Supreme Court of Ohio Clerk of Court - Filed October 22, 2021 - Case No. 2021-1193

IN THE SUPREME COURT OF OHIO

LEAGUE OF WOMEN VOTERS OF OHIO, *et al.*, *Relators*, *v.* OHIO REDISTRICTING COMMISSION, *et al.*, *Respondents*.	Case No. 2021-1193

OHIO APRI V. RYAN SMITH DEPOSITION TRANSCRIPTS - APPENDIX OF EXHIBITS
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OHIO APRI V. RYAN SMITH DEPOSITION TRANSCRIPTS - APPENDIX OF EXHIBITS

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

OHIO A. PHILLIP RANDOLPH)
INSTITUTE, et al.,)
)
Plaintiffs,)
)
v.)
)
RYAN SMITH, Speaker of the)
Ohio House of Representatives,)
et al.,)
)
Defendants.)
----------)

- - -
Friday, December 7, 2018
- - -

Deposition of CLARK BENSEN, taken at the offices of Covington & Burling, 850 Tenth Street N.W., Washington, D.C., beginning at 9:01 a.m., before Nancy J. Martin, a Registered Merit Reporter, Certified Shorthand Reporter.

Job No. 151503

CLARK BENSEN

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CLARK BENSEN

WASHINGTON, D.C., FRIDAY, DECEMBER 7, 2018; 9:01 A.M.

- - -

CLARK BENSEN,

having been first duly sworn,

was examined and testified as follows:

EXAMINATION

BY MR. FRAM:

Q. Would you please state your full name for the record.

A. Clark Bensen, C-l-a-r-k, B-e-n-s-e-n.

Q. Do you have a middle initial?

A. H.

Q. It turns out to be relevant on some documents. That's the only reason why I'm being picky there.

My name is Robert Fram. My middle initial is D, but I don't know if that matters. I represent the plaintiffs.

MR. FRAM: And do the other folks want to say who they are?

MS. McKNIGHT: Good morning. Kate McKnight from Baker Hostetler on behalf of Mr. Bensen.

CLARK BENSEN

MS. RIGGINS: Alyssa Riggins from Ogletree Deakins on behalf of the legislative defendants.

MR. RECHTER: Peter Rechter, Covington & Burling for plaintiffs.

EXAMINATION

BY MR. FRAM:

Q. Mr. Bensen, have you been deposed before?

A. Yes.

Q. That will help move things along a little bit. We won't have to go through some of the litany of how depositions work with you. About how many times?

A. A dozen either way.

Q. And any of them concern redistricting?

A. Yes.

Q. And any concern Congressional redistricting?

A. It's hard for me to say. It's kind of a mix of legislative or Congressional.

Q. Fair enough.

Can you please tell us the depositions that you gave regarding redistricting?

A. It would be much easier to read through my CV, but they started in the '90's. So I must have

done three or four in the '90's and five or six in the 2000s. I think in the 2010 cycle I've only done two depositions. One was Congressional, and one was a local election.

Q. So I'm just going to focus on the 2010, 2011 cycle.

A. Yeah.

Q. I'm sorry. Did one of those concern Congressional?

A. Well, this.

Q. Just this one. Besides this one?

A. I'm pretty sure -- it's been a long decade. I think the only deposition after 2010 was a local legislative.

Q. Have any of the other depositions concerned Ohio?

A. I was deposed in the 1990 cycle in Ohio, which was, I believe, legislative. And I think -- yeah, I was deposed in 2000, which was Ohio, which I believe was legislative also. I don't think I was in 2000.

Q. Do you remember was -- do you remember anything about the claim in that case, whether it was a Voting Rights Act or a racial discrimination case or

a parse gerrymander or anything about it?

A. Well, not through a partisan gerrymander. The 2000 case was a racial case, Voter Rights Act, and '90 cycle -- I think actually that was mostly a Voting Rights Act too.

REPORTER MARTIN: A what?

THE WITNESS: Voting Rights Act, VRA, we'll be saying that several times.

BY MR. FRAM:

Q. Sure. Any reason you can't give complete and truthful testimony today, such as medication?

A. No.

Q. Now, I know -- well, let me back up. You were served with a document subpoena in this case; is that right?

A. Yes.

Q. What did you do to comply with it?

A. I looked at -- I have multiple computers. Three basic computers that were running at the time. I have only one that was around during the 2010 cycle. So I looked through that for documents and E-mail on that machine.

Q. Okay. What E-mail addresses did you look at, please?

A. The only one I would have used at the time, I think was my normal one. It was just CLARK@POLIDATA.ORG. P-o-l-i-d-a-t-a. That's on my card there (indicating).

Q. Do you have a Gmail account?

A. I do now, but I didn't then.

Q. Did you have any other E-mail accounts back in 2010, 2011?

A. I might have. I mean they were involved in POLIDATA.ORG. I don't like have a data at POLIDATA.ORG, but I suspect almost everything I did would have just been the CLARK@POLYDATA.ORG. It's all on the same Outlook system.

Q. And you looked at that E-mail account?

A. Yes.

Q. Did you find some E-mail from that in the 2010, 2011 time frame?

A. Yes.

Q. Okay. You provide those to counsel?

A. Yes.

Q. Okay. Let's back up for a minute.

For a while you were in some direct communication. You were responding to subpoenas, it seemed like, on your own and not through counsel, and

CLARK BENSEN

I can't -- I don't know whether the documents, were they produced through counsel, or did you produce them directly yourself?

A. The documents were -- I sent the documents originally to the AG's office so they could figure out what was privileged since they were the ultimate client. So they're the ones that wrote up the privilege log that we discussed.

Q. Got it. And the actual documents themselves, did you ship them out on your own, or was that sent by the AG's office?

A. No, I did that.

Q. Do you know if the AG's office withheld documents on the basis of anything other than privilege?

A. I don't know.

Q. What did you do, if anything, to prepare for today's deposition?

A. I glanced at the subpoena.

Q. Anything else?

A. I looked up on the Internet who pays for depositions in such cases, who was going to pay me. And I -- oh, I gave a quick review to the calculation of the PVI. That's P-V-I.

Q. Why don't we say for the record what those letters stand for, please.

A. Partisan voting index.

Q. And what did you do to look up the meaning of PVI?

A. I just wanted to remind myself as to whether if a plus was AD plus or an R plus. It's just a technical thing, which I always get confused.

Q. And what did you find?

A. I think I found that fact contrary to normal situation. If it was a plus 1, that would be in favor of the Democrats. If it was a minus 1, that would be in favor of the Republicans.

Q. Got it. And while we're on the subject, because we'll come back to it later just to keep it simple, what does -- do you have an understanding of how a PVI number is calculated?

A. Yes.

Q. How is it calculated?

A. We'd just compare the district -- see, the glare is already hitting. You just compare two numbers. It's the district percentage of the Democrat two-party vote, Democrat portion of the two-party vote to the nationwide Democrat two-party vote, and you

take that difference, and it's a question of whether it's a plus or minus as to whether -- like, again, minus 1 would have been a D plus 1, but a plus 1 would have been R plus 1.

Q. So if you're looking at a particular Congressional district, let's say it has a -- we'll say D plus 1 scoring to it, what would that tell us about that district?

A. It would say that on average -- an average of the previous two Presidential elections, that district was 1 point higher than the nationwide Democratic percentage. So it's an Obama election. So it would be that Obama ran 1 point higher in that district than he did nationwide.

Q. Right. So it's one point higher for the Presidential elections in that district the last two averages; is that right?

A. Yes. Well, yeah. Whether it's average or calculated, but yes, it's the last two.

Q. Let's break that down a little bit.

Is it your understanding that PVI looks at the preceding two Presidential elections?

A. Yes, that's correct.

Q. Okay. And now the question of what they do

with those two. Do they average them or do they have some other way of using those two election results?

A. There are several ways to calculate it, but in essence, they're the same number. It's just a question of concept. To some people it makes more sense to say, "We averaged the two," but in some places they just actually aggregate them all together and then just do one division. It doesn't really matter.

Q. In either event, it's a two-party -- is it a two-party total only? Is that right?

A. Yes.

Q. So one thing they do, which however they do the math, they filter out third-party vote; is that right?

A. Yes. That's just not considered.

Q. Okay. By the way, did you meet with counsel in preparation for your deposition?

A. Did I meet with counsel? Yes.

Q. I'm not going to ask you what you talked about, but did you review any documents when you met?

A. No.

Q. Okay.

A. Well, I briefly reviewed the subpoena, but

yes.

Q. That aside, you --

A. No.

Q. Okay. And have you looked at any documents recently that helped you remember events back from 2011 that you'd forgotten?

A. Only when I was looking for documents.

Q. Do you recall which documents helped you remember some things you'd forgotten?

A. Just in general sense, which is because I had no recollection of what I actually done. So it kind of helped refresh that I hadn't done much.

Q. When did you do that, looking for the documents? Around what time this past few months?

A. When did I do it?

Q. Yeah.

A. I did it -- I don't know -- probably two months ago.

MR. FRAM: Okay. Why don't we have marked as our first exhibit the curriculum vitae of Clark Hamilton Bensen.

(Deposition Exhibit 1 was marked for identification.)

BY MR. FRAM:

Q. And I should state for the record this is not a document you actually produced. This is a document we found, and we found it in -- my understanding is the case of Shickel v. Dilger, which is an Eastern District of Kentucky case. It was filed July 23, 2016. So it might be out of date. This is the most recent one we could find.

A. I doubt it's out of date much.

Q. Why don't you take a quick look at it and tell us if there's anything in the last two years that you've added to your CV. It's a very comprehensive CV.

A. I think the only thing since then would have been the -- there was a case in Georgia and a case in Virginia -- two cases in Virginia. So one would have been the Sumter County case, which was a local school board election.

And the Virginia cases were both legislative cases over the House -- well, one was over the House delegates, and one was over the state Senate and the House delegates. The first one would have been Bethune-Hill --

REPORTER MARTIN: What Hill?

THE WITNESS: B-e-t-h-u-n-e, -Hill.

CLARK BENSEN

And the other was -- it will come to me. Vesilind, V-e-s-i-l-i-n-d.

BY MR. FRAM:

Q. Now, were you an expert witness in any of these cases?

A. Like I said, I believe in this time frame I probably did -- I did at least one voter rights case in California, which was city of San Jose. I can't remember the title of the case. Possibly one more in California, but it was local.

Q. Was that under state law?

A. Yes. Those are both state. California has its own Voting Rights Act.

Q. So for any of these cases were you an expert witness?

A. Well, this Kentucky case I was. No, none of the others.

Q. Okay. And were you a fact -- what was the subject of your fact witness testimony in Bethune-Hill?

A. I didn't testify. I worked -- I provided data for experts. In fact, in each of those cases, I didn't testify. It was all working from the standpoint of providing data for experts.

Q. Did you provide data for experts after the litigation started or part of the actual map drawing before the litigation happened?

A. In each -- well, in Virginia I did work originally on preparing data for the people who drew the plan in 2011, but I didn't participate in the actual line drawing.

Q. Uh-huh.

A. So aside from that, everything was just after the fact, preparing data for experts for litigation.

Q. So you gave them -- you gave the people generating the maps, you gave them some data, and then they used that to draw the maps in Virginia; is that right?

A. Yes.

Q. Okay.

A. Well, let me rephrase that. I provided the -- what had been the House Republican caucus, I provided them data. They had, basically, a separate system. There wasn't an official legislative drawing system. So my point is the caucus had them. Whether they used that to actually draw the map, I don't know.

Q. Right. Do you know the software they used when they got your data to help make use of it for

generating maps?

A. Well, someone used maps. I do know that much. The legislative thing did not.

Q. You've done that in other cases, I take it, provided data that others have used in Maptitude; is that right?

A. Yes, frequently.

Q. So we're on the same page as we talk about it today, do you refer to that as a layer of data that's used in Maptitude or a data set? I just want to make sure I'm using words that are easy for you -- for us to communicate.

A. First, Maptitude is M-a-p-t-i-t-u-d-e. What I do is I provide the data that the end user will put into their Maptitude files. So layers are distinct levels of geography, and in general, each of those layers will have the same information, the same columns in a sense in the spreadsheet. They would be just different rows.

Q. I understand. I think I'm understanding what you're saying. Let's see if I got it right. So you provide some political data, and that might, say, concern past election results within that state; is that right?

A. Yes.
Q. So statewide election results?
A. Generally, yes.
Q. Might I say for 2010, '11 cycling -- strike that.
For 2010 and '11 redistricting cycle, did you have a practice of using a certain set of elections?
A. Could be whatever the statewide elections were from as far back as we could go, at least through 2004, 2002, or in Virginia's case, with odd elections, that -- in other words, what you want to do is pretty much take the previous decade entirety. Sometimes you don't go quite so far back.
Q. And did you tend to look only at the statewide elections?
A. Yes.
Q. Why was that?
A. Because it's similar to the whole concept behind PVI. It's a neutral indicator because it doesn't account for district specific or candidate specific factors. Plus it's the only thing that has fungibility because you can look at a statewide vote by any configuration of districts. But if you look at legislative vote or the Congressional vote, half the

precincts are in this district and half the precincts are in that district.

Q. And then once the people working on generating the maps have this data, if I understood you correctly, they can then see that election data for those previous elections for a variety of different jurisdictional -- geographic units; is that right?

A. Correct.

Q. And that can be down to census block unit; is that right?

A. That's the lowest level, yes.

Q. You understand, in generating maps in Maptitude, one draws district lines around different census blocks?

A. Well, ultimately, yes. You may pick a county subdivision or something and it takes off the blocks in there. You don't necessarily pick each of the census blocks. You pick the level of geography that's the most efficient.

Q. Okay.

A. But if you know you have to split a city, well, then you have to go down to some lower level.

Q. And then Maptitude has a way, then, of taking

the information and -- regarding the various geographies encompassed in a district and then showing you the election results data for the district that's been proposed; is that right?

A. Yes. It's basically just a computerized adding machine.

Q. Okay. Thank you very much. I hope that will be helpful as we go forward so we're using the same vocabulary.

Why don't we go back to your CV a little bit and just talk about your background. So you -- I take it you went to the University of Vermont?

A. Yes.

Q. And graduated in '74?

A. Yes.

Q. And then you went on to Vermont Law School?

A. Yes. I was in western New England for a year, and I transferred into Vermont when it became accredited. The new school didn't have ABA accreditation the first year. So that's why I went out of state.

Q. And you got your J.D. there in '78; is that right?

A. Yes.

CLARK BENSEN

Q. And then what was your -- let me back up.

Before you graduated law school, did you run for the Vermont House of Representatives?

A. Yes.

Q. And you were elected?

A. Yes.

Q. And you were there for one term?

A. Yes.

Q. Okay. And then what was your first job after you graduated law school?

A. Well, I practiced quote/unquote "law" for -- I did one or two cases, and then I said, "Boy, I really did want to do politics." So I actually ran the George Bush for president primary campaign in 1979. Well, strike that.

I did have -- that was my second. I actually did have a research grant that I continued to work on some of the data I worked on while in college to help a professor do a project by Congressional committees.

Q. And after you campaigned for late President Bush, what did you do next?

A. I'm not sure exactly what I did for a few months there. I did some sort of political analysis in Vermont. A lot of my focus at that point was in

Vermont. We had the legislative redistricting project. At that point the legislative -- I was a consultant to the legislative apportionment board in -- I guess that would have been the session of 1981, and then the fall of '81 I came down to D.C.

Q. Okay. And what did you do when you came down to D.C.?

A. I worked at the Republican National Committee or RNC.

Q. And what did you do there, please?

A. I was hired as a programmer, as all lawyers should be, you know.

Q. I do. They throw you in the deep end of the pool and you learn on the job, or did you have a little programming experience before you got there?

A. I had done programming in high school, very early days of computers, late '60's.

Q. Computers changed a bit?

A. Yes. In that period of 10 years, there was a huge change, but this was still before PCs. So it wasn't really the deep end for me. It was the easy way to get in.

Q. I understand. How long did you do that work as a programmer?

A. Well, I was at the committee from '81 to '89. Pretty much I always did that even though I moved up the chain and I was administrator, I was manager, and senior staff and I did many more things, but I eventually ended up running the computer programmers too. So my mix was kind of as an integrator.

Q. And for how many years were you there?

A. Eight.

Q. During those years did people use software draw districts for Congressional seats, or did they do it on magic markers on white boards?

A. Mostly the latter. The degree to which computers in the 1980 cycle -- and, again, the only state I was involved in redistricting the eighth cycle on my own was in Vermont. And I wrote programs for that, but it was Vermont, not a large amount of data, but we still had to do the programming as if it were.

When I got to the RNC, the process that had been used is -- again, I got there in '81. So the redistricting cycle was half done. Basically then computers were really just the adding machine. You'd have to basically go through and tag every piece of geography to a district, and that was tedious. And plus we didn't have census blocks. So it was still

much more inchoate as a process.

Q. What were the units of an election -- well, did you have units for election results back then, you didn't have census blocks?

A. Well, yeah, I think they were called enumeration districts were the lowest level of which we had data. I'm not totally sure on that. But I think census blocks were really more en vogue in the '90's cycle. So it was just not as refined. For instance, you probably would have had political information by precinct, but that's probably about all you had.

Q. So what would you do if a district split a precinct?

A. Well, you'd probably just make an estimate of what it was, which depends on the state. Some states were more organized and had better information. So you could actually do something below the precinct. But in the '80's cycle, it was hard to do.

Q. So you were doing this, you said, for about seven or eight years, about '80's, late '80's?

A. I was there through '89.

Q. Then what happened?

A. Well, then I went to do consulting for

redistricting for the '90's cycle on my own.

