

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, :
 :
 Plaintiff, :
 vs. : Docket No. CA 11-1303
 :
 UNITED STATES OF AMERICA and : Washington, D.C.
 ERIC H. HOLDER, in his official : Tuesday, January 17, 2012
 capacity as Attorney General of : 8:00 a.m.
 the United States : Day One
 :
 Defendants, and :
 :
 Wendy Davis, et al., :
 :
 Intervenor-Defendants :
 -----x

A.M. SESSION
TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE THOMAS B. GRIFFITH
UNITED STATES CIRCUIT JUDGE and
HONORABLES ROSEMARY M. COLLYER and BERYL A. HOWELL
UNITED STATES DISTRICT JUDGES

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Proceedings recorded by machine shorthand, transcript produced
by computer-aided transcription.

1 JUDGE GRIFFITH: Good morning.

2 Good morning, welcome, glad that we're all finally here
3 together and that I can be part of this.

4 I'm Judge Griffith. By statute I'm the Presiding Judge
5 of the Three Judge District Court. I am exercising my
6 authority as the Presiding Judge to delegate the running of
7 this event to Judge Collyer and we'll turn the time over to
8 her. Glad to do so.

9 JUDGE COLLYER: Thank you, sir.

10 JUDGE GRIFFITH: We're going to switch seats because
11 the microphone here is better for her voice.

12 JUDGE COLLYER: Thank you, sir.

13 I have half, I have half a paralyzed larynx, and so
14 therefore, I don't speak as loudly or as well as I use to. I
15 use to scare people, but I don't do it as well anymore.

16 The only thing, we started at eight and the clock starts
17 at 8:15 in case there are last minute things.

18 The only thing that I know of is the Court's ruling;
19 that is, the three of us on the motion to exclude the defense
20 expert witnesses.

21 Is there anything else that needs to be raised before we
22 start the evidence?

23 MR. MORTARA: From the State of Texas, no, Your
24 Honor.

25 JUDGE COLLYER: All right.

1 MR. MELLETT: Your Honor, Tim Mellett for the United
2 States. There are a couple of points that I'd wish to make.

3 The United States and Defendant Intervenors will be
4 moving in exhibits in batches as opposed to individually.
5 We're going to make sure that we confer with the State so as to
6 economize on time.

7 The other thing that we wanted to make the Court aware
8 of is because of the tight time strictures that we have here,
9 you know, the eleven and a half hours with witnesses for time,
10 what we are planning on doing is that we are going to be
11 letting people know via time cards and stuff. I wanted to let
12 the Court know that what that means occasionally is we will be
13 handing somebody a card up here, putting it up here. I just
14 wanted to let the Court to know and we will try to be as
15 inobtrusive as possible.

16 JUDGE COLLYER: That's fine.

17 I will say that I will be keeping track of the time and
18 there are no appeals.

19 MR. MELLETT: Thank you, Your Honor.

20 JUDGE COLLYER: You're welcome.

21 Anything else?

22 MR. MORTARA: Your Honor --

23 JUDGE COLLYER: Could you come forward and introduce
24 yourself?

25 MR. MORTARA: Your Honor, Adam Mortara for the State

1 of Texas.

2 We have a few hands ups, folders with some slip sheets
3 for Your Honors that are some helpful laments that will
4 illustrate some of the key points in the case. We'll give them
5 to the other side. They are just listings of the incumbents in
6 various districts. It can get quite confusing every time a
7 member gets mentioned.

8 We saw in the Section 2 trial one of the judges would
9 ask what party is that member in. So we created some lament
10 guides.

11 May we hand those up?

12 JUDGE COLLYER: Yes, thank you.

13 All right, let me tell you what the Court's ruling is on
14 the motion to exclude expert witnesses for the defense.

15 I'm, I don't usually do this, but since there are three
16 of us who are agreeing, I'm going to actually read what we
17 three have agreed to. Isn't that handy.

18 Texas asked the Court to exclude the testimony of
19 defendants' experts Dr. Theodore Arrington, Dr. Alan Lichtman,
20 Dr. Henry Flores and Professor J. Morgan Kousser for two
21 reasons.

22 First, Texas argues that it is not proper for an expert
23 witness to present an opinion on whether Texas enacted
24 redistricting plans with discriminatory intent because this is
25 an issue for the fact finder to determine.

1 And second, Texas contends these individuals are not
2 state of mind experts and offer little more than a summary of
3 defendants' evidence.

4 The motion will be granted only in part because it
5 reflects a stingy reading of the Federal Rules of Evidence and
6 the testimony of these experts intend to offer.

7 Federal Rule of Evidence 702 governs the admissibility
8 of expert testimony. An expert is allowed to offer his opinion
9 if he is qualified by an, as an expert by knowledge, skill,
10 experience, training or education under Rule 702, and if his
11 testimony is relevant and reliable pursuant to Kumho Tire
12 versus Carmichael 526 U.S. 137.

13 The presumption under the federal rules is that expert
14 testimony is admissible. Citing Daubert v. Merrell Dow
15 Pharmaceutical 509 U.S. 579. Expert testimony is relevant if
16 it will assist the trier of fact to understand the evidence or
17 determine a fact in issue. That's also Daubert.

18 Contrary to the argument presented by Texas, Rule 704 of
19 the Federal Rules of Evidence expressly provides that an
20 opinion is not objectionable just because it embraces an
21 ultimate issue.

22 District Courts have broad discretion to admit expert
23 testimony citing U.S. v Miller v Bill Harbor International
24 Construction 608 F.3d 871. Such discretion is especially
25 brought here because there is no risk of jury confusion in a

1 bench trial.

2 Texas gives a narrow reading to the expert reports in
3 deposition testimony when it complains defendants' experts
4 merely summarize easy to understand documents such as e-mails
5 under Texas legislative record.

6 In fact, the experts have examined mountains of data on
7 demographics, registration records, voting patterns,
8 alternative redistricting plans and the like with respect to
9 multiple voting districts across the expanse of Texas.

10 To identify facts they believe especially relevant and
11 helpful to the Court's decision here, the e-mails and
12 legislative record constitute but a small part of that data.

13 However, Texas properly complains that experts can
14 rarely, if ever, offer state of mind testimony. For this
15 reason expert testimony will be somewhat limited.

