

**State Defendants' Response to Plaintiff-Intervenors'
and TXNAACP Motion for Preliminary Injunction**

Exhibit AK

Excerpt from Transcript of Aug. 27th Status Conference, 08/27/25 Tr. at 68:11-20

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

LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, et al.,
Plaintiffs,

3:21-CV-00259-DCG-JES-JVB

v.

9:06 a.m. to 11:26 a.m.

GREG ABBOTT, IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS, et al.,
Defendants.

August 27, 2025

STATUS HEARING
BEFORE THE HONORABLE DAVID C. GUADERRAMA
HONORABLE JERRY E. SMITH
AND HONORABLE JEFFREY V. BROWN

APPEARANCES:

FOR THE LULAC PLAINTIFFS:

Ms. Nina Perales
MALDEF
110 Broadway Avenue, Suite 300
San Antonio, Texas 78205
(210) 224-5382
nperales@maldef.org

FOR THE GONZALES PLAINTIFFS:

Mr. David Fox
Elias Law Group
250 Massachusetts Avenue NW, Suite 400
Washington, DC, 20001
(202) 987-5010
dfox@elias.law

1 APPEARANCES: (Continued)

2 **FOR PLAINTIFF MEXICAN AMERICAN LEGISLATIVE CAUCUS:**

Mr. Sean McCaffity
3 Sommerman, McCaffity & Quesada, L.L.P.
3811 Turtle Creek Boulevard, Suite 1400
4 Dallas, Texas 75219
(214) 720-0720
5 smccaffity@texttrial.com

6 **FOR PLAINTIFF TEXAS NAACP:**

Ms. Lindsey Cohan
7 Dechert LLP
515 Congress Avenue, Suite 1400
8 Austin, Texas 78701-3516
(512) 394-3027
9 lindsey.cohan@dechert.com
and
10 Mr. David Rollins-Boyd
The Lawyers Committee for Civil Rights Under Law
11 1500k NW
Washington, D.C. 20005
12 (617) 893-1322
drollins-boyd@lawyerscommittee.org
13 and
Mr. Carroll Rhodes
14 Law Offices of Carroll Rhodes
P.O. Box 588
15 (601) 894-4323
Hazlehurst, Michigan 39083
16

17 **FOR THE BROOKS PLAINTIFFS:**

Mr. Chad Dunn
18 Brazil & Dunn
1900 Pearl Street
19 Austin, Texas 78705-5408
(512) 717-9822
20 chad@brazilanddunn.com
gwen@brazilanddunn.com
21 and
Mr. Mark P. Gaber
22 Mark P. Gaber, PLLC
P.O. Box 34481
23 Washington, D.C. 20043
(715) 482-4066
24 mark@markgaber.com
25

APPEARANCES: (Continued)

FOR THE CONGRESSIONAL INTERVENORS:

Mr. Gary L. Bledsoe
6633 East Highway 290, Suite 208
Austin, Texas 78723-1157
(512) 322-9992
gbledsoe@thebledsoelawfirm.com
garybledsoe@sbcglobal.net

FOR THE STATE DEFENDANTS:

Mr. Ryan Kercher
Ms. Kathleen Hunker
Office of Texas Attorney General
P.O. Box 12548
MC 009
Austin, Texas 78711
(512) 463-4139
ryan.kercher@oag.texas.gov
kathleen.hunker@oag.texas.gov

Court Reporter:
Leticia Perez, RMR, CRR
525 Magoffin Avenue, Third Floor
El Paso, Texas 79901

Proceedings reported by court reporter. Transcript
produced via computer-aided transcription.

Leticia D. Perez
525 Magoffin Avenue
El Paso, Texas 79901

09:06 1

PROCEEDINGS

2 JUDGE GUADERRAMA: We're here for purposes of
3 conducting a Status Hearing on this case.

4 I'd ask for announcements, please.

5 MS. PERALES: For LULAC Plaintiffs, good morning,
6 Your Honor. Nina Perales.

7 JUDGE GUADERRAMA: Good morning, Ms. Perales.

8 MR. ROLLINS-BOYD: For Texas NAACP, David
9 Rollins-Boyd, Lindsey Cohan, and Carroll Rhodes.

10 MR. FOX: For Gonzales Plaintiffs, David Fox.

11 MR. DUNN: For the Brooks Plaintiffs, Chad Dunn and
12 Mark Gaber.

13 MR. McCAFFITY: For the Mexican American Legislative
14 Caucus, Sean McCaffity.

15 MR. BLEDSOE: For Plaintiff Intervenors, Gary Bledsoe.

16 JUDGE GUADERRAMA: Good morning to all of you.

17 MR. KERCHER: For State Defendants, Ryan Kercher and
18 Kathleen Hunker.

19 JUDGE GUADERRAMA: Good morning as well.

20 All right. So just to tie up some loose ends from our
21 trial, I guess your original complaints, there were some State
22 Board of Education districts that were challenged. We asked
23 you to present us with the claims that would be preceding the
24 trial, and there were no State Board of Education claims, so
25 I'm assuming those have been intentionally abandoned?

09:09 1 MS. PERALES: That's correct, Your Honor.

2 JUDGE GUADERRAMA: So the next thing is, Mr. Kercher,
3 if you can tell us, without violating any ethical duties to
4 your client --

5 MR. KERCHER: I probably don't have a clue, but I'm
6 happy to answer any questions the Court may have.

7 THE COURT: Okay. So where are we if the Governor
8 hasn't signed the bill yet? So I guess three things could
9 happen. He could sign the bill at some point, before the
10 expiration of the deadline; he could veto the bill; or he could
11 not sign it and it becomes law as a matter of law. Due course.

12 MR. KERCHER: That's my reading as well. In fact, it
13 didn't even occur to me -- I was conferring with Mr. Dunn this
14 morning. It didn't even occur to me that the Governor would
15 not sign it immediately. I have no insight into what the
16 timeline might be when he might do that.

17 Obviously there's been a lot of press and a lot of
18 media around this, and so I imagine that there will be some
19 fanfare when it happens. But at the latest, I would think it
20 would be 30 days after *sine die*, which is about the middle of
21 October.

22 JUDGE GUADERRAMA: That -- at that point it would
23 become law as a matter of operation.

24 MR. KERCHER: By default, yes.

25 JUDGE SMITH: So the reason that's a matter of

09:10 1 concern -- I didn't mean to interrupt, Mr. Dunn; you were going
2 to say something. But the reason that's a matter of concern is
3 the question -- and maybe both one or both sides have an answer
4 for us -- is, do we even have jurisdiction to entertain either
5 a Motion for Leave to File or, if leave to file is granted, is
6 there a ripe controversy for the filing of amended complaint or
7 other proceedings?

8 And the reason for that is, we obviously have an
9 obligation on our own to examine jurisdiction. So if one or
10 both sides have an answer to that, it would be helpful.

11 But again, I didn't mean to interrupt what you were
12 going to say, Mr. Dunn.

13 MR. DUNN: Well, I could respond to that, Your Honor.
14 I rose to discuss the veto deadlines since I spent some time
15 looking at the Texas Constitutional question. And it's
16 complicated, is the answer, but I think I have it right.

17 If the bill passes the Legislative Session within the
18 last ten days of the session, then the Governor gets 40 days
19 from the last day of the session to veto the bill. And if he
20 doesn't, then it becomes law. If, however, the bill gets to
21 the Governor before ten days are up, of the end of session,
22 then the Governor has ten days to veto it or it becomes law.

23 So the session's still in, and we don't know -- I
24 haven't heard any public pronouncement, anyway, as to when it
25 will adjourn, *sine die*. So I believe, based on my math, if the

09:12 1 session extends past Tuesday, then that means the bill will
2 have passed before this last ten days of the session, which
3 would mean then we have to wait until a *sine die*. We count
4 ten days. That's the deadline for the Governor to veto the
5 bill or it becomes law.

6 He has said publicly he is going to expeditiously sign
7 the bill and he has spoken publicly about some of the evidence
8 we've already offered about the plan that was passed. So it
9 seems extremely unlikely he's going to veto the bill.

10 But on the matter of jurisdiction, I believe there are
11 some courts -- and we can collect some of these cases -- where
12 courts have understood that a change in the law was coming,
13 but, because of the election deadlines, it's scheduled a
14 procedure.

15 Certainly by the time this Court would enter any
16 judgment, the bill will have been vetoed or will have passed.
17 And so when we get to the point of talking about scheduling
18 today, I think, by the time the evidence is finished in this
19 hearing, if the Court is kind enough to grant it to us, the
20 matter of the bill having become law will have happened.

21 If the Governor is to veto the bill, the Court can
22 vacate the hearing and it won't proceed. But he's given every
23 indication that he's going to sign the bill.

24 JUDGE GUADERRAMA: So what is your estimation of
25 the deadline, of the farthest out?

09:13 1 MR. DUNN: The deadline for veto?

2 JUDGE GUADERRAMA: Right.

3 MR. DUNN: Well, it's unfortunate -- I don't know,
4 because we don't know when the legislature's going to adjourn.
5 And the Texas Constitution gives the governors deadlines based
6 upon when -- first the deadline happens from adjournment.

7 And then, second, it depends on how long the session
8 is as to whether or not the bill came out within the last
9 ten days of session or not.

10 JUDGE GUADERRAMA: So this is a special session.
11 Doesn't it have a built-in deadline?

12 MR. DUNN: It does. It started Friday last, and so it
13 has 30 days from that date.

14 JUDGE GUADERRAMA: So that date, then after that
15 there's another 20 -- ten days, because the bill would have
16 passed in the first part of it.

17 JUDGE SMITH: But I think what Mr. Dunn is saying is
18 that they could adjourn early, *sine die*, before the 30 days.

19 JUDGE GUADERRAMA: I'm just trying to figure out what
20 the --

21 MR. DUNN: Sure.

22 JUDGE GUADERRAMA: -- the latest -- the farthest-out
23 deadline for this is.

24 MR. KERCHER: If that math is correct, ten days -- I
25 don't have any reason to challenge Mr. Dunn; it's been a minute

09:14 1 since I've looked at that portion of the Texas Constitution,
2 but if it's ten days after *sine die* and the 30-day session
3 lasted 30 days, then that would put us at about September the
4 25th.

5 And just for context, I believe the Governor has just
6 added a couple of things to the call for this session. Which,
7 they could move very rapidly, but that may suggest it may last
8 the full 30 days.