Q. Okay. And you said you were on your own. Did you form your own company at that time?

A. Well, it had always sort have been there. I mean I started Polidata in 1974 when I was in college, just sort of I didn't do very many projects while I was at the RNC.

Q. And so you were doing business under the name Polidata starting for the 1990 cycle?

A. Right.

Q. Okay. And now in the 1990 cycle, was there a particular piece of software that was being used?

A. That cycle was pretty much several customized programs were being developed. There wasn't a Maptitude until, I believe, sometime after that. We had Maptitude for the 2000 cycle. So sometime in that decade they developed it. In fact, the RNC worked with Maptitude a lot to develop it.

Q. I see. So they worked with Caliper? That's the company that developed Maptitude?

A. Yes. And I believe that's what it was called then too, yes.

Q. Were you part of the project of working with Caliper to develop Maptitude?

A. Well, to some degree, but not very much. We had a person, Tom Hofeller, who was the director for redistricting either at the RNC or the NRCC at the time, and he was much more -- he was similar to me in a sense. He was a programmer but a political person. So he was actually more involved in the development of it.

Q. Okay. Then in the 1990's cycle, you also looked at election results data while you were -- well, let me back up.

In the 1990 cycle were election results data also looked at in the generation of maps, whether you did or someone did?

A. Generally, yes.

Q. Did you also provide election results data to whoever was actually generating the maps at that time?

A. Yes.

Q. Let's go to -- what happened -- how long were you -- were you on your own consulting ever since then, or did you pick up another job after the 1990's cycle?

A. I was back at the RNC for the '94 election cycle. Other than that, no. I've been working on my own.

Q. Were you working with the late Dr. Hofeller when you went back?

A. I don't think he was there by that time. I think he was out in California for a while. I've worked with Dr. Hofeller for -- on numerous projects over the decade, yes.

Q. Do you recall who you were working with in the 1990's at the RNC?

A. Well, largely, Tom Hofeller. David Winston -- again, I'm sketchy as to whether Hofeller was the NRCC or the RNC. That's H-o-f-e-l-l-e-r. Or David Winston, W-i-n-s-t-o-n. But basically I was working with the data people to get data for the redistricting office or department in whatever it was, RNC or NRCC.

And at that time we had a -- I forget the exact structure of it, but we were providing data to Republicans and states too, and some minority coalitions in states too.

Q. You said you were getting data for, let's just say Republicans. Let's start with that for a minute.

A. Uh-huh.

Q. Was this data election results data?

A. Yes.
Q. Did you provide any other kinds of data?
A. Well, I would repackage census data, but I wouldn't develop it on my own. But it was almost all general election statewide results.
Q. Do you have an understanding as to why the folks working on the maps in either the '80's or '90's wanted to have election results data?
A. Well, I think I already answered that. My point is that's just a way to assess the political makeup of any district that they're looking at, or not just a district, but in the area. I mean a lot of times they just need -- there are a lot of units in a data set, and even though state political people sometimes know every nook and cranny of the district or the state, a lot of times they don't.
So they just got to look at the county or county subdivision or precinct or something and say, "Is that a Republican or a Democrat area?"
Q. And your experience in the '80's, the people working on the maps wanted to have that information; is that right?
A. Well, pretty much without exception, yeah.
Q. And also the '90s?

A. Yes.
Q. And also the 2000s?
A. Yes.
Q. And also after the 2010 cycle?
A. Yes.
Q. And pretty much without exception, in your experience?
A. I believe the only difference was Florida because their state constitutional provision had a provision about no partisan bias or political favoritism or whatever. But, of course, my question was how are you going to measure that if you don't have the political data.
Q. So other than Florida, with that exception, any of the folks working on generating maps that you've worked with wanted to understand the political makeup of the district; is that right?
A. In my experience, yes. Well, if the client was a partisan client. If it was a voter rights case, that's not necessarily the issue.
Q. Whenever the client was Republican, that was the case?
A. In my experience, yes.
Q. Like you said, the census information was

already in the census. You might have repackaged it.
Over the years have you developed a methodology for collecting election results data?
A. A methodology?
Q. How do you go about doing it?
A. That's a pretty cumbersome process. You have to get -- you have to have a data system ready to input data that you get from states or counties, and you have to have all sorts of routines set up to input it, proof it, compare it with different levels of geography to make sure, in fact, it comports with what the canvas said, and then you basically just have to follow it all the way through, kind of like a chain of evidence thing.
So you know this is what you got from the secretary of state or the county board, and you just go all the way through to the point where you can finally play with it enough to get it into the redistricting system.
Q. And what's the form -- let me strike.
Starting in 2010, looking at that time period because I know software changes, what was the form in which you would provide this election result data to people working on maps?

A. It would generally be a DBF database file because that can be easily imported into Maptitude -- well, depending on who the client was. If the client wasn't very computer savvy, I would give it to them in a CDF format, which is a Maptitude kind of format. So it was basically just -- it's just a conversion routine. So they could just open it up instead of importing it.

Q. Okay. Do you remember in Ohio if you provided election results data to Republicans working on generating maps?

A. In Ohio --

Q. In 2010. In the 2010 -- strike that.

In 2011 did you provide election results data to Republicans in Ohio working on Congressional redistricting of maps?

A. I believe so, yes.

Q. Do you recall the form in which you provided it to them? Did you give it to them in DBF files or in CDF file?

A. I don't recall, actually. It could have been either one.

Q. Was that -- one of the individuals you provided information to Mr. Ray DiRossi?

A. Well, to Ray or Heather. They were a tag team as far as I'm concerned. One would ask for something. I'd treated them as the same. So pretty much they both got whatever.

Q. At that time Heather's last name was Mann, M-a-n-n; is that right?

A. I've forgotten if it was Mann or was Blessing.

Q. Just for the record, I'll say it's Blessing now and it was Mann.

A. Yes. It was Mann.

Q. Just to make sure that's consistent with what you remember.

A. Right.

Q. Other than Mr. DiRossi and Ms. Mann, did you provide election results data to anyone else in Ohio in 2011?

A. I believe John Morgan, John B. Morgan was also working with Baker to assist Heather and Ray to understand the ins-and-outs of Maptitude, kind of just the operational aspects of it. So it may in fact be that I gave it to him. He actually helped them install it into their system.

Q. What about Mr. Adam Kincaid? Do you know

him?

A. Yes.

Q. Did you do any work with him regarding Ohio redistricting in 2011?

A. No.

Q. Okay. Do you recall ever providing him with any Ohio election results data?

A. No. I recall never giving him any data results.

Q. Okay. By the way, you said that, without exception, when you worked for Republicans working on maps, they'd want to have election results data. I just want to get a sense of how many times we're talking about. More than 20 times?

A. You mean clients to whom I've provided data for redistricting?

Q. Yes. Election result data -- let me state the question more clearly.

The number of times you provided election results data to clients working on redistricting. I want to limit that to Republicans.

A. Certainly more than 20, yes.

Q. More than 50?

A. It's hard to say. In several cycles I've

worked on, projects that were nationwide. So whether I actually gave it to them or they ended up getting what I had worked on, I couldn't tell you.

Q. In terms of the number of projects that you've actually given Republicans working on redistricting election results data, can you give me a number ballpark?

A. Probably closer to 20 to 50.

Q. Or 30?

A. Could be.

Q. Okay. Since the 2000 cycle, have you -- has Maptitude been the redistricting software of choice in the redistricting projects you've been involved in?

A. Well, most of my clients have used Maptitude, but not all.

Q. Okay. About how many times have you been involved in projects where Maptitude was the software used?

A. Again, a couple dozen maybe. My role differs by the client stuff too. So, in other words, I may have been involved in a project where they were using Maptitude, but I didn't provide them data. I was just helping them review the information or something like that, or I was helping them run reports. But in

general, it would have been -- most of my clients would have used Maptitude.

Q. How would you describe your role in Ohio in 2011? I'm going to focus on Congressional redistricting.

A. My recollection is I really did two things. One was kind of a follow-up to what we had done for -- what I had done for the legislative redistricting, which was to provide Ray and Heather with the basic information they needed so as we discussed political data and such like that. And then I helped them on technical things because they were still -- the Congressional operational aspects in Ohio were much easier than the operational aspects of the legislative plans because through legislation we did an entirely separate data set because of geography.

Congressional in Ohio was just like in any other state. So it was much easier. But there's still technical questions because they had done it the legislative way, which was convoluted, and that was actually easier. So I helped them on some technical things there. Then that's pretty much all -- again, I may have given some stuff to John Morgan, although I think my recollection was he was much more involved in

the legislative thing too.

Then I worked with Mark Braden as the counsel to give him information on plans and such that he was having looked at.

Q. You said that you gave Mr. DiRossi and Ms. Mann the data they needed. Just so our record is clear, that included election results data; correct?

A. I'm pretty sure. Well, that's my recollection.

Q. That's all I can ask for.

A. Yeah.

Q. And do you recall any other data other than election results data that you provided to Mr. DiRossi or Ms. Mann in the 2011 Ohio Congressional redistricting work?

A. Only to the extent that I might have also repackaged the census data. Census data is hundreds of fields, and when I say, "repackage," I basically just narrow it down to like 20 fields, and normally I would have that as part of the record to which I would append the political data.

Q. By the way, as a mechanical matter, when you provided data to them, did you have a shared FTP site? Did you send them a zip file? The nuts and bolts of

how you actually transmit the information.

A. Well, I'm pretty sure by 2011 it was not via FedEx. So it would have been if a file was small enough, I would have just E-mailed it as an attachment. If it was 5 or 10 megs, I would have sent them a link to a public -- not a public, but it's called Sendspace and it's like Dropbox. So I would just send them a link. They could just get it downloaded from there.

Q. Did you set up that Dropbox account, or did they set it up and ask you to send it? Do you recall how that got set up?

A. It's just a default that I use for all my clients.

Q. Is that Dropbox account available today?

A. Well, yes.

Q. And does it have information from the 2011 -- is information from the 2011 cycle still in it?

A. No. It has a limit of 1,000 files. So after you get 1,000 files, you just have to delete it. So it never has -- hardly even has a year's worth of files in it. It's strictly a temporary kind of flow basis.

Q. Sure. Thanks.

Do you recall providing election results data from 2002 to 2010 to Mr. DiRossi and Ms. Mann?

A. I'm not sure 2002. Probably did. I'm pretty sure it went from '04 on, anyway.

Q. Do you recall any discussions as to what the parameters of the election results data sets should be?

A. No. I think it's probably, basically, I said, "Here's all your statewide races, and you can pick and choose." I think the only option would have been the judicial races in Ohio, I think, have changed over time. My recollection is that now they still have a partisan primary, but it's a nonpartisan election, general election.

But I think in the -- possibly -- at some point in the last 20 years it's changed. So the ones from the '02 to '10 may have been a mix of -- they were actually partisan election. So, frankly, I don't recall if I included them or not, but that would have been about the only discussion.

Q. As to whether or not to include the judicial elections?

A. Right. I think probably I would have processed them anyway, but I just don't recall

whether -- yeah.

Q. Okay. Did you ever provide block equivalency files to Mr. Mann or -- excuse me, Ms. Mann or Mr. DiRossi?

A. I could have.

Q. Just for the record, if you could please explain what a block equivalency file is.

A. A block equivalency file or a so-called block assignment file, which could be a BAF or a BEQ, in jargon, it's just one record for each census block in the jurisdiction, and it has only two pieces of information; the block number, which is a long geographic identifier, and then the district to which it's assigned. It's the normal way plan geography is transferred from one system to another.

(Deposition Exhibit 2 was marked for identification.)

MR. FRAM: I'm going to mark next as Exhibit 2 a document that's got a Bates number on it. LENZO-, L-E-N-Z-O, -_004434 through -440. And for the record, it's a PowerPoint. The first slide appears to have been entitled "Election Data for Redistricting," got a "Copyright 2010 POLIDATA on it. The slides are in thumbnail form. That's how we

received them. I didn't want to alter that, but I apologize. They're a little smaller than one might like.

I'd ask you to take a look at this document, Exhibit 2, please.

(The witness reviewed Exhibit 2.)

THE WITNESS: Okay.

BY MR. FRAM:

Q. Is this a document that you've seen before?

A. Well, yes.

Q. Is this a PowerPoint you created?

A. Yes.

Q. And you used this in giving one or more presentations?

A. Yes.

Q. Do you recall which presentations where you may have used this PowerPoint?

A. I know there's a Republican seminar at some point in 2010 or 2011. I'm pretty sure it was in there. I probably would have sent it to some of my clients or something, but it was probably -- as you said, it says, "2010." So that's probably where this iteration came. It's pretty much a standard thing. I could have used it at NCSL conferences as well.

Q. Why don't we say for the record what NCLS is.
A. National Conference of State Legislatures.
Q. Did you also present at any time at an RNC conference?
A. I just said that.
Q. Not the Republican Congressional committee but the national committee, or it might have been either one?
A. Yeah. I couldn't limit it to that. It could have been a combined one. I think it was probably an RNC. So it was basically for umbrella groups. The problem with NRCC is they have a specific pretty narrow focus.
Q. You see this was produced by Mr. Lenzo. Is that a name with which you're familiar?
A. Yes.
Q. Who is Mr. Lenzo, please?
A. Well, I view him as -- I can't remember exactly what his title was in 2011, but he works for the House Republicans. Whether he was chief of staff or he was counsel, I don't remember.
Q. Do you recall whether he attended any presentation where you used this PowerPoint?
A. I don't, but it seems like he must have.

Q. Did you see him -- did you have a chance to talk with Mr. Lenzo at the RNC -- we'll call it the "RNC conference."

A. I don't recall specifically. I know I've seen him at one or two, but I couldn't tell you whether it was an RNC one or an NCSL one.

Q. Did you ever talk to Mr. Ray DiRossi at either one of those conferences?

A. I don't remember if Ray went. It's more likely I would have -- the reason I'm confused is because there was so many -- there was only one RNC conference. There are multiple NCSL conferences. The NCSL had a set of redistricting seminars leading up to the process. So it's much more likely I saw him at one of the NCSL conferences.

Q. Do you recall just talking to anybody at any of these conferences about the potential of doing work for Ohio Congressional redistricting in the 2010, 2011 cycle?

A. Well, not specifically Congressional. We talked about possibly doing -- well, actually, at that time not really because it would have been pretty much a general conversation. My involvement only came once whoever in Ohio decided to have the project, and they

contacted Mr. Braden, and then that's how I got involved in the case. So I don't remember any specific discussions about that part of it at a conference.

Q. Do you recall the first time you were contacted regarding doing work for the Ohio Congressional redistricting?

A. No, I really don't.

Q. Was it in 2011?

A. Could be. I really don't know.

Q. Was it after the 2010 mid-terms or before? I'm sorry. Yeah. 2010 mid-terms or before.

A. I'm pretty sure it was afterward because the problem is nothing is really happening in Ohio until the 2010 mid-terms because they couldn't decide who the actual board members were going to be.

Q. Or who would be controlling the legislature in the case of the Congressional redistricting; is that right?

A. Well, that's true but -- well, that's a good point. The apportionment board was really just for the legislature, but the problem was none of the infrastructure could get going until the 2010 elections could decide who was on the apportionment

board, and then the Congressional was sort of tagging along to some degree.

Q. Okay. Now, so our record is clear, I'm going to be asking -- I have been asking and will be asking about Ohio Congressional redistricting. I take it, did you do work also on the state legislative redistricting as well?

A. Yes.

Q. Okay. So I might be very specific and explicit about questions regarding the state legislative process, but if I'm not, when I'm just talking about redistricting, I'm asking questions about the Ohio Congressional redistricting. Do you understand that?

A. Yes.

Q. Okay. Would you change any of your answers that you can think of now in the testimony you've given so far based on that clarification?

A. No.

MS. McKNIGHT: Objection.

You can answer.

BY MR. FRAM:

Q. If it comes to mind that oh, no, that was only about the state apportionment process, then

please feel free to let me know.

A. Well, as I said, that's what's kind of confused in my mind because at the time, it was very discreet, but now it's, like years later, fuzzy.

Q. That's why I'm reinforcing the point. I want to turn to the first substantive slide on -4434 right after the title slide, the one under the heading "Introduction." Do you see that?

A. Yes.

Q. Could you please take a look at that.

(The witness reviewed Exhibit 2.)

THE WITNESS: Yeah. Yes.

BY MR. FRAM

Q. If I understand correctly, this was the first substantive slide of your slide set after the title slide; is that right?

A. It appears so, yes.

Q. So the first thing that you presented was to -- you said, "However, to estimate the election impact, you will need election data." Do you see that?

A. Yes.

Q. And you communicated that to the people at the RNC conference; is that right?

CLARK BENSEN

MS. McKNIGHT: Objection.

You may answer.

THE WITNESS: I'm not sure that I actually presented this or this was just part of a handout that they provided. I don't have a recollection as to what -- I know I spoke at the conference, but I'm not sure where I spoke. If I spoke, this would have been the first thing I said, yes.

BY MR. FRAM:

Q. Okay. And you were a person who could provide election result data that could be used to estimate the election impact of a district; is that right?

A. Yes.

Q. Turning to the next page of the PowerPoint -- of the exhibit, -4435, and to the slide entitled "Analytical Goals." Do you see that?

A. Yes.

Q. And there are four that are listed. Do you see that?

A. Yes.

Q. Do you see the fourth one is entitled "Partisan Fairness"? Do you see that?

A. Yes.

CLARK BENSEN

Q. What's your understanding of what the term "partisan fairness" means?

A. There are various metrics that analysts -- mostly experts in litigation will use to assess the degree to which the votes break out, and they generally would look at it from a statewide perspective.

