at or
3 near the time of the event, act, condition, that it's being
4 offered for. This document was not made in the regular
5 course of business of Representative Deaton's office. It
6 was something that was transmitted to him as is very clear
7 from the header of the memo. And the case law is clear
8 that when you're just the custodian of records that happens
9 to be the conduit or happens to have something in your
10 files, that does not allow you to bring something in
11 through the hearsay exception for business records.

12 And finally, the third requirement under the statute
13 is that the Court has to be sure that -- of the source of
14 information, the method and time of preparation to justify
15 it's admission. And as just covered, I don't believe any
16 of that information has been sufficiently covered, simply,
17 by providing a form affidavit that's contained within
18 Missouri statute.

19 MS. LANSDELL: I do want to address the
20 compliance with deadlines. The State has complied with all
21 deadlines in this case and I believe that Plaintiffs may be
22 mixing deadlines. January 7 was the deadline for expert
23 reports. We are not offering this as an expert report. It
24 is just being offered as a document that the legislature
25 considered that was used in the ordinary course of the

1 legislature's business. However, if Your Honor does not
2 want to admit this under the business records statute, it
3 is also proper subject for judicial notice.

4 This court is permitted to take judicial notice of
5 public records. This document is part of the legislative
6 record and it's well-established that Missouri Courts can
7 take notice of a wide variety of public records, including
8 legislative records. I do want to point this court's
9 attention to a 2013 Missouri Supreme Court case, *Schweich*
10 *v. Nixon*. I will spell that. It is as S-C-H-W-E-I-C-H,
11 and the citation for that is 408 S.W.3d 769 and that's page
12 778 at Footnote 11. This footnote catalogs a number of
13 documents related to legislative proceedings that a court
14 may properly take judicial notice of.

15 For example, the Court may take judicial notice of
16 proceedings by -- of the proceedings by which laws were
17 enacted. This court may take judicial notice of journal
18 entries associated with the passage of a bill, as well as
19 legislative records to compare a house bill to its senate
20 counterpart. It follows that this court may take notice of
21 this document used by the House and Senate during the
22 process of confirming House Bill 1.

23 MS. MENG MORRISON: Your Honor, I just want to
24 clarify one thing I said before -- before I get to
25 Counsel's point.

1 We -- actually, we were just checking our email
2 records, and we did not receive the business record
3 affidavit under the statutory rules of, I believe, seven
4 days before it's being offered. I think we received it,
5 maybe, on Friday before trial started on Tuesday; it might
6 have been Thursday. So I do want to clarify the record,
7 that that is also a grounds by which we would like to
8 object to this document.

9 On the point that Counsel just made about public
10 records, we agree that there are certain things related to
11 the maps enactment that we could, perhaps, stipulate to.
12 There are a couple of legislative documents that we've
13 submitted and the other side has agreed to bring into
14 evidence. This document, however -- our understanding and
15 are not aware of where it is, you know, located within the
16 legislative record. It's also not a document coming from
17 the General Assembly.

18 It's being offered as a document that is being offered
19 from Representative Deaton. And unless Counsel has a
20 citation for judicially noticeable documents contained
21 within the records of a representative, we're not aware of
22 how that would allow judicial notice to bring this document
23 in.

24 And sorry, one last point.

25 THE COURT: Okay.

1 MS. MENG MORRISON: I also know that Counsel
2 noted that they're not offering this as an expert opinion.
3 The contents of this document goes over county splits,
4 municipality splits, compactness scores; it contains
5 printouts, I believe, of scores from Maptitude, things like
6 that. That is all things that we've just spent the last
7 two days talking to several experts about over and over and
8 over again. So the contents of this document is not mere
9 lay witness testimony or information. It is certainly
10 expert opinion.
11 MS. LANSDELL: I think I'll just say that the
12 context of this memo here was elicited by the expert
13 reports and expert testimony of the plaintiffs -- both Dr.
14 Cervas and Dr. Stern cite to this memo. Doctor Stern
15 testified that we was instructed by Counsel to respond to
16 this memo and relied on the memo informing his report.
17 Admission of the record provides the Court with the full
18 context for the opinions of Plaintiff's experts.
19 And I just want to note that it is -- again, this is a
20 discretionary decision for this court and Plaintiffs,
21 although have asked us to cite a specific case, have not
22 cited a case in the other direction saying that this would
23 be inappropriate.
24 THE COURT: Let me -- they injected one
25 additional issue, which was the timing of the affidavit

1 that wasn't on the table earlier when you spoke.

2 Can you tell me about the timing of the affidavit
3 production?

4 (DEFENSE COUNSEL CONFER.)

5 MS. LANSDELL: Your Honor, I think I'll just note
6 that the purpose of the business records timing is to give
7 notice -- ample notice to Plaintiff's and in this case, it
8 was Plaintiffs who introduced this to the defendants --
9 "this," being the memo.

10 THE COURT: Right. But I -- I think I have to
11 kind of resolve the factual issue with the parties here
12 without, hopefully, having to swear any of you all in,
13 about whether or not it was sent to them --

14 MS. LANSDELL: Sure.

15 THE COURT: -- timely.

16 MS. LANSDELL: This did come a bit later. You
17 know, they had initially subpoenaed Representative Deaton
18 but there were some faults with that they and did not
19 pursue it, ultimately. So this did -- the affidavit did
20 come delayed to Plaintiff's.

21 THE COURT: Okay. Fair enough.

22 MS. LANSDELL: Yes.

23 THE COURT: Again, I just want to make sure I
24 have the, kind of, factual agreement about what that is.

25 MS. MENG MORRISON: Your Honor, on the timing

1 issue, I do believe the affidavit was only signed six days
2 ago, so I think --

3 MS. HUNKER: We're checking, Your Honor.

4 THE COURT: Okay.

5 MS. LANSDELL: The affidavit was signed on
6 January 27.

7 THE COURT: Well, in any event, you're saying you
8 didn't send it timely?

9 MS. LANSDELL: Yes. Correct.

10 THE COURT: That's -- I don't want to get too --
11 too bogged down in that, if that's the agreement; anyway, I
12 don't know that it matters, particularly, when it was
13 signed. Okay.

14 Anything else anybody wants to add? I'll give you
15 some thoughts here.

16 MS. MENG MORRISON: Yes. Just to add one
17 additional thing, Your Honor. Counsel said that we weren't
18 able to provide a case cite about bringing this in if it's
19 relied upon by an expert, for the very reasons that I
20 believe Counsel did not object to allow them to ask
21 questions about the memo when they were cross-examining our
22 experts. So we have no objection to them, you know,
23 understanding how the memo was used, but to offer the memo
24 -- which is an out-of-court statement -- not by a party
25 opponent, and it doesn't fall under any exception that

1 they've pointed to.

2 We will note that there's a case, *Byers v. Cheng*, 238

3 S.W.3d 717, that talks about expert reliance materials.

4 And in certain instances, perhaps, there's some materials

5 that can be brought in, but in this case that doesn't fall

6 under the learned treatise exception. It is a document

7 that contains very similar analysis and Counsel has not

8 provided an exception that would allow that hearsay into

9 this case.

10 MS. LANSDELL: I'll just say, I think the

11 exception we've provided is judicial notice for the

12 legislative record.

13 THE COURT: Okay. All right. Let me, kind of,

14 walk through my thoughts on the different kind of topics

15 here. I'll start -- I usually like to tell folks what I'm

16 doing, so you're not waiting in suspense, then I'll go

17 through my process. I'm going to sustain the objection at

18 this time. Walking through the kind of different levels of

19 analysis. At first, we'll start with the business record,

20 it's not dispositive. It could be -- I have some other

21 thoughts about it that I think make it not the sole issue.

22 The timing issue, there a statutory requirement and we

23 don't have that. I think the more substantive issue, as it

24 relates to business records that I have -- and usually, at

25 least, some of the cases that I'm familiar with -- this

1 kind of shows up in often collection type of cases; where
2 one company absorbs another company or buys their debts and
3 then they're -- you have this situation where the secondary
4 company is trying to enter them into evidence using a
5 business record at trial.

6 And I'm using that analogy because some of the cases
7 that I look at, I think are somewhat applicable here,
8 because Representative Deaton, obviously, is not the author
9 of this document. It may have been received by the
10 legislature Representative Deaton, but he didn't create it,
11 didn't author it; it's just stored there, right? And I
12 don't think that -- that's a way to access it as a business
13 record of the legislature, because he didn't create it,
14 he's not familiar with, he just received it.

15 And I do think that's similar or at least analogous
16 to some of the cases that I've reviewed that denied
17 business record admissions because, in those circumstances,
18 they're companies that didn't create the records; they got
19 them from some other company, and then are trying to use
20 them at trial. I'll give you a couple cases if you want to
21 look at and we're gonna be here today and tomorrow if you
22 want to try to talk me out of it, anybody can; 697 S.W.3d
23 795, that's *Jefferson Capital Systems, LLC v. Rice*, from
24 the Eastern District in 2024.

25 And 136 S.W.3d 134, that's *C & W Asset Acquisition*,

1 *LLC v. Somogyi*, S-O-M-O-G-Y-I, that's a Southern District
2 case from back in 2024. Again, different context, but I
3 think in terms of analyzing the business record foundation
4 and what it can be used for, I think it's kind of
5 applicable since this came from outside the legislature.
6 And so I don't know that I'm convinced that the legislature
7 can use a business record for something that it didn't
8 create, that it only received.

9 The other basis that I've heard so far is the
10 *Schweikert* case versus *Nixon*. I do have some familiarity
11 with that, and to me, I think this is one step removed from
12 what I see in Footnote 11 from that case talking about,
13 because those -- all the examples given in Footnote 11 of
14 that are what I would classify as actual records created by
15 the General Assembly. They're bills that they, you know,
16 were in front of them, comparing bills, actions taken by
17 them in their records.

18 I think that's different than, again, something that
19 was written from outside the General Assembly that was sent
20 to them that happens to be stored there or maybe was passed
21 around there. And I don't know that I've seen a case for
22 judicial notice purposes that accesses something that's --
23 to me, I'm not phrasing it as precisely as I'd like -- but
24 maybe one step beyond what I see in the Footnote 11
25 examples, in terms of things that the General Assembly

1 actually wrote themselves that are stored somewhere there,
2 if that makes sense.

3 So because they are kind of threshold, I think
4 authentication and foundation issues, I think it's more
5 appropriate to deny their admission at this time and that's
6 just where I'm at. So, obviously, we'll be here if anybody
7 thinks they can change my mind, feel free later, but based
8 on what we've talked about, that's where I'm at.

9 MS. MENG MORRISON: Thank you, Your Honor.

10 MS. LANSDELL: Thank you, Your Honor.

11 THE COURT: Okay. All right.

12 Normally, I'd drag you all till 12:15, but where are
13 you at with your evidence and case?

14 MS. HUNKER: The witness that we'd call would be
15 Intervenor's expert, and so that would probably take decent
16 length for the direct.

17 THE COURT: Okay.

18 MR. GORE: Yeah. I think our preference would be
19 to break for lunch now, if it's suitable to the Court.

20 THE COURT: Again, I'm going to reward you all
21 for being ahead of schedule and that's fine with me.

22 MS. KHANNA: I'm sorry, Your Honor.

23 THE COURT: Yeah.

24 MS. KHANNA: I didn't mean to interrupt. Just,
25 for scheduling purposes, I wanted to alert the Court and

1 let you know that we are going to be huddling over the
 2 lunch break about a short possible rebuttal presentation,
 3 do not expect that to go past today. I know the only one
 4 witness left for the defendants, so we'll be -- we'll be
 5 taking care of that in the next hour.

6 THE COURT: Okay. Just make sure they know,
 7 probably before I know; make sure the other side knows so
 8 we can talk about it if we need to but let's plan to resume
 9 at 1:10 and we will see then. Okay.

10 (COURT IS IN RECESS.)

11 THE COURT: Good afternoon.

12 I think the intervenor was gonna call your witness; is
 13 that correct?

14 MR. GORE: That's correct, Your Honor.

15 THE COURT: Okay. Go ahead.

16 MR. GORE: Intervenor calls Doctor M.V. Hood III
 17 to the stand.

18 THE COURT: Doctor.

19 If you could please raise your right hand.

20 **DOCTOR M.V. Hood III,**

21 having been sworn by the Court testifies as follows:

22 THE COURT: Thank you. Have a seat, please.

23 THE WITNESS: Thank you.

24 MR. GORE: Would Your Honor care for a hard copy
 25 of this exhibit?

1 THE COURT: Oh, why not. Thank you.

2 **DIRECT EXAMINATION BY MR. GORE**

3 Q. Good afternoon, Dr. Hood.

4 A. Good afternoon.

5 Q. Will you introduce yourself to the Court?

6 A. I'm M.V. Hood III.

7 Q. Where are you currently employed?

8 A. At the University of Georgia.

9 Q. What's your position there?

10 A. I'm a professor of political science and director of
11 the SPIA Survey Research Center there.

12 Q. How long have you been employed at the University of
13 Georgia?

14 A. Since 1999.

15 Q. Will you briefly describe your educational background?

16 A. Sure. I have a BS in political science from Texas
17 A&M, an MA in political science from Baylor University and a PhD
18 in political science from Texas Tech University.

19 Q. What are your academic areas of expertise?

20 A. Generally speaking, American politics and policy; more
21 specifically, southern politics, election administration, racial
22 politics, electoral politics, public opinion. So something like
23 redistricting would fall under the area of election
24 administration for me.

25 Q. Let's get on the screen Intervenor Exhibit 215, which

1 is in evidence. It's your report.

2 Do you have a hard copy of your report with you --

3 A. Yes.

4 Q. -- as well?

5 A. Yes, sir.

6 Q. Let's go to page 19. Doctor Hood, you should now be
7 seeing a copy of your CV dated January of 2026.

8 Did you prepare this CV?

9 A. Yes.

10 Q. And is it correct and current as of today?

11 A. Well, there's a few additions.

12 There's another publication under journal articles, for
13 instance, so, but it was up to date when I published it in
14 January, yes, so.

15 Q. Since the date of your CV, have you been disclosed as
16 an expert witness in any other cases?

17 A. No.

18 Q. Now, Dr. Hood, your CV lists a number of peer-reviewed
19 publications. Can you briefly describe your experience in
20 producing peer-reviewed scholarship?

21 A. Well, I've got a couple of academic peer-reviewed
22 Pressbooks. I've got -- and I'm not sure, 50 to 60 journal
23 articles and probably about ten book chapters, so just
24 approximations.

25 Q. Have any of those publications touched on

1 redistricting?

2 A. Yes.

3 Q. Have you ever previously served as an expert witness
4 in court?

5 A. Yes.

6 Q. How many times, approximately?

7 A. I would say, 25 or so.

8 Q. Have you ever previously appeared in court as an
9 expert witness in a redistricting case?

10 A. Yes.

11 Q. And how many times, approximately?

12 A. Maybe, half of those cases dealt in some way or the
13 other with redistricting.

14 Q. In those prior redistricting cases, have you offered
15 opinions on the question of district compactness?

16 A. Yes.

17 Q. How many times, approximately?

18 A. Well, I did list those cases out in my expert report
19 in this matter. I think there are about eight, I believe.

20 Q. And Dr. Hood in your peer-reviewed scholarship and
21 expert work, do you use methods that are generally accepted by
22 experts in your field?

23 A. Yes.

24 Q. Did you do so for your work in this case?

25 A. I did.

1 MR. GORE: Your Honor, the parties have
 2 stipulated that Dr. Hood is an expert in American politics,
 3 redistricting, and quantitative political science, so I'd
 4 offer him as an expert in those areas.

5 MS. HARLESS: Yeah. No objection.

6 THE COURT: All right.

7 Q. (MR. GORE) Doctor Hood, what were you asked to look
 8 at in this case?

9 A. I was asked to make an assessment of the 2025 Missouri
 10 Congressional Redistricting Plan, also called HB1 by some
 11 people.

12 Q. What factors did you look at in conducting your
 13 assessment?

14 A. A number of factors: contiguity, compactness,
 15 communities of interest, core retention, among others.

16 Q. Did you compare the 2025 plan to any prior Missouri
 17 Congressional Districting Plan?

18 A. Yes. I had as points of comparison the 2012 plan and
 19 the 2022 plan.

20 Q. Did you have any assistance with preparing your
 21 report?

22 A. Yes.

23 Q. Who assisted you?

24 A. I asked Mr. Clark Bensen, who's a data analyst at
 25 POLIDATA to -- at my direction -- produce a number of reports.

