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In the Matter of:

WYGANT, et al.

vs

LEE, et al.

TRANSCRIPT OF PROCEEDINGS - VOLUME I

April 17, 2023

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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

TELISE TURNER, GARY WYGANT, and FRANCIE HUNT,	)	
Plaintiffs,	)	
vs.	)	Case No. 22-287-IV
BILL LEE, Governor, TRE HARGETT, Secretary of State, MARK GOINS, Tennessee Coordinator of Elections; All in their Official Capacity Only,	)	Russell T. Perkins, Chief Judge J. Michael Sharp, Judge Steven W. Maroney, Chancellor
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

Volume I

Monday, April 17, 2023

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(The aforementioned cause came on to be heard Monday, April 17, 2023, before the Honorable Russell T. Perkins, Chief Judge; J. Michael Sharp, Judge; and Steven W. Maroney, Chancellor, beginning at approximately 9:20 a.m., when the following proceedings were had, to-wit:)

CHIEF JUDGE: Are the parties ready to proceed?

MR. TIFT: Yes, Your Honor.

MR. RIEGER: Yes, Your Honor.

MR. TIFT: And we can explain to the Court the binders all in front of you, if you'd like.

CHIEF JUDGE: Let's do it.

MR. TIFT: Okay. So the parties worked together on all proposed exhibits and reached an agreement to admit many of them without even needing to go through the normal process of, "Do you recognize this document," with the witness.

And so the binders contain every possible exhibit that either side wants to use. Our intention, which was agreed, is that all of those that we agree are admissible and should be admitted can be admitted from -- either from right now or as they're used throughout trial. And then any of the remainders will be

subject to normal objections.

At the close of trial, we will work together to remove anything from the official binder that was never made an exhibit. And that way, the binder -- hopefully, it will allow for the smoothest, quickest use of exhibits in the trial and for a clean record with the Court's copy.

CHIEF JUDGE: Great.

MR. RIEGER: And we have -- they're not in front of Your Honors at the moment, but we have ready tables of contents, where the exhibits that we have agreed on should come in without having to go through the ordinary process have been marked.

If the Court would like those, we can provide those to the Court. And that will also allow for easier access to the individual sections of the binder.

CHIEF JUDGE: Okay.

MR. TIFT: And, I guess, ultimately, we could read through on the record what we already agree is admitted. Whatever the Court prefers for the ones that there's no dispute on admission, to do it properly.

CHIEF JUDGE: Okay. Well, after we take care of some preliminary matters, the exhibits can be -- the agreed-upon exhibits can be admitted.

I understand there would be some that

you don't -- we'll have to go through the process on those.

Also, we have several motions pending, motions in limine.

As to the pending motion that we heard on March 7th, no need for any argument on that. Our plan is to -- our hope is to take a break after we hear all seven motions in limine and come back and announce rulings on all of them, and also announce ruling -- a ruling -- this is our hope -- on the motion -- the evidentiary motions we heard on March 7th.

I'm ready.

MR. SWATLEY: Good morning, Your Honor. May it please the Court, my name is Jacob Swatley with the firm Harris Shelton from Memphis. I'm special counsel to the defendants in this matter.

The first motion in limine -- Motion in Limine Number 1 to exclude Plaintiffs' expert, Dr. Cervas.

The hallmark of an expert is professionalism, of being able to do the job asked first, and to do it correctly when asked.

Additionally, the standard for excluding an expert is whether their testimony and opinions will substantially assist the trier of fact and is trustworthy.

We believe that the proceedings in this case have shown that they are not. Dr. Cervas needed to prepare five different reports in this matter, four on the House, and produced over 20 maps. Each round contained non-contiguities in those maps, meaning that somehow the districts were not connected, either over water, over land, or even by point contiguity.

This is not a very difficult task for an expert in this field. Ultimately, I believe at least 12 of those maps were -- had some type of non-contiguity within them. I believe a majority of the maps that he produced had this flaw.

Dr. Cervas also showed that during his deposition and in his reports, he did not -- he testified that he did not read a single Tennessee case before he started drawing.

As the Court is well aware by now, redistricting is a complex task. It requires comparison of many different variables, often variables that do not necessarily relate to each other. Apples and oranges and peaches, and somehow they all work together to find what we think is the standard.

In Tennessee, you can't understand the criteria for drawing a map without understanding the case law that has interpreted the Constitution. The

Constitution doesn't say split as few counties as possible, split 30 counties. The Constitution says: Don't split any counties. And only by case law do we have a standard where it somehow interprets that.

Dr. Cervas simply did not -- simply did not create the maps that show that his testimony will be trustworthy here because he did not understand many aspects, as gone through in the motion in limine, of what the standards are in Tennessee.

Additionally, as Your Honors know, we went through this -- the motion for evidentiary sanctions and the issues within overriding a map that was in the record, without telling anyone. And if that was not pointed out, that map would have -- a map that was not produced during discovery, that was not produced by the discovery deadlines laid out by this Court in their discovery scheduling order, that map would have ultimately been -- you know, whether it was an intent or not, snuck into the record to where we would have had a very serious issue there.

So, ultimately, we move for the exclusion of Dr. Cervas's testimony in whole. We believe it's neither trustworthy, nor will assist the trier of fact.

And I'm happy to answer any questions

on that motion in limine, as they may arise.

CHIEF JUDGE: No questions from me.

MR. TIFT: Thank you, Your Honors, and good morning. Scott Tift on behalf of the plaintiffs.

Motion in Limine Number 1 should be denied. First off, we don't really understand why it was filed because it's duplicative of the already-pending motion from March 7th, often copying the exact same language in block. But we're here on this issue again, and there's a few important points.

There's no question that Dr. Cervas is qualified. They don't challenge his qualifications. He has been the primary mapmaker for four statewide redistricting maps; two in New York, two in Pennsylvania.

He's been the assistant to the special master under three different Courts, drawing the maps for three different parts, subparts, or full parts of states in previous litigation.

He's got a PhD in political and U.S. politics, teaches a class that discusses redistricting, has peer-reviewed papers on redistricting. And, of course, his real-life experience.

He's certainly qualified under the standards set forth in our rules to supply opinions on that based on his experience. And so that's Point 1.

The second, you know, the reason -- we submit the Court should hear all of the parties' expert witnesses, and the Court can decide what's persuasive or not, based on the full testimony. I think what you just heard from opposing counsel is a great example of this.

For instance, you were just told Dr. Cervas didn't read any Tennessee cases. Maybe that sounds like a problem in isolation. But what Dr. Cervas told these same counsel during his deposition is what he used to get up on the law is called the National Conference of State Legislators red book, a book that Mr. Himes, their expert, writes chapters for and is well-regarded as one of the leading redistricting documents or compendiums out there.

So Dr. Cervas testified -- he didn't testify, "I don't know anything about Tennessee law."

He testified that, "I read the NCSL red book on the issues at hand. He also has broad knowledge with previous experience about the federal overlays on redistricting, whether that's one-person, one-vote, minority-majority district, Voting Rights Act, all of those issues.

And, of course, he's working under Counsel, who he puts in his report, advised him on what his assignment was. And his assignment involved

determining whether or not fewer counties could have been split under the 2020 demographics, while keeping the variance under 10 percent, which is sort of a break point in the one-person, one-vote litigation, and while still complying with federal constitutional law.

So he's also been advised on the law that he's speaking on by Counsel in this case. So the idea that he's not aware and just working in a vacuum is not accurate. It's a choice cherry-pick from a deposition.

The same is true on non-contiguities. There's a few issues with their non-contiguity argument.

One is Defendants never acknowledged the fact that Dr. Cervas, when they've identified non-contiguities, has then gone back and done errata versions to fix these non-contiguities.

But, also, it's important to note that their own -- you know, Dr. Cervas used a program called Dave's Redistricting app. It's the same program that their other expert, Sean Trende, used when redistricting the whole state of Virginia as a special master under the Court there. And it's a program that Mr. Himes testifies in his deposition has troubles recognizing small non-contiguities.

So the program has a problem with

finding some non-contiguities. And what we're talking about in almost all cases is a census block, the tiniest bit of a state with zero people in it.

So you've got -- one of them, he'll testify, is in a lake. So in the middle of a lake is noncontiguous. And as soon as Mr. Himes runs the program through Maptitude -- which is better at finding non-contiguities -- Dr. Cervas is able to pair them up.

And, notably, it doesn't change the analysis at all or the weight of these maps at all.

For instance, if a map has a certain number of splits and a certain percentage total variance, two very key details here, putting a zero population census block slightly to the left and to the right changes the variance not at all. It changes the county splits not at all.

There's one 11-person non-contiguity. Fixing that one neither changes any county splits, nor changes the total variance of the plan.

So what you're really hearing here is criticism, substantive criticisms of what Dr. Cervas has done, couched in the language of disqualifying untruthfulness. It's not untruthfulness. They can make those criticisms -- I'm sure they will -- on the stand. But substantive criticisms of a qualified expert should be

aired through direct and cross-examination and not couched in indicia of untruthfulness.

And, finally, we've discussed the issue of the maps and the inadvertent error that Dr. Cervas made when he went to see if he could fix a non-contiguity, and failed to save a duplicate copy, so that for a little while, the actual link pointed to a different map.

Now, both sides, as you heard on March the 7th, have the original data underlying all of the maps that are before the Court. The original data are called shapefiles, Block Assignment Files. Dr. Cervas has them on his computer, and Mr. Himes said in open court during summary judgment that he has them on his computer. He also said in his deposition that the way he analyzes the maps is downloads the shapefiles to his program.

So, first off, nothing's been destroyed. Also, no primary evidence has been destroyed. It's an expert's testimony that we're talking about.

And then the map that he made for his own, figured out he could fix those non-contiguities, from day one, Plaintiffs have said, "We have no intention of using that map at trial."

I don't know why they would want to use that map at trial. So if this were to hinge on, you know, his extra map that he made not being in the record, I

mean, we can publish it. We don't want to use it. They don't want to use it. So I don't see how that would be an issue.

But what fundamentally has not happened is any destruction of these underlying files. But also what's notable here is that Dr. Cervas has excerpted and analyzed all of his maps in his report. Mr. Himes has done his own analyses of those maps. And they're going to get here and testify about those maps, based on their analyses of them.

Nothing has changed in their reports. Nothing is going to change in Mr. Himes's response to Dr. Cervas's testimony about what any given map has, in terms of variances and things along those lines.

So this is all a bunch of, you know, throwing up smoke to make it look like, all of a sudden, nobody knows what's going on. But everybody knows what these maps are. Everybody has the files of these maps. Both sides have reviewed these maps, and both sides are ready to support and criticize the maps, respectively, in front of you.

And so we submit the way that -- the proper ruling here is to deny Motion in Limine 1. There's -- you've got a qualified witness that they have substantive criticisms of. They should certainly be able

to air those criticisms.

But what shouldn't happen is the expert being excluded or his final map being -- you know, not being allowed to see the light of day because of a claim that he somehow destroyed the files, which didn't happen, and which they do have.

And as a final point, though Counsel didn't just say it, there's a suggestion of that his final map produced over three years ago was, you know, trial by ambush. And, of course, we would submit to the Court that here at trial Dr. Cervas, on cross or in rebuttal, is certainly capable and even expected to respond --

CHIEF JUDGE: I think he said three years ago.

MR. TIFT: Well -- and that's certainly not true. Thank you for the correction. Three months ago.

But, you know, here today, Dr. Cervas will be -- or tomorrow, whenever he does -- will be allowed, during cross and redirect, to respond to novel criticisms.

When there was a novel criticism stated in their expert witness's deposition, rather than waiting three months later to address it at trial, three days later he supplied the final map, which is his substantive

response.

So we'd submit there's no reason for denying in Motion in Limine 1 and that the Court should create, you know, the best record we can have here by having all of the experts testify and weighing what was persuasive and what wasn't.

Thank you.

CHIEF JUDGE: Brief rebuttal.

MR. SWATLEY: Just a couple of brief points on this.

First one is, you know, not reading the case law, but looking at the red book. I've got a copy of the red book. You know what word never appears in it? Lockert. Or Rural West Tennessee. You can't understand Tennessee redistricting without understanding Lockert or Rural West Tennessee.

There are a number of criteria that Dr. Cervas used, like in his reports, like compactness, mean deviation, total splits of counties, coalition majority-minority districts. None of these criteria have ever been substantively considered in any Tennessee redistricting case.

Coalition on majority-minority districts are actually not only disfavored, they are considered not actionable by the Sixth Circuit. The Sixth

Circuit does not recognize coalition majority-minority districts at all.

Once again, if you don't understand the criteria here, you can't draw a map. This is a very hard process. But no map can be made legal if you don't understand what those standards are.

Additionally, you know, their expert used, in one of his affidavits, words to describe Dave's Redistricting as a persistent software flaw related to non-contiguity. He had four rounds, where this persistent software flaw kept tripping him up.

The problem is, he also put in his report that he had a license to Maptitude, the exact software that Mr. Himes used the entire time to create the enacted map that has no contiguity issues.

The thing is, he had a tool. If he thought there was a persistent flaw, he had another tool he could have found this out. He didn't.

And we'll also get to the fact later on, though, if we get there, that all it takes to find a non-contiguity in Dave's Redistricting is two mouse clicks. There's a tool to find them.

Finally, they say that 11 people left out of a map for noncontiguous reasons is somehow, you know, okay. There's only one plaintiff here. That's 11

potential plaintiffs, if they're in a noncontiguous district. I mean, it certainly matters to those 11 people probably to be in a district that's legal.

Ultimately, the whole record here shows this goes beyond substantive criticism. This comes to the basic competence and testimony and trustworthiness of their expert.

We believe that his testimony should be denied for the reasons that are mentioned. And, again, happy to answer any questions that the Court may have.

CHIEF JUDGE: Thank you.

Motion Number 2.

MR. SWATLEY: Good morning, Your Honors. This motion is a motion in limine to exclude any redistricting criteria that are either not one of the house factors listed in the statute they passed or that the house redistricting committee considered or any that are not in Tennessee law. And I mentioned them briefly.

Dr. Cervas, in his reports, mentioned compactness. Mean deviation, instead of overall deviation. Mean deviation is also average deviation. Total splits of counties, instead of the -- if a county is split once, that counts as one split, as we usually consider in Tennessee law. And coalition majority-minority districts.

Again, redistricting is complicated enough, just off the criteria that's considered under Tennessee law. If we have experts getting up here and talking about all these things, which may be fair considerations in other states, but aren't considered here in Tennessee, we just run the risk of adding additional burdens here, additional confusion, and, quite frankly, it's a waste of time.

We'd like these excluded because they just aren't considered in Tennessee law. They weren't considered by the House. And they are not determinative to whether the enacted house map is legal or not.

You know, we can go through all the compactness and all these, you know, mathematical precision measures, but they don't determine the law here.

We can talk about mean deviation. It's not a consideration of the law. Overall deviation is what matters.

Total splits, completely irrelevant here.

And, again, the coalition majority-minority districts that Dr. Cervas actually cited in some of his reports, Sixth Circuit case law is very clear. Majority-minority districts cannot be considered under the Voting Rights Act by adding a coalition of

district minorities from, you know, different racial categories or ethnic categories.

Again, these are irrelevant. They will not help the Court here to make the determinations that it must. And we would like them excluded because it, quite frankly, will just help us focus on the issues that the law actually turns on here.

CHIEF JUDGE: Thank you.

MR. TIFT: Your Honor, I'll be brief because the same issue is here.

There's no reason why the Court can't hear an expert use the terminology of his trade, and then sort through, under the crucible of cross-examination of post-trial briefs, if some portion of it is somehow irrelevant to the specific crux of the issue. And, you know, walking through these, it's demonstrated why that is clear.

I mean, the first, compactness. Compactness is used in 40 states, as Mr. Himes recognizes. And Doug Himes has criticized Dr. Cervas's maps for the converse of compactness, which is bizarre shape districts. You know, our federal courts have walked through the fact that bizarre shape is a way of determining the compactness of a district.

So, you know, that's a very frequently

1 used term. He's criticizing the maps through,
2 essentially, a lack of compactness, which is reflected in
3 a bizarre shape. And, you know, worst case scenario, if
4 the Court hears the expert, you know, we're not here on a
5 jury trial. If the Court hears him talk about compactness
6 and that's not compelling, that's fine. It's not
7 persuasive, if that's the case.
8 Average deviation has been recognized
9 by the United State Supreme Court as a redistricting
10 metric since 1973 and in cases since. So to suggest that
11 you can't even talk about something that the United State
12 Supreme Court recognizes as a redistricting metric, when,
13 again, we're in front of a bench trial here, it just
14 doesn't hold water.
15 And, finally, on the coalition
16 districts. Coalition districts are part of overall voting
17 rights considerations. I assume that's why Mr. Himes, and
18 regularly throughout his testimony to the house
19 subcommittees and the committees, talked about how the
20 enacted map itself has two coalition districts, in
21 addition to the 13 majority-minority districts.
22 You know, he was touting that as one of
23 the many -- you know, as he was explaining the
24 constitutionality of that document. So why that's
25 relevant in briefing the people who are actually enacting

the bill, but can't be even stated here by Dr. Cervas, when, again, it is part of an overall analysis of the dilution of racial votes and everything like that, you know, the Court can sort through that. He shouldn't be limited from testifying about it.

CHIEF JUDGE: Thank you.

MR. SWATLEY: Yeah. Again, this trial should be about what the legal standards are, not what may be good for a map in some hypothetical world, where we're going beyond what the law requires.

You know, Mr. Himes did, in his testimony, talk about opportunity districts. Opportunity districts are not necessarily coalition majority-minority districts, additionally. If he says that they're good, that doesn't mean it's a legal standard. It might be something nice to say, "Hey, this map also has these features that people may like or not like."

But, again, we're here focused on the legal standards.

Again, total splits are irrelevant. It is confusing, with the understanding of county splits as they're used in Tennessee law.

Again, the Court -- you know, the Supreme Court may have mentioned mean deviations somewhere. There's no legal requirement related to the

average deviation of districts.

When we talk about population deviation, one-person, one-vote, we're talking about overall deviation.

And, finally, on compactness, again, you know, the bizarre shapes, yeah, I mean, it's -- obviously, it's a bizarre shape, and it just doesn't quite pass the smell test sometimes. But, again, not a legal requirement here.

So we should stay focused on the issues that this case will turn on, not go into a how-to-draw-a-map class and get off subject of what we need to focus on here because it will only just delay the trial longer, and we want to be respectful of the Court's time.

CHIEF JUDGE: Thank you.

Motion Number 3.

MR. RIEGER: Good morning, Your Honors. Alex Rieger from the Attorney General's Office, here on behalf of Defendants.

Our Motion in Limine Number 3 is to exclude all evidence and testimony that's unrelated to the split of Gibson County.

It is our contention that any evidence besides relating to the split of Gibson County is

irrelevant because you don't have a plaintiff to attach it to.

Mr. Wygant is the last plaintiff left for the house map. It's undisputed that Ms. Hunt lives in Davidson County, which is not a split county.

The Court -- in its order on summary judgment, as to Ms. Turner, who was a former plaintiff in this case, the Court got that absolutely right. It found that because she did not live in a split county, under United States versus Hayes, she asserted only a generalized grievance that was insufficient to show harm.

What this means is that in Tennessee, the right to vote belongs to individual citizens and individual citizens by themselves, in isolation. It's an individual right.

Mr. Wygant lives in Gibson County. If, say, for instance, Anderson County was split. Mr. Wygant does not live in Anderson County. He is not harmed by the split of Anderson County. He can only be harmed if his allegations are true that the split is unconstitutional, and, of course, we vigorously contest that. But his harm originates only from the split of Gibson County. And that is the only thing that he may challenge here, under Gill versus Whitford and Baker versus Carr.

Now, Plaintiffs in this case have said,

"Well, this is the type of piecemeal attack that is disfavored, in Lincoln County -- that the Supreme Court said was disfavored, Lincoln County versus Crowell."

To be fair, the defendants did not make that problem. Plaintiffs are masters of their complaint. They proceeded to go with only one plaintiff in the House.

Compared to the Lockert cases, where Lockert 1, 2, and 3, it was the State of Tennessee, ex rel., Lockert. And, of course, the State of Tennessee has statewide standing. Here, Mr. Wygant does not.

And just like the federal Voting Rights Act cases, they have to proceed district by district, which means that if you are alleging noncompliance with the VRA, you have to live in that district. You can't say, "Well, I live in District 3 and I'm challenging because District 4 is violates the VRA."

We know, in the case of Alabama Legislative Black Caucus versus Alabama that that doesn't work. You have to live there, and then your entire scope is focused on whether or not the district where you live is unconstitutional.

And one more thing in Gill -- and I'll be brief. It is somewhat difficult because the remedy -- of course, if there was an unconstitutional split, the remedy would be a statewide redrawing of the map. It

would have to be.

But that does not mean that the remedy works backwards into the injury for the purposes of standing. Standing does not look at the remedy in redressability. Standing only starts by looking at the injury. And we know that because the United States Supreme Court told us that in Gill, when it said: The plaintiffs' mistaken insistence of the claims in Baker and Reynolds versus Sims were statewide in nature rests on a failure to distinguish injury from remedy.

And that's what Plaintiffs are trying to get this Court to do. They're trying to get the Court to confuse remedy with injury.

Here, Mr. Wygant has only one injury, and that is the alleged unconstitutional split of Gibson County. His proof should be limited to that, and the Court should do for Mr. Wygant and for Plaintiffs exactly what it did for Plaintiff Turner when she was still in this case, which is to acknowledge that a plaintiff only has standing to attack the district and the county they live in.

And for that reason, we are asking that this Court exclude all the testimony and evidence that's unrelated to the split of Gibson County. Thank you.

MR. TIFT: Your Honor, Motion in Limine

Number 3 is asking the Court -- it's trying to do an end run around the decisions this Court has already reached, which is that Mr. Wygant, in a divided county, has standing to bring claims. And the Supreme Court has provided us with what happens in that case.

The Tennessee Supreme Court has said that when an individual plaintiff has standing to bring these claims, or when plaintiffs have brought these claims, so long as the individual plaintiff proves that at least one county was divided, the burden shifts to defendants. And the burden through three decades of cases has not been, "All right. So the burden shifts to the defendants to prove that the specific county where the plaintiff lives is where -- is improperly divided."

That would make no sense because these are -- you know, these types of cases where the standard is to have the fewest divides necessary to comply with the federal constitution involves looking at the entire puzzle.

And so the standard, once a plaintiff has established standing, is for the defendants -- state defendants to demonstrate that the map is justified because it crosses minds only as necessary to meet to comply with the federal constitution. That is a statewide look at the map because there's no way to look at just one

piece of the puzzle without looking at the rest of the map.

It actually is like Baker v. Carr and not like Gill. There were not plaintiffs in all 95 counties of Tennessee in Baker v. Carr. There were plaintiffs in a subset of counties. I'm not aware of exactly who they were. But there certainly weren't 95 counties. And the issue there was they had standing from their district, but the remedy was statewide. The same thing is true here.

Mr. Wygant, as the Court has determined, has had his constitutional right to have his county not divided violated. Now, the burden switches to the defendants to demonstrate that the map, in fact, divided as few as possible. And if they don't meet that burden, the remedy is, as Mr. Rieger just stated, a statewide redoing of the map.

So that's the burden before us. We're not in a Voting Rights Act case. The Voting Rights Act case, we don't disagree with Mr. Rieger that that's how those cases fall down.

This is one where once a plaintiff with standing demonstrates the county has been divided, the map as a whole has to be analyzed to determine if as few counties were divided as possible.

And that makes a lot of sense. I mean, if the Court were to rule that testimony could only be provided about Gibson County, that would lead us to sort of an -- almost a farcical hearing, where there's no way to say if your specific county did or didn't need to be divided, when you can't look at any other piece of the puzzle at all.

I mean, it's like a traffic accident case with ten cars, saying, "Well, we can only talk about this one car and not how many of the other cars affected, and not how they interacted."

There would be no way to focus just on Gibson County alone, blocking off the entire rest of this state, and even prove anything just about Gibson County, much less follow the burden that has been given to us by courts for the defendants to demonstrate that the map itself crosses as few county lines as possible.

And Defendants, multiple times throughout our briefing over the last few months, are fond of saying that we agree to something or that we agree -- that we have taken the position and agreed with them on something.

Here, they say that we agree that this is a piecemeal attack. Of course, we don't agree this is a piecemeal attack. What we said in our response is that

they're trying, through an evidentiary motion, to take a case that is, in fact, a fascial challenge to the map and say, "You need to turn it into a piecemeal attack."

And then they're logging on or connecting to the Lincoln County standard, where if a map has been justified by Defendants first, then Plaintiffs would have to prove bad faith.

Again, we looked at this several times along the way. But Lincoln County came at the end of the three Lockert cases and a federal court case, where, at that point, the state court and the federal court had justified the remedial map put in place and validated it. And then Lincoln County, by itself, brought a claim challenging expressly only Lincoln County.

And on that ground, the Supreme Court said, "Since the map has already been justified by both our court's guidance and the federal court's guidance, to overturn just Lincoln County's divide would require bad faith."

So we certainly do not agree this is a piecemeal attack. It's not. This is a fascial challenge to the statute. And it is one where evidence should come in about the whole state because that is the burden set by our Supreme Court.

The burden by our Supreme Court, at

this stage, where the counties are divided, is for the defendants to demonstrate that as few counties as necessary were divided to comply with the federal or constitutional requirements.

And the final point, Defendants point out that the Lockert cases were ex rel. cases brought on behalf of the State. Well, the Rural West case lines were not. And the Rural West cases allowed voters to overturn a statewide map, taking it from 30 divides to 28 divides. And the Moore case, two decades later, was also not an ex rel. case, and the Court there did not limit to just determining if Shelby County was the -- was, in fact, in violation. The Court determined that the entire map was justified and constitutional.

So focusing just on the ex rel. mechanism of Lockert also doesn't get you to a place where the burden stated by our Supreme Court doesn't apply and where, all of a sudden, burden borrowed from other types of redistricting cases becomes applicable.

So we would ask that the motion be denied.

MR. RIEGER: Just a few extra points.

First, we acknowledge that the Court in its summary judgment motion found that Mr. Wygant has standing. And summary judgment as to that claim can't be

retested here. It would have to be something for appeal, since they've already received judgment on the claim of standing with Mr. Wygant.

What the motion is about is what standing limits. And standing -- Mr. Wygant's standing is a limitation upon his claim.

Now, we're not saying that we can't leave Gibson County if information is relevant to whether or not Gibson County was constitutionally or unconstitutionally split.

Certainly, looking at surrounding counties, the population pressures, the existence of majority-minority districts that would have to be maintained, all of that window can certainly be considered because it will have pressure on Gibson County. It will help illuminate the reasons why Gibson County was split.

However, to go beyond that and to point and say that -- the Tri-Cities counties and say that creates pressure on Gibson County, well, Mr. Wygant is not affected by anything out there. It's on the other end of the state. And it's, frankly, irrelevant to his claims.

Again, he is a single voter. He is not voters. He is not challenging multiple counties. He has one injury, and that's the allegation that Gibson County was split. If the split of Gibson County is ultimately

determined to be constitutional, his claim should end there. Because the only thing that he would have standing to challenge has been declared not unconstitutional.

And for that reason, we're asking that this Court exclude all testimony and evidence that is unrelated to Gibson County. And that does not mean isn't completely focused on the split of Gibson County, but that does not impact the question, and the question that Mr. Wygant only has standing to raise, which is: Was Gibson County unconstitutionally split?

Thank you, Your Honors.

CHIEF JUDGE: Thank you.

Motion Number 4.

MR. SWATLEY: Your Honor, this motion in limine is about excluding any maps, boards, or testimony related thereto of any maps not disclosed by the plaintiffs to the defendants on or before December 2nd of 2022.

We believe that the agreed discovery scheduling order entered by this Court was abundantly clear. Ultimately, you know, this expert discovery process followed a familiar pattern. Plaintiffs disclosed their expert, filed a report. Defendants then did the same. We had expert depositions. And there were deadlines for this.

The agreed discovery scheduling order said expert rebuttal reports were due December 2nd of 2022, and then expert depositions were completed, by agreement of the parties, by January 4th.

Then five days later, and a mere 11 days before summary judgment motion were due, there's another report that was filed by Plaintiffs of Dr. Cervas. This represented his fifth and final report in this case.

And, ultimately, what we have here is a situation where Plaintiffs keep trying go back and get another opportunity to draw another map, another map, another map. And we think that the scheduling order was very clear.

You know, we would think the Court is well within its authority to take control of its docket and to exclude this untimely report. Because, ultimately, you know, if this whole process just means that their expert gets to constantly go back and try to redraw and redraw again and again and again, I mean, eventually, even a blind squirrel finds an acorn every once in a while.

