

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL GONIDAKIS, et al.,)	
)	
PLAINTIFFS,)	CASE NO. 2:22-CV-773
)	
vs.)	
)	
OHIO REDISTRICTING COMMISSION,)	
et al.,)	
)	
DEFENDANTS.)	
)	

TRANSCRIPT OF MOTION FOR PRELIMINARY INJUNCTION PROCEEDINGS
BEFORE THE HONORABLE ALGENON L. MARBLEY, DISTRICT CHIEF JUDGE
THE HONORABLE JUDGE AMUL R. THAPAR, SIXTH CIRCUIT JUDGE
THE HONORABLE BENJAMIN J. BEATON, DISTRICT JUDGE
MARCH 30, 2022; 9:00 A.M.
COLUMBUS, OHIO

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WEDNESDAY MORNING SESSION
MARCH 30, 2022

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JUDGE MARBLEY: Good afternoon. On behalf of my colleagues, Judge Thapar and Judge Beaton, I want to welcome you to the United States District Court for the Southern District of Ohio. We don't often -- certainly I don't often get an opportunity to sit as part of a three-judge panel, and I welcome the opportunity to sit with these fine, outstanding jurists here today.

We're going to begin with Counsel introducing themselves and identifying themselves for the record. And I will indicate to the defendants and -- to the defendant and to the intervenors that the order in which I will call upon you will be the order in which you will proceed with respect to the examination of witnesses and presentations of your case in chief.

So I want to begin with Counsel for the plaintiffs.

MR. BREY: Thank you, Your Honors. I'm Donald Brey for the plaintiff. Here with me are Matthew Aumann, Trista Turley, Ryan Spitzer, and my client who is not a lawyer but will testify, Michael Gonidakis.

JUDGE MARBLEY: Thank you, Mr. Brey.

Counsel for the defense?

MR. BLANTON: Good morning, Your Honor. Please the

1 Court. Jonathan Blanton. With me is Mike Walton both from the
2 Ohio Attorney General's Office on behalf of the Secretary of
3 State. With me are Mike Roadhouse and Amanda Ferguson with the
4 Ohio Secretary of State's Office, and also Amanda Grandjean is
5 present.

6 JUDGE MARBLEY: Counsel for the League of Women Voters
7 party.

8 MR. CAREY: David Carey with ACLU of Ohio on behalf of
9 the intervenor defendants.

10 JUDGE MARBLEY: Counsel for Sykes and Russo
11 intervenors?

12 MR. COOPER: Good morning, Judge. Ben Cooper on
13 behalf of Senator Sykes and Leader Russo. With me is Matthew
14 Wessler, Gupta Wessler, and also with me in the courtroom is
15 Senator Sykes.

16 JUDGE MARBLEY: Will you, Mr. Cooper, be doing the
17 examination on behalf of the Sykes and Russo intervenors?

18 MR. COOPER: On behalf of the witnesses. And with the
19 Court's permission, Mr. Wessler will be presenting argument.

20 JUDGE MARBLEY: On behalf of the Simon intervenor
21 parties?

22 MR. SQUIRE: May it please the Court, Percy Squire on
23 behalf of the Simon parties.

24 JUDGE MARBLEY: And Mr. Squire, we're going to address
25 your latest filing later on this afternoon. We aren't going to

1 deal with that now. But I wanted you to know that it will be
2 dealt with today some time.

3 MR. SQUIRE: Thank you very much, Your Honor.

4 JUDGE MARBLEY: The Bennett party intervenors?

5 MR. MCTIGUE: Good morning, Your Honors. I'm Don
6 McTigue on behalf of the Bennett intervenors. With me is Derek
7 Clinger, my partner, and also Mr. David Fox and Jyoti
8 Jasrasaria, both co-counsel with the Elias Law Group.

9 JUDGE MARBLEY: Thank you, Mr. McTigue.

10 And the OOC parties?

11 MS. MARSHALL: Good morning, Your Honors. Christina
12 Marshall on behalf of the OOC intervenor. And with me is
13 co-counsel Yurig Rudensky.

14 JUDGE MARBLEY: Will you be handling the witnesses for
15 the OOC parties?

16 MS. MARSHALL: I will, Your Honor.

17 JUDGE MARBLEY: Thank you very much.

18 On behalf of the panel, we would prefer to dispense with
19 opening statements in the interest of time. I think as I told
20 you, this may be the only day that Judge Beaton will be able to
21 appear in person. So we want to get as much done today with
22 him live with us as possible. And in that respect, we want to
23 begin with the presentation of evidence immediately.

24 Please understand that since we are the fact finders and
25 the decision makers, there will be times when we will ask

1 questions. So don't be alarmed if we interrupt your otherwise
2 brilliant examinations with questions of our own.

3 Mr. Brey, are you ready to proceed?

4 MR. BREY: I am, Your Honors.

5 JUDGE MARBLEY: Will you call your first witness,
6 please.

7 MR. BREY: Your Honor, before calling my first
8 witness, I would like to submit into evidence Exhibits 1
9 through 15. They have been provided to the Court. They have
10 been provided yesterday by PDF to all counsel, and they have
11 also been provided hard copies this morning. The exhibits in
12 here are either matters of the Secretary of State's
13 documents -- and I believe we'll have a stipulation from the
14 Secretary of State as to the authenticity of those, or in
15 several cases such as Supreme Court announcements are part of
16 the public record. And I can verify that I pulled those from
17 the public record to include here.

18 I don't think any of these are controversial. They more
19 or less tell the timeline this Court has read in numerous
20 briefs. And it was my belief it would be helpful to the Court
21 to have it in one package which is why we did that.

22 JUDGE MARBLEY: Are there any objections to any of
23 these documents being received?

24 There being no objections, Mr. Brey, they will be
25 received.

1 MR. BREY: Thank you. That will certainly save us
2 time going through timeline once more.

3 Our first witness we would like to call Amanda
4 Grandjean.

5 JUDGE MARBLEY: Ms. Grandjean, please come forward and
6 be sworn.

7 (Witness sworn.)

8 JUDGE MARBLEY: And I should have asked you this
9 earlier, Mr. Brey. I'm assuming that you are not asking for
10 there to be a merger with the trial on the merits pursuant to
11 Rule 42?

12 MR. BREY: I haven't asked for that, no.

13 JUDGE MARBLEY: All right. Please proceed.

14 - - -

15 AMANDA GRANDJEAN

16 Called as a witness on behalf of the Plaintiffs, as upon
17 cross-examination, being first duly sworn, testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. BREY:

21 Q. Ms. Grandjean, would you please tell the Court your role
22 with the Secretary of State's office.

23 JUDGE MARBLEY: Maybe we can get the name and have her
24 last name spelled for the record.

25 JUDGE THAPAR: Can you spell it for us?

1 THE WITNESS: Yes. Amanda, A-M-A-N-D-A; Grandjean,
2 G-R-A-N-D-J-E-A-N.

3 BY MR. BREY:

4 Q. Would you briefly tell the Court your educational
5 background.

6 A. Certainly. I went to Miami University in Oxford, Ohio,
7 with a double major in political science and journalism. And I
8 graduated from the Ohio State University Mortiz College of Law.

9 Q. Would you briefly tell the Court your employment
10 history.

11 A. Certainly. Before being in my current position as the
12 director of elections and deputy assistant Secretary of State,
13 I worked for the law firm of Bricker and Eckler in Columbus,
14 Ohio, full time, and prior to that a series of internships.
15 But I was a full-time attorney at Bricker and Eckler.

16 Q. How long have you been with the Secretary of State's
17 office?

18 A. Since January of 2019.

19 Q. And you indicated your current role is deputy assistant
20 secretary of state and director of elections. How long have
21 you held those roles?

22 A. Since January of 2019.

23 Q. What are your general duties in those capacities?

24 A. Many different duties. So, in the interest of time,
25 advising the 88 county boards of elections on elections

1 administration, drafting directives, advising the secretary on
2 different election administrations and legal matters, and
3 ensuring that elections are administered appropriately, safely,
4 securely, and fairly in the State of Ohio.

5 Q. To what extent do your job duties require you or provide
6 you an opportunity to be knowledgeable about timing needs of
7 various boards of elections in processing an election?

8 A. Could you restate the question?

9 Q. I apologize. I'm perfectly capable of asking confusing
10 questions and I think I just did. Let me rephrase it.

11 Do your interactions with the 88 boards of elections
12 give you knowledge about what sort of needs and activities the
13 local boards of elections have to engage in before an election
14 can be safely and securely conducted?

15 A. Yes. However, I will say that my professional opinions
16 and counsel to the secretary is based on an aggregate of all 88
17 county boards of elections as opposed to our most sophisticated
18 or our board of elections that may have the least amount of
19 resources.

20 Q. Are you involved at all in preparing or drafting
21 directives of the Secretary of State?

22 A. Yes.

23 Q. Am I correct that the Secretary of State has no
24 authority to change the primary date?

25 A. That is correct.

1 Q. Am I also correct that the only primary date in Ohio law
2 currently as of today is May 3rd, 2022, for this year?

3 A. That is correct. Can I clarify?

4 Q. Please.

5 A. Statewide within the primary, yes, is May 3rd. I just
6 want to make those two qualifying points. There is a general
7 election in November.

8 Q. By statewide, are you including all candidates that run
9 statewide as well as candidates for the general assembly?

10 A. Pursuant to Ohio law, all valid races that the boards
11 have received valid declarations and nominating petitions for.

12 Q. Okay. I'm trying to understand. Is there another
13 primary date that's currently in Ohio law which voters can vote
14 in a primary for general assembly candidates other than May
15 3rd, or possibly not May 3rd? But is there anything other than
16 May 3rd which they can vote for primary candidates in the
17 general assembly?

18 A. I'm only aware of May 3rd.

19 Q. If I understood your -- is it your professional opinion
20 that it is now too late to conduct a primary election for
21 general assembly candidates on May 3rd no matter what plan
22 issues?

23 A. No matter -- can you qualify what you mean by no matter
24 what the plan is?

25 JUDGE THAPAR: Can I ask a question? Can you hold the

1 election on May 3rd? Just a yes or no, and then you can
2 clarify with the absentee ballots and military ballots and
3 everything else.

4 THE WITNESS: I can hold an election on May 3rd for
5 the statewide elections.

6 JUDGE THAPAR: What about the general assembly?

7 THE WITNESS: Per my affidavit, at this point in the
8 absence of action, I have grave concerns about the ability to
9 hold a May 3rd election with election day ballots prepared.

10 JUDGE MARBLEY: Ms. Grandjean, I think I understand,
11 but Judge Thapar's question was a bit more narrower than that.
12 And you said you have grave concerns about the ability to hold
13 a May 3rd election with election day ballots prepared. Is that
14 a no?

15 THE WITNESS: Again, my answers are in the aggregate.
16 So I'm representing what my opinion is.

17 JUDGE MARBLEY: I'm saying in the aggregate. Yes or
18 no, can you hold an election on May 3rd as Judge Thapar asked?

19 THE WITNESS: Just to qualify with those races on, and
20 our briefing and affidavit was specifically tailored to the
21 third plan implementing that as of last week.

22 JUDGE THAPAR: If we directed you to use the third
23 plan today, could you hold an election on May 3rd as to all
24 offices?

25 THE WITNESS: On May 3rd?

1 JUDGE THAPAR: On May 3rd. That's the only date that
2 exists right now, right?

3 THE WITNESS: I cannot say that every single board of
4 elections would be prepared with election day ballots by
5 May 3rd.

6 JUDGE MARBLEY: Is that a no, then, Ms. Grandjean?

7 THE WITNESS: It's more nuanced than that.

8 JUDGE MARBLEY: You can't say -- we're just trying to
9 make a factual determination and we're just trying to get to
10 the facts. And if you can't answer this question, do we need
11 to -- does this three-judge panel need to direct the secretary
12 to come and answer it? Because somebody is going to answer our
13 question.

14 THE WITNESS: Understood, Your Honor.

15 JUDGE MARBLEY: So yes or no? Can you hold an
16 election on May 3rd?

17 THE WITNESS: With those races on, no.

18 JUDGE MARBLEY: Thank you.

19 BY MR. BREY:

20 Q. So whether -- if you use the third plan, you cannot hold
21 an election on May 3rd for general assembly candidates?

22 A. Again, to qualify everything that I've said, I cannot
23 say that every county board of elections would be prepared with
24 election day ballots on May 3rd.

25 Q. Can you say that some county board of elections would

1 not be able to have ballots ready on May 3rd?

2 A. Yes.

3 Q. And some might be able to?

4 A. Yes.

5 Q. But you can't hold it in all 88 counties on May 3rd
6 because some would not be ready?

7 THE WITNESS: Yes.

8 JUDGE THAPAR: What about the military ballots?

9 THE WITNESS: No.

10 JUDGE THAPAR: Those cannot go out?

11 THE WITNESS: No. By April 5th, Your Honor.

12 JUDGE THAPAR: Okay.

13 BY MR. BREY:

14 Q. And it is also correct that even if a plan other than
15 plan three were used, you still could not have a primary
16 election on May 3rd for all 88 counties?

17 A. That's correct.

18 JUDGE BEATON: I may regret asking this question, but
19 I'm going to. Why can't you do it on May 3rd? I'm not
20 challenging your view, but what is the mission critical step
21 that couldn't happen by either April 5th or May 3rd to pull
22 that off? And as your -- as the lawyer said, I think we can --
23 we can use the baseline, not the aggregate because all counties
24 have to do this. So it needs to be the county you would most
25 be concerned about. What is the specific step that couldn't

1 happen?

2 THE WITNESS: Your Honor, how much time do you have?

3 JUDGE BEATON: You can answer it at a high level.
4 That's fine.

5 THE WITNESS: I apologize. I'm not in any way trying
6 to be cagey in what I'm saying. I'm wanting to be on the
7 record that what I'm saying is in the aggregate for the whole
8 state as opposed to one county saying they could do that. So
9 that's why I'm being nuanced. I apologize.

10 JUDGE MARBLEY: And please understand, Ms. Grandjean,
11 this three-judge panel will give you an opportunity to explain
12 your answer. So I don't want you to suffer any trepidation
13 about giving an answer because you're always going to be able
14 to explain with us. So please proceed.

15 THE WITNESS: Thank you. So, as we in some capacity
16 explained in our briefing, there is no metaphorical button in
17 elections that permits the state to redo everything. Ohio is a
18 bottom up and decentralized state, meaning every single county
19 gets to chose their voting system vendor. That's the vendor
20 that is supplying the voting equipment. They get to chose
21 their E-Pollbook vendor. They get to choose their voter
22 registration vendor. All of these pieces of technology are
23 intertwined.

24 The ballot itself is programmed through the election
25 management system and the voting system. This takes

1 significant amount of time to reprogram the ballot. And that's
2 just the technological reprogram.

3 JUDGE BEATON: At the risk of oversimplifying, if we
4 magically had a map at the end of the day and said here is what
5 we're going to use and try as hard as you can to get it done by
6 May 3rd, the first step that would need to happen is you would
7 send it out to the counties, they would work with their vendors
8 and IT to get that reprogrammed. And that's what you're not
9 sure could happen in time?

10 THE WITNESS: Step number one, if it were to be
11 hypothetically an entirely new plan, we would have to start
12 with the voter registration system because voters are
13 registered by district. So you only get the correct ballot if
14 you're registered appropriately, if that makes sense. So
15 that's how the voter registration system is intertwined.

16 JUDGE BEATON: And that's presumably done centrally by
17 the Secretary of State because the counties don't know.

18 THE WITNESS: It's not. It's done at the county
19 level. Voter registration is bottom up. I apologize. I speak
20 this lingo so much I forget it's not common. Bottom up means
21 that all voter registration data originates at the county
22 level.

23 JUDGE BEATON: Okay.

24 THE WITNESS: So I apologize for not explaining that.

25 JUDGE MARBLEY: Ms. Grandjean, I want to make sure

1 that I understand your testimony too.

2 You would have to look at -- I don't want to offend any
3 county so I'm trying to figure out how to say this. You would
4 have to look at the county that had the least amount of
5 resources, and that would be the county that would be less
6 likely to get prepared on a quick pivot. Is that right?

7 THE WITNESS: Perhaps. However, I will tell you this,
8 Chief Judge. It is often our largest, most resourced counties
9 that have the most complicating ballots. Between Franklin
10 County, Hamilton County, and Cuyahoga County, there are
11 approximately 8,000 different ballot styles. So I -- it is --
12 I would be remiss if I didn't say that a high-level answer is
13 almost impossible for me to give.

14 However, it is, again, a new map. You first start -- to
15 go back, Judge, to your question, you first start with the
16 reprogramming of the voter registration system itself. You
17 then move on to the certification and protest period for those
18 candidates, meaning, of course, if there is a new plan, you
19 have to afford the ability, unless there's temporary law, for
20 those candidates to file into those districts. Then, you know,
21 Ohio law provides for a protest period meaning that if someone
22 is certified for the ballot, you're protesting against their
23 certification to the ballot.

24 JUDGE BEATON: Are those lengths of time set by law?

25 THE WITNESS: So the certification, you know,

1 typically is, and the protest typically is. Those were in
2 House Bill 93. The secretary had the ability to alter those
3 deadlines given the flexibility from the general assembly to
4 speed up the time after I believe the January 22nd map was
5 passed. I'm sorry. The timeline in my head is very confusing.

6 JUDGE THAPAR: Can I walk you backwards? I want to
7 understand again at a high level what everything is. So
8 imagine the primary is May 3rd. I don't want you to pay
9 attention to the date today. Ideally, you need six weeks to
10 send out the military ballots to comply with law, correct?

11 THE WITNESS: So we would need -- no.

12 JUDGE THAPAR: Six weeks back you have to send them
13 out, correct?

14 THE WITNESS: Are you referring to the -- I'm sorry.
15 I'm not following.

16 JUDGE THAPAR: The military ballots, they generally go
17 out six weeks before an election?

18 THE WITNESS: Forty-six days.

19 JUDGE THAPAR: Forty-six days. How many days in --
20 and that is the earliest thing that occurs other than the
21 certification and protests whenever that occurs?

22 THE WITNESS: And the filing deadlines. This is all
23 presumed that the districts are known well in advance,
24 obviously. In the ordinary course of an election, districts
25 are programmed well in advance.

1 JUDGE THAPAR: Okay. Let me do it this way. You gave
2 us an August 2nd date, or the secretary did, as the latest
3 possible date he could hold the primary. How much before that
4 does he need -- he needs to send out military ballots 46 days
5 before then. How many days before that do you need to know the
6 districts?

7 THE WITNESS: An election calendar typically begins 90
8 days before an election.

9 JUDGE THAPAR: That's typical. Now I want worst-case
10 scenario.

11 THE WITNESS: Worst-case scenario -- and, again,
12 I'm -- this is based on the aggregate of what I know right now
13 without having culled a sampling of counties.

14 JUDGE THAPAR: Let me do it this way. Forty-six plus
15 10 was 56. You told us last Friday that if we instituted map
16 three, the secretary did, the lawyers on behalf -- if we
17 instituted map three, you could get it done. Is it 56 days
18 worst case? Can you do certification and protests still? Or
19 does that happen before the ballots are prepared?

20 THE WITNESS: That happens typically before, sometimes
21 simultaneously as the ballot are being prepared.

22 JUDGE THAPAR: So worst case was last Friday. The
23 secretary represented if we ordered map three, you could get it
24 done, right?

25 THE WITNESS: Last Friday.

1 JUDGE THAPAR: I think it was last Friday.

2 THE WITNESS: I just don't want to get confused with
3 the Monday filing as well.

4 JUDGE THAPAR: Is that ten days before April 5th? I
5 don't know. I'm just -- it's not --

6 THE WITNESS: Was last Friday ten days before
7 April 5th?

8 JUDGE THAPAR: I'm trying to figure out how many days
9 out. Ninety is best. What's worst and you can still make an
10 election happen is what I'm trying to figure out.

11 THE WITNESS: Again, I would say at the absolute
12 soonest.

13 JUDGE THAPAR: I understand you want 90. You want
14 120. You probably want 365. But we're operating in the world
15 we're in. So 56 days, could you make it happen?

16 THE WITNESS: Sixty.

17 JUDGE THAPAR: Thank you.

18 JUDGE MARBLEY: Sixty days would take care of both
19 behemoths like Franklin County, Cuyahoga, and Hamilton as well
20 as a smaller county like, say, Darke County?

21 THE WITNESS: Yes. I have not asked them specifically
22 about 60 days. I just want the record to reflect that.

23 JUDGE THAPAR: They're not here telling us otherwise,
24 right, as far as I know? Okay.

25 JUDGE BEATON: Does that include a period for

1 candidates? I think we've been focused more on what the voters
2 receive in a ballot, but what has to happen -- or does your
3 answer include the steps that would need to happen in order for
4 candidates to decide I'm running, I'm running in this district,
5 I'm filing my paperwork? Is that embraced in this 60 days?

6 THE WITNESS: So it depends --

7 (Loud buzzer noise coming from courtroom audio system.)

8 JUDGE THAPAR: That means your time is up.

9 THE WITNESS: It's my lucky day.

10 JUDGE MARBLEY: We don't have lights like they have at
11 the court of appeals. We just have buzzers.

12 (Loud buzzer noise stopped.)

13 JUDGE MARBLEY: Please continue.

14 THE WITNESS: I understand we're dealing in a
15 hypothetical world right now. So I guess let me say this.
16 There are -- there would need to be temporary law passed or
17 this Court ordering our ability to have flexibility within
18 current law that doesn't exist that sets these rigid timelines.
19 And the filing deadline for candidates is 90 days before an
20 election.

21 JUDGE THAPAR: If they don't know their districts, how
22 can they --

23 THE WITNESS: That's right.

24 JUDGE MARBLEY: Have most candidates who intend to
25 run, to your knowledge, already filed, though, based on the

1 view that there would be a May 3rd election?

2 THE WITNESS: So the -- specifically, the filing
3 deadline in the State of Ohio was only changed by the general
4 assembly for congressional candidates. That was changed in
5 Senate Bill 258 to March 4th. That was a 60-day filing
6 deadline, Your Honor. The rest of the candidates did receive
7 the 90 day. And that filing deadline was on February 2nd of
8 this year.

9 That was premised -- that filing deadline was premised
10 on the January 22nd map that the Ohio Redistricting Commission
11 passed that they filed under that. The general assembly came
12 back then and passed House Bill 93 that altered the filing
13 rules, meaning that they inserted a transfer provision and
14 other qualifiers to essentially grandfather in those petitions,
15 if that makes sense.

16 JUDGE BEATON: So a new map under House Bill 93
17 wouldn't wipe out the people who have declared, though it could
18 create districts in which no one has declared or in which
19 people would declare but they haven't had a chance to already.
20 So would there need to be some abbreviated period for new
21 candidates?

22 THE WITNESS: That is up to the lawmakers, the general
23 assembly, to determine what is best policy. I think they're --
24 looking at the language of House Bill 93 is slightly a gray
25 area which would ultimately probably lead to additional

1 litigation surrounding this. Shocking. That given the fact
2 that on the 6th -- I'm really -- I apologize to get so in the
3 weeds here, but I do think it's important.

4 There was not only a transfer provision contained in
5 House Bill 93, meaning if you filed per the correct board of
6 elections, the most populous board of elections under the
7 January 22nd map, and that map was subsequently invalidated by
8 the Ohio Supreme Court. However, let's say the most populous
9 county changed once the Ohio Redistricting Commission passed a
10 new map. That first board of elections was required to
11 transfer the petition, the candidate petition, to the new most
12 populous county board of elections. So that transfer provision
13 is there.

14 The signature analysis per the candidate petition I
15 think is what would need to be addressed because it only
16 contemplates certain maps, meaning -- so typically under Ohio
17 law, there are requirements for signing a part-petition,
18 requirements for signing a candidate petition.

19 JUDGE THAPAR: Can I interrupt you? I really -- I'm
20 not smart enough to figure all of this out. What I care about
21 is the bare bones. So 60 days before an election could happen,
22 does that mean candidates can file and all the other stuff that
23 has to happen can happen if it's 60 days?

24 In other words, you get the map. Day 60, can candidates
25 file and you all make an election happen, or now do we need

1 more days added on?

2 THE WITNESS: We need more. I'm sorry. My answer was
3 premised on having the maps prior to the 60 days.

4 JUDGE THAPAR: So how much before the 60 days?

5 THE WITNESS: An additional two weeks.

6 JUDGE THAPAR: So you're saying 74 days?

7 THE WITNESS: Yes, to reprogram the voter registration
8 systems assuming it is an entirely new map.

9 JUDGE THAPAR: So everything could happen if you had
10 74 days from August 2nd?

11 THE WITNESS: It would be incredibly condensed, but I
12 believe we could get it done.

13 JUDGE THAPAR: That answers my question.

14 JUDGE BEATON: Has the Secretary of State, in
15 connection with the Commission process or this litigation or
16 any other litigation, written down on paper a roadmap of what
17 all would need to happen between the imposition of a new map
18 and the primary election? Because this is a subject that as we
19 all can see is extremely hard to handle orally and we all
20 empathize with your position. And on the flip side, it's also
21 arguably the most important factual information for us to have
22 in front of us since this is, by definition, a step of last
23 resort.

24 And I'm not -- it would seem to be in your -- in the
25 interest of your boss and many others to help us not create new

1 problems inadvertently. Right now we're operating in a vacuum,
2 and we are going to do our best whatever it is, if anything, we
3 end up doing. It just seems like that could be extremely
4 helpful to have on paper. I'm not saying it doesn't exist. If
5 it does, perhaps someone from the secretary's office can point
6 me to it.

7 MR. BREY: Your Honor, I apologize for interjecting.
8 I believe pages 9 and 10 of the secretary's response contain a
9 timeline. It may or may be the timeline the Court is
10 interested in seeing.

11 JUDGE BEATON: What document number is that?

12 MR. BREY: Docket number 113. I believe that timeline
13 relates to a May 24 date, and that's also presuming the third
14 plan which, as I understand the submission, since the boards of
15 election have already proceeded along the ways of the third
16 plan, it would require less days than if there were a totally
17 new plan.

18 JUDGE THAPAR: I don't have docket numbers. Is it a
19 response to the motion for TRO?

20 MR. BREY: The Court ordered on Friday that certain
21 questions be answered by Monday. And the response of the
22 Secretary of State was filed on Monday. And at pages 9 and 10,
23 there is a number of dates that are described in there.

24 JUDGE BEATON: Does the witness have this timeline?

25 MR. BREY: It's not in the notebook that I provided.

1 I apologize.

2 JUDGE MARBLEY: I can give her mine.

3 MR. BLANTON: Your Honor, I have a spare copy.

4 JUDGE MARBLEY: Okay.

5 JUDGE BEATON: Perhaps if you can take a look at that
6 and let us know if this is consistent with your answers today.

7 THE WITNESS: Your Honor, I believe my affidavit is
8 what -- is that the timeline you're referencing, Mr. Brey?

9 MR. BREY: I was referencing the motion. I believe it
10 is --

11 JUDGE MARBLEY: It's on pages 9 and 10. And it's all
12 premised on a May 24th date. The first date is March 30th,
13 then March 31st through April 9th, the boards must do the
14 following non-exhaustive list. Are you familiar with that
15 document?

16 THE WITNESS: I am.

17 JUDGE MARBLEY: Let me ask you this, Ms. Grandjean.
18 I'm assuming that all of the dates contained in the secretary's
19 response are key to time frames of the election date. That is,
20 as Judge Thapar asked earlier, working backwards, right?

21 THE WITNESS: Yes, sir.

22 JUDGE MARBLEY: So, theoretically, if this panel were
23 to say we don't like May 24th but we like August 2nd, could we
24 use the same time frames working backwards that the secretary
25 has used key to the May 24th date?

1 THE WITNESS: This timeline -- I will answer your
2 question if I just understand it correctly.

3 JUDGE MARBLEY: Sure.

4 THE WITNESS: This timeline was premised on the boards
5 of elections having a backup database that contained the third
6 map they already reprogrammed. Does that make sense? Is your
7 hypothetical premised on the same facts?

8 JUDGE MARBLEY: Yes. Everything else being the same
9 except that instead of May 4th we use August 2nd.

10 THE WITNESS: I don't -- I think that that can work.

11 JUDGE MARBLEY: Okay.

12 THE WITNESS: Again, the premise of that extra work
13 having been done is important to the answer.

14 JUDGE MARBLEY: I understand. Thank you.

15 JUDGE THAPAR: Can I see yours?

16 JUDGE MARBLEY: You can see mine.

17 MR. BREY: May it please the Court, I believe the same
18 dates are reflected in paragraph 13 of the affidavit of
19 Ms. Grandjean that was attached to what Your Honor has in his
20 hands.

21 JUDGE MARBLEY: All right.

22 MR. BLANTON: Your Honor, that's a complete copy that
23 includes Ms. Grandjean's affidavit.

24 JUDGE THAPAR: Thank you.

25 JUDGE BEATON: This takes us from March 30th to

1 May 24th which is less than the 74 days you were talking about
2 a moment ago. And you said the reason for that is because this
3 uses a map three plan that had already been programmed in the
4 system. That's the step you would have to repeat with whatever
5 new map.

6 THE WITNESS: That's right, sir, and presuming that
7 the candidates do not need to refile and all of that subsequent
8 work that had essentially occurred starting at February 2nd.

9 JUDGE MARBLEY: Does that also contemplate new
10 candidate filings? So, in other words, if we were to adopt,
11 let's say, the fourth map just for the purpose of my question,
12 would we have to build in a time for any persons who under the
13 previous maps would not be eligible to run in a certain
14 district but now under a new map might be eligible to run?
15 Would this timeline contemplate that as well?

16 THE WITNESS: It does not. It is only premised on the
17 third map.

18 JUDGE MARBLEY: How much additional time would we need
19 to build in if we were trying to make sure that persons who now
20 are eligible to run wanted to run?

21 THE WITNESS: So effectively would the filing deadline
22 be reopened?

23 JUDGE MARBLEY: Yes. If we wanted to include a new
24 filing deadline for new candidates, how much time would we need
25 to allot for that?

1 THE WITNESS: Well, as I said, that typically starts
2 90 days before, but --

3 JUDGE MARBLEY: But going to Judge Thapar's paradigm,
4 what's the least amount of time that we can give for a new
5 candidate?

6 THE WITNESS: Just repeating the facts. An entirely
7 new map, an open filing deadline. Is the fourth map final?

8 JUDGE MARBLEY: Let's say the fourth map is out, this
9 panel's map; so it's final.

10 THE WITNESS: Then I think a range of what we
11 discussed from --

12 JUDGE THAPAR: Seventy-four to 90?

13 THE WITNESS: Yes. But I think, again, the more we
14 expedite -- I feel the panel needs to hear this. The more we
15 expedite, the more risk we insert into the process.

16 JUDGE THAPAR: Aren't we past worrying about risk at
17 this point?

18 THE WITNESS: As the director of elections, I'm never
19 past worrying about risk.

20 JUDGE THAPAR: I appreciate that. But could we do it
21 with 74 days? If we said 74 days out, map X has to be put in
22 place, candidates have to be able to file, everything has to be
23 able to happen, we could do it?

24 THE WITNESS: Yes.

25 JUDGE THAPAR: An ideal world is 90 days?

1 THE WITNESS: An ideal world in the regular ordinary
2 course of an election calendar is 90 days.

3 JUDGE BEATON: Would that be May 2nd?

4 THE WITNESS: I'm sorry, from -- is 90 -- it's
5 actually May 4th.

6 JUDGE THAPAR: And May -- am I doing this right,
7 May 18th? 20th? No, 20th would be 16. So May 18th. I don't
8 know if that's --

9 JUDGE BEATON: It would be 74 days.

10 JUDGE THAPAR: May 20th. You're right.

11 JUDGE MARBLEY: Sometime between May 4th and May 20th
12 for an August 2nd election.

13 THE WITNESS: To begin the process?

14 JUDGE MARBLEY: Yes.

15 THE WITNESS: Yes.

16 JUDGE MARBLEY: All right. Mr. Brey, do you know
17 where you left off?

18 MR. BREY: I do. And, actually, I appreciate the
19 questions from the panel because it's always -- I always enjoy
20 having judges tell me what questions they're wanting answers to
21 by asking them. So you're not interfering with my presentation
22 in any way.

23 JUDGE MARBLEY: Everyone who is participating by phone
24 please mute their mics.

25 Please continue, Mr. Brey.

1 BY MR. BREY:

2 Q. There's been some discussion back and forth about moving
3 the primary date in response to questions from the panel. Let
4 me ask you about two different possibilities, one a bifurcated
5 primary and one whether a primary should be held as early as
6 possible versus as late as possible.

7 First of all, are there -- if there were a bifurcated
8 primary, would that have cost ramifications to the citizens of
9 Ohio?

10 A. Yes.

11 Q. Would those cost ramifications be large or small?

12 A. Large.

13 Q. Do you have an estimate of how much it would cost to
14 have a bifurcated primary?

15 A. I don't have, obviously, my notes in front of me. But
16 if I'm recalling to the best of my recollection, I believe the
17 previous estimate that was given was 20 million, I believe.
18 But, again, that's just to the best of my recollection without
19 anything in front of me right now.

20 Q. Do you recall that in 2011 the legislature contemplated
21 and ultimately rejected conducting two primaries?

22 A. Can you repeat the question?

23 Q. Do you know whether or not the Ohio General Assembly in
24 2011 contemplated but ultimately rejected conducting two
25 primaries?

1 A. I'm not aware.

2 Q. Are you aware of an estimate of the -- in 2011 the cost
3 of conducting two primaries?

4 A. I'm not aware.

5 Q. Are you familiar with a letter from the Ohio Association
6 of Elections Officials strongly discouraging two primaries that
7 was sent in February of this year copied to Secretary of State
8 LaRose?

9 A. Do you have a copy? There's been so many letters
10 throughout this process.

11 Q. I actually do have a copy.

12 Have you seen that letter before?

13 A. Yes.

14 Q. Does that refresh your recollection of what the estimate
15 of conducting a bifurcated primary was 10 years ago or 11 years
16 ago?

17 A. According to the letter it was 15 million in 2011.

18 Q. And the 20 million or so is a more recent estimate? And
19 I realize you're not pinning yourself down on that.

20 A. Yeah. And obviously I, just for the record, didn't
21 write this letter. It was written by a nonprofit association.
22 But to the best of my recollection, it was 20.

23 Q. Is this -- the Ohio Association of Election Officials,
24 is that the group of folks you spoke with this past Friday
25 afternoon?

1 A. It was.

2 Q. And you spoke with them to find out what realistically
3 could be done in terms of timing?

4 A. Yes.

5 Q. Do you agree or disagree that the logistics of
6 conducting back-to-back elections are significant and
7 troublesome?

8 A. Could you please define back-to-back elections?

9 Q. A bifurcated primary. Are you familiar in your role
10 with the Secretary of State of whether or not that would cause
11 logistics problems?