9 JUDGE GUADERRAMA: So then a hearing would be
10 appropriate outside that window, the first part of October?

11 MR. DUNN: Well, we would ask for a hearing before. I
12 can address that in a minute, but what I call Gaber GPT was
13 able to pull up a Fifth Circuit here called *Choice, Inc. of*
14 *Texas versus Greenstein*, 691 F.3d 710. It's an August 2012
15 case.

16 This is a quote. "Importantly, the Supreme Court has
17 explained that one does not have to await the consummation of
18 threatened injury to obtain preventative relief. If the injury
19 is certainly impending, that is enough."

20 So on the matter of scheduling, shall I address that
21 now?

22 JUDGE GUADERRAMA: Yeah, we'll get to it in a second.

23 MR. DUNN: Okay.

24 JUDGE GUADERRAMA: In fact, maybe -- it may be a good
25 time to do it now. We'll come back. But let's talk about

09:16 1 scheduling.

2 Do you have a general idea how many days of court time
3 it would take to get this thing done?

4 MR. DUNN: Well --

5 JUDGE GUADERRAMA: Because that impacts when our three
6 schedules could come together to accommodate.

7 MR. DUNN: Understood, Your Honor.

8 The Plaintiffs have conferred. What I'll state at the
9 outset is the Motion to Schedule the hearing was initially
10 filed on just some of the Plaintiff groups, but all of the
11 Plaintiff groups joined in that motion. And all of them are
12 ready and wanting to proceed on the Preliminary Injunction
13 Hearing. And we'd like it to last no longer than five days.
14 But we understand if the Court can't provide us five days
15 because of its schedule. We'll take what we can get.

16 And to just be candid about it, we'll call our first
17 witness on Tuesday. We just need time to get them here. We
18 have been preparing to go to trial the minute this Court will
19 let us do so. And we have -- the State at this point, at least
20 with respect to the Brooks Plaintiffs, has had our pleadings
21 and our expert report longer than we had to prepare them.

22 So we don't believe that this can't proceed in
23 reasonable haste in order to give our clients their day in
24 court, get a record. Ultimately this case, I think it's clear,
25 will be decided by the U.S. Supreme Court on whatever decision

09:17 1 this Court makes.

2 What I can say is that September 15th, the week that
3 the Court has said it's first available is, we believe, the
4 last week that this hearing should occur. We believe the Court
5 should rule around October the 8th. That way the Supreme Court
6 has approximately a month before the opening of the filing
7 period to review this Court's decision.

8 If it took another couple of weeks it could possibly
9 do so because their filing period lasts until December the 8th.
10 So, in theory, if a final ruling from the Supreme Court were to
11 come a week or two before the end of the filing period, people
12 could adjust their filings and there would be no other changes
13 necessary to the election calendar.

14 And that said, we think that the egregious
15 unconstitutional conduct that we've laid out in our Preliminary
16 Injunction and that we intend to prove here at trial is of the
17 nature that justifies this Court changing the election
18 deadlines if it becomes necessary.

19 If we proceed as we proposed, we don't believe it's
20 necessary to change the dates. We think that this is an
21 orderly process that allows the Court to weigh the evidence and
22 make a decision on the evidence and law.

23 What I will also say, though, is, if it is the State's
24 desire to delay, the State should also not be able to claim
25 now, in October or November or December, that it's -- our

09:18 1 clients can't have their day in court and get an adjudication
2 as a result of the delay the State asked for.

3 That's why we're prepared to go on Tuesday. We
4 understand the Court's unable to do that and are fully
5 respecting of that, but we are ready to go when the Court will
6 give us a hearing. And we will do anything -- and hopefully
7 we've demonstrated that in the last five days -- in our power
8 to get our clients their day in court on this map.

9 And the final thing I'll say -- and I'm not at all
10 suggesting that Counsel for the State had anything to do with
11 this; in fact, I'm fairly certain they had no idea. But one of
12 the last witnesses the State proffered in this case testified
13 under oath that the State was not in the process of redrawing
14 its map.

15 But as you're going to hear from the evidence, the
16 State, in fact, was working on it since the spring. And
17 many -- and members of the Legislature were having discussions
18 about it, and ultimately there was a conference at ALEC in
19 Fort Worth where there were additional discussions working on
20 the map.

21 But the State announced ready in this Court to try a
22 case on a Congressional Map, and all of us spent a tremendous
23 amount of time and resources and burden to try that case. And
24 now it is only partly relevant. Only part of that evidence is
25 necessary.

09:19 1 We're here not because of the Plaintiffs' conduct.
2 And the Plaintiffs have been proceeding against this case, in
3 one form or the other, for four years. We stand here hat in
4 hand. Please give us a hearing, and give it to us in time.

5 JUDGE SMITH: Well, there's at least one serious
6 problem with that, which is that some of the Plaintiffs and
7 their attorneys, and the organizations with which they are
8 associated, had a walk-out in the Legislature that delayed
9 everything for a considerable period of time.

10 Had that not occurred and had the Legislature taken
11 this up in the first called session as the first order of
12 business -- which, there was every indication that would have
13 happened -- we probably, by now, would have already had a
14 Preliminary Injunction Hearing and we would be ready to
15 announce the results of that.

16 So if part of the test for a Preliminary Injunction is
17 that you're coming into a court of -- of equity, there are some
18 people who are coming in with unclean hands, because the
19 equities are not in their favor if they're urging the need for
20 some kind of immediate action, but they were directly
21 responsible for the delay.

22 MR. DUNN: Well, two responses to that, Your Honor.

23 First, those people that engaged in the quorum break
24 are not parties before the Court. So they're not here with
25 unclean hands, because they're not here at all.

09:21 1 But the second piece to it is, Chairman Hunter said on
2 the floor during the House debate -- and we'll offer this
3 evidence at trial -- that had there not been a quorum break the
4 plan was to have 15 field hearings on the map.

5 And so were that to take place, the map would have
6 passed at the same time that it ultimately did pass. And in
7 fact, the original 30-day special session was to end Wednesday
8 of last week and the bill ultimately passed late Friday night,
9 early Saturday morning, two -- you know, two and a half days
10 after the end of the session.

11 But, you know, there are millions of voters in the
12 state impacted by the lines that were drawn on this plan -- and
13 whose constitutional rights are affected, and their voting
14 rights are affected by this plan -- who had nothing to do with
15 any of the decisions of what legislators did during the debate.
16 And they're asking to have it adjudicated under the
17 constitution.

18 JUDGE BROWN: As far as timing goes, I have a
19 question. As I understand it, okay, there's going to be a
20 special election in CD18 this November.

21 MR. DUNN: Yes, sir.

22 JUDGE BROWN: And that filing deadline, I believe, is
23 Wednesday. And I know that, you know, the lines on 18, I mean,
24 we can't do anything about that, I guess. We can't be adverse
25 on that.

09:22 1 MR. DUNN: I don't -- not without --

2 JUDGE BROWN: I don't know when the filing deadline
3 is. The 3rd, yeah.

4 MR. DUNN: Not without moving the election.

5 And also, unless I've missed some communication, which
6 is certainly possible, I'm not sure -- I think the election's
7 going to be run under the 2021 map. I think it has to be. I
8 mean, this -- as has been mentioned, this isn't even law yet,
9 and it has to take effect 90 days thereafter under the
10 effective clause.

11 JUDGE BROWN: Okay. That answers my question as far
12 as the effect on -- as far as how that affects this case.

13 MR. DUNN: Okay. The reason I hedge on this is
14 because, in 2021, the map didn't take effect until, I think,
15 after the filing deadline, or at least well into it. And the
16 State just proceeded with its new map even though it wasn't --
17 it hadn't taken effect.

18 So I don't know whether it's the Secretary of State or
19 whomever makes these decisions intention to just go ahead and
20 use the 2025 map. And I've not seen any public pronouncement
21 on that. But my view of the law is, is that the 2021 map has
22 to be used in November.

23 I think some of my colleagues might want to weigh in
24 on this subject, if I may.

25 JUDGE GUADERRAMA: Sure, absolutely.

09:23 1 MR. FOX: Very briefly on the question of unclean
2 hands. I just want to emphasize to the Court --

3 JUDGE GUADERRAMA: Identify yourself for the record.

4 MR. FOX: Oh, excuse me. David Fox for the Gonzales
5 Plaintiffs.

6 I want to emphasize to the Court there are a number of
7 groups, a number of parties here, and certainly the vast
8 majority of them could not have had less to do with a decision
9 by Texas legislators as to how to exercise their legislative
10 duties and the decision to break quorum.

11 Certainly our clients are individual voters in a
12 varieties of districts around the state. They had no say.
13 They had nothing to do with that. It wasn't their choice as to
14 whether their legislator would leave the state for a quorum
15 break. And so I can't imagine any basis for assigning to them
16 the responsibility, or saying it was their fault, to the extent
17 there was a delay.

18 Beyond that, I'm in full agreement with Mr. Dunn. We
19 are ready to bring this to the Court as soon as the Court is
20 ready to hear it, and are hopeful that it will happen quickly.

21 Thank you.

22 JUDGE GUADERRAMA: All right. Thank you.

23 Ms. Perales?

24 MS. PERALES: Also on the question of unclean hands,
25 I'd like to join what Mr. Dunn and Mr. Fox have said and simply

09:25 1 point out that the LULAC Plaintiffs filed the first case.

2 Others were consolidated. But the LULAC Plaintiffs have no
3 control over who was consolidated subsequent.

4 Of course the LULAC Plaintiffs, which include a number
5 of membership organizations that have asserted associational
6 standing, are essentially here for the individual voters who
7 are their members, who live around the state.

8 Their voting rights are impaired by this new map.
9 That's why we're here asking for preliminary relief. And it is
10 our position that they do not have unclean hands, because they
11 did not engage in or otherwise have a role in the quorum break
12 in the House.

13 Thank you.

14 JUDGE GUADERRAMA: Thank you.

15 MR. McCAFFITY: Sean McCaffity on behalf of the
16 Mexican American Legislative Caucus.

17 Totally and completely agree with everything Mr. Dunn
18 said, so I won't repeat that. Obviously we are here asking for
19 as quick of a hearing as the Court will give us.

20 And with respect to the unclean hands, obviously some
21 of the members of the Mexican American Legislative Caucus are,
22 in fact, Democratic lawmakers that did break quorum.

23 The membership in MALC, however, or the caucus,
24 however, did not as a whole. There was a split in the caucus.
25 Not all of them went. For instance, Representative Moody did

09:26 1 not go. And the caucus doesn't have, necessarily -- or
2 shouldn't be treated with unclean hands simply because some of
3 the members determined that it was in their constituents' best
4 interests for them to act on a quorum break.

