

IN THE UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 EL PASO DIVISION
 VOLUME 7 OF 9

LULAC, et al.,) (EP:21-CR-259-DCG-JES-JVB
) ((Lead Case)
Plaintiffs,) (
) (
ROY CHARLES BROOKS, et al.,) (EP:21-CV-00991-DCG-JES-JVB
) (
Plaintiffs,) (
) (
vs.) (EL PASO, TEXAS
) (
GREG ABBOTT, in his official) (
capacity as Governor of Texas,) (
et al.,) (
) (January 27th, 2022
Defendants.) ((1:33 p.m. to 5:53 p.m.)

HEARING ON BROOKS PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

FIFTH CIRCUIT JUDGE JERRY EDWIN SMITH
 U.S. DISTRICT JUDGE DAVID C. GUADERRAMA
 U.S. DISTRICT JUDGE JEFFREY V. BROWN

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1 (Proceedings resume after lunch at 1:33 p.m.)

2 (Continued cross-examination).

13:33:03 3 SENATOR CECELIA JOAN HUFFMAN,

13:33:03 4 CROSS-EXAMINATION CONTINUED BY THE PLAINTIFFS

13:33:03 5 BY MR. DUNN:

13:33:03 6 Q. Senator, you should have a map in front of you of the
13:33:06 7 Panhandle area of Plan S2100. Do you see that?

13:33:07 8 A. Yes.

13:33:08 9 Q. This is the benchmark arrangement of the two senate
13:33:13 10 districts in the Panhandle, would you agree?

13:33:15 11 A. It appears to be so, yes, sir.

13:33:16 12 Q. And I'm just, for your knowledge, it cut off the
13:33:20 13 shading there at the very top of Texas, where it gets to the
13:33:22 14 Oklahoma, but other than that, it's accurate.

13:33:24 15 A. Right. I can tell that. Yes, sir. Thank you.

13:33:26 16 Q. How would you describe sort of the shape of Senate
13:33:31 17 District 31 here? There's a letter, for example.

13:33:33 18 A. It would be hard to describe it as a letter.

13:33:35 19 Q. Look like a C., maybe, to you, the way it fits around
13:33:40 20 28?

13:33:41 21 A. Yeah, sort of.

13:33:43 22 Q. These districts were reconfigured in the latest plan,
13:33:46 23 is that right, 2168?

13:33:48 24 A. Which districts are you referring to, sir?

13:33:49 25 Q. The same, 31 and 28.

13:33:51 1 A. Yes.

13:33:52 2 Q. A little less than C. and a little more of a jagged
13:33:56 3 edge now between the two, would you agree?

13:33:56 4 A. I'd have to look at it to specifically agree, but
13:34:00 5 there are some changes, yes, sir.

13:34:01 6 Q. Do you recall our discussion before lunch where
13:34:06 7 Senator Seliger had given a speech on the floor, alleging that
13:34:08 8 he had been told that the reason for rewording his district was
13:34:13 9 for an oil and gas and a farm, to create an oil and gas farm
13:34:15 10 district, do you recall that?

13:34:16 11 A. Do I recall his speech on the floor? I said I recall
13:34:22 12 some part of it, yes.

13:34:23 13 Q. Now, in the documents that you produced, you produced
13:34:28 14 a number of pages of public testimony and statements that were
13:34:31 15 sent to you and I want to show you one of those now. It's been
13:34:33 16 admitted as exhibit Plaintiffs' Exhibit 103.

13:34:44 17 Best you can, can you tell us who this is from and to
13:34:46 18 and the date and time of its sending?

13:34:48 19 A. It looks like it's from a Mr. James O'Shaw (phonetic).

13:34:53 20 Q. And what is sen when in --

13:34:55 21 A. It looks like September 23rd, in the morning, 11:20 --
13:34:58 22 excuse me -- evening, 11:20 p.m.

13:35:02 23 Q. Do you see where his correspondence is discussing
13:35:03 24 Senate District 28 and 31?

13:35:05 25 A. I see the first sentence, yes, sir.

13:35:07 1 Q. If you can, if you could read the paragraph in the
13:35:13 2 middle of the page that begins the new districts?

13:35:15 3 A. All right. You'd like for me to read that allowed,
13:35:15 4 sir?

13:35:19 5 Q. Please.

13:35:19 6 A. "The new districts would also be more geared to
13:35:21 7 communities of interest. The proposed alternative District 28
13:35:25 8 would constitute 44 percent of Texas severance tax generation
13:35:30 9 oil and gas production, providing the significant and common
13:35:34 10 community of interest. The new District 28 would encompass much
13:35:39 11 of the central Permian Basin, which constitutes the largest oil
13:35:42 12 field in the world."

13:35:42 13 Q. And if you could just continue.

13:35:44 14 A. Sure. "The alternative 31 would only constitute
13:35:48 15 roughly about five percent of the same energy severances;
13:35:52 16 however, it has the vast majority of cattle production in the
13:35:55 17 state providing a different community of interest unique to the
13:35:58 18 Texas Panhandle and also critical and important to the state.
13:36:00 19 It's Exhibit C, D and E."

13:36:04 20 Q. And then finally?

13:36:05 21 A. "The new District 28 would have a common community of
13:36:08 22 interest n that there are two Air Force bases, within a 100
13:36:12 23 miles to each other; Goodfellow, San Angelo and Dyess, Abilene.
13:36:17 24 In addition, it serves as home to a majority of the states
13:36:18 25 alternative energy generation capability."

13:36:21 1 Q. Thank you. I don't need you to read much more, but I
13:36:24 2 just -- if you'd like to see the rest of the letter, I can put
13:36:27 3 that on the screen for you there.

13:36:28 4 A. Okay. Do you want me to finish that?

13:36:30 5 Q. No, ma'am.

13:36:30 6 A. Okay.

13:36:31 7 Q. I'm just offering it to you in case you'd like to see
13:36:31 8 it.

13:36:33 9 Now, this was sent with a proposal. This is the
13:36:36 10 proposal that was sent. It doesn't resemble the shape at all of
13:36:42 11 either the benchmark or 2168's outline of these two
13:36:47 12 senate districts, does it?

13:36:48 13 A. No.

13:36:49 14 Q. But it indicates on its face that it does draw Senate
13:36:52 15 District 28 and District 31 and keep them roughly the same
13:36:55 16 population. Do you see that there in the left-hand side?

13:37:00 17 MR. HILTON: Your Honor, I'm going to object to
13:37:02 18 leading again. It's beyond the scope of direct. More
13:37:03 19 importantly, though, this hearing --

13:37:04 20 THE COURT: I'll sustain your objection.

13:37:06 21 MR. DUNN: Thank you.

13:37:06 22 BY MR. DUNN:

13:37:07 23 Q. Is this correspondence where you got -- let me ask it
13:37:09 24 this way.

13:37:09 25 Are you willing to waive your legislative privilege

13:37:13 1 and tell us this is where the idea came from for the oil and gas
13:37:14 2 versus agricultural explanation that was given to Senator
13:37:19 3 Seliger?

13:37:19 4 A. I will not waive my privilege.

13:37:23 5 Q. In any event, the way the map ended up, does not look
13:37:29 6 like the orientation you saw on your screen; is that true?

13:37:33 7 A. Correct.

13:37:34 8 Q. All right. Let's -- you were asked by your lawyer,
13:37:39 9 during your direct examination about some cases, and you read
13:37:42 10 some of the excerpts of some cases that you cited in the floor
13:37:47 11 debate. Do you recall that, generally?

13:37:48 12 A. Generally, yes, sir.

13:37:48 13 Q. There was some discussion about *Bartlett v.*
13:37:53 14 *Strickland*, *Cooper v. Harris*, *Abbott v. Perez*, do you remember
13:37:59 15 that?

13:37:59 16 A. Yes.

13:38:00 17 Q. Now, you understand that the U.S. Supreme Court has
13:38:05 18 had an opportunity on at least two -- two opportunities in the
13:38:07 19 last decade to rule on redistricting with respect to Texas?

13:38:11 20 A. Yes.

13:38:11 21 Q. But you don't recall reading any of those decisions at
13:38:14 22 any point?

13:38:15 23 A. I do not, no, sir.

13:38:16 24 Q. And you don't recall reading any of the decisions of
13:38:18 25 three-judge federal court in San Antonio?

13:38:20 1 A. Correct.

13:38:21 2 Q. And you don't recall reading any of the decisions of
13:38:23 3 the three-judge federal court in Washington D.C.; is that true?

13:38:27 4 A. Correct.

13:38:27 5 MR. HILTON: I just want to make it clear for the
13:38:29 6 record. I'm not objecting that these are reference to public
13:38:30 7 statement to the extent that the question could be construed as
13:38:33 8 attacking legislative privileged information, such as what she
13:38:36 9 considered. That would be improper. But I understand the
13:38:39 10 question and I understand the witness's answer to be within her
13:38:43 11 public statement.

13:38:45 12 BY MR. DUNN:

13:38:46 13 Q. If you gave an answer to the latter, I didn't hear it.
13:38:48 14 I apologize.

13:38:48 15 A. Could you repeat the question?

13:38:49 16 Q. Yes, ma'am.

13:38:50 17 You didn't -- you don't recall that whether you've
13:38:52 18 read any of the decisions of the three-judge federal Court in
13:38:55 19 Washington D.C. Is that true?

13:38:57 20 A. Right. I guess you're speaking of full opinions,
13:38:59 21 correct.

13:38:59 22 Q. And you haven't read the portion or you don't recall
13:39:03 23 reading the portion of the 2012 three-judge district court
13:39:07 24 opinion that talks about Senate District 10. Is that your
13:39:11 25 testimony?

13:39:11 1 A. I don't recall reading that.

13:39:14 2 Q. Now in fairness, when you gave your comments that I'm
13:39:18 3 referencing here on the floor of the Senate and in Committee,
13:39:21 4 you were reading from outlines, would you agree?

13:39:24 5 MR. HILTON: I'm going to object to the extent that
13:39:25 6 goes into the witness's legislative, mental impressions and
13:39:30 7 opinions and her process in conducting her legislative acts.

13:39:33 8 THE COURT: Didn't we see a video of that? Is that
13:39:36 9 what you're talking about? I'm overruling that objection.

13:39:39 10 BY MR. DUNN:

13:39:40 11 Q. When you would give your comments, especially with
13:39:42 12 respect to the law on the floor of the Senate and in Committee,
13:39:45 13 you were reading from a document. Is that true?

13:39:48 14 A. In some instances, that is true, yes, sir.

13:39:51 15 Q. And in some instances, your counsel, Ms. Mackin, can
13:39:54 16 be seen on the screen instructing you when to -- where to start
13:39:57 17 reading and stop reading. Isn't that true?

13:39:59 18 A. I don't think she instructed me to start and stop.
13:40:03 19 She did, you know, have whispered comments to me occasionally,
13:40:07 20 yes.

13:40:07 21 Q. And you understand that Ms. Mackin was one of the
13:40:09 22 counsels for the State of Texas in the prior round of
13:40:12 23 redistricting. Is that true?

13:40:13 24 A. I do know she played a role in the redistricting for
13:40:16 25 the Attorney General's office, yes, sir.

13:40:17 1 Q. And do you know that she -- there's evidence before
13:40:20 2 the Court that she exchanged exhibits in that litigation that
13:40:24 3 had racial shade maps pertaining to Tarrant County?

13:40:28 4 A. I have no knowledge of that.

13:40:29 5 Q. You also, it's true, recall that in 2017, the U.S.
13:40:42 6 Supreme Court issued its opinion in an appeal of the San Antonio
13:40:45 7 court's case, as it relates to Texas redistricting plans. You
13:40:48 8 recall that generally, at least?

13:40:49 9 A. Generally, yes.

13:40:51 10 Q. And in that decision, the U.S. Supreme Court affirmed
13:40:54 11 the finding that racial discrimination had occurred with respect
13:40:59 12 to the drawing of House District 90 in Tarrant County. Are you
13:41:04 13 aware of that?

13:41:04 14 A. Yes.

13:41:04 15 Q. Now, obviously, that was key information that you were
13:41:06 16 aware of as you went into the redistricting process, is that
13:41:09 17 Tarrant County had already been a recent example of race
13:41:13 18 discrimination and redistricting in this state, would you agree?

13:41:17 19 MR. HILTON: Your Honor, I'm going to object to the
13:41:18 20 extent it characterizes the information as to key. That goes
13:41:21 21 into her mental impressions and what she considers as part of
13:41:23 22 her legislative acts.

13:41:25 23 THE COURT: She can answer whether she was aware of it
13:41:28 24 or not. I'll overrule the objection to that extent.

13:41:30 25 A. Was your question: Was I aware when I went in to draw

13:41:33 1 the maps?

13:41:34 2 BY MR. DUNN:

13:41:34 3 Q. The Supreme Court had recently found intentional race
13:41:37 4 discrimination with respect to the drawing of House District 90
13:41:40 5 in Tarrant County.

13:41:41 6 A. No.

13:41:43 7 Q. All right. I want to turn to the discussion that you
13:42:01 8 had with your lawyer about the various times you laid out the
13:42:05 9 principles that guided you and the attorneys working with you in
13:42:08 10 crafting these plans. Do you recall that testimony, generally?

13:42:10 11 A. I don't know what you are referring to, sir.

13:42:13 12 Q. Well, let's start here.

13:42:13 13 When you laid out the bill, the Senate Bill 4 in
13:42:16 14 committee, one of the first things you did was state the
13:42:19 15 principles that guided you in crafting that map; is that true?

13:42:22 16 A. Yes, sir.

13:42:23 17 Q. And you -- in listing those principles on the first
13:42:28 18 day of the committee hearing, on the first day this bill was
13:42:31 19 considered, you didn't mention partisanship once, did you?

13:42:32 20 A. I don't recall mentioning it, no, sir.

13:42:36 21 Q. Then you took almost three -- excuse me --
13:42:39 22 two-days-worth of testimony, and that testimony included
13:42:42 23 one person after another from Tarrant County coming in and
13:42:47 24 explaining to you and the committee members, that this proposed
13:42:50 25 map would split communities on the basis of race Tarrant County.

13:42:54 1 Is that the testimony you received?

13:42:55 2 A. I would not characterize it as just that. No, sir.

13:42:58 3 Q. And then the third day of the committee hearing, the
13:43:01 4 final day, you came in and again listed your priorities; is that
13:43:04 5 right?

13:43:04 6 A. I believe that is correct, yes, sir.

13:43:05 7 Q. And that is the first time and the only time that you
13:43:09 8 listed the priorities together and said partisanship; isn't that
13:43:14 9 true?

13:43:14 10 A. I don't think it was the only time, sir.

13:43:17 11 Q. You think there was another occasion in the Senate
13:43:21 12 Committee debate or on the Senate floor, where you mention
13:43:23 13 partisanship along with the other criteria you were following?

13:43:26 14 A. I don't recall.

13:43:27 15 Q. Now, when you read the priorities on that third day of
13:43:32 16 the hearing, was partisanship written on the page or did you
13:43:36 17 call inaudible?

13:43:39 18 MR. HILTON: Objection, Your Honor. That's asking
13:43:40 19 about the content of attorney-client communication and attorney
13:43:42 20 work product and legislative privilege information. It's
13:43:45 21 talking about the content of a document that is not public and
13:43:48 22 is part of her private files and contains her mental
13:43:54 23 impressions.

13:43:54 24 THE COURT: I'm going to overrule the objection. She
13:43:57 25 can answer whether she was on the paper or she just said it.

13:44:02 1 A. I don't recall.

13:44:04 2 BY MR. DUNN:

13:44:05 3 Q. I call your attention to this portion of the
13:44:10 4 recording.

13:44:10 5 MR. DUNN: And for the Courts' reference, it's
13:44:13 6 Defendants' Exhibit 63.

13:44:15 7 It begins at 50 and 58.

13:44:15 8 (Video and audio played).

13:44:15 9 *SENATOR HUFFMAN: Of the criteria I used in proposing*
13:44:21 10 *in considering these districts, we focussed on*
13:44:23 11 *complying with all applicable law, including the*
13:44:26 12 *Constitution, the Voting Rights Act, and the*
13:44:29 13 *requirement to equalize district populations based on*
13:44:32 14 *the 2020 Census, focussed on keeping political*
13:44:37 15 *subdivisions together, keeping communities of*
13:44:39 16 *interest together, preserving the cores of existing*
13:44:43 17 *districts, creating geographically compact districts,*
13:44:45 18 *addressing partisan considerations, protecting*
13:44:48 19 *incumbents, and when possible, honoring reasonable*
13:44:51 20 *requests made by incumbent members. These*
13:44:54 21 *considerations have also guided my approach to what*
13:44:57 22 *proposed committee amendments I'm able to support.*

13:44:59 23 *So the first amendment -- okay. This first...*

13:44:59 24 (Video and audio stop).

13:44:59 25 BY MR. DUNN:

13:45:05 1 Q. You see Ms. Mackin directing you where to look for
13:45:08 2 comments?

13:45:10 3 A. That is not what she was doing.

13:45:12 4 Q. What is it that she was doing?

13:45:14 5 MR. HILTON: I'm going to object to the extent that
13:45:15 6 this is asking about, you know, the conversations between the
13:45:19 7 Senator and her staff and her --

13:45:21 8 THE COURT: Sustained.

13:45:22 9 BY MR. DUNN:

13:45:22 10 Q. Does it appear to you that you were reading in the
13:45:25 11 course of this?

13:45:25 12 A. It appears so, yes, sir. I would agree.

13:45:27 13 Q. And this is where you say partisanship; is that right?

13:45:30 14 A. I do say partisanship, yes, sir.

13:45:32 15 Q. Now, on the Senate floor, you did not say
13:45:36 16 partisanship, is that true, when you listed off the principle at
13:45:40 17 the outset?

13:45:41 18 A. I don't recall if -- if at the beginning -- if I don't
13:45:43 19 believe I did at the beginning, if your question is, did I do
13:45:47 20 late later, I believe that I did.

13:45:47 21 (Video and audio played).

13:45:50 22 SENATOR HUFFMAN: Ms. President and members.

13:45:50 23 Members, this is the Senate bill which draws our
13:45:56 24 new lines for the entire Senate. We're going to call
13:46:00 25 this -- it's officially called Plan S2130, if you're

13:46:05 1 *looking in district viewer. This plan was developed*
13:46:08 2 *after the committee heard many hours of public*
13:46:11 3 *testimony and after I listened to each members*
13:46:15 4 *priorities and input about their respect districts.*

13:46:18 5 *My goals and priorities in developing this*
13:46:20 6 *proposed plan included, first and foremost, following*
13:46:25 7 *all applicable law, equalizing population across*
13:46:29 8 *districts, preserving political subdivisions and*
13:46:33 9 *communities of interest when possible, preserving the*
13:46:36 10 *cores of previous districts to the extent possible,*
13:46:39 11 *avoiding paring incumbent members, achieving*
13:46:44 12 *geographic compactness and accommodating incumbent*
13:46:48 13 *priorities to the extent that I could.*

13:46:48 14 *I also...*

13:46:52 15 (Video and audio stop).

13:46:52 16 BY MR. DUNN:

13:46:53 17 Q. Again you're reading from your notes there, is that
13:46:54 18 true?

13:46:54 19 A. Yes, sir, I would agree.

13:46:56 20 Q. And again no mention of partisanship, right?

13:46:59 21 A. Correct.

13:47:11 22 THE COURT: Was there an answer to that?

13:47:14 23 SENATOR HUFFMAN: I said correct. Yes, Your Honor.

13:47:15 24 THE COURT: Thank you.

13:47:19 25 BY MR. DUNN:

13:47:19 1 Q. I'm now going to call your attention to what's been
13:47:20 2 admitted as Plaintiffs' Exhibit 41, and it's the *Senate Journal*
13:47:24 3 you talked about with your lawyer, in part, earlier. We're on
13:47:28 4 page A, as in apple, dash 7.

13:47:31 5 Now there's an exchange here in the middle of the
13:47:32 6 page. I can make the type larger. Can you make that out,
13:47:35 7 Senator?

13:47:35 8 A. I can. Thank you, sir.

13:47:36 9 Q. Can you read just the part that Senator Powell says
13:47:39 10 beginning: "Well, you said..."

13:47:39 11 A. "Well, you said the following, and I am going to quote
13:47:42 12 this from your comments. Quote, my goals and priorities in
13:47:45 13 developing these proposed plans, include first and foremost,
13:47:48 14 abiding by all applicable law, equalizing population across
13:47:52 15 districts, preserving political subdivisions and communities of
13:47:56 16 interests when possible, preserving the cores of previous
13:47:59 17 districts to the extent possible, avoiding paring incumbent
13:48:03 18 members, achieving geographic compactness when possible, and
13:48:07 19 accommodating incumbent priorities also when possible," end
13:48:07 20 quote.

13:48:12 21 "These were the goals that you followed in drawing the
13:48:14 22 districts; is that correct?"

13:48:15 23 Q. And your answer?

13:48:16 24 A. "Literally speaking, yes."

13:48:17 25 Q. You don't interject and say, excuse me, you left out

13:48:20 1 partisanship; isn't that true?

13:48:22 2 A. I did not.

13:48:28 3 Q. Now ultimately, your bill went over to the House side
13:48:32 4 to pass, isn't that true?

13:48:33 5 A. Ultimately, my bill in the House passed?

13:48:36 6 Q. Ultimately, the redistricting bill went from the
13:48:38 7 Senate to the House and was passed there?

13:48:40 8 A. Yes.

13:48:41 9 Q. Did you provide or did you your staff provide the
13:48:45 10 talking points to the House about what guided the bill?

13:48:49 11 MR. HILTON: Objection, Your Honor. It goes to the
13:48:51 12 core of legislative privilege, communication between legislators
13:48:54 13 and staff.

13:48:54 14 THE COURT: Sustained.

13:48:56 15 BY MR. DUNN:

13:48:57 16 Q. Did you attend any in-house proceedings?

13:48:59 17 A. I did not.

13:49:00 18 Q. I'm going to show you at the beginning of Exhibit 69,
13:49:09 19 as soon as it loads. Beginning at :48.

13:49:09 20 (Video and audio played).

13:50:06 21 CHAIRMAN HUNTER: At that hearing, I laid out what we
13:50:08 22 heard the Senate's goals and priorities were, which
13:50:11 23 including following all applicable law, equalizing
13:50:16 24 population across districts, preserving political
13:50:21 25 subdivisions and communities of interest when

13:50:24 1 *possible, preserving the cores of previous districts*
13:50:27 2 *to extent possible, avoiding paring incumbents,*
13:50:33 3 *achieving geographic compactness, and accommodating*
13:50:38 4 *incumbent priorities to the extent possible.*

13:50:40 5 *Proposed amendment...*

13:50:42 6 (Video and audio stopped).

13:50:42 7 BY MR. DUNN:

13:50:43 8 Q. Again, no partisanship is mentioned in the House there
13:50:46 9 either, is it?

13:50:46 10 A. At that point, I did not hear it -- (mumbling).

13:50:46 11 (Court reporter asks for clarification).

13:50:46 12 SENATOR HUFFMAN: Yes. I'm sorry.

13:50:52 13 BY MR. DUNN:

13:50:52 14 Q. In fact, it's the case that nowhere in this
13:50:55 15 legislative record do you or Chairman Hunter say Senate District
13:51:02 16 10's lines were driven by partisanship?

13:51:04 17 A. I don't know if it appears in the -- for sure, I don't
13:51:07 18 know what --

13:51:07 19 Q. You know --

13:51:09 20 A. -- Chairman Hunter said.

13:51:11 21 Q. -- about it today, right?

13:51:11 22 THE COURT: Hold on. Don't speak over each other,
13:51:11 23 because she can't get it.

13:51:15 24 MR. DUNN: I'm sorry.

13:51:16 25 SENATOR HUFFMAN: You'll have to repeat the question.

13:51:18 1 MR. DUNN: Okay.

13:51:18 2 BY MR. DUNN:

13:51:18 3 Q. Nowhere in the Senate debate or in the House debate do
13:51:22 4 one of the bill authors say out loud, the lines for Senate
13:51:27 5 District 10 were based -- were drawn on the basis of
13:51:29 6 partisanship, do they?

13:51:30 7 A. I don't know what Chairman Hunter said during his
13:51:36 8 presentation, no knowledge of that. And I don't recall if there
13:51:38 9 was a specific word, partisanship, used during the SD-10,
13:51:43 10 itself, discussions. I know partisanship was discussed during
13:51:47 11 the overall debate.

13:51:49 12 Q. Your lawyer hadn't shown you one today. You don't
13:51:53 13 recall it today, do you?

13:51:53 14 A. I don't recall.

13:51:54 15 Q. Now returning to Mr. Sparks for a brief second,
13:52:18 16 admitted before the Court is Plaintiffs' Exhibit 102. I'll
13:52:26 17 bring it up on the screen here.

13:52:39 18 Do you see this letter addressed to my co-counsel,
13:52:42 19 Mr. Gaber?

13:52:44 20 A. I do see a letter --

13:52:44 21 Q. Do you see --

13:52:50 22 A. -- addressing a Mr. Gaber, yes.

13:52:51 23 Q. And it's sent on behalf of Chris Gober, do you see
13:52:51 24 that?

13:52:56 25 A. I do see the signature Chris Gober.

13:52:56 1 Q. And he identifies him as counsel for Kevin Sparks, is
13:52:59 2 that true?

13:53:00 3 A. I see that, yes.

13:53:01 4 Q. Included with this production are a number of text
13:53:05 5 messages, which are identified -- the first one on the top of
13:53:10 6 the page, what is the first date?

13:53:12 7 A. I can barely see this, but it looks like October 5th,
13:53:17 8 2021.

13:53:17 9 Q. Can you see who was exchanging the messages?

13:53:17 10 A. No.

13:53:22 11 MR. SWEETEN: Your Honor, may I address the issue?
13:53:24 12 Counsel right now is attempting --

13:53:29 13 JUDGE GUADERRAMA: Wait a minute. Wait a minute.

13:53:29 14 MR. SWEETEN: Patrick Sweeten, Your Honor.

13:53:29 15 THE COURT: Right.

13:53:29 16 But --

13:53:29 17 MR. SWEETEN: Okay.

13:53:30 18 JUDGE GUADERRAMA: -- hasn't the objections been
13:53:32 19 coming --

13:53:32 20 MR. SWEETEN: He has.

13:53:32 21 JUDGE GUADERRAMA: -- from Mr. Hilton?

13:53:34 22 MR. SWEETEN: He can make the objection. I was going
13:53:35 23 to discuss the exhibits.

13:53:36 24 THE COURT: Let's have one lawyer making objections.

13:53:45 25 MR. SWEETEN: Okay.

13:53:45 1 MR. HILTON: Thank you, Your Honor.

13:53:47 2 We've objected to Exhibit 102, and we need to make a
13:53:52 3 point specifically now, because Mr. Dunn is going to ask the
13:53:56 4 witness about it. These -- there is no witness on any witness
13:54:00 5 list, who is going to be here who can authenticate these.
13:54:04 6 There's no author on any of them. There is no indicia in the
13:54:07 7 record beyond the cover letter that Mr. Dunn just showed that
13:54:10 8 these are authentic, and there's certainly no evidence that the
13:54:14 9 witness has any knowledge. So the extent that Mr. Dunn is going
13:54:17 10 to have read a document -- have Senator Huffman read documents
13:54:22 11 that can't be authenticated, about which she has no knowledge
13:54:26 12 into the record, you know, quite frankly, I don't see the
13:54:28 13 relevance of that either, Your Honor. So that's the thrust of
13:54:31 14 our objection, but to the extent that the Court is going to let
13:54:34 15 this questioning proceed, there is no indication here that
13:54:39 16 Senator Huffman has any knowledge about it, that it's
13:54:40 17 authenticate and object to its use.

13:54:43 18 THE COURT: Well, we'll find out what Senator Huffman
13:54:46 19 knows, but your objection to this document is what,
13:54:49 20 authentication?

13:54:50 21 MR. HILTON: We need to reiterate our objection to the
13:54:53 22 document based on authenticity. It's hearsay. It can't be
13:54:59 23 authenticate. It's irrelevant and it's -- there's no evidence
13:55:01 24 and no foundation laid that Senator Huffman has any knowledge
13:55:04 25 about it.

13:55:06 1 THE COURT: All of the those objections are overruled.
13:55:09 2 What about the authentication?

13:55:11 3 MR. DUNN: So the witness is unavailable to us. He's
13:55:12 4 greater than a 100 miles from this courthouse. It's a
13:55:15 5 preliminary injunction hearing, which has loser federal evidence
13:55:16 6 rules, and it's authenticated by the cover letter that's
13:55:21 7 included with it.

13:55:22 8 We could get Mr. Gober's attention, as an officer of
13:55:25 9 the court, and get additional instruction from him, but
13:55:29 10 excluding this document at this point because of the location of
13:55:31 11 the hearing and the proximity to production for this trial, is
13:55:39 12 grossly unfair.

13:55:39 13 JUDGE GUADERRAMA: All right.

13:55:44 14 MR. HILTON: Your Honor, may I respond briefly?

13:55:45 15 JUDGE GUADERRAMA: Yes, sir.

13:55:46 16 I think we've already admitted these subject to the
13:55:49 17 objections, and we'll take those up when we finally decide on
13:55:53 18 the case it is. In a preliminary junction hearing, there is
13:55:57 19 evidence -- not evidence -- but the case law from the *Sierra*
13:56:00 20 *Club* that indicates that it's -- the evidentiary standards
13:56:05 21 aren't the same, and so we're going to consider it for that
13:56:09 22 purpose.

13:56:10 23 MR. HILTON: Understood, Your Honor.

13:56:11 24 I just want to note for the record that Mr. Dunn had
13:56:14 25 the opportunity to take any depositions he wanted and ask for

13:56:15 1 any authenticated evidence that he wanted from Mr. Gober. He
13:56:17 2 did not avail himself of that opportunity. But I understand the
13:56:20 3 Court's ruling.

13:56:21 4 THE COURT: All right.

13:56:22 5 Mr. Dunn?

13:56:23 6 BY MR. DUNN:

13:56:23 7 Q. Senator, in those binders to your left, if you would a
13:56:27 8 cleaner version -- I don't intend to ask much -- but it's under
13:56:29 9 tab 102.

13:56:30 10 A. Okay. Give me a second. It's at the bottom.

13:56:38 11 Q. And I noticed your water bottle is empty.

13:56:44 12 A. Yes, I have it before me now.

13:56:46 13 Q. You see the date of this first text message is October
13:56:50 14 the 5th?

13:56:50 15 A. Yes.

13:56:51 16 Q. That's the day after the plan passed the Senate floor;
13:56:54 17 is that true?

13:56:55 18 A. Correct.

13:56:55 19 Q. The floor debate was on October the 4th?

13:56:59 20 A. Correct.

13:56:59 21 Q. Now prior to this moment, has anybody told you about
13:57:06 22 the existence of these text messages?

13:57:09 23 A. No.

13:57:21 24 Q. Fair enough.

13:57:21 25 Now you had a discussion with your lawyer earlier.

13:57:24 1 You read a portion of the Senate floor debate, where you
13:57:26 2 explained that it was necessary to make changes to Senator
13:57:30 3 Powell's district in order to equalize the population. Do you
13:57:33 4 recall that, generally?

13:57:33 5 A. That's one of the reasons, yes, sir.

13:57:35 6 Q. It's not your testimony here today that the only way
13:57:37 7 this map could've been drawn for the Texas Senate was to make
13:57:41 8 changes for Senate District 10?

13:57:43 9 MR. HILTON: Objection. That's legislative privilege.

13:57:46 10 THE COURT: Sustained.

13:57:47 11 BY MR. DUNN:

13:57:48 12 Q. Are you aware of any proposals that had been offered,
13:57:50 13 during the Senate debate, in the public record that balanced by
13:57:53 14 population deviation, the state map, but didn't make changes to
13:57:57 15 Senate District 10?

13:57:58 16 A. I don't recall.

13:58:00 17 Q. Senator Powell offered an amendment. You would recall
13:58:03 18 that one, is that true?

13:58:04 19 A. Senator Powell did offer amendments, yes, sir.

13:58:08 20 Q. And at least one of those amendments balanced the
13:58:10 21 entire map and kept Senate District 10 within deviation, along
13:58:14 22 with the rest of the map, and didn't change Senate District 10?

13:58:19 23 A. I don't recall that.

13:58:20 24 Q. In fact, you had a number of proposal before you on
13:58:23 25 the Senate, both in committee and on the floor, that balanced

13:58:26 1 the population in all 31 Senate districts and left Senate
13:58:29 2 District 10 alone?