1 The results of those reports are encapsulated in the tables in
2 my reports.

3 Q. Did you do anything to verify the accuracy of the data
4 reports Mr. Bensen provided you?

5 A. Yes. To the extent possible, I was able to run the
6 numbers in Dave's Redistricting App for some of -- some of the
7 information, and I also cross-referenced those reports with the
8 plaintiff's expert reports. The numbers were the same or very
9 close most of the time.

10 Q. Is it common for experts in your field to receive
11 assistance from data analysts?

12 A. Yes.

13 Q. Have you used Mr. Bensen to prepare data for you in
14 your prior expert work?

15 A. Yes.

16 Q. How many times, approximately?

17 A. A number, I'm not exactly sure; maybe, five, six
18 times.

19 Q. Has any court ever found your use of Mr. Bensen's
20 assistance to be unreliable or invalid or problematic in any
21 way?

22 A. No.

23 Q. Did Mr. Bensen write any portion of your report?

24 A. No.

25 Q. Do the opinions and conclusion in your report

1 represent your own opinions and conclusions as an expert?

2 A. They do.

3 Q. Let's get your expert report, Intervenor Exhibit 215
4 on the screen and go to page 4. Doctor Hood, I'd like to call
5 your attention to this Subsection A, on page 4, district
6 compactness and contiguity.

7 What did you examine in this subsection of your report?

8 A. I looked at the contiguity of the districts for the
9 2025 plan, as well as compactness scores for the 2012, 2022, and
10 2025 plans.

11 Q. And what did you conclude about the 2025 plan in
12 contiguity?

13 A. I concluded that the eight districts are contiguous
14 based on the shapefile that was housed at the Secretary of
15 State's Office. So the eight districts in the 2025 plan are
16 contiguous.

17 Q. I believe you testified that you then looked at
18 compactness and drew comparisons between the challenged
19 districts and other districts and plans; is that right?

20 A. Yes.

21 Q. Why do you think a comparison to other districts and
22 plans is useful?

23 A. Well, there's a number of reasons. One being, you
24 want to see if the districts in the 2025 plan, for instance, are
25 outliers, as compared to previous redistricting plans that have

1 been put in place by the Missouri General Assembly.

2 Q. And for the 2022 plan and 2025 plan comparison, was
3 the General Assembly using the same population data to draw
4 districts?

5 A. Yes.

6 Q. And what -- what similarities are there between the
7 2012 plan and the 2025 plan when it came to drawing the
8 districts?

9 A. Well, I mean, obviously, we're still talking about the
10 same geography; the population data for that plan was from the
11 2010 census. But one point about the 2012 plan, as well, there
12 was a challenge in Missouri State Courts to the compactness of a
13 number districts in the -- excuse me -- the 2012 plan. And so
14 the 2012 plan, those districts were challenged, were upheld as
15 being sufficiently compact under the Missouri Constitution, as
16 well as the rest of the plan. And so it's one point of
17 comparison we can look to for when a Missouri Court specifically
18 analyzed the compactness issue and rendered a judgment, so.

19 Q. For your analysis which statistical measures of
20 compactness did you use?

21 A. Reock, Polsby-Popper, and the alternative Schwartzberg
22 measures.

23 Q. The Court has already heard testimony about the Reock
24 and Polsby-Popper measures.

25 Will you briefly describe the alternative Schwartzberg

1 measure?

2 A. Sure. It compares the perimeter of a district to the
3 perimeter of a circle with equal area.

4 Q. Is it similar to Polsby-Popper?

5 A. Yes. They're mathematically related.

6 Q. How does alternative Schwartzberg score districts?

7 A. A one would be a perfectly compact district, like a
8 circle, but unlike Reock and Polsby-Popper -- which range from

9 zero to one with movement towards one being increased

10 compactness -- in the Schwartzberg measure, higher values above
11 one are actually less compact.

12 Q. Doctor Hood, let's go now to Table 1, which is on page
13 5 of your expert report.

14 What is Table 1 showing?

15 A. This is a comparison of Reock compactness scores for
16 the 2012, 2022, and 2025 plans.

17 Q. And which software program was used to generate these
18 scores?

19 A. Maptitude.

20 Q. Three scores are shaded in the 2025 column; what are
21 those scores?

22 A. So those are the districts currently under challenge
23 in this case.

24 Q. Based on Table 1, what did you conclude about the
25 compactness of the 2025 plan as a whole compared to prior plans?

1 A. Well, I then record the mean value across the eight
2 districts. And so in 2012, the mean Reock score was .44, it
3 increases to .45 in 2022, and then to .47 in 2025. So the 2025
4 plan on average is slightly more compact than the 2012 plan or
5 the 2022 plan.

6 Q. And based on Table 1, what do you conclude about the
7 compactness of District 4 compared to prior plans?

8 A. So in 2025, District 4 had a Reock score of .43,
9 that's a drop from 2022, when it had a score of .53. It's the
10 same value, essentially, from 2012, with a value of .3 in that
11 year, as well.

12 Q. And what did you conclude about the compactness of
13 District 5 compared to prior plans?

14 A. So in 2025, District 5 has a Reock score of .35, which
15 is -- which is lower than the value in 2022 of .37, but slightly
16 higher than the value of -- in 2012 of .33.

17 Q. What do you conclude about the compactness of District
18 6?

19 A. So District 6 had a Reock score of .36 in 2025, which
20 is higher than the 2022 value of .30 or the 2012 value of .29.

21 Q. What was the least compact district in the 2022 plan?

22 A. So that's -- the brackets are the districts in each
23 plan that have the lowest compactness score. So the bracket
24 there is around District 6, which has a Reock score in 2022 of
25 .30.

1 Q. Are all the districts in the 2025 plan more compact
2 than District 6 in the 2022 plan?

3 A. Yes.

4 Q. Does that include Districts 4, 5, and 6 in the 2025
5 plan?

6 A. Yes.

7 Q. And Dr. Hood, what was the least compact district in
8 the 2012 plan?

9 A. District 6 at 0.29.

10 Q. Are all the districts in the 2025 plan more compact
11 than the version of District 6 in the 2012 plan?

12 A. Yes.

13 Q. Does that include Districts 4, 5, and 6 from the 2025
14 plan?

15 A. Yes.

16 Q. Let's go to Table 2 in your report, which is on page
17 6. Doctor Hood, do different software programs sometimes
18 calculate Reock scores differently for the same district?

19 A. They do. I mean, different software programs
20 sometimes use different map projections, and so, because of
21 that, sometimes the Reock scores are slightly different from
22 program to program.

23 Q. So what is Table 2 on page 6 of your report showing?

24 A. These are Reock scores as calculated from Dave's
25 Redistricting App.

1 Q. Why did you include Table 2 in your report?

2 A. Because some of the plaintiff's experts made use of
3 this particular redistricting app to generate these Reock
4 scores, so I just wanted my report to be complete and thorough
5 in its comparisons.

6 Q. And based on Table 2, what do you observe about the
7 compactness of the 2025 plan as a whole compared to prior plans?

8 A. So in 2025, you know, based on these calculations, the
9 mean Reock score is .41, as compared to .42 in 2022 or .40 in
10 2012.

11 Q. How about District 4?

12 A. District 4 has a Reock score under this calculation of
13 .39 in 2025.

14 Q. And how does that compare to prior plans?

15 A. It's lower. The Reock score for 4 in 2022 was .51 and
16 it was .41 in 2012.

17 Q. And how does District 5 compare to prior plans?

18 A. So District 5 has a Reock score in 2025 of .29, which
19 is higher than the 2012 value at .26 but lower than the 2022
20 value at .42.

21 Q. And how does District 6 compare to prior plans?

22 A. So District 6 has a Reock score in 2025 of .28, which
23 is higher than the 2022 value of .25 or the 2012 value of .24.

24 Q. And Dr. Hood, looking at Table 2, according to the
25 Reock measures calculated in Dave's Redistricting App, what was

1 the least compact district in the 2022 plan?

2 A. District 6 at .25.

3 Q. And are all the districts in the 2025 plan more
4 compact than that district?

5 A. Yes.

6 Q. And what was the least compact district in the 2012
7 plan?

8 A. Again, District 6 at .24.

9 Q. And are all the districts in the 2025 plan more
10 compact than that version of District 6 in the 2012 plan?

11 A. Yes.

12 Q. And what was the second least compact district in the
13 2012 plan?

14 A. It looks like District 5 at .26.

15 Q. And are all the districts in the 2025 plan more
16 compact than District 5 in the 2012 plan?

17 A. Yes.

18 Q. Let's go to your next table, which is also on page 6,
19 Table 3. What is this table showing?

20 A. These are Polsby-Popper scores for the same types of
21 comparisons we were making previously between the three
22 districting plans.

23 Q. And when you look at this table, what do you conclude
24 about the compactness of the 2025 plan as a whole compared to
25 prior plans?

1 A. Well, as a whole the mean compactness score for the
2 2025 plan is .37 under the Polsby-Popper measure, which is
3 higher than 2022, where the mean score was .27. It's lower than
4 -- or, excuse me -- sorry. Let me back up for a for second.

5 So the mean score for 2025 is .37, which is higher than the
6 mean score for 2022 at .32 or 2012 at .27.

7 Q. And what do you conclude about the compactness of
8 District 4 compared to prior plans?

9 A. So District 4 has a Polsby-Popper score of .33 in
10 2025, which is higher than the value in 2022 at .30 or the value
11 in 2012 at .23.

12 Q. And just to clarify the record, does that mean that
13 District 4 became more compact in 2025 than it was in 2022 or
14 2012?

15 A. Yes.

16 Q. And based on Table 3, what do you conclude about
17 compactness of District 5 compared to prior plans?

18 A. So District 5 has a compactness -- Polsby-Popper
19 compactness score of .20 in 2025, which is lower than the
20 Polsby-Popper measure for that district in 2022 at .38 and just
21 slightly higher than the measure for that district in 2012 at
22 .19.

23 Q. What do you conclude about the compactness of
24 District 6 compared to prior plans?

25 A. So District 6 in 2025, has a Polsby-Popper compactness

1 score of .36, which is higher than the value for 2022 for that
 2 district at .30 or higher than the value for that district in
 3 2012 at .24.

4 Q. Doctor Hood, what was the least compact district in
 5 the 2022 plan according to the Polsby-Popper score?

6 A. District 3 at .16.

7 Q. And are all the districts in the 2025 plan more
 8 compact than that district?

9 A. Yes.

10 Q. Okay. And what was the least compact district in the
 11 2012 plan?

12 A. District 5 at .19.

13 Q. And are all the districts in the 2025 plan more
 14 compact than that district?

15 A. Yes.

16 Q. Now, according to Table 3, Dr. Hood, have the
 17 plaintiffs in this case challenged the three least compact
 18 districts in the 2025 plan?

19 A. The three least compact districts?

20 Q. Yeah. On the Polsby-Popper measure.

21 A. Well, there's -- some of the districts, yes. There's
 22 one, District 8 at .27, which is below the values for 4 or 6 in
 23 that plan, so.

24 Q. Thank you, Doctor. Let's go now to page 7, Table 4.
 25 What is this table showing?

1 A. This is the Schwartzberg alternative comparisons for
 2 the -- again, the three districting plans we've been talking
 3 about.

4 Q. I believe you testified earlier that Polsby-Popper and
 5 alternative Schwartzberg both compared the shape of a district
 6 to a circle; is that right?

7 A. The perimeter of a circle with the equal area, yes.

8 Q. And so are those two -- two measures of compactness
 9 mathematically related?

10 A. Yes.

11 Q. And given that that is the case, Dr. Hood, are the
 12 figures and results in Table 4 consistent with the figures and
 13 results in Table 3 we just discussed?

14 A. Yes.

15 Q. Let's go to paragraph -- or page 8 of your report.

16 I'd like to call your attention to a paragraph that starts,
 17 There is also at least one academic article of note.

18 Do you see that paragraph?

19 A. Yes, I do.

20 Q. And there is a reference in this paragraph to an
 21 article by Pildes, P-I-L-D-E-S, and Niemi, N-I-E-M-I.

22 What point are you making in this paragraph?

23 A. Well, they -- they analyzed districts and came up with
 24 some parameters potentially for what might be uncompact or a
 25 district that was so uncompact that it might be

1 unconstitutional, again, so. I'm not offering this as any kind
 2 of bright-line test, for instance, so but just as a benchmark to
 3 think about what's compact and what's not compact.

4 Q. Doctor Hood, we talked about your Tables 1 through 4.

5 Did you also provide figures depicting the various
 6 compactness results in comparisons we've been discussing?

7 A. I did.

8 Q. So let's turn to Figure 1, which starts after page 9
 9 of your report.

10 What is Figure 1 depicting?

11 A. So these are Reock scores, again, for the 2025, 2022,
 12 and 2012 plans.

13 Q. What are the red squares?

14 A. So the red squares in the 2025 column are the
 15 challenged districts in this case.

16 Q. What are the blue circles?

17 A. A blue circle would be another district in that
 18 particular redistricting plan.

19 Q. What are the blue triangles?

20 A. A blue triangle would be a case where a district --
 21 two districts had the exact same compactness score and so,

22 visually, they're stacked on top of one another and you wouldn't
 23 be able to see that, and so that's why I put those as triangles.

24 Q. What is the black rectangle at Figure 1?

25 A. I call it the zone of similarity. It's simply a

1 bounding the challenged districts top to bottom in terms of the
 2 least and most compact for the challenged districts, and then it
 3 just sort of draws a box across the other plans to help us
 4 visually make some comparisons.

5 Q. Is that a term of art, "zone of similarity"?

6 A. No. I mean, it's just, again, it's just an aid or I
 7 hope it's an aid to being able to sort of graphically or
 8 visually see what's going on.

9 Q. So looking at Figure 1, what do you conclude about the
 10 2025 plan?

11 A. Well, you can see the challenged districts there are
 12 towards the bottom, which means they're less compact. And so
 13 there are five other districts above or outside of the zone of
 14 similarity or outside of the box in that case.

15 Q. And what do you conclude about the 2022 plan?

16 A. So comparing it to the 2022 plan, there's two
 17 districts that fall in the -- in the rectangle there from the
 18 2022 plan, and one district actually falls below the rectangle,
 19 meaning that it's less compact than the challenged districts
 20 from 2025.

21 Q. What do you conclude about the 2012 plan?

22 A. The 2012 plan, there are two districts that fall
 23 within the same boundary line for the challenged districts from
 24 2025, and then there are two additional districts that actually
 25 fall below that -- that boundary like, again, that box; meaning,

1 they're less compact than the challenged districts in 2025.

2 Q. Let's take a look at Figure 2 on the next page of your
3 report. What is Figure 2 depicting?

4 A. Same thing, except these are for Polsby-Popper scores.

5 Q. So what do you conclude briefly from Figure 2 about
6 the 2025 plan?

7 A. So you can see the 2025 plan, that -- you can see that
8 the -- the challenged district there and then the, again, box
9 drawn around the challenged districts. There's another district

10 from the 2025 plan that falls within that zone that's not being
11 challenged and the remaining four districts are above that box.

12 Q. And what do you conclude about the 2022 plan?

13 A. The 2022 plan, there are -- it looks like five
14 districts within the box; one district below the box, meaning,
15 it's less compact on the Polsby-Popper measure, and there's two
16 districts above the box, which means they're more compact than
17 the challenged districts in 2025.

18 Q. And how about the 2012 plan?

19 A. The 2012 plan contains six districts within the --
20 within the box, so they have scores that are comparable to the
21 challenged districts in 2025. One district is below that and
22 one district is above that, meaning it's more compact.

23 Q. Now, that's turn to Figure 3 on the next page of your
24 report. What is Figure 3 depicting?

25 A. Same comparisons, except these are -- these are

1 alternative Schwartzberg scores.

2 Q. And since, as we've discussed before, Polsby-Popper
3 and alternative Schwartzberg measures are mathematically
4 related, is the depiction in Figure 3 generally consistent with
5 the depiction in Figure 2 we were just discussing?

6 A. Yes. I mean, they're sort of mirror images, because,
7 again, in the alternative Schwartzberg scores, higher values, in
8 that case above one, are less compact, so.

9 Q. Doctor Hood, are you aware that some of the
10 plaintiff's experts in this case have critiqued your comparison
11 of compactness scores as not being useful in this case?

12 A. Yes.

13 Q. And how do you respond?

14 A. Well, I mean, we need to be able to make comparisons,
15 again, to see if there are any outliers in terms of the
16 districts being challenged compared to prior districting plans
17 that have been put in place by the state. And so you have to
18 compare something to something, right? And so I've compared the
19 challenged districts in 2025, to the other districts from the
20 2025 plan, as well as the districts from the 2012 and 2022 plans
21 to the 2025 plan.