5 On top of that, I agree with the scheduling issues.
6 It may have been a cause of delay, but as far as a significant
7 delay or what kind of delay with respect to the closeness, or
8 proximity, to the election, it is not a material one given what
9 would have occurred in the ordinary course anyway.

10 And so while there may have been an injunction hearing
11 last week, for example, Justice Smith, or the week before, if
12 there was no quorum break, I don't know that that's necessarily
13 true, but if it is, having a quorum break -- or an injunction
14 hearing next week still gives the Court plenty of time to
15 assess this single map and -- on a Preliminary Injunction
16 basis, and allows the Plaintiffs to put their cases forward
17 under the constitution.

18 JUDGE BROWN: In the interest of a little levity, it's
19 Judge Smith. We all know there's no justice on the Fifth
20 Circuit.

21 JUDGE SMITH: But in fairness, Judge Brown used to be
22 Justice Brown.

23 MR. McCAFFITY: Thank you, Your Honor.

24 MR. BLEDSOE: Your Honors, I would like to weigh in
25 just briefly on the clean hands issue.

09:28 1 I would like to say that the parties that -- of
2 course, as Mr. Dunn said, that did break quorum are not party
3 to this litigation.

4 But secondly, I ask you to at least entertain the idea
5 that this is, indeed, a legitimate constitutional measure that
6 was undertaken by those individuals before passing judgment on
7 what actually happened, because I think that's part of the
8 legislative process.

9 And it's no different, for example, than the Governor
10 not signing the bill now or not filling the 18th Congressional
11 District way back from the last special election, where it
12 should have been held in May.

13 So I think there are a lot of issues that can be
14 discussed in reference to that, but I would say that that was
15 something that, if we look at the case law and all that's
16 around the quorum break, I think it's clear that what they did
17 was legitimate, was constitutional, was contemplated by the
18 Texas Constitution. It's a means that they use, and I don't
19 think they should be at all harmed or held to be with unclean
20 hands because they undertook it.

21 THE COURT: Thank you, sir.

22 MS. COHAN: Good morning, Your Honors. Lindsey Cohan
23 for Texas NAACP.

24 I just want to emphasize our individual members had
25 nothing to do with the quorum break. We are in agreement with

09:29 1 Mr. Dunn and the other attorneys that have spoken that we would
2 like our day in court expeditiously and at the first
3 opportunity that the Court can make itself available to us for
4 that hearing.

5 And we appreciate the Court's attention to this and
6 the manner in which you scheduled this hearing so quickly to be
7 able to hear us on this.

8 Thank you.

9 JUDGE GUADERRAMA: Thank you.

10 Anyone else?

11 JUDGE SMITH: Just in terms of the timing, before
12 hearing from the State, there are obviously some difficulties
13 in scheduling. And, you know, the judges have talked about
14 this, and we try to be as flexible as we can.

15 We'll hear from the State about how many days they
16 think it might take for a trial. We are certainly willing, as
17 I think our -- the record will show, we've been willing
18 throughout to allow as many trial days as folks need. And
19 five days, or whatever it is if it's more than that, that's
20 fine. I have to speak personally; I like coming to El Paso,
21 but that's obviously, you know, up to everyone individually.

22 But just let me say, in terms of the constraints for
23 the judges, next week, the week of September 1st, is completely
24 out. The week of September 8th is completely out. I mean,
25 there's no flexibility on those two weeks.

09:30 1 The week of the 15th is completely out because of one
2 of the judges with a very serious, substantial trial schedule.
3 The week -- I realize, yes, we had indicated the 15th as a
4 possibility, so you certainly have a right to respond to that,
5 but it's not -- it's not a reasonable possibility, particularly
6 for a hearing that would be five days or longer.

7 The week of the 22nd is absolutely out because of
8 judicial commitments that can't be changed.

9 So the earliest, in terms of judges' availability --
10 we can move things around as best we can -- would probably be
11 approximately Wednesday, October 1st, and continuing into the
12 week of October 6th. You know, the other judges may have some
13 reflections on that, too.

14 But we're talking about hard commitments, where
15 there's not much ability for us to -- you know, to move things
16 around.

17 But I didn't mean to interrupt, though, for
18 Mr. Kercher, whatever you wanted to say about, number one, how
19 many trial days -- reason to believe; and number two, how much
20 preparation time; and number three, about the calendar.

21 JUDGE BROWN: And before we hear from Mr. Kercher, the
22 trial that he's talking about is mine. It starts
23 September 8th. Four defendants, two murders. It's a Murder in
24 Aid of Racketeering case. It's supposed to go three weeks.

25 There may be pleas, and I could potentially, you know,

09:32 1 recess the trial to come to El Paso and do a hearing. That
2 wouldn't be ideal, have it -- I mean, it's going to be hard
3 enough to seat a jury in that case, if you can imagine. MS 13,
4 machetes, that kind of thing.

5 So that's the new wrinkle on the week of the 15th.
6 But that's kind of the whole story on it.

7 Mr. Kercher?

8 MR. KERCHER: And I appreciate that context. That
9 probably saves everybody a lot of time.

10 By way of reminder, the last time we did a Preliminary
11 Injunction Hearing in this case, it was on one district. There
12 was one party. Each called one expert. And we had -- the
13 State had 60 days to prepare. And that hearing lasted --
14 excuse me -- four days.

15 Here, we got the fourth new expert report last night.
16 That's not disparaging Plaintiffs' Counsel, who certainly have
17 been working quickly. But if we think about the amount of time
18 that the experts took during trial -- and of course, this time
19 we won't have to go through all the background. We need not go
20 through their resumés and so forth.

21 But if we think about the time that the experts took
22 during trial, I think we should reasonably anticipate that if
23 the Plaintiffs need four or five days to put on their case,
24 that the State will likely need two, assuming we call two
25 experts. We're still not sure on that yet, but -- if for no

09:34 1 other reason than because this time around we should
2 anticipate, I think, that we will have multiple
3 cross-examinations of each of those experts.

4 I also am quite certain that if the Court wants to get
5 the most out of a hearing in this case -- and it should -- that
6 the State should get at least two weeks. I mean, I'd love
7 30 days, but two weeks to respond to these expert reports.

8 These are obviously very complicated. Dr. Barreto is
9 doing a new kind of analysis that, on first glance, looks a lot
10 like Dr. Duchin's analysis. So it's not going to be just a
11 function of cross-examining Dr. Barreto on the same things we
12 cross-examined him on last time. He's done something like
13 Dr. Duchin's analysis.

14 All of that -- and Plaintiffs will tell you that's
15 incredibly time consuming. And I know that they have worked
16 very quickly. But we asked, when we conferred on Friday, "Can
17 you at least tell us what districts you're looking at?"
18 Because I can't have my experts look at all 38 Congressional
19 Districts. And they were reasonably not prepared to tell us
20 that until the map went through both chambers.

21 I don't want to move for delay. Mr. Dunn, he's so
22 good at talking about these procedural issues and then also
23 wrapping up some of the merits issues. The guy's a good
24 lawyer.

25 Look, the reality is that this is complicated. And we

09:35 1 are not insensitive to the rights of voters. It is also the
2 case that this matter was delayed for 18 days by a Democratic
3 caucus break. And no, that's not on all of the parties.

4 But I would also point out that while the House was
5 unable to make quorum for those 18 days, the Senate did
6 proceed. And in fact, the Senate held a hearing after the
7 initial map was -- was filed in the Senate and invited groups,
8 like the NAACP and MALDEF, to come and testify and talk about
9 what that map would do and have their input in the legislative
10 process rather than turning to a court as a super-legislature.

11 And in that Senate hearing voting rights groups,
12 including some who are Plaintiffs in this case, were invited to
13 give their input. No one showed up.

14 I would also point out that, although I sympathize
15 with Mr. Dunn's heartfelt plea for a trial, this case was set
16 to go to trial in 2022 and the Plaintiffs chose discovery.
17 That was not because the State was using delay. That's because
18 the Plaintiffs decided that they needed more evidence, evidence
19 that, in large part, they largely did not get because of
20 subsequent rulings by this Court and by the Fifth Circuit.

21 The Plaintiffs did not ask this Court for a trial
22 setting. The Court set one. And had the Court not *sua sponte*
23 set this trial we still, in all probability, would not have
24 tried their original claims. That should weigh heavily on the
25 Court's mind as it figures out how best to balance the equities

09:37 1 between the parties. Because the Plaintiffs pushed for
2 emergency relief at the beginning of this case and then decided
3 they did not need it.

4 So understanding that the Plaintiffs are telling you
5 now, okay, there is renewed vigor -- now they want to move
6 forward -- the State has some concerns, not just about the
7 expertise. I think the ripeness issue does continue to be a
8 problem.

9 I agree, though, with the Plaintiffs that there is a
10 window of time between whenever the laws -- the map will become
11 law. And I think it's reasonable to assume that it will, that
12 the Court would have time to rule on that before the filing
13 deadline in November, which I think is something at which we
14 are all looking at sort of as a hard stop.

15 I will tell you that Dr. Trende has a deposition in a
16 case in Mississippi on September the 17th. Dr. Alford has a
17 deposition in that same case on September the 23rd. At a
18 minimum, I think Dr. Trende needs to be here, particularly if
19 we're going to have expedited discovery or no discovery, to
20 listen to the opinions of the opposing experts in order for him
21 to be able to properly respond.

22 A couple of other scheduling pieces. It makes sense,
23 particularly if we are going to move quickly, that the answer
24 deadline for the Defendants be pushed, and also that State
25 Defendants get the opportunity to respond to the Preliminary

09:38 1 Injunction Motions in a consolidated fashion so that we're not
2 putting together -- I think we've got four of them right now.
3 I think that would probably be more efficient for the Court;
4 there is a lot of overlapping allegations.

5 I will close this portion of my remarks by -- by
6 saying that, while I don't doubt the sincerity of Plaintiffs'
7 Counsel, anybody with electricity knows what has happened with
8 these new maps.

9 I did not have it on my bingo card when I tried this
10 case that we would be back here with a brand-new
11 Congressional Map. But my bingo card has been a whole lot less
12 useful in predicting the future since 2016. And when the
13 president of the United States says that he wants five more
14 Republican seats out of the State of Texas, it should come as
15 no surprise that a Republican state like Texas finds a way to
16 find those seats.

17 The notion that because Texas has redistricted in the
18 middle of the cycle means that there is something untoward
19 going on, or because someone dares to mention Fifth Circuit
20 precedent in *Pettaway*, that that is evidence, much less direct
21 evidence, of discrimination, boggles my mind.

