

IN THE UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 EL PASO DIVISION
 VOLUME 9 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 28th, 2022
Defendants.) ((1:01 p.m. to 2:31 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 1:01 p.m.)

13:01:14 2 JUDGE GUADERRAMA: We're going to admit Exhibit 1 of
13:01:16 3 2. I think that's one that had the objection over the hearsay
13:01:23 4 and authentication objections and we'll each then give it the
13:01:27 5 weight that we think that the exhibit deserves.

13:01:31 6 And the last thing is, do you-all want to set time
13:01:35 7 limits for your closing or do you want to just go until you
13:01:39 8 think we've had enough or how do you want to do that?

13:01:40 9 MR. DUNN: Mr. Gaber and I were intending to split the
13:01:45 10 closing with -- where I plan to focus on the record evidence and
13:01:47 11 he intended to focus on the legal argument and I think we've
13:01:50 12 estimated that should take about an hour, if that sounds
13:01:53 13 reasonable to the Court.

13:01:55 14 JUDGE GUADERRAMA: Hour is fine.

13:01:56 15 The government, are you good with an hour?

13:01:57 16 MR. THOMPSON: That's fine, Your Honor. Thank you.

13:01:59 17 JUDGE GUADERRAMA: So do you-all need a warning at any
13:02:03 18 point or you and Mr. Gaber will divide it up how you want, you
13:02:07 19 want a warning right before you end?

13:02:09 20 MR. DUNN: I'll take a warning at 30 minutes, Your
13:02:09 21 Honor.

13:02:12 22 JUDGE GUADERRAMA: Thirty-minute warning? All right.
13:02:12 23 The government, any warning?

13:02:14 24 MR. THOMPSON: Thank you. That would be great.

13:02:14 25 JUDGE GUADERRAMA: I'm sorry?

13:02:18 1 MR. THOMPSON: That'll be great. Thank you.

13:02:18 2 JUDGE GUADERRAMA: Okay. A 30-minute warning as well
13:02:21 3 or 3-minute warning?

13:02:23 4 MR. THOMPSON: Three would be great.

13:02:26 5 JUDGE GUADERRAMA: All right.

13:02:27 6 Mr. Dunn, whenever you're ready.

13:02:30 7 CLOSING ARGUMENT BY THE PLAINTIFFS

13:02:32 8 MR. DUNN: May it please the Court.

13:02:34 9 Chad Dunn on behalf of the Brooks plaintiffs.

13:02:35 10 On behalf of my client and the citizens of Tarrant
13:02:38 11 County, I thank the Court and its staff for the time and effort
13:02:40 12 to consider this important matter today. It's my honor to stand
13:02:44 13 with these gentlemen and ladies arguing such an important case.

13:02:48 14 And my thanks to the state for their professionalism
13:02:51 15 and their exceptional conduct throughout this trial.

13:02:54 16 The record evidence is clear that the government is no
13:02:57 17 longer entitled to a presumption of good faith. In fact, the
13:03:01 18 record evidence is that the government has routinely, throughout
13:03:04 19 the process of developing the map for Senate District 10, engage
13:03:08 20 not just in willful blindness, but outright dishonesty to the
13:03:12 21 citizens of Tarrant County, to Senator Powell and to other
13:03:16 22 members of the Senate and the House, who were asked to vote on
13:03:19 23 this plan.

13:03:20 24 We started the beginning of the plan analysis, which
13:03:23 25 starts with population deviation. On your screen is Plaintiffs'

13:03:26 1 Exhibit 55, which shows the total population deviation of the
13:03:30 2 state Senate districts as of the release of the new Census
13:03:34 3 figures. One of the things that this Court heard through the
13:03:37 4 record evidence is that it was necessary to make changes to
13:03:40 5 Senate District 10 in order to balance the population, but that
13:03:44 6 is simply not true.

13:03:45 7 As the Court will note, Senator Seliger's district was
13:03:49 8 shown to be 7.5 percent negative deviation. The adjacent Senate
13:03:55 9 district was shown to be 15.3 negative deviation, and there were
13:04:00 10 two districts to the north and west of Tarrant County; Senate
13:04:04 11 District 30, it was 9.3 percent positive deviation and Senate
13:04:08 12 District 12, that was 15.6 positive deviation.

13:04:11 13 Trades between those four districts alone would have
13:04:15 14 balanced the maps in the Panhandle, and all of the evidence that
13:04:19 15 the Court heard from Senator Powell and from Senator Huffman is
13:04:22 16 that there were a number of proposals before the Legislature
13:04:23 17 that accomplished the tasks of balancing those adjacent
13:04:27 18 districts without making any changes to Senate District 10.
13:04:31 19 And, of course, the evidence shows that Senate District 10,
13:04:35 20 after the release of the new Census figures was swell within
13:04:36 21 deviation less than 1 percent.

13:04:39 22 So if the question -- if the motivation behind the
13:04:41 23 plan was not to balance population, what was it? The government
13:04:47 24 posits that it's a partisanship explanation, except the record
13:04:51 25 evidence from the legislative debates does not support such a

13:04:55 1 conclusion nor does the evidence developed throughout this
13:04:58 2 litigation. We'll track some of that here.

13:05:00 3 But we start at the beginning of the process with a --
13:05:03 4 and what kind of information the government actors here reviewed
13:05:06 5 in developing the plan. At Plaintiffs' Exhibit 104 on your
13:05:11 6 screen, starting back in October 2019, the Texas Demographic
13:05:17 7 Center began to make presentations to both the House and Senate
13:05:17 8 redistricting committees.

13:05:18 9 You heard Senator Huffman testify yesterday that she
13:05:22 10 recalled having seen these presentations and, in fact, they were
13:05:24 11 routine presentations throughout the field hearings in that
13:05:28 12 following year.

13:05:29 13 As the Court will note on page 21 of the exhibit, it
13:05:32 14 contains detailed racial shading maps of the Dallas-Fort Worth
13:05:38 15 area. It also includes Hispanic and Black population shading
13:05:43 16 maps, as well as the Asian population in Dallas-Fort Worth.

13:05:47 17 This information of course though wasn't new to the
13:05:49 18 key actors in this case. On your screen is Plaintiffs'
13:05:53 19 Exhibit 29, which was the -- was an exhibit in the *Perez* case in
13:05:56 20 San Antonio in the last three-judge court, to handle Texas
13:05:59 21 redistricting. And this is one of the exhibits Anne Mackin
13:06:03 22 herself personally handled in negotiations between plaintiffs'
13:06:06 23 and defendants' counsel when she was then serving in the
13:06:09 24 Attorney General's Office. This map too shows the racial
13:06:13 25 shading of Tarrant County, much as the Texas Demographic Center

13:06:17 1 had also shown.

13:06:18 2 And so with that year and a half of absorption of that
13:06:21 3 information, Mr. Svatora on behalf of his senator, Senator
13:06:27 4 Powell, and Senator Powell's Senator Powell's Chief of Staff,
13:06:30 5 Gary Jones, went to meet with the staff from Senator Huffman,
13:06:32 6 and you heard that testimony by videotape deposition. And in
13:06:35 7 this contemporaneously taken note, Senator Powell, through her
13:06:38 8 staff, was told that there would be very -- likely to be very
13:06:41 9 little change to her district. In fact, the phrase was, as you
13:06:44 10 see in the next to the last line, "slightly tweaking your
13:06:48 11 district." That was either untrue at the time it was said or it
13:06:52 12 became untrue at some point later, but in the follow-up meeting
13:06:57 13 that includes Senator Huffman and her Chief of Staff Gary Jones,
13:06:59 14 which he always describes in his declaration before the Court.

13:07:03 15 Senator Powell and Mr. Jones were provided two maps,
13:07:08 16 Exhibit 7, that had been admitted into evidence; Brooks'
13:07:13 17 Exhibit 7. This is a photograph of one of them. And as the
13:07:16 18 Court will note, it contains racial data in the margin. Now
13:07:20 19 that in and of itself is relevant, but what is also relevant
13:07:24 20 about this exhibit is if you carefully look, you'll see that it
13:07:26 21 shows the non-Anglo percentage of population for Senate District
13:07:32 22 10 is 56-something percent. And so the information before
13:07:37 23 Senator Huffman and her staff was not the CVAP figures that we
13:07:42 24 hear as post hoc explanation. Instead what they knew or at
13:07:45 25 least what they were telling others what the documents that they

13:07:47 1 were providing, is that Senate District 10 was indeed a
13:07:49 2 majority-minority district.

13:07:51 3 On Exhibit 9 are some additional maps that were later
13:07:58 4 provided in a drop box and made available to all of the Senate
13:08:01 5 staff and Senators. I'll show that email momentarily, but what
13:08:04 6 this map also shows is that the information provided to the
13:08:06 7 entire Senate, with respect to Senate District 10, both included
13:08:11 8 racial makeup and also indicated that the district was -- also
13:08:16 9 indicated the percentage of the district. Now this information
13:08:19 10 comes out after the development of the plan begins.

13:08:26 11 Now here's the email, Plaintiffs' Exhibit 8, that was
13:08:29 12 admitted into evidence, where Mr. Opperman forwards to all of
13:08:34 13 the staffers for the senators a drop box that contains various
13:08:38 14 information, and included in there are a number of racial maps,
13:08:41 15 and indeed -- and Gary Jones' declaration in paragraph 11 on
13:08:46 16 page 2, he describes the types of racial maps that were
13:08:50 17 provided. So up until this point, in approximately 2 years
13:08:53 18 worth of work, the data that the government was working with in
13:08:57 19 developing this map was plainly racial data.

13:09:00 20 But then somehow the strategy changed and
13:09:04 21 unfortunately this Court has been deprived of an explanation of
13:09:07 22 why that is so. But it is true that on September 16th at 5:31
13:09:11 23 p.m., Mr. Jones, Senator Powell's Chief of Staff, forwarded a
13:09:16 24 letter to the staff for Senator Huffman explaining why she was
13:09:22 25 against this recent proposal she had seen projected on the wall

13:09:24 1 in Senator Huffman's office. And in there she included
13:09:28 2 information about the racial discrimination that she thought
13:09:30 3 would result from adopting such a plan.

13:09:34 4 And then the next day, Mr. Opperman responds in what
13:09:37 5 has to be one of the oddest letters sent from -- emails sent
13:09:40 6 from a legislative staffer in the chair of a committee, that at
13:09:44 7 least I have seen, and he says, and I quote, "Gary, thank you
13:09:48 8 for reaching out. I briefly opened these documents and they
13:09:51 9 appear to contain racial data, so I closed them right away."
13:09:56 10 Open paren, (Just a reminder, we are drafting all maps without
13:09:59 11 regard to racial data and sending the drafts out for legal
13:10:03 12 compliance check.)

13:10:04 13 In what other circumstance does the Legislature
13:10:08 14 consider an important matter a public policy and willfully close
13:10:10 15 its eyes to relevant data? But what's more about this is what
13:10:14 16 changed in the last 2 years about the considering racial data in
13:10:18 17 adopting of a map and then all of a sudden deciding not to.

13:10:22 18 And then finally, what else doesn't make sense is that
13:10:25 19 a state like Texas, with such a sorted history of violations of
13:10:29 20 the Voting Rights Act in redistricting, deciding to simply
13:10:34 21 ignore racial data, can't be anything other than a pretext.

13:10:36 22 Senator Powell having been unsuccessful at convincing
13:10:43 23 Senator Huffman to change course, then sent an unprecedented
13:10:45 24 email to all of her colleagues, providing them the detailed
13:10:49 25 information they needed in order to observe the effect that this

13:10:53 1 new proposal would have on Senate District 10. In there she
13:10:57 2 included the Federal District Court decision from Washington
13:11:01 3 D.C. in 2012, as well as an explanatory letter and racially
13:11:05 4 shaded maps. And, yet, another abnormality in the process, the
13:11:11 5 next day, from Senator Huffman comes a read receipt for this
13:11:15 6 document showing that in fact it had been received and according
13:11:18 7 to the record read.

13:11:20 8 So then the discussion on the Senate floor begins.
13:11:25 9 And the Court, I know, has seen each of the iterations of
13:11:28 10 Senator Huffman explaining her motivations behind the plan. I
13:11:30 11 won't repeat that here, other than to say the government has not
13:11:34 12 provided you, at any point, a record evidence of Senator Huffman
13:11:38 13 describing, number one, that Senate District 10, itself, was
13:11:41 14 specifically part -- was developed as a partisanship motivation.
13:11:45 15 And in the only time that Senator Huffman lists each of the
13:11:49 16 principles that guided her in the plan that she mentioned
13:11:52 17 partisanship, was on the third committee hearing; each other
13:11:57 18 time she addressed her principles, such information was not
13:11:57 19 provided.