22 Q. And after having conducted that comparison, Dr. Hood,
23 what is your conclusion about whether the challenged districts
24 are outliers in how the General Assembly has drawn congressional
25 districts in redistricting cycles?

1 A. Well, in my opinion, I don't think they're outliers,
2 necessarily. Again, you can look at some of the figures we were
3 just looking at visually to see that they're not outliers. In
4 some cases, the 2025 plan performs better on some of these
5 compactness measures than the other two plans that we talked
6 about.

7 Q. Let's turn now to page 10 of your report and
8 Subsection B which is titled -- right after the figures, is page
9 10 -- titled population deviation.

10 What did you observe here in this subsection of your
11 report?

12 A. So I wanted to look and make sure the district
13 population counts we equal across the eight congressional
14 districts in the 2025 plan.

15 Q. And what did you conclude?

16 A. I conclude that they are. It's a -- the 2025 plan is
17 a zero deviation population plan.

18 Q. Is that based on the shapefile prepared by the
19 Secretary of State, again?

20 A. Yes.

21 Q. And in the next section, Section C, what assessment
22 did you conduct in Section C of your report? Starting with page
23 10.

24 A. So that's a section on communities of interest and I
25 was looking at counties, municipalities and VTDs, and the number

1 of times they may be split across congressional districts.

2 Q. And why did you conduct that assessment?

3 A. Well, looking at communities of interest is a
4 traditional redistricting criteria, typically in that, we want
5 to minimize the number of times those types of geographic units
6 are split.

7 Q. As part of your assessment, did you count or include
8 in your count splits of counties, municipalities, or VTDs where
9 no population was affected?

10 A. I did not.

11 Q. And what's an example of a split that might not affect
12 population?

13 A. Well, I mean, there are a lot of, I guess, generic
14 examples. I mean, one example might be, I believe, Jefferson
15 City sort of north and south of the river is split and north of
16 the river; I don't think that territory contains any population,
17 so.

18 Q. And how did you treat the City of St. Louis in this
19 analysis of splits?

20 A. Oh, the City of St. Louis is an independent city, so
21 it was treated as a analogous to a county in this analysis.

22 Q. So let's turn next to Table 6 on page 11. How does
23 the 2025 plan compare to the 2022 plan on county splits?

24 A. In 2025, there were five counties that were split
25 across congressional districts and compared to the 2022 plan,

1 which split nine counties. So 7.8 percent of counties were
 2 split in the 2022 plan, versus 4.3 percent of counties in the
 3 2025 plan.

4 Q. So the 2025 plan splits fewer counties than the 2022
 5 plan; is that right?

6 A. Correct.

7 Q. Let's go now to Table 7 of your report, municipality
 8 splits by congressional plan.

9 How does the 2025 plan compare to the 2022 plan on
 10 municipality splits?

11 A. So looking at Panel A, first, the 2025 plan splits 1.4
 12 percent to, excuse me, municipalities, versus 3.3 percent of
 13 municipalities being split by the 2022 plan.

14 Q. And how does that compare in raw numbers of
 15 municipalities split?

16 A. So there were 31 municipalities split under the 2022
 17 plan, versus 13 split under the 2025 plan.

18 Q. What does Panel B show?

19 A. Panel B looks at municipalities that are wholly
 20 encompassed within a county. So, again, the municipality
 21 doesn't spill -- spill out across the county boundary lines, so.

22 So the thinking here is that, you know, if there's a hierarchy
 23 and the top of the hierarchy are counties and we're trying to
 24 keep counties wholly intact, then sometimes we might have to
 25 split municipalities to keep the county -- the counties intact,

1 to the extent possible.

2 Q. And how does the 2025 plan perform with respect to
3 municipalities splits -- of municipalities within an entire --
4 contained wholly within a county compared to the 2022 plan?

5 A. So in the 2025 plan, 0.2 percent of municipalities
6 contained wholly within a county were split that -- there's just
7 two of those -- versus 2.3 percent of municipalities wholly
8 contained within a county, the raw number being 22 there.

9 Q. Let's take a look now at Table 8 on page 12. This
10 table examines VTD splits by congressional plan; is that right?

11 A. Yes.

12 Q. And how does the 2025 plan compare to the 2022 plan on
13 VTD scores?

14 A. So the 2022 plans split 1 percent of the VTDs versus
15 the 2025 plan, which split 0.9 percent; so by a tenth of a
16 percentage point, you know, fewer VTDs were split in the 2025
17 plan compared to the 2022 plan.

18 Q. Doctor Hood, does your Table 8 contain a typo?

19 A. Yes. It has a typo in it.

20 Q. What is that typo?

21 A. The number for the 2022 plan under not split should be
22 4558 instead of 4588.

23 Q. Does that typo affect the percentages calculated in
24 Table 8?

25 A. No. The percentages are correct.

1 Q. And does it affect the total number of split VTDs in
2 that column?

3 A. No.

4 Q. And does that typo affect any of your opinions in this
5 case?

6 A. No.

7 Q. Now, Dr. Hood are you aware that certain of the
8 plaintiff's experts criticize or critique your splits analysis
9 for counting the number of splits but not considering how those
10 splits allocate population between different districts?

11 A. Yes, I am.

12 Q. How do you respond to that criticism?

13 A. Well, I mean, I guess, I've done what is, in my
14 opinion, is the most straightforward mechanism for determining
15 splits. Again, I'm not looking at any split that doesn't
16 contain population, you know, I think -- I think we could -- you
17 know, most of the time map drawers could agree that fewer splits
18 in terms of whatever kind of jurisdiction we're talking about
19 are better, but then we start talking about something like
20 splits by population. I mean, if it's split, it's split.

21 So, you know, is a 90/10 split better than an 80/20 split?

22 I mean, I don't know. I think, that's -- some of that's
23 slightly normative, in my opinion.

24 Q. Let's turn now to page 13 of your report. You have a
25 section called district congruity analysis.

1 Do you see that?

2 A. Yes.

3 Q. And what are you assessing here?

4 A. This is -- another way to put this is district core
5 retention levels.

6 Q. And what do you observe about that factor?

7 A. So this is the percentage of the population from a
8 district from the 2022 plan that was carried over to the 2025
9 plan.

10 Q. And what in particular do you observe about that?

11 A. You know, most of the time -- well, for one, the
12 average district core retention is 77 percent. Most districts
13 -- well, all the districts -- seven out of eight districts have
14 a district core retention score of, you know, at least 61
15 percent or greater. So three fifths of constituents being
16 carried over from the previous plan. The one exception, again,
17 being District 5, which has a district core retention score of
18 about 43.

19 Q. So Dr. Hood, based on your report, will you briefly
20 summarize your overall opinions in this case?

21 A. Well, I mean, in terms of compactness, again, I don't
22 view the challenged districts from the 2025 plan as being
23 extreme outliers. Especially, when we can compare it to the
24 2012 or 2022 plans. As well, the 2025 plan does equally as well
25 or better than the 2022 plan in terms of a number of traditional

1 redistricting criteria; such as, you know, communities of
2 interest, for one example.

3 Q. Thank you, Dr. Hood. I have no further questions.

4 A. Thank you.

5 **CROSS-EXAMINATION BY MS. HARLESS**

6 Q. Good afternoon, Dr. Hood.

7 A. Good afternoon.

8 Q. My name is Annabelle Harless. We met at your
9 deposition. Nice to meet you in person.

10 A. Yes.

11 Q. I'm going to be asking you some questions today on
12 behalf of the Wise Plaintiffs.

13 A. Okay.

14 Q. You used only quantitative metrics to measure
15 compactness in this case, correct?

16 A. That's true, yes.

17 Q. And those metrics only measure compactness in terms of
18 the size and shape of the district, right?

19 A. Correct.

20 Q. And beyond using those quantitative metrics, you
21 didn't do any other type of analysis that measures compactness,
22 correct?

23 A. Correct.

24 Q. And among the compactness scores that you used, there
25 was none that you relied on more than another, right?

1 A. Correct.

2 Q. And you'd agree that there's no consensus on any
3 particular mathematical cut point for determining that a
4 district is not compact, right?

5 A. Correct. Not to my knowledge, yes.

6 Q. I want to talk a little bit about comparing
7 redistricting plans. You'd agree that when comparing to past
8 maps the first place that you would start is to compare the
9 challenged map to the most recent previous map, correct?

10 A. Yes.

11 Q. The most recent previous map in this case was the 2022
12 map, right?

13 A. Correct.

14 Q. And the 2022 map was drawn using the same census
15 population data as the 2025 map?

16 A. Correct.

17 Q. And in that regard, the 2022 plan is particularly
18 useful in terms of comparison for the 2025 map, right?

19 A. And I do use it as a comparison point, yes.

20 Q. You'd agree that the 2012 map was drawn with different
21 census data, correct?

22 A. The population data's different, yes.

23 Q. And it's also true that the population in Missouri
24 changed from the 2010 census to the 2020 census, right?

25 A. Yes, that's correct.

1 Q. And you didn't do any analysis of the redistricting
2 criteria that were considered in the drawing with the 2012 map,
3 right?

4 A. Correct.

5 Q. So you can't know for sure whether the factors
6 considered in drawing the 2012 map were the same as those used
7 in drawing the 2022 map, for example?

8 A. Correct.

9 Q. And something, you don't know whether the factors
10 drawn -- factors used for drawing the 2012 map were the same as
11 those used for the 2025 map, correct?

12 A. Correct.

13 Q. I would like to pull up Intervenor's Exhibit 215,
14 which is your exhibit report -- or which is your expert report
15 and we're going to go to page 5.

16 And we'll zoom in on Table 1 and, again, this is the Reock
17 scores from the Maptitude software for the maps that you
18 compared in this case, correct?

19 A. Correct.

20 Q. You'd agree that an average compactness score for a
21 whole map would mask the existence of non-compact individual
22 districts, right?

23 A. It's -- it's possible. I mean, again, everything up
24 there is -- is fully transparent and, in other words, I'm giving
25 the compactness score for all the districts, so.

1 Q. And if we look at Table 1 and I'm looking at the 2025
2 column, all three of the challenged Districts 4, 5, and 6, are
3 less compact than the 2025 plan average, right?

4 A. Yes, correct.

5 Q. And it's true that District 4, 5, and 6 have the three
6 lowest compactness scores of any districts in the 2025 map,
7 correct?

8 A. Yes.

9 Q. And in particular, District 5 has the lowest
10 compactness score on this Reock measure than any other district
11 in the 2025 map, correct?

12 A. That is correct.

13 Q. And you'd agree that the compactness of Districts 4
14 and 5 decreased in the 2025 plan as compared to the 2022 plan,
15 correct?

16 A. Four and five?

17 Q. Yes.

18 A. Yes. Yes, that's correct.

19 Q. And District 4 in the 2022 map is more compact than
20 the 2025 map?

21 A. Correct.

22 Q. And Districts 4, 5, and 6 in the 2025 map, all have
23 lower compactness scores than the average for the 2022 map,
24 right?

25 A. Yes.

1 Q. And then, the same thing for the 2012 map. All three
2 of the challenged districts in the 2025 map are less compact
3 than the mean of the 2012 map, correct?

4 A. Correct.

5 Q. Now, you don't have any kind of threshold that you use
6 for determining the significance of a difference in a
7 compactness score; is that right?

8 A. Correct.

9 Q. But you'd agree, for example, that a difference of .03
10 is small, correct?

11 A. It's small, yes.

12 Q. And if we look at the mean row at the bottom of Table
13 1 here, the difference between the average for the 2025 and the
14 2022 map as a whole is only .02, correct?

15 A. That's correct.

16 Q. So you'd agree there's not that great of a difference
17 between those average compactness scores for the 2025 and 2022
18 maps?

19 A. Well, it's not that great, but there is a difference,
20 it's .02.

21 Q. In your report, you know that your Reock Maptitude
22 scores align with those in Dr. Stern's report, correct?

23 A. Yes.

24 Q. And you don't dispute any of Dr. Stern's calculations
25 in his report, correct?

1 A. No.

2 Q. Now, you noted that there's a difference in the Reock
3 scores as reported by Maptitude and Dave's Redistricting App
4 because of the projection system used, correct?

5 A. Correct.

6 Q. But you still reported the Reock scores from Dave's
7 Redistricting App in your report, right?

8 A. Yes. To be thorough, I did. Yes.

9 Q. And let's look at Table 2 in your report which is on
10 page 6. And in this table, you report the Reock scores
11 generated by Dave's Redistricting App, correct?

12 A. Correct.

13 Q. And after you ran these numbers you found they were
14 comparable with the numbers reported in Dr. Cervas' report,
15 right?

16 A. Yes.

17 Q. And if we look at the 2025 map scores in Table 2,
18 you'd agree that all three of the challenged Districts 4, 5, and
19 6, are less compact than the 2025 plan average, correct?

20 A. Yes.

21 Q. And Districts 5 and 6 have the two lowest compactness
22 scores out of all the districts in the 2025 map, right?

23 A. Correct.

24 Q. And if we look at the 2022 column in Table 2, you'd
25 agree that the compactness of Districts 4 and 5 decreased in the

1 2025 plan as compared to the 2022 plan, right?

2 A. Correct.

3 Q. And the difference between District 4's compactness
4 scores in 2022 and 2025 is 0.12; that's not a small difference,
5 correct?

6 A. District 4?

7 Q. Yes.

8 A. Well, it's larger than .02, that we were just talking
9 about certainly, so.

10 Q. It's -- it's over four times larger than .02, correct?

11 A. Yes.

12 Q. And similarly for District 5, the difference in the
13 compactness score from 2022 to 2025 is 0.13, right?

14 A. Yes.

15 Q. And you'd agree that the 0.13 decrease is not a small
16 difference, correct?

17 A. Well, I don't think I put in adjectives to anything.
18 It's, again, we know what the difference is.

19 Q. And looking at the mean, all three challenged
20 districts in the 2025 map have lower compactness scores than the
21 mean of the 2022 map, correct?

22 A. Correct.

23 Q. And all three challenged districts in the 2025 map
24 have lower compactness scores in the mean of the 2012 map,
25 right?

1 A. Correct.

2 Q. And if we look at the mean row there at the bottom of
3 Table 2, you'd agree that according to the scores in this chart,
4 there's not that great of a difference between the overall
5 compactness score for the 2012, 2022, and 2025 maps?

6 A. They're very close, yes.

7 Q. But if we're looking closely at the numbers there, at
8 least according to the Dave's Reock scores, the 2022 plan has
9 the highest average compactness score among the 2012, 2022, 2025
10 maps, correct?

11 A. By -- yeah, .01. Yes.

12 Q. And let's move to Table 3, which is still on page 6.
13 And this includes the Polsby-Popper scores for the same three
14 maps we've been talking about, correct?

15 A. Correct.

16 Q. Looking at Table 3, you'd agree that the Polsby-Popper
17 score for District 5 is less compact in the 2025 plan than in
18 the 2022 plan, correct?

19 A. Correct.

20 Q. And the value for District 5 in the 2025 plan is 0.18
21 lower than for District 5 in the 2022 plan, right?

22 A. Yes.

23 Q. And that means the compactness score for District 5
24 decreased by about half from the 2022 to the 2025 plan, correct?

25 A. Approximately, yes.

1 Q. That's not a small difference, right?

2 A. Well, again, it's larger than .02 or a difference like
3 that, that we've been talking about.

4 Q. And looking at this table, the Polsby-Popper scores
5 for all three of the challenged districts in the 2025 plan are
6 lower than the 2025 maps average, correct?

7 A. Correct.

8 Q. And looking at District 5 in Table 3, District 5's
9 score in the 2025 plan is lower than the mean for the 2022 map,
10 right?

11 A. Yes.

12 Q. And the Polsby-Popper score for District 5 in the 2025
13 plan is also lower than the mean for the 2012 map, correct?

14 A. Correct.

15 Q. All right. Let's go to Table 4, which is on page 7 of
16 your report. And you testified earlier that the scores in this
17 table generally align with what is reported in Table 3, correct?

18 A. Correct.

19 Q. All right. We've just finished looking through all
20 four of these -- Tables 1 through 4 -- and across all four of
21 the quantitative metrics you report there, you'd agree that

22 District 5 in the 2025 plan is less compact than in the 2022
23 plan, correct?

24 A. Yes.

25 Q. And you're not offering an opinion as to why the

1 compactness score for any district in the 2025 plan changed from
2 the 2022 plan, correct?