22 JUDGE GUADERRAMA: So Mr. Kercher, you're available
23 anytime after October 1st?

24 MR. KERCHER: The State can be prepared by
25 October 1st, yes.

09:40 1 JUDGE SMITH: Is it reasonable or not -- I'm inviting
2 responses. Is it reasonable or not to say that if we were to
3 begin -- you know, we may not decide it this way. If we were
4 to begin on Wednesday, October 1st, and block out the rest of
5 that week and the week of October 6th -- that would be just for
6 weekdays -- that would be eight days of trial.

7 Is there anyone who thinks that is unlikely to be
8 sufficient to get done what everybody reasonably needs to do?
9 Again, we're gonna give you whatever days you need. Does
10 anybody have a problem with eight trial days? Whenever they
11 are, eight trial days?

12 MR. DUNN: I don't believe we have a problem with
13 eight trial days. Our primary concern is, can the Court get a
14 ruling done, you know, within days? Scheduling the hearing at
15 that point, we'll need a ruling within days. So -- unless
16 we're gonna -- I mean, you know we're just taking time from the
17 Supreme Court. And then at some point it may alter the
18 election dates. And, you know, the fact the State's asking for
19 the delay ought to weigh into whether the election dates ought
20 to move.

21 JUDGE SMITH: On the question of election days, of
22 course speaking only for myself, but I think, as I pointed out
23 during the trial, changing the election days, the
24 San Antonio -- what I call the San Antonio trial proved it can
25 have unintended consequences in unrelated races.

09:41 1 If the election days were to be changed, would that
2 mean changing the election days throughout the state, such that
3 there would not be primaries for any offices statewide as of
4 the first week in March? Is that what we'd be talking about
5 for the term "changing the election days"?

6 MR. DUNN: Well, I think there's kind of two things
7 about that.

8 First, I believe that the filing deadline, which is
9 set at December 8th, could be moved back a couple of weeks
10 without changing the election otherwise. And you might recall
11 in 2021 -- I'm pretty sure the filing period ended the second
12 week of January, back then. So everything's sort of been moved
13 up a little bit in the decade as the law sort of evolved. So I
14 think there's some flexibility there.

15 In terms of, if it became necessary to move the
16 primary election for Congressional races, then, you know, the
17 Court would have options. It could either -- as it did in
18 2021, it could set a different primary -- I mean it could set
19 one primary for everything.

20 JUDGE SMITH: You mean 2012, I think.

21 MR. DUNN: 2012. Sorry.

22 JUDGE SMITH: That's okay.

23 MR. DUNN: 2012. So it could set, you know, a
24 consolidated new primary -- I believe it got moved to May, if I
25 recall correctly, then. It could also elect to do just the

09:42 1 Congressional races in that later election, keep everything
2 else in March.

3 And then there is a precedent, I believe, in 2003, the
4 last sort of mid-decade redistricting, if I remember right.
5 The Court said at least some Congressional races were what they
6 referred to as a jungle primary, where people filed in
7 November, top two vote-getters went to a runoff that was
8 decided in December.

9 And, but we heard, Your Honor, at the prior
10 proceedings in this case about not wanting to change the
11 deadlines, and the Court's comment now about how that sometimes
12 has unintended effects.

13 I can tell you that I would average about 22 hours of
14 sleep have been had by this table in the last five days so that
15 you wouldn't have to do that, so that you wouldn't have to move
16 the schedule, so that we could be ready to put on our case.

17 MS. PERALES: I may be the only counsel who didn't
18 really follow, or understand, the Court's discussion of its
19 availability. I just wanted to ask if September -- the week of
20 September 8 is the week that the machete trial starts.

21 JUDGE BROWN: Yes, that's the -- yeah. Yes.

22 MS. PERALES: And so --

23 JUDGE BROWN: And it's supposed to go for three weeks.

24 MS. PERALES: For three weeks.

25 JUDGE BROWN: And this was -- the trial date was

09:44 1 promised to them a long time ago, and the defendants -- I'm
2 getting way too deep into the weeds on this. Moving that trial
3 exposes these four defendants -- the DOJ has not decided
4 whether to seek or not seek the death penalty yet, and the
5 defendants don't want to give them any more time to do that.
6 And so I promised them that we would start the trial on
7 September 8th. And that effectively gives DOJ a deadline. So
8 that's why it's not just a trial, you know, it's -- but --

9 MS. PERALES: And so if there were pleas -- if it was
10 me, I might be seriously considering a plea, not that I
11 actually have used a machete for those purposes. But I'm just
12 wondering, if there was a last-minute change in the Court's
13 availability, as Mr. Dunn has articulated, we can be ready.
14 Mr. Dunn has said we could be ready next week.

15 You know, we're willing to take on the work of
16 preparing even if we're not sure until the final moments if the
17 Court is available in September. We will do that. We've
18 worked very hard to get us to where we are today, and we would
19 do that. And I just wanted to mention that to the Court.

20 JUDGE BROWN: We appreciate that.

21 MS. PERALES: Thank you.

22 MR. DUNN: One question about that, Your Honor, that I
23 don't know, if the Government decides to pursue the death
24 penalty, does that reset your case?

25 JUDGE BROWN: Oh, yeah.

09:46 1 MR. DUNN: It does?

2 JUDGE BROWN: Just like that.

3 MR. KERCHER: The only thing that I think I'll add,
4 following along Mr. Dunn's latest remarks, which are all fair,
5 is the issue of remedy. The Plaintiffs are pushing very hard
6 because they say they need to have a remedy here. The remedy,
7 though, as I understand it, that they would be asking for is
8 that the maps they just spent four weeks telling the Court are
9 grossly discriminatory and unconstitutional would remain in
10 place. If that is the quality of their remedy, that should
11 speak to the degree of expediting to which they are entitled.

12 JUDGE SMITH: Well, just so we're not confused -- and
13 maybe I'm confused, so clarify for me. Interesting that you
14 brought up "remedy." So we're talking about a Hearing on
15 Motions -- a Motion or Motions for Preliminary Injunction,
16 which, of course, tests, among other things, the likelihood of
17 success on the merits. And if the Court agreed to grant those
18 motions, then it would enjoin the implementation of the 2025
19 Congressional maps, as I understand it.

20 Whether or not -- I mean, whether we granted or denied
21 a Motion for Preliminary Injunction after a hearing, would
22 there still not need to be, after that, a trial on the merits
23 of that issue? We only would have decided there is likelihood
24 or there isn't likelihood, but then there would be a trial on
25 the merits and then a remedy if a remedy were to be ordered.

09:47 1 But if I'm confused procedurally, please -- I'm not
2 the trial judge here, so, you know, you can clarify.

3 MR. KERCHER: No, that's exactly right, Your Honor.
4 But I guess that's my point, is, if the Plaintiffs get the
5 ruling that they want in a Preliminary Injunction Hearing, all
6 that means is that the maps that they -- that is -- that the
7 Congressional Map that they also think is racist and
8 discriminatory and violates Section 2 of the VRA, is still in
9 place.

10 JUDGE SMITH: The '21 and '23 maps.

11 MR. KERCHER: Yes, Your Honor.

12 MR. DUNN: Well, I guess I'll take this in two parts.

13 The first part is, if the Court were to grant an
14 injunction against House Bill 4, the measure that adopted this
15 new map, it would also, therefore, enjoin the repealer
16 provision in it, which would have the effect of reinstalling
17 the 2021 map, which the State is able to administer because all
18 of the counties in the state have already assigned ballot
19 styles to every voter in the state, as registered under that
20 map.

21 So the Plaintiffs are trying to live in the world of
22 reality here in terms of the timing, without -- and trying to
23 offer the Court options that don't require adjusting the
24 schedule.

25 What do we think ought to happen? What we think ought

09:49 1 to happen is the 2025 map ought to be enjoined, the trial we
2 had on the 2021 map should then be adjudicated, struck down for
3 the reasons we offered evidence, and then there should be a
4 remedy put into place.

5 That's what we think that the evidence and the law
6 otherwise requires. But the Court already issued an order last
7 week saying that it was holding off on ruling on the Voting
8 Rights Act claims given matters before the U.S. Supreme Court.
9 So we tried to fashion our remedy requests within the confines
10 of the reality that we were hearing from the Court, which is
11 that it wasn't gonna rule on our 2021 claims.

12 And so between two unconstitutional and illegal maps,
13 the 2021 map, when you balance the equities, is a reasonable
14 remedy given the timing that the Legislature has left us with.

15 JUDGE BROWN: It's the lesser of two evils.

16 MR. DUNN: Exactly.

17 JUDGE SMITH: So again, in terms of timing and
18 preparation -- I didn't mean to cut off anyone else that wanted
19 to speak on this. So there's been talk about the filing
20 complaint, answering a complaint, what -- Motion to Dismiss, I
21 assume.

22 But the expert reports, there's been discussion about
23 that. What other preparatory matters are there, if any? Are
24 there depositions? Are there Requests for Admissions,
25 interrogatories, the usual sort of things in preparation for a

09:50 1 trial?

2 I'm just trying to iron out any of the complications
3 that number one, take time; and number two, complicate the
4 process. We need to -- what are both sides saying about that?
5 I'm sure you're short-circuiting things as much as you can,
6 but -- and there's been some discussion about the inability to
7 subpoena some witnesses and those sorts of things. So
8 anyway...

9 MR. DUNN: So the Plaintiffs have conferred on that,
10 on those very matters, Your Honor. From our perspective,
11 especially in light of the recent development of the law around
12 legislative privilege and attorney-client privilege with regard
13 to legislators, we don't -- we don't view discovery as
14 necessary in moving on the Preliminary Injunction.

15 It also is the case, as you can see in the papers that
16 we filed, that many direct statements were made in public. We
17 have those available, and we're ready to play them as part of
18 our evidence in this case.

19 We see discovery as just delaying things. The State,
20 of course, has access to all the information, so they're not at
21 a disadvantage by not doing discovery. It's the Plaintiffs
22 that would be at a disadvantage by not having an opportunity to
23 do discovery, and we've decided we'd rather get our hearing and
24 get a decision and get this resolved by all the courts that are
25 gonna look at it in as early a time as possible.

09:51 1 In terms of the deadlines, I think the deadlines we
2 would like to have is a deadline to disclose witnesses for the
3 trial with some description generally of what they will say.
4 You know, the standard Rule 26 disclosures.

5 And then some deadline to disclose exhibits with the
6 understanding that, as there was in the May/June trial, some
7 exhibits are going to come to light as we proceed. But
8 roughly, you know, everybody can disclose their exhibits.