16 Dr. Arrington for instance, will not be allowed to opine
17 on the actual intent of the Texas legislature. In his
18 declaration paragraph three he said but the actual intent of
19 the legislature is to prevent any reflection of the explosive
20 growth of Hispanic population and the relative decline of
21 voting strength of Anglo voters since the 2000 census. Close
22 quote.

23 Actual intent is usually gleaned from direct words of
24 intention expressed by the person or persons quoted reflecting
25 what is in his mind. Here, we're interested in discerning the

1 purpose of the Texas redistricting plans; that is, the
2 reasoning behind them which is somewhat more objective than
3 actual intent.

4 These experts may testify to what they infer or deduce
5 were the reasons behind Texas redistricting from the
6 application of their expertise to a set of facts, actions and
7 consequences. Such testimony will reflect their own opinions
8 as to purpose not the quote actual close quote intention of
9 someone else.

10 Thus, to the extent the experts opine on purpose as
11 evidenced by actions and consequences that are deduced from
12 their analyses, their testimony will offer specialized
13 knowledge to help the trier of fact understand complex evidence
14 as contemplated by Rule 702 A.

15 The Court notes experts do not opine on how the law
16 applies to the facts and they will all be limited accordingly.

17 Dr. Arrington for instance, at paragraph 76 of his
18 declaration said such a justification would be a protection
19 against a claim of intentional discrimination under the
20 Arlington Heights approach to intent. And in paragraph 107
21 such a skewed distribution is not justified on rational grounds
22 as required by the Arlington Heights factors.

23 Texas does not challenge the expertise, credentials or
24 methodology of these experts beyond its two points.

25 This Court is well equipped to appreciate the scope of

1 expert opinion. The testimony of these four experts will be
2 admitted at trial. The Court will make its own findings
3 concerning the purpose of the plans from the record as a whole.

4 Therefore, the motion is granted in part and denied in
5 part.

6 It's ten after. We have a whole five extra minutes.

7 Does anybody have anything to say or do you want to just
8 get going?

9 MR. MORTARA: I have your folders, Your Honor.

10 JUDGE COLLYER: Thank you, sir. You can submit the
11 folders.

12 MR. MORTARA: I have seven copies as with the
13 exhibits.

14 JUDGE COLLYER: Thank you.

15 MS. PERALES: Good morning, Your Honor, Nina Perales
16 for the Latino Task Force Defendant Intervenors.

17 JUDGE COLLYER: Yes.

18 MS. PERALES: We wanted to alert the Court to an
19 agreed motion that we filed yesterday evening regarding expert
20 witnesses and their last supplemental reports.

21 We've spoken to the State, cordially, and discussed some
22 of their more recent disclosures, those made in January and in
23 order to allow our experts to do their final supplemental
24 analysis and reports on the latter disclosed materials, we came
25 to an agreement that the deadline that the State can live with

1 is Friday and that would be for experts other than Dr. Murray.

2 And in addition, the motion alerts the Court to an
3 agreement that because one expert Dr. Engstrom who is a task
4 force expert was unable to do his rebuttal report to Dr. Alford
5 who is testifying for the State, we agreed that Friday would be
6 an acceptable deadline.

7 However, this would mean that the prefiled testimony for
8 those experts would not occur today, but would occur on Friday
9 and so that motion is pending before the Court.

10 JUDGE COLLYER: Thank you very much.

11 I will assume for the purposes of proceeding that the
12 motion is granted and will confer with my colleagues
13 thereafter.

14 MS. PERALES: Thank you, Your Honor.

15 JUDGE COLLYER: Thank you, ma'am.

16 All right, is Texas ready?

17 MR. MORTARA: We are, Your Honor.

18 JUDGE COLLYER: Okey, dokey.

19 MR. MORTARA: May I proceed?

20 JUDGE COLLYER: Yes.

21 OPENING STATEMENT BY MR. MORTARA

22 MR. MORTARA: Good morning Your Honors, I'm Adam
23 Mortara, and I'm privileged today to represent the State of
24 Texas in this matter.

25 Before I get started, I would like to thank the Court

1 for the time to present opening statement today and introduce
2 our trial team. With me are my partners John Hughes and Ashley
3 Keller as well as four lawyers from the Office of Attorney
4 General of Texas; Angela Colmenero, Matthew Frederick, Stacey
5 Napier and visiting periodically will be Reed Clay.

6 There are two issues in this case. Whether or not the
7 proposed maps retrogress under Section 5, that's Texas House,
8 Congress and Texas Senate.

9 And whether or not those maps were enacted with any
10 discriminatory purpose.

11 I will not spend time today discussing the Texas Senate
12 because the Justice Department agrees that Texas is entitled to
13 declaratory judgment of preclearance of those plans and I would
14 like to spend my time on the House and Congress.

15 The standard for retrogression is well known to the
16 Court from its summary judgment opinion. If a plan does not
17 increase the degree of discrimination against a minority voting
18 population it is entitled to preclearance.

19 For example, plans that preserve or increase minority
20 voting strength should be precleared unless they have a
21 discriminatory purpose.

22 This inquiry is statewide and the Justice Department
23 agrees. I'm showing you page 4 of their brief. In this case
24 where the State is requesting preclearance of statewide plans,
25 analysis of retrogression should be conducted on statewide

1 basis. That's from the Justice Department summary judgment
2 brief.

3 The question then is whether on a statewide basis the
4 Texas maps diminish Latino voting power. That voting power is
5 measured by Latino voters' ability to elect their candidates of
6 choice. I want to make a brief aside about candidates of
7 choice.

8 Both sides will occasionally, in fact frequently, in
9 fact, almost all the time slip into the parlance of calling
10 Latino candidates of choice democrats and that's because in
11 virtually all of the elections in fact, all of the elections
12 you're going to hear about during this trial that's true. The
13 Latino candidate of choice was a democrat because Latinos in
14 Texas at least right now vote predominately democrat.

15 That is changing, that is moving. And one exception to
16 the comment I just made is Representative Aaron Pena who
17 represents a district from Hidalgo County in South Texas. He
18 was the Latino candidate of choice five times when he was
19 elected but according to the defendants the day that he
20 switched to the Republican Party he ceased to be the Latino
21 candidate of choice and he wasn't any longer.