13:58:30 3 A. I don't recall that, sir.

13:58:32 4 Q. It's been stated here in this courtroom by Senator
13:59:00 5 Powell, that on at least three occasions, she provided to you
13:59:03 6 the 2012 D.C. Court decision about Senate District 10. Are you
13:59:09 7 willing to waive your legislative privilege and disagree with
13:59:13 8 her on that point?

13:59:14 9 A. No, I will not waive my privilege.

13:59:16 10 Q. Do you disagree with her --

13:59:19 11 MR. HILTON: Objection. The witness just said she
13:59:22 12 won't waive her privilege.

13:59:22 13 JUDGE GUADERRAMA: She invoked the privilege on her
13:59:25 14 own.

13:59:26 15 BY MR. DUNN:

13:59:28 16 Q. There's been testimony in this case from Senator
13:59:31 17 Seliger about changes made to the two-thirds rule in the Senate.
13:59:35 18 Do you know about those, generally?

13:59:36 19 A. About his comments or the changes?

13:59:37 20 Q. The changes?

13:59:38 21 A. Yes, of course.

13:59:39 22 Q. It wasn't necessary to do anything to Senate District,
13:59:44 23 10, for Republicans to maintain control over the chamber in
13:59:49 24 terms of passing bills, was it?

13:59:50 25 MR. HILTON: Objection. Goes to legislative

13:59:53 1 privilege, asking for her mental impressions and opinions about
13:59:55 2 what legislation is or is not necessary and at the core of the
14:00:02 3 legislative privilege.

14:00:04 4 THE COURT: All right. Okay. Overruled.

14:00:08 5 Mr. Dunn, I don't know if you want to respond to that.
14:00:12 6 You're just asking about control of the Senate?

14:00:15 7 MR. DUNN: That's right.

14:00:16 8 THE COURT: Overruled.

14:00:17 9 THE WITNESS: And your question is: What's the number
14:00:19 10 required to pass legislation?

14:00:22 11 BY MR. DUNN:

14:00:23 12 Q. Yes, we'll start there. What is the number?

14:00:25 13 A. It's 18.

14:00:26 14 Q. And is there -- was there a higher number at some
14:00:29 15 point?

14:00:29 16 A. Yes.

14:00:29 17 Q. What was that?

14:00:30 18 A. When I first started in the Senate, it was 21. Later,
14:00:34 19 it lowered to 19. And then another session lowered to 18, where
14:00:38 20 it currently is, so it's actually not two-thirds anymore.

14:00:42 21 Q. Why was it lowered from 19 to 18, if you know?

14:00:46 22 A. It was --

14:00:46 23 MR. HILTON: Objection, Your Honor. Asking about the
14:00:47 24 purpose of a legislation and it involved legislative privilege
14:00:52 25 information, including her mental impressions and opinions about

14:00:54 1 legislation, her legislative act, to the extent that she can
14:00:56 2 answer based on publically disclosed information, she can do so,
14:00:59 3 but she should not reveal any legislative privilege information.

14:00:59 4 JUDGE GUADERRAMA: All right.

14:01:02 5 Senator, whatever is in the public domain about why it
14:01:08 6 was lowers from 19 to 18, can you tell me?

14:01:19 7 JUDGE BROWN: And if I could interrupt for a second.
14:01:19 8 If we could abbreviate the legislative privilege objections and
14:01:19 9 take the speaking out of it, please?

14:01:19 10 MR. HILTON: Of course, Your Honor.

14:01:22 11 BY MR. DUNN:

14:01:22 12 Q. So my question is, it wasn't necessary in make changes
14:01:25 13 to Senate District 10 for Republicans to contain -- to continue
14:01:29 14 to have full control over the Texas Senate, was it?

14:01:33 15 A. I would take issue with the way you characterized full
14:01:39 16 control, so --

14:01:40 17 MR. DUNN: Apparently, we're pretty boring.

14:01:41 18 (Computer sound).

14:01:41 19 A. -- I can't agree with you on that question, because it
14:01:44 20 has an assumption in it, yes.

14:01:45 21 Q. Well, as a vote-counting matter, the votes were there
14:01:50 22 when Republicans were voting together to move any legislation
14:01:53 23 they wanted to?

14:01:54 24 A. When Republicans all vote together, it took 18 votes
14:01:58 25 to bring a bill to the floor.

14:02:00 1 Q. Now transitioning, you were asked by your lawyer today
14:02:04 2 to read some statements about how you would draw the map, as you
14:02:07 3 say race blind, and then you would send it for a Voting Rights
14:02:12 4 Act compliance review. Do you remember that discussion today?

14:02:15 5 A. Yes, sir.

14:02:16 6 Q. How is it you would received this Voting Rights Act
14:02:18 7 compliance review?

14:02:19 8 MR. HILTON: Objection to the attorney-client
14:02:22 9 privilege and legislative privilege, but no objection to the
14:02:25 10 extent she can answer based on public conversations.

14:02:29 11 A. I believe, publicly, I've stated that I received the
14:02:34 12 advice verbally from Mr. Hilton.

14:02:36 13 BY MR. DUNN:

14:02:36 14 Q. Was that orally or in writing?

14:02:38 15 A. As I stated, without waiving my privilege that as I
14:02:41 16 have stated publically, verbally.

14:02:44 17 Q. Did you receive any data along with it?

14:02:49 18 MR. HILTON: Same objection, legislate privilege and
14:02:51 19 attorney-client.

14:02:52 20 JUDGE GUADERRAMA: Sustained.

14:02:53 21 BY MR. DUNN:

14:02:53 22 Q. Did you receive any data -- any actual maps that
14:02:56 23 analyzed it with the VRA analysis?

14:03:01 24 MR. HILTON: Same objections.

14:03:02 25 THE COURT: All right. Sustained.

14:03:03 1 So you're making the legislative objection for the
14:03:03 2 Senator?

14:03:10 3 MR. HILTON: Your Honor, to the extent it's asking
14:03:13 4 about information that she considered in connection with her
14:03:16 5 legislative acts regardless of its source, that would implicate
14:03:18 6 the legislative privilege, and to the extent it specifically
14:03:21 7 directed --

14:03:21 8 JUDGE GUADERRAMA: Right. I'm just wondering --

14:03:21 9 MR. HILTON -- that's communication between me and her.

14:03:23 10 JUDGE GUADERRAMA: -- because it's just unusual that
14:03:25 11 you're making it and not her. It's her privilege.

14:03:31 12 MR. HILTON: Understand, and I can --

14:03:31 13 JUDGE GUADERRAMA: And I understand that you're her
14:03:32 14 personal counsel, I guess, also, counsel for the government.
14:03:36 15 That all seems unusual to me, but that's why you're invoking the
14:03:41 16 privilege?

14:03:42 17 MR. HILTON: If it's the Court's instruction to
14:03:44 18 withhold objecting on legislative privilege to Mr. Dunn's
14:03:47 19 questions, and if my client doesn't need to confer with me
14:03:51 20 regarding any privileged matter, I can do that, but I just want
14:03:53 21 to make sure I'm abiding by what the Court would like me to do.

14:03:56 22 JUDGE GUADERRAMA: Sure, I think the process should be
14:03:58 23 she should invoke it.

14:04:00 24 BY MR. DUNN:

14:04:03 25 Q. Are you invoking your legislative privilege to that

14:04:06 1 question?

14:04:07 2 A. Could you repeat the question, sir? I want to make
14:04:09 3 sure I understand, specifically.

14:04:10 4 Q. I might need the court reporter to do it, at this
14:04:13 5 point, after the speech.

14:04:13 6 A. Trying to make sure --

14:04:13 7 MR. DUNN: Could you?

14:04:13 8 THE COURT: I don't have the feed, otherwise I would
14:04:14 9 do it.

14:04:14 10 THE COURT REPORTER: "Did you receive any data -- any
14:02:55 11 actual maps that analyzed it with the VRA analysis."

14:04:41 12 THE WITNESS: I will invoke my privilege.

14:04:44 13 BY MR. DUNN:

14:04:44 14 Q. Now, you had a discussion on the floor about how you
14:04:47 15 had boxes of maps that you used throughout this process. Do you
14:04:51 16 recall that?

14:04:51 17 A. I don't recall, specifically, the speaking about that
14:04:56 18 on the floor, but, yes, there were boxes of maps around.

14:05:01 19 Q. This is Defendants' Exhibit 65.

14:05:08 20 A. Did you want me to refer to that, sir?

14:05:10 21 Q. No, ma'am. I'm going to show you a video. I
14:05:13 22 apologize.

14:05:13 23 A. Okay.

14:05:13 24 MR. DUNN: It begins at 12:15.

14:05:13 25 (Video and audio played).

14:05:19 1 *SENATOR POWELL: Were there any printed maps used to*
14:05:21 2 *compare?*

14:05:24 3 *SENATOR HUFFMAN: I think we had many printed maps*
14:05:29 4 *there in the redistricting office in preparing of the*
14:05:31 5 *eventuality of having public hearings. In fact, we*
14:05:33 6 *still have boxes full of printed maps, but because*
14:05:36 7 *the public hearings were not held, we had an*
14:05:39 8 *excessive number of printed maps.*

14:05:41 9 *So, yeah, there were printed maps around.*
14:05:43 10 *Sometimes I keep one even on my desk to look, as we*
14:05:47 11 *go through the process, because it's a quick*
14:05:49 12 *reference among population numbers by county, you*
14:05:51 13 *know, and other useful information. That is a quick*
14:05:54 14 *reference while performing the job.*

14:06:01 15 (Video and audio stopped).

14:06:01 16 BY MR. DUNN:

14:06:01 17 Q. So I represent to you in looking through you documents
14:06:04 18 you produced, there's not a single map. Where is the box of
14:06:09 19 maps?

14:06:09 20 A. I don't know where the boxes of -- the box of maps,
14:06:11 21 the maps were all of the benchmark map, so there was a -- one
14:06:17 22 for the State Board of Education, the congressional districts;
14:06:21 23 there was one for the Senate maps benchmark, and then one that
14:06:26 24 showed, for example, all of the counties with their population
14:06:30 25 on it. So they were all documents that had been produced by the

14:06:34 1 legislative council, where we had made multiple copies, because
14:06:37 2 again, we were going to do the on-the-road public hearings, and
14:06:41 3 as a courtesy to the public, we were going to have those maps
14:06:44 4 available for participants, attorneys representing --
14:06:50 5 participating or groups and so forth. So they were all of the
14:06:53 6 benchmark. There was no maps printed, per se, as we -- unless
14:06:57 7 they were adopted, if that answers your question.

14:07:02 8 Q. I'm afraid it doesn't. I appreciate the description,
14:07:06 9 but where is the box of maps?

14:07:08 10 A. I don't know.

14:07:10 11 Q. It's Senator Powell's testimony, and her staff Gary
14:07:18 12 Jones's testimony in his declaration, that they saw maps you
14:07:20 13 were using prior to laying out the first Senate plan that
14:07:24 14 include racial data on it. Are those maps in that box?

14:07:30 15 MR. HILTON: Objection, Your Honor. Legislative
14:07:33 16 privilege. Sorry.

14:07:34 17 THE COURT: She's answered she doesn't know where the
14:07:36 18 box is.

14:07:37 19 BY MR. DUNN:

14:07:38 20 Q. Well, you recall your lawyer asked you earlier today
14:07:40 21 about an exchange between you and Senator Powell on the floor
14:07:44 22 were -- and you each disagreed, I think it's fair to say -- but
14:07:46 23 you both agreed on the notion that each of you initialed the
14:07:48 24 bottom of the page of some maps that had racial data on it. Do
14:07:53 25 you recall that?

14:07:53 1 A. I recall what was said on the floor of the Senate. I
14:07:56 2 saw that today again. And what I stated on the floor of the
14:07:59 3 Senate is exactly what happened that day.

14:08:04 4 Q. Where are those initialed maps?

14:08:07 5 A. I handed them over to the Attorney General -- to
14:08:12 6 Mr. Hilton.

14:08:18 7 Q. Are you willing to ask to have them produced to this
14:08:21 8 litigation?

14:08:21 9 A. Not if it waives any of my privileges.

14:08:25 10 Q. Now, there was a discussion that you had with your
14:08:32 11 lawyer here today about a Senate floor exchange between you and
14:08:37 12 Senator West. Senator West asked you what your understanding of
14:08:40 13 the coalition district was, do you recall that?

14:08:43 14 A. I do recall, yes.

14:08:44 15 Q. And when providing in your definition of coalition
14:08:48 16 district, you volunteered that the Voting Rights Act doesn't
14:08:53 17 require them. Do you remember saying that?

14:08:54 18 A. I don't specifically recall, but the record will speak
14:08:57 19 for itself, yes.

14:08:58 20 Q. At any point in time, have you become familiar with a
14:08:59 21 case *Campos v. The City of Baytown*, a Fifth Circuit case?

14:09:07 22 A. I've heard of the case. I would not say I'm familiar
14:09:07 23 with it, and could not recite it to you, sir.

14:09:08 24 Q. That case permits Section 2 of the Voting Rights Act
14:09:12 25 to require the creation of a coalition district?

14:09:17 1 A. You're asking me if I believe the case says that? I
14:09:20 2 don't know what the case says.

14:09:21 3 Q. And one final exchange, generally, about the Senate
14:09:24 4 floor. You had a discussion that you talked about with your
14:09:27 5 lawyer with Senator Gutierrez, and Senator Gutierrez asked you a
14:09:32 6 question about how the district would perform for Senator
14:09:35 7 Powell. Do you remember that?

14:09:39 8 A. Yes.

14:09:44 9 MR. DUNN: We're on exhibit -- Defendants' 65,
14:09:47 10 beginning at 1:28.

14:09:47 11 (Video and audio played).

14:09:51 12 *SENATOR GONZALEZ: Under your plan, I think that we've*
14:09:53 13 *already determined that Senate District 10 would*
14:09:56 14 *probably not be returning Senator Powell. Was that*
14:09:56 15 *accurate?*

14:10:04 16 *SENATOR HUFFMAN: I do not know who the voters of*
14:10:07 17 *Senate District 10 will vote for.*

14:10:09 18 (Video and audio stopped).

14:10:09 19 BY MR. DUNN:

14:10:09 20 Q. Now, partisanship was guiding your decision-making.
14:10:13 21 Are you willing to waive your legislative privilege and tell us
14:10:16 22 why you couldn't just say, right then, we drew the map to defeat
14:10:21 23 Senator Powell?

14:10:21 24 A. I'm not going to waive my legislative privilege, but I
14:10:26 25 have said publically an on the floor of the Senate that

14:10:27 1 partisanship was a consideration of the drawing of the maps.

14:10:30 2 Q. And then finally, the same exhibit.

14:10:34 3 MR. DUNN: Beginning at 41:07.

14:10:39 4 *SENATOR HUFFMAN: Depends on how you define*
14:10:40 5 *compactness and what the goals of the redistricting*
14:10:42 6 *process were and how much population you needed,*
14:10:45 7 *where you could find the population, other incumbents*
14:10:49 8 *surrounding you and their interests had to be taken*
14:10:52 9 *into account as well.*

14:10:57 10 *SENATOR POWELL: Even if you didn't need any*
14:10:59 11 *population.*

14:10:59 12 *SENATOR HUFFMAN: Pardon?*

14:10:59 13 *SENATOR POWELL: Even if you didn't believe you needed*
14:10:59 14 *population.*

14:11:00 15 *SENATOR HUFFMAN: Well we believed you needed*
14:11:02 16 *population.*

14:11:06 17 (Video and audio stopped).

14:11:06 18 BY MR. DUNN:

14:11:06 19 Q. Are you willing to waive your legislative privilege
14:11:09 20 and explain the grin on your face right there?

14:11:15 21 A. I'm not going to waive legislative privilege, sir.

14:11:21 22 Q. And is the reason you won't waive legislative
14:11:23 23 privilege and that you invoke it today is because the truth to
14:11:26 24 that inquiry is you weren't telling Senator Powell the truth?
14:11:31 25 Isn't that a fact?

14:11:31 1 MR. HILTON: Objection. Privileged, attorney-client,
14:11:33 2 legislative and calls for speculation.

14:11:35 3 JUDGE GUADERRAMA: Sustained.

14:11:38 4 MR. DUNN: Pass the witness.

14:11:53 5 SENATOR CECELIA JOAN HUFFMAN,

14:11:53 6 REDIRECT EXAMINATION BY THE DEFENSE

14:11:53 7 BY MR. HILTON:

14:12:13 8 Q. Senator Huffman, are you a Republican?

14:12:14 9 A. Yes, I am.

14:12:15 10 Q. Republican is a political party?

14:12:19 11 A. Yes.

14:12:20 12 Q. Do you have a partisan motivations?

14:12:23 13 A. Yes.

14:12:24 14 Q. Senator Huffman, can you predict the future?

14:12:29 15 A. I cannot, sir.

14:12:30 16 Q. Can you predict how people are going to vote in the
14:12:37 17 future?

14:12:37 18 A. No, sir.

14:12:38 19 Q. Earlier, do you recall Mr. Dunn asking you if you or
14:12:46 20 Chairman Hunter stated publicly that SD-10 was drawn according
14:12:51 21 to partisanship? Do you recall him asking about that?

14:12:54 22 A. Yes, sir, I recall.

14:12:55 23 Q. Do you recall any Democratic legislators publicly
14:12:58 24 stating that SD-10 was drawn according to partisanship?

14:13:05 25 A. I can't recall, sir.

14:13:30 1 MR. HILTON: Your Honor, if I may have one moment to
14:13:30 2 locate a document. I may have a follow-up question if I can get
14:13:30 3 my hands on it, and If not, I'll have no further questions.

14:13:45 4 JUDGE GUADERRAMA: Yes, sir.

14:14:07 5 MR. HILTON: I appreciate the indulgence, Your Honors,
14:14:11 6 and this will take one more minute, and then I have two more
14:14:18 7 questions and then I'll pass the witness.

14:14:18 8 BY MR. HILTON:

14:14:26 9 Q. Senator Huffman, do you recall the deposition that
14:14:29 10 Mr. Dunn took of you in connection with this case?

14:14:32 11 A. Yes, sir.

14:14:32 12 Q. Okay. Do you recall being asked the question: Would
14:14:34 13 you describe the Senate map as a partisan gerrymander?

14:14:40 14 A. Yes.

14:14:41 15 Q. Do you recall my objection and instruction to you not
14:14:42 16 to reveal any legislative privileged information in response to
14:14:46 17 that question?

14:14:47 18 A. Yes.

14:14:47 19 Q. Do you recall what your answer to that question was?

14:14:58 20 A. No.

14:14:59 21 Q. Perhaps I can refresh your recollection?

14:15:01 22 A. I wish you would.

14:15:46 23 Q. I'm going to end that line of questioning prematurely.

14:15:57 24 Senator Huffman, have you revealed any legislative
14:16:00 25 privileged information today in your testimony?

14:16:01 1 A. No.

14:16:01 2 Q. And did you maintain your legislative privilege?

14:16:05 3 A. Yes, sir.

14:16:07 4 Q. Okay.

14:16:07 5 MR. HILTON: Nothing further.

14:16:09 6 THE COURT: All right. Thank you.

14:16:11 7 Mr. Dunn?

14:16:13 8 MR. DUNN: I have no further questions for this

14:16:15 9 witness, Your Honor. I just have a small thing I'd like to make

14:16:16 10 sure I insert in the record here. I don't intend to start

14:16:19 11 something.

14:16:19 12 THE COURT: All right. Let me just excuse the

14:16:22 13 Senator.

14:16:22 14 Are we done with the Senator? Is she free to go?

14:16:28 15 MR. HILTON: Nothing further from the state, Your

14:16:30 16 Honor.

14:16:30 17 MR. DUNN: Nothing from the plaintiffs.

14:16:30 18 THE COURT: Thank you, Senator. You're free to go.

14:16:32 19 (Witness excused).

14:16:32 20 THE COURT: Mr. Dunn?

14:16:33 21 MR. DUNN: We just want the record to reflect that

14:16:34 22 we've viewed Mr. Hilton's -- who is, I'm sure, a fine and

14:16:38 23 excellent lawyer -- as a witness to this case, and we just don't

14:16:41 24 want to be seen having waived any right to pursue discovery on

14:16:45 25 that issue later, but there's no reason to address it today.

14:16:52 1 THE COURT: All right. Who's your next witness?

14:16:57 2 MR. SWEETEN: Your Honor, we had Mr. Hilton doing the
14:16:58 3 next witness, which is was Ingram. We're going to go ahead and
14:17:02 4 make the decision to go ahead and put Dr. Alford on through
14:17:06 5 Mr. Thompson. The one thing I would say is that Mr. Ingram has
14:17:09 6 a flight in the morning at 10:30. We think we can get Alford on
14:17:14 7 and then we can get Mr. Ingram on -- (indiscernible).

8 JUDGE GUADERRAMA: Okay.

9 MR. SWEETEN: May I have a moment to speak with my
10 client?

11 JUDGE GUADERRAMA: Yes, sir.

12 (Witness present and sworn by the Court).

13 MR. THOMPSON: May I proceed?

14:17:55 14 JUDGE GUADERRAMA: Yes, sir.

14:17:55 15 DR. JOHN ALFORD,

14:17:56 16 DIRECT EXAMINATION BY THE DEFENSE

14:18:01 17 BY MR. THOMPSON:

14:18:06 18 Q. Dr. Alford, thanks for being here.

14:18:09 19 Could you state your name for the record, please?

14:18:10 20 A. John Alford.

14:18:12 21 Q. And what do you do for a living?

14:18:13 22 A. I'm a professor of political science at Rice
14:18:19 23 University in Houston, Texas.

14:18:19 24 Q. And could you just briefly walk the Court through your
14:18:21 25 academic background?

14:18:23 1 A. I have a bachelor's degree in -- actually, a
14:18:26 2 Bachelor's of Science in Political Science from the University
14:18:29 3 of Houston, Master's in Public Administration from University of
14:18:35 4 Houston, Master's in Political Science from the University of
14:18:36 5 Iowa, Ph.D. in Political Science, Speciality in the American
14:18:41 6 Politics Public Policy and Methods from the University of Iowa.

14:18:46 7 Q. And then you work in academia. Could you walk through
14:18:49 8 the academic jobs you've held, just briefly?

14:18:51 9 A. I taught for one year at Oakland University, which I
14:18:56 10 mistakenly thought was in Oakland, California, but it was
14:18:57 11 actually in Oakland, Michigan; then was recruited to the
14:19:02 12 University of Georgia, where I taught for three, four years
14:19:06 13 before being recruited to come to Rice. I've taught at Rice
14:19:10 14 since then.

14:19:10 15 Q. And you publish in peer-reviewed journals?

14:19:14 16 A. Yes.

14:19:15 17 Q. A lot, a little? Do you have any description to that?

14:19:16 18 A. Enough to be a full professor.

14:19:18 19 Q. Have you served as a reviewer for peer-review
14:19:22 20 journals?

14:19:23 21 A. Yes, I have.

14:19:24 22 Q. Have you testified as an expert witness in
14:19:25 23 redistricting cases?

14:19:26 24 A. Yes, I have.

14:19:27 25 Q. And kind of give the Court a sense of volume how often

14:19:32 1 you do that?

14:19:32 2 A. I think the first case I testified in was in Alabama
14:19:36 3 in the 1980s. I testified and drew districts in the '90s,
14:19:41 4 testified and drew districts in 2000, and continued to testify
14:19:49 5 and draw districts. So I draw districts mostly for localities,
14:19:52 6 but I testified for the State of Texas for several decades. I
14:19:58 7 worked for the Attorney General of Texas separately before that.
14:20:05 8 I would say I'm a lot busier now than I used to be. I got into
14:20:11 9 this because it was something I could do for a couple of years
14:20:15 10 and then have eight years off, but in Texas, you don't get many
14:20:18 11 years off.

14:20:18 12 Q. So are these and other details about your credentials,
14:20:22 13 qualifications and experiences, available to the Court in a CV
14:20:25 14 that you attached to your report?

14:20:26 15 A. Yes.

14:20:26 16 MR. THOMPSON: Brian, if we could just bring up
14:20:33 17 Defendants' Exhibit 34.

14:20:34 18 BY MR. THOMPSON:

14:20:35 19 Q. Doctor, I believe you have binders if you want them,
14:20:36 20 but we also have Defendants' Exhibit 34 on the screen here.

14:20:41 21 Can you see the exhibit all right?

14:21:08 22 I'll just tell you. This exhibit contains a few
14:21:08 23 related documents. It starts off with your declaration, then
14:21:16 24 has your report and then it has your CV. So I'll let you find
14:21:20 25 that, and ask Brian to flip back to the page Bates stamp State

14:21:25 1 P.I. 1307 in Defendants' Exhibit 34.

14:21:29 2 Is that your CV?

14:21:49 3 A. It is.

14:21:49 4 Q. And is that CV accurate?

14:21:52 5 A. I've got a couple more recent redistricting
14:21:57 6 engagements, but it's everything up into the time it was
14:22:01 7 produced, yes.

14:22:03 8 Q. Thank you.

14:22:03 9 MR. THOMPSON: Your Honor, at this time defendants
14:22:04 10 would offer Dr. Alford as an expert regarding topics addressed
14:22:07 11 in this court, including political science, redistricting and
14:22:10 12 racially polarized voter analysis.

14:22:12 13 JUDGE GUADERRAMA: Mr. Gaber?

14:22:14 14 MR. GABER: No objection, Your Honor.

14:22:16 15 JUDGE GUADERRAMA: The Court will receive him as such.

14:22:19 16 BY MR. THOMPSON:

14:22:21 17 Q. Dr. Alford, would you turn to page two of your report,
14:22:23 18 that's Bate stamped State's P.I. 1299? You include a heading.
14:22:29 19 I believe it says The History of Texas Senate District 10; do
14:22:35 20 you see that?

14:22:35 21 A. Yes.

14:22:36 22 Q. What does the Court need to know from that section of
14:22:39 23 your report?

14:22:39 24 A. I just thought it was useful to have context about how
14:22:43 25 the district had developed over time. It was -- as all the

14:22:48 1 senate districts were, it was a Democratic district at some
14:22:52 2 point. In the past, as the state began shifting Republican, it
14:22:56 3 was one of the early districts, I think one of the first three
14:23:02 4 districts to flip Republican, remained a Republican district
14:23:05 5 through some shade changes and other things over time, and then
14:23:12 6 with the difficulties that Senator Berman got into to, it
14:23:17 7 became, basically, a much more competitive district, and is in
14:23:22 8 that form as sort of been battled for, back and forth. It's a
14:23:27 9 rare thing. It's an actual competitive legislative district in
14:23:34 10 the United States, so it's been contentious for some time.

14:23:38 11 Q. And as part of that analysis, did you ultimately learn
14:23:40 12 anything about whether the district had elected minority
14:23:43 13 candidates or White candidates?

14:23:45 14 A. Over the history of the district, it's based on White
14:23:49 15 candidates.

14:23:49 16 Q. So after that section on the history of SD-10, your
14:23:54 17 report includes section entitled Plaintiffs' Analysis. Do you
14:23:56 18 see that on page four of your report, which is Bate stamped
14:24:01 19 State P.I. 1301?

14:24:05 20 A. Yes.

14:24:05 21 Q. That section mentions ACS data, American Community
14:24:09 22 Survey data, about Senate District 10 CVAP. Is the ACS CVAP
14:24:13 23 data reliable?

14:24:15 24 A. It is reliable. It's the best data we have for the
14:24:21 25 issue of assessing voter-eligible population.

14:24:24 1 Q. Is it something that political scientists routinely
14:24:27 2 use?

14:24:27 3 A. Yes.

14:24:28 4 Q. Could you briefly explain to the Court what data you
14:24:32 5 reported and why it matters?

14:24:34 6 A. Sort of my first question here was it's a little
14:24:39 7 unclear to me initially whether this was -- whether there was an
14:24:43 8 attempt here to argue that this was, in fact, a
14:24:47 9 majority-minority district. So it just looks at those
14:24:52 10 population percentages. If you look at total population, you
14:24:55 11 might be able to argue it was a majority district, but when you
14:25:00 12 look at voter-eligible population, it's not a majority district
14:25:05 13 in the 50-percent-plus-one sense. And in reading Dr. Barreto's
14:25:12 14 report, he focuses on Black and Hispanic voting patterns, and
14:25:17 15 Black and Hispanic eligible population combined doesn't come
14:25:22 16 anywhere close. But I don't think he indicated that he thought
14:25:26 17 that the current Black and Hispanic vote combined would be
14:25:31 18 majority. So again, this helps with the context that we're not
14:25:35 19 talking about a majority-minority district in the Section 2
14:25:39 20 sense.

14:25:40 21 Q. Did the ACS CVAP data that you reviewed reveal
14:25:47 22 benchmark configuration was a majority White CVAP district?

14:25:52 23 A. That's what it reveals, yes.

14:25:54 24 Q. Did you review Dr. Barreto's report?

14:25:57 25 A. Yes.

14:25:58 1 Q. Does Dr. Barreto's report to analyze whether Black
14:26:01 2 voters and Latino voters are cohesive?

14:26:04 3 A. Yes.

14:26:05 4 Q. Do you identify any problems with that analysis?

14:26:07 5 A. He confines his analysis solely to set of fairly
14:26:15 6 recent general election contests, in which he simply looks at
14:26:22 7 patterns of voting for Democratic and Republican candidates
14:26:25 8 statewide in Texas elections. And that was the extent of his
14:26:33 9 analysis.

14:26:33 10 Q. And what's wrong with doing that?

14:26:35 11 A. It's difficult to glean much from those elections,
14:26:39 12 because the partisanship has always been a powerful force in
14:26:47 13 American politics and in voting, but I don't think it's any
14:26:51 14 surprise to any one that is substantially more powerful now than
14:26:55 15 it was even ten years ago or two decades ago. But in terms of
14:27:00 16 voting behavior, it's officially powerful that it simply erases
14:27:05 17 the other factors in voting behavior.

14:27:07 18 So you can look at those results and you can say
14:27:10 19 something about how people voted, democrat or Republican, in a
14:27:18 20 general election, but you can't say much more beyond that. In
14:27:21 21 particular, you can't say much this case, whether these two
14:27:25 22 groups are absent the shared characteristic of being --
14:27:30 23 preferring the Democratic Party, whether they're, in fact, form
14:27:34 24 single political group.

14:27:36 25 Q. Thank you for that.

14:27:36 1 And I want to make sure that those of us who don't run
14:27:40 2 recently polarized analysis for living fully understand what you
14:27:43 3 just said. Are you're suggesting that there's -- if one looks
14:27:51 4 at general elections, partisanship is at issue in a way that is
14:27:56 5 not true if one looks at primary elections?

14:27:59 6 A. That's true. So, primary elections are presumedly
14:28:05 7 distinctive in the sense that the things that voters of whatever
14:28:09 8 racial group can focus on, including policy preferences or a
14:28:13 9 preference for a reflective representation, are available in
14:28:16 10 nonpartisan elections and in party primaries, without being
14:28:22 11 overridden by the queue of partisanship.

14:28:23 12 Q. So if the Court wanted to separate out results that
14:28:27 13 have been driven by partisanship and results that are being
14:28:31 14 driven by race, would the Court want to look at primary
14:28:34 15 election?

14:28:35 16 A. I would not say that I would look only at primary
14:28:39 17 elections, because ultimately the general elections are informed
14:28:42 18 about what will happen to the racial groups preferred candidates
14:28:48 19 in the broader election setting. But, yes, I think if you want
14:28:52 20 to understand why these disparate groups are in fact forming a
14:29:00 21 cohesive political force and, therefore, share in the election
14:29:04 22 of candidates of choice or agree in the election of the
14:29:08 23 candidates of choice, I think you have to get outside of the
14:29:12 24 partisan context to glean some information about that.

14:29:15 25 Q. I think I'm following. So to do a racially polarizing

14:29:20 1 voting analysis in this context, are you saying you should look
14:29:21 2 at both general election data and primary election data?

14:29:25 3 A. I would, yes. I would say not everybody -- I was
14:29:32 4 surprised to see that Dr. Barreto's colleague, Dr. Collingwood
14:29:36 5 recent case I was involved in, did the same analysis and used
14:29:40 6 only primary elections; excluded the analysis in the general
14:29:44 7 elections completely, so they just weren't informed. So some
14:29:48 8 people do that, some do both. I think it's better to have the
14:29:52 9 full picture.

14:29:53 10 Q. So when you're saying that Dr. Barreto's colleague was
14:29:57 11 only primary, you're not suggesting that he looked only at
14:30:00 12 generally election data?

14:30:01 13 A. Correct.