Q. And did you -- do you remember talking about partisan fairness in your presentation at the RNC?

A. Unless it's in here, I didn't really see it unless I glanced over it. Again, I don't remember what I talked about. I'm sure I had another thing on just partisan fairness. You can add that too.

Q. Do you have an understanding of the term "partisan fairness" as you used it, putting aside the various experts who have their own views?

A. Well, yes. There are different metrics that they use.

Q. Is there a metric that you prefer?

A. It depends on what the client is looking for.

Q. Do you recall working with the RNC, is there a metric the client preferred?

A. Well, the RNC did really do it per se.

Q. Fair enough. Working with any Republican

state legislatures or their staff, was there a metric that they had preferred in terms of measuring partisan fairness?

A. It would depend on the decade.

Q. After 2010.

A. It was probably still partisan symmetry at the time as kind of the main focus because we hadn't really had much in the way of litigation. So there really hadn't been much change for the last 20 years.

Q. If you could explain for the record what you understand the term "partisan symmetry" to mean, please.

A. You basically -- you take the votes, say for a president or something, statewide race, and you reaggregate that from all the census blocks basically in each district, and you'd come up with how many districts were won by, say, Obama. And you'd say if Obama got 55 percent of the statewide vote but he won 65 percent of the districts, that's A.

But then you look at the plan and say, "Well, if, in fact, McCain had gotten 65, 55 percent of the vote, would he have gotten 65 percent of the seats." And it's a question of the differential between that.

Q. Do you ever recall a conversation about

partisan symmetry with anyone in Ohio in the 2010 cycle?

A. No.

Q. Turning to Page -4436. Do you see the slide at the bottom of the page, "Keyline Dataset"?

A. Yes.

Q. Okay. Do you recall discussing that at the RNC conference?

A. As I said before, I don't know if I actually presented this or not, but I would have. If I would have presented this, I would have gone through each slide.

Q. Just so I understand, looking at this slide, what was -- what's the "Universe of reported units" or sub units refer to?

A. Basically, that would be precincts. Sub unit would be a split precinct.

Q. And when you said down further, "Establishes coding scheme," what does that refer to?

A. It just means taking -- it goes back to what I said about developing election scheme, election recording scheme. There's no standardization even amongst counties in one state, but computers, as we know, like zeros and ones. So you have to take

whatever information they've given to you and come up with some sort of nomenclature where you would give it a code, which is basically just some series of numbers or letters so that you could have Precinct 1, I'll say, be identified as Precinct 1 each year even though they may call it Adams School one year, and then the next year they call it the Jefferson Firehouse or something like that.

Q. And you also developed codes for different elections?

A. I'm sorry?

Q. Did you also develop code -- did you ever develop codes for different elections? So, for example, GOAP, or the general election for 2008 for President?

A. I wouldn't call that a code, but yeah, it's the same kind of thing. You come up with a pneumonic, basically, that is generally no more than 10 characters that just makes it easier to process because there's still -- certainly in the early days, there was a lot of hand work.

Q. Did you ever come up with any pneumonics for elections?

A. Well, yeah. When I was at the RNC, we spent

time -- when I got there they had a very basic system, and I spent some time making it a little more extensive because when I was there, they didn't have to deal with redistricting before I got there. So we had to come up with all sorts of codes and look-up tables and nomenclature standards for the data that eventually went into any election system which eventually went into a redistricting system.

The redistricting system itself is very simple. It's like Maptitude. But getting the information so that you get it in there is much more complicated because there's just a lot of steps.

Q. What were some of the steps?

A. Well, that depends on each county and each state. When I say, "steps," the basic point is sometimes a state, even back then -- in fact, Ohio in -- I think in -- well, certainly '90 and 2000 -- I can't recall 2010. They had -- for a long period of time they had a very good data file for precinct level data, and it was pretty straightforward.

But a lot of states, even at that time, were not very organized, and even now when they're organized, every state has a different way of looking at it. So as part of the operational aspects, it's

just sifting through all that to kind of come to the lowest common denominator so that you could actually process it efficiently in a computer system.

Q. So you say Ohio had a pretty good precinct-level election result data set; is that right?

A. Yes. For a long time. At least a decade or so.

Q. And is that also true in the 2011 redistricting?

A. Ironically, I don't think that was the case, but then they had received a grant from the election administration commission to clean up their precinct data, which, in my mind, did nothing but kill off the good format that they had.

Q. So some problems developed in the 2011 work?

A. Yeah. It was much more work than it used to be for Ohio.

Q. What was some of the problems you recall?

A. Well, it wasn't done by data people. It was done by political people who wanted to get something. In other words, in the past it had been done by, basically, IT professionals, but by this time it was done by the Secretary of State's office, and their

focus was not on doing it efficiently from a programmer standpoint.

So basically you had to re-engineer what they had thought and done.

Q. Do you recall some of the problems that were created by virtue of the fact that the Secretary of State with non-IT people had reconfigured the data?

A. There weren't any insurmountable things. It was just that it was so much easier to do it the old way because they thought the way we thought. But now it was in a different format and you had to re -- you had to go through everything.

I mean it just added a few days extra work. That's all.

Q. And you did those few days of extra work as regards Ohio in 2011?

A. Yes.

Q. For the Congressional redistricting work?

A. Yes.

Q. Okay. Did you also need to do some work so that the precinct data, election results data could be reflected at the census block level?

A. Well, work needed to be done to do that. I'm not sure I did that. We had a project in the 2011

cycle that was doing it for all states -- well, not all states but including Ohio. And I think probably I got that block-level information from that project.

Q. You say, "we." Who is doing --

A. I don't remember. It was an outside group that the RNC was working with. I don't remember what the group was called, but they did basically, as every state, they didn't do the at-large states. So it was pretty much if it was more than one seat, then they did it. So in reality, I remember I had to convert the election data so I had it in my system, but I think by the time we got to the actual block-level data, I got it from the project.

Q. Okay. Now, the project, do you recall any of the persons working on what you described as "the project"?

A. Well, Tom Hofeller was involved in some degree. I can't remember what his role was at the time, whether he was still working at the RNC. He would have been the main contact. In other words, he would have known who was -- I was still at the time working with -- I was a consultant with the RNC to make sure that the data that went to and came back from the project was -- met certain qualifications.

CLARK BENSEN

Q. So you received data at the census block level -- strike that.

You received election result data at the census block level from the RNC in 2011; is that right?

A. Or from the project that they were working with, yes.

Q. In the directive from the RNC or from what I'll call "the project"; is that right?

A. Yes.

Q. And then when you received that information -- let's just focus on Ohio Congressional redistricting -- what would you do with that information?

MS. McKNIGHT: Objection.

THE WITNESS: But I can still answer?

MS. McKNIGHT: Yes.

THE WITNESS: I would run it through my set of validations. I would look to see if it added up vertically to multiple levels of geography. Typical would have been by county and such to see if in fact the results that were given to me by block added up. And then horizontally I'd look and see if, in fact, a number of votes for President versus votes for U.S.

senate, things like that, and run other validation checks just to make sure that it looked like a good data set to use.

BY MR. FRAM:

Q. Do you recall there being any issues regarding the data set in connection with your work in Ohio Congressional redistricting in 2011?

A. I don't recall any. It wasn't very often that I had problems with the data sets. I don't recall anything for Ohio.

Q. And then once you run your validation checks, what did you do next?

A. Then I would have converted it to get it into Maptitude, which would mean I took the block level data and I would aggregate it up for each of the layers, the geographic levels that would feed into Maptitude. So it would add it up to the precinct level. The precinct would have been the 2010 census VTDs, county subdivision, county and the other levels. I would just add it up from the block and then convert that into a DBF or a CDF so they could import it into Maptitude.

Q. Sure. We just entered a new acronym here. We should just say for the record, VTD?

A. Voting district. V-T-D.

Q. And then Ohio is the precinct, the VTD?

A. Well, it may be. Generically, the VTD is supposed to be the census bureau's version of the state's precinct, but the VTD is frozen in time. It's really designed as a delivery mechanism for the census data. So, for instance, this time they would freeze the precincts as of the 2018 election, not literally, but they would freeze it.

That's the representation they would give to the census bureau. So when they got the data in 2021, it would be data for the 2018 VTDs or precincts. But there's not a perfect match.

Q. Okay. Turning to -4439, the slide at the top. It says, "Block to Precinct Equivalency." Do you see that?

A. Yes.

Q. It says there "Key to linking." Do you see that? Then under that there's sub bullets, "all election over time, election results with 2010 census." Do you see that?

A. Yes.

Q. Do you recall what you meant when you wrote those words?

A. Yes.
Q. What did you mean?
A. For instance, the file that I got from the project was at block level. So what the project would have done is with these precinct maps over time, they would have assigned each block to a precinct for, say, the 2002 election, 2004 election, and so on, and then they would distribute that information from the precinct level for that election for that precinct to the blocks, usually based upon voting age population, and then they'd do that for each county, for each election, for each VTD or precinct.
Q. "They" being the folks working on what you'd call "the project"; is that right?
A. Yes, they would have the geography for the precincts and the block, and then they'd assign each block to a precinct.
Q. Did you ever E-mail back and forth with anybody working on the project?
A. Well, I'm sure I did.
Q. Did you ever find any of those E-mails when you were looking through your files for this case for producing documents?
A. I'm sure I didn't keep those because the

only -- the only reason I had any of the E-mails from Ray and Heather were because I had to segregate them off as -- they were in a client folder. But there would have been too many E-mails in the other project to keep that. That was just in my in box, and it just disappeared over time. Because that was much more of a day-to-day type of thing.

Q. Let me make sure I got the record right on this. Is there a record of when Dr. Hofeller was working on the project?

MS. McKNIGHT: Objection.

THE WITNESS: He was like a liaison. Again, I think he was at the RNC that cycle. I think that's right. So he would have been liaison between the people actually doing all the precinct matching and that kind of stuff, yes.

BY MR. FRAM:

Q. Do you recall when you first heard about the project?

MS. McKNIGHT: Objection.

THE WITNESS: 20- -- not really. Obviously, late in the decade.

BY MR. FRAM:

Q. Late in the decade, like between 2000 and

2010?

A. Yeah. So like 2009, '10.

Q. The project was not up and running for the 2000, 2001 redistricting work; is that right?

MS. McKNIGHT: Objection.

You can answer.

THE WITNESS: There were pretty much different projects in each cycle, but they were just like two-year projects, or it depended. In most cases I think they were pretty much two-year projects.

BY MR. FRAM:

Q. Do you know who Mr. Chris Jankowski is?

A. Yeah, I know who he is.

Q. Do you ever communicate with him about redistricting regarding the 2010 cycle?

A. No. I did work for him briefly before 2010.

Q. Do you ever communicate with Mr. Jankowski regarding the project?

MS. McKNIGHT: Objection.

THE WITNESS: I had no conversations with him after the 2010 election.

BY MR. FRAM:

Q. By the way, I'm just using your phrase, "the project." If there's something more specific. I'd be

happy to use that.

A. I really can't remember. Again, I was trying to figure that out, and that's because I wasn't actually employed by the project. My client was the RNC. So...

Q. Did you ever tell Mr. DiRossi or Ms. Mann that you were receiving information from the project for RNC and then validating the data?

MS. McKNIGHT: Objection.

THE WITNESS: I'm sure I did.

MS. RIGGINS: If you're moving on to another exhibit, do you think this would be a good time for a quick break since we've been going a little over an hour?

MR. FRAM: It would be, but I'll have one more question for the witness.

Q. Having spent a little time with this PowerPoint now, do you have any doubt in your mind this is an authentic copy of the presentation that you either gave or was distributed at RNC conference in the 2010, 2011 time period?

MS. McKNIGHT: Objection.

THE WITNESS: I don't have any doubt as to its authenticity. I assume it was probably one of the

things that was in the packet. I don't have any reason to believe it wasn't.

BY MR. FRAM:

Q. I'm sorry. The last --

A. I said I don't have any reason to believe it wasn't.

Q. There were a couple negatives in there. I just wanted to make sure I got it.

A. I'm sorry.

Q. That's okay. I do that.

MR. FRAM: Why don't we take that break.

(A recess was taken from 10:19 a.m. to 10:33 a.m.)

BY MR. FRAM:

Q. Just so we're talking about this term "the project" before the break, and just so I understand how the information actually came to you. Was it your -- did you receive information from the RNC or from the separate entity or group called "the project"? You've been calling it "the project."

A. I received the precinct-level data from the RNC, and I would receive the block-level data from the project.

Q. Understood. Was the RNC copied on those

communications when you received the block-level information?

A. Well, it's possible I received it directly from the RNC. It's a question of -- it really depended on what state they were working on.

Q. Okay. For Ohio, do you have a recollection as to whether or not you received information from the RNC, from the project, or from both?

A. I have no recollection.

Q. Okay. It was one or the other?

A. Yes.

Q. Okay. And was Dr. Hofeller in the loop when you received the information from the RNC or the project?

MS. McKNIGHT: Objection.

You can answer.

THE WITNESS: Well, I wouldn't have received it from Hofeller. I would have received it from someone at the RNC who was working with Hofeller.

BY MR. FRAM:

Q. I see. And what about similar to the project? Let me back up.

The project is staffed by outside consultants not RNC employees; is that right?

A. Yes. It's outside consultants.

Q. You just don't remember who the consultants were; is that right?

A. Well, Magellan Strategies in Colorado was one of the consultants.

Q. Anybody else?

A. Well, there would have been other individual consultants working with them.

Q. Okay. Do you know the name of any of the principals at Magellan?

A. David Flaherty.

Q. Anybody else?

A. His wife, Jennifer.

Q. Okay. And their work was a nationwide data set regarding census block -- strike that.

Their work, "they" being the folks at Magellan, were concerned nationwide -- a nationwide data set for election results at the census block level; is that right?

A. They developed block-level data sets for multiple states. It wasn't necessarily nationwide.

Q. Okay. Did that include Ohio in 2010?

A. Yes.

Q. I'm sorry. And 2011?

A. Yes.

Q. Okay. And you used their information in your work at Ohio for Congressional redistricting in 2011?

A. That's my recollection, yes.

Q. By the way, I think you used the word "client" from time to time in connection with your redistricting work. You said it depends upon the client. Do you have an understanding of who your client was in Ohio in 2011 as regards Congressional redistricting?

A. Well, my client was Baker Hostetler.

Q. Did Baker Hostetler, did they make the first contact to you as regards to getting involved in Ohio Congressional redistricting in 2011?

A. Yes.

Q. And I think before you weren't sure when that was; is that right?

A. Yes.

Q. It was after the 2010 mid-terms as best you can recall; is that right?

A. Yes. I'm sure my invoices will refresh my recollection.

MR. FRAM: Let's work on that. Let's see here. We've got a few invoices.

CLARK BENSEN

We'll start with this one as Exhibit 3. I should be clear. We talk about identifier numbers. In litigation they're called Bates numbers at the bottom of the page. These were not produced to us with numbers. I just want the record to be clear, we added these identifier numbers. We just added those Bensen numbers at the bottom of the page just so that we can identify the document.

So I'll just state for the record this is Bensen_0000 -- five zeros. So -0000013.

(Deposition Exhibit 3 was marked for identification.)

BY MR. FRAM:

Q. For the record, this is an invoice from Polidata, LLC, and the date in the upper right-hand corner is 10-4-2011.

Mr. Bensen, is this an invoice you submitted to the Baker firm in October 2011?

A. It appears to be, yes.

Q. Okay. It says here -- there's a period, I see, where it says, "to September 30." Do you see that?

A. Yes.

Q. During your practice, your invoices would

cover a month or more than that?

A. Just really depends on how busy I am at the time. There's not -- I work by myself. So there's no administrative person keeping me on tap. So I will sometimes -- I would usually do it, A, whenever I find the time to do it, or, B, when I've reached a plateau or something. But it's really -- at this period of time, it was just happenstance.

Q. Well, under you see Q-t-y. That means quantity. Do you see that?

A. Yes.

Q. And then it says, "174"?

A. Yes.

Q. That would be 174 hours?

A. Yes.

Q. And your rate over there is $200. Do you see that over in the next column?

A. Yes.

Q. So the totals, if you multiply out the 174 times the 200; is that right?

A. Hopefully.

Q. Okay. But do you recall whether or not you spent 174 hours on this project in September, or whether that went back to an earlier period of time?

A. I don't know.

Q. Okay. Can you break apart that 174 hours for us in any way in terms of how like much was involved in which aspect of the redistricting work or which was -- well, let me back up a minute.

Of the 174 hours in the summer of 2011, do you have any sense of what percentage of your time was spent on Congressional redistricting as opposed to state?

A. For Ohio?

Q. Ohio.

A. Not from this one invoice, no.

Q. By the way, I'm assuming where it says, "Project, 2011-0HLEG-Re," that that covers both the Congressional and the state map work; is that right?

A. I can't tell from this invoice alone.

Q. Did you provide separate invoices for the Congressional work and the state reapportion work?

A. My recollection is there were four invoices, and the first two were mostly legislative, and the second two are mostly Congressional, but I can't tell from the invoice alone.

MR. FRAM: Okay.

(Deposition Exhibit 4 was marked for

identification.)

MR. FRAM: I'll mark this next as 4, Bensen_0000014, an invoice dated February 16, 2012.

Q. Does this appear to be an invoice that you submitted to the Baker firm?

A. That's one of them, yes.

Q. And the description here of the work is the same as in Exhibit 3, which is "Redistricting-General Data Development." Do you see that?