22 Also, you'll notice a correlation between the districts
23 that the defendants are complaining about particularly in the
24 Texas House and their occupation by Latino Republican
25 representatives, and these Latino Republican Representatives

1 including Representative Jose Alsada, who is with us today,
2 represent the new efforts of the Republican Party in Texas and
3 continuing efforts to build inroads into the Latino community
4 and in ten years from now if this trial happens again, I don't
5 think we'll talk about all Latino candidates of choice being
6 democrat. But for now I wanted to advise the Court that all of
7 us frequently do that.

8 All parties agree that the starting point of the Section
9 5 inquiry is a demographic analysis. And here I want to
10 clarify something about Texas' summary judgment position versus
11 how the maps were actually drawn by the legislature and the map
12 drawers.

13 In our summary judgment motion we moved as a matter of
14 law that a demographic analysis was sufficient to prove
15 ability to elect under Section 5. Your Honors rejected that
16 position. That is a legal issue we took in litigation.

17 It is not the approach taken by the Texas legislature or
18 the map drawers at the time because the legislatures, the
19 legislature and the map drawers were engaged in a good faith
20 effort to follow the Justice Department's guidance and the
21 previous experience Texas had had with the Justice Department
22 and Section 5.

23 I wanted to draw that distinction because frequently
24 there's been conflation by the parties between Texas'
25 litigation position and what actually occurred when the maps

1 were drawn. And that confusion can continue because when the
2 maps were drawn, the map drawers were very focused on
3 demographics. And one demographic they were very focused on
4 was 50 percent SSVR. There are a lot of acronyms in this case.
5 SSVR is Spanish sir name voter registration. It's sometimes
6 also referred to Spanish sir name registered voters, SSRV, the
7 same concept.

8 As I said, the map drawers were very concerned with this
9 statistic and the reason they were concerned was the Justice
10 Department. I'm showing you on the screen a letter dated
11 November 16th, 2001 from the Justice Department.

12 This letter concerns the preclearance of Texas' House
13 map from 2001. And the idea of the importance of the 50
14 percent SSVR statistic comes from here and I'm showing you now
15 page 3 of the letter where the Justice Department remarks that
16 Texas' plan is to deny preclearance in part because the number
17 of districts with an SSVR below 50 percent has increased or the
18 number of districts with above SSVR 50 percent has decreased.

19 Texas relied on the information the Justice Department
20 gave it in the 2001 letter when drawing districts in 2011. Now
21 this is not all the Justice Department says in this letter and
22 we'll get to that.

23 The Justice Department also endorses in this letter an
24 election analysis. And both parties have done an election
25 analysis for this case.

1 The Texas legislature and the map drawers also did an
2 election analysis at the time they were drawing the maps. They
3 did not just rely on preclearance. But in order to do an
4 election analysis, we need to know what elections to look at.
5 And you need to know what you're going to do when you have
6 them.

7 So I want to explain now a concept called reconstituted
8 election analysis which you're going to hear a lot of and
9 eventually we will all slip into jargon and shorthand to
10 describe this but I think it's worth talking about it for a few
11 minutes.

12 On the screen you see a square, it's a state. It might
13 be a state like Colorado or Wyoming that is relatively square.
14 And what you see is I painted it as a red state. It's more red
15 than blue.

16 The reason we know that is we have the results of a
17 statewide election say for governor and for whatever reason,
18 the voters in this state have chosen to organize themselves
19 with the republicans in the south and the democrats in the
20 north.

21 If you draw legislative districts for this state, one,
22 two, three and four, you can then look at the results of a
23 statewide election within each of these districts. What you
24 see is the way I've drawn the map the result of the statewide
25 election is the same in each district, the republican win, just

1 as the republican had won state wide.

2 Well, if we change the lines and have a new district map
3 we can reconstitute the results of the statewide election in
4 the new districts and see if anything has changed. Here you
5 see something has changed.

6 The republican won all four in the first map, and now
7 the republicans won two, maybe the third and the democrat has
8 prevailed inside of the reconstituted district. Those
9 statewide elections as compared to the district elections
10 you'll hear the experts refer to as exogenous elections. That
11 just means it's a fancy word for a bigger from the legislative
12 district geographically that you're looking at, exogenous
13 elections. And virtually all of the exogenous elections you
14 will hear about in this trial are statewide elections, here the
15 governor's race.

16 So as I mentioned, the question then becomes if you are
17 going to do an election analysis what elections will you pick?
18 Well, Texas before the maps were ever completed and before they
19 were finally analyzed and determined to be compliant with the
20 Voting Rights Act by the map drawers and the legislature, Texas
21 picked ten elections to look at.

22 You see here the list of them. Texas RPVA,
23 unfortunately that's another acronym. It means racially
24 polarized voting analysis. The reason we needed it to be a
25 racially polarized voting analysis is you can go to any

1 district in Texas that elects democrats and you can find in
2 those districts minority communities Latinos and African
3 Americans and generally in Texas what you see is those
4 communities prefer democrats.

5 That does not mean that those voters have voting power
6 or the power to elect their candidate of choice in those
7 districts. Racially polarized voting is required to determine
8 whether that's going on.

9 Texas looked at ten elections and you'll see even more
10 acronyms on this slide. All of the elections are mixed race
11 contests. The experts all agree those are the most probative
12 when trying to determine racially polarized voting. You see
13 some acronyms. Governor Perry is Anglo Republican and
14 Mr. Sanchez is a Hispanic Democrat. Anglo is a word that seems
15 quite frequently in Texas to describe a white non-Hispanic.

16 JUDGE COLLYER: You don't really think we don't know
17 that already, do you?

18 MR. MORTARA: I wasn't sure, Your Honor.

19 Texas picked ten elections. You'll notice that the
20 elections are rated towards the more recent contests. There
21 are five of the ten from 2008 and 2010. That's good because
22 more recent elections are more probative of what the voting
23 population is going to look like in 2012.