14:30:05 14 Q. Did your report explain this issue by pointing in a
14:30:11 15 particular primary, for example?

14:30:14 16 A. Yes, and intended just to be at a (indiscernible) of
14:30:16 17 an example. I think we could just stop at that point and say
14:30:19 18 there's not sufficient evidence here to know about whether these
14:30:24 19 groups are, in fact, forming a single group.

14:30:28 20 Q. Could you walk the Court through the example you gave
14:30:31 21 in your report?

14:30:31 22 A. The example is an actual endogenous election, which is
14:30:34 23 also something that is not in Dr. Barreto's report. So it's an
14:30:38 24 actual endogenous election. It's a prime Democratic primary in
14:30:42 25 SD-10.

14:30:42 1 Q. Sorry, just before you keep going, we went over this a
14:30:43 2 little bit yesterday I don't think you were here. Could you
14:30:44 3 tell the Court what you mean by endogenous?

14:30:48 4 A. So an endogenous election is what's sometime called
14:30:50 5 the election /TPHAL force. So if the case is about a Senate
14:30:54 6 election, then a contest in a Texas Senate district is the
14:30:59 7 election at hand. So a lot of times when we're look at things
14:31:03 8 like reconstituted election analysis, there're reasons why we
14:31:08 9 might want to use statewide elections to do that, but those
14:31:11 10 statewide elections are exogenous elections. Governors election
14:31:16 11 is a different election.

14:31:18 12 Where I think you see this most dramatically is I've
14:31:20 13 been involved in a lot of school board cases, you get somebody
14:31:25 14 analyzing school board districts using the presidential contest.
14:31:29 15 Well, that's a very exogenous election. It's very different to
14:31:34 16 run for president in a partisan setting than it is to run for
14:31:35 17 the school board and, you know, the supreme branch of Texas. So
14:31:40 18 you always prefer elections that are -- ideally you prefer
14:31:45 19 elections that are the actual election at issue.

14:31:48 20 Q. I'm sorry. I'm sorry to have interrupted you. I
14:31:51 21 think were you testifying about the example contained in your
14:31:54 22 report, and you just described it as an endogenous election. Do
14:31:58 23 you want to just continue where you left off?

14:31:59 24 A. So it's -- if it's a racially contested primary in
14:32:04 25 that district, there's a -- in a Democratic primary, there is an

14:32:10 1 Anglo candidate and a Hispanic candidate, in the primary it
14:32:13 2 appears that the preference of Hispanic voters is for the
14:32:17 3 Hispanic candidate, preference of Anglo voters is for the Anglo
14:32:21 4 candidate. Neither of those strike me as very surprising.

14:32:24 5 And then I think the question at hand here is if this
14:32:26 6 is an actual political coalition, then Black voters should be
14:32:32 7 supporting the Hispanic candidate along with Hispanics voters,
14:32:34 8 but, in fact, the majority of Black voters are favoring the
14:32:37 9 White candidate, not the Hispanic candidate or -- I'm sorry --
14:32:39 10 the Anglo, not the Hispanic candidate.

14:32:43 11 Q. Now was that analysis intended to conclusively
14:32:48 12 establish whether Black voters and Latino voters are cohesive in
14:32:54 13 SD-31 [sic]?

14:32:55 14 A. No.

14:32:56 15 Q. What was it intended to do?

14:32:58 16 A. So there's a background on this issue. There relates
14:33:02 17 not just to this part of Texas, but to all of Texas, to a long
14:33:10 18 literature in political science on the issue of coalitions
14:33:13 19 between Black and Hispanic voters in local elections, as well as
14:33:16 20 in other sorts of elections. And it's pretty consistent in that
14:33:22 21 it shows that these kinds of coalitions rarely emerge. If they
14:33:26 22 emerge, they rarely last.

14:33:27 23 So my point here was just that having done what he had
14:33:30 24 done with general elections, Professor Barreto had failed to
14:33:35 25 establish that something in SD-10 or Tarrant County made it

14:33:40 1 unique, relative to the normal pattern that we would see in
14:33:45 2 which these groups don't form a coalition.

14:33:48 3 So it's an example. It's an endogenous example, but
14:33:55 4 I'm not trying to prove in this particular instance what's true
14:33:58 5 or isn't true. I'm just pointing out there's not enough
14:34:01 6 evidence in Dr. Barreto's report to tell whether this is some
14:34:06 7 sort of an usual setting.

14:34:09 8 JUDGE SMITH: Mr. Thompson, you asked a minute ago
14:34:11 9 about SD-31. Is that what you meant to ask?

14:34:16 10 MR. THOMPSON: I don't think so. I apologize if I --

14:34:17 11 JUDGE SMITH: Just to make clear that this was all
14:34:20 12 about SD-10 and not SD-31.

14:34:20 13 MR. THOMPSON: Yes. I'm sorry.

14:34:22 14 JUDGE SMITH: It was a long answer to your short
14:34:25 15 question, but I'm sure you said SD-31.

14:34:30 16 BY MR. THOMPSON:

14:34:32 17 Q. Dr. Alford, I don't know if I just said SD-31, but
14:34:34 18 your report wasn't analyzed -- I'm sorry -- was your report
14:34:35 19 analyzing SD-10 or SD-31?

14:34:38 20 A. SD-10 and my comments were about SD-10.

14:34:45 21 Q. Thank you very much.

14:34:45 22 In this analysis of SD-10, did your report cite the
14:34:49 23 endogenous primary election example alongside a discussion of
14:34:55 24 some academic literature and cases regarding Black and Latino
14:34:59 25 cohesion or coalitions?

14:35:01 1 A. Yes.

14:35:02 2 Q. And I should have put this on the record earlier,
14:35:07 3 Dr. Alford. What is the Texas Legislative Council?

14:35:11 4 A. The Texas Legislative Council is a research service
14:35:15 5 body within the Texas government, established primarily to
14:35:19 6 provide expert data information to the Legislature, but also
14:35:24 7 more broadly to the Texas government and much of that
14:35:28 8 information is available publicly, as well.

14:35:29 9 Q. It's a reliable source of data?

14:35:32 10 A. Yes.

14:35:32 11 Q. When Dr. Barreto testified, he had some complaints
14:35:42 12 about the information that accompanied your report. Are you
14:35:47 13 familiar with that? I don't know if you saw the testimony or
14:35:49 14 not.

14:35:49 15 A. Yes, I saw that.

14:35:51 16 Q. What information did you disclose with your report?

14:35:55 17 A. Along with the sort of general of what I relied on
14:36:00 18 discussion, I disclosed the actual data set that was used to
14:36:04 19 produce this primary analysis for SD-10, that included the
14:36:12 20 actual votes by precinct, and in accompanying columns, the CVAP
14:36:20 21 information that was used to produce the EI analysis on that
14:36:23 22 data set.

14:36:24 23 Q. Was that equivalent to the information or better than
14:36:27 24 the information that Dr. Barreto disclosed with his report to
14:36:31 25 you?

14:36:31 1 A. He also produced data sets, although he did not
14:36:35 2 produce a single set. He produced sort of multiple raw data
14:36:40 3 sets; one for the VAP data for the entire State of Texas,
14:36:47 4 another independent one for elections, he looked at. So what he
14:36:51 5 discloses was maybe not as convenient, but certainly had I
14:36:54 6 wanted to rerun that, I could easily have worked that out,
14:36:57 7 figured out how the things matched up and run that. My data set
14:37:02 8 was, you know, much more compact, much more useable form.

14:37:06 9 Q. Was the information that you disclosed sufficient for
14:37:10 10 a competent expert to understand the analysis contained in your
14:37:13 11 report?

14:37:14 12 A. Yes.

14:37:14 13 Q. Now I want to walk through just a couple of things
14:37:17 14 that I understood Dr. Barreto to be complaining about
14:37:21 15 specifically. I believe he referred to a spreadsheet that
14:37:26 16 listed candidates as candidate one and candidate two, rather
14:37:28 17 than by name. Are you familiar with that spreadsheet that was
14:37:33 18 disclosed?

14:37:33 19 A. While the votes for the two candidates are in there,
14:37:36 20 the headers, because of the way that these data sets are brought
14:37:40 21 into the EI program, the headers are generic; candidate one,
14:37:47 22 candidate two and candidate three, so that you don't have to
14:37:49 23 rewrite the program every time you pull in a set of data.

14:37:52 24 So the candidates were there with the votes, but it
14:37:59 25 probably wouldn't have been nice if I actually thought to say,

14:38:02 1 by the way candidate one is, you know, Martinez, or candidate
14:38:06 2 two is Martinez. But we know on the primary. If I had gotten
14:38:11 3 data set, I'd have gone to the bottom, looked at who had the
14:38:14 4 most votes and I would have been off to the races or just
14:38:17 5 checked the precinct against the TLC date.

14:38:21 6 And so it didn't render it impossible to analyze and I
14:38:21 7 would say less effort to analyze than his data sets were that
14:38:26 8 came to me.

14:38:27 9 Q. And if I recall correctly, this issue was raised, and
14:38:32 10 subsequent to that, you just provided a code book that explained
14:38:35 11 who candidate one and candidate two were?

14:38:37 12 A. Yeah. Dr. Barreto seemed to think it was very
14:38:39 13 important to have a code book, so I provided a code book that
14:38:43 14 had one line in it; candidate one is X and candidate two is in
14:38:46 15 the code book.

14:38:46 16 Q. Did you think a competent expert could've figured that
14:38:51 17 out?

14:38:51 18 A. I don't think you need to be an expert to figure that
14:38:56 19 out.

14:38:56 20 Q. Now I just want to turn to a different complaint about
14:38:58 21 disclosure. Do you recall Dr. Barreto complain about a table or
14:39:02 22 some table that he received and didn't understand?

14:39:04 23 A. Yes.

14:39:05 24 Q. Was that something you relied upon or relied on in
14:39:10 25 preparing your report?

14:39:11 1 A. My understanding with the discussion of the table
14:39:14 2 involved a large number, substantially more than a single
14:39:17 3 contest with some sort of EI analysis and this is the only
14:39:22 4 contest I analyze for my report. So it's not anything I relied
14:39:26 5 on the report or anything that he apparently couldn't make sense
14:39:30 6 of, but I don't know why he would need to make sense.

14:39:33 7 Q. Is it fair to say that we may have accidentally sent
14:39:35 8 something that wasn't relevant to the opinions you put forward
14:39:39 9 in your report?

14:39:40 10 A. That's possible.

14:39:41 11 Q. So you're confident that anyone who needed
14:39:46 12 understanding actual opinions given in your report would not
14:39:48 13 need to analyze this table that he's talking about at all?

14:39:52 14 A. No.

14:39:53 15 Q. In your report, you also analyze an alternative plan
14:39:59 16 that the plaintiffs had put forward. And I kind of want to get
14:40:02 17 the timeline correct. I believe there was an alternative plan
14:40:07 18 that was mentioned in the P.I. motions before Dr. Cortina's
14:40:12 19 involvement. Do you remember addressing that?

14:40:14 20 A. Yes.

14:40:14 21 Q. I believe the discussion begins on page seven of your
14:40:17 22 report which is Bate stamp State P.I. 1304, if you would like to
14:40:21 23 look at it?

14:40:30 24 A. Yes.

14:40:31 25 Q. What did you conclude in that section of your report?

14:40:33 1 A. With here I'm just addressing just generally the
14:40:37 2 concept that there was -- as I understand the purpose of the
14:40:41 3 alternative plan was to show the state could've achieved its
14:40:45 4 objective in some other way that was less objectionable than
14:40:49 5 plaintiffs, but I thought the alternative just missed the mark.
14:40:53 6 It's a discussion about, kind of to me, a fairly similar
14:40:57 7 operation in Travis County to divide up a Democratic district.
14:41:03 8 It's a district that I think has always been Democratic, and is
14:41:08 9 securely Democratic, so it's, you know, undertaking that, it's
14:41:12 10 just a different -- something quite different in nature from
14:41:17 11 trying to improve a historically Republican district, in the
14:41:21 12 Republican sense and moving it back to its Republican status.

14:41:24 13 Q. And just so it's clear on the record, the district
14:41:27 14 that you are describing is historically Democratic, is that the
14:41:32 15 Travis County District?

14:41:34 16 A. Correct.

14:41:35 17 Q. So are there reasons that Republican legislature is
14:41:38 18 looking for partisan advantage, might have focussed their
14:41:42 19 attention first on Tarrant County rather than Travis County?

14:41:47 20 A. I'm not sure -- I have no, of course, insight into
14:41:50 21 what the Legislature might be doing, I would be surprised if
14:41:54 22 Travis County would ever come up much at all.

14:41:57 23 Q. And I'm sorry. I should clarify the question. I
14:42:00 24 didn't mean to ask you, do you know what legislators are
14:42:03 25 thinking or anything like that. What I meant to ask was from an

14:42:06 1 objective perspective, someone who is looking for partisan
14:42:10 2 advantage trying to create another Republican seat, is there
14:42:12 3 someone -- is there -- are there reasons that someone in that
14:42:15 4 position might look at Tarrant County versus Travis County?

14:42:21 5 A. If you just take the senate districts and put them in
14:42:24 6 order based on their vote for Governor Abbott or Ted Cruz, look
14:42:30 7 at the most secured down to the most Republican to most
14:42:36 8 Democratic, what you'll see in the middle are the districts that
14:42:40 9 you normally would look and say, okay, we've got -- we got our
14:42:41 10 district and won there or we lost narrowly, if you're looking
14:42:45 11 for a seat, that's usually where you look. You don't tend to
14:42:50 12 sort of look down at the strongest districts for the other side
14:42:53 13 and say why don't we try to -- just at a starting point as a
14:42:56 14 practical matter, you know, taking a district that you have won
14:43:02 15 recently and narrowly lost when you lost it, tweaking that
14:43:06 16 district to make the district perform better for your party is a
14:43:12 17 much similar matter than trying to -- so you're sort of --
14:43:17 18 you're fudging around on the margins with the district to try to
14:43:22 19 get it to perform a little bit better for you, whether you are
14:43:26 20 democrat or Republican. You are not building a district at of
14:43:29 21 whole cloth.

14:43:30 22 Q. If I understand you correctly, if we took a list of
14:43:33 23 state senate districts that the Republicans did not win, but
14:43:37 24 ranks them by the ones at the top being the closest the
14:43:41 25 Republicans came to winning, are you saying that the Tarrant

14:43:45 1 County district would be ranked higher or lower than the Travis
14:43:48 2 County district?

14:43:49 3 A. The Travis County district would be, if I'm recalling
14:43:52 4 correct, the third most Democratic district in the state. I
14:43:55 5 think for the margin of victory there was over 30 points. And
14:44:02 6 SD-10 would be the first district on your list that was not won
14:44:08 7 by Republicans, so the next most Republican district about SD-10
14:44:13 8 is a district that was won by Republicans, not just in the
14:44:17 9 endogenous election, but also in things like the Tec Cruz race.

14:44:23 10 Q. Now after you submitted your report, analyzing the
14:44:27 11 plaintiffs' alternative plan, did Dr. Cortina submit an expert
14:44:30 12 report analyzing a new alternative plan called Alternative Plan
14:44:35 13 4?

14:44:35 14 A. Yes.

14:44:36 15 Q. Did you review that report?

14:44:40 16 A. I did.

14:44:41 17 Q. I want to start at a high level and give you a chance
14:44:46 18 to address Dr. Cortina's individual opinion.

14:44:49 19 Are you aware of any reason to think that the Texas
14:44:51 20 Legislature considered Alternative Plan 4?

14:44:54 21 A. No.

14:44:55 22 Q. Was Dr. Cortina's first opinion based on an election
14:45:02 23 analysis?

14:45:05 24 A. It's based on some election results. I'm not sure
14:45:09 25 it's what you mean by analysis.

14:45:11 1 Q. I don't mean to assert proper election analysis. I
14:45:16 2 believe he labeled it an election analysis in his report?

14:45:20 3 A. That's correct.

14:45:20 4 Q. What was your reaction to Dr. Cortina's purported
14:45:25 5 election analysis?

14:45:25 6 A. I did not find it particularly persuasive in terms of
14:45:30 7 the underlying argument that it would've been preferable for the
14:45:37 8 Republican Party to choose a plan like plan four over the plan
14:45:42 9 that was adopted.

14:45:44 10 Q. Did Dr. Cortina demonstrate that the Alternative Plan
14:45:53 11 4 would better serve whatever goals the Legislature may have
14:45:57 12 had?

14:45:57 13 A. I don't think so. It's pretty narrowly -- it's pretty
14:46:03 14 narrow in addressing the aspects of that -- the electoral
14:46:05 15 aspects of the plan. So he makes some assumptions about some
14:46:09 16 things that -- that -- some things that might be Republican
14:46:13 17 goals, relative to the election performance of districts, some
14:46:16 18 of which may have been goals of the party and some of which may
14:46:21 19 not. They certainly -- in no sense of the exhaustive election
14:46:23 20 goals pursued by a party when they engage in partisan
14:46:33 21 gerrymandering.

14:46:33 22 Q. We'll just keep moving here relatively quickly,
14:46:33 23 Doctor.

14:46:33 24 Dr. Cortina's opinion, I believe he testified
14:46:36 25 yesterday, was based on a visual analysis of the enacted maps.

14:46:39 1 Are you familiar with that opinion?

14:46:40 2 A. Yes.

14:46:41 3 Q. What was your reaction to Dr. Cortina's visual
14:46:46 4 analysis?

14:46:47 5 A. Well, first of all, I'm not sure exactly what
14:46:50 6 expertise is involved in a visual analysis. I mean, it's a
14:46:54 7 special kind of I know it when I see it expertise. It would be
14:46:58 8 difficult to -- in a scientific sense, right, issues of
14:47:01 9 replicability and so forth. But more generally, I just thought
14:47:07 10 the idea that a visual look at those plans would disclose, even
14:47:13 11 if he was an expert at visually analyzing map confirmations and
14:47:18 12 configurations, the idea that that would disclose somehow a
14:47:19 13 state policy, I mean, I don't think you have to know much about
14:47:25 14 differences between the State Board of Education, the United
14:47:28 15 States Congress, the State Senate and the State House. I mean
14:47:31 16 if you know only the one simple fact that those plans are not
14:47:34 17 all drawn by the same people are in consultation with the same
14:47:38 18 people, you'd know that they might exhibit a variety of
14:47:41 19 different concerns, obviously. The idea that they're shade in
14:47:46 20 one particular part of state could be fairly described as a
14:47:49 21 state policy, I just think is -- again -- I mean, that's
14:47:54 22 substantial overreach, but I don't think it's particularly
14:47:58 23 relevant to the issue here.

14:47:59 24 Q. Is there some scholarly literature that makes state
14:48:03 25 policy a well defined term of art in political science that

14:48:06 1 tells us an expert how to a visual analysis to find that?

14:48:11 2 A. Not that I'm aware of.

14:48:14 3 Q. I believe Dr. Cortina's last opinion he labeled about
14:48:19 4 being core retention. Did you review that opinion as well?

14:48:23 5 A. Yes.

14:48:23 6 Q. And what was your reaction to that opinion?

14:48:28 7 A. There are a lot of different ways to do core
14:48:31 8 retention, so I'll just say, you know, I don't think it merited
14:48:35 9 a redoing or debating the issues about the nature of core
14:48:39 10 retention, because there are different ways of coming at core
14:48:39 11 retention.

14:48:44 12 You come at it from the perspective of the drawn
14:48:47 13 district and looking what the it contains. You can look it
14:48:50 14 coming from the perspective of the original districts and how
14:48:54 15 much of the original district.

14:48:56 16 So, for example, if a district needs to get bigger,
14:48:59 17 and when you make the district bigger, you keep everybody in the
14:49:04 18 district who was there originally. One direction of core
14:49:07 19 retention is that's 100 percent retention, because everybody who
14:49:09 20 was in the old district is in the new district. On the other
14:49:12 21 hand, the new district is not made up entirely of people from
14:49:16 22 District 10. It also now includes people from District 22,
14:49:19 23 but -- so it's fractional in that sense.

14:49:22 24 So, there are different ways to go at it. The way he
14:49:26 25 went at it is one fairly common way, and so I don't have any

14:49:29 1 objection to that or to the numbers he produced. I think it's a
14:49:33 2 reasonable -- looks to be reasonably competent core analysis for
14:49:37 3 the two plans or the three plans.

14:49:39 4 Q. And so taking, you know, his numbers and his analysis,
14:49:42 5 with which you're not fighting right now, did Dr. Cortina
14:49:46 6 demonstrate that the enacted map as 2168 or Alternative Plan 4
14:49:54 7 at a higher core of retention relative to the benchmark plan?

14:50:00 8 A. The average core of retention was higher in the
14:50:03 9 adopted plan than it was in core retention relative to benchmark
14:50:08 10 than it was in Plan 4.

14:50:09 11 Q. Have you ever used the RedAppl software?

14:50:12 12 A. Yes.

14:50:13 13 Q. Do you know whether RedAppl is used by non-expert
14:50:20 14 laymen like staffers?

14:50:23 15 A. That's what it was developed for. So it's an
14:50:26 16 alternative to something called ArcInfo, which is a very
14:50:28 17 complicated piece of GIS software that most mappers use, but
14:50:33 18 RedAppl is developed, I think, by the legislative council, to --
14:50:37 19 precisely to let laypeople or legislators access map drawing
14:50:43 20 software.

14:50:44 21 Q. And do you know whether it's possible for someone
14:50:47 22 using RedAppl to just not turn on racial shading while drawing a
14:50:53 23 map?

14:50:54 24 A. My recollection when I've used RedAppl --

14:50:58 25 MR. GABER: Your Honor, this is not in Dr. Alford's

14:51:07 1 report.

14:51:07 2 JUDGE GUADERRAMA: Mr. Thompson?

14:51:08 3 MR. THOMPSON: That's fair. It's not in the report.

14:51:09 4 I think it goes to his credentials as an expert, but...

14:51:12 5 JUDGE GUADERRAMA: We've already accepted him as an
14:51:18 6 expert.

14:51:18 7 MR. THOMPSON: Thank you, Dr. Alford.

14:51:22 8 No further questions. I'll pass the witness.

14:51:25 9 THE COURT: Mr. Gaber?

14:51:30 10 DR. JOHN ALFORD,

14:51:31 11 CROSS-EXAMINATION BY PLAINTIFFS

14:51:31 12 BY MR. GABER:

14:52:28 13 Q. Mark Gaber for the Brooks plaintiffs?

14:52:32 14 Dr. Alford, good afternoon. We met over the phone
14:52:34 15 once in a deposition. I doubt you remember it. It was in the
14:52:37 16 *Perez v. Abbott* case from 2017. You had a long seven or
14:52:43 17 eight-hour deposition with nine lawyers asking you questions,
14:52:45 18 so...

14:52:45 19 A. Nice to see you in person.

14:52:47 20 Q. Thank you for indulging us.

14:52:50 21 You have served as a political science consultant in
14:52:53 22 many voting rights lawsuits; is that right?

14:52:56 23 A. That's correct.

14:52:56 24 Q. And you have had the occasion to run ecological
14:52:58 25 inference analysis and write about racially polarized voting in

14:53:03 1 those consulting jobs; is that fair?

14:53:05 2 A. That's correct.

14:53:06 3 Q. Have you ever published peer-reviewed journal articles
14:53:10 4 on racially polarized voting?

14:53:12 5 A. No.

14:53:13 6 Q. Have you ever published any peer-review academic
14:53:14 7 articles about ecological inference?

14:53:16 8 A. No.

14:53:16 9 Q. So are you more of a higher consultant who runs these
14:53:22 10 types of analysis, but you don't do any academic work for it; is
14:53:26 11 that fair?

14:53:27 12 A. It's my original academic work, the early, perhaps,
14:53:30 13 two-thirds of my career was election voting behavior analysis.
14:53:36 14 I moved off on a different direction in my research work. I
14:53:40 15 have had an interest in this area. I've taught courses on
14:53:43 16 redistricting and so forth, but for a variety of reasons, it's
14:53:50 17 not an area that I made an active research area.

14:53:53 18 Q. And your active research area relates more, from
14:53:57 19 looking at your CV, top genetics and politics?

14:54:04 20 A. I would not say that.

14:54:05 21 Q. How would you describe it?

14:54:06 22 A. Again, most of my academic career has been doing
14:54:10 23 relatively boring things, like analyzing incumbency advantage
14:54:13 24 and voter behavior. More recently, I'm interested or have
14:54:17 25 become interested in research on physiology of -- broadly the

14:54:22 1 physiology of political behavior, particularly ideology. So a
14:54:27 2 part of that, obviously, because it's physiology, involves
14:54:32 3 genetics, but I would not say I don't actively work in that
14:54:36 4 area. My work is mostly in the area of brain physiology and
14:54:41 5 ideology.

14:54:43 6 Q. When you say, physiology, is your work about whether
14:54:48 7 people inherent -- inherit their political persuasion through
14:54:53 8 their genetic makeup, is that part of what you mean by that?

14:54:57 9 A. No, that's -- so that's a very early piece in this
14:55:02 10 work that sort of established -- that established kind of a sort
14:55:09 11 of goalpost, the general, what's come to be called the standard
14:55:12 12 social science model, as the all abstract or high level human
14:55:21 13 behaviors environmentally caused and not in any sense
14:55:27 14 biologically determined.

14:55:27 15 So sort of our initial proof of concept was to borrow
14:55:32 16 on some work from long standing work from behavioral genetics
14:55:39 17 that shows that, in fact, characteristics like left-right
14:55:42 18 ideology or actually substantially inheritable. Our only
14:55:47 19 purpose there was to demonstrate that was non-zero where in way
14:55:53 20 are we dismissing that environment has enormous impact on
14:55:54 21 people's ideology.

14:55:55 22 But there is clear, replicated evidence, at this
14:56:01 23 point, from I virtually every part of the world, that a portion
14:56:04 24 of your ideological -- adult ideological orientation is
14:56:10 25 influenced by genetics. That's pretty the end of my work on

14:56:17 1 genetics.

14:56:19 2 I was very -- surprisingly, to me, was a very well
14:56:21 3 accepted article. It was the first article in political science
14:56:24 4 ever covered by the science section of the *New York times*, so we
14:56:28 5 felt like we had achieved what we started out to do.

14:56:31 6 Q. Well, turning to your work in this case, if you could
14:56:35 7 turn to -- this is Defendants' Exhibit 34. And it is the first
14:56:40 8 page of your initial expert report. And I think you should have
14:56:57 9 a copy in the black binder?

14:57:00 10 A. I do.

14:57:01 11 Q. The binders are very large.

14:57:01 12 A. Okay.

14:57:06 13 Q. Page one of the report.

14:57:10 14 Now, Dr. Alford, when did you submit this report?

14:57:14 15 A. I don't actually know. I would have to look back to
14:57:33 16 see. It's a very busy time these days and I couldn't tell you
14:57:36 17 in certainty when I submitted the report. Prior to today and
14:57:41 18 sometime after Christmas would be my recollection.

14:57:46 19 Q. I first saw it on December 20th, I believe, which is
14:57:48 20 the day that the defendants' P.I. opposition brief was due.
14:57:54 21 Does that sound about right?

14:57:55 22 A. Certainly, corrects my impression it was done after
14:58:00 23 Christmas.

14:58:00 24 Q. Now, you say in the scope of inquiry, given the very
14:58:04 25 type schedule, my analysis below is both limited in preliminary

14:58:07 1 and I reserve the right to supplement this initial report as
14:58:09 2 appropriate.

14:58:09 3 Do you see that?

14:58:10 4 A. Yes.

14:58:11 5 Q. Did you ever provide any sort of supplement with
14:58:16 6 respect to your opinions regarding Dr. Barreto's report or is
14:58:21 7 this the only report on that topic?

14:58:25 8 A. I think that's correct. I mean, I did provide other
14:58:33 9 material, but I think it was confined to -- if I'm not mistaken,
14:58:37 10 to Dr. Cortina's report.

14:58:39 11 Q. So the only opinions you have with respect to racial
14:58:43 12 polarized voting, or anything else in Dr. Barreto's report, are
14:58:47 13 contained here in Exhibit 34; is that right?

14:58:53 14 A. I mean, I read Dr. Barreto's testimony here in court,
14:58:58 15 so I have opinions.

14:59:00 16 Q. The only opinions that you've disclosed in the case?

14:59:03 17 A. The opinions in this report are the only reports in
14:59:08 18 writing.

14:59:09 19 Q. Did you have time, since December 20th, to make any --
14:59:12 20 or was time available to you, since December 20th, to make any
14:59:16 21 updates if you had them?

14:59:18 22 A. I have not done any additional analysis on the Barreto
14:59:22 23 issues in that time period.

14:59:27 24 Q. Now I want to skip forward to pages two to three of
14:59:32 25 your report, the history of Texas Senate District 10. Do you

14:59:38 1 see that?

14:59:38 2 A. Yes.

14:59:45 3 Q. And at the bottom of page three, you state that,
14:59:47 4 quote, the redraw of the district and the recently enacted plan
14:59:52 5 shifts the district back toward what would likely be more
14:59:56 6 similar to its earlier status as a secure Republican district.

14:59:59 7 Did I read that correctly?

15:00:00 8 A. Yes.

15:00:01 9 Q. Now are you referring back to the 1980s and 1990s in
15:00:07 10 this statement?

15:00:08 11 A. No. I think more to its configuration in the 2000s.

15:00:13 12 Q. Are you aware of what the -- and you go through and
15:00:18 13 say that it was previously more Republican; is that right?

15:00:23 14 A. It was previously more Republican, yes.

15:00:26 15 Q. But since 2008, it's been won three times by the
15:00:32 16 Democratic candidate; is that right?

15:00:34 17 A. I think that's correct.

15:00:35 18 Q. And in that period of time, once by the Republican
15:00:38 19 candidate?

15:00:39 20 A. Correct.

15:00:39 21 Q. And that change in the district's partisan performance
15:00:46 22 has corresponded with the rapid increase in the district's
15:00:50 23 minority population; is that fair?

15:00:53 24 A. I've not looked at a timeline change in the district,
15:00:58 25 so, I presume the district, in terms of general trends, probably

15:01:05 1 has been trending that direction, but I don't know about the
15:01:08 2 timeline.

15:01:08 3 Q. So you haven't studied the timeline of the demographic
15:01:14 4 makeup of SD-10, only the election results?

15:01:18 5 A. The only thing I've looked at with a timeline was
15:01:22 6 looking at, with regard to Dr. Barreto's contention that the
15:01:25 7 district is today, certainly a majority-minority voter-eligible
15:01:31 8 district. So I looked at the timeline with regard to that and I
15:01:34 9 disagree with that, but the terms of what you're talking about,
15:01:38 10 what was the shift from say the 90s up to today, I have not
15:01:42 11 looked at that.

15:01:47 12 Q. Now, on page or section four of your report, which is
15:01:54 13 page four of your report, you have a paragraph at the top of the
15:02:02 14 page. Do you see that under the header Plaintiffs' Analysis?

15:02:06 15 A. Yes.

15:02:06 16 Q. What is the purpose of this paragraph?

15:02:14 17 A. I just found -- I was just trying to sort of anchor
15:02:19 18 what it was that was being discussed here in terms of what
15:02:23 19 mattered. So -- and I was confused a little bit by
15:02:27 20 Dr. Barreto's stance, arguing that this was, in fact, a Section
15:02:33 21 2, *Gingles*' one district, but let's assume that's his assertion.
15:02:39 22 What he asserts the district is today is certainly a
15:02:41 23 majority-majority, Citizen Voting Age Population district.

15:02:45 24 Q. Did Dr. Barreto say anything to that report?

15:02:50 25 A. He certainly argued that, yes, along the lines of

15:02:53 1 the -- my recollection is he presented that data and basically
15:02:57 2 was trying to discount the fact that the CVAP data from the
15:03:02 3 2015, 2019 was dated.

15:03:04 4 Q. My question was the about the section, that it was a
15:03:08 5 *Gingles'* -- the benchmark district was a *Gingles'* prong-one
15:03:10 6 district. Do you use those words?

15:03:10 7 A. That's why I said I was confused about what he was at.
15:03:13 8 (Mumbling) analysis was about, if he wasn't trying to make the
15:03:18 9 case that it was a *Gingles'* one district.

15:03:20 10 Q. Now, do you agree that the ACS data, that's a
15:03:25 11 two percent estimate, is that -- each year; is that right?

15:03:27 12 A. Two percent estimate?

15:03:30 13 Q. The two percent survey, rather, of the population and
15:03:34 14 then therefore generates estimates of the Citizen Voting Age
15:03:37 15 Population?

15:03:37 16 A. Yes. ACS actually serves two percent of the U.S.
15:03:42 17 population every year.