But that's not necessarily fair because, keep in mind, this map was enacted and all these maps have been post hoc. So if we sit around for months and months and months and try to come up with a slightly better map that somehow comes in, I mean, that's not what

the redistricting cases have spoke for.

But, ultimately, this comes down to an issue of a scheduling order, and the Court's order here, and the wording of that order was not adhered to.

There's also language in that scheduling order that specifically points to any supplemental reports that were not timely disclosed may be stricken. And we think this is well within the Court's authority here and their discretion to strike the untimely report on January 9th.

Not to mention any mention of any maps that have not been disclosed that may be brought up at trial that haven't been shown yet. And that includes the map that was created after summary judgment was filed that was inadvertently placed into the record by overriding the map that was disclosed in the supplemental report.

So, ultimately, you know, it would be trial by ambush if new maps suddenly showed up here. And we think the Court should take control of the docket. And, clearly, that is not the intent of the scheduling order.

So we would ask that the Court not allow any maps or testimony related to maps that were not disclosed by December 2nd, for those reasons.

CHIEF JUDGE: Thank you.

MR. TIFT: Your Honors, I don't think that anybody disagrees that the Court is fully in charge of what it can allow and not allow under its records. And I do think that it would make no sense, in the context of this lawsuit, to strike an expert's response to newly-lodged accusations from a deposition that took place after the expert rendered his opinion. And let me walk through why.

First off, there is no prejudice here. The prejudice would be -- is made up. I mean, there's no prejudice because three days -- business days after their final expert witness testified to new concerns about one of Dr. Cervas's maps, Plaintiffs produced a response to that testimony with one map addressing the two specific criticisms stated: This is in response to the criticisms raised in your expert's testimony. Dr. Cervas can certainly be made available for additional deposition on this map.

And Defendants chose not to do so, and now say that it's trial by ambush to have produced that map then. Whereas, if that map hadn't been produced then, then later today or tomorrow, Your Honors would be hearing Dr. Cervas be cross-examined by these lawyers to say, "Well, this map, 13D, has these two issues, doesn't it, sir?"

And then in either his response on cross or -- or on direct, he would be well within his right to respond to those criticisms and to show how he would fix those criticisms. But he's not all of a sudden not allowed to defend himself against attack because a scheduling deadline has passed.

And it would be our suggestion that proffering that response three days after the depos and three months before trial is the opposite of trial by ambush. They've now had three months to respond to this one additional map. They have substantively responded to it. They had their expert, Mr. Himes, analyze it, put together a new analysis. And they substantively challenged that map in their summary judgment motion.

So they certainly haven't been ambushed. The question is, really, what it comes down to here is their concern that this was produced after the deadline. And for that, you know, we don't disagree. I mean, it is noted -- or it should be noted that the only reason it was two weeks before summary judgment is because their witness took two months to schedule, and we often always extend courtesies to the witnesses, and we extended the schedule because their expert couldn't testify until January. And so the proximity to summary judgment is particularly irrelevant here.

But, yes, it was certainly after the deadline, but promptly after new criticism that was raised after the deadline, and as far away from trial as possible to ensure that his response to that criticism is not a trial by ambush.

So we would say it's well within the Court's discretion to manage the documents before it and to say, in the interest of justice, in the interest of getting this right, in the interest of seeing what is the actual response to this criticism, we shall allow this map in.

And, of course, if the Court excludes it, he can certainly testify about how he would fix the issues that they've raised. Those are criticisms they are raising, and he has every right in demonstrating to the Court that those are valid maps, despite the criticism of explaining to the Court how so.

So it would be much clearer before the Court, and certainly there is no ambush or prejudice here for him to -- instead of talking through into the -- without any visual, how he would fix the issues to be able to let him actually show you on the map how he fixed them.

Thank you, Your Honors.

CHIEF JUDGE: Thank you.

MR. SWATLEY: Your Honor, let's be

clear. They violated an order of this Court by not disclosing that supplement report timely. Point-blank.

Additionally, I would just say notice how many of these motion in limines are about Dr. Cervas due to his sloppiness here in this case.

Ultimately, just throwing up a new map at trial that our experts have never seen, that hasn't gone through the crucible of discovery, would be ambush.

If there is one thing I think we can all agree on is that redistricting is complex and it's hard. And even experts need to look at a map, do mathematical analysis, go through a detailed process on finding out every different criteria on this map. Because most criteria take its own specific targeted analysis.

And saying that there's -- either drawing a map or showing a new map that our experts have never seen, they can't be expected to give a full and complete and accurate criticism on the fly of some new map.

It takes the help of computer programs. You have to analyze data, and you have to find different percentages. And in some cases, you have to go through mathematical analysis, like regression analysis. You have to, in some cases, go through racially polarized voting for Voting Rights Act analysis.

1 These are complex processes that,
2 ultimately, you can't just do on the fly and you can't ask
3 an expert to do so.
4 So, again, for the reasons of -- and an
5 order of the Court was clearly violated. And, again, any
6 maps that just show up here that haven't gone through
7 discovery, that weren't disclosed in the reports that the
8 Court's deadlines clearly gave for the experts, we just --
9 we think that's improper, and we would ask that the Court
10 exclude those.
11 CHIEF JUDGE: Thank you, sir.
12 Number 5.
13 MR. RIEGER: Your Honor, Motions in
14 Limine 5, 6, and 7 are preservation motions. Under the
15 local rules of Davidson County, if you do not raise
16 deposition objections as part of a motion in limine, they
17 are waived.
18 I don't know that Your Honor would --
19 that Your Honors would want me to go through the entire
20 list for all three and have those ruled on now.
21 If I could make a suggestion, it would
22 be that if they come up -- since depositions are not
23 admissible evidence, they're only used for the purpose of
24 impeachment through prior inconsistent statements, that we
25 take them up -- each of the objections individually up if

they come up.

And if the Court is fine with that, then I think that would resolve 5, 6, and 7 by simply noting that they're preserved. And if they come up, we can handle the objection there.

CHIEF JUDGE: Thank you.

We'll hear from the other side, and see if you need to come back up here.

MR. TIFT: Your Honor, that's, essentially, what we said in our response. Only used for impeachment, presumably, if we first ask the question live, they would raise the objection, you'll have already ruled on it. If we then need to impeach, it's probably already been ruled on. So we would say that it doesn't make any sense to rule on them right now.

CHIEF JUDGE: Okay. So we'll treat that as something that's going to be reserved and taken up on a case-by-case basis.

So we'll take a break. We'll rule on the motion -- we'll confer on the motion from -- that we heard on March 7th, and then these first four motions in limine, and come back and announce the rulings, and then proceed with the proof.

I assume -- but I get in trouble when I do that -- that the parties will rely on your pretrial

briefs, instead of opening statements. But we are fine with hearing opening statements, if the parties so elect to do so.

MR. RIEGER: Defendants are fine with that approach.

CHIEF JUDGE: Thank you.

MR. TIFT: Your Honor, we had agreed and put in the proposed order that we would do openings, but limit them to 15 minutes. And particularly since Defendants raised a few new arguments in their pretrial brief, we'd like to do the 15 minutes.

CHIEF JUDGE: Okay. That's fine with the Court.

MR. RIEGER: That's fine with the defendants.

(Recess taken from 10:08 a.m. to 10:29 a.m.)

CHIEF JUDGE: The panel, after conferring, respectfully denies the motion to disqualify -- I'm calling it that as shorthand -- filed in January, heard in March, motion to strike. Again, that is a shorthand reference to a motion filed on February 22nd, and heard on March 7th. We deny those motions.

And we also deny Motions in Limine 1, 2, 3, and 4.

Basically, some of these motions go to the weight. Some of these motions relate to potential prejudice. And we don't see any actual prejudice.

A question of spoliation of evidence was raised. But as we found out on March 7th, that does not appear to be an actual spoliation.

We were concerned about the missing of a deadline. But in the grand scheme of things, it looks like everyone's recovered and done a nice job, a great job in briefing and getting ready for trial.

So we think we are just going to let the lawyers try the case, and we'll see how it comes out.

So that's the Court's ruling on those.

We'll have opening statements.

MR. TIFT: And one quick question, Your Honor. Would you like us, by agreement, to go ahead and read in the numbers of the exhibits that we agree are admitted, or would you like us to do that after the opening?

CHIEF JUDGE: Let's do the opening first.

MR. RIEGER: And I'm sorry, Your Honor. When would you like for us to call for the rule?

CHIEF JUDGE: Oh. It makes sense to do it now, I think.

MR. RIEGER: Okay. The defendants respectfully request the rule, please.

CHIEF JUDGE: Okay. If there's anybody in here who is expected to testify in this case and you are not a party or a party representative, we're going to ask you to step out of this courtroom, wait out in the hall.

There is a vending area with seating down the hall that you can wait.

You're not to discuss this case or your testimony. The only exception is that, on a break, if you voluntarily want to talk to one of these lawyers, you may. You don't have to. But other than that, talk about the weather, talk about what's happening with UT and Vandy and all of that. But please don't discuss your testimony or the issues in this case.

So if somebody needs to be excused, please be excused at this point.

MR. TIFT: Your Honor, the only fact witness outside of the party plaintiffs is Mr. Himes. And I believe it's an exception to the rule that testifying experts are permitted to observe the trial and respond at trial. So we would ask that our testifying expert not be excluded from the courtroom.

CHIEF JUDGE: Any position on that?

MR. RIEGER: Are you seeking to have Dr. Cervas remain?

MR. TIFT: Correct.

MR. RIEGER: No objection as to that.

As for Mr. Himes, our expert and fact witness, who is going to be called by Plaintiffs, since he is both a fact and an expert, we think that the rule would apply to him. But, regardless, I believe it's his choice whether or not he wishes to remain in here or not.

But when do you think you're going to call him in the order?

MR. TIFT: After the two plaintiffs. So it should be after the lunch break, I would assume.

MR. RIEGER: Okay. Thank you, Your Honor.

CHIEF JUDGE: So is he to be excused? Mr. Himes?

MR. RIEGER: Yes. I believe he would need to be since he is a mixed fact and expert.

CHIEF JUDGE: Sorry to see you go, Mr. Himes.

MR. TIFT: Your Honor, I'm just going to set myself a timer on my phone here. That's why I brought my phone up here, so I don't go beyond the 15 minutes we agreed on here.

Well, Your Honors, again, may it please the Court, and, again, good morning.

You're going to hear and have heard that redistricting is a complex process. But this lawsuit is not complex.

In many cases, there's lots of claims, lots of things going on. But, here, there is one claim about the Senate, one claim about the House.

And the senate claim is only on standing because Defendants are not opposing on the merits. And Ms. Hunt has standing under all of the applicable redistricting law.

On the House claim, the standard is clear. Defendants bear the burden of justifying the enacted map by demonstrating that it crosses as few lines as possible, to comply with federal constitutional requirements, and they cannot meet their burden.

Plaintiffs' expert, in addition to the lack of testimony from Defendants' expert, will demonstrate that it is, in fact, possible to divide far fewer.

So redistricting is complex, but the issues here are not complex and are not a close call.

On the senate, it's not a close call that Ms. Hunt has standing. Article 2, Section 3 of the

Constitution requires, with no ambiguity, in a county having more than one senatorial district, the districts shall be numbered consecutively. The enacted senate map doesn't do that. It numbers them 17, 19, 20, and 21. And Ms. Hunt lives in 17.

Now, Defendants don't defend the case on their merits. They agree the districts are nonconsecutive. And they haven't put on any either fact or expert witnesses to contradict the merits.

Francie Hunt, who you'll hear from first, does live in District 17, has voted in District 17, will vote in District 17 in the future.

We are instructed by our Supreme Court to construe the Constitution's language as precise and devoid of surplusage. As recently as last year, our Supreme Court reminded us of that fact in Metro Government of Nashville and Davidson County versus the Tennessee Department of Education.

It stated that we are to read the language as precise enough to reflect the intent of the founders of that document.

And, here, the language is precise to say exactly what the founders meant. They meant consecutive numbering has to be applied. Not somewhat close to consecutive numbering, consecutive numbering.

We're also required to not read any surplusage into our constitutional language.

And Defendants' arguments here, either about past election results -- which we submit are irrelevant to this question -- or about the fact that three of the districts are odd and one is even, so there could never be a full turnover, would do exactly what we're counseled not to. That would render the consecutive language surplus. It would be saying, "Yes, they said consecutive. But since three are even and one is odd and there can't be a full turnover, that's what they meant."

But this is clear, unambiguous language, and we are required to not go outside of that language. We're required to strictly construe the text of the Constitution. And in this case, it requires consecutive numbering. That has the effect of a fully staggered term county senate delegation. And Ms. Hunt has been denied the opportunity to vote for such a -- for such a situation, for a staggered term senate delegation, and to be represented by it.

There's not a close call that that is what the language says. It's plain and unambiguous. And she's been denied the right.

Now, Defendants point to primarily standing cases outside for redistricting to point to -- to

1 try to say this is a generalized grievance. But
2 generalized grievances do not throw out redistricting
3 cases because in redirecting cases, so long as you're not
4 just anyone from the whole state trying to assert
5 something about Nashville, you're not a generalized person
6 trying to uphold good government.
7 This is an exact example. Every other
8 Tennesseean outside of Davidson County is being provided
9 the benefit of what they're required to have from the
10 Constitution. If they live in a county with more than two
11 senate districts, theirs are consecutively numbered. A
12 much smaller subset of Nashville -- of Tennessee voters in
13 Davidson County, and in District 17 specifically, do share
14 the injury, but that doesn't make it generalized. The
15 generalized language that they rely on comes from cases
16 outside of the redistricting arena.
17 Instead, in the redistricting arena,
18 it's just a common sense fact that the injury is going to
19 be shared with a subset of people. It can't not be when
20 you're looking at whether a whole county was split,
21 whether a district violates the Voting Rights Act, whether
22 a noncontiguous district is at issue, the injury is going
23 to be shared.
24 In our Tennessee Supreme Court, in
25 Lockert, has recognized the excellent policy reasons for

the presence of a provision that counties must be represented in the senate, recognizing the importance of counties as political subdivisions.

So our Supreme Court has said that is a very valid state rational basis, and our founders have said that it needs to be consecutively numbered.

We submit that that leads to a fully staggered senate delegation and that that's the right that's being denied here.

Now, Dr. Cervas will testify. His testimony is un-rebutted. The defendants did not hire experts to respond on his senate testimony.

But he will show that, in addition to the clear and obvious violation of just not being consecutively numbered, that it could, in fact, have been consecutively numbered.

And that's where Defendants raise a new argument in their pretrial brief, which is that there's something along the lines of no legal framework for changing the numbers of districts.

And we'll get into this with Dr. Cervas. But in order to correct the numbering, there will need to be switching of some even-for-even districts and odd-for-odd districts so that the whole map has consecutive numbering.

It's very few switches. But Defendants say that that prevents redressability under the standing. But the numbers are the names of the districts.

I want to back up and think for a second about if the people of Knoxville decided it's finally time to truly honor Pat Summitt, and we're going to work with our legislators to rename Knoxville Summitt City, the day that went into effect, the Knoxville city council members wouldn't all of a sudden be out of office. Their terms wouldn't be ended. The name of their political subdivision would have been changed, and they would continue to serve out the rest of their terms.

That's the exact same situation here. If the legislature, through a remedial map, which is statutory, as part of that remedial map, changes District 14, which is Senator Shane Reeves, to District 18, so that Rutherford's districts will stay consecutive, that's not going to all of a sudden kick Senator Reeves out of office two years into his four-year term. It's merely going to change the name of his district.

The remedial maps that Dr. Cervas has created show that no conflict of incumbents is going to come up. There's not going to be somebody drawn out of their district.

And so the only issue they're raising

is that you can't change 18 to 14. Or maybe you can. They're really just saying there's an absence of law.

But there's no reason articulated why the General Assembly can't change the numbering of districts, as long as they follow the clear constitutional requirement that those numbers be consecutive.

And so Ms. Hunt prevails in this case. And if she doesn't prevail, that's a ruling that no citizen can challenge a clear constitutional requirement and that the General Assembly is free to number all of the large county senate districts however they choose. Because if Ms. Hunt doesn't have standing, then no citizens have standing.

On the house claim, this is also not a close call. Citing Lockert 1 and Lockert 2, in denying the motion for summary judgment, this Court reiterated that the burden has shifted to Defendants to show that the General Assembly was justified in passing a reapportionment map that crossed county lines and to show that as few county lines as necessary were crossed to comply with the federal constitutional requirements.

It's not a close call. You're going to hear from Dr. Cervas that it is very doable to have 24, 23, 22 splits. And so to have stopped at 30 is not a close call, that that is not the fewest necessary to

comply with federal constitutional requirements.

Now, I want to talk about the order of operations, the discussion I had responding to Judge Maroney about here on March 7th.

It's important for us to remember the order of operations in our law. Our federal constitution is the supreme law of the land, and it and federal laws trump conflicting state laws, including the state constitution.

On the state level, the constitution is a supreme law of the land, and it would trump any unconstitutional statutes.

And then, of course, below that, below even statutes, states have some ability to have practices that they follow.

And so before one-person, one-vote became a doctrine applied to our U.S. Supreme Court, the Tennessee Constitution said you shall not divide counties in redistricting the house, and so you couldn't. You couldn't for incumbency protection. You couldn't for preserving prior cores. You couldn't for any other reason that you wanted to because our constitution said you can't.

The only thing that changed is the U.S. Supreme Court determined that the equal protection clause

requires equal population. And congress passed the Voting Rights Act.

And so our Supreme Court said you still can't divide counties unless you're doing so for a preempting federal reason, a federal constitutional reason, and the Voting Rights Act.

What that boils down to is one-person, one-vote or a preservation of minority voting strength.

And so that's the why behind the standard. And I think when you back up, it makes sense. You can't divide these for state reasons. You can only divide them for a preempting federal reason. And that's why the Lockerts have articulated it, as the legislature having to make a good-faith effort to divide as few county -- cross as few county lines as necessary to comply with federal constitutional requirements.

And the burden at this point is on the defendants to justify the map. And they cannot do so.

Defendants withheld all factual proof about whether or not the mapmaker working with the legislators tried to do so or did so.

You'll hear that through Mr. Himes, who through privilege objections sustained by this Court, is unable to testify whether he tried to create fewer than 30 county splits, whether he created some maps that do create

fewer than 30 splits, whether any members of the legislature asked him to, whether any members of the legislature asked him to split a county that had been together for other reasons.

All of that evidence is off the table under privilege. So there's no factual support to meet their burden.

There's also no expert support to meet their burden. In fact, the experts will testify, as they did at their depositions, they were not retained to make an expert opinion about whether or not the enacted house map divides as few counties as necessary to comply with the federal constitutional requirements. And they don't have an opinion on that point. They don't have an opinion on that point.

They do have an opinion that Dr. Cervas has made certain maps that they don't like. And they'll point out why they think his illustrative maps are problematic. But they don't have an opinion that would establish the burden that the enacted house map divides as few counties as necessary to comply with the federal constitution.

Beyond that, the legislative history will reveal that during public hearings, the only factual evidence that we have, there was never a mention from

Mr. Himes or the representatives enacting the bill of the actual standard that they should be trying to meet, to divide as few counties as necessary to comply with the federal constitution.

And when a member of the House said, "Aren't we supposed to be dividing as few?"

Mr. Himes, advising them in his role as counsel to the House, stated, that, "After you reach 30, it's just a policy decision, whether to reduce fewer."

That's not what our Supreme Court says.

And, finally, Defendants have made the choice to have an expert witness here, who is also a fact witness. Mr. Himes drew the maps, and he is the expert to defend the maps he drew.

And he, in his expert hat, listed what he determined as an expert were the justifications for each of the counties split in the enacted house map. And for six of them, he listed core preservation, and for a seventh, he listed core preservation and incumbent protection. None of those are federal constitutional requirements and cannot justify splits.

So Defendants don't meet their burden, and Plaintiffs prevail on that point as a result.

But Plaintiffs will also submit Dr. Cervas's testimony to say it's not just an academic

failure to meet the burden, it's failure to meet the burden, coupled with demonstration that significantly fewer counties could have been split.

Now, Dr. Cervas's overall testimony that significantly fewer counties could have been split on 2020 demographics, while still complying with the federal constitution, is un-rebutted. Because Defendants' experts don't have an opinion on that point. They only have opinion on his illustrative maps.

But he'll demonstrate, particularly through his maps 13C and 13D_e that with the same majority-minority districts as the enacted house map, with a similar or lower variation in the enacted house map, with six fewer county splits than the enacted house map, and, ultimately, with the equivalent core preservation, and incumbent protection, and with no un-contiguities, he will show those maps, demonstrating that on all of those factors, there could have been far fewer splits with either the same or better metrics on all the other points.

And so he, in addition to the defendants' failure of proof, will demonstrate that, in fact, far fewer -- over 20 percent fewer counties should have been divided.

So Mr. Wygant prevails on his claims. Because he has standing as someone whose district was

divided, in violation in the constitution, because Defendants are unable to meet their burden of demonstrating the enacted house map crossed as few county lines as necessary to comply with federal constitutional requirements, and because Defendants' own witness says that the enacted house map divided seven out of 30 counties for reasons other than federal constitutional requirements.

And so redistricting can be complex. We agree. But the claims aren't complex here. And the calls aren't close calls.

Both plaintiffs prevail on their claims. And under the statute that enacted this Court, TCA 20-11-105 -- or 18-105.

But, you know, the remedy we seek is the Court providing time for the legislature to correct the identified constitutional defects. And if the legislature doesn't do so by the Court's deadline, for the Court to impose an interim map.

Thank you, Your Honors.

CHIEF JUDGE: Thank you.

MR. RIEGER: May it please the Court, I'll be handling the house section of the opening, and Mr. Swatley will handle the senate portion.

To start on the house map, perfection

is not the standard. Perfection cannot be the standard. And how do we know this?

First, look at what the Tennessee Supreme Court has said. In Lincoln County versus Crowell, they expressly rejected a map that was more perfect than the map it was challenging.

In Lincoln County versus Crowell, you had a map that split both Lincoln County and Marshall County. The Supreme Court was presented with another map -- an alternative map by the plaintiffs that only split Lincoln and no longer split Marshall. The Supreme Court said that's not enough. That would require perfection.

So when faced with a map that did nothing except reduce a split one more time, the Supreme Court said perfection was not required.

We also know by the Supreme Court's actions. Lockert 2. The Chancery Court in Lockert 2 found that it was optimal to split 25 counties and that that was the number. That number was perfect. The Supreme Court did not go with 25. The Supreme Court said no more than 30.

So we know that the standard that Plaintiffs are articulating, which is perfection, is not required. And we know it because the Tennessee Supreme

Court says it's not required, and the Tennessee Supreme Court's actions demonstrate that it is not required.

We can also see that if you look at the urban -- the Lockert 2 section regarding urban counties. No one is going to disclaim the fact that if you can split an urban county, you can get fewer splits all together. The amount of population deviation that you save by being able to split an urban county is significant. And by splitting, for example, a Shelby County, you can get fewer splits overall.

Lockert 2 said you can't do that. Lockert 2 said if you fall within the deviation window and aren't at risk for one-person, one-vote, unconstitutionality under equal protection, which is a federal requirement, you can't split an urban county, even if it gets the deviation down and reduces county splits.

So we know that Plaintiffs' argument is based on perfection, and we know that that is not the standard.

On the house claim, we've got one plaintiff left. And I don't want to retread a lot of ground that we argued in the motion in limine in terms of evidence.

But I do want to reiterate, Mr. Wygant lives in Gibson County. That is where his injury occurs.

While the Court has denied our motion in limine and has agreed to accept testimony and testimony that falls outside and is unrelated to Gibson County, if Gibson County is -- if that split is constitutional, Mr. Wygant's claim is resolved. That should be it.

Because if the Court did not -- if the Court allows someone who is in a district to challenge the constitutionality of another county split that they don't live in, Plaintiff Turner should still be in this case. And this Court correctly relied upon United States versus Hayes to find that she could not challenge outside.

Now, the proof in this case will demonstrate that the overarching goal of this map was that it was designed to comply with one-person, one-vote and the federal requirements equal protection.

And we're going to get you there by walking you through each split. Every single split, the population map behind it, and where it falls in the redistricting process, what pressures due to Voting Rights Act, majority-minority districts, due to the unique geography of our state, and due to the location of the urban centers, how each split is justified by equal protection. And we're going to demonstrate that the federal requirement purveyed every single split in this map.

The proof is going to show that Tennessee has 95 counties. We all know this. But the proof of the map of the population will demonstrate that only ten can remain whole, either only split internally or standing alone and apart.

Which means that we have 85 counties that we have to do something with. Equal protection, one-person, one-vote, says that those 85 counties can't stand by themselves, we have to do something with them. So it is an 85-piece puzzle, for which there are infinite combinations.

But the ultimate combination in every action done is to help create districts that satisfy one-person, one-vote.

And you're going to hear proof that the tools the General Assembly uses are the tools that it's permitted to under Article 2, Section 4, which starts by saying: Notwithstanding this article and this section, the General Assembly can adopt or use whatever redistricting criteria it wants to use.

In this case, when determining how to solve the 85-piece puzzle and get everything in compliance with one-person, one-vote, the proof is going to demonstrate that the General Assembly relies upon the tools of things like core preservations and the other

provisions of the statute, which sets out the house redistricting criteria.

And, more importantly, the Supreme Court has stated that it has not validated a map in which it has not been shown that there was bad faith or ulterior motive.

And, in this case, the legislature had no better map before it.

Dr. Cervas has spent the last -- almost a year, at this point, trying to come up with better maps.

The proof is going to show that we had the census data for five months. Dr. Cervas has had a year.

And only until D_e2, which was the late-timed map, did he come anywhere close to anything that was better, that was just objectively more perfect. Again, perfections is not the standard.

But the fact that it took Dr. Cervas so long, the fact that Plaintiffs had so many problems with Dr. Cervas's maps, the fact that so many of them were constitutional, and the fact that the maps before the General Assembly at the time that the enacted house map was ultimately adopted, were so blatantly unconstitutional, rejecting those bad maps cannot import bad faith to the General Assembly.

The proof will show that the map -- that the map is constitutional.

And, at this point, I will turn it over to my colleague, Mr. Swatley, to talk about the senate.

MR. SWATLEY: Your Honors, as you know, on the senate claim, it's about nonconsecutive numbering of the Davidson County senatorial districts.

Now, we're not defending the merits of the claim because the plaintiff, an individual voter, does not have standing. So we don't get to the merits here.

As the Court is well aware, the Tennessee standing doctrine generally comports with Article 3 standing at the federal level.

And two elements of standing, which we believe the plaintiff here cannot meet, is that she suffered a distinct and palpable injury or an injury in fact.

An injury in law? Sure. But not an injury in fact. And an injury in law is not enough. There must be some type of concrete harm. We submit that the plaintiffs have not carried their burden, which is their burden, to show that there is a concrete harm.

Additionally, we believe there's a redressability problem that Plaintiffs cannot overcome.

The maps that their expert produced are

fundamentally flawed because they're shown as three different maps that could have been enacted instead of the enacted plan. But there's a couple of issues there.

One, we've had an election since then. Any of those maps would renumber four senate districts.

Now, the problem is that if you renumbered 18 to 14, you're not just swapping a number. The senator was voted in for representing District 18 or District 14.

If you redrew District 18 to cover a completely different area, the senator that was elected to District 18 is now no longer eligible to continue serving because they've been drawn out. And the Tennessee Constitution requires that senators must not only live in the district they represent, but they also must -- they also must have lived there for a year. Now, that would be the new district.

But, ultimately, any redressability problem here, as the proof will show, will only create potentially more legal peril for this map.

The issue here is that the Tennessee Constitution is just not equipped to deal with the renumbering of senate districts. And Plaintiffs have no proof to show anything different as far as that their maps would actually comply with the constitution, even though

they may consecutively number.

But, regardless, there is no injury in fact. This plaintiff cannot show it.

Generally, the plaintiff has shown -- the two different ways they try to show an injury in fact through piecing together different redistricting and election law buzzwords, one of them is that the nonconsecutive numbering somehow violates the right of Davidson County voters to consecutively numbered senatorial delegation.

And the word that -- senatorial delegation is where any claim based on the right to vote fails. Because the right to vote, as has been gone over extensively, is an individual right.

We have single-member districts in the senate in Tennessee by constitutional mandate. Every Tennesseean is represented by one senator. They are not represented by a delegation.

Now, there's no claims here about the district itself. There's no claim that it's mal-apportioned, that it violates one-person, one-vote, that it violates the Voting Rights Act, the county splits, or anything else.

And as Plaintiffs' counsel said, the numbers are just the name of the district. It's the label

we place on it. It's not the district itself.

So, ultimately, if the person votes in that district, there's nothing wrong with that district. Their right to vote is not infringed by when other districts vote in relation there.