9 Obviously the State's going to want to respond to our
10 expert reports, which we expect. We may need to reply to
11 those. And, you know, if the State wants depositions of our
12 experts, then we would want to do that reciprocally, but we
13 also don't think that's necessary.

14 These experts have testified. They've all been
15 deposed. It is true that Dr. Barreto is doing some simulations
16 like Dr. Duchin did, but, you know, there's already been hours
17 of testimony about what that looks like in this case. They can
18 obviously cross-examine him about it.

19 But again, if we can find time for the depositions,
20 even if that means taking them at a lunch break or in the
21 evening during a trial break...

22 But our view is that we have what we need to meet our
23 burden of proof, and we don't need any delay for discovery that
24 ultimately, as Mr. Kercher just argued, didn't result in a
25 whole lot of material information, you know, that changed the

09:53 1 calculation.

2 MR. KERCHER: Yeah, I don't think there will be a need
3 for a lot of written discovery, to answer the first question.
4 And we have already conferred a little bit on working together,
5 as we did for the trial on the merits earlier this year, in
6 terms of getting the legislative record before the Court. I
7 think the legislative record is going to be, in large part,
8 what the Plaintiffs are relying on. I think it will be
9 important to us, too.

10 I also agree with Mr. Dunn that getting a deadline for
11 exchanging witnesses and exhibits will be important. That will
12 probably drive further decisions about depositions. Look, I
13 would love to be able to say, "Oh, yeah, we need at least five
14 depositions per side." I'm candidly not sure that that's
15 actually true. I would reserve saying we don't need any
16 depositions until I see their witness list. Or they may find
17 somebody on our side who surprises them.

18 I very much -- having gone through the challenges of
19 Dr. Murray's deposition during trial, I would like to avoid
20 that if we can. That was not ideal for a variety of reasons,
21 not least of which is the manner in which that testimony had to
22 be sort of laboriously presented to the Court.

23 I'm not sure that expert depositions will be
24 necessary, and I'm not particularly pushing for those. What
25 matters to me is that my experts get the opportunity to

09:54 1 evaluate what it is that the four Plaintiffs' experts are doing
2 and have the opportunity to respond meaningfully to them. And
3 if Mr. Dunn says they want to reply, then have at it.

4 MR. DUNN: One other comment I failed to mention is,
5 you know, the Preliminary Injunction rule, as the Court,
6 especially the trial judges of the Court know, you know, is
7 more flexible in terms of evidence. And indeed, as you know,
8 many Preliminary Injunctions are just decided on papers and
9 affidavits. So we have been talking about ways that we can
10 shorten directs, you know, amply giving the State whatever
11 cross-examination time it wants, and ways that we can shorten
12 things from the May/June trial.

13 And although I agree -- because I was here for it, the
14 four-day trial we had on the Senate District map, on the
15 Preliminary Injunction. But that was also the first
16 proceedings in the case. And it's true it was on one district.
17 But it was on one map, and that's what this hearing is going to
18 be over, is one map.

19 There are some different districting issues, but as
20 you've seen from our papers, our overarching arguments apply to
21 the map as a whole. So, you know, certainly that's why we
22 thought we could get this done in five days.

23 MR. KERCHER: And I'll add, I think, two pieces. One
24 is, Judge Smith, you referenced a Motion to Dismiss. I think
25 that -- again, we're still -- we are still processing some of

09:56 1 these papers that have come in.

2 Our plan right now is, we have only seen one claim
3 that looks new under the law. The Gonzales Plaintiffs are
4 arguing that the mid-cycle redistricting is, per se, violative
5 because it violates the one-person one-vote rule because the
6 mid-cycle districts are drawn using the 2020 Census, and, of
7 course, those populations have changed since then.

8 I think we will be moving to dismiss that claim. I'd
9 be interested to see whether the Elias Law firm files a similar
10 suit against California in a mid-decade redistricting cycle.
11 We'll see.

12 The other thing is -- and I hesitate to say this,
13 because it is speculation; I have no firm information one way
14 or another. But because of the considerable press and politics
15 around this redistricting effort, it seems that there is a
16 possibility there could be Intervenor. I don't know what that
17 would do to the scheduling. I'm not arguing that it should do
18 anything to the schedule, but it is something that the parties
19 and the Court should perhaps consider.

20 MR. FOX: David Fox for the Gonzales Plaintiffs.

21 Two points on that. One is, on the claim Mr. Kercher
22 referenced, I think one of the -- the thing I would just
23 highlight about that claim is, I do think the facts are
24 undisputed. I think it's a question of law. I don't think it
25 needs to delay any aspects of this Court's schedule.

09:57 1 MR. KERCHER: I agree with that.

2 MR. FOX: The second is, in terms of Intervenorors,
3 certainly --

4 JUDGE GUADERRAMA: Mr. Fox, speak just a little bit
5 more slowly, if you would.

6 MR. FOX: My apologies, Your Honor.

7 In terms of Intervenorors, we would urge the Court to
8 deny any motions to intervene that would require a delay in
9 this matter. We are well, well into this four years in. There
10 is a huge trial record, much of which is extremely relevant to
11 what is still before the Court.

12 The idea that new parties would try to join now and
13 slow things down, I think, would -- there is ample reason for
14 the Court to deny any motion that would require that.

15 JUDGE GUADERRAMA: So procedurally, you-all are gonna
16 get together and come up with deadlines for the witnesses and
17 exhibits list? You-all will --

18 MR. DUNN: Well, once we know the trial dates, I
19 suspect that will be the case.

20 JUDGE GUADERRAMA: And so --

21 MS. PERALES: Your Honor, could we have a moment?

22 *(Sotto voce discussion off the record.)*

23 JUDGE SMITH: If you need to meet and confer, it's
24 perfectly okay; we'll be glad to take a break. We understand
25 you have a large group of people, so it's only fair you're able

09:58 1 to talk about this if you wish to.

2 MR. DUNN: I think we can share the information. What
3 Ms. Perales was suggesting, but I agree with -- and folks can
4 nod if they disagree, but we're going to prepare to go on
5 September 8th in the event that the trial pleas or the
6 Government seeks the death penalty or something else happens.
7 And we'll be ready to offer evidence then. And if the Court
8 ultimately, you know, issues an order at a different date and
9 time, then we'll obviously do whatever the court orders.

10 JUDGE SMITH: Well, I'm gonna interrupt you, if you'll
11 excuse me. Let me just make it clear what I said earlier. The
12 week of September 1st is absolutely out because of unmovable
13 commitments. The week of September 8th is absolutely out
14 because of unmovable commitments. The week of the 15th, we've
15 discussed about Judge Brown's trial. The week of
16 September 22nd is absolutely out of the question.

17 The week of the 29th would be available beginning on
18 Wednesday, October 1st. And again, all three judges available
19 from October 1st through Friday, October 10th, which would be
20 eight days of trial, just counting weekdays.

21 So we needn't talk about the week of the 8th, because
22 that isn't gonna happen.

23 MR. DUNN: And I shouldn't have presumed to discuss
24 the Court's schedule. I guess we just wanted to communicate to
25 you.

10:00 1 JUDGE SMITH: That's perfectly okay. We're here to
2 work it out.

3 JUDGE BROWN: We understand that if something comes
4 up, if the Court sets a date for the injunction hearing and
5 the -- and earlier -- and things change and we're able to get
6 to you sooner, that you'll be ready to go. That's what you're
7 saying.

8 MR. DUNN: Yes, Your Honor. We need 48 hours just to
9 get people here.

10 JUDGE BROWN: Yeah.

11 MR. DUNN: But we'll be ready.

12 JUDGE BROWN: We understand that, and we appreciate it
13 very much.

14 JUDGE GUADERRAMA: So if the United States makes the
15 death decision in Judge Brown's case, we possibly could start
16 on the 15th. But the last one I had, the Government made the
17 decision at the very last minute of the very last day for some
18 unknown reason. That's just how they do it.

19 MS. PERALES: And my apologies also for saying the 8th
20 without knowing about the Court's full schedule.

21 If the Government were to make a last-minute decision
22 before the scheduled start of trial on the 8th and the Court
23 decided that it was available on the week of the 15th, that
24 would give more time than Plaintiffs are asking for to be
25 ready. And so --

10:01 1 JUDGE GUADERRAMA: One week.

2 MS. PERALES: Yes. And we will proceed now,
3 accordingly, to be ready, understanding that the Court will set
4 a date for us but could call us earlier.

5 I want to reiterate what Mr. Dunn said. All we need
6 is 48 hours' notice to physically get the witnesses here. We
7 will be ready.

8 MR. BLEDSOE: Your Honor, I just wanted to comment on
9 the trial deposition issue, since Dr. Murray was mentioned. I
10 will admit that that did not go well, but I think that the good
11 thing about it is, we saw how that went. And I think there are
12 various contours, constraints, that can be put out there that
13 would make that an effective tool where it could still be
14 utilized in the proceedings.

15 I would ask you still consider that as an option,
16 because we probably would even request that again for
17 Dr. Murray because of his age and infirmity.

18 JUDGE GUADERRAMA: How old is Dr. Murray?

19 MR. BLEDSOE: 83?

20 JUDGE GUADERRAMA: All right. Mr. Kercher, we -- can
21 you be ready on 48 hours' notice?

22 MR. KERCHER: Likely not. Certainly not -- I
23 certainly can't commit to being ready on 48 hours' notice at
24 this juncture. As I say -- and not disparaging the Plaintiffs'
25 work here, but we got the latest amended complaint last night.

10:03 1 I have not read Dr. Murray's expert report. I'm not
2 sure we've even sent it to our experts yet.

3 On the 15th, Dr. Trende, that would present a
4 challenge for us because of Dr. Trende's competing deposition.
5 I understand that that may not be dispositive, but it should be
6 a factor. Additionally, he will be unavailable, I believe it's
7 on September the 22nd for a hearing concerning his son that is
8 an immovable date.

9 I understand we all have to figure out our witness
10 schedules, and that may be more my problem. But as the Court
11 is weighing how best to do this I'm saying that, while I
12 appreciate that the Plaintiffs are making themselves available
13 at the earliest possible moment, being the responsive party,
14 and being the responsive party to four motions, is a
15 fundamentally different position.

16 And so, to the degree that we can have a date certain
17 towards which we are working, that -- there is a sort of a
18 reliance there, right? I mean, are we gonna have two separate
19 dates on which we will disclose witnesses? Two separate dates
20 on which we'll disclose exhibits? Or are we all just gonna
21 front load that?