A. Yes.

Q. Does that refer to you providing election results data to the individuals working on the redistricting maps in Ohio in 2011?

A. Well, that would be -- that's my general rate for all those types of things. In other words, I would have a lower rate for strictly data and a higher rate for like reports or analysis or something like that. So just, in general, we cover most all kinds of data manipulation or Maptitude stuff.

Q. And you have a different rate for litigation, testifying work; is that right?

A. Yes.

Q. Now, just comparing the two invoices, there are 174 hours set forth in Exhibit 3 but only 8 hours

in Exhibit 4. Do you have a recollection that the intensity of the project dropped off, say starting in October? Do you remember that?

A. Well, my recollection was that the first version of the Congressional plan was adopted in the middle of September, and then nothing happened for, I don't know, a month or something. And then there was another, I guess, bill. So yes, from my recollection, activity dropped off.

Q. Okay. Did your work pick up after -- for the second bill that was introduced? The second Congressional bill?

A. Well, I must have done some work during that time, yes.

Q. So you did some work -- you did some work on both bills; is that right?

A. Right. But my recollection is it would have been second -- the revision was just fairly isolated, or I don't exactly remember what the revision was, but I didn't have much to look at, as I recall.

Q. Other than Mr. DiRossi and Ms. Mann, and I think you mentioned Mr. Lenzo, did you have occasion to interact with any other individuals in Ohio regarding redistricting in 2011?

A. I don't recall anyone, no.

Q. Did you ever travel to Ohio in 2011 in connection with any of the work you were doing on redistricting?

A. I don't think I did. This was my very busy period, and I rarely traveled because I had too much work in other states.

(Deposition Exhibit 5 was marked for identification.)

MR. FRAM: I'll mark next as Exhibit 5. It's a document with Bates No. BRADEN000657. It's an E-mail string earlier in time, seems to be Heather Mann to Mark Braden, May 25, 2011, 1:45 p.m. There's a subsequent E-mail from Mark Braden to you, Mr. Bensen, dated June 1, 2011 at what appears to be, I guess, 5:53 p.m.

Q. My first question is do you have any reason to believe you did not receive this E-mail back around June 1, 2011 from Mr. Braden?

A. All I have to go by is what's on the paper.

Q. Around June 1, 2011 do you recall whether you were already working on Ohio redistricting or not?

A. I have no recollection.

Q. Okay. Do you recall submitting any budget

estimates or expenses to Mr. Braden as part of your work in the Ohio Congressional redistricting?

MS. RIGGINS: I'm going to object because since Mr. Bensen was an expert consultant on the project, we're going to consider a lot of his work and conversations with Mr. Braden covered under both attorney-client and work product privileges, but I'm going to instruct the witness that he can answer the specific question if he can do so without revealing the substance of the conversation.

MR. FRAM: Just so we're clear for the record, I had understood that, of course, Ms. McKnight is counsel for Mr. Braden and has played a role in our discovery issues regarding the contours of the privilege. I have yet to have the pleasure of acting with the Ogletree firm on those issues. So I didn't know that you're representing Mr. Braden or had any way, have any standing to assert the privilege on these issues.

Of course, if there's new information I don't have and you actually also are counsel for Mr. Braden and are asserting a privilege on his behalf, then please say so on the record so we're on the same page.

MS. RIGGINS: I'm asserting the privilege on

behalf of the legislative defendants who Mr. Braden represented, including Mr. DiRossi and Ms. Mann.

MR. FRAM: My understanding is that the attorney general's office is representing Mr. Braden for that part of the project, and they've asserted privilege from time to time. And as is the Baker firm, Ms. McKnight, I just hadn't known that your firm is also now a third law firm representing Mr. Braden standing on the privilege.

I just want to note for the record we don't understand that. We're glad to work with a couple law firms we're already talking to about the privilege, but we didn't realize that you were also asserting the privilege for Mr. Braden.

MS. RIGGINS: Yes, on behalf of our client, the legislative defendants, who were his clients.

MS. McKNIGHT: And for the record, Baker Hostetler is representing Mr. Braden insofar as there are any issues arising outside of his representation and work for Ohio in 2011. So just to be clear in how you were describing our role.

MR. FRAM: I don't think this will necessarily come to anything, but if it ever does, I just want to say that we don't agree that the Ogletree

firm has standing to assert any privilege whatsoever on this issue. Just -- we'll just see where it goes. I just don't want not say anything to be taken to mean anything.

THE WITNESS: Can I have a moment with my attorneys here?

MR. FRAM: You want to talk to your attorneys?

THE WITNESS: Yeah.

MR. FRAM: Oh, sure. Talk to your attorneys.

THE WITNESS: It will be brief.

(A recess was taken from 10:52 a.m. to 10:55 a.m.)

MR. FRAM: After your legal conversations, anybody want to say anything?

MS. RIGGINS: Just for the record, to clear it up, Ogletree Deakins is special counsel to the attorney general's office as we represent the legislative defendants. So Mr. Fram was focusing on the representation of Mark Braden, and I want to make it very clear that Ogletree is here and I am here as special counsel to the attorney general's office representing our clients, the legislative defendants. The privilege is theirs to assert as they were the

clients of Mr. Braden.

MR. FRAM: Okay. Well, I didn't see him showing up here today to assert it. So we'll keep going forward. Like I said, I don't know if this will come up or not.

Why don't we mark next as Exhibit 6 an E-mail, JUDY_0001692 through -1696.

(Deposition Exhibit 6 was marked for identification.)

MR. FRAM: It's an E-mail string, the first page of which is an E-mail from Clark Bensen dated August 10, 2011, 1:50 p.m., to Heather Mann, Mike Lenzo, Miranda Thomas, with a "cc" to Mark Braden, Troy Judy and John Barron.

Mr. Bensen, please take a quick look at this one.

(The witness reviewed Exhibit 6.)

THE WITNESS: Okay.

BY MR. FRAM:

Q. Now, the Outlook E-mail string is in reverse chronological order. The very first page is not the earliest one that starts the string. So I just want to point that out and then say we're going to have to look at how this all gets started, but I guess I'd

start with a question for you about the E-mail that you sent on August 10, 2011, 10:13 a.m.

A. What page is that?

Q. It's JUDY_000163 -- excuse me. -0001694 to -95. You'll see there's some other numbers on this based on how long the string was when it was printed out -- or the document was printed out, but this is an E-mail, one coherent E-mail string, as far as we can best tell. This document was part of a large collection of E-mails, multiple strings, some quite unrelated to each other. That's why you have two different kinds of numbers on it.

A. Yes.

Q. So in any event, you see that E-mail from you to Heather Mann, Miranda Thomas, Mike Lenzo, copy to Mr. Braden, and then also it looks like another copy to Ms. Mann dated August 10, 2011, time start 10:13 a.m.

A. 10:13 a.m.?

Q. Down at the bottom of the page, -0001694 --

A. Yes.

Q. -- and it carries over to the top of the next page, -1695. Do you see that?

A. Yes.

CLARK BENSEN

Q. Okay. Do you have any reason to doubt that you sent this E-mail to Ms. Mann and others on August 10, 2011?

A. No.

Q. Okay. Do you see there's a reference in the top of Page -1695 to you being in Cincinnati?

A. Yes.

Q. Is it your recollection you traveled to Cincinnati in the summer of 2011?

A. No, because I could have been at an NCSL conference or something else. This doesn't help me figure out that --

Q. I'm not asking whether you made a special trip just for the Ohio redistricting work. Just whether or not you were in Cincinnati that summer.

A. Well, it appears I would be, yeah.

Q. Do you recall any conversations with anybody in Cincinnati in the summer of 2011 regarding Ohio redistricting?

A. I believe this is actually to attend an RNLA conference in Cincinnati.

Q. What's RNLA?

A. Republican National Lawyers Association.

Q. Did you attend such a conference in

Cincinnati?

A. Yes.

Q. Okay. Did you give a presentation at the conference?

A. I don't recall it. I think I did, yes.

Q. Okay. Do you recall the contents of the presentation?

A. I'm sure it had nothing to do with Ohio.

Q. Do you recall, while you were in Cincinnati, talking to anybody about any issue related to redistricting in Ohio?

A. No, because I was -- really, the RNLA conference is just a day of seminars, and my recollection is it was like a two-day seminar or two days of -- it was the annual meeting. So it was like probably Friday and Saturday. I remember I was really only there for like half a day. I think I came in the first night and spoke in the morning and flew out early afternoon.

Q. Okay. Do you recall whether Mr. -- well, were only lawyers in attendance?

A. Yes.

Q. Now, Ms. Mann is a lawyer. Are you aware of that?

A. I wasn't.

Q. Do you recall if she was there?

A. No.

Q. Looking beyond just the issue of what was going on in Cincinnati, you'll see there's a reference to -- let me back up a minute.

Do you see there's an E-mail from Mr. Lenzo to you dated August 10, 2011 at 10:22 in the morning? Do you see that?

A. 10:22, yes.

Q. Do you have any reason to doubt you received this E-mail?

A. No.

Q. And he says, "To date no one has instructed how to proceed with respect to 'Version 3', so it has not been requested." Do you see that?

A. Yes.

Q. Is he referring to Version 3 of a database being developed by folks at Cleveland State University?

A. That's my understanding, which I believe is all legislative and not Congressional.

Q. Okay. But there was -- your understanding, there was a database. Did you use the Cleveland State

University database in any way in working on the Congressional redistricting?

A. Not that I recall.

Q. Okay. Is it your understanding that this E-mail string only concerns legislative issues as regard to the legislative redistricting?

A. That's my recollection, yes.

Q. Is that true of all the other E-mails in the string as you recall?

A. Anything relating to the OCURD file would be, as far as I recall, relating to legislative plans.

(Deposition Exhibit 7 was marked for identification.)

MR. FRAM: I'm going to mark now Exhibit 7, a document Bates numbered BRADEN000782. It's another E-mail string. The top of the first page is from CLARK@POLIDATA.ORG to Heather Mann and then to Mark Braden dated August 11, 2011 around 5:14 p.m., and then there's an earlier-in-timing follow-down from Caliper Technical Support dated Wednesday, August 10, 2011 at 1:57 p.m.

The first question is going to be whether you have any reason to doubt that you sent the August 11, 2011, 5:14 p.m. E-mail to Ms. Mann and Mr. Braden.

(The witness reviewed Exhibit 7.)

THE WITNESS: No.

BY MR. FRAM:

Q. Okay. That's your E-mail address; is that right?

A. Yes.

MS. McKNIGHT: Objection.

BY MR. FRAM:

Q. CLARK@POLIDATA.ORG, that's your -- that was your E-mail back in 2011?

A. Yes.

Q. Do you see where you say, "Heather, We can discuss this. It is painless for the Congressional plan." Do you see that?

A. Yes.

Q. So this is just released, in part, concerning questions as regard to the Congressional redistricting?

A. This is in preparation for when the plan has been approved in getting it ready for the Secretary of State and/or who is going to draft the final bill or the law. I think there were two levels. One was the bill, and then the law may have had a separate requirements. But it was how to transfer the plan

geography when the plan was done into whatever requirements the -- whatever legal requirements were required for describing the geography.

Q. And the block equivalency files needed to be presented in a form that could be used to put the plan into a bill?

A. Well, that would be the starting point, yes. The question was whether they could just reference a block assignment file on file at the Secretary of State's office or if they had to have a listing of different geography within it.

Q. What do you recall about that?

A. Only what it says here, which is she's got -- it has to be by census track. So a block equivalency file per se would not do it. They would have to have it broken down by different levels of geography.

Q. So it would have to be broken down by census track as well, not just census block; is that right?

A. Well, something along those lines. So in other words, some programming would have to be done to get it to the point where the bill drafters could incorporate it into the bill structure.

Q. Okay. Is it your understanding that the bill drafters needed to work with data at the census track

level?

A. Only based upon what it says here.

Q. Do you have any recollection about that issue as you sit here?

A. No.

Q. Did you do anything to make the election result data usable at a census tracked level?

A. Can you rephrase the question?

Q. Did you do anything -- you said this is for the Congressional plan. You say that. Did you do any painless thing?

A. Well, obviously, once I got this, it wasn't painless. It was easy. Painless would be if you just exported a block assignment file. For the legislative, it was much more difficult. So I was just telling her this is not a difficult thing for the Congressional plan. I don't know if I did anything. I assume I probably wrote some program to allow the export of it into the fashion that the bill drafters needed.

Q. Okay. And just so I understand correctly, that would have included election result data?

A. No, just geography.

Q. So it would be correlating particular

geography units with the district; is that right?

A. Yes.

Q. Okay. So, for example, correlating in the census tracked -- different census tracks with the district; is that right?

A. Yes. It would normally be arranged by district, and it would say, "These census tracks are in this district." Some of them may have been split. If the track was split, then it would list the blocks they were in.

MR. FRAM: Okay. So we have marked Exhibit 8, a document with Bensen_0000033 through -37.

(Deposition Exhibit 8 was marked for identification.)

BY MR. FRAM:

Q. It's another E-mail string. However, this has got some -- what appear to be redactions. Somebody has blocked somebody's information.

So I'm going to start on Page 0000035.

A. Yes.

Q. E-mail from Heather Mann, Monday, August 15, 2011, 7:03 p.m. to Clark Bensen, also Tracy Horgan and also Caliper Technical Support. Do you see that? There's several people cc'd, Ray DiRossi, Troy Judy,

CLARK BENSEN

Mark Braden, Lynda Jacobsen, and Mark Lenzo. Do you see that?

A. Yes.

Q. Any reason to doubt you received this E-mail on or about August 15, 2011?

A. No.

Q. Okay. Now, this comes a few days after the previous E-mail we saw where you were saying it would be, your word, painless, to respond to the need to get the geography files at the track level for the Congressional plan. Is this dealing with the same issue or different issues, this E-mail in Exhibit 8?

MS. McKNIGHT: Objection.

THE WITNESS: It appears to be the same issue.

BY MR. FRAM:

Q. Okay. If you go back to the E-mail from Lynda Jacobsen back on August 15, 2011 at 9:38 a.m. at Bensen_0000036, carrying over to the next page, -37. Do you see that E-mail?

A. Yes.

Q. See where she describes some of the issues that folks are running into because they're preparing a bill. Do you see that?

A. Yes.

Q. Does this help refresh your recollection as to what some of the problems the folks were having as they were trying to create a final bill?

A. Yes.

Q. What were the problems that you remember?

A. They didn't understand what the codes were.

Q. What was the solution?

A. I don't know. I assume I translated it via a program so they could read 31 -- 391079677001121l7 or some sort of set of numbers -- a string of numbers, let's say that, into county track block.

Q. Okay. Do you recall doing that?

A. I don't recall doing it.

Q. Do you recall if anybody else did that?

A. No.

Q. Now, Ms. Jacobson, she's with the Ohio legislative service commission. Do you see that? There's a signature block at the end of the E-mail.

A. Yes.

Q. Okay. Do you have any understanding what their function was in the Congressional map redistricting process in 2011?

A. I assume they were the ones that put it into

bill format. I have no reason to believe I didn't provide them the translation of this into the format for them to do that. I have no recollection of specifically doing it.

MR. FRAM: Okay.

(Deposition Exhibit 9 was marked for identification.)

MR. FRAM: Exhibit 9 is a document with Bates No. Bensen_0000044. It's an E-mail from Heather Mann to Clark Bensen, cc Ray DiRossi dated September 16, 2011 at 10:48 p.m.

Q. Mr. Bensen, do you have any doubt that you received this E-mail on or about September 16, 2011?

A. No.

Q. Do you see there's a reference to importing "old maps/plans as SHPE files." Do you see that?

A. Yes.

Q. Do you recall providing that information to Ms. Mann in September 2011 in connection with Congressional redistricting?

A. I'm not sure that's what this infers. She's talking about importing maps that she has somehow that are SHPE files.

REPORTER MARTIN: What files?

CLARK BENSEN

THE WITNESS: SHPE files, just S-H-P-E, files.

BY MR. FRAM:

Q. Why don't we say for the record what a SHPE file is, please.

A. It's just a computer file that has a representation of the outline of any piece of geography. One record, one file per shape.

Q. Did you have on your crew SHPE files for the Ohio Congressional district?

A. Not that I recall. Almost everything -- I may have if they sent it to me as a SHPE file, but the normal way would be that we were transferred geography via a block assignment file. They may have had a SHPE file that they got somewhere else. I think the question here was they were trying to deal with the Secretary of State in how to provide the information whenever the plans were done on Secretary of State's website. So they wanted to have both the block equivalency file and a SHPE file.

So this appears to be they were trying to play with both of them because importing them in Maptitude is different.

Q. I'm sorry.

A. Importing a SHPE file into Maptitude is different than importing a block assignment file.

Q. Okay. So they didn't want to provide the SHPE files. They wanted some instruction to you as to how to do it; is that right?

A. That's my recollection. That's what it appears to be here. I don't have a recollection, but that's the kind of stuff -- they would have asked me questions like that fairly often. Well, not fairly often, but whenever they arose.

MR. FRAM: I understand.

(Deposition Exhibit 10 was marked for identification.)

MR. FRAM: We're going to look at next, I guess we'll mark it as Exhibit 10 in this deposition. It has a previous sticker on it, Exhibit 11. My understanding is this is -- it's 11 from a prior litigation. But in any event, it's an E-mail from Clark Bensen to Ray DiRossi, Heather Mann, Troy Judy, Matt Schuler, Benjamin Yoho, Vaughn Flasher, Mike Lenzo, with a "cc" to Mark Braden dated July 10, 2011. That's the -- physically the first one E-mail on the document that is not the earliest in time. It's another Outlook E-mail string that is the most recent

in time.