So just from a logical standpoint, any claim based on the right to vote fails here because the right to vote is just not infringed.

And as the Tennessee Supreme Court has told us, in ACOU versus Darnell, there's no standing based on the right to vote when the right to vote is not infringed.

For the same reasons, there's no dilution of a vote. Again, we're talking about the label here. There's nothing wrong with the district lines itself.

The other way the plaintiffs have tried to articulate and the way that the Court did point out where this issue is headed, is that there is a potential benefit being deprived of consecutive numbering of Davidson County.

Now, if Davidson County were consecutively numbered, they would vote on two senators running for reelection during presidential years and two during the governor race. So two and two.

And, here, obviously, we have 3-1.

So what the claim here is that there's somehow a deprivation of a stable senate delegation and avoiding turnover in senate representation and preserving institutional knowledge.

Well, let's be clear. The enacted senate map perfectly maintains the staggered terms of the Tennessee Senate, where 17 senators run, and then 16 senators run two years later.

So if the institutional knowledge is preserved for every Tennesseean, and on the margins, one extra Davidson County senator running for reelection every four years does not change the institutional knowledge of the senate. Not in any tangible or intangible way that would confer some type of harm for standing. It's just not possible.

But, additionally, we dive deeper into this issue and we say this benefit that's being allegedly deprived has to be identified to see if it is being deprived.

And we submit the benefit is avoiding simultaneous turnover of more than half of Davidson County senate districts in a regularly-scheduled election.

Now, there's no chance under this that we could have all four turn over in one election at once

because it runs on a 3-1 cycle.

So for this benefit to be deprived, you would have to have all three Davidson County senators up who were up for reelection in '22, or will be up for reelection in '26 or '30, all lose at once.

Well, we know from the elections last year, in '22, that this did not happen. There was only one of those seats that turned over, and that was due to a retirement.

So the plaintiff here hasn't shown any actual harm because the benefit has not been deprived. And, again, if the benefit is localized to Davidson County, it said only two senators could potentially turn over at once.

Now, if there's no actual harm, case law tells us that, for standing, if there's no actual harm, then at least it must be imminent, or at least likely to be imminent.

For a number of reasons, all of them political realties, this is probably implausible. It's hypothetical. It's speculative. And it's certainly not imminent.

Incumbency is a very powerful ally in politics. So is, in this situation, the heavy partisan lean of Davidson County.

It's uncontested that -- you know, what the election results that will be in the record will show you is that Davidson County votes about 2-1 democratic. And the senate districts here represent that make-up. You have two heavily democratic senate districts and one heavy republican because it takes a sliver in Davidson County, and then it has all of Wilson County, where most of the population is.

But there's one other point that I believe the Court will find enlightening on this subject. The nonconsecutive numbering of senate districts in Davidson County is not a new concept. The Court can judicial notice of what's already been admitted of the 1990 senate map, the enacted plan, and the 2000s enacted plan.

The senate districts in Davidson County for 20 years were not consecutively numbered. They were also on the 3-1 cycle. We never had a lawsuit about that. It never got struck down.

But what that does show us is that this majority turnover of the three senators running at once, all turning over at once, never happened. It wasn't even close.

Only one time in the last 30 years has more than one Davidson County senate seat turned over at

one time. And, ironically, that was because of redistricting. It was when two turned over. But three never has.

So whether it's incumbency being a powerful ally, the partisan lean of Davidson County in these districts, or the historical data, the plaintiff cannot show that three senators running for Davidson County, in 2026 or 2030, all losing at once in one election is likely, is imminent, is even really possible.

What we are going to see here is that it's speculative. It's conjectural. It's hypothetical. And those are the exact type of claims that the standing doctrine has been designed to remove as justiciable controversy.

Ms. Hunt cannot show an injury in fact. And the plaintiffs have real problems meeting their burden for redressability here. This is fatal because they can't show standing. And the senate claim should be dismissed.

CHIEF JUDGE: Thank you.

We'll have the first witness called.

MR. SPRAGENS: Good morning. This is John Spragens of Spragens Law on behalf of the plaintiffs. And the plaintiffs call Plaintiff Francie Hunt as our first witness.

CHIEF JUDGE: Thank you.

FRANCIE HUNT,

was called as a witness, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SPRAGENS:

Q. Good morning. Would you please introduce yourself to the Court, and give the Court a little bit of background about yourself.

A. Hello. Good morning. I'm Francie Hunt. I live in Hermitage, Tennessee, which is part of Davidson County, Nashville. It's just on the cusp of Wilson County, actually. And there's Nashville Shores around that area and near Andrew Jackson's home, Hermitage.

I'm a mother, first and foremost. I have a son, Isaac, who turns 17 tomorrow, and a 22-year-old daughter, Eliza. She is in her final year at Warren Wilson College in -- just outside of Asheville, North Carolina.

Q. And, Ms. Hunt, obviously, we're in a makeshift courtroom. So I'm going to have to ask you to keep your voice up as much as possible, just so everybody can hear you.

So could you please give your address in

Hermitage.

A. Sure. It's 532 New Castle Lane.

Q. And I think you testified earlier, but I couldn't quite hear you.

That Hermitage address that you gave, that's part of Nashville and Davidson County?

A. Yes. It's in Nashville. I could probably also put Nashville as my address.

Q. How long have you lived on New Castle Lane?

A. I moved there in 2017.

Q. And before you moved to New Castle Lane, were you a resident of Nashville or another part of Tennessee?

A. I've lived in Nashville the whole time I've lived in Tennessee. I first moved to Donelson, which is also in Nashville. And then raised my children mostly in East Nashville. I owned a bicycle shop there for quite a while. I lived at 1711 Eastland Avenue.

Q. And when did you first move to Middle Tennessee?

A. Back in 1999.

Q. You mentioned you owned a bicycle shop. Can you tell the Court a little bit about what you do for a living?

A. Sure. I'm the executive director for Tennessee Advocates for Planned Parenthood. I'm also the

organizing advocacy director for Planned Parenthood of Tennessee and North Mississippi. And that's what I do currently.

Q. About how long have you worked with Planned Parenthood?

A. Ten years. This is my Planiversary.

Q. And before that, what type of work did you do?

A. Most of my career, I have been a child advocate. So I moved to Tennessee, actually, to get Stand for Children started, which is a child advocacy organization.

We worked closely with the governor to expand prekindergarten here in the state to help 16,000 at-risk young people, four-year-olds, in the state. I'm really proud of that. Worked on a lot of, you know, school support issues.

I also helped get communities in Schools Started, which is another nonprofit. We helped bring in social workers into schools that --

The concept was, you know, in order for our young people to be successful academically, we also need to be addressing their wraparound services, making sure that they're healthy and eating and that sort of thing. So communities and schools was another area of work that

I've done.

On my own time, I've also been on the board for Walk Bike Nashville, which is a transit advocacy organization. I was on the board for the Nashville Public Library for many years as well.

Q. It's fair to say that you're pretty involved in the community?

A. Yes.

Q. Ms. Hunt, are you registered to vote in Davidson County?

A. Yes.

Q. And how long have you been registered to vote here?

A. As soon as I moved here.

Q. Late 1990s?

A. Yeah. 1999.

Q. What party is your registration affiliated with?

A. Democrat.

Q. And do you vote regularly in elections?

A. Yes.

Q. Does that include primary and general elections?

A. All of the elections. Yes.

Q. Does that include local, state, and federal

elections?
A. Yes. Local, state, and federal.
Q. Do you plan to vote in upcoming elections in Davidson County?
A. Yes.
Q. Do you know which Senate House -- excuse me -- State Senate District you live in?
A. I do. I live in Senate District 17.
Q. And who is your current state senator in District 17?
A. Senator Mark Pody.
Q. Now, Ms. Hunt, you understand you're here today as part of a lawsuit that you brought.
What is your understanding of the allegations in this lawsuit as they relate to the State Senate District?
A. Well, I'm in Senate District 17. There isn't a Senate District 18 in Davidson County. And then it goes 19, 20, and 21.
And according to the Constitution, plainly stated, it needs to be consecutively numbered. And that is not the case.
Q. Are you aware of any other county in Tennessee, in which the senate districts are not consecutively numbered?

A. I think that Davidson County is the only one that is not in congruence with the Constitution.

Q. And I believe you testified you live in 17; is that right?

A. Yes.

Q. So would you say that you live in a district that is not consecutively numbered with the other three?

A. That's right.

Q. In a given year, if the districts were consecutively numbered, how many state senators in Davidson County would be up for election?

A. Well, I think that's the problem there, is that three would be up. Because we have four total. And because they're not consecutively numbered, my understanding -- and I'm no lawyer -- is that the advantage of having staggered numbers that -- or consecutive numbers is that it ensures proper staggering of elections.

And so as it currently stands, it means that, in one year, three of our districts would be up during a gubernatorial election, and then only one of them would be up during a presidential.

And that's really the core of the problem there.

Q. You talked a lot about your, sort of,

political advocacy work.

What's the significance of being up for election in a gubernatorial election year versus a presidential election year?

A. Yeah. It's a huge issue. You know, just understanding it from an advocate standpoint, it's pretty, unfortunately, common knowledge that under a gubernatorial election, there is -- there are fewer people. I mean, a presidential election will drive turnout.

So that creates a big problem, in terms of making sure that there's some fair and equitable representation in my county, in particular for my district and for me.

Q. You heard -- you've been in the courtroom this morning; is that correct?

You've been in this courtroom this morning?

A. Yes.

Q. So you heard the State's opening argument. You heard about whether you have a distinct and palpable injury, concrete harm, or that there's been any benefit deprived to you as a voter by this nonconsecutive numbering.

Can you tell the Court a little bit about the impact on you as a voter and a resident of Davidson County to have the delegation when -- this 3-1 pattern, instead

of the 2-2 pattern?

A. Sure.

I mean, I'm actually deeply offended to hear that I don't get to use my voice to even raise this as an issue as a voter in my district. Because, to me, if I as a voter can't have a say in how my voice is represented, then, kind of, what's the point?

But I think to speak to the injury directly, you know, to contextualize it, in this moment, I think it's really clear that even as we've seen with the -- all the talks around the Tennessee Three happening right now, there's a deep suspicion around the legitimacy of democracy right now.

And I have felt this now, as someone who really cares about an individual's right to bodily autonomy and to my right to make my own private decisions over my own healthcare. As a mother. As someone who's had a miscarriage. You know, I think that those decisions around a person's healthcare and their pregnancy need to absolutely be left up to that individual person and not left up to Government.

And, you know, when Roe fell last year, I mean, I felt that. That was not a cerebral injury. That was, like, a very deep injury that I personally felt.

And I think that, for me, if we can't rely on

protecting the Constitution that is plainly written, then what is the meaning of it? I mean, that's kind of where I feel like, you know --

I think that what our -- what governor -- what the governor and the State of Tennessee has done in terms of our rights and our voice, I don't agree with that. But if I knew that the rules that we were following by and that the word of the Constitution was being followed to the letter, I at least could live with that. And that's, to me, what -- what's at stake. That's, to me, what I so personally bring to this.

And it's not -- it's me, for sure. But it's also my neighborhood, my city of Nashville, and everybody who shares the same values that I do.

Q. You talked about "our rights and our voice and the city of Nashville."

From your perspective, with the non-consecutively numbered senate districts, what is the impact on Nashville's voice in the state legislature?

MR. SWATLEY: Your Honor, objection, for relevance. Nashville isn't a party here. There's only an individual plaintiff.

CHIEF JUDGE: I'm going to ask Counsel to rephrase.

BY MR. SPRAGENS:

Q. Ms. Hunt, as a citizen of Nashville, what is your personal view on legislative developments that affect you and your city under the 3-1 staggered system that we have in place today?

A. Sure.

I mean, it's clear that we are all operating under a super majority, a Republican super majority at the state level. And they don't share my view a lot of times, and they don't share, I think, you know, Nashville's view a lot of times.

And so it feels like -- especially when we have, in this current iteration of the redistricting, a situation where there is unfair representation, where it's a 3-1 split, where three of those districts are going to be voting during an election cycle that has a lower turnout rate, by comparison to the presidential, it does continue to put us at a disadvantage.

And so I feel like I'm voting with both hands tied behind my back. And I'm just pleading, that at least make it so that I'm only voting with one arm behind my back. I mean, it's so incredibly painful to be in this situation.

Q. You know, Ms. Hunt, a few minutes ago you heard, in the State's opening statement, about the likelihood of turnover of three seats at once.

Is it possible, in your experience as a political organizer, for incumbents to lose primary elections?

MR. SWATLEY: Your Honor, objection for speculation. She's not here as an expert.

MR. SPRAGENS: I'm just asking about her personal experience, Your Honor.

CHIEF JUDGE: If you would, rephrase, please, so maybe it won't sound the way it just sounded. Okay? Please.

BY MR. SPRAGENS:

Q. Ms. Hunt, you have been a political organizer, and you're a citizen; is that correct?

A. Yes.

Q. Have you ever seen an incumbent lose a primary election?

A. I have not.

Q. Have you seen incumbents lose to other parties?

A. I have not. It's very difficult to be an incumbent.

Q. Are you familiar with the staggering of U.S. senate terms? Tennessee has two U.S. senators, and the staggering of terms with respect to the U.S. Senate?

A. Yes.

MR. SWATLEY: Objection. She's not here for the U.S. Senate.

CHIEF JUDGE: I'll allow it as background.

BY MR. SPRAGENS:

Q. And you testified that you are familiar with that?

A. Yes.

Q. How does that concept, in your mind, relate to the Tennessee Constitution's requirement that the districts be numbered consecutively?

A. I think that --

CHIEF JUDGE: If you have an objection, go ahead and state it.

MR. SWATLEY: Objection again. Same objection. It's just -- U.S. senators aren't in the Tennessee Constitution or the U.S. Constitution. It's just relevance.

CHIEF JUDGE: Okay. The Court will allow it on the limited purpose of trying to bring some context to her prior testimony. But we're not going to try a senate case that does not exist. So --

MR. SPRAGENS: Thank you, Your Honor. I'm just trying to get her to articulate the standing burden that they've been contesting here.

BY MR. SPRAGENS:

Q. The Court said you can answer that question. How does that comparison work, in your mind?

A. I mean, I think that the comparison, to me, illustrates that it's fairly common for staggering to occur so that you not only have fair and equitable representation, but, also, there's at least a structural aspect to ensuring that there is expertise in leadership in that incumbency that can be there over time.

Q. And is that what you were testifying to earlier, about Nashville and its voice in the state legislature?

A. Yes.

Q. As a plaintiff in this lawsuit, what are you asking this Court to do to remedy the non-consecutively-numbered districts?

A. My request is very simple, which is to recognize, acknowledge, and uphold the Constitution as it is written, which is to recognize that the district numbers need to be consecutively numbered.

And as I heard earlier, you know, that if -- as someone stated earlier, that it's simply just a matter of numbering, as if labels didn't matter, then if that were the case, then I just ask that they change the labels.

Q. And if the Davidson County senate districts are not corrected to comply with the Constitution, do you expect, as a voter and a citizen, that that will have an impact on your life in the future?

A. Absolutely. We're going to continue to see a concentration of powers that will not be in my self-interest or my view, and not be able to use my voice and vote.

Q. And when you say a concentration of powers, are you talking about the State with respect to the City of Nashville?

A. Yes. Yes.

I mean, I think we've seen that with the -- what I will say, an -- what it feels like, again, personally, an overreach from the State into Nashville to even decide how we can govern ourselves, where there was an effort to, basically, take away my representative at the local level, my counsel member, and have the districts from 40 to 20.

Q. And is it your belief that if the delegation were evenly split, you would -- Nashville -- you, as a citizen of Nashville, would be more effectively able to resist that?

A. Yes. Absolutely.

MR. SPRAGENS: Thank you. I don't have

any further questions at this time.

CHIEF JUDGE: Thank you.

CROSS-EXAMINATION

BY MR. SWATLEY:

Q. Good morning, Ms. Hunt. My name is Jacob Swatley. I represent the defendants in this matter. I believe we remember each other from your deposition in December.

A. Mm-hmm.

Q. So, if you could, please, I'd ask that you -- in the books there, if you could turn to Exhibit 84.

MR. RIEGER: Your Honor, if I could -- and, Scott. I don't think we ever got around to doing the checklist sheet as to what's already in.

MR. TIFT: That's right. I think we could also just proceed, and, like, whenever we get to one, just acknowledge, you know, when it's used in court that it's admitted.

MR. RIEGER: Okay.

MR. TIFT: Since we're already sort of in the process. We could just, for instance, with this one, say, you know, "The parties have already agreed this will be admitted, so, you know, it's admitted now."

MR. RIEGER: That's fine. I just

wanted to make sure we were on the same page.

CHIEF JUDGE: The laundry list can come later, on a break.

MR. SWATLEY: And, Your Honor, this is the Enacted 2022 Senate Plan. It's Exhibit 84. And I think the Court can take judicial notice of the fact that this is the enacted plan.

CHIEF JUDGE: Exhibit 84, just for purposes of the record, is admitted into evidence.

(Marked Exhibit 84.)

BY MR. SWATLEY:

Q. So, Ms. Hunt, you recognize Davidson County there in the middle of this map, of the Tennessee State Senate Districts?

A. Yes.

Q. Okay. And I know it's kind of small. But do you recognize the grey bit next to Wilson County that's in Davidson County?

A. Barely, but yes.

Q. Yes.

And, best as you can tell from this map, you live in that grey District 17?

A. Am I looking at the right one? Because 17 is pink. Is that --

Q. You're probably not looking at --

A. Okay.

MR. SWATLEY: Well, here. Let me -- Your Honor, if I may approach.

CHIEF JUDGE: Yes, you may.

BY MR. SWATLEY:

Q. Do you recognize the grey bit next to Wilson County that's in Davidson --

A. Yes.

Q. -- as District 17?

A. Yes.

Q. All right. And you do not live in District 19, 20, or 21?

A. No.

Q. Okay. Senator Pody, your senator, won the election last year?

A. Yes.

Q. Does Senator Pody appall you?

A. Yes.

Q. And does Senator Pody, do you feel that he is very disconnected from the life experiences in your area?

A. I can only speak for myself, and I would say yes for myself.

Q. And your friend, Senator Yarbro, won reelection last year as well?

A. Yes.

Q. Okay.
A. And let me just clarify because I don't want people to think --
I actually, generally, orient myself towards liking everybody. And the only reason why I would -- I wouldn't want any harm done to Mark Pody. I just wouldn't vote for him. That's what I mean by "appalled."
And the reason for the appall -- being appalled is because he was somebody that wanted to make it so that the -- the -- the husband would have more power over bodily autonomy, than the wife. And I just don't think that's right.
Q. So it's fair to say that you don't agree with him politically?
A. Yes.
Q. Now, based on your knowledge, you're not bringing a claim here against the senate map for anything, other than the numbering?
A. Yes.
Q. You voted in the Senate District 17 August primary last year?
A. Yes.
Q. You also voted in the November general election for Senate District 17?
A. Yes.

Q. And, to your knowledge, your vote counted in both?
A. Yes.
Q. And the people voting in your district had the opportunity to elect the candidate of their choice that was on the ballot last year?
A. The candidate of their choice?
Q. That was on the ballot.
A. I didn't -- there was not a candidate of my choice on the ballot that year.
Q. Based on your knowledge, the people voting in your district, though, had the opportunity to elect the candidate of their choice that was on the ballot last year; correct?
A. They had the opportunity to vote for a candidate that was on the ballot. He was unopposed.
Q. Okay. And you had the opportunity to express your individual voice through voting last year in Senate District 17?
A. Yes.
Q. And is it fair to say, based on your knowledge, that Nashville and Davidson County lean democratic?
A. Yes.
Q. And based on your personal knowledge, the

Davidson County vote, again in your knowledge, generally goes for democrats in statewide elections, like governor and U.S. senator?

A. I think that's true.

Q. You believe the senate maps are gerrymandered?

A. I do.

Q. By pairing your sliver of Davidson County with all of Wilson County, is your district gerrymandered?

A. Yes. Because it's not consecutively numbered, as the Constitution states it needs to be.

Q. All right. Were you frustrated with redistricting, where Nashville was divided into several different piecemeal districts?

A. Yes. That added insult to injury.

Q. And you're not bringing a claim for racial gerrymandering here?

A. No.

Q. Do you imagine it would be in the interest of a party in power to redistrict, in a way as to strengthen and concentrate their power?

A. Yes.

Q. Do you believe the party in power would redistrict in a way that it would be to their advantage?

A. Yes.

Q. And you think the senate was pretty successful in that this time?
A. Yes.
Q. Were they successful in drawing it to where their incumbents are not as likely to lose?
A. Right.
Q. You agree that you're not bringing a claim here for political gerrymandering?
A. That's correct.
Q. Okay. And consecutive numbering of districts, to your knowledge, is designed to ensure institutional knowledge in the senate?
A. I understand that to be the case. I think it's also just to create just general fairness and equity in terms of turnout as well.
Q. And you agree that, statewide, the senate districts are staggered and that 16 senators are up for election, and then 17 are up two years later?
A. I don't know that. You're telling me that. I don't have a reason to not believe you.
Q. Okay. Is it fair to say that the benefit of consecutive numbering within Davidson County, if there is any, is that at any one election, only two Davidson County senate seats can turn over?
A. Right.

Q. And so, logically, you being deprived of that benefit would require -- again, to your knowledge, would require three Davidson County senators turning over at one time?

MR. SPRAGENS: Object to the legal conclusion.

THE WITNESS: I'm sorry. I don't understand the question.

CHIEF JUDGE: Wait a minute. Let's get the objection on the record.

MR. SPRAGENS: Object to the question; calls for a legal conclusion.

CHIEF JUDGE: Your response?

MR. SWATLEY: Well, Your Honor, she says she's deprived of a benefit. I'm just asking facts about the benefit she's being deprived of. It's the facts within her knowledge.

CHIEF JUDGE: Objection overruled.

BY MR. SWATLEY:

Q. I'll repeat it.

To your knowledge, the benefit you're being deprived of would require three Davidson County senators turning over at one time?

A. So you're asking me, does a 3-1 split hurt me? Yes. I think that -- there are a lot of words in

your question.
Q. I'm sorry. I'll try shorter ones.
A. Yeah.
Q. If Davidson County senate districts, the four senate districts, were consecutively numbered, only two would be up at one time?
A. That's right.
Q. Okay. And under the current map, last year in 2022, and then in '26 and '30, three senators are up at one time?
A. That's right.
Q. So for you not to get the benefit, based on your knowledge, all three of those senators would have to lose at once in the elections in '26 and '30?
A. I don't -- I guess I'm not -- I don't think that's the only way that I'm harmed, or that only having three --
Like, I don't think the harm begins when three people lose an election in one year.
Q. Okay. So, in your experience, in almost 25 years -- or almost 25 years of voting for state senators in Tennessee, that these seats don't turn over very often?
A. That's correct.
Q. And when you first moved here in the late

1990s, the senate districts were not consecutively numbered?

A. The senate districts were consecutively numbered.

Q. In the 1990s?

A. Oh, I don't know. I didn't move here until 1999.

Q. So, in 1999, were they consecutively numbered?

A. I don't remember.

Q. Okay. If you could flip to Tab 106 for me. I believe it will be in a different binder than the one you were looking at previously.

A. It's the same one, I think.

MR. SWATLEY: Exhibit 31 is a map of the 1990s enacted senate plan. I believe it's been admitted, and the Court can take judicial notice that that is the 1990 senate plan. It's also depicted on Demonstrative 106.

CHIEF JUDGE: Admitted for the record.

(Marked Exhibit 31.)

BY MR. SWATLEY:

Q. Ms. Hunt, while you're looking there at the 1990 senate plan -- yes, that one.

Could you please tell me what the numbers of

the Davidson County senate districts are.
A. It looks like it's 19, 20, 21.
Q. And is there one more?
A. It looks like there's 17.
Q. All right. And based on your knowledge, 17, 19, 20, and 21 are the same numbers of the senate districts currently?
A. I believe that's true.
Q. And you filed no lawsuit in 1999 or 2000 about the senate districts?
A. No. I was busy building my family at that time. So I wasn't looking at maps.
Q. So you didn't look at maps, so you didn't know they were not consecutively numbered at that time?
A. Yeah. I guess I didn't.
Q. So it's painful now, to be in this situation, but in the '90s, you didn't know about it?
A. In the '90s, no, I didn't know about this.
Q. Okay. Could you please flip to Tab 108. But this also is the -- oh, I'm sorry.
MR. SWATLEY: So it's Exhibit 32, Your Honor. I believe it's been agreed upon to be admitted. It's also Tab 108.
CHIEF JUDGE: Exhibit 32 is admitted.
MR. SWATLEY: Thank you, Your Honor.

(Marked Exhibit 32.)

BY MR. SWATLEY:

Q. Ms. Hunt, can you please tell me the numbers of the four senate districts on the 2000 senate map that you're looking at?

A. 21, 19, and 20.

Q. And then is -- also, is there one more number, maybe from Williamson County, coming up into Davidson County on there?

A. Yes.

Q. What is that number?

A. 23.

Q. So the numbers were 19, 20, 21, and 23?

A. Yes.

Q. Okay. And you lived in Davidson County during the 2000s?

A. Yes.

Q. Okay. Were you aware at the time that the -- you were not aware that they were not consecutively numbered?

A. No.

Q. Was it painful to be in that situation then --

A. It was --

Q. -- but you didn't know?

A. -- apparently.
Q. But you didn't know?
A. Right.
Q. And it was also unfair at that time, but you didn't know about it?
A. Right.
Now that I know about that, it seems that we were not in line with what the Constitution had written.
MR. SWATLEY: May I refer with Counsel real quick?
CHIEF JUDGE: Of course, you may.
BY MR. SWATLEY:
Q. So in the late 1990s and all through 2000, while those two maps were in place, you had a palpable harm, but didn't know about it?
A. Yeah. I didn't know about it.
Q. From the late 1990s through the 2000s, if you didn't know about it, how could it have affected you?
A. Well, I think that if -- if -- if, then, as it does now, the Constitution states that it needs to be consecutive, then it should have been in alignment back in the day.
And I will say that myself and so many other people are becoming more aware of how important it is that we ensure that our Constitution is fully followed.

Q. All right.
A. So it's not too late.
Q. The district number doesn't cause high or low turnout, does it?
A. Oh, it can.
Q. The district number itself?
A. Actually, the timing of when it's up for election. Like, whether it's a gubernatorial year or presidential.
Q. So not the -- it's not the number, it's more of when that election falls?
A. And I think that odds and evens are assigned to a gubernatorial or presidential.
Q. And whether a voter votes in an election is the choice of the voter; correct?
A. Yes. It's the choice of the voter, and there's a lot of other aspects that go into it. There are, you know, voting rights, and accessibility, and suppression issues too.
Q. But you're not alleging that this map violates any of your federal voting rights here?
A. I'm saying that it violates the state constitution because it's not in numerical order.
Q. So when you lived on Ironwood in the late '90s, do you recall whether your senator was Senator

Harper, Senator Haynes, Senator Henry, or Senator Rochelle?

A. Say the names again.

Q. Senator Harper, who represented District 19. Senator Haynes, who represented District 20. Senator Henry, who represented District 21. Or Senator Rochelle, who represented District 17.

A. I knew many of them, but I don't remember which one.

Q. Okay. Well, when you lived on Eastland Avenue in the 2000s, when the senate districts were also not consecutively numbered, were you represented by Senator Harper, Senator Haynes, Senator Henry, or Senator Blackburn, or Bryson, or Johnson?

A. It might have been Thelma Harper at that point.

Q. Okay.

A. It definitely wasn't Haynes -- or I'm sorry -- Henry.

Q. Definitely wasn't Henry?

A. Yeah.

Q. You think it was Harper?

A. Yeah.

Q. Okay. So you -- so your testimony is that in the 2000s you lived in Senate District 19, where Senator

Harper represented you?
A. I think that's a possibility. I would have to look and see. It's been a long time ago.
Q. I understand.
Well, if you want, we can look back at Tab 108, if you could tell me -- you may be looking at it right now. It may be right in front of you.
A. Oh, okay.
Q. Can you tell, on that map, where you lived, on Eastland Avenue?
A. Oh, gosh. These maps. This is how it was during the redistricting too. The maps were released without any street names. So it was really hard to tell anything. And that's what it looks like here too.
So I'm not sure I could, actually.
Q. Okay. During that redistricting process, did you ever download publicly-available shapefiles about the senate plans?
A. I have.
Q. You did download the shapefiles?
A. Not the whole thing because it was really big. But I did try to look because I was just -- I really was trying to figure out what was happening with redistricting.
Q. Okay. But not the shapefiles?

A. There was a -- I don't know the names of things. I don't know if it was called a shapefile. But there was something on the website, where you could click, and then it would take you to some map.