22 So it seems to me it makes the most sense -- and it
23 does not seem like a material delay, particularly talking about
24 some of the delays that happened in the September session -- to
25 move from September to October. That would provide certainty

10:04 1 for all parties. That would give Plaintiffs the opportunity to
2 reply to the expert reports that -- to the responses from my
3 experts. And it would be clear, free and clear, I believe, in
4 everyone's schedules.

5 JUDGE GUADERRAMA: So when is Dr. Trende's deposition,
6 and how long is that gonna take?

7 MR. KERCHER: It is -- it is on the 17th. My
8 understanding is that it is set for a full day. And it is in
9 Mississippi. As Dr. Trende learned last time he had to testify
10 here, it is not always easy to get to El Paso from places
11 outside the state, and so getting here can be something of a
12 challenge.

13 JUDGE GUADERRAMA: So -- and I'm just talking for
14 myself -- if we started on the 15th, working five days with the
15 Plaintiffs, that would cover the Trende deposition, give him
16 time to give the deposition, get to El Paso, to be here on the
17 22nd?

18 MR. KERCHER: The 22nd is the -- Dr. Trende's oldest
19 son is autistic and has turned 18, and I believe it is the 22nd
20 when there is a hearing where Dr. Trende and his wife will
21 become legal guardians. And so -- and I can get back to the
22 Court with a firm date. I'm almost certain it is
23 September 22nd. That is the date of that hearing, which, for
24 obvious reasons, is a non-starter.

25 JUDGE GUADERRAMA: So you're gonna have more than one

10:05 1 witness?

2 MR. KERCHER: Probably.

3 JUDGE GUADERRAMA: Okay. So we could move Dr. Trende
4 to the 23rd. I'm --

5 MR. KERCHER: I understand.

6 JUDGE GUADERRAMA: This is not a decision being made.

7 MR. KERCHER: I understand, yeah. We're just trying
8 to figure out what the flexibilities are. I appreciate that,
9 and I don't want to be the only guy who's standing up
10 Plaintiffs' case if there's a good reason to go forward on the
11 15th, but there are challenges to doing that.

12 JUDGE SMITH: I'm gonna short circuit this again. The
13 week of the 22nd is out. That's Fifth Circuit *en banc* week,
14 and that entire week is blocked out and unavailable. That's
15 just a matter of public record. That's when we have our *en*
16 *banc* court.

17 MR. DUNN: I think I've said what I needed to about
18 scheduling. I just wanted to clarify, because it might not
19 have been clear, we are proposing five days. If for some
20 reason September 15th could work, it sounds like Dr. Trende
21 could get here that Friday to testify, his deposition's on
22 Wednesday, his hearing's on Monday -- I don't know; perhaps I
23 have that wrong. But, you know, we were gonna make this happen
24 in one week so it didn't have to roll into several.

25 I'm sorry?

10:07 1 Five days for the whole case, leaving the State time.
2 (Sotto voce discussion off the record.)

3 JUDGE GUADARRAMA: Okay. So that brings us back to
4 the trial we had, and that opinion, and the findings of fact
5 and conclusions of law.

6 So if we, the Court, are thinking that Congressional
7 Maps are not something we ought to be dealing with in that
8 opinion, because it's likely there's gonna be a bill passed
9 that covers that, it leaves us with all the State claims. Half
10 of those claims are VRA claims, which we're thinking the
11 Supreme Court is thinking about -- something about that.

12 So if -- and I'm just speaking for myself; I'm not
13 speaking for anybody else. If we were to consider that those
14 things are in such flux that we don't want to touch them, that
15 would leave us just the constitutional claims for the state
16 maps.

17 Is that what we want to do, or -- I mean, because
18 it's -- if we're gonna do the Preliminary Injunction Hearing
19 and then worry about kicking out an opinion on that quickly,
20 that's gonna push that back far enough that, unless we move the
21 election dates, *Purcell* is gonna say is too late.

22 What do we do about all that?

23 MS. PERALES: We understand that it is what it is. We
24 do -- we would not want -- I have so many things in my mind at
25 the same time. I apologize.

10:08 1 First, Your Honor, as I believe we mentioned in our
2 filing, Section 2 cases are important enough, particularly when
3 they involve states, that they go frequently to the U.S.
4 Supreme Court. And we don't believe that the pendency of a
5 Section 2 case in the U.S. Supreme Court, or the possible
6 pendency in the case of *Turtle Mountain*, is enough reason to
7 defer ruling in a Section 2 case.

8 And we just had a decision from a three-judge panel,
9 the Fifth Circuit, reiterating the standards under Section 2,
10 as articulated in *Milligan*. We have -- and the mandate has
11 been stayed by the request of a single judge in the Fifth
12 Circuit. But the law is clear, and we believe that we are
13 entitled to a judgment in our favor on the merits because of
14 that.

15 However, that said, practicalities are that the Court
16 has suspended the deadline for the submission of findings of
17 fact and conclusions of law. It's the State's position that if
18 that deadline were to be restored, it would have to be pushed
19 forward because of the time that sort of pens were down.

20 If the Court cannot do both of these things, cannot do
21 a Preliminary Injunction and reach a decision on the merits --
22 and of course, there would have to be time for the parties to
23 submit proposed findings -- then it just seems that the
24 practicalities of the situation are that the Congressional Map
25 just passed, not yet signed, has essentially displaced the

10:10 1 ability to reach -- to conclude findings of fact and
2 conclusions of law on the State legislative claims. It pains
3 me to say that. We were hoping for a merits decision after the
4 trial, but I believe we are where we are.

5 JUDGE GUADERRAMA: Thank you.

6 MR. KERCHER: I don't know that I have anything to add
7 other than what we put in our response. The PI is going to be
8 a very heavy lift from my office doing for my team, doing the
9 PI and doing the conclusions of law and findings of fact
10 simultaneously. It would be, I want to say, unduly burdensome.

11 I am, for the record, about to lose my red right hand,
12 who has accepted a position as Principal Deputy Solicitor
13 General of Missouri. So I'm gonna be doing this with one arm
14 tied behind my back, as anybody who knows how much I rely on
15 Ms. Hunker can attest.

16 That is not dispositive of the Court's schedule. I
17 tend to think that, with *Callais* having been held over *the*
18 *Turtle Mountain* ban, looking like it is going to get certified,
19 we'll see, look, it looks like the new map is going to get
20 passed, too. I think the Supreme Court's going to have an
21 awful lot of these issues, to think of the VRA Section 2
22 issues, to think about -- and I think it's unlikely that even
23 if this Court makes a ruling, goes up to the Supreme Court,
24 that the Supreme Court is going to rule on a Section 2 decision
25 by this panel before it rules on *Callais* or *Turtle Mountain*.

10:12 1 And I think that that, just as a matter of
2 practicality, should probably guide how we approach the
3 findings of fact and conclusions of law. I tend to agree with
4 the Court's comments that if we are going to prioritize the
5 PI -- and that's what I'm hearing from the other side, I don't
6 want to put words in their mouth -- then that means that
7 *Purcell* effectively forecloses this Court getting an opinion
8 out on the State claims, the state maps, prior to the *Purcell*
9 deadline.

10 If that's true, then it seems like the Preliminary
11 Injunction is what has -- is what has the most opportunity to
12 get Plaintiffs some relief. And so that's probably where the
13 resources, by both parties, should be focused.

14 MR. DUNN: Well, I'm not gonna presume to tell the
15 Court what it's able to get done by when. I already sort of
16 made that mistake.

17 But what I will say is, if the Court's ruling on the
18 constitutional claims as it relates to the 2025, it seems like
19 it could rule on the constitutional claims at least with
20 respect to the House and Senate claims.

21 I'm thinking others probably have different -- but I'm
22 thinking the SD10 claim, because the analysis in a lot of
23 the -- however the Court decides to resolve certain legal
24 issues, I think, are gonna overlap on some of those things. So
25 that might be middle ground.

10:13 1 JUDGE BROWN: And as far as -- as far as our order
2 suspending the deadline on findings and conclusions goes, and
3 us getting a merits ruling out on -- from that trial that we
4 had in May and June, there's three of us up here. We all have
5 different concerns. I will tell you that the -- that the
6 law -- the law on the Voting Rights Act being in flux is less
7 of a concern to me than just our ability to get a ruling out.

8 The -- my opinion in *Pettaway* was 150 pages, and that
9 concerned one Commissioners Court precinct. And the 2012
10 decision, about the 2011 -- the 2011 redistricting, I think
11 Judge Smith said, was 400 pages.

12 And frankly, when we went into this trial earlier this
13 year, I had serious doubts as to whether we could get to any
14 relief that could be -- to any relief for the 2026 election.
15 Even back then I thought that.

16 So really, the timing of it all, *Purcell*, our ability
17 to get -- and all of that has been complicated now by the fact
18 that we've all -- we all have to turn our attention to this
19 Preliminary Injunction Motion, which I think the Plaintiffs are
20 absolutely correct to seek.

21 So just, that's just my thinking on it, is all I'm
22 sharing with you.

23 MR. McCAFFITY: Just because you did it, to add some
24 levity on this situation, you guys just need to work harder.

25 MR. DUNN: He said that.

10:15 1 JUDGE BROWN: He was not speaking for all counsel.

2 JUDGE GUADERRAMA: So Mr. Kercher, have you filed a
3 response to the Motion for Preliminary Injunction?

4 MR. KERCHER: We have not, Your Honor.

5 JUDGE GUADERRAMA: No? All right.

6 JUDGE SMITH: Has the motion actually been filed for
7 Preliminary Injunction?

8 MR. KERCHER: Yes. Yes. The question caused me a
9 moment of self-doubt, but yes, there are now, I believe, four
10 motions for Preliminary Injunction. I believe the Brooks
11 Plaintiffs, the LULAC Plaintiffs, and the MALC Plaintiffs
12 consolidated their motion, and it's a doozy. We have one from
13 the Intervenors, we have one from NAACP, and we have one from
14 Gonzales.

15 MR. FOX: David Fox.

16 Two of those are pending rulings on Motions to Enlarge
17 the Page Limit. The consolidated one and the Gonzales one are
18 both longer than the 20-page limit.

19 MS. PERALES: I would simply add, Your Honor, that I
20 believe Mr. Kercher is correct in observing that there's a
21 unique claim that is being brought forward by Gonzales
22 Plaintiffs. But the remainder of that sentence is that the
23 four pending PI motions are very clearly focused on the same
24 issues, the same districts, the same legal arguments.

25 So it does streamline -- four sounds like a lot, but

10:17 1 it is a streamlined presentation.

2 Thank you.

3 JUDGE SMITH: And those are two -- I just want to be
4 sure I understand. Those motions are motions to enjoin
5 implementation of what the legislature just passed and is
6 awaiting the Governor's signature. Is that right?