There are other E-mail -- there's one other E-mail on the string immediately below and is from Ray DiRossi dated Sunday, July 10, 2011 at 4:22 p.m. And it's to Heather Mann, Troy Judy, Matt Schuler, Benjamin Yoho, Vaughn Flasher, Mike Lenzo. Also someone called JODY@CAPITALSTRATEGIESGROUP with a cc to Mark Bensen -- Mark Braden, I'm sorry, and a cc to you, Clark Bensen.

(The witness reviewed Exhibit 10.)

THE WITNESS: Okay.

BY MR. FRAM:

Q. Mr. Bensen, my first question is do you have any reason to doubt that you were copied on the E-mail from Ray DiRossi dated Sunday, July 10, 2011, at 4:22 p.m.?

A. No.

Q. And do you have any reason to doubt that you in fact responded on Sunday July 10, 2011 at 4:44 p.m.?

A. No.

Q. Now, you see in Mr. DiRossi's E-mail, do you see where he's referring to "using the 5 races listed below (equally weighted) to comprise our index number

for apportionment and redistricting." Do you see that?

A. Yes.

Q. And then do you see it says that he's copying you to make sure that they have the races and the political data to be used in Maptitude? Do you see that?

A. Yes.

Q. Do you recall receiving a selection of elections to be used for index for Congressional redistricting in 2011?

A. I don't recall it, but I have no reason to think I didn't receive this.

Q. Do you see in the elections here he indicates that, in the 2004 Presidential election, the 2006 auditor election, 2006 attorney general election, 2008 Presidential election, and the 2010 governor election. Do you see those?

A. Yes.

Q. Do you have any recollection that those were elections that were selected by the map drawers in Ohio in 2011 for their index for scoring Congressional districts?

A. Do I have any recollection of that?

Q. Right.
A. No more than this E-mail.
Q. You say at the top of the -- at the top of the page of the exhibit, in your response you say, "Ray, A good start...
"Thanks, Clark." Do you see that?
A. Yes.
Q. Did you provide any further information to further iterate the index?
A. Not that I recall. My only recollection was they were not specific to this. My general recollection was they were trying to integrate it into their Maptitude data files. In other words, I gave them the basic numbers. He's trying to figure out how to have that into the Maptitude side so they could have it calculated when they're doing their plans.
Q. When you said, "a good start," do you have any recollection of what you meant?
A. Well, he understood the basic concepts of what needed to be done.
Q. And what were the basic concepts, as far as you understood?
A. He picked races that appeared to be relevant to him and used the two major party vote.

CLARK BENSEN

Q. Okay. Did you have any understanding as to whether or not the races he chose understated or overstated likely Republican strength?

A. What was the first part of the question?

Q. I'll say it again because I'm obviously not getting there.

Did you have any understanding as to whether the races he chose overstated or understated likely Republican strength in Ohio?

A. I didn't have any understanding. That isn't what I was asked.

(Deposition Exhibit 11 was marked for identification.)

MR. FRAM: Okay. Why don't we have marked next as Exhibit 11 to this deposition a document titled Bensen_000- -- -000- -- six zeros -4, and it goes through No. 6.

(The witness reviewed Exhibit 11.)

BY MR. FRAM:

Q. I'll represent that we added the identifier number, but these came from your document production in this case.

A. Yes.

Q. Do you recall seeing this document that you

pulled off your computer?

A. Yes.

Q. This is a document you created?

A. Yes.

MR. FRAM: The document had some meta data with it. We're going to mark it as Exhibit 12, the meta data we've generated.

(Deposition Exhibit 12 was marked for identification.)

BY MR. FRAM:

Q. We generated this meta data, but from the computer file you gave us. You'll see on Exhibit 12 there's a reference to the "Date Created." Do you see that?

A. Yes.

Q. It's July 22, 2011?

A. Uh-huh.

Q. Is it consistent with your recollection that you created Exhibit 11 on or about July 22, 2011?

MS. McKNIGHT: Objection.

You may answer.

THE WITNESS: I assume so.

BY MR. FRAM:

Q. Do you recall creating Exhibit 11 as part of

the work you were doing in Ohio redistricting?
A. I remember creating the document, yes.
Q. Do you see in the upper -- on Exhibit 11, the upper right corner you'll see -- do you see that?
A. Yes.
Q. That would be for Ohio; is that right?
A. Yes.
Q. And 2002 to 2010, that refers to the time period for the election results you were looking at; is that right?
A. Yes.
Q. And under where it says, "State," does that mean you were looking at statewide election results?
A. No. This is the result for the state totals.
Q. Okay. And then I promised you your initials would be important. Do you see where it says, "Author" and meta data 12 "chb" --
A. Yes.
Q. -- under "Author." That's your initials?
A. Yes.
Q. Now, turning to Exhibit 11, it says, "Example of Calculations for Election Averages." Do you see that, first page?
A. Yes.

Q. Then it says, "EA11 to EA16."
A. Yes.
Q. Does "EA" stand for election averages?
A. Yes.
Q. Okay. Is that a nomenclature that you developed, or is it something that others developed, EA?
A. It's my nomenclature.
Q. All right. And do you recall if you shared this document, Exhibit 11, with anyone after you created it?
A. I don't recall. I assume the reason I did it in this format was so that I could send it to Ray or Heather so they could understand how the averages were calculated.
Q. Had they asked you to calculate different averages?
A. I don't know -- I don't recall that they did. Generally I would do it for my clients because these are generic averages, to get them kind of the flavor for what the range is in any piece of geography. So they could pick and choose from these if they thought that's useful. It's more just so they had something handy to work with until they decide what they want

themselves to come up with.

Q. Okay. So that was your ordinary practice, to generate different EA scorings and then send it to the client?

A. Yes, generally.

Q. Do you have any reason to think you did not follow that practice in the case of Ohio Congressional redistricting in 2011?

A. No, I think I probably did include these in the data sets when I sent them, yes.

Q. Okay. If you look over EA12. Do you see that, the second set of scorings on the first page of Exhibit 11. Do you see that?

A. Yes.

Q. And do you see there are different elections listed in the -- well, far left column and the immediate to the left column. Do you see that?

A. Yes.

Q. There are five elections. Am I reading that correctly?

A. Yes.

Q. This, by the way, is described as an "(as selected by client)." Do you see that?

A. Yes.

Q. Is it your recollection -- let's talk about what those elections were. The "2004 P," does that mean 2004 Presidential?

A. It would be the same five that are on that E-mail.

Q. That being Exhibit 10, the E-mail from Mr. DiRossi?

A. Yes.

Q. So, once again, you got 2004 Presidential, 2006 auditor, 2006 attorney general, 2008 Presidential, and 2010 governor. Do you see that?

A. Yes.

Q. Okay. So those are the five client selected elections for the EA12 index; is that right?

A. I'm not sure that my use of the term "(as selected by client)" here means this is what they selected as opposed to this is an example of what you could select. In other words, I went through and just picked out close races in the mix versus the following page where I've broken them out by on year and off year.

Q. Let's stick with EA 12.

A. I don't have a recollection to know whether this means I did this after they selected them or as a

preparatory.

Q. Well, if we compare the date of Mr. DiRossi's E-mail, it's July 10. Do you see that on Exhibit 10?

A. Yeah.

Q. If you look at the meta data on Exhibit 12, and that has this document being created on July 22, about 12 days later. Do you see that?

A. Yes.

Q. Does that help refresh your recollection that, in fact, "as selected" here means this was the five elections that Mr. DiRossi had selected back on July 10?

MS. McKNIGHT: Objection.

THE WITNESS: It could well be. I mean I have no recollection per se of that.

BY MR. FRAM:

Q. Okay. But in any event, it's the same five elections in the E-mail as you testified and on Exhibit 11 for EA12; is that right?

A. Well, yes, because it's obvious that those are close races.

Q. I'm sorry?

A. It's obvious that the ones listed in 10 were close races.

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Q. Okay. Why don't we go across some of the columns on these because they seem to be the same across the different -- let me back up a minute.

They are EA scorings for five different averages; is that right? Excuse me. Six averages. Six different averages, EA11 through EA16; is that right?

A. Yes.

Q. And the columns appear to be the same in each of those tables; is that right?

A. Yes.

Q. Why don't we go through what the meanings are for each of the columns if we could. Just do it once for all. So for the far left is the "Year." That's the year of the election; is that right?

A. Yes.

Q. Okay. And then under the year, individual years there's a "Sum," S-u-m. Does that stand for adding up all the election results for all those years; is that right?

A. It's a total of the records above it, yes.

Q. And "Avg," what's that mean?

A. The average.

Q. And EA is election -- that stands for, you

said, election average?

A. Right.

Q. Why is EA -- I'm noticing now that EA is not the same number as average; right?

A. Correct.

Q. What's the difference, please?

A. It doesn't include the other votes.

Q. The third-party votes?

A. Third minor parties.

Q. So EA would be the two-party only average; is that right?

A. Yes.

Q. Okay. Thank you.

And then "Dem," the next column over, that's the Democrat votes in that election; is that right?

A. Yes.

Q. And "Rep" is Republican?

A. Yes.

Q. And "Oth" would be the third party or minor party votes; is that right?

A. Whatever's left over.

Q. And "Tot," the next column over, that's total votes; is that right?

A. It's a total of the previous three columns.

Q. And Dem percentage, that's percentage of the two-party vote or of all the votes?

A. Total vote.

Q. Okay. And Rep percentage similarly is Republican percentage of the total vote, including third party?

A. Yes.

Q. And Oth percentage is the minor or third-party percentage; is that right?

A. Yes.

Q. What does "TotMPV" stand for?

A. The total of just Dem and the Rep.

Q. So just the two-party total, in other words?

A. "MPV" is major party vote.

Q. Major. Thank you.

And DMP percentage, is that the Democratic percentage of the two-party vote, the major party vote?

A. Right.

Q. That's the next column over.

And RMP percentage, is that the Republican percentage of the major party vote; is that right?

A. Yes.

Q. What does "MOV" stand for, the far right

column?

A. Margin of victory. Just the difference between the Rep and the Dem percentage.

Q. Other percentage differences?

A. Yes.

Q. And is that the difference in their percentages in the major party vote?

A. Yes.

Q. Now I just want to go through the different options you presented here. EA11 is defined as "top-ticket races." Do you see that?

A. Yes.

Q. That's just President and governor only; is that right?

A. Yes.

Q. It says you provided that EA11 applied quota "for MIXED years." Do you see that?

A. Yes.

Q. What's "mixed year" mean?

A. Each election year. It's not broken out by on year or off year.

Q. Let's just define that for the record so that everyone understands. What's an on year?

A. A Presidential year.

Q. Okay. And an off year would be a non-presidential year?

A. Yes. Or a mid-term year in this case.

Q. Did you ever -- you presented this EA11 option. Is there any reason a client would prefer to use the EA11 option? Any advantages?

A. Well, it just tells you what the high level is. Those are the races with the highest turnout. It's just -- the point here is just to give them some range of dynamics in any piece of geography.

Q. So EA11 would be a high turnout year. That's the reason for considering it; is that right?

A. Well, not necessarily the high turnout year, a high turnout on the ballot. This is the top of the ballot regardless of year.

Q. I see. I see. Picking the top. Regardless of the year, it would be the highest turnout because those are the top of the tickets in that year?

A. Right. There wasn't as much roll-off -- well, generally, there would be no roll-off from the top of the ticket.

Q. Right. Right. It's unusual to have more people vote for local assessor than it is for President. It goes the other way around. Isn't that

right?

A. Well, there are far fewer people voting for assessor than there are President, yes.

Q. I understand. Like I said, for EA12, it's your understanding that, as you say, close races were chosen; is that right?

A. Yes.

Q. And where it says quota "adjusted to 50/50, does that mean -- well, what does that mean, "adjusted to 50/50"?

A. What I would do in some cases like this is these are close races, but they're not actually 50-50. So I would adjust them down a little bit one way or the other so that they were closer to actually 50-50. So, in other words, there was a 51 percent Democratic race. I would basically take a percent off so as to try to conflate them all into being even closer to 50 percent each.

Q. Was there a certain amount by which you would bring them closer to 50-50, a certain number of percentage points?

A. It just depends on how far away from 50 they were.

Q. Would you try to make them all as close to

50-50 as you could?

A. Yes. That was the theory here.

Q. But if you had a situation -- well, let's just take the top line. 2004 Presidential. Do you see that? Go over to the DMP percent and the RMP percent columns. Do you see that?

A. Yes.

Q. And the DMP is 48.63. Do you see that?

A. Yes.

Q. And the RMP percent is 51.37. Do you see that?

A. Yes.

Q. Does that reflect the numbers before or after you adjusted them to make them closer to 50-50?

A. Before.

Q. So the 50-50 it's just simply 50-50. There's nothing -- or is there some number between these values and 50-50 you would generate?

A. No. It would really just be basically, for instance, in that race, 2004 Presidential from a Democratic percentage, it was under 50. So I would raise it up like a point and a half. When you look at the actual numbers, it's not necessarily going to add up in the redistricting database. It may not actually

add up to 50-50, but it would be closer to 50-50 than 48-50 -- 49-51.

Q. And you said you would do that in the redistricting database?

A. I do it in the data before I put it into the redistrict database. But because of the multiple levels of geography, it wasn't going to give them an exact fact. It was just to give them some sense of if you had a close race but not just one close race, you looked at a mix of them, this is how it might come out.

Q. Did you provide the election results as adjusted to 50-50 to Ms. Mann or Mr. DiRossi in 2011?

A. My recollection is it was in the database, yes.

Q. Do you know if they used that information?

A. I have no idea.

Q. I want to understand, when I see an EA12 scoring value, if I see it here, it's not yet adjusted to 50-50; is that right?

A. These numbers are the raw data numbers. They don't reflect the adjustment to 50-50. The difference here versus what was in here is I adjusted 50-50. When Ray in Exhibit 10 was talking about his five

races, he wasn't adjusting them. He was just using them as they were.

Q. Okay. And so, similarly, here on Exhibit 11 for EA12, these numbers are not adjusted. These are just the numbers as they are?

A. Everything else -- well, no. It says on the top of each of the sub tables whether they were adjusted or not. It would have basically been only the close races that I would adjust.

Q. That's why I'm asking because it says here, "adjusted to 50-50" for this table on the first page of Exhibit 11, and then we're looking over here at the Democrat and Republican percentages, before I believe you had said they had not been adjusted. So I'm trying to understand whether they were or they weren't just to know I'm reading the document correctly.

A. These are the raw numbers. I was trying to illustrate the difference between what the adjustment was, which was basically all 50-50 versus what I had to start before I did the adjustment. In other words, if one was 65 percent they would know that would be a huge adjustment. So what's the point of having it in there. So this is really just to say, "These are the races that were chosen to put into this." The end

result was they were more or less 50-50.

Q. Okay. Turn to EA13. Top of it says, "close races (from EA12) for on years, adjusted to 50/50." Do you see that?

A. Yes.

Q. And on that one it says -- well, explain what you were doing here. These are close races from EA12 for on years. What do you mean by that?

A. It's the same as the table for EA12, but it's only for the Presidential years. One each year.

Q. And EA14, similarly, is for the non-presidential years; is that right?

A. Just one in each year.

Q. Right. I got it. So you have -- for the A14 you just got -- you have the attorney general and the governor race; is that right?

A. Yes.

Q. Okay. I understand. Then going over to EA15.

A. Yes.

Q. You've got "good/high GOP performance %btw" -- I assume is between "55-60 for mixed years, unadjusted." Do you see that?

A. Yes.

Q. What are the elections that you included there?

A. "S" is the U.S. Senator, and "J" is the state treasurer.

Q. Those are stronger Republican years; is that right? Stronger as far as elections?

A. Yes.

Q. Republicans had better than 55 percent; is that right?

A. Yes.

Q. EA16, conversely, it says, "bad/low GOP performance." Do you see that?

A. Yes.

Q. Okay. Here you're looking at the 2006 senate and the 2006 treasurer; is that right?

A. Yes.

Q. Okay. And then the note at the bottom, you provide clarification as to what adjusted and unadjusted means; is that right?

A. Yes.

Q. And you make it clear that adjustments would mean different than those listed here?

A. Right, because when you actually implement it throughout the whole data set, they're -- first off,

they're going to be adjusted, and they're still not going to add up.

Q. Do you know if Ms. Mann or Mr. DiRossi used the adjusted numbers in the generation of maps for Ohio in 2011?

A. I don't. It would appear from this, Exhibit 10, that they probably just used the basic raw data.

Q. Okay. Did you ever have a conversation with them as to whether they should be using a high GOP performance index?

MS. RIGGINS: Objection. Mr. Bensen's conversation and the substance of those conversations with Ms. Mann and Mr. DiRossi are covered under the attorney-client privilege. Mr. Bensen may answer the precise question asked but not revealing any --

MR. FRAM: Just for the record, we've had lots of testimony about their communications and we've also had plenty of documents. If that's your position, our position is that privilege is utterly and completely waived.

Q. You may answer the question.

A. Would you restate the question.

Q. Yeah. Did you talk to them at all about

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whether they should use a high GOP performance index?

MS. McKNIGHT: Just remember to answer the precise question.

THE WITNESS: Did I have a conversation -- one more time.

BY MR. FRAM:

Q. Did you have any communications in any way about whether to use a high performance -- a high GOP performance index or not?