15:03:44 18 Q. And the White CVAP number that you talk about in your
15:03:48 19 report comes from the five-year aggregation of those estimates,
15:03:53 20 right?

15:03:54 21 A. That's correct.

15:03:54 22 Q. And so the data has -- is in some sense stale,
15:04:00 23 correct, it goes back to 2015 in this instance?

15:04:06 24 A. The proportions from the data are centered
15:04:11 25 approximately on 2017.

15:04:18 1 Q. And so what it actually reflects then is the status of
15:04:21 2 the district as of 2017, a snapshot of time?

15:04:25 3 A. That's not entirely true.

15:04:27 4 Q. On average?

15:04:29 5 A. That's -- this is complicated. And I'm not trying to
15:04:34 6 be evasive here, but the Census cautions a lot about saying
15:04:39 7 exactly that about the ACS. A lot of people say, well, the --
15:04:44 8 obviously, if it's 15 to 19, it centered on 17, so it's just
15:04:49 9 weird things were in 17 or it's the average based on 17. It
15:04:53 10 isn't. Technically, it isn't. It's a distribution that's more
15:04:59 11 closely centered on the time period.

15:05:02 12 The ACS is not a -- unlike the Census, which is a
15:05:06 13 snapshot at a point in time, right, the Census is, although it's
15:05:12 14 a legal fiction, the legal fiction is the Census is a full count
15:05:15 15 of U.S. population on a given day every 10 years. The ACS
15:05:21 16 sample runs continuously year round. It's not tied to a
15:05:24 17 particular point in the spring. It's a continuous survey, always
15:05:29 18 in the field and always updating and it is not a count. It is
15:05:32 19 not intended to be a count of anything.

15:05:33 20 Q. The count is the Census Bureau?

15:05:36 21 A. The what?

15:05:37 22 Q. The count is the decennial census data? That's the
15:05:41 23 one count.

15:05:41 24 A. Correct. So while both ACS and decennial census come
15:05:45 25 from the Census Bureau, one is a count and the other is a

15:05:47 1 continuous survey of proportions.

15:05:51 2 Q. So -- but just to be clear, in paragraph four of your
15:05:53 3 report here, you are discussing the legal standards for
15:05:57 4 crossover districts for coalition districts; is that fair?

15:06:04 5 A. I want to say broadly the legal context that they're
15:06:04 6 usually evaluated in.

15:06:05 7 Q. You're not a lawyer?

15:06:07 8 A. No.

15:06:14 9 Q. Have you accomplished any academic papers about the
15:06:17 10 legal theories of crossover vote districts?

15:06:19 11 A. No, I don't publish in that area.

15:06:21 12 Q. Or coalition districts?

15:06:25 13 A. No.

15:06:25 14 Q. Are you aware that a three-judge federal Court in 2012
15:06:30 15 invalidated the 2011 version of SD-10 as intentionally, racially
15:06:37 16 discriminatory?

15:06:42 17 A. I'm not sure about the dates. I have some
15:06:47 18 recollection. Was it a case here in Texas or was it...

15:06:52 19 Q. Well, you testified in the case.

15:06:53 20 A. I know, that's why I'm trying to locate the case in
15:06:57 21 my...

15:06:57 22 Q. It was in Washington D.C.

15:06:59 23 A. Okay. Yeah. I thought it was in Washington. I
15:07:02 24 couldn't figure out why -- was this the Section 5 case?

15:07:05 25 Q. Yes, it was. And you're familiar with that case?

15:07:08 1 A. Yeah, I remember that case.

15:07:12 2 Q. Now in paragraph 4.1, where you discuss Dr. Barreto's
15:07:19 3 record, did you offer any analysis to Dr. Barreto's findings
15:07:24 4 that Black and Hispanic voters vote cohesively in general
15:07:29 5 elections as he reports?

15:07:30 6 A. Well, I mean, I considered it, but I just thought -- I
15:07:37 7 mean, I don't think his figures are correct. I'll just be frank
15:07:41 8 with you. I don't believe his analysis is correct.

15:07:43 9 Q. You didn't offer some sort of analysis on your own?

15:07:47 10 A. That's correct.

15:07:47 11 Q. Did you do any analysis?

15:07:49 12 A. I have not done any analysis.

15:07:51 13 Q. So your belief that his figures are incorrect is just
15:07:55 14 speculation?

15:07:57 15 A. I would not say it was just speculation, but my
15:08:00 16 decision was that I don't believe they're substantively wrong.
15:08:05 17 I believe the majority of Hispanics, the majority of Blacks vote
15:08:09 18 for Democratic candidates in Tarrant County and in SD-10. I
15:08:12 19 believe the majority of Whites vote for Republican candidates.

15:08:15 20 So, I don't think there's anything substantively -- it
15:08:20 21 doesn't matter, in terms of what my point is here, so it's a
15:08:24 22 distraction. But I will say, I'm not going to go on record as
15:08:28 23 saying I didn't contest that, because I think his reports --

15:08:31 24 (Speaking over each other).

15:08:31 25 Q. But you didn't actually contest it, right?

15:08:34 1 A. What?

15:08:35 2 Q. You did not actually contest it in your report?

15:08:39 3 A. I'm not contesting it. I don't think that's the issue
15:08:42 4 at hand.

15:08:43 5 Q. Did you receive Dr. Barreto's data?

15:08:45 6 A. Yes.

15:08:46 7 Q. Did you undertake any effort to replicate his
15:08:49 8 analysis?

15:08:49 9 A. No. That was the decision I was making at that time.

15:09:00 10 Q. Your primary dispute is that -- with Dr. Barreto, is
15:09:05 11 that partisan primary elections should be analyzed as well; is
15:09:10 12 that correct?

15:09:10 13 A. At a minimum, yes.

15:09:12 14 Q. Are voters, who participate in partisan primary
15:09:19 15 elections, a random sample of the voters who eventually
15:09:24 16 participate in the November general election?

15:09:26 17 A. There's not a random sample of that or anything else.

15:09:29 18 Q. I missed the first part.

15:09:30 19 A. There is not a random sample of that or anything else.

15:09:34 20 Q. It's a different set of voters in the primary than in
15:09:38 21 the general, correct?

15:09:38 22 A. I would say typically the voters in the general -- in
15:09:41 23 the -- sorry -- in the primary are a subset of the voters in the
15:09:44 24 general, so there are not a lot of primary specialists, which a
15:09:48 25 term -- so voters sometimes -- we have voters that we call

15:09:51 1 presidential specialists; every four years they come out and
15:09:55 2 vote for President. And if you're a
15:09:57 3 straight-party-ticket-state, they might vote a straight ticket,
15:09:57 4 but they're really there to vote for President.

15:10:00 5 There are not a lot of voters that come out and vote
15:10:03 6 in primaries and then don't vote in general elections. So in
15:10:05 7 that sense, you could think of it as a kind of a subset. On the
15:10:09 8 other hand, if you're starting from the broader set of voters in
15:10:12 9 a November general election, the voters of the Democratic
15:10:17 10 primary are not only -- not a representative sample. They're
15:10:21 11 not even representative. They're Democrats.

15:10:25 12 Q. And it's a much smaller sample in the primary than it
15:10:29 13 is in the general election?

15:10:30 14 A. It is not a sample. It is -- it is --

15:10:33 15 Q. A much more substance --

15:10:35 16 A. -- universe of voters in the use Democratic primary.

15:10:38 17 Q. And that is a much smaller number of voters in any
15:10:42 18 primary election, than it is in the generally election?

15:10:44 19 A. Typically, yes.

15:10:48 20 Q. Does the political science literature have any finding
15:10:52 21 on the characteristics of voters who participate in primary
15:10:55 22 elections versus general elections?

15:10:57 23 A. So again, most primary voters do participate in
15:11:02 24 general elections, but the general electorate is typically less
15:11:07 25 partisan, less efficacious, less politicly motivated, probably

15:11:19 1 some other things as well. That's my recollection.

15:11:24 2 Q. So if the general election electorate is less
15:11:28 3 politically motivated, that would provide a better sense of
15:11:32 4 voters who might be voting along racial lines?

15:11:39 5 A. Not necessarily.

15:11:40 6 Q. Why not?

15:11:40 7 A. I don't think racial and political are separate terms,
15:11:45 8 otherwise we wouldn't be talking about racial groups as a
15:11:51 9 unified political force in politics, if people do vote on the
15:11:56 10 basis of race. So race and politics are not separate.

15:12:07 11 Q. Would you also agree that primary voters are usually
15:12:11 12 somewhat older?

15:12:12 13 A. That's typically the case, yes.

15:12:14 14 Q. And then if you only focus on one party's primary,
15:12:24 15 you're not getting a representative sample of voters in the
15:12:27 16 district as a whole; is that right?

15:12:30 17 A. That's correct.

15:12:37 18 Q. And Republican and Democratic primary in Texas, does
15:12:41 19 the ballot clearly mark the partisan label such as Democratic or
15:12:46 20 Republican at the top of the ballot?

15:12:48 21 A. In the primary?

15:12:49 22 Q. Right.

15:12:50 23 A. Not that I'm aware of.

15:12:52 24 Q. The voter typically knows which primary they're voting
15:13:00 25 in though, correct?

15:13:00 1 A. I would hope so.

15:13:03 2 Q. Okay. I'd like to take a look at the primary that you
15:13:11 3 studied.

15:13:11 4 Now to begin, you looked at one Democratic primary in
15:13:18 5 SD-10; is that correct?

15:13:18 6 A. As far as I know, it's the openly racially contested
15:13:22 7 primary in the modern history of SD-10.

15:13:24 8 Q. And that's the 2014 Democratic primary for SD-10
15:13:32 9 between the Anglo candidate Libby Wilson [sic] and Hispanic
15:13:35 10 candidate Mike Martinez; is that right?

15:13:37 11 A. That's correct.

15:13:39 12 Q. Now, at the bottom of page four, you say in the last
15:13:47 13 sentence: An EI analysis of the same sort provided for the
15:13:52 14 general election by Dr. Barreto -- do you see that sentence?

15:13:56 15 A. Yes.

15:13:56 16 Q. What are you referring to there, when you say: An EI
15:14:00 17 analysis?

15:14:01 18 A. I'm talking about King's EI, which is the standard,
15:14:07 19 sort of broad umbrella for EI analysis. All EI analysis
15:14:11 20 originates from King's original EI model, sometimes called the
15:14:17 21 two-by-two. That's been updated most recent analysis, including
15:14:21 22 the most recent analysis that I've seen from Dr. Barreto, uses a
15:14:27 23 more up-to-date technique. It's sometimes called R by C for
15:14:27 24 Multinomial Dirichlet Bayesian Analysis.

15:14:36 25 (Court reporter asks for clarification).

15:14:36 1 A. Multinomial Dirichlet Bayesian Analysis. That's --
15:14:46 2 that is the -- I would say maybe the highlighted EI method in
15:14:51 3 what Dr. Barreto calls the eiCompare.

15:14:55 4 Q. My question was actually a little more basic than
15:14:57 5 that. I'm trying to figure out which EI analysis you are
15:15:01 6 referring to. What document or what analysis or who -- you
15:15:06 7 know, which EI analysis are you referring to there?

15:15:09 8 A. Which of Dr. Barreto's?

15:15:10 9 Q. No, which of yours. You referred to EI analysis,
15:15:15 10 similar to the same sort of Dr. Barreto, and then you give the
15:15:19 11 results. I'm just curious, when you say (mumbling) and not the
15:15:22 12 EI analysis, which one is that?

15:15:23 13 A. That's the EI analysis of the 2014 primary that I'm
15:15:29 14 reporting in the paragraph.

15:15:30 15 Q. Okay. Maybe we'll circle back to this.

15:15:33 16 So, you report that Mike Martinez got 62 percent of
15:15:37 17 the Hispanic vote. Do you see that on page five?

15:15:42 18 A. Yes.

15:15:42 19 Q. And Libby Willis received 69 percent of the Anglo
15:15:51 20 vote; is that right?

15:15:52 21 A. Yes -- or -- just let me look back here -- yes.

15:15:58 22 Q. And then you go on to show or report that Black voters
15:16:06 23 voted for Libby Willis by a margin of 61 to 39. Do you see
15:16:11 24 that?

15:16:12 25 A. Correct.

15:16:12 1 Q. Where did you get this data?

15:16:14 2 A. That's the result of an EI analysis.

15:16:18 3 Q. Who provided you the EI analysis?

15:16:20 4 A. So the EI analysis was performed, as is true for all
15:16:26 5 of my EI analysis, under my direction, supervised by Dr. Randy
15:16:36 6 Stevenson.

15:16:37 7 Q. I think I heard you say: As is true for all of your
15:16:43 8 EI analysis. Do you recall in the 2017 case that you received
15:16:49 9 an EI analysis from the Attorney General's office and that was
15:16:53 10 the EI analysis that you used, the Texas Attorney General's
15:16:59 11 office?

15:17:01 12 A. Again, there are a lot of Texas cases, but I know that
15:17:06 13 there -- maybe it was 2017. I know I received analysis in the
15:17:12 14 past from the Attorney General's office that I haven't relied
15:17:16 15 on, but I don't know if that was analysis I have relied on.

15:17:19 16 So at some point in the set of the Texas cases,
15:17:26 17 Dr. Stevenson, working with me, developed a methodology and a
15:17:29 18 set of programs for doing EI analysis that he shared with the
15:17:33 19 technicians at the Attorney General's office, so they have the
15:17:38 20 ability to run the EIs in the same form and fashion that we are
15:17:41 21 running them. So, you know, I don't -- this -- whatever was
15:17:49 22 going on in 2017, what's going on now is that the technicians in
15:17:58 23 the Attorney General's office can run an EI in exactly the form
15:18:02 24 that I want it run, because that's been set up by Dr. Stevenson.
15:18:07 25 Dr. Stevenson can run it.

15:18:10 1 In this particular -- for this particular analysis, I
15:18:12 2 think at the time I wrote the report, I may have been using a
15:18:19 3 run that came from the Attorney General's office, that was set
15:18:24 4 up -- we are in the process of -- it's a very large data process
15:18:28 5 to get ready for the trials that are coming up here in Texas, so
15:18:32 6 if we -- for a while, have been involved in the process of
15:18:34 7 building the data and programming capacity to do that. And we
15:18:39 8 did that. We do that kind of a type of election at a time and
15:18:42 9 we were -- we were not at the stage, yet, where we had the full
15:18:46 10 Senate election data set.

15:18:49 11 And so my recollection is that it was just quicker to
15:18:54 12 have -- to have that -- I think what ended up happening was that
15:19:02 13 Dr. Stevenson had that run with -- where the data was at that
15:19:06 14 time, which was the TLC data that the Attorney General's Office
15:19:12 15 had, rather than the data Dr. Stevenson had.

15:19:16 16 Subsequent to that, Dr. Stevenson got that data, and
15:19:21 17 while this has been run again, produces the same results, so I
15:19:25 18 was confident then, because I knew it was Dr. Stevenson code
15:19:30 19 that was being used, the TLC data. I'm confident now, because
15:19:34 20 I've seen the replication of it. Directly, it's the same
15:19:38 21 result.

15:19:38 22 Q. Okay. Who is the technician at the Texas Attorney
15:19:43 23 General's Office? Who ran the EI analysis?

15:19:45 24 A. I know it's in the technical office. I don't know the
15:19:49 25 actual person that runs the analysis.

15:19:51 1 Q. Do you know any of the names of the people in the
15:19:54 2 Texas Attorney General Office's technical office, who do run
15:19:58 3 these types of EI analyses?

15:20:00 4 A. I now Mr. Falk is sort of -- to my knowledge,
15:20:03 5 supervises that group. And I know there's a redistrictor or a
15:20:09 6 GS person there, but there are other technical people in the
15:20:13 7 technical staff as well.

15:20:15 8 Q. Do you know if any of these technicians have Ph.D.s?

15:20:19 9 A. No idea.

15:20:20 10 Q. You've never inquired to see if they have a Ph.D.?

15:20:24 11 A. You know, I have never inquired, because you don't
15:20:27 12 need to have a Ph.D. to initiate an R. Program. That's why we
15:20:33 13 wrote the program.

15:20:34 14 Q. Do you know if they have any experience or training in
15:20:35 15 running ecological inference analysis?

15:20:39 16 A. Again, you don't need to have experience in doing
15:20:41 17 that. You would have to have some experience to doing that, if
15:20:43 18 you're going to write the programs to do it, but if you're going
15:20:47 19 to execute the programs, you don't need that experience. They
15:20:52 20 might have, but I don't know.

15:20:52 21 Q. But you haven't inquired?

15:20:54 22 A. A decade or so ago when -- 15 years ago, the first
15:20:59 23 time I met with any of the technical people, I know there was a
15:21:03 24 mathematician there, who seemed to know a great deal about EI in
15:21:08 25 his mathematical underpinnings, I thought quite sophisticated.

15:21:12 1 I have no idea if he's still there or if he's the one involved
15:21:14 2 in doing it, but it's a very sophisticated technical staff.

15:21:18 3 Q. Did you talk to anyone in the Attorney General
15:21:21 4 office's technical office about this EI analysis that you report
15:21:24 5 about in your report?

15:21:26 6 A. No.

15:21:26 7 Q. How did you receive it?

15:21:28 8 A. I don't recall if I received it from the attorneys or
15:21:34 9 if I received it from Professor Stevenson. I wasn't in
15:21:42 10 communication with the technical office over this. That was
15:21:46 11 communication between Dr. Stevenson and the technical office.

15:21:50 12 Q. So you don't know whether Dr. Stevenson had had any
15:22:02 13 involvement in running this analysis either?

15:22:04 14 A. I think I've discussed what my understanding is of
15:22:07 15 what his involvement was.

15:22:08 16 Q. Did you talk to him about whether he was involved?

15:22:12 17 A. I talked to him about getting the analysis. I tell
15:22:16 18 him what I wanted. I said I want a standard R by C EI run on
15:22:22 19 the 2014 Democratic primary in SD-10, and I want it done now.
15:22:27 20 Because I made the decision, you know, that since there was a
15:22:31 21 racially contested primary, it would be useful illustrative. He
15:22:37 22 said he would do it immediately. His --

15:22:40 23 He then contacted me shortly after that, and said, you
15:22:43 24 know, we don't actually have the set of primary data, yet. So
15:22:48 25 that data hasn't actually been put into our system. He said,

15:22:52 1 you know, I'll talk to Falk and see about either having him send
15:22:59 2 me the data or if they would just run it up there, just run my
15:23:04 3 code up there. And then eventually I got the sheet, which is on
15:23:06 4 the bottom. It says something about the Attorney General's
15:23:09 5 office, so I'm assuming that that was the decision.

15:23:11 6 The next time I communicated with Dr. Stevenson, he
15:23:15 7 indicated that he had subsequently gotten the data, rerun the
15:23:20 8 analysis himself on our system and tried a bunch of different --
15:23:26 9 ran a bunch of stress tests on it and got the same result.

15:23:29 10 Actually, the result was slightly less favorable to
15:23:32 11 Dr. Barreto's position than the one here, but I'm fine with this
15:23:37 12 one.

15:23:37 13 Q. So it sounds like if we wanted to know how this
15:23:41 14 analysis came about, we'd at least need to talk to
15:23:46 15 Dr. Stevenson; is that fair?

15:23:46 16 A. I wouldn't think so.

15:23:48 17 Q. But you didn't conduct the analysis.

15:23:50 18 A. It was conducted by Dr. Stevens, under my supervision,
15:23:54 19 running programs that he and I developed together, using
15:23:58 20 parameters I specified, data I specified.

15:24:02 21 Is there something you want to know about the details
15:24:04 22 about how that was run? You know --

15:24:04 23 Q. (Indiscernible) --

15:24:08 24 A. -- Dr. Barreto would just say I ran eiCompare, which
15:24:11 25 if you've ever looked at it, you'll recognize eiCompare involves

15:24:16 1 some 30 different possible statements, none of which he's
15:24:19 2 discussed in any detail, but if you want to know how R by C EI
15:24:21 3 runs and how we ran this, I'm happy to discuss it with you.

15:24:24 4 Q. So just to back up a little bit, the 61 to 39 percent
15:24:31 5 figure you report for Black voters in the 2014 SD-10 Democratic
15:24:39 6 primary in favor of Libby Willis, in your report this comes from
15:24:43 7 the Texas Attorney General Office, not from Dr. Stevenson.

15:24:46 8 A. Those numbers came from a printout that came in from
15:24:50 9 the Texas Attorney General's office.

15:24:51 10 Q. Okay. Can I have you turn --

15:24:53 11 MR. GABER: Or Mr. Dunn, if you can bring up
15:24:57 12 Defendants' Exhibit 36.

15:25:31 13 BY MR. GABER:

15:25:31 14 Q. Do you see that, Dr. Alford?

15:25:33 15 A. Yes.

15:25:34 16 Q. Is this the EI analysis that was the source of the
15:25:38 17 information you report for the 2014 Democratic primary in SD-10
15:25:43 18 in your expert report?

15:25:45 19 A. I think it is.

15:25:47 20 Q. Okay. So on direct examination, when counsel asked
15:25:51 21 you about whether your analysis had come from this report from
15:25:57 22 the Attorney General's office, that was actually incorrect on
15:26:02 23 direct; is that fair?

15:26:03 24 A. I don't think this is the report they were
15:26:06 25 referencing. If it -- if I answered incorrectly, if I said they

15:26:10 1 were referencing some other report from the Attorney General's
15:26:13 2 office, I know Dr. Barreto referred to some report with multiple
15:26:17 3 elections, across multiple periods of time. I don't know
15:26:21 4 exactly what this is. I did not use it on my report and that's
15:26:25 5 exactly what I said on direct and...

15:26:26 6 Q. But you did use this report, exhibit -- Defendants'
15:26:33 7 Exhibit 36?

15:26:33 8 A. Yes.

15:26:33 9 Q. And I see that there. I see the -- it's reported
15:26:38 10 Libby Willis 61.1 percent and Mike Martinez 38.9 percent; is
15:26:45 11 that right?

15:26:45 12 A. Yes.

15:26:47 13 Q. And we see the date on the bottom. This was run on
15:26:51 14 December 16th, 2021; is that right?

15:26:53 15 A. Correct.

15:26:54 16 Q. Do you see that date on the bottom right?

15:27:00 17 A. Yes, I do.

15:27:01 18 Q. And then it has the Office of the Attorney General,
15:27:04 19 State of Texas, in the lower left corner; is that right?

15:27:08 20 A. That's correct.

15:27:09 21 Q. Is there any way for someone to -- from this chart to
15:27:16 22 seek to replicate this analysis, if this is all they had?

15:27:20 23 A. Sure.

15:27:21 24 Q. And how would they do that from this piece of paper?

15:27:25 25 A. Actually, they're way ahead of where I was with

15:27:29 1 Dr. Barreto's result. I didn't get a piece of paper like this
15:27:32 2 from Dr. Barreto, did I?

15:27:33 3 Q. You got this expert report that had the chart?

15:27:36 4 A. No, there's no piece of paper like this.

15:27:40 5 My expert report contains an extract from this actual
15:27:43 6 EI printout. His report contains tables that are extracts from
15:27:46 7 his actual EI reports, except we have no EI reports in the
15:27:50 8 record from Dr. Barreto. So I could do -- I could redo his
15:27:53 9 analysis, but he would have a head start on me, because it's
15:27:56 10 very clear from this exactly what the analysis is. It's more
15:27:59 11 than everything you need.

15:28:01 12 I can redo his --

15:28:02 13 Q. Thank you.

15:28:02 14 A. -- anaylsis and I don't even have his printout.

15:28:04 15 Q. And when you say that you're referring to the primary
15:28:08 16 election, you didn't have an analysis of the primary election.
15:28:11 17 You had the analysis of the general elections from Dr. Barreto.

15:28:15 18 A. Dr. Barreto has not provided -- if you look at what
15:28:18 19 you're referring to here, your referring to the actual output of
15:28:21 20 running an EI program on an election, the actual output. That's
15:28:25 21 why you know the date it was run. That's why you know all the
15:28:28 22 estimates. That's how you know it's EI analysis. There is
15:28:32 23 nothing in Dr. Barreto's report like this. There is nothing in
15:28:36 24 Dr. Barreto's zip file disclosure like this.

15:28:38 25 Q. You didn't take any of these complaints in your expert

15:28:41 1 report, did you?

15:28:42 2 A. As I said, I had the opportunity if I wanted. As a
15:28:48 3 competent EI analyst, I have the opportunity to rerun and
15:28:52 4 validate Dr. Barreto's analysis. I don't believe that it would
15:28:57 5 have been validated. I don't think it's substantially wrong and
15:29:01 6 I don't want to be down that rabbit hole.

15:29:03 7 I resent Dr. Barreto suggesting that given that he was
15:29:07 8 far ahead of where I would be, that he is simply unable to do
15:29:11 9 that, that is either not true or he is completely incompetent.
15:29:16 10 This is just not an issue here. Competent analysts can use a
15:29:21 11 data set to do an EI. If they have EI printout, they're even
15:29:21 12 better off.

15:29:24 13 I would love -- intend to insist going forward in
15:29:28 14 this -- as these cases go forward, insist on getting
15:29:32 15 Dr. Barreto's EI printouts, because typically in cases involved
15:29:35 16 with Dr. Barreto, I have not been able to replicate his results.
15:29:39 17 I cannot say that about any other expert.

15:29:41 18 Q. And, Dr. Alford, you didn't try here, correct?

15:29:44 19 A. I explained --

15:29:45 20 Q. Yes or no?

15:29:46 21 A. I did not.

15:29:47 22 Q. Does this chart from the Attorney General's office
15:29:51 23 contain any confidence intervals?

15:30:01 24 A. It does not.

15:30:01 25 Q. And a confidence interval would be important,

15:30:04 1 generally, to determine the range of possible percentages, given
15:30:08 2 the known error in the data; is that fair?

15:30:11 3 A. Very useful.

15:30:13 4 Q. Did you ask for the confidence intervals from this
15:30:17 5 chart from the Attorney General's office?

15:30:20 6 A. I did not.

15:30:25 7 Q. Just so the record is clear, Dr. Stevenson is a
15:30:28 8 professor at Rice University; is that right?

15:30:32 9 A. That's correct.

15:30:33 10 Q. Dr. Randy Stevenson; is that correct?

15:30:34 11 A. He's a professor of comparative politics and
15:30:36 12 methodology.

15:30:37 13 Q. And so that -- and so that I have the sequence of
15:30:40 14 events right, the Attorney General's office gave this analysis
15:30:45 15 to Dr. Stevenson. Did he give it to you then?

15:30:48 16 A. As I say, I'm not exactly sure -- obviously, it was
15:30:54 17 produced there. Where it went after that, I was not in direct
15:30:59 18 contact with them, so I did not initiate that. I might have
15:31:04 19 initiated the request with Dr. Stevenson, and whether that form
15:31:08 20 that you've got here, whether that came directly to me or came
15:31:12 21 to me through Dr. Stevenson, I don't recall.

15:31:15 22 Q. Did Dr. Stevenson write the expert report?

15:31:18 23 A. Not a single word of it.

15:31:20 24 Q. Who did?

15:31:21 25 A. I do.

15:31:27 1 THE COURT: Mr. Gaber, we've been at is for about
15:31:30 2 two hours.

15:31:31 3 MR. GABER: Take a break?

15:31:33 4 THE COURT: Yes, sir. Let's take a 15-minute recess.
15:31:36 5 We'll come back at 3:45.

15:31:40 6 COURTROOM SECURITY OFFICER: All rise.

15:46:26 7 (Break at 3:31 p.m. to 3:46 p.m.).

15:46:26 8 BY MR. GABER:

15:46:28 9 Q. Dr. Alford, earlier you mentioned that you had run
15:46:32 10 stress tests on Dr. Barreto's analysis. Do you recall that?

15:46:35 11 A. (No response).

15:46:38 12 Q. You mentioned that you had run stress tests on
15:46:43 13 Dr. Barreto's analysis? Do you recall testifying to that
15:46:44 14 effect?

15:46:44 15 A. No.

15:46:44 16 Q. Did you run stress tests on Dr. Barreto's analysis?

15:46:50 17 A. I have not run Dr. Barreto's analysis.

15:46:53 18 Q. Did you run stress tests on the Attorney General's
15:46:59 19 analysis?

15:46:59 20 A. Yes.

15:47:00 21 Q. How many?

15:47:00 22 A. One.

15:47:02 23 Q. And where is that stress test? Do you still have it?
15:47:06 24 Do you have the results of it?

15:47:07 25 A. I don't have the results of it.

15:47:08 1 Q. What happened to it?

15:47:10 2 A. I can probably retrieve the results of it, but a
15:47:15 3 couple of things that you look at in an EI analysis.

15:47:18 4 So the main thing that you would do to see what might
15:47:24 5 happen in that sort of analysis is if you have the time to do
15:47:27 6 it, is to raise the iterations, so that when we say we're stress
15:47:35 7 testing it, we mean changing the seed and increasing the
15:47:39 8 iterations. And typically that would either show no change or
15:47:43 9 it will show that it's sort of wandering, indicating that it may
15:47:49 10 not be a very solid result. So as I said, we replicated the
15:47:53 11 analysis.

15:47:54 12 In the stress test part, we substantially increased
15:47:59 13 the number of iterations and we got a result that was both more
15:48:04 14 solid and showed a larger divergence in terms of support --
15:48:10 15 minority support between Blacks and Hispanics on that election.

15:48:17 16 So that's why I'm confident in these numbers, because
15:48:20 17 while I was not a part of this original analysis, I have since
15:48:25 18 both retrieved the data, rerun the original form and rerun a
15:48:31 19 much more stressful rigorous form, and the results are, if
15:48:35 20 anything, stronger for my position than what's here.

15:48:39 21 Q. And is that data and analysis that you can produce in
15:48:45 22 this case?

15:48:48 23 A. I have not produced it in this case, because I didn't
15:48:51 24 rely on a report or any subsequent analysis for the case.

15:48:56 25 Q. But as you testified here today, you testified that it

15:48:58 1 bolsters your opinion, correct?

15:49:00 2 A. That's correct.

15:49:02 3 Q. And we don't have that stress test analysis; is that
15:49:07 4 right?

15:49:07 5 A. I assume you don't.

15:49:10 6 Q. What did Dr. Stevenson set the RHO value at for the
15:49:14 7 analysis.

15:49:15 8 MR. GABER: And that's RHO for the court reporter.

15:49:18 9 A. I would have to look back and see what our -- there
15:49:21 10 are whole series of values that we set, so I'd have to go back
15:49:24 11 to see what we're running at currently.

15:49:26 12 Q. Do you have any sense of what it was?

15:49:28 13 A. I don't.

15:49:29 14 Q. How many simulations did Dr. Stevenson set?

15:49:34 15 A. So that's what I would call iterations, but you could
15:49:38 16 call them simulations.

15:49:41 17 So people run anywhere from 500 to -- to quite a lot.
15:49:48 18 These -- this analysis that is produced here, I think was run
15:49:54 19 with, if I'm remembering correctly, maybe 10,000 iterations and
15:49:59 20 maybe a 10,000 burn-in. So we sort of -- we typically push that
15:50:04 21 a little bit harder, sometimes up to a million iterations. I
15:50:09 22 think when stress testing it, we ran 200,000 iterations, as well
15:50:14 23 as tuning, which is not -- this is something else you can do to
15:50:18 24 make that. So it's -- if you tune first, it's -- the iterations
15:50:22 25 are more efficient. So what we did in rerunning it was we tuned

15:50:28 1 first, I think ran the iterations at 200,000.

15:50:32 2 Q. And I want to back up a little bit topically, and then
15:50:37 3 I'll come back. I apologize for that. I didn't want to lose
15:50:41 4 track of it.

15:50:42 5 You mentioned earlier that Dr. Collingwood, in a case
15:50:46 6 that you worked in recently, had analyzed only primary
15:50:49 7 elections. Do you recall that?

15:50:51 8 A. That's correct.

15:50:51 9 Q. Are you referring to the *Johnson v. Wisconsin* case?

15:50:57 10 A. Yes.

15:50:58 11 MR. GABER: For the Courts' record, that's number
15:50:59 12 2021-AP-1450-OA, in the Wisconsin Supreme Court regarding state
15:51:08 13 redistricting.

15:51:08 14 BY MR. GABER:

15:51:10 15 Q. Dr. Alford, do you know why Dr. Collingwood only
15:51:14 16 analyzed primary election results?

15:51:15 17 A. He said that he only analyzed them because thought
15:51:20 18 those were the only things what were probative.

15:51:21 19 Q. And full disclosure, I'm counsel on that case, and
15:51:24 20 Dr. Collingwood is expert for my client.