Is that what you mean by a shapefile?

Q. I'm not the one testifying here.

A. Okay. Well, I'm trying --

So if that is what is a shapefile, then, yes, that is what I opened. But I didn't download it because I wouldn't want to use up that space on my computer.

Q. Okay. And in the 2010s, you were represented by Senator Haile in District 18?

A. Senator Haile. What's his first name?

Q. Ferrell Haile.

A. Oh, Ferrell Haile. Yes.

Q. Yes.

And, to your knowledge, you were represented by Senator Haile for all of the 2010s, when you lived in District 18?

A. I don't remember. I think so.

I know I've met with him a few times as my representative.

Q. Okay.

A. Or senator.

Q. So Senator Haile was your senator for all of

the 2010s, sounds like he was pretty stable in office then; correct?

A. It's possible.

Q. Okay. Now, as you testified earlier, Senator Pody is your current senator?

A. Yes.

Q. And earlier, because you said that your district was gerrymandered, you agree that it's unlikely that Senator Pody will lose reelection?

A. (Witness moves head up and down.)

Q. I'm sorry. Can you please --

A. I think that is a possibility, yes.

Q. Okay. But earlier when you were nodding, you were nodding up and down to signify "yes"?

A. Yes.

Q. So if nonconsecutive numbering upsets you so much, why didn't you sue from the late 1990s until 2012, when the Davidson County districts weren't consecutively numbered?

A. I think that, you know, I was starting to pay more attention to, like, redistricting. You know, a lot of the work that I've done as a child advocate is helping people understand how governments work overall, that they do have a representative, how they can meet with those representatives and build a relationship with them to help

voice what their concerns are to those legislatures so they can be heard.

And I think that kind of going from just kind of that in-person, you know, relationship-building level of politicking to actually understanding maps was kind of a growth area for me. And I think probably for the community at large -- actually, at least in my circle of folks that I'm talking with.

So, yeah. It wasn't until recently that I became aware that we were out of sync with the Constitution, that that became alarming to me. And, now, even in this session, learning that that's something that's been going on over the last few cycles is actually pretty disturbing.

Q. So you're saying you only know if it's not consecutively numbered if you understand the maps?

A. I'm sorry. I don't understand the question.

Q. You only understand -- you only know if the Davidson County districts are not consecutively numbered if you understand the maps?

A. I mean, I only know that they're not consecutively numbered when I can see the number.

Q. Can you see the number on a map?

A. Yes.

I guess it could be in written form, where

it's, like, they say these are the numbers for Davidson County. Then I could just see if they're in sequence or not.

Q. And if it's in written form or if it's on the map, that's the only way you know if it's not consecutively numbered?

A. Right.

MR. SWATLEY: Your Honor, I'd like to confer with Counsel real quick.

CHIEF JUDGE: You may.

BY MR. SWATLEY:

Q. When did you learn that the Davidson County senate districts were not consecutively numbered?

A. During the redistricting process, when it got voted in.

Q. Okay.

A. Or decided. I don't know if it was voted in. But . . .

Q. Could you be more specific on when? Do you remember a time?

A. I think when the maps came out, and within my network of friends, we were talking about what that means.

Q. Which friends?

A. My partner, Skip Brzezienski.

Q. Anyone else?

A. Probably our staff at Planned Parenthood.
Q. Okay. Anyone else?
A. Well, later on, as we -- as I, you know, got involved with this case, you know, we talked about it then as well.
Q. With who did you talk later on about this?
A. I'm trying to remember. I mean, it's pretty -- just through our networks. It was pretty common knowledge that this was an issue.
Q. Okay. Did you talk about this issue with Senator Yarbro?
A. No.
Well, we -- I had talked about whether or not I was going to take on this case and if that was going to have any unintended consequences.
Q. What do you mean by "unintended consequences"?
A. That if -- because I trust him, and I think that if there was any backlash or whatever, that I didn't want to be a part of something that would hurt anybody.
Q. And I appreciate that explanation, but I'm not sure it answers my question. Let me ask you again.
What would the unintended consequences be?
A. I think the unintended consequence would be whether or not it actually makes a difference.

Q. What would be making a difference?
A. Whether or not taking a stand on the constitutionality of consecutive districts would matter or not.
Q. Did you also talk to him because you didn't want anything to be inadvertently harmful?
A. I wouldn't want to harm him, no.
Q. So if he got redistricted out, would that be a harm?
A. It would be. And he said that that's a risk that he would be willing to take, and that was okay with me.
Q. And Senator Yarbro, a democrat, being redistricted out, is the type of harm you checked on before joining this lawsuit?
A. Yes.
Q. Okay. Have you been a registered democrat since the late '90s?
A. I think so.
Q. Okay. And, to your knowledge, was the General Assembly in the late 1990s and in the 2000s controlled by the democrats?
A. I think Governor Bredesen was in office during some of the child advocacy that I was doing.
Q. And now, as you testified earlier, there's a

republican super majority?
A. That's right.
Q. And now you're bringing a lawsuit, that you didn't before?
A. That's right.
MR. SWATLEY: If I may confer with Counsel.
CHIEF JUDGE: You may.
BY MR. SWATLEY:
Q. Is the reason you didn't know about the nonconsecutive numbering in the 1990s and 2000s, because we had a democratic General Assembly and you were a democratic voter?
A. I mean, there's probably some connection to that, yes. I think that during the time that I was raising young children, there was a time, living in Nashville, that it felt peaceful. It felt like there were major aspects of politics that I didn't have to, like, sit there and drill down and pay attention to that closely.
And then as more and more government outreach started happening, impacting my life, it kind of forced me to have to pay attention to it.
I mean, I wouldn't -- even when I came into Planned Parenthood, we knew that there were, you know, general attacks to bodily sovereignty issues. But never

to the extent -- even --

Like, I will tell you, like, I walked across the state, from Memphis, all the way to Johnson City. And I talked to people from every walk of life. And, I mean, I talked to Trump supporters and confederate flag bearers and, like -- just everyone that you could possibly connect with. Because I was hungry to understand, like, what do people actually think about this?

I wouldn't normally -- I wouldn't have walked across the state a decade ago. But I did last fall because this hurt so badly, this affront to my, you know, identity and -- and sovereignty over my own life and family, that I really wanted to connect with them.

And I think that what I realized, in crossing the state, is that people are in the same kind of area of awareness that I am, and starting to wake up to a lot of the ways in which there's been an abuse of power over our rights. And there's, what I feel, very deeply, is a stripping of our voice.

And that's why, you know, a decade ago, no, I wasn't paying attention to the maps. But now I am, and I think that something should be done about it.

Q. So is nonconsecutive numbering of Davidson County senate districts only an abuse of power when republicans do it?

A. It's when I was aware of it.
Q. What, if anything, did Senator Yarbro say when you asked him about joining this lawsuit as a plaintiff?
A. He said that -- he said, "You know what? It may mean that I don't have my office anymore, but you have to do what's right."
Q. But did you not do the right thing when you didn't sue about it when it was not consecutively numbered in the '90s?
A. I didn't consult with him or even know to do anything back in the day. So, no, I wouldn't have talked to him.

MR. SWATLEY: I'll pass the witness.
CHIEF JUDGE: Thank you.
Redirect?
MR. SPRAGENS: Very short redirect, Your Honor.
CHIEF JUDGE: Go ahead.

REDIRECT EXAMINATION

BY MR. SPRAGENS:
Q. Ms. Hunt, you were asked some questions about the 1990s, when you moved here, and the 2000s.
Do you know if you even lived in a

non-consecutively-numbered senate district during those periods of times?

A. I didn't.

Q. So Exhibit 32, which you were shown, and there was that District 23, which is Williamson County, sort of encroaching into the bottom of Davidson County, you didn't live in that district at the time, did you?

A. No.

Q. You were asked a lot of questions about your political views and beliefs.

Are you bringing this lawsuit about a constitutional violation because of your political views and beliefs?

A. I mean, no, in the sense of I see that the Constitution, regardless of my personal political views, ought to be protected and respected.

And, also, yes. I mean, I think the fact that I care deeply about the rights that are being stripped away from us made me awake to this problem.

Q. Is it fair to say you became aware of the violation through the political process and your participation in it?

A. Yes.

Q. Does your political affiliation impact your harm as a voter and a resident of Davidson County?

A. Sorry. Say that one more time.
Q. Does the fact that you're politically on one side of certain issues impact whether you're harmed as a resident of Davidson County?
A. Does the -- I'm sorry. I'm having a hard time. Sorry.
Q. That's fine.
I'm just asking if the constitutional violation that you're alleging here, does that change for somebody who is a republican in Davidson County?
A. No, it does not.
Q. You were asked about expressing your individual voice through voting and whether you were given the opportunity to do that in this last 2022 election. Do you remember that question?
A. Yes.
Q. Was that vote cast based on senate maps that were drawn in conformance with the Tennessee Constitution?
A. In 2022?
Q. Yes, ma'am.
A. No, it was not.
Q. You were asked about the benefit you've been deprived of.
Did you have the benefit of voting in an election using senate districts that were drawn in

conformance with the Constitution?
A. Well, apparently, no.
Q. And you were asked why you didn't sue in the 1990s, when you first moved to Tennessee, and why you didn't sue in the 2000s, when you lived in different parts of Davidson County.
My question is, are the senate districts non-consecutively numbered today in 2023?
A. No.
Q. Are they non-consecutively numbered? Are they improperly numbered today in 2023?
A. That is correct.
Q. And were they improperly numbered last year in the redistricting process?
A. Well, if these are the maps that I just saw, apparently, they were also incorrectly draw then.
Q. And my question is for 2022, when they implemented the new maps.
Were they improperly numbered during --
A. Yes.
Q. -- the 2022 election cycle?
A. Yes. Yes.
Q. Does that violate the Tennessee Constitution today?
A. Yes.

MR. SWATLEY: Objection. It's a legal conclusion.

MR. SPRAGENS: I'll rephrase that, Your Honor.

CHIEF JUDGE: Objection sustained.

BY MR. SPRAGENS:

Q. Do you allege, as the plaintiff in this lawsuit, that that violates the Tennessee Constitution today?

A. Yes.

Q. And do you allege, as the plaintiff in this lawsuit, that that diminishes your voice in the legislature today?

A. Yes.

MR. SPRAGENS: I don't have any further questions. Thank you, Your Honor.

CHIEF JUDGE: Any additional questions?

MR. SWATLEY: Just a couple, Your Honor, briefly.

CHIEF JUDGE: Okay.

RECROSS-EXAMINATION

BY MR. SWATLEY:

Q. I believe earlier you said that the nonconsecutive numbering of the senate districts

diminishes the voice of you as a voter?
A. Yes.
Q. How is it diminished?
A. Because three out of the four districts in Davidson County will be up during a gubernatorial election, versus a presidential, where it wouldn't be as it should have been created consecutive, where two would be during a presidential and two would be during gubernatorial, which would mean there would be a little bit more fairness in terms of turnout on both sides.
Q. And turnout is a choice by the individual voter; right?
A. It's a choice by the individual voter.
Also, contributing factors, external factors, such as, you know, billions of dollars are poured into political advertising. A presidential election will bring in a lot more attention to folks, so that people understand it's an election year. There's a lot more get-out-and-vote opportunities. There's a lot of voter registration opportunities.
You know, and so the -- voting also is -- it's more pronounced during that time. So there's greater awareness.
Q. But --
A. So it's collective, as well as individual.

Q. So your testimony here today is that the right to vote is a collective right?
A. Well, it's an individual right. But I'm talking about, like, it's -- I do think it's a collective responsibility to help make sure that there's no voter suppression, that we have fair elections and infrastructure to help people get to the polls.
Q. Whether there's an election in a gubernatorial year or a presidential year, every registered voter who wants to vote can vote; right?
A. Not always. I mean, sometimes there are obstacles. I mean, during COVID, I think there was -- people had to make special exceptions to be able to vote, absentee ballot. So there are barriers.
But, yes. I mean, individuals can certainly make the choice to vote.
Q. So it all comes down to choice -- individual choice to vote?
A. As one aspect.
Q. Okay. So last year, based on your knowledge, only one senator in Davidson County, one senate seat turned over; right?
A. What was -- what's -- oh, I can't ask you a question.
Q. It's okay. I'll try to -- it was probably a

bad question. I'll try to rephrase.
A. Yeah.
Q. Based on your knowledge of the three Davidson County senators who were up for reelection last year, Senator Pody was reelected, your friend Senator Yarbro was reelected, and Senator Charlane Oliver was a new incumbent, she was elected?
A. Yes.
Q. So only one of those seats turned over; correct?
A. I don't know who the turnover person would be.
Q. Would it have been Senator Gilmore?
A. Oh, because she, yeah, retired. Yeah.
Q. So you weren't deprived of the benefit of nonconsecutive numbering last year because only one of those seats turned over; right?
A. That's correct.
MR. SWATLEY: Okay. No more questions, Your Honor.
MR. SPRAGENS: Nothing further.
CHIEF JUDGE: All right. You may step down.
We're going to take a short break.
And then who is the next witness?

MR. SPRAGENS: The next witness is Gary Wygant, the other plaintiff.

CHIEF JUDGE: All right. Thank you.

(Recess taken from 12:02 p.m. to 12:10 p.m.)

MR. SPRAGENS: Our next witness will be Plaintiff Gary Wygant.

GARY WYGANT,

was called as a witness, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SPRAGENS:

Q. Good morning, Mr. Wygant.

A. Good morning.

Q. The record will reflect that you and Ms. Hunt, before -- you were sworn in before providing your testimony; is that right?

A. Yes.

Q. Would you please introduce yourself to the Court and provide a little background about yourself.

A. Sure. I'm Gary Wygant. I'm a resident of Gibson County. I have been there since 2015, when I retired and moved there to live there on the family farm

with my wife.

Q. What part of the state is Gibson County located in?

A. Oh, it's -- well, Gibson County, we refer to it as the heart of West Tennessee. With favor to Madison County, of course.

Q. Is it more rural or urban, would you say?

A. You know, it's rural, and we have a lot of agriculture there. But we are growing. And a lot of that is thanks to an expansion of population from the south, from Madison.

Q. About how long have you lived there, did you say?

A. I've lived there since 2015, but I've been associated with it for close to 40 years because of my marriage to an incumbent.

Q. I believe you said you were retired. When you were working, what was your profession?

A. Right.

So for eight and a half years, I worked for the Coca-Cola Company. And I was in the recycling business, trying to recycle bottles and cans. And it was a good effort. We lived in the Atlanta area, in Cobb County, Marietta, Georgia, at that time.

Prior to that, I worked in the aluminum

business, where we made can sheet for beverage cans. So there's a natural affiliation there.

So that comprises, really, two retirements that I have enjoyed.

Q. Since your latest retirement, tell us about your involvement in your community.

A. Right.

So when we finally stopped moving around for my work, Janice and I joined a church. And I'd become very active in volunteer work with the church, and am a trustee there. And that takes a little bit of your time. I think you know that if they know you're a volunteer and you're willing, you get plenty of opportunity to do some things.

I've also been active with my grandson's baseball activities. And we're currently assistant coaching a little league team of 11, 12-year-olds.

And let's see. It was 2020 -- I think it was 2020 or 2019, I was asked to become more active by some members of my church, who were also past executives in the Gibson County democratic party.

And as such, I've now -- subsequent to that, I became more active. I was interested in the issues that were being described. And I've been elected twice as their chairman. I'm currently chairman of the Gibson

County Democratic Party.

Q. And, Mr. Wygant, are you registered to vote in Gibson County?

A. Oh, yes.

Q. Do you vote in every election?

A. Every one I can, yes.

Q. That would include democratic primaries?

A. Yes.

Q. And, also, general elections at the local, state, and federal level?

A. Yes.

Q. Has that been the case ever since you moved to Gibson County?

A. Yes, it has.

Q. Do you expect to continue voting in elections after today's date?

A. Yes.

And I'll make a plug for early voting. Because sometimes election day is not convenient.

Q. Who currently represents you in the State House of Representatives?

A. I live in the newly-divided Gibson County. I happen to have landed in District 79, which was my prior district, when all of Gibson County was in District 79.

And our representative is recently elected,

Brock Martin. And I believe he lives somewhere east of Huntingdon, in Carroll or Henderson County.

Q. What about the other portion of Gibson County, the part you don't live --

A. Right.

Q. -- what district is that, and who represents it?

A. So that's District 82. And, roughly, half of our voters are in District 82. Rough numbers because I don't have specifics. And the representative there is Chris Hurt. And he's from Halls, Tennessee. At least he went to high school there.

And so we have two representatives for our county, depending on which half of the county you happen to be in.

Q. And how would you say the county is divided, just geographically? You know, where does -- how does the line go through the county?

A. Yeah. It's, like, right down the spine. If you take Highway 45 down, it pretty well -- Highway 45 West, it pretty well divides that way. And then with a little jog at the bottom, out of Medina. So it's -- well, the --

There were some words to describe maps. But you'd have to look at it to -- and I'm sure we have a

display of it -- to see how the new redistricting changed the shape of District 79, and introduced us into District 82.

Q. So let's talk about that.

Prior to the 2022 redistricting, how did District 79 look geographically and with respect to Gibson County?

A. Right.

So Gibson County -- in the prior District 79, Gibson County was whole. And on its east, Carroll County was attached, about two-thirds of Carroll County, about 60 to 70 percent of Carroll County geographically. And that was District 79 prior to the redistricting.

Q. You said your current representative is not from Gibson County. Can you explain a little bit more about where your current representative is located relative to Trenton and Gibson County?

A. Right.

It's about -- I don't know his home address. But Brock Martin is a chiropractor in Carroll, and I believe in Henderson County. I'm not sure where all of his offices are. But I believe he lives in the Henderson area.

Q. Okay.

A. Or Huntingdon area. I'm sorry.

Q. And District 79, the one you described earlier, is encompassing, you know, Gibson and a piece of Carroll, how is it shaped now?

A. Wow.

When I visualize it, okay, it's half of Gibson County. It takes the same kind of bottom half or portion of Carroll County. And then it grabs Henderson County over here. So it's a -- the shape of it is a little like that, as I'm drawing it with my hand.

The other half, the 82, is a little bit more shapey, if you will. It's got Obion County above it. Or a portion of, if not all.

The western half of Gibson County, Crockett County, and Lauderdale county. So District 82 goes all the way to the Mississippi River.

So if you're a resident in District 82, your current representative is living out toward Halls, out that way, quite a distance from Gibson County.

So, in both cases, we have representatives who are recently elected, who are not residents in Gibson County, which is a big change for us.

Q. Before redistricting, when Gibson County was entirely in District 79, did you have regular interactions with your representative?

A. I'd say as much social as otherwise. You

know, one of the benefits of the way that we had it in Gibson County was that you --

And, by the way, Representative Curtis Halford, who retired and opened up that seat, was in close proximity to Trenton, where I also live. So we have, you know, occasion to see each other socially. His wife is involved in community theater, and we support that. So we would see them there. We would see them at other events, such as charity events. I recently saw him last August at the Gibson County Fair, for example.

So, you know, Mr. Halford was and is out and about in the community. Yes.

Q. When he was serving, was he a democrat or a republican?

A. He's a republican.

Q. But you still saw him in all those circles?

A. Sure.

Q. What about after redistricting? Do you see the legislators who represent Gibson County in your community?

A. I have.

I can tell you I have seen Representative Martin, who was recently elected. I have seen him several times at -- again, at events, if you will, in Gibson County.

I have not seen Representative Hurt at events in Gibson County. So I don't know what his frequency might be.

Q. Let's talk a little bit about the impact of the redistricting on Gibson County from your standpoint.

A. Okay. Right.

Q. What have you perceived, under the new configuration, in terms of Gibson County's ability to get things done in the legislature?

A. Right.

So you probably would be aware, but we're quite proud in Gibson County that we've finally crossed a threshold here in the latest census of 50,000 residents. And that has quite a bit of meaning in terms of the attention that we get in funding for our county activities. In fact, some of our county officials got a raise out of that, which was kind of nice for them. But it put more attention on Gibson County.

You might also be aware that we now have Tyson Foods, who's moved into Humboldt, who have brought a lot of commerce to Gibson County. And we have a lot of chicken barns and chicken trucks and a big expansion of feed capacity in Gibson County for Tyson Foods.

We're also proximate enough to the BlueOval expansion that issues, like, traffic, like roads and

bridges, like housing, municipal issues that expand out into non-municipal areas.

Gibson County is slated to grow. It's been growing. And it's going to be continuing.

The concern with regard to the redistricting that I have heard and continue to be concerned about is that our representation is fractured from an east/west perspective in the redistricting.

So if we've got an issue that pertains to Gibson County, who do we call? We've got to call both and say, "Hey, we have an issue we need to address, we want you to address."

The other, I think, concern that I have about the redistricting is that from the outset of redistricting, it caused confusion for the voters. Right up to the day of election, we were trying to educate people about what it meant that they got a new voter card, that they no longer were in District 79, that they might be in District 82, and that they need to look toward Halls to get representation.

Q. In another context, I think you used the word "disenfranchisement" to describe this. Can you explain what you mean by that?

A. Right.

So probably not unique to Gibson County. But

what I've learned, through my long association with, and now finally moving there eight or nine years ago, is that people have a great deal of pride in Gibson County.

There's civic pride, but there's also county pride. They -- they're proud of their county, like nowhere else. And they want things to keep going the way that they've appreciated throughout their life.

This redistricting came as a shock and a surprise to people. Because we always had Chris Crider or, you know, preceding, Representative Halford. And all of a sudden, people were, like, "Well, what happened? Do we vote now?"

We got that question often. "What are we voting for?"

This also came on the heels of redistricting locally in the county. Because the census also actioned -- I referenced growth. Gibson County grew. It did not just grow 1,000 people, so that we surpassed 50,000. But the distribution of that changed. Some of our more rural areas had a decline. Some of our growing suburban areas, like Medina, exploded; right? Again, expansion from Madison County.

So what was happening is the county commission had a task that's been described this morning as an analytical task to redistrict. And when that became

apparent, that we were going to be redistricting, I took an active role in monitoring what was going on so that I could communicate it to the voters.

And what I learned is that, indeed, it's a complex process. Even at little old county level. We've got 19 county districts. Nobody wants to see a change in their county district. In our county, maybe 30 percent of the people did see a change in their county district.

But because we took involvement, we were able to observe what was happening. I myself went to the analytical presentations by the State-provided experts that performed the analysis. And, indeed, while quite complex, they boiled it down to choices. They said, "We can do this with these 19 districts, and provide the equity, and meet the standards that we work within, and the guardrails that we have federally and statewide. And these are the choices that we've presented to the commission."

And the committee and the commission came back and, again, in public meeting, explained that to whoever went. And I was there and said, "This is how we believe it's most fairly represented."

Now, you may have also heard of a little old town called Skullbone. Well, Skullbone in Gibson County is a place with -- they are probably the exemplary town

for civic pride. They did not want to lose their polling place.

And so as a result of negotiations that occurred at the commission meeting, discussions with the election commission, who were also there, and I also observed that, that there was a coordinated response that made sense to everyone who took involvement, and was explainable to the voters; right?

So when we sat down in voter meetings and said, "This is how we -- this is how your representatives redistricted, and we were there to observe it, and it was transparent," you know, the one question I continued to get was, "Do you think it was done fairly?"

All right. Now, I'm no expert; right? But I was there. And what I observed was done according to the law, and done transparently, done in a way that's understandable to the common voter, and, ultimately, resulted in an opportunity for people to go out and exercise their option and vote.

So, yeah, it makes a difference in Gibson County.

Q. So that was a local -- you're testifying about local districts?

A. That's right, yes.

Q. Did you have any involvement in the state

house and senate redistricting process?

A. I tried. I tried contacting my representative, Representative Halford. And he was not involved.

When I was able to get a response about, "Well, what's happening with redistricting for our county and our District 79," the answer that I unfortunately got was that our representative was uninvolved and unaware. He could not tell me what the process was and how it was going. And I could not deliver that to our voters. I couldn't tell members of my party, or for that matter, anyone else.

I'd like to add to that, that, you know, it's a small town, trying to -- the chairman of the republican party is also a member of the same church I go to. So I know him quite well, Pat Reilly.

And I asked Pat, I said, "Pat, are you aware of what's happening?"

And he said, "No. All I know is the committee is operating under" --

MS. HOLLARS: Objection. Hearsay, Your Honor.

MR. SPRAGENS: Your Honor, if I could respond. I don't think this goes to the truth of the matter asserted. This is about notice and the effect on

the redistricting process.

CHIEF JUDGE: We'll allow a little of it. But we do need to be careful about that.

BY MR. SPRAGENS:

Q. Okay. Go ahead, if you want to just complete your testimony there.

A. Okay. Well, what I was driving at was that neither I, nor others that I queried, were aware of how the process was going or that the outcome would result in a split of our county into two districts.

Q. Mr. Wygant, were you aware of any hearings held in Gibson County or nearby about the state redistricting effort?

A. No.

Q. Were you aware of any hearings being held in Nashville that you were invited to participate in about that effort?

A. No.

Q. If those hearings had been held, would you have gone as a resident of Gibson County and a chair of the democratic party?

A. I would have made an effort, yes.

Q. In the new division of Gibson County, in your role as party chair, did the democratic party have candidates to field for those seats?

A. So we fielded a candidate, who was also a party officer, from Henderson County. His name was Thomas Jefferson, II. And Thomas ran against Brock Martin for District 79.

He was unsuccessful in that bid. And -- but we were very proud of fielding a candidate. We were not able to muster a candidate from Gibson County for District 82. So Mr. Hurt ran unopposed.

Q. And the incumbent that you mentioned you spoke with about trying to get information about redistricting, did he run again?

A. No. Curtis Halford retired. He had announced in advance that he was going to. So we all knew that.

Q. And did he announce that before the decision was announced that Gibson County would be split in half?

A. Yes. I believe so. I believe it was generally known that he was retiring.

Q. And so there was no incumbent losing a seat in that redistricting; is that correct?

A. Yes.

Q. You're here today as a plaintiff in a lawsuit. What's your understanding of the allegations you're making about the house redistricting?

A. Well, first of all, I think you can figure

out I'm not a constitutional scholar. But I can read it, and I know that it says that we shouldn't divide counties.

I'm also aware, from discussing the case, that there's been subsequent decisions that have been taken that mitigate that to some degree.

So I am aware that some divisions had been made, and I'm very aware of the recent decisions that were made on redistricting.

Q. Are you -- in your role as a plaintiff in this lawsuit, are you just challenging the redistricting of Gibson County?

A. No. It's a -- the word "puzzle" was used earlier in the testimony, and it very much is.

There's 99 pieces to this puzzle. And it -- not only am I concerned that Gibson County was divided, I'm concerned that other counties were divided.

And unlike the, I think, wonderful and exemplary job that was done in the county for this same exercise at a lower level, that this all seems to have been done under a cloak of secrecy. Not even my representative could advise me how I could learn more, how I could be a part of this. So I felt very damaged by that.

Q. And, Mr. Wygant, if you are successful in this lawsuit, what are you asking this Court to order the

legislature to do?

A. I think they need to do the job correctly. I think it needs to be lawful. It needs to respect the Constitution. And, of course, subsequent case law.

But I think, more than anything, it needs to be open. People need to know what's happening. They need to see what's happening. We're not analysts, but we understand when someone is hiding information, apparently, not telling us what's going on while it's happening.

MR. SPRAGENS: At this time, I'll pass the witness.

Thank you, Mr. Wygant.

CROSS-EXAMINATION

BY MS. HOLLARS:

Q. Good afternoon, Mr. Wygant. I'm Amy Hollars, and I have just a few questions for you this afternoon on behalf of the defendants.

A. Okay.

Q. Mr. Wygant, you moved to Gibson County in 2015; is that correct?

A. Correct.

Q. So you've lived there about eight years?

A. That's right.

Q. And you only claim residence in Gibson

County; correct?
A. That's correct.
Q. And, Mr. Wygant, have you voted in just about every election since you moved to Gibson County in 2015?
A. Yes.
Q. From the time that you moved to Gibson County in 2015, until the 2022 redistricting plan came into effect, you were in House District 79; correct?
A. That's correct.
Q. And you're still in House District 79 --
A. That's correct.
Q. -- under the new redistricting plan?
A. That is correct.
Q. But the new map changed your district; is that correct?
A. Yes.
Q. All right. And it split Gibson County?
A. It did.
Q. Now, you acknowledge there are decisions that have to be made in the process of redistricting that could cause counties to have to be divided; correct?
A. Yes.
Q. And, in fact, you testified that you understand and agree that some counties may require division, to follow the law; is that correct?