3 A. Correct.

4 Q. Based on the quantitative metrics in your report,
5 District 5 in the 2025 map is not as compact as it could be,
6 correct?

7 MR. GORE: Objection; that calls for a legal
8 conclusion.

9 THE COURT: Sustained, as to that particular
10 phrase.

11 MS. HARLESS: Okay.

12 Q. (MS. HARLESS) You'd agree that it's possible to draw
13 a more compact version of District 5, correct?

14 A. Well, given the millions of possibilities out there, I
15 would say so, yes.

16 Q. And not even just hypothetically. The 2022 map, which
17 was in place in Missouri, is an example of a more compact
18 District 5, correct?

19 A. Correct.

20 Q. All right. I want to ask you a couple of questions
21 about Figures 1 through 3 in your report. And those come after
22 -- they don't have page numbers from after page 9 -- in
23 Intervenor's Exhibit 215, if you want to go to Figure 1.

24 And these figures are just a visual representation of the
25 compactness scores that you have in Tables 1, 3, and 4, correct?

1 A. Correct.

2 Q. In each of these figures you drew a box around certain
3 scores which you call the "zone of similarity," right?

4 A. I drew a box around the challenged districts of 2025,
5 yes.

6 Q. And the zone of similarity is not a term found in any
7 peer-reviewed literature that you're aware, correct?

8 A. No, it's not. I mean, again, I'm just trying to offer
9 some visual guidance to help us make some comparisons.

10 Q. And even though you call the box the zone of
11 similarity, you'd agree that there could be different
12 constraints on compactness on the districts falling in that box,
13 right?

14 A. Sure. It's possible.

15 Q. Different factors might have impacted the compactness
16 score of a district between the 2012 and 2025 maps, correct?

17 A. Well, I mean, I guess, just hypothetically, that's
18 possible.

19 Q. And different factors could influence the compactness
20 score of a district in one area of the state when compared to a
21 district in another area of the state, correct?

22 A. Correct.

23 Q. In Figures 1 through 3, it's fair to say you're not
24 offering an opinion as to any particular district from the 2022
25 map, for example, has a compactness score that puts it in the

1 zone of similarity with a district in the 2025 map?

2 A. I'm not. No.

3 Q. Let's a look Figure 1 here. If we look at this
4 figure, we can see that all three of the challenged districts,
5 which are red boxes, have lower Reock scores than every other
6 non-challenged district in the 2025 plan, correct?

7 A. That is correct, yes.

8 Q. And then, let's turn to Figure 2, please. And if we
9 look at the 2025 map in Figure 2, the challenged districts have
10 three of the four lowest compactness scores, correct?

11 A. Correct.

12 Q. And District 5 is the box at the very bottom of the
13 column for 2025, with the lowest compactness score of 0.20,
14 right?

15 A. Yeah. District 5 has a Polsby-Popper score in 2025 of
16 .20, yes.

17 Q. And it's the red box at the very bottom of the column
18 for 2025 in Figure 2?

19 A. Yes. Yes.

20 Q. So every other district in the 2025 map has a higher
21 compactness score than CD5, correct?

22 A. Yes.

23 Q. And the highest score appears to be 0.53; feel free to
24 check the table, if you need to do that.

25 A. That looks to be correct, yes.

1 Q. That is a 0.33 difference, correct?

2 A. Yes, it is.

3 Q. So the most compact district in the 2025 plan is more
4 than twice as compact as District 5, right?

5 A. Yes, on that metric. Yes.

6 Q. And if we look at the 2022 column in Figure 2, only
7 one district in the 2022 map had a compactness score lower than
8 District 5 in the 2025 map, right?

9 A. Correct.

10 Q. And, again, you're offering no opinion as to why that
11 district in the 2022 map had a lower score, correct?

12 A. That's correct.

13 Q. And if we look at the 2012 column, only one district
14 in the 2012 map had a compactness score lower than District 5 in
15 the 2025 plan, right?

16 A. Correct.

17 Q. Now, Counsel for Intervenors mentioned on direct an
18 article that you cite in your report. I'll just refer to it as
19 the *Pildes*, P-I-L-D-E-S, article; is that -- will you understand
20 what I'm talking about?

21 A. I think it's *Pildes* and *Niemi*.

22 Q. Yeah. But if I shortened it to *Pildes* for -- just for
23 the sake of everyone?

24 A. I'm with you. I'm with you.

25 Q. Okay.

1 A. Okay.

2 Q. And that was a 1993 article, correct?

3 A. I believe so.

4 Q. Would you like to check or --

5 A. Yes, that's correct.

6 Q. And you cite the *Pildes* article mainly to say it
7 suggests a particular national cut off for determining if a
8 district is compact according to certain mathematical
9 compactness scores, correct?

10 A. Yes. It's one possibility.

11 Q. And then you used that cut off to compare the
12 compactness of the 2025 maps districts?

13 A. Yes, I did.

14 Q. Now, you'd agree that there's no consensus behind the
15 threshold the *Pildes* article suggests, right?

16 A. That's the opinion of those two scholars, yes.

17 Q. And there's not an academic consensus behind the
18 threshold suggested in that article?

19 A. I would say, there's not really an academic consensus
20 on a lot of these compactness scores.

21 Q. And the *Pildes* article was published in a law review,
22 right?

23 A. Correct.

24 Q. So it's not peer-reviewed?

25 A. I would assume it wasn't.

1 Q. And the focus of that article is the US Supreme
2 Court's decision in *Shaw v. Reno*; that's a racial gerrymandering
3 case, correct?

4 A. That is correct, yes.

5 Q. And the *Pildes* article is discussing compactness in
6 relation to racial gerrymandering claims brought under the
7 Federal Constitution, right?

8 A. Correct.

9 Q. And as far as you're aware, this case doesn't involve
10 any racial gerrymandering claims, right?

11 A. That is correct.

12 Q. Since the *Pildes* article is from 1993, it's comparing
13 the compactness of congressional districts across the country
14 from the 1980s and 1990s, right?

15 A. Yes.

16 Q. You didn't do any analysis in this case to see the
17 range of compactness scores for congressional districts across
18 the country in 2012, right?

19 A. I did not.

20 Q. And you didn't do that analysis for 2022, right?

21 A. I did not.

22 Q. And you didn't do that analysis for 2025, correct?

23 A. That's correct.

24 Q. Fair to say, that you don't know whether average
25 compactness scores for congressional districts on either of the

1 Reock or Polsby-Popper measures have changed since the 1993
2 article, correct?

3 A. I don't have an answer to that.

4 Q. And you're not aware how many congressional districts
5 across the country might be invalidated by the threshold
6 suggested in the *Pildes* article today, correct?

7 A. Correct.

8 Q. Now, you noted earlier that the Reock compactness
9 scores may vary on the projection method that is used, right?

10 A. Correct.

11 Q. And you don't know if the Reock compactness scores
12 from the *Pildes* article were calculated using the same
13 projection method as the scores presented in your report,
14 correct?

15 A. I don't know the answer to that, no.

16 Q. Okay. And in the *Pildes* article the authors note that
17 different states might be subject to different compactness
18 constraints, right?

19 A. Correct.

20 Q. You would agree that a district drawn in one state
21 might be subject to different compactness constraints than a
22 district drawn in another state, correct?

23 A. It's possible, yes.

24 Q. For example, the shape of a state's boundaries could
25 impact mathematical compactness scores?

1 A. Yes.

2 Q. And different patterns of population dispersion could
3 impact district compactness scores?

4 A. It's possible, yes.

5 Q. And you'd agree that different states consider
6 different redistricting criteria when they're redrawing
7 districts, right?

8 A. Certainly.

9 Q. And any of those criteria could impact a district's
10 compactness score, correct?

11 A. Yes, hypothetically.

12 Q. And it's also true that areas within a state could
13 have different geographic factors that influence the compactness
14 of a district, right?

15 A. Yes, --

16 Q. For example --

17 A. -- it's possible.

18 Q. For example, natural features in one area of the state
19 might impact the compactness of the district boundaries in
20 different ways?

21 A. Yes, it's possible.

22 Q. And you testified that it's not your opinion that the
23 compactness cut off that you identified in the *Pildes* article
24 should be established as a bright-line threshold for measuring
25 the compactness of congressional districts in Missouri, correct?

1 A. That's correct.

2 Q. You're not claiming that any district with a Reock
3 score 0.16 or above is compact under the Missouri Constitution,
4 correct?

5 A. Well, I'm not qualified to make that determination,
6 for one.

7 Q. And you're not aware of any court that has adopted the
8 threshold suggested in the *Pildes* article for measuring
9 compactness, correct?

10 A. I'm not aware, no.

11 Q. And you're not aware of whether any court has found a
12 district with a mathematical compactness score above the
13 threshold identified in that article to be illegal, right?

14 A. Correct.

15 Q. And you don't know whether a court has found a
16 district with a mathematical compactness score below the
17 threshold in the article to be legal, right?

18 A. No. I don't know the answer to that.

19 Q. You cite the Missouri Supreme Court case *Pearson v.*
20 *Koster* in your expert report, correct?

21 A. Yes.

22 Q. And you read that case, right?

23 A. I did.

24 Q. And you note in your report that the *Pearson* case did
25 not establish a bright-line test using compactness measures,

1 correct?

2 A. I believe I state that, yes.

3 Q. In your report you compared the least compact
4 districts in the 2012 map to the 2025 map, on the basis that the
5 2012 districts passed constitutional muster in *Pearson*, right?

6 A. That's one point of comparison I make, yes.

7 Q. But you'd agree that comparing a compactness score for
8 a challenged district in the 2025 plan to a district in the 2012
9 plan alone doesn't determine whether that district is compact,
10 correct?

11 A. No. I don't think I made that argument, though.

12 Q. And you'd agree that a district with a compactness
13 score above the threshold of the least compact district in the
14 2012 map is not necessarily constitutional as related to
15 compactness, correct?

16 A. You mean, under the Missouri Constitution?

17 Q. Correct.

18 A. Well, I mean, again, I'm not qualified to make that
19 determination, for one.

20 Q. It's your understanding that the Court in *Pearson*
21 didn't uphold the districts at issue in that case based solely
22 on their scores on quantitative compactness measures, right?

23 A. Correct.

24 Q. Beyond a district's quantitative score, closely united
25 territory is another factor that might help a Missouri Court

1 determine whether a district is compact, right?

2 A. According to that opinion in -- yes.

3 Q. And one comparison for determining closely united
4 territory is whether communities that share similarities are
5 included in a district together, correct?

6 A. Well, that could be one.

7 Q. And you weren't asked to assess closely united
8 territory in this case, correct?

9 A. Correct.

10 Q. And the phrase "closely united territory" doesn't ever
11 appear in your report, right?

12 A. I don't believe so.

13 Q. All right. I want to talk a little bit about the
14 redistricting criteria that you discussed in your report and the
15 first one you discussed is the overpopulation requirement.

16 You'd agree that the 2022 plan was already equally
17 populated, correct?

18 A. Yes. It met muster on that -- that particular metric.
19 Yes.

20 Q. And there was no new decennial census that required
21 redrawing the districts in 2025, correct?

22 A. No. There's not been a new census.

23 Q. And you're not offering an opinion on how population
24 considerations may have impacted the compactness score for any
25 particular district in the 2025 map, right?

1 A. I'm not, no.

2 Q. Let's move on to contiguity. Again, you're not
3 disputing that the 2022 map was contiguous, correct?

4 A. Correct.

5 Q. And you're not offering an opinion on how contiguity
6 as a factor may have impacted the compactness score for any
7 particular district in the 2025 map?

8 A. I'm not.

9 Q. In your report you include a discussion of communities
10 of interest, which you define as political subdivisions, right?

11 A. Yes.

12 Q. And that's the only type of community of interest that
13 you offered opinions about in this case?

14 A. Yes.

15 Q. But you agree that there could be other types of
16 communities of interest, for example, economic communities of
17 interest, right?

18 A. Well, if -- if, you know, determined by the
19 legislature, then, yes.

20 Q. Corn growers, for example, might be an economic
21 community of interest?

22 A. It's possible.

23 Q. In terms of political subdivision splits, your
24 analysis includes the number of county, municipal, and VTD
25 splits for overall, for the entire 2022 and 2025 maps, right?

1 A. Yes.

2 Q. And you don't dispute the political subdivision splits
3 calculated in Dr. Cervas' or Dr. Stern's reports, correct?

4 A. Correct.

5 Q. You're not offering an opinion as to how or why any
6 particular county, municipality, of VTD was split in the 2022
7 and 2025 maps, right?

8 A. That's correct.

9 Q. And you're not offering an opinion on whether
10 following the boundaries of any particular political subdivision
11 impacts the district compactness scores in the 2025 map,
12 correct?

13 A. Correct.

14 Q. I would like pull up Table 9, which is on page 13 of
15 Intervenor's Exhibit 215. And in this table you analyze core
16 retention for the 2025 map, correct?

17 A. Yes, that is correct.

18 Q. And the core retention numbers in this table are the
19 percentage of an incumbents old district found in the new
20 district, right?

21 A. Yes, that's correct.

22 Q. And the remainder of the constituents have been
23 redrawn into another district, correct?

24 A. That would be the -- the -- the implication, yes.

25 Q. And you'd agree that core retention is closely linked

1 to incumbent electoral success and is an important element
 2 related to protecting incumbents across a redistricting cycle,
 3 right?

4 A. There is a connection between core retention and
 5 incumbency protection, yes.

6 Q. And retaining the core of a district helps an
 7 incumbent's re-election chances because constituents know the
 8 incumbent and the incumbent has name recognition, correct?

9 A. Correct.

10 Q. And you'd agree that constituents can benefit from a
 11 connection with an incumbent too, correct?

12 A. It's certainly possible, yes.

13 Q. And one way that constituents can benefit from a
 14 connection with an incumbent is if the incumbent's been with the
 15 district for a while and has provided district specific benefits
 16 for the constituents, right?

17 A. Yes.

18 Q. And this might be especially true if an incumbent has
 19 represented a district for 20 years or so, right?

20 A. Well, I mean, I think -- I don't think it's just
 21 necessarily length of service; that might be related to being,
 22 say, a committee chair, having enough seniority to be a
 23 committee chair, so.

24 Q. Let's look at Table 9 here. The core retention
 25 numbers show that Districts 4 and 5 are the most heavily

1 reconfigured in the 2025 map, correct?

2 A. Well, I mean, three -- 60.4 percent of District 3's
3 population was carried over from the previous district.

4 Q. But you would agree, based on the numbers, that
5 Districts 4 and 5 are the most heavily reconfigured in the 2025
6 map, correct?

7 A. Well, certainly, District 5 down at 43 percent, yes.
8 What was the other one? Four?

9 Q. Yeah.

10 A. Well, I mean, again, 3 is slightly below 4; they're
11 pretty close.

12 Q. Okay. If we look at Table 9, the core retention
13 numbers for Districts 4 and 5 in the 2025 map are lower than the
14 average, right?

15 A. Correct.

16 Q. The core retention score for District 5 is over 33
17 points lower than the mean for the 2025 map, correct?

18 A. Yes.

19 Q. And District 5 in the 2025 map only retained about
20 42.7 percent of it's population from the 2022 map, right?

21 A. Correct.

22 Q. And that's a loss of about three-fifths of District
23 5's previous constituents from 2022, right?

24 A. Yes, approximately -- approximately, yes. A little
25 less than that but, yeah.

1 Q. Would that make District 5 an outlier?

2 A. Well, I mean, I guess in this analysis certainly
3 District 5 has the lowest core retention score; there's no doubt
4 about that.

5 Q. That means about 60 percent of District 5's
6 constituents were transferred to an entirely new district in the
7 2025 map, correct?

8 A. Or districts, plural, yes.

9 Q. And that happened in the middle of the decade after
10 two congressional elections had already taken place, right?

11 A. That's correct.

12 Q. Now, you report the core retention scores here but
13 you're not offering an opinion as to why any particular area of
14 the state was moved in or out of districts in the 2025 map,
15 correct?

16 A. Correct.

17 Q. And you're not offering an opinion as to how core
18 retention impacted the compactness score of any particular
19 district in the 2025 map, right?

20 A. Correct.

21 Q. And if the map drawer wanted to maximize core
22 retention, they would've just left the 2022 map the same,
23 correct?

24 A. Well, I guess, hypothetically. If you wanted the
25 exact same -- if 2025 looked exactly like 2022 then, yes.

1 Q. Now, you'd agree that in the 2025 map there were two
2 districts, 7 and 8, that were unchanged from the 2022 map,
3 correct?

4 A. That's correct.

5 Q. And you'd agree that if a district didn't change, then
6 the legislature's choices remain reflected in its district
7 boundaries, correct?