12 A. Certainly running two statewide elections within the --
13 within a six-month period is difficult.

14 Q. And would it be challenging for election officials to
15 manage and poll worker recruitment if they did that?

16 A. I'm sure there would be struggles to recruit poll
17 workers.

18 Q. Would there be challenges with obtaining ballots for
19 bifurcated elections given the supply-chain issues we have?

20 A. I'm not entirely sure just because I haven't personally
21 surveyed the boards. I think there are known supply-chain
22 issues, generally speaking, but I have not asked the specific
23 questions of the bifurcated quantities.

24 Q. Have you thought about the issue of whether there would
25 be voter confusion and lower voter turnout with a bifurcated

1 election?

2 A. Certainly I think about voters every single second of my
3 day.

4 Q. Do you anticipate that it would suppress voter turnout
5 to have a bifurcated election? Or is that not a concern of
6 yours?

7 A. Can you repeat the question?

8 JUDGE MARBLEY: In repeating the question, because of
9 the importance of the question, would you not make it a
10 compound question.

11 MR. BREY: I apologize.

12 JUDGE MARBLEY: I'm just concerned if she says yes, we
13 may not know what she's saying yes to.

14 MR. BREY: I apologize to the Court as well as Counsel
15 for my propensity to ask confusing questions.

16 BY MR. BREY:

17 Q. Would there be, in your professional judgment, a
18 suppressed voter turnout with a bifurcated primary?

19 A. I don't know.

20 Q. Have we ever had a bifurcated primary, to your memory,
21 as long as you've been involved with Ohio politics, statewide?

22 A. I'm not sure.

23 Q. The other possibility is moving the date either short
24 period of time or long period of time. Do you have any
25 concerns that a lot of Ohio potential poll workers or voters go

1 on vacation in July and August?

2 A. Yes.

3 Q. Are you concerned that a July or August primary might
4 have a much lower voter turnout than a May or June primary?

5 A. I'm not sure specific -- I haven't studied the voter
6 turnout comparison.

7 Q. You reference there is a holder of August 2 for special
8 elections in your affidavit; is that correct?

9 A. Can you repeat that? I'm struggling to hear you. I'm
10 sorry.

11 Q. Is August 2 a date in Ohio law under which special
12 elections can be conducted?

13 A. It is.

14 Q. Have special elections, as long as you've been involved
15 in Ohio politics, ever been conducted statewide?

16 A. I'm not sure. There was a special congressional last
17 year.

18 Q. And that was just in one or two congressional districts,
19 correct?

20 A. Correct.

21 Q. It wasn't statewide?

22 A. Correct.

23 Q. Have you ever had any discussions with any of the
24 elections officials you deal with about challenges in obtaining
25 poll workers in the summertime?

1 A. I believe I answered that question.

2 Q. I'm sorry.

3 A. There is certainly -- there is always a concern about
4 recruiting poll workers consistently. And the timing of doing
5 so certainly impacts the recruitment.

6 Q. Now, am I correct that in presidential years, Ohio often
7 holds the primary election in June?

8 A. I believe the 2020 primary election was in March.

9 Q. Okay. Then I stand corrected. Is it -- have you
10 ever -- are you familiar with any studies of voter turnout in
11 the summertime versus in the spring?

12 A. I'm not.

13 Q. Would you agree that it would maximize voter turnout to
14 conduct a primary in a season where there's voters more likely
15 to be engaged and to show up at the polls?

16 A. Can you repeat the question?

17 Q. Did you want me to repeat it or rephrase it?

18 A. Either.

19 Q. Okay. Would you agree that you're more likely to have a
20 strong voter turnout in seasons in which the voters are not
21 otherwise engaged with summer vacation or summer activities?

22 A. I'm not sure how to answer that question.

23 JUDGE BEATON: Mr. Brey, may I ask, does this line of
24 questions relate to any requests that would push out the
25 currently scheduled primary for congressional statewide

1 elections? Or is all of this premised on a world in which --
2 what we discussed earlier about the currently scheduled primary
3 date actually is incorrect and we say, yeah, you got to go
4 ahead on the current and have one primary for all the races on
5 the May date? Is that what you're driving at?

6 MR. BREY: Obviously, with the filing on Monday, as
7 well as questions this Court has asked, has suggested the Court
8 is contemplating changing the primary date, I thought it would
9 be helpful to ask this witness what would happen in terms of
10 what's the best judgment in terms -- that this Court may have
11 to make in terms of having a later primary date, July or
12 August, or have an early one in May or June, if it needs to be
13 changed at all.

14 JUDGE BEATON: But I'm right that neither you nor any
15 other party in this case is asking us to move elections other
16 than the general assembly, the primary election for any other
17 elections, right?

18 MR. BREY: That's correct, Your Honor.

19 JUDGE BEATON: And do you anticipate us hearing
20 evidence later today that notwithstanding this witness's
21 answers, that it is still possible to stick with the current
22 May date for all the races?

23 MR. BREY: I believe this witness has testified that
24 it is not possible to hold a unified primary on May 3rd.

25 JUDGE THAPAR: So where is this going?

1 MR. BREY: Right now, as of today, there is no primary
2 date upon which my clients can vote for a candidate for a
3 general assembly. So I believe that the reality is we're
4 asking this Court to change the primary date, or do what it
5 needs to do to ensure my client's right to have, one, a plan,
6 and a primary date on which that plan can be voted.

7 JUDGE BEATON: But are you going to tell us it's
8 possible to do it on May 3rd? Or is some witness going to tell
9 us it's possible despite what the Secretary of State --

10 MR. BREY: I think the witness told us it's
11 impossible.

12 JUDGE BEATON: I guess I'm curious. If a bifurcated
13 election under the status quo is inevitable, then the premise
14 of all of these questions may be true. I just don't see where
15 it goes. Of course, there are consequences and costs to having
16 a second primary.

17 MR. BREY: I'm sorry, Your Honor. I didn't hear you
18 clearly.

19 JUDGE BEATON: Of course there will be costs and
20 consequences of having a bifurcated primary. I'm just curious
21 whether spelling those out in such detail is necessary if
22 there's no alternative to having a bifurcated primary, which is
23 why I asked if there was some request that we either move the
24 current non-general assembly elections back, or if there was
25 going to be some other evidence to contradict what we already

1 heard which is that the current May primary is impossible.

2 MR. BREY: Your Honor, we are not going to present
3 evidence to contradict Ms. Grandjean's statement that the
4 May 3rd primary is impossible.

5 JUDGE THAPAR: Then I think what he is saying is we
6 get the point. We understand.

7 MR. BREY: I'm done with this line of questioning.

8 JUDGE THAPAR: Can I ask a few questions that this
9 brought up? Once you program a system, a map, into all the
10 computers, everyone's got it. Does it exist forever? In other
11 words, can they turn the switch on and you could have -- let me
12 use the 2010 map as a hypothetical. That's the map that Ohio
13 operated under -- and you should tell me if I'm wrong -- till
14 now or they changed it?

15 THE WITNESS: That map, Your Honor, was changed
16 when --

17 JUDGE THAPAR: 2016.

18 THE WITNESS: No. When the first --

19 JUDGE THAPAR: Just give me the year.

20 THE WITNESS: This year. I'm sorry, sir.

21 JUDGE THAPAR: Map one.

22 THE WITNESS: Yeah.

23 JUDGE THAPAR: Is the 2010 map still in the system
24 somewhere?

25 THE WITNESS: I do not believe so for every single

1 board of elections, no.

2 JUDGE THAPAR: But for most it is?

3 THE WITNESS: The status quo, to the best of my
4 current knowledge, for voter registration systems is somewhere
5 between the January 22nd map and the February 24th map.

6 JUDGE MARBLEY: So there is a map in the system?

7 THE WITNESS: Yes, that exists from 2022.

8 JUDGE THAPAR: This year's map?

9 THE WITNESS: Correct. Because we had to verify -- we
10 had to go through the filing deadline process with the
11 candidates. So we had to reprogram the January 22nd map into
12 each and every county's voter registration systems to verify
13 those petitions.

14 JUDGE THAPAR: So there is a map in the system?

15 THE WITNESS: Yes.

16 JUDGE THAPAR: Okay.

17 THE WITNESS: But it may not be the same.

18 JUDGE THAPAR: As of today, are you starting to put
19 map four in? Will that supersede the other map?

20 THE WITNESS: No. The secretary has pressed pause on
21 any changes to voter registration systems in light of this
22 litigation.

23 JUDGE THAPAR: Okay. So which map is in the system?
24 You don't know. One or two?

25 THE WITNESS: Could be one or two.

1 JUDGE MARBLEY: Could it be both? Or does one
2 automatically bump the other?

3 THE WITNESS: Yes. One automatically bumps the other.
4 The conversations we've been having surrounds backup. Again,
5 because of the decentralized nature and the variety of vendors,
6 there's different capacities to what each vendor is able to do.

7 JUDGE THAPAR: What did you use in 2020? Was it the
8 2010 map?

9 THE WITNESS: Yes. I'm sorry, Your Honor. Just to be
10 very clear, whatever the final map to that redistricting
11 process was. I don't know if it was 2011.

12 JUDGE THAPAR: I'll call it the 2010 map. Yes, I
13 understand. And then the newest map in the system is either
14 map one or map two.

15 THE WITNESS: That's correct, to the best of my
16 knowledge.

17 JUDGE THAPAR: Thank you.

18 BY MR. BREY:

19 Q. I have a couple of questions about the earliest a
20 primary could be elected and still -- elected for general
21 assembly candidates. In your affidavit, you indicated May 24
22 as the earliest date. And if I heard your testimony correctly,
23 you said you needed at least 60 days which, by my count, would
24 take us to May 31 if we're still using Tuesdays. Which is the
25 earliest date in which, if you use map three, you could conduct

1 a primary for general assembly candidates?

2 A. Mr. Brey, just to be very clear and on the record, the
3 hypothetical I was going down with the panel was premised on a
4 new map.

5 Q. Okay. So, if there were a new map, 60 days plus 14, or
6 60 days from today or tomorrow?

7 A. Again, as I explained to the panel -- and I don't know
8 if it's probably in the record. We need time to reprogram. So
9 an additional two weeks to reprogram. Again -- and everything
10 I say is in the aggregate. One county may need a week, another
11 county may need two weeks.

12 JUDGE THAPAR: Let me give you a hypothetical. What
13 if we use the map in the system, whatever one it is?

14 THE WITNESS: That makes it easier, significantly
15 easier.

16 BY MR. BREY:

17 Q. Make sure I've got the numbers right. If the Court were
18 to order that map three or plan three be used today or
19 tomorrow, there could be an election, a primary election, for
20 general assembly candidates on May 24th; is that correct?

21 A. Correct. On that day.

22 Q. And if there were an order for a different map, say map
23 four, the earliest would be June 14? If you add 60 plus 14
24 days, I believe that's how it comes out.

25 A. I don't have a calendar in front of me; so if that math

1 adds up to being around that date.

2 JUDGE MARBLEY: But we're talking about a new map
3 being at a minimum 74 days.

4 THE WITNESS: That includes the two weeks to
5 reprogram. Just to go back to the hypothetical because, when
6 you change one fact in this hypothetical, it changes
7 everything.

8 Chief Judge was referencing opening the filing deadline
9 for candidates which also changes the equation. Ordering a map
10 that candidates were already partially certified to cuts the
11 time down administratively. Does that make sense?

12 BY MR. BREY:

13 Q. It does. Thank you. And that's because I presume a lot
14 of work has already been done on map three, for example?

15 A. And even going back. I mean, the transfers occurred
16 when map three was passed, right. And so those boards of
17 elections where they were -- they had originally had the
18 candidates' petitions that were filed under the January 22nd
19 map, now have -- the new boards have them, right, the new most
20 populous boards have them. Yes, the work has started and been
21 done.

22 MR. BREY: I have nothing further for this witness.

23 JUDGE MARBLEY: All right. Thank you very much.
24 Counsel for Defendant LaRose.

25 MR. BLANTON: Thank you, Your Honor.

1 JUDGE MARBLEY: Just as a housekeeping matter,
2 Mr. Brey had the witness as upon cross and so he was leading
3 her. But you don't have that luxury. I just want you --

4 MR. BLANTON: I will do my best not to lead the
5 witness.

6 JUDGE MARBLEY: That's preferrable. Even though Judge
7 Thapar is now on the Sixth Circuit, he was a district court
8 judge. So that is the original DNA. So we're all poised to
9 object to leading questions if posed. Please proceed.

10 MR. BLANTON: I will do my best. Jonathan Blanton on
11 behalf of Secretary of State LaRose.

12 JUDGE BEATON: May I ask one other preliminary
13 question? I take it you work in the attorney general's office
14 but you're not here representing anyone other than the
15 Secretary of State today?

16 MR. BLANTON: That's right.

17 JUDGE BEATON: I guess even though three members of
18 the Commission are represented here in this lawsuit, the other
19 members are not represented by you or anyone else?

20 MR. BLANTON: I believe Mr. Clark is here on behalf of
21 the Commission. But I believe the secretary is the original
22 named defendant for this motion. That's why we're here on his
23 behalf.

24 JUDGE BEATON: Right. I just wanted -- I was curious
25 whether you were representing anyone other than the Secretary

1 of State.

2 MR. BLANTON: No, Your Honor. I'm here on behalf of
3 the Secretary of State in his role as the administrator of
4 elections for the State of Ohio.

5 JUDGE MARBLEY: Please proceed, Mr. Blanton.

6 MR. BLANTON: Thank you, Your Honor.

7 - - -

8 DIRECT EXAMINATION

9 BY MR. BLANTON:

10 Q. Ms. Grandjean, Mr. Brey and the Court have asked a lot
11 of detailed questions about the election process. Ohio's
12 election process is fairly complicated. Is that safe to say?

13 A. Yes.

14 Q. I'd like to walk you through things sort of step-by-step
15 so that the Court will have an understanding of what the time
16 frames are.

17 Ms. Grandjean, you were asked whether the Secretary of
18 State has prepared or makes available a single document that
19 the Court could refer to, or individuals could refer to, in
20 terms of applicable election timelines. Do you know whether
21 the Secretary of State retains such a document anywhere?

22 A. We publish the election calendar on our website. The
23 2022 election calendar is obviously not accurate given all of
24 the different, rapid changes, but it is a good example of the
25 ordinary course or the regular course of an election.

1 Q. Does that election calendar include cites to the revised
2 code and specific statutory time frames?

3 A. It does.

4 Q. Would you recognize the election calendar if you were to
5 see it?

6 A. I would.

7 MR. BLANTON: May I, Your Honor?

8 MR. BREY: Please the Court, I believe that's Exhibit
9 1.

10 MR. BLANTON: Yes. This was previously provided by
11 Mr. Brey as Exhibit 1.

12 BY MR. BLANTON:

13 Q. Ms. Grandjean, do you have that in front of you?

14 A. I do.

15 Q. Do you recognize that document?

16 A. I do.

17 Q. And what is it?

18 A. It is the 2022 Ohio Elections Calendar.

19 Q. And aside from the various challenges we have had in the
20 2022 general election primary season, does it accurately
21 reflect the statutory time frames within which things are to
22 occur for elections in Ohio?

23 A. Generally, but it does not contain the changes contained
24 in Senate Bill 11 or House Bill 93 or Senate Bill 258.

25 Q. Let's talk about Senate Bill 11. What is Senate Bill

1 11?

2 A. Senate Bill 11 was the bill that the general assembly
3 passed to essentially account for the UOCAVA deadline and also
4 provided an appropriation to the secretary for essentially
5 expedited postage for the UOCAVA ballots.

6 JUDGE THAPAR: What's UOCAVA?

7 THE WITNESS: Uniformed and Overseas Citizens Act.
8 It's a federal law.

9 JUDGE THAPAR: I'm aware of the law. You say it that
10 way -- I hate acronyms.

11 THE WITNESS: Sorry.

12 BY MR. BLANTON:

13 Q. Overseas and military voters?

14 A. Yes.

15 Q. That had to do with the postage and the extended time
16 during which those ballots may be counted after election day?

17 A. Yes. It added an additional ten days for uniformed and
18 overseas voters for their ballot to make it back to the board
19 of elections. As long as they put it in the mail by the close
20 of polls on election day, they have 20 days for that ballot to
21 make it back wherever it is in the world.

22 JUDGE THAPAR: Ten or 20?

23 THE WITNESS: Twenty totals, Your Honor.

24 BY MR. BLANTON:

25 Q. You mentioned House Bill 93; is that correct?

1 A. Yes.

2 Q. What did House Bill 93 do?

3 A. It did many, many different things.

4 Q. Relative to elections and time frames.

5 A. Okay. So first and foremost, it, as I've stated,
6 created this transfer provision. It did not change the filing
7 deadline for general assembly candidates. Again, as I
8 testified earlier, the only filing deadline that was changed
9 pursuant to Senate Bill 258 was the congressional filing
10 deadline, and that was on March 4th. It went, for
11 congressionals, from 90 to 60. General assembly stayed the
12 same at 90; so it maintained that.

13 However, it created this transfer provision and it
14 created qualifiers for the analysis on the validity of
15 declarations of candidacies and part-petitions at the highest
16 level.

17 Q. Did it give the Secretary of State authority to change
18 certain election deadlines?

19 A. Yes.

20 Q. Was that specific to a given time frame of the May 3rd
21 election or something else?

22 A. My belief is the May 3rd election.

23 Q. Ms. Grandjean, the Court has asked about the time frame
24 needed to implement -- we'll start with a new election, a new
25 primary election for general assembly candidates. Are there

1 statutory provisions the Court would need to be mindful of in
2 terms of the time it would take to lawfully, under Ohio law,
3 conduct that election?

4 A. Yes. And I feel like I was trying to get to that in the
5 hypothetical answer. But there are numerous deadlines that
6 would need to change if the election calendar is altered.

7 Q. When you were talking about the normal election calendar
8 of 90 days, that contemplates the certification of candidates?

9 A. Yes.

10 Q. Ninety days before election day?

11 A. Yes.

12 Q. Is that statutory?

13 A. Yes.

14 Q. So, if the Court were to order a primary election on a
15 compressed time frame, that's one of the things they would need
16 to consider?

17 A. Yes. Although I'm trying to understand the -- I haven't
18 done the analysis on how House Bill 93 impacts any of this.

19 Q. Assuming House Bill 93 does not impact a subsequent
20 primary for the general assembly, is that something the Court
21 needs to be mindful of when crafting relief if there is a
22 separate primary?

23 A. Yes.

24 Q. The same with the certification of candidates by the
25 boards. That's 78 days prior?

1 A. No. Well, do you mind if I look?

2 Q. No. Please. I apologize for the tiny font.

3 A. It is 78. Apologies.

4 Q. If the Court were on the 78-day clock we were talking
5 about a few minutes ago, that's something the Court would need
6 to consider also?

7 A. Yes.

8 JUDGE THAPAR: What was 90 and what was 78? Repeat
9 that again. I thought certification of candidates was 90 days.

10 THE WITNESS: That's correct. The filing deadline is
11 90 days.

12 MR. BLANTON: That was my lack of clarity.

13 BY MR. BLANTON:

14 Q. Filing deadline for candidates 90 days prior by statute,
15 correct?

16 A. Correct.

17 Q. And certification by the boards at 78 days prior to
18 election day, correct?

19 A. Correct.

20 Q. That's by statute?

21 A. Typically, yes.

22 Q. And then there is a recertification back to the boards
23 by the Secretary of State of candidates to be on the ballot; is
24 that correct?

25 A. Yes. The issuance of the form of the ballot which is 70

1 days prior to the election.

2 Q. Those are included in the provisions that this Court
3 should be mindful of if changing Ohio's election calendar?

4 A. A non-exhaustive list.

5 Q. I won't get into an exhaustive list, Mandy.

6 JUDGE MARBLEY: Ms. Grandjean, in talking to us about
7 the August 2nd date, all of these things that Mr. Blanton has
8 listed were contemplated in your giving us that date; is that
9 right?

10 THE WITNESS: It is, in addition to the knowledge that
11 I have that special elections have already been scheduled in
12 counties for county issues on August 2nd.

13 JUDGE MARBLEY: You just glom on to what has already
14 been established, right?

15 THE WITNESS: That is the current law, that the
16 counties can have an August 2nd special election.

17 JUDGE THAPAR: If it's August 2nd, May 4th would allow
18 you to do all of these things, whereas May 20th we would have
19 to change some of these things?

20 THE WITNESS: For the full calendar?

21 JUDGE THAPAR: Yes.

22 THE WITNESS: You mean if we had maps before May 4th?

23 JUDGE THAPAR: No.

24 JUDGE BEATON: On May 4th.

25 JUDGE THAPAR: You get a map on May 4th. Could you do

1 everything you need to do?

2 THE WITNESS: We still could do everything. It would
3 be deviating from this schedule because the filing deadline
4 under current --

5 JUDGE THAPAR: You would have to abbreviate the filing
6 deadline?

7 THE WITNESS: That's right.

8 JUDGE BEATON: Isn't it the secretary's position
9 already on page 9 that we discussed earlier that -- you all
10 proposed a May 24th schedule that wouldn't respect all the
11 deadlines that we've just been talking about, right? So isn't
12 the secretary already assuming that some of these deadlines,
13 albeit statutory, are altered?

14 MR. BLANTON: If I may, Your Honor, the May 24th
15 primary assumes the use of the third plan and carrying over a
16 number of the provisions of House Bill 93 about not reopening
17 candidate registration, not reopening the opportunity to file
18 petitions to run. It also contemplates the -- it also does not
19 implicate Article XI, Section 9(C) which provides for, after
20 the passage of a map, an additional 30-day period for
21 individuals to establish residence within the new legislative
22 district.

23 JUDGE BEATON: So it's the secretary's position that
24 the authority set out assumed by the schedule on page 9 would
25 not exist for a different map?

1 MR. BLANTON: Yes, Your Honor.

2 JUDGE BEATON: And if we looked at the statute, it
3 says that?

4 MR. BLANTON: Pardon me?

5 JUDGE BEATON: If we looked at that statute --

6 MR. BLANTON: You would need to look at the Ohio
7 Constitution Section 9(C) and also the elections calendar.
8 9(C) specifically contemplates the passage of a new map. When
9 the redistricting commission adopts a map following the
10 decennial census, there is a 30-day move-in period for
11 individuals to establish residency per Ohio law.

12 JUDGE BEATON: You're saying those default statutory
13 deadlines were overridden, or at least allowed to be overridden
14 in some circumstances, and that's reflected on page 9 of your
15 filing.

16 MR. BLANTON: Yes, under map three which is a
17 continuation of a process. Map four is new. And the
18 secretary's position would be that restarts and reopens the
19 9(C) period which --

20 JUDGE MARBLEY: Here is what I don't understand.
21 Ms. Grandjean has stated either map one or two -- in response
22 to one of Judge Thapar's questions, that either map one or two
23 is already programmed into the system. Does this suggest -- is
24 this premised on Judge Beaton's question -- the information on
25 page 9, is that premised on map three having to be programmed

1 into the system?

2 MR. BLANTON: Your Honor, it relies on the work --
3 having done some work on map three.

4 May I follow up on the question versus V1 and V2?

5 JUDGE MARBLEY: Sure.

6 BY MR. BLANTON:

7 Q. Ms. Grandjean, you were asked about the systems that the
8 boards use and their ability to implement various maps. Do you
9 recall that?

10 A. I do.

11 Q. Go back a little bit earlier. Is there a centralized
12 Ohio election database run by the Ohio Secretary of State?

13 A. Nuanced answer, unfortunately. There is a statewide
14 voter registration database that exists by not only federal law
15 but also state law. That statewide voter registration database
16 is simply a reflection of the data in the 88 county board of
17 elections' systems. It is not the originating data source and
18 we have no ability to alter the counties' data.

19 Q. So the data originates from the county boards of
20 election?

21 A. Correct.

22 Q. As you sit here today, can you say whether Ohio's 88
23 county boards are all using a single version of the
24 redistricting plan?

25 A. I cannot.

1 JUDGE MARBLEY: But my question was different. My
2 question is what map was the basis of the information contained
3 in your filing?

4 MR. BLANTON: That is V3, Your Honor. Because it was
5 the most recent map that we were working with.

6 JUDGE MARBLEY: If that is the case, that's somewhat
7 at variance with what Ms. Grandjean has said because she told
8 us that the maps -- at least my understanding of her testimony
9 is that the maps that have been programmed into the system are
10 one and two with one of those serving as a backup. So my
11 question is does the information on page 9 contemplate having
12 to program a new map?

13 THE WITNESS: May I clarify the confusion? I
14 apologize --

15 JUDGE MARBLEY: Please.

16 THE WITNESS: -- if I've inserted any additional
17 confusion into this already very confusing process.

18 What I meant is that -- it's helpful for me to refer to
19 them as dates. I'm sorry. That's just how my brain works.
20 I'm very sorry.

21 JUDGE MARBLEY: That's fine.

22 THE WITNESS: The county boards of elections back in
23 September at that time when the first map was programmed
24 reprogrammed everything because we told them to.

25 JUDGE MARBLEY: And at that time you had the 2010 map.

1 THE WITNESS: Exactly. And that was well before the
2 filing deadline. So that existed.

3 JUDGE MARBLEY: Yes.

4 THE WITNESS: At some point between September and
5 January 22nd when there was map two, the Supreme Court
6 invalidated it. I can't recall the exact date of the decision.
7 I think it was maybe the 16th or the 14th. The Supreme Court
8 invalidated that. Some boards may have saved a backup of that
9 first database. We did not tell them to do that, but they may
10 have. I can't tell you one way or another sitting here.

11 When the January 22nd map was passed -- in your view,
12 map two, right, so we're speaking the same language?

13 JUDGE MARBLEY: Yes.

14 THE WITNESS: Map two, we immediately told them upon
15 getting the data from the general assembly, reprogram your
16 voter registration systems as soon as possible because there is
17 a looming filing deadline, right, that candidates -- on
18 February 2nd, that candidates may have circulated under the
19 September, the first map, they may have gathered signatures
20 under that. They may have already even filed if they were
21 super eager. There is a possibility to that.

22 So they all reprogrammed to that. They did, Your Honor,
23 all of their -- the filing deadline, that process which is a
24 big process, under the January 22nd map.

25 Then, subsequently, the Ohio Supreme Court invalidated

1 that second map and there was the February 24th map. Somewhere
2 between -- and I would need to look at the directives to give
3 you an exact date; so I apologize. We told them to save a
4 backup database of the third map if possible, right. So there
5 could be some that have backups of three. There could be. But
6 given the sense that there was a reprogram in September, there
7 definitively was a reprogramming in January, and then there
8 could have been in some for February, I just don't know exactly
9 what is in every system at every county at this point.

10 The only thing I can say is that they obviously did
11 analyses under the January 22nd map and the February 24th map.

12 JUDGE MARBLEY: And embedded in your answer was a
13 veritable treasure trove of information, but it still didn't
14 answer my question. My question is far simpler than that.

15 When you put together your affidavit and you included
16 the information on page 9 -- you know what I'm talking about?

17 THE WITNESS: Yes. And I believe the exact statement
18 was given the fact that our office had directed the boards that
19 if possible to retain a backup database of the February 24th
20 map.

21 JUDGE THAPAR: Which was which one? Map two?

22 THE WITNESS: I think it's three.

23 JUDGE MARBLEY: But what I'm saying, you put together
24 this page 9, right?

25 THE WITNESS: Yes.

1 JUDGE MARBLEY: And was this premised on you having to
2 program a new map into the system? Or was it premised on you
3 using the existing map that was in the system?

4 THE WITNESS: Not an entirely new map. It was -- and,
5 again, I'm giving you an answer that could apply to any of the
6 88 counties. Again, that specific line that we directed them
7 that if they have the ability to maintain a backup to do so,
8 that's what it's premised on.

9 JUDGE THAPAR: And the backup is map three?

10 THE WITNESS: Correct.

11 JUDGE MARBLEY: But when you did this -- I'm not
12 talking about anybody else. You. When you did this, did you
13 have -- did you contemplate having to reprogram a map or use
14 whatever existing map was on the system?

15 THE WITNESS: Not an entirely new map, no. No.

16 JUDGE MARBLEY: So if we were to use a new map --
17 let's say we were to use the fourth map. What impact from a
18 temporal vantage point would it have on what you put on pages 9
19 and 10?

20 THE WITNESS: It would change.

21 JUDGE MARBLEY: How so? Change by how many days, you
22 think?

23 JUDGE THAPAR: Can I ask a clarifying question?

24 JUDGE MARBLEY: Yes.

25 JUDGE THAPAR: Are these more aggressive than the 90

1 and 74 you gave me?

2 THE WITNESS: Certainly, certainly, certainly.

3 JUDGE THAPAR: To get I think where Judge Marbley is
4 going and where I would go is if we instituted map three, could
5 we shorten the May 4th and May 20th dates?

6 THE WITNESS: Premised on August, is that what you're
7 saying?

8 JUDGE THAPAR: August 2nd.

9 THE WITNESS: Yes, we could.

10 JUDGE THAPAR: Can you give me those dates?

11 THE WITNESS: I think they're -- if we're talking
12 explicitly about the panel instituting the third plan --

13 JUDGE THAPAR: Before you get to that, what would be
14 the easiest map? I'm not saying we'd do it, but what would be
15 the easiest map for us to order you to use?

16 THE WITNESS: The easiest for -- sorry. I'm thinking
17 about my answer because none of this is easy. The easiest map
18 to reprogram would likely be -- to ensure that everyone --
19 excuse me. I don't want to use the word reprogram. To ensure
20 that every county is operating on the same map would likely be
21 the February 24th map.

22 JUDGE MARBLEY: And that's because it's at least
23 partially already in the system?

24 THE WITNESS: Correct.

25 JUDGE THAPAR: And then give the answer to my other

1 question.

2 THE WITNESS: I really hate to make you repeat it.

3 JUDGE THAPAR: I will but let me type this. You said
4 the easiest map to make sure every county is operating on the
5 same map is February 24th which is map three?

6 THE WITNESS: I believe so. Can someone confirm?

7 JUDGE THAPAR: Is February 24th map three?

8 MR. BLANTON: Yes.

9 JUDGE THAPAR: Because I operate not on dates. Now my
10 question is let's assume we're going to use map three.
11 Remember the dates you gave me? You told me May 4th ideal,
12 May 20th if I pushed you.

13 THE WITNESS: And that line of questioning was
14 again --

15 JUDGE THAPAR: Based on a new map. So now I want to
16 know using map three, what's the latest date we can flip the
17 switch if Ohio doesn't solve their problem?

18 THE WITNESS: I now understand the question. Can I
19 think for a second?

20 JUDGE THAPAR: Absolutely because this date is
21 critical.

22 THE WITNESS: This is a different question. Just so
23 I -- this is a different question than the question the Court
24 posed to the State in the -- this is a very different --

25 JUDGE THAPAR: All I want to know is I want to

1 institute map three. Instead of you answering and putting you
2 on the spot, can I just figure out what this says days-wise and
3 then work back from August 2nd? In other words, this is
4 premised on May 24th. So I could figure the days out, use this
5 and come up with an answer.

6 THE WITNESS: Perhaps.

7 JUDGE THAPAR: Why?

8 JUDGE MARBLEY: And I asked that same question a
9 moment ago, and you said I could use those time periods to work
10 backwards. At least that was my understanding.

11 THE WITNESS: Certainly. And again, it just is
12 premised on the filing deadline not being reopened, all of
13 those facts maintaining -- staying the same which is what our
14 answer is premised on.

15 JUDGE MARBLEY: And in response to Judge Beaton's
16 question, I think that Mr. Blanton said that it's possible that
17 those filing dates not be reopened because the dates on pages 9
18 and 10 were premised on the filing dates not being reopened.

19 Am I right, Mr. Blanton?

20 MR. BLANTON: Those assume proceeding under map three,
21 Your Honor, that is correct. Map three where --

22 JUDGE MARBLEY: If you decided to use map four, the
23 same rules that apply with respect to, let's say, reopening
24 filing dates could apply to map four as you would suggest apply
25 to map three, right?

1 MR. BLANTON: Your Honor, I don't think that's correct
2 because map three -- we're talking about using map three as a
3 hypothetical. We're assuming that is a continuation of events
4 that have already been in place; so the selection of
5 candidates, establishing of districts, certification and
6 programming.

7 JUDGE THAPAR: And all that happened under map three?

8 MR. BLANTON: It was in process under map three. The
9 boards were working toward the completion of map three until
10 last week when Directive 31 went out.

11 JUDGE MARBLEY: If I understand Ms. Grandjean
12 correctly, since you have 88 independent boards, they were all
13 in different places in terms of how much progress they made,
14 right?

15 MR. BLANTON: That's safe to say.

16 JUDGE MARBLEY: So it's conceivable that some of them
17 had closed the process for registration and some of them had
18 left the process open, right?

19 MR. BLANTON: For voter registration?

20 JUDGE MARBLEY: No, for candidate registration or
21 certification.

22 MR. BLANTON: The candidates had already been
23 established by this point, Your Honor.

24 JUDGE MARBLEY: That's my point. So, if we have a
25 fourth map, we can't apply that same rule.

1 MR. BLANTON: Correct.

2 JUDGE MARBLEY: We can't say that the candidates have
3 been determined at this point. We have -- we have statutorily
4 to reopen the process so that additional candidates can come
5 in. Is that right?

6 MR. BLANTON: It's the position of the attorney
7 general that the Supreme Court's decision on March 16
8 invalidating that map would result in a new map if map four is
9 used. And yes, Your Honor, we would restart the --

10 JUDGE THAPAR: Can I follow up? You're pausing --
11 according to Ms. Grandjean, you are not instituting map four at
12 this point. You're waiting for the Ohio Supreme Court to
13 decide if that's right.

14 MR. BLANTON: I can ask Ms. Grandjean to clarify that.

15 THE WITNESS: We have not instructed the boards, we
16 have not given the boards -- at this point, we just received
17 them, the shapefiles, equivalency files, our legal descriptions
18 for map four.

19 JUDGE THAPAR: If we want to wait as long as possible
20 for Ohio to solve their own mess, we should plan -- map three
21 is our best solution is what you're saying? If we want to give
22 Ohio as much time as possible, that's what I'm trying to
23 understand.

24 THE WITNESS: To essentially grandfather in the work
25 that's already been done?

1 JUDGE THAPAR: Yes. So I don't have to alter all of
2 these -- we don't have to alter.

3 THE WITNESS: I believe that's accurate.

4 JUDGE BEATON: May I ask a question of Counsel?

5 MR. BLANTON: Certainly, Your Honor.

6 JUDGE BEATON: One reason this is so difficult is
7 because we seem to be constructing an alternative, a
8 *Grove/Branch* backstop alternative, on the fly. Is that because
9 the Secretary of State has declined to take a position on what
10 this Court should do if it concludes that the only way to
11 ensure people can vote in a state primary is to intervene but
12 hasn't told us what the Secretary of State's position on the
13 contours of that remedy should be?