A. Yes.
Q. But your alleged harm is that Gibson County was divided when it did not need to be?
A. Yes.
Q. Okay. Mr. Wygant, you've also testified that you don't have an opinion about Shelby County redistricting; is that correct?
A. I haven't studied the situation in Shelby County, or experienced it.
Q. Do you recall when Mr. Alex Rieger took your deposition back in August --
A. In August.
Q. Do you recall he asked you whether you had an opinion about redistricting in Shelby County?
A. I recall him asking, yes.
Q. Do you recall your response at that time?
A. Not as I'm sitting here, no.
Q. Okay. Would it surprise you to learn that you said you didn't have an opinion about it at that time?
A. No, it doesn't surprise me.
Q. Okay. Well, do you have an opinion about redistricting in any other counties?
A. More and more, yes. As I educate myself on what's happening and I see the impact that redistricting is having.

Q. Mr. Wygant, which one specifically do you have an opinion about?
A. Which --
Q. Which --
A. Is that plural?
Q. Which counties or which districts do you have an opinion about the redistricting process?
A. Okay. I understand the question.
So for me personally, my opinion is now inclusive of the counties that have been attached to the county that I represent as chairman of the democratic party.
So, now, Lauderdale County, Crockett County, Obion County, Henderson County have been added to the counties that now I have to pay attention in some way to what's happening there in order to work with legislators with regard to what's happening in Gibson County and what could happen in Gibson County.
Q. Okay. And, for example, you don't live in Anderson County; correct?
A. No. No.
Q. And do you have any opinion about the division of the county in Anderson County?
A. I have a categoric opinion about redistricting that affects other counties in Tennessee.

Q. Well, whenever there is a division, which you have testified sometimes has to occur to follow other rules, whenever that occurs, is it your opinion that the remaining portions of the county are very damaged, as you described your feeling after Gibson County was split?

A. Right. So -- so I can -- I can answer, I think, in this way.

What happened to me and what happened to Gibson County is happening elsewhere in Tennessee. We know that. And I don't think it's a broad speculation that there are people there that feel exactly the way I feel and are asking the question, "Why was this not done in a manner that I could participate?"

Q. So, Mr. Wygant, do you feel, personally, the impact of the split of Anderson County?

A. Not like I would if I lived there.

Q. So the claim that you articulated in the complaint focuses on the Gibson County split; correct?

A. It's foremost in my mind. It's the experience I have.

Q. And not on the split of any other counties in the newly-enacted house map?

A. You're describing an exclusion. I don't exclude what's happening around the state, in my opinion.

Q. So my question, though, is, your claim, as

articulated in your complaint, does that complaint -- in that complaint, are you focusing on a split in any other counties in the newly-enacted house map?

A. I believe the newly-enacted redistricting map is just as unfair to other divided counties as Gibson County.

Q. Do you have any individual and personal impact from the division in those other counties?

A. Well, I do hear about it from the other county chairmen, yes. But that's really them relaying their feelings.

Q. Mr. Wygant, you referred to what you felt was a lack of transparency in the process.

Did you ever request to address the General Assembly with your concerns about redistricting?

A. No.

Q. Did you know of anyone at Gibson County who did so?

A. I tried to connect with Representative Halford to find out how I could raise a complaint, what I could do about it. And he told me he didn't know how I could, it was a done deal.

Q. So, Mr. Wygant, you are active in local politics; correct?

A. Yes.

Q. And have been elected two times as the chair of your local democratic party in Gibson County?
A. Yes. Yes.
Q. So you are tuned in to the political process, aren't you, Mr. Wygant?
A. As much as I can, yes.
Q. And you read the local papers?
A. I do.
Q. And do you read any kind of a statewide or a paper out of Nashville?
A. I don't have a subscription to the Tennesseean, but I sometimes see articles that cover the --
Q. And you read articles online about political issues and --
A. Sometimes, yes.
Q. But redistricting got by you?
A. No. I can't say it got by me. But all the inquiries that I made fell short of delivering an answer as to how can I get involved.
Q. Mr. Wygant, you described having access and kind of a familiarity with your former representative, Curtis Halford; correct?
A. Yes. Yes.
Q. And he retired?

A. He did.
Q. So there's nothing necessarily about this redistricting that affected your choice not to have Curtis Halford as your representative anymore?
A. Curtis Halford took that decision.
Q. Okay. And he was from your home -- he's from Gibson County; correct?
A. He is.
Q. Now, before the split, how was your -- I think you described how the District 79 was configured.
A. Yes.
Q. And that district also included a large portion of Carroll County?
A. Yes, it does. About 60 percent.
Q. It did before?
A. Yes.
Q. And even before Representative Halford decided not to run again, your representative could have come from Carroll County, just as easily?
A. The requirement is to live in the district. So, sure.
Q. So in terms of access and familiarity, that's always a risk, isn't it, when you have a multicounty district?
In other words, the candidate may not be from

your home county?
A. Especially now.
Q. Do you -- you referred to the fact that you felt disenfranchised by the fact that the representative, Brock Martin, is not from Gibson County and that Representative Hurt is not from the other half of Gibson County.
But you did vote in the last election; correct?
A. I did.
Q. Nothing prevented you from that?
A. Correct.
Q. So in a county -- or in a district that has multiple parts, multiple county constituents in a district, there's always the risk that the candidate elected is not going to be from your home county, isn't that correct?
A. Yes.
Q. Okay. Could it be that having two separate representatives who are representing Gibson County within their districts, that they could work together and have greater influence than a single representative, in promoting the interest of Gibson County?
A. I don't know.
Q. Okay. So, clearly, Mr. Wygant, your

preference is that Gibson County remain intact, is that it would have remained intact in the last redistricting?

A. Yeah. It certainly is an animating issue for me and for my party in Gibson County. It's defined by the county.

So in terms of my representation of about 8,000 democrats in Gibson County, the answer is they want their county -- their representative to represent the whole county.

For me, in terms of the broader issue, personally, I find this offensive and damaging to the credibility of my state, that this process, which could be done, handled by local county commissioners, couldn't be handled in the same open and equitable way by elected representatives in the state house.

Q. Have you done any investigation into the processes and the opportunities for public comment in this redistricting process?

A. In the one that just happened --

Q. Yes.

A. -- in January? No.

Q. Okay. So why do you assert, then, that there's a lack of transparency, if you have not looked into that?

A. There's -- well, I take exception to my --

the characterization that I took no interest. I asked my representative, and he couldn't help me. Who else should I ask? You ask the guy who's representing you now, "What am I supposed to do?"

And he says, "Sorry. It's behind closed doors, and I'm not a part of it, and I can't help you."

Q. Okay. So that's based -- your assertion is based upon that conversation that you had with Representative Halford, saying, "It's already done"?

A. And, also, other conversations anecdotally by others with the same --

Q. I'm not going to ask you about those.

A. Okay.

Q. Now, Mr. Wygant, you said that in your capacity as the democratic chair in Gibson County, that you -- I think you said you represented about 8,000 democrats that were voting in that area; is that correct?

A. That's our best count, yes.

Q. Is your opposition to this redistricting map for the House -- redistricting map for the House, is it -- does it come from a political perspective?

A. I think one of the things you have to know about Gibson County is we have 30,000, and we have about 8,000 democrats. This division doesn't change the distribution in a way that would influence an election

within the county.
Q. So it doesn't affect the --
A. Not in terms of within the county.
Q. Okay. So you discussed, Mr. Wygant, your feelings about Gibson County being a tight-knit community and that they had some common interests in dealing with the challenges of growth in the future?
A. Yes.
Q. Okay. So core preservation of Gibson County is important to you, isn't it?
A. I need a definition of "core preservation."
Q. Okay. So -- well, is it important to you, that in redistricting house -- your house district, 79, that it be kept substantially the same as it was before the 2022 redistricting process?
A. Yeah.
So I think I can speak for myself and for others in Gibson County who resist changes; right? I'd always like to say things stay the same. But I accept that change does happen. And that within the confines of the redistricting rules that I observed at the county level, that there are choices that are made.
Q. Would you agree that the legislature should afford weight to keeping the district as close as possible as to -- as the previous version of the district?

A. Well, as I testified to earlier, constitutionally, it should be every county; right?

But with the mitigations that have happened, it should just be as few times as possible in redistricting, that we have to answer the question about a divided county.

Q. Okay. Mr. Wygant, I'm going to refer you to one of the exhibits that is in your notebook there. And it's the one that would have 105 in it.

A. Okay. I'm going to need help.

Q. I'm going to pass over to you, for ease, if I could, this document. And it shows populations of the split counties.

A. Okay.

MS. HOLLARS: And, Your Honors, this was an exhibit that was agreed upon would be admissible. And it is 105.

CHIEF JUDGE: What's the exhibit number? 105 is the tab; right?

MS. HOLLARS: 105 is the tab.

CHIEF JUDGE: Exhibit 20 is admitted by agreement.

MR. SPRAGENS: So 105, Your Honor, our position is it shouldn't be admitted as just demonstrative evidence. Exhibit 20 is a different matter. If they want

to hand the witness Exhibit 20, no objection.

CHIEF JUDGE: Well, now, 105 would be --

MS. HOLLARS: I'm using it for demonstrative purposes, in any case.

CHIEF JUDGE: Okay. So Exhibit 20 will be marked for identification purposes only until it's offered. And then if it's offered, we'll hear any objection to it.

(Marked Exhibit 20, for identification.)

BY MS. HOLLARS:

Q. The demonstrative is based upon the table, which is Exhibit 20. And we'll mark this for ID.

Mr. Wygant, the copy that I sent over to you is colorful, and it has -- it's titled: Populations of Split Counties.

Correct?

A. It says: 2022 County Population Split Counties.

Q. Okay. So do you know, in -- according to the last census, the 2020 census, do you know what the population -- the average population for our districts in Tennessee should be?

A. Not off the top of my head, no.

Q. Do you -- you know that your county has just surpassed the 50,000-person mark; correct?
A. Yes. Yes.
Q. Okay. So if the number -- population number for districts is 68,900, roughly, would it be correct that none of the counties currently in the 2022 redistricted 79 would have enough population to make up a single district by itself? So I'm asking about Gibson, Carroll, and Henderson.
MR. SPRAGENS: Your Honor, I would just object to -- if she's asking about his personal knowledge, that's fine. If she's asking him to read an exhibit that hasn't been authenticated, I would object to that.
CHIEF JUDGE: I will allow the question, and the witness can answer it, if you will.
BY MS. HOLLARS:
Q. If you can, sir.
A. I am aware, from this document and from internet search, that none of the individual counties -- Carroll, Gibson, or Henderson -- is above the 69,000 number that you posed in the question.
Q. Okay. So if you added any two of those counties together, without splitting them --
A. Yes.
Q. -- wouldn't you exceed the goal redistricting

number?
A. If these numbers are used in the discussion, Gibson and Carroll County would equal 78,000 and some change.
Q. So that would be too great, if we used the 68,900 figure as --
A. It would be more than.
Q. Yes.
So you couldn't simply just add those two counties together without doing some split?
A. If 69,000 was the number, yes.
Q. Do you know if any of the other redistricting plans that were provided to the General Assembly during the redistricting process kept Gibson County intact?
A. I do not know. The process was opaque to me.
Q. Okay. And, Mr. Wygant, you testified that you had no reason to think you wouldn't have similar values and interests to those persons in the additional counties that were added to District 79, didn't you?
A. I'm not sure. Would you pose that once more for me?
Q. So did you testify that you had no reason to think you wouldn't have similar values and interests to the persons from Henderson and Carroll County that were added to District 79?

A. Are you referring to my deposition?
Q. I am.
A. Okay. I may have said that.
Q. Okay. Do you feel the same way today?
A. I'm a little more educated now. I think that we have one very simple interest in common, is that we want to know about the decision and how the decision was made to divide our county. And if we were aware of that, then we might feel better about accepting it.
I've spoken to my counterparts in both of those counties, and their constituents echo that same point of view.
Q. Mr. Wygant, you already told us that you didn't have an opportunity -- or you didn't attend a hearing before the General Assembly; correct?
A. Correct.
Q. And did you submit a map electronically by computer?
A. To whom?
Q. Did you know that there was an opportunity to do that in the redistricting process?
A. I did not.
Q. Okay. So you did not submit a map?
A. I didn't know. I didn't submit.
Q. Did you contact any other legislators about

the redistricting process?
A. I don't recall contacting another legislature.
Q. And do you know how your former representative, Mr. Halford, voted on the enacted plan?
A. I'm trying to remember, but I can't recall.
Q. Did anyone within the democratic party you're familiar with submit a map?
A. Not to my knowledge. I don't know.
Q. Did you contact anyone to submit a map?
A. I called my representative, and I e-mailed her.
Q. Okay. Did you contact anyone within the democratic party to submit a map during that process?
A. No.
Q. And did you -- strike that, please.
MS. HOLLARS: No further questions. Thank you, Mr. Wygant.
THE WITNESS: Thank you.
MR. SPRAGENS: Just a brief redirect, Your Honor.

REDIRECT EXAMINATION
BY MR. SPRAGENS:
Q. Mr. Wygant, you were asked questions about

your opinions about county splits. Do you remember those questions?

A. Yes.

Q. Your opinion about Gibson County's split and other county splits on the map, do you recall those questions?

A. Yes.

Q. Are you an expert on redistricting?

A. No.

Q. Are you an expert on mapmaking for house districts in a state?

A. No.

Q. Do you have any special knowledge of the factors under Tennessee law that should be considered in the redistricting process?

A. I have become more aware through the county redistricting process.

In fact, at the county commission meeting, open meeting that I referred to when the vote was being taken, during the public portion of that, I asked the question about did the commissioners feel and could they agree that the minority-majority rule had been observed, especially with regard to some changes in and around Humboldt, Tennessee.

Q. So you became aware of the majority-minority

rule through your work?
A. Yes.
Q. Nonetheless, do you hold yourself out as an expert on those factors?
A. No. No.
Q. Are you an expert on the target population for house districts in the 2022 redistricting?
A. No.
Q. Have you retained an expert to present testimony in this lawsuit?
A. Our team has an expert, yes.
Q. And do you defer to him about opinions on what county splits were necessary in order to comply with the U.S. Constitution or Federal law?
A. Yes.
Q. You were asked some questions about your legal claim in the complaint. The claim that you filed in the complaint in this case challenged -- did it challenge the constitutionality of the enacted map, or did it challenge the single act of splitting Gibson County?
A. It challenged the constitutional aspect.
Q. So as you sit here today, are you here to urge the Court to undo one act of line drawing in Gibson County, or is it bigger than that?
A. I believe that the map for the State needs to

be redistricted, redrawn.

And I further would assert and ask the Court to assure that it be done in an open and interpretive process that allows for comment and input from the voters.

Q. You testified earlier about a puzzle.

Is it possible to just change one line that was drawn on the map?

A. Yeah.

If only that could be true. No. Each piece of the puzzle changes the entire puzzle to a degree.

Q. You were asked some questions by the State about your access and familiarity with your current representative.

Is he from -- I think you testified he's not from Gibson County; correct?

A. Our current representative, no.

Q. Is he from the county next door?

A. He is. He's about a county over; right?

And I add, he's a nice guy. But, politically, we're quite different. I can say that.

Q. Is he from an adjacent county, or one that's separated from Gibson County?

A. I believe he's adjacent.

Q. And if the Gibson County commission or leadership wants to get a road built that requires some

involvement from the State, who do they need to contact?
A. From Gibson County?
Q. Yes.
A. All right. Well, we would need to make sure we're addressing the representative from both District 82 and District 79.
Q. So that's two representatives?
A. Correct.
Q. If they want to get state funds, if they need to apply for state funds?
A. Indeed. If we're -- if we're trying to pursue a county-wide issue or of interest to our specific county, yes.
Q. If they want to stop a landfill permit that's right there in the middle of the county, who would they contact?
A. Yes.
Q. Both representatives?
A. Yes.
Q. You were asked some questions about it being your preference not to split Gibson County. Do you remember those questions?
A. Yes.
Q. Do you recall if the drafters of the constitution expressed a preference about if counties

should be split?
A. The Tennessee Constitution?
Q. Yes, sir.
A. My understanding is that it asks or requires that counties not be split.
Q. Is it just your preference Gibson County not be split?
A. Well, the Constitution says it shouldn't, but it's also my preference -- personal preference.
MR. SPRAGENS: Thank you. I don't have any further questions at this time.
MS. HOLLARS: Pass the witness.
CHIEF JUDGE: Thank you.
We'll take a lunch break and come back at 1:15 -- I mean, 2:15. I'm sorry.
(Recess taken from 1:10 p.m. to 2:20 p.m.)
CHIEF JUDGE: Next witness.
MR. TIFT: Your Honor, Plaintiffs would call Doug Himes.
And, Alex, do you want to let the Court know how we're going to handle this?
MR. RIEGER: Certainly.
So I believe that Plaintiffs intend to call Mr. Himes as a hostile witness.

I would be, technically, entitled to lead him on my cross. But it would be difficult because the leading questions would be limited in scope -- maybe limited in scope under Rule 611, to what they ask on direct.

So rather than try to divide it up into what can be leading cross-examination, what would be a more traditional direct, we are going to -- we've agreed with -- Plaintiffs and Defendants have agreed that we are going to recall Mr. Himes. So there will be no cross-examination now. We'll, during our proof, call him and do his direct examination without leading questions in the traditional manner.

CHIEF JUDGE: Okay. Thank you. I appreciate that.

DOUG HIMES,

was called as a witness, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TIFT:

Q. Good afternoon, Mr. Himes. Could you take a second just to introduce yourself to the Court.

A. Sure. I'm Doug Himes. I'm the House Ethics

Counsel for the Tennessee House of Representatives.

Q. Okay. And my first question was going to be, what is your current job? You've just described it as the House Ethics Counsel; is that correct?

A. That's correct.

Q. Do you have any other current jobs at this point?

A. I have roles within that job. And I was serving as counsel to that house committee on redistricting.

Q. And what is your -- generally speaking, your job responsibilities as ethics counsel to the House?

A. So it's ethics counsel. I serve as the staff attorney for the House Ethics Committee. I also serve, hopefully, as a resource to members and staff of the House on ethics, campaign finance, statement-of-interest matters.

I'm the liaison with the Bureau of Ethics and Campaign Finance. I work some with the Secretary of State's Office, the Division of Elections, and with the Attorney General's office from time to time on different matters that may pertain to ethics and campaign finance.

I also serve -- in that role, I'm, technically, assigned to the Chief of the Clerk House Office. So I work with the Clerk as the counsel for the

House Clerk, when it comes to rules and parliamentary issues.

Q. Okay. And who is, technically, your employer in that job?

A. I guess, technically, it is the -- the House of Representatives, we have a Speaker of the House.

Q. And I'm aware that you've had a job with the State for a good while. Can you walk us through, just sort of title-wise, what jobs you've held with the State over the years.

A. Sure.

Starting in 1992, I served as an intern to the Tennessee General Assembly. I was assigned to then-State Senator Stephen Cohen from Memphis. It was that senate state local government committee.

After that, I went to graduate school, came back and worked in the Office of Legal Services as a session employee, a nonlawyer drafting resolutions and proclamations honoring different people, mostly.

After law school, I was hired at the end of my law school with the Tennessee Attorney General's Office, and I worked in the criminal justice division about a year, year and a half.

And then I went back to the General Assembly, and I worked in the Office of Legal Services, which is a

nonpartisan joint office that writes bills, staffs committees and resolutions. And I was there until 2018.

And I left to work with the Bureau of Ethics and Campaign Finance as the assistant director under Drew Rawlins. And about 11 months later, I was invited to come back to the House in the current role that I have as House Ethics Counsel.

Q. And so, currently, your job for the General Assembly is your primary source of income; correct?

A. That's correct.

Q. Okay. And during the 2021-2022 redistricting process, you served as the primary mapmaker for the House of Representatives; correct?

A. That's correct.

Q. And you were not involved in drawing the senate map in the 2021-2022 cycle; correct?

A. I was not involved.

Q. Okay. And I want to walk through, generally, the timeline of the 2021-'22 house redistricting process.

Can you let us know when your office received the level of census data that you needed to start your process?

A. So are you talking about the state level redistricting data, that you can actually start crafting?

Q. Yes. Because I recall you received a few

things before that but that you were waiting for something before you could start.

A. It was in August of '21.

Q. Okay. And upon receiving that data and before the first meeting of the House Select Committee on redistricting, you created a sort of first-draft map; correct?

A. Yes. Worked on the concept from the date -- well, not exactly when we received it. But when we received it, the data that was put into a system called Maptitude. And once it gets into that system, it's a little bit easier to work with in creating a concept for redistricting.

So sometime after that, which is probably about a few days after the release to the public and to the State of Tennessee, would have worked on a concept from that point forward.

Q. Okay. And I was going to say, the language that you'd used before was concept maps. So just to go back through that.

Once the data was usable to you in your Maptitude software, you put together a first concept map, and you put that together before the first meeting of the House Select Committee on redistricting; correct?

A. It was a concept, yes. And it was, roughly,

from when it's workable to when that meeting was in September of '21.

Q. Right.

By the time you got to that September 2021 meeting, you did have the concept prepared?

A. Yes, there was a concept.

Q. And then you presented a near final version of what became the enacted house map at the December 17th, 2021, House Select Committee on redistricting; correct?

A. That's correct.

Q. And during those few months, between the concept and the near final version in December, you revised the map or parts of the map to get from that concept to the near final version; correct?

A. Yes. It was continuously worked on from the beginning inception until it passed.

Q. And if we were to go to your Maptitude account today, you would still have multiple different drafts or iterations or subdrafts from that drafting process still saved on your computer; correct?

A. I wouldn't have -- there would be some. But the way that I will work with a concept is once there is a concept, then meeting with the area coordinators for redistricting, and then meeting with the 99 House members.

Typically, I would just work it through and

use that base as the concept. Wouldn't have different -- wouldn't have, like, 100 different saved versions. There might be a few at different snapshots in time.

Q. Sure.

And I said nothing about 100. But at your deposition -- I'm just confirming -- you testified that there would be drafts or subdrafts reflecting that drafting process on your Maptitude still to today?

A. Yes. Everything that was on Maptitude then is there now.

Q. Okay. Let's look at the enacted house map itself. It's in one of these four binders as Exhibit 29. So the binders are labeled for their ranges. So we're looking for the range that includes 29.

Some flipping probably to do. We're looking for Tab 29. Once you get there, if we're all looking at the same thing, it should say, on the top of it: Chapter 598.

Is that what you've got there, Mr. Himes?

A. That's what it says.

Q. All right. Can you let us know what Chapter 598 means in your understanding here?

A. It's the public chapter number for the bill that became law.

MR. TIFT: Okay. And I'd like to go

ahead and admit this Exhibit 29 -- which we understand has no objection -- as an exhibit.

MR. RIEGER: No objection.

CHIEF JUDGE: Exhibit 29 is admitted, without objection.

(Marked Exhibit 29.)

BY MR. TIFT:

Q. And I want to talk about some terminology briefly.

So you just said Public Chapter 598 was the public chapter that enacted the -- this map that we're looking at; correct?

A. Can you repeat that? I'm sorry.

Q. Yeah.

Just confirming, Public Chapter 598 was the public chapter number for the enacted house map; correct?

A. That's correct.

Q. And it's accurate to also say that that map is reflected now in statute at TCA 3-1-103; correct?

A. That's correct.

Q. Okay. And you agree that the enacted house map that we're looking at splits 30 counties?

And what I mean by that is, there's 30 times where a portion of one county is prepared with one or more other counties to form a district; correct?

A. There are 30 splits in Chapter 598. I don't -- I can't say that I can see what some of these districts are because they're the same color. But I'm assuming it's the plan.

Q. And you're quite familiar with the enacted house map; correct?

A. I am.

Q. And you know, regardless of how the picture looks, that the enacted house map has 30 county splits in it; correct?

A. The enacted -- Chapter 598 has 30 county splits.

Q. Okay. And I keep using a shorthand we've used often throughout this. I keep saying "enacted house map." And can we agree that when I say that, I'm referring to Public Chapter 598 and/or, now, TCA 3-1-103?

A. Yes.

Q. Okay. I'm going to ask you a couple questions that I fully expect are objected to for privilege. I'm saying that because I don't want to seem like I'm tricking you into trying to answer. Okay? So don't jump in with an answer.

But during your months of drafting for the 2021-2022 redistricting cycle, did you ever try to create a house map with fewer than 30 county-splitting districts?

MR. RIEGER: Objection, to the extent that calls for attorney-client privilege or work-client privilege. The Court has already ruled on that in the order governing the motion to compel.

CHIEF JUDGE: All right.

MR. TIFT: And we agree with that being the ruling. And we'll need to establish the record on some of these questions.

CHIEF JUDGE: We'll just stand by our prior ruling.

Go ahead.

BY MR. TIFT:

Q. And so during these months of drafting, did you ever actually create any house maps with fewer than 30 county-splitting districts?

MR. RIEGER: Objection, to the extent that it goes into attorney-client privilege or work-product privilege. That has already been covered by this Court's order on the motion to compel.

MR. TIFT: And to avoid belaboring with more questions, do we correctly understand that the State takes the position that all of the private nonpublic drafting process that Mr. Himes did is subject to the privilege?

MR. RIEGER: Yes.

CHIEF JUDGE: Thank you. So noted for the record.

MR. TIFT: And I guess I would also say, confirm you're instructing the witness not to answer based on the privileges; correct?

MR. RIEGER: I am.

CHIEF JUDGE: Thank you.

BY MR. TIFT:

Q. All right. Looking at the enacted house map, do you agree that it has a total population variance of 9.90 percent; correct?

A. That's correct. It's 9.90.

Q. And can you explain for us what a total population variance means?

A. Overall variance or total variance is going to be your highest and lowest in deviation. What district is the lowest percentage from the ideal, which was 69,806 was the ideal for a house district. And then, also, the highest-populated districts. Expressed as a percentage, added together, gets you the 9.90.

On the high end, was 5.09. Those were districts in Montgomery County. It was kept whole, and there were three districts. On the low end, there were two districts that composed the areas of Dickson, Cheatham, Hickman, and Lewis, and those were both the

negative 4.81. Added together is the overall deviation of 9.90 percent.

Q. Okay. And so you agree that the metric of total deviation doesn't reflect the population variance of the other -- I guess, in this case, 96 or -7 districts; correct?

A. If you would repeat that. Sorry.

Q. Yes.

You agree total population is reflecting the top variance and the bottom variance and really doesn't tell you anything about the other districts in between population-wise, except that they're within that range?

A. I would agree that the 9.90 is the expression of the top, the bottom, everything else falls in between that.

Q. Okay. And you don't have to say this. But can you walk us through both what the ideal population for a district was under this map and what that means?

A. Sure.

So I mentioned the ideal population for the map is -- for each house district is 69,806. And, essentially, that's taking the State's population -- which I'm sure is in here somewhere, and I don't know it off the top of my head -- based on the 2020 census, and dividing it by 99, and that gets you to the 69,806.

BY MR. TIFT:

Q. And just to link that up, as you said -- if you could turn -- it's going to be a different binder, unfortunately. You're going to be turning to Exhibit 99.

Do you recognize this presentation that you put together?

A. Yes.

MR. TIFT: Okay. And at your deposition, you testified this was a presentation you presented to the House Select Committee on redistricting on September 8th, 2021.

And we'd move that this go ahead and be admitted as an exhibit. And the parties had agreed there's no objection.

CHIEF JUDGE: What exhibit number?

MR. TIFT: This is 99.

MR. RIEGER: No objection.

CHIEF JUDGE: Exhibit 99 is admitted, without objection.

(Marked Exhibit 99.)

BY MR. TIFT:

Q. If you turn -- the pages aren't numbered. But if you turn to, approximately, the 13th. I think it's going to give us the data that -- numbers-wise that you were referring to, so we can close up the question of how

we got to the ideal population.

So you found that page that has our aggregate population numbers?

A. Are you looking -- there's two pages that have the information on it. Are you looking at the Tennessee growth through the decades or the 2020 population?

Q. Right.

I'm looking at the one that's general redistricting population information, ideal population, TN 2020 population.

Are we on the same page?

A. Yes, we are.

Q. Okay. So could you walk the Court through both -- using the actual numbers here, how we got to the -- or how you get to the ideal population for a house district.

A. So this was part of the presentation. It's just the 2020 population of Tennessee, as reported by the census. The resident population of 6,910,840. If you divide that by 99, the end result is 69,806.

Q. Okay. And then in terms of earlier discussing staying within a 10-percent range, does this reflect your calculation of what would be 5 percent more than average and 5 percent less than average?

A. So this reflects a standard 10-percent range, which is not what the house used. But it does reflect a 5-percent up and a 5-percent below.

And as I mentioned, the House did a positive 5.09, and then on the low end did a negative 4.81. So we moved the range a little bit in order to keep the accounting.

Q. Okay. And, again, that total deviation is based on combining sort of the amount between the highest populated and the least populated in those districts, that's going to give you that percent; correct?