24 More stale data for instance, from the 2002 Governor's
25 race is less probative, the reason being from 2002 to 2012,

1 some people pass away, some people move away, some people grow
2 up and become voters and some people move into the district.
3 All of those changes build up and build up like interest in a
4 bank so that the data from 2002 is somewhat less reliable than
5 the data from 2008 and 2010, and that's why Texas rated --

6 JUDGE GRIFFITH: What is OD, maybe you can explain
7 that?

8 MR. MORTARA: Your Honor, that is other, some
9 candidates choose not to disclose their race. Mr. Scarborough
10 appears to be white Anglo.

11 The Justice Department picked its own five elections
12 after this litigation started and after they had to do their
13 analysis. The five elections the DOJ picked are a subset of
14 the Texas ten and they are not rated towards the more recent
15 elections and for that reason, the evidence will show they are
16 less robust, but the good news is under any set of these
17 elections the Texas maps are not retrogressive. In other
18 words, the choice of the election index is not dispositive as
19 to the case.

20 Once you have an election index you have to know what to
21 do with it to perform a functional analysis. Here again, the
22 parties have a dispute.

23 JUDGE COLLYER: Let me ask you a question. Do
24 railroad commissioners, courts of criminal appeals, Texas
25 Supreme Court candidates run as party candidates?

1 MR. MORTARA: Yes, Your Honor.

2 JUDGE COLLYER: Holy cow.

3 MR. MORTARA: I believe all of the statewide office
4 holders in Texas are partisan, so they're party elections. I'm
5 not from Texas so I'm not a one hundred percent sure of that.

6 JUDGE COLLYER: I guessed since your a newish, I
7 don't want to say new, and overlook the hours you have spent.

8 Go ahead.

9 MR. MORTARA: Later on I'll tell the Court about my
10 experience in 2001 as a law clerk to the Balderas panel in
11 Texas for redistricting.

12 Once you have the elections, you have to figure out how
13 you are going to do the functional analysis. And here the
14 problem is a little bit of the making of both parties. The
15 Justice Department's letter from 2001 talks about an election
16 analysis. So Texas knew it had to do an election analysis.
17 The legislature and the map drawers were all testified. They
18 knew they had to do an election analysis.

19 The problem is you can look through this entire 2001
20 letter and you won't find any explanation of what elections to
21 pick or how to do your analysis once you have picked your
22 elections. And that problem rolls forward to 2011 when the DOJ
23 published its guidance in February which also contains zero
24 explanation of how to do the functional analysis and what
25 elections to pick.

1 Dr. Handley, the DOJ's expert has approximately a ten
2 page report on how she did her analysis in this case. But the
3 DOJ which has had five years since the 2006 amendment of the
4 Voting Rights Act and three years of the administration has not
5 told the small handful of statewide jurisdictions that are
6 covered by Section 5 how to do this analysis. That's why
7 there's a dispute over what to do.

8 The Texas legislature and the map drawers did one thing,
9 the Justice Department in litigation is doing another and our
10 expert Professor John Alford in response to this Court's
11 summary judgment opinion is doing another.

12 Let's talk about the DOJ's analysis. The DOJ deploys
13 what we're calling a binary analysis. The DOJ takes the
14 position through its expert Dr. Handley, the district that has
15 a 51 percent chance of electing a Latino candidate of choice is
16 an ability to elect district. It just is, it gets a check
17 mark. And that district is just as good for minority voting
18 power as a district that is predicted to have a one hundred
19 percent chance of electing a Latino candidate of choice.
20 That's the Justice Department's position, we call it the binary
21 analysis.

22 The problem with it is illustrated by what I'm showing
23 you on the screen now. In the top map you have five seats --
24 six, excuse me -- five of which have a hundred percent chance
25 of electing a Latino candidate of choice according to your

1 election analysis.

2 You have an alternative map in the bottom, it's got six
3 seats, all six of which have a 51 percent chance of electing
4 the Latino candidate of choice. The problem here is fairly
5 obvious. In a wave election for democrats the bottom map might
6 put in six Latino candidates of choice. But most elections are
7 not wave elections and over the course of a decade, there are
8 going to be many types of elections. And even in a wave
9 election for republicans the top map is going to put in a
10 significant number of Latino candidates of choice. Probably
11 five.

12 That's why the top map is superior for Latino voting
13 strength than the bottom because Latinos will over the course
14 of the next decade and over the course of many types of
15 elections republican wave, democrat wave, middle of the road,
16 put in more candidates of choice. They have more voting power
17 statewide. That's what's wrong with the binary analysis.

18 When you take a look at the binary analysis, Dr. Handley
19 did as applied to the Texas House map, you can see how it
20 works. On the left side you see H100 and H203, and Your Honor,
21 if you know what these things are, please interrupt me and tell
22 me but I will explain otherwise.

23 H100 is the benchmark plan. It's the map that existed
24 in Texas for the 2010 elections.

25 H283 is the proposed map, the legislative map passed by

1 the Texas legislature. Across the top here you see the ten
2 districts that are really materially in dispute, the Justice
3 Department and the State agree as to all of the others.

4 What Dr. Handley does is she looks at the benchmark and
5 decides on her black or white binary basis, doesn't get a check
6 mark or not. Is it an inability district, she adds those up,
7 and gets ten.

8 Then she looks at the proposed and decides it's in
9 question. She adds those up, she gets a seven. You'll notice
10 there's a question mark for House District 41. That's
11 Representative Pena's district on which Dr. Handley has not
12 been able to come to a conclusion because of the way the map
13 was drawn and we'll talk about that during the trial.

14 By contrast the Professor John Alford's statewide
15 functional approach looks like this. What Professor Alford did
16 was he looked at the actual strength of minority voting power
17 in the before and after. He scored each district on a score
18 out of ten based on the Texas ten elections that I showed you
19 before.

20 If the minority candidate of choice, Latino candidate of
21 choice prevailed in the district, they got a one. If they
22 didn't, they got a zero. What the full statewide functional
23 analysis shows you, unlike the binary analysis is the dramatic
24 improvement in Latino voting power that Texas put into these
25 maps in districts like House District 34.

1 House District 34 in 2010 elected a republican who is
2 not the Latino candidate of choice. In 2012 if this Court
3 rules in Texas' favor this district will overwhelmingly likely
4 elect a Latino candidate of choice.