14 MR. BLANTON: No. Respectfully, I don't think that's
15 quite it.

16 JUDGE BEATON: What remedy as a backstop -- because as
17 I understand your papers, you don't think we should intervene
18 right now at least. Assuming we do because we have to avoid
19 the *Grove/Branch* problem, what's the secretary's position on
20 what we should do?

21 MR. BLANTON: Your Honor, that is a very, very
22 challenging question because there are a great number of
23 variables still in place. The fourth plan is currently pending
24 in front of the Ohio Supreme Court.

25 JUDGE THAPAR: His question isn't what's going on.

1 It's if we have to intervene, what's your position? We don't
2 care what's going on outside this courtroom.

3 JUDGE MARBLEY: That's the seminal question that we've
4 been asking from when we had a one-judge panel to the point
5 that we now have a three-judge panel.

6 MR. BLANTON: Your Honor, I believe the secretary's
7 position is that Ohio's Constitution requires the selection and
8 election of general assembly representatives from districts.
9 Ohio statutes require those candidates to be selected through a
10 primary election. The secretary has, as his chief elections
11 officer, a great and compelling interest in making certain this
12 is an orderly election that goes forward with the best
13 opportunity to vote on a map that is acceptable.

14 Going past August 2nd would result in the compression of
15 the general assembly calendar, the general election calendar.
16 It would also get into potentially overlap issues with later
17 elections --

18 JUDGE MARBLEY: What you're saying -- that has come
19 out today. So you're telling us that we do have an
20 alternative. We can go back as far as August 2nd, right?

21 MR. BLANTON: Yes, Your Honor.

22 JUDGE MARBLEY: But that still sort of begs the
23 question. It still doesn't answer Judge Beaton's question as
24 to what do you want. We're used to people coming in to this
25 place of redress to tell us what they want. So what does the

1 secretary want? That's kind of a --

2 MR. BLANTON: May I have one moment?

3 JUDGE THAPAR: While he's taking that second, do you
4 know? You're the deputy. Do you want him to answer it?

5 THE WITNESS: I think -- everyone would have loved to
6 have had -- not been here right now, unfortunately, with all
7 due respect.

8 JUDGE THAPAR: As the three of us know.

9 JUDGE MARBLEY: We understand.

10 THE WITNESS: I would love to continue to work through
11 my job.

12 MR. BLANTON: Your Honor, because there is an Ohio
13 statute that prohibits the secretary or any other elected
14 official from asking or seeking to have an election date
15 changed, the secretary is in a very difficult position on this.

16 JUDGE BEATON: You're the defendant. You didn't come
17 asking us to change anything, right? The question is assuming
18 a violation, which during the TRO hearing I believe all the
19 parties uniformly accepted that at some point the state process
20 has failed, there's no alternative to a federal court under
21 *Grove* and *Branch* ordering a backstop to ensure that an election
22 happens.

23 And so perhaps you're not prepared to answer this right
24 now. But I believe it's very, very, very important to minimize
25 disruption and to economize these proceedings if the Secretary

1 of State takes a position on what ought to happen assuming the
2 state procedures don't produce a viable primary date. I
3 believe right now we've gotten to the fact that you think a
4 bifurcated primary is inevitable.

5 MR. BLANTON: Yes, Your Honor.

6 JUDGE BEATON: And that an August 2nd date is
7 preferrable. Then I think what we need to fill in is exactly
8 when does the process need to begin? It sounds like your
9 answer there is 90 days.

10 MR. BLANTON: Yes, Your Honor.

11 JUDGE BEATON: Sitting here today it's at least
12 conceivable that we could start the election calendar process
13 90 days before April 2nd. That's the May 4th date we talked
14 about. Then I think the last remaining question, I think at
15 least big question, is what map do we use? And so if the
16 secretary has a position on which map should be used as a
17 federally imposed backstop if we come to May 4th and there's
18 not a state solution, that would be good to know. Also good to
19 know would be which maps in your view are even possible and
20 which are impossible.

21 So I'm not trying to bat you around. I'm really trying
22 to focus this because building an alternative on the fly is
23 proving very difficult, and I'm confident that we all --
24 despite our best efforts, we could overlook something or create
25 an unintended problem unless we have a choice of alternatives

1 thought out in advance rather than something we come up with on
2 the fly.

3 MR. BLANTON: Yes, Your Honor. I do not see a
4 situation where the Secretary would endorse the use of map
5 three as it has been rejected by a majority of the Ohio Supreme
6 Court as not satisfying the requirements of the Ohio
7 Constitution. And in the eyes of the majority, that is a very
8 dangerous position.

9 Map four, Your Honor, the secretary has voted in favor
10 of. He supported it when it was proposed.

11 JUDGE THAPAR: But, Counsel, we're assuming that Ohio
12 doesn't solve its problem.

13 MR. BLANTON: Yes, Your Honor.

14 JUDGE THAPAR: Is our best alternative, then, to use
15 the 2010 map and just say you guys figure it out and we're
16 going to use the 2010 map for one more election? Because that
17 has been blessed by everyone, as far as I know. It creates its
18 own set of malapportionment issues that the plaintiff points
19 out. But is that our best alternative? Or is it map three
20 which is in the system? Or is it something else?

21 MR. BLANTON: The secretary's position at this point
22 in time is it would be map four because that is the most recent
23 work engaged in by the Commission and passed by the Commission.

24 JUDGE THAPAR: All of this presumes it's rejected by
25 the Supreme Court. So you've got to operate under that

1 hypothetical. We don't get involved if the Supreme Court says
2 go ahead.

3 MR. BLANTON: Yes, Your Honor. At this point I think
4 the secretary has no option but to say if this Court were to
5 order to proceed on a known map, that it would be map four
6 because that was the most recent act of the Commission that has
7 not been invalidated by the Ohio Supreme Court.

8 JUDGE THAPAR: But that brings in all of these filing
9 deadlines whereas map three doesn't.

10 MR. BLANTON: It does, Your Honor. When Ms. Grandjean
11 was testifying about that use, that is for simplicity's sake:
12 what is the fastest thing?

13 JUDGE THAPAR: I get it. I totally understand that.
14 Let me ask you another question. I want you to assume -- I'm
15 telling you under *Grove* and *Branch*, this is the way we get
16 involved, is Ohio Supreme Court will never give you a map. So
17 that means they reject map four. The secretary's position is
18 we still institute map four at that point?

19 MR. BLANTON: Your Honor, the secretary's position in
20 that situation -- preference -- I think the secretary's
21 position has to be that we're not to that point yet. If map
22 four is rejected, if Ohio is unable to solve its problems in
23 time for this May 4 trigger -- Ms. Grandjean may be able to
24 speculate on this.

25

1 BY MR. BLANTON:

2 Q. We're talking, what, two weeks to program,
3 Ms. Grandjean? So we're talking late April, probably.

4 A. For a fourth map?

5 Q. To make a -- assuming that the statutory deadlines for
6 candidates at 90 days for an August election, we roll that back
7 to May 4th is the 90th day?

8 A. That's right.

9 Q. That there would need to be time for the boards to
10 program?

11 JUDGE THAPAR: We figured all this out. You're not
12 giving me an answer. Map four is struck down. You have to
13 assume that. Tell me which map the secretary wants. The only
14 map not struck down, as far as I can figure out on my question,
15 is the 2010 map, right?

16 MR. BLANTON: Your Honor --

17 JUDGE THAPAR: Wait. I want yes or no. I'm done with
18 the qualifiers. Map four struck down. Which map does the
19 secretary want? Four? Three? 2010?

20 MR. BLANTON: May I, Your Honor, since I've got my rep
21 here?

22 JUDGE THAPAR: Yes. Mr. Blanton, what if we recessed
23 and let you call the secretary?

24 MR. BLANTON: Thank you, Your Honor. That's probably
25 the --

1 JUDGE MARBLEY: How much time would you need,
2 Mr. Blanton?

3 MR. BLANTON: Fifteen minutes, Your Honor.

4 JUDGE MARBLEY: And while you're talking with the
5 secretary, one other question that I have that may be related
6 to Judge Thapar's is whether the secretary has looked at the
7 maps that were done by the independent mapmakers who were
8 brought in pursuant to the Supreme Court's directive. And I
9 understand that those two mapmakers put together a combined map
10 that the Commission rejected because they said they didn't have
11 time either to evaluate the combined map or to finish that
12 process, whatever.

13 So I would also like to know if the secretary has looked
14 at the combined maps that were brought in by the -- that were
15 put together by the independent mapmakers. Do you understand
16 my question, Mr. Blanton?

17 MR. BLANTON: I do understand, Your Honor. Would this
18 Court, rather than taking the step of choosing a map today,
19 given the multitude of interests that that implicates, consider
20 if Ohio's system fails, if the Commission and Supreme Court are
21 unable to bring forward a map that the Supreme Court finds
22 compliant, establishing a date on which parties and interested
23 persons could present maps to the Court for consideration
24 rather than having the secretary essentially deem what map
25 would be chosen? The secretary --

1 JUDGE MARBLEY: At this point we're just gathering
2 information. I just want to know if the secretary has either
3 reviewed and/or considered that particular map that the
4 Commission did not look at.

5 JUDGE THAPAR: Mr. Blanton, the problem with that is
6 the Commission, not us, are experts on your state. We don't
7 have the knowledge to start to engage in that type -- in those
8 types of things. That's what you have a Commission for. Your
9 Commission needs to figure this out. And we need to know from
10 the secretary -- now that you're going to call, I want two
11 answers. One is easiest map for us to order and last date on
12 which we can order it; and second one is the preferred map,
13 last date on which we can order it. I actually have a third
14 question.

15 JUDGE MARBLEY: I have a question too. There's about
16 four.

17 JUDGE THAPAR: There's going to be four. The third
18 question is I'm coming back to the 2010 map, and I'm just
19 wondering that is one map that's been actually blessed by
20 everyone. So it has, in some sense, the least peril for us.
21 Why not just say one more election? You better figure it out
22 between you next year and get the ball rolling.

23 JUDGE MARBLEY: And you recall my question.

24 MR. BLANTON: Yes, Your Honor. We've been scouring
25 those. As to the question regarding the independent mapmakers,

1 given the existence of the motions to show cause which we'll
2 likely inquire -- I will be inquiring of the secretary and
3 others about the mapmaking process, the conversations and
4 efforts to resolve, asking the secretary to take a position on
5 the independent mapmakers' work and the resulting lack of
6 adoption in this forum places him in an extremely difficult --

7 JUDGE MARBLEY: I'm not asking if he prefers. I'm
8 just asking if he has reviewed or considered it. That's
9 simple. Either he has or he hasn't. Chances are he hasn't
10 because maybe he hasn't considered anything that did come out
11 of the Commission. But I want to know whether he has just in
12 case.

13 JUDGE THAPAR: I got one more now that incorporates
14 those. Can he rank for us which ones he wants and which are
15 easiest?

16 MR. BLANTON: Your Honor, as his counsel in light of
17 the pending -- the show cause, the history behind this --

18 JUDGE THAPAR: I get it. Don't rank them. Just get
19 me the answer to my questions if you can.

20 MR. BLANTON: Question one: What's easiest?

21 JUDGE THAPAR: Yes. That means the longest we can
22 wait for the Ohio actors to get on the same page and leave us
23 out of it. That's what I want. And what map is that? And
24 then the second one is: What does he prefer? And the third is
25 the 2010. Why not just institute the 2010 for now and wait

1 another --

2 MR. BLANTON: We may have moved into closer to 30
3 minutes.

4 JUDGE MARBLEY: It's five till 11. We'll stand in
5 recess until 11:30.

6 (Recess taken from 10:55 a.m. to 11:33 a.m.)

7 JUDGE MARBLEY: Mr. Blanton, are you ready to proceed?

8 MR. BLANTON: I am ready. I had the opportunity to
9 speak to the secretary. As a stage setter, Your Honor, one of
10 the answers that needs to come out of today's hearing or by COB
11 tomorrow is whether there will or will not be a bifurcated
12 primary. I ask that because, for the May 3rd primary, the
13 boards need to be able to send out the UOCAVA, the military
14 voter ballots. Monday is that 46th day.

15 So, if you're going to go forward with a primary for
16 everyone but the general assembly on May 3rd, then the
17 secretary needs to instruct the boards to go forward with --

18 JUDGE THAPAR: Why would we mess with anything?

19 Look, what we're saying is, just to be crystal clear,
20 this is your all's problem. We're only getting involved if we
21 have to.

22 MR. BLANTON: I appreciate that, Your Honor. That
23 clarifies. Just putting it out there as an issue.

24 JUDGE MARBLEY: Then, too, that puts us in a position
25 where we have to repudiate totally *Grove* and *Branch* because

1 what the secretary is telling us is that the burden is now on
2 us to do something, and we can't defer to the Supreme Court
3 which is -- or to the state organs.

4 MR. BLANTON: I'll reframe that. Barring an order
5 from this Court advising -- or by the legislature advising the
6 secretary that the May 3rd primary for the non-GA candidates is
7 not going forward, we'll be sending UOCAVA ballots on Monday.
8 We'll be directing the boards Friday evening to start that
9 process. That's a stage setter.

10 JUDGE BEATON: Has anyone asked us to prevent that
11 May 3rd primary from going forward for non-GA candidates?

12 MR. BLANTON: I don't believe anyone has.

13 JUDGE BEATON: So the status quo, as it exists today,
14 is that your boss or your client is going to send out ballots
15 for all the other primary elections on Monday.

16 MR. BLANTON: Yes, Your Honor.

17 JUDGE BEATON: Unless we say otherwise.

18 MR. BLANTON: You're correct. The boards will do
19 that, or the GA.

20 JUDGE THAPAR: Let me give you a clue. We ain't
21 saying otherwise.

22 MR. BLANTON: Much appreciate it in terms of clarity.

23 Having talked with the secretary, I have an
24 understanding of the secretary's preferred courses of action.
25 One, based on Judge Thapar, Judge Beaton -- the panel's

1 instruction is I understand not likely to occur, the
2 secretary's preference in terms of elections administration and
3 simplicity would be a unified primary on May 24 using map
4 three.

5 In terms of elections going forward, if the primary does
6 not take place in a unified fashion on May 24th, from an
7 elections administration perspective in terms of simplicity, in
8 terms of taking the greatest advantage of work already done by
9 the boards, and in terms of providing the State of Ohio with
10 the -- the legislature and the Commission with the longest
11 possible time to engage in additional - assuming map four does
12 not survive - additional mapmaking opportunities and the
13 opportunity to complete that and the work that goes into it,
14 the secretary would prefer to use map three for the later
15 primary.

16 That would, in terms of timing, allow for the use of the
17 more compressed time frame because the map three calendar would
18 be a continuation of what has already been done. So it
19 wouldn't be reopening candidate filing. It wouldn't be
20 reopening the certification of candidates and petitions which
21 is that 90-day window. We would be back down more to about a
22 55-day window, 46 of which is UOCAVA, and then the
23 administration ahead of that affords the opportunity to handle
24 protests, to do programming, to do clean up. And that puts,
25 assuming the Court were to order -- and, again, the secretary's

1 preference is not to have a primary this late.

2 If this Court orders an August 2nd backstop primary,
3 then that would put us at roughly June 8th being the 55-day
4 trigger when we would need a map.

5 JUDGE MARBLEY: So let me make sure I understand what
6 you just said. If we are going to have an August 2nd primary,
7 then the map has to be loaded onto the statewide computers of
8 the 88 boards of election by June 8th?

9 MR. BLANTON: Yes, Your Honor.

10 JUDGE BEATON: If it's map three.

11 MR. BLANTON: If that's map three. If it's other than
12 map three, then the window expands for the full 90-day period
13 plus the time necessary to load new districts ahead of that.

14 JUDGE THAPAR: We read *Grove* and *Branch* and pay
15 attention to what our bosses say. They tell us stay out as
16 long as possible, intervene only when you have to and the whole
17 system is broken down. What you're saying is if we used map
18 three, we could wait until June 8.

19 MR. BLANTON: Yes.

20 JUDGE MARBLEY: And if we don't use map three?

21 MR. BLANTON: If we do not use map three, Your Honor,
22 than we back up to -- barring a change in Ohio law on the
23 candidate filing deadlines, that's 90 days, and then there is
24 the 30-day Article XI, 9(C) move-in period that would also be
25 triggered. So it expands that date back.

1 JUDGE BEATON: I don't understand how the June 8th
2 does any real-world work. Because if that only works for map
3 three, then either we can just decide well in advance that it's
4 going to be map three, but if you wait past 90 days and come up
5 to that 55-day threshold, then it can only be map three. So,
6 in effect, you would have decided by not deciding long before
7 that it would be map three. So, effectively, the deadline for
8 Ohio to produce an alternative to the commission process would
9 not be June 8th.

10 MR. BLANTON: No, Your Honor.

11 JUDGE BEATON: It would be 90 days out from the
12 August 2nd. It would be May 4th, still, right?

13 MR. BLANTON: At the latest because I'm still thinking
14 through that. So 90 days would be the date filing deadline
15 barring a change in law. That's May. Candidates would need
16 the opportunity to circulate petitions.

17 JUDGE THAPAR: Can I stop you? And then you can
18 continue. But what about the move-in? Would that be 120 days?

19 BY MR. BLANTON:

20 Q. Mandy, can there be an overlap between the 30-day
21 move-in period and candidate filing? Do you know?

22 A. So the 9(C) only applies to general assembly candidates.

23 JUDGE THAPAR: What's the 9(C)?

24 THE WITNESS: The article that Mr. Blanton was
25 referencing that permits general assembly candidates 30 days

1 from the filing of the map to move into their districts, yes,
2 exactly.

3 JUDGE THAPAR: So, as I understand it, his question is
4 can that overlap some with the 90 days?

5 THE WITNESS: With the 90 days?

6 JUDGE THAPAR: So you get a new map. You get magical
7 map. Magical map comes in. You have to put it in. They know
8 it already. It's just got to be instituted in the system. My
9 understanding is you need 74 days -- it takes 16 days. Can
10 that 16 days overlap with the 30 days such that we can go two
11 weeks back from May 4th, which is like April 20th or something,
12 and say that's the magic date?

13 THE WITNESS: I believe with the caveat of House Bill
14 93 -- so House Bill 93 did provide language surrounding 9(C)
15 although it was temporary law that said three things must
16 happen before -- by the 30th day. The candidate must -- under
17 the set of facts that House Bill 93 was passed, the candidate
18 must move to their new district by the 30th day. They must
19 update their voter registration by the 30th day, and they must
20 file an addendum with the board of elections by the 30th day.
21 Those were the three things.

22 I don't mean to frustrate you. My answer is just that
23 if those same provisions were included in a later date, it
24 could work. Does that make sense?

25 JUDGE BEATON: I thought the lawyer for the secretary

1 said that those House Bill provisions were limited to a May 3rd
2 primary date.

3 THE WITNESS: I'm just hypothesizing if they were
4 carried over.

5 MR. BLANTON: I believe that the secretary was not
6 authorized to change it past April 3rd. So this would require
7 the -- what Ms. Grandjean is discussing would require action by
8 the general assembly.

9 BY MR. BLANTON:

10 Q. Barring action by the general assembly, there is --
11 under the use of a fourth map, Ms. Grandjean, there is a
12 potential that we would need full 120 days before election day
13 to allow the move-in and then the filing deadline; is that
14 correct?

15 A. Can I make sure I understand the question? I'm sorry.
16 You're saying a statewide election occurs on May 3rd.

17 Q. No. If we have the August 2nd -- let's start with the
18 August 2nd primary date the Court is discussing. Without House
19 Bill 93, without the special dispensation, without changes to
20 the statute by the legislature, we have the 90-day deadline,
21 the date by which candidates are supposed to file petitions, 90
22 days before that, right?

23 A. Yes.

24 Q. And then we have potentially that 30-day 9(C) move-in
25 period before that?

1 A. It's triggered per the Constitution -- and I don't have
2 a copy in front of me. My recollection of the terms of the
3 Constitution is that 30 days is triggered from the filing of
4 the new plan.

5 MR. BLANTON: So that new plan could be either --
6 well, if the Court adopts a plan, that will be a question
7 whether that's a new plan.

8 JUDGE BEATON: Hold on. That's important because if
9 it's 30 days from the adoption of a new plan, then you're
10 talking about a perspective window in which to act. Can that
11 forward-looking window from the date of adoption of a plan
12 overlap with a retrospective 90-day window to get ready for an
13 election?

14 THE WITNESS: That's my understanding. That's what
15 currently happens. That is what happened currently with the
16 February 24th.

17 JUDGE THAPAR: But it can only overlap 16 days, right?
18 Because day 74 is when you start implementing the ballots.
19 Because you program map, day 74, you implement ballots. You
20 need to know the name on the ballot.

21 THE WITNESS: Correct. That's been the difficulty of
22 this process. So I don't mean to be cagey when I answer your
23 question, because the temporary law addressed that exact
24 scenario and accounted for this transfer provision that I was
25 referencing earlier for the candidates. Even though the

1 districts were already set for the filing, there were multiple
2 different maps during the 90-day period. Do you see what I'm
3 saying?

4 JUDGE BEATON: So, if we are going to implement a
5 last-stitch election plan that did the least violence to Ohio
6 election law, you would say we should count back 74 days and
7 then 30 days?

8 THE WITNESS: The least violence to the law is 90
9 because that's the filing deadline.

10 JUDGE THAPAR: What about the 30 days?

11 THE WITNESS: The 30 days is, again, not triggered by
12 the -- the candidate filing deadline. It's triggered by the
13 filing of a new map.

14 JUDGE BEATON: That's why I was focusing on 74. It
15 sounded like you could have the 30 days in which people could
16 move. And you all would wind up the normal election calendar
17 90 days in advance, but you wouldn't need to know, I guess,
18 whether the last candidate had moved until 16 days into the
19 90-day period. And you could still respect both the allowance
20 of 30 days for candidates, but also the 90-day calendar for an
21 election.

22 JUDGE THAPAR: In other words, you would know the map
23 104 days out. They could know where they need to move. Like
24 John Doe could move and you could start the process rolling.
25 And at day 74, because you have 30 days, you would know who

1 your candidates are, and they can go out.

2 THE WITNESS: Correct.

3 JUDGE MARBLEY: Under that scenario if we have an
4 August 2nd election date, then we -- and let's say this Court
5 determines that it needs a new map, then we have to go 104 days
6 out from August 2nd; is that right?

7 THE WITNESS: I think it just depends on what the
8 interpretation of filing the new plan is. Because that's when
9 the 30 days would begin. So would it be this Court --

10 JUDGE MARBLEY: So it would be 30 in addition to the
11 74. That's where Judge --

12 THE WITNESS: I believe that's correct.

13 JUDGE BEATON: In this circumstance, I think we
14 would -- on day 104 -- T-minus 104 is when we would order the
15 Secretary of State to file the new plan, whatever is the
16 backstop, and that would trigger both the 30 days for
17 candidates and also the rest of the election calendar.

18 JUDGE MARBLEY: Driven by an August 2nd date. Is that
19 right, Ms. Grandjean?

20 THE WITNESS: I'm doing the math in my head really
21 quick.

22 JUDGE MARBLEY: Take your time.

23 THE WITNESS: Ninety days from August 2nd is May 4th.

24 JUDGE BEATON: So then April 20th.

25 THE WITNESS: That would be the filing deadline for

1 candidate petitions. Presumably we would know districts prior
2 to --

3 JUDGE THAPAR: You'd know on April 20th.

4 THE WITNESS: Okay.

5 JUDGE THAPAR: So they would have 14 days to file, but
6 they would still have 30 days to move. So you could put the
7 defaults on 74 days before.

8 THE WITNESS: Correct. My only caveat is in the
9 event -- and I don't know the answer to this question because
10 it's a lawmaker question. Is the transfer -- the transfer
11 provision question in the event that the 30 days does go -- it
12 goes past 90 in the hypothetical. Am I understanding that?

13 JUDGE THAPAR: Yes.

14 THE WITNESS: My question is, for the sake of
15 accuracy, I would say we need the transfer provision in the
16 event that a candidate did decide to move -- or did decide to
17 move after the filing deadline into the new district because
18 the 30 days overlaps the 90. Does that make sense?

19 JUDGE BEATON: I think the candidate would have to
20 file on the basis of an address that he or she still had --

21 THE WITNESS: I'm just pointing out --

22 JUDGE THAPAR: What you're saying is in an ideal
23 world, it would be 120 days, but you could live with more.

24 JUDGE MARBLEY: You could live with 104. We're
25 talking about bare minimum. So the bare minimum is 104.

1 THE WITNESS: I'm just trying to overlay current
2 temporary law with the constitutional provision.

3 JUDGE THAPAR: When do you do the challenges? Is it
4 after the 30 days run? What if Jane Doe says I'm going to move
5 to Hamilton County from Franklin County - I'm just making this
6 up - and then doesn't move? She's now on the ballot and
7 someone wants to challenge it.

8 THE WITNESS: That's a great question. I think my
9 affidavit is a good example of this. So in this scenario --
10 and, again, just applying the hypothetical that's in the
11 affidavit of May 24th, 30 days from the filing of the
12 February 24th map is March 26th, right?

13 So, in the affidavit, I believe I laid out that if you
14 look on page -- where am I? I'm sorry.

15 JUDGE BEATON: Nine. It refers to protest hearings.

16 THE WITNESS: Yes, nine. Yes. So in that
17 hypothetical, complete the certification in the event that a
18 candidate has moved into a new district prior to March 26th,
19 and completed the steps in House Bill 93 I was referencing no
20 later than April 1st, and hold a protest hearing no later than
21 April 4th. Many of the boards --

22 JUDGE THAPAR: So what does that mean in days?
23 Because you're operating off the May 24th. So that means we
24 can use 104 days?

25 THE WITNESS: Yes.

1 JUDGE THAPAR: Without a problem with the protest
2 hearings.

3 THE WITNESS: Yes.

4 JUDGE THAPAR: That's all I care about.

5 BY MR. BLANTON:

6 Q. Ms. Grandjean, in terms --

7 JUDGE THAPAR: Wait. You haven't answered my 2010
8 question.

9 JUDGE MARBLEY: And my question about the --

10 MR. BLANTON: I wasn't sure we were ready to get
11 there. I was staying on that question on the third map. I'm
12 happy to answer those question and then go back.

13 JUDGE THAPAR: If you want to go, as long as you don't
14 leave that podium without giving us the answers, I don't care.

15 JUDGE MARBLEY: I would like an answer to mine because
16 mine is the simplest. It's yes or no he's looked at them.

17 MR. BLANTON: He did see them as they were developing
18 over the evening, over the last few days. The evening of this
19 past Monday things were in constant transition. There were --
20 if you've seen the hearings or heard anything about them, there
21 was a great deal of back and forth, great deal of examination.
22 All of that was going on. So the secretary has some -- knows
23 about them, has had the opportunity to review them. In terms
24 of an in-depth review, I do not know.

25 JUDGE THAPAR: What about 2010 since we're answering?

1 MR. BLANTON: Thank you, Your Honor. Using 2010 maps
2 have two large problems. One is the clear malapportionment
3 issue -- three. The second is the boards do not have those
4 districts loaded in and have not been tracking voters based on
5 that I don't believe. Lastly, by using the 2010 map, that's
6 going to again trigger the opening of candidate petitions
7 because we have candidates who have been --

8 JUDGE THAPAR: Every map you do that but map three.

9 MR. BLANTON: You're right.

10 JUDGE THAPAR: So in the hierarchy, when I asked for
11 rankings, I can do them myself. He's got map three and
12 everything else.

13 MR. BLANTON: That's pretty safe, Your Honor, yes. As
14 you are well aware, the great complications Ms. Grandjean was
15 just talking about, all of the unknowns and timelines and
16 changes in statutes that are implicated by the use of anything
17 other than plan three.

18 JUDGE BEATON: But you did say that your client would
19 prefer a unified primary.

20 MR. BLANTON: In terms of election simplicity, in
21 terms of cost, in terms of the simplest administration, a
22 unified primary I think for the boards would be preferable.

23 JUDGE BEATON: What about in terms of his position in
24 this litigation? Is there a request that we delay the May 3rd
25 primary to make it unified?

1 A moment ago when you advised us those overseas ballots
2 need to go out on Monday, I thought we established there is not
3 a request to do anything with the non-GA primary. If the
4 secretary's position is actually our position is you should
5 move it all and have a unified primary, well, then, there is a
6 request to do that.

7 MR. BLANTON: Your Honor, in recognition of the work
8 that is required of the local boards and the expense that a
9 second non-unified primary would entail, the secretary would
10 prefer a unified primary.

11 JUDGE BEATON: Can you point to any precedent for a
12 *Grove/Branch* federal court ruling that move not just the
13 elections, it wouldn't happen at all, but also related
14 elections that otherwise would go forward?

15 MR. BLANTON: I have not dug into that.

16 JUDGE BEATON: I would think before we could seriously
17 consider moving these other non-GA primaries that someone would
18 have to show us some authority for a federal court sweeping in
19 other elections that weren't otherwise not going to happen.

20 JUDGE THAPAR: I'm thinking out loud which is
21 dangerous. But, as far as I know -- and I hate to say it this
22 way. Just to answer Judge Beaton's question out loud, I don't
23 think there is a constitutional right to unified primary. So
24 it would probably be -- I mean, you can go down the street and
25 the Supreme Court can do it but -- or the general assembly

1 presumably.

2 MR. BLANTON: The general assembly. The Supreme Court
3 has advised they're not in the business of --

4 JUDGE THAPAR: Maybe you can find some authority. I'm
5 with Judge Beaton. Show me something.

6 MR. BLANTON: Understood, Your Honor. Further
7 questions for me, Your Honor?

8 JUDGE MARBLEY: Please continue with your examination.

9 MR. BLANTON: I don't believe I have anything else for
10 the witness.

11 JUDGE THAPAR: I thought you had questions when we
12 interrupted you about maybe the third map.

13 MR. BLANTON: Actually, I think we already went over
14 those, which was about -- I don't know that she needs to
15 clarify the complexities and unknowns of an election conducted
16 under plan three in the future versus plan four.

17 JUDGE THAPAR: You mean map three or map four or plan?

18 MR. BLANTON: Pardon me?

19 JUDGE THAPAR: When you call it plan three, you mean
20 map three.

21 MR. BLANTON: Yes. Map three or four, some unknown
22 map.

23 JUDGE THAPAR: Map four is the same as every other map
24 in the world but map three. She's done a good job explaining
25 the complexities to us.

1 JUDGE MARBLEY: Thank you, Mr. Blanton.

2 Mr. Carey, any questions?

3 MR. CAREY: Yes, Your Honor, very briefly.

4 JUDGE MARBLEY: If I didn't make it clear earlier,
5 given the number of parties we have here, if your issue has
6 already been covered, we're going to ask that you not put your
7 own imprimatur on the same issue. But, you know, if you have
8 no questions, it's not verboten to pass.

9 MR. CAREY: Thank you, Your Honor. And I will
10 endeavor to avoid repetition.

11 - - -

12 CROSS-EXAMINATION

13 BY MR. CAREY:

14 Q. Hello, Ms. Grandjean. My name is David Carey. I'm an
15 attorney with the ACLU.

16 According to your affidavit, the Secretary of State has
17 concluded that August 2nd is the latest that the primary could
18 be held without disrupting the general election. And the basis
19 for that -- the significance of that particular date,
20 August 2nd as opposed to August 1st or August 3rd, is that
21 special elections are being held throughout the state on that
22 date and that candidates want sufficient time to campaign for
23 the general election. Is that correct?

24 A. I don't think that those are the only reasons that was
25 our answer.

1 Q. I understand that August 8th is the beginning of the
2 election administration calendar according to your affidavit;
3 is that correct?

4 A. For the November --

5 Q. For the November primary.

6 A. Yes. Not primary. General.

7 Q. I'm sorry. Thank you. The November general.

8 August 2nd is before that election administration
9 calendar begins. So what I'd like to understand is the
10 significance of that date beyond the factors that I just
11 mentioned.

12 A. I'm not sure I understand the question.

13 Q. Why does the secretary say that August 2nd is the last
14 date that a primary could be held other than the two factors
15 that I just mentioned, special elections being held throughout
16 the state and allowing sufficient time for campaigns before the
17 general election?

18 A. It allows for the time -- all of the things to take
19 place that need to take place for an election that
20 hypothetically could not have started at that point. I mean,
21 again, we just went through a 90-day calendar.

22 Q. So August 8th is the beginning of the election
23 administration calendar. By my math, August 8th is 92 days
24 prior to the general election. So would you agree with me that
25 August 8th, for purposes of your office administering the

1 election, is the latest that you could proceed setting aside
2 those two factors that I mentioned for August 2nd?

3 A. I don't understand the question.

4 JUDGE THAPAR: Can I ask it? Remember how we went
5 through everything. We were working backwards. All he is
6 doing is taking the general election and working backwards and
7 saying you need 90 days to do everything for the general. Why
8 is August 2nd the magic date instead of August 8th which is 90
9 days before the general?

10 THE WITNESS: We're talking about two different
11 primaries. We're -- two different elections. We're talking
12 about a general election and a primary election.

13 JUDGE THAPAR: What Mr. Carey is saying, I think - but
14 he can correct me - is wait a minute, I've looked at your
15 general election protocols, whatever it is - he's much smarter
16 than me - and 90 days before is what you need before the
17 general election.

18 MR. CAREY: If I can add the date that's given in
19 Ms. Grandjean's affidavit is August 8th which is 92 days by my
20 math.

21 THE WITNESS: I did not give August 8th as the latest
22 date. I gave August 2nd. We cited August 8th as a date on the
23 calendar that appears for the general election.

24 BY MR. CAREY:

25 Q. I can read you the portion of your affidavit.

1 A. Can I see it?

2 JUDGE MARBLEY: Just a second. Let him read that
3 portion. Then Judge Beaton has a question, then Judge Thapar.

4 JUDGE THAPAR: I don't have a question. She should
5 have the affidavit.

6 JUDGE MARBLEY: Just a second. I'm sorry. Go ahead,
7 Judge Beaton.

8 JUDGE BEATON: This is just a suggestion. But rather
9 than working off this affidavit, would it make more sense to
10 look at Exhibit 1, the 2022 Ohio elections calendar? Because
11 that has all of these deadlines stacked right up together. I
12 see your point that August 8th appears in the affidavit or in
13 the secretary's filing but not in the elections calendar.
14 There may be a little more concreteness to looking at the
15 elections calendar.

16 JUDGE MARBLEY: Go ahead, Mr. Carey.

17 BY MR. CAREY:

18 Q. I'm not sure how else to ask this. Your -- there is a
19 date in your affidavit - August 8th - where you say, and I'm
20 quoting, "The election administration calendar for the
21 November 8th, 2022, general election begins on August 8th,
22 2022, which includes the filing deadline for nominating
23 petitions for nonpartisan races."