A. That's correct.

Q. Okay. Again, fair warning. A couple questions that I expect to be objected to.

During your drafting process, did you try to make any maps with a total population variance lower than 9.90 percent?

MR. RIEGER: Objection, to the extent it goes into work-product or attorney-client privilege. The Court's order on the motion to compel resolves that. And I'll instruct the witness not to answer.

CHIEF JUDGE: Agreed, in terms of our prior ruling. We're not going to change it now.

MR. TIFT: Yes.

BY MR. TIFT:

Q. And then also during your drafting process, did you, in fact, make any maps with a total population variance lower than 9.90 percent?

MR. RIEGER: Same objection, Your Honor.

CHIEF JUDGE: Okay. Noted for the record. Same comments by the counsel and by the panel.

MR. TIFT: Thank you, Your Honor.

BY MR. TIFT:

Q. Now, I'd like to talk about the majority-minority districts in the enacted house map.

You agree there are 13 majority-minority districts in the house -- enacted house map; correct?

A. That's correct.

Q. You also agree that the enacted house map has what you've referred to as two coalition districts; correct?

A. I think I typically use the term "opportunity districts" to describe them. There's two opportunity districts in Davidson County.

Q. Okay. And you agree that when you presented this map to various committees of the legislature that you referred to them as coalition districts; correct?

A. I won't dispute you because I don't recall. I think of them mostly as opportunity districts, but I may

have interchanged that terminology.

Q. Okay. And if the public transcript reflects you saying "coalition," you're not saying you didn't say "coalition district"?

A. I wouldn't -- I don't disagree with that, no.

Q. Okay. So tell us what you mean by either a coalition district or an opportunity district.

A. Well -- so a coalition district or opportunity district -- well, I guess I should backtrack a little bit here because I think I've confused myself.

A coalition district would be a district that would have combined racial or ethnic, you know, voting age population of 50 percent, plus one.

An opportunity district, I think, would be more of a district that has some high percentage of voting age, Hispanic, African-American, Asian. That's enough to be -- to give sort of an influence or opportunity for a racial minority act.

Q. Okay. And I'd now ask you to look to Exhibit 95. It's in the same binder that's in front of you right now. 95.

Okay. And this Exhibit 95 is the transcript of the select committee on redistricting's meeting from December 17th, 2021. I'm asking you to turn to Transcript Page 28.

And you'll see that you start talking, at the very start of Page 27, and continue into Page 28. And at 28, Line 16, you say: This concept creates two coalition districts in Davidson County.

Did I read that correctly?

A. That's correct.

Q. So I want to understand which one it is since our -- we talked about terminology a minute ago.

You agree that the enacted concept map has two coalition districts; correct?

A. Yes. I misspoke and confused myself between the two.

MR. TIFT: Okay. I'd move to admit 95, and understand there's no objection to do so.

MR. RIEGER: There is none.

CHIEF JUDGE: Exhibit 95 is admitted, without objection.

(Marked Exhibit 95.)

BY MR. TIFT:

Q. And when you were calculating what is or is not a majority-minority district for the enacted house map, what metric do you use to determine that?

Tell me what a majority-minority district is to you. What does that mean?

A. Okay. So majority-minority district is

50 percent, plus one voting age of the racial or ethnic minority group in that district.

Q. Okay. And I understand that you have testified that in your work for the House you consider people who identify as only black in this instance, as opposed to people who identify as all or part-black in figuring out that percentage; is that correct?

A. Yes. I think what I described earlier, I think in my depositions, was the House has traditionally used the racial categories of black alone, Asian alone.

And I think I went on to say that that does not mean that using a -- any part-black or any part-Asian is not the right way to do it. But the metric that we've used to look over time has always been a single-race category.

Q. Okay. And you don't dispute that in, you know, federal Voting Rights Act lawsuits, the Courts have looked at all or part-black as well; correct?

A. I agree that the Courts have looked at those issues.

Q. Okay. Another couple questions, just reserving -- recording in the trial record, that may have an objection.

During your drafting process, did you try to make any maps of more than 13 majority-minority districts?

MR. RIEGER: Object, to the extent it goes into attorney-client privilege or work product. This Court's order on the motion to compel resolves that. I would instruct the witness not to answer.

CHIEF JUDGE: So noted.

BY MR. TIFT:

Q. And second question, during the process, did you, in fact, make any maps with more than 13 majority-minority districts?

MR. RIEGER: Same objection.

And, also, I'll throw in relevance as well, since there are no VRA claims in this case.

CHIEF JUDGE: So noted.

MR. TIFT: Right. And then I guess we --

CHIEF JUDGE: There's no need for me to rule on the relevance.

MR. TIFT: Okay.

CHIEF JUDGE: He instructed him not to answer.

MR. TIFT: He's instructed him not to answer. Okay.

BY MR. TIFT:

Q. All right. Now, if we can look -- you need to turn a couple tabs back to Tab 93.

A. I'm there.
Q. Okay. Do you recognize this document? It's a one-pager behind 93.
A. It appears to be the house redistricting guidelines.
Q. Okay. And are you familiar with these guidelines?
A. I am.
MR. TIFT: Okay. I'd like to move to admit Exhibit 93. I understand it's without objection.
MR. RIEGER: No objection.
CHIEF JUDGE: Exhibit 93 is admitted, without objection.
(Marked Exhibit 93.)
BY MR. TIFT:
Q. And you agree, as the primary mapmaker for the house enacted map, you sought to follow these three guidelines; correct?
Sorry. Six. Let me re-ask that.
You agree, as the primary mapmaker, you sought to follow these six guidelines; right?
A. That's correct.
Q. Okay. And you agree the General Assembly has memorialized these guidelines in the statute, TCA 3-1-103, that codifies the actual enacted map; correct?

A. That's correct.

Q. A couple more questions that are going to lead to an objection.

When drafting -- during the drafting process, did you seek to divide as few counties as necessary to comply with the equal protection clauses protections related to minority vote dilution?

MR. RIEGER: Objection, to the extent it goes under work product or attorney-client privilege.

I instruct you not to answer.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. And when -- during the drafting process for the enacted house map, did you seek to divide as few counties as necessary to comply with the Voting Rights Act?

MR. RIEGER: Same objection.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. And during the drafting process, did you seek to divide as few counties as necessary to comply with the federal courts one-person, one-vote doctrine?

MR. RIEGER: Same objection and instruction.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. All right. We're going to look to the next exhibit. This is 93 -- sorry. 94.

And 94 is the transcript of the September 8th, 2021, meeting of the House Select Committee on redistricting.

You took part in that meeting; correct?

A. That's correct.

MR. TIFT: I'd move to admit Exhibit 94, which I understand is without objection.

MR. RIEGER: No objection.

CHIEF JUDGE: Admitted, without objection.

(Marked Exhibit 94.)

BY MR. TIFT:

Q. And let's turn to Page 15 of the transcript.

All right. We actually have to go back quite a few pages for you to see that you're the one that's talking. This section begins on Page 6 of the transcript. You'll see your name on Line 4. And then feel free to flip through. It appears that you continue being the speaker all the way through to Page 15.

Do you recognize that?

A. I do.

Q. Okay. On Page 15, Line 2, you state -- and I

read, let me know if I get this wrong: No more than 30 counties may be split to attach to other counties or parts of counties to form multicounty districts. So Article 2, Section 5 of the Tennessee Constitution tells us, "Hey, House of Representatives, don't split any counties." The one-person, one-vote standard says, "Well, you've got to have your districts substantially equal in population." And those two things, they conflict. One is federal. One is our State Constitution. In 1983, this issue came up in front of the State Supreme Court in the case Lockert v. Crowell. And the Supreme Court, in its wisdom, said, "All right, House. In order for you to comply with one-person, one-vote, we know you're going to have to split counties. But we're going to put that limit at 30. You're not going to split more than 30, and you're not going to split, at the time, the four urban counties but for two reasons. So you're limited to 30. The four urbans would count if you would split them for these reasons."

Did I read that correctly?

A. Yes.

Q. All right. And you agree, during this passage, you did not inform the members of the subcommittee about their obligation to cross as few county lines as necessary to comply with federal constitution requirements; correct?

A. I agree. I mean, what I said is what I said. So . . .

Q. Right.

And you can't point me to anywhere in this transcript, where you informed the committee that they needed to attempt to divide as few counties as possible to comply with federal constitution requirements; correct?

A. I think what I've said is here.

Q. Okay. And then we'll go back -- we've already looked at and admitted Exhibit 99. That's the written presentation that I assume was probably on the screen or something that accompanied your remarks. That's Exhibit 99, if you'll turn back to it.

And on the 16th page here -- again, I'm sorry they're not numbered, but the original wasn't numbered.

You put up the six house redistricting guidelines that we had looked at in a separate exhibit before. It says: House redistricting guidelines.

And it has six bullets.

A. Yes.

Q. And the fifth bullet -- let me know if I read it correctly -- says: No more than 30 counties may be split to attach to other counties or parts of counties to form multicounty districts.

Did I read that correctly?

A. That's correct. And that's the language in 3-1-103.

Q. Okay. And -- yeah. So that -- so this language comes directly from the six enumerated factors in TCA 3-1-103; correct?

A. I believe it's pretty much verbatim.

Q. And you agree that this fifth bullet does not say that the General Assembly should divide counties only as necessary to comply with federal and constitutional requirements; correct?

A. I would -- I think the bullet says no more than 30 counties may be split to attach to other counties or parts of counties for multicounty districts.

MR. TIFT: Okay. Let's turn now to Exhibit 95.

Exhibit 95 is the transcript of the December 17th, 2012 [sic], hearing of the House Select Committee on redistricting.

I'm sorry to say my housekeeping is already off here. I think we may have already admitted it. But if not, I'd move to admit it without objection.

MR. RIEGER: There's no objection, but I think it was admitted.

MR. TIFT: Okay.

BY MR. TIFT:

Q. And, Mr. Himes, you participated in this meeting of the select committee; correct?
A. I did.
Q. I want to direct you to Page 46 of the transcript.
Have you found Page 46?
A. I believe I have, yes.
Q. Okay. And starting at Line 21, these are words stated by Representative Karen V. Camper.
Do you see where I am?
A. Yes.
Q. And I believe we refer to Representative Camper as Leader Camper; correct?
A. That's correct.
Q. Okay. So Representative Camper states, on Line 21, to you: I think I understand what you're saying. This map creates a situation where we have a 30-county split. Is that what you said in your presentation? And you also mentioned earlier, if I'm not mistaken, that the Supreme Court decision felt it best to not split, if possible. If at all possible, the least amount making sure that there's equal representation, that we would not go to that 30-number limit. But, in this case, we actually did. And so could you talk about the rationale for, you know, 23-county split versus, like in our plan,

it's 23. And we still gave equal representation. We met within Lockert's decisions and all the things that the Constitution requires. Why would we go to the 30-county split, if we could have did less than that?

And then Representative Johnson recognizes you. And you respond: Thank you, Mr. Speaker. Leader Camper, I -- you know, Lockert gives you an upper limit of 30. And it's something that -- since we have the Lockert decision, it's something that we placed in the Tennessee code as one of our criteria. And it's consistently adopted as one of our criteria that our limit is 30. While it is true that you can sometimes draft plans with fewer county splits, you have the discretion to get to that limit, and that becomes a policy decision that you-all -- that you make. I -- to say -- I mean, I would suggest that if you -- if you kept it in the plan that was presented earlier, if you kept Shelby whole, you wouldn't just split 23. You would have more splits. And I think what Lockert says, keep the urban counties whole. So 23 is -- I think is -- is a great number, but I don't know that it's a number that you get to, but for splitting Shelby County.

Did I read that correctly?

A. I think, essentially, yes.

Q. Yeah. I think I stumbled once or twice.

But you agree that, in this hearing, you, in response to Leader Camper's question, you stated that -- whether or not to divide fewer than 30 counties is a policy decision for the members to make; correct?

A. I think, yes, I said -- I said while it is true that you can sometimes draft plans with fewer county splits, you have the discretion to get to that, to do that, and that becomes a policy decision that you-all -- that you make.

Q. Okay. And you agree that you did not inform Leader Camper or the rest of the body at this time that Lockert required them to divide as few counties as necessary to comply with federal constitutional requirements; correct?

A. That's not -- yeah. That's not included here.

Q. And now let's turn to Exhibit 96.

Exhibit 96 is the transcript of the hearing of the January 18th, 2022, hearing of the house state government committee.

Have you found that tab?

A. (Witness nods head.)

MR. TIFT: I'd like to move, at this point, to admit Exhibit 96. My understanding is that it's without objection.

MR. RIEGER: It is without objection.

CHIEF JUDGE: Admitted, without objection.

(Marked Exhibit 96.)

BY MR. TIFT:

Q. And you recall participating in this committee hearing as well; correct?

A. I do.

Q. And if we turn to Page 25 of the transcript. On Page 25, the bottom part of the page -- on 25, at the bottom of the page, Representative Bill Beck is speaking.

And he states, starting at Line 23: And were there any -- there were other plans produced that split less counties. I believe 23 or 24. Is there -- is there a reason we didn't strive in this plan to split less counties?

Vice Chairman Aldridge recognizes you. And you respond: Representative Beck, I think you know, under the Lockert decision, the maximum that that Court, the Tennessee Supreme Court, suggested that we split is 30. And this plan does split 30. And when you go east to -- we started in some ways going east. We had some -- there was population issues coming out of the northeast corner. And you start splitting counties that you don't have any choice but to split. Could you split -- well, yeah,

fewer? Possibly. And I think that becomes a policy decision about those. But you're always going to split more counties. Probably closer to 26, 25, 27, 28. And then we have the discretion to split counties, although we try not to. This one splits 30.

You agree here that you, again, are stating that it's a policy decision whether or not to split fewer than 30 counties; correct?

A. I think what I've said is there, yes.

Q. Okay. And you agree, in response to Representative Beck's question, you did not inform him or the body that Lockert requires the General Assembly to divide counties only as necessary to comply with the federal constitutional requirements; correct?

A. What I've said is here.

Q. Okay. And you agree that's not what you said there; correct?

A. It's not said there.

Q. Okay. In all three of these hearings, based on your memory of these hearings, you're not aware of any point where you informed the bodies you were speaking to of an obligation to divide as few counties as necessary to comply with federal constitutional requirements; correct?

A. I don't think it would have been those words.

Q. Okay. And you would agree that the words are

recorded for any person to review, including the Court; correct?

A. In here, yes.

Q. And so in the transcript sections that we've reviewed, you agree that you did not inform the bodies of an obligation to cross as few county lines as necessary to comply with federal law; correct?

A. What we reviewed, I informed them of the TCA code provision, which is part of our guidelines.

Q. And you don't have any memory from these hearings of saying that the body actually had to divide only as many as necessary to comply with federal law; correct?

A. I don't have a memory of saying exactly what you're suggesting that I may or may not have said.

Q. Okay. And then when you were questioned about dividing fewer than 30 on two separate hearings, you informed the body that it was a policy decision, up to their discretion, whether to divide fewer than 30; correct?

A. And that's based on the plans that were in front of them at the time.

Q. Okay. And that wasn't my question.

My question was, you agree that that's what you informed them when they asked you if you should be

dividing fewer?

A. I agree that's what I said. But that's the context of those statements.

Q. Okay. And you're unable to testify today about what you actually did as the map drawer; correct -- as we've heard from the objections?

MR. RIEGER: Maintain the objection.

You can probably answer that with a "yes" or "no," but you can't go further than that.

THE WITNESS: So there's that concept that was developed, and then that worked into the final plan.

BY MR. TIFT:

Q. Right.

In all those concepts and drafting process, you're not permitted to tell me about today here; correct -- under the privilege that's been asserted?

A. I guess you have the concept was -- you-all have the original concept that made this plan.

Q. You mean we have the -- what you describe as the near final enacted plan that was debuted at the December 2021 meeting of the House Select Committee; correct?

But we do not have Doug Himes's concept map from September, the first map that you drew, that's been

held back under the attorney-client privilege; correct -- and the work-product privilege?

A. I don't know the answer to that.

MR. TIFT: Okay. And just to confirm with Alex, any maps beyond those presented publicly have been withheld due to a sustained privilege; correct?

MR. RIEGER: That is correct.

MR. TIFT: Okay.

BY MR. TIFT:

Q. Now, let's . . .

Do you recall, during the redistricting process, through Representative Freeman, the house democratic caucus presented a concept map. And you worked with -- you pointed out some issues to them, and they presented a second version of it. Do you recall that?

A. I do.

Q. Okay. And I'd ask you to turn to page -- to Tab 15. We're going to have to switch binders now. We're jumping back to one of the first binders. Tab 15.

It's a fairly large document that I'm just using for one page of it. If you'll turn to the next-to-last page.

Well, first, I'll say, this was your affidavit, which you signed at the early phase of this litigation, March 22nd, 2022. That's on Page 15, your

signature.

You remember creating and submitting this affidavit; correct?

A. I do.

Q. And if we turn to the next-to-last page, you'll agree that the next-to-last page, which is labeled Himes 6, is your analysis of that democratic caucus house concept presented by Representative Freeman; correct?

We're looking at the next-to-last page, which has an exhibit, Himes 6, on the top corner. That's your analysis of the revised democratic house caucus concept; correct?

A. Yes. I think this would be the plan that was offered on -- at the December meeting.

Q. Okay. And I'm just going to go through your analysis.

You agree that this proposal had a 9.72 overall deviation; correct?

A. That's correct.

Q. And this concept split 23 counties; correct?

A. Yes, but.

Q. Had 23 counties split. So I know you've got a "but."

But it did split 23 counties; correct?

A. Yes, but.

Q. Okay. And we'll get back to -- I'll call that an asterisk.

You agree that this plan was contiguous, that's what the "yes" means; correct?

A. That's correct.

Q. There were not any unassigned areas; correct?

A. That's correct as well.

Q. And your asterisk, which is in the form of a Footnote 1, points out that one of the splits that is in those 23 is a split involving Shelby County; correct?

A. Oh, sorry. The -- I was looking at the incumbents.

But, yes. The asterisk with county splits, yes.

Q. Right.

And that's the -- what you referred to as your "but" just a second ago; right?

A. Yes.

Q. Okay. So you would agree this map had 23 splits and that one of those splits is a split involving Shelby County.

A. That's correct.

MR. TIFT: I'd like to admit that Exhibit 15, which I understand is without objection.

MR. RIEGER: No objection.

CHIEF JUDGE: 15 is admitted, without objection.

(Marked Exhibit 15.)

BY MR. TIFT:

Q. I'm going to ask you some questions about your communications with General Assembly members.

During the drafting process, you did communicate with members of the House about redistricting; correct?

A. In general terms, yes. I met with all 99 at some point during the process.

Q. Right.

And, to be clear, I'm not currently asking for the content of those, but their existence.

And before you created your initial concept map, you heard from some house members, and you worked to incorporate their priorities into the concept map, if possible; correct?

A. Before the initial concept?

Q. Right.

Before you drafted your initial concept map in, roughly, September, you had heard from some members and you did your best, as possible, to incorporate their priorities?

MR. RIEGER: I'm going to object, just

in case that treads on work product or attorney-client privilege.

If there's a way to answer it without going into it, please do.

THE WITNESS: So, I guess, generally speaking, would have received probably some direction, I think, when the census information came out. There was the dramatic change in population.

So I would have had some direction. And it would force, basically, a three-seat shift of the house districts towards Middle Tennessee because of the loss of population in the Upper Cumberland Plateau, West Tennessee, primarily.

But it forced a shift of seats. So I would have received some direction on where those contractions may occur, where the districts would no longer be in their original areas, but move to Middle Tennessee, where to move the seats from.

BY MR. TIFT:

Q. Mr. Himes, your deposition transcript from September of last year is included under Exhibit 4 in the binders. Can you take a look at that?

So Tab 4. It is your deposition from September 9th, 2022. I'd like to direct you to Page 44.

Page 44 and Tab 4 is your deposition. And

the question at the bottom of the page, I ask: In coming up with what you call the concept map, which you said happened at some point in September, to come up with that, did you incorporate priorities from house leadership?

And your answer was: My sense is I would have. I would have had some direction, I believe, on where the districts that needed to move to Tennessee would be from.

So you agree that you did incorporate input from members in coming up with your concept map; correct?

A. I think that's what I just said now.

Q. Okay. Great.

So you incorporated feedback to make your concept map from members?

A. I said -- what I said here is I had a sense that I believe I would have had some direction about where that three-seat shift would have come from. And I believe that's what it says -- I think that's what I said, and that's what it says here.

Q. And you also got direction from Speaker Sexton staff; correct?

MR. RIEGER: I believe, again -- again, I'll assert privilege for attorney-client work product as to content.

So generalities only, please.

BY MR. TIFT:
Q. I'm not asking about content. I'm asking you to confirm your deposition testimony, that you received input from Speaker Sexton's staff to inform your drafting process.
A. I believe that's what it says here, that in a general way, I mean, I would have -- suspect have talked to some of his staff.
Q. Throughout the drafting process in '21 and 2022, the redistricting process, you met with or communicated with house members and tried to incorporate their priorities, if possible; right?
A. That is correct.
Q. And that included with -- e-mails between counsel members, between General Assembly members and yourself; correct?
A. Probably very rarely did I receive e-mails.
Q. But you did receive some e-mails from members about redistricting; correct?
A. I suspect I did.
Q. Yes.
Now, I'm going to ask you about content and expect an objection that's already been sustained.
But did you -- did any General Assembly members ever ask you to ensure the house redistricting

plan that you were working on crossed as few county lines as necessary to comply with federal constitutional requirements?

MR. RIEGER: Objection. Work product and attorney-client privilege. It's already been resolved by the order on the motion to compel. And instruction not to answer.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. And did any General Assembly member ever ask you to divide a specific county or counties in the map that became the enacted house map?

MR. RIEGER: Same objection and instruction.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. Did any General Assembly members ever ask you to keep a specific county undivided?

MR. RIEGER: Same objection and instruction.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. Did any General Assembly member ever ask you to divide a county that you had not divided in a previous map during the redistricting drafting process?

MR. RIEGER: Same objection and instruction.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. Did any General Assembly member ever ask you to put a county back together, that you had divided in the previous drafting of the redistricting map?

MR. RIEGER: Same objection and instruction.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. Did any General Assembly member ever ask you to divide a county for a reason, other than a federal constitutional requirement?

MR. RIEGER: Same objection and instruction.

CHIEF JUDGE: Noted.

BY MR. TIFT:

Q. Did any General Assembly member ever ask you to divide a county for a reason, other than federal constitutional requirements or the Voting Rights Act?

MR. RIEGER: Same objection and instruction.

BY MR. TIFT:

Q. And did you ever inform a member of the

General Assembly that the redistricting map for the '21-2022 redistricting process should cross as few county lines as is necessary to comply with federal constitutional requirements?

MR. RIEGER: Same objection and instruction, except for the transcripts that have already been admitted into evidence of legislative history.

CHIEF JUDGE: Noted.

MR. TIFT: And so just to confirm and understand, the State's objection and instruction not to testify concerns any communications about redistricting between Mr. Himes and members of the General Assembly or their staff?

MR. RIEGER: Apart from those that form the legislative history in this case that's already been admitted into evidence.

CHIEF JUDGE: Objection and instruction noted.

BY MR. TIFT:

Q. Mr. Himes, you agree, in your opinion, if you're -- you know, having done maps for the last few decades in the State, you believe that the enacted house map complies with the Voting Rights Act; correct?

A. I believe it does.

Q. And in your role as the mapmaker, do you have

opinion about whether you could have created fewer county divides and still had a constitutional map?

A. I think -- as we've discussed earlier in the deposition, I think it's theoretically possible. That doesn't preclude both or all from being constitutional.

MR. TIFT: If I could take a brief minute to consult.

CHIEF JUDGE: Yes, sir.

MR. TIFT: No further questions for the witness. And as we've discussed before, the State will call him in their affirmative case and will address all questions to him at that time.

CHIEF JUDGE: Thank you, sir.

MR. RIEGER: Mr. Himes, the rule is still in effect. So we'll need you to leave, please, and we'll let you know when we recall you tomorrow. Thank you.

MR. TIFT: Would Your Honor be opposed to a short break for reorganizing of the documents for the next witness?

CHIEF JUDGE: We'll take a break.

(Recess taken from 3:16 p.m. to 3:26 p.m.)

MR. TIFT: Your Honor, the plaintiffs call their expert witness, Jonathan Cervas.

MR. SWATLEY: Your Honor, we would object to calling Mr. Cervas on the same grounds as covered in our motion in limine and our motion to disqualify. We realize the Court's ruling on it. We just wanted to preserve the objection.

CHIEF JUDGE: Duly noted. Thank you.

MR. SWATLEY: Thank you, Your Honor.

(Witness is sworn in.)

MR. TIFT: And before Dr. Cervas starts testifying, I thought we could go ahead and put on the record admitting the five documents that he created. I can go through them one at a time.

Exhibit 7 is his October 10th, 2022, expert report concerning the senate, which we'd ask it be admitted, without objection.

MR. SWATLEY: No objection --

Subject to the objection. I apologize, Your Honor.

CHIEF JUDGE: Subject to the objection about his ability to testify and related issues that have been raised previously by motion.

(Marked Exhibit 7.)

MR. TIFT: And then Plaintiffs next move to admit Exhibit 8, which is Dr. Cervas's, also, October 10th, 2022, report, this one on the house claim.

MR. SWATLEY: Subject to the same objection.

CHIEF JUDGE: Admitted, subject to the objections.

(Marked Exhibit 8.)

MR. TIFT: All right. Plaintiffs also move to admit Exhibit 9, which is Dr. Cervas's December 2nd, 2022, rebuttal report.

MR. SWATLEY: Subject to the same objection, Your Honor.

CHIEF JUDGE: Admitted. Objection is preserved.

(Marked Exhibit 9.)

MR. TIFT: Plaintiffs also move to admit Exhibit 10, which is Dr. Cervas's January 9th, 2023, supplemental report.

MR. SWATLEY: Same objection.

CHIEF JUDGE: Admitted. The objection is preserved.

(Marked Exhibit 10.)

MR. SWATLEY: To clarify on this. And the additional objection related to the timeliness of the supplemental report.

CHIEF JUDGE: Thank you. Noted for the record.

MR. TIFT: And, finally, Plaintiffs move to admit, at this time, Exhibit 85, which is Dr. Cervas's report from the temporary injunction phase.

MR. SWATLEY: Subject to the same objection regarding his testimony.

CHIEF JUDGE: Thank you. Admitted into evidence. Objection is noted.

(Marked Exhibit 85.)

JONATHAN CERVAS,

was called as a witness, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TIFT:

Q. Okay. Dr. Cervas, good afternoon. Could you introduce yourself to the Court.

A. Sure.

My name is Jonathan Cervas. I am Plaintiffs' expert witness, and I am from Pittsburgh, Pennsylvania.

And I will continue my introduction.

Q. Dr. Cervas, I want to go through your educational background. And to assist everyone listening, and perhaps yourself as well, your CV has been submitted, attached to several of your reports, but among others,

Exhibit 7 is your report on the senate. And the back side of it, the last few pages of it, includes your curriculum vitae.

So once you're there, could you walk us through your educational background.

A. Sure.

I received my bachelor's degree in political science from the University of Nevada, Las Vegas, in 2007.

I went to the graduate school at the University of California Irvine, where I earned my master's degree and my PhD. The PhD, I received in 2020 -- August of 2020.

Q. All right. And I would ask you to go through your current employment -- both your current employment -- well, your current employer first. Sorry.

A. I'm currently employed at Carnegie Mellon University in Pittsburgh, as I mentioned. There, I'm a post-doctoral fellow, where I teach classes in the institute of politics and strategy. And currently teaching two classes, including one that I had to postpone for tomorrow to be here.

Q. All right. And then I understand that you have been involved in several different redistricting matters in recent years. I was wondering if you could walk through these one at a time. First, I'd like to

understand your role related to the recent redistricting in New York State.

A. Sure.

I was appointed as -- by the New York Supreme Court as special master. The Court appointed me to -- originally, contingent to the final outcome of the case, to draw remedial statewide maps for both the U.S. congressional districts in New York and the state senate districts in New York.

The Court of Appeals subsequently upheld the lower court's ruling and changed my role from contingent to being the person who actually was in charge of drawing those maps. And, eventually, come late May of 2022, I delivered those maps, and they were in use for the 2022 elections, both the congressional maps and the state senate maps.

Q. And, to be clear, who did you work for in that role?

A. I was appointed by the New York Supreme Court under the supervision of the justice of that Court.

Q. And working as special master in that case, I'm not sure you said which statewide maps you were working on.

A. Oh, I did. I'll repeat and say that it was the U.S. congressional -- 26-district U.S. congressional

map, and also the state senate map, which consists of 63 districts statewide.