7 MS. PERALES: Yes, Your Honor.

8 JUDGE GUADERRAMA: Which affects all but one of the
9 Congressional Districts in the state, as I understand it. Is
10 that -- it makes changes to every district except one, except
11 the 19th?

12 MS. PERALES: My understanding was it affects 34 out
13 of 38 districts? But I --

14 MR. DUNN: I'm thinking just the 19th.

15 MR. GABER: 19th is the only one that has zero
16 changes.

17 MS. PERALES: I see.

18 There was one district, Congressional 19, that has
19 zero changes.

20 But in terms of adjudicating the Preliminary
21 Injunction Motion, the arguments are much more focused with
22 respect to the districts that are being challenged.

23 But yes, Your Honor, to answer your question, the
24 Congressional Map that has been passed by the Legislature and
25 is awaiting the Governor's signature is a substantial redraw

10:18 1 of -- because of the ripple effect and the zero population
2 deviation permitted for Congressional redistricting. It does
3 have an effect on all but one.

4 JUDGE SMITH: Okay. And again, I'm not trying to bog
5 things down, but just trying to be sure I understand and
6 clarify. I thought I remembered something that the State has
7 filed recently indicating that they have not been sufficiently
8 informed of which of the districts are being challenged as
9 violations of either the constitution or Section 2.

10 Is that -- is that still a matter of controversy or is
11 that what you're gonna cover in your response, or what?

12 MR. KERCHER: It is -- that time has overtaken those
13 events since we filed that response to the motion that gave
14 rise to this hearing. We have now, I believe, received amended
15 or supplemental complaints from all of Plaintiffs' groups and
16 Preliminary Injunction Motions and accompanying exhibits that
17 identify the districts that they are now challenging.

18 JUDGE SMITH: Okay. Thank you for that clarification.

19 MR. GABER: Can I just add for the -- for Gonzales and
20 Brooks and LULAC and MALC, the PI motions are attached as
21 exhibits to the Motion to Enlarge the Page Limit. So if you
22 haven't seen it, that's where we are.

23 JUDGE SMITH: Right. Okay.

24 JUDGE GUADERRAMA: So you-all remember from our last
25 trial what our electronic capabilities are. Are there any

10:19 1 technological or logistical things that we need to focus on?

2 MR. DUNN: It would be fantastic if there would be an
3 HDMI connection on each table and one at the podium that works.
4 And that will get rid of at least 90 percent of what we went
5 through.

6 JUDGE SMITH: Would it be possible for us -- that's a
7 technical matter, and our tech people aren't here. Would it be
8 possible for you or both sides just to put that specific
9 request in writing in terms of the technical needs that you
10 think you need? I don't mean as a pleading filed in the case,
11 but just some way that we could then give that to the local
12 tech people and see if they could --

13 JUDGE GUADERRAMA: You could email us and tell us what
14 those are. Specificity. I know -- I guess Stephen -- let's
15 see. Stephen was -- Stephen was your guy? There he is. And
16 Brian was the State's guy. Maybe you can get together and send
17 us an email and tell us, you know, what we could do to improve,
18 and we could give it to our IT people and see if they can do
19 that. And as soon as possible, because IT takes, you know --

20 JUDGE BROWN: A specific wish list.

21 JUDGE GUADERRAMA: -- they work less hard than we do.

22 All right. So any other issues that we should be
23 addressing that we haven't touched upon?

24 MS. PERALES: Just a very quick question, Your Honor.
25 Asking on behalf of some other folks who are interested in

10:21 1 being helpful here, would the Court feel that it has sufficient
2 time to consider amicus briefs if they were filed before the
3 start of the Preliminary Injunction Hearing? If there's an
4 earlier date that the Court would want any amicus briefs, we
5 can convey that.

6 THE COURT: Well, let's see. If that were to happen,
7 it should be as soon as possible.

8 MS. PERALES: Thank you, Your Honor.

9 JUDGE GUADERRAMA: I mean, I think we're all trying
10 hard to get this done, but we have -- I mean, there's a lot of
11 things going on, too.

12 MS. PERALES: Thank you, Your Honor.

13 MR. BLEDSOE: And Your Honor, just one slight
14 clarification for one thing Mr. Kercher said in reference to
15 the invitation to the different Plaintiff parties and other
16 groups to present testimony to the legislature where he
17 indicated no one showed up on that particular day.

18 I think the request was sent out Monday, late
19 afternoon, for a Wednesday morning show. A number of groups, I
20 think, did submit written testimony, and I think I know the
21 NAACP did respond the second -- the day after the invited
22 testimony. There was actually a public hearing and NAACP
23 showed up and was extensively involved, entertained many
24 questions from the panel, and provided written testimony.

25 So there was participation from the groups. A lot of

10:23 1 it was the logistics and the late notice.

2 JUDGE GUADERRAMA: All right. Thank you, Mr. Bledsoe.

3 So anything else that we need to take up? We're going
4 to take a short break here, talk about some things, then we'll
5 come back out. If you have any other issues --

6 MR. DUNN: I don't think anything else from the
7 Plaintiffs.

8 THE COURT: Okay. Let me see. Hold on.

9 So Mr. Dunn, I'll just ask you, how far out do you
10 think the *Purcell* principle, you know, moves us to the next
11 election cycle if we don't push back the deadlines?

12 MR. DUNN: Well, as somebody who teaches it and have
13 read every one of the cases that talk about *Purcell* for the
14 Supreme Court, there isn't a hard and fast -- there are times
15 when the Supreme Court has said, "This isn't a *Purcell*
16 problem," then other times at that same time in the election it
17 was a *Purcell* problem. So I'm not sure there's a clear
18 boundary line here.

19 But again, I think that if the election -- if the
20 election, primary election for Congressional seats, is not
21 going to move past March, then the filing deadline of December
22 the 8th can be moved some period of time, around ten or 14 days
23 later than it is now, without the March election changing.

24 So I don't know if that answers Your Honor's question.

25 JUDGE GUADERRAMA: Well, what was the latest ruling on

10:24 1 *Purcell*? Was it the Alabama case?

2 MR. DUNN: No, I don't think it was the Alabama case.
3 I think it was a 2020 case out of Michigan or Wisconsin. And
4 what had happened is that the circuit had enjoined some mail-in
5 ballot procedures. And at that point the mail-in ballot
6 procedures had been advertised. Voters had been told they
7 could turn in their ballots about three days after election day
8 as a result of the trial court and ultimate circuit injunction,
9 and that condition had been in place seven or ten days.

10 And so it went to the Supreme Court. The people that
11 had obtained the injunction argued that *Purcell* now applied,
12 the electorate is operating under this. And the Supreme Court
13 disagreed and went back to the prior, prior status quo,
14 regardless of the *Purcell* principle.

15 That's the last case I remember, but... Yeah.

16 JUDGE GUADERAMA: Well, Judge Kavanaugh had a
17 concurring opinion case out of Alabama. Wasn't that decided
18 three years ago, or...

19 MR. DUNN: That's true, about *Purcell*. But in that
20 case they left the injunction in place. Yes. I don't recall.
21 Perhaps Judge Kavanaugh -- Justice Kavanaugh said something to
22 the effect of, "Since the injunction's in place it's too late
23 to change now." I recall that generally, but I don't recall
24 enough what it is.

25 THE COURT: I just seem to remember there's a

10:26 1 six-month window, six months out.

2 MR. DUNN: I'm sorry; I can't help you with that one,
3 Your Honor.

4 THE COURT: Okay. Thank you.

5 MR. DUNN: Mr. Gaber can.

6 MR. GABER: So that was Justice Cavanaugh's
7 concurrence in the stay decision in the -- I think it was
8 *Maryland versus Milligan* at that time. And that occurred in, I
9 want to say, February. And the actual primary election was
10 being held in March.

11 And so we are in the posture here where it's the
12 candidate-filing deadline that we're trying -- I think we're
13 trying to get this so that we're not -- if the Court rules in
14 the period before this candidate-filing deadline, we're --
15 *Purcell*'s just not even an issue, because nothing could
16 possibly start with respect to *Purcell* concerns, really, until
17 the end of the filing deadline.

18 And so, you know, we were trying to get this done so
19 that *Purcell* is not even something you have to consider, and
20 so -- and so that *Purcell* would be something the Supreme Court
21 would not have to consider.

22 And so that's the difference between the timing of the
23 *Milligan* case and this one.

24 JUDGE GUADERRAMA: All right. Thank you.

25 MR. GABER: And another -- the case I had, the

10:27 1 Wisconsin State Legislative Maps case from 2022, the
2 Supreme Court actually reversed the Wisconsin Supreme Court's
3 injunction in, I think, April. And there was a May deadline
4 that the State had said it needed the maps in place. And there
5 needed to be another proceeding in the Wisconsin Supreme Court
6 after that April ruling by the Supreme Court.

7 So to Mr. Dunn's point, it's a moving target, but it's
8 not six months. It is well -- you know, a much shorter period
9 than that, and we are not anywhere near that zone right now.

10 JUDGE GUADERRAMA: Thank you.

11 JUDGE BROWN: I'll note that in my *Pettaway* case,
12 again, got my ruling out on October 13th, I believe. Almost
13 immediately stayed by the Fifth Circuit. The stay got lifted
14 within -- the stay got lifted in November. Very short window.
15 I didn't know it was going to be a short window, and I issued
16 my order and just got lambasted, saying it's within two weeks
17 of the end of the filing. It was before the filing deadline
18 had come. But that's the -- that was the Fifth Circuit, not
19 the Supreme Court, so...

20 MS. PERALES: I would like to add only that I was
21 counsel in *Purcell*, and what was at issue at that time was
22 voter ID requirements. And so the only thing I would add is
23 that, not only is it a moving target, but it does turn, I
24 think, heavily on whether information has gone to voters
25 already. For example, in a voter ID case, voters have been

10:29 1 told, "This is what you need to show to prove your identity at
2 the polls," right? And the Court's concern has always been,
3 you know, sort of whiplash for the voters.

4 In this type of case, even filing -- candidate-filing
5 deadlines, that is something that affects more of the
6 candidates who are -- or potential candidates who are closely
7 following these matters, and I don't think raises the same
8 issues of voters hearing sort of two different things, you
9 know. Because this isn't a voter ID case there isn't that
10 possibility of voter confusion until perhaps ballots start
11 going out.