24 Would you agree with me that the calendar could be
25 preserved if a primary was held any time before August 8th?

1 JUDGE THAPAR: Can you tell us what paragraph of her
2 affidavit?

3 MR. CAREY: 15d.

4 JUDGE BEATON: I think the secretary's filing is based
5 on her affidavit.

6 MR. CAREY: Looking at Exhibit A to the secretary's
7 filing, ECF number 1131.

8 JUDGE MARBLEY: We have it.

9 THE WITNESS: That's the law. I didn't make it up. I
10 guess I just don't know what the question is.

11 BY MR. CAREY:

12 Q. My question is why couldn't a primary be held on, say,
13 August 7th?

14 A. The point is that why -- the point is exactly what we
15 said in our briefing. Overlapping elections should be avoided
16 at all costs. It is very dangerous from an election
17 administration perspective to have overlapping time periods.

18 The point is that it is very difficult -- that the
19 post-election period, which includes the unofficial and
20 official canvass period, which, again, per a normal election
21 calendar may begin on the 11th day after the election, must
22 begin on the 15th day after the election, and must conclude by
23 the 21st day after the election. That is a significant period
24 of time that the boards of elections are doing work to shore up
25 one election while simultaneously preparing for another

1 election.

2 JUDGE THAPAR: Can I ask a related question? You gave
3 all of these answers; so give sufficient time. Would it also
4 cut costs to hold -- I know costs are going to be high. But
5 would it cut costs to hold the August 2nd special election and
6 primary on the same date, or would you be getting rid of the
7 special elections?

8 THE WITNESS: No. It would be the former, keeping
9 elections together.

10 JUDGE THAPAR: It would cut costs.

11 JUDGE MARBLEY: I just want to be clear. Regardless
12 of what we do here, there is going to be an August 2nd special
13 election; is that right?

14 THE WITNESS: In some counties, yes. I don't have an
15 exact number for the panel.

16 BY MR. CAREY:

17 Q. Earlier, in response to some questions from the panel, I
18 believe you testified that for the primary, a 90-day election
19 administration calendar would be ordinary but that if
20 compressed in a worst-case scenario, 74 days would be
21 sufficient. Is that correct?

22 A. I believe I gave that under a very specific set of
23 factual qualifiers.

24 Q. Let me cut to my question, then. Can the time for the
25 election administration calendar to be carried out for the

1 general election be compressed in a similar manner? Could
2 elections still be held if the primary was more shortly before
3 the general election than August 2nd?

4 A. I don't know. I haven't done that analysis as it
5 pertains to the general election. I've only done it as it
6 pertains to this primary election.

7 Q. You can't say today --

8 JUDGE THAPAR: Can I interrupt you? I'm sorry. So
9 what you're asking is that there be now four elections this
10 year: the senate/house stuff May 3rd, a special election
11 August 2nd, a primary sometime after August 2nd, and a general
12 election in November.

13 MR. CAREY: I'm asking whether that would be possible
14 to fulfill.

15 JUDGE THAPAR: I don't care if it's possible if it's
16 not going to be a request. Are you going to make a request to
17 us that we add a fourth election?

18 MR. CAREY: Under *Grove* and *Branch*, as the Court has
19 observed, the Court should wait until the last possible trigger
20 date.

21 JUDGE THAPAR: It also factors in considering reality.
22 That's my point. Are you asking that we create a fourth --
23 independent of the special elections, after the special
24 elections have the primary?

25 MR. CAREY: I'm trying to ascertain at this moment

1 what the latest date is that the primary could be held.

2 JUDGE BEATON: The answer to that question is only
3 relevant if someone is asking us to hold a fourth -- to add a
4 fourth election after August 2nd but presumably no later than
5 August 10th or 8th. Is that your client's request?

6 MR. CAREY: In part, my answer to your question would
7 depend on what the date is.

8 JUDGE BEATON: It's going to be between August 2nd and
9 August 10th.

10 MR. CAREY: If the date can be moved by a similar
11 proportion as with the primary -- and we're talking about a
12 16-day difference from 90 days to 74 days.

13 JUDGE BEATON: That's a totally different set of
14 considerations.

15 MR. CAREY: I'm trying to ascertain with Ms. Grandjean
16 whether the general election calendar could be compressed to a
17 similar degree. If it could, then, yes, I believe we would ask
18 that the trigger date be pushed back.

19 JUDGE THAPAR: We don't -- as I understand it -- and
20 this has to be a consideration unless you tell me I'm crazy.
21 August 2nd means we don't monkey with the general election
22 other than compressing the time which you can campaign against
23 you're opponent because you're campaigning against your other
24 opponent meaning your primary opponent. But if we -- so you're
25 asking us to monkey with both the primary and the general?

1 MR. CAREY: I'm asking whether there is leeway to push
2 the trigger date back so that the Court can observe its --

3 JUDGE THAPAR: Is there authority for us not only
4 compressing one but compressing another?

5 MR. CAREY: I don't have that specifically. But the
6 Court has broad authority to reset election dates as necessary.

7 JUDGE BEATON: As long as we do minimal violence to
8 state law.

9 MR. CAREY: Right. Balancing those two factors may --

10 JUDGE MARBLEY: You may answer.

11 THE WITNESS: Can you repeat the question?

12 BY MR. CAREY:

13 Q. Could the primary date be pushed back and allow for a
14 compressed schedule between the primary and the general
15 election and still have a general election held?

16 A. I believe my affidavit and the secretary's briefing
17 speaks for itself. And our answer was August 2nd.

18 MR. CAREY: Thank you, Ms. Grandjean. I have no more
19 questions.

20 JUDGE MARBLEY: Thank you, Mr. Carey.

21 Mr. Cooper?

22 MR. COOPER: No questions, Your Honor. Thank you.

23 JUDGE MARBLEY: Mr. Squire?

24 MR. SQUIRE: No questions, Your Honor.

25 JUDGE MARBLEY: Mr. Fox?

1 MR. FOX: Just a few questions.

2 JUDGE MARBLEY: Please proceed, Mr. Fox.

3 MR. FOX: For the record, David Fox on behalf of the
4 Bennett parties.

5 JUDGE THAPAR: Thank you, Mr. Fox.

6 - - -

7 CROSS-EXAMINATION

8 BY MR. FOX:

9 Q. Ms. Grandjean, you were asked some questions about what
10 maps are in the county board of elections' systems. Do you
11 recall that?

12 A. I do.

13 Q. Do you know if all 88 counties have the same map in
14 their system?

15 A. I don't know. I haven't examined them personally.

16 Q. Is it possible some counties have one map and some
17 counties have a different map?

18 A. Perhaps, and some may have different backups.

19 Q. All counties would need to have the same maps in their
20 system to conduct an election, correct?

21 A. Correct.

22 Q. You don't know if all 88 counties have a backup of any
23 particular map at this point; is that right?

24 A. Again, our directive speaks for itself. We have
25 instructed them to, if they are capable of maintaining a backup

1 of the -- of the map, that they were instructed to do so. The
2 February 24th map. Excuse me.

3 Q. And do you know if there are any counties that, as you
4 sit here today, do not have the capability to back up their
5 systems in that way?

6 A. I don't know.

7 Q. Now, candidates filed --

8 JUDGE THAPAR: Before you move on to the next line,
9 can you get us that answer?

10 THE WITNESS: The exact answer to whether or not they
11 have the capability to --

12 JUDGE THAPAR: No. All I care about is do they have
13 map three in their system. I'm not saying today because I
14 recognize. Can you get us an answer in an affidavit taking a
15 survey of 88 counties and answering the question that Mr. Fox
16 asked?

17 THE WITNESS: Yes.

18 BY MR. FOX:

19 Q. One more question on that line. Do you know if there
20 might be some counties that have partially implemented map
21 three in their system but did not finish the process before
22 Secretary LaRose --

23 A. I don't know.

24 JUDGE THAPAR: That would be helpful, too, in your
25 affidavit. Thank you, Mr. Fox.

1 BY MR. FOX:

2 Q. Ms. Grandjean, candidates filed for the general assembly
3 on February 2nd, correct?

4 A. Yes.

5 Q. That was the last day?

6 A. Yes.

7 Q. And that was under the second plan, correct?

8 A. January 22nd.

9 Q. Correct.

10 A. Yes.

11 Q. There has been no opportunity for candidates to file
12 since the third plan was adopted on February 24th, correct?

13 A. You need to qualify your question to general assembly
14 candidates.

15 Q. Correct.

16 A. Correct.

17 Q. And there was an opportunity for candidates to move
18 after the third plan was adopted, correct?

19 A. The Ohio Constitution affords for 30 days in 9(C) to
20 move into a district once the new plan, slash, map is filed.

21 Q. And the deadline for candidates to move under the third
22 plan was March 26th, right?

23 A. I believe that is 30 days from the 24th.

24 Q. And that's last Saturday, correct?

25 A. Correct.

1 Q. Before that deadline occurred, the Ohio Supreme Court
2 had already ruled the third plan, the February 24th plan,
3 unconstitutional, correct?

4 A. Correct.

5 Q. And before that deadline occurred, your office,
6 Secretary LaRose, issued a directive that said that
7 certifications of candidacies under the third plan were void;
8 is that right?

9 A. No. We said not that -- that the act itself was void.

10 Q. What do you mean by "the act"?

11 A. The act the board took meaning in a public meeting,
12 the -- I mean, I'm sure -- there was an email that was written
13 about this. And I would have to refresh my recollection
14 exactly, but -- of what the email said, but it is -- and/or the
15 directive. So, if you have something for me to point to, that
16 would be helpful. But the act of certification was void
17 pending the federal litigation.

18 Q. But there was a statement put out that the act of
19 certification was void as a result of the Supreme Court's
20 action, right?

21 A. As a result of the Supreme Court --

22 Q. The Ohio Supreme Court.

23 A. I mean, if you have the statement, that would be great.

24 MR. FOX: One moment, Your Honor.

25 JUDGE THAPAR: Just while he's getting it, that just

1 means they moved. You all certified that they moved -- or
2 certified that, and then once the Supreme Court struck it down,
3 you voided that certification. Am I thinking about this right?

4 THE WITNESS: Not quite. And I mean that with all due
5 respect.

6 JUDGE THAPAR: Don't worry about that part. Just give
7 me the answer.

8 THE WITNESS: Meaning that -- and I need to understand
9 what the date is he's referring to, the statement, to give you
10 an accurate answer. But the act of certifying a candidate to a
11 district that was invalidated like temporarily -- not
12 temporarily, with all due respect to the Supreme Court, but
13 just in light of pending federal litigation.

14 BY MR. FOX:

15 Q. Ms. Grandjean, I apologize. I don't know if you have
16 the packet of exhibits?

17 A. I do not.

18 JUDGE THAPAR: This one?

19 MR. FOX: That is the one.

20 THE WITNESS: Then I do.

21 BY MR. FOX:

22 Q. Can you turn to what they admitted as Exhibit 14 and
23 that's Directive 2022-31?

24 A. Yes.

25 Q. Let me know when you're there.

1 A. I'm there.

2 Q. If you go to the second page --

3 JUDGE THAPAR: To the second what?

4 MR. FOX: Second page, heading Roman 3.

5 BY MR. FOX:

6 Q. Do you see it says starting with the second sentence,
7 "Due to the Supreme Court's decision in League of Women Voters
8 of Ohio, by operation of law, a board's decision to certify or
9 reject those candidates' petitions for the May 3, 2022, primary
10 election is null and void"?

11 A. Correct. That's what I'm getting at, the act.

12 Q. I'm not trying to disagree with you. All I'm asking you
13 is that statement went out before the March 26th deadline for
14 candidates to move, right?

15 A. It says March 23.

16 Q. And again, before that March 26th deadline, the Ohio
17 Supreme Court had already ruled the third plan
18 unconstitutional?

19 A. I'm sorry. Can you repeat that? So many dates.

20 Q. Before the March 26th deadline for a candidate to move
21 under the third plan, the Ohio Supreme Court had already ruled
22 the third plan unconstitutional?

23 A. I believe that's correct.

24 MR. FOX: No further questions.

25 JUDGE BEATON: Just so this makes sense in my mind, is

1 your point that because of this 30-day moving period, there
2 actually wouldn't be a shorter time period potentially for map
3 three than for any other map?

4 MR. FOX: Correct. If Your Honors were to order an
5 election under map three without allowing an opportunity for
6 candidates to move, there will be candidates who did not move.
7 I have a declaration from one of them. I was hoping to offer
8 live testimony, but he may not be available because of timing.

9 There will be candidates who did not move because the
10 Ohio Supreme Court struck down the third plan.

11 JUDGE THAPAR: Can you give me the date they struck
12 down the third plan?

13 MR. FOX: I believe it was March 16th.

14 JUDGE THAPAR: So ten days. So what we could do, to
15 cut it as close as possible if we were going to do plan
16 three -- you gave us June 8th. We could cut back ten days on
17 that and say that's the move-in -- the remainder of the move-in
18 period. Is that possible?

19 THE WITNESS: Yes.

20 MR. FOX: I will just -- if I may. I think Judge
21 Beaton's question earlier was a very good question which is
22 that the June 8th, the deadline doesn't really help very much
23 because the actual drop-dead has to be the time to adopt a new
24 plan because by then it either will have happened or won't have
25 happened. I don't know that the June 8th deadline really makes

1 any difference.

2 JUDGE BEATON: In other words, any advantages to using
3 map three would follow from the logistical efficiency of that
4 map already having been partially implemented. I'm sure you
5 disagree in some respects. It would not flow from us being
6 able to set a later drop-dead date. The drop-dead date would
7 have to be 90 days for the same reason that we would have to
8 know whether it was map three or some other map at that point,
9 not at 74 days.

10 MR. FOX: Exactly. No matter what, Ohio needs to
11 adopt a new plan in time to implement a new plan. And if it
12 hasn't done that in time to implement a new plan, then the
13 additional days before June 8th don't make a difference because
14 at that point what the secretary is telling us is only the
15 third plan can be implemented anyway. And we would know that
16 at, I guess, the number is 104 days out.

17 JUDGE BEATON: Thank you for that clarification.

18 JUDGE THAPAR: Wait. I'm sorry. I'm not following
19 you. Let me ask it this way. Let's say -- I'm not saying we
20 should institute map three. I'm just trying to figure all this
21 out. Let's say we decided, okay, if we have to get involved,
22 map three is going in. Presumably the secretary -- if June 8
23 is when they said we could rev up map three, what am I missing?

24 MR. FOX: By the time 104 days before the election has
25 passed, which I think is April 20th that the date the Court

1 came up with, it's already too late. There's no possibility,
2 according to the Secretary of Ohio, of adopting any map other
3 than map three between April 20th and June 8th because it's
4 already too late to do anything other than map three, which
5 means if you get to April 20th, you already know that the only
6 map that can be implemented is map three.

7 JUDGE THAPAR: So are you asking us instead of waiting
8 until, I guess, it would have to be June 8th plus ten days --
9 so working back. Let's just pick May 28th. I know that's
10 probably wrong. But May 28th being we would have to intervene
11 either on May 28th if we're doing map three, or April 20th if
12 we're doing all other maps.

13 MR. FOX: What I am saying is that the Court should
14 adopt -- if the Court thinks it needs to adopt a schedule for
15 the adoption of a map, the Court should adopt a schedule that
16 allows it to implement a map other than three. The map three
17 schedule does not actually give Ohio any more time.

18 JUDGE MARBLEY: Mr. Fox, let's assume for a moment
19 that we adopt a map other than map three. Let's just assume
20 for the purpose of my question that the Supreme Court adopts
21 map four or -- that we adopt a fourth map. What date, based on
22 your argument, is the date by which that map has to be adopted?
23 And, again, let's use the August 2nd date as the date for the
24 election as opposed to the May date.

25 MR. FOX: We don't -- I want to be clear. Our clients

1 and we do not have factual information about what the Secretary
2 of State can or cannot do. We will have, I hope, some
3 testimony from a local elections official about some of this.
4 But our position -- we're not in a position to challenge the
5 Secretary of State's representations to this Court about what
6 can be done and in what period of time. And what I heard from
7 that colloquy is that that date is really, I think, to allow
8 for a chance for candidates to move, it sounds like that date
9 is potentially April 20th.

10 JUDGE THAPAR: But you agree -- so back to Judge
11 Marbley's question. May 4th -- April 20th, I'm sorry, if we
12 want to institute map four.

13 MR. FOX: Correct.

14 JUDGE THAPAR: Map three, why couldn't we do it
15 May 28th?

16 MR. FOX: The Court could. But the only reason to
17 provide more time is to let Ohio adopt a different map. And
18 Ohio is subject to the same limitations as this Court. And so
19 if this Court can't adopt another map after April 20th, then
20 Ohio can't do so either. And so you're not giving Ohio any
21 more time.

22 This was Judge Beaton's point. I don't want to take
23 credit for it. I thought it was an excellent point.

24 JUDGE THAPAR: Why aren't we? Because Ohio can do all
25 kinds of things that we shouldn't do like monkey with all their

1 rules. What we're trying to do is the least amount of damage
2 to Ohio law. We're going to do some damage if we get involved;
3 there's just no question. So we're trying to do the least.

4 MR. FOX: It's true that the general assembly could
5 change the deadlines and thereby allow a later map. The
6 general assembly could do that at any time. But I think that's
7 a fair point. I would say that the downside of ordering an
8 election under an unconstitutional map greatly outweighs the
9 allowing for the possibility that the Ohio General Assembly
10 will amend statutory law to make it possible to adopt a
11 different map later in what is a relatively --

12 JUDGE THAPAR: But you agree Ohio can do all sorts of
13 things that we shouldn't do.

14 MR. FOX: Absolutely. Which is why our position is
15 the Court should, for the time being, stay out of it entirely.

16 JUDGE THAPAR: Why doesn't that counsel us giving them
17 more time, not less? In other words, *Branch* and *Grove* are
18 pretty clear that, hey, Court, stay out till you have to
19 intervene. I think we all agree to that.

20 MR. FOX: Yes.

21 JUDGE THAPAR: And so I agree with you past
22 April 20th, you know we're left with one option. But it seems
23 like Ohio could still -- they could work it out. The Supreme
24 Court and the Commission could sit down in a room and hammer
25 this out. They could adjust some things to make it work.

1 MR. FOX: Your Honor, I think that -- I think that's a
2 good point. I think that makes sense. What I will say is I
3 think if Ohio can do it, then so can this Court, to avoid
4 ordering an unconstitutional map.

5 JUDGE MARBLEY: Mr. Fox, the question becomes,
6 though -- and this was kind of Judge Thapar's point. What is
7 the *Grove/Branch* date? Is it April 20? Because under *Grove*
8 and *Branch*, we are to abstain until it just becomes apparent
9 that if we don't act, there won't be an election. So what is
10 the *Grove/Branch* date? Is it April 20th?

11 MR. FOX: Your Honor, the *Grove/Branch* date is the
12 last date this Court can order a lawful map. Our position is
13 this Court cannot order the third map because the third map is
14 unconstitutional under Ohio law.

15 JUDGE BEATON: That's a separate point. The timeline.
16 What's your position on timeline?

17 MR. FOX: Because of that, if the Court's -- if the
18 Court's view based on what the Secretary of State has said is
19 the last date the Court can order a lawful map that is not the
20 third map is April 20th, then our answer is April 20th is the
21 *Grove/Branch* date because our position is the Court cannot
22 order an unlawful map.

23 JUDGE MARBLEY: Thank you. You all have anything?

24 JUDGE THAPAR: Yes, I do. I'm sorry. April 20th --
25 but any map we pick could potentially be characterized as

1 unlawful. This is the problem, right? And this is the Supreme
2 Court -- and other courts have pointed this out. In a
3 last-stitch effort, we can impose under the supremacy clause
4 something that might be or is unlawful under state law in the
5 interest of protecting the right to vote.

6 MR. FOX: Yes, Your Honor. But you can only do that
7 if it is necessary; in other words, if state law and federal
8 law are inconsistent. It is not necessary because it is
9 entirely possible for this Court to impose a map that is lawful
10 under both federal and Ohio law.

11 JUDGE MARBLEY: But you're saying that's not the third
12 map.

13 MR. FOX: Correct. It's not the third map. It is not
14 the fourth map that was just passed by the Commission, but it
15 is entirely possible -- we will have some evidence today of
16 this. It is entirely possible to draw a lawful map under both
17 Ohio and federal law, and that is what the Court should do if
18 it must do something.

19 JUDGE BEATON: By April 20th.

20 MR. FOX: Correct. Again, not our position, based on
21 the secretary's representation of the time they need.

22 JUDGE BEATON: You're not disputing the timeline. You
23 have a different position on remedy.

24 MR. FOX: Correct.

25 JUDGE MARBLEY: Thank you, Mr. Fox.

1 Ms. Marshal, anything?

2 MS. MARSHALL: No questions, Your Honor.

3 JUDGE MARBLEY: Mr. Brey, any recross?

4 MR. BREY: Very briefly, Your Honor.

5 - - -

6 RE-CROSS-EXAMINATION

7 BY MR. BREY:

8 Q. The ten additional days which has been discussed for
9 change in residence, is there any reason that couldn't begin
10 June 8th and ten days after that as additional time for people
11 to change residence rather than adding -- subtracting from
12 June 8 ten days earlier?

13 A. Again, I don't have that Constitution in front of me,
14 but I think it just says from when the plan is filed.

15 MR. BREY: Thank you.

16 JUDGE THAPAR: Can I ask one question? So back to
17 Mr. Fox. I'm just thinking out loud. He says April 20th.
18 That means on April 20th, we would have to have -- let's say
19 we're going to the -- the three of us are going to sit down and
20 we're going to throw darts at an Ohio map and that's how we're
21 going to divide it, okay? We do that and we come up with our
22 map. You have to have that by April 20th.

23 THE WITNESS: And it's a new map?

24 JUDGE THAPAR: It's going to be new because the darts
25 are going to tell you. New map. You need it April 20th. In

1 other words, if we pick a map not in existence today, it would
2 have to exist on April 20th.

3 THE WITNESS: For the full, ordinary course of the
4 election calendar. Is that what you're asking?

5 JUDGE THAPAR: Yes.

6 THE WITNESS: Yes. That would be the ordinary -- that
7 would back up to the ordinary timeline.

8 JUDGE THAPAR: Okay. That helps.

9 MR. BREY: Nothing further, Your Honors.

10 JUDGE MARBLEY: Thank you, Mr. Brey. But more
11 importantly, thank you, Ms. Grandjean. We appreciate your
12 patience and your thoroughness and your candor.

13 We'll break for lunch now. Why don't we break for 45
14 minutes until 1:15.

15 (Lunch recess taken from 12:29 p.m. to 1:24 p.m.)

16 - - -

17 WEDNESDAY AFTERNOON SESSION

18 MARCH 30, 2022

19 - - -

20 JUDGE MARBLEY: Mr. Brey, your next witness, please.

21 MR. BREY: Thank you, Your Honor. Plaintiffs call
22 Mike Gonidakis to the stand.

23 JUDGE MARBLEY: Mr. Gonidakis, please come forward and
24 be sworn.

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MICHAEL GONIDAKIS

Called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BREY:

Q. Mr. Gonidakis, would you please state your name and the spelling of your name for the record.

A. Michael, M-I-C-H-A-E-L; Gonidakis, G-O-N-I-D-A-K-I-S.

Q. Where do you live?

A. I live at 6584 Baronscourt Loop in Dublin, Ohio 43016.

Q. Are you a registered Ohio voter?

A. Yes, sir.

Q. Do you know the state senator in whose district you currently are?

A. Yes.

Q. Have you been involved in voting activity over the years?

A. Yes, sir.

Q. Briefly describe the sort of election area and activity in which you've been involved?

A. Doing research on the candidates, of course, going door-to-door for candidates, obviously choosing a candidate to support, attending rallies, small, large, and yard signs, distributing them, putting them in my yard, and so on and so

1 forth.

2 Q. You are president of the Ohio Right to Life, are you
3 not?

4 A. That is correct.

5 Q. You're not an employee but have some sort of contract
6 relationship with them?

7 A. Yes.

8 Q. Do you care what voting plan is adopted?

9 A. No, sir.

10 Q. Do you care when the primary is conducted?

11 A. No, sir.

12 Q. Do you care whether you have a unified or bifurcated
13 primary?

14 A. No, sir.

15 Q. Do you care whether or not you have a right to vote for
16 your general assembly candidates in a primary?

17 A. Yes, sir.

18 Q. Why is that?

19 A. Well, it's a God-given constitutional right to be able
20 to vote. I've had that since I've been 18 years old here in
21 the United States and Ohio. And many men and women, sons and
22 daughters, husbands and wives, have sacrificed their lives
23 fighting for and defending that right for all of us in this
24 room.

25 Q. Are you concerned or are you not concerned about

1 whether -- let me withdraw that question.

2 MR. BREY: I think I'm done with asking questions of
3 this witness.

4 JUDGE MARBLEY: All right. Mr. Blanton, any cross?

5 MR. BLANTON: No, thank you, your Honor.

6 JUDGE MARBLEY: Mr. Carey, any cross?

7 MR. CAREY: No questions, Your Honor.

8 JUDGE MARBLEY: Thank you. Mr. Cooper, any cross?

9 MR. COOPER: No, Your Honor.

10 JUDGE MARBLEY: Mr. Squire, any cross?

11 MR. SQUIRE: No, sir.

12 JUDGE MARBLEY: Mr. Fox, any cross?

13 MR. FOX: No, Your Honor.

14 JUDGE MARBLEY: Ms. Marshal, any cross?

15 MS. MARSHALL: No, Your Honor.

16 JUDGE THAPAR: Can I ask a question?

17 JUDGE MARBLEY: Please.

18 JUDGE THAPAR: You said -- just looking at my notes --
19 you research candidates, go door-to-door, you attend rallies,
20 you distribute and put yard signs in the yard. Do you also
21 donate to candidates?

22 THE WITNESS: I have in the past, yes, sir.

23 JUDGE THAPAR: You are not one of the plaintiffs that
24 would consider running, or are you?

25 THE WITNESS: No, sir.

1 JUDGE THAPAR: Okay. That answers mine.

2 JUDGE BEATON: Would you say that your interest in
3 this election is just the same as any old voter? Or do these
4 activities you mentioned give you a particular interest in the
5 Ohio primary election?

6 THE WITNESS: Your Honor, I would say that I'm always
7 very interested in the election cycle, whether it be an
8 off-year, on-year election cycle. I think my voter intensity
9 personally is always at a hundred percent.

10 JUDGE MARBLEY: In light of the questions of my
11 colleagues, Mr. Brey, any redirect of Mr. Gonidakis?

12 MR. BREY: I have no redirect for this witness, sir.

13 JUDGE MARBLEY: Mr. Gonidakis, thank you very much,
14 sir. You may be excused. Mr. Brey, your next witness.

15 MR. BREY: With that, we rest our case.

16 JUDGE MARBLEY: Thank you, very much.

17 Mr. Blanton, do you have any witnesses you wish to call
18 at this time?

19 MR. BLANTON: I do not.

20 JUDGE MARBLEY: Mr. Carey, do you have any witnesses
21 you wish to call at this time?

22 MR. CAREY: No, Your Honor.

23 JUDGE MARBLEY: Mr. Cooper, do you have any witnesses?

24 MR. COOPER: Yes. We would call Christopher Glassburn
25 to the stand.

1 JUDGE MARBLEY: Mr. Glassburn, please come forward and
2 be sworn.

3 (Witness sworn.)

4 MR. COOPER: Your Honors, before I begin, there is a
5 couple of exhibits we'd like to use. I wonder if I might
6 provide copies to the Court.

7 JUDGE MARBLEY: Yes. Give them to Ms. Shane.

8 JUDGE THAPAR: While he's doing that, would you spell
9 your last name.

10 THE WITNESS: My name is Chris Glassburn,
11 G-L-A-S-S-B-U-R-N.

12 JUDGE THAPAR: Thank you.

13 JUDGE MARBLEY: Mr. Cooper, please proceed.

14 - - -

15 CHRIS GLASSBURN

16 Called as a witness on behalf of Intervenor Defendants, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. COOPER:

20 Q. Mr. Glassburn, could you please introduce yourself to
21 the judges?

22 A. Hi. My name is Chris Glassburn. I'm the president of a
23 company called Project Govern that works on redistricting,
24 government financing campaigns.

25 Q. I know before we began you asked me to convey to the

1 Court that you have a chronic cough. You're not infectious,
2 but there may be times you need to take a drink of water or
3 something like that.

4 MR. COOPER: If that's okay with the panel?

5 JUDGE THAPAR: Yes.

6 MR. COOPER: I think he may have a water bottle.

7 THE WITNESS: I left it behind.

8 JUDGE THAPAR: Can we get it for him?

9 JUDGE MARBLEY: We've got an extra one right here.

10 THE WITNESS: Thank you very much.

11 JUDGE THAPAR: Just cough at my law clerks.

12 THE WITNESS: Yes, Your Honor.

13 BY MR. COOPER:

14 Q. Mr. Glassburn, can you tell us, please, how long you've
15 been working on redistricting maps in Ohio?

16 A. I have worked on maps since the -- since 2008. I was
17 one of the map drawers for the 2010 cycle of redistricting.

18 Q. And just to preview a little bit of your testimony
19 today, were you personally involved in the Ohio Redistricting
20 Commission's recent map-drawing process, the one that went from
21 March 17th through March 28th?

22 A. Yes, I was.

23 Q. And were you also personally involved in the
24 redistricting commission's earlier map-drawing processes?

25 A. Yes. I was involved in all rounds.

1 Q. Have you also formed opinions about certain maps that
2 were created during the most recent round of redistricting?

3 A. Yes, I have.

4 Q. Opinions about whether those maps are -- meet the
5 relevant criteria established by Ohio's Constitution?

6 A. Yes, I have.

7 Q. So just before we get to that, I want to talk about your
8 qualifications. Can you please tell the panel about your
9 training and experience with respect to drawing legislative
10 district maps?

11 A. Sure. My undergraduate degree is in history. I did
12 some graduate school coursework at Cleveland State which has a
13 GIS program there. And I first became familiar with how to do
14 this at Cleveland State. But then I went to work in the state
15 legislature, was a legislative employee for a number of years.
16 I researched the previous rules for drawing in the last cycle
17 and was the official map drawer for the Democrat's
18 congressional and state legislative in the last cycle as well
19 as in the lawsuit that followed.

20 Q. When you say "last cycle," what do you mean by that?

21 A. The 2010 process following the 2010 census.

22 MR. COOPER: Please continue.

23 JUDGE THAPAR: When you worked in the state
24 legislature, what did you do?

25 THE WITNESS: I had a variety of roles from

1 legislative aid to policy director and aid to the speaker.

2 JUDGE MARBLEY: Which speaker?

3 THE WITNESS: Speaker Armond Budish.

4 BY MR. COOPER:

5 Q. So, Mr. Glassburn, please continue with your experience
6 with drawing legislative district maps.

7 A. Following the 2010 cycle, I had been hired to provide
8 mapping expertise and opinions by both Democrats and the Ohio
9 League of Women Voters at different times leading up to the two
10 reforms 2015 and 2018; 2015 being the state legislative. And
11 then I have served as the Democratic map drawer for this cycle
12 in each of its rounds. And I do some municipal redistricting
13 this cycle as well.

14 Q. Do you have experience with map-drawing software?

15 A. Yes, I do.

16 Q. Can you tell us about that?

17 A. I have proficiencie with Maptitude as well as some of the
18 online platforms such as Dave's Redistricting or
19 DistrictBuilder.

20 Q. Have you been hired as a consultant by governmental
21 agencies to draw maps?

22 A. Yes.

23 Q. Can you tell us a little bit about that?

24 A. I mean, I have been the -- hired by the State of Ohio in
25 the 2010 cycle and the 2020 cycle here for the state

1 legislative and congressional maps as well as by municipalities
2 in Ohio to draw city council districts.

3 Q. Through your education, training, and experience, have
4 you developed specialized knowledge about how to draw
5 legislative district maps?

6 A. Yes, I have.

7 Q. Have you also developed specialized knowledge about how
8 to draw maps in Ohio?

9 A. Yes, I have.

10 Q. Can you tell us a little bit about Ohio's unique
11 aspects?

12 A. For both state legislative and congressional, Ohio has
13 some of the most complex rules for map drawing in the country;
14 as well as the political geography of the boundaries of cities,
15 townships, villages, et cetera, it's some of the most
16 challenging as well.

17 Q. And how long, again, have you been involved in drawing
18 maps in Ohio?

19 A. Since 2008.

20 Q. And, in fact, during this most recent round of
21 redistricting, did the independent mapmakers turn to you with
22 any questions as they developed their maps?

23 A. Yes.

24 Q. Tell us a little bit about that.

25 A. Both of the independent mapmakers were from other

1 states: one Florida, one California. So many times they asked
2 about where city or township boundaries would lie or what --
3 for example, what counties could be paired together legally
4 given population limits.

5 Q. Let me take a little bit of step back and ask you about
6 the process that took place from March 17th through March 28th.
7 Can you please explain for the panel the map-drawing process
8 that the Commission put in place for this most recent go-round?

9 A. So the Commission itself adopted a set of rules and were
10 following or attempting to follow the most recent Ohio Supreme
11 Court orders as well as the Ohio Constitution. What stemmed
12 from that was the hiring of the two independent map drawers,
13 and this time they were the leads drawing the maps. And this
14 was all done in public on live web stream camera.

15 Q. And were those independent map drawers engaged by the
16 Commission itself?

17 A. Yes, they were.

18 Q. While the independent map drawers were doing their work,
19 where were you?

20 A. Myself, Randall Routt, another mapmaker with the
21 Democrats, as well as two Republican mapmakers and the
22 representatives of the statewide elected officials were charged
23 with being in the room while they draw those maps and to offer
24 technical advice to assist them in the completion of maps.

25 Q. So the Commission adopted independent map drawers. They

1 were hired by the Commission itself. The maps were drawn in
2 public on live stream. Can you tell us about the frequency of
3 interaction these mapmakers had with the Commission as a body?

4 A. The mapmakers checked in at least once every single day.
5 There were multiples, I believe, on a couple of days.

6 Q. And I think earlier you had mentioned that the
7 Commission adopted a set of ground rules for the independent
8 mapmakers?

9 A. Yes.

10 Q. Are you familiar with those ground rules?

11 A. Yes, I am.

12 Q. Can you please look at what's been marked as Sykes/Russo
13 Exhibit 1? Are these the ground rules for the independent
14 mapmakers?

15 A. Yes.

16 Q. To your knowledge, were these rules followed by the
17 independent mapmakers?

18 A. Yes.

19 MR. COOPER: Your Honors, at this point, we'd like to
20 move into evidence Sykes/Russo Exhibit 1.

21 JUDGE MARBLEY: Any objection, Mr. Brey?

22 MR. BREY: I have no objection.

23 JUDGE MARBLEY: Any other objection from any other
24 parties?

25 It will be received and you may publish it if you like,

1 Mr. Cooper.

2 MR. COOPER: Thank you, Judge. I think rather than
3 take the Court's time with that, I think the Court --

4 JUDGE MARBLEY: We all have copies.

5 BY MR. COOPER:

6 Q. Mr. Glassburn, at some point in the process, did the
7 Commission also provide additional instructions to the
8 independent mapmakers after a mediation?