Q. Okay. And did you have any people, employees assisting you in that role?

A. I did. I asked the Court if it would be okay if I had a small staff to help me with the task because redistricting can be quite complex.

And I had my mentor, who is my PhD advisor, Bernard Grofman, was on my team. I also hired one of his undergraduate students, Zach Griggy, who has worked with me in other capacities and has worked with Dr. Grofman in his capacity as special master on other engagements.

Additionally, I had on my staff somebody who was about to graduate from New York Law School. She actually graduated law school while we were in the middle of our project. And I had a friend of mine who I've worked with in other capacities on redistricting who is from the state of New York, with knowledge of their communities of interest, Jason Fearman, who also assisted.

So it was the team of the five of us who worked on that project.

Q. Okay. And among your staff, who bore the ultimate responsibility for each of the maps submitted to the Court?

A. I was appointed special master, and,

therefore, it was my job to both deliver the maps, and responsible for ensuring that it complied with all state and federal law.

Now, ultimately, the buck stopped with me. I was in charge of the maps.

Q. And did you recommend or submit any maps to the Court that you had not reviewed and approved?

A. No. I approved -- I delivered the map personally after I approved it. And, of course, helped to draw these maps, together with my team.

Q. Next, I would like to understand what role you had in the state of Pennsylvania recently.

A. So this is -- depending on how you define things, I'm still sort of technically appointed to that position. The commission has now ended. We are writing a final report.

In that role, the title I was given was redistricting consultant. And this is a political commission made up of the -- both the chambers of the state legislature, the House and the Senate, the majority and the minority leaders. So there are the four leaders of the state legislature, and one mutual chair, which was appointed by the State Supreme Court.

I was hired as the commission's redistricting consultant and mapmaker. And so in that role, I helped to

devise the two plans that became law and are currently used and were used in the 2022 election, for both the State House of Representatives and the State Senate.

Q. Okay. And you said those maps are currently in place and active in Pennsylvania?

A. That's right.

Q. All right. Did you have any assistance in that role? Or any people working as an assistant to you?

A. Nobody worked for me in that role. I was working for the commission, as their -- almost as if I was their assistant.

Q. And so am I correct, between those two jobs, you were the primary mapmaker responsible for four different statewide maps?

A. That's right.

Q. Can you list for us what those four maps are?

A. So in Pennsylvania, I -- the responsibility of the commission was the State House of Representatives 203-district map, the Pennsylvania State Senate Map with its 50 districts.

In New York, I was in charge of the State Senate map, with 63 districts, and the U.S. congressional districts, 26 districts.

Q. And I understand you've worked three other occasions as the assistant to a special master. Can you

tell the Court about those engagements?

A. Yes.

There were federal court cases decided over the last, I guess now, six years, in which my mentor, Bernard Grofman -- Dr. Bernard Grofman, was appointed as special master by the federal courts. And in those -- in his roles there, he hired me as his assistant because he doesn't have the -- he did not have, at the time, the technical skills to run the software. And so, together, we worked on those maps, the remedial maps.

Q. Which states did those involve?

A. So the very first case was out of Utah. The second case was in Virginia, and the third case was out of Georgia.

Q. And were those all statewide, or were some of them subsets of a state or other political subdivisions?

A. Those were all subsets of states.

Q. And do you recall what subsets they were of the states?

A. Yes.

Well, in Utah, it was a court case titled Navajo Nation. And it was centered around San Juan County, Utah. So it was a county redistricting case.

In Virginia, it was -- this was technically a statewide case. This was a case that went to the U.S.

Supreme Court. Bethune-Hill. And there the district court ruled that 11 of the house of delegate districts had been -- resulted from racial gerrymandering, and they required a redraw of the house of delegates map.

It's a 100-district map, but we only redrew 25 of them in order to narrowly tailor our remedial to the effective districts.

Q. Okay. So that was --

A. And in Georgia, it was a subset. It was a county. Again, a county redistricting school board. It was Sumter County, Georgia. Better known as the home of Jimmy Carter.

Q. So do I understand correctly that you've worked on -- in five different states as special master, assistant to the special master, or in Pennsylvania for the legislative commission on redistricting?

A. Yes, that's right.

Q. And in the three roles where you were assistant to Special Master Grofman, do I understand correctly that you were the one running the mapmaking software to do the actual line drawing, in consultation with Dr. Grofman?

A. Yes. In all three cases, I was the -- you might call me the primary mapmaker, as used before, those words. But, yes, I ran the software.

Q. Okay. And now looking to that CV that's, I believe, still in front of you.

Have you written peer-reviewed articles in recent years?

A. In whatever time I have available to me, I try to work on research.

Q. All right.

A. It would have been updated from this point, but not very much.

Q. Okay. And Page 1 and 2 lists publications. And I'd like to go through those publications briefly to understand which ones touched on redistricting. And as far as I'm concerned, you're welcome to use the numbers, as opposed to reading the whole names of them. But however you'd like to.

Just tell us which ones of these had a -- touched on redistricting.

A. Okay.

So Number 2, Number 4, Number 5, Number 6. I'm going to say Number 7. It's very tangential, but it does. Number 10. And, very slightly, Number 11.

Q. Okay. So you listed one, two, three, four, five of these publications as being about redistricting, and another two being tangentially touching redistricting; correct?

A. (Witness nods head.)
Q. And we won't go through the list. But have you had other in-progress work that touched on redistricting?
A. I have a paper forthcoming at the New Hampshire Law Review, which is about state level -- state courts' effect on partisan gerrymandering.
Q. Have you -- in your teaching capacity, has any of your teaching touched on redistricting?
A. I teach a class in the semester, which is this current semester, called Representation and Voting Rights. And we do about six weeks on redistricting.
MR. TIFT: All right. At this time, I'd like to move to admit Dr. Cervas as a testifying expert, such that under the 700 series of the Rules of Evidence, he's allowed to give opinion testimony concerning redistricting.
MR. SWATLEY: Your Honor, we would object on the same grounds, for our motion to exclude and the motion in limine. We understand the Court has ruled on those.
CHIEF JUDGE: The Court determines that Dr. Cervas is, indeed, an expert in the matters of writing maps and other issues related to redistricting, as per his testimony and his curriculum vitae. And so he will be

allowed to testify as an expert.
BY MR. TIFT:
Q. All right. Dr. Cervas, as you know, as everyone knows here, we have a claim related to the Senate, a claim related to the House. I'd like to talk about the claim related to the Senate first.
And Exhibit 7, which is the one I believe you're already looking at, is your sole report on the senate claim. Do you still have that in front of you?
A. Yes.
Q. Okay. I just want to start off by asking, you know, what were you asked to do concerning the enacted senate map?
A. I was asked to evaluate the enacted 2022 map as to whether the districts that were inside of a county that had multiple districts were sequentially numbered. And then if there was a violation of that constitutional provision, to provide an alternative plan which would remedy that problem.
Q. And did you determine whether the four Davidson County senate districts were, in fact, not numbered consecutively?
A. That's right. They include District 17, 19, 20, and 21. And so, therefore, they are nonsequential.
Q. And have you reached an expert opinion and

conclusion about whether or not Davidson County's four senate districts could have been consecutively numbered?

A. I have. I have created an alternative plan that would remedy this violation of the Constitution.

Q. Okay. I want to step back and ask, first off, what authorities or guidelines you reviewed prior to undertaking your analysis.

A. As I state on Page 2 of my report, I followed the criteria taken from, quote, guidelines for submission of senate or congressional redistricting plans to the senate ad hoc committee on redistricting.

Those include a bulleted list. One to be composed of continuous districts. Continuity --

Q. And since you're reading, I'm just going to encourage you to not read too quickly for the court reporter.

A. Okay. Two, be for the State as a whole. Plans for the Senate must contain 33 districts.

Three, only contain single-member districts.

Four, have a population within 10 percent overall range, expressed as a percentage, from the smallest to the largest district. The ideal population of a senate district is 209,419. The 10-percent overall range is 219,890 to 198,948.

And, five, comply with the Voting Rights Act,

United States Constitution, and the Tennessee Constitution.

Q. And on Number 5 there, based on your experience that we've already discussed, were you familiar with requirements of the Voting Rights Act, U.S. Constitution -- well, I'll stop on those two, Voting Rights Act and U.S. Constitution.

A. Yes. I -- as I mentioned earlier, I've been involved in several federal lawsuits; some of which included the Voting Rights Act. I teach about the Voting Rights Act in my class, and I've taken an election law class, where we went through the Voting Rights Act thoroughly.

Q. And did you do anything to familiarize yourself with the Tennessee Constitution's requirements related to numbering in the Senate?

A. I did. I looked up the provisions in the Tennessee Constitution. If I flip to the next page here, on Page 3, there's two more bullet points. And Bullet Point Number 7 is coming from the Tennessee Constitution. It says: All senate districts numbered are sequenced such that all districts contained in a single county are ordered and skip no numbers.

Q. Okay. All right. And then I sort of interrupted you, going through what authorities or

guidelines you followed.

So what else did you review to determine the parameters of your assignment?

A. I reviewed the enacted map, as I mentioned. Of course, I reviewed the U.S. census data, as delivered in August. That's the 2020 census data, sometimes known as Public Law 94171.

I used that data, combined with the boundary files, provided by the U.S. census.

And that was the entirety of the data that I needed to show that there was a violation of the Constitution in this case.

Q. Okay. And did you review any guidance on the land island situation in the state of Tennessee, and could you help us understand what that means?

A. Right.

Bullet Point Number 6 on that list talks about the fact that there are some noncontiguous parts of counties themselves.

And contiguity, just so we understand what that concept is, is that if you're in, say, a county that you can walk to all parts of the county without ever having to leave the county.

And so there are some instances where there are small geographic areas that exist just beyond on the

border, where you would have to cross into another county.

And for the purposes of Tennessee, in redistricting, those -- all parts of the county are considered contiguous.

Q. All right. Certainly, I'll be referring to the map that you reviewed as the enacted senate map.

And can we agree that when I'm saying "enacted senate map," I'm referring to the map that was enacted in February of 2022, and it's now codified at Tennessee Code 3-1-102?

A. Yes.

Q. Now, how did you approach this assignment?

A. The first part of the task was to determine whether the districts were sequentially numbered.

I simply loaded the enacted plan into the computer, and I looked at all of the counties that had multiple districts and just checked to see whether they were ordered, literally, sequentially; 1, 2, 3, 4 . . . 17, 18, 19, 20. And Davidson Counties were not. It was missing what should have been their District Number 18.

So once I determined that that was the case, I wanted to try to think about as if I were -- had been appointed by a Court, who had determined that this was a constitutional violation. How I would, for a Court, remedy this situation.

And so I redrew the enacted map with as minimal amount of change as possible in order to comply with the state constitution.

Q. Okay. And in doing so -- I'm going to encourage you, whether there's illustrations in the document before all of us, you can direct them to us.

But did you come up with a first iteration of any map that consecutively numbered these four districts?

A. I did. We can find that starting on Page 11. And more particularly, Page 12, under the subheader: Cervas Senate 1 Plan.

Q. All right. So walk us through -- and we're on Page 12, but with the illustration.

Walk us through what Cervas Senate Plan -- what you did to get to Cervas Senate Plan 1.

A. Well, let me sort of talk in broad strokes so that we're not getting too much into the detail.

The way you solve this problem is that all the districts inside of Davidson County must be sequential. So you need to have a District 18.

So District 17, which was not sequential, is the one that needs the change in this circumstance. And District 17 had the parts in Davidson County that were adjacent to two bordering counties. To the north was Wilson County, and to the south was Rutherford County.

And so because there's a requirement -- or the way that the state senate operates is that even-numbered elections are in one two-year cycle, and odd-numbered districts are the next two-year cycle.

We wanted to try to ensure -- I wanted to try to ensure that no incumbent who is in a district that has four years left in the term would be subject to a new district, where their term might be cut short.

And so that required actually changing which way the districts went. And so I eliminated the part of District -- what was District 17, what should be District 18, from Wilson County. And, instead, took it into Rutherford County.

And then that required -- because Rutherford County has two districts, that it also needs to be sequential. And so I changed the district number, the other district in there so that it was odd -- an odd number, so that they would be sequential and nobody would be caused to lose their two-year term.

To do that, I had to take a number from just slightly north. And I have all the details in my report, and I can go through it in more detail.

But the idea is that you simply have to make it so that Davidson County includes a District 18. And you can do it with very, very little disruption of the

entire plan.

Q. And to that point, did this first iteration of your plan alter any of the other three Davidson County districts?

A. It did not. Not one of them.

Q. And did this plan alter the other Rutherford County districts?

A. It did not.

Q. And did this plan keep incumbents in districts that are -- if they were an even district, they stayed even, and if they were an odd district, they stayed odd?

A. I cannot speak affirmatively to that statement because I was not provided information about where incumbents lived, even though I'd asked for that information. So I can't speak definitively on that fact.

Q. Okay. All right. And so you went from Senate Map 1 to a Senate Map 1A. I want to understand what changes you made to get to 1A and what prompted you to make a new plan beyond Senate Plan 1.

A. So Cervas Senate 1A Plan starts on Page 14 of this report. And, again, as I mentioned, there were very limited changes in the first iteration of this plan.

This second iteration is, essentially, the same plan, which is indicated by the fact that it has the

same number.

Here, I wanted to show to the Court that there are tradeoffs in redistricting, so that my very narrow change of the first map caused that the deviation to be quite high in one of the districts.

Now, it was within the 10 percent overall deviation, but it was higher than maybe we would like. And the other district that was in Rutherford County had a deviation that was in the other direction; that is to say one had too few people and one had too many, which meant you can balance those two things together.

And in doing so, you can lower the deviation of both of those districts. So now they both have populations that are closer to mathematical equality.

And so that's all this iteration -- this 1A iteration was, was to balance the two districts in the Rutherford area.

Q. And does this iteration, Concept 1A, as it's labeled, keep the other three Davidson County districts just as the legislature enacted them?

A. My recollection is that there is still no change to Davidson County at all, except for in the numbering.

Q. Okay. And then you proceeded and created Concept Map 1B. Can you explain to us why you created

Concept Map 1B?

MR. SWATLEY: Your Honor, we would object to the mentioning of Senate Plan 1B because the only way that it's in the record was through the hyperlink in his report. That hyperlink is dead. So it's not in the record. It's not with the Court. We don't have a copy.

CHIEF JUDGE: Counsel?

MR. TIFT: Your Honor, that's inaccurate. Everyone in this room with a binder is looking at the report that sets forth his map and his analysis of his map.

And just like in other -- you know, the State never issued any expert interrogatories or request for documents to get an underlying shapefile. And whether or not a link has broken on the publically-available link to see these reports is really irrelevant to the fact that the report -- the map that he created is the map that he created. He summarized it here. It's referenced here. It hasn't changed here.

And, importantly, Defendants chose not to offer any contradictory expert testimony whatsoever on the senate plan. They did not hire any experts to criticize any maps. So this is an uncontested report. It still sets forth the exact map, in visual form, and

analysis in written form.

So it's just not the case that the map is not there anymore. We're looking at the map, and he's walking you through the details of it.

MR. SWATLEY: Your Honor, to the extent he testifies about things like total population deviation, voting age population, anything in that map, what's on the paper and the report, we can't verify.

And, ultimately, the problem is, when you present a map, you have to also present the underlying data pursuant to Tennessee Rules of Evidence 705, if asked.

The problem is, this map cannot be presented in any analyzable form because it's been removed from the record because of a dead hyperlink.

It's true we didn't send an interrogatory. But there was an expert report deadline, and the Court's order does say anything not timely delivered will be struck.

The issue is it's not here to where they can be analyzed right now.

The Court doesn't have a copy of the shapefile or a Block Assignment File. It's been removed from the record in the only analyzable form it was in. So, you know, we don't have the form here, either, in the

record with the Court or the defendants have to verify this particular plan.

CHIEF JUDGE: Counsel?

MR. TIFT: And we'd submit the defendants have certainly waived those concerns, given that they made a choice not to analyze these maps, not to download the shapefiles, which they downloaded for all of the others, which were publically available, not to hire an expert to analyze it, not to criticize them in any way, and not to contest this claim on the merits.

Dr. Cervas's testimony here is, frankly, not necessary, given that they haven't contested the merits. But we understand that it could be useful to the Court, should the Court end up having to do an interim map to have been able to see the feasibility of this claim.

So they made a choice for the last -- go back to October, to not analyze this map, to not dig down and see if the figures that are reflected here that haven't changed are accurate or not, not hired an expert to do so. And so they've waived the chance now to say they want an ability to analyze it.

CHIEF JUDGE: Last remark, and I'll --

MR. SWATLEY: Your Honor, I would just say that this -- his senate maps go towards

redressability. We've already said that any option that Dr. Cervas does places legal peril on the map.

We can't waive standing, no more than redressability is an element of the standings. So it's absolutely relevant here.

But the issue, again, is that the only analyzable form given of this map was through a hyperlink on Dave's Redistricting. It's not on us to prove their case. They're the ones who have to prove their case and put on their proof.

The Court doesn't have this map in an analyzable form. I mean, look, the hyperlink is dead. We can't look at it right now if we wanted to pull it up.

So unless the plaintiffs have changed that in the last week since I've looked at it, it's a dead link. The map isn't in the record in a form that can be analyzed. Because the data underlying the map has to be verifiable and analyzable as well. Otherwise, we're just staring at a piece of paper.

MR. TIFT: I would point out the Court certainly doesn't have to analyze underlying shapefiles. You're weighing testimony based on what's put before you.

And, of course, the Court can hear what has been the same text, summarizing this data for the last five months. And should, on cross-examination, they

convince you that it's uncompelling, that's fine. It won't be -- you know, the other two maps are still in the record.

But there's no reason to exclude him from testifying about what's been in his report for all these months, when the defendants chose to not analyze the data at all and not to object at all here.

And, of course, when Dr. Cervas previously corrected a link that went broken, they made a big point of saying that's spoliation.

So if you want to hear from the witness, he'd be happy to reconnect, you know, the original files, but not going to do so anymore if they, you know, consider that somehow destroying evidence.

CHIEF JUDGE: The Court will overrule the objection. We may be on limited ground here, but you can go forward from that.

BY MR. TIFT:

Q. All right. I was asking you to explain how you got to your Concept 1B or what you were seeking to do, moving from IA to 1B.

A. This is very simple. It doesn't build too much beyond what we already have established here, except for that the -- the Davidson County senate districts are overpopulated, as they are now, in the enacted map.

And because of the fact that we were able -- we were doing some slight configuration changes in the outlying areas of the districts around it, you can actually reduce the population deviation, such that the districts are closer to equal population.

And I wanted to demonstrate for this Court that it could easily be accomplished, given -- it's just an additional thing that can -- it's a benefit to voters in these areas, to have more equal representation.

The spirit of Reynolds versus Sims. You know, one-person, one-vote.

And this just demonstrated a very simple, easy way to do that under this illustrative plan.

And just to clarify, this is not something I'm suggesting we should absolutely do right now, take this plan and put it into place. It's just an illustration of something that can be done. This is something the Court could order or the legislature could do themselves. Or they could choose to create their own map.

The underlying data is almost irrelevant. It's the point that you can reduce the deviations, which is what's important in this particular case -- or this particular map.

Q. And so, Dr. Cervas, having looked at these

examples, I'd like to circle back and understand your expert opinion on whether or not the 2020 U.S. census data applied to Tennessee allows for Davidson County's four senate districts to be consecutively numbered without violating any other constitutional or statutory concern.

A. Yeah. There's no reason, in my opinion, why -- and no justification for districts to not be sequentially numbered in Davidson County.

I don't know what the motivation was to not do it. I've heard earlier today that it has happened in previous decades.

But I read the Constitution as well as anybody else can, and the words are abundantly clear that districts must be sequentially numbered when there are more than one district inside of a county. And they're not.

And I've demonstrated that it's very simple without even changing most of the legislative intent. It can be done, accomplished without violating any federal laws. And, in fact, lowering -- potentially, lowering the population deviations in each of the districts, compliant with Reynolds versus Sims.

Q. All right. I'd like to move on now to the house claim and the work you've done for that.

And I believe we'll start by flipping over to

Exhibit 8, which is your initial -- after the temporary injunction phase, it's your initial expert report on the house claim. Tab 8.

Okay. So, Dr. Cervas, starting off again, like we did with the senate claim, what was your assignment concerning the enacted house map?

A. Yeah.

On the house claim, I was asked by Plaintiffs' counsel if it was possible to create a compliant map, a map that was compliant with all federal and state statutory law that split fewer than 30 counties.

Q. And did you reach an opinion concerning whether or not the 2020 census data, as applied to Tennessee, allowed for fewer county splits in the house map, while still complying with federal constitutional requirements?

A. It's unequivocal that the legislature can create a 99-district plan that splits fewer than 30 counties, including plans that have substantially fewer county splits than 30.

Q. And we'll go through different examples that you have in support of that opinion.

But, you know, just in summary, I mean, how many splits have you been able to create in your various maps?

A. All that data is not in this document. But I'll sort of just say that the range of the county splits in the maps that I've created, the illustrative maps I've created, range from 22 to 25.

Q. Let's start, again, discussing what authorities you reviewed or guidelines you reviewed before starting your process.

A. So upon accepting this task, I looked up the state constitution, of course, because that's what one would do if you want to comply with the state constitution.

Additionally, I searched the internet for redistricting in Tennessee and was able to find an official website from the state government, which I have listed the URL for, and the title, on Page 2 of this report.

It was called the House Select Committee on redistricting. So they have a website, like a portal, where you could go to, and it had all kinds of information, documents, from the hearing that happened from that committee.

And from there, I used that document -- again, that's hyperlinked -- that included a list -- a bullet list of items.

Would you like me to go through the list

or . . .

Q. Sure. Yes.

A. So, here, there are roman numerals. And it's -- so the Point 1 is: Each district must be represented by a single member.

Point 2: Districts shall comply with constitutional requirements for, quote, one-person, one-vote, unquote, as judicially interpreted to apply to state legislative districts.

3: Geographic features, boundaries, and population figures shall be based on the 2020 decennial census.

Point 4: Districts must be contiguous in contiguity. By water is sufficient.

Point 5: No more than 30 counties may be split to attach to other counties or parts of counties to form multicounty districts.

And Point 6: The redistricting plans shall comply with the Voting Rights Act in the constitutions of Tennessee and the United States.

Q. And I know you've already testified to your familiarity with the Voting Rights Act.

As to Roman 2, which is the requirement of the one-person, one-vote, have you been familiar with one-person, one-vote requirements, based on your

experience?

A. I am. I mentioned, in my previous statement, about Reynolds versus Sims. I'm actually quite familiar with all of the malapportionment court cases, starting in the 1960s with Baker versus Carr and Reynolds versus Sims, Wesberry versus Sanders, in going on to the 1970s.

And so I'm quite familiar with the legal standards set out in these court cases under one-person, one-vote.

Q. Did the Voting Rights Act apply to your previous redistricting engagements?

A. Well, the redistrict- -- I'm sorry. The Voting Rights Act applies to all redistricting schemes, potentially. It's federal law, first passed in 1965, and amended four times, most recently in 2006. And so it applies nationwide. Section 2 applies nationwide.

Section 5 of the Voting Rights Act is no longer -- it's -- Section 5 itself is still constitutional, but the coverage formula of Section 4, which gives weight into Section 5 is no longer relevant after Shelby County versus Holder in 2013.

In the states I worked in, Section 5 would not have been relevant, except for it would have been relevant in Virginia, and then Georgia. It would not have been relevant in New York statewide, but it may have been

relevant in some of the counties.

So its relevance is -- I mean, it's always relevant in redistricting; right? Section 2 is always relevant.

Q. So is it accurate to say this engagement here is not the first time you've had to ensure maps you draw are compliant with the Voting Rights Act?

A. Compliance with the Voting Rights Act is somewhat complicated by the fact that the equal protection clause of the U.S. Constitution says that you can't use race as a predominant motive. And, therefore, any use of race is subject to strict scrutiny. And so using race needs to be justified under a compelling state interest. And that compelling state interest includes the Voting Rights Act.

Q. And is it accurate to say that in your previous engagements you've also had to ensure compliance with one-person, one-vote?

A. Absolutely. 100 percent. The number-one criteria, because it stems from the U.S. Constitution, is one-person, one-vote. It's subject to U.S. constitutional law.

Q. Did you review the Constitution itself concerning county splits, as you were getting to work on this project?

A. For Tennessee?
Q. For Tennessee. Correct.
The Tennessee county splitting language?
A. Yes. I did review the Tennessee Constitution upon accepting the engagement.
Q. And did you -- well, first off, are you aware of what the NCSL red book is?
A. Yes. NCSL is the National Conference of State Legislatures. It's a bipartisan, nonpartisan organization that provides information to state legislators.
I have, in previous times, given presentations to the NCSL. And they are a wonderful resource, and they provide this book called -- we just -- NCSL redistricting red book law. And it is a thick textbook, and I literally use it as a textbook in my class. My students have to read the textbook. It's so good. And it goes through all the federal and state laws regarding redistricting.
Q. All right. And did you review the red book before getting to work in this case?
A. Yes. I've had the red book for -- probably since 2019, when it came out. And I've used it in my class for three consecutive years.
Q. I want to look in your report. The report

we're looking at, you made various illustrative maps. Some of them start with the Numeral 13, and some of them are denoted with Numeral 14, and some of them have the Numeral 13.5.

Can you explain just the difference, as we're going to look at some of these maps, what that signifies?

A. They're signifying that these maps have different, sort of, objectives.

And I named it 13 because those maps, all each have exactly 13 districts inside of Shelby County, identical to the districts in the enacted plan.

The 14 refers to the fact that there are 14 districts inside of Shelby County, which could potentially be drawn in any way suitable by the legislature, contingent upon being compliant with the Voting Rights Act.

And the 13.5 indicates that I've treated Shelby County slightly differently, and I think we'll probably -- because I talk about these in my reports.

But Shelby County has a population that could justify either 13 districts or 14 districts. And another option ought to be that one district can cross over to an adjacent county so that all of the districts have, approximately, equal population.

Again, consistent with Reynolds versus Sims,

having districts as equal as practicable.

Q. And so just connecting the dots, what does 13.5 refer to on that matrix?

A. 13.5 -- I've created two plans that are in the 13.5 series, where a part of Shelby County is connected to an adjacent county to form an entire district.

Q. All right. Let's talk about your map --

Well, actually, I'd like to ask, in case -- I don't know if there are any differences.

But on Page 6, you discuss what data, sort of, underlie your work. And I know you already did that with the senate map.

But is the data underlying the same, or are there any differences to the underlying data?

A. No. The underlying data is exactly the same. The population base comes from the U.S. census. It's the same for the State House and the State Senate.

Q. All right. So let's talk about Map 13A, which there's an illustration of it on Page 14 of your map. I want to step back and understand, that you're starting this report, how did you get to Map 13A?

A. So as I said, Map 13 means that Shelby County has 13 districts. Now, Shelby County enacted plan has exactly 13 districts. And so instead of redrawing those

districts, I decided to leave them exactly as is, before trying to reduce the number of county splits.

Additionally, Counsel informed me that the State of Tennessee suggests that other large metropolitan areas that have multiple districts ought not ever cross the county line. So there's no particular reason to change several of these counties at all.

And so limiting myself to only those non-urban counties, the question was, can I reduce the number of county splits, holding those as they were in the enacted map?

Q. And to understand that a little bit more, those larger counties that you're speaking about, did they include the type of county split crossing the county line in the enacted house map?

A. Can you repeat that question?

Q. Yeah.

If you're talking about having left the largest of the counties exactly as the legislature enacted them, as they were enacted, did they themselves have a county split, where they were pairing, for instance, part of Davidson with a neighboring county?

A. No. They -- these -- all those urban counties -- so this includes -- so, obviously, Shelby County, as I mentioned. Davidson County, Hamilton County,

and Knox County.

Those counties all have some number of districts inside of them, and they don't cross the county border at all. So I kept that exactly as it was in the enacted map. So those districts didn't change at all.

Q. And so in the end, in 13A, do you know how many of the enacted house maps districts stayed exactly the same as they were in the enacted house map?

A. So, in addition to those Shelby -- the urban counties, including Shelby and Davidson and Knox and Hamilton, there was several other districts that I was able to keep 100-percent exactly the same.

And it ended up being, in this particular map, 51 of the 99 had absolutely no change at all from the legislature's enacted map.

Q. Okay. So I think we stopped to add some more details there.

But you were, I believe, saying that you started with preserving some of the districts. And then take us through what you did after that.

A. And so once I had preserved those districts, I wanted to -- the question was, was it possible for the legislature to draw a map that reduced the number of county splits?

And so that process involves finding

combinations of counties that -- because the rest of the counties have populations that are quite small and need to be added to other counties in order to form districts.