12 JUDGE GUADERRAMA: Thank you.

13 MR. FOX: Your Honor, David Fox.

14 Just one more point on that. Somewhat uniquely among
15 redistricting cases, this is a situation where we are trying to
16 restore the status quo. And we're trying to avoid a change in
17 the maps rather than impose a change in the maps. There's no
18 need in our view for a complicated remedial process if we
19 prevail. And I think that that does reduce, substantially, any
20 *Purcell* issue. It's certainly probably easier for election
21 administrators if we win than if we don't, because they don't
22 need to implement new maps.

23 So I just think the Court -- and I think other courts
24 would take into account that as well, in analyzing the *Purcell*
25 issue.

10:30 1 Thank you.

2 JUDGE GUADERRAMA: Mr. Kercher?

3 MR. KERCHER: Feels like undergrad again, me against
4 the faculty.

5 My understanding of *Purcell* and its progeny is that
6 what really matters is the change and the effect of change.
7 And there is something about a reliance interest that is at
8 issue here.

9 I think that the candidate-filing deadline impacts
10 voters directly because that is when candidates need to decide
11 whether they will run, where they will run, for what they will
12 run.

13 So, for example, one of the Plaintiffs, one of the
14 Intervenor Plaintiffs, is Congresswoman Jasmine Crockett, who
15 testified at trial. Her district has changed dramatically, as
16 I understand it, and there are questions about whether she will
17 run for a new district, her old district, or whether she will
18 run for State office.

19 Those things will begin to solidify when that
20 candidate-filing deadline opens. And that happens, I believe,
21 on November the 8th.

22 It's also important, if we are thinking about the
23 change and the effect on voters -- again, this has obviously
24 been a big deal in the media; lots of people that don't
25 necessarily follow election law, like the folks in this room,

10:31 1 have seen stuff on the news about changes in Texas maps. And
2 the sooner that voters know what changes will be in place the
3 less confusion there will be.

4 So on that piece, I think, we probably agree with the
5 Plaintiffs inasmuch as there is a need to get some clarity on
6 what will happen in this election, which is why we are trying
7 to be flexible as the State in moving towards an Injunction
8 Hearing that would allow this Court to get its order out.

9 But I also think that that moves that *Purcell* deadline
10 earlier. Mr. Dunn suggests that we could move the
11 candidate-filing deadline -- I disagree that it would make
12 sense to move the closing of that deadline rather than moving
13 the opening of the deadline, because if you just move the
14 closing, then you may have somebody file for District 33 that,
15 by the end of the candidate-filing deadline, doesn't exist
16 anymore.

17 I would need to talk with my client, the Secretary of
18 State, about the practical ramifications of moving that
19 deadline. I candidly don't know. If the Court feels that
20 would be helpful I'm happy to make that inquiry and come back
21 to you, but I don't know what the practical ramifications of
22 moving that window would be.

23 JUDGE GUADERRAMA: All right. So we'll take a short
24 break, and we'll come back and --

25 Oh, I'm sorry, Mr. Bledsoe.

10:33 1 MR. BLEDSOE: Congresswoman Crockett testified that
2 she wants to keep the old Congressional District 30 together,
3 that these contemplations that are occurring in social media
4 are simply because of what occurred at the legislature, and
5 there are facts that have been thrust upon her.

6 And in reference to the time period on the back end
7 versus the front end, one of the things I know that they talked
8 about before -- and that was one of the defenses in the case we
9 just finished trying -- was that they wanted candidates to know
10 when they -- by the deadline where they would be able to file
11 or whether they wanted to run for a particular district because
12 of what it would look like.

13 And that's the problem, of course, with the 18th
14 Congressional District, because everybody's filing in the 18th
15 Congressional District, and now it's going to be, basically,
16 the 29th Congressional District. So that's a problem. So I
17 think "before" should be emphasized.

18 JUDGE GUADERRAMA: Thank you, Mr. Bledsoe.

19 So, I don't know, Mr. Fox, if you -- looks like
20 you were standing up. So just for me, if we -- would the
21 Plaintiffs be prejudiced if we heard five days of testimony one
22 week, and then came back to hear the State's three days of
23 testimony a week or two later? Would that prejudice you
24 somehow?

25 MR. DUNN: Well, we don't think we need that much

10:34 1 time, but we also don't think -- I mean, that would not
2 prejudice us other than the fact that, given the Court's
3 schedule reality, you know, following up on days may push it
4 into October and, you know, that, of course, delays when the
5 Court gets the evidence to make a ruling, but...

6 JUDGE GUADERRAMA: No, I'm just, in order to move
7 up --

8 MR. DUNN: Right.

9 JUDGE GUADERRAMA: -- the hearing of the case, we --
10 in my mind, maybe we could do part of it earlier. And then
11 there's reasons why we can't continue and then come back when
12 we can and finish up with the State. We'd be ahead of the
13 game. We'd be five days ahead of the game.

14 MR. DUNN: I 100 percent agree. I mean, it's better
15 than starting on October 1st and finishing eight, nine days
16 later. Instead, we resume October 1st and maybe be done by the
17 3rd or the 4th.

18 MR. KERCHER: It's not my favorite because of the work
19 that we need to do in order to get ready for it, but we will
20 obviously abide by whatever schedule the Court puts in place,
21 and the State will announce ready on the date that the Court
22 instructs us to.

23 THE COURT: Okay. Let's take, let's say, a 15-minute
24 break, and be back at 10:50.

25 (Recess.)

11:20 1 JUDGE GUADERRAMA: All right. So we had some serious
2 and deep discussions about how quickly we could get this set.
3 And we hear the cries of the Plaintiffs for the need to get
4 this done sooner than later. We gave it very serious
5 consideration, all the different options.

6 But the soonest date that works out for all three of
7 us and pending matters is October 1st. So we'll schedule the
8 trial October 1st, 9:00. We'll work 9:00 to 6:00 like we did
9 before. We'll go through October 10th during the weekdays, and
10 if we need a Saturday, the one in between the two weeks, the
11 one at the tail end of the two weeks, we can add a Saturday to
12 accommodate the witnesses.

13 We're asking that once we get started, that we don't
14 have any opening statements. You just call your first witness.
15 And we'll just go like we did during the trial, one right after
16 the other. Make sure they're here so that we don't have any
17 gaps in the time period.

18 So if there are going to be amicus briefs filed, we're
19 going to order that those be filed by September 17th. Motion
20 for Leave to file with the amicus attached to the Motion for
21 Leave, and that that amicus not exceed 20 pages.

22 And we will have an order out shortly on the Motion
23 for Leave to file the amended complaints and Motion to Exceed
24 the Page Limits. We'll get that out soon.

25 We're gonna ask the parties to confer and then come up

11:22 1 with a schedule on the deadlines for the witness lists, for the
2 exhibit lists, and, you know, any expert report deadlines back
3 and forth. So if you can have all of that worked out and in
4 agreement, filed with the Court.

5 And then finally, Mr. Kercher, before the four PI
6 motions filed -- I'm not sure that the deadlines to respond may
7 be different, you want to do a consolidated response. So what
8 was your thinking on how that would work? What deadline would
9 that be, or how would we make that happen?

10 MR. KERCHER: My initial thought is three weeks, but
11 having conferred with Plaintiffs on that, we'll work -- just
12 figure this out now, but three weeks hence.

13 JUDGE GUADERRAMA: All right. Plaintiffs have any
14 grave concern with that?

15 MR. KERCHER: That would be the 17th?

16 JUDGE GUADERRAMA: And maybe you-all can then talk
17 about it once we recess and then come up with an agreement on
18 when that would be.

19 MR. KERCHER: Happy to do that.

20 JUDGE GUADERRAMA: Also --

21 MR. DUNN: That would put our reply to this right on
22 the deadline of the trial starting. And we're not trying to
23 jam anybody, but we had two days to file the motions that
24 they're responding to, so perhaps two weeks?

25 JUDGE GUADARRAMA: Well, hopefully you-all can work

11:23 1 that out between you and --

2 MR. KERCHER: We'll confer, Your Honor.

3 MR. DUNN: All right.

4 JUDGE GUADARRAMA: So the other thing is the Motion to
5 Dismiss Deadline that you -- I guess you suggested you might be
6 filing that in relation to the Gonzales complaint, the new
7 cause?

8 MR. KERCHER: That's correct, Your Honor. And that
9 will be quite brief. I mean, that's not going to be a
10 20-pager; that's just going to be on the one novel claim. And
11 I think Mr. Fox and I are in agreement that that's strict on
12 the law and probably shouldn't affect the PI. So I would think
13 that filed on Saturday -- yeah, we just have ten days from that
14 Saturday. That's already well under way.

15 JUDGE GUADERRAMA: So you'll get that in ten days.

16 JUDGE BROWN: Just so you-all know, we talked about
17 this, too. Especially in light of the fact that we're not
18 getting to this as soon as the Plaintiffs want us to get to it,
19 we are going to be -- we're not making any commitment, but we
20 are -- we want to let you-all know now that we're gonna be open
21 to moving the filing period, or moving the deadline back, if we
22 need to. We're -- you know, I think we're all three very
23 reluctant to mess with election dates, but we're gonna be open
24 to any request to move that, as Mr. Dunn suggested.

25 And we also think that, even though we're not getting

11:25 1 to it as fast as the Plaintiffs would like us to, I think this
2 schedule still gives us plenty of time to get a ruling out to
3 you-all timely enough for -- if you need any -- if either side
4 needs any more relief after that, there should be time to get
5 it. It'll be short fused, but I think there will still be
6 time.

7 JUDGE GUADERRAMA: Anything else before we close?

8 MR. DUNN: Nothing from the Brooks Plaintiffs,
9 Your Honor.

10 MS. PERALES: Nothing further, Your Honor.

11 MR. BLEDSOE: We have a Section 2 issue that we've
12 raised and amended. We won't be pursuing it.

13 JUDGE GUADERRAMA: You will not be pursuing it?

14 MR. BLEDSOE: Will not be pursuing it in the PI
15 motion.

16 THE COURT: All right.

17 JUDGE BROWN: In the injunction? Is that what you
18 mean? The injunction is just going to be constitutional
19 claims?

20 MR. BLEDSOE: Right, just constitutional claims.

21 JUDGE BROWN: A lot of heads nodding over there.

22 MR. KERCHER: Nothing further from State Defendants.
23 Thank you, Your Honors, for making this happen so quickly.

24 JUDGE GUADERRAMA: Thank you-all. See you soon.

25 (Proceedings concluded.)

* * * * *

C E R T I F I C A T E

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/Leticia Perez Date: August 30, 2025
Leticia Perez

Leticia D. Perez
525 Magoffin Avenue
El Paso, Texas 79901