9 A. Yes, they did.

10 Q. And are you familiar with that mediation agreement that
11 the Commission members reached with each other?

12 A. Yes, I am.

13 Q. Can you please look at what's been marked as Sykes/Russo
14 Exhibit 2? Is this the mediation agreement providing those
15 additional instructions to the independent mapmakers?

16 A. Yes, it is.

17 Q. To your knowledge, were these additional instructions
18 followed by the independent mapmakers?

19 A. Yes, they were.

20 MR. COOPER: At this point we move that Exhibit 2 be
21 adopted into evidence.

22 JUDGE MARBLEY: Any objection to Exhibit 2?

23 MR. BREY: No objection.

24 MR. BLANTON: No objection.

25 JUDGE MARBLEY: Exhibit 2 will be received.

1 JUDGE THAPAR: Can I ask one question? Is this
2 mandated by law, this what I'll call the incumbent protection
3 amendment? Or is it just something they did? Does that make
4 sense?

5 THE WITNESS: My simple answer is no.

6 JUDGE THAPAR: It's not mandated. So they did it of
7 their own volition.

8 THE WITNESS: Yes, Your Honor.

9 JUDGE THAPAR: Thank you. Sorry about that.

10 JUDGE MARBLEY: Please proceed, Mr. Cooper.

11 BY MR. COOPER:

12 Q. Mr. Glassburn, following this process that's been
13 described, did the independent mapmakers produce a final map?

14 A. Yes, they did.

15 Q. Are you familiar with the independent mapmakers' final
16 map?

17 A. Yes, I am.

18 Q. And how did you become familiar with it?

19 A. I observed the creation of the map as well as assisted
20 in the transmission of that final file to the representatives
21 of all Commission members.

22 Q. Tell us, how did you do that? Were you in the room when
23 the map was completed? What happened there, just for the
24 Court's benefit?

25 A. Very painfully I was in the room for all 18 hours of map

1 drawing each day.

2 Q. Do you have with you a flash drive that we have marked
3 as Sykes/Russo Exhibit 3?

4 A. Yes, I do.

5 Q. And is the final map from the independent mapmakers
6 contained on this flash drive?

7 A. Yes, it is.

8 Q. When was this map completed?

9 A. It was completed the final evening of the process.

10 Q. Which was a Monday, March 28th?

11 A. Yes.

12 Q. And that was approximately 10:30 p.m. or somewhere
13 around there?

14 A. Correct.

15 MR. COOPER: Your Honors, at this time, I'd like to
16 move that the Sykes/Russo Exhibit 3 be admitted into evidence.

17 JUDGE MARBLEY: Any objection, Mr. Brey?

18 MR. BREY: We would object. We have a flash drive.
19 We have no idea what's on it. We can't access or read it. We
20 have no idea what he's introducing.

21 JUDGE MARBLEY: Mr. Cooper, was Exhibit 3 previously
22 provided to Mr. Brey?

23 MR. COOPER: It was provided but only about two
24 hours -- it was provided today.

25 JUDGE MARBLEY: And you say you have not been able to

1 open it, Mr. Brey?

2 MR. BREY: No. Actually, I noticed it about -- when
3 he walked up here, it was in front of me. If he had provided
4 it to me two hours ago, I can't dispute that. But I don't
5 know. I have no familiarity of it until it appeared on my
6 place five minutes ago.

7 MR. COOPER: Judge, would it be prudent to take a
8 three-minute break for Mr. Brey to look at the flash drive?
9 They are simply files that have been downloaded.

10 JUDGE MARBLEY: What is on the flash drive?

11 MR. COOPER: The independent mapmakers' final map.

12 JUDGE MARBLEY: Let me ask it to you this way,
13 Mr. Brey. If what Mr. Cooper represents is included on the
14 flash drive, do you have any objection to it?

15 MR. BREY: Well, I do object to it because it's not
16 authenticated by the independent mapmakers. It's a third-party
17 hearsay submission, what he says he saw and believes happened.
18 So I think it would be excluded for that reason as well.

19 JUDGE MARBLEY: Do you have any rejoinder?

20 MR. COOPER: I think there is testimony that
21 Mr. Glassburn has provided that he personally observed the
22 completion of this map and transmitted these very electronic
23 files from the mapmakers to the Commission which then uploaded
24 them to its public website. But if the Court would like more
25 foundation, Mr. Glassburn will be able to provide that.

1 JUDGE MARBLEY: Let me go at it this way.

2 Mr. Brey, let's say we adjourn and we got a copy from
3 the independent mapmakers of that which is obtained on the
4 flash drive. Do you have an objection to that?

5 MR. BREY: I think if you have independent mapmakers
6 who authenticate and could be cross-examined, yes, it would be
7 appropriate evidence.

8 JUDGE MARBLEY: So your only objection to it is
9 authentication?

10 MR. BREY: Its authentication if it's what he claims
11 it is. I would note the two hours probably means as soon as we
12 left for lunch he left it on my empty desk which is why I
13 didn't see it until --

14 MR. COOPER: I handed it to --

15 JUDGE MARBLEY: Counsel, I don't permit that type of
16 exchange. Please direct your comments to the Court.

17 I'm going to, unless there is disagreement among my
18 colleagues, admit it provisionally so we can keep going. My
19 point was whether you had any objection to the map itself. We
20 can cure the authentication problem.

21 JUDGE BEATON: May I just ask, is this some special
22 program that you have -- that represents it, or is it just like
23 an image that you can print out and hand us all?

24 MR. COOPER: It's -- Mr. Glassburn could mention this.
25 It's six or seven files, some of which are images that could be

1 printed but some of which are Excel spreadsheets containing
2 data. And printing those I think -- some maybe are 30,000
3 lines or something like that. I thought it might be easier for
4 the Court to accept that into evidence as its native files
5 instead of a big stack of --

6 JUDGE BEATON: I have no problem doing what the Chief
7 Judge suggested. If you have a printout of the map, it seems
8 easier to hand everybody a printout of the map.

9 MR. COOPER: It would. Unfortunately, the map itself
10 is not the independent mapmakers' final map. It's one of the
11 files that comprises it. But the data itself is the final map.

12 JUDGE BEATON: So there's no printout of the final
13 map? There's no geographic representation?

14 MR. COOPER: There is, but --

15 JUDGE BEATON: Why can't you print the final?

16 MR. COOPER: We can. We would also like the Court to
17 have the underlying data of that that comprises the final map.

18 JUDGE MARBLEY: So you can give us the final map.

19 MR. COOPER: In addition to the visual representation.

20 JUDGE MARBLEY: My ruling stands. I'm going to allow
21 it subject to authentication, Mr. Brey. Your objection is duly
22 noted.

23 MR. BREY: I also object to relevance.

24 JUDGE MARBLEY: All right. Please continue,
25 Mr. Cooper.

1 BY MR. COOPER:

2 Q. Mr. Glassburn, maybe you can address this. Can you tell
3 us what is on the flash drive and how that comprises the final
4 map?

5 A. There were, I believe, six files: two image files that
6 would be printed out as 8-and-a-half-by-11s as the House and
7 Senate maps. There are two files that are data files that
8 would list each of the districts with population and partisan
9 indexes. Then there would be two files, one for House and
10 Senate, that are a listing of the 264,000 census blocks that is
11 Ohio and which district each of those go to.

12 Q. Mr. Glassburn, did the independent mapmakers begin this
13 map-drawing process from scratch?

14 A. Yes, they did.

15 Q. How long did it take for the independent map drawers to
16 start from scratch and produce this map?

17 A. Five-and-a-half days.

18 Q. Earlier you said you had formed opinions about whether
19 certain maps created during the most recent round met criteria
20 established by Ohio's Constitution. I'm going to ask you about
21 those opinions. But before I do, will you please ensure that
22 the opinions you give us are only opinions that you hold to a
23 reasonable degree of professional certainty?

24 A. Yes.

25 Q. Are you familiar with the criteria for mapmaking

1 established by Ohio's Constitution?

2 A. Yes, I am.

3 Q. Does that include the criteria as construed by the Ohio
4 Supreme Court?

5 A. Yes, it does.

6 Q. How did you become familiar with that criteria?

7 A. Well, the constitutional amendment was passed several
8 years ago, and I was part of the analysis and adoption of that
9 as well as have become very familiar with it since. And I have
10 read each of the court rulings as they have come out.

11 Q. What experience do you have applying these
12 constitutional criteria?

13 A. I have, as I said, been the Democratic mapmaker in each
14 round which consisted of producing final maps in each round but
15 many drafts and iterations within each round. So I've had to
16 use these criteria dozens and dozens of times.

17 Q. To your knowledge and given your understanding of the
18 criteria of Ohio's Constitution, does the independent
19 mapmakers' map meet all of the constitutional criteria?

20 A. Yes, it does.

21 Q. Can you please explain why for the Court?

22 A. The criteria in Ohio's Constitution requires a number of
23 things. To keep it at a high level, it requires constructing
24 districts going from the largest county to the smallest that
25 have at least one state House district, and drawing as many

1 districts within each of those counties as possible using a
2 construction of townships, municipalities and whole counties
3 thereafter for the remainder of the state.

4 While doing that, the Constitution also points to the
5 election results of the past ten years, and that if you can
6 preserve all of the provisions regarding the construction, that
7 you should draw districts that are in the proportion of the
8 election results of the last ten years and do it in a compact
9 manner.

10 Q. With these maps, might there still be some technical
11 flaws in the independent mapmakers' map?

12 A. Yes.

13 Q. Can you give us an example of such a technical flaw that
14 might exist?

15 A. All of the commission-adopted maps and final maps
16 submitted by the minority have had technical flaws in the final
17 files submitted. Those typically consist of census blocks that
18 are not populated or census blocks that have been assigned to a
19 precinct erroneously. These are very minute flaws that are
20 corrected after.

21 JUDGE MARBLEY: Mr. Glassburn, for the record, could
22 you define for us what a census block is?

23 THE WITNESS: Yes. The U.S. Census Bureau, in the
24 process of conducting the decennial census, aggregates the
25 numbers, the results, in blocks of individuals. So your -- if

1 you lived on a city block in downtown Columbus, a census block
2 might be the entire -- how you would normally think of as a
3 block of four streets and say that eight people live on this
4 block. And it would have in the census report corresponding
5 information about a variety of topics. But for the purposes of
6 this, it's eight people live in that census block. In Ohio
7 there are 264,000 of those blocks that make up the entirety of
8 Ohio.

9 JUDGE MARBLEY: So the example works well in an urban
10 setting. Explain the census block concept for a rural setting
11 where you don't have city blocks.

12 THE WITNESS: So census blocks may be very small.
13 They can geographically be fairly large. But even in a rural
14 township, there will be several dozen blocks that are
15 separated. A block might be something that is unpopulated like
16 a golf course or airport, or as large as, for example, an
17 entire subdivision in a community.

18 JUDGE THAPAR: Is each block equivalent in population,
19 or do they vary?

20 THE WITNESS: They vary substantially.

21 JUDGE MARBLEY: Vary based on what?

22 THE WITNESS: Population. So, as I said, some blocks
23 are unpopulated. Some have just a single digit. Some have as
24 many as I believe a thousand people in them.

25 JUDGE MARBLEY: Thank you, Mr. Cooper.

1 BY MR. COOPER:

2 Q. Mr. Glassburn, you had said that there might be some
3 technical flaws in the independent mapmakers' map. How long
4 would it take, in your opinion, to identify and fix those
5 technical flaws?

6 A. No more than one day.

7 Q. Did the Commission end up adopting the independent
8 mapmakers' map?

9 A. No, they did not.

10 Q. I think for ease of the Court, we've been calling the
11 map that the Commission adopted map four or the fourth plan.
12 Are you familiar with map four?

13 A. Yes, I am.

14 Q. Do you have an opinion as to whether map four meets the
15 Ohio constitutional criteria as you understand them?

16 A. Yes, I have an opinion.

17 MR. BREY: Your Honor, I would object to the
18 testifying about the legality of the map. It will be before
19 the Court, the Supreme Court, in due time.

20 JUDGE MARBLEY: Well, this witness is testifying as an
21 opinion witness under *Johnson*. We would otherwise call him an
22 expert witness. And so his opinion is not binding obviously on
23 the Supreme Court. But, for the purposes of this hearing, it's
24 appropriate and I believe it's a proper area of inquiry. You
25 may cross-examine on that, certainly.

1 Please continue, Mr. Cooper.

2 BY MR. COOPER:

3 Q. Mr. Glassburn, based on your education, training, and
4 experience, what is your opinion regarding map four?

5 A. Map four would have the same defects as map three
6 primarily driven by the failure to follow the symmetry guidance
7 as the Ohio Supreme Court outlined.

8 Q. Can you explain that? I don't want to get super
9 in-depth unless the Court would like to, but give us a little
10 bit more at a high level.

11 A. So map three as -- had, between House and Senate, 19
12 Democratic seats that were between zero and 52 percent. There
13 were zero Republican. This proposal, I believe, reduces that
14 number from 19 to 17 or 16.

15 JUDGE THAPAR: What does that mean, zero and
16 52 percent?

17 THE WITNESS: There were, in map three, 19 districts
18 that had an average Democratic electoral performance between
19 50 and 52 percent for the previous decade.

20 BY MR. COOPER:

21 Q. And Mr. Glassburn, is that a measure of --

22 JUDGE THAPAR: I'm sorry. So not zero. Between 50
23 and 52 percent.

24 THE WITNESS: There were zero Republican districts
25 between 50 and 52.

1 JUDGE THAPAR: I thought you said Democratic seats
2 between zero and 52 percent. It's between 50 and 52 percent.
3 Got it. What did you say about -- I'm sorry. I missed the
4 next part.

5 THE WITNESS: There were zero Republican districts
6 that were 50 to 52 percent Republican by index.

7 JUDGE THAPAR: What were they?

8 THE WITNESS: I'm sorry? What were --

9 JUDGE THAPAR: What's the number?

10 THE WITNESS: There were zero Republican seats in that
11 range.

12 JUDGE THAPAR: So what range were they in?

13 THE WITNESS: All above 52 percent Republican.

14 JUDGE MARBLEY: How many districts were there that
15 were above 52 percent Republican?

16 THE WITNESS: Fifty-four in the House and 18 in the
17 Senate. So that would be 72 total.

18 JUDGE MARBLEY: And so those 72 districts were over
19 54 percent?

20 THE WITNESS: Fifty-two.

21 JUDGE MARBLEY: Thank you.

22 BY MR. COOPER:

23 Q. That was under map three. I think you said there were
24 19 House districts where the Democratic was in that 50 to
25 52 percent range, zero Republican districts. What about map

1 four?

2 A. That number, my understanding, reduced from 19 to 16.

3 Q. And how many Republican seats?

4 A. Zero.

5 Q. And what about on the Senate side?

6 A. No. That's both combined. House and Senate combined.

7 JUDGE THAPAR: House and Senate combined.

8 THE WITNESS: Yes.

9 JUDGE THAPAR: Thank you.

10 BY MR. COOPER:

11 Q. Have you also analyzed the compactness of map four and
12 the independent map?

13 A. Yes, I have.

14 Q. And can you tell the Court a little bit about what
15 compactness is and your analysis of these two maps?

16 A. Compactness has been defined by many measures. The two
17 driving, leading measures that I've seen are one is called the
18 Reock measure which measures how dispersed a district is over
19 an area. So a square would score very well.

20 The other is the Polsby-Popper method which is how
21 indented a district is, how much do the lines move on a jagged
22 basis.

23 Q. And after analyzing the compactness of map four and the
24 independent map, can you tell the Court about the comparison
25 between the two maps?

1 A. The independent map scored better than map four on both
2 of those measures for House and Senate maps.

3 JUDGE THAPAR: What does better mean?

4 THE WITNESS: More compact.

5 JUDGE BEATON: And who did that analysis?

6 THE WITNESS: I did. But the measures are -- there is
7 a formula. One called, again, Reock, R-E-O-C-K; and then one
8 called Polsby-Popper, P-O-L-S-B-Y, P-O-P-P-E-R.

9 JUDGE BEATON: So you took the independent map and ran
10 these two computer programs on it and you got a score that said
11 more compact?

12 THE WITNESS: Yes, Your Honor.

13 JUDGE MARBLEY: What did the independent map do with
14 respect to the districts? Map three had 19. Map four had 16.

15 THE WITNESS: The independent map had House and Senate
16 combined, five Democratic seats between 50 and 52, and three
17 Republican seats between 50 and 52.

18 JUDGE MARBLEY: Can I ask one other question,
19 Mr. Cooper? I'm sure that you were going to get to this. Were
20 these -- who drew these independent maps? I think I know the
21 answer, but I want it to be clear on the record.

22 THE WITNESS: They were drawn by Douglas Johnson and
23 Michael McDonald. Michael McDonald, the professor from
24 Florida, Douglas Johnson was the -- Mr. McDonald was nominated
25 by the Democrats. Mr. Johnson was nominated by the

1 Republicans. Mr. McDonald left at approximately 5 p.m. on the
2 final day, and Mr. Johnson alone finished the final map, but he
3 consulted with Mr. McDonald remotely.

4 JUDGE BEATON: Can you tell us more about that? What
5 happened after 5 p.m.?

6 THE WITNESS: After 5 p.m., Mr. Johnson finished
7 physically drawing the maps. He had completed a House map. He
8 needed to complete a Senate map because senate districts are
9 comprised of three house districts; so you must do the House
10 first. And then he briefly consulted with Mr. McDonald before
11 declaring that he had finished a map.

12 JUDGE MARBLEY: Please continue, Mr. Cooper.

13 MR. COOPER: I just had a couple of wrap-up questions.
14 If there are other questions from the panel --

15 JUDGE THAPAR: When you say Republicans nominated and
16 Democrats nominated, who do you mean by that?

17 THE WITNESS: Senator Sykes and Leader Russo nominated
18 Mr. McDonald. And Speaker Cupp and the other -- Senator
19 Huffman, Governor DeWine, Auditor Faber and Secretary LaRose
20 nominated Mr. Johnson to be the two independent map drawers.

21 JUDGE BEATON: Was that pursuant to some law? Or was
22 that instruction from the House? Or did they just reach that
23 arrangement by agreement?

24 THE WITNESS: The Ohio Supreme Court discussed in its
25 plan that the Commission consider hiring an independent map

1 drawer, and that the process occur in public this time. And
2 those recommendations were followed -- the way that was
3 followed was each caucus, if you will, of the Commission
4 members nominated an independent, and the two independents
5 worked together.

6 JUDGE BEATON: So, in other words, this wasn't just
7 drawing from like the text of the Constitution or some state
8 law provision. It was part of the Ohio Supreme Court's
9 decision as implemented by the Commission members.

10 THE WITNESS: Yes, Your Honor.

11 JUDGE MARBLEY: This was part of the Supreme Court's
12 opinion that directed -- that gave them directions.

13 THE WITNESS: Yes, Your Honor.

14 JUDGE MARBLEY: Like a remand with directions.

15 THE WITNESS: Yes, Your Honor.

16 JUDGE MARBLEY: Mr. Cooper, anything further?

17 BY MR. COOPER:

18 Q. The only follow-up question I have, Mr. Glassburn, is
19 you've expressed a lot of opinions today. Once again, do you
20 hold all of those opinions you expressed to a reasonable degree
21 of professional certainty?

22 A. Yes.

23 JUDGE BEATON: I did have one further question. I
24 don't mean this -- I don't mean for this question to come off
25 as glib in the least, okay? But you gave a lot of opinions

1 about compliance with the Ohio constitutional instructions for
2 mapmaking. But part of that process, a big part of that
3 process is also actually approval by the Commission. And so,
4 in that sense, the product of McDonald and Johnson is not
5 consistent with the Ohio Constitution, right?

6 THE WITNESS: The map - Your Honor, if I understand
7 your question - that was produced by Johnson and McDonald did
8 not follow any of the -- did not -- did not violate any of the
9 mapmaking instructions from the Constitution or from the
10 Court's order.

11 JUDGE BEATON: The substantive instructions, so to
12 speak. Are those found in a particular provision of the Ohio
13 Constitution? I know when you pull up this article, it starts
14 with the composition of the Commission and how they should
15 operate. Is there an aspect of the state law that you are
16 particularly referring to when you talk about technical
17 compliance and so forth?

18 THE WITNESS: The Ohio Constitution provisions require
19 that Sections 2, 3, 4, 5 and 7 are primary to be followed and
20 that Section 6 is -- is followed after those provisions are
21 followed.

22 JUDGE BEATON: And so which of those did your
23 testimony speak to when you're talking about compliance?

24 THE WITNESS: To all of the provisions.

25 JUDGE BEATON: Two through 7, but not 1.

1 THE WITNESS: One as well, but the map construction --
2 the instructions on how to construct a map are contained within
3 2 through 7.

4 JUDGE THAPAR: But part of the constitutional process
5 is approved by the Commission, not struck down by the Supreme
6 Court, correct?

7 THE WITNESS: Yes, Your Honor.

8 JUDGE THAPAR: And that didn't occur.

9 THE WITNESS: The Commission did not approve the
10 independent maps.

11 JUDGE BEATON: Did they take it up at all?

12 THE WITNESS: They voted to not approve the maps.

13 JUDGE MARBLEY: What was the reason given?

14 THE WITNESS: I was primarily outside of the room at
15 that time; so I did not hear all of the reasons that were
16 given.

17 JUDGE BEATON: Was there an actual thumbs up, thumbs
18 down, or was it just not passed?

19 THE WITNESS: It was voted down, I believe,
20 five-to-two.

21 JUDGE BEATON: That's all I have.

22 JUDGE MARBLEY: Was this map done by the -- it was a
23 map that was constructed by both MacDonald and Johnson working
24 together. Was there any question about that?

25 THE WITNESS: No. It's their map.

1 JUDGE MARBLEY: And to your knowledge was this map
2 completed?

3 THE WITNESS: This map was completed.

4 JUDGE MARBLEY: Thank you very much, Mr. Cooper.

5 MR. COOPER: Thank you, Judge.

6 JUDGE MARBLEY: Mr. Brey, cross?

7 MR. BREY: Thank you, Your Honor.

8 - - -

9 CROSS-EXAMINATION

10 BY MR. BREY:

11 Q. I understand that you serve as president of Project
12 Govern; is that correct?

13 A. Yes, I do.

14 Q. I believe you mentioned that you were hired by
15 Intervenor Sykes and Russo. Was that you individually or
16 through Project Govern that you were hired?

17 A. That was through Project Govern, yes.

18 Q. And Project Govern does political consulting and
19 lobbying and some other things. Let me ask. What does Project
20 Govern do?

21 A. Project Govern does redistricting and mapmaking work.
22 It does electoral campaigns and works on government finance
23 work.

24 Q. Is it fair to say that Ohio Redistricting Commissioners
25 Sykes and Russo have a different view of what Ohio's

1 Constitution requires than the other Republican members of the
2 Ohio Redistricting Commission?

3 MR. COOPER: Objection. Calls for a speculation about
4 their state of mind.

5 JUDGE MARBLEY: Sustained.

6 BY MR. BREY:

7 Q. Is it fair to say that as you observe the Ohio
8 Redistricting Commission's activities, Ohio Redistricting
9 Commission members Sykes and Russo expressed differing views of
10 what Ohio's Constitution required than the other members of the
11 Ohio Redistricting Commission expressed?

12 A. In this most recent round, there was agreed-upon rules
13 and mediation. Were there different comments beyond that?
14 Yes.

15 Q. From your point of view, if I understood your testimony
16 correctly, is it your view that map four would be worse than
17 map three or are they about the same? Or would you prefer map
18 four to map three?

19 A. Map four alters very minimally map three.

20 Q. Do you have any preference in terms of which would be
21 worse between map three and map four?

22 A. They're essentially the same map.

23 JUDGE MARBLEY: Mr. Glassburn, did you understand the
24 question?

25 THE WITNESS: I'm sorry. Map four is less

1 asymmetrical than map three. So my interpretation would be
2 that map four would be better, if that is the question.

3 JUDGE BEATON: You say less asymmetrical?

4 THE WITNESS: Correct.

5 JUDGE MARBLEY: When you say better, you mean better
6 in terms of complying with the ground rules for map drawers and
7 the Ohio Constitution?

8 THE WITNESS: Yes, and the Supreme Court order. But
9 I'm not saying it is sufficient.

10 JUDGE MARBLEY: I understand.

11 Please continue, Mr. Brey.

12 BY MR. BREY:

13 Q. I believe you understand that Ohio law does not require
14 independent advisors, but that was a recommendation that was
15 implemented by the Ohio Redistricting Commission; is that
16 correct?

17 A. Correct.

18 Q. And do either of the so-called independent advisors have
19 any longstanding connections to the State of Ohio, to your
20 knowledge? Or if you don't know, say you don't know.

21 A. To my knowledge, no.

22 Q. You've expressed your legal views of map three and map
23 four and of the map that's on the flash drive. Were those
24 views expressed to the full redistricting commission before
25 they determined not to use whatever is on your flash drive?

1 A. My views on map three the Commission knows. My views on
2 the impendent map each of the commissioners knew as the process
3 went along. Map four I was not in the room when that was
4 adopted and introduced. So, no, I would say no on map four.

5 Q. I'm not sure what you meant by the impendent map. What
6 map were you referring to?

7 A. The Johnson McDonald map.

8 Q. Is that the one on the flash drive marked Exhibit 3?

9 A. Yes, it is.

10 Q. Okay. So you don't know whether any of the discussion
11 that you just testified to was -- that information was conveyed
12 in any way to the redistricting commission before they decided
13 not to proceed with whatever is on flash drive 3?

14 A. I was not in the commission room at the time of the
15 adoption of map four.

16 Q. Have you reviewed any of the briefing that's been in
17 front of the Ohio Supreme Court on various maps one, two and
18 three?

19 A. I have read the decisions from the Supreme Court. I
20 certainly have read and composed my own affidavits. I have not
21 read every single one of the filings of all parties in each
22 round.

23 Q. Are you at least familiar with some of the filings on
24 behalf of parties, or affidavits that claim based upon other
25 people's professional judgment that maps one, two, or three are

1 perfectly constitutional? Have you read anything like that in
2 any of the filings in the Ohio Supreme Court?

3 A. I don't believe I have.

4 Q. Would you be at all surprised if there were such filings
5 in front of the Ohio Supreme Court by people who have a very
6 different view about what Ohio Constitution requires and that
7 to which you've testified?

8 A. I am surprised that people would find any of the
9 Commission maps constitutional. I am not surprised that some
10 commissioners had that opinion in their briefs.

11 Q. And you understand that the Ohio Supreme Court by a
12 four-three majority has struck down maps one, two, and three,
13 correct?

14 A. Yes.

15 Q. And if I understand your testimony correctly, you fully
16 expect it will strike down map number four as well; is that
17 right?

18 A. Yes.

19 Q. And you also understand that although the majority
20 rules, the three learned members of the Ohio Supreme Court
21 testified in their professional opinions -- they didn't
22 testify, they ruled in their professional opinions that maps
23 one, two and three are perfectly constitutional, didn't they?

24 A. Yes.

25 Q. So isn't it possible for someone in good faith to have a

1 diametrically opposed view about what map is or is not
2 constitutional than that to which you've testified?

3 A. I believe that individuals can have different good-faith
4 opinions. I find it very hard to believe that individuals have
5 a good-faith opinion that this map would meet the
6 constitutional muster.

7 Q. By the way, are you a lawyer?

8 A. No, I am not, sir.

9 Q. Okay. How do you know that the errors and deficiencies
10 in what's on flash drive marked Exhibit 3 can be cleaned up in
11 a day?

12 A. I have been a professional map drawer for quite some
13 time, and I'm aware of -- and I witnessed the creation of that
14 map.

15 Q. Do you know whether or not members of the redistricting
16 commission, any of them are lawyers?

17 A. I am aware that some of the Commission members are
18 lawyers. I don't know their active status.

19 Q. Were you aware that Speaker Cupp formally was Ohio
20 Supreme Court Justice Cupp, for example?

21 A. Yes.

22 Q. Were you aware that Senator President Huffman is a
23 lawyer?

24 A. Yes, I am.

25 Q. Were you aware that Governor DeWine was formally not

1 only a lawyer but attorney general of the State of Ohio?

2 A. Yes, I am.

3 Q. Would you acknowledge the opinions of those three men
4 regarding the constitutionality also to have weight as experts?

5 MR. COOPER: Objection, Your Honor. Relevance, and
6 he's being asked to opine on whether those folks can offer
7 expert opinions. They're not here before the Court.

8 MR. BREY: I poorly phrased the question. Let me
9 withdraw that question.

10 JUDGE MARBLEY: All right.

11 BY MR. BREY:

12 Q. Have you ever before testified in court about whether or
13 not something complies with Ohio's Constitution as a witness?

14 A. No.

15 MR. BREY: No further questions.

16 JUDGE MARBLEY: Thank you, Mr. Brey.

17 Any questions, Mr. Blanton?

18 MR. BLANTON: No, thank you, Your Honor.

19 JUDGE MARBLEY: Mr. Carey?

20 MR. CAREY: No, Your Honor.

21 JUDGE MARBLEY: Mr. Squire?

22 MR. SQUIRE: Yes, Your Honor, I have a few.

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CROSS-EXAMINATION

BY MR. SQUIRE:

Q. Good afternoon, Mr. Glassburn. How are you?

A. I'm okay. How are you?

Q. I have a few questions I'd like to ask you if you'd indulge me.

Sir, you indicated you have familiarity with map-drawing software. Does that familiarity cause you to have an understanding whether or not there are map-drawing programs that include information concerning racial demographics?

A. Yes.

Q. And are you familiar with whether the data that is available in the programs concerning map drawing that provide information on racial demographics provide that information down to the census block level?

A. Yes, those programs do.

Q. Is there any difference between a census block and a census tract?

A. A census tract is a combination of several blocks.

Q. And in connection with the maps that have been drawn that are being considered by this Court, the information concerning census block data included racial demographic information. Is that a true statement?

A. Sorry. Could you repeat your question?

1 Q. Did the census block data available to the redistricting
2 commission and its respective map drawers, was racial
3 demographic information available with the software that you
4 were using down to the census block level?

5 A. The program that was used, Maptitude, has that data.
6 That data was instructed by the Commission to be removed prior
7 to drawing.

8 Q. All right. That's what I wanted to know.

9 Now, would you agree with me that notwithstanding the
10 amendments to the Ohio Constitution that occurred in 2015,
11 there's nothing in your knowledge to suggest that those state
12 amendments in any way abrogated or nullified the federal Voting
13 Rights Act?

14 A. The state amendments are not in conflict with the
15 federal Voting Rights Act.

16 Q. Would you agree with me that in addition to the duty to
17 comply with the state Constitution, the Commission had a duty
18 to also comply with the federal Voting Rights Act?

19 A. Yes.

20 Q. Now, would you explain to me, if it's possible, how the
21 Commission could comply with the federal Voting Rights Act if,
22 in connection with the formulation of these districts, they
23 disregarded racial demographics available concerning racial
24 statistics?

25 MR. BREY: I would object. This witness has not been

1 identified as showing any expertise with respect to the Voting
2 Rights Act. His sole expertise was drawing redistricting
3 lines, not Voting Rights Act.

4 JUDGE MARBLEY: I'm going to sustain that objection.

5 Mr. Squire, you may lay a foundation for how this
6 witness as a map drawer would know about the requirements of
7 the Voting Rights Act. There may be an intersection out there
8 where they meet, and, if so, please make that the focal point
9 of your foundation.

10 MR. SQUIRE: I apologize to the Court. I was not
11 attempting to inquire whether he had an understanding of the
12 Voting Rights Act. I was really more interested in determining
13 what information was available in the software that he's
14 familiar with.

15 JUDGE MARBLEY: All right. Rephrase your question.

16 MR. SQUIRE: Thank you, Judge.

17 BY MR. SQUIRE:

18 Q. To the extent that this information on racial data is
19 available with the software down to the precinct block level,
20 would that information include the behavior of voters over the
21 past ten years as the Ohio Constitution requires the
22 redistricting commission to look at?

23 A. When -- the way this process moves forward in terms of
24 the datasets, there is the United States census which is in
25 those census blocks. The State of Ohio contracted with Ohio

1 University to add that partisan data from elections of the past
2 ten years. That is a separate dataset that gets put onto the
3 census data.

4 So the independent map drawers removed the racial data
5 from the census and just retained the overall population and
6 then re-added Ohio University's political dataset for the
7 Commission.

8 Q. The original software that was used, however, not the
9 separate data that got into voting behavior, would reveal to
10 the mapmaker which precincts were homogeneous racially,
11 wouldn't it?

12 A. The program that was used for drafting, Maptitude, comes
13 with it the full U.S. census data including race. Prior to
14 this plan being drawn, the mapmakers were instructed to remove
15 that data so that only population totals were the only item of
16 information left. And that is what they did.

17 Q. So given that you did have available to you, if you had
18 elected to use it -- if the Commission had elected to use it,
19 the ability to analyze the voting behavior of homogeneous
20 precincts racially, the exclusion of that information, then,
21 would prevent you from determining whether the lines that were
22 drawn in these districts resulted in vote dilution or not. It
23 took that ability away from you, didn't it?

24 A. Without the census racial data, no, we could not look at
25 racial data. However, we also did not have any *Gingles* test

1 which is a -- which is the analyzation of racially polarized
2 voting. We did not have any documents that suggest there was
3 racially polarized voting that followed that *Gingles* criteria
4 for any part the state.

5 Q. Wouldn't it be part of the analysis of the mapmakers to
6 look at, if the racial data was available, whether or not the
7 lines they were recommending resulted in the processes leading
8 to nomination or election not being equally open to black
9 voters?

10 A. No.

11 Q. How could you contend -- how could you, then, determine
12 what the results would be of a particular configuration on
13 black voters if you did not include that in the process of
14 determining where these district lines would be?

15 A. There was no racial analysis done.

16 Q. So you couldn't determine the results. Would you agree
17 with me?

18 A. Yes.

19 Q. And your failure to include those results was the result
20 of express directions given to you by the redistricting
21 commission. Would you agree with that statement?

22 A. Yes. In this round and all others.

23 Q. And that direction was given to you with respect to maps
24 one, two, three, and four as recently as March 23rd, 2022,
25 correct?

1 A. Yes.

2 Q. Now, was the same process followed with respect to the
3 exclusion and lack of consideration of whether it was any
4 result that led to unequal ability to access -- to elect
5 representatives of choice, was the same process followed with
6 respect to the configuration of congressional districts?

7 A. The Commission has continued to adopt, whether it be
8 state, legislative or congressional, maps that do not use
9 racial data.