13:11:58 20 Well let's focus on the principles that were told to
13:12:03 21 both the Senate and House at the beginning of their
13:12:06 22 deliberations.

13:12:06 23 (Video with audio played).

13:12:06 24 *SENATOR HUFFMAN: My goals and priorities in*
13:12:10 25 *developing these proposed plans include first and*

13:12:11 1 *foremost abiding by all applicable law, equalizing*
13:12:15 2 *population across districts, preserving political*
13:12:17 3 *subdivisions and communities of interest when*
13:12:20 4 *possible, preserving the cores of previous districts*
13:12:24 5 *to the extent possible, avoiding pairing incumbent*
13:12:28 6 *members achieving geographic compactness when*
13:12:31 7 *possible and accommodating incumbent priorities also*
13:12:34 8 *when possible.*

13:12:34 9 In the Senate...

13:12:37 10 (Video and audio stop).

13:12:37 11 MR. DUNN: These list of priorities have not been
13:12:41 12 demonstrated in the record evidence to have been treated
13:12:44 13 faithfully.

13:12:44 14 First, the evidence that you heard from the citizens
13:12:46 15 of Tarrant County and Senator Powell, herself, is that there are
13:12:50 16 no communities of interest between these rural counties combined
13:12:52 17 with her portion of Tarrant County and the citizens and the
13:12:57 18 cities and the communities that she has represented in this last
13:12:59 19 term.

13:12:59 20 Furthermore, there has not been any evidence that
13:13:02 21 it's -- that the map is compact, and indeed it is not, and the
13:13:05 22 idea that somehow or another the core of the district has been
13:13:09 23 retained is simply laughable.

13:13:12 24 In short though, as an evidentiary standpoint, there
13:13:16 25 is no alternative evidence in the record to the testimony of the

13:13:17 1 plaintiffs on these issues, and what remains in the legislative
13:13:22 2 record are nothing more than bold assertions not supported by
13:13:25 3 rational argument.

13:13:27 4 Now in the Senate debate, Senator Seliger provided us
13:13:32 5 some context and I'd like to call the attention to -- the
13:13:34 6 Courts' attention to.

13:13:34 7 (Video and audio played).

13:13:37 8 MR. DUNN: -- state if you have an opinion as to when
13:13:38 9 she was giving you a specious answer.

13:13:39 10 SENATOR SELIGER: To try and take those four counties
13:13:41 11 in the Panhandle, those being Gray, Wheeler, Donley
13:13:50 12 and Collingsworth out of the district and adding
13:13:54 13 counties that go almost all the way to the border,
13:13:59 14 like Schleicher and Upton and Reagan. Good counties.
13:14:02 15 I have no objection representing them, because
13:14:04 16 clearly I was going have to represent more than 37
13:14:08 17 counties, but it was designed to concentrate the vote
13:14:13 18 to the degree possible in the area close to Midland
13:14:17 19 to help Mr. Sparks.

13:14:20 20 MR. DUNN: Is that where Mr. Sparks is from?

13:14:22 21 SENATOR SELIGER: Yes.

13:14:23 22 MR. DUNN: So why not just tell you that?

13:14:25 23 SENATOR SELIGER: I don't know. Because everybody
13:14:29 24 insists they're innocent of any suspect motive.

13:14:33 25 (Video and audio stopped).

13:14:33 1 MR. DUNN: And in the same way they don't tell Senator
13:14:36 2 Seliger what they were up to with regard to him, they wouldn't
13:14:39 3 tell Senator Powell what they were up to with regard to her
13:14:42 4 district, and when we asked methodically, careful questioning of
13:14:45 5 the important facts, she never got clean and honest answers.

13:14:50 6 Ultimately, the fact that the legislatures involved
13:14:53 7 here couldn't come before the Senate and say, Senate Seliger, we
13:14:58 8 have decided we would like to target your district for
13:15:00 9 replacement or Senator Powell, we would like your district to
13:15:05 10 become a Republican district and/or we would like to ensure that
13:15:05 11 you don't gain election in the next cycle. Had they come before
13:15:10 12 the Court with evidence such as that, then perhaps the Court
13:15:11 13 would be in a more difficult of a factual bind, but because the
13:15:16 14 legislatures involved here decided not to tell the truth, the
13:15:19 15 good faith presumption falls away.

13:15:24 16 Now Senator Seliger provided some other context with
13:15:28 17 regard to the operation of the Senate.

13:15:28 18 (Video and audio played).

13:15:32 19 MR. DUNN: Do you have any reasons that you -- and I
13:15:32 20 don't want you to disclose them at the moment --

13:15:32 21 SENATOR SELIGER: Okay.

13:15:33 22 MR. DUNN: I just want to know if they exist.

13:15:34 23 Did you have any reasons that you voted against the
13:15:36 24 Senate plan other than what you said on the floor
13:15:40 25 publicly.

13:15:40 1 *SENATOR SELIGER: Yes.*

13:15:42 2 *MR. DUNN: Okay.*

13:15:43 3 *Have you -- are those other reasons that you have,*
13:15:46 4 *you ever expressed them publically elsewhere?*

13:15:49 5 *SENATOR SELIGER: Publically, no.*

13:15:50 6 *MR. DUNN: Like to the newspaper or constituents or*
13:15:50 7 *anything of that sort?*

13:15:53 8 *SENATOR SELIGER: No.*

13:15:53 9 *MR. DUNN: And so I assume you take legislative*
13:15:57 10 *privileges on your other basis for voting against the*
13:16:01 11 *Senate plan.*

13:16:02 12 *SENATOR SELIGER: Yeah.*

13:16:11 13 *I'd like to tell you, but he would not approve.*

13:16:15 14 *MR. DUNN: Okay. He is your lawyer.*

13:16:16 15 *SENATOR SELIGER: Yes.*

13:16:17 16 *MR. DUNN: Okay. I say that for our record. It*
13:16:23 17 *doesn't know who he is.*

13:16:24 18 *SENATOR SELIGER: Oh, okay.*

13:16:26 19 *MR. DUNN: Is it the case that in the Texas Senate*
13:16:29 20 *there's sometimes what's said in the public about the*
13:16:32 21 *motivations behind the legislative activity and*
13:16:33 22 *there's something different in private?*

13:16:36 23 *SENATOR SELIGER: All the time.*

13:16:37 24 *MR. DUNN: Would you say more often than not that's*
13:16:37 25 *the case?*

13:16:39 1 *SENATOR SELIGER: Not necessarily, no.*

13:16:40 2 *MR. DUNN: Would you say more often than not that's*

13:16:43 3 *the case on the big items?*

13:16:43 4 *UNKNOWN SPEAKER: Objection, form, calls for*

13:16:47 5 *speculation; objection, foundation.*

13:16:47 6 *SENATOR SELIGER: I would say it's often the case.*

13:16:51 7 *MR. DUNN: You think it's often the case with regard*

13:16:53 8 *to redistricting?*

13:16:55 9 *UNKNOWN SPEAKER: Same objection.*

13:16:55 10 *SENATOR SELIGER: I think it's often the case on a lot*

13:16:56 11 *of issues, particularly more controversial ones.*

13:16:59 12 *MR. DUNN: Including redistricting?*

13:16:59 13 *UNKNOWN SPEAKER: Same objection.*

13:17:00 14 *SENATOR SELIGER: Yes.*

13:17:04 15 *(Video and audio stopped).*

13:17:04 16 *MR. DUNN: Now Senator Seliger, obviously, had careful*

13:17:09 17 *opinions about his district's construction, and although not*

13:17:13 18 *relevant specifically to the relief requested from this Court,*

13:17:15 19 *it's relevant to show that not -- it wasn't just Senator Powell*

13:17:20 20 *who was not given accurate answers about her district, but it*

13:17:23 21 *was another senator as well. That type of perturbing of the*

13:17:29 22 *deliberative process of the state Senate charged with making*

13:17:35 23 *laws in this state should not be tolerated and this is the case*

13:17:38 24 *to deal with it.*

13:17:40 25 *Another thing to note from Senator Seliger, what he*

13:17:42 1 states here, is he had more to say to explain about his vote,
13:17:45 2 but just like Senator Huffman here, the government worked to
13:17:50 3 make them or request of them to impose their legislative
13:17:53 4 privilege, to seek legislative privilege and impose it on nearly
13:17:56 5 every question. Even in the circumstance where Senator Seliger,
13:18:01 6 himself, said there, I would tell you, but my lawyer Mr. Opiela
13:18:05 7 would not allow me.

13:18:08 8 And one final excerpt from Senator Seliger.

13:18:08 9 (Video and audio played).

13:18:08 10 *UNKNOWN SPEAKER: -- point anything in the public*
13:18:13 11 *record demonstrating the protectoral explanations*
13:18:15 12 *were given for why Senate District 10 was drawn the*
13:18:15 13 *way that it was drawn?*

13:18:19 14 *SENATOR SELIGER: Anything in the public record?*

13:18:19 15 *UNKNOWN SPEAKER: Yes.*

13:18:21 16 *SENATOR SELIGER: No.*

13:18:21 17 (Video and audio stop).

13:18:23 18 MR. DUNN: And so instead the way the government chose
13:18:25 19 to litigate the case was to address witnesses only asking about
13:18:29 20 the public record to ensure that they continued the process of
13:18:32 21 not disclosing what really had occurred in these legislative
13:18:38 22 debates.

13:18:39 23 Now continuing on with the timeline of the process
13:18:42 24 after the Senate passes the plan, Senator Powell then sends and
13:18:47 25 email to all of the members of the House Committee, and they are

13:18:50 1 then given the same information, including the 2012 court
13:18:54 2 decision, Senator Powell's letter and a number of racial shading
13:18:58 3 maps. And in nowhere in the House record has the government
13:19:00 4 shown that partisanship was stated or suggested as part of the
13:19:04 5 motivation for the Senate plan. At best, there's a mention of
13:19:07 6 it by Senator Huffman as an aside in discussions on the floor.
13:19:11 7 Nowhere does that discussion exist before the House. The House
13:19:16 8 could not have known that the plan was adopted with a partisan
13:19:19 9 purpose with respect to Senate District 10, but it did know
13:19:22 10 about the racial consequences of such a purpose, because Senator
13:19:25 11 Powell saw to it that they were informed.

13:19:27 12 Plaintiffs' Exhibit 20 that I'm showing you on the
13:19:29 13 screen is Senator Powell's email to all of the members of the
13:19:33 14 House, again disclosing the 2012 decision, her letter and
13:19:35 15 racially shaded maps.

13:19:37 16 You heard from Chairman Turner that he gave a
13:19:40 17 presentation on the floor of the House, where he described all
13:19:43 18 of the this information, and he asked the messengers in the
13:19:47 19 House to print this information and lay it on each of the desks
13:19:50 20 for the House members.

13:19:51 21 So now we turn back to the testimony that was
13:19:56 22 developed in the course of this case. This is the rough
13:19:59 23 transcript from Senator Huffman's testimony yesterday. And I'll
13:20:03 24 do my best to paraphrase. As the Court will see, it's not quite
13:20:05 25 finished, but I'll read it as best I recall and ultimately we'll

13:20:09 1 have the final record to consider.

13:20:10 2 JUDGE GUADERRAMA: Is there any way you can blow it
13:20:13 3 up?

13:20:14 4 MR. DUNN: Yes, sir.

13:20:14 5 (Paraphrasing from transcript).

13:20:19 6 MR. HILTON: Earlier do you recall Mr. Dunn asking you
13:20:22 7 whether Senate District 10 was drawn on the basis of
13:20:25 8 partisanship? Do you recall him asking about that?

13:20:27 9 SENATOR HUFFMAN: Yes, sir.

13:20:27 10 MR. HILTON: Do you recall that stating that Senate
13:20:32 11 District 10 was related to partisanship?

13:20:34 12 MR. DUNN: And her answer here in the courtroom to her
13:20:37 13 own lawyer was: I cannot recall, sir.

13:20:42 14 And then there was this additional exchange.

13:20:47 15 MR. HILTON: Do you recall being asked the question
13:20:49 16 whether you would describe the Senate map as
13:20:51 17 partisan?

13:20:52 18 SENATOR HUFFMAN: Yes.

13:20:52 19 MR. HILTON: Do you recall an objection to legislative
13:20:55 20 privilege in response to that question?