5 The binary analysis also ignores the dramatic
6 improvement in House District 74 which I will discuss in a
7 moment. What the binary analysis avoids showing is that as a
8 matter of fact statewide the proposed Texas map under the ten
9 election index increases Latino voting power over the
10 benchmark.

11 I mentioned to you before that it doesn't matter what
12 index you pick. If you go with Dr. Handley's five election
13 index these two numbers are the same, they're just even between
14 the two years. If you go with the most recent five elections,
15 there is even more dramatic improvement for Latinos. So we
16 picked the middle one, the Texas ten that was based on the
17 elections Texas picked before the maps were drawn.

18 I want to now shift focus to talk about some specific
19 House Districts. The first I want to talk about is House
20 District 74. House District 74 is represented by Pete Gallego,
21 he has been in the Texas House for 20 years, two decades. He's
22 a very successful, very well respected Latino democrat
23 incumbent.

24 This is the largest geographically State House District
25 in America. It occupies a very large stretch of West Texas and

1 one of the things that Your Honors will learn is that there
2 aren't that many people living in that slath ck of West Texas
3 before you get to El Paso. For instance, you'll see Loving
4 County is the only white one in the upper corner there on our
5 map. There are very few people in Loving County, less than 500
6 I think.

7 Dr. Handley's approach to House District 74 is to say
8 well, Representative Gallego continues to get reelected even
9 though he is a 20 term incumbent and he is one of the most
10 important members of the Texas legislature. And that means
11 since he's a Latino candidate of choice it gets a check mark in
12 the benchmark.

13 The Texas approach as you see shows that this district
14 is in fact republican. It only scores in four out of ten on
15 the Texas ten scale. What's going on here is that Mr. Gallego
16 a very successful candidate with crossover appeal and long term
17 incumbent continues to win despite the fact that this district
18 is republican.

19 And Dr. Handley's analysis turns virtually entirely on
20 the decisions of Mr. Gallego to run or not run for reelection.
21 That's the problem.

22 Section 5 and retrogression should not turn on the
23 decisions of individual politicians to decide to run or not
24 run. As we all know, they can make those decisions for a
25 variety reasons. They want to seek a different office. They

1 have a medical issue. They want to retire from public office.

2

3 Section 5 shouldn't turn on whether Pete Gallego runs or
4 doesn't run. That's not in the statute. Section 5 protects
5 voters. That's particularly important here because Dr. Handley
6 just last night at eleven p.m. sent us a supplemental expert
7 report where she again cites the fact that District 74 is
8 consistent with reelected Representative Gallego who has been
9 there for 20 years, long time incumbent, one of the most
10 powerful members of the Texas House in the Democratic Party.

11 But the problem is meet Pete Gallego. Pete Gallego is
12 not running for reelection. Pete Gallego announced in
13 September that he's running for Congress. Before Dr. Handley
14 wrote her first report, before she wrote her second report,
15 Mr. Gallego decided not to run for reelection.

16 If he had left House 74 the way it was in the benchmark
17 with Mr. Gallego deciding to seek congressional office and come
18 here, what would have happened? That district would have gone
19 republican, they would have elected somebody who is not a
20 Latino candidate of choice.

21 We dramatically increased the Latino voting power in
22 that district, we did it at the request of Mr. Gallego the
23 evidence will show. And that district is going to elect a
24 Latino candidate of choice in 2012 if you rule in Texas' favor.

25 Dr. Handley's analysis gives us zero credit for having

1 increased that voting power in that district, zero.

2 I want to move on now to talk about House District 35.
3 House District 35 is represented by my friend Jose Aliseda who
4 is here and will testify today. He's part of that vanguard,
5 that new leadership in the Republican Party that is helping
6 move Latino voters into the party. That's what his testimony
7 will show.

8 Dr. Handley's approach to House District 35 is to give
9 it a check mark because it use to elect democrats. It's a very
10 marginal seat as you can tell both ways. It scores five out of
11 ten on the Texas ten in the benchmark and four in the proposed.
12 That is a slight decline.

13 When you peel back the numbers you see nothing has
14 really changed at all. That's a 2004 election that flips
15 between a five and four and it flips by a very narrow margin.

16 House District 35 has not changed functionally
17 politically at all between the benchmark and the proposed but
18 because Dr. Handley has her bright line, has her binary
19 approach, she says yes in the benchmark and no in the proposed,
20 and that counts against Texas when the improvement in '74 didn't
21 count for us.

22 Well, the problem with that is what Dr. Engstrom, Ms.
23 Perales' expert, but she just mentioned this morning said about
24 it under cross examination from the Justice Department's own
25 Bryan Sells who is right here with us.

1 Let's talk about 35. There wasn't any reason for me to
2 feel that particular district was retrogressive. You don't
3 agree with Dr. Handley, no I don't, must be.

4 Even the Latino's own Task Force expert Dr. Engstrom
5 agrees with us there's been no change in House District 35.
6 Either it was a check in the before and it still is or it
7 wasn't and it isn't. Yet that's charged against us.

8 JUDGE COLLYER: I misunderstood. I thought you meant
9 House District 25.

10 MR. MORTARA: 35. I'm sorry, ma'am, if I misspoke.

11 JUDGE COLLYER: Thank you. Thank you.

12 MR. MORTARA: Moving on now to House District 117,
13 Your Honor. House District 117 according to Dr. Handley is a
14 check mark in the benchmark but not in the proposed.

15 She gets to that because the district as far as she is
16 concerned no longer gives the ability to elect because it
17 scores lower on her index of five. You can see in the Texas
18 index it does go from a five to a two, that's a decline. We're
19 not hiding from that.

20 Now if you open up the numbers, you'll see that it
21 hasn't changed at all in the last five elections. All of the
22 data that shift are the older elections but there is a decline,
23 a decline when you saw Professor Alford's analysis is more than
24 made up for by improvements in other districts which is why
25 it's a statewide analysis and you look over the whole state and

1 what's changed for Latino voters.

2 But moreover, another problem with Dr. Handley's
3 analysis which she did before the Court issued its summary
4 judgment ruling is that she didn't take into account because
5 she couldn't because the Court hadn't ruled, the Court's bright
6 red line matter of law test in footnote set 22 which says that
7 if you reach a certain population level that district has an
8 ability to elect as a matter of law. That's from footnote 22
9 in the Court's summary judgment opinion at 29 over to 30. When
10 you take that into account 117 still presents an ability to
11 elect as a matter of law under the Court's summary judgment
12 ruling.