15:51:26 21 And is it your understanding that the Section 2 claim
15:51:30 22 in that case is about the Democratic primary and White voters
15:51:37 23 blocking the candidates of choice of Black voters in that
15:51:39 24 primary?

15:51:40 25 A. I -- I -- I'm -- I don't think that's really the

15:51:44 1 central issue there. Certainly, it's not a coalition case.

15:51:48 2 Q. No, I guess what I'm saying is, do you understand the
15:51:51 3 Section 2 claim to be in that case?

15:51:59 4 A. I would have to -- I -- I haven't seen the filing in
15:52:01 5 the case since I submitted my report in the case, so I would
15:52:05 6 have to look back.

15:52:06 7 Q. And so when you mentioned that Dr. Collingwood was
15:52:10 8 limiting it to only primary elections, you weren't aware that
15:52:15 9 primary elections were the elections at issue in the case?

15:52:18 10 A. It may well be.

15:52:20 11 Q. You were an expert witness in that case.

15:52:29 12 A. I wrote a report.

15:52:30 13 Q. But you weren't aware that the primary election was
15:52:33 14 the election that's at issue?

15:52:35 15 A. I'm involved in quite a number of similar cases,
15:52:40 16 currently, so I hesitate to talk about a particular one.

15:52:43 17 Q. Turning back to the ecological inference report that
15:52:50 18 the state Attorney General ran, which is Defendants' Exhibit 36,
15:52:57 19 do you know -- excuse me -- do you know if this EI analysis
15:53:05 20 accounted for varying degrees of voter turnout?

15:53:08 21 A. This is R by C analysis, so, yes.

15:53:12 22 Q. And I guess what I mean by that, is turnout within the
15:53:16 23 Democratic primary -- within each precinct, did it account for
15:53:20 24 turnout by race?

15:53:22 25 A. I guess I'm not sure I understand what you mean by

15:53:26 1 within precinct. Within each precinct, it counted for turnout
15:53:30 2 by race.

15:53:30 3 Q. Well, let's -- I want to get back to this, but I want
15:53:37 4 to move a bit more linearly with you to do that.

15:53:41 5 So, the spreadsheet that was sent -- there was an
15:53:52 6 Excel spreadsheet that was sent and that was represented as your
15:53:55 7 underlying data, does that sound right to you?

15:53:58 8 A. Spreadsheet is the underlying data, yes.

15:54:01 9 Q. Not for the Attorney General analysis that's in your
15:54:04 10 report, but for your later effort that you did; is that right?

15:54:09 11 A. It's the same data.

15:54:12 12 Q. How do you know that?

15:54:13 13 A. Because they provided us with the data, and then we
15:54:18 14 did subsequent analysis, and it's the same rows, columns and
15:54:25 15 data.

15:54:25 16 Q. But it's not actually the data that you used. It's
15:54:29 17 not the Excel spreadsheet that you use to come up with this
15:54:32 18 report in your report, because you just used the printout from
15:54:37 19 the AG's office, right?

15:54:40 20 A. I always use the printout.

15:54:42 21 Q. Okay.

15:54:45 22 A. Everybody uses the printout.

15:54:47 23 Q. Everybody uses the printout. What does that mean?

15:54:50 24 A. So Dr. Barreto didn't get the numbers in his report
15:54:54 25 from the spreadsheets he gave me. He got the number in his

15:54:55 1 reports from the printouts he didn't give me.

15:54:58 2 Q. But he ran that report. You didn't run this report.

15:55:01 3 A. I don't know if Dr. Barreto ran it or not.

15:55:05 4 MR. GABER: Mr. Dunn, could you please pull up the
15:55:09 5 spreadsheet that was sent by the State -- actually, first, the
15:55:14 6 code name PDF.

15:55:21 7 BY MR. GABER:

15:55:22 8 Q. Now, you talked about this in your cross-examination,
15:55:24 9 that Dr. Barreto had one of his complaints about it, it didn't
15:55:27 10 list the candidates who were associated with the candidate one
15:55:32 11 field and the candidate 2 field, is this the code, both, that
15:55:35 12 you then subsequently provided us?

15:55:37 13 A. Yes.

15:55:37 14 Q. And candidate one is Libby Willis, do you see that?

15:55:41 15 A. Yes.

15:55:42 16 Q. And candidate two is Mike Martinez?

15:55:45 17 A. Correct.

15:55:45 18 Q. Is this the code book that you used to subsequently
15:55:49 19 run analysis?

15:55:51 20 A. No. We created the code book subsequent to running
15:55:55 21 the analysis.

15:55:55 22 Q. Was that because plaintiffs had requested the data?

15:56:01 23 A. No because they requested the code book. We don't
15:56:04 24 have a code book so we created one.

15:56:07 25 Q. Now, who won more votes in that primary election?

15:56:12 1 A. Libby Willis ran the primary, so I assume she got more
15:56:18 2 votes.

15:56:20 3 MR. GABER: Mr. Dunn, can you pull up the spreadsheet
15:56:25 4 that was produced, please?

15:56:28 5 BY MR. GABER:

15:56:40 6 Q. Dr. Alford, do you recognize this document?

15:56:42 7 A. It looks as though it's the spreadsheet we were
15:56:51 8 talking about.

15:56:59 9 Q. Do you know when this spreadsheet was created?

15:57:02 10 A. I'm not sure I do recognize this spreadsheet.

15:57:23 11 Q. Well, I can represent to you that this is the
15:57:26 12 spreadsheet that we were sent by your counsel last Saturday,
15:57:34 13 Friday or Saturday, represented the data that outlined your
15:57:37 14 analysis. Does that seem right to you?

15:57:39 15 A. It does not look like the spreadsheet that I have that
15:57:45 16 represents that data. So there may have been -- the wrong
15:57:49 17 spreadsheet may have been sent, but I don't recognize this
15:57:54 18 spreadsheet that was used to produce these results.

15:57:56 19 Q. What was different in the spreadsheet that you do
15:57:59 20 recognize? What's triggering to think this isn't the right
15:58:03 21 spreadsheet?

15:58:04 22 A. Well, first of all, the spreadsheet that I -- well, my
15:58:08 23 recollection is that the first thing in the spreadsheet is two
15:58:12 24 candidate columns that's followed by some VAP data followed by
15:58:19 25 CVAP data. What I'm seeing here is some identifier information,

15:58:23 1 VTD-key district, then some CVAP, followed by the candidates,
15:58:30 2 followed by some CVAP, followed by Black and Hispanic and other.
15:58:37 3 I don't even know what those are.

15:58:39 4 Q. Can you see the file name at the top, Dr. Alford?

15:58:44 5 A. The what?

15:58:45 6 Q. The file name?

15:58:47 7 A. Yes.

15:58:47 8 Q. Can you read that for the record, please?

15:58:49 9 A. SD-10, underscore; it looks like dem-something, and
15:59:00 10 2014, I guess, demo, like demographics, maybe, in 2014 dem
15:59:07 11 primary, paren., 2.XLSX.

15:59:15 12 MR. GABER: Mr. Dunn, could you go to the file
15:59:19 13 properties of this spreadsheet?

15:59:21 14 BY MR. GABER:

15:59:22 15 Q. Dr. Alford, do you see it says labs modified by Randy.
15:59:27 16 Do you understand that to be Randy Stevenson?

15:59:29 17 A. I would assume so.

15:59:30 18 Q. And the last modified date is January 20th, 2022.
15:59:34 19 Does that look right to you?

15:59:39 20 A. Yes.

15:59:40 21 Q. When was the analysis that you actually directed to be
15:59:47 22 run using not this data, I guess, but some other set of data,
15:59:51 23 when was that done?

15:59:52 24 A. Prior to the report, so it would've been well prior to
15:59:56 25 1-20.

15:59:58 1 Q. All right. So, this appears to you not to be data
16:00:06 2 that relates to your analysis?

16:00:09 3 A. It may be the data, but it -- at least in my
16:00:12 4 recollection, it's organized differently than the spreadsheet in
16:00:19 5 which I saw the data.

16:00:20 6 Q. Okay.

16:00:22 7 MR. GABER: Mr. Dunn, can you pull up the email that
16:00:26 8 transmitted this data?

16:00:27 9 And we'll offer this as -- the email as Plaintiffs'
16:00:36 10 Exhibit 106.

16:00:47 11 BY MR. GABER:

16:00:48 12 Q. The original email was sent Friday January 1st, 2022,
16:00:54 13 from Mr. Sweeten. And it says, Mark add Chad, please find data
16:00:58 14 relating to the EI analysis related to Dr. Alford. Do you see
16:01:02 15 that?

16:01:02 16 A. Correct.

16:01:02 17 Q. Do you know when this doctor -- the expert disclosure
16:01:08 18 deadline was in this case?

16:01:09 19 A. I don't.

16:01:11 20 Q. And it's your testimony, now, that you don't think
16:01:17 21 this is the data. You don't recognize it, at least.

16:01:20 22 A. I -- it looks like -- I don't know if it's the data or
16:01:24 23 not. I don't recognize the form of the spreadsheet. It may be
16:01:27 24 exactly the same date. I don't know.

16:01:31 25 MR. GABER: Mr. Dunn, go back to the spreadsheet,

16:01:34 1 please.

16:01:35 2 BY MR. GABER:

16:01:36 3 Q. And if you would please --

16:01:37 4 MR. GABER: I'm going to ask Mr. Dunn to sort or -- to
16:01:43 5 sort --

16:01:43 6 JUDGE GUADERRAMA: Give me a second.

16:01:43 7 Thank you.

16:02:05 8 MR. GABER: If you could please sort column F, the VTD
16:02:10 9 Black CVAP column program from largest to smallest?

16:02:10 10 BY MR. GABER:

16:02:31 11 Q. So what I've done, Dr. Alford, is have the Excel
16:02:38 12 spreadsheet sorted, so the precinct with the largest number of
16:02:42 13 Black population are shown at the top of the spreadsheet, so we
16:02:47 14 can take a look at what this data shows. Do you understand
16:02:51 15 that?

16:02:51 16 A. Yes.

16:02:51 17 Q. Now, if you recall the code book identified candidate
16:02:56 18 one as Libby Willis and candidate two as Mike Martinez?

16:03:01 19 A. Correct.

16:03:01 20 Q. Does that seem right?

16:03:04 21 Now if you look -- and the data that you reported was
16:03:07 22 that Black voters supported Libby Willis by a margin of
16:03:15 23 61 percent to 39 percent?

16:03:17 24 A. That's correct.

16:03:17 25 Q. That's a 20-point margin, right?

16:03:21 1 A. Correct.

16:03:21 2 Q. If you look at the precinct on here that's reported as

16:03:26 3 having the largest Black population, which is now in row two,

16:03:34 4 you see that that has a Black CVAP of 2,640, out of total CVAP

16:03:42 5 out of 3,480. Do you see that?

16:03:44 6 A. Yes.

16:03:45 7 Q. And that's a majority Black precinct, right?

16:03:48 8 A. Correct.

16:03:50 9 Q. And candidate one, that you identified as Libby

16:03:54 10 Wilson [sic]; is that right?

16:03:56 11 A. I think that's correct.

16:03:57 12 Q. And you identified candidate two as Mike Martinez?

16:04:01 13 A. Correct.

16:04:01 14 Q. Who carried this precinct?

16:04:03 15 A. That district was carried by candidate two.

16:04:06 16 Q. Who is that?

16:04:07 17 A. I don't know. Based on the code book it would be --

16:04:12 18 suggest it might be Mike Martinez, but I -- again, this is not

16:04:16 19 the form I saw the data in. Maybe the candidates are reversed

16:04:21 20 here. I don't know.

16:04:22 21 Q. So you're saying that the candidates are reversed?

16:04:24 22 A. It's very possible.

16:04:26 23 Q. In which case, it would not really be all that easy to

16:04:29 24 go and compare and look up to see which precinct is which and

16:04:34 25 what candidate is which?

16:04:35 1 A. What do you mean?

16:04:36 2 Q. Well, one of your criticisms of Dr. Alford [sic], was
16:04:39 3 that he didn't need the code book. He could just look at this
16:04:44 4 spreadsheet and determine what this data was.

16:04:47 5 A. Actually criticism with Dr. Barreto though.

16:04:50 6 Q. Did I say Dr. Alford?

16:04:52 7 A. I should be critical of myself, too. It's only fair.

16:04:55 8 Yeah, this is not handled the way it should be
16:04:59 9 handled. That should be unambiguous. On the other hand, if you
16:05:03 10 get the candidates reversed and run the analysis, you'll get the
16:05:05 11 same exact same results, except they all would be flipped. And
16:05:08 12 you look at them say, wait a minute. That looks like the exact
16:05:11 13 same numbers out to ten decimal points, but reversed. What
16:05:13 14 could that mean? It can only mean one thing; the candidates are
16:05:16 15 reversed.

16:05:16 16 Q. What is --

16:05:16 17 A. You can't be mislead by any of this.

16:05:19 18 Q. So, 61 percent of 39 percent is the margin that you
16:05:26 19 performed for Black voters for Willis versus Martinez?

16:05:33 20 A. Correct.

16:05:34 21 Q. Looking at the -- so let's assume that the candidate
16:05:39 22 one and candidate two, that that's flipped and that candidate
16:05:43 23 one is actually Martinez and candidate two is Willis. Looking
16:05:48 24 at the precinct with the largest number of Black votes, what do
16:05:54 25 you -- do you happen to know what that margin of victory is?

16:05:58 1 A. (No response).

16:06:11 2 Q. Do you have a calculator or some device that --

16:06:14 3 A. They do not allow me to bring --

16:06:16 4 Q. Well, I'm not going to even ask that. But I will
16:06:17 5 represent to that I've just calculated it and that's
16:06:20 6 54.9 percent, in the precinct with the largest number of voters,
16:06:24 7 victory for candidate two, which we don't know who that is?

16:06:29 8 A. That's -- this is a good example why we run an
16:06:35 9 incredibly complicated EI program to do this analysis. It tells
16:06:38 10 you exactly nothing. I mean it is the largest number of Black
16:06:40 11 voters, but there 3,480 people in the precinct. The rest of
16:06:44 12 those voters are not Black voters. The election -- matching the
16:06:48 13 election result up with the percent Black, if that's all that
16:06:50 14 was, I would not have a job.

16:06:51 15 Q. Well, I guess I'm just trying to get a sense of, you
16:06:54 16 know, how sure you are -- well, one we don't know that this is
16:06:58 17 the right spreadsheet, right?

16:07:02 18 A. I -- I don't know if it's -- I can't, on the basis of
16:07:06 19 what we're doing here. We could do it all day and I couldn't
16:07:09 20 tell you whether this is the right spreadsheet or whether the
16:07:11 21 candidates are labeled right. I can tell you -- I can certainly
16:07:15 22 can check and see if this is the right data, just put in a
16:07:18 23 different order that I had see. If it is, then I can tell you
16:07:21 24 that no matter which candidate you run as one and two, you'll
16:07:25 25 get identical results that are either these results or the

16:07:27 1 exactly flipped results.

16:07:28 2 And again, if you could tell by summing up the
16:07:30 3 candidates that the code book is wrong, then I guess you figured
16:07:34 4 it out. I think Dr. Barreto could figure it out, too.

16:07:38 5 So, if it's confusion and I am responsible for it,
16:07:41 6 then that's self-criticism. That shouldn't be the case. On the
16:07:45 7 other hand, there's a lot being made out of nothing here.

16:07:50 8 Q. That's your opinion.

16:07:52 9 Okay. So --

16:07:59 10 MR. GABER: Mr. Dunn, if you could open up the second
16:08:01 11 version of this spreadsheet. And if we could reverse -- and
16:08:20 12 this is column...

16:08:36 13 BY MR. GABER:

16:08:37 14 Q. Okay. Dr. Alford -- and this gets back to the
16:08:41 15 question I was asking about you turnout in the primary. I want
16:08:44 16 to get some clarification on this. And so what we've done is we
16:08:49 17 have sorted column D of the spreadsheet. That's the column that
16:08:55 18 reports the total CVAP in the precinct. And we've sorted that
16:09:00 19 from largest to smallest. Do you see that?

16:09:02 20 A. Yes.

16:09:03 21 Q. Now, and let's take the first one that's listed.

16:09:10 22 Do you see that the CVAP and this VTD, which is
16:09:17 23 VTD7616 in this key. The total CVAP is 5,365. Do I have that
16:09:24 24 right?

16:09:24 25 A. Yes.

16:09:25 1 Q. And the Anglo total CVAP is 3,110; is that right?

16:09:33 2 A. That's correct.

16:09:33 3 Q. Now, does it look to you that there were 60 votes for
16:09:41 4 candidate one in this precinct and 83 votes for candidate two?

16:09:45 5 A. Yes.

16:09:45 6 Q. Now this is a majority-Anglo precinct; is that right?

16:09:51 7 A. That's correct.

16:09:52 8 Q. And SD-10, is it your assessment that Anglo voters
16:10:03 9 prefer Republican candidates?

16:10:06 10 A. I would think so, yes.

16:10:07 11 Q. And so -- and this is a, you know, given 5,365 CVAP,
16:10:15 12 that's, what, 143 people voted in that primary in that precinct?

16:10:20 13 A. Correct.

16:10:21 14 Q. Would you expect that that 143 people to be
16:10:29 15 representative of the overall demographics of that precinct?

16:10:35 16 A. No.

16:10:36 17 Q. How would it be different?

16:10:37 18 A. That's Democratic primary, so it will be the majority
16:10:40 19 of -- presumably the majority of Whites in SD-10 won't be voting
16:10:44 20 in the Democratic primary. They'll be voting in the Republican
16:10:48 21 primary. So we learned something about how White Democrats
16:10:51 22 vote, but will learn very little about how Whites in general
16:10:55 23 vote. On the other side of that, presumably the majority of
16:11:00 24 Blacks that participate in a primary, will be participating in
16:11:05 25 the Democratic primary, so we'll get pretty good information

16:11:06 1 about how Blacks vote, probably fairly good, maybe not quite as
16:11:09 2 good about Hispanics, because Hispanics tend to split more
16:11:15 3 Republican than do Blacks. So I would say the primaries -- it's
16:11:20 4 mostly useful to understanding behavior of Black and Hispanic
16:11:25 5 voters in the Democratic primary, less useful understanding
16:11:28 6 White voters in SD-10.

16:11:32 7 Q. So even though this is a majority-Anglo precinct, it's
16:11:38 8 quite likely that the voters, who are voting in this precinct in
16:11:42 9 this election, are either majority-Black or majority-Hispanic or
16:11:46 10 some combination of both; is that fair?

16:11:50 11 A. I don't know what you mean by quite likely. If you
16:11:54 12 mean is it quite possible? It's possible.

16:11:57 13 Q. Well, if it's a majority-Anglo precinct and 5,360
16:12:04 14 people and 140 people show up in the primary, do you agree it's
16:12:11 15 likely that the primary demographic makeup in that precinct is
16:12:16 16 substantially more minority than the precinct itself?

16:12:21 17 A. I would expect it to be substantially more minority.
16:12:24 18 But in terms of who these -- who this handful of voters are, as
16:12:28 19 you can see from those numbers, they could easily, even with
16:12:32 20 very low levels of turnout, they could easily be all Anglo, all
16:12:36 21 Black, all Hispanic or any combination in between.

16:12:39 22 Q. Well, not quite easily, right? I mean it's a
16:12:41 23 Democratic primary, as you just said. The likelihood is that
16:12:45 24 the minority number overrepresents the minority number in the
16:12:50 25 precinct itself?

16:12:51 1 A. That doesn't -- it's true in the aggregate, but isn't
16:12:55 2 necessarily true at the precinct level. There are lots of --
16:12:57 3 there are lots of precincts where you -- I mean remember that if
16:13:01 4 you assume that 20 percent of eligible Whites are Democrats, our
16:13:08 5 Anglos CVAP is 3,110. So 20 percent of that is a lot of people,
16:13:14 6 more than enough to make up this whole -- this whole turnout.

16:13:19 7 So, the question that would have -- a particular
16:13:21 8 precinct is like, is part of the reason why you have multiple
16:13:26 9 precincts analyzed. In a particular precinct, it's not
16:13:30 10 inconceivable that this is, in fact, all Anglo or all Black or
16:13:35 11 all Hispanic.

16:13:36 12 Q. Now if we were to group all of the majority-Anglo
16:13:42 13 precincts, so we're not just looking at one, would it be the
16:13:45 14 case that it is substantially likely that the minority
16:13:50 15 population in those precincts exceeds the -- by quite a bit, the
16:13:57 16 minority total of population in the precinct itself. And I
16:14:01 17 meant to say, the minority total participation in the primary
16:14:07 18 exceeds by a substantial amount the minority population in the
16:14:11 19 precinct.

16:14:12 20 A. I think that's possible. I guess I'm not
16:14:17 21 understanding. So we're -- you're talking about turnout.
16:14:22 22 Turnout it built into the R by C models, where it's actively
16:14:28 23 estimating these differences, and looking at them not by lumping
16:14:33 24 together a few precincts, but by actually looking at the
16:14:36 25 curvilinear relationship to turnout by group across all of these

16:14:41 1 precincts and adjusting for that.

16:14:43 2 And we are starting with CVAP, so I would like to
16:14:46 3 point out that Dr. Barreto's analysis uses VAP, not CVAP, which
16:14:51 4 means, among other things, clearly, his Hispanic estimates are
16:14:55 5 wrong, in ways very similar to what you're talking about --

16:14:55 6 Q. Okay. But --

16:14:56 7 A. -- but he's starting on an even further, even more
16:14:59 8 remote number. He's got a bunch of people --

16:14:59 9 Q. Dr. Alford?

16:15:00 10 A. -- who aren't even eligible.

16:15:02 11 Q. Did you -- do you know if the technician, who ran this
16:15:08 12 model, adjusted by race in the precinct for turnout?

16:15:13 13 A. We don't adjust for turnout. Okay? So there's a much
16:15:21 14 older procedure that I -- maybe is what you're referring to,
16:15:24 15 which is Goodman's Double Regression, where you estimate
16:15:29 16 turnout, adjust for turnout, estimate vote direction and then
16:15:32 17 those estimates are mathematically combined. It's not a
16:15:36 18 technique that's used anymore.

16:15:38 19 We don't adjust for turnout in that form. We -- the
16:15:42 20 model incorporates turnout, because it's not just estimating
16:15:46 21 voting for the different candidates. It's also estimating not
16:15:50 22 voting for any of the candidates.

16:15:53 23 Q. So is it your testimony that the model incorporates
16:15:57 24 the turnout by race that's in the precinct?

16:16:02 25 A. Because the analysis is trying to understand who

16:16:06 1 people voted for by race.

16:16:09 2 So if we do -- for example, if this is a two-way race,
16:16:15 3 if you wanted to, you could run two by two EI, something
16:16:20 4 Dr. Barreto might do, for example, that would be wrong. And
16:16:24 5 that would be wrong. Because if you look at the first table in
16:16:27 6 the very first book by Professor King about EI, he pointed out
16:16:32 7 exactly this problem.

16:16:32 8 If you don't know the actual race of the voters, like
16:16:36 9 in Georgia, when we do this analysis, we know the actual race of
16:16:39 10 the people who showed up in the Democratic primary, because
16:16:43 11 they're registered by race, party, and there's official record
16:16:46 12 of whether they came in and turned in a ballot. So we don't
16:16:50 13 have this issue.

16:16:52 14 Everywhere else, like Texas, where we don't have
16:16:55 15 registration by race, we have to use some other eligible number
16:16:58 16 to get to that. The eligible number closest to the real number
16:17:01 17 is the CVAP. That's why we use CVAP not VAP. So using that
16:17:05 18 CVAP number and putting it into the model, if you just put in
16:17:09 19 the two candidates, you'll have all of the issues you're talking
16:17:13 20 about. But that's not what we're trying to understand.

16:17:16 21 What we're modeling is given the choice of these two
16:17:17 22 candidates or not voting, what did individuals do and how did
16:17:22 23 those decisions play out across all the racial categories. That
16:17:26 24 means that the decision, when we model what happened in this
16:17:29 25 race with regard to the voters, who actually chose Libby

16:17:34 1 Wilson [sic] or Mark Martinez, we also have an option for those
16:17:39 2 citizens of voting age population to have voted for nobody, that
16:17:43 3 is to have not participate or to have rolled off.

16:17:46 4 So when that's being estimated, inherent in that
16:17:51 5 estimation is not just what is the racial groups favoritism
16:17:54 6 toward these two candidates, but sitting off to the side it's
16:17:58 7 estimating the proportion that don't favor either of the
16:18:01 8 candidates and don't participate, that's the appropriate way,
16:18:04 9 and the only way to incorporate that information and still have
16:18:08 10 valid statistical properties. That's what we do here.

16:18:12 11 It's a complicated procedure. It takes a lot of
16:18:17 12 computer horsepower. It results in things that the -- it --
16:18:19 13 results like these printouts, that you can say are the best
16:18:21 14 estimates that can be made of what is an inherently unknown
16:18:24 15 property.

16:18:25 16 You can't get at it better by doing extreme precinct
16:18:30 17 analysis or sorting spreadsheets or we would be back where we
16:18:34 18 were 40 years ago.

16:18:35 19 Q. I'm certainly not trained to do this.

16:18:37 20 Did -- and I noticed you said that it was complicated.
16:18:41 21 It's the case, right, that you don't know the training or
16:18:44 22 expertise of the folks who actually ran the EI analysis that is
16:18:49 23 in the report?

16:18:50 24 A. But you claim you don't know how to do this? Give me
16:18:54 25 five minutes and I can employ you to run the EI analysis.

16:18:59 1 Because running the analysis in the sense of executing the R
16:19:03 2 program is not complicated. That's part of the reason why
16:19:05 3 Barreto and Collingwood developed eiCompare, so people can do it
16:19:08 4 without understanding EI.

16:19:10 5 Trying to understand what is EI is doing is
16:19:13 6 complicated, but actually running it in our program is more
16:19:15 7 complicated than pointing it at the right data set.

16:19:19 8 Q. In the primary model for 2014, did you account for the
16:19:23 9 race of the voters in the primary?

16:19:25 10 A. Account for the race of the voters?

16:19:27 11 Q. Uh-huh.

16:19:29 12 A. I'm not sure what you mean.

16:19:30 13 Q. Did you do a Spanish surname analysis?

16:19:34 14 A. No. There's no -- there is no Spanish surname
16:19:38 15 analysis here. There's CVAP.

16:19:40 16 Q. And did you account for the race of the people who
16:19:43 17 actually voted in a precinct in the primary?

16:19:47 18 A. We are predicting, through the EI, just as we're
16:19:51 19 predicting a vote direction, we're predicting who votes by race,
16:19:54 20 by precinct.

16:19:56 21 Q. And that prediction is based on the overall
16:20:00 22 demographics of that precinct?

16:20:03 23 A. It's based upon the CVAP across the precincts, yes.

16:20:06 24 Q. Right. So -- and this is my point. If you have a
16:20:10 25 precinct that overall is 55 percent Anglo, but the actual voter

16:20:17 1 participation in the precinct is, say, 60 percent Black, that --
16:20:22 2 did you account for that difference within a precinct in the
16:20:26 3 analysis?

16:20:30 4 A. If -- if that is a precinct anomaly, in the sense that
16:20:35 5 it's not like the pattern of general pattern of the proportion
16:20:39 6 of Blacks turning out in a nonlinear fashion across the
16:20:44 7 precincts, then nothing can account for that.

16:20:47 8 Q. What about in the case of a non-anomaly? So, we know
16:20:51 9 that SD-10 and Anglo precincts is that that Anglo voters in
16:20:56 10 SD-10 prefer Anglo candidates, right?

16:20:59 11 A. What do you mean we know that?

16:20:59 12 Q. Well, is --

16:21:01 13 A. Through the EI, yes, but again you want to talk about
16:21:03 14 what the EI tells you, compare the VAP to the proportion of
16:21:07 15 population in the general election. In your sense, I can give
16:21:09 16 you the -- we can create the same precinct example, which is the
16:21:12 17 general election. We don't know that at all.

16:21:14 18 Q. Okay. So my -- and maybe I was not precise enough.

16:21:16 19 It's your opinion that the Anglo voters in SD-10
16:21:21 20 prefer Republican candidates?

16:21:24 21 A. Based on the EI analysis, yes.

16:21:25 22 Q. Do you have any reason to doubt that's the case?

16:21:28 23 A. I don't have any reason to doubt that it's the case.
16:21:32 24 But the analysis you're talking about doing right now might make
16:21:35 25 you doubt it, because VAP is a long way from eligible

16:21:39 1 population. Many of this precincts, the VAP estimate for
16:21:44 2 Hispanics is more than -- was more -- well more than twice the
16:21:46 3 actual eligible population, both because Hispanics are younger
16:21:50 4 and because they're more likely to be citizens.

16:21:53 5 So in terms of what we're looking at here for the
16:21:56 6 general election analysis Dr. Barreto did, the problems you are
16:21:59 7 talking about here are inherent and ecological inference. We
16:22:01 8 can't escape them, because we don't know about the individual
16:22:05 9 voters in Texas. But they are as large or more large, larger
16:22:10 10 than Dr. Barreto's VAP analysis of the generals, as they are
16:22:14 11 here in the primary. But in general --

16:22:19 12 (Speaking simultaneously).

16:22:19 13 Q. Dr. Alford, this is CVAP, right?

16:22:22 14 A. What?

16:22:22 15 Q. This is CVAP that's in here, right?

16:22:23 16 A. This is CVAP.

16:22:23 17 Q. Okay. So that addresses the VAP issue you're talking,
16:22:28 18 right, this based on eligible voters?

16:22:29 19 A. This is eligible voters, right.

16:22:31 20 Dr. Barreto's analysis is based on VAP, not eligible
16:22:34 21 voters, and that among other reasons, that means his Hispanic
16:22:39 22 estimates in the general election are certainly an error. I
16:22:43 23 don't -- but again, my belief, based on my confidence in EI, is
16:22:47 24 that with Dr. Barreto running it with VAP instead of CVAP, I
16:22:52 25 still believe that, substantively, those are producing the right

16:22:56 1 estimates.

16:22:56 2 What you're talking about here like within a
16:22:58 3 particular precinct what could be happening, what you're getting
16:23:02 4 to is what is -- is what is the bounds part of an EI analysis.
16:23:05 5 And the fact is that whether you're using VAP or CVAP, you
16:23:08 6 seldom get any legitimate bounds information out of EI in large
16:23:13 7 precincts, so that's what we're seeing here.

16:23:17 8 Q. I'm not sure I quite got an answer to my question,
16:23:20 9 which is whether or not the model accounts for the possibility
16:23:23 10 that across the district, in Anglo-majority precincts, the
16:23:31 11 electorate in the primary is actually majority-minority?

16:23:33 12 A. Oh, yes, certainly does.

16:23:34 13 Q. And how so?

16:23:35 14 A. Because if it's the case that across the board in
16:23:40 15 these precincts the majority of turnout is minority turnout,
16:23:44 16 then what you'll see is that -- I mean for that to be true, it
16:23:48 17 means that Anglo turnout must be very, very much lower than
16:23:52 18 minority turnout, right, given the eligible population.

16:23:55 19 Q. Right.

16:23:56 20 A. And then what you see as you go -- again, as you go
16:23:58 21 across from all Anglo precincts to all minority precincts is
16:24:02 22 what you'll see is turnout will be very high in the all-minority
16:24:05 23 precincts and it will be almost nonexistent in the all-Anglo
16:24:09 24 precincts. That happens to not be true, but if it was true,
16:24:12 25 that's what we would be modeling. It will take advantage of the

16:24:15 1 fact that if you're correct, that Anglos are turning out at
16:24:18 2 really, really low levels, then that'll be disclosed when you
16:24:20 3 go, for example, to the first all-Anglo precinct and compare
16:24:24 4 that to the most -- you know that would be the extreme precinct
16:24:27 5 analysis. But again, that's an analog for what it's doing.

16:24:31 6 Q. Now, this isn't something that you disclosed in your
16:24:33 7 report, right, that there was -- that you did some analysis that
16:24:34 8 had race level voter estimates in your model.

16:24:41 9 A. Again, if you're talking about do I have the racial --
16:24:47 10 do I have the racial self-identification of the voters in a
16:24:49 11 primary in Texas, I don't. Nobody does. I have the CVAP data,
16:24:54 12 which is a better measure available than the VAP data.