13:20:57 21 SENATOR HUFFMAN: Yes.

13:20:58 22 MR. HILTON: Do you recall what your answer to that
13:20:59 23 question was?

13:21:00 24 SENATOR HUFFMAN: No.

13:21:01 25 MR. DUNN: And then the lawyer for the government

13:21:03 1 attempts to refresh her recollection on her own deposition.

13:21:07 2 It's worth noting to the Court, that deposition was
13:21:10 3 just taken last Friday. So between last Friday and this week,
13:21:15 4 Senator Huffman could not keep clear in her testimony that
13:21:19 5 partisanship was the central concern behind Senate District 10.

13:21:23 6 Now this Court has had the opportunity to review the
13:21:28 7 government's response to the motion for preliminary injunction.
13:21:28 8 The tail weaved in there is simply completely unsupported by
13:21:33 9 Senator Huffman's testimony in the court and at the deposition.

13:21:35 10 And finally if the Court would like more context about
13:21:39 11 the discussion of the deposition, it's been filed as Exhibit 1
13:21:42 12 in the motion in limine, and we encourage the Court to give
13:21:46 13 careful attention to the exchange about partisanship, which is
13:21:49 14 contained at the very end of the deposition.

13:21:55 15 Now we turn our attention to the 2012 preclearance
13:22:03 16 decision. Here at the *Senate Journal* for October 4th, 2021, on
13:22:08 17 page A-9, Senator Powell is asked this:

13:22:13 18 *UNKNOWN SPEAKER: Have you read the 2012 preclearance*
13:22:16 19 *decision from the D.C. Federal Court in Texas v. The*
13:22:19 20 *United States case.*

13:22:21 21 *ANSWER: Have I read it? I probably have in the past.*
13:22:22 22 *I don't want to say definitively because I don't*
13:22:25 23 *recall if it's one I read.*

13:22:26 24 MR. DUNN: That answer of the chair of the committee,
13:22:29 25 who is charged with redrawing a district that was most recently

13:22:32 1 found to have been intentionally dismantled, is itself
13:22:34 2 incredible, but this additional exchange with Senator West:

13:22:34 3 (Video and audio played).

13:22:44 4 *SENATOR WEST: We know there was a court decision back*
13:22:46 5 *in 2012, as it relates to Senate District 12 --*
13:22:52 6 *Senate District 10, did you take that Court decision*
13:22:53 7 *into consideration in drawing or redrawing Senate*
13:22:53 8 *District 10?*

13:22:59 9 *SENATOR HUFFMAN: No, sir.*

13:23:01 10 *SENATOR WEST: Why is that?*

13:23:02 11 *SENATOR HUFFMAN: I didn't think it was required for*
13:23:04 12 *me to do so.*

13:23:06 13 *SENATOR WEST: Okay. You didn't think it was*
13:23:07 14 *required?*

13:23:08 15 *SENATOR HUFFMAN: Correct.*

13:23:08 16 *SENATOR WEST: Okay.*

13:23:11 17 (Video and audio stopped).

13:23:11 18 MR. DUNN: No explanation given.

13:23:14 19 Now it may be that some look back at the 2012 decision
13:23:16 20 and think the court got it wrong. It was a diverse group of
13:23:21 21 judges from different backgrounds. It was a well thought out
13:23:23 22 opinion. It's appendix on the Senate in particular is
13:23:26 23 voluminous. But the State of Texas, in its Legislature, in no
13:23:30 24 other circumstance can simply ignore a binding court decision;
13:23:34 25 one from the Fifth Circuit or from another. It had options

13:23:36 1 here. If it thought it was not required to give respect to the
13:23:40 2 2012 decision, it could have filed a declaratory judgment
13:23:42 3 action. It could've been honest here on the floor said we've
13:23:44 4 read the opinion and for these various reasons, we think we no
13:23:48 5 longer have to follow its edicts. It did none of those things.
13:23:50 6 Instead, the Legislature chose to tell a different tale about
13:23:53 7 the purposes behind their effort.

13:23:56 8 We have more than proven the elements required of us
13:24:01 9 here today. Even though we've been deprived of the box of maps,
13:24:05 10 which almost certainly have various racial shading and
13:24:08 11 information on it, even though we've been deprived of the maps
13:24:13 12 that were initialed by Senator Huffman and Senator Powell, at
13:24:17 13 the end of the day it's important what happens to Senator
13:24:22 14 Powell's senate district. That ought to be enough. It's
13:24:25 15 important what happens with the million-plus minority voters in
13:24:29 16 Tarrant County. That ought to be enough. It's important whether
13:24:34 17 or not the state's deliberative body -- it's highest
13:24:35 18 deliberative body, the Senate, can continue to be permitted to
13:24:37 19 operate this way and that out to be enough.

13:24:41 20 But at the end of the day, what this case is
13:24:44 21 fundamentally about is the respect for the rule of law. Senator
13:24:50 22 Huffman gave no respect for it, even though she has a
13:24:55 23 substantial experience as a fine trial lawyer, as an excellent
13:24:57 24 criminal judge, knew precisely what she was doing here.

13:25:00 25 This Court has the opportunity to vindicate the

13:25:02 1 decision-making of the United States District Court. It has far
13:25:08 2 reaching consequences. It should find liability and issue an
13:25:13 3 injunction.

13:25:14 4 JUDGE GUADERRAMA: Thank you, Mr. Dunn.

13:25:45 5 CLOSING ARGUMENT BY PLAINTIFFS

13:25:53 6 MR. GABER: May it please the Court, Mark Gaber for
13:26:00 7 the Brooks plaintiffs.

13:26:00 8 Two-and-a-half years ago, Texas successfully defended
13:26:05 9 itself in the Supreme Court by arguing that the 2013 Legislature
13:26:09 10 had remedied the 2011 Legislature's intentionally, racially,
13:26:14 11 discriminatory actions by enacting court ordered plans.

13:26:17 12 The Supreme Court credited the testimony of Senator
13:26:21 13 Seliger, which the state offered to it, and expressly noted that
13:26:25 14 it was not as if the Legislature had reverted to what it had
13:26:29 15 done in 2011, and so therefore no inference of intentional
13:26:35 16 discrimination should arise from those actions.

13:26:36 17 This case turns *Abbott v. Perez* upside down in all
13:26:38 18 respects. The state has gone back to, with respect to the
13:26:43 19 Senate District 10, the very plan, the very same type of plan
13:26:45 20 that was found to be intentionally discriminatory, and in the
13:26:50 21 process of doing that it has discredited the testimony that the
13:26:55 22 Supreme Court credited of the state senator who was in charge of
13:26:58 23 that redistricting process because he disagrees with the
13:27:03 24 Lieutenant Governor's policy preferences.

13:27:05 25 Now in *Bartlett v. Strickland*, the Supreme Court ruled

13:27:07 1 that if there was a showing that a state intentionally drew
13:27:10 2 district lines, in order to destroy otherwise effective
13:27:13 3 crossover districts, that would raise serious questions under
13:27:17 4 the 14th and 15th amendments. That showing has been made here.

13:27:23 5 In looking -- just a background on the law of
13:27:26 6 intentional discrimination, it is true that in -- and this was
13:27:30 7 highlighted by the state in their opening -- part of this Court
13:27:33 8 decision was highlighted -- *Personal Administrator v. Finney*,
13:27:36 9 from the Supreme Court. And the state is correct that that case
13:27:40 10 says that intentional discrimination is not merely volition or
13:27:46 11 awareness of discriminatory effects, but at the same time the
13:27:51 12 Supreme Court made clear that where the adverse consequences of
13:27:52 13 a law upon an identifiable group are clear that it can -- a
13:27:58 14 strong inference arises that those adverse effects were desired
13:28:02 15 and that that inference can reasonably be drawn.

13:28:04 16 And the Court says that it is only the case that that
13:28:08 17 inference should not be drawn where all of the evidence shows
13:28:10 18 that some other explanation was the reason for the action. That
13:28:15 19 clearly is not the case here, and that inference clearly shows
13:28:21 20 the presence of racially, discriminatory intent in this case.

13:28:25 21 The framework that the Court is to use in assessing
13:28:28 22 that evidence is the Arlington Heights framework. In beginning
13:28:33 23 with whether or not the decision of the Legislature has -- bears
13:28:38 24 more heavily on a racial-minority group than on white voters.
13:28:43 25 There's no dispute that that's the case here. You can look at

13:28:46 1 the map and you can see that.

13:28:47 2 Hundreds of thousands of minority voters, who had been
13:28:51 3 electing their candidate of choice, after a three-judge federal
13:28:55 4 court ruled the last time that it was dismantled, that they had
13:28:59 5 the right to do so and to continue doing so, were moved out of
13:29:03 6 the district and cracked among several Anglo dominated districts
13:29:07 7 spanning across dozens of counties outside of the DFW metroplex.
13:29:15 8 That historical background in the D.D.C. decision speaks with
13:29:18 9 specificity about the various neighborhoods that were cracked
13:29:22 10 apart in 2011. Those same neighborhoods are the ones that are
13:29:25 11 cracked apart in the 2020 enactment.

13:29:29 12 In 2016 the Fifth Circuit sitting en banc, ruled that
13:29:36 13 that decision was a contemporaneous example of state sponsored
13:29:38 14 discrimination. And it did so rejecting the argument of the
13:29:43 15 state and of the decent that the vacatur of that decision in
13:29:45 16 light of Shelby County somehow got rid of all of the factual
13:29:50 17 evidence of discriminatory intent. The Fifth Circuit majority
13:29:54 18 sitting en banc was clear that that remained a relevant factual
13:29:59 19 example of state sponsored discrimination.

13:30:02 20 The next factor is the specific sequence of events,
13:30:06 21 and Mr. Dunn went over those; I won't repeat them; but the
13:30:09 22 shifting explanation -- the specious population -- the
13:30:11 23 population arguments were the ones that were repeatedly used and
13:30:14 24 they changed. In the state's brief, they had a different
13:30:17 25 population explanation. They said in the brief that the

13:30:21 1 Panhandle districts were losing population and so, therefore,
13:30:26 2 SD-10 -- it provided a partisan opportunity for SD-10 to take
13:30:29 3 more population from those districts. That has it exactly
13:30:32 4 backwards. That makes no sense even logically as an argument.

13:30:38 5 The third factor is the departures from the normal
13:30:42 6 procedures. You saw the resource witness that the Attorney
13:30:45 7 General's office sent to the Senate Committee. Normally the --
13:30:49 8 as Senator Powell testified, the procedure for a resource
13:30:52 9 witness is to send a subject matter expert on the issue, and
13:30:55 10 instead, the expert would not testify largely about the
13:31:00 11 redistricting processes.

13:31:02 12 You saw the process in the House, where there was one
13:31:05 13 meeting held. At the beginning of that meeting, after having
13:31:10 14 received a letter from Senator Powell, explaining what had
13:31:14 15 happened with the district and the racial effects of that
13:31:17 16 change, you saw that the Chair Hunter said that, you know, we're
13:31:23 17 just going to -- something along the lines of I'm going to trust
13:31:26 18 the process. I'm going to be productive and I'm going to accept
13:31:30 19 what they did. That is not the normal process as Representative
13:31:35 20 Turner testified, nor is it the process to deny the ability to
13:31:39 21 have resource witnesses or to have experts come and testimony in
13:31:42 22 more than 3-minute increments, nor is it the normal process to
13:31:47 23 vote on the bill on the same day.

13:31:50 24 You saw that Chair Hunter said that amendments could
13:31:53 25 be offered to the bill, but we're going to pass it today, so get

13:31:57 1 them in in the next three hours. That, as Representative Turner
13:32:01 2 testified, is not the normal process in the House and he has
13:32:03 3 never seen that happen before.

13:32:04 4 In terms of substantive departures, this is the only
13:32:09 5 map that was passed by the Legislature that cracks apart the
13:32:14 6 Fort Worth minority community and every other map it would seem
13:32:17 7 set to keep that community together, the minority community in
13:32:21 8 Fort Worth. And the state's argument is that, well, that's
13:32:24 9 not -- our maps don't reflect our substantive policies. That's
13:32:28 10 just not a credible argument. It is the embodiment of the
13:32:33 11 substantive policy with regard to redistricting.