13 The last district I want to talk about before
14 summarizing Dr. Handley's binary analysis is House District 34.
15 House District 34 is in Nueces County. Nueces County is where
16 Corpus Christi is. And you're going to hear today from
17 Representative Todd Hunter who is from Corpus Christi.

18 You are going to hear a lot about Nueces County. Nueces
19 County is a micro-causing for what's going on in Texas.
20 There's a heavy Latino population that is increasingly
21 republican and as a result, Latino republicans are being
22 elected county wide in Nueces more and more.

23 What happened in the census is that Nueces had three
24 representatives and because of the census and with the Texas
25 Constitution apportioning the house members by county, Nueces

1 could only have two representatives. All three of the Nueces
2 representatives in 2010 are republicans. Two of those were
3 elected from majority minority Latino districts.

4 What happened is that Texas looked at the situation and
5 said Nueces could only have two, and dramatically increased the
6 minority voting strength for one of those two districts and
7 drew it in there as a district that's not going to elect a
8 republican in 2012. It's going elect a Latino candidate of
9 choice, almost certainly. Again, under the binary analysis we
10 get absolutely no credit for that increase in Latino voting
11 power because according to Dr. Handley, it's a check mark both
12 ways.

13 It doesn't matter whether this Court adopts a binary
14 analysis for the statewide functional analysis under either
15 Texas prevails because when you do the binary analysis right
16 you see nothing has changed.

17 I told you about House District 74, that's a republican
18 district. The only reason the Latino district is winning there
19 is because he's a 20 year incumbent. He's decided not to run
20 for reelection. If we had left that district the way it was, a
21 Latino candidate of choice likely does not win. That's an
22 improvement for us. It's not ten to seven, it's nine to seven.

23 House District 35 as I said is a push. If you listen to
24 Dr. Engstrom, the Latino Task Force expert, it's the same
25 either way, no retrogression. If you listen to Dr. Handley

1 under her analysis properly, we think it should be a check in
2 both. If you listen to us, we think it probably should be not
3 an inability in both for a variety of reasons, but it doesn't
4 matter, it's a push.

5 That brings us nine to eight. As we said, House
6 District 117 meets the Court's population standard in footnote
7 22 of the summary judgment opinion. Now we're at nine to nine,
8 no retrogression. No decrease in minority voting strength even
9 under a binary analysis.

10 You saw the question mark by 41, that one also meets the
11 Court's population test, no more question mark.

12 Now this is not the best way to look at it because it
13 doesn't accurately represent minority voting power, but it's
14 the way that you look at it if you adopt a proper binary
15 analysis.

16 Texas does not need you to adopt the statewide
17 functional analysis for Texas to prevail. There is one more
18 thing Texas does need to prevail. And that is --

19 JUDGE COLLYER: You have two minutes of your 30 if
20 you wanted to keep to 30.

21 MR. MORTARA: Your Honor, we understood the order --
22 oh, I have as much time as we need? I timed it at 45. I feel
23 that I'm going somewhat longer.

24 JUDGE COLLYER: Believe me, it's your time. The more
25 time you use here, the less time you have somewhere else, but

1 it's your time.

2 MR. MORTARA: Thank you, Your Honor. I had a little
3 bit of nervousness when you said I had two minutes left.

4 JUDGE COLLYER: You have two minutes left if you
5 intended to keep it to 30.

6 MR. MORTARA: I did not. Thank you, Your Honor.

7 In order to prevail on the Texas House map we also need
8 to talk about House District 149 which is represented by Hubert
9 Vo, an Asian democrat.

10 The Justice Department has a theory that the Voting
11 Rights Act protects multi ethnic coalition districts. And as
12 you know in summary judgment we argued that the Voting Rights
13 Act as a matter of law does not.

14 The Court ruled against us and said that the Voting
15 Rights Act can protect coalition districts, but the Court
16 enacted a fairly strict test for proof of the existence of
17 these coalitions, and that test requires proof of cohesive
18 voting between ethnic groups. This is easy for any coalition
19 district that the other side talks about throughout this case.
20 Latinos and African Americans do not vote cohesively in
21 democrat primaries in Texas.

22 We need to look no further than Dr. Engstrom, the Latino
23 Task Force expert. Here he is in his report, African Americans
24 have a distinct tendency to vote for candidates competing with
25 the candidates preferred by Latinos in primary elections.

1 This is true up and down the State of Texas and it's
2 true in every instance that is going to be discussed in this
3 trial. And that's why Hubert Vo's district which is a tri or
4 quad ethnic coalition is not a protected coalition district
5 under the Voting Rights Act.

6 These, these different groups all prefer democrats.
7 That doesn't mean they prefer the same democrats. So the
8 general election yes, they vote democratic. In a democratic
9 primary they don't vote the same. They're not a protected
10 coalition and there are no protected coalitions that we are
11 going to discuss.

12 Every time you hear coalition district the State's
13 response is there is no cohesive voting in the democratic
14 primary. I don't need to stand up and say you can just think
15 it because I told you. That is our response to every single
16 coalition district in the case.

17 JUDGE COLLYER: So it's your legal position that one
18 has to look at the results of primary elections in order to
19 determine whether an effective coalition exists?

20 MR. MORTARA: Correct. We think that's borne out by
21 the cases. It is borne out by the cases and that's what we
22 understand the Court's summary judgment opinion to require.
23 Because otherwise, Your Honor, every democrat district is a
24 coalition district protected by the Voting Rights Act.

25 Because every democrat district is composed of Anglos

1 and minorities. And those minorities, Latinos and African
2 Americans generally prefer democrats.

3 So of course, the District elects democrats, it's a
4 democrat district. There's always going to be a coalition of a
5 group of people that elect that democrat. If it's a multi
6 ethnic coalition, then without trying to prove anything more
7 every democrat district is protected by the Voting Rights Act
8 right there in Texas, we can never change them.

9 JUDGE COLLYER: Well, I think your latter analysis is
10 superficial and a little premature, but I'm not sure that the
11 former carries the day. But I just wanted to be sure I
12 understood you.