10 MR. SQUIRE: I have no further questions, Your Honor.

11 JUDGE MARBLEY: Thank you, Mr. Squire.

12 Mr. Fox, any questions?

13 MR. FOX: No questions, Your Honor.

14 JUDGE MARBLEY: And Ms. Marshall, any questions for
15 this witness?

16 MS. MARSHALL: No, Your Honor.

17 JUDGE MARBLEY: Mr. Cooper, any redirect?

18 MR. COOPER: Yes, sir.

19 - - -

20 REDIRECT EXAMINATION

21 BY MR. COOPER:

22 Q. Mr. Glassburn, just for the sake of clarity, I know we
23 talked about the process that led to the independent mapmaker's
24 map. Can you briefly describe the process that led to map
25 three and map four?

1 A. Map three and map four were exclusively drafted by the
2 mapmaker for the legislative Republicans, that would be
3 President Huffman's map drawer Ray DiRossi, and Speaker Cupp's
4 map drawer Blake Springhetti.

5 Q. To your knowledge, did anyone -- first of all, did you
6 have any input into map three or map four?

7 A. I had absolutely no input into map four. Map three did
8 not feature suggestions from the Democratic map drawers.

9 Q. In your professional opinion, if the Court -- if the
10 panel were to appoint a special master and that person got
11 started tomorrow from scratch, let's say, how long would you
12 expect it to take that person to draw a map, a constitutionally
13 compliant map?

14 A. It took these independent map drawers five-and-a-half
15 days. So I would say that's a reasonable estimate.

16 Q. What if the Court were to appoint the two independent
17 mapmakers as special master and they were permitted to pick up
18 where they left off or use the knowledge they gained already,
19 how long would you expect it to take them?

20 A. I would expect it to take less than five days certainly;
21 possibly as little as one or two.

22 JUDGE MARBLEY: Mr. Glassburn, I know you referenced
23 this earlier. What are the infirmities of the map that was
24 drawn by the independent mapmakers that would require them
25 additional time were this panel to appoint them as special

1 master?

2 THE WITNESS: I'm not aware of any infirmities.

3 JUDGE MARBLEY: I thought that you were saying that
4 there were some minor technical glitches that may need
5 correcting. There are no such technical glitches in your
6 professional opinion with respect to this rejected map?

7 THE WITNESS: Your Honor, all of the maps that have
8 been adopted so far had technical glitches at time of adoption.
9 I suspect that this map could have some, but I'm not aware of
10 any. And if it follows the track of the previous maps, those
11 can be resolved in a day.

12 JUDGE MARBLEY: Thank you, Mr. Cooper.

13 Mr. Brey, do you have any recross?

14 MR. BREY: No, Your Honor.

15 JUDGE MARBLEY: Are there any questions from anyone
16 else on recross?

17 Mr. Squire, anything further?

18 MR. SQUIRE: No, Your Honor.

19 JUDGE MARBLEY: Thank you very much.

20 Mr. Squire, do you have any witnesses you wish to call?

21 MR. SQUIRE: I do not, Your Honor.

22 JUDGE MARBLEY: I'm sorry. You may step down,
23 Mr. Glassburn.

24 Mr. Fox, do you have any witnesses?

25 MR. FOX: Yes, Your Honor.

1 JUDGE MARBLEY: All right.

2 MR. FOX: Our first witness was going to be a
3 candidate, Richard Neal, who had to leave due to a family
4 emergency. We have a short declaration from him which I'm
5 hoping it's uncontroversial enough to submit the declaration in
6 lieu of calling him. I had not gotten it to opposing counsel.
7 They may need a moment to read it. It's two pages.

8 JUDGE MARBLEY: Do you have other witnesses?

9 MR. FOX: Yes, Your Honor.

10 JUDGE MARBLEY: Why don't you call that witness and
11 that will give Mr. Brey additional time and other Counsel --

12 MR. FOX: My colleague, Ms. Jasrasaria, is going to
13 present Dr. Rodden, and Dr. Rodden is remote.

14 JUDGE MARBLEY: Is that R-O-D-I-N?

15 MR. FOX: R-O-D-D-E-N.

16 JUDGE MARBLEY: Good afternoon.

17 MS. JASRASARIA: My name is Jyoti Jasrasaria, and I'm
18 here on behalf of the intervenor plaintiffs the Bennett
19 petitioners.

20 JUDGE MARBLEY: And, ma'am, could you spell your last
21 name for the record? My name is Algenon. I'm used to that
22 question. I hope you take no offense.

23 MS. JASRASARIA: Of course. J-A-S-R-A-S-A-R-I-A.

24 JUDGE MARBLEY: If you're ready to proceed, do you
25 have Dr. Rodden on the line? I see we have him on visual. Do

1 you have the audio? Dr. Rodden, can you hear me?

2 MR. RODDEN: I can hear you. Can you hear me, Your
3 Honor.

4 JUDGE MARBLEY: We can hear you just fine.

5 (Witness sworn.)

6 JUDGE MARBLEY: Dr. Rodden, did you have your right
7 hand raised?

8 THE WITNESS: I was having trouble hearing.

9 - - -

10 JONATHAN RODDEN

11 Called as a witness on behalf of the Intervenor Defendants,
12 via videoconference, being first duly sworn, testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. JASRASARIA:

16 Q. Dr. Rodden, could you please state your full name for
17 the record?

18 A. Jonathan Rodden.

19 Q. And where are you from, Dr. Rodden?

20 A. I grew up in the suburb of St. Louis, Missouri, but I
21 now live in Stanford, California.

22 Q. What is your current employment?

23 A. I'm a professor of political science at Stanford
24 University.

25 Q. And how long have you been at Stanford University?

1 A. This is my 12th year now at Stanford.

2 Q. Do you have tenure?

3 A. Yes, I do.

4 Q. Could you please walk the Court through any other
5 institutions that you have worked at besides Stanford as a
6 political scientist, your professional background?

7 A. I was an undergraduate at the University of Michigan at
8 Ann Arbor. After that, I was a student for a time in Germany.
9 I received a Ph.D. in political science from Yale University.
10 And then I was assistant professor of political science at MIT
11 where I received tenure. And then I spent time as a fellow at
12 the Center for Advanced Study in the Behavioral Sciences at
13 Stanford University. And after that I became a full professor
14 of political science at Stanford University.

15 Q. What does your research currently focus on?

16 A. My work currently focuses on political and economic
17 geography. Much of that has to do with the drawing of
18 electoral districts in the U.S. and other context. I use a
19 variety of data at level of individuals, precincts, counties,
20 electoral districts, to try to understand the representation
21 of different groups that are arranged in geographic space. And
22 redistricting is a big part of that research agenda.

23 Q. What is the general subject areas of the classes that
24 you teach?

25 A. I teach some classes in statistics. I teach some

1 classes in political geography. I teach classes in political
2 economy, and I also teach a variety of more introductory
3 classes for our incoming undergraduates.

4 Q. Have you ever been published in peer-reviewed journals
5 or other publications?

6 A. Yes.

7 Q. Could you tell the Court generally about what your
8 publications are about and the methodology that you use?

9 A. Yes. Many of my publications involve quantitative data.
10 Much of that has to do with elections. Much of the information
11 involves precinct level election results. I've done a lot of
12 work with automated redistricting and some work, of course,
13 also with drawing maps by hand. But a lot of the research has
14 to do with various forms of electoral data and quantitative
15 analysis of that type of data.

16 Q. Have you ever presented expert reports and testimony in
17 other -- in cases on redistricting and political geography?

18 A. Yes, I have.

19 Q. How many times would you say on -- as an estimate?

20 A. I think cases that had to do with both redistricting in
21 some way and political geography in some way, I think it's
22 three or four cases that really fit into that category exactly.

23 Q. Did the trial courts in those cases credit your
24 analysis?

25 A. Yes.

1 Q. And have you ever been disqualified as an expert?

2 A. No.

3 Q. Were you an expert in any redistricting cases in Ohio
4 this cycle?

5 A. Yes.

6 Q. Would that be the *Bennett v. Ohio Redistricting*
7 *Commission* case before the Ohio Supreme Court about general
8 assembly redistricting, and the *Adams v. DeWine* case also
9 before the Ohio Supreme Court on congressional redistricting?

10 A. Yes. I submitted expert reports in both of those cases.

11 Q. And did you draw maps for either of those cases?

12 A. I did for the case related to state House and Senate
13 districts. I drew my own House and Senate districts and
14 presented those to the Court.

15 JUDGE BEATON: Ms. Jasrasaria, you may get to this,
16 but could you make sure the witness clarifies if he's talking
17 about testimony in the court proceedings that reviewed the
18 Commission process or actually before the Commission? Does
19 that make sense?

20 MS. JASRASARIA: Yes.

21 BY MS. JASRASARIA:

22 Q. Dr. Rodden, have you ever presented any -- was your role
23 in those cases limited to the litigation, or did you also
24 participate in any Commission proceedings?

25 A. I did not participate in Commission proceedings. I was

1 called to work as an expert witness in this case, in the
2 litigation.

3 Q. And to your knowledge, was the map that you produced in
4 the general assembly case ever submitted to the Commission for
5 consideration?

6 A. Yes, it was.

7 Q. Outside of your work in Ohio, have you ever drawn a map
8 for -- in either redistricting litigation or with a state body
9 that is working on redistricting?

10 A. Yes. I submitted -- most recently submitted a map in an
11 impasse case in -- related to congressional districts in
12 Pennsylvania.

13 Q. And what happened with that map in Pennsylvania?

14 A. Well, there was a very interesting hearing in which lots
15 of maps were presented. And the experts were called to discuss
16 the maps that they had drawn, after which the Supreme Court of
17 Pennsylvania had a proceeding in which it decided on a map.
18 And the Supreme Court decided to implement my map.

19 Q. What was your assignment in the general assembly
20 redistricting case in Ohio? Turning back to Ohio.

21 A. Well, I was asked to examine the Commission's map and to
22 examine in particular its -- the -- make an assessment of
23 whether it was consistent with the principles of the Ohio
24 Constitution.

25 Q. So you have reviewed the general assembly maps that were

1 adopted and considered by the Ohio Redistricting Commission?

2 A. Yes.

3 Q. And can you just generally describe the methodology that
4 you used to evaluate those maps?

5 A. Yes. I examined the maps according to traditional
6 redistricting criteria, some of which are outlined in very
7 specific detail in the Ohio Constitution, looking at splits of
8 counties and looking at the -- at various measures of
9 compactness of districts. And then I also performed an
10 analysis of the partisanship of the districts as called for by
11 the Constitution, and also did a detailed analysis of all of
12 the different regions of the states in trying to understand the
13 nature of the district drawing decisions.

14 Q. Are these methodologies that you just described similar
15 to those that are commonly used in your field and in your
16 academic work?

17 A. Yes.

18 MS. JASRASARIA: Your Honors, at this time I tender
19 Dr. Rodden as an expert in the fields of redistricting and
20 political geography. I do have a copy of his CV that I can
21 pass out.

22 JUDGE MARBLEY: That won't be necessary. In the Sixth
23 Circuit there is a case called *Johnson* which doesn't allow the
24 Court to give his imprimatur to the witness. But he may
25 testify as an opinion witness. Please proceed.

1 MS. JASRASARIA: Thank you.

2 BY MS. JASRASARIA:

3 Q. Dr. Rodden, what did you learn through the process of
4 drawing your own map in the general assembly case in the Ohio
5 Supreme Court?

6 A. I learned a lot about the implementation of the rules of
7 the Ohio Constitution and some of the challenges associated. I
8 think the previous expert mentioned that as well. The rules of
9 the Constitution are challenging and interesting, and I learned
10 how to apply them in the context of Ohio and, in the process,
11 learned about some of the tradeoffs in drawing districts in
12 Ohio related to compactness, the minimization of splits of
13 counties and municipalities, and the task of trying to draw
14 districts that end up reflecting the overall preferences of the
15 voters in the State of Ohio.

16 Q. And you just referenced the previous testimony. Were
17 you listening to the testimony that Chris Glassburn just gave
18 about the map-drawing process?

19 A. Yes, I was.

20 Q. That will help us move things along. So that's helpful
21 to know.

22 The map that you drew, is that map fully compliant, to
23 the best of your knowledge, with all of the technical and
24 substantive constitutional requirements in the Ohio
25 Constitution?

1 A. Yes. To my knowledge the final version of my map
2 complies with all of those provisions.

3 Q. And you're not aware of any concerns that anyone has
4 raised with regard to your final map along any legal compliance
5 issues?

6 A. No, no such issues with my final map.

7 Q. You had mentioned that you had considered the -- that
8 you had evaluated various general assembly plans that were
9 considered or adopted by the Ohio Redistricting Commission.
10 And I guess to start, did you evaluate the third plan that was
11 adopted by the Commission on February 24th?

12 A. Yes, I did.

13 Q. And for the third plan did you measure the expected
14 partisan performance of each seat?

15 A. Yes, I did.

16 Q. How did you measure that?

17 A. I believe I measured it in the same way ultimately that
18 the Commission measured the same thing; so took precinct level
19 data from nine previous statewide elections and then aggregated
20 the results of those elections to the -- within the boundaries
21 of the proposed districts to get a Democratic vote share and
22 Republican vote share for each of those districts, and then
23 analyzed the overall partisanship of the districts using that
24 technique.

25 Q. Did you look at how safe or competitive each of those

1 seats was?

2 A. In my report I reported a few different statistics
3 starting with just how many seats are above and below
4 50 percent. But then I also went into detail to examine how
5 many seats are within a very close range of 50 percent. So I
6 did some analysis of how many seats were between 50 and
7 52 percent Democratic, and how many seats were between 50 and
8 52 percent Republican, in addition, of course, to the seats
9 that are above 52 percent for each party; so looking at some of
10 the less competitive seats and some of the very competitive
11 seats.

12 I also broke those down into some other categories and
13 provided histograms which are really placing all of the results
14 into small bins so that the Court could get an understanding of
15 the distribution of support, how many seats are very
16 competitive and just very close to 50 percent and how many are
17 less competitive.

18 Q. Dr. Rodden, you mentioned a report. Do you have a copy
19 of your most recent report that you submitted in the Bennett
20 case. I believe it was on February 28th?

21 A. Yes.

22 MS. JASRASARIA: Your Honors, I do have some copies of
23 that report which Dr. Rodden may use simply to refresh his
24 recollection. We also did submit that report as Exhibit 3 to
25 our preliminary injunction response brief. So I'm happy to

1 hand out copies. But if you have it --

2 JUDGE MARBLEY: You can hand them out. That will make
3 it easy.

4 JUDGE THAPAR: Doctor, while she's doing that, can you
5 hear me okay?

6 THE WITNESS: Yes, I can.

7 JUDGE THAPAR: Did you present your map to the
8 Commission?

9 THE WITNESS: The map was -- the map -- I did not
10 personally appear before the Commission, but the map was
11 submitted to the Commission through its online interface.

12 JUDGE THAPAR: Did they ever approve, reject, do
13 anything with it?

14 THE WITNESS: Not to my knowledge.

15 JUDGE THAPAR: You studied the standards. Are you
16 aware -- the strict proportionality, I'm just curious, does
17 that exist in any other state in the nation?

18 THE WITNESS: A requirement of strict proportionality.
19 Not to my knowledge.

20 JUDGE MARBLEY: Please proceed. Thank you for passing
21 out these extra copies.

22 MS. JASRASARIA: Yes, of course.

23 BY MS. JASRASARIA:

24 Q. So we're actually now going to take a look at a table of
25 statistics from each of the House maps that Dr. Rodden was

1 considering. And we were originally planning on putting these
2 up for folks to look at, but because Dr. Rodden is appearing
3 remotely, we were not able to do that. So I just handed out
4 copies to everyone. And I will also pass three copies up for
5 the Court.

6 JUDGE THAPAR: What are these?

7 MS. JASRASARIA: These are some plan statistics that
8 were put together by Dr. Rodden essentially laying out some of
9 the things we heard in the prior testimony as well, just
10 compactness scores, splits, as well as the actual number and
11 percentage of various seats across a number of plans. And so I
12 just wanted to make sure people had this in front of them as
13 Dr. Rodden went through it.

14 BY MS. JASRASARIA:

15 Q. Dr. Rodden, do you have I believe it's Rodden 2 in a PDF
16 that I sent you earlier today, just so we're all looking at the
17 same thing?

18 A. Yes, I do.

19 MR. BLANTON: Is this available anywhere? Is it
20 filed?

21 MS. JASRASARIA: It's not filed. We can certainly
22 email a copy if that would be helpful.

23 MR. BLANTON: Thank you.

24 JUDGE THAPAR: Doctor, one more question related to
25 the strict proportionality. Can you explain to me the winner's

1 bonus?

2 THE WITNESS: Sure. The distribution of voters across
3 districts in a state is really -- can vary a lot from one state
4 to another, but there's usually something like a bell curve
5 where there are some -- out in the tails of the distribution
6 there are some very uncompetitive districts, and then closer to
7 the middle of the distribution there are some more competitive
8 districts.

9 So it can be the case that in a very hotly contested
10 state where a lot of those very competitive districts that if a
11 party wins more than 50 percent of the votes, it might win --
12 it might be able to win majorities in several of those very
13 close districts just to the one side or the other of
14 50 percent, in which case the party --

15 JUDGE THAPAR: I'm sorry to interrupt. Finish your
16 answer. I'm very sorry.

17 THE WITNESS: So the way I just wanted to complete
18 that thought was that when this -- when there is -- a party
19 wins, say, 52 percent of the vote, it might win something more
20 than 52 percent of the seats under some distributions. It all
21 depends on how the votes are distributed across districts which
22 is a function of political geography and, of course, how those
23 districts are drawn.

24 JUDGE THAPAR: How would strict proportionality impact
25 this?

1 THE WITNESS: I'm not sure. It wouldn't -- I mean,
2 strict proportionality -- I think the question is would a
3 requirement -- perhaps what you're asking is would a
4 requirement of strict proportionality be inconsistent with a
5 winner's bonus.

6 JUDGE THAPAR: It would be inconsistent -- okay.

7 THE WITNESS: The argument I was trying to make about
8 the winner's bonus is something we sometimes, or I would say
9 even often, see emerging. We can sometimes expect to see a
10 party with 52 percent of the vote, say, getting a bit more than
11 52 percent of the seats. That is something that occurs under
12 some conditions. So that is -- that is not an outcome that we
13 will define as strict proportionality.

14 JUDGE BEATON: Is that another way of saying it's
15 inconsistent with strict proportionality in your view? Or are
16 you saying it's something that's different?

17 THE WITNESS: It's not as a general matter. It's
18 something that we sometimes observe. So the winner's bonus is
19 a thing we observe sometimes in the real world. So strict
20 proportionality is something that we sometimes do not observe
21 in the real world. I guess that's how I would put it just to
22 be as clear as I can about it.

23 JUDGE MARBLEY: Please proceed.

24 MS. JASRASARIA: I'll continue.

25

1 BY MS. JASRASARIA:

2 Q. Dr. Rodden, people now have a copy of this table. And
3 so I just wanted to -- I know that in the previous testimony,
4 did you hear the term partisan asymmetry being thrown out by
5 the previous witness?

6 A. I did.

7 Q. And could you just briefly describe what partisan
8 asymmetry means?

9 A. Well, the meaning that seems to have -- I think it's
10 important to focus not on broadly what political scientists
11 mean by this, but the way it's been used in the -- by the Ohio
12 Supreme Court is this analysis of what happens in the very
13 competitive districts. And there was a discussion of asymmetry
14 in the distribution of those competitive districts such that in
15 the fourth plan there were -- again, we were talking just a
16 moment ago about districts that are very close to 50 percent.
17 And so we see that there are a lot of districts on one side of
18 50 percent in that little narrow band and very few, in fact,
19 zero districts on the other side within that narrow band. So,
20 in this context, that is the notion of asymmetry that the Ohio
21 Supreme Court was referencing.

22 Q. So turning to the table in front of us, if you look at
23 the third plan and in that middle section, that's where you can
24 see Dr. Rodden's numbers regarding the number of seats with
25 certain vote shares.

1 And so just so that we're all understanding the same
2 thing, Dr. Rodden, for the third plan, how many of the very
3 competitive seats under the Ohio Supreme Court's definition
4 were Democratic leaning under the third plan which is the first
5 plan in that table?

6 A. There were 19 seats that were between 50 percent and
7 52 percent Democratic.

8 Q. And how many of those supercompetitive seats were
9 Republican leaning in the third plan?

10 A. Zero. So all of the Republican-leaning seats were above
11 52 percent Republican. And there were 54 of those.

12 Q. And just to clarify for everyone, we're simply looking
13 at the House statistics here. Obviously, something similar
14 happened in the Senate, but we're just looking at House here as
15 a demonstrative.

16 So turning to the fourth plan which was passed on
17 Monday, did you have an opportunity to evaluate that plan?

18 A. Yes, I did.

19 Q. And what were -- and are you -- how would you describe
20 the differences in the district boundaries between the third
21 plan and the fourth plan?

22 A. They're almost identical. There was a slight change to
23 the district boundary in northern Franklin County in an area
24 not far from where you all are in the Upper Arlington,
25 Worthington area. And there was another small change made in

1 the -- a couple of small changes made in the Canton area. But
2 I was able to analyze how many voters were affected by it.
3 99.7 percent of the voters are in the same district in the
4 third and fourth plan. They're essentially the same plan.

5 Q. How did the changes between the third plan and fourth
6 plan affect the partisan performance of the plan?

7 A. Well, we can see in this table that there was a move
8 from 19 seats that were in that 50 to 52 Democratic range down
9 to 17. So there were -- basically, that amounts to a couple of
10 small moves in a couple of district lines such that there are
11 two districts that went from around 51 percent Democratic to a
12 little over 52 percent Democratic.

13 Q. And just to summarize, how would that change affect what
14 you described previously as the partisan symmetry or asymmetry
15 of the third and fourth plans?

16 A. This made a very slight -- it didn't change anything on
17 the Republican side. It made a couple of -- just made a couple
18 of these competitive seats slightly more Democratic leaning.

19 Q. And just to understand exactly how partisan symmetry
20 plays out, looking at the fourth plan, for example, how would,
21 for example, the Republican party perform if it just
22 outperformed its typical election results in a particular year?

23 A. Well, so what everyone, including the Commission and
24 myself, was doing in this case was just imagining future
25 elections looking a lot like the average of the last nine

1 statewide elections. But then we can ask yourself: What would
2 happen in an especially good Democratic year and what would
3 happen in an especially good Republican year?

4 My understanding of the question is what would happen in
5 an especially good Republican year where, as I was describing
6 earlier, when a party does well, it can win some of those
7 districts just on the other side of 50 percent that it would
8 normally lose in a close election. What we see from the tables
9 is there is a very rich -- there are a lot of seats. There are
10 17 seats that are just barely Democratic.

11 So, in a year when the Republicans do as well, they can
12 expect -- say if they win a two percentage point swing in their
13 favor, they can expect to win potentially all 17 of those
14 seats. So that would end up with 54 plus 17 potentially.

15 Q. And for the third plan that number would be 19 seats,
16 correct?

17 A. Yes.

18 Q. So, in addition to symmetry, one of the other things we
19 heard the previous witness talk about was proportionality. I
20 know this has come up in some of the questioning as well. And
21 so do you recall about what the percentage of voters in Ohio
22 over the past decade has preferred Republicans in statewide
23 elections?

24 A. Well, it depends a bit on which elections we settle on
25 and so forth. I think when we settle on those nine statewide

1 elections, it looks like we would conclude that Ohio is a state
2 that is 54 percent Republican and 46 percent Democratic more or
3 less.

4 Q. And were you able to use the Ohio Supreme Court's
5 formula to evaluate the proportionality of the third plan?

6 A. Yes. The Supreme Court had the notion that if we think
7 about these districts between 50 percent and 52 percent, if we
8 think of those as toss-ups, essentially, that could go either
9 way and we just look at the districts that are above
10 52 percent, then we can get a sense -- we can use that as a
11 guide to whether we are approaching proportionality.

12 Q. And so how did you -- sorry. What did you find the
13 proportionality for the third plan was based on the Supreme
14 Court's formula?

15 And for everyone else who is following along, this is on
16 the bottom panel of the table.

17 A. Well, when we look at -- yes, when we just exclude the
18 toss-up seats and look at the remainder of the seats, we get
19 the breakdown that is 32.5 percent Democratic versus
20 67.5 percent Republican.

21 Q. In your view does that closely correspond to what you
22 previously described as the 54/46 split that we've seen across
23 the past nine statewide elections in Ohio?

24 A. No. I think it's rather far from that.

25 Q. And you've also looked at the proportionality for the

1 fourth plan, correct?

2 A. Yes.

3 Q. And those numbers are in the next column over from what
4 we just read out, correct?

5 A. Yes. And we can see, as we expect with only two
6 districts changing, it's just a slight difference. But we're
7 now looking at a breakdown of about 66 percent Republican and
8 34 percent Democratic.

9 Q. And in your view does that closely correspond with the
10 54/46 split that we described earlier?

11 A. No.

12 Q. Did you have an opportunity to compare the third and
13 fourth plans to any other plans?

14 A. Yes. I examined the -- my own plan that I spent a lot
15 of time creating. And then I was also able to look at the
16 independent map drawers' plan that I received on Monday
17 evening.

18 Q. And looking at what's labeled here as the Rodden plan,
19 your plan, what does the symmetry of that plan look like based
20 on what we're looking at here in the second panel of the table?

21 A. My plan ended up with fewer of these toss-up seats. It
22 ended up with two that were Democratic leaning and one that was
23 Republican leaning. I still had a number of competitive seats,
24 if we define competitiveness a little more broadly. But in the
25 very competitive seats, it was relatively even at two-to-one.

1 If we look at the proportionality as defined by the Ohio
2 Supreme Court, we get something more like a 58 to 42 percent
3 breakdown.

4 Q. And what about those same numbers -- same criteria for
5 the independent map drawers' plan?

6 A. The independent map drawers' plan had a few more of
7 these competitive seats than mine, but they were very
8 symmetrically arranged. There were three of these very -- kind
9 of these Democratic leaning very competitive states and three
10 Republican leaning very competitive states. And if we look at
11 the proportionality statistics, this one comes closer than my
12 plan to this notion of proportionality with a breakdown of
13 around 55 to 45 percent.

14 Q. So which of the four plans we just went through is the
15 most proportional using the Ohio Supreme Court's methodology?

16 A. Clearly the independent map drawers' plan.

17 Q. And how would you -- what about your plan? How would
18 that, like, rank?

19 A. My plan is -- comes in second on this dimension. It is
20 not -- it does not achieve proportionality according to this
21 definition, but it comes closer than the -- certainly than
22 either the third or fourth plan which are very far from
23 proportionality.

24 Q. And which of the four plans --

25 A. In a way that it's not really consistent with the way

1 political scientists think about the winner's bonus. That's
2 not the kind of outcome that one would expect from anything
3 like a winner's bonus.

4 Q. And which of the four plans we just went through is the
5 most symmetric in the Ohio Supreme Court's definition?

6 A. The independent map drawers' plan.

7 Q. You also noted earlier that you had taken a look at
8 compactness and splits of counties and VTDs. Could we start
9 with compactness? I know that we already heard about what
10 compactness was. Could you explain how the four plans we've
11 discussed today fair on compactness?

12 And all of the compactness metrics are listed in panel
13 one of the table.

14 JUDGE MARBLEY: Ms. Jasrasaria, Judge Beaton and I
15 have just maybe a definitional question. But VTDs?

16 MS. JASRASARIA: I was definitely going to ask that
17 question. Happy to jump to that now.

18 BY MS. JASRASARIA:

19 Q. Doctor, looking at the split, how would you define a
20 VTD?

21 JUDGE MARBLEY: What is a VTD?

22 THE WITNESS: A vote tabulation district is really at
23 the heart of the administration of elections in the United
24 States. In many instances it's the same thing as a precinct.
25 Think of what you know as a precinct. In most cases you

1 wouldn't be too far off in defining a VTD, a vote tabulation
2 district, as a precinct.

3 This is the unit at which ballots are distributed, and
4 it is a unit where if we have a split VTD, then that means some
5 people in the precinct are going to be getting a ballot that
6 has different things on it than other people. So this is a
7 reason why splitting VTDs is a real headache for election
8 administrators and it's something -- when I draw electoral
9 maps, I try to minimize my splits of VTDs.

10 JUDGE MARBLEY: Thank you very much.

11 BY MS. JASRASARIA:

12 Q. Since we're talking about VTDs, looking at the number of
13 splits of VTDs across all of these plans, could you just
14 briefly explain how the various plans fair on that particular
15 metric?

16 A. Yes. We can see that the third and fourth plan, those
17 split 135 vote tabulation districts. The independent map
18 drawers' plan splits 118 and mine splits 96. I should add
19 these are relatively high numbers, all of these relative to
20 other states I've worked in. And much of that has to do with
21 the difficulty mentioned by previous experts related to the
22 geography of the boundaries of some of Ohio's cities and
23 townships and municipalities.

24 But it is possible to -- with some work to try to bring
25 this number down if you're really focusing on traditional

1 districting criteria as I was in drawing maps. So I was able
2 to split fewer VTDs than these other maps.

3 Q. And now looking at counties, why did you consider splits
4 of counties in your evaluation of the various plans?

5 A. Well, this is something that's very important in the
6 criteria adopted in the Ohio Constitution, not to mention it's
7 considered really a central traditional redistricting principle
8 more generally. In the practice of redistricting, we try to
9 minimize county splits.

10 Q. And how did the four plans fair on that metric?

11 A. The third plan, the fourth plan, and the independent map
12 drawers' plan are the same. They split 38 districts. I'm
13 sorry, 38 counties. But, again, as I mentioned, focusing on
14 traditional redistricting criteria was really the most
15 important thing I was doing in drawing my districts. And I --
16 whenever I faced a decision in which it was possible to keep a
17 county whole, I did so. As a result, you can see I was able to
18 split substantially fewer counties than these other plans.

19 Q. So turning briefly to compactness, could you just tell
20 us how the four plans fair on the compactness measures that
21 you've described here or that you put forth here?

22 A. Yes. As we can imagine given the limited very minor
23 changes from the third plan to the fourth plan, there are no
24 big differences there. But we can see that the independent map
25 drawers' plan is more compact on every measure -- again, higher

1 numbers are greater numbers of average compactness. So we see
2 a difference such that the independent map drawers' plan is
3 more compact on each one of these measures than the
4 Commission's plan.

5 But then my maps are on -- the Polsby-Popper and this
6 area of Convex Hull measure are more compact than the
7 independent map drawers' plan. Mine are -- my earlier theme, I
8 focused a lot on traditional redistricting criteria in drawing
9 my maps, and I ended up with a more compact set of maps than
10 the others.

11 JUDGE BEATON: May I ask, these are, I guess,
12 hundredths of a unit of measurement for all of these different
13 ratios. Do you consider the difference between, say, your plan
14 and the independent map's plan material?

15 THE WITNESS: I do. And in my first report, one of
16 the things I did is I reported these statistics by region. So
17 I focus in on an area, a particular urban area, and it was --
18 one could just -- visualizing it, one could see the maps were
19 highly compact in my plan and quite non-compact in the -- in
20 the Commission's plan. And then when we look at the numbers
21 for those regions, we saw some very large differences.

22 When we average it all together and we see still a
23 difference, say, between .39 and .41, or .31 and .36, those are
24 substantial enough that you can certainly just notice the
25 difference when you look at the maps.

1 JUDGE BEATON: Is there an increment in your
2 profession that is customarily considered to be de minimis
3 versus material?

4 THE WITNESS: I wish we had some agreement on that. I
5 don't think we have a clear bright line. I think the first
6 question is how much is too much and just is there a general
7 standard for looking at, say, a Reock score and deciding
8 whether .39 is good or bad. We can't do that in particular
9 because every state is so different in its geography.

10 The question is here: Do we have a clear sense of
11 whether -- how big is the magnitude of looking at an average
12 score .41 and .39? We don't have agreement on that. There's
13 no bright line standard.

14 JUDGE BEATON: Okay. May I also ask if you have
15 assessed the 2010 map according to these metrics that you've
16 set out here? Or do you know how it would fair relative to the
17 four options that you put on this chart?

18 THE WITNESS: I'm afraid I don't have that information
19 in my head at the moment. I'm not sure if I've done that or
20 not. I believe I probably have not. I think I would remember
21 it if I had done it.

22 JUDGE BEATON: Okay. Thank you.

23 BY MS. JASRASARIA:

24 Q. Dr. Rodden, why did you choose to report three different
25 compactness measures here? What was the purpose of that?

1 A. Well, each of these measures captures something a little
2 bit different. Some of them -- I think a Polsby-Popper, for
3 instance, is a little bit more -- it's a bit more reactive to
4 jagged boundaries of districts or jagged boundaries of, say, a
5 township. If I had chosen a really oddly shaped township as
6 the boundary for a district, then that would push the
7 Polsby-Popper score up especially.

8 And some of them really captured more what would happen
9 if we have a claw or kind of an appendage reaching out from a
10 district. They all capture something a little bit different.
11 Again, there is no agreement in this literature on which one is
12 best. They each capture something different. A standard
13 practice is to use several of these measures. And when we see
14 that they all give you the same story -- kind of reaching back
15 to this question about whether this is de minimis, if we really
16 saw things going in different directions for different measures
17 of compactness, then we start to worry that really there's
18 really no difference between the plans.

19 But when we see the same story with each of these
20 measures, it raises our confidence that there's some difference
21 there that's really substantive in the way the districts were
22 drawn.

23 Q. What might explain the differences between the
24 performance on proportionality and traditional redistricting
25 criteria when considering your plan versus the independent map

1 drawers' plan?

2 A. Well, again, I have not -- I received the independent
3 map drawers' plan very recently, as have we all. And so I've
4 not had a chance to really carefully assess all the choices
5 they made. But I can say that I -- as I think I already
6 mentioned, really my first order of business in drawing these
7 districts was to try to minimize splits and to try to achieve
8 compact districts even if that meant -- really without paying
9 much attention to what implications that had for partisanship.
10 That's really the approach I took. So it's possible there are
11 some tradeoffs when one does that.

12 Q. Based on your analysis of these plans, as well as a
13 number of other plans over the course of your participation in
14 the litigation, what is your opinion on whether it's possible
15 to draw a more proportional and more symmetrical plan than the
16 third and fourth plans, for example?

17 A. I think from looking at my own experience in drawing a
18 map, it became very clear to me that it's really very
19 straightforward to abide by traditional redistricting criteria
20 and to meet the requirements of the Ohio Constitution and come
21 closer to partisan proportionality. I can see in the
22 independent mapmakers' plan that it was possible for them,
23 perhaps with slightly less compactness than my plan and
24 slightly more splits, but something that was still similar or
25 even better than what the Commission achieved.

1 And they were able to achieve absolute proportionality,
2 essentially, very close to it. So, from those examples, it's
3 very clear to me that it is quite possible to achieve this.

4 Q. And in your view based on what you know about the
5 requirements from the Ohio Constitution as well as other
6 redistricting criteria, is it possible to draw a plan that is
7 compliant with both state requirements as well as any
8 requirements that your -- any other requirements that exist
9 either in federal law or traditional redistricting criteria?