A. I had conversation with him about whether to use one. I merely explained what was there.

Q. What do you recall about that conversation?

MS. RIGGINS: Objection. Covered under the attorney-client privilege. This is substance of the conversation, and it's not just technical advice. You're asking about the substance of why one would do something over the other.

MR. FRAM: I'm just asking about facts.

Q. What do you recall about the conversation?

MS. RIGGINS: Objection. Covered under the attorney-client privilege.

MR. FRAM: I'm not sure you're Mr. Bensen's attorney. So are you instructing Mr. Bensen not to answer the question?

CLARK BENSEN

MS. RIGGINS: Yes.

MR. FRAM: Okay.

Q. Are you following the lawyer from Ogletree's -- who's representing you here today?

A. That's a good question. She's representing the -- as far as I understand, the privileges of the actual client, being the legislature or the state or whomever, and Ms. McKnight more or less representing me.

Q. Are you following the instruction not to answer the question?

A. Well, generally, I will do that. My conversations here were totally technical. So that's all I can say. There's nothing, from what I recall about it, being privileged. In her defense, she's saying it could be privileged. My recollection is it wasn't a conversation that got to that level.

Q. So given that testimony, what can you tell me about the conversation since you don't recall anything about it being privileged?

A. It was pretty much the same as our colloquy about what was in it.

Q. I'm sorry. If you could state for the record -- we've covered a lot of territory. So I'm

trying to focus on what we'd actually discussed with them.

A. Just what was in the averages.

Q. So you explained the averages to them. Is that what you recall?

A. Right.

Q. Okay. And was this on a telephone call or in person? Do you recall?

A. I hardly ever saw them in person. So I guess it was a telephone call.

Q. Okay. And do you recall any questions they asked you about different averages?

A. No.

Q. Do you recall any -- from a substantive, technical matter, the pros-and-cons of different averages with them?

A. I'm sure I did. Just, again, to the extent these were a range of offerings they could use. If they wanted to get a sense of the dynamics of any piece of geography without calculating it themselves, this gave us something to start with.

Q. Do you recall them saying they preferred to go the A12?

A. No. And my recollection is they were using

their own version of it regardless of what I gave them, but that's all I can --

Q. But the one version they were talking about, would that reflect the elections -- the data set forth in Mr. DiRossi's E-mail that's been marked as Exhibit 10?

A. I have no recollection of it aside from that E-mail. My only recollection was I helped them to calculate something themselves, to calculate what it was. It could have been this. It could have been some other E-mails we haven't seen.

Q. Then did you give them EA data so that they could use in Maptitude?

A. Excuse me?

Q. Did you give them EA data that they could then use in Maptitude?

A. My recollection is it was included in the data set I sent them, yes.

Q. So the data set you sent them included various EA information; is that right?

A. That's my best recollection.

Q. And that could not be used to provide an index value for different Congressional districts as each district was drawn; is that right?

A. It could, yes.

(Deposition Exhibits 13, 14 and 15 were marked for identification.)

MR. FRAM: I'm going to mark the next three exhibits; 13, 14, and 15.

Is that right?

REPORTER MARTIN: That's correct.

MR. FRAM: So 13 has got Bates No. BLESSING0013211, and it says, "Polidata_2018.10.04." It's a screen shot of a zip file.

14 appears to be another screen shot of files that -- this one has the identifier at the top of "11274 > Document Production > Third Party > Mann, Heather2018.10.04 > BLESSING0013211 > Polidata > Clark07-24-11."

Exhibit 15 has also got No. BLESSING0013211 Polidata_Clark 07-24-11_ccBlock.cdf. That's 15. We'll do those three together.

(The witness reviewed the documents.)

BY MR. FRAM:

Q. Okay. Now, these are documents that were produced by Heather Blessing, Mr. Bensen, not by you. The files are identified -- first one on Exhibit 13.

See, it says, "Polidata." Then that zip file, it's a screen shot of a zip file. Do you see that?

A. Yes.

Q. It says, "Clark 07-24-11." Do you see that? Then "Clark 08-26-11, 09-05-11," and then "Clark New Congressional Layers," and then "Clark 1." Do you see that?

A. Yes.

Q. Followed by a DBF file which appears to have a lot of data in it. Do you see that?

A. Yes.

Q. Do you see they are modified dates on the far right column? Do you see those?

A. Yes.

Q. My question is do you recall, in fact, sending -- I think before you said election result data to Ms. Mann or Mr. DiRossi. Did you also send them DFF files?

MS. McKNIGHT: Objection.

THE WITNESS: It just depends on what format I send it to them.

BY MR. FRAM:

Q. Okay. Do you recall sending them -- do you recall creating files in late July 2011 for work on

the Ohio redistricting?

A. I don't recall, but it seems within the time frame, yes.

Q. Let's turn to Exhibit 14, which I'll represent is what you see if you click on the Clark 24-11 folder that we see in Exhibit 13. Do you see there's a whole lot of files listed?

A. Yes.

Q. Do you have any understanding of what those files are? It's a long list.

A. Those are the files that you need for Maptitude.

Q. Do you recall generating those files?

A. These would have been ones I would have created. I don't know specifically if I did these, but yes.

Q. All right. And then if you go to Exhibit 15, which is what happens if you click on the cc block, that CDF file that's on Exhibit 14.

A. If you click on the what now?

Q. The third file down. "ccBlock.cdf." Do you see that? I'm just on Exhibit 14.

A. Yes.

Q. Do you understand what CcBlock.cdf stands

for?

A. Yes.

Q. What is that?

A. This would be the Maptitude file that would have one record per block connected to a SHPE file. So, in other words, there would be like 350,000 or whatever shapes, one for each block, and each record would have the information that's listed on the side of the pages in Exhibit 15 corresponding to that block.

Q. Okay. So let's look at Exhibit 15 then. Let's look at, starting on that second page of Exhibit 15 where that information starts being listed. Do you see that?

A. Yes.

Q. So if you go down to -- there's an -- at the very top it says name. It says block 4015. Do you see that at the top?

A. Yes.

Q. Does all this information concern census block 4015?

A. Yes.

MS. McKNIGHT: Objection.

You can answer.

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MR. FRAM: I'm sorry. Is census block 4015 attorney-client privilege?

MS. McKNIGHT: To be clear, my objection is to form. He may answer.

MR. FRAM: Okay.

Q. Does census block 4015 refer to census block? Does block 4015 refer to a census block?

A. It refers to a block in a census track.

Q. Right. But is that a census block?

A. Yes.

Q. Thank you. And so, in fact, did you generate a file for each census block that has the information set forth on Exhibit 15?

A. No, I generated a record for each.

Q. You generated a record for each census block that has the information set forth on Exhibit 15 for block 4015?

A. Well, actually, I didn't generate a record. I appended information to the records that Maptitude had already created.

Q. And you did that for every census block?

A. I did it for every census block and apparently other layers too.

Q. Now, you've used Maptitude a lot. Do you

know how to generate the -- I don't know if you'd call the stuff on the right a window or a table. Whatever you're comfortable with in terms of how you'd describe it.

A. Table.

Q. Data?

A. No. "Table" is fine.

Q. Table?

A. Yeah.

Q. Do you know how you would view this table in Maptitude?

A. Actually, in this format, no, but the data view option, it says at the top -- at the very top of that, those two columns it says, "Data view, Census Block info."

Q. Uh-huh.

A. The data view option is a way to actually look at what the data are behind the screen, so to speak. Getting in this actual format, I'm not sure how they did that, but it's -- normally you look at it across the page. You would have one record and you would have cell after cell after cell, just like an Excel file. They just have somehow managed to do it this way.

Q. This happens to be vertical, but you've seen it horizontal. Is that what you're saying?

A. I've just never seen it in this format.

Q. Look at the far left of the document. Do you see there's icons that go down the page. Do you see that?

A. Yes.

Q. Do you see there's a little "i"?

A. Yes.

Q. Do you see it's highlighted with blue around it?

A. Yes.

Q. Do you see in the middle of the map there's an "i"?

A. Yes.

Q. So you're saying that if you click on that "i" icon and then you hover over the particular census block and you click on that and you get your data view table?

A. Well, good point. That's probably why this is like this because normally when I would do that, I would only have a few variables showing up. So the table would be like 10 lines long. This is apparently just doing the entire thing and going through the

entire record, basically.

Q. So you can customize how much you see in data view; is that right?

A. Yes.

Q. I understand. This is just all of it as far as you can tell?

A. Apparently, yes.

Q. Let's look at some of the documents. Why don't we start with the third page of the document, which is marked as 003 at the bottom.

A. Yes.

Q. You'll see it says G02G_DV. Do you see that?

A. Yes.

Q. Let's just go through what the nomenclature is there. So G is general election; is that right?

A. The first G, yes.

Q. '02 is the year, 2002?

A. Yes.

Q. And the second "G" is the governor's race; is that right?

A. Yes.

Q. And between DV is the Democrat vote; is that right?

A. Yes.

Q. Okay. And that then says -- if you go over to the far right, it's got 13,000. Do you see that? Am I reading that correctly, or is it 13?

A. 13.

Q. So what does 13 stand for there in that column?

A. That's the number of votes that we would estimate were cast in that block for the Democratic candidate.

Q. Okay. I got it. So 13 Democrat votes in that block. Then under the same election, RV got 4 Republican votes; is that right?

A. Yes.

Q. And then if you go down to the total votes, TV is the next one. Is that total votes? Is that right?

A. Yes. That would include votes -- the other votes that aren't listed.

Q. In this case it just seems to be adding the 13 Democrats and the 4 Republicans. That comes up to 17; is that right?

A. Right.

Q. And then the next one down is GO2G_RP. Do you see that?

A. Yes.
Q. Is that Republican percentage of the vote?
A. Yes.
Q. Looking over the far right column, 23.5, that was the percentage of the Republican vote in that census block; is that right?
A. Yes.
Q. By the way, did you come up with these nomenclatures for the elections, or was this something someone else did?
A. No. This is based upon my work at the RNC in the '80's.
Q. Okay. And then let's just go -- I'm not going to go through all the numbers, but just so we got a good record here. So the next is GO2A, and that's -- is that the 2002 -- well, what is that?
A. "A" is for attorney general. I is for auditor. "T" is for Secretary of State. "J" is for state treasurer. "H" is for U.S. House. "Y" is state senate, and "X" is state house.
Q. Okay.
A. So apparently I did include the legislative races, state house and state senate and Congress.
Q. I see here you've got RP values, but I'm not

seeing DP values. You just gave the Republican percentage; is that right?

A. Well, yes, but that's because the record, the longer the record is, it's just -- it isn't a problem anymore. It's just easier to have fewer fields. So, for instance, the reason the other votes aren't included but the TV is is you can calculate the other vote from that if you need it.

Q. Uh-huh.

A. So, likewise, you can calculate the Democrat percentage if you need it, but it just saves fields.

Q. Does the RP percentage share the two-party percent, or is it the percentage of everything including the third party?

A. I think this is based upon the actual -- total votes. Once again, you can calculate the percentage of the major party vote from the information given here.

Q. All right. I think you testified before that if you knew which census blocks you were including in the district, then Maptitude can aggregate up, let's say, the Republican percentage for the entire district based on all those census blocks; is that right?

A. It would add up the raw numbers and calculate

the percentage.

Q. Okay. That's how the map works. I understand.

A. Right.

Q. Fair enough. Let's skip ahead in the document a little bit to Page 6. Do you see EA values appearing on Page 6?

A. Yes.

Q. Then it starts at EA11, and then it goes all the way up to EA41. It's not sequential. There's some gaps. I want to ask you about that. Okay?

A. Yes.

Q. Do these reflect the EA data that you provided to Mr. DiRossi and Ms. Mann?

MS. McKNIGHT: Objection.

THE WITNESS: It appears to be.

BY MR. FRAM:

Q. And I see we have EA11 through -16 as we saw back on --

A. 11.

Q. Exhibit 11. Is it your recollection that these EA values stated here reflect the same EA elections set forth on Exhibit 11?

MS. McKNIGHT: Objection.

You can answer.

THE WITNESS: Appears to be, yes.

BY MR. FRAM:

Q. There's some additional ones beyond 6. That gets us through EA16.

A. Uh-huh. Yes.

Q. But then this one keeps going a little (indicating). You got EA21. That was not on Exhibit 11. Do you know what that was?

A. I'm sure I did. I have no recollection what they are at this time though.

Q. So you also had 31 and 41. Do you see those?

MS. McKNIGHT: Objection. Form.

You can answer.

THE WITNESS: Yes. It appears I did them, obviously. I just have no recollection what they were or were not.

BY MR. FRAM:

Q. Did you ever have any conversation with Mr. DiRossi or Ms. Mann, after you generated Exhibit 11, as to developing additional election averages?

A. I don't recall that, but I do frequently have other -- the way these are set up, the 21, 31, 41,

those were the standardized things that I would do. I just don't remember what they were.

Q. Okay. In any event, in Maptitude they had the election data beyond just the five elections that were contained for EA12. Isn't that right?

MS. McKNIGHT: Objection.

THE WITNESS: Yes.

BY MR. FRAM:

Q. Okay. And if they wanted to they could have looked at the election results for Congressional district based on a broader set of elections than those contained in the EA12; correct?

MS. McKNIGHT: Objection.

THE WITNESS: They had the capability of doing that, yes.

MR. FRAM: Okay.

(Deposition Exhibit 16 was marked for identification.)

MR. FRAM: We're going to have marked as Exhibit 16 a document BENSEN_0000084 through -- actually, it's the only number we have on it. It's a five-page spreadsheet. So that's Exhibit 16.

(The witness reviewed Exhibit 16.)

BY MR. FRAM:

Q. Mr. Bensen, this is a document you produced in this case. The information in the brackets below, that's the file name. We added the number, but the file name that was received, it was September 14 "dvw_aggset_ohcd_2011_enacted-" September -- "-sep14_ohmix_", it looks like "kl15a.xls." Do you see that?

A. Yes.

Q. Do you recognize this document?

A. Yes.

Q. Did you create this document?

A. Yes.

Q. Do you recall why you created this document?

A. This is a normal version of the data view which is -- there's this one record in this case for each district, and then it just lists what appears to be all the fields going across. In other words, each of the variables. They may be a subset of them to the extent that it doesn't appear to be all of the population, the census demographics, but it has a mix of census demographics, and then it has a mix of the political indicators, meaning as just the Dem and the Rep vote for what appears to be all the statewide races, and has some of the election averages towards

the end of the record or the end of the pages.

Q. Now, did you generate this using Maptitude? Is that right?

A. Yes. This is one way to export data from Maptitude.

Q. You can export data from Maptitude into Excel; is that right?

A. Yes.

Q. This is an .XLS file. That's an Excel file; is that right?

A. Yes.

Q. Okay. So I take it the tool you used to do that, it wouldn't be initially the data view tool, but it would be some other Maptitude button you'd click on?

MS. McKNIGHT: Objection.

You can answer.

THE WITNESS: It would be the data view. It would be -- this is what would show up on your screen. In the data view window you would then say, "export" or save as an Excel file. There are several other options.

BY MR. FRAM:

Q. So why don't you see if I got the sequence

right. You used the info tool to create the data view; is that right?

A. No. You don't need the info tool here. The info tool is just a way to look at a particular area. This is as you were normally drawing, the data view shows up at the top of your page -- well, that's the way I would do it. You can then just, when you're done with the map or if it's just the map you're looking, it shows you the number so you can just export that out so you could do something else with it.

Q. So first you see it, but then you export it to Excel. Is that how that works?

A. Right. So you can manipulate it or print it out more easily. It's very hard to print stuff out in Maptitude.

Q. Understood. And so, like you say, if you look at Exhibit 16, you look starting on the second page, you start seeing all those -- let me back up.

On the far left it's got district, and it's got 1 through 16. Do you see that?

A. Yes.

Q. Those are the 16 districts for which maps are being drawn in 2011; is that right?

A. Yes.

MS. McKNIGHT: Objection.

You can answer.

BY MR. FRAM:

Q. And then you go on to the second page. Starting at eight columns over, we start seeing our election results -- is that right? -- with the GO2G_DV. Do you see that?

A. Yes.

Q. Then we have here all the statewide elections between on that page and Page 3 and page -- up through the middle of Page 4, we got all the elections 2002 through 2010. Do you see that?

MS. McKNIGHT: Objection.

THE WITNESS: Yes.

BY MR. FRAM:

Q. Before you weren't sure if you went all the way back to 2002. Does this refresh your recollection to the fact that you did?

A. Yes. It appears it went to 2002. So these would be the standard selections of all these statewide races.

Q. Fair enough. And the nomenclature here we've already discussed with what the acronyms mean. Now,

you don't call them codes. Do you have a name for these things like G02 that you developed at the RNC?

MS. McKNIGHT: Objection. Form.

You may answer.

THE WITNESS: An acronym is fine. I call them race codes or office code or whatever.

BY MR. FRAM:

Q. I'll use what you use. These are the race codes that you use, and - you developed those race codes when you worked at the RNC in the '90's; is that right?

A. In the '80's. In the '80's every space, every byte on a computer was valuable. You didn't use much. This is back when your file names were 8.3. So you had to be concise as such.

Q. And it still shows up in Maptitude today?

A. Well, it does for me because I'm too old to retrain.

Q. But it showed up in 2011 in Ohio?

A. Oh, and it will show up in 2021 in the states I work in, yeah.

Q. And then we get to the -- we get to Page 4, and we start seeing the EA code, starting with EA11. Do you see that?

A. Yes.

Q. And here, once again, it's got not just EA -- going to the next page, but let's see Page 4 and 5. EA11 through EA16, but also, again, through -- you also have EAs 21, -31, and -41. Do you see that?