13 MR. MORTARA: Thank you, Your Honor.

14 House District 149 is not protected and that's true of
15 all of the other coalition districts you'll hear about.

16 In conclusion, the Texas House map is not retrogressive
17 with respect to Latino voting strength.

18 As you saw in Professor Alford --

19 JUDGE GRIFFITH: Can I ask you a question?

20 The slide that you showed us before was Mr. Engstrom
21 saying there haven't been coalitions built between African
22 Americans and Asians, is that --

23 MR. MORTARA: No, and Latino. You see in the House
24 District 149 we never know to call it a tri-ethnic or a
25 quad-ethnic or a even more ethnic. The other population is

1 Asian but it's a lot of different ethnicities within that Asian
2 group and we don't record at the demographic level what those
3 are. So really what you have here is --

4 JUDGE GRIFFITH: Could you go back to the slide
5 quoting Mr. Engstrom? I'm sorry.

6 MR. MORTARA: Yes. That's African Americans and
7 Latinos. So two of the primary components of House District
8 149 are African Americans and Latinos and there's documented
9 history in Texas of these two groups not voting together in
10 democratic primaries and that's what the evidence will show.

11 JUDGE GRIFFITH: Thank you.

12 MR. MORTARA: In conclusion, the House map is not
13 retrogressive with respect to Latino voting strength under
14 either the Professor Alford functional analysis or the Dr.
15 Handley binary approach.

16 I want to move on to Congress.

17 JUDGE HOWELL: Can I just stop you for a second to go
18 back to 149 and your position that you need to look at
19 primaries and whether there's cohesive voting by all minority
20 groups for the same candidate of choice in primaries in order
21 to evaluate cohesiveness.

22 Is Representative Vo one of those candidates that all
23 the groups support in the primary?

24 MR. MORTARA: No. The evidence will show that
25 Representative Vo is not the candidate of choice in democratic

1 primaries when you look at all of the different groups voting
2 in primaries.

3 The problem is you don't have that many elections to
4 look at. When you look at statewide elections you can look at
5 statewide primaries within the district, what you can see is
6 that the Latinos and African Americans do not vote for the same
7 candidates in primaries when it pits an Anglo against a
8 Hispanic or an Anglo against an African American.

9 What you'll hear the evidence show and what Dr. Engstrom
10 will say is that African Americans particularly vote to defeat
11 Latino candidates of choice in democratic primaries.

12 Now I understand Your Honor's question, one of the
13 problems with --

14 JUDGE HOWELL: You gave us a principal and you gave
15 us HD 149 Representative Vo, but you didn't show whether or not
16 that either demonstrates or it doesn't demonstrate your
17 principal and that's my question.

18 MR. MORTARA: House District 149 definitely does.
19 That's what we'll have testimony on.

20 JUDGE HOWELL: It definitely does show that
21 Representative Vo is not the candidate of choice in the
22 democratic primary of all of the groups whether it's multi or
23 quad or tri-ethnic groups in House District 149?

24 MR. MORTARA: I think there's been a
25 misunderstanding.

1 When you look at House District 149 and all of the
2 possible data on it, what you will see is that there's not
3 cohesive voting in democratic primaries across the board. I'm
4 not currently aware of what the voting was for Representative
5 Vo in the last democratic primary.

6 One problem with that is that when you look at the Asian
7 population there, it's difficult to disaggregate the different
8 groups that are involved, and it makes a racially polarized
9 voting analysis somewhat more complex as it pertains to Mr. Vo
10 himself.

11 What we know is that African Americans and Latinos do
12 not vote together and you can get a majority coalition in House
13 District 149 without those two voting together.

14 JUDGE HOWELL: But based on my impression from
15 reading all of this material together, it had been my
16 impression that at least in House District 149 all of the
17 different minority groups had pulled together cohesively to
18 support Representative Vo.

19 So I thought that in that district of these, given your
20 proposed test today of cohesive voting in the primary and
21 that's where the Court should focus its attention that this
22 would satisfy your test for a coalition, cohesive coalition
23 district.

24 MR. MORTARA: I don't think that you can base the
25 test simply on one primary election. I think you have to look

1 at the behavior of voters in the district.

2 Here we just have the benchmark because the district has
3 been removed -- I'm sorry, did I answer your question, Your
4 Honor?

5 JUDGE HOWELL: Just that you are unclear about that.

6 MR. MORTARA: Yes.

7 JUDGE HOWELL: Whether in 149 that it meets your test
8 or it doesn't?

9 MR. MORTARA: We will put on evidence that it does
10 not.

11 May I move on to Congress now, Your Honor?

12 JUDGE HOWELL: Uh-hmm.

13 MR. MORTARA: On Congress retrogression analysis is
14 not meaningfully disputed any more. On a pure binary basis Dr.
15 Handley awards a seven check marks and you get seven districts,
16 Latino ability districts in the benchmark, and you get seven in
17 the proposed.

18 Of course again, Dr. Handley's analysis has, has, Dr.
19 Handley's analysis does not permit us to look underneath and
20 how the congressional map has in fact resulted in a dramatic
21 improvement in enhancement of Latino voting power.

22 As can see, we took two districts, Congressional
23 District 23 and 27 that had not performed in recent election
24 for a Latino candidate, those both elected republicans that are
25 not Latino candidates of choice.

1 We created two new Districts 34 and 35, both of these
2 are very strong for Latino voters and will perform unlike the
3 previous two Districts 23 and 27. As a result, when you look
4 at Professor Alford's statewide functional approach you see the
5 truth which is that Latino voting power has increased, it
6 hasn't stayed the same.

7 Now Congress at District 23 is the source of our first
8 dispute about the congressional map. Congressional District 23
9 occupies a similar area of West Texas, of course, bigger than
10 Representative Gallego's district.

11 The evidence will show that Dr. Handley's decision to
12 declare this a Latino ability district is suspect based on the
13 election information we have from Congressional District 23
14 which recently elected a republican in 2010.

15 You can see it scores rather low on the Texas metric,
16 three to one. And it's Texas' position that if you are doing a
17 binary analysis Congressional District 23 was not an ability
18 district in the benchmark and still isn't in the proposed.