16:24:58 13 And when I model that across a series of precincts, if
16:25:02 14 you're confident that when Dr. Barreto models it, he can show
16:25:06 15 that Anglos are more likely to vote Republican, then you also
16:25:08 16 need to be confident that with a better measure like CVAP, that
16:25:12 17 when we estimate it across these precincts, we can account for
16:25:15 18 the fact that there are turnout differences, just as there are
16:25:18 19 in the general. Okay. This is either you accept the EI is
16:25:21 20 doing something here or you just have to dismiss the whole
16:25:24 21 project.

16:25:27 22 This -- there are many questions about how well we're
16:25:30 23 answering ecological inference questions, but there's probably
16:25:32 24 not an area in the social sciences, where there's a more broad
16:25:36 25 agreement and broad acceptance that we're doing the best we can

16:25:40 1 do, and that the results we get, both because they replicate
16:25:43 2 from expert to expert and because they replicate.

16:25:46 3 This is not the first time somebody ran an EI on a
16:25:49 4 general election or primary in the State of Texas, and they
16:25:52 5 produce results that over time, over case, over geography,
16:25:56 6 reenforce our certainty that we are actually providing the Court
16:25:59 7 with some useful insight, despite all of the limitations of
16:26:03 8 ecological inference that you correctly are alluding to.

16:26:08 9 Q. Now I want to move on beyond the -- or I guess -- so
16:26:12 10 after all of the this, after the data pickup, you're saying that
16:26:18 11 you think this is a good estimate, this 61 to 39 for the Black
16:26:22 12 vote for Libby Wilson [sic]?

16:26:24 13 A. Yes.

16:26:24 14 Q. And what is the confidence interval of that?

16:26:27 15 A. Off the top of my head, I don't know what the
16:26:30 16 confidence interval is.

16:26:30 17 Q. Have you ever known?

16:26:31 18 A. I'm sure that I saw it, because it's in the -- in
16:26:34 19 the -- when we do the analysis, it kicks out 95 percent
16:26:38 20 confidence interval.

16:26:38 21 Q. This is the analysis, the second analysis that
16:26:41 22 happened sometime in January?

16:26:44 23 A. Correct.

16:26:47 24 Q. Now, on page five of your report, you also talk
16:26:54 25 about -- well, let's see. It's not page five. I apologize.

16:26:59 1 Actually, I want to stay on the primaries for a
16:27:03 2 second. Did you -- so this is the only primary you analyzed in
16:27:06 3 SD-10, correct?

16:27:06 4 A. Correct.

16:27:07 5 Q. Did you analyze any other primary elections in Tarrant
16:27:11 6 County?

16:27:11 7 A. No.

16:27:12 8 Q. Why not?

16:27:13 9 A. I initially wasn't going to analyze this one. It was
16:27:20 10 a last minute decision, because I thought -- even though I don't
16:27:22 11 think it needs to be addressed. There's -- this is simply not
16:27:25 12 something that's in question on this particular issue, whether
16:27:28 13 in the State of Texas, in Tarrant County, in the Dallas area,
16:27:32 14 Blacks, Hispanics and Asians vote together in a coalition
16:27:36 15 sufficient to satisfy *Gingles*' one. It's just simply not a
16:27:40 16 question anymore.

16:27:40 17 So the issue is whether SD-10 is some unicorn in which
16:27:44 18 that's true, and then it's up to you guys to show that's it
16:27:47 19 true. And I see Dr. Barreto not even attempting to do that. So
16:27:51 20 I'm not here to -- you know, it's just not -- at this stage in
16:27:54 21 this proceeding in the big trial, where we all get a year to do
16:27:58 22 our stuff, all of that's going to be done and done in detail.

16:28:00 23 But, no, I don't think it was necessary here. I don't
16:28:03 24 think this primary is necessary. I think you can erase this
16:28:06 25 entire primary from history and you'll have exactly the same

16:28:11 1 situation in Dallas/Fort Worth, which is the current situation.
16:28:14 2 The current situation in SD-33, which is a miniature of the 10
16:28:19 3 that you're talking about, is the situation where rather than
16:28:22 4 solving a problem, because it created a district that could
16:28:26 5 serve a unified, single minority group, it's created a problem,
16:28:30 6 because it's now a barrier to creating a genuine Hispanic
16:28:33 7 district, right, because it's now a Black district, and if
16:28:36 8 that's all it took to satisfy that unified minority, then Blacks
16:28:41 9 and Hispanics would be thrilled with it.

16:28:43 10 The city of Houston, who I'm working with on
16:28:44 11 redistricting, is being sued to get rid of their at-large seats,
16:28:48 12 because despite of the success, including electing two Black
16:28:50 13 mayors, the city has only elected one district with a Hispanic
16:28:54 14 representative, and so far from being happy that overall,
16:28:57 15 minorities are well represented in the city of Houston. Quite
16:29:01 16 reasonably, I think, Hispanics argue that they are not
16:29:05 17 effectively represented, when a Black candidate, who is the
16:29:07 18 candidate of choice, or Black or White voters, gets elected,
16:29:10 19 they would like to have a system in which the candidates they
16:29:15 20 prefer get elected. So this fiction is not helpful to anybody
16:29:18 21 and it is a fiction.

16:29:19 22 Q. So this primary analysis for the 2014 Democratic
16:29:25 23 primary in SD-10, we can just ignore that?

16:29:27 24 A. I didn't -- I did not need that analysis to offer my
16:29:32 25 criticism. The analysis isn't necessary, because my -- the main

16:29:37 1 thing I'm trying to point out here is Dr. Barreto was provided
16:29:40 2 nothing to overcome the -- this considerable burden in Texas,
16:29:45 3 and particularly in the Dallas/Fort Worth area, to the
16:29:49 4 presumption that you can join these groups together. And he's
16:29:52 5 arguing that -- he's also joining groups together that he didn't
16:29:55 6 even bother to analyze; he's not analyzing Asian voters, he's
16:30:01 7 not analyzing others. It's deficient.

16:30:03 8 Q. Dr. Alford, you mentioned -- I think you said SD-33.
16:30:07 9 I think you meant to say CD 33; is that right?

16:30:10 10 A. Well, this is my trade off of your SD-31, right?

16:30:13 11 Q. Yes.

16:30:13 12 A. So, yes, I meant CD-33.

16:30:15 13 Q. And you mentioned CD-33 on page six of your report; is
16:30:19 14 that right?

16:30:20 15 A. Let me go back to the report.

16:30:24 16 I'm sorry. What tab is that?

16:30:39 17 Q. It is exhibit --

16:30:47 18 A. Oh, 34? I found it. I'm sorry.

16:30:51 19 Q. Did you find it, Exhibit 34?

16:30:53 20 A. Yes, page six.

16:30:56 21 Q. So on page six, you have one paragraph that goes from
16:31:07 22 page six to page seven, where you draw the conclusion that Black
16:31:12 23 and Hispanic voters in D-33 are not cohesive in Democratic
16:31:19 24 primaries; is that correct?

16:31:19 25 A. Yes.

16:31:20 1 Q. Do you provide any data about that?

16:31:22 2 A. No. I was just referencing data that was provided in
16:31:28 3 the previous Texas case on the dispute over CD-33.

16:31:35 4 Q. That was the data that came from the Attorney
16:31:38 5 General's office, right, the EI analysis from the 2017 case that
16:31:43 6 you used?

16:31:43 7 A. I'm actually mostly referencing partly that and partly
16:31:47 8 data that came from Richard Engstrom, one of the plaintiffs'
16:31:51 9 experts in the case.

16:31:52 10 Q. You didn't disclose any of that in this report, right?

16:31:56 11 A. No, I'm just referencing, just generally that
16:31:59 12 discussion. I'm not. It's not something I did for this report
16:32:02 13 or that I looked at for this report.

16:32:06 14 Q. And you haven't updated your analysis with respect to
16:32:11 15 CD-33 for the 2018 Democratic primary?

16:32:16 16 A. No.

16:32:17 17 Q. Are you aware that the candidate who ran against Mark
16:32:22 18 Veasey in the 2016 and 2018 Democratic primaries, ran against
16:32:28 19 him in the 2020 general election?

16:32:29 20 A. I believe I'd heard that.

16:32:31 21 Q. Carlos Quintanilla?

16:32:33 22 A. Yes.

16:32:34 23 Q. Do you know how he performed in the 2020 general
16:32:39 24 election?

16:32:40 25 A. Am I correct in remembering that he's not running as a

16:32:45 1 democrat or a Republican?

16:32:47 2 Q. He ran as an independent.

16:32:49 3 A. Yea, I think he didn't perform very well. It's a
16:32:50 4 partisan general election. If you want to keep making my point
16:32:54 5 for me, keep making my point. Partisan general elections are
16:32:56 6 not about the names or reputations, et cetera, about the
16:32:59 7 candidates. They're about the R and the D, and then after that,
16:33:02 8 you can put the -- however deeply in their heart they believe
16:33:04 9 that the libertarians and the greens and -- like someone can be
16:33:09 10 the top vote-getter as a Republican, lose the primary and run as
16:33:12 11 a libertarian, run as an independent, run as a write-in.

16:33:15 12 Q. And the election that actually elected the candidate
16:33:19 13 in CD-33, mark Veasey won the Hispanic vote; is that right?

16:33:24 14 A. He's running as a democrat, so again, I haven't
16:33:28 15 analyzed that, but if you ask for my prediction, I would predict
16:33:32 16 he won the Democratic vote.

16:33:35 17 Q. Against Carlos Quintanilla?

16:33:38 18 A. Running as independent or running as write- -- Carlos
16:33:40 19 would have done better as a Republican.

16:33:41 20 Q. Well, the Republican candidate was a Latino, as well,
16:33:41 21 did you --

16:33:44 22 A. Not surprising. Did he get the Hispanic vote?

16:33:46 23 Q. No.

16:33:47 24 A. No. Did Carlos get the Hispanic vote? No. Who got
16:33:50 25 the Hispanic vote? The democrat, right, Mark Veasey, who stole

16:33:53 1 the district from the Hispanic voters. It's a Hispanic-majority
16:33:58 2 district created by Domingo Garcia to elect the Hispanics and
16:34:01 3 it's not doing it.

16:34:01 4 Q. Dr. Alford, I just want to close the loop on your
16:34:08 5 CD-33 discussion.

16:34:09 6 The analysis that you ran on CD-33 in your -- in a
16:34:13 7 previous case, not this case, that was an analysis of CD-33 as a
16:34:18 8 whole; is that right?

16:34:19 9 A. I -- I think it is CD-33 as a whole, but I'm not
16:34:27 10 certain. I did not go back to look at that analysis. I
16:34:30 11 actually just looked at the court's discussion about the issue
16:34:33 12 of the coalitions.

16:34:34 13 Q. Okay. Well, I will represent to you this was actually
16:34:37 14 one of my questions to you, at the time, that it was an analysis
16:34:40 15 of CD-33 as a whole, because the district goes from Fort Worth
16:34:44 16 into Dallas County; is that right?

16:34:46 17 A. Correct.

16:34:46 18 Q. You haven't run any specific analysis on the Tarrant
16:34:50 19 County portion of the results from CD-33; is that right?

16:34:55 20 A. I have not.

16:34:56 21 Q. And SD-10 is entirely, or was entirely located, within
16:35:01 22 Tarrant County; is that right?

16:35:02 23 A. The benchmark is entirely in Tarrant County.

16:35:04 24 Q. And so the relevant population for determining whether
16:35:08 25 Black and Latino voters are cohesive in the primary, would be

16:35:11 1 the precincts that are located in Tarrant County; is that fair?

16:35:15 2 A. Ultimately, that would be correct.

16:35:26 3 Q. Dr. Alford, page seven of your report, you sort of
16:35:29 4 summarize the discussion of primaries versus general elections
16:35:33 5 with a quote from long -- long-block quote from a report of
16:35:38 6 Dr. Rene Rocha. Do you see that?

16:35:40 7 A. Yes.

16:35:41 8 Q. And you summarize that in most local settings, the
16:35:47 9 development of long-lasting rainbow coalitions is unlikely. Is
16:35:50 10 that a fair assessment?

16:35:53 11 A. Yes.

16:35:53 12 Q. And you include Dr. Rocha's paper on the back of your
16:35:58 13 report; is that right?

16:35:58 14 A. Yes.

16:35:59 15 Q. When was this paper written?

16:36:01 16 A. Oh...

16:36:02 17 Q. It starts on State's PI, Bates number 001320?

16:36:13 18 A. It looks like it was published in 2007.

16:36:16 19 Q. Okay. Can you turn to -- it's page 324 of the article
16:36:24 20 at the top. It's Bates number state's PI number 001329?

16:36:36 21 A. Yes.

16:36:37 22 Q. And then on the last paragraph of the first column, do
16:36:37 23 you see that Dr. Rocha reports this study shouldn't be
16:36:40 24 interpreted to suggest that there's a lack of cohesion and
16:36:44 25 partisan elections?

16:36:46 1 A. Yes.

16:36:46 2 Q. You didn't include that in your report, right, other
16:36:52 3 than it being appended to your report?

16:36:55 4 A. I mean would've happily done so, but -- except I
16:36:59 5 think, unless I'm mistaken, I'm even -- never suggested or
16:37:03 6 contested the conclusion that the groups spoke cohesively in the
16:37:09 7 general election. That -- it just isn't the issue here. I'm --
16:37:12 8 I'm -- without even redoing Dr. Barreto's analysis, I'm
16:37:15 9 conceding the majority of Blacks and Hispanics in Texas vote
16:37:20 10 Democratic. To say that this coalition emerges in the general
16:37:22 11 election is to say this is a partisan coalition. It's about
16:37:26 12 party behavior, not about racial or ethnicity -- ethnic behave.

16:37:33 13 Traditionally, in the south, Blacks and Whites both
16:37:35 14 voted Democratic, but it didn't mean that the general
16:37:38 15 election -- White victory in the general election meant that the
16:37:40 16 candidate of -- preferred by Blacks had been elected, but the --
16:37:44 17 most of the history of the Voting Rights Act has been about
16:37:48 18 righting exactly that wrong.

16:37:49 19 Q. It's widely known in Texas, would you agree, that
16:37:53 20 Black and Latino voters prefer Democratic candidates and White
16:37:59 21 voters prefer Republican candidates?

16:38:01 22 A. On average, statewide, correct.

16:38:04 23 Q. Would you say that's widely known that that's the case
16:38:07 24 in the urban areas, too; Tarrant County, for example?

16:38:13 25 A. Maybe -- I think it's probably true in Tarrant County,

16:38:17 1 though less probably than it is in other, you know, I'll
16:38:20 2 hesitate, because Tarrant County is a little different than the
16:38:24 3 other urban counties, but it certainly -- the White -- tendency
16:38:29 4 of Whites to vote Republican is certainly, remarkably less, in
16:38:32 5 the large urban cities in Texas; Houston, Dallas, San Antonio,
16:38:37 6 Austin.

16:38:38 7 Q. And it's widely known, would you agree, that rural
16:38:42 8 White voters vote overwhelmingly for Republican candidates?

16:38:47 9 A. Pretty much everywhere that there's a Republican Party
16:38:51 10 in the world, that's true.

16:38:52 11 Q. And your study of political science, that -- is that
16:38:56 12 something that you think most political or politicians are aware
16:39:02 13 of?

16:39:02 14 A. Or the fact that cities are more liberal than...

16:39:05 15 Q. No, that Black and Hispanic voter prefer Democratic
16:39:10 16 candidates and that White voters -- white rural voters prefer
16:39:15 17 Republican candidates?

16:39:16 18 A. I would think so.

16:39:23 19 Q. Do you know what the claim is that we're here to
16:39:27 20 adjudicate in this case for this P.I. hearing?

16:39:27 21 MR. THOMPSON: (Indiscernible).

16:39:27 22 (Court reporter asks for clarification).

16:39:37 23 MR. THOMPSON: Objection, in so far as it call for a
16:39:39 24 legal conclusion.

16:39:40 25 THE COURT: I'll overrule that objection.

16:39:41 1 You can tell us if you know, in your opinion, what
16:39:46 2 that is, not as a legal matter.

16:39:48 3 A. I mean I would say as a non-lawyer, non-scholar of the
16:39:52 4 law, that in most cases it's pretty clear to me, roughly what
16:39:58 5 the parameters of the claim are. Like, so, in a Section 2 case,
16:40:02 6 you know, I understand the way *Gingles*' one, two and three work;
16:40:06 7 I understand what totality of the circumstances is. It doesn't
16:40:08 8 mean I'll always predict what the court is doing to do.

16:40:12 9 But I will say in this case, given the amount of
16:40:14 10 conflict between things like *Bartlett v. Strickland* and, you
16:40:20 11 know, the various rulings on crossover versus coalition, on too
16:40:25 12 much attention to race and too little, in the weird way in which
16:40:29 13 the claims seem to be understood by Dr. Barreto and Dr. Cortina,
16:40:36 14 I would hesitate to say I understand exactly that the legal
16:40:41 15 dilemma is here or what the solution to it is.

16:40:43 16 BY MR. GABER:

16:40:43 17 Q. Have you read the complaint that the Brooks'
16:40:46 18 plaintiffs filed?

16:40:47 19 A. Yes.

16:40:47 20 Q. Okay. So, do you understand that this is a case about
16:40:51 21 one claim is vote intentional discrimination, one claim is
16:40:54 22 racial gerrymander *Shaw* violation and another that's not being
16:40:59 23 adjudicated in this P.I. hearing is a Section 2 coalition claim?
16:41:04 24 Did you read those?

16:41:05 25 A. I mean I know there's a discussion of all of that, and

16:41:08 1 that's exact -- I think was what I was trying inarticulately to
16:41:10 2 say, that there are a lot of moving parts here and how they
16:41:12 3 actually intersect legally, I don't understand.

16:41:14 4 Q. Okay. If the claim is that the Legislature
16:41:19 5 intentionally discriminated to prevent Black and Latino voters,
16:41:24 6 to -- prevent them from electing their preferred candidate in
16:41:29 7 the general election, what is the relevance in your academic
16:41:32 8 view of the primary election?

16:41:35 9 MR. THOMPSON: Objection, calls for a legal
16:41:37 10 conclusion. Objection, vague as to what the formal legal
16:41:41 11 definition of intentional discrimination in its preferred --

16:41:43 12 (Counsel speaking simultaneous with the Court).

16:41:43 13 THE COURT: I'm going to overrule the objection. I'd
16:41:45 14 like to hear what he says.

16:41:47 15 THE WITNESS: Well, I would say first, if the claim is
16:41:51 16 being raised on behalf independently of Black, Hispanic and
16:41:55 17 Asian voters, then I think the -- those issues are issues that I
16:41:59 18 think benefit from understanding getting a better former precise
16:42:06 19 estimate of racial voting percentages, so I think the primaries
16:42:09 20 are useful, but I don't think they're as critical as they are
16:42:13 21 here, where -- where whatever this case is, it's a case, as I
16:42:16 22 read at least, about first saying these groups, Blacks,
16:42:20 23 Hispanic, Asians and others, can be combined for the purpose of
16:42:25 24 this case, because I don't see the analysis that talks about
16:42:27 25 anything except dividing minorities or minority opportunity, I

16:42:30 1 don't see Blacks, Hispanics, Asians. So in that sense, you
16:42:35 2 know, if it's -- if it's -- if any of this is premised on
16:42:39 3 combining the minorities, then I think it's crucial to
16:42:42 4 understand, first, if you could combine the minorities.

16:42:45 5 BY MR. GABER:

16:42:46 6 Q. So, if the claim is that the Legislature intentionally
16:42:51 7 discriminated against minorities in the district, to prevent
16:42:56 8 them as a group from being able to elect their preferred general
16:43:01 9 election candidate, then all of this discussion about the
16:43:06 10 Democratic primary where the candidate -- where no candidate is
16:43:09 11 elected, a candidate is nominated by one party, is largely
16:43:14 12 irrelevant from an academic standpoint even; is that right?

16:43:17 13 A. I mean if your only question is, is the new version of
16:43:22 14 SD-10 more or less likely to elect a Democratic candidate, which
16:43:28 15 seems to be the question you're asking...

16:43:29 16 Q. No, that's not the question I'm asking. I'm trying to
16:43:33 17 understand why it is that you think the primary election is so
16:43:37 18 important, when the claim that we're adjudicating is not a
16:43:42 19 Section 2 coalition claim in this hearing. It's an intentional
16:43:48 20 discrimination claim to prevent minority voters from electing
16:43:52 21 their candidate of choice in a general election.

16:43:54 22 A. Well, first of all, I don't think you get a very clear
16:43:59 23 picture of the voting behavior of minorities by looking only at
16:44:02 24 general elections, which you see partisan outcome, and then
16:44:07 25 quite frankly, if that's what the case is about, then I don't

16:44:10 1 think you need Dr. Barreto or me, because the simple answer to
16:44:14 2 your question -- I've said this about SD-10 before, and I
16:44:18 3 hesitate to say it again -- but in any district, in which under
16:44:23 4 any election, it's possible for a democrat to be elected one
16:44:27 5 time out of ten, if you make that district less Democratic, you
16:44:34 6 will reduce the opportunity for minority voters to elect a
16:44:37 7 candidate of choice in that district. And that doesn't matter
16:44:41 8 whether there are ten minorities or -- or it's 50 percent
16:44:44 9 minority. Right? So it's just axiomatic, given what you're --
16:44:48 10 given this -- this setup that -- there's no question -- if
16:44:51 11 that's what you're saying, like, for example, there's no
16:44:54 12 question that that applies equally -- with equal force to -- to
16:44:59 13 plan four, where it does exactly the same thing in Travis
16:45:05 14 County; it takes a district with substantial, but
16:45:06 15 sub-majority-minority population and divides it up into
16:45:10 16 whatever, six pieces. Right? So I mean that's just -- I mean
16:45:12 17 if that's your basic argument that the state should have
16:45:15 18 intentionally -- (indiscernible) -- somewhere else, I don't
16:45:18 19 know. And if it's your argument --

16:45:18 20 Q. Well -- well -- I -- we are going to move on to the
16:45:22 21 your response to Dr. Cortina, I think now, so we can talk about
16:45:29 22 that.

16:45:31 23 Now, you didn't, in your -- so you issued -- you gave
16:45:37 24 a response report to Dr. Cortina; is that right?

16:45:42 25 A. That's correct.

16:45:44 1 Q. And you discuss it somewhat in your initial report; is
16:45:50 2 that right?

16:45:50 3 A. That's correct.

16:45:51 4 Q. Is there anything in your initial report that you
16:45:55 5 don't dress in your subsequent report, with respect to the
16:46:01 6 alternative plan four issue?

16:46:04 7 A. I guess -- I'm -- are they the -- I'm not sure they're
16:46:08 8 exactly the same plan, but I think the general outlines of my
16:46:11 9 criticism in the original report are sort of drawn out in more
16:46:15 10 detail in the response. I'm -- without looking at the two
16:46:19 11 reports, I couldn't say if there was something I said in one and
16:46:23 12 I didn't say in the other.

16:46:24 13 Q. Okay. I'll have you turn to Defendants' Exhibit 70,
16:46:29 14 if you could?

16:46:46 15 A. I'm there.

16:46:47 16 Q. Okay. And so --

16:46:47 17 MR. DUNN: (Indiscernible).

16:46:47 18 MR. GABER: Okay. It sounds like we're having
16:46:47 19 computer problems.

16:46:47 20 BY MR. GABER:

16:46:56 21 Q. Now, this is your response report to Dr. Cortina; is
16:47:00 22 that right, Dr. Alford?

16:47:02 23 A. That's correct.

16:47:02 24 Q. And you address the three areas of focus of
16:47:08 25 Dr. Cortina, right; you start with the election performance and

16:47:12 1 the comparison amounts in the core population retention section
16:47:16 2 is after that?

16:47:16 3 A. That's correct.

16:47:17 4 Q. Now you don't actually take any issue with Dr.
16:47:24 5 Cortina's election results analysis, in this first section of
16:47:28 6 your response report, correct?

16:47:30 7 A. I -- right, I don't agree with his interpretation, but
16:47:35 8 I'm accepting that he has the right reconstitute election
16:47:39 9 numbers and I don't dispute that.

16:47:40 10 Q. Okay. And you don't take issue with the -- his
16:47:44 11 analytical approach of concluding that a 55 -- or a 10 percent
16:47:48 12 margin of victory for Republicans would generally be considered
16:47:51 13 a safe seat; is that right?

16:47:54 14 A. I don't. I'm sorry. I'm -- I'm commenting on what he
16:48:00 15 did in the report. It's -- that's obviously an arbitrary
16:48:04 16 number. I don't -- I don't take it to be anything other than
16:48:06 17 just an arbitrary number he put in the report.

16:48:08 18 Q. But you don't, anywhere in your response report, you
16:48:11 19 don't criticize that as a level at which Republican candidates
16:48:15 20 would generally be considered secure in their district?

16:48:21 21 A. I -- I didn't pay much attention to it. I just
16:48:24 22 thought he was putting in a number to allow him to look at sort
16:48:27 23 of the districts that are in the more competitive range. I
16:48:30 24 didn't -- I don't -- I didn't -- if he's intending that to mean
16:48:33 25 something special in an election sense, I don't think it means

16:48:36 1 anything special in an election sense. I don't know where any
16:48:41 2 literature that suggests that that's true.

16:48:43 3 Q. What level margin of victory do you think is necessary
16:48:46 4 for -- to be a safe seat?

16:48:49 5 A. Well, obviously, it's not 10 percent, because that's
16:48:53 6 how Brimer lost his Senate seat and that's why were here.
16:48:56 7 Right? I mean people get defeated when they are -- I mean he
16:48:58 8 won before that with, I think, 59 percent of the vote. The next
16:49:02 9 thing you know, he's looking for another job. So it's -- that's
16:49:05 10 not secure enough.

16:49:06 11 I worked for Jim Wright when was a speaker of the
16:49:10 12 House. A group of colleagues and I worked on his re-election
16:49:12 13 campaign. He was furious that he wasn't getting more attention
16:49:16 14 and more appreciation from the constituency, because he was,
16:49:21 15 after all, the most powerful person in the U.S. House of
16:49:25 16 Representatives.

16:49:25 17 Q. You blamed the loss of -- is it Kal [sic] Brimer?

16:49:27 18 A. What?

16:49:28 19 Q. You had blamed, in your report, the loss of that
16:49:31 20 Republican candidate in SD-10 on ethical issues, right?

16:49:35 21 A. Yes.

16:49:35 22 Q. Okay.

16:49:37 23 A. Yeah, he was -- you know, he didn't do a good job of
16:49:39 24 running and that's my point. Maybe he thought that he could be
16:49:41 25 unethical because he was in a safe seat, but I can tell you,

16:49:45 1 I think that's about the margin Jim Wright got in the election,
16:49:49 2 and we were fired and we never worked for him again. He was
16:49:53 3 furious he didn't get above 60 percent.

16:49:56 4 So -- right -- it's -- you know, what's safe enough, I
16:49:59 5 don't know. There -- in the current -- you have to remember
16:50:02 6 that Texas is trending, however slowly Democratic, and these
16:50:06 7 districts are going to be fixed for 10 years, or however long it
16:50:09 8 takes for the Court to overturn them. And so politicians are
16:50:13 9 risk-averse in their forward looking, then if...

16:50:15 10 Q. You don't take any issue with the comparison or you
16:50:17 11 don't take issue with the comparison between the election
16:50:21 12 results and the alternative plan four, as being comparable to
16:50:26 13 the election results in the adoptive plan, right? You don't
16:50:29 14 report on anything like that?

16:50:29 15 A. I mean the table of numbers seems quite reasonable to
16:50:32 16 me, and I use that exact same number of tables to comment on why
16:50:37 17 the interpretation is why I disagree with the interpretation.

16:50:41 18 Q. But that's the thing, you don't actually comment on
16:50:42 19 why you disagree with the interpretation on page one of your
16:50:46 20 report, do you? Other than to say that SD-10, in the benchmark
16:50:51 21 district, is trending towards the Democrats; is that right?

16:50:57 22 A. I guess I -- I mean wasn't aware that Dr. Cortina's
16:51:01 23 report hinged entirely on an arbitrary 10 percent number. I
16:51:05 24 thought he was making a broader point and he using that just to
16:51:08 25 show some counts, so I...

16:51:09 1 Q. And I'm not suggesting to you that it does. I'm just
16:51:12 2 saying you don't take issue with that in your report.

16:51:15 3 A. It's of no importance and I don't take issue with --
16:51:18 4 in my mind, it was of no importance, because it's a small enough
16:51:21 5 table that anybody could look it at. When you've got a thousand
16:51:26 6 native points, you need to be careful about how you summarize
16:51:27 7 things.

16:51:28 8 And you can see the table...

16:51:28 9 Q. And you didn't find anything between the electoral
16:51:31 10 comparison of Alternative Plan 4 and Plan S2168, that you found
16:51:38 11 reason to comment on; is that right?

16:51:39 12 A. On the methodology?

16:51:41 13 Q. No, no. On the actual election results.

16:51:44 14 A. I'm just -- because I'm commenting on Dr. Cortina's
16:51:48 15 report in this case, I'm just taking -- I'm -- I don't believe
16:51:51 16 that he interprets the data in an appropriate way, and so I'm
16:51:55 17 looking at what my interpretation of it is, but I am not
16:52:00 18 disputing his numbers.

16:52:01 19 Q. Okay. And you're not disputing that the electoral
16:52:04 20 performance, using the 2018 and 2020 general elections,
16:52:08 21 reconstituted in the districts in both plans, shows that they
16:52:11 22 perform at least as well for Republican candidates; is that
16:52:16 23 right?

16:52:16 24 MR. THOMPSON: Objection. Vague as to what perform as
16:52:18 25 well means, and to the extent -- I think he means he is

16:52:22 1 misstating Dr. Cortina's testimony.

16:52:25 2 THE COURT: Overruled.

16:52:26 3 You can answer if you understand it.

16:52:28 4 A. And maybe this is, you know, part of the what the
16:52:30 5 misunderstanding is on this particular set of points, but you
16:52:34 6 can just count up the number of districts that somebody won in
16:52:38 7 any particular election. You can use a high mark, low mark.
16:52:42 8 They used to use the Hobby index in the old days and now they
16:52:44 9 use the Cruz index. Right? So you can use that and say, here's
16:52:47 10 how many seats we would've won or wouldn't won. It's a way of
16:52:49 11 summarizing one metric about the performance of districts, which
16:52:53 12 is the metric of any given election, what ended up winning and
16:52:57 13 ended up losing, which is not even consequential, but there are
16:53:00 14 a lot of other metrics that have to do with electrical
16:53:04 15 performance of districts. I mean...

16:53:05 16 BY MR. GABER:

16:53:05 17 Q. You didn't conduct any of that analysis, right?

16:53:08 18 A. No, I'm just commenting this is the analysis
16:53:10 19 Dr. Cortina provided.

16:53:10 20 If you want to focus on the one aspect, then I can
16:53:13 21 assure you that when people draw districts, as I do, you don't
16:53:17 22 just focus on that one aspect, but if you do...

16:53:19 23 Q. Were you here for Senator Huffman's testimony today?

16:53:22 24 A. Yes.

16:53:22 25 Q. And did you hear her video of her testifying about the

16:53:26 1 various elections that she looked at?

16:53:29 2 A. I'm sure I did.

16:53:31 3 Q. Did you hear her testify about looking at the 2020
16:53:34 4 Presidential Election, the 2018 Senate Election and Dan
16:53:39 5 Patrick -- Lieutenant Governor Dan Patrick elections?

16:53:42 6 A. I think she mentioned Cruz, as well.

16:53:44 7 Q. And Cruz.

16:53:45 8 So, if that is true, then Dr. Cortina would have been
16:53:50 9 using the same elections that the Legislature did or say -- said
16:53:55 10 they did?

16:53:55 11 A. And, again, I think we're talking past each other.

16:53:58 12 I'm not saying that you shouldn't look at this, and
16:54:00 13 I'm not saying that it wouldn't be maybe the first thing you
16:54:03 14 look at. But I'm just saying that when you talk about overall,
16:54:06 15 what's a preferred partisan plan, you can't assess that just by
16:54:12 16 talking about just the raw election reconstituted.

16:54:16 17 Parties have a lot of interests and a lot goes into
16:54:20 18 redistricting beyond -- obviously, top line for many incumbents
16:54:24 19 is my share of the vote. But there are a lot of other things
16:54:28 20 that matter deeply, not only to the party, but to the
16:54:31 21 incumbents.

16:54:32 22 Q. And you don't -- you don't identify those in the
16:54:33 23 electoral -- (mumbling)?

16:54:33 24 A. No. All I'm saying is this what I make of what Dr.
16:54:37 25 Cortina's provided.