13:32:36 12 The state has argued that plaintiffs have to show that
13:32:40 13 all of the *Gingles* preconditions are satisfied to show that
13:32:45 14 there's a discriminatory effect to this discriminatory intent.
13:32:49 15 That is not the law. *Bartlett* would not -- the quote that I
13:32:52 16 read to you from *Bartlett* could not exist if that were the law.
13:32:55 17 If intentionally destroying a crossover district required you to
13:32:59 18 show that you could have 50-percent-plus-1 district, then it's a
13:33:04 19 circle. You can't have a violation of the 14th Amendment.
13:33:07 20 That's not the law. The law is that the state -- the
13:33:10 21 Legislature needed to have succeeded in destroying that
13:33:14 22 crossover district. So you can have a situation that's not
13:33:16 23 unlawful if they intend to, but don't do a good job and fail to
13:33:21 24 destroy it, that would perhaps not have a discriminatory effect.
13:33:24 25 There is no doubt here that that effect is present.

13:33:28 1 Now finally, I want to turn to the alternative plan
13:33:32 2 that plaintiffs have offered. The Supreme Court, though they
13:33:36 3 disagreed about whether or not such a showing were a requirement
13:33:40 4 in a *Shaw* claim to disentangle partisanship from race and states
13:33:45 5 that have racially polarized voting. The Supreme Court made all
13:33:49 6 of the Justices agree that this would be key evidence, a strong
13:33:53 7 showing that could overcome the legislative presumption of good
13:33:57 8 faith and the burden of proof to show that if partisan
13:34:00 9 motivations were truly what the state were at -- what the
13:34:02 10 Legislature were intending to follow, that it would've done this
13:34:04 11 type of map, rather than the one they did that moves around so
13:34:09 12 many minority voters. And that was the case. The Supreme Court
13:34:12 13 said that that was key evidence in the ordinary case.

13:34:16 14 Here we have a situation where a three-judge court in
13:34:20 15 2017 said that a partisan gerrymander in the Travis County area
13:34:26 16 splitting apart that area into five Republican districts would
13:34:28 17 be perfectly lawful. Judge Smith said in his dissenting opinion
13:34:35 18 said that there is dramatic differences between what's required
13:34:36 19 in DFW in redistricting law and what's required in Travis
13:34:41 20 County -- the map drawer was counsel of record in that case --
13:34:42 21 read that opinion, knew those facts. We have the context here
13:34:47 22 that was not present in *Cooper*, was not present in *Cromartie*,
13:34:51 23 which comes together. There's no evidence that the state
13:34:54 24 offered that the alternative plan, which follows the Court
13:34:58 25 order, the very thing that Texas defendant itself is doing in

13:35:01 1 the *Abbott v. Perez* case, there's no evidence to suggest that it
13:35:05 2 would not perform as well or better for Republican candidates,
13:35:10 3 safe seats for 19 Republican candidates, no incumbents are
13:35:14 4 paired, all of the priorities that are publicly available at
13:35:20 5 least were followed. You heard some questions that suggest
13:35:23 6 perhaps there were some other partisan reasons that might have
13:35:27 7 been followed. There's no actual evidence of that. So the
13:35:30 8 states main argument is that, well, there's no evidence that
13:35:31 9 this plan was before the Legislature. That's not the point of
13:35:35 10 the exercise and the Supreme Court made that clear in *Cooper*.
13:35:40 11 It is evidence of what the map drawer would've done had they had
13:35:42 12 the intent that the state says they had. And so with no
13:35:47 13 evidence to suggest, as was the case in the *Cromartie* case, that
13:35:50 14 there was some flaw in the alternative plan, there's no evidence
13:35:54 15 of that, the Court must give it the key evidence characteristic
13:35:59 16 that the Supreme Court, that all of the Justices at the Supreme
13:36:05 17 Court, said should be the case in *Cooper*.

13:36:08 18 With respect to the *Shaw* claim, the court on that
13:36:12 19 claim does not need to find a discriminatory purpose. It
13:36:16 20 just -- it needs to find that race with a predominant
13:36:19 21 consideration in the drawing in the lines and that traditional
13:36:22 22 redistricting principles were subverted. Well, traditional
13:36:25 23 redistricting principles were clearly subverted here. The
13:36:27 24 district bears no relation to its prior districts.

13:36:30 25 You heard Senator Huffman turned down another district

13:36:34 1 that would have created a majority Hispanic district in the DFW
13:36:36 2 metroplex. She turned that down because she said it was not
13:36:40 3 compact and it combined areas that had not previously been
13:36:46 4 represented in the same senate district before. SD-10 combined
13:36:50 5 seven prior senate districts, more than any other districts in
13:36:53 6 the state and yet that was not a problem for Senator Huffman's
13:36:56 7 explanation. She said, Senator Powell, you live in the core of
13:37:00 8 your district. You live in the heart and sole of it and so
13:37:03 9 therefore it's compact and it combines communities of interest.

13:37:06 10 Instead what happened is 764,695 people were moved to
13:37:14 11 create the new version of SD-10, a district that was 5,318
13:37:20 12 people over population. Its population deviation in the
13:37:25 13 benchmark plan is closer to ideal than all the three districts
13:37:29 14 in the new plan. And indeed the first three, I think,
13:37:33 15 iterations of SD-10, the new SD-10 that were released by the
13:37:37 16 Senate, increased the deviation of the district by five-fold to
13:37:42 17 23,000, 24,000. It was only at the last minute when the
13:37:45 18 argument was made that this was a specious explanation. Was
13:37:51 19 there an amendment that dropped it down back around 5,000 people
13:37:55 20 over deviation.

13:37:56 21 And so with this these types of cuts along racial
13:37:58 22 lines, this type of export and import of hundreds of thousands
13:38:03 23 of people radically altering the racial makeup of the district.
13:38:06 24 With shifting and inconsistent explanations and alternative map
13:38:12 25 evidence and all the inferences and all the direct and

13:38:15 1 circumstantial evidence that you've seen, the state has not
13:38:18 2 overcome the evidence to show that this was not a racial
13:38:24 3 gerrymandering.

13:38:24 4 With respect to the timing issue, the Supreme Court in
13:38:28 5 one of its first cases, *Marbury v. Madison*, said that every
13:38:34 6 wrong has a remedy, and so the suggestion that in January, there
13:38:36 7 is no ability for there to be relief in time for November is
13:38:40 8 just not credible. There are states who have not begun
13:38:44 9 redistricting, yet, and here we are having completed
13:38:48 10 adjudication of a hearing on this case, and the state says,
13:38:52 11 well, we can't do it in March. We can't do it in May. We're
13:38:56 12 not going to be able to do it in November. That is not
13:38:59 13 credible. There are ten months between now and November. This
13:39:03 14 very -- we have -- in our filing we have offered two alternative
13:39:08 15 options beyond using the -- beyond disrupting the March primary.

13:39:12 16 Courts in Texas have followed these approaches before.
13:39:17 17 Just last -- the governor followed this approach in the last
13:39:21 18 election cycle. The primaries were moved. The runoff was in
13:39:26 19 July. This is the same schedule that we suggest in our brief.
13:39:30 20 There's already going to be a partisan election on May 24th, I
13:39:33 21 think. The primary could be held that day.

13:39:35 22 In *Vera v. Bush*, the state held in a more complicated
13:39:39 23 situation where there was straight ticket voting, where most
13:39:43 24 people voted straight ticket, and had to be educated that they
13:39:45 25 needed to separately vote on this one race for Congress. We

13:39:49 1 don't have that circumstance anymore. There's no precinct
13:39:52 2 splits. This isn't a congressional plan and so there's not the
13:39:55 3 requirement to have zero population deviation. So all VTDs will
13:40:00 4 be kept whole. There is no reason why there cannot be relief in
13:40:04 5 this case, at the very least, prior to November, following a
13:40:06 6 process that courts in Texas have before followed.

13:40:10 7 I want to make one additional aside about an argument
13:40:16 8 you heard from the state in questioning earlier about *LULAC v.*
13:40:22 9 *Clements*, that there's some requirement to show that
13:40:23 10 partisanship and not race was the reason that motivated the
13:40:27 11 voting behavior.

13:40:28 12 First, it's not -- this is an intent case, so that
13:40:32 13 argument is not very relevant. What matters here is whether or
13:40:36 14 not -- and for the same reason, all of the discussion about
13:40:39 15 primary elections is wholly irrelevant. What matters here is
13:40:43 16 that there was intentional effort to make it so that minority
13:40:48 17 voters could not elect their candidate in the general election.

13:40:53 18 And on the point about whether why people vote the way
13:40:57 19 they do, in *Gingles*, the Supreme Court expressly held that
13:41:02 20 causation is not relevant to the inquiry of racially polarized
13:41:06 21 voting. What matters is whether or not it happened, not why it
13:41:12 22 happened. And that's at 478 US at 27 73. And so to the extent
13:41:14 23 there is -- you can read into *LULAC v. Clements* some other
13:41:19 24 understanding or a causation requirement --

13:41:20 25 JUDGE SMITH: I think you got the page wrong. Give us

13:41:24 1 that cite again.

13:41:24 2 MR. GABER: I said -- I clearly did get the page
13:41:25 3 wrong. I have typed it wrong. So there is a title that says
13:41:29 4 causation is not a requirement -- or something like that. And
13:41:32 5 it's towards the bottom of the decision.

13:41:35 6 And it could not more expressly say --

13:41:38 7 JUDGE SMITH: You can get it and give it to us later.
13:41:40 8 I didn't mean to interrupt you.

13:41:43 9 MR. GABER: No worries. I'll get it while the state
13:41:45 10 is arguing.

13:41:46 11 The Supreme Court could not more clearly have rejected
13:41:51 12 that type of inquiry as having any importance, and in any event,
13:41:56 13 that is a Section 2 standard.

13:41:59 14 I'm going to reserve the rest of my time for rebuttal
13:42:03 15 and I don't know how much that is; 20 minutes it looks like or
13:42:03 16 18 minutes. But I do want to say one thing, which is that given
13:42:07 17 the invocation of the legislative privilege in this case and the
13:42:13 18 inability for plaintiffs to obtain any meaningful discovery,
13:42:18 19 it's our view that the Court can, under Rule 42(b), sever
13:42:25 20 Counts One through Five of the Brooks plaintiffs' complaint,
13:42:29 21 which are the intentional discrimination and the *Shaw* claims
13:42:32 22 from the Sixth Count, which is the Section 2 coalition claim for
13:42:36 23 a new different district in Tarrant County, hold that last claim
13:42:40 24 for trial, and then under Rule 65(a)(2), consolidate the merits
13:42:47 25 with this preliminary injunction hearing and issue final

13:42:52 1 judgment. We think that would be the most effective use of the
13:42:53 2 Court's time, of the parties' time, in light of the fullest
13:42:59 3 extent of the record that could be developed, given the
13:43:02 4 indication of the legislative privilege. And so I wanted to
13:43:05 5 raise that now for the Court to consider as it considers the
13:43:08 6 path forward.

13:43:09 7 JUDGE GUADERRAMA: All right. Thank you, Mr. Gaber.

13:43:09 8 MR. SWEETEN: Your Honor, Mr. Thomson will close for
13:43:09 9 the state.

13:43:28 10 JUDGE GUADERRAMA: Yes, sir.

13:43:28 11 MR. THOMPSON: If I could just get one moment to set
13:43:36 12 up technology, Your Honor.

13:43:26 13 JUDGE GUADERRAMA: Yes, sir.

13:43:26 14 CLOSING ARGUMENT BY THE DEFENSE

13:43:57 15 MR. THOMPSON: Rule 65 consolidation I believe would
13:44:31 16 be a violation of Rule 65. I have not had time to pull up the
13:44:33 17 Rule prior to stepping up here. It does require notice to the
13:44:38 18 other party who has not requested consolidation, and I believe
13:44:42 19 that notice has to come before the close of evidence, for
13:44:45 20 example, because parties, including the state defendants here,
13:44:47 21 make decisions about what evidence to pursue in limited
13:44:52 22 preliminary injunction hearings compared to full trials on the
13:44:56 23 merit. So we very much oppose Rule 65 consolidation.

13:45:08 24 I believe Your Honors should be able to see the
13:45:08 25 presentation that I intend to give on your screens. I have some

13:45:12 1 hard copies if Your Honors would prefer them, though they do not
13:45:17 2 include some edits made in light of the close we just heard.

13:45:36 3 Your Honors, the standard here is a high one. A
13:45:39 4 preliminary injunction may be awarded only upon a clear showing
13:45:43 5 that the plaintiff is entitled to relief. It's a heavy burden
13:45:46 6 particularly in an intentional discrimination case.