And so I looked for combinations of counties, where you wouldn't have to actually take only a partial. So combining full counties. And doing that to the greatest degree possible, combining full counties, in the spirit of the Tennessee Constitution that says: Don't divide any counties.

So I tried to not divide any counties.

Q. Okay. And as a result of that process, how many counties did your final 13A divide?

A. I'm going to flip to my table, just so I get the data correct.

I provide a summary table on Page 18, include a comparison to the enacted map. And so Cervas House Map 13A ends up with what I label TN County Splits, which is the equivalent to the way Mr. Himes counts the splits, as 24 total splits.

Q. Okay. And that's compared to the enacted house maps 30 splits; correct?

A. Exactly correct.

Q. Now, what about on one-person, one-vote? Was this map below a 10-percent population variation?

A. Yes, it was.

Q. Okay. What is the population -- total population deviation in this map?

A. 9.96 percent.

Q. Okay. And at this stage, you know, did you actively try to reduce that number lower than 9.96?

A. Because, by necessity, by limiting the number of county splits, you increase the total variance, which is exactly in the spirit of Reynolds versus Sims.

That Court had said that states have a compelling interest to not split counties. And so we're going to allow some deviation. And so the result was a 9.96 total deviation, with the benefit of having only 24 county splits.

Q. And were there any limitations that you confronted in terms of being able to lower a variation, based on districts that you didn't change at all?

A. So keeping in mind that I did not change 51 total districts in this plan, that means whatever deviation those districts currently had continue to persist in the plan that I've created.

I did not create this plan, what I would say de novo. Like, I didn't start from a blank slate. I started from a 51-district map, and then filled in the areas. And so I was constrained by the fact that some of those districts had quite high deviations.

Q. Okay. Now, when you were drawing this map, did you draw it with an eye towards race as a demographic to consider while you were drawing it?

A. No. In fact, upon working on this particular plan, 13A, I used absolutely no race in the drawing of this plan.

Now, I understand -- I'd already understood that almost all of the VRA-required districts would be in those urban counties that I didn't change anyways.

And I mentioned earlier the equal protection clause of the U.S. Constitution says that we can't use race in impermissible ways.

So instead of trying to draw with race in any way, I just didn't draw with race at all.

Q. And at some point, after creating the race-blind map, did you then look at how race was treated in the map?

A. Yeah.

So upon completing the plan, I have access to the demographic data at the district level, to see what each district was.

And I know, from the enacted plan, that there were 13 districts that had a majority-minority population. Whether those were required of the Voting Rights Act or not, I'm unaware of because no Voting Rights Act analysis

had been -- as far as I know, was not done. It was certainly not provided to me and was not available on the Tennessee website.

So I operated under the assumption that all 13 of those would have been required, and noticed that I only had 12 in this map, which meant that I would have retrogressed, moved backward.

Now, retrogression is not a standard anymore, after Shelby County versus Holder, but it's still an important way to try to determine whether you've complied with the Voting Rights Act.

If you've gone backward, if you've reduced the number of minority districts, there's a good chance that you may have violated the Voting Rights Act.

And so from that point, I identified at what part of the state -- keeping in mind that I didn't change any districts in Shelby County, or Davidson, or Hamilton, or in Knoxville. So which part of the state did that district disappear from?

And it was from a rural area in West Tennessee. And it would have been what in the enacted map is District 80, is currently a majority-minority district.

Q. Okay. And so if you can just, once more -- because it's a term we haven't discussed before today, and it seems like a term of art.

Just, once more, explain to us what retrogression means when you're using that term.

A. Yeah. I don't have to use that term if we don't like the term. But the term simply means that you've reduced the number of effective majority opportunity districts.

So in the Voting Rights Act, if a state enacted a plan that previously had 13, then in a redistricting, enacted a plan that only had 12, they've retrogressed, they've moved backward, they've eliminated one seat.

Q. And did your identification of retrogression and your Map 13A give you any concern about Map 13A?

A. Yeah. I knew immediately that 13A would be -- given the fact that District 80 clearly, just from looking at the demographics of the Rural West Tennessee area, that almost certainly a Voting Rights Act district would be required there.

And so Map 13A would not have been one that would have been satisfactory to comply with federal law.

Q. Okay. And so if you don't deem Map 13A satisfactory to comply with federal law, why did you include it in your report?

A. For transparency purposes and to show that I didn't use race in an impermissible way. It was important

for me to include this map for the Court so they understood that sometimes when you draw race blind, it can cause the problem of eliminating districts that are required by the federal law. And only after looking at the map after the fact can you verify that that is true.

And so I wanted to include this for transparency purposes. But in no way would I recommend this map because I do believe it conflicts with federal law.

Q. Okay. And so did that cause you to move on and make Map 13B?

A. It did. So --

Q. And I'll just say, and walk us through sort of the process of creating Map 13B.

A. So Map 13B is simply a response to the fact that I had retrogressed on that district. And still without using race in any impermissible way, I wanted to redraw from that map, map -- District 80, that would be compliant with the Voting Rights Act, while still keeping the plan largely the same.

Q. Okay. And so, I guess, what changes did you make that got you to 13B?

A. Yeah. So it's going to require changes to any district that is adjacent to those districts -- that district that I was forced to change. And I'm not sure I

have the details written in here, about which specific lines had to move.

But the bottom line is that in Map 13B, District 80 now is one with a population that is greater than 50-percent black voting age population.

And in -- after I had delivered this report, Defendants' expert, Mr. Trende, analyzed the plan for Voting Rights Act, and agrees that it would be compliant with the Voting Rights Act.

Q. And so is this district in Map 13B, that's a majority-minority district, also numbered District 80?

A. I believe that's correct.

Q. And let's talk about the --

Well, in creating that district, were you aware of where the incumbent from District 80 previously lived?

A. At this point, when I wrote this report, I had asked for incumbency information, as I mentioned on the senate map, and was told it was not available. It was not available on the State's website, which is not totally surprising because these are addresses of legislators. And so to not make that public is understandable.

And so I did not have any information about any of the incumbents, nor do I know any of these incumbents. I don't know where they live.

In many ways, I've shielded myself from any effects of partisanship in this. From the very beginning, I wanted to have as little knowledge about those kinds of things as possible, and only try to create maps that are compliant with law.

Q. So is it accurate that for this entire report, everything in it, you did not have data concerning where incumbents lived?

A. For this entire report, I had absolutely no information on incumbency.

Q. And you may have said this. But Map 13B, what is its total number of majority-minority districts?

A. It will have the same number as the enacted plan, 13 majority-minority districts.

Q. And what total population variance is reflected in Map 13B?

A. This also has a 9.96 overall deviation.

Q. And how many county splits does this Map 13B have?

A. This one is the map that has the most of all the illustrative maps that I've presented, and it's 25.

Q. Okay. And do you recall what led to an increase of one split between the Map 13A and 13B?

A. I can't speak to what exactly. There were somewhat significant changes required in order to

accommodate that district. And so somewhere it made that -- some combination had to go away to create another combination of counties, and it added one split in doing so.

This is part of the tradeoffs of redistricting, is that federal law requires us to do things, and sometimes that increases the number of county splits. And this is a circumstance it which it did increase by one county split.

Q. Now, let me ask, in making Map 13B, did you try to preserve the cores of previous districts from the 2010 map?

A. No -- well, I'll say no, that I didn't try in the areas in which I was seeking to reduce the number of total county splits because the Constitution doesn't say anything about core preservation. And none of the websites said anything about core preservation.

So all of the information that I had at the time suggested that there was no particular reason to preserve the cores, nor is it my opinion that one should preserve the cores, if it conflicts with the state constitution.

And so I did not try to preserve cores. But that being said, 51 districts are preserved, identical, in this map. 51 out of 99 are identical to the enacted map,

which, by definition, is core preservation.

Q. Now, at some point after submitting this map, this report, did you subsequently become aware of Defendants' criticism that these maps were -- included some zero population or non-contiguities.

A. Yes. After I delivered this report, there was a response that indicated that there were some -- in this particular report, noncontiguous individual census blocks containing zero people.

Q. And let's break down. We've got several terms that those of us who aren't in the field may need to walk through more in detail.

Can you explain to us what a census block is, as the first point?

A. My pleasure.

The census, when it delivers its data, what I call the PL94171 data, that is -- actually, the census itself calls it redistricting data. And a census block is the lowest-level geography that the census delivers.

So the census cannot provide information about individual people because it would make people's privacy -- privacy concerns. So they have to aggregate the data up a little bit. And so they create what's called a census block.

So instead of identifying each person at each

address, they create what are, essentially, neighborhoods. They're very, very, very small geographically. In Nashville, they're probably no more than one square block. In some areas, they will be slightly larger geographically than an actual block. But, usually, there are about ten people in them.

And the point of these census blocks is so that when states have to do redistricting, that they can create districts that are as equal as practicable with -- and depending on whether it's congressional or state legislative redistricting, consistent with the court cases from the 1960s.

So this product was only started after those court cases, that the census started delivering these very small-level geography. And there are -- I should know off the top of my head.

But I would guess that there's probably close to several hundred thousand census blocks or a couple hundred thousand census blocks in this state. I think somewhere I have a footnote, maybe it's 197,000 census blocks. So a very large number in the state of Tennessee.

Q. And why does having census blocks be -- particularly small measure, aid in creating equal population maps?

A. So you can imagine if you have -- well,

counties themselves are far too large in some circumstances to create districts.

So in a small county, the whole county might be assigned to one district. But in a large county, you might have -- as Shelby County, you might have 13, 13 and a half, or 14 districts. And so you need this fine grain population data in order to create districts that have equal population.

And the standard in congressional redistricting is exactly one person. So the districts have to have no more than a deviation of one person.

So if the district size is, say, 700,000, every district must have exactly 700,000 or 700,001, or 699,999. And that's the deviation allowable in congressional redistricting.

That's not the case we're worried about here. We're allowed to have a deviation of 10 percent.

But, still, in these larger counties especially, or in counties that end up being divided, because of the necessity to comply with one-person, one-vote, these census blocks become very important for creating equal population districts.

Q. All right. And you just mentioned, under equal population law, an allowance of a 10-percent deviation. Can you explain to us your understanding of

the importance of the 10-percent number?

A. Yeah.

So courts after -- in Reynolds versus Sims and in subsequent cases upholding those decisions settled on what might be termed a bright-line test, that any plan that has below a 10-percent deviation is presumed constitutional.

Now, it's presumed constitutional, but it is a rebuttable presumption. So somebody can come in and claim that the legislature did not actively try to reduce the population deviations and could prevail on that claim, even if it's under 10 percent.

Likewise, it could be over 10 percent, and that's a rebuttable presumption too; right?

So if a state has a compelling state interest to have a population deviation slightly higher than 10 percent, the Courts may allow that, but only if there's a compelling state interest.

Q. All right. Now, getting back to non-contiguities, can you explain to us what a non-contiguity is the context of redistricting?

A. So similar to how I -- to explain contiguity in the terms of a county, you can think of it in the exact same terms as a district. We draw political districts.

And one requirement in almost every state is

that they are contiguous. And that means that you can walk to any part, or drive to, any part of the district and get to any other point of the district without ever leaving that district.

So this room -- anything that's within the walls of this room would be contiguous. But the next room over with a door would not be contiguous; right? Because you have to go through something else to get to it.

And so contiguity just means that you can walk to any part of it -- of the district without leaving it.

Q. Okay. And what is a zero population non-contiguity?

A. This is not even a real term, really. It -- but what we're referring to with zero population non-contiguity is simply that the noncontiguous part doesn't have any people, which means it doesn't affect the variance. It has no effect at all on the plan.

And in the situation in which we're talking about, these were sort of unintentional technical things.

Districting plans are -- are -- what they really are, are a spreadsheet with two columns and 197,000 rows with a census block being identified in the district. And all it means is, simply, that one census block had been misidentified into the wrong district. And that

census block itself has no population.

Q. And the defendants identified for you in these maps certain zero population noncontiguous consensus blocks; correct?

A. Yes.

Q. Why didn't you identify these noncontinuous census blocks in the first place when making the maps?

A. So I -- upon first being engaged in this lawsuit, I inquired about getting a license for Maptitude for redistricting. It's premier software used by redistrictors. And I called up the folks at Maptitude.

I've used the software in the past. I have a license through my engagement in Pennsylvania. So I -- when I created the maps for the state of Pennsylvania, I used Maptitude.

When I called those folks up, they wanted to charge me $10,000 to get the data for Tennessee, licensing data for Tennessee. And that's pretty cost-prohibitive.

In New York -- or let me walk that back and say I'd already been using Dave's Redistricting app for a long time. This is a free public open source software that any one of us can go create an account, for free, and can create your own redistricting maps. It has all the data that we need, all of the redistricting data provided by the census, in a very convenient and easy to use sort

of on your web browser system.

And my mentor used it when he was the special master in Virginia. I'd already been using it in my private life, to teach my classes. And even in New York when I was special master, it's the software package I used. I chose not to spend the $10,000 on the data from the expensive package, and instead use this Dave's Redistricting.

It's been around for a while, but it's gotten very, very powerful and very, very good in the last several years. And it is now powerful enough to actually do these tasks of redistricting without using the more expensive software.

And so I was using that software. And built into that software are the precincts from the state of Tennessee. And so when I was building my districts, I will -- instead of building with the 197,000 census blocks -- you know, that would take a long time to individually allocate. You use the precincts, which are much larger, about 2,000 per precinct. And so you can much more quickly allocate precincts to the districts.

For some reason -- and I believe it relates to the fact that precincts themselves are sometimes noncontiguous or have really bizarre shapes, oftentimes resulting from the boundaries of lakes or other geography

features. It caused several of the districts to end up with these non-contiguities.

So the only way you could physically see these things is if you zoomed so far into them. You can't see them on these maps that are printed in the report because they are so small. I mean, we're talking about, like, neighborhood, as I said. And so you have to zoom in so far that it just wasn't something on my radar.

Now, Dave's Redistricting has this tool built in. It's a drop-down and it allows you to find non-contiguities. It's supposed to speed up that process because they are so small sometimes.

And when I was working on these reports, we did that, and it never identified any noncontiguous areas.

Throughout this process, as I would deliver a map and Mr. Himes would put it into Maptitude -- again, that's the $10,000 software -- he would be able to identify these noncontiguous areas.

And after a while, I was sort of getting a little bit fed up with the fact that I wasn't finding these things, that it wasn't identifying them.

And so I contacted Dave's Redistricting and said, "Here's the situation. I'm drawing maps in Tennessee. And I run them through the contiguity checker, and it's not identifying them. And, yet, I know factually

that there are noncontiguous parts of these maps. Can you help me figure out what's going on?"

After a few days, they had returned that they had figured out that it was related to the precincts in the way that their system identified non-contiguities. But they weren't sure exactly what it was, but they were going to rewrite the program using a different method to identify noncontiguous areas.

This was -- now, we're talking only a couple months ago, when they finally got around to fixing the software. And this was all happening during, you know, Christmas and other holidays.

So it wasn't until much more recently that they actually fixed this. But they've e-mailed me since and have said that they fixed this tool.

And I checked it, and it seems to -- if I go back to some of these original maps and see the tool, it actually shows now that there are noncontiguous parts. So it appears that they have fixed this tool. They've told me they fixed it, and it appears to be fixed.

But that's -- to answer your question in a very long way, that's what happened.

Q. So let me be clear. When first drafting these, did you check the non-contiguity tool to see if Dave's told you there were any non-contiguities in them?

A. I did check.
Q. And, now, have you gone back to look at them, and do they now reflect non-contiguities in them?
A. They now -- these original maps -- before the -- I have issued corrections to all these maps, even before the software had been corrected.
But these maps now -- the original maps do now show that they're noncontiguous. So I -- if I had had that availability at the time, we never would have had the circumstance of having any of these non-contiguities.
Q. And you just stated this. But for the maps in this report, did you, in your rebuttal report, issue correction maps that corrected the zero population noncontiguous census blocks?
A. Yes, I did issue corrections to these plans, thanking Mr. Himes for identifying these, what I call, technical errors. Obviously, unintentional, and minor, and they're not relevant at all to the underlying premise and data that the State could have reduced the number of county splits far below the enacted plan. That opinion still -- it still holds exactly the same weight as the maps with the contiguity as they're corrected.
Q. And did correcting the non-contiguities or noncontiguous census blocks in the maps in this report affect the map's variance at all?

A. All of the maps that I've created in this report, when they have the non-contiguity corrected, does not affect the deviation or the splits at all. The data is identical, exactly the same, not a fraction, not -- no differences.

Q. And why is it that correcting a zero population noncontiguous census block doesn't affect the population numbers?

A. Well, it's not possible to change the population number in any district if you allocate a block with no population to a different district. It won't change the population because there's no people.

Q. And let me ask -- you may have just said this. But after correcting noncontiguous census blocks for each of these maps in your report, did the number of county splits change at all?

A. The number of county splits --

MR. SWATLEY: I would object for leading.

THE WITNESS: Well, I actually just said that.

CHIEF JUDGE: Wait just a second. You may respond. He objected to leading.

MR. TIFT: I don't need to lead him,

Your Honor. I think I can -- I actually don't think the question was leading, but I can ask it again.

CHIEF JUDGE: Okay. Go ahead.

BY MR. TIFT:

Q. Dr. Cervas, you just testified that you corrected the non-contiguities in these maps; correct?

A. That's right.

MR. SWATLEY: Your Honor, we would also object to any -- testifying about any map that we haven't seen, a map without these contiguities and maps we haven't seen. They're not in the record. They're not in the reports.

MR. TIFT: Your Honor, I'll point to you where they are in the record and are in the reports to respond to that. Can I point him to his next report to answer that objection?

CHIEF JUDGE: Yes.

BY MR. TIFT:

Q. All right. If we look at Number 9.

All right. Tab 9, Exhibit 9 is your rebuttal report; is that right?

A. Yes.

Q. Did you publish links to the corrected maps in this report?

A. Yes. I -- Paragraph 1 of this report on

Page 2 is -- the subtitle is: Noncontiguous Census Blocks.

Q. Okay. And walk me through what the links are on Page 5 at the bottom.

A. Page 5 contains Footnotes 9, 10, 11, 12, 13, 14. And those are links to Dave's Redistricting app, the same way I've delivered every other map in this court case. And those are links to what I've called maps: Cervas House Map 13B_e, Cervas House Map 14A_e, Cervas House Map 13.5A_e, and Cervas House Maps 13.5B_e.

Q. Okay. And are those links pointing to maps where you've corrected the non-contiguities you were just speaking about?

A. Yes.

And let me clarify --

MR. TIFT: Let me stop there.

So I'll respond to the objection that these have, in fact, been produced. They're here in this report with the links. And so they have been produced to the parties.

MR. SWATLEY: Your Honor, it was unclear. We'd just ask that they identify what maps we're talking about before, so if there is a map that's not in the record, we can't object to it.

CHIEF JUDGE: Overruled.

BY MR. TIFT:
Q. All right. I believe I've consistently been asking you about the maps reflected in this report, but I'm still asking you about the maps in your expert report.
Okay. So other than responding to their objection, we've been looking at your primary first expert report, which has five maps, and speaking about those five maps; correct?
A. Yes.
Q. All right. Let's return to doing that.
We talked about A and B and that they had non-contiguities.
I'm curious, did you attempt to fix the non-contiguities in A?
A. I did not.
Q. Why not?
A. As I mentioned earlier, Map 13A is not a map that I would recommend because it almost certainly violates the Voting Rights Act.
Q. All right. But for the other maps, 13B, 14A, 13.5A, and 13.5B, did you correct the non-contiguities and publish those links in your rebuttal report?
A. I did.
Q. And did correcting any of those zero population non-contiguities affect the variance in any way

of those maps?
A. They did not.
Q. All right. Let's look at that rebuttal report now. We are now on Exhibit Number 9. I'll make it clear if I'm going back to Exhibit Number 8. We're talking about Exhibit Number 9.
Exhibit Number 9 is your rebuttal report, which you produced on December 2nd, 2022. Do you have that in front of you now?
A. I do.
Q. Okay. And exhibit number -- in your rebuttal report, you provide two maps; is that correct?
A. Two new maps, yes.
Q. And they're labeled 13C and 13D; correct?
A. That's correct.
Q. Now, does the number 13 in these map titles signify, you know, what you stated before about the number of districts in Shelby County?
A. That's right. It's still 13 districts inside of Shelby County, unadjusted at all from the enacted map.
MR. TIFT: All right. Your Honors, we're about 15 minutes until 5:00. Should we still expect that we're stopping at 5:00? I may jump a little forward to touch one discreet topic, and then we'd be done. But it would take a little longer to get there. I just want

to clarify. Should I assume we have 15 minutes at this point?

CHIEF JUDGE: Yeah. 15 minutes, or we can adjourn before then, if you so choose.

MR. TIFT: One second.

MR. SWATLEY: Your Honor, I realize the Court has set the deadline at 5:00. But if he's going to be done shortly after 5:00, we can stay five or ten minutes if that will get it done, just for completeness. But . . .

CHIEF JUDGE: We have little flexibility --

MR. TIFT: Sorry. Let me clarify. We're not going to be done with Dr. Cervas that quickly. There was just one -- a point on non-contiguities that I thought I might jump to, if we were about there.

Give me one last second.

BY MR. TIFT:

Q. All right. Dr. Cervas, we're going to look at a subsequent exhibit. Exhibit 10. Turning to that. That's a January 9th, 2023, supplemental report.

Do you have that before you?

A. I do.

Q. And turn to the map on Page 2 here.

Do you see the map on Page 2?

A. I do.
Q. And it reflects Map 13D_e. Do you recognize that?
A. Yes.
Q. And did you create Map 13D_e for this report?
A. I did.
Q. And did you, at any point, subsequently learn of non-contiguities in this Map 13D_e?
A. I was -- I became aware of those non-contiguities after I delivered the previous report.
Q. Okay. And what -- you know, do you remember specifically which non-contiguities were identified in criticism of this map, like how many non-contiguities?
A. I believe there was three total in the entire state.
Q. Okay. And do you recall how many of them were populated versus unpopulated?
A. I believe there was one that was populated, and that would have been in Middle Tennessee, and two that had zero population in the northeast portion of the state.
MR. TIFT: And, at this point, we'd like to use a demonstrative exhibit to use with the witness concerning this map. We're going to use the easel here, if that's helpful. And this is also at the very back of the final binder under Tab 118 -- sorry. Tab 170.

We'll start three pages from the back.

BY MR. TIFT:

Q. Dr. Cervas, looking to this demonstrative exhibit before you, do you recognize this demonstrative exhibit?

A. I do.

Q. And what is this exhibit reflecting?

A. This is District 1 and District 3 in my illustrative Map 13D_e.

Q. Okay. And there's two circled little spots on here. What do those represent?

A. Those are the two noncontiguous census blocks, the small geography area, that unfortunately crept their way into this illustrative map.

Q. When creating Map 13D_e, did you use the non-contiguity tool on DRA, and were these identified?

A. Yeah. I tried to use that tool, but it didn't identify any noncontiguous areas.

Q. Okay. And so what is the population of these two non-contiguities?

A. Both of these have no people in them at all.

MR. TIFT: And I don't know if the Court would give leave to the witness to approach this to point to answer the question of what is involved in you correcting these non-contiguities.

CHIEF JUDGE: We'll give it a try.

MR. TIFT: I would ask if you could start at the top --

MR. SWATLEY: Your Honor --

CHIEF JUDGE: You've got freedom to move around the courtroom, if you wish.

MR. SWATLEY: Well, I would just object to him insinuating to a map that's not in the record, wasn't disclosed according to the Court's deadlines. If he's going to try to talk about a map that's not in the record, some hypothetical corrected map that's not here, our expert hasn't had a chance to analyze it, it wasn't disclosed by the discovery deadline.

MR. TIFT: Your Honor, this map is in the record. This is Map 13D_e. Including these non-contiguities. And Dr. Cervas is about to show you, as a task of redistricting, what's involved in pairing a non-contiguity with its appropriate district. It is not a new map. This is the map that we're discussing --

CHIEF JUDGE: Objection overruled.

BY MR. TIFT:

Q. Can you identify one of the two non-contiguities here, and pointing to it, helping us see where you are?

A. So I used the dotted circle, dashed circle to

identify where they are.

Again, they're very, very, very, very, very small. And so it's right there.

Q. Okay. And which district is that census block assigned to?

A. It was, in this map, assigned to District 1.

Q. And which district is it, sort of, surrounded by?

A. It should have been assigned to District 3.

Q. And is this one or more census blocks?

A. This is exactly one census block.

Q. And how many people live in this census block?

A. Nobody.

Q. Do you know if there's land in this census block?

A. You can see this, sort of, weird boundary. This is actually a lake.

Q. And so what's involved in pairing this with its correct district?

A. All one would need to do is to reassign this one census block into District 3, and that noncontiguous is gone.

Q. Okay. And then point us out the other -- the noncontiguous census block in this map.

A. Again, it's almost -- you probably can't see it at any distance. I couldn't see it from over there.

It's a little, tiny dot right there (indicating).

Q. Okay. And which district was it assigned to?

A. Also assigned to District 1.

Q. And which district does it actually abut?

A. It should have been in District Number 3.

Q. So what's involved in correcting that non-contiguity?

A. Again, taking the spreadsheet with the 197,000 census blocks, you would have to identify that number. That's the unique identifier for the census block. And change it from 1 to 3.

Q. Okay. And would doing so change the variance in this map at all?

A. No.

Q. Okay. And why is that?

A. Again, nobody lives in these. So there's no possible way to change the populations of the districts.

Q. Okay. Now, I'd direct you to the next demonstrative -- which, in the binders, is the next page.

Can you identify the noncontiguous census block in this demonstrative?

A. This one is right here (indicating). It's in Dickson County.
Q. And how many people live in this census block?
A. There's 11 people who live in this one.
Q. And which district is it assigned to in Map 13D_e?
A. It's assigned to District 78 right here (indicating).
Q. And to correct the non-contiguity, which district should it be assigned to?
A. It should be assigned to District 69.
Q. And what's involved in reassigning it to District 69?
A. Again, you simply just have to -- in the software, you know, just literally click, and then reassign it, or go into the spreadsheet and change the number.
Q. Okay. And would doing so change the total variance of this map?
A. No.
Q. And why is that?
A. The total variance or overall variance, as it's been called, and is in my report, its overall variance is the largest district in the state and the

smallest district in the state. And that is neither of these two districts. And they're not anywhere close to being the largest or smallest. And, therefore, a small change of just 11 people isn't going to affect the overall variance.

Q. Okay. And so just to confirm, District 78 and 69, you said, are not either the top or the bottom population-wise districts?

A. That's right.

Q. Okay. Are you aware if -- how many people is 11, you know, percentage-wise for one of these districts?

A. Oh, you test my math.

So there's, approximately, 70,000 people in each district. So 11 out of 70,000 is 0.000-something. A very, very small percentage in total population.

Q. But, again, even if it changes the variance in District 78 and 69, do I understand you correctly that it will not change the total variance?

A. That's right.

Q. Okay. Now, is fixing these non-contiguities, pairing them with the correct districts, something that is easy for you to do?

A. It's very, very simple to do once they're identified.

Q. And does doing so change the number of county

splits in the Map 13D_e at all?

A. No. It's important to note -- and I didn't visualize it here.

But there's a county border here. So this is a split county. And, therefore, you can put this into District 69, and it doesn't affect the split total at all, in any sense.

And if I could add that if there was a problem with the variance, you could simply reassign any of the census blocks along this line without affecting the splits in any way.

Q. So would correcting these three noncontiguous census blocks affect Map 13D_e's total variance at all?

A. No, not at all.

Q. Would doing so affect its number of county splits at all?

A. No, not at all.

Q. And does -- do the presence of these three non-contiguities in these maps in any way alter your expert opinion in this case?

A. No. My expert report remains exactly as it was, that the State could have reduced the total number of county splits while adhering to all federal law.

MR. TIFT: All right, Your Honor. I think that's what I was trying to figure out, if we had

the time for. So this could be a time to adjourn. I can certainly go back to where I was, and keep going also.

CHIEF JUDGE: Let's adjourn for the day. Thank you.

(Proceedings concluded at 5:00 p.m.)

REPORTER'S CERTIFICATE

STATE OF TENNESSEE }
COUNTY OF WILLIAMSON }

I, Sarah M. Motley, Licensed Court Reporter and Notary Public for the State of Tennessee at Large, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS THEREOF, I have hereunto affixed my official signature and seal of office this 3rd day of May, 2023.

SARAH M. MOTLEY STATE OF TENNESSEE NOTARY PUBLIC WILLIAMSON COUNTY

SARAH M. MOTLEY, LCR
NOTARY PUBLIC FOR THE STATE OF TENNESSEE
LCR No. 383 Expires 6/30/2024
Notary Expires 1/11/2025

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