16:54:37 1 Q. And in terms of what information would be available to
16:54:41 2 someone creating this type of alternative plan, did you -- did
16:54:47 3 you hear the invocation of legislative privilege today?

16:54:51 4 A. I heard a lot of discussion.

16:54:53 5 Q. You are were here. I'm sure you heard it.

16:54:54 6 A. I heard just -- I heard -- well, most of what I heard
16:54:56 7 was about legislative privilege.

16:54:59 8 Q. Okay. So these other considerations, that you just
16:55:03 9 identified or have generally identified, if they are not
16:55:08 10 accessible to the public or a party putting into evidence plan
16:55:12 11 like this, then it can't be considered, right?

16:55:16 12 A. Can't be considered by the Legislature?

16:55:16 13 (Counsel and witness speaking simultaneous).

16:55:20 14 (Court reporter asks for clarification).

16:55:20 15 MR. THOMPSON: I'm sorry.

16:55:21 16 Objection, speculation. Objection, vague as to can't
16:55:25 17 be considered by whom.

16:55:26 18 THE COURT: He can answer if he knows.

16:55:30 19 And you consider those if you don't have access to
16:55:34 20 them.

16:55:34 21 BY MR. GABER:

16:55:35 22 Q. Can you consider something you don't have access to?

16:55:37 23 A. Dr. Cortina doesn't have access, so we can't
16:55:41 24 consider --

16:55:41 25 Q. (Indiscernible).

16:55:41 1 A. -- it. The Legislature has access to it, so they can,
16:55:44 2 which means that Dr. Cortina's analysis may reflect what
16:55:47 3 superficially he thinks is a better plan for the Republicans,
16:55:51 4 but it's the Republicans in the Legislature who have to decide
16:55:54 5 what's a better plan. And the idea that this sort of ends the
16:55:56 6 discussion, I think this may be -- is a rough beginning, but I'm
16:56:00 7 sure --

16:56:00 8 Well, I mean, Kel Seliger is primarily concerned about
16:56:03 9 his opponent in the primary, not about his margin in the --
16:56:07 10 right -- if you make his district more Republican, at the same
16:56:11 11 time open himself up. I've drawn lines where people are the
16:56:12 12 only single thing they cared about, was they wanted to make sure
16:56:16 13 that the person, who they thought was going to oppose them in
16:56:18 14 the next primary, was not in their district. So they might be
16:56:22 15 willing to accept a more -- take a bigger chance in the general
16:56:25 16 to avoid taking a chance in the primary.

16:56:28 17 Q. There's no evidence that you've seen that any of that
16:56:31 18 is the case, right, because of, in part, the indication of
16:56:36 19 legislative privilege?

16:56:37 20 A. In my experience in redistricting, there is a -- the
16:56:40 21 idea that a legislature would look at this table and say, well,
16:56:44 22 I guess that's it; this is a better plan; why didn't we think of
16:56:48 23 that; I mean, it just defies the notion -- this would make
16:56:51 24 redistricting awfully simple, not only for redistricters, but
16:56:54 25 for legislative bodies that have to adopt plans.

16:56:57 1 Q. Dr. Alford, you're not aware of anything that the
16:57:00 2 Legislature did other than putting the House in the district to
16:57:04 3 accommodate former Senator Flores in SD-24?

16:57:08 4 A. I have no knowledge of SD-24. I have no idea. All I
16:57:12 5 know is I've been involved in redistricting and there are a lot
16:57:17 6 of things about a plan that might make you prefer one to
16:57:19 7 another, are --

16:57:19 8 Q. Were you involved in the redistricting of the State
16:57:22 9 Senate Plan in 2021?

16:57:23 10 A. Not at all.

16:57:24 11 Q. So you don't know anything about the -- whatever other
16:57:28 12 partisan priorities beyond electoral performance that might have
16:57:31 13 motivated it?

16:57:32 14 A. Right. I'm just saying in my experience there are --
16:57:35 15 there are partisan motivations that cannot be captured in a
16:57:39 16 single number about a reconstructed election about how your
16:57:43 17 party will do in a particular election. There are larger
16:57:46 18 interests than that, that come under the umbrella of
16:57:50 19 partisanship, that can be summarized in a number. And I'm not
16:57:51 20 saying Dr. Cortina should have added those in. I'm just saying
16:57:56 21 that what did we learn from plan four. We learned that there's
16:58:00 22 a plan out there, that on one indicator, in some narrow sense
16:58:04 23 might seem like it was unequal or preferable plan. On the other
16:58:09 24 hand, on the face of it, I think that the notion, based on his
16:58:13 25 numbers, that that makes any sense at all, I think is, again,

16:58:17 1 simply based on his numbers. That notion to me makes no sense
16:58:20 2 at all.

16:58:22 3 Q. Dr. Alford, did you consider any of the court cases
16:58:29 4 that talk about partisan gerrymandering in Texas when you opine
16:58:35 5 that it would make more sense to do a partisan gerrymandering in
16:58:44 6 Tarrant County versus Travis County?

16:58:44 7 A. I'm not a lawyer, so I'm not offering -- and I
16:58:47 8 don't -- I -- maybe I misunderstood --

16:58:48 9 Q. Is that a no?

16:58:48 10 A. -- I didn't think Dr. Cortina was saying it legally
16:58:52 11 would make more sense. I thought he was just talking about it
16:58:55 12 as redistricting plan. I'm talking about it as a redistricting
16:58:57 13 plan.

16:58:58 14 Q. So your opinion, am I right, your opinion is that if
16:59:02 15 the Legislature would think to do a partisan gerrymander in
16:59:08 16 Tarrant County before they would think to do a partisan
16:59:09 17 gerrymander Travis County; is that your testimony?

16:59:14 18 A. I mean my -- I'll tell you, my frank belief --

16:59:16 19 Q. That's a yes or no question, Dr. Alford.

16:59:19 20 A. That they would think about Tarrant County before
16:59:23 21 Travis.

16:59:24 22 Q. To do a partisan gerrymander.

16:59:27 23 A. Yes.

16:59:28 24 Q. Okay. Dr. Alford, have -- you were an expert in the
16:59:31 25 *Perez v. Abbott* case, right?

16:59:32 1 A. Yes.

16:59:32 2 Q. Did you read the decision in that case?

16:59:34 3 A. The what?

16:59:35 4 Q. Did you read the decision in that case about the 2011
16:59:39 5 Congressional and the State House plans?

16:59:43 6 A. I'm sure at some point I did.

16:59:45 7 Q. Did you consider the Court statement, and I'm quoting
16:59:51 8 from 253 F. Supp. 3d 864 at 897, quote, "The Legislature could
17:00:05 9 have simply divided Travis County and Austin Democrats among
17:00:09 10 five Republican districts," end quote, if the Court had
17:00:15 11 announced to the Legislature that it could divide Travis County
17:00:22 12 into five Republican districts, don't you think that that's a
17:00:24 13 statement to the Legislature that that would be a pretty good
17:00:28 14 place if they wanted to do a partisan gerrymander that they
17:00:34 15 would do it?

17:00:35 16 A. Well, (sound), first of all --

17:00:38 17 Q. Dr. Cortina, is that -- sorry -- Dr. Alford --
17:00:38 18 (Counsel and witness speaking simultaneous).

17:00:38 19 A. -- yeah --

17:00:40 20 Q. -- yes or no question?

17:00:40 21 A. -- I completely disagree with you.

17:00:43 22 Q. Me or the Court?

17:00:44 23 A. Well, the Court is not offering this to the State as
17:00:48 24 one more piece of friendly advice about what a great job you do
17:00:51 25 in redistricting, and then, in fact, if you want to go even

17:00:53 1 further, why don't you cut up Travis County.

17:00:56 2 The Court and the State are --

17:00:57 3 Q. Dr. Alford, you -- you just said you're not a lawyer,
17:00:59 4 right?

17:00:59 5 A. I'm not a lawyer --

17:00:59 6 Q. Okay. So, I --

17:01:00 7 A. -- I'm just a human being. And I'm telling you that
17:01:03 8 when the Court says that to the State, it doesn't mean the State
17:01:07 9 says, oh, thank you and, also, thank you for the things you said
17:01:08 10 about that we do so terrible everywhere else. It's a core
17:01:12 11 decision.

17:01:12 12 Q. Dr. Alford --

17:01:12 13 (Witness speaks over counsel).

17:01:12 14 A. (Indiscernible).

17:01:12 15 Q. -- you're aware that there's also a court decision
17:01:15 16 that says that dismantling SD-10 is intentionally, racially
17:01:22 17 discriminatory, right, from the same 2011 redistricting cycle?

17:01:25 18 A. We're -- we were in both of those cases, so you'll --
17:01:28 19 you know, if -- do you want to talk of -- yeah, I was there --

17:01:28 20 Q. (Indiscernible).

17:01:29 21 A. -- yes, I know what that judge said on that, and a
17:01:33 22 whole lot of other things, and i know what happened in the
17:01:35 23 three-judge panel, and my point is, you're saying the
17:01:38 24 Legislature should have looked at that and said, okay, we have a
17:01:41 25 green light from the court to do whatever we want to do.

17:01:44 1 Point number one -- I'm not a lawyer, but let me tell
17:01:46 2 you, because some three-judge panel somewhere said, why didn't
17:01:49 3 your just go ahead and paint the town blue, doesn't mean that
17:01:52 4 when you taint -- paint it blue, and you come back to the same
17:01:54 5 court, they're going to say it was legal. Right? So, that's --
17:01:56 6 I don't think that's particularly good advice to say do whatever
17:01:59 7 the court said.

8 Point number two --

9 Q. Dr. Alford, are you aware --

10 (Court reporter interjects).

11 JUDGE GUADERRAMA: Mr. Gaber, it's about 5 o'clock.

12 Could we move on, please?

13 MR. GABER: I'm just about finished, Your Honor.

14 JUDGE GUADERRAMA: I hope so.

17:02:08 15 A. My second point would be this: If you look to that
17:02:11 16 advice, and the court said it's perfectly legal to divide up...
17:02:14 17 BY MR. GABER:

17:02:14 18 Q. Dr. Alford, there actually isn't a question pending.

17:02:16 19 In the second section of your report in response to
17:02:23 20 Dr. Cortina, you -- you, in a paragraph or I think a couple of
17:02:30 21 sentences, criticize the map comparison in the Tarrant County
17:02:34 22 region, that's in pages two to three, do you see that?

17:02:37 23 A. On what page?

17:02:38 24 Q. Two to three of your report?

17:02:41 25 A. Okay. Comparison maps, got it.

17:02:43 1 Q. Now you say that there's legal battles that aren't
17:02:47 2 considered; the evolution of the map over time, the politics
17:02:49 3 incumbents, the history of the bodies, you don't actually
17:02:52 4 identify anything about these topics that you think are flawed
17:02:55 5 in Dr. Cortina's analysis, right?

17:02:57 6 A. No, there's -- I'm not suggesting that they are flawed
17:03:02 7 in his analysis.

17:03:02 8 Q. Okay. Thank you.

17:03:03 9 In the third section, you take issue with the core
17:03:07 10 population analysis -- well, first, you agree that the
17:03:11 11 differences plan-wide are small. Do you see that on the
17:03:14 12 paragraph on page three?

17:03:16 13 A. Yes.

17:03:16 14 Q. But what you do take issue with is that there are some
17:03:23 15 districts in Alternative Plan 4 where the core population
17:03:26 16 retention is below 50 percent; is that correct?

17:03:31 17 A. I mean I -- well, first of all, I mean I say the
17:03:34 18 difference is small, but -- but the difference favors the
17:03:39 19 state-adopted plan. There is less -- or there's more core
17:03:43 20 retention in state-adopted plan. So that's the first point --

17:03:44 21 Q. The difference is small, right?

17:03:45 22 A. The difference is small --

17:03:45 23 Q. Okay.

17:03:46 24 A. -- but it's in the wrong direction for you.

17:03:48 25 Q. Dr. Alford, are aware -- so you listed the districts

17:03:51 1 on page four, right? You listed the districts in both plans
17:03:53 2 where its below 50 percent?

17:03:55 3 A. Yes.

17:03:56 4 Q. And the theme here, right, is that Republican
17:04:00 5 incumbents would prefer to have districts with higher core
17:04:08 6 retention; is that right?

17:04:21 7 A. I think the theme is that that would matter to the
17:04:24 8 party --

17:04:24 9 Q. Well, what you say here is it would matter to the
17:04:33 10 Republican incumbent --

17:04:33 11 A. -- it would matter to the incumbents.

17:04:33 12 (Court reporter interjects).

17:04:33 13 MR. GABER: Sorry.

17:04:33 14 A. I say that core retention is a high priority,
17:04:37 15 typically of incumbents --

17:04:37 16 Q. Thank you.

17:04:38 17 A. -- but I also say that the level of disruption would
17:04:41 18 make this less palatable to the majority party.

17:04:46 19 Q. Now, Dr. Alford, the lowest core retention in
17:04:49 20 Alternative Plan 4 is SD -- the reconfigured SD-14; is that
17:04:55 21 right?

17:04:55 22 A. Correct.

17:04:55 23 Q. That is that it would be created as a new open seat
17:04:59 24 for Republican candidates, correct? There's no incumbent in
17:05:03 25 that seat?

17:05:04 1 A. Correct.

17:05:04 2 Q. Are you aware that the current Republican incumbent in
17:05:08 3 SD-24 and SD-12 have announced their retirement?

17:05:14 4 A. I'm not aware.

17:05:15 5 Q. So you didn't consider that in your analysis?

17:05:18 6 A. I don't think it figures into the analysis at all.

17:05:23 7 Q. And another district, District 2, at the bottom of the
17:05:27 8 chart, you see that Plan 4 actually has a higher core retention
17:05:32 9 than does the plan S2168?

17:05:37 10 A. I'm sorry?

17:05:39 11 Q. The core retention in Alternative Plan 4 for District
17:05:43 12 2 is higher in Plan 4 than in S2168, slightly?

17:05:50 13 A. Slightly.

17:05:53 14 Q. Now at the end, you discuss how your kind of overall
17:05:58 15 summary, one of your points is that alternative -- there's no
17:06:02 16 evidence that Alternative Plan 4 or something like it, was ever
17:06:05 17 introduced or considered; is that what you say?

17:06:08 18 A. Yes.

17:06:08 19 Q. You don't know whether that's the case?

17:06:15 20 A. I have no evidence of it, so, that's -- yes, I don't
17:06:18 21 see any -- just -- Dr. Cortina provides no evidence of it, so...

17:06:21 22 Q. And you're not a lawyer, so you don't know if it's
17:06:25 23 legally relevant to the exercise, right?

17:06:29 24 A. It's -- no, I'm just saying to the issue of whether
17:06:33 25 this is --

17:06:34 1 Q. Thank you, Dr. Alford. Yes or no. I'm trying to get
17:06:36 2 a sense --

17:06:36 3 THE COURT: Let him finish his answer, Mr. Gaber.

17:06:40 4 MR. GABER: I'm sorry, Your Honor?

17:06:40 5 THE COURT: Let him finish his answer.

17:06:43 6 MR. GABER: Yes.

17:06:43 7 BY MR. GABER:

17:06:44 8 Q. Dr. Alford, please continue.

17:06:45 9 A. Just to the issue that Dr. Cortina has raised, which
17:06:48 10 is that this is a plan that because the Legislature didn't
17:06:52 11 entertain it, somehow provides insight into whether they were
17:06:56 12 actually intending not to just divide up Democrats or help
17:07:03 13 Republicans, but were actively looking to divide a racial
17:07:06 14 minority in a particular area.

17:07:07 15 Q. But you don't know whether they considered, right,
17:07:11 16 because, one, because of legislative privilege?

17:07:15 17 A. Right, which I'm saying, I don't know evidence that
17:07:17 18 they considered this.

17:07:18 19 Q. And you don't identify any other partisan goals or
17:07:21 20 guidelines that might not be followed in Alternative Plan 4?

17:07:28 21 A. I think that's much of what the discussion is about.
17:07:31 22 It's about core retention. It's about, you know, basically
17:07:35 23 working on districts that you can improve that are districts you
17:07:40 24 have won in the past and might win in the future.

17:07:42 25 Q. Outside of the core retention, there's no other

17:07:46 1 actual -- example of an alternative -- or additional partisan
17:07:50 2 consideration that you identify; is that right?

17:07:52 3 A. I mean I think table -- my view of that is that's --
17:07:58 4 is that's summarized in the sorted table one.

17:08:00 5 Q. And that's the core retention table?

17:08:03 6 A. No. That's Cruz election performance.

17:08:07 7 Q. Oh.

17:08:07 8 So the election result was the only thing that you
17:08:12 9 point to?

17:08:14 10 A. That's the -- in terms of what I'm providing evidence
17:08:17 11 in here, that evidence about where there are districts in which
17:08:23 12 Republican performance in the Cruz election in the existing plan
17:08:28 13 suggested these were districts that should be shored up. Those
17:08:33 14 districts were all shored up and one of those districts was
17:08:35 15 SD-10.

17:08:35 16 Q. And the same number of districts are shored up in
17:08:40 17 Alternative Plan 4, by roughly the same margin, right?

17:08:44 18 A. The same districts are shored up. And again, let's
17:08:49 19 shore up the districts that are in trouble; we're shoring them
17:08:52 20 up; and then we take one of them and say, but let's not shore
17:08:54 21 that one up. Let's, instead, go to the bottom of the list and
17:08:58 22 carve up Travis County. That seems like -- I would have to
17:09:02 23 wonder what the motivation for that was.

17:09:06 24 Q. Dr. Alford, I don't have any further questions.

17:09:18 25 MR. GABER: I pass the witness.

17:09:18 1 THE COURT: Thank you, Mr. Gaber.

17:09:20 2 Mr. Thompson?

17:09:26 3 MR. THOMPSON: If I may.

17:09:27 4 DR. JOHN R. ALFORD

17:09:27 5 REDIRECT EXAMINATION BY THE DEFENSE

17:09:27 6 BY MR. THOMPSON:

17:09:36 7 Q. Dr. Alford, I'm sorry for keeping you so long today.

17:09:42 8 Do you remember being asked whether you attempted to
17:09:43 9 replicate Dr. Barreto's data?

17:09:46 10 A. Yes.

17:09:47 11 Q. Was replicating Dr. Barreto's data important to your
17:09:51 12 point about whether an R.P.V.A. should include both general and
17:09:55 13 primary election data?

17:09:56 14 A. No.

17:09:56 15 Q. Regarding your data, do experts consider the ACS CVAP
17:10:01 16 data to be reliable?

17:10:02 17 A. Yes.

17:10:03 18 Q. Is it something -- or is something that courts, and
17:10:05 19 experts testifying in redistricting cases, routinely rely upon?

17:10:09 20 A. Yes.

17:10:10 21 Q. You've gotten a lot of questions about the way the EI
17:10:13 22 was run, which technicians were involved, confidence intervals,
17:10:17 23 et cetera. Does any of that cause you to lose confidence in
17:10:20 24 your opinions?

17:10:20 25 A. No.

17:10:21 1 Q. By the way, if I told you that David Falk had a Ph.D.
17:10:24 2 from Princeton, would you have any reason to disagree with me?

17:10:28 3 A. I know he's sharp. I must say I'm not -- I didn't
17:10:30 4 know he was that sharp. I wish I had a Ph.D. from Princeton.

17:10:37 5 Q. Me too.

17:10:37 6 Let's put this in context. The long discussion you
17:10:38 7 had with Mr. Gaber regarding the spreadsheet, relates to the
17:10:42 8 illustrative example that we discussed in your direct testimony,
17:10:47 9 right?

17:10:47 10 A. Correct.

17:10:47 11 Q. And did you testify earlier that Dr. Barreto's
17:10:51 12 analysis was basically insufficient, even if you had no data
17:10:55 13 about that illustrative example of the 2014 primary?

17:10:58 14 A. That's correct.

17:10:58 15 Q. Do you standby that testimony?

17:11:00 16 A. I do.

17:11:02 17 Q. Thank you very much.

17:11:03 18 MR. THOMPSON: Nothing further questions.

17:11:04 19 JUDGE GUADERRAMA: Thank you, Mr. Thompson.

17:11:07 20 Mr. Gaber?

17:11:11 21 MR. GABER: Nothing further, Your Honor.

17:11:11 22 JUDGE GUADERRAMA: Dr. Alford, thanks for coming down?
17:11:11 23 I assume you are free to go.

17:11:11 24 Is that correct?

17:11:16 25 MR. SWEETEN: I'm sorry, Your Honor?

17:11:16 1 JUDGE GUADERRAMA: Mr. Thompson, is the doctor --

17:11:17 2 MR. THOMPSON: Oh, yes, he is.

17:11:18 3 JUDGE GUADERRAMA: And Mr. Gaber?

17:11:20 4 MR. GABER: Yes, Your Honor.

17:11:20 5 JUDGE GUADERRAMA: All right.

17:11:21 6 Thank you, sir.

17:11:21 7 (Witness excused).

17:11:23 8 MR. SWEETEN: Your Honor, so we've got Keith Ingram.

17:11:27 9 We had this direct and cross-examination back in December in the

17:11:32 10 Mount case. It lasted about an hour and 15 minutes.

17:11:34 11 Mr. Hudson is going to try to speed up the direct, in

17:11:39 12 light of the length of the cross-examination that we just had,

17:11:41 13 but it looks like we could go over 6 o'clock, maybe to 6:15 or

17:11:45 14 6:30.

17:11:45 15 JUDGE GUADERRAMA: Okay.

17:11:47 16 MR. SWEETEN: We'll try to be...

17:11:47 17 JUDGE SMITH: Which witness is it that has the 10:30

17:11:50 18 flight?

17:11:53 19 MR. SWEETEN: This is Keith Ingram, the director of

17:11:53 20 the elections...

17:11:53 21 JUDGE SMITH: So that's...

17:11:55 22 MR. SWEETEN: It's a 10:30 flight in the morning.

17:11:58 23 JUDGE SMITH: So that's who we're going to hear from

17:11:58 24 now.

17:12:01 25 MR. SWEETEN: He's walking in now.

17:13:01 1 (Witness present and sworn by Judge Guaderrama).

17:13:01 2 KEITH INGRAM,

17:13:04 3 DIRECT EXAMINATION BY THE DEFENSE

17:13:10 4 BY MR. HILTON:

17:13:10 5 Q. Good evening, Mr. Ingram. How are you?

17:13:12 6 A. I'm fine. How are you?

17:13:12 7 Q. I'm okay. I apologize that you've been waiting for so
17:13:15 8 long today, but we appreciate you being here. I also understand
17:13:16 9 you have a flight out in the morning tomorrow. We're going to
17:13:18 10 try to get through this as quickly as we can.

17:13:21 11 I want to briefly go through your background, just so
17:13:24 12 the Court has some understanding of who you are and what you
17:13:26 13 bring to the table.

17:13:27 14 Can you please tell the Court your current employer
17:13:30 15 and your job title and your educational background?

17:13:34 16 A. I'm the director of the elections division at the
17:13:36 17 Texas Secretary of State, been there about 10 years, and worked
17:13:39 18 for the Governor in the appointments office. Before that, I
17:13:43 19 graduated from Texas A & M University back in '89 and U.T. law
17:13:49 20 in 1993.

17:13:50 21 Q. And you were director of elections in 2012, when
17:13:54 22 elections were delayed as a result of redistricting litigation?

17:13:55 23 A. That's right. I started January 5th, 2012.

17:13:58 24 Q. And at a high level, what are some of your
17:14:02 25 responsibilities as director of elections?

17:14:03 1 A. The election code says that the Secretary of State is
17:14:08 2 Chief Election Officer for the State of Texas, and it creates a
17:14:11 3 division to help the secretary fulfill that responsibility, and
17:14:16 4 I direct that division.

17:14:17 5 Q. Who are some of the other the government officials in
17:14:21 6 Texas that you communicate with regularly out of the state or
17:14:25 7 local level?

17:14:26 8 A. We talk to county election officials on a very regular
17:14:31 9 basis. I would say that they're out primary customers. We also
17:14:35 10 talk to city election officials, as well as folks in the
17:14:40 11 Governor's office and Attorney General's office, if a question
17:14:40 12 of law comes up, that we can help on.

17:14:44 13 Q. Do you regularly present on and explain the election
17:14:48 14 system in the election code in Texas?

17:14:50 15 A. I do. I make speeches, some more elementary than
17:14:56 16 others.

17:14:56 17 Q. Do regularly attend conferences and have discussions
17:14:59 18 with election officials from all over the state and from other
17:15:01 19 states?

17:15:02 20 A. We do. We have a county election official seminar
17:15:05 21 every summer here in Texas. We have another one in December for
17:15:08 22 our city schools and other election officials. And then I'm a
17:15:11 23 member of the National Association of State Election Directors
17:15:15 24 and we get together twice a year.

17:15:17 25 Q. You mentioned a minute ago that the Secretary of

17:15:22 1 State's role regarding elections was to -- I'm sorry -- could
17:15:24 2 you state that one more time?

17:15:25 3 A. Chief Election Official for the State of Texas.

17:15:27 4 Q. That's to -- I always forget the code in the election
17:15:31 5 code: Obtain and maintain, something to that effect?

17:15:31 6 A. Yes. 31003 says that our job is to obtain and
17:15:35 7 maintain uniformity in the interpretation, application and
17:15:38 8 operation of the election code and election laws outside of the
17:15:41 9 election code.

17:15:42 10 Q. And what's the local government's role in
17:15:46 11 administering elections?

17:15:47 12 A. So they actually put on the elections. The elections
17:15:51 13 are held at the county level for a -- you know, a statewide
17:15:55 14 election will have actually 254 specific elections. For a
17:15:58 15 primary, like we're about to have, it's 508 elections, because
17:16:03 16 each party in each county holds their own election.

17:16:06 17 Q. Who has responsibility for redistricting in Texas?

17:16:09 18 A. The Legislature.

17:16:11 19 Q. Does the secretary of state do anything at all with
17:16:14 20 respect to drawing new districts for statewide offices or state
17:16:18 21 legislative seats?

17:16:19 22 A. We do not.

17:16:20 23 Q. What's the first day of in-person voting for the March
17:16:24 24 2021 primary?

17:16:26 25 A. I believe early voting starts February 14th, I think.

17:16:29 1 If I look at a calendar...

17:16:31 2 Q. And Mr. Ingram, I apologize. I'll ask you not to
17:16:34 3 refer to your phone. You're going to have to refer to anything
17:16:36 4 separately and -- understood. I appreciate you trying to be
17:16:39 5 helpful. We'll get to some documents later that I think may
17:16:43 6 have the exact date and we can point the Court to those
17:16:46 7 documents.

17:16:46 8 How long does it take to prepare for this kind of
17:16:49 9 election, a primary election?

17:16:50 10 A. Well, the preparation has been going on since last
17:16:54 11 summer, whenever the legislative session concluded, because we
17:16:58 12 have to make sure that all of the new laws that the Legislature
17:17:01 13 passes are implemented in training materials for this election.

17:17:04 14 It begins in earnest in November of '21. When the
17:17:09 15 filing period started on November 13th, that's when the election
17:17:13 16 really kicked off.

17:17:14 17 Q. When do the local the government officials begin their
17:17:21 18 work?

17:17:22 19 A. They've been working on it since before November 13th,
17:17:26 20 but part of what we had this year that made it difficult is the
17:17:31 21 redistricting fell in, right on top of the November
17:17:35 22 constitutional amendment election, as well as preparing for
17:17:39 23 candidate filing and then the election in the primary.

17:17:42 24 Q. And so the compressed schedule for redistricting
17:17:46 25 affected local governments' preparations? Am I understanding

17:17:50 1 you correctly?

17:17:51 2 A. That's correct. Because you know it's hard to
17:17:54 3 explain, but a county like Harris County, they've got a G.I.S.
17:17:59 4 division that can do redistricting and the rest of the office is
17:18:02 5 not affected. Lee County doesn't have that luxury. They've got
17:18:05 6 one person, who's supposed to do all the redistricting, all the
17:18:08 7 candidate filing questions that come up and prepare for this
17:18:11 8 election.

17:18:11 9 Q. And of course, when your referring to redistricting,
17:18:15 10 local governments have to do their own redistricting for local
17:18:18 11 offices?

17:18:18 12 A. That's true, but the redistricting I'm talking about
17:18:21 13 that affects election officials directly is that last step,
17:18:24 14 after all of the officer lines are drawn, then they have to draw
17:18:28 15 voter registration precincts and tie each voter to a list of
17:18:31 16 offices for that precinct.

17:18:33 17 Q. Very good. And we'll talk about voter precincts in a
17:18:37 18 little bit.

17:18:38 19 For a large country like Harris County or like Tarrant
17:18:41 20 County, how many people are involved in the overall effort of
17:18:44 21 conducting an election?

17:18:46 22 A. A lot. I don't know the exact numbers, but, you know,
17:18:52 23 a place like Harris County is going to have 800-something
17:18:57 24 polling places on election day, with a minimum of three each in
17:18:59 25 each of those polling places, they're going to have 50 or 60

17:19:03 1 places in early voting, with anywhere from five to ten folks
17:19:06 2 working those places, plus all of the ones in the office. They
17:19:09 3 hire a lot of temps to do a lot of data entry. It's a lot.

17:19:13 4 Q. Could it be thousands?

17:19:14 5 A. It's a big operation, yes.

17:19:16 6 Q. Same question, but for a smaller county like

17:19:20 7 Shackelford or Callahan or Brown County?

17:19:22 8 A. It's not as big, because usually those folks only have
17:19:27 9 four election day polling places, so it's three each for them.

17:19:31 10 But, you know, proportionally speaking, it's just as big a
17:19:33 11 logistic for Shackelford County with their resources, as Harris
17:19:38 12 County with their resources.

17:19:40 13 Q. Smaller county, smaller resources for administering
17:19:43 14 elections?

17:19:44 15 A. They would have smaller resources, period, yes, sir.

17:19:47 16 Q. Let's pull up Defendants' Exhibit 49.

17:20:06 17 So this is Defendants' Exhibit 49. Do you recognize
17:20:10 18 this document?

17:20:11 19 A. I do.

17:20:12 20 Q. And what is this document?

17:20:13 21 A. This is the election law calendar that our office
17:20:15 22 prepares for the primary election.

17:20:19 23 Q. And what was the purpose of this election advisory and
17:20:22 24 what was the target audience?

17:20:25 25 A. The purpose of this advisory is to make sure that all

17:20:26 1 of the events that have to happen to put an election on, a
17:20:29 2 primary election, are listed by dates, so that election
17:20:32 3 officials can refer to it, as they go through each of these
17:20:37 4 weeks, to see -- to make sure they don't miss anything,
17:20:41 5 basically, making sure they're hitting all of the milestones.

17:20:44 6 Q. And the document begins with a number of notes. As
17:20:47 7 you scroll through the first, I don't know, 15 or so pages,
17:20:49 8 there's a number of notes. What are those notes intended to do
17:20:54 9 and who are they directed at?

17:20:54 10 A. They're things that don't really have a specific date
17:20:57 11 in the calendar that they apply to, but that election officials
17:21:01 12 need to know in preparing for the election.

17:21:06 13 MR. HILTON: And if we could skip ahead to State P.I.
17:21:09 14 1470 in the same exhibit.

17:21:14 15 BY MR. HILTON:

17:21:15 16 Q. You see this page of the exhibit, Mr. Ingram?

17:21:18 17 A. Yes.

17:21:19 18 Q. And you see that heading calendar of events?

17:21:22 19 A. I do.

17:21:23 20 Q. And so just, generally, what does the rest of this
17:21:25 21 document describe and what information could the Court find
17:21:29 22 there?

17:21:29 23 A. So the rest of the document is an explanation of what
17:21:34 24 goes on, particular dates in the calendar that, you know, are
17:21:39 25 hyperlinked in that first page.

17:21:44 1 MR. HILTON: Let's go to Defendants' Exhibit 51.

17:21:44 2 BY MR. HILTON:

17:21:55 3 Q. Mr. Ingram, to you recognize this document?

17:21:57 4 A. I do.

17:21:58 5 Q. What is it?

17:21:59 6 A. This is a short calendar that we put together, much
17:22:02 7 earlier than the one we just referenced that just has the hot
17:22:06 8 points for each election that's coming up in the next calendar
17:22:09 9 year.

17:22:10 10 Q. Does this document have a different intended audience
17:22:13 11 than the previous one?

17:22:14 12 A. Not really. They're both for election officials.
17:22:17 13 It's just this one is kind of an advance notice and it's an
17:22:19 14 easy -- it's an easy glance when four members of the public or
17:22:22 15 candidates for public office, if they're interested, just at a
17:22:25 16 high level about calendar events, you know, important things
17:22:29 17 like voter registration deadline.