13:45:49 7 Plaintiffs cannot win without clearly showing that the
13:45:52 8 Legislature as a whole was imbued with racial motives. That's
13:45:56 9 from *Brnovich v. DNC*. It's an important recent case that
13:46:03 10 involves VRA claims and intentional discrimination claims.
13:46:03 11 Plaintiffs in that case, like plaintiffs here and many others,
13:46:07 12 try to pursue this theory that they could say the Legislature
13:46:11 13 was acting with a discriminatory purpose because some key actor,
13:46:18 14 a bill sponsor, for example, had a discriminatory purpose. The
13:46:22 15 Supreme Court rejected that. It compared it to the cat's paw
13:46:24 16 theory, which is acceptable in Title 7 cases, for example, and
13:46:27 17 said it has no place in an intentional discrimination case like
13:46:32 18 this one. So while the defendants believe that the plaintiffs
13:46:37 19 have not produced any real evidence of discriminatory purpose by
13:46:37 20 anyone, it certainly true that they haven't provided evidence of
13:46:42 21 discriminatory purpose for everyone.

13:46:44 22 The test here is whether plaintiffs have managed to
13:46:51 23 disentangle race from politics and prove that the former drove
13:46:56 24 the district's lines. That's from *Cooper v. Harris*, which
13:46:56 25 Mr. Gaber was talking about.

13:47:03 1 Cases involving partisan motivation are strikingly
13:47:04 2 different than other cases involving allegations of racial
13:47:09 3 discrimination, and the reason for that is that they are
13:47:13 4 absolutely distinct as a matter of law. The Supreme Court has
13:47:16 5 confirmed that partisan motivations are not the same as racial
13:47:20 6 motivations. But as a factual matter, as some of the witnesses
13:47:26 7 testified, racial motivations and partisan motivations can have
13:47:33 8 similar effects on a map. So when you see these effects and the
13:47:37 9 plaintiffs say we're deeply concerned by these effects, they
13:47:41 10 could've come from racial motivations, but they also could have
13:47:45 11 come from partisan motivations, and so the facts that you see
13:47:48 12 the effects tells you nothing about whether they were racial
13:47:52 13 motivations or partisan motivations. It doesn't move the needle
13:47:54 14 one way or the other.

13:47:56 15 Combine that with the presumption of good faith that
13:47:59 16 the Supreme Court has insisted time and time again, the state
13:48:02 17 legislatures are entitled to, including the redistricting cases
13:48:06 18 like *Abbott v. Perez*. That is a case where the Supreme Court
13:48:11 19 reversed, because the District Court accepted the plaintiffs'
13:48:14 20 argument that the presumption of good faith fell away due to a
13:48:18 21 taint in a prior decision.

13:48:19 22 Here, we can just take the plaintiffs' words for it.
13:48:25 23 When Senator West on the floor asked Senator Powell, do you
13:48:29 24 believe that your district is being intentionally targeted for
13:48:32 25 elimination as it being a democratic trending district, Senator

13:48:37 1 Powell said, absolutely, that's partisanship. And she
13:48:41 2 confirmed, quote, in Texas, everything is partisan.

13:48:44 3 Mr. Sweeten was questioning her. He said you
13:48:51 4 understood entering redistricting, your district might be
13:48:55 5 targeted for political purposes. Yep, she says on the
13:48:59 6 transcript. It says, because you were a Democrat. She says,
13:49:03 7 yes. When she was asked to please identify which of her
13:49:09 8 colleagues had racially discriminatory purpose, she said she
13:49:14 9 would not speculate on the motives of my colleagues. It's quite
13:49:18 10 a thing for a plaintiff to say that she's unwilling to speculate
13:49:22 11 about the motives of the people she says act with discriminatory
13:49:27 12 intent and then ask the Court to do that.

13:49:29 13 When asked does she have any personal knowledge about
13:49:34 14 what Senator Huffman utilized, whether she utilized any sort of
13:49:37 15 racial information when drawing SD-10, Senator Powell said, I
13:49:42 16 have no firsthand knowledge.

13:49:44 17 Plaintiff Brooks similarly has no knowledge. He
13:49:50 18 testified that he did not know. You're not testifying to this
13:49:53 19 Court about any personal knowledge of motivations behind any of
13:49:56 20 the senators that provided maps that would've impacted SD-10
13:50:01 21 during legislative session, right; right, according to Brooks.

13:50:05 22 De Leon, we heard him testify. He similarly says he
13:50:08 23 has no knowledge about this.

13:50:10 24 Senator Huffman mentions partisanship. She answers on
13:50:14 25 the floor in the statements we've heard played many times. She

13:50:18 1 says she's addressing partisan considerations. The plaintiffs
13:50:20 2 say that's not mentioning it often enough. Well, she mentions
13:50:23 3 it in other ways. She talks on the floor, of course, with
13:50:27 4 Senator Powell, about how she has partisan shading turned on
13:50:33 5 during the map drawing process. That is of course a statement
13:50:35 6 that she is considering partisan information in the drawing of
13:50:38 7 the maps. There's no other reason to have the partisan shading
13:50:41 8 turned on. All of the senators understood that and that's why
13:50:45 9 all of the senators talk on the floor about how Senator Powell
13:50:48 10 is being targeted for political reasons. Senator Huffman one
13:50:52 11 thing we never had was racial shading.

13:50:56 12 On your screen you can see S-2100, which is the
13:51:01 13 benchmark plan shown with partisan shading. You can see the
13:51:04 14 northern part of the boundary for SD-10 incorporating a lot of
13:51:09 15 those blue areas showing democratic voters. And then you can
13:51:16 16 see S2168, the enacted map, bisects those democratic voters,
13:51:20 17 puts some of them into SD-9 and keeps some in SD-10. It is
13:51:23 18 completely plausible that these senators, as they say they did,
13:51:27 19 drew this with partisan shading. There's no reason that they
13:51:31 20 would have needed racial shading for anything they were trying
13:51:33 21 to do. They have disclaimed racial intent and certainly racial
13:51:37 22 data was not necessary to achieve their partisan attempts.

13:51:40 23 In the last round of redistricting, plaintiffs made
13:51:43 24 much of split VTDs, and the reason for that, if Your Honors
13:51:50 25 haven't seen these before, that they say partisan information

13:51:51 1 isn't available at certain low levels of generality below the
13:51:56 2 VTD's level, and so they say that if there are split VTDs then
13:52:02 3 that may raise some suspicion that they were doing something
13:52:04 4 other than partisanship. That's not the case here. We don't
13:52:07 5 have any split VTDs and the plaintiffs don't disagree.

13:52:13 6 Representative Turner says he has no knowledge about
13:52:19 7 any of this.

13:52:22 8 Senator Huffman continues to confirm throughout the
13:52:25 9 transcripts that she had did not want to have the racial data.
13:52:30 10 We heard her speak rather passionately on the floor of the
13:52:34 11 Senate when Senator Powell said, you had these maps, right; and
13:52:37 12 Senator Huffman essentially testified, I didn't want the maps.
13:52:41 13 You forced them upon me. I got rid of them as soon as I could,
13:52:44 14 because I don't want to consider race.

13:52:48 15 Senator Johnson put in his V-senate journal, the
13:52:53 16 reason that he was voting against plan 2168, which was Senate
13:53:00 17 Bill 4, the proposed maps under C.S.S.B.4 do exactly what they
13:53:08 18 were expected to do. They make districts more partisan, and if
13:53:10 19 not invalidated by a court challenge, they effectively eliminate
13:53:15 20 a democratic seat.

13:53:17 21 Senator Seliger confirmed the partisanship of his
13:53:20 22 colleagues.

13:53:21 23 *Question: Now one of the goals of Republican members*
13:53:24 24 *was to benefit Republicans, right?*

13:53:26 25 *Answer: Correct.*

13:53:28 1 *Question: All right. So, losing a democratic seat is*
13:53:32 2 *the result of partisanship in the map, right?*

13:53:34 3 *Answer: True.*

13:53:36 4 MR. THOMPSON: Now, Senator Seliger, whose declaration
13:53:37 5 was Exhibit 1 to the plaintiffs' PI motion, their star witness
13:53:42 6 agrees partisanship is what's causing the loss of the democratic
13:53:46 7 seat here.

13:53:47 8 *Questioning goes on:*

13:53:48 9 *Question: Let me ask it like this. Is there any*
13:53:50 10 *non-privileged information you can provide about how*
13:53:54 11 *SD-10 was drawn?*

13:53:55 12 *Answer: It was drawn very specifically to ensure it*
13:53:59 13 *would be represented by a Republican.*

13:54:02 14 *Question: So partisan reasons?*

13:54:04 15 *Answer: Yes.*

13:54:05 16 MR. THOMPSON: And Senator Seliger further confirmed
13:54:09 17 that it was not race that was at issue.

13:54:11 18 *Question: There's nothing in the public record to*
13:54:15 19 *your knowledge that demonstrates anything but color*
13:54:16 20 *blindness, right?*

13:54:17 21 *Answer: Correct.*

13:54:18 22 MR. THOMPSON: Going further down the page:

13:54:20 23 *Question: Your not aware as you sit here today of any*
13:54:23 24 *racial animus by the 87th Legislature's redistricting*
13:54:27 25 *committee, right?*

13:54:29 1 Answer: No.

13:54:30 2 MR. THOMPSON: Now, it is true that Senator Seliger
13:54:33 3 thinks that some of his colleagues did not give him the full
13:54:35 4 story. The plaintiff says this is evidence of pretext. If so,
13:54:39 5 it's just evidence of more partisanship. Recall call that his
13:54:43 6 testimony is that the Senators should have been admitting to
13:54:47 7 even more partisanship than they did. Certainly they talked
13:54:51 8 about partisanship on the floor. Senator Seliger says they
13:54:54 9 didn't mention it often enough. They didn't admit to it in all
13:54:57 10 the circumstances, when they really were being partisan. If the
13:55:00 11 plaintiffs theory is right, it just undermines their intentional
13:55:06 12 discrimination claims. Open partisanship and alleged hidden
13:55:09 13 partisanship are equally partisanship and equally not race.

13:55:13 14 In some cases, including the last round of
13:55:17 15 redistricting, I believe, plaintiffs are expert witnesses to
13:55:21 16 evaluate intent. I'm not sure that's the appropriate topic of
13:55:26 17 expert testimony, but it does happen. It did not happen in this
13:55:28 18 case.

13:55:30 19 Dr. Cortina confirmed when asked:

13:55:30 20 Question: You were not asked to analyze any
13:55:32 21 legislative motive, right?

13:55:34 22 Answer: I was not asked to do so.

13:55:36 23 MR. THOMPSON: Same thing for Dr. Barreto.

13:55:38 24 Question: Are you offering -- or excuse me -- and you
13:55:41 25 are not offering any testimony or opinions regarding

13:55:44 1 *the Legislature's intent. You were just looking at*
13:55:47 2 *the facts in the voting data, correct?*

13:55:49 3 *Answer: That's correct.*

13:55:50 4 MR. THOMPSON: Now, plaintiffs have made much of this
13:55:53 5 text message that the Court has just admitted. I obviously
13:55:58 6 can't authenticate the text message or anything. I don't know
13:56:02 7 much about it, but I understand that the plaintiffs' theory is
13:56:05 8 that the Lieutenant Governor is speaking to a potential
13:56:07 9 candidate and criticizing Senator Seliger. What's important
13:56:13 10 about this, if the Court find it to be competent evidence, is
13:56:16 11 the way that the Lieutenant Governor is allegedly describing
13:56:21 12 SD-10 and the goings-on about it.

13:56:23 13 He says, according to plaintiffs, that Senator Seliger
13:56:27 14 just voted to preserve a D. district over a potential R.
13:56:31 15 District in Fort Worth area giving D.s more control. This is a
13:56:37 16 putatively private text message exchange. He's not saying
13:56:42 17 anything about race. He's describing it in strictly partisan
13:56:43 18 terms and complaining about a Republican not voting for the
13:56:46 19 bill.

13:56:47 20 The plaintiffs lacking in direct evidence of any kind
13:56:51 21 shift their focus to effects. We talked about this a little
13:56:55 22 bit, but they have two theoris, seemingly, of how the effects
13:56:58 23 could go to prove intent; one is just the mere distance of the
13:57:03 24 effects and the other is alleged awareness of those effects.