8 A. Well, I mean, I don't know what the legislative
9 choices were, necessarily. I mean, they decided not to change 7
10 and 8, that's true.

11 Q. And so even if you don't know what their choices were,
12 it's the case that whatever their choices were in 2022 are still
13 reflected in the boundaries of Districts 7 and 8, correct?

14 A. They -- well, again, they decided not to change 7 and
15 8 at all, so.

16 Q. Turning to the Voting Rights Act.

17 You're not offering an opinion on how, if at all, the
18 Voting Rights Act may have affected the compactness of any
19 district in the 2025 map, correct?

20 A. That's correct.

21 Q. And you're also not offering an opinion on whether
22 population density of different regions in the state influenced
23 any district boundaries in the 2025 map, correct?

24 A. Correct.

25 Q. You're not offering any opinions in this case on the

1 analysis done by Plaintiff's expert, Dr. Cromartie, right?

2 A. Correct.

3 Q. And besides your critique that Dr. Cervas cannot
4 account for all the concerns of the Missouri General Assembly,
5 you've offered no other opinion on Dr. Cervas' alternative maps,
6 correct?

7 A. I believe that was it, yes.

8 Q. And same for Dr. Stern?

9 A. Yeah, I believe so. I don't think I had any other
10 criticisms, specifically of him.

11 Q. In your report you state that it is certainly possible
12 to create a hypothetical congressional districting plan for
13 Missouri where the districts are more compact than in the 2025
14 plan, correct?

15 A. Correct.

16 Q. And you didn't draw any alternative congressional
17 plans in this case, right?

18 A. I did not.

19 Q. You have never participated in the redistricting
20 process as a map drawer, right?

21 A. I've never been a map drawer, no.

22 Q. You've never drawn a map for a governmental body or a
23 jurisdiction?

24 A. That's correct.

25 Q. You've never used a computer algorithm to produce

1 maps?

2 A. No.

3 Q. Now, you also offered an opinion that the -- only the
4 General Assembly can know what and how criteria should be
5 considered and balanced with other factors when redistricting,
6 correct?

7 A. Correct.

8 Q. But you didn't talk to any Missouri legislators about
9 the 2025 map, right?

10 A. I did not.

11 Q. And you're not offering any opinions about which
12 factors were considered by the legislature in redrawing the 2025
13 map?

14 A. I'm not, no.

15 Q. And you're not offering an opinion on the motivations
16 of the legislature in the 2025 map, right?

17 A. Correct.

18 Q. But it -- isn't your opinion that you -- one must know
19 the motivations of the legislature to determine if a map is
20 compact, correct?

21 A. Well, correct. I mean, I can use objective
22 quantitative scores for that.

23 MS. HARLESS: No further questions, Your Honor.

24 THE COURT: Okay.

25 **CROSS-EXAMINATION BY MS. GAMBHIR**

1 Q. Good afternoon, Dr. Hood. My name is --

2 A. Good afternoon.

3 Q. My name is Harleen Gambhir and I represent the Healey
4 Plaintiffs.

5 Doctor Hood, I'd like to pull up your expert report which
6 is at DX 102. Looking at page 2, if we could zoom in on the
7 third paragraph, which starts with the sentence: I have been
8 tendered as an expert in a number of cases involving questions
9 of district compactness in both federal and state courts.

10 Did I read that correctly?

11 A. Yes.

12 THE COURT: And I'm sorry to interrupt. I just

13 -- I think we're all on the same page here but just for
14 anybody that has to read this later. I think we've also
15 been using the same report as 215. It's double marked, but
16 it's the same thing as 215, right?

17 MS. GAMBHIR: Yes, Your Honor. Thank you.

18 THE COURT: Okay. Sorry to interrupt. Go ahead.

19 MS. GAMBHIR: Not at all. Thank you, Your Honor.

20 Q. So the next sentence continues: Some of the cases in
21 which I have offered expert testimony on this specific topic
22 include -- and then you list several cases; is that right?

23 A. Correct.

24 Q. And Doctor Hood, one of the cases that you list is
25 *Bethune Hill v. Virginia State Board of Elections*; is that

1 right?

2 A. Correct.

3 Q. And that case was in Federal Court in Virginia?

4 A. Yes.

5 Q. Okay. I'm going pull up the Court's decision in that
6 case, which I'd ask that we mark Demonstrative 312.

7 And Dr. Hood, do you recognize this opinion?

8 A. Well, it looks like it's the opinion from that case,
9 yes.

10 Q. Let's go to Footnote 60 on page 88, and there the
11 Court wrote: We do not credit Dr. Hood's testimony for several
12 reasons.

13 Is that right?

14 A. Well, that's what it says, yes.

15 Q. Thank you. If we could go back to Dr. Hood's report
16 on page 2. Another case that you list is *Ohio A. Philip*

17 *Randolph Institute v. Ryan Smith*, Case No. 1:18-CV-357; is that
18 right?

19 A. Correct.

20 Q. And that was in Federal Court in Ohio?

21 A. Correct.

22 Q. All right. I'd like to look at the Court's opinion
23 and order in that case; that will be Demonstrative 313. And if
24 we could go to page 93.

25 Doctor Hood, do you see the line that reads: We, however,

1 can draw limited inferences from his report -- testimony and
 2 report -- due to some inapt comparisons, unexplained and
 3 apparently meaningful exclusions of certain elections in his
 4 partisan indices, and admitted failures to account for certain
 5 confounding variables in some of his analyses.

6 Did I read that right?

7 A. Yes.

8 Q. And is that in reference to your testimony in that
 9 case?

10 A. I would assume so, yes.

11 Q. Okay. And if you go to the footnote to that sentence,
 12 which is Footnote 536.

13 It begins: Courts in several other cases in which Dr. Hood
 14 has testified as an expert witness have afforded Dr. Hood's
 15 testimony little weight for similar reasons.

16 Did I read that right?

17 A. Yes.

18 Q. And looking at the first paragraph of page 94 of the
 19 same case, do you see where the Court said: He also acknowledged
 20 that in the previous academic article he had concluded that a
 21 core retention level of 68.7 percent greatly altered the
 22 relationship between representatives and constituents.

23 Do you see that?

24 A. Yes.

25 Q. Doctor Hood, did you present that conclusion in an

1 academic article?

2 A. Well, I've written quite a few academic articles at
3 this point. I guess, it would it be -- which one is it?

4 Do you know which one it is?

5 Q. I'd have to defer to the Court's opinion in that case.
6 But, Dr. Hood, let's look at your report back on page 13 at
7 Table 9.

8 Now, this is a table you produced on district core
9 retention, correct?

10 A. Correct.

11 Q. And you were comparing the core retention for the 2025
12 plan with the 2022 plan as a baseline, correct?

13 A. Correct.

14 Q. And Dr. Hood, under the column labeled, "total
15 population," can you please read for me the number listed for
16 District 3?

17 A. 60.4.

18 Q. And the number for District 4?

19 A. 61.9.

20 Q. And the number for District 5?

21 A. 42.7.

22 Q. And Dr. Hood, you would agree with me that each of
23 those numbers is less than 68.7 percent?

24 A. That would be true, yes.

25 Q. And under voting age population, can you please read

1 for me the number listed for District 3?

2 A. 61.3.

3 Q. And District 4?

4 A. 60.9.

5 Q. And District 5?

6 A. 42.7.

7 Q. And you'd agree with me that each of those numbers is
8 less than 68.7?

9 A. Yes.

10 Q. Okay. Going back to page 2 of your report.

11 Another case you list is *Common Cause v. Lewis*, Case No.
12 18-CVS-014001; is that right?

13 A. Yes.

14 Q. Oh, and that case, I think, the highlighting may be
15 off --

16 A. Yeah. I was --

17 Q. -- *Common Cause v. Lewis*.

18 A. I was thrown for a second, yes.

19 Q. My apologies.

20 Looking a little further down, that was the case in the
21 Wake County, Superior Court; is that right?

22 A. Yes.

23 Q. Okay. Let's pull up that case.

24 A. Well, okay. That case, yes.

25 Q. Yes, *Common Cause v. Lewis*. Thank you.

1 If we could look at that case which is Demonstrative 314,
2 and we can go to page 262 at Paragraph 613.

3 That paragraph reads: Doctor Hood's testimony was not
4 persuasive, and the Court gives it little weight.

5 Correct?

6 A. That's what it says, yes.

7 Q. And the next paragraph begins: Doctor Hood's testimony
8 -- expert testimony -- has been rejected by court's in numerous
9 prior redistricting and other voting rights cases.

10 Correct?

11 A. Correct.

12 Q. Okay. And then going back to your report at page 2.

13 Do you see *Vesilind v. Virginia State Board of Elections*, Case
14 No. CL15003886-00?

15 A. Yes.

16 Q. And that was in the Richmond County, Circuit Court in
17 Virginia?

18 A. Yes.

19 Q. Okay. And I'll ask that we look at that case which
20 will now be Demonstrative 315. And on page 11, do you see the

21 second paragraph that begins with: Doctor Hood listed among his
22 criticisms -- do you see that?

23 A. Yes, I do.

24 Q. And that sentence ends with what looks to be quote
25 from you stating: Sometimes it's not easy to compare one

1 district from one plan to another district from another plan.

2 Did I read that correctly?

3 A. Yes.

4 Q. Okay. So let's look at Figure 1 of your report, which
5 I believe is on page 10.

6 And Dr. Hood, you testified earlier that the shapes in this
7 figure represent districts in the 2012, '22, 2025 plans?

8 A. Correct. Correct.

9 Q. And Dr. Hood, you would agree with me that this figure
10 compares districts from one plan to other districts from other
11 plans?

12 A. That is correct.

13 Q. And you'd agree with me that Figures 2 and 3 of your
14 report do the same?

15 A. Yes.

16 Q. Thank you. We can take that figure down.

17 Doctor Hood, is it fair to say that you don't respond
18 directly to anything in Dr. Rodden's report submitted in this
19 case?

20 A. That's correct.

21 Q. And Dr. Hood, if we could look -- actually, at page 10
22 of your report, Part C, that would be DX 2.

23 And you have a section there where you examine committees
24 of interest; is that right?

25 A. Correct.

1 Q. And in that section, you look at counties?

2 A. I do.

3 Q. And municipalities?

4 A. Yes.

5 Q. And VTDs?

6 A. Yes.

7 Q. And you focused on those factors because they're the
8 ones that you often look at in analyzing redistricting plans?

9 A. Yes.

10 Q. And you did not look at state legislative districts?

11 A. I did not.

12 Q. And that's not something you would typically look at
13 in evaluating compliance with traditional redistricting
14 principles?

15 A. Well, I guess it would be possible. I mean, I'm just
16 reporting what I typically do.

17 Q. And Dr. Hood, you testified earlier that you did not
18 examine the degree of political subdivision splits, quote, "If
19 it's split, it's split."

20 Do you recall that?

21 A. Right. I didn't -- I didn't analyze the degree of the
22 split in terms of population, that's true. Yes.

23 Q. Okay. So Dr. Hood, I'd like us to look at the State
24 Defendant's Exhibit 117. If we can pull up? And Doctor Hood,
25 the top panel here shows how the 2025 versus the 2020 -- the

1 2022 map versus the 2025 map splits Columbia.

2 Now, Dr. Hood, in looking at these images, you'd agree
3 with me that both the 2022 map and the 2025 map split Columbia,
4 correct?

5 A. So the -- the -- are we looking at the top two panels?

6 Is that fair?

7 Q. Yes. Yeah.

8 A. Okay.

9 Q. The top left and the top right.

10 A. And you're saying that the top left is 2022 and the
11 top right is 2025; is that fair?

12 Q. Yes.

13 A. Okay. And the question was, are they split?

14 Is Columbia split in both those plans?

15 Q. Yes.

16 A. Yes. It is.

17 Q. Okay. And as far as your analysis goes in this case,
18 the degree of the split between the left panel and the right
19 panel is not relevant, correct?

20 A. Well, I mean, I only measured whether it was splits or
21 not whether it contained -- the split contained population or
22 not, so.

23 Q. If it's split, it's split?

24 A. Yes.

25 Q. No further questions.

1 MS. GAMBHIR: Thank you, Your Honor.

2 Thank you, Dr. Hood.

3 A. Thank you.

4 **REDIRECT EXAMINATION BY MR. GORE**

5 Q. I have a few questions on redirect, Dr. Hood.

6 So I believe it was Ms. Harless who asked you during cross-
7 examination whether you knew all the factors that were
8 considered by the General Assembly when it drew the 2012 and
9 2022 plans; do you recall that?

10 A. Yes, I do.

11 Q. And to your knowledge, when the General Assembly drew
12 those plans, was it subject to the requirement to draw the
13 districts as compact as may be?

14 A. Yes. I mean, it was -- it was drawn under that
15 constraint, yes.

16 Q. Let's see, if we can, let's pull up Dr. Hood's report,
17 Intervenor Exhibit 215 and go to Table 1 on page 5.

18 And again, I believe it was Ms. Harless who asked you a
19 series of questions comparing the compactness scores of the
20 three challenged districts to the median compactness scores; do
21 you recall that?

22 A. Right. To the mean compactness score, yes.

23 Q. And so looking at Table 1, is the Reock score for
24 District 3 lower in 2025 than the mean compactness score for
25 District 3 in the 2025 plan?

1 Or the mean compactness score for the 2025 plan statewide?

2 A. Yes.

3 Q. Is it also lower than the -- and is District 3 a
4 district that's been challenged in this case?

5 A. No, it's not.

6 Q. Is it also -- is District 3's compactness score in
7 2025 also lower than the mean compactness score for the 2022
8 plan?

9 A. Yes.

10 Q. Okay. Let's go to Table 2 in your report which is on
11 page 6. And according to Table 2, is District 3, again, lower
12 on -- is its Reock score, again, lower than the mean for the
13 2025 plan?

14 A. Yes.

15 Q. Is it also lower than the mean for the 2022 plan?

16 A. Yes.

17 Q. And for the 2012 plan?

18 A. Yes.

19 Q. And let's go to Table 3 on page 6 of your report. And
20 is District 8's Polsby-Popper score lower than the mean for the
21 2025 plan?

22 A. Yes.

23 Q. And is District 8's 2025 Polsby-Popper score also
24 lower than the mean for the 2022 plan?

25 A. Yes.

1 Q. Has District 8 been challenged in this case?

2 A. No.

3 Q. No further questions. Thank you.

4 MS. HARLESS: Nothing further, Your Honor.

5 MS. GAMBHIR: Nothing further, Your Honor. Thank
6 you.

7 THE COURT: All right. You can step down. Thank
8 you.

9 THE WITNESS: Thank you, Your Honor.

10 MR. ELLINGER: Judge, before we close the
11 intervenor's case, I just want to confirm the exhibits we
12 had in.

13 THE COURT: That's a good idea.

14 MR. ELLINGER: I believe we've offered 201 to
15 215. My understanding is the plaintiffs have not objected
16 to any of those except for 206; is that correct?

17 MR. MULJI: I believe, that's correct, Your
18 Honor.

19 THE COURT: That's my note from our opening
20 discussion. So just to make sure we're on the same page, I
21 consider -- with the exception of 206 -- 201 through 215
22 admitted; again, with the exception of 206.

23 MR. ELLINGER: And we -- we will offer 216 again,
24 however, I think that's already been argued and objected,
25 so I'm not gonna -- unless we have a desire to argue it all

1 again, I don't see any reason to argue.

2 MR. MULJI: Oh, no. I don't think we have an
3 objection to that.

4 MS. KHANNA: Are you saying -- did you say 206?

5 MR. ELLINGER: Excuse me, 206. I'm sorry.

6 MR. MULJI: Two hundred and six?

7 MR. ELLINGER: Mr. Kincaid's report. We've
8 already -- I assume your objections are the same --

9 MR. MULJI: Yes.

10 MR. ELLINGER: -- and it's already been submitted
11 to you, so we're not gonna spend any time arguing that, if
12 that's okay with you.

13 MR. MULJI: That is fine with us.

14 THE COURT: I'll just incorporate our discussion
15 from just before the lunch break on that.

16 MR. ELLINGER: And then, we had four or, excuse
17 me, five exhibits, and if you don't -- if I can approach,
18 Judge?

19 THE COURT: Sure.

20 MR. ELLINGER: I just updated the exhibit list
21 real quick to add the additional exhibits. We can give you
22 all a copy, too.

23 MR. MULJI: Thank you.

24 MR. ELLINGER: Here you go. Just to add the
25 additional exhibits that we had during Mayor Lucas'

1 testimony and those would be exhibit -- Intervenor's
2 Exhibit 216, we'd move that.