A. Yes.

Q. Does looking at this help you remember what those were?

A. No. Again, I'm sure I did them because I have multiple sets of them. I just at this point have no recollection because I didn't look at this closely enough to remind me that I should figure out what they were.

Q. Okay. This shows the -- those EA indices, the number of votes. Let me back up. It shows the votes for the election selected for each EA for each Congressional district; is that right?

A. Yes.

Q. So if I look at just a quick one example and I pick District 1 and I go over to EA12_RV, and it says 173298. Do you see that? It's on Page 4. Does that mean there were 173,298 Republican votes in the five elections that were part of EA12?

A. Well, in the adjusted version of EA12.

CLARK BENSEN

Q. So there you have -- that's not the actual -- let me go back. That's not the actual average for the five elections?

A. No. It's the adjusted version.

Q. So let's see if I understand correctly. If I look at the Democrat vote, okay, it's 131,240; right?

A. Yes.

Q. So they're not the same. They've been adjusted to pure 50-50. If it's 50-50, wouldn't it be the same?

A. No. You're missing a point.

Q. I am missing the point.

A. It's not to create 50-50 districts. It's using as if you had a 50-50 statewide race. In other words, since most states don't have races that are 50-50, they have some that are close, some that are not. So I take the ones that are close and adjust them down to 50-50. So if you look at this and say, "Well, if you had a statewide race that was 50-50, this is how this district would perform.

Q. I see. So even if the statewide was 50-50, the Republicans would do better here. Under the Democrats they would do 173,298, and the Democrats would only do 131,240.

A. Right. That's the concept.

Q. I see. Now, do you recall whether you provided the information in Exhibit 16 to Mr. DiRossi in this manner?

MS. McKNIGHT: Objection.

THE WITNESS: This was as a result of the plan they gave me.

BY MR. FRAM:

Q. So they had this information?

A. Well, yes, they had it in their file. So they could have had the same thing. Now, whether they used this data view and never looked at those numbers, I can't tell.

Q. Right. But they had it available to them?

A. Right.

MR. FRAM: I understand. Thank you.

(Deposition Exhibit 17 was marked for identification.)

MR. FRAM: Why don't we mark next as Exhibit 17 a document, Bensen_000001 through -3. This is entitled "Example of Calculations for Election Averages EA11 to EA16." And the far right says, "OH, "2002-2010, "Adams County."

(The witness reviewed Exhibit 17.)

THE WITNESS: Yes.

BY MR. FRAM:

Q. At the bottom -- there's a file name at the bottom, and that is "[ea11_methods_cy_Adams_kg22a.xlsx, page1." Do you see that?

A. Yes.

Q. Is this a document you created?

A. Yes.

Q. And you did so as part of your work for redistricting -- Congressional redistricting in Ohio in 2011?

A. Yes.

Q. Do you recall sharing this information with Mr. Mann and Ms. -- Ms. Mann and Mr. DiRossi?

A. I assume this was sent to them when I sent the state level one, which is Exhibit 11. I just took the first county and gave them an example of county.

Q. Did you also generate EA calculations for each county, or is this just a one-off example with Adams County?

A. This is just an example for them for one county.

Q. So they could see it?

A. Yes.

Q. I notice there's something a little different about this than the one we went over before, if you compare this to Exhibit 11. Let's take a look. Actually, let me ask you, other than the fact that this is just for county and the other is statewide, is this sort of the same set of information, just broken down by county?

A. It should be.

Q. Now, looking at these, this information here, you got these -- see the RNP percentage columns in both 17 and 11?

A. Yes.

Q. Now, I don't see, if I compare that over to Exhibit 16 where I've got -- there's EA numbers provided. I don't see percentages on that table.

A. Right.

Q. Can you see the -- can you generate percentages in Maptitude for, say, the Republicans in a given district in a census block?

A. Well, yes. The whole concept of data view is you can put whatever you want in there. If you want to see raw numbers, if you want to calculate, you can calculate. This is just an export of data so that I

can use it to run customized reports.

MR. FRAM: All right. Why don't we mark next as Exhibit 18 a document numbered BLESSING0013211 [Polidata > Clark 07-24-11 ccCounty. cdf]. It's a multi-page document. They all have that same number, but they also have identified as up to Page 6. We'll have that marked next as 18.

(Deposition Exhibit 18 was marked for identification.)

BY MR. FRAM:

Q. My first question to you, Mr. Bensen, is what's a -- do you have an understanding what a ccCounty.cdf file is?

A. It's a Maptitude file that has one record of a SHPE file and information for each county.

Q. And if you look at the top of the second page where you see "Name" it says, "Adam." Do you see that?

A. Yes.

Q. So would this be information for Adams County on this document?

A. Yes.

Q. And did you -- and then if you go down starting at the bottom of the second page, you see the

various election results are listed there. Do you see that?

A. Yes.

Q. Is that the election results information that you provided in 2011 as part of --

A. It appears to be.

Q. And here, if you go to the G02 -- let's see. G_RP on the bottom of Page 2. Do you see that?

A. I'm sorry. G02.

Q. G_RP. Do you see that?

A. Yes.

Q. That's one, two, three, four, five, six from the bottom on Page 2. Do you see that?

A. Yes.

Q. That would be the Republican percentage in Adams County that appears at 63.4; is that right?

A. Yes.

Q. Okay. And, in fact, for all the elections here on this county report, you see there are RP values that appear, not just raw numbers; is that right?

A. RPs appear in addition to the raw numbers, yes.

Q. And then if you go over to Page 6, you've got

the EA values. Do you see that?
A. Yes.
Q. Go to EA -- Exhibit 12. You'll see an _RP. Do you see that?
A. Yes.
Q. And then that number appears as 60.5.
A. Yes.
Q. That would be if you use the EA12 index that the Republican percentage is 64.5 percent; is that right?
A. For Adams County.
Q. And then if you want to do the same, if you wanted to generate a Republican percentage using EA12 for an entire district, you could use this information and aggregate it up; is that right?
A. Yeah. As I said, you would aggregate up in raw numbers, and then it depends on what you have in your data view as to whether it's calculating. In other words, in some cases if it's not done correctly, this RP number isn't correct because it doesn't add those up. It has to be calculated after the aggregation --
Q. Right.
A. -- and because of the way Maptitude is done,

it's sometimes easy to screw up on that.

Q. So the first thing you would do is add up the raw numbers in the district for total Republican votes, and then Maptitude would calculate the Republican percentage; is that right?

A. Well, yes, but there are several steps involved. In other words, this is why it would normally be done initially, but it's not just in the data set. The user has to do it in their Maptitude version as well.

Q. Okay.

A. But, yes, the process would be it gets all added up automatically by Maptitude. Whether it calculates a percentage depends on what the user says to do.

Q. Okay. And then -- but you could calculate the percentage?

A. Yes.

Q. And then you could make that percentage appear in a little box that could appear over the district, couldn't you?

A. Yes. It could show up, and it would, at that point, be just like any other variable that you want to label over.

Q. You could customize the labels you want to show?

A. Yes.

Q. You don't want to burden the decision maker with an eight-page table of data, and if you just want to show what's the Republican percentage for EA12, you could just show that in a label?

MS. McKNIGHT: Objection.

THE WITNESS: We never want to burden the user or --

BY MR. FRAM:

Q. I appreciate that.

A. -- the viewer.

Q. So the label function could help you communicate efficiently?

A. Well, and that's part of the trick of getting used to using Maptitude. You got to figure out you, as the line drawer, may have all sorts of stuff on your screen, but when you're showing it to someone else, you want to minimize as much as you can.

Q. I understand. Did you ever see any maps concerning the Ohio redistricting in 2011 where labels with just certain index percentages were applied?

A. I never saw any of that.

CLARK BENSEN

MR. FRAM: This might be an okay time to take a short lunch now.

(A recess was taken from 12:38 p.m. to 1:05 p.m.)

BY MR. FRAM:

Q. Going back to Exhibit 11, first page, the EA12 table. Do you see that?

A. Yes.

Q. Bottom row with "Adj," do you see that?

A. Yes.

Q. Does that refer to your adjustment?

A. Yes.

Q. Okay. There's only one value in the adjustment row, and that's under DMP percentage. Do you see that?

A. Yes.

Q. So that's the Democratic percentage for the major party vote; is that right? That column, DMP percentage.

A. That is, yes.

Q. Right. And then going down to the bottom, the adjustment is 0.993. Do you see that?

A. Yes.

Q. It's italicized, that number.

A. Yes.

Q. Why is that number italicized?

A. That's just an indication of the degree to which I had to adjust the races that are listed. So, for instance, if you look on the next page, it's like .990. and .984. It's just a question of the degree to which the races were close to 50 or not.

Q. I was asking -- well, thank you. I was trying to decipher a little bit.

Is the adjustment, the .993, is that a subtraction or an addition? The .993.

A. I think that's just the end result of the degree to which all of these five races were adjusted.

Q. Okay. So it shows you that we had a .993 adjustment. Let's see if I understand the basis of the adjustment. That's if you add into the mix a 50-50 race; is that right? Added that to the EA12, or is that something else, or the degree to which the EA deviated from a 50-50?

A. It's more of the latter. It's just really just a way for me to kind of scope out the degree to which there's an adjustment in the numbers.

Q. Right. So the mechanics is not that you're adding a sixth election to EA12, a 50-50 race, and

then seeing what the difference would be. It's rather looking at what EA12 is as compared to a 50-50 race; is that right? And then that's the adjustment number, .993?

A. Well, yes, sort of. In other words, if these weren't very close races and they were closer to 55 than 50, this .99 would be more like .90. In other words, it's a question of how close the mix came to being 50-50.

Q. Okay.

A. It doesn't matter except to the extent -- it's like a margin of error kind of thing. It's just a question of there's more adjustment in the -- in some races than in others.

Q. So if it was a real high performance race for one party or the other, that adjustment number would be bigger -- right? -- because it would be farther away from the -- the adjustment would have to be much bigger to get to 50-50. Is that it or the other way around?

A. The way I did it, from what I can tell here is it would be lower because it's a question of how close it was to perfection. So if you made a bigger adjustment, it would be farther down.

Q. I see. So this is saying that we are .993 away from a 50-50 is what this is telling us. Is that what --

A. Well, as I said, for the third time, sort of. It's just a quality control thing that I use to kind of scope out the degree to which there's error. So it's only useful to the extent you compare it with the other adjustments that are on the other page.

Q. It tells you how far away this index is from 50-50. Is that what it tells you?

A. No. It tells you how far away the races that were in the selection were away.

Q. Right. Therefore, the -- but what one is doing, I take it, is comparing all the -- in the case of EA12, all five of the selection against the 50-50. What the five elections in the EA12 would be compared to a 50-50.

A. I think this has been asked and answered. That is sort of what it is, but it's not what you're saying it is. It is just a quality control check for me to see the degree to which the adjustments needed to be made as opposed to others in the on year versus the off year.

Q. Okay. Needed to be made if one wanted to get

to 50-50? Needed to be made to what purpose?

A. The point here was to have a hypothetical set of a statewide race that was 50-50.

Q. Uh-huh.

A. They aren't all 50-50. If they're all 50-50, the adjustment would be 1.00.

Q. Uh-huh. Uh-huh.

A. But because they're plus or minus, it's less than the 1.00.

Q. Got it. Got it. Okay. So what this is saying is that -- I see. And that makes sense if I look at this particular example. The Democratic two-party vote, major-party percentages 48.63 -- let's see. If I go down to, actually, the average, it's 50.38; is that right?

A. Right.

Q. Okay. All right. Okay. And if it was exactly 50, then the adjustment would be 1.00?

A. Right.

Q. Okay. So even though -- I think I understand where I was falling off the tracks because the Democratic vote's a little higher than 50-50 here, but the adjustments is under 1.0?

A. Right. So the reason it's in italics is just

because it's really for my purposes and not for the user's purposes.

Q. I see. Let me ask you a question for the user's purpose.

If you look over to Exhibit 15. And let's go over to EA15, which was the census block for 41 -- census block 4-1-5; right?

A. Yes.

Q. And let's go to the -- just pick up the EA12 RP_RP. Do you see that?

A. Yes.

Q. Is that with an adjustment or is that without the adjustment, that RP, that Republican percentage?

A. I think I've answered this already, which is it may be -- it would be the unadjusted, but I don't know from this listing whether that's actually calculated correctly. It appears to be from 2 versus 25, but I don't know.

REPORTER MARTIN: I'm sorry?

THE WITNESS: I'm sorry. 2 Democrat and 25 Republican. Well, no. Well, whatever the numbers are. Don't worry about that. The extra step I said that needed to be calculated, I can't tell from this listing whether the extra step was made or not.

CLARK BENSEN

BY MR. FRAM:

Q. Okay. Again, these are -- I wanted to pick out RP. I'm just trying to understand whether or not there had been any adjustment. So you just can't tell from how this -- whether or not they used the adjustment or not?

A. The raw numbers would be at adjusted numbers. I can't say if the RP is correctly calculated.

Q. Oh. Interesting. So looking above -- thank you.

So for EA12 RV, do you think that showed an adjustment?

A. Yes. The 23 Democrat, the 2 Republican would have bent the adjusted values, and the 25 as well for the total. I just can't tell from this standpoint, even though it looks like 2 divided by 25 and 6.2, I can't tell if in fact the step was made to calculate that RP correctly.

Q. Okay.

A. It probably was here because this is a block record, but for other levels of geography you can't tell.

Q. Okay. But as you said, when you do the whole Congressional district, since you're going to add up

all the raw votes from, let's say, a census block and then you'll calculate your percentages?

A. Yes.

Q. You're adding up adjusted numbers?

A. Yes.

Q. So your final Congressional district percentage would be -- reflect the adjusted numbers.

A. Yes. The caveat there that -- you'll note that the EAs are raw numbers without any decimal points, whereas all the votes are -- sometimes may have decimal points.

Q. Okay.

A. So, in other words, there's going to be some slippage in the sense that you're not adding up partial votes.

Q. Well, subject -- is it a matter of rounding the decimal points? Does that have the decimal point that gets --

A. It's really just a question of when you assign votes to a block, you usually have decimal points because you will round it up at some point. You may not round it up. It's kind of personal preference as to how it's done.

Q. Looking at this document, this document being

Exhibit 15, it's your understanding that, in fact, when you use the raw votes for census block, add them up to an entire district, and then calculate the percentages, that those percentages reflect your adjustment?

MS. McKNIGHT: Objection.

You can answer.

THE WITNESS: Yes. They would add up to the adjusted numbers at the block level and at the district level.

BY MR. FRAM:

Q. Just so we're clear for the record, qualitatively, right at the district level, just so I understand qualitatively, the effect of the adjustment, if I understand correctly, once you've done that, does that make, in fact, the election results closer or less close? Once you've done the adjustment. You've changed the numbers.

A. I can't answer that. Can you rephrase that?

Q. Sure. You have your numbers, and you adjust it.

A. Yes.

Q. When you make -- now we're not just looking at internal QC. We're actually using the adjustment

when we're scoring a district. So we're beyond your own QC. You actually use your adjustment to change the numbers; is that right?

A. Yes.

MS. McKNIGHT: Objection.

You may answer.

BY MR. FRAM:

Q. Okay. I'm just trying to say directionally when you do that, is the net effect to make whatever collection you're doing for your EA, make the elections closer, the scores closer between the Republicans and Democrats or farther apart?

MS. McKNIGHT: Objection you can answer.

THE WITNESS: It would really depend on what you have in the selection of races you've used. It would bring them all -- each of those closer to 50-50. That doesn't mean that each district is necessarily closer to 50-50.

BY MR. FRAM:

Q. No, I do understand that.

A. Yeah.

Q. Incrementally, of course, the district itself will not become 50-50 by virtue of using your adjustment. That's right?

A. Yes.

Q. I get that. But directionally, incrementally the district gets closer to 50-50 by virtue of using the adjustment?

A. The numbers in each level of geography become closer because they are adjusted from what they were to 50-50.

Q. Right. And then when you generate your district as a whole you're reflecting those adjusted numbers at the smaller units of geography. For example, the census block?

A. Yes.

Q. And, therefore, the district as a whole -- the district as a whole incrementally moved closer to 50-50 incrementally by virtue of using the adjustment?

A. Yes.

Q. Thank you.

A. Are we done with 15?

Q. I am.

(Deposition Exhibit 19 was marked for identification.)

MR. FRAM: 19 is a document with Bates No. Bensen_0000042. It's an E-mail from Heather Mann to Clark Bensen, cc to Mike Dittoe, D-i-t-t-o-e, dated

September 14, 2011 at 4:34 p.m.

(The witness reviewed Exhibit 19.)

BY MR. FRAM:

Q. Any reason to think you did not receive this E-mail on or about September 14, 2011?

A. No.

Q. Do you see there's a request to you from Heather Mann asking you to -- it says, "Attached are the files I'd like you to test." Do you see that?

A. Yes.

Q. Do you recall being asked to test files?

A. Yes.

Q. Okay. Do you see she's attaching some -- the "CONGRESSIONAL PLAN SHAPE FILE.DBF." Do you see that?

A. Yes.

Q. Among others?

A. Yes.

Q. Do you recall what you did to test the files?

A. Well, the focus here was to provide for the Secretary of State, I believe -- see, I shouldn't have had food.

The Secretary of State was, I believe, having a website for when a plan was done. In this case it would have been planned as of September 14, and they

were providing it in two different formats, a block assignment file and a SHPE file. And a block assignment file, as we discussed -- well, we didn't. It's a fairly easy export Maptitude, and it's one button and it's done.