10 A. Yes. I believe it is possible to achieve that.

11 JUDGE MARBLEY: Dr. Rodden, based on your evaluation
12 of the constitutional criteria for the State of Ohio in your
13 study of these four plans, does the independent map drawers'
14 plan, in your view, in your professional opinion, comply with
15 the requirements of the Ohio Constitution?

16 THE WITNESS: That is a question that I would need
17 probably another day or two to be able to answer. And just to
18 give you a sense of why I say that, on first glance, everything
19 does look fine. There are these -- one of the things I learned
20 in drawing this is that the geography of Ohio's boundaries for
21 its townships' vote tabulation districts and municipalities is
22 really quite unusual.

23 And it can emerge, and it did emerge in my case in
24 drawing my map, that these very small technicalities emerge
25 where, for instance, an unpopulated census block ends up

1 accidentally creating a split. And it's only -- we're only
2 allowed in drawing these maps -- this is an important point. I
3 don't know how much into the weeds you want to go on this. But
4 it is -- the Constitution forbids making more than one
5 municipal split per district. So, if I've already split
6 Columbus and then I accidentally have one unpopulated census
7 block in one of the surrounding municipalities that is
8 accidentally in the wrong district, the entire plan then
9 becomes technically out of compliance.

10 Now, that can be solved by taking the cursor, placing it
11 on that census block and moving it. It is a solution that
12 takes five seconds. So it seems plausible that some of those
13 kinds of technical problems could -- given the time frame in
14 which the mapmakers had to do their work, it would surprise me
15 greatly if they didn't have a couple of those unpopulated
16 census blocks in the wrong place. But I have not had the
17 opportunity to search through and try to find out whether that
18 has happened or not.

19 JUDGE MARBLEY: The same question with respect to your
20 plan.

21 THE WITNESS: In my plan -- I feel like it's been
22 vetted very carefully. I did -- unbeknownst to me, I had
23 exactly some of these problems in which a census block was in
24 the wrong place and I corrected those. So I feel confident
25 that my plan is constitutionally compliant.

1 JUDGE MARBLEY: Do you have an opinion as to whether
2 the independent map drawers' plan complies with the ground
3 rules for map drawers as adopted by the Ohio Redistricting
4 Commission?

5 THE WITNESS: I have every reason to believe that it
6 does comply. But I would -- I would want to -- I would want to
7 have more time to dive into the details. It has been a very
8 limited time frame. My initial impression is that it does.

9 JUDGE MARBLEY: Same question with respect to the --
10 with respect to your plan, the Rodden plan.

11 THE WITNESS: Yes. I believe that my plan is
12 compliant with all of the written criteria and even some
13 unwritten criteria, some things I've learned about the ways in
14 which municipalities and in which incorporated places and
15 townships are observed in the Ohio redistricting process. And
16 my understanding is that my plan has been fully vetted and
17 constitutionally compliant.

18 JUDGE MARBLEY: Have you reviewed your plan for the
19 type of technical deficits that you referred to moments ago?

20 THE WITNESS: Yes.

21 JUDGE MARBLEY: And does your plan -- is your plan
22 replete with these technical deficiencies?

23 THE WITNESS: No. A previous version of it had a
24 handful and they were corrected.

25 JUDGE BEATON: One follow-up. What did you mean by

1 unwritten criteria you've learned about?

2 THE WITNESS: I'd be happy to explain that. When I
3 mentioned that the geographic boundaries in Ohio are
4 complicated, I think much of that has to do with the way in
5 which incorporated places have grown over time and the way they
6 have overtaken parts of townships, and so that sometimes there
7 will be a township line that is running right through an
8 incorporated place. And so when I'm drawing a map and I've got
9 this rule that I can only include one split per district, I
10 have a choice to make. Do I split the township or do I split
11 the incorporated place?

12 There is nothing written in the Ohio Constitution that
13 tells me which one is to be preferred. And when I first
14 started in the process, there were some places in the map where
15 it seemed more straightforward to me to follow the line of the
16 township, therefore, splitting a small incorporated place. I
17 then came to realize that the traditional practice in Ohio
18 redistricting is, in fact, to do the opposite, to not split the
19 place and instead --

20 (GoToMeeting caller interruption.)

21 JUDGE MARBLEY: Excuse me. Will everyone else on this
22 phone call please go on mute.

23 Ma'am, would you go on mute, please.

24 Let's power through.

25 JUDGE THAPAR: Doctor, can you finish your answer?

1 You said not to split and then you stopped.

2 THE WITNESS: Yes. I'm sorry if that was too much
3 detail.

4 JUDGE MARBLEY: No, it wasn't. Someone interrupted
5 you on the call. So please continue.

6 THE WITNESS: The thing that I realized over time is
7 that it was more important to keep an incorporated place whole
8 than to keep a township whole. And so that led to a few
9 changes in the map. It led to a few places in which I simply
10 had to go -- many of them were very small and didn't involve
11 very many census blocks. But that was a set of changes I made
12 that -- to keep my map in keeping with the approach of Ohio
13 mapmaking.

14 BY MS. JASRASARIA:

15 Q. Dr. Rodden, you mentioned that at a certain point in
16 your drafting process you did become aware of some technical
17 flaws. And I was just curious, when you went to correct those,
18 how long did it actually take you once you were aware of the
19 concerns?

20 A. It took me very, very little time at all. It took me
21 maybe an hour.

22 MS. JASRASARIA: Thank you. No further questions from
23 me.

24 JUDGE MARBLEY: We're going to take -- it's 3:27.
25 We're going to take approximately -- about 15 minutes

1 until 3:45 for recess and then we're going to return with any
2 cross-examination.

3 (Recess taken from 3:28 p.m. to 3:49 p.m.)

4 JUDGE MARBLEY: Mr. Brey, are you ready for your
5 cross?

6 MR. BREY: I am, Your Honor.

7 JUDGE MARBLEY: Please proceed.

8 - - -

9 CROSS-EXAMINATION

10 BY MR. BREY:

11 Q. Doctor, my name is Donald Brey. I represent the
12 plaintiffs in this case.

13 My understanding is that you were hired to represent the
14 Bennett parties in connection with the litigation in front of
15 the Ohio Supreme Court; is that correct?

16 A. That's correct.

17 Q. And you are not a member of or staff of the Ohio
18 Redistricting Commission, correct?

19 A. That's correct.

20 Q. Were you aware that not a single one -- you've had
21 several proposals that you've submitted online or otherwise,
22 right?

23 A. Well, there's really been one proposal that had some
24 slight alterations made to it.

25 Q. Has that proposal with the alterations been proposed by

1 any single member of the Ohio Redistricting Commission at any
2 time?

3 A. That I do not know.

4 Q. Did I understand you to say that you did, in fact,
5 review the provisions of Article XI of Ohio's Constitution as
6 to what is required in redistricting?

7 A. Yes.

8 Q. And is one of the -- well, perhaps not exactly
9 requirement, but a statement of the Ohio Constitution is that
10 the Ohio Redistricting Commission shall attempt, among other
11 things, to ensure that general assembly districts shall be
12 compact. Is that something that you remember?

13 A. Yes.

14 Q. Would you agree or disagree that it's difficult -- well,
15 let me back up and do the premise. Is it your understanding
16 that Ohio's large cities are predominantly Democrat and more so
17 than they used to be over the last 10, 20 years, and Ohio rural
18 counties are more Republican more so than they used to be over
19 the last 10, 20 years, or do you know?

20 A. If we -- depends a little bit on how we define rural.
21 Some of the lower density counties have become more Republican
22 and some others -- some that are growing and gaining population
23 that that is not true.

24 Q. When the Republican and Democrat voters are
25 geographically separate in terms of where they live, is it

1 harder or easier, does it make no difference in how you can
2 achieve compactness in having a redistricting plan?

3 A. Well, compactness is just a function of -- it's
4 something that has really nothing to do with partisanship.
5 Compactness is a geographic concept. It has to do with drawing
6 districts that don't have tentacles and appendages and so
7 forth.

8 Q. When you reviewed Ohio's constitutional requirements,
9 did you understand that at the same time that the redistricting
10 commission was supposed to ensure that general assembly
11 districts be compact, the statewide proportion of districts
12 whose voters, based on statewide state and federal
13 participation election results during the last ten years, to
14 the extent they favor each political party, they shall closely
15 correspond with the statewide preferences of the voters of
16 Ohio? Do you remember reading something along those lines?

17 A. Yes.

18 Q. If I recall your testimony, you indicated your analysis
19 showed there was approximately a 54 Republican, 46 percent
20 Democrat in terms of the statewide partisan preference over the
21 last ten years?

22 A. Yes.

23 Q. Did you read anything in the Ohio Constitution saying
24 that districts that are 52 percent versus 48 percent should be
25 disregarded in determining the number of districts that favor

1 one party or the other?

2 A. No.

3 Q. And, in fact, you are excluding the districts like that
4 when you reach your percentage of I think it was 35/65 percent,
5 excluding what you call the toss-ups, correct?

6 A. Yes. That was something that was in response to the
7 Supreme Court's decision. There are other statistics and other
8 analyses in my reports.

9 Q. I understand. If you include all of the districts that
10 favor one party or the other drafted in the third plan, isn't
11 it a fact that you've got 54 Republican-leaning seats and
12 around 45 Democrat-leaning seats?

13 A. In the third plan?

14 Q. The February 24 plan.

15 A. I'm not sure I have that in -- that information in front
16 of me right now. But that sounds familiar.

17 Q. As part of your engagement to represent the interest of
18 the Bennett parties in the Ohio Supreme Court case, did you
19 also do reviews and analyses of other expert witnesses who
20 filed affidavits in that case?

21 A. I'm trying to remember whether I've reviewed any other
22 expert reports. I don't believe I have.

23 Q. Are you familiar with a Dr. Michael Barber?

24 A. I am familiar with him, yes.

25 Q. And how do you know him or know of him?

1 A. He is a professor of political science at BYU, and we
2 have come across each other at some conferences and so forth.
3 And he has also been engaged as an expert in some other
4 redistricting cases in which I have had an opportunity to
5 review his testimony.

6 Q. Were you aware that he filed an affidavit in connection
7 with the Ohio Supreme Court litigation?

8 A. I don't believe I was aware of that.

9 MR. BREY: For the Court's reference, it is attached
10 to our motion for temporary restraining order, the affidavit, a
11 copy which has already been filed in the Ohio Supreme Court.

12 BY MR. BREY:

13 Q. Do you have any reason to believe that he would
14 mischaracterize the partisan leaning in his representations?

15 A. I can't speak about something I haven't read.

16 Q. Fair enough.

17 As I understand, the plan that you were proposing, it
18 actually has 57 Republican-leaning districts and 42
19 Democrat-leaning districts in the House if you include the
20 52/48 districts; is that correct?

21 A. Just to make sure I heard you correctly. Did you say 57
22 Republican leaning and 42 Democratic leaning?

23 Q. Correct. The version of your plan that was in play at
24 the time of the plan three litigation.

25 A. Yes, I believe that's correct.

1 Q. And wouldn't you agree that 57/42 does not comply with
2 the aspirational requirement to have similar percentage of
3 Republican and Democrat-leaning districts as would reflect the
4 last ten years as a 54/45-leaning plan would do?

5 A. That's correct. I think I testified that it does fall
6 short of proportionality.

7 Q. Now, you mention in your affidavit districts between
8 zero and 52 percent. In fact, in plan three, there weren't any
9 50/50 districts, were there?

10 A. You mean exactly 50/50?

11 Q. Rounded to 50/50, yes. Say from 49.51 to 50.49
12 districts. There are none of those?

13 A. I would have to go back in the data and take a look.
14 I'm not sure.

15 Q. Well, isn't it a fact that in plan three there's not a
16 single 51/49 percent district, again, with the rounding?

17 A. I suspect there probably were. I'd be surprised if
18 there were none that were 51 percent. But I believe there
19 were -- if memory serves, I believe there were quite a few
20 51 percent seats in the third plan. There were a very large
21 number of 51/49 seats.

22 Q. Do you mean 51/49 or do you mean 52/48?

23 A. I mean 51/49. I believe a decision rule might have been
24 in place to try to produce as many 51 percent districts as
25 possible. That's one of the things I wrote in my report: a

1 very large number of 51/49 districts in that plan.

2 Q. You note the lack of competitive Republican-leaning
3 districts in the Commission's plan three compared with a number
4 of competitive Democrat-leaning districts in the Commission's
5 plan three. Isn't, in fact, there asymmetry present in all
6 three of the plans that were considered by the Court: your
7 plan, the Commission's plan three and the Sykes/Russo plan that
8 was submitted to the Court?

9 A. To make sure I understand, the question is whether there
10 is asymmetry in the number of seats falling between 50 and
11 52 percent on the Democratic side and on the Republican side.
12 Is that the question?

13 Q. Let me ask it a little differently. In fact, I believe
14 plan three created one district with a partisan index between
15 47 and 50 Democrat whereas your plan created three districts in
16 that range; is that correct?

17 A. Between 47 and 50 percent Democrat. So
18 Republican-leaning districts. I don't have the full
19 distribution of every district. And all of the numbers are
20 just not -- I'd have to open up my dataset to answer that
21 question.

22 Q. Okay. Well, would you have to open your dataset to be
23 able to tell this Court that, in fact, your plan is or is not
24 more likely to have a proper percentage of Republican and
25 Democrat-leaning districts if the proper percentage is roughly

1 54 percent and 46 percent?

2 A. I am not sure I understand that question.

3 Q. If you include what you call toss-ups and what I refer
4 to as competitive leans, how many Republican districts and how
5 many Democrat -- I think we already answered that, 57 and
6 40-something.

7 Did you have any less opportunity than anyone else
8 filing proposed plans online with the Ohio Redistricting
9 Commission to have even a single member of the Ohio
10 Redistricting Commission decide this is a good enough plan, we
11 want to carry it forward?

12 A. As an expert witness in the litigation, I did not have
13 any interaction with anyone on the Commission. So I don't
14 know -- I can't answer anything about the internal workings of
15 the Commission.

16 Q. Now, did you testify about your view of the
17 constitutionality of your plan, or did you not? I can't
18 remember. I apologize.

19 A. I testified that to my knowledge my plan met the
20 technical criteria of the Constitution.

21 Q. So you're not making a judgment about whether or not it
22 would be constitutional to have a plan that not a single member
23 of the Ohio Redistricting Commission thought would be the plan
24 they want to put their name behind?

25 A. I do not have an opinion about that.

1 MR. BREY: Nothing further. Thank you.

2 JUDGE MARBLEY: Thank you, Mr. Brey.

3 Mr. Blanton, any questions?

4 MR. BLANTON: No, thank you, Your Honor.

5 JUDGE MARBLEY: Mr. Carey, any questions?

6 MR. CAREY: No, Your Honor.

7 JUDGE MARBLEY: Mr. Cooper, any questions?

8 MR. COOPER: No, sir.

9 JUDGE MARBLEY: Mr. Squire, any questions?

10 MR. SQUIRE: No, sir.

11 JUDGE MARBLEY: Ms. Marshal?

12 MS. MARSHALL: No, Your Honor.

13 JUDGE MARBLEY: Ms. Jasrasaria, do you have any
14 redirect?

15 MS. JASRASARIA: I do not.

16 JUDGE MARBLEY: Dr. Rodden, thank you for your time
17 today and your testimony. We find it helpful. You may be
18 excused.

19 THE WITNESS: Thank you very much.

20 JUDGE MARBLEY: Mr. Fox, do you have any additional
21 witnesses?

22 MR. FOX: No additional witnesses. We do have a
23 declaration from Richard Neal that it's my understanding that
24 plaintiffs and the attorney general at least are not objecting
25 to.

1 MR. BREY: We have no objection.

2 MR. BLANTON: No objection, Your Honor.

3 JUDGE MARBLEY: Your declaration will be -- are there
4 any other objections from any other Counsel?

5 Your declaration, Mr. Fox, will be received into
6 evidence.

7 MR. FOX: Thank you, Your Honor. And we're short on
8 copies so I'm handing up three and we will file it this
9 afternoon.

10 JUDGE MARBLEY: Thank you, much.

11 Ms. Marshall, do you have any witnesses?

12 MS. MARSHALL: We do, Your Honor.

13 JUDGE MARBLEY: How many witnesses do you have?

14 MS. MARSHALL: Three live witnesses and one who is
15 going to be testifying remotely.

16 JUDGE MARBLEY: The only thing that I would ask for,
17 as far as you were concerned -- and I'm just echoing what we
18 said earlier and what we've said at the end because it looks
19 like there's a possibility that we could finish it with a
20 complete live panel, is that if it has been covered and is a
21 part of the record, then we would ask that you not delve into
22 it because it's only cumulative and repetitive.

23 MS. MARSHALL: I understand, Your Honor. It's been a
24 long day.

25 JUDGE MARBLEY: We're used to long days here, though.

1 Please call your first witness.

2 MS. MARSHALL: We call Mikayla Lee to the stand.

3 JUDGE MARBLEY: Ms. Lee, please come forward and be
4 sworn.

5 - - -

6 MIKAYLA LEE

7 Called as a witness on behalf of the Intervenor Plaintiffs,
8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MARSHALL:

11 Q. Good afternoon, Ms. Lee. Can you please state your full
12 name and spell your full name for the court reporter?

13 A. Sure. Mikayla Renae Lee, M-I-K-A-Y-L-A, R-E-N-A-E,
14 L-E-E.

15 Q. Where do you live?

16 A. I live in Columbus, Ohio.

17 Q. How long have you lived there?

18 A. I've lived there for over a year now, but I recently
19 moved from Cincinnati.

20 Q. Are you a registered Ohio voter?

21 A. I am.

22 Q. Do you know what district you are currently in,
23 currently registered to vote in?

24 A. Yes. I believe I am in district for the House 15 and
25 for the Senate 18.

1 Q. What do you do for a living?

2 A. I'm recently employed at the Ohio Democratic Party
3 working on campaigns this year.

4 Q. How long have you been doing that?

5 A. Just a couple of months.

6 Q. Can you tell us a little more about your duties and
7 responsibilities in that position?

8 A. So I have previously worked in campaigns in Ohio both on
9 the partisan side and nonpartisan side. Right now I work to
10 coordinate the logistics for some of the campaigns that will be
11 on the ballot on the Democratic party side from the top of the
12 ticket all the way down to county commission, judicial races,
13 and things like that.

14 Q. And in performing those functions, are you involved in
15 the community with respect to elections?

16 A. Absolutely.

17 Q. Can you tell us a little bit more about that?

18 A. Yeah. So this role was kind of a culmination of some of
19 the work I've done over the past couple of years which is on
20 the professional side engaging directly in partisan electoral
21 activity, working with candidates and campaigns, but then on
22 the personal side engaging in advocacy and working to advocate
23 for issues that I care about in the state.

24 Q. Is that what brought you to be involved in this
25 litigation?

1 A. Yes.

2 Q. How about the Supreme Court litigation? Are you also
3 involved in that?

4 A. I am.

5 Q. And that is currently pending?

6 A. Yes.

7 Q. Do you know the outcome of that litigation or where it
8 currently stands today?

9 A. Where it currently stands today is the Supreme Court has
10 rejected three previous maps passed by the Commission. And I
11 think we're in the middle of seeing how they rule on the fourth
12 map that was just passed on Monday.

13 Q. Can you describe for us how you became involved in this
14 litigation, both this one in federal court and the Ohio Supreme
15 Court litigation?

16 A. So I was a part of the effort to advocate and talk to
17 legislators about how we were wanting a fair process with the
18 map drawing that lined up with what Ohioans voted for on a
19 statewide level with the issue ballots regarding fair maps.
20 The beginning of that process kind of led me to this litigation
21 with the Supreme Court knowing that I wanted to make sure to
22 advocate on a legal standpoint about what I feel like Ohioans
23 deserve. And I think we're here because there were some
24 outcomes on the state level that, yeah, brought us here.

25 Q. Would it be fair to say this litigation is impactful to

1 you as an Ohio voter?

2 A. Yes.

3 Q. And also to the community members that you work with?

4 A. Yes.

5 Q. Do you have an understanding of the current
6 redistricting plan?

7 A. The one that was passed on Monday?

8 Q. That's correct.

9 A. Yes.

10 Q. Can you tell us about that, what your understanding is?

11 A. My understanding was after the third plan was passed,
12 there were directives from the Supreme Court to kind of try
13 that process again. And what ended up happening was there were
14 slight variations made to a previous pass -- a plan that was
15 rejected that was then passed instead of the independent map
16 that was produced by the two independent mapmakers.

17 Q. How do those decisions impact you individually?

18 A. On a personal level, as a voter, it's extremely
19 frustrating and confusing. Earlier I was hesitating because I
20 couldn't quite remember which district I'm in now. As someone
21 who works on campaigns, has worked with candidates in the past
22 and knows what that process is like and how much work goes into
23 trying to best represent yourself to voters, it's extremely
24 difficult and complicated to, you know, do all the things that
25 require -- that are required by campaign staff and candidates

1 in an election year.

2 On the other hand, I work with and have been in contact
3 with people who are interested in running for office or working
4 on campaigns who are now in a place where they either don't
5 know what their plan is for this year, whether they want to run
6 for office or can run for office or should run for office. And
7 that also reflects on the side of staffers and advocates who
8 want to have their voices heard in Ohio but are currently in a
9 little bit of a bind.

10 Q. Have you previously experienced the effect of
11 gerrymandered maps?

12 A. Yes.

13 Q. Can you tell us about that?

14 A. Yes. So a lot of my peers and I were extremely excited
15 about the beginning of this process because over the last
16 couple of years, we've seen how difficult and frustrating it
17 can be as people who identify in similar ways as us to want to
18 advocate and support legislation that we know would be good for
19 the State and good for our communities that don't ever get to
20 go anywhere because we have an extreme partisan gerrymandering
21 environment in Ohio.

22 With the opportunity to have fair maps, to have a system
23 that accurately reflects Ohio and its voters, we were
24 definitely optimistic that this would be a process that would
25 end favorably and things like that. So, from a voter

1 perspective, from an advocate perspective, it's been extremely
2 difficult to campaign, to work with candidates, to work with
3 advocates who want to put in that work but know that a lot of
4 times a lot of that work is done in vain.

5 And then specifically on the candidate side, it's hard
6 to recruit people, to encourage people to run for office when
7 they think they're facing an uphill battle not only with
8 gerrymandered districts but, then, in the legislature that
9 doesn't reflect Ohio voters knowing they're not going to be
10 able to get legislation passed to impact their communities
11 because of the state we're in.

12 Q. You previously mentioned the third map. That's been
13 deemed unconstitutional by the Supreme Court. You understand
14 that, correct?

15 A. Yes.

16 Q. How would implementation of that third map affect you
17 individually?

18 A. It would affect me because it would be a continuation of
19 what we've been experiencing so far which I've kind of
20 explained is difficult for me not only personally as a voter
21 but as someone who engages in a political system as a career.
22 That map, I don't believe, reflects Ohio voters. I don't
23 think -- we've established it's not constitutional, and I don't
24 think that we would benefit from that being implemented.

25 Q. Based on your personal experience and also the work that

1 you do in your community, how would that third map affect your
2 community?

3 A. It would be similarly discouraging, as things have been
4 before, about whether or not the work that's been done over the
5 past years, you know, whether the law as it stands, you know,
6 gets to be applied. So not only would that be discouraging to
7 the voters, the advocates who have been working on this end,
8 but also to the candidates who are kind of in the state of
9 limbo who, you know, would then may or may not be successful in
10 running for office or pursuing a career as a legislator because
11 of a map that would be gerrymandered.

12 MS. MARSHALL: Thank you. No further questions.

13 JUDGE MARBLEY: Thank you, Ms. Marshall.

14 MR. BREY: No questions for this witness.

15 JUDGE MARBLEY: Mr. Blanton?

16 MR. BLANTON: No questions.

17 JUDGE MARBLEY: Thank you. Mr. Carey?

18 MR. CAREY: No questions.

19 JUDGE MARBLEY: Mr. Cooper?

20 MR. COOPER: No questions.

21 JUDGE MARBLEY: Mr. Squire?

22 MR. SQUIRE: No questions, Your Honor.

23 JUDGE MARBLEY: Mr. Fox?

24 MR. FOX: No questions, Your Honor.

25 JUDGE MARBLEY: Thank you very much, Ms. Lee. You may

1 be excused.

2 MS. MARSHALL: Your Honor, we call Jeniece Brock to
3 the stand.

4 JUDGE MARBLEY: Ms. Brock, please come forward and be
5 sworn.

6 - - -

7 JENIECE BROCK

8 Called as a witness on behalf of the Intervenor Plaintiffs,
9 being first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. MARSHALL:

12 Q. Good afternoon. Can you please state your full name and
13 spell your full name for the court reporter?

14 A. Absolutely. Jeniece LaTrece Brock is my full name.
15 J-E-N-I-E-C-E, capital L, lower case A, capital T-R-E-C-E,
16 B-R-O-C-K.

17 Q. Ms. Brock, where do you live?

18 A. I live in Akron, Ohio.

19 Q. How long have you lived there?

20 A. All my life.

21 Q. What do you do for a living?

22 A. I'm currently the policy and advocacy director at the
23 Ohio Organizing Collaborative.

24 Q. What is the Ohio Organizing Collaborative?

25 A. The Ohio Organizing Collaborative is a grassroots

1 democracy organization.

2 Q. Can you tell us a little bit about what they do?

3 A. Our organization advocates and educates black and brown
4 and underrepresented communities along policies and issues that
5 come up for the State.

6 Q. How long have you worked there?

7 A. I've worked there a year and three months.

8 Q. You already mentioned your title. Can you tell us a
9 little bit about your duties and responsibilities in that
10 position?

11 A. Yes. My duties are to educate Ohioans about -- Ohioans
12 and our members about current legislative agendas and then also
13 to advocate for issues that concern them.

14 Q. It's my understanding that you're appearing today in
15 court as a representative of the Ohio Organizing Collaborative;
16 is that correct?

17 A. Yes.

18 Q. I'm not sure you mentioned this. Did you actually tell
19 us what the formal mission is -- can I abbreviate to OOC
20 instead?

21 A. Absolutely.

22 Q. Can you tell us the mission statement for OOC?

23 A. I don't know that I have it memorized verbatim. I know
24 that we work to make sure that our folks, black and brown,
25 immigrant, and all communities that tend to be disenfranchised

1 have full representation and be able to be advocated for.

2 Q. In your experience in working for the OOC, have they
3 supported ballot initiatives?

4 A. Yes.

5 Q. Can you tell us what you know about those?

6 A. In 2015 and 2018 the Ohio Organizing Collaborative
7 supported Issue 1.

8 Q. Any others?

9 A. Off the top -- a lot of this is before the time I was
10 employed with the OOC. But I do know this redistricting issue
11 was something that they were actively engaged in.

12 Q. So let's jump forward to that. So you said that the OOC
13 has been involved with the Ohio Redistricting Commission
14 meetings themselves. In what way?

15 A. The Ohio Organizing Collaborative have testified before
16 the Ohio Redistricting Commission. The Ohio Organizing
17 Collaborative sponsored a citizen commission that drew district
18 plans and submitted those to the Ohio Redistricting Commission.

19 Q. Did the OOC -- they're involved in this litigation in
20 federal court?

21 A. Yes.

22 Q. Were they also involved in the Supreme Court litigation?

23 A. Yes.

24 Q. And what is your understanding of the nature of that
25 litigation, the Supreme Court litigation right now?

1 A. Currently, the previous maps that were presented and
2 submitted to the Ohio Supreme Court were struck down. There
3 was a map that was submitted as recently -- or recently as this
4 Monday. And so we're awaiting the outcome of that map as well.

5 Q. If I reference the third map, do you understand what I'm
6 talking about?

7 A. Yes.

8 Q. What would it mean for the OOC if this Court, this
9 federal court, were to implement that third map for Ohioans?

10 A. The OOC traditionally represents underrepresented
11 constituency in membership; so black and brown communities,
12 students, immigrants, anyone that's typically disenfranchised.
13 And having that map implemented would directly impact those
14 communities, and it would hurt their ability to properly engage
15 into the process. And then it would also make it more
16 challenging for us to advocate for them, costing us to use more
17 resources in order to make sure they can adequately engage in
18 the Democratic process.

19 Q. As an OOC representative, have you witnessed or observed
20 the impact of gerrymandering maps in the past?

21 A. Yes. Currently, with supermajority in the statehouse,
22 it makes it very challenging when our members have a view on an
23 issue or a piece of legislation that is not in line with the
24 majority, you know, party. And it makes it more challenging
25 for us to advocate for them and encourage them to continue to

1 engage when it seems like it's more difficult to get a good
2 amount of the folks who are a part of the general assembly to
3 hear their views.

4 MS. MARSHALL: Thank you. No further questions.

5 JUDGE MARBLEY: Thank you, Ms. Marshall.

6 Mr. Brey?

7 MR. BREY: No questions, Your Honor.

8 MR. BLANTON: No questions, Your Honor.

9 JUDGE MARBLEY: Mr. Carey?

10 MR. CAREY: No questions, Your Honor.

11 JUDGE MARBLEY: Mr. Cooper?

12 MR. COOPER: No questions, Your Honor.

13 JUDGE MARBLEY: Mr. Squire?

14 MR. SQUIRE: No questions, Your Honor.

15 JUDGE MARBLEY: Mr. Fox?

16 MR. FOX: No questions, Your Honor.

17 JUDGE MARBLEY: Ms. Brock, thank you very much, ma'am.
18 You may be excused.

19 MS. MARSHALL: Your Honor, we call Chris Tavenor to
20 the stand.

21 JUDGE MARBLEY: Mr. Tavenor, please come forward and
22 be sworn.

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CHRISTOPHER TAVENOR

Called as a witness on behalf of the Intervenor Plaintiffs,
being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MARSHALL:

Q. Would you please state your full name and spell your
full name for the court reporter?

A. Christopher Doyle Tavenor, C-H-R-I-S-T-O-P-H-E-R,
D-O-Y-L-E, T-A-V-E-N-O-R.

Q. Chris, where do you live?

A. I live in Columbus, Ohio.

Q. How long have you lived here?

A. In different parts of Columbus for about 11 years now.

Q. Are you a registered voter?

A. Yes.

Q. Do you know what district you're in?

A. I believe it's House District 18 and Senate District 15,
but I might have those flipped.

Q. What do you do for a living?

A. I'm the staff attorney for the Ohio Environmental
Council.

Q. What is the Ohio Environmental Council?

A. It's a 52-, 53-year-old statewide environmental
nonprofit 501(c)(3) organization dedicated to ensuring clean

1 air, water, healthy public lands and a healthy democracy for
2 all who call Ohio home.

3 Q. How long have you worked there?

4 A. Officially employed by the OEC since October 21st, 2017.

5 Q. How about unofficially?

6 A. I was an intern for the OEC starting in May 2016.

7 Q. Today you are the representative of the OEC in this
8 litigation?

9 A. Yes.

10 Q. Can you tell us a little bit about your duties and
11 responsibilities with the EOC?

12 A. As the staff attorney for the Ohio Environmental
13 Council, I lead our democracy program, our advocacy efforts
14 around democracy, in addition to running a number of other
15 community engagement projects from our emerging leaders program
16 to our law conference that we have every year, as well as doing
17 a bunch of internal legal work in supporting our other advocacy
18 programs where necessary.

19 Q. How many members are there of the OEC?

20 A. I believe somewhere around 3,100 members.

21 Q. Do you know which districts they come from?

22 A. I believe last time I checked I think we have members in
23 84 of 88 counties.

24 Q. Did the OEC undertake any initiatives in 2021 with
25 respect to Article XI of the Ohio Constitution?

1 A. Yes. Starting about a year ago around this time in
2 2021, the OEC started educating its members and other
3 individuals about the redistricting process.

4 Q. Were you involved in that?

5 A. Yes.

6 Q. Can you tell us about your involvement?

7 A. I would run educational sessions to tell people about
8 what the redistricting process was going to look like and
9 educate them about what the Constitution said about what a fair
10 map would look like.

11 Q. Did the OEC also observe the redistricting committee
12 meetings?

13 A. Yes.

14 Q. Were you involved in some of those meetings?

15 A. Yes. I testified personally on behalf of the OEC.

16 Q. Was the OEC also involved in the Supreme Court
17 litigation as it is in this federal court litigation?

18 A. Correct, yes.

19 Q. What is your understanding of the current status of the
20 Supreme Court case?

21 A. The Ohio Supreme Court invalidated the map passed on
22 February 24th. It is currently -- the map that was just passed
23 a few days ago by the Commission is actively being considered
24 by parties.

25 Q. Chris, can you tell us, if this Court were to implement

1 that third plan, that February 24th plan, what -- how would
2 that impact the OEC?

3 A. Yes. Over the past few years, we've seen people just be
4 very upset with the state of the way the general assembly
5 works, and people have expressed to us that having
6 gerrymandered maps makes it less likely they will participate
7 in the political process.

8 Q. This not only impacts the OEC but your members across
9 the state?

10 A. Correct.

11 MS. MARSHALL: No further questions.

12 JUDGE MARBLEY: Mr. Brey?

13 MR. BREY: No questions, Your Honor.

14 MR. BLANTON: No questions, Your Honor.

15 JUDGE MARBLEY: Mr. Carey?

16 MR. CAREY: No questions, Your Honor.

17 JUDGE MARBLEY: Mr. Cooper?

18 MR. COOPER: No questions, Judge.

19 JUDGE MARBLEY: Mr. Squire?

20 MR. SQUIRE: No questions, Your Honor.

21 JUDGE MARBLEY: Mr. Fox?

22 MR. FOX: No questions, Your Honor.

23 JUDGE MARBLEY: Thank you very much, Mr. Tavenor. You
24 may be excused.

25 THE WITNESS: Thank you.

1 MS. MARSHALL: Your Honor, we call Michael Latner
2 remotely.

3 JUDGE MARBLEY: Good afternoon, Mr. Latner.

4 MR. LATNER: Good afternoon, Your Honor.

5 JUDGE MARBLEY: Can you hear me okay?

6 MR. LATNER: Yes, I can.

7 JUDGE MARBLEY: Ms. Shane, would you please swear in
8 the witness.

9 - - -

10 MICHAEL LATNER

11 Called as a witness on behalf of the Intervenor Plaintiffs,
12 via videoconference, being first duly sworn, testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. MARSHALL:

16 Q. Good afternoon. Could you please state your full name
17 and spell your last name for the record?

18 A. Michael Steven Latner, L-A-T-N-E-R.

19 Q. Where do you live?

20 A. I live in Atascadero, California.

21 Q. What do you do for a living?

22 A. I'm professor of political science and public policy at
23 California --

24 Q. Can you restate your answer? There is a little problem
25 with the audio.

1 A. I am a professor of political science and public policy.
2 Can you hear me okay?

3 JUDGE MARBLEY: Professor Latner, do you think that we
4 will be able to hear you better if you just dialed in? We're
5 having trouble hearing you.