3 MR. MULJI: No objection.

4 MR. ELLINGER: Intervenor's Exhibit 217?

5 MR. MULJI: Plaintiffs don't have any objection
6 to the remaining exhibits on the list.

7 THE COURT: Okay. So --

8 MR. ELLINGER: And it would be 218, 219, and 220.

9 THE COURT: Without objection -- and I guess, do
10 both Plaintiffs not object?

11 MR. MULJI: Yes, Your Honor.

12 MS. KHANNA: Yes, Your Honor.

13 MS. GAMBHIR: Yes, Your Honor.

14 THE COURT: I want to be careful; 216 through 220
15 will also be admitted. And so just to recap for the
16 Intervenor's Exhibits, 201 through 220, with the exception
17 of 206 are all in evidence.

18 MR. ELLINGER: Thank you, Judge. And with that,
19 the intervenor would rest its case.

20 MS. HUNKER: The State Defendants also rest, with
21 the small exception that we are still waiting on the
22 deposition designations, and so to the extent that those
23 still have to be admitted into the record, we would have
24 that caveat in any type of closing our case-in-chief.

25 THE COURT: Sure. For both I think that's -- I'm

1 assuming that's the case for both parties?

2 MR. MULJI: That's the case for Plaintiffs, as
3 well.

4 THE COURT: Okay. All right.

5 MR. MULJI: We will have those as soon as we get
6 them.

7 THE COURT: Okay.

8 MS. KHANNA: And Your Honor, I think as I
9 previewed, we are considering a short rebuttal
10 presentation. It might -- may be most efficient for us to
11 -- I don't know if you wanted to take a quick break right
12 now. I believe we'll have one rebuttal witness.

13 THE COURT: Okay.

14 MS. HUNKER: Your Honor, in terms of notice, we
15 only are just learning about the rebuttal the same time you
16 are. So to the extent that we could get a little bit of,
17 you know, understanding of what it would entail, would be
18 most appreciated.

19 THE COURT: Sure. I'll give you all -- it's,
20 what, 2:36 right now; why don't we say 2:55 to resume?

21 Does that give everybody enough time to figure out what
22 your plan is?

23 MS. KHANNA: It works for us, Your Honor. Thank
24 you.

25 THE COURT: Okay.

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MS. HUNKER: Two fifty-five, you said?

THE COURT: Yeah.

MS. HUNKER: Yes, Your Honor.

THE COURT: All right. We'll see you then.

(COURT WAS IN RECESS.)

THE COURT: All right.

MS. KHANNA: Thank you, Your Honor.

THE COURT: Are you ready?

MS. KHANNA: Yes, Your Honor.

THE COURT: Okay.

MS. KHANNA: The Plaintiffs collectively call Joseph Dandurand to the stand.

MS. HUNKER: Your Honor, we're going to object to this particular witness, as well as the rebuttal. We don't believe it is proper rebuttal. It sounds like -- based on our conference with Plaintiffs -- that this witness would be testifying about the urban-rural divide. This was not something that the defendants presented affirmative evidence on. In fact, in our pre-trial brief, we explicitly disclaimed the relevance of rural versus urban because we view it as a community of interest, which the Missouri Supreme Court has said is not a recognized factor.

That is *Johnson v. State*, 366 S.W.3d 11. Plaintiffs did address in their affirmative case-in-chief this idea of

1 rural and urban. They did so with Dr. Cromartie. They
2 also did so -- did so with Dr. Stern -- sorry -- with Dr.
3 Rodden. Both those individuals testified pretty
4 extensively on these factors. Doctor Rodden, for example,
5 had multiple metrics talking about soybeans and corn and
6 talking about the different interests. This was an
7 affirmative part of their case-in-chief, but was not part
8 of ours.

9 To the extent they realized through our cross-
10 examination that they did not present enough evidence, that
11 is still, again, not proper rebuttal because it's outside
12 the scope of what we directed in our presentation in
13 response. Finally, I'm going to turn to the lack of
14 notice. We had requested that Plaintiffs disclose anybody
15 with knowledge -- potential knowledge of the case -- this
16 was Interrogatory 25. This individual was never disclosed.

17 We exchanged witness lists on February 11, this
18 witness was not listed and so this is a ambush of surprise.
19 We have not had a chance to really review what this
20 individual would know or have preparation for being able to
21 rebut properly any type of cross-examination.

22 MR. ELLINGER: And, Judge, Intervenors would join
23 in that objection.

24 I'd further note, that both Dr. Trende, who was the
25 Defense expert, Mr. Kieffer who -- with the election

1 boards, and Dr. Hood, who was our expert -- none of them
2 testified in any way, shape, or form about rural areas,
3 rural interests, the rural-urban divide. And we would
4 agree that, that -- just the way things exceed the scope of
5 cross-examination on redirect, rebuttal is confined to the
6 scope of the counter case that's put on by Defendants and
7 Intervenors.

8 This exceeds that scope, and there's no basis for him
9 to be called as a witness at this point in time.

10 Particularly, in light of the surprise and their lack of
11 disclosure, even though we've asked.

12 MS. KHANNA: Your Honor, if I -- if I could just
13 do the podium?

14 THE COURT: Sure.

15 MS. KHANNA: Just to address the questions. To
16 clarify, we did read the pre-trial briefs and their legal
17 arguments; however, in the defendant's opening statement
18 two days ago, Counsel said -- when referring to Dr. Rodden
19 and then also referring to our other experts -- The
20 important thing to note, Your Honor, is their aim is to
21 keep Kansas City together and, quote, To heck with the rest
22 of the State.

23 This line of -- this argument -- this apparent defense
24 that there has not been enough attention paid to the urban
25 -- the rural counties, continued through to their

1 presentation of evidence through cross-examination of our
2 witnesses; specifically, on -- with respect to Dr. Rodden
3 on pages 66 to 67 of the -- the so far -- the rough trial
4 transcript. The question was asked on cross-examination to
5 Dr. Rodden: In your view, these agricultural counties have
6 common interests or a set of common issues that are
7 important to them, correct?
8 And he said: That seems likely. And they said: You
9 don't -- and you have -- you don't know whether the General
10 Assembly thinks that this configuration results in better
11 representation of those interests as compared to the 2022
12 plans? He said: No. And then they asked: And you also
13 have not surveyed voters in those counties to determine
14 whether they think they are better represented under the
15 2025 plan versus the 2022 plan?
16 Once again, injecting into their defense an apparent
17 contention that there has not been enough attention paid to
18 the interest of the agricultural counties. I'd follow-up,
19 Your Honor, I don't have transcript cites for things from
20 yesterday late afternoon and this morning, but they did ask
21 both our witness, Mary Esselman, about things -- she could
22 not speak to rural counties and their interests. And,
23 specifically, Dr. Trende today testified -- in his
24 testimony on the stand -- he criticized Dr. Stern for his
25 failure to consult with rural voters in preparing his

1 illustrative maps.

2 And he also testified that he didn't know whether
3 former District 4 or 6 would have been considered a rural
4 district. All of these are questions about -- that have
5 not -- frankly, were not part of our case-in-chief -- about
6 the interest of these rural areas and -- but they have been
7 clearly injected in the course of the defense. And so we
8 would -- we would say that a short rebuttal is perfectly
9 proper. Under the legal standard in Missouri, this court
10 has broad discretion to allow rebuttal witnesses wherever
11 there has been -- the other opposing party has opened the
12 door to an issue.

13 And to the question of timing and prejudice, to be
14 very, very, candid, Your Honor, this was a -- these are --
15 there are statements we all listened to in opening -- in
16 open court and have discussed over the last 16 hours. This
17 was not a witness that we had -- we're sitting on, and
18 we're trying to surprise anybody with. We gave notice when
19 we first thought we were going to provide a presentation
20 but to confirm after the case closed; we confirmed that we
21 would provide that and then we spoke with Counsel about who
22 we'd be presenting and why.

23 And I believe that the key inquiry under the legal
24 standard, Your Honor, is prejudice, to the extent -- extent
25 that Counsel suggested that they had -- they had no notice

1 and they didn't -- they would have wanted to cross-examine
2 or other, depose him. To be clear, we provided all of the
3 other witnesses, none of whom -- none of our fact witnesses
4 were deposed in this case. None of the -- they choose to
5 do depose none of them. So they had -- they had the same
6 amount of information about our rebuttal witness that they
7 had of any of our fact witnesses. Other than -- and they
8 had the name, frankly, within hours of us having decided to
9 call him.

10 MS. HUNKER: Your Honor, first, let me state that
11 the opening is not evidence. The opening is talking about
12 the various themes of the case and those themes were set by
13 the plaintiff's largely through their expert reports, as
14 well as the individuals that they had disclosed to us prior
15 to the trial. Doctor Rodden, Dr. Cromartie, made it clear
16 that they -- that the plaintiffs viewed urban and rural
17 divide as being an important issue. And so we have
18 incorporated certain themes into the opening, but that is
19 not in evidence.

20 The only party that introduced this issue is
21 Plaintiffs through their experts and through also their
22 facts witnesses who testified pretty extensively on how
23 urban interests are unique or how the interest of Kansas
24 City, specifically the Jackson County parts of Kansas City,
25 are unique. And so they're the ones who are introducing

1 this and have throughout the trial. I actually think
2 Counsel made my case for me, because she's talking about
3 Dr. Rodden's testimony.

4 These questions are coming up during their -- during
5 their case-in-chief; which means, they could've asked
6 additional questions on redirect. It also means they
7 could've asked other questions of their plaintiffs or fact
8 witnesses that came to trial. Now, because -- just because
9 Plaintiffs realized that, perhaps, they should've put more
10 evidence on at the beginning, doesn't make it proper
11 rebuttal, because, again, it goes outside the scope of what
12 we had our witnesses testify specifically on.

13 They testified only on their reports and Mr. Kieffer
14 talked specifically about Kansas City and his role in the
15 election board. So we are not the ones who are targeting
16 this issue, that is Plaintiffs. To the extent that they
17 believe that they've missed something, that was on them to
18 meet their burden during their case-in-chief.

19 And with that, I'll defer to Intervenors.

20 MR. ELLINGER: And, Judge, if I may just a few
21 extra points.

22 I would agree that our opposing counsel explained it
23 perfectly well. In their case-in-chief they raised this
24 issue. In their case-in-chief we cross-examined their
25 witnesses. In their case-in-chief, this was the issue that

1 they wanted to raise. They had ample opportunity to raise
2 it. In fact, Dr. Cromartie's entire report talks about
3 rural-urban. And we cross-examined him for quite a bit of
4 time and they had the opportunity to do a redirect over all
5 that -- that discussion, they chose not to do it at that
6 time.

7 Again, no one has raised it from the defense or from
8 the intervenor side. It's not an issue that we put into
9 the case. It's an issue they put into the case. They
10 tried to put it on in their case-in-chief. They have
11 rested their case-in-chief. And as a result, they
12 shouldn't be allowed to call a rebuttal witness now, when
13 there's nothing to rebut from our case-in-chief. It's only
14 to go back and bolster their initial case-in-chief, which
15 is not appropriate for rebuttal witnesses. Thank you.

16 MS. KHANNA: Your Honor, if I may?

17 THE COURT: Okay.

18 MS. KHANNA: Just to -- the characterization of
19 this rebuttal witness is talking about the rural -- the,
20 quote, "rural-urban divide," is not something -- words that
21 we have used; that is words that Counsel has chosen to
22 understand from that. That is not -- that is not the issue
23 that we're considering. It is Counsel who has brought up
24 throughout their defense of this case -- including
25 something they've not addressed through their own expert

1 testimony, Dr. Trende.

2 They have brought up this idea, that there's some kind
3 of a zero-sum game between the interests of Kansas City and
4 the interest of rural counties. That was not part of our
5 case-in-chief, because we don't believe it to be true. We
6 never thought that was actually -- I don't actually think
7 that's unnecessarily a credible argument, but it's
8 certainly an argument that they have injected and opened
9 the door to in the course of representation, including
10 through their expert witness.

11 And so we would argue that, again, in the Court's
12 discretion, that -- a short rebuttal on that point, that
13 they seem to be contesting -- at least as a thematic matter
14 or a legal matter of their defense, we should be allowed to
15 address it.

16 THE COURT: I'm going to let you argue. I want
17 to be clear, because I don't know that I really understand
18 it yet.

19 What would Judge Dandurand testify? Just summarize
20 for me what you're proposed testimony would be.

21 MS. KHANNA: Yes, Your Honor.

22 So it would be -- in some ways similar to some of the
23 other testimony that have talked about their lived
24 experience. It would be about his lived experience, in
25 particularly in some of the rural counties, and the extent

1 to which there is a -- there is or is not -- a trade-off
2 between the interests of Kansas City and the rural
3 counties. To the extent that the suggestion has been made
4 by Counsel -- which it has -- that these districts somehow
5 satisfy the interest of rural counties, even if it comes at
6 the expense of Kansas City residents.

7 That is, again, a thematic argument that they've
8 injected into every part of their presentation and that I
9 think we should have a chance to rebut. I don't think it's
10 credible, Your Honor, but I think we should be able to
11 provide a witness to say as much. I'm sure that they will
12 tell -- they will argue as they already had, that, you
13 know, we bear the burden on all these issues, so presumably
14 we'd bear burden of rebutting their -- what they want to
15 call a thematic argument.

16 I think it's a theme that -- that -- if it's worth
17 adjusting from their -- from their perspective, then it's
18 worth -- then it's worth us addressing, as well.

19 THE COURT: Okay. I cut you off. Go ahead.

20 MS. HUNKER: Yeah. I just want to quickly point
21 out, that the reason I used the term "urban-rural divide,"
22 is because that was the term that Counsel used when they
23 explained to us what this witness was going to discuss.
24 And so that is how we understand this witness to be coming
25 to testify and the subjects he'd be testifying to.

1 But Counsel did raise earlier the notice and idea of
2 prejudice. And I do want to point out that this has been
3 an incredibly expedited case, where we had to make very
4 quick decisions on which witnesses that we would depose and
5 which ones we would not. When the case -- when there was a
6 realization that the trial was going to be postponed,
7 Defendants, specifically the State Defendants, proposed
8 having more time to do fact depositions because we wanted
9 to be able to depose some of the fact witnesses; that was
10 declined by Plaintiffs.

11 It was hinted by this Court that that wasn't really
12 going to be a choice, but the thing is, we were making
13 those decisions based --

14 THE COURT: I'm sorry. Are you talking about me?

15 MS. HUNKER: Yes, Your Honor.

16 Back when we had our first status conference, you had
17 suggested you thought that the deposition and discovery
18 deadline should remain and so that the depositions should
19 have closed --

20 THE COURT: Okay. That -- just so -- that was
21 just honoring what I thought was an agreement that you all
22 had.

23 MS. HUNKER: And it was.

24 THE COURT: Okay.

25 MS. HUNKER: And that was based on the original

1 date and this is not a criticism of that decision. It's
2 simply trying to explain the procedural posture that we are
3 now in.

4 THE COURT: Got it.

5 MS. HUNKER: My main point is that we had to make
6 hard choices and you can only make hard choices when you
7 have the facts and we didn't have the facts of who was
8 actually going to be called by Plaintiffs and who they
9 thought was relevant. This individual was not disclosed at
10 any point during discovery. It was not disclosed at any
11 point after this trial but -- before this trial, nor was it
12 -- this witness disclosed during the actual listing of
13 witnesses last week -- I believe it was on February 11.

14 And so there, I do think is prejudice here, because it
15 changes the dynamic of who we choose to depose and ensuring
16 that we would be able to make those decisions that are
17 necessary, given the short turnaround for this case. I
18 think in terms of the subject area, we've discussed this
19 pretty thoroughly in the last few exchanges. We do hold
20 that talking about communities of interest is not relevant.

21 This was, again, clear from our brief; however, based on
22 the expert reports that the plaintiffs have submitted in
23 this case and the testimony that you've heard from Dr.
24 Rodden, Dr. Cromartie, that is obviously something that
25 Plaintiffs disagree about.

1 They were talking pretty extensively about rural
2 interest, urban interest, and how they differ. And so this
3 is a subject in which as part of their case-in-chief really
4 guided their case-in-chief, and was the underlined theme of
5 their case-in-chief. We have not presented the affirmative
6 evidence against it. We've only crossed their witnesses.
7 Their witnesses had a chance to push back against our
8 questions. There's also a chance for redirect from
9 Plaintiffs.