The SHPE file is likewise easy to do, but whereas the block style file only has two pieces of information, the block code and the district assignment, the SHPE file may contain anything that was in the data view at the time or all that information. So the point here was to provide a SHPE file that had no information except the district number.

So the trick is it's tricky in Maptitude to get that so, in fact, it's a clean SHPE file. So they're sending it to me so I can make sure that, in fact, it was a clean SHPE file and had nothing but the bare information.

Q. And what did the bare information consist of?

A. The barest would be just the district number. It may have had like total population.

Q. What information should it not include?

A. Well, you don't want it to include the substantive data because that's not the purpose of the

SHPE file. If you're going to present data, you present it in another format, which is why you would export the data view to Excel or something and do a table that people could read. You don't just put it into the SHPE file.

MR. FRAM: Okay.

(Deposition Exhibit 20 was marked for identification.)

BY MR. FRAM:

Q. Exhibit 20 is an E-mail, LWVOH_00018302. I just want to draw your attention to on the last part of the document there's an E-mail string. It's in Gmail format. So we get the earliest in time on September 2, 2011, 6:41 p.m. from Adam Kincaid to Mr. DiRossi, Ms. Mann, Mr. Tom Whatman. And then we have later in time, I'd like to ask you to look at Page 7 of the document from Heather Mann to Clark Bensen and Mark Braden on September 3, 2011 at 8:15 a.m., forwarding some of the other E-mails. Before, I believe you indicated you didn't recall communications with Mr. Kincaid back in 2011. I wonder if you recall receiving any of this E-mail forwarding some of his E-mails back in 2011.

A. I don't have a recollection. Where did I get

it from him?

Q. No. I didn't say you did. Ms. Mann appears to be forwarding his materials. I was wondering whether or not you recall her forwarding you Kincaid E-mails in 2011.

A. No, not at all.

Q. You don't recall what this is about?

A. First time I've ever seen it. Obviously it's not the first time I've seen it. I don't have any recollection of it.

MR. FRAM: That's fine.

(Deposition Exhibit 21 was marked for identification.)

BY MR. FRAM:

Q. It's an E-mail from Heather Mann to Clark Bensen as the top E-mail on the page. There are two of them. But it's October 26, 2011 at 9:55 a.m. It's Bensen-0000047.

Mr. Bensen, is there any reason to think you did not receive this E-mail on or about October 26, 2011?

A. No.

Q. Okay. Do you recall receiving a request for SHPE files for Congressional districts?

CLARK BENSEN

A. No. It wouldn't seem that unusual.

Q. By this point, HB319, the first map had already been enacted. Do you recall what, if anything, you were doing on any redraft?

MS. McKNIGHT: Objection.

THE WITNESS: I don't recall. This appears to be simply the fact that what we discussed before about the SHPE file that the Secretary of State was going to have on their website. Warren Glimpse is saying he couldn't find it.

REPORTER MARTIN: I'm sorry. Who?

THE WITNESS: The E-mail -- the sender of the E-mail is Warren Glimpse, G-l-i-m-p-s-e, and he was indicating he couldn't find it on the Secretary of States site. So he's asking Heather Mann for a copy. She just asked me to send it to him. I guess that's -- she asked me to send it to her so presumably, she could respond to this request.

(Deposition Exhibit 22 was marked for identification.)

MR. FRAM: 22 is an E-mail from Heather Mann to Clark Bensen, cc to Troy Judy. Bensen-0000063.

(The witness reviewed Exhibit 22.)

BY MR. FRAM:

Q. Is there any reason to think you did not receive this E-mail on or about November 9, 2011?

A. No.

Q. Do you recall receiving a request from Ms. Mann to generate EA12 and McCain 08 index scorings for proposed Congressional districts?

MS. McKNIGHT: Objection.

You can answer.

THE WITNESS: Not without this E-mail. I have no recollection.

BY MR. FRAM:

Q. Okay. "EA12," do you see that there at the bottom -- in the text of the E-mail?

A. Yes.

Q. In the table you see something called "Unified Index"?

A. Yes.

Q. Do you recall what you called the phrase "Unified Index"?

A. That's not my term.

Q. Do you recall anybody else using it, though, in 2011?

A. I don't, no.

Q. But "EA12" is one of your terms?

CLARK BENSEN

A. EA12 is my term, yes.

Q. Do you recall in November -- let me ask the question.

How would you -- how would loading a DBF file help one calculate an EA12 index scoring for a district?

A. Well, I can't tell from this. They sent an attachment called November Modified DBF. I suspect that was a block assignment file. So it was to load it up as a plan and see what the numbers were.

Q. Right. So if -- I understand. So if the DBF files were the block assignment files and you have the EA12 numbers for each census block, then you could figure out which census blocks were in a particular district; correct?

A. Right.

Q. And then you could use that information to calculate the EA12 scoring for the district; correct?

A. Right.

Q. I understand.

(Deposition Exhibit 23 and 24 were marked for identification.)

MR. FRAM: We'll do two exhibits next, one after the other here. So we're up to Exhibit 23. So

Exhibit 23, BLESSING00012553 and, 24, BLESSING0013212.

(The witness reviewed Exhibits 23 and 24.)

BY MR. FRAM:

Q. Have you ever seen either Exhibits 23 or 24 before?

A. No.

(Deposition Exhibit 25 was marked for identification.)

BY MR. FRAM:

Q. We'll mark next as Exhibit 25, BENSEN_0000086 with the file name "december14 > DVW_aggset_ohcd_2011_revised-hb369-december14.xls."

(The witness reviewed Exhibit 25.)

BY MR. FRAM:

Q. Mr. Bensen, did you create this document?

A. Yes.

Q. You did so as part of your work on Congressional redistricting in Ohio in 2011?

A. Yes.

Q. And in the ordinary course you shared it with Mr. DiRossi and Ms. Mann?

A. I don't know.

Q. Would it have been your practice to do so?

A. Possibly.

Q. Do you have any idea why you created this document?

A. Well, I created it -- I would have thought I created it for my own purposes so I could run my customized reports. It's similar to the one we had before, which is just a basic listing of the data. This is for the December plan.

Q. HB369?

A. Yes.

Q. So do you understand this would have been for HB369 as enacted; is that right?

A. Or as revised, yes. The second round.

Q. I'm sorry. You said you created it for your test report?

A. No, so I could run my own reports after. As I said before, raw numbers are useful. If you want to count the percentages or something, you would do it from this set.

Q. Now, this has the numbers for each district for all the EA scorings from EA11 through -41; is that right?

A. Yes.

Q. And what -- why would you be running -- I'm sorry. Why would you be running test -- were you

running test scores off of those EA numbers?

A. I didn't say anything about a test.

Q. Were you running reports off of those numbers?

A. I would take this information and put it into my data system where I would keep track of all the plans I was looking at so we could go through and say, "Okay. What was the pop in District 1 in Plan 319." I'd have it in a database. That's all this was for.

Q. So just for your internal purposes for this one?

A. Well, in case I had to run some sort of report on it, but basically, for my own internal stuff so I could keep track of it.

Q. Do you recall providing any internal reports to anyone in Ohio?

A. In Ohio? I don't recall it, no.

Q. Why were you keeping track in your own system, your own reports?

A. I'm a redistricting consultant. That's what I do. I have a data system where I keep track of everything in a logical fashion so when I need it, I can find it. I don't have to go into Maptitude and regenerate it.

Q. Was this generated from Maptitude?
A. Yes.
Q. So was this data available to Mr. DiRossi and Ms. Mann?
A. Yes.
(Deposition Exhibit 26 was marked for identification.)
BY MR. FRAM:
Q. I'd like to mark next as 26 a document, BENSEN_0000086. And it has the heading "Measures of Compactness." The file name was ohcd_2011-revised-hb369-december14_ohmix_k- -- I think that's -- I can't tell if that's 11 or ll5a. Maybe you can tell me.
A. kl15a.
Q. kl15a. Thank you.
MS. McKNIGHT: Could we go off the record just for a moment.
MR. FRAM: Sure.
(A discussion was held off the record.)
MR. FRAM: Okay. Just so we're clear, this document has the same Bates numbers as previous exhibits we looked at, and that is because they were produced in native to us without Bates numbers, and I

said earlier Covington added the numbers at the bottom of the documents rather than create a separate slip sheet that indicates the Bates numbers and says "Produced in Native." Okay.

Q. So, Mr. Bensen, you produced this document?

A. I don't have it yet.

(The witness reviewed Exhibit 26.)

THE WITNESS: Yes.

BY MR. FRAM:

Q. Maybe you can explain. Do you have an understanding what the file name is at the top?

A. It's just my nomenclature for how I keep track of files.

Q. And did you create this on or about December 15, 2011?

A. Yes. That's generated from Maptitude software.

Q. So the Maptitude software can create compactness scores for redistricting; is that correct?

A. Yes.

Q. Okay. Did anyone ask you to do this?

A. Not specifically.

Q. Do you remember communicating this to anybody?

A. I don't recall. It's a standard thing I run on any plan I get.

MR. FRAM: Okay.

(Deposition Exhibit 27 was marked for identification.)

MR. FRAM:

Q. Bensen_0000075, okay, through -76. A couple of E-mails. One is from Heather Mann to Clark Bensen on December 15, 2011 at 9:55 a.m. There's an E-mail earlier, it appears, initially from Clark Bensen to Heather Mann at 4:55 a.m.

I should say there's an even earlier E-mail from the night before, December 14, at 10:24 p.m. from Heather Mann. So why don't we take these one at a time.

Mr. Bensen, any doubt that you sent the 4:55 in the morning E-mail to Ms. Mann?

A. No.

Q. Any doubt that you received the reply from her at 9:55 that same morning?

A. No.

Q. And we don't have your name as an addressee -- I take it back. We do. From Heather Mann, December 14 at 10:25 p.m., do you see there's an

E-mail she sent to you then?

A. Yes.

Q. Do you understand she's sending certain attached files to that E-mail?

A. It appears so.

Q. And there were SHPE files and equivalency files for HB 369 as passed. Do you see that?

A. Yes.

Q. Your E-mail back says -- let me back up. Do you have an understanding why she sent you those files?

A. This gets back to the discussions we had several times throughout the summer about getting stuff ready for the Secretary of State's website.

Q. Were you helping with that?

A. I was the one that generated it for the Secretary of State, or for their website.

MR. FRAM: Okay.

(Deposition Exhibit 28 was marked for identification.)

Mr. FRAM: Why don't we mark next as 28 document BENSEN_0000086 [Congressional Shape Files Test 2_HB369 as Passed Test 2 shp]. The second page of it has an under bar CD15. That's 28.

(The witness reviewed Exhibit 28.)

BY MR. FRAM:

Q. Mr. Bensen, do you recall doing tests on the SHPE files of HB369 as enacted?

A. I remember doing tests on SHPE files, yes.

Q. What was the purpose of the test -- running tests on the SHPE file?

A. As I explained before, it's to make sure we know exactly what information is going to be accompanying -- substantive information would be accompanying the SHPE file. The shape for each district.

Q. For District 15, for example, is this -- strike that.

Is this an example of that test report for District 15?

A. I don't have a recollection. It appears to be.

Q. Does this appear to be the information that would be on the test that you created?

A. Well, since this says, "Test 2" -- I don't have any recollection as to how many other tests I did or what the theory was as to the selection of this information.

CLARK BENSEN

Q. Fair enough. But for Test 2, does this appear to be the information you created?

A. It appears that way. Again, I just have no recollection to discuss that.

Q. Okay. Again, I'm calling it a test. Do you call it a test or report? What would your preferred wording be?

A. We were trying to test here because we were trying to test to make sure that, in fact, the SHPE file had what we wanted in it.

Q. And the information is included here. It includes various election result data -- correct? -- for CD15?

A. It has several, yes.

Q. And that includes -- well, going down on the CD15, do you see there are various rows that begin with F_? Do you see that?

A. Yes.

Q. Going to F_EA12_RV. Do you see that?

A. Yes.

Q. What does the "F" stand for?

A. It's an aptitude conversion for percentage. When a Maptitude field is exported, it shows up as an "F." I can see from this file name, though, that I

didn't create this. This must have been something that she sent to -- Heather or Ray sent to me.

Q. So she either -- Mr. DiRossi or Ms. Mann, to the best of your understanding, created this; is that right?

A. Right.

Q. Okay. If you look at this -- okay. Never mind.

So if I look at, again, the F_EA12_RV, and that's .5493. Do you see that?

A. Yes.

Q. Does that mean that the Republican scoring for CD15 would have been 54.93 percent?

MS. McKNIGHT: Objection.

But you may answer.

THE WITNESS: Yes.

(Deposition Exhibit 29 was marked for identification.)

BY MR. FRAM:

Q. The document with Bates No. BRADEN000683 through -84, it's an E-mail string, the top of the first page is to Mark Braden to Mark Salling, Heather Mann, Clark Bensen, Michael Lenzo, Ray DiRossi, with a cc to Ellen Cyran. And going down the page there's an

E-mail from Mark Salling to -- let's just back up.

The date of this E-mail is July 15, 2011, and the next E-mail is an E-mail from Mark Salling to Heather Mann, Mark Braden, Clark Bensen, Michael Lenzo, Ray DiRossi, cc to Ellen Cyran, and that's July 15 at 4:50 p.m. Do you recall receiving any of these E-mails back and forth involving Mark Salling?

A. I have no recollection of it.

Q. Okay. So you have no recollection at all of receiving any information from Mark Salling in 2011?

A. No. I have a recollection of receiving information from Ohio State. I just don't have any recollection of this (indicating).

Q. Okay. Do you have any recollection of any use of the Ohio -- do you recall Ohio State traded database for the election results?

A. Yes.

Q. In which they tried to estimate election results for different census blocks. Do you recall that?

A. Yes.

Q. Okay. Do you recall any use of that for Congressional redistricting in 2011?

A. No. My recollection is we didn't use it at

all.

MR. FRAM: If we can take just a quick break.

MS. McKNIGHT: Okay.

(A recess was taken from 1:56 p.m. to 2:03 p.m.)

MR. FRAM: I'm going to mark next exhibits, 29 and 30. Two distinct E-mails. They're both dated December 15, 2011. Exhibit 29 is -- 30.

(Deposition Exhibits 30, and 31 were marked for identification.)

MR. FRAM: So 30 is Bensen-0000077. And 31 is Bensen-000078. They're E-mails. They're both from Heather Mann. They're both dated December 15, 2011. They're both to Clark Bensen. Difference is Exhibit 30 is a 2:29 p.m., and Exhibit 31 is a 2:36 p.m. They both have attachments of "Congressional Shape Files Test 2.zip."

(The witness reviewed the documents.)

BY MR. FRAM:

Q. Mr. Bensen, you produced these documents in this case?

A. Apparently, yes.

Q. Do you have any reason to think you didn't get these E-mails from Ms. Mann on December 15, 2011?

A. No.

Q. Is it your understanding that she was sending you the SHPE files for HB369 as enacted?

A. Yes.

Q. And looking back at Exhibit 28, which was the -- for CD15, the data on it. Do you see that?

A. Yes.

Q. Does this help refresh your recollection that in fact Exhibit 28 was sent to you by Ms. Mann?

MS. McKNIGHT: Objection.

THE WITNESS: Yes. I thought that's what I said. Yes, this does appear to be the ones she sent.

BY MR. FRAM:

Q. Thank you.

A. Yeah.

Q. I have one question about that. Do you see on 28 towards the bottom, the second down, four from the bottom there's a row that says, "FORMULA." I think it's "FORMULA_F1" or FI. Do you see that?

A. Yes.

Q. And then there's "FORMULA_F1" below that, a couple down, and then "FORMULA_F2." Do you see those?

A. Yes.

Q. Do you have any understanding what those

formulas refer to?

A. No. I know I helped them calculate -- I showed them how to calculate things over the course of when they need to. But they're not mine. So...

MR. FRAM: Okay. Well, thank you.

Well, we have no further questions for you subject to follow up if opposing counsel should have questions for you.

MS. McKNIGHT: None for me. Thanks.

MS. RIGGINS: None for me.

MR. FRAM: I hope it makes for an easier drive for you.

MS. McKNIGHT: For the record, I'd just like to note we'd like to read and sign. Thank you.

(Witness excused.)

(Deposition concluded at 2:08 p.m.)

CLARK BENSEN

C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Dated: December 17, 2018

___ _____

Nancy J. Martin, RMR, CSR

CLARK BENSEN

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it. You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition. It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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Case Name:

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SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 2018.

_____

(Notary Public) MY COMMISSION EXPIRES:_____

CLARK BENSEN

ACKNOWLEDGMENT OF DEPONENT

I, CLARK BENSEN, do hereby certify that I have read the foregoing pages, _____ to _____, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____

DATE SIGNATURE

Subscribed and sworn to before me this _____ day of _____, 20____.

My commission expires: _____.

_____

Notary Public

CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on October 22, 2021, I caused a true and correct copy of the following documents to be served by email upon the counsel listed below:

1. **Affidavit of Freda J. Levenson**
2. **Deposition Transcripts from APRI v. Smith , Appendix of Exhibits, Volume 1 of 4 (pages 1 - 163)**
3. **Deposition Transcripts from APRI v. Smith, Appendix of Exhibits, Volume 2 of 4 (pages 164 - 345)**
4. **Deposition Transcripts from APRI v. Smith, Appendix of Exhibits, Volume 3 of 4 (pages 346 - 644)**
5. **Deposition Transcripts from APRI v. Smith Appendix of Exhibits, Volume 4 of 4 (pages 645 - 694)**

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