6 THE WITNESS: I'm happy to dial in.

7 JUDGE MARBLEY: Let's try it one more time. When you
8 said "I'm happy to dial in," that came through quite clearly.

9 THE WITNESS: Okay.

10 BY MS. MARSHALL:

11 Q. Mr. Latner, can you just tell us a little bit about your
12 teaching experience, how long you've been doing that, what
13 courses you teach?

14 JUDGE THAPAR: Ms. Marshall, is there any chance you
15 have his résumé or CV?

16 MS. MARSHALL: We can certainly submit that.

17 JUDGE THAPAR: Is there any objection to that so we
18 can move beyond this?

19 MR. BREY: No, Your Honor. I was looking at his
20 résumé online.

21 JUDGE THAPAR: So you'll stipulate to it?

22 MR. BREY: Yes.

23 JUDGE THAPAR: Okay. Great.

24 JUDGE MARBLEY: I'm assuming no other party has an
25 objection to us stipulating. If so, you may make your

1 objection for the record because we're going to proceed on.

2 Get to the substance, please, Ms. Marshall.

3 MS. MARSHALL: Will do, Your Honor.

4 BY MS. MARSHALL:

5 Q. Mr. Latner, it's my understanding that in your past
6 conducting research and your experience in this field that you
7 had an opportunity to take a look at the 2010 Ohio map; is that
8 correct?

9 A. Yes, I have.

10 Q. Can you tell us about that 2010 map?

11 A. Yes. I studied the Ohio 2010 map and the elections that
12 proceeded from it as --

13 JUDGE MARBLEY: You'll have to call in. Do you have
14 the number? If not, Ms. Shane can give you -- you have it?

15 While he's doing that, at some point -- Ms. Marshall, at
16 some point, you can submit his CV for us.

17 MS. JASRASARIA: Your Honor, a quick housekeeping
18 matter?

19 JUDGE MARBLEY: Yes.

20 MS. JASRASARIA: We would just like to submit the
21 chart that we handed out into evidence.

22 THE WITNESS: Can you hear me now?

23 JUDGE MARBLEY: Any objection, Mr. Brey?

24 MR. BREY: I think he did testify about this. I can't
25 remember what he said. But if he testified about it, I think

1 it can come in.

2 JUDGE MARBLEY: He testified fairly extensively about
3 it. It will be received.

4 MS. JASRASARIA: Thank you.

5 JUDGE MARBLEY: Please continue, Ms. Marshall.

6 BY MS. MARSHALL:

7 Q. Mr. Latner, can you tell us about the 2010 Ohio map that
8 you took a look at in your research?

9 JUDGE MARBLEY: Mr. Latner, please remember to turn
10 off the audio on your computer.

11 THE WITNESS: Can everyone hear me without echo?

12 JUDGE MARBLEY: Yes.

13 THE WITNESS: Yes. I have studied the Ohio House and
14 Senate maps from 2010. They were, in my assessment, among the
15 worst gerrymanders in the country at that time. That was a
16 period where there was extensive partisan gerrymandering that
17 occurred across a number of states. The average asymmetry in
18 the Ohio maps from 2012 to 2015, there were only two or three
19 other states that had as much of an advantage for Republican
20 voters, and those I believe were Tennessee and Louisiana.

21 BY MS. MARSHALL:

22 Q. For what purpose were you taking a look at that 2010
23 map?

24 A. The purpose of the analysis was part of a BooksLink
25 project, an analysis of all state legislative maps in the

1 United States over the previous decade.

2 Q. Were the results of your research published?

3 A. Yes, they were.

4 Q. I want to skip forward to 2021, 2022.

5 JUDGE BEATON: May I ask a couple of follow-up
6 questions? I believe the comparison you made was that only two
7 or three states had a more Republican advantage. Could you
8 just phrase that for us in terms of the whole country? Were
9 those the top three even if you look at all states? Or are you
10 only examining the tilt in the Republican direction?

11 THE WITNESS: No. Thank you for the clarification. I
12 meant among the top two or three worst states overall in terms
13 of any bias either favoring Democratic voters or Republican
14 voters. There are a number of states that have Democratic
15 gerrymanders, but there are fewer of them in part because more
16 state legislatures were controlled uniformly by the Republican
17 party during that redistricting cycle.

18 JUDGE BEATON: Thank you. And my other question was
19 whether the concerns you raised about the 2010 census map were
20 litigated in Ohio?

21 THE WITNESS: I believe that there was litigation, but
22 I wasn't a part of it.

23 JUDGE THAPAR: Another question. You studied it from
24 2012 to 2015. Then why don't you explain to us what happened
25 post 2015 just quickly.

1 THE WITNESS: In terms of bias in the state
2 legislatures?

3 JUDGE THAPAR: In Ohio, did the map change in 2015?

4 THE WITNESS: No, the map did not change. We were --
5 just to clarify. There are periods of data that we're
6 averaging over the decade. As you know, the Senate is not
7 elected all at once. So we have to look at specific time
8 periods. So our analysis really focused on the decade as a
9 whole. We weren't looking specifically at changes between
10 elections.

11 JUDGE THAPAR: So the 2020 map is the 2010 map,
12 according to your testimony?

13 THE WITNESS: You mean the map that was used in 2020.
14 Yes. The -- I'm not sure if there were changes that were made
15 off the top of my head, if there was litigation that resulted
16 in that. But we used for our analysis whatever maps were used
17 for those specific elections.

18 JUDGE THAPAR: Sorry, Ms. Marshall.

19 MS. MARSHALL: No problem.

20 BY MS. MARSHALL:

21 Q. Mr. Latner, can you tell us about -- you were involved
22 in the Supreme Court litigation, is that correct, on behalf of
23 the Ohio Organizing Collaborative?

24 A. Yes.

25 Q. Can you tell us about your involvement in that case?

1 A. Yes. I served as an expert witness and conducted
2 analysis of the requirements of the State Constitution on the
3 plans that were submitted, several of the plans.

4 Q. Can you tell -- did you formulate opinions in that case?

5 A. I did. Specifically, I conducted extensive analyses of
6 the proportionality of the adopted and revised plans, as well
7 as alternatives, and also of the symmetry, that is, the degree
8 to which any of the plans favored one political party or
9 parties' voters over another.

10 Q. Mr. Latner, can you tell us a little bit more about your
11 methodology in terms of that analysis?

12 A. Absolutely. So, for the proportionality assessment, I
13 did as you've already heard today, basically the same starting
14 point as other analyses, that is, I calculated the statewide
15 average vote share over the last decade for the available data.
16 The source of my data was from the Voting and Election Science
17 Team which is where everyone was using the same voter
18 tabulation district data.

19 I then estimated voter preferences across each district
20 using mapping software and calculated seat shares, statewide
21 seat shares, from those estimates. Then I compared how closely
22 the seat shares matched the voter preferences over the last
23 decade and also conducted initial analyses of the toss-up
24 districts that have already been discussed, and then compared
25 the differences in the maps across different points.

1 Q. Did you conduct that analysis for the first, second, and
2 third map?

3 A. Yes, I did.

4 Q. Can you -- and what opinions did you formulate with
5 respect to those three maps?

6 A. Essentially, I found that the first map violated
7 proportionality on a number of levels. The -- they weren't
8 using a correct definition of proportionality. That was the
9 primary result of that analysis.

10 On the revised maps, you can see that there's the
11 appearance of an improvement in proportionality in both the
12 first and the following revised map. But, as soon as you look
13 past the statewide single data point of 54/46 in terms of
14 Republican and Democratic vote shares, you see these plans are
15 actually quite un-proportional or disproportional. By that I
16 mean, as soon as you move away from that point, there is a
17 great deal of disproportionalities that will emerge with the
18 result of very minor vote swings.

19 So, for example, in the third revised map, we looked at
20 the impact of what a two-point vote swing in either direction
21 would result in from the statewide average and found that, as
22 others have noted, that small vote swing would result in 19
23 additional Republican seats and zero additional Democratic
24 seats if the swing was favoring Democrats. And the reason for
25 that is because none of those toss-up districts favor

1 Republican voters even slightly. They're all just slightly
2 Democratic districts.

3 So you can allocate them as a way of sort of
4 superficially getting to that 45/55 difference, but that's not
5 really an accurate assessment of proportionality. And indeed,
6 if anything, it reveals the intent to have the image of
7 proportionality. But a truly proportional map is a map that
8 corresponds closely to the preferences of voters across a
9 number of vote ranges. Because, as we know, voters change
10 their maps and there are changes in preferences, and the maps
11 should be responsive to those changes.

12 Q. Mr. Latner, can you also tell us about your asymmetry
13 analysis that you discussed earlier?

14 A. Yes. So I -- in addition to estimating and analyzing
15 the proportionality of the plans, I conducted a symmetry
16 analysis in line with the Constitution's requirements that
17 plans do not favor one party over another.

18 And symmetry is a very good test for this because it
19 explicitly looks at the deviation between the seat shares that
20 a party's voters get for a given vote share. So, for example,
21 if the vote statewide is split 50/50, you've got both parties'
22 voters getting 50 percent of the vote share, what symmetry
23 requires is they get the same share of seats for that
24 50 percent share. And so one party gets 60 percent of the
25 seats with 50.1 percent of the vote. Symmetry requires that

1 the other party would also get 60 percent of the seats or
2 50.1 percent of the vote.

3 It's a very clean test in the sense that it is distinct
4 from proportionality because you can have very disproportional
5 results that are still fair in the sense that we're assuming a
6 two-party system, we're assuming the winner's bonus that was
7 discussed earlier. And it takes account for all of that and
8 looks to see whether or not voters are being treated equally
9 depending on the party that they're voting for, or regardless
10 of the party they're voting for, I should say.

11 So there are a couple of ways to calculate symmetry.
12 One simple measure I employed was to simply look at the
13 proportion of districts that each party won with 5 percent or
14 greater than its statewide vote share. This is a measure that
15 can be calculated by hand. It's fairly simple to do. It
16 basically asks the question are either parties' voters more
17 comfortably seated, that is, do they have more districts where
18 they can reliably win those districts relative to the other
19 party?

20 The second measure is a little more complex. It's a
21 computational measure. It involves simulating actual elections
22 and estimates what happens when voters do change their
23 preferences across the 45 to 55 percent vote share. That's a
24 nice method in that it also provides confidence intervals and
25 other statistical tools to allow us to test the robustness of

1 those results.

2 Using both of those measures, I found that the revised
3 plan, the third revised plan specifically, but also the
4 previous plans all exhibit extreme asymmetry, that is,
5 statistically significant asymmetry, and asymmetry that's
6 frankly worse than most of the maps we actually see employed
7 around the United States.

8 The third revised map changed little from the previous
9 map. And my conclusion in the asymmetry analysis was that the
10 implementation of this plan would harm voters in Ohio by
11 diluting the value of their vote depending on which party they
12 voted for.

13 Q. Do you hold that opinion to a reasonable degree of
14 professional certainty?

15 A. Yes, I do.

16 Q. Mr. Latner, have you also had an opportunity to review
17 the Johnson McDonald plan?

18 A. I am currently in the process of reviewing it and will
19 be finishing that analysis soon.

20 Q. Have you had a chance to compare the third map with any
21 other maps, any other viable alternatives?

22 A. Yes. Viable alternatives, I would say there are a few
23 others in my analysis that was submitted to the Court. I
24 compared the third revised maps to the previously revised and
25 adopted maps from the Commission, as well as the Ohio Citizens

1 Redistricting Commission maps and Dr. Rodden's maps. And I
2 found that both the OCRC maps and Dr. Rodden's maps were
3 significant improvement over the third revised plan and that,
4 indeed, if there's any asymmetry -- on the one hand, they're
5 more proportional overall. They also exhibit less asymmetry.
6 And both of those plans would be compliant plans that could be
7 adopted.

8 MS. MARSHALL: Thank you, Mr. Latner. No further
9 questions.

10 JUDGE MARBLEY: Thank you.

11 Mr. Brey, anything?

12 MR. BREY: I don't think I have any questions for this
13 witness.

14 JUDGE MARBLEY: Mr. Blanton?

15 MR. BLANTON: No, thank you, Your Honor.

16 JUDGE MARBLEY: Mr. Cooper?

17 MR. COOPER: No questions, Judge.

18 JUDGE MARBLEY: Mr. Carey?

19 MR. CAREY: No questions, Your Honor.

20 JUDGE MARBLEY: Mr. Squire?

21 MR. SQUIRE: No questions, Your Honor.

22 JUDGE MARBLEY: Mr. Fox?

23 MR. FOX: No questions, Your Honor.

24 JUDGE MARBLEY: All right.

25 Mr. Latner, thank you very much, sir. You may be

1 excused.

2 THE WITNESS: Thank you, Your Honor.

3 MS. MARSHALL: We have no further witnesses, Your
4 Honor.

5 JUDGE MARBLEY: Thank you very much, Ms. Marshall.

6 Mr. Brey, does the plaintiff -- do the plaintiffs,
7 rather, have any rebuttal witnesses?

8 MR. BREY: We do not, Your Honor.

9 JUDGE MARBLEY: You rest at this time?

10 MR. BREY: We do rest.

11 JUDGE MARBLEY: We're going to take about a 10-,
12 12-minute recess until five, and then we're going to come back
13 and hear brief closing remarks from any of the parties who wish
14 to give a closing. Then we will advise how we're going to
15 proceed from there with respect to resolution of this motion
16 for a preliminary injunction hearing.

17 (Recess taken from 4:48 p.m. to 5:18 p.m.)

18 JUDGE MARBLEY: Thank you very much, everyone, for
19 your patience. At this time, we have decided we are going to
20 take the preliminary injunction under advisement. We are not
21 going to intervene in the state court proceedings at this time.

22 We recognize that April 20th is the proverbial drop-dead
23 date. We're going to have you submit post-hearing briefs
24 pursuant to the following schedule. Simultaneous briefing will
25 be -- opening briefing will be due on April 6. Reply briefs

1 will be due on April 11.

2 For purposes of organization and to assist you and us,
3 the four preliminary injunction factors should be your guide.
4 But the real gravamen of your pleading should be the likelihood
5 of success on the merits. And I think everyone understands
6 that.

7 We also want you, as a part of your analysis -- and you
8 are certainly free to argue as you wish. But, as a part of
9 your analysis, we want you to address the question of why we
10 should not use the 2010 map as it is currently the status quo.
11 And the argument shouldn't just be rhetoric, but you should
12 tell us whether there are any cases which would indicate that
13 we should or should not use a map positioned as the 2010 map,
14 that is, the status quo map.

15 At this time, we will hear from each of the parties.
16 You have a maximum of five minutes to tell us the relief that
17 you want, not the reasons therefore; I think that has been
18 fairly clear. But just tell us the relief that each of you
19 wants beginning with you, Mr. Brey.

20 MR. BREY: Thank you, Your Honor. Legal proceedings
21 as well as politics are the art of the possible. There are a
22 lot of things I would like, but there are some things I
23 understand this Court lacks jurisdiction to give.

24 We can't vote on May 3rd for general assembly
25 candidates. So we would like the primary for the general

1 assembly candidates to be moved, although our preference would
2 be a unified primary. That, I believe, is a choice for the
3 general assembly to make, not for this Court. As this Court
4 has noted, intervening minimally in the state processes when
5 necessary is its guide stone.

6 JUDGE THAPAR: Mr. Brey, one thing I think we all
7 should have made clear is we are operating under the assumption
8 of Ohio law as it exists today.

9 MR. BREY: Correct.

10 JUDGE THAPAR: So if it changes then we can revisit
11 things anyway we want as a panel.

12 MR. BREY: Certainly. But we would ask the Court to
13 set a primary date on which my clients will be able to vote for
14 general assembly candidates. We would also ask the Court by
15 June 8, if it decides to adopt the plan three, or April 20 if
16 it wants to reserve the opportunity to adopt another plan by
17 April 20 if the state authorities don't resolve this situation
18 so they have a primary date and a plan.

19 Moving the primary date also is contingent upon the
20 State not providing another primary date and another plan
21 that's fully in place so the people will have an opportunity to
22 vote. That's the bottom line. We want to be able to vote.

23 JUDGE THAPAR: Can I ask you this question? This may
24 be the silliest question you'll ever hear. What's the
25 likelihood you and the other parties could meet and agree to a

1 map that we could institute on April 20th? Is that zero or
2 higher than zero?

3 MR. BREY: It might be higher than zero but not very
4 much. I think that Counsel get along. We're adversaries, but
5 we're also, for the most part, friends and we get along. That
6 doesn't mean that the interest of our clients is something
7 we're likely be able to resolve by meeting and discussing.
8 We're certainly willing to do that. I just think it's not
9 going to get us anywhere.

10 So the question is partly do you use plan three or do
11 you use another plan? I realize it's not going to be decided
12 today.

13 JUDGE MARBLEY: Mr. Brey, we want to know the relief
14 you want.

15 MR. BREY: We would ask for plan three. We believe
16 it's important to have a plan that's been adopted by some state
17 authorities, not by independent observers, not by parties who
18 don't have their plan submitted. We understand the downside of
19 this. The Ohio Supreme Court has declared four-to-three that
20 that does not comply with Ohio's Constitution.

21 JUDGE THAPAR: Why wouldn't it be plan four since that
22 hasn't been rejected?

23 MR. BREY: We would have no objection to plan four,
24 frankly. I believe I heard testimony that some of the parties
25 preferred plan three. It's what we had in our TRO. There was

1 no plan four at the time. That's the default position. We
2 have no objection to plan four. We have no objection to any
3 plan as long as we're able to do it. We think plan three would
4 be the best one.

5 JUDGE MARBLEY: Thank you, Mr. Brey.

6 Mr. Blanton?

7 MR. BLANTON: As defendants, we're not asking for
8 relief so much as for consideration, that whatever relief this
9 Court should craft that if it does determine that it is
10 necessary to set a primary date, that the primary date that
11 this Court chooses would provide Ohio's boards of election with
12 the time needed to hold and conduct a proper election in which
13 the people can have confidence.

14 We want it to be orderly. We want it to be sensible.
15 We want it to comply with the law and hopefully one that
16 doesn't require changes to Ohio statutes in terms of time
17 frames.

18 JUDGE BEATON: Am I right, based on your earlier
19 comments, that in light of the evidence we heard today that the
20 dates that would achieve that would be the imposition of a map
21 by this Court on April 20th which would allow you to prepare
22 for an August 2nd primary consistent with Ohio law?

23 MR. BLANTON: Yes.

24 JUDGE BEATON: And in the view of the Secretary of
25 State, that would be the least disruptive alternative and

1 certainly less disruptive than the current status quo which is
2 no plan in place?

3 MR. BLANTON: The only simpler plan, Your Honor, is to
4 use plan three assuming that the House Bill 93 provisions
5 follow through so we don't get into the 9(C). But that is --

6 JUDGE BEATON: I thought you were going to say plan
7 four would be the simpler way if it's not invalidated or if
8 it's used provisionally by this Court. Even if the Supreme
9 Court were to say no on a prospective basis, it could still be
10 implemented in an orderly manner by this Court consistent with
11 that timeline I set out, right, as a default?

12 MR. BLANTON: Yes. If this Court were looking to
13 compress the time frame at all, plan three would be simpler.
14 If we're looking at April 20th, plan four is perfectly
15 sufficient.

16 The only other thing, Your Honor, is I owe you some
17 homework, our team does, in terms of the survey you asked
18 Ms. Grandjean to prepare. Does the Court have a preferred
19 return date on those responses?

20 JUDGE MARBLEY: Could you return it on the same day
21 you file your opening briefs?

22 MR. BLANTON: Yes, Your Honor. I don't see that being
23 a problem.

24 JUDGE MARBLEY: Thank you very much.

25 MR. BLANTON: Your Honor, we are proceeding with

1 May 3rd.

2 JUDGE MARBLEY: Mr. Carey?

3 MR. CAREY: Your Honor, I believe I can be very brief.

4 I understand the Court --

5 JUDGE MARBLEY: Brevity is the soul of wit and
6 persuasion.

7 MR. CAREY: I understood the Court's comments as to
8 *Grove*, as to the Court's intent not to intervene to imply that
9 the Court will not be imposing the third map in response to the
10 preliminary injunction request. But, to the extent that wasn't
11 encompassed by the Court's comments, then we would request that
12 the Court deny that relief.

13 In addition to that, as to moving the primary date, we
14 submit that's primarily the prerogative of the Ohio General
15 Assembly. That said, should the Court find that some
16 intervention is necessary, we believe that moving the primary
17 date would be a relatively harmless measure particularly in
18 light of the fact that as the Secretary of State has stated,
19 there can be no unified primary on May 3rd in any event. So
20 the disruption to state proceedings would be relatively
21 minimal.

22 We also agree that an August 2nd primary date, or as
23 late as possible, would be appropriate should the Court decide
24 to grant that relief. We also agree with the Court's statement
25 that April 20th is the so-called drop-dead date or trigger

1 date. We take no position at this time as to mechanisms for
2 how to meet that date. But given that --

3 JUDGE THAPAR: When you say "mechanisms," what do you
4 mean?

5 MR. CAREY: A special master or imposing one
6 particular map.

7 JUDGE THAPAR: Thank you.

8 MR. CAREY: That said, we heard testimony today that a
9 map can be drawn very quickly, but the surrounding proceedings
10 may not be quite so quick. In the interest of expediting the
11 proceedings and moving towards that April 20th goal, we would
12 request the parties submit proposals, at minimum a proposed
13 schedule towards that end; so a proposed schedule either for a
14 special master or for the Court to consider particular maps.

15 JUDGE THAPAR: Isn't that what your briefs are for?

16 MR. CAREY: I understood that to be as the merits of
17 the preliminary injunction. But if that can be included --

18 JUDGE THAPAR: Yes. You can include it.

19 MR. CAREY: Thank you.

20 JUDGE MARBLEY: Mr. Cooper?

21 JUDGE BEATON: I think merits of preliminary
22 injunction, given the nature of our discussion here, definitely
23 embraces the nature of the remedy, if that clarifies things.
24 If we're talking about an April 20th drop-dead, then we need to
25 be -- like the biggest aspect of the relief relevant, then, is

1 going to be the remedy.

2 MR. CAREY: Thank you for the clarification, Your
3 Honor.

4 JUDGE MARBLEY: Mr. Wessler.

5 MR. WESSLER: Thank you, Your Honor. Matt Wessler for
6 the Sykes and Russo intervenors. I think I can be equally
7 brief. I think there will be some overlap.

8 Our first request for the relief is you deny the
9 preliminary injunction since the relief that was actually
10 requested by the plaintiffs in that motion is no longer
11 available. We also think it would be prudent for you to set a
12 primary date.

13 JUDGE THAPAR: If we deny the PI - I haven't thought
14 this through so maybe you can help me - what happens? Aren't
15 we done?

16 MR. WESSLER: I don't think so. I think you can still
17 retain jurisdiction over this case under your inherent
18 authority and continue apace. But the specific relief that was
19 requested was hold the primary on May 3rd and adopt --

20 JUDGE MARBLEY: We can deny the specific relief but
21 grant a different type of relief --

22 MR. WESSLER: It's more of a housekeeping point. But
23 that's all.

24 JUDGE THAPAR: I thought you meant deny it wholesale.

25 MR. WESSLER: Understood. We may be arguing that in

1 the briefs, but not today.

2 JUDGE THAPAR: Okay. We're happy to leave it to Ohio.

3 MR. WESSLER: We do think it's prudent to set a
4 primary date, and that date should be August 2nd for the GA
5 races. It is a narrowly tailored remedy, a somewhat
6 unobtrusive step I think in the right direction that is
7 consistent with *Grove* and *Branch*. And given that April 20th is
8 the drop-dead date, we think that although *Grove* and *Branch*
9 certainly are the controlling framework for this Court,
10 temporary deferral does not mean do nothing. And in our view,
11 this Court should begin the process of establishing a procedure
12 for how to evaluate which map to adopt in the event that it has
13 to do that.

14 Specific relief we would request in that respect is to
15 refuse to adopt either map three or four which are, I think,
16 plainly unconstitutional, and instead either appoint a special
17 master or the Court itself to attempt to identify the best and
18 most constitutionally compliant version of a map that could be
19 adopted within the three-week period that we have. In our
20 view, that is at this point the independent mapmakers'
21 completed map that you heard testimony about today. And we
22 will include more about that in our briefing.

23 JUDGE THAPAR: Do you agree that April 20th is the
24 drop-dead date?

25 MR. WESSLER: We're willing to accept that date based

1 on the representations made by the Secretary of State, yes.

2 JUDGE MARBLEY: Thank you, Mr. Wessler.

3 Mr. Squire.

4 MR. SQUIRE: May it please the Court. Your Honor,
5 there are a number of points that I would like to address in
6 terms of the remedy that my clients seek from this Honorable
7 Court. Number one, Judge, we would ask that you grant our
8 motion to certify a class. Number two, we would ask that in
9 connection with that, that the Court take judicial notice of
10 the proceedings that were filed in the Northern District of
11 Ohio back in December that we ultimately, in light of the
12 filing of this case, elected to dismiss voluntarily in light of
13 this Court granting us permission to intervene here.

14 We would ask that the Court enjoin the use of maps one
15 through four and also the congressional map, as well as the
16 general assembly map, and that there be a unified primary.
17 It's the position of my clients that in light of the number of
18 misfirings that have occurred with respect to the State's
19 ability to come up with a map, that the Court appoint a special
20 master, in effect, assume control of what the redistricting
21 commission endeavored to do most recently by the hiring of
22 experts and the engagement of mediators from the Sixth Circuit,
23 and do what the Supreme Court can't do with the outcome of that
24 process and that is adopt whatever map these experts come up
25 with. The State's already paid and so forth, and there's been

1 general consensus that that process has been performed in
2 accordance with state law.

3 The last and most important relief we request here is
4 that a declaration issue that advises whoever develops these
5 maps, that part of their responsibility is a duty to assure
6 that the result does not cause the processes leading to
7 nomination and election of candidates to be not equally open to
8 the members of our class.

9 Thank you, Judge.

10 JUDGE MARBLEY: One question for you, Mr. Squire. You
11 filed either this morning or last night a motion for a TRO.

12 MR. SQUIRE: Yes, sir.

13 JUDGE MARBLEY: In light of what we've done here
14 today, is that still viable? Or can those concerns be
15 addressed in the briefing that you're going to undertake?

16 MR. SQUIRE: Your Honor, it can be addressed in the
17 briefing that we're about to undertake. For the reason that we
18 sought at least temporary restraint of the implementation of
19 any of the state plans one, two, three or four, to the extent
20 the Court has taken that under advisement, the emergency and
21 the immediacy and imminence of any harm doesn't exist.

22 JUDGE MARBLEY: I thought so. Thank you very much.

23 Mr. Fox?

24 MR. FOX: Thank you, Your Honors. We think if the
25 Court wants to set a date for the primary, that an August 2nd

1 date makes sense. That seems to be a reasonable date. We
2 would ask the Court to decide on a map in time for a
3 decision -- for a lawful map to be imposed. Thus, it sounds
4 like that is April 20th.

5 JUDGE THAPAR: Do you agree with that?

6 MR. FOX: Again, we just aren't in a position to
7 assess whether April 20th is or is not the latest possible date
8 in which a lawful map can be imposed. But given the
9 representations from the Secretary of State's office, we have
10 no reason to disagree.

11 JUDGE BEATON: You don't object to the April 20th
12 drop-dead date.

13 MR. FOX: Correct. We have no way to challenge that.

14 We would ask the Court to decide on a lawful map which
15 means a map that complies with both Ohio and federal law, in
16 connection with the post-trial briefing, either by choosing a
17 map presented to the Court in that briefing or in the evidence
18 today or by choosing a process for getting such a map.

19 JUDGE MARBLEY: Are you going to urge upon us a
20 particular map in your briefing?

21 MR. FOX: Your Honor, I am not -- standing here today,
22 I am not sure if we will urge a map or process for getting a
23 map. But we will certainly do one or the other of those
24 things.

25 JUDGE MARBLEY: Fair enough.

1 MR. FOX: The last point would be we would urge the
2 Court to be conscious of the fact that the commissioners and
3 the State are, of course, all aware of what this Court is
4 doing. So part of what *Grove* requires in terms of this Court
5 staying out of it until it's too late is that if this Court
6 shows its hand earlier than necessary in terms of what the
7 fallback will be, that will affect what the Commission is able
8 to do and what the state actors are able to reach.

9 So I would ask that the Court consider not reaching a
10 decision on a map earlier than the Court has to reach a
11 decision to truly give the state process a chance to reach a
12 conclusion.

13 JUDGE MARBLEY: You don't have an objection with
14 parallel processes, do you?

15 MR. FOX: Parallel processes to enable a decision at
16 the end of the last possible day, no.

17 JUDGE THAPAR: Mr. Fox, can I ask you about that? So
18 you're saying you don't want us to do anything before
19 April 20th, but on that magic day we need to not only decide
20 but issue a map.

21 MR. FOX: Your Honor, the Court can take -- will have
22 briefing on a process. If the Court wants to -- if what the
23 Court decides makes sense is a -- and, again, we just -- having
24 just heard this plan, I can't tell you if we're going to urge a
25 process or map. If what the Court decides is needed is a

1 process, then the Court should undertake that process so as to
2 have a map by April 20.

3 JUDGE THAPAR: Wouldn't we have to undertake that
4 process before you even urge it? Or you're saying we could do
5 it the 11th, we could construct a map in the interim and have
6 it ready on the 20th.

7 MR. FOX: Exactly. What I'm urging the Court not to
8 do is, for example, issue an order on the 12th that says if the
9 Ohio Supreme Court and the Ohio Redistricting Commission -- the
10 Ohio government does not produce a lawful map, then X map will
11 be the map earlier than necessary because that will interfere
12 with the State proceedings. Even if the Court says the State
13 is free to reach a different conclusion, having that out there
14 will interfere with the State proceedings.

15 JUDGE BEATON: May I ask what case law supports that
16 position? Descriptively, I understand that position. But
17 there are also costs that we heard of from the Secretary of
18 State, risks that waiting until the very last minute would also
19 implicate -- there's also a risk that we say something that is
20 not exactly right, and so we need to hear something. And it
21 makes me very, very nervous about staying our hand in hopes of
22 not affecting a state process while risking a worse outcome in
23 a concrete way as opposed to just the -- the effect of showing
24 our hand, as you said it earlier. So can you point me to any
25 law that would demand that or encourage that of us?

1 MR. FOX: Standing here I cannot. If we can, we'll
2 put it in our briefing. I understand the Court's concern. I
3 do think that April 20th is a long time before August 2nd. And
4 I hear what the Secretary of State has been saying today about
5 their time. I do think it's hard to believe that if it were
6 delayed by a few days because of an issue like one of the ones
7 Your Honor identified, that that would really prevent an
8 election from occurring ultimately on August 2nd. But in terms
9 of case law, I don't have it in front of me. I'm happy to try
10 to provide it in our briefing.

11 JUDGE BEATON: I appreciate your position. I think
12 there are also countervailing considerations. It's very
13 difficult to choose from amongst these different options, none
14 of which works entirely or we wouldn't be here in the first
15 place. So, to the extent you all can identify law rather than
16 preference that guides our discretion amongst a remedy, that's
17 what's going to be most helpful.

18 MR. FOX: Understood. Rest assured we will have a lot
19 of law on the remedial choice. That we will be a focus of the
20 briefing we're submitting after this hearing.

21 JUDGE MARBLEY: Nicely done, Mr. Fox. Thank you.

22 JUDGE THAPAR: Wait. Can I ask one question? I'm
23 sorry. Did you argue we don't have standing?

24 MR. FOX: Yes, Your Honor.

25 JUDGE THAPAR: The plaintiffs don't have standing?

1 MR. FOX: Yes.

2 JUDGE THAPAR: Do you still think that?

3 MR. FOX: Your Honor, the fact that what the Court is
4 hearing today is that April 20th is the drop-dead date suggests
5 that the standing inquiry -- our argument was that they didn't
6 have standing before there was a real threat that an election
7 couldn't be held. I think the evidence before the Court today
8 that April 20th is the drop-dead date does change that
9 analysis, to some extent. I think the Court could conclude
10 from that that there is standing purely to make sure that an
11 election is held by August 2nd.

12 JUDGE THAPAR: Thank you, Mr. Fox.

13 JUDGE MARBLEY: Thank you, Mr. Fox.

14 Ms. Marshall?

15 MS. MARSHALL: Your Honors, we would ask this Court to
16 deny the specific relief that is requested. We have no
17 objection to moving the primary to August 2nd. We would like
18 to ask this Court to have a more expedited briefing schedule to
19 follow this up and to set this case for a trial on the merits.

20 We would also ask this Court to appoint a special master
21 so that we could have a parallel proceeding along the lines
22 with the Supreme Court proceedings. It is clear what
23 transpired earlier this week that we do need to continue moving
24 this matter forward and that this Court does need to have a
25 special master appointed so, to the extent maps are submitted

1 by the parties, the Court has an independent special master to
2 advise the Court as well.

3 JUDGE MARBLEY: Ms. Marshall, thank you very much.
4 Thank you very much, everyone, for your arguments, for the
5 presentation of the evidence. It was quite thorough and very
6 well done, especially given the time frame within which
7 everyone had to operate.

8 Hopefully after the 11th, you can all get a little bit
9 more sleep. I know many of the lawyers here, and I see some
10 very bleary, puffed eyes. I understand it. We're trying to
11 vindicate some very important interests.

12 I would also ask that you stay within the page
13 requirements. But we have provisions under the local rules, if
14 you have to exceed them, you would take certain steps. You
15 don't have to take the time to ask for permission, but, if you
16 do, make sure that you have the appropriate indexes and the
17 like. But it is true - and I know this from being on this
18 court for 25 years - that brevity is the soul of persuasion.
19 And so repetitive arguments are typically not very persuasive.
20 And through our questioning, I think everyone knows what our
21 concerns are. And to the extent that you can get to the point
22 clearly, we will collectively appreciate it.

23 With that being said, anything further, Judge Thapar,
24 Judge Beaton?

25 JUDGE THAPAR: No. Thank you all very much.

1 JUDGE MARBLEY: Also before we leave, I want to thank
2 Judges Thapar and Beaton for coming down, sitting with us, and
3 certainly making for a warmer bench than we've had for the past
4 few days here in Columbus. And it's good sitting with them.
5 They're friends of mine. So thank you very much, everyone.

6 (Proceedings concluded at 5:45 p.m.)

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C E R T I F I C A T E

I, Shawna J. Evans, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Algenon L. Marbley, Chief Judge, in the United States District Court, Southern District of Ohio, Eastern Division; the Honorable Amul R. Thapar, Judge, in the United States Court of Appeals for the Sixth Circuit; and, the Honorable Benjamin J. Beaton, Judge, in the United States District Court, Western District of Kentucky, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Shawna J. Evans
Shawna J. Evans, RMR, CRR
Official Federal Court Reporter

April 3, 2022