13:57:06 25 *Cooper v. Harris*, which again Mr. Gaber spoke about,

13:57:10 1 says, crucially, political and racial reasons are capable of
13:57:13 2 yielding similar oddities in the district's boundaries. That is
13:57:17 3 because, of course, racial identification is highly correlated
13:57:20 4 with political affiliation. So again, Your Honors, that if
13:57:25 5 there are effects that the plaintiffs say are consistent with a
13:57:28 6 racial motive, does nothing to prove a racial motive, because
13:57:32 7 they are equally, if not more consistent, with a partisan
13:57:37 8 motive.

13:57:37 9 The Supreme Court confirmed this again even more
13:57:43 10 recently in *Brnovich* saying, the voting preferences of members
13:57:47 11 of a racial group may make the former partisan motives look like
13:57:52 12 the latter racial motives. This is why the district courts have
13:57:56 13 to engage in such careful fact-finding, because it is not enough
13:58:00 14 to have this disparate impact-style claim and thereby infer
13:58:04 15 intent related to race, when all of those same impacts can be
13:58:10 16 attributed to partisan motivations.

13:58:13 17 Plaintiffs say, even if the existence of the effects
13:58:19 18 isn't enough, there's this willful blindness theory that has
13:58:24 19 been put forward. And I'm a little bit familiar with willful
13:58:27 20 blindness in other areas of law. Certainly, an ordinary tort
13:58:31 21 plaintiff might try to prove that a tort defendant was reckless
13:58:35 22 and willfully blinded himself to some sort of risk. That is
13:58:39 23 just not how it works in constitutional or VRA intentional
13:58:43 24 discrimination claims. That is one of the leading complaints
13:58:46 25 that people who don't like those decisions have about those

13:58:49 1 decisions. They say, the court abandoned a doctrine like
13:58:53 2 willful blindness that apply in ordinary torts. They did. They
13:58:57 3 don't apply that doctrine.

13:58:59 4 Now, to the extent there was awareness that these
13:59:03 5 effects might occur, it's worth noting, of course, that they're
13:59:07 6 attributable to the plaintiff. It's Senator Powell, who
13:59:10 7 insisted upon attempting to provide this information to Senator
13:59:13 8 Huffman, saying, she acknowledged that she provided the maps,
13:59:17 9 that Senator Huffman did not ask her for those maps, and then
13:59:22 10 Senator Huffman then turned the maps over and didn't want them.
13:59:26 11 The Supreme Court has confirmed that awareness of these types of
13:59:31 12 effects is not sufficient for an intentional discrimination
13:59:34 13 claim.

13:59:34 14 In *Miller v. Johnson*, the Supreme Court explained,
13:59:37 15 redistricting legislatures will almost always be aware of racial
13:59:40 16 demographics; but it does not follow that race predominates in
13:59:45 17 the redistricting process.

13:59:46 18 Similar, *Feeney* says, more than intent as volition or
13:59:51 19 intent as awareness of consequences is required. That's to show
13:59:56 20 that there was an intent to do something to lead to those
13:59:59 21 effects because of, not merely in spite of, the alleged adverse
14:00:04 22 effects.

14:00:05 23 *Hunt v. Cromartie* says much of the same thing from
14:00:12 24 1999. Our prior decisions have made clear that the jurisdiction
14:00:15 25 may engage in constitutional political gerrymandering, even if

14:00:20 1 it so happens that the most loyal Democrats happen to be Black
14:00:25 2 Democrats and even if the state were conscious of that fact.

14:00:26 3 Senator Huffman followed a color-blind policy,
14:00:33 4 according to her testimony. Some people don't like that.
14:00:35 5 Understand. Senator Powell didn't like it. Mr. Dunn seems to
14:00:40 6 believe its inappropriate to blind oneself to racial effects
14:00:44 7 when making government decisions. Everyone is entitled to their
14:00:47 8 own opinion about that, as a matter of policy, I suppose, but
14:00:49 9 certainly the Constitution does not require government officials
14:00:54 10 to look at race. It barely tolerates it.

14:00:56 11 Justice Harlan famously noted that our Constitution is
14:01:00 12 color-blind and neither knows nor tolerates classes among
14:01:04 13 citizens. It is the highest and best tradition we have for
14:01:07 14 government officials dealing with sensitive topics related to
14:01:07 15 race, which followed Justice Harlan's advice.

14:01:15 16 Now it is true that the Voting Rights Act sometimes
14:01:15 17 forces governments into uncomfortable positions and that to --
14:01:21 18 in an effort to ensure governments do not violate Section 2,
14:01:24 19 sometimes people have to look at racial information. Senator
14:01:30 20 Huffman testified that she did this through a legal compliance
14:01:32 21 check and had lawyers check to see if Section 2 was met. Seems
14:01:38 22 like quite a reasonable policy to me. There's no reason to have
14:01:40 23 government officials unnecessarily giving themselves racial
14:01:46 24 information when the Constitution's policy is to insofar as
14:01:49 25 possible avoid making decisions based on race. If she had made

14:01:53 1 any decisions based on race, she would've been sued and she
14:01:57 2 would have had to defend against a claim subject to strict
14:01:59 3 scrutiny. That's not an enviable position to be in.

14:02:05 4 Now the plaintiffs also point to alleged
14:02:09 5 irregularities in the scheduling and procedures for the passage
14:02:12 6 of the maps. It's worth noting that this comes from *Arlington*
14:02:16 7 *Heights* and *Arlington Heights* is not saying, here's a list
14:02:20 8 elements where we check off the boxes, and if each one is met,
14:02:23 9 then we can prove intentional discrimination. *Arlington Heights*
14:02:26 10 lists a series of factual considerations that may be relevant in
14:02:30 11 any given case. Certainly, sometimes procedurally
14:02:34 12 irregularities suggest something nefarious is afoot.

14:02:38 13 With regard to this legislation, however, the
14:02:40 14 allegedly unusual process suggests nothing nefarious. It
14:02:45 15 suggests that there was a pandemic that caused a lot of
14:02:48 16 problems. One could easily say these courts have been holding
14:02:51 17 Zoom hearings a lot recently. That's very procedurally
14:02:54 18 irregular. I wonder if there's something nefarious afoot. Of
14:02:54 19 course not. It's related to the pandemic.

14:03:00 20 The COVID-19 pandemic delayed the Census. That caused
14:03:03 21 the Census Bureau to violate a federal statute that required it
14:03:06 22 to get us the data by April 1st, 2021, that had (indiscernible)
14:03:10 23 effects and, yet, we couldn't redistrict during the regular
14:03:14 24 session, we had to do it during a special session,
14:03:18 25 constitutionally limited to 30 days. So in addition to the

14:03:21 1 process starting late, we're now stuck in a session that's much
14:03:25 2 shorter than regular session.

14:03:26 3 Representative Turner testified that he thinks in a
14:03:28 4 normal Census year, he could get at least twice that amount of
14:03:32 5 time, two months or so, to redistrict. We only had one month.
14:03:37 6 We're also facing the threat of a broken quorum, so
14:03:40 7 Mr. Sweeten's questioning went through this.

14:03:42 8 The Democrats left the state of -- many of the
14:03:44 9 Democrats in the House had left the state to break quorum and
14:03:49 10 prevent legislation from moving forward in the House. That
14:03:50 11 would also prevent redistricting maps prosecute moving forward.
14:03:53 12 States understandably prefer to redistrict themselves rather
14:03:57 13 than default on their constitutional obligations and have a
14:04:01 14 state or federal court draw the maps on their own. So it made
14:04:05 15 good sense for members of the Legislature to say, let's get a
14:04:08 16 move on while we have a quorum. The process had to both start
14:04:12 17 late and end quickly, both for those reasons and because of the
14:04:15 18 upcoming election deadlines.

14:04:17 19 Next the plaintiffs point to this -- these alleged
14:04:22 20 alternative plans. There seems to be some legal disputes about
14:04:25 21 the burdens here. They're analogizing to *Cooper*, which was a
14:04:29 22 *Shaw* claim out of intentional vote delusion claim. One of the
14:04:33 23 reasons it's different is in that type of case, the defendant is
14:04:39 24 struck -- is stuck with strict scrutiny, because the defendant
14:04:42 25 had said we used race, had to use race, and under strict

14:04:46 1 scrutiny to say, did you really have to use race? And if
14:04:49 2 there's an alternative plan that either doesn't use it or uses
14:04:52 3 it less, and the Court says, no, you didn't have to, here's an
14:04:54 4 alternative you could've done, that's not the situation we find
14:04:59 5 ourselves in here. The defendants a denying any motivation, any
14:05:03 6 racial gerrymandering. We didn't do any of it. So the
14:05:06 7 alternative plan has to be used for a slightly different purpose
14:05:09 8 when it's used in a case like *Cooper*.

14:05:10 9 At best, the plaintiffs would have to show that this
14:05:15 10 plan was so obvious that the people making decisions in the
14:05:18 11 Texas Senate and the Texas House just would have happened upon
14:05:22 12 it themselves, that if they were -- the plaintiffs' theory is,
14:05:27 13 if these decision makers were truly partisan, then they would've
14:05:31 14 gone for alternative plan four, other than the enacted map.
14:05:36 15 Only a racist would have gone with the enacted map. That's not
14:05:39 16 true. There's no factual evidence supporting this.

14:05:43 17 There was expert testimony from Dr. Cortina about the
14:05:46 18 nature of the plan, I suppose, and what sorts of effects he
14:05:51 19 thought it might have, but it was deficient in every respect if
14:05:55 20 the point was to show that it's a factual matter.

14:05:56 21 The Legislature considered something like this and
14:05:58 22 would've adopted it if it were truly partisan. He had no
14:06:03 23 evidence that anybody, during this rushed process about which
14:06:06 24 they complained, thought to try to create a Republican district
14:06:09 25 in Travis County, rather than in Tarrant County; a rather

14:06:12 1 counterintuitive idea; and he had no evidence that the plan
14:06:16 2 actually would've been better for Republicans, recalled that
14:06:19 3 when he was questioned on cross-examination, he said, yes, I say
14:06:22 4 it's better for Republicans, but I mean in the statewide races.

14:06:27 5 SC -- you know, the various senate districts would've
14:06:30 6 been better in statewide races, but we don't run statewide races
14:06:35 7 on senate districts. We run senate races in senate districts.
14:06:37 8 And when asked whether he had any predictions about how
14:06:39 9 alternative plan four would've worked out for actual senate
14:06:44 10 races, he said no for two reasons; one, he had no predictions at
14:06:48 11 all and, two, he didn't have any data about senate races. He
14:06:52 12 was doing a reconstituted election analysis dependent on
14:06:56 13 statewide data, which he said didn't allow him to draw
14:07:00 14 conclusions about senate races.

14:07:02 15 Finally, the plaintiffs complain about legislative
14:07:06 16 privilege. I mean, certainly, privilege is annoying for people
14:07:09 17 who are on the other side of it. We certainly face it all the
14:07:13 18 time, the state defendants, but it is contemplated by precedent,
14:07:15 19 and all of the relevant legal rules have been written to account
14:07:19 20 for the existence of legislative privilege.

14:07:23 21 For example, the plaintiffs rely on the *Arlington*
14:07:25 22 *Heights* framework. *Arlington Heights* itself discusses how
14:07:28 23 legislators will rarely testify in these types of cases about
14:07:32 24 privileged information. They also seem to attribute the
14:07:35 25 assertion of privilege to the office of the Attorney General.

14:07:39 1 It's just not true. Neither the defendants nor the office of
14:07:44 2 the Attorney General is empowered to tell senators what to do
14:07:48 3 with regard to legislative privilege. Everyone made clear,
14:07:52 4 including this Court and the witnesses, that privilege belongs
14:07:53 5 to the senators. There's nothing I or anyone else can do to
14:07:57 6 force them to give up information that I think would be helpful.

14:07:59 7 Mr. Dunn made some comments about what happened at
14:08:05 8 Senator Seliger's deposition. It's worth noting he was
14:08:08 9 represented by outside counsel, to the extent that's relevant at
14:08:11 10 all. And Senator Powell asserted privilege, too. I'm informed
14:08:17 11 that she decided to waive it as to SD-10, but said that if there
14:08:20 12 were any questions about anything else other than SD-10; the
14:08:24 13 rest of the maps; other than that, she would be asserting
14:08:26 14 privilege. That's not particularly surprising. This is what
14:08:30 15 senators do; they assert privilege. It raises no inference of
14:08:33 16 anything.