10 To the extent that the witnesses or Plaintiffs didn't
11 do it then, I hate to say, falls on them. They made a
12 choice on how they were going to structure their case-in-
13 chief, and the fact that now in hindsight, they're
14 realizing they could've done a better job, is not exactly
15 what rebuttal is for.

16 MR. ELLINGER: And I'll be exceedingly brief,
17 Judge, since we've belabored this point quite a bit.

18 Look, our argument is not that there's this big giant
19 difference between urban and rural; that's actually what
20 their arguing has been and that's what Dr. Cromartie
21 testified to. It's more that they're putting Kansas City
22 and Jackson County first. Their witnesses testified and
23 were cross-examined on the fact that they don't want to be
24 in with rural areas. They have raised the interest of
25 rural voters.

1 They have raised the interest of the fact that they --
2 their witnesses don't want to be with rural voters. It was
3 incumbent upon them if they thought this was an important
4 issue to put it on in their case-in-chief. We're simply
5 pointing out -- we were pointing out the limits of their
6 evidence that they put on in their case-in-chief; we didn't
7 offer evidence of our own on this issue. And as a result,
8 rebuttal shouldn't go and we should close the trial and
9 proceed to closing arguments. Thank you, Judge.

10 THE COURT: Any last comments?

11 MS. KHANNA: Sure, Your Honor.

12 THE COURT: Okay.

13 MS. KHANNA: I also don't want to belabor the
14 point. I think Your Honor understands the various issues.
15 I will say, the -- the -- it was news to all of us I
16 believe during the course of this trial that part of
17 Defendants defense or story was going to be, perhaps, that
18 the -- that the harms that we are perceiving in Kansas City
19 are somehow a byproduct of the benefits to the rural areas
20 or maybe even the -- a part of the -- what might justify
21 this map. That was how they started their opening in this
22 case and that's how their questioning has proceeded.
23 I do understand Counsel now to be disclaiming that
24 view, that there's not really a justification that they're
25 offering, that somehow this map was drawn to help rural

1 votes, even if it came at the expense of the interests of
2 urban voters. But, again, I feel like -- as Counsel has
3 admitted, that that theme has been injected by them.

4 They've opened the door but I don't see any -- I think -- I
5 think the -- again, the course of this bench trial, Your
6 Honor has all the discretion to decide to consider it, give
7 it as much weight as -- as you would decide to give it.

8 But I think, you know, it is -- I want to make sure
9 that we are not only providing all the evidence that we
10 believe is important, but we're also combating any of the
11 thematic or the penumbra of ideas that they have suggested
12 throughout this case might be important, whether or not
13 they've actually put on any evidence to that score.

14 THE COURT: Okay. Let me kind of walkthrough --
15 I don't think, as a technical matter, from my impression of
16 the way the case has proceeded, that what I'm hearing the
17 proposed testimony would be, would be rebuttal evidence.

18 Because I don't think that the defendants have -- I don't
19 think that the fact that they cross-examine some of the
20 plaintiff's witnesses about their testimony and reports,
21 somehow becomes a new topic that they've injected into the
22 case that justifies a rebuttal witness that hasn't
23 otherwise been discussed, if that makes sense.

24 Because during their witness's testimony, I don't -- I
25 haven't perceived anything to touch on those topics. Did

1 they ask some of the plaintiff's witnesses about it? Sure.

2 And I think that they're entitled to do that without that

3 being some sort of new rebuttal topic that then accesses

4 witnesses that have otherwise not been part of the

5 discovery process. I just don't think that's the way

6 rebuttal testimony is generally intended to operate.

7 I think it's intended to be a true response to

8 something that they've injected into the case. But the

9 issues were testified about by most of the lay witnesses

10 called by the plaintiff, I think, virtually, all of them

11 and then, obviously, some of the expert testimony. So I --

12 my intention would be that I do not think -- obviously, no

13 disrespect to Judge Dandurand --

14 MS. KHANNA: Of course.

15 THE COURT: -- who is a lovely person, I'm sure

16 would be a great witness, but I don't think it qualifies as

17 rebuttal testimony.

18 Now, the question of what to do with that. Obviously,

19 it's a bench trial. In any trial I think I would,

20 generally, give you the option to do an Offer of Proof for

21 their testimony and I don't see a problem with that.

22 Do you all have a problem with allowing them to call

23 it just as an Offer of Proof? I think I, generally, would

24 be required to allow them to do that.

25 MR. ELLINGER: I think as an Offer of Proof, that

1 makes sense, Judge. And I think --

2 THE COURT: Okay.

3 MR. ELLINGER: -- that's the appropriate remedy.

4 THE COURT: Okay. Okay. And so I'm not going to

5 send him away. I think that's the -- probably the proper

6 way to handle it, just, as a technical matter, and then if

7 you all think I'm wrong, feel free to try to convince me

8 first or somebody else if I don't change my mind on it.

9 MS. KHANNA: Thank you, Your Honor. I appreciate

10 it. In that sense, we will offer him as a -- his testimony

11 is an Offer of Proof.

12 THE COURT: Any other preliminary record before

13 we do that?

14 MS. HUNKER: Not to my knowledge, Your Honor.

15 THE COURT: Okay.

16 MR. ELLINGER: No, Judge.

17 MS. KHANNA: So with that, Your Honor, we will

18 call as our Offer of Proof, Joseph Dandurand to the stand.

19 **JOSEPH DANDURAND,**

20 having been sworn by the Court testifies as follows:

21 THE COURT: Thank you. Go ahead and come on up.

22 **OFFER OF PROOF DIRECT EXAMINATION BY MS. KHANNA**

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Can you please state and spell your full name for the

1 Court?

2 A. Joseph Dandurand; J-O-S-E-P-H, D-A-N-D-U-R-A-N-D.

3 Q. And you're a former State Court judge; is that
4 correct?

5 A. Yes.

6 Q. May I refer to you as Judge Dandurand?

7 A. Whatever your pleasure is.

8 Joe is fine; whatever you want to do is okay.

9 Q. I don't know that I can do that.

10 A. All right.

11 Q. So I will refer to you as Judge Dandurand.

12 A. Okay.

13 Q. Judge Dandurand, where do you live?

14 A. Warrensburg, Missouri.

15 Q. And how long have you lived in Warrensburg?

16 A. 1977.

17 Q. If we could pull of Plaintiff's Exhibit 44.
18 Judge Dandurand, this is a copy of the 2022 congressional map.

19 Are you able to see from here where you live on that map?

20 A. Absolutely, yes.

21 Q. Can you see what district line that is?

22 A. Four.

23 Q. You said, District 4. What county is that in?

24 A. Johnson.

25 Q. And if we could pull up Plaintiff's Exhibit 41. This

1 is the 2025 congressional map.

2 Can you see from here what district you would reside in
3 under this configuration?

4 A. Five. There we go. That's better. Five.

5 Q. See it there? Thank you. Okay. And we can take this
6 down. Can you please tell us about your home in Warrensburg?
7 What is your neighborhood like?

8 A. It is a typical neighborhood with a homeowner's
9 association, about 60 homes in the neighborhood, on the very
10 southeast part of the City of Warrensburg.

11 Q. And do you own farmland?

12 A. I do.

13 Q. About how many acres?

14 A. We own 270 acres of farmland in Johnson County,
15 Missouri, bought in the 1980s.

16 Q. Do you raise any crops?

17 A. We raise soybeans, corn, and wheat.

18 Q. And do you own any cattle?

19 A. We raise steers every year. We put them in -- on the
20 farm in the spring and then sell them in the fall; so I don't
21 keep them through the winter, but, yes.

22 Q. And how about any farm machinery?

23 Do you own any farm machinery?

24 A. I love my tractor, my brush hog, my blade; I use them
25 often and a farm truck.

1 Q. How would you characterize your Warrensburg community?

2 A. It's -- it's quite a mix, because the Warrensburg
3 community would include the Whiteman Air Force Base community,
4 as well. So it is about 95 percent rural by area -- about 95
5 percent farmland and about 5 percent municipalities but the
6 biggest city in the county of 40,000 is Warrensburg and there
7 are about 18,000 people -- there are 45,000 in the county, about
8 18,000 in Warrensburg -- mostly rural.

9 Q. And do you know what the primary industries or
10 employers are in the area?

11 A. I do. The -- the hospital is a large employer. The
12 university is the largest employer, the University of Central
13 Missouri is there, and the air force base, a lot of civil
14 service folks that work at the air force base.

15 Q. Is it a largely faith-based community in Warrensburg?

16 A. It is. It is a -- it is, yes.

17 Q. Can you tell us a little about your occupational
18 background?

19 A. I graduated from law school here in 1980 and started
20 practicing law in Warrensburg, until I was elected to Circuit

21 Court Judge, trial court judge, in 1986. For Cass County and

22 Johnson County, Missouri so they -- they're both in the 4th;

23 Cass County I think has always been there, as well. And I

24 practiced until 1986, when I was elected and I was elected again

25 in '92 and '98 and 2004.

1 I was appointed to the Missouri Court of Appeals in 2007 by
2 Governor Blunt and left the Court of Appeals in 2009 when my
3 friend, former Cass County prosecutor, Chris Koster, was elected
4 to Attorney General and he convinced me after only 14 months on
5 the Western District Court of Appeals to ditch the robe and move
6 to Jeff City and take on the job as the Chief Deputy Attorney
7 General. So I did that for his entire term, eight years.

8 When his term ended, Senator Hawley was elected Attorney
9 General. I had a -- he and John Sauer met with me personally
10 and asked me to stay on to help with the transition and I did.
11 I stayed for several weeks and honestly was offered the
12 opportunity to stay as long as I wanted to stay but I had
13 another offer for another job -- because it seems it's kind of
14 hard for me to sit still for very long -- so I became the
15 executive director of Legal Aid of Western Missouri and did that
16 for four and a half years.

17 And I've been doing mediations and arbitrations at Jay
18 Daugherty Mediation since then, about three and a half years.
19 That's -- that's my career.

20 Q. Thank you for summing that up.

21 A. And I wanted to ask a little bit about your time as the
22 executive director of the Legal Aid of Western Missouri.

23 A. Sure.

24 Q. What -- out of what office did you work?

25 A. I worked out of the Kansas City office. We had

1 offices in St. Joe, in Joplin, and in Warrensburg, which I
 2 visited at least -- at least twice a year. But my main office
 3 was in -- on the, like, Cleaver Boulevard on -- on the east or
 4 east-end, before you get to Raytown --

5 Q. And --

6 A. -- 50 Highway.

7 Q. Sorry. Go ahead.

8 A. No. It's all right. It was on 50 Highway.

9 Q. Were the needs of the clients in these different
 10 offices all the same?

11 A. Really, very, disparate. The needs of the folks in
 12 the inner city focused really largely on housing, security, home
 13 security, eviction issues, expungement of records issues. We
 14 had three, actually -- three Kansas City offices. We had
 15 lawyers in the schools, in the public schools, that we'd send
 16 every day to help deal with keeping family issues together and
 17 identify them early.

18 We had law firms that we associated with to help out with
 19 neighborhood issues all around Kansas City's inner area
 20 neighborhoods even some south. So that was a large focus of the
 21 use of resources in the Kansas City area offices; not so in the
 22 outer areas, which really focused a lot more on family law stuff
 23 -- a lot of family law stuff.

24 Q. And you mentioned that you're currently a mediator; is
 25 that right?

1 A. Yes.

2 Q. Do you work for a specific practice?

3 A name of the practice?

4 A. Jay Daugherty Mediation & Arbitration is the name of
5 the practice.

6 Q. That's located in Kansas City?

7 A. It is.

8 Q. So you currently live in Warrensburg and work in
9 Kansas City?

10 A. I do now, right.

11 Q. And do you make that daily commute?

12 A. I do not. I don't.

13 I have an apartment in South Kansas City. And so I'm
14 sleeping here three nights a week and then, you know, making a
15 trip home and going home on the weekends, but I've had an
16 apartment here since I started working at Legal Aid, because I
17 wasn't commuting there either. I -- I found out pretty early
18 that -- that -- I'm too old for that, so I got an apartment.

19 Q. Is it common for residents of the Warrensburg
20 community in your area to commute to Kansas City for work?

21 A. It happens because there are better paying jobs there,
22 so some people do that. Some people commute to Kansas City from
23 Warrensburg for their jobs, more maybe, like, the Lee's Summit
24 area. I know, for instance, when Sprint was here -- the Sprint
25 offices were here, several Warrensburg people made the trip

1 there because they paid a lot of money for -- compared to what
2 they could earn around Warrensburg.

3 Q. Would you consider Warrensburg part of the greater
4 Kansas City area then?

5 A. No. No.

6 Q. And why not?

7 A. You don't -- so we're on 50 Highway -- US 50 Highway,
8 and that goes through from Jackson County through Lee's Summit
9 to Lone Jack and then into Johnson County; Lone Jack is almost
10 the county line. There are no cities. There are no cities when
11 you get to Lone Jack, the Jackson County line, till you get to
12 Warrensburg on the way. It's farm ground. It's all farm
13 ground.

14 Q. Do you consider Warrensburg to be closely united with
15 Kansas City area?

16 A. No. No.

17 Q. Is that for the same reasons?

18 A. Same reasons.

19 Q. I want to ask you about your previous district, when
20 you were in District 4 under the 2022 map.

21 A. Right.

22 Q. Did you consider District 4 a rural district?

23 A. It is a rural district. I -- Vicky Hartzler was our
24 US representative. I knew her well. She was -- she lived in
25 Harrisonville, Cass County and she -- I convinced her to be on

1 my board at the CASA, Court Appointed Special Advocates Board,
2 when we developed one of those in the Circuit. She was always
3 out in the area and it's, just, all -- it was a hugely rural
4 district where she had to travel to, to get around.

5 Q. And I think you just mentioned, in the course -- well,
6 under that old district did you have access to your
7 representative in that district?

8 A. Well, I did. And, in fact, when I was in Jeff City I
9 was a member of the Jeff City Rotary Club with Mr. Ellinger and
10 Vicky would -- Vicky Hartzler would present there from time to
11 time and I knew her pretty well. She was a -- I would consider
12 her a friend.

13 Q. Do you think your Warrensburg community -- the
14 interests of the rural farmer workers and their families and
15 that community would be better served by being combined in a
16 district with Downtown Kansas City?

17 A. I cannot see how that would possibly benefit those
18 folks and their interests.

19 Q. Why not?

20 A. Because they're, I think, to me, it's conflicting. I
21 get that some of that has to happen but -- but the interest of
22 those folks in the -- in the City of Kansas City and their need
23 for representation -- I'll give you an example. One of the most
24 important things in that entire Fourth District is the Whiteman
25 Air Force Base, and the fight that Ike Skelton -- before Vicky

1 Hartzler put up -- and Vicky Hartzler after him to see to it
2 that that did not gut the whole 4th District by closing that air
3 force base was crucial to the entire area.

4 And whoever would have this district, that would include
5 Kansas City, would have different issues, different focuses, and
6 -- and different, you know, populations to serve. That's just
7 one example of how -- of how I -- that air force base is a key
8 component to all of the 4th District, Pettis County, Cooper
9 County, all those surrounding there and it almost got closed a
10 few times.

11 Q. So is it your understanding that representation of the
12 rural counties in the middle part of the state in the 2022 map
13 was a problem that needed fixing by combining them with Kansas
14 City?

15 A. It wasn't a problem at all.

16 Q. Do you believe it's a -- any -- a problem now to
17 combine them?

18 A. Yes. I don't -- it would, I think, cost them the
19 attention that -- that they were able to receive with the
20 district, currently the way it is, to add the City of Kansas
21 City to it.

22 Q. Thank you.

23 MS. KHANNA: No further questions, Your Honor.

24 **OFFER OF PROOF CROSS-EXAMINATION BY MR. ELLINGER**

25 Q. Judge, nice to see you, again.

1 A. Good to see you. Good to see you.

2 Q. Never figured I'd be asking you questions.

3 A. That's fair enough.

4 Q. (Laughs.) I just have a few questions for you. Let
5 me start with, kind of, in reverse order.

6 Do you know who your state representative is in
7 Warrensburg?

8 A. My state rep is Dr. Angela Phelps' husband, Mr. Phelps
9 -- and I -- Brandon Phelps. That's it.

10 Q. Brandon Phelps. Okay.

11 A. Brandon Phelps. There go. I just --

12 Q. I won't ask if you voted for him or not because that's
13 not really relevant here, but he was elected by the citizens in
14 Warrensburg and the surrounding area that constitute -- is it
15 District 52, if my memory serves?