17:22:33 18 Q. Let's turn ahead a couple of pages to state P.I.
17:22:39 19 001574. And there's a heading, that says, important 2022
17:22:43 20 election dates and then a heading, that says, March 1, 2022
17:22:51 21 primary election. Do you see that, Mr. Ingram?

17:22:52 22 A. I do.

17:22:53 23 Q. Are the dates that are contained in this portion of
17:22:55 24 Exhibit 51, are those the same dates that are reflected in a
17:22:58 25 lengthier Defendants' Exhibit 49?

17:23:00 1 A. They are. These are just -- this is a very high level
17:23:02 2 calendar.

17:23:02 3 Q. And so I'd like to talk about the dates on here. So,
17:23:11 4 let's begin with this December 13th, 2021, date, filing deadline
17:23:18 5 for candidates. Can you please explain the importance of that
17:23:20 6 date to the Court?

17:23:20 7 A. That's the date by which anybody that wants to run for
17:23:24 8 a party office -- for the nomination of a party office, has to
17:23:31 9 file their application -- their candidacy application, with the
17:23:34 10 appropriate filing authority, in order to be considered for that
17:23:38 11 nomination.

17:23:39 12 Q. For the up -- for this March 1st election, that filing
17:23:45 13 deadline has passed?

17:23:47 14 A. It has.

17:23:48 15 Q. And the offices that candidates were filing for, were
17:23:56 16 those based on the maps that the Legislature just passed in the
17:24:00 17 third call session of the 87th Legislature?

17:24:03 18 A. That is correct. They were filing for a place for the
17:24:07 19 maps that had just been drawn and signed by the Governor on
17:24:11 20 October 25th.

17:24:12 21 Q. Let's go down to this -- well, there's one deadline I
17:24:17 22 wanted to ask you about that's not pictured on this version. It
17:24:19 23 is in Defendants' Exhibit 49. Are there any federal deadlines
17:24:25 24 with respect to balance and elections that come into play in
17:24:31 25 January?

17:24:31 1 A. If a county has received any federal postcard
17:24:35 2 applications before January 15th, January 15th, 45 days before
17:24:39 3 the election is the deadline to mail those ballots or email
17:24:44 4 those ballots to overseas and military voters. A similar
17:24:48 5 deadline for domestic ballot-by-mail is January 30th.

17:24:50 6 Q. This is federal January 15th deadline, what has to
17:24:55 7 happen at the local level in order for local county
17:24:59 8 administrators to be able to meet that federal deadline?

17:25:02 9 A. So the county -- or the candidates file. Then the
17:25:06 10 party does the ballot order drawing by December 23rd, certifies
17:25:12 11 that their ballot to the county. The county gets the ballots
17:25:16 12 programmed. They get them back and they proof them. They do a
17:25:18 13 logic inaccuracy test before the mail ballots go out, to make
17:25:22 14 sure that every vote will be counted the way that its cast. And
17:25:26 15 so that logic inaccuracy test, you know, could take a day. If
17:25:28 16 it's a small county, it could take a week and a half in a big
17:25:32 17 county. And once all of that is done, then your ready to send
17:25:37 18 your mail ballots on January 15th.

17:25:40 19 Q. If we had more time, I'd ask you to explain some more
17:25:43 20 details of that processed, I'd certainly invite the Courts'
17:25:45 21 question, if they have any, about what all of that entails. But
17:25:49 22 is it fair to say that that's a tremendous amount of work?

17:25:52 23 A. All of those steps require a lot of work, especially,
17:25:54 24 it's very important that the ballot proofing be done correctly
17:25:59 25 so that you don't have a ballot correction later. So ballot

17:26:00 1 proofing means that you should have the eyes of the candidates
17:26:04 2 on the ballot, the eyes of the political parties locally on it,
17:26:07 3 as well as the election officials, to make sure that everybody
17:26:13 4 agrees this is what the ballot audit looks like.

17:26:16 5 Q. In your view, is that important to the safety and
17:26:17 6 integrity of Texas elections?

17:26:21 7 A. Absolutely. Because any time you have a corrected
17:26:22 8 ballot situation, you've got a potential for voter confusion.

17:26:27 9 Q. Again, so that deadline has passed?

17:26:31 10 A. Agreed.

17:26:32 11 Q. And there were some other upcoming deadlines here.

17:26:36 12 I also note in Defendants' Exhibit 51 that there other
17:26:39 13 elections listed. For example, on the next page, it talks about
17:26:41 14 a May 7th, 2020 uniform election date, and there are a few more
17:26:46 15 listed in here as well. Is that right?

17:26:48 16 A. Agreed.

17:26:49 17 Q. So, what does the calendar look like for a local
17:26:53 18 election administrator once the March primaries is concluded?
17:26:59 19 Is there time off before the next one?

17:27:01 20 A. No. They're immediately preparing for May and, of
17:27:06 21 course, the May runoff for the primary.

17:27:09 22 Q. In general, this year for this primary election, has
17:27:13 23 there been any wiggle room?

17:27:16 24 A. The schedule has been completely packed. Like I
17:27:19 25 mentioned, the overlaying of redistricting on top of what's

17:27:21 1 already a packed calendar, pushed everybody to the limit this
17:27:25 2 time.

17:27:26 3 Q. Are local election officials in Texas getting the job
17:27:29 4 done? Are they doing what they need to do?

17:27:32 5 A. They are. They are indeed. They always do.

17:27:36 6 Q. Let's go briefly to Defendants' Exhibit 48. Do you
17:27:46 7 recognize this exhibit, Mr. Ingram?

17:27:49 8 A. I do.

17:27:49 9 Q. And what is it?

17:27:50 10 A. The main purpose of this advisory was to talk about
17:27:57 11 the special situation of precinct chairs this year and make sure
17:28:01 12 that everybody understood that they're filing period was going
17:28:03 13 to end at midnight, December 1st, and reopen again on
17:28:08 14 January 15th.

17:28:09 15 Q. Why was it a specialist here?

17:28:11 16 A. Because the precinct chairs -- you know, the voter
17:28:15 17 precincts are the last precincts to be drawn. Once you got
17:28:19 18 officer lines in population, thresholds in place, then they draw
17:28:24 19 the precinct lines, and the precinct chairs run for the
17:28:26 20 chairmanship of that voter registration precinct, and so they
17:28:31 21 can't know what their office is going to be, until the voter
17:28:35 22 registration precincts are drawn.

17:28:37 23 Q. The first page of this election advisory also mentions
17:28:41 24 SB13, and the Court has heard some testimony regarding SB13 and.
17:28:45 25 It says in here, SB13 authorizes Secretary of State to adjust

17:28:49 1 the schedules. Am I reading that correctly?

17:28:53 2 A. That's right.

17:28:54 3 Q. Did the Secretary of State have to move any election
17:28:56 4 dates?

17:28:56 5 A. Just the precinct chair filing period and to make sure
17:29:00 6 that there're elections on the runoff date.

17:29:02 7 Q. Were any of the election dates in the previous
17:29:05 8 exhibits that we looked at, other than those, were those moved
17:29:09 9 as a result of SB13?

17:29:11 10 A. There were not.

17:29:11 11 Q. Because legislature got to redistricting on time under
17:29:15 12 Senate Bill 13?

17:29:16 13 A. That is correct.

17:29:18 14 Q. And I want to turn briefly to the next page, because
17:29:20 15 you had mentioned drawing precincts. And there's a heading here
17:29:25 16 that says, effects of redistricting on county election
17:29:29 17 precincts. Do you see that, Mr. Ingram?

17:29:35 18 A. I do.

17:29:36 19 Q. So can you just very -- again, very briefly, explain
17:29:40 20 what -- again, briefly, what a precinct is and some of the rules
17:29:43 21 that go into play when the local election officials have to do
17:29:48 22 the work of drawing?

17:29:48 23 A. So the 42.005 of the Election Code says that precincts
17:29:53 24 boundaries can't cross more than one of a particular kind of
17:29:56 25 officer. So each congressional district, you should have one

17:29:59 1 congressional district in every voter registration precinct, one
17:30:03 2 commissioners court precinct in every voter registration
17:30:06 3 precinct. So you've got to follow the officer lines when you're
17:30:09 4 drawing voter registration precincts so that you don't have a
17:30:12 5 split precinct with an office that you can't have a split
17:30:16 6 precinct up for. And then you also have to follow the
17:30:17 7 population requirements, so it has to be fewer than 5,000 and
17:30:21 8 more than 250, so that you've got the right number of voters in
17:30:27 9 each precinct. And so those are the two main rules that they
17:30:30 10 have to follow, but they can't do that until they get the
17:30:35 11 officer lines from other entities, including the county
17:30:38 12 commissioners court.

17:30:39 13 Q. Ist hat a time -- consuming process to draw these
17:30:40 14 precincts?

17:30:40 15 A. To draw the precincts is the most time-consuming part
17:30:43 16 of this process.

17:30:44 17 Q. And very briefly, on the last page of this exhibit,
17:30:47 18 there's a heading that says, voter registration certificate.
17:30:50 19 What is a voter registration certificate?

17:30:53 20 A. Every two years we do a mass mail-out of the different
17:30:55 21 colored voter registration certificate. This year they're blue.
17:30:59 22 You might have been getting them in the mail last couple of
17:31:00 23 weeks. But that shows what precinct -- what voter registration
17:31:05 24 precinct you're in and what offices are tied to that.

17:31:09 25 Q. Have those certificates been mailed out across Texas?

17:31:12 1 A. I think most counties have done it. We probably have
17:31:15 2 a couple that haven't. I would have to check.

17:31:17 3 Q. The deadline described in this election advisory, it
17:31:20 4 says between January 1, 2022, and January 12, 2022, did I read
17:31:25 5 that correctly?

17:31:26 6 A. That's correct.

17:31:26 7 Q. So that deadline has passed?

17:31:29 8 A. That deadline has passed.

17:31:30 9 Q. Okay. And then very briefly, I just want to turn to
17:31:31 10 Defendants' Exhibit 50. And if you could just identify this for
17:31:39 11 the Court in case they need to refer to it.

17:31:39 12 A. This is similar to the first exhibit we looked at.
17:31:42 13 This is the election law calendar for the May uniform date
17:31:47 14 election, our detailed position.

17:31:52 15 Q. All right. I next want to go to --

17:32:02 16 MR. HILTON: Defendants' 52, please, first page of
17:32:15 17 text.

17:32:16 18 BY MR. HILTON:

17:32:16 19 Q. Mr. Ingram, do you recognize Defendants' Exhibit 52?

17:32:20 20 A. I do.

17:32:20 21 Q. Is that a declaration that you've submitted in
17:32:23 22 connection with this case?

17:32:24 23 A. I did. I prepared it, I think, back in December.

17:32:26 24 Q. At high level, can you just summarize what this
17:32:36 25 declaration explains. I'm going to go through some detailed

17:32:39 1 questions, but for purposes of doing this, is so the Court knows
17:32:41 2 that this testimony is in here so that we can cut short some of
17:32:44 3 the other things that I want to -- (mumbling).

17:32:46 4 Just generally, what are you explaining in this
17:32:49 5 declaration?

17:32:49 6 A. The purpose of this declaration was to make sure that
17:32:51 7 the Court would know that the election was already in motion and
17:32:55 8 that disturbing it at this point means it has a ripple effect
17:33:03 9 of -- in a lot of different areas, because elections are such
17:33:04 10 logistics-heavy operation that, you know, interfering with it,
17:33:09 11 and then trying to start the train again later, it just has
17:33:14 12 consequences that can be very problematic.

17:33:17 13 Q. And so if an election date for this primary --
17:33:27 14 March 1, 2022 primary election, if that were to be delayed or
17:33:27 15 postponed, what would some of the effects be of that?

17:33:31 16 A. Well, it's kind of inconceivable right now to even
17:33:36 17 think about, but we have, I don't know, maybe 100,000 voters, at
17:33:44 18 least 50,000 have already completed applications for ballot by
17:33:49 19 mail, and they have either been accepted or rejected; most of
17:33:54 20 them accepted; I think we have about a 12 percent rejection rate
17:33:57 21 statewide right now. So if the election is delayed at this
17:34:03 22 point, do they have to file another application for ballot by
17:34:07 23 mail or is this one good? The voters who have ballots in hand,
17:34:12 24 more than 4,000 ballots have been mailed. I know that Tarrant
17:34:16 25 County is mailing 3,000 yesterday and today, Harris County is

17:34:21 1 mailing 30,000 tomorrow. So those voters that get a ballot in
17:34:23 2 their hand, do they go ahead and vote it? Will it count? Do
17:34:29 3 they have to wait for another one? What do you do with this
17:34:30 4 ballot? I mean it's just inconceivable at this point that we
17:34:33 5 would stop the election. It's just -- I can't imagine -- I
17:34:37 6 don't know how we pick up the pieces at this point.

17:34:40 7 Q. Is it possible for a voter to have already voted in
17:34:44 8 this election at this point?

17:34:45 9 A. Absolutely.

17:34:46 10 Q. And were you director of elections -- you were
17:34:50 11 director of elections in 2012, when there was a delay due to
17:34:54 12 redistricting litigation?

17:34:55 13 A. That's right.

17:34:56 14 Q. What were some of the -- what were some of the
17:34:59 15 negative consequences of delaying that election?

17:35:01 16 A. So that election was delayed before it got started. I
17:35:06 17 mean there had been a candidate filing period, so they had to do
17:35:09 18 that again, but basically everything else had to be done. So
17:35:12 19 we're later in the process than then.

17:35:14 20 But the primary effect was on voters. Voters. I used
17:35:19 21 to say all summer of 2012, there's just not a lot of trust in
17:35:23 22 this world, because voters did not think that the moving of the
17:35:27 23 election was fair, right, and they inevitably thought that it
17:35:31 24 was a conspiracy on the part of the other team to jerk around
17:35:36 25 their particular candidate. And so I know that's what it was

17:35:41 1 like in 2012. We've now had 2016 and 20220 elections and voter
17:35:47 2 trust is much lower than it was when I got here in 2012. And I
17:35:53 3 cannot imagine the consequences to voters and the potential just
17:35:56 4 saying -- throwing up their hands and saying I give up, if that
17:35:59 5 happens.

17:36:02 6 Q. I want to turn next to a Supreme Court of Texas
17:36:08 7 decision *In re Khanoyan*. We're not offering it as an exhibit,
17:36:14 8 but again it's a published decision -- or an issue decision I
17:36:15 9 think is awaiting official publication.

17:36:23 10 I have up here on the screen the slip copy. The
17:36:24 11 Westlaw cite for this is 2022 WL 58537. And it was decided by
17:36:31 12 the Supreme Court of Texas on January 6th of 2022.

17:36:36 13 Mr. Ingram, have you read this case?

17:36:38 14 A. I read it, yes, yesterday evening.

17:36:43 15 Q. Not asking for legal opinion, but can you state just
17:36:48 16 generally, briefly, what this case is about?

17:36:51 17 A. The case was about application *Purcell* principle, that
17:36:54 18 once an election is in motion, that the burden is really high to
17:36:59 19 stop that train and start it again later.

17:37:01 20 Q. And you referred to the *Purcell* principle. Does that
17:37:05 21 refer to *Purcell v. Gonzalez*, 549 U.S. 1, decided in 2006?

17:37:12 22 A. Yes. I'll take your word for it.

17:37:14 23 Q. We'll see the citation on the next page, so...

17:37:24 24 MR. HILTON: Let's go to page three, please, Brian,
17:37:27 25 and if you can zoom in on footnote one.

17:37:27 1 BY MR. HILTON:

17:37:31 2 Q. Do you see that citation there, Mr. Ingram? Did I
17:37:35 3 recite that correctly to you?

17:37:37 4 A. You did.

17:37:39 5 Q. All right. Let's go to page six of this case,
17:37:44 6 *In re* -- I'm saying *Khanoyan*, and I don't know if that's the
17:37:49 7 correct pronunciation -- this first full paragraph here that
17:37:51 8 begins: "But no amount of expedited briefing..."

17:37:56 9 Mr. Ingram, I want to go through a couple of the
17:37:59 10 statements here by the Supreme Court of Texas. I want to find
17:38:02 11 out from you if you agree or disagree or what you think about
17:38:07 12 it.

17:38:07 13 In the second line of this paragraph, it says: "The
17:38:09 14 primary election for 2022 is already in its early stages. It
17:38:14 15 began on November 13 with the opening of the filing period for
17:38:20 16 candidates, based on the now-challenged map. That filing period
17:38:21 17 ended on December 13. The period for ballot access has closed."

17:38:25 18 Did I read that correctly?

17:38:27 19 A. Agreed.

17:38:29 20 Q. And do you agree that the primary election is already
17:38:33 21 in its early stages?

17:38:35 22 A. Yes.

17:38:35 23 Q. And this -- this case was issued on January 6th. So
17:38:39 24 are we even further along?

17:38:40 25 A. Yeah, I was about to say we're not in the early stages

17:38:44 1 anymore. We're midway, I would say. Right now counties are
17:38:47 2 training poll workers to start working in a couple of weeks.

17:38:51 3 Q. The next sentence on page six of the slip opinion:
17:38:55 4 "Ballots must be finalized very soon to comply with deadlines
17:38:59 5 for mailing ballots to military and overseas voters."

17:39:04 6 That deadline we discussed earlier, that's already
17:39:04 7 passed?

17:39:05 8 A. That's right. Ballots are finalized and mailed out to
17:39:10 9 voters.

17:39:17 10 Q. First complete sentence on this page says: "The
17:39:19 11 affidavits attached to Respondents' brief, including affidavits
17:39:22 12 from the Texas Secretary of State's office drawn from
17:39:25 13 contemporaneous litigation, all state that disruptions to the
17:39:28 14 election at this point would be 'catastrophic'."

17:39:31 15 Did I read that correctly?

17:39:32 16 A. You did.

17:39:33 17 MR. HILTON: And I'd like to zoom in on -- and there's
17:39:35 18 a footnote 4 there. I'd like to zoom in on footnote four.

17:39:35 19 BY MR. HILTON:

17:39:40 20 Q. And do you see your name in footnote 4?

17:39:43 21 A. I do.

17:39:44 22 Q. Did you submit that declaration in connection with
17:39:47 23 this case or with a different case?

17:39:49 24 A. I think it was a different case. I didn't -- it
17:39:52 25 didn't have anything to do with this one.

17:39:55 1 Q. Okay. Do you agree that disruptions to elections at
17:39:58 2 this point would be catastrophic?

17:40:01 3 A. I do.

17:40:02 4 Q. Did you say as much in the declaration that we have
17:40:04 5 before this Court, Defendants' Exhibit 52?

17:40:07 6 A. I believe so, yes, sir.

17:40:08 7 Q. In fact, wasn't your declaration in this case
17:40:12 8 substantially identical to the declaration that's being
17:40:15 9 referenced by the Supreme Court of Texas here?

17:40:16 10 A. It was the same, yes.

17:40:21 11 MR. HILTON: Scrolling back up.

17:40:21 12 BY MR. HILTON:

17:40:22 13 Q. I'll read one more sentence from this page.

17:40:26 14 The Supreme Court of Texas said, "Requested relief
17:40:28 15 could prevent the election from going forward on time, and at
17:40:32 16 the very least, insert a great deal of confusion into this
17:40:35 17 election cycle."

17:40:36 18 Did I read that correctly, Mr. Ingram?

17:40:37 19 A. I do.

17:40:41 20 Q. Do you agree with that?

17:40:44 21 A. I do.

17:40:44 22 Q. And then one final sentence from this, that I'd like
17:40:51 23 to look at, and we'll look at one more document and we'll
17:40:55 24 wrap-up and we'll get you to the flight on time tomorrow
17:41:00 25 morning.

17:41:02 1 MR. HILTON: Page 12. And it's the last paragraph I'm
17:41:14 2 sorry, end of the paragraph. I apologize. Scroll up.

17:41:27 3 BY MR. HILTON:

17:41:28 4 Q. On page 12, here, the end of that paragraph, Supreme
17:41:32 5 Court of Texas says: "Any relief this Court could grant is
17:41:35 6 already likely to disrupt elections in Harris County, and with
17:41:37 7 every passing day the likely severity of that disruption grows."

17:41:41 8 Did I read that correctly?

17:41:42 9 A. You did.

17:41:43 10 Q. And this was issued on January 6th. Will the
17:41:46 11 disruption by delaying an election be more severe today than it
17:41:49 12 would have been on January 6th?

17:41:51 13 A. Much more.

17:41:55 14 Q. Mr. Ingram, one last document. This is a filing by
17:42:03 15 plaintiffs' counsel in this case by Brooks' plaintiffs, the
17:42:08 16 Brooks Plaintiffs' Supplemental Brief on Preliminary Injunction
17:42:11 17 Remedies. And that's E.C.F. docket number 159.

17:42:16 18 Have you read this brief, Mr. Ingram?

17:42:19 19 A. I did.

17:42:20 20 Q. I want to start on page five of this document with the
17:42:24 21 plaintiffs' conclusion.

17:42:25 22 The plaintiffs conclude, in this supplemental brief,
17:42:31 23 the March 2020 primary does not pose a barrier to effective fair
17:42:35 24 and workable relief for the Brooks plaintiffs.

17:42:40 25 Did I read that correctly?

17:42:41 1 A. You did.

17:42:42 2 Q. What relief are they seeking as they describe in this
17:42:46 3 document?

17:42:46 4 A. So, I wasn't entirely sure if it was statewide or just
17:42:50 5 a few districts, but what they're looking for is to delay at
17:42:55 6 least part of the primary election to either May 24th or
17:42:56 7 November of this year.

17:42:59 8 Q. Do you believe that delay of a primary election -- I
17:43:05 9 understand the brief to be just in counties affected by
17:43:09 10 remediation of Senate District 10, but even if it were
17:43:13 11 statewide, would that cause voter confusion?

17:43:16 12 A. Yes.

17:43:16 13 Q. Would it have negative consequences?

17:43:18 14 A. It would make voters wonder what the point is. You
17:43:22 15 know, why did I go through that effort; why bother next time?
17:43:27 16 It's very corrosive to the authenticity and legitimacy of the
17:43:34 17 process whenever you change the rules in the middle of the game.

17:43:37 18 Q. Would a delay of this primary also entail the other
17:43:42 19 negative consequences, that I've asked you about today, such as
17:43:45 20 a waste of resources at the local level and duplication of
17:43:49 21 effort?

17:43:49 22 A. Absolutely. And -- yes, absolutely.

17:43:51 23 Q. And on pages one and two of this document, Mr. Ingram,
17:43:57 24 the plaintiffs described two potential remedial options; one is
17:44:01 25 to delay the primary to May 24, 2020, and one is for an open

17:44:08 1 primary, a jungle primary in November of 2022.

17:44:11 2 Do you recall that from reading the supplemental
17:44:13 3 brief?

17:44:14 4 A. Yes.

17:44:14 5 Q. And in your view, would each of these options present
17:44:22 6 barriers to administering fair -- or fair elections in Texas?

17:44:23 7 A. So, the major objection is that the voting in this
17:44:29 8 election is already underway.

17:44:31 9 There was a situation back several years ago, whenever
17:44:36 10 I was newer in this job, where a school district had a
17:44:39 11 consolidation election with another school district, and they
17:44:42 12 posted a trustees meeting, with three-days notice posting
17:44:45 13 requirement like you're supposed to, that had on the agenda,
17:44:47 14 "cancellation of the election," and it was during early voting,
17:44:52 15 same as we're doing early voting right now. And our office,
17:44:56 16 under its limited authority under 31.005 of the Election Code,
17:45:02 17 sent a very sharply worded letter to the school district that
17:45:06 18 said, no, no, no, that's an abuse of voters' rights stop an
17:45:10 19 election once it's already underway. Those people who have
17:45:13 20 voted and are about to vote deserve to have their votes counted
17:45:18 21 as they've been cast. You can talk about the legitimacy of the
17:45:20 22 election after it's held, but no way are you going to stop it or
17:45:24 23 we're going to get the Attorney General to file a mandamus.

17:45:27 24 It's the same kind of thing here. This election is
17:45:29 25 underway. People are voting. We cannot abuse those voters by

17:45:33 1 saying their vote is a straw vote at this point. It's just not
17:45:38 2 right. So that's the biggest objection.

17:45:42 3 Q. And let me ask you about that. So that example that
17:45:46 4 you gave, that was in reference to a school board election?

17:45:48 5 A. It was a consolidation of two school districts.

17:45:53 6 Q. Safe to say that that's a much smaller election as far
17:45:57 7 as number of voted impact -- number of voters impacted than a
17:46:01 8 senate district or multiple senate districts?

17:46:05 9 A. I would agree with that. It was Coleman and Novice
17:46:05 10 ISD, so it's pretty small.

17:46:07 11 Q. There's also reference here to some notion that the
17:46:11 12 Court could order the Secretary of State to direct that the
17:46:14 13 affected districts primary results not be tallied.

17:46:18 14 Do you recall reading that?

17:46:18 15 A. I did.

17:46:19 16 Q. Okay. What did you think of that?

17:46:20 17 A. That's impossible. These races are on the ballot with
17:46:24 18 the rest of the races. When you put a ballot in the scanner, it
17:46:28 19 tallies all the races. There's no way not to do that. No,
17:46:32 20 there is a way; it would require hand counting every other race
17:46:35 21 on the ballot.

17:46:38 22 Q. In every affected election?

17:46:42 23 A. In every affected election, every affected precinct.

17:46:47 24 Q. And finally, Mr. Ingram, with respect to this
17:46:49 25 document, plaintiffs cite to a 1996 case, *Vera v. Bush*, as

17:46:55 1 support for some of their proposals. Have there been
17:47:00 2 any changes -- had there been any changes to the administration
17:47:04 3 of elections in Texas since 1996?

17:47:07 4 A. Yes, quite a few.

17:47:08 5 Q. All right. Can you give a couple of examples?

17:47:11 6 A. So the way the ballots are prepared is different now.
17:47:15 7 The way that voting systems -- you know, voting systems, period,
17:47:19 8 are different. Back in 1996, there were a number of counties
17:47:22 9 that had punch cards and now we almost universally use ballot
17:47:27 10 marking devices. And the equipment that we have now costs more
17:47:31 11 than what they had back then. You could just use, you know,
17:47:34 12 optical scan ballots back then. Now we've got ballot marking
17:47:38 13 devices and there's a discrete number of units that each county
17:47:41 14 has, and so if you have to program a separate election on
17:47:43 15 separate equipment, a lot of counties are not going to have
17:47:46 16 enough equipment to do -- to do that. It's just practically
17:47:49 17 more difficult.

17:47:50 18 Q. We talked about the 45-day federal deadline for
17:47:55 19 mailing out ballots. Do you know whether that was implemented
17:48:00 20 after 1996?

17:48:01 21 A. That was in 2010.

17:48:03 22 Q. And the *Purcell* case that we looked at earlier, that
17:48:05 23 was decided in 2006?

17:48:08 24 A. Agree.

17:48:09 25 Q. Would you say it's harder to administrate --

17:48:11 1 administer elections since 1996 or at least more complicated?

17:48:17 2 A. Elections administrators now have to be pretty good
17:48:20 3 lawyers and they have to be pretty good I.T. people, techs,
17:48:22 4 both. So, yes, it's much more difficult.

17:48:28 5 Q. Thank you, Mr. Ingram.

17:48:29 6 MR. HILTON: I think I'm finished, Your Honor. I just
17:48:32 7 want to check with my (mumbling).

17:48:38 8 MS. DANAHY: Your Honor, plaintiffs don't have any
17:48:43 9 questions.

17:48:44 10 MR. HILTON: Well, then I have no further questions
17:48:46 11 either.

17:48:46 12 Thank you.

17:48:46 13 JUDGE GUADERRAMA: And may Mr. Ingram be excused?

17:48:52 14 MS. DANAHY: Yes, Your Honor.

17:48:53 15 MR. HILTON: Yes, Your Honor.

17:48:53 16 JUDGE GUADERRAMA: Thanks for coming down. You are
17 free to go, sir.

18 (Witness excused).

19 MR. SWEETEN: Well, we made it under 6 o'clock.

20 THE COURT: Yes, you did.

21 MR. SWEETEN: So, we have to videotaped depositions.

17:49:15 22 We can just start those in the morning. We seem to be on
17:49:16 23 schedule. I don't know and I haven't talked to Mr. Dunn about
17:49:17 24 rebuttal. So maybe if you give us two minutes to talk, we can
17:49:20 25 maybe project to the Court about what tomorrow looks like.

17:49:23 1 JUDGE GUADERRAMA: Sounds good.

17:49:23 2 (Sotto voce conversation between counsel).

17:50:26 3 MR. SWEETEN: Your Honor, I think here's where we are.
17:50:28 4 And I forgot to mention Phil King will be on tomorrow, as well.
17:50:32 5 So we have Representative King. We have a 45-minute video depo
17:50:38 6 with both sets of clips, a 30-minute video depo with both sets
17:50:42 7 of clips. He's got a single rebuttal witness that he thinks
17:50:45 8 will take an hour. I haven't added that up, but I think we're
17:50:50 9 talking about early afternoon, which is what we were hoping for.
17:50:54 10 We think we can work out a deal on the exhibits, which may
17:50:58 11 obviate the need for an additional projection and so I guess my
17:51:01 12 projection is 2 o'clock tomorrow we could be finished.

17:51:04 13 Now, there was one other idea that he just pitched and
17:51:08 14 it seems like it might be workable for us and that is that he
17:51:12 15 suggested that maybe rather than give close tomorrow, but if
17:51:15 16 there's a time over the next couple of weeks, that we would come
17:51:18 17 before the Court -- Houston, El Paso -- wherever you want us to
17:51:22 18 be, we can come in and give a full closing, if that's something
17:51:26 19 the Court would entertain. If not, we can be ready to give
17:51:30 20 closing tomorrow, and we can also do written closing, whatever
17:51:35 21 the Court wishes.

17:51:37 22 JUDGE SMITH: I'd' rather have closings tomorrow.

17:51:37 23 JUDGE GUADERRAMA: You want to do it tomorrow?

17:51:40 24 JUDGE SMITH: It seems to me, while it's fresh in
17:51:43 25 everybody. We may still have some requests for additional

17:51:46 1 briefing or input.

17:51:47 2 I don't know. That's just me.

17:51:57 3 JUDGE BROWN: That's fine.

17:51:59 4 JUDGE GUADERRAMA: What would be your preference?

17:51:59 5 MR. SWEETEN: What would be what? I'm sorry.

17:52:02 6 JUDGE GUADERRAMA: Your preference? What would be

17:52:04 7 your preference?

17:52:04 8 MR. SWEETEN: Well --

17:52:04 9 JUDGE GUADERRAMA: Or do you have one?

17:52:05 10 MR. SWEETEN: Well, he had the idea. I was fine with
17:52:07 11 that. But if the Court prefers us to do it tomorrow, we're
17:52:11 12 absolutely willing to -- I mean we're happy to do it.

17:52:12 13 MR. DUNN: My only suggestion is there's a lot of
17:52:14 14 exhibit information that the Court hasn't seen in this short
17:52:17 15 evidentiary hearing. And so, you know, closing tomorrow will
17:52:20 16 mean it won't get talked about, because we won't have the
17:52:23 17 ability to put all of that together. So that's what my
17:52:27 18 suggestion, but we also don't want any further delay, so...

17:52:30 19 THE COURT: So Judge Smith indicated maybe we'll hear
17:52:33 20 you orally tomorrow and then we have a submission later in the
17:52:37 21 week that maybe can summarize those other exhibits you're
17:52:40 22 talking about.

17:52:40 23 JUDGE SMITH: If for whatever reason, we can reconvene
17:52:45 24 at some other time when we -- the Judges indicate --

17:52:53 25 MR. SWEETEN: The state is fine giving it tomorrow and

17:52:56 1 the state is fine giving the closing in two weeks. We're really
17:52:59 2 here, you know, to do what the Court wants us to do.

17:53:03 3 MR. DUNN: I'm here. We'll do it tomorrow.

17:53:05 4 MR. SWEETEN: We'll just do it tomorrow.

17:53:07 5 JUDGE GUADERRAMA: All right. Sounds good. We'll see
17:53:08 6 you-all back -- we start at 9 o'clock again tomorrow. You'll
17:53:12 7 have enough time if we start at 9:00?

8 MR. SWEETEN: I think we will.

9 JUDGE GUADERRAMA: All right. Then we'll see you back
10 at 9 o'clock. We're in recess until then.

11 (Proceeding concludes for the evening).

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /s/KATHLEEN ANN SUPNET
Kathleen A. Supnet, CSR

February 23, 2022
Date

KATHLEEN A. SUPNET, CSR