14:08:34 17 Plaintiffs have also pointed to previous court
14:08:38 18 decisions here. There was some district court opinions from the
14:08:41 19 last round of redistricting. They considered different maps
14:08:45 20 passed by different legislators. The D.C. court that they often
14:08:47 21 used even had a different legal standard. It is under the now
14:08:50 22 defunct Section 5. The burden was on the state to prove the
14:08:54 23 negative and that court didn't think we had, but that doesn't
14:08:57 24 tell us anything about what this -- what the plaintiffs have
14:09:00 25 proven under a different legal standard, 10 years later with

14:09:04 1 different maps and decision makers.

14:09:06 2 There was also some discussion I think of *Abbott v.*
14:09:10 3 *Perez*, which was the -- one of the two times the Supreme Court
14:09:14 4 got to review the decisions from Texas redistricting last round.
14:09:20 5 There was only one instance of intentional discrimination
14:09:23 6 according to the Supreme Court of the United States. It had to
14:09:26 7 do with HD90. The thing about HD90 is that was intentional
14:09:33 8 discrimination by Democrats. It was an intramural fight about
14:09:36 9 whether a district, HD90, would have more Latino voters and
14:09:41 10 fewer African American voters or more African American voters
14:09:44 11 and fewer Latino voters. So as the Supreme Court majority
14:09:46 12 opinion put it, the Legislature adopted changes to HD90 at the
14:09:52 13 behest of minority groups, not out of a desire to discriminate.
14:09:56 14 That is Darby, the chairman at the time, was too solicitous of
14:09:59 15 changes with respect to HD90. That was found to be
14:10:04 16 unconstitutional, but the Supreme Court explained even though
14:10:08 17 that was unlawful, it certainly didn't raise any inference of
14:10:12 18 intentional discrimination. Efforts to accept too many changes
14:10:18 19 from minority groups that wind of up constituting racial
14:10:23 20 gerrymandering are no evidence at all of an intent to harm
14:10:26 21 minority groups in some separate way.

14:10:29 22 Now it is true that the standard here is very high and
14:10:33 23 the plaintiffs, perhaps not unreasonably complain that it's very
14:10:37 24 difficult to meet the standard that I believe applies and I've
14:10:41 25 laid out.

14:10:42 1 Congress had some sympathy for that position and they
14:10:45 2 provided an alternative way to handle it. In 1982, Congress
14:10:50 3 amended Section 2 of the VRA, and according to the Supreme
14:10:54 4 Court, the intent there was to make it easier to bring a
14:10:56 5 discrimination claim by removing the intent requirement. So all
14:10:59 6 of these things we've taking about; the difficulties of proving
14:11:01 7 intent, the ambiguities of effects in light of possible partisan
14:11:04 8 motivations, all of those fall by the wayside under modern
14:11:07 9 Section 2 precedent for an effects claim.

14:11:09 10 Now the plaintiffs have that claim. They were just
14:11:12 11 talking about severing it off. They have a Section 2 effects
14:11:16 12 claim, where they wouldn't have to prove intent according to
14:11:19 13 their theory. And they consciously and strategically chose not
14:11:23 14 to press it at the PI stage. So they should not be heard now to
14:11:25 15 complain, oh, it's just too difficult to prove intent. They had
14:11:28 16 an alternative and they chose not to avail themselves of it.

14:11:32 17 Finally, Your Honors, I'll just turn to the *Purcell*
14:11:37 18 principle. This is a venerable principle of election cases,
14:11:42 19 generally. It has not come up in some of the Texas
14:11:46 20 redistricting cases in the past, because of the effect that
14:11:49 21 Section 5 used to have. When Section 5 preclearance was in
14:11:55 22 effect, it meant that -- and according to legal fiction -- Texas
14:11:58 23 law didn't take affect until it was pre-cleared. So there was
14:12:01 24 no map in place that an selection could be held on, so courts
14:12:05 25 had to do something until preclearance was overcome. Now,

14:12:09 1 that's not the case. Preclearance is gone. And there is a map
14:12:13 2 in place, and we know that because local and state officials are
14:12:17 3 already running an election on it.

14:12:19 4 The Supreme Court pays close attention to these kinds
14:12:22 5 of things. And in 2020, as in many previous years, repeatedly
14:12:27 6 emphasized that lower federal courts should ordinarily not alter
14:12:31 7 the election rules on the eve of an election. That's *RNC v.*
14:12:35 8 *DNC*. What goes for the eve of an election goes doubly for the
14:12:35 9 middle of an election where people are already voting.

14:12:40 10 The Fifth Circuit has also faithfully applied this
14:12:44 11 principle. We have just four examples here for Your Honors'
14:12:48 12 reference, where the Fifth Circuit stayed injunctions in 2020
14:12:50 13 related to election law changes. Judge Smith was involved in a
14:12:55 14 couple of these. I was involved in a couple myself.

14:12:57 15 One that might be worth noting is the fifth one,
14:13:01 16 *Mi Familia Vota*. And it mirrors this case in the presentation
14:13:07 17 of evidence. In *Mi Familia Vota*, the defendants put on
14:13:11 18 declarations, I believe, from election officials saying that the
14:13:15 19 district court should not do this. It would cause problems. It
14:13:18 20 would cause voter confusion. The administration of elections
14:13:21 21 would not work very well. And the plaintiffs did not. They had
14:13:26 22 one declaration that the Fifth Circuit discounted, because it
14:13:29 23 didn't address the question in hand, and then said the
14:13:31 24 plaintiffs raise no other evidence, nor does the district court
14:13:36 25 cite to any, to support the proposition that the disruption to

14:13:38 1 Texas's election rules would be minimal. You can see that the
14:13:41 2 Court put the burden on the plaintiffs, as part of the general
14:13:46 3 PI burden, to prove that it would be okay, that it wouldn't
14:13:49 4 cause problems for the election. They couldn't do it without
14:13:53 5 evidence. That's exactly what we're seeing here.

14:13:54 6 The plaintiffs had an opportunity to put on evidence
14:13:57 7 related to *Purcell*. They knew who our witnesses were going to
14:14:00 8 be. They chose not to do so. They haven't designated a single
14:14:04 9 witness to talk about this.

14:14:05 10 When we put on witnesses, they didn't cross-examine a
14:14:05 11 single one of the. I don't think Your Honors heard a single
14:14:09 12 cross-examination question during the testimony from the two
14:14:11 13 election administrators or from Director of Elections Keith
14:14:19 14 Ingram.

14:14:19 15 Now, I think, and I am sure the record will reflect
14:14:24 16 I'm wrong, the first time plaintiffs have addressed *Purcell* is
14:14:27 17 doing Mr. Gaber's closing statement that just happened. I
14:14:30 18 didn't see it in their original motion. I didn't see it in
14:14:33 19 their reply brief. I haven't seen it in any of the evidence. I
14:14:37 20 supposed they did submit -- excuse me -- they did submit a
14:14:40 21 remedies brief, I think, during the PI hearing this week, but
14:14:44 22 they did not put on any evidence with it. They didn't have a
14:14:47 23 witness or declaration attached, I believe. And Mr. Gaber is an
14:14:51 24 eloquent man, but he is not an election administrator and he is
14:14:55 25 certainly not a fact witness.

14:14:56 1 Defendants' evidence regarding *Purcell* has already
14:15:01 2 been credited by the Supreme Court of Texas. It cited
14:15:05 3 declarations from Ingram, Sherbet and Decker. Now of course
14:15:05 4 they're different declarations. They were offered in different
14:15:10 5 cases, but they're substantially the same, materially identical,
14:15:14 6 you might say.

14:15:15 7 We litigated a state court redistricting case, I think
14:15:19 8 last month, in state court, and we put on the same type of
14:15:23 9 evidence. The court denied the temporary injunction.

14:15:28 10 Then there is the next case. It's called -- I'm
14:15:32 11 probably going to mispronounce it -- *In re Khanoyan*. This is
14:15:32 12 the case that went up to the Texas Supreme Court. We weren't
14:15:39 13 the defendants there. I wasn't a lawyer in that case, but the
14:15:42 14 lawyer is there actually relied on the same evidence we put in
14:15:45 15 in the state Court proceeding, just attached it to their briefs
14:15:48 16 as I understand it. And that's why the Supreme Court came to
14:15:51 17 see our evidence and credit it. They said, no amount of
14:15:56 18 expedited briefing or judicial expediency at this point can
14:16:02 19 change the fact that the primary election for 2022 is already in
14:16:06 20 its early stages. The only thing we need to be updated about
14:16:08 21 that is that we're no longer in the early stages. According to
14:16:09 22 Director of Elections Keith Ingram, I was about to say we're not
14:16:13 23 in the early stages; we're midway.

14:16:18 24 One interesting fact I learned yesterday about *In re*
14:16:22 25 *Khanoyan* is that the lawyer for the plaintiffs in this case,

14:16:25 1 Mr. Dunn, was the lawyer helping the defendants in that case.
14:16:29 2 He relied on our evidence and he convinced the Supreme Court to
14:16:35 3 prevent those plaintiffs from getting relief to whatever extent
14:16:39 4 they were entitled to it in that case. This goes to show that
14:16:43 5 sometimes *Purcell* stops Republican plaintiffs or plaintiffs
14:16:47 6 aligned with the Republican party from getting relief they
14:16:51 7 believe they're entitled to. Other times it stops plaintiffs
14:16:53 8 aligned with the democratic party from getting relief they're
14:16:56 9 entitled to. What's good for the goose is good for the gander,
14:17:01 10 Your Honors.

14:17:02 11 This is not some conspiracy to prevent people from
14:17:04 12 winning lawsuits they ought to win. It is a well respective
14:17:08 13 rule established repeatedly by the Supreme Court and the Fifth
14:17:09 14 Circuit that we can't throw the baby out with the bath water.
14:17:13 15 We need elections in this country and in this state to run
14:17:17 16 smoothly and well. It's crucial, both for having the election
14:17:20 17 results, for having voter confidence in the elections, from
14:17:22 18 preventing voter confusion and disenfranchise them.

14:17:26 19 Now is not the time to stop the train on the tracks,
14:17:30 20 as Mr. Sherbet put it. It's far too late for that. As
14:17:38 21 Mr. Sherbet put it, we've already started mailing out ballots.
14:17:42 22 We've already posted ballots on our website. We've already
14:17:45 23 started securing equipment, preparing it for testing. I don't
14:17:48 24 know how it could feasible, from the stance of the voting
14:17:51 25 equipment especially. He goes on to say, I think it's going to

14:17:57 1 be a situation where there definitely will be confusion. It's
14:18:00 2 referring to voter confusion. That is the animating principle
14:18:05 3 behind *Purcell*. In *Purcell v. Gonzalez*, the Supreme Court says
14:18:07 4 the problem with these late orders in election cases is they
14:18:10 5 cause voter confusion.

14:18:11 6 Mr. Sherbet points out the things that the lawyers in
14:18:17 7 the room may not find confusing, do, just as a practical matter,
14:18:22 8 confuse some voters. It's something we have to be especially
14:18:24 9 careful with regarding mail-in ballots, because who is eligible
14:18:28 10 to cast those, we need to be especially certain not to confuse
14:18:32 11 voters in that circumstance, and mail-in ballots are the ones
14:18:38 12 that are already going out. So the people most vulnerable to
14:18:40 13 confusion are the ones who would be most affected by any kind of
14:18:42 14 injunction entered at this point.

14:18:45 15 Plaintiffs have pointed to the fact that sometimes
14:18:48 16 courts have granted the sort of relief they want in the past,
14:18:52 17 albeit in very different circumstances. One of the different
14:18:56 18 circumstances being the Section 5 issues I already mentioned,
14:18:57 19 but beyond that, we shouldn't just blindly do whatever was done
14:19:01 20 in 2012. We should ask, how did it go in 2012; did it cause
14:19:07 21 unnecessary voter confusion or did it not? It's a factual
14:19:09 22 question that can only be resolved with evidence. The only
14:19:11 23 evidence before this Court says that there were problems in
14:19:15 24 2012.

14:19:15 25 The Kendall County Elections Administrator, Ms.

14:19:19 1 Decker, talked about the strain on the office staff, talked
14:19:22 2 about the difficulty finding poll workers to work, the problems
14:19:27 3 with having the primary election during the Memorial Day
14:19:30 4 weekend.

14:19:31 5 Now these aren't -- one might say, surely they can
14:19:35 6 just work harder and things like that. The problem is we have a
14:19:37 7 lot of counties in Texas, 254. Some of them are fairly small.
14:19:41 8 Some of them are fairly understaffed, don't have the same
14:19:43 9 resources the larger counties have. And I'm sure that they find
14:19:47 10 people that work in those offices are willing to put in as much
14:19:50 11 effort as they can and do whatever they need to do to make
14:19:53 12 things work. The problems is, there's a limit how much they can
14:19:55 13 do. They're already operating at capacity. And when things
14:19:59 14 happen to them, when things fall down on their job, the people
14:20:04 15 harmed are voters, not defendants, not plaintiffs. That's who
14:20:07 16 we have to watch out here for, the voters.