16 A. No. That changes way too often for me. I don't know.

17 Q. But he was elected by the folks that live -- your
18 neighbors --

19 A. He was.

20 Q. -- and live around Warrensburg and in the surrounding
21 areas, right?

22 A. And I -- and I did vote for him.

23 Q. And you did vote for him.

24 A. There you go.

25 Q. And he represents Warrensburg's interests in

1 Missouri's General Assembly, correct?

2 A. He does. He does.

3 Q. Okay. And Representative Phelps voted yes on House
4 Bill 1, right?

5 A. I don't know. I don't know that.

6 Q. Would it surprise you if he voted yes on House Bill 1?

7 A. No. It would not surprise me.

8 Q. Okay. And presumably -- who's your senator?

9 A. Rick Brattin.

10 Q. Okay. And he's elected from a much larger district,
11 obviously, than the house district, correct?

12 A. Really, mostly, my old circuit, Cass and Johnson
13 County is the most -- most of that district.

14 Q. And he was elected by the folks that are in Cass and
15 Johnson and a couple other counties, as I recall?

16 A. He was, right.

17 Q. And are you aware he voted yes on House Bill 1?

18 A. That, I would absolutely believe to be true.

19 Q. Okay.

20 A. Yes.

21 Q. So the folks who are elected -- and let me go back
22 real quick. Representative Phelps was overwhelmingly elected in
23 his house district, wasn't he?

24 A. Oh, he was, absolutely.

25 Q. And --

1 A. And I don't know what it was. I know he had a viable
2 opponent and he had a lot of support and he won handily. I do
3 know that.

4 Q. And -- and Senator Brattin won overwhelmingly in his
5 State Senate district, too?

6 A. Yeah. But he didn't have an opponent, that I recall.
7 I don't -- I don't -- he -- I don't think he had an opponent in
8 the general election --

9 Q. Well --

10 A. -- that was substantive.

11 Q. But he won overwhelmingly against --

12 A. He absolutely did.

13 Q. -- against that non-substantive opponent, correct?

14 A. He did. He did.

15 Q. And both of them have been pretty vociferous advocates
16 for their districts in their areas, haven't they been?

17 A. You know, I will give that to you since you asked
18 about -- about the Representative Phelps; I'm not gonna give you
19 that on Senator Brattin.

20 Q. Okay. We won't go -- we won't explore the political
21 disagreements there.

22 A. Fair enough. Right.

23 Q. So you mentioned that Warrensburg and Johnson County,
24 you guys don't really think about as being a part of the Kansas
25 City area, correct?

1 A. Right. Correct.

2 Q. Do you know if it's part of the Kansas City combined
3 statistical area for census and other purposes?

4 A. I don't know.

5 Q. Okay. The Missouri Census Data Center classifies
6 Warrensburg as the Warrensburg, Missouri, urban cluster; would
7 that surprise you?

8 A. Nothing would surprise me along those lines, but I
9 don't know that, so I'll take your word for it. Certainly.

10 Q. You're a Chiefs fan?

11 A. I am a Chiefs fan.

12 Q. Sorry about them going to Kansas --

13 A. Yeah.

14 Q. -- that's heartbreaking as a Missouri guy.

15 A. That was -- I'm a Chiefs fan, that's true. Right.

16 Q. And I -- I've been to Warrensburg a number of times
17 and when it's game day, there's a lot of people driving to
18 Kansas City to see Chiefs games and a lot of Kansas City Chiefs
19 flags flying.

20 A. There are. There are.

21 Q. Are you a Royals fan?

22 A. I'm a St. Louis Cardinal fan --

23 Q. Oh, even better.

24 A. -- or -- regardless.

25 Q. I'm gonna -- I'm gonna bless you for that one --

1 A. All right. All right.

2 Q. -- being a Cardinals fan myself.

3 Do you read the Kansas City Star newspaper?

4 A. I do.

5 Q. A lot of people in Warrensburg read the Kansas City
6 Star newspaper.

7 A. No. I don't think so.

8 Q. You don't think? No?

9 A. I don't think that very many do. I don't think very
10 many of them pay the subscription.

11 Q. It's got the best Chiefs-scripts.

12 A. They do. They do. But there's a local paper, as
13 well.

14 Q. And I think you said you're currently living in --
15 splitting your time between an apartment in South Kansas City
16 and your residence in Warrensburg --

17 A. In Warrensburg.

18 Q. -- right?

19 A. And as I did live eight years in Jeff City. I had an
20 apartment in Jeff City for eight years, too.

21 Q. It's even a longer commute from Warrensburg --

22 A. It is.

23 Q. -- to Jefferson City --

24 A. It is.

25 Q. -- isn't it?

1 A. Right.

2 Q. And your apartment in South Kansas City -- I know you
3 said your office is over -- close to Raytown. Where -- is your
4 apartment close to --

5 A. The Legal Aid office was.

6 Q. Yeah. The Legal Aid office --

7 A. Correct.

8 Q. -- when you were there.

9 A. Yeah.

10 Q. Was that close to where your apartment was to --

11 A. Yeah. I would just zip down 71 Highway and get off.

12 It was 12 minutes to the Legal Aid office.

13 Q. And I know you -- you talked a little bit about what
14 the folks in Legal Aid -- or, I guess, your clients in Legal
15 Aid --

16 A. Clients.

17 Q. -- would have. And I know you talked about evictions,
18 right?

19 A. Yes.

20 Q. Are evictions solely and uniquely to inner cities?

21 A. Of course not; not solely, uniquely.

22 Q. There's quite a bit of rental housing in and around
23 Warrensburg and Knob Noster; isn't there?

24 A. There are, yes. There are students that go to the
25 university that rent property.

1 Q. And you have military families and folks --

2 A. You're right.

3 Q. -- that are affiliated with military families too,
4 correct?

5 A. Absolutely.

6 Q. And evictions occur there in those apartment complexes
7 periodically too, don't they?

8 A. Periodically, not often. Periodically.

9 Q. And you mentioned that the folks in -- when you dealt
10 with them in Warrensburg area, they were more concerned with
11 family law stuff, right?

12 A. Yes.

13 Q. People in the Kansas City offices didn't care about
14 family law stuff?

15 A. Oh, they did. And -- and, honestly, we were grossly
16 understaffed to handle -- and under qualified -- to handle the
17 big domestic violence issues that -- that were dealt with in the
18 city.

19 Q. Okay. And domestic violence isn't unique to the city?

20 A. Absolutely not.

21 Q. It's everywhere, correct?

22 A. Everywhere. It's everywhere.

23 Q. Yeah. And you mentioned expungements?

24 A. Right.

25 Q. You weren't there after the marijuana amendment was

1 passed, were you?

2 A. At Legal Aid?

3 Q. Yeah.

4 A. Yeah. I was.

5 Q. Yes, you were? So you're aware there were a lot of
6 expungements after that point, too, right?

7 A. Yes. There were.

8 Q. And that -- that was across the state, including in --

9 A. It was across the state.

10 Q. -- and that -- included in Warrensburg and Knob Noster
11 and other places in Johnson County, right?

12 A. Right.

13 Q. You mentioned being in the 2025 map in Congressional
14 District 4 -- Johnson County's Congressional District 4, right?

15 A. The 2025 map? I think it's 5.

16 Q. Excuse me, 2022 map.

17 A. Yes.

18 Q. My apologies.

19 A. No. It's fine.

20 Q. The 2022 map.

21 Could we pull up Intervenor's Exhibit 208, please? And I
22 apologize it'll take a second for it to load up.

23 A. Okay.

24 Q. That's the 2012 congressional districts; do you
25 recognize that?

1 A. It's a little small, but, yes, I do.

2 Q. You can --

3 A. I was -- I was at the Attorney General's Office when
4 the -- when the new one -- when the change came in.

5 Q. I think you all defended that map, didn't you?

6 A. We did. Some appellate judges were not happy with us
7 but that's how it goes.

8 Q. And I see Johnson County up there; it borders, you
9 know, Lafayette --

10 A. Yes.

11 Q. -- Pettis, Henry; do you see kinda where I'm at?

12 A. Right.

13 Q. And I mean, it's been with Pettis County for a long
14 time in Congressional District 4, right?

15 A. Pettis, Saline, and --

16 Q. Yep. Saline County, Lafayette County.

17 A. -- and Cooper.

18 Q. Yeah.

19 A. Yeah. We've -- we've been with them forever.

20 Q. In 2012, that was districted -- Lafayette and Saline
21 -- were districted out of Congressional District 4 and merged
22 into Congressional District 5; do you see that?

23 A. Right.

24 Q. And the Missouri Supreme Court affirmed that map,
25 correct?

1 A. Right. In 2012 -- though, I -- to be fair, I don't
2 recall what contests there were. I don't even, I mean, it
3 seemed like Ike Skelton was still our US rep in 2012, but if he
4 lived in Lafayette County --

5 Q. I believe this is after he was gone.

6 A. Okay. All right.

7 Q. Yeah. But the Missouri Supreme Court in *Pearson v.*
8 *Koster* affirmed this map, correct?

9 A. Oh, yes. You're right. Now, my years -- I got my
10 years right. You're correct.

11 Q. Yeah. And your office defended that map?

12 A. We did. We did.

13 Q. Yeah. Can could we go to Intervenor's Exhibit 209,
14 please? That's the 2022 map, isn't it?

15 A. Yes. Right. Yes.

16 Q. And there's Johnson and Pettis and I see Lafayette and
17 Saline are brought back in together, right?

18 A. Right.

19 Q. And -- and my experience, in being in Johnson County
20 and in Lafayette County, is those counties have a lot in common
21 with each other, don't they?

22 A. Well, they're not very -- the courthouses aren't very
23 far apart.

24 Q. Exactly. And Pettis County -- if Kansas City is the
25 western anchor to Johnson County, Sedalia is really kind of the

1 eastern anchor to --

2 A. On this map?

3 Q. Yeah.

4 A. Or Morgan, yeah. Morgan County, but, yes.

5 Q. So let's go to Intervenor's Exhibit 210, please.

6 A. And those courthouses are 30 miles apart, as well.

7 Q. Yep. And we might need to blow this up a little bit
8 to get into that, but you can see in this map -- oh, excuse me.

9 I think I have the wrong map number. Excuse me one second,
10 Judge.

11 THE COURT: Yup.

12 MR. ELLINGER: Let me get my list. I'm sorry.

13 Exhibit 211. My apologies. Those were Senate maps. And
14 can we zoom in a little bit?

15 Q. So this is the -- the current Missouri First Map that
16 this case is about; do you recognize that?

17 A. I do.

18 Q. And we've got Johnson, Pettis, Saline, and Lafayette,
19 once again, back together in a single district, correct?

20 A. Yes.

21 Q. And Lafayette and Saline and, you know, there's
22 several other counties there, but that block has kinda stayed
23 together, hasn't it?

24 A. You mean those? Just those? I mean,
25 certainly --

1 Q. Those four counties we were just talking.

2 A. Those four counties, yes.

3 Q. Lafayette, Saline, Pettis, and Johnson, right?

4 A. Absolutely. Yeah. And now your -- and now your
5 county's in it, too.

6 Q. My county's in it, too?

7 A. Yes.

8 Q. My county used to be with you all for a long time.

9 A. Yeah.

10 Q. And so -- I don't think I have any further questions,
11 Judge.

12 THE COURT: Okay.

13 Q. Thank you, Judge.

14 A. You bet, Marc. Good to see you.

15 MR. SULLIVAN: No questions from the State.

16 MS. KHANNA: One question, Your Honor.

17 THE COURT: Okay.

18 MS. KHANNA: Can we please put up what I think
19 was Intervenor's Exhibit 208, again?

20 **OFFER OF PROOF REDIRECT EXAMINATION BY MS. KHANNA**

21 Q. Judge Dandurand, I think Counsel just showed you this
22 map. This is the 2020 -- 12 -- sorry, 2012 congressional map.

23 A. Yes.

24 Q. And where's Johnson County?

25 What district is Johnson County in this map?

1 A. Four.

2 Q. And Johnson County is in District 4 in the 2022 map?

3 A. Yes.

4 Q. And it's the 2025 map that changes Johnson County's
5 location for the first time?

6 A. Yes.

7 MS. KHANNA: Thank you, Your Honor. No further
8 questions.

9 MR. ELLINGER: No -- no recross on that, Judge.

10 THE COURT: All right. Thank you very much.

11 THE WITNESS: Thanks, Judge.

12 THE COURT: All right. Aside from our

13 depositions that we've talked about, is there any other
14 witness testimony that anybody has?

15 MS. KHANNA: Nothing from Plaintiffs, Your Honor.

16 MS. HUNKER: Nothing from State Defendants.

17 MR. ELLINGER: Nothing from Intervenors.

18 THE COURT: Okay. Well, we won't consider our
19 evidence closed until you all work through that. Do
20 you expect that that'll be ready before closings?

21 MR. MULJI: Yes, Your Honor. They'll be ready
22 before closings.

23 THE COURT: Okay. So we'll tidy things up and
24 close our evidentiary record before closings.

25 We will recess in a moment for today, and we'd

1 discussed everybody doing closing arguments tomorrow. So
 2 why don't we plan on -- I'll give you till 9:00 o'clock
 3 tomorrow. Does that work a little better for everybody?

4 (Laughter.)

5 MR. MULJI: Thank you, Your Honor.

6 MS. KHANNA: Thank you.

7 THE COURT: Okay. Like I said, we -- everybody
 8 gets credit for moving things along this week. So we'll
 9 plan on closings at 9:00.

10 I do have and you don't have to address this now if
 11 you want to just talk about it tomorrow but just, kind of,
 12 a couple of procedural curiosities about -- obviously, I
 13 wasn't here when Count I go stayed. But that's -- just in
 14 terms of after tomorrow getting you all a judgement that
 15 you can move forward with, did you all discuss at the time
 16 Count I was stayed what to do with that if I'm gonna issue
 17 a judgment on the other counts?

18 MR. ELLINGER: Judge, I don't know that we had a
 19 formal discussion about it. That -- that count is pending
 20 before the Missouri Supreme Court now. It's been fully
 21 briefed and arguments are next -- early next month. And I
 22 think the understanding was it was stayed because that case
 23 is now teed up in -- and at the risk of sounding bad --
 24 regardless of what decision you make one way or another,
 25 the red brick building in Jeff City is going to end up

1 making the decision on that probably pretty quickly.

2 MR. MULJI: Your Honor, I'll just note, I'd

3 probably want to reference back the Court's order,

4 specifically, sort of, bifurcating the proceedings in this

5 way. I believe, what -- what Judge Otto, before you,

6 ordered was that Count I would be stayed but that -- that

7 these claims -- these claims would be finally adjudicated.

8 THE COURT: And so are the parties anticipating

9 -- I'll get the phrase wrong -- but me issuing a judgment

10 on the remaining counts and declaring that there's no just

11 reason for delay on those counts.

12 MR. MULJI: I think that's right, Your Honor.

13 MR. ELLINGER: Yes, Judge. I think that's the
14 accurate way.

15 MS. HUNKER: State Defendants agree.

16 THE COURT: Okay. And after the Supreme Court

17 does whatever they're gonna do, relating to Count I, would

18 you all just come back? Or I -- what do you plan to do

19 with that?

20 MR. ELLINGER: I mean, candidly, Judge, whichever

21 way the Court rules on that, it's either going to negate

22 Count I or it's going to make the rest of this effectively

23 irrelevant, too.

24 MR. MULJI: That's right, Your Honor.

25 MR. ELLINGER: Depending on which way it rules.

1 MR. MULJI: Yeah. It's a mostly legal -- it's a
2 entirely legal question, so.

3 THE COURT: Yeah. I'm just kinda procedurally
4 curious about what your plan is there once they make a
5 decision.

6 MR. ELLINGER: I think after the Supreme Court
7 comes down with its opinion, we would probably confer and
8 send you some type of short memorandum with a copy of the
9 judgment -- or excuse me -- the opinion from the Supreme
10 Court, saying who won.

11 MR. MULJI: I think that's the likeliest --

12 MR. ELLINGER: That -- that would resolve Count
13 I, whichever way it goes.

14 MR. MULJI: Yeah. Likeliest outcome.

15 THE COURT: Okay. All right. That was something
16 I just wanted to discuss with you all.

17 Anything else before we recess and see you tomorrow?

18 MR. MULJI: Nothing from Plaintiffs.

19 MS. HUNKER: Nothing from State Defendants.

20 MR. ELLINGER: Nothing for Intervenor.

21 THE COURT: All right. Have a good night. We'll
22 see you at 9:00 AM. Thanks, everybody.

23 (COURT RECESSED FOR THE DAY AT 3:42 PM.)

24

25