14:20:09 17 Decker testified that 2012 we had voter confusion with
14:20:15 18 in-person voting, too. People would see our fliers for one
14:20:18 19 election with different locations in the election they were here
14:20:21 20 to vote on.

14:20:27 21 Director of Elections, Keith Ingram, testified that
14:20:31 22 the problems seen in 2012 would also manifest if the primary
14:20:35 23 election in 2022 were delayed.

14:20:39 24 *We asked: Do you believe that delay of primary*
14:20:41 25 *election -- I understand the brief to be counties*

14:20:45 1 *affected by remediation of Senate District 10, but*
14:20:48 2 *even if it were statewide, would that cause voter*
14:20:52 3 *confusion?*

14:20:52 4 *Answer: Yes.*

14:20:53 5 *Question: Would it cause negative consequences?*

14:20:54 6 *Answer: It would make voters wonder what the point*
14:20:56 7 *is, you know, why did I go through that effort; why*
14:21:00 8 *bother next time?*

14:21:00 9 MR. THOMPSON: These are not the kind of problems that
14:21:03 10 we can long stand in a democracy.

14:21:07 11 Plaintiffs' brief on remediation -- on remedies --
14:21:10 12 excuse me -- offers two options; one, is delaying the primary.
14:21:14 13 Director of Elections Ingram explains the major objection to
14:21:19 14 that is the voting in this election is already underway. The
14:21:23 15 second option was to order the SOS to direct the affected
14:21:28 16 district's primary results not be tallied. He testified, quote,
14:21:30 17 that's impossible. The problem is the votes -- the races are on
14:21:34 18 the same ballot. So if they're put into a machine together, all
14:21:39 19 of the votes will be counted. The alternative, he said, was to
14:21:41 20 count them by hand, but that's obviously not feasible given the
14:21:46 21 number of votes that would have to be counted in a time frame.
14:21:47 22 Also, just note that as matter of law, I do not believe the SOS
14:21:54 23 can direct the affected districts to not count the ballots. I'm
14:21:58 24 not aware of any authority in the election code that would allow
14:22:02 25 that. Seems very surprising to me. I haven't seen anything

14:22:04 1 cited by the plaintiffs. And as the Fifth Circuit put it in
14:22:09 2 Paloby (phonetic), there's the elemental fact that a defendant
14:22:11 3 can only be enjoined to do something he's otherwise empowered to
14:22:18 4 do.

14:22:18 5 Your Honors, we think that the plaintiffs have not
14:22:20 6 carried their burden to show any kind of intentional
14:22:23 7 discrimination or racial gerrymandering. We think that the
14:22:25 8 plaintiffs have not carried their burden to demonstrate that
14:22:28 9 relief ordered by this Court would do more good than harm. It
14:22:33 10 would delay -- delaying elections, messing with election
14:22:36 11 deadlines, would cause voter confusion and administrative
14:22:40 12 turmoil to only ultimately threatens the election itself.

14:22:42 13 I thank the Court for its time, both today and going
14:22:47 14 back. If the Court has any questions, I'm happy to answer them,
14:22:51 15 otherwise, I will leave the podium to Mr. Gaber.

14:22:55 16 JUDGE GUADERRAMA: Thank you, Mr. Thompson.

14:23:12 17 Mr. Dunn, once you begin, you'll have 19 minutes.

14:23:17 18 CLOSING ARGUMENT BY THE PLAINTIFFS

14:23:17 19 MR. DUNN: May it please the Court.

14:23:20 20 Thank you, Your Honor. I will be yielding back the
14:23:22 21 vast majority of that time.

14:23:25 22 Judge Smith, a cite that we did not have for you
14:23:27 23 earlier was 478 U.S. 63 in the *Gingles* case.

14:23:32 24 I'm going to pick off in the end where my counsel --
14:23:35 25 my co- -- opposing counsel ended on the matter of *Purcell*. And

14:23:38 1 I'd like to just state for a moment to the logical conclusion of
14:23:41 2 the government's argument in this case.

14:23:44 3 The state could come into court and admit that it drew
14:23:48 4 a map on the base of intentional race discrimination and there
14:23:52 5 would be no remedy under the state's theory of *Purcell* as it
14:23:57 6 applies to redistricting.

14:23:58 7 And even the Texas Supreme Court didn't go that far in
14:24:02 8 the decision as it was represented to this Court. I'm going to
14:24:06 9 show you the other part of the decision now.

14:24:08 10 Well, first, you were shown the cover page to the
14:24:11 11 brief that I filed. And there's no question I've done so and I
14:24:12 12 encourage the Court to look at it. One of the things that we
14:24:15 13 note in that brief is that the law, under state law with respect
14:24:18 14 to remedies for state election procedures, has been in place by
14:24:22 15 the Texas Supreme Court since at least the 1870s, that provides
14:24:26 16 that once the election machinery is underway, procedural matters
14:24:29 17 as it relates to ballot access and voting become moot; the
14:24:34 18 election rolls forward. No question that's still state law.

14:24:37 19 What we also state in our brief is that that -- the
14:24:40 20 claim made in the *In re Khanoyan* case, was a novel
14:24:44 21 constitutional claim, not yet recognized by any state in the
14:24:48 22 country, that was not based on intentional race discrimination
14:24:51 23 and isn't more to any specific provision in any constitution.
14:24:55 24 For that reason, the Court said it's a novel claim. The
14:24:58 25 plaintiffs in that case were dilatory in pursuing their claim.

14:25:03 1 The Supreme Court lays that out in paragraphs. But even had
14:25:06 2 they had a case that was worth pursuing and that was ultimately
14:25:10 3 sustained on the merits, the Supreme Court said this on the
14:25:14 4 bottom of page 13:

14:25:16 5 "It remains possible, in fact, that this case may yet
14:25:20 6 provide such a vehicle for judicial consideration of the
14:25:23 7 questions presented here. No party disputes that an
14:25:27 8 interlocutory appeal is permissible. Such opinion -- an appeal
14:25:30 9 could not change the 2022 primary, which has already begun. But
14:25:35 10 the new map, if it stands, will govern Harris County elections
14:25:40 11 for the rest of the decade. If the Court concludes that the map
14:25:42 12 is in fact unconstitutional, the remedial options could, at
14:25:46 13 least in theory, include an election for all four precincts in
14:25:50 14 '24 -- 2024, or even again, at least in theory, for a special
14:25:54 15 election for the two precincts up in 2022."

14:25:58 16 And it cites to some federal authorities.

14:26:00 17 It is the law in federal court as it now is in the
14:26:04 18 Texas Supreme Court, that when there is a constitutional harm,
14:26:07 19 there is a remedy. The reason that the plaintiffs don't contest
14:26:11 20 that it's too late now for the March election is because it
14:26:15 21 wouldn't be reasonable to do so. But these plaintiffs have been
14:26:18 22 diligent. They filed their claim within eight days. We hear
14:26:24 23 daily we're criticized by counsel for having been diligent in
14:26:25 24 pursuing our case. We filed a voluminous, extensive motion for
14:26:30 25 preliminary injunction the day before Thanksgiving that

14:26:32 1 contained numerous exhibits, declarations, pages. In fact, I'll
14:26:36 2 venture to say in my 20-plus years of doing this, it's not just
14:26:39 3 the most comprehensive motion for preliminary junction I've
14:26:42 4 seen. It's the volume of at least two or three others of
14:26:45 5 similar weight and circumstance combined. And the plaintiffs
14:26:49 6 asked for a hearing.

14:26:50 7 Now I under other circumstances, other plaintiffs
14:26:54 8 arranging various venue, consolidation and other procedural
14:26:58 9 matters stood in the way, but these plaintiffs did everything
14:27:00 10 they could to get a remedy in time for March. If there is no
14:27:04 11 remedy, then there is no Fourteenth and Fifteenth Amendment.

14:27:08 12 On the matter of consolidation, Rule 65 says -- and
14:27:11 13 I'll just have to disagree with the state -- it says
14:27:14 14 specifically, that notice consolidation can be before or after
14:27:17 15 the preliminary junction.

14:27:20 16 On a number of other things that we are plainly in
14:27:24 17 opposite to the record, for one, Senator Powell has not invoked
14:27:29 18 legislative privilege. She did not do so here in front of the
14:27:30 19 Court. She was asked at her deposition, would she ever or some
14:27:35 20 omnibus *Mother Hubbard* question about would she ever invoke
14:27:37 21 legislative privilege, and there was an objection that she
14:27:40 22 might, but at no point did she decline to answer a question on
14:27:42 23 that basis.

14:27:43 24 There was also a statement made here at this podium
14:27:47 25 that the lawyers for the state have not once instructed a

14:27:51 1 witness to invoke legislative privilege, but the Court heard
14:27:55 2 Senator Seliger's testimony where that occurred on a number of
14:27:57 3 occasions. And it heard it right here in the courtroom with
14:27:59 4 Senator Huffman, who had to take a minute to go around the
14:28:02 5 corner to get advice from her state counsel as to whether and
14:28:05 6 how to take legislative privilege.

14:28:08 7 And then on the matter of HD90. HD90 was a claim
14:28:13 8 among, as the state presents, Democrats who had adjusted a
14:28:18 9 district to make it easier -- make it harder to elect a Latino
14:28:22 10 candidate of choice, for which the Supreme Court rightly struck
14:28:25 11 it down. The purpose -- the relation of HD90 to this case is it
14:28:29 12 was in 2017 that the U.S. Supreme Court found that there had
14:28:33 13 been race-based lines drawn with respect to a district in
14:28:37 14 Tarrant County. Nevertheless, Senator Huffman, here or on the
14:28:42 15 floor in the Senate, couldn't concede to having read or
14:28:45 16 carefully considered that decision.

14:28:46 17 And on the matter of the alternative plan, Senator
14:28:49 18 Huffman says she used racial shading, and that the type of
14:28:54 19 racial shading she used in the excerpt you viewed, was statewide
14:28:55 20 election results, which are precisely the statewide election
14:28:59 21 results that Dr. Cortina used to evaluate his plan.

14:29:04 22 And then --

14:29:15 23 JUDGE BROWN: I think you meant partisan shading.

14:29:16 24 MR. DUNN: And I beg your pardon, Your Honor. This
14:29:16 25 also appears on the record, page 118.

14:29:24 1 Senator West, page 118 of the transcript of this
14:29:25 2 courts proceeding yesterday. Senator West asks: So in relation
14:29:25 3 to the Voting Rights Act, race was never considered at all. I
14:29:29 4 just want to make that certain.

14:29:30 5 And Senator Huffman responds: That's not what I said.
14:29:32 6 I said that we drew the maps blind. And then I looked at some
14:29:37 7 data, myself, after everything was done and, in fact, I was, I
14:29:40 8 think, yesterday, if not before.

14:29:42 9 She goes on to say she received the Voting Rights Act
14:29:45 10 analysis. This is on the floor of the Senate.

14:29:47 11 Prior to posting the map for consideration by Senate
14:29:50 12 floor and later all of the House proceeding, there is no doubt
14:29:53 13 in this record that Senator Huffman knew the consequence of her
14:29:57 14 map, and was no doubt in the record that the rest of the members
14:29:59 15 of the Senate and the rest of the members of the House knew
14:30:03 16 about it, because Senator Powell saw to it that they are aware
14:30:07 17 of the consequences of their action.

14:30:08 18 The plaintiffs have met their evidentiary burden and
14:30:10 19 they are entitled to the injunction for which they seek.

14:30:22 20 JUDGE GUADERRAMA: All right. Thank you, Mr. Dunn.

14:30:25 21 All right. We will --

14:30:37 22 JUDGE BROWN: One thing. I don't need a hardcopy of
14:30:42 23 the exhibits. Has there been an electronic -- a full electronic
14:30:43 24 copy would be welcomed for me.

14:30:47 25 JUDGE GUADERRAMA: Greg?

1 JUDGE BROWN: If we could get that. Okay.

2 JUDGE GUADERRAMA: So, we may present you with an
3 order for some sort of written submission prior to the entry of
4 our decision, and if we need to do that, we'll get that to you
5 promptly.

6 All right. Thank you-all. This was an interesting
7 four days.

8 We're adjourned.

9 (Proceeding concludes at 2:31 p.m.).

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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