19 The other source of dispute that Congressional 23 plays
20 a role in is the frequent references of the other side to the
21 Hispanic population growth in Texas. This is very important.
22 You'll see references constantly to the massive growth of the
23 Latino community in Texas over the last ten years and it's
24 true, they went from 32 percent of the population to 37.6
25 percent.

1 But when you look underneath and you see who the voters
2 are, who the actual citizen voters are, you see that Latino
3 citizen voters only comprise 26.4 percent of the Texas voting
4 population in 2010. There are over five million Latinos living
5 in Texas who are not citizens.

6 There's two important observations from that. Number
7 one is you draw congressional seats to one man one vote.
8 That's not one citizen one vote, that's one man one vote. So
9 you have to draw to the population you have which includes
10 these five million plus non-citizen Latinos.

11 But you can't draw effective Latino districts with
12 people who do not and cannot vote. So you have a much smaller
13 population with which to work to draw effective Latino
14 districts.

15 The second problem is illustrated by this map right here
16 in purple which is that the citizen voting Hispanic population
17 in Texas is dramatically concentrated in the Rio Grand Valley
18 area. You can see that by the different shades of purple
19 across the map.

20 That's percentage of Hispanic citizen voting age
21 population over citizen voting age population out of the total
22 citizen voting down in the deep valley of Hidalgo County.
23 That's almost 80, 90 percent of the Latino citizen voters of
24 the total voters down there. That's where the population is
25 concentrated and that poses a problem in drawing districts.

1 The other problem that congressional districts raise
2 with respect to this population argument is what I call the DOJ
3 500,000. These are the, allegedly the 500,000 Latinos who will
4 lose their ability to elect candidates of choice under the
5 proposed Congressional map. And you have to do some forensics
6 to figure out where this number comes from.

7 What Dr. Handley did is she took the Hispanic population
8 in all the minority ability districts in the benchmark and in
9 the proposed and she came up with minus 480,000 in which she
10 rounded up to minus 500,000. Of course, many of those are not
11 voters, so we have the citizen data on the other side which we
12 have is minus 242 if you look at citizens.

13 The problem with this is Dr. Handley included Latino
14 voters in African American ability districts. As Dr. Engstrom
15 told us, Latinos and African Americans don't prefer the same
16 candidates in democratic primaries.

17 So when you take out the African American ability
18 districts and just look at the Latino ability districts you go
19 from minus 480 down to minus 380. You are still minus, so we
20 still have a couple more steps to go.

21 We'll start with that minus 380. You'll notice Dr.
22 Handley includes Congressional District 23 because she gave it
23 a check mark. She doesn't give it a check mark in the proposed
24 map. If you take Congressional District 23 which recently
25 elected a republican and is not an ability district out of the

1 picture, it's plus.

2 The missing 500,000 Latinos become an additional 180,000
3 which we'll round up to 200, an additional 200,000 Latinos and
4 an additional 50,000 citizen voters who now will have the
5 ability to put their candidates into office under the
6 Congressional map. If you put 23 on both sides of this
7 equation and say it's an ability district to both, it's still a
8 plus, it's smaller plus about 90,000.

9 These population arguments are very important because
10 the DOJ and the defendants accuse Texas of having had a
11 discriminatory purpose in enacting these maps because of a
12 failure to draw additional minority seats. And they say that
13 you can have circumstantial evidence of discriminatory purpose
14 because more seats could have been drawn and they weren't.

15 The problem here is that DOJ is ignoring the equal
16 protection clause. It violates the Constitution to redistrict
17 with a racial end or using racial means. That is to draw on
18 northern districts unless the Voting Rights Act requires it.
19 Once Texas assured itself of Voting Rights Act compliance, it
20 had to stop using racial means and racial objectives in
21 districting.

22 What that means is once you have assured yourself of
23 non-retrogression, you cannot draw districts on the basis of
24 race anymore. So the DOJ's circumstantial evidence of
25 discriminatory purpose is in fact direct evidence once a proper

1 Voting Rights Act analysis is done of compliance with the equal
2 protection clause.

3 This is dramatically similar to the experience that DOJ
4 had with Georgia in the 1990s. In the 1990s the DOJ tried to
5 misinterpret Section 5 to require Georgia to draw a
6 proportional membership for its Congressional delegation and
7 draw three African American districts. It was called the Max
8 Black Plan. This was repeatedly litigated in the Supreme
9 Court.

10 What the Supreme Court said was Justice, your
11 interpretation of Section 5 is bringing it in tension with the
12 14th Amendment. Because you're telling states that they have
13 to draw to proportional representation limits, and you are
14 telling states through misinterpretation of the Voting Rights
15 Act that they have to violate the equal protection clause.

16 States have to walk a very fine line between the Voting
17 Rights Act and the equal protection clause. There is no other
18 compelling state interest for districting on the basis of race
19 other than the Voting Rights Act.

20 So when you ask why didn't Texas just go draw more
21 districts? The answer is because Texas felt it had complied
22 with the Voting Rights Act and that's when use of race has to
23 stop.

24 And the DOJ will say this is not a proportional
25 representation argument but any argument that begins with

1 population figures and ends with a statement that more
2 districts should have been drawn is a proportional
3 representation argument whether it's called that or not. Of
4 course, the Voting Rights Act on its own explicitly prohibits
5 theories of proportional representation.

6 I want to give you just one example of what happens when
7 you try to draw more districts. The Justice Department says in
8 its brief you can draw an additional majority minority district
9 in North Texas for Congress.

10 The Justice Department uses the phrase majority minority
11 and Your Honor pointed out these coalition districts, well, the
12 district the Justice Department is talking about would be a
13 coalition district which we would say is neither protected by
14 the Voting Rights Act as a matter of law. We've lost that in
15 front of Your Honors, but also not a functioning coalition
16 district under your summary judgment opinion.

17 Here is what happens when you try to draw an actual
18 Latino district in North Texas for Congress. It looks like
19 this, and what you can see here is a district that looks very
20 much like the districts that were struck down by the Supreme
21 Court in the '90s. There's virtually no explanation for the
22 shape of this district that would not be race or ethnicity
23 based. This is a district that is majority Latino voters.

24 But it's not just this, I'm not showing you the whole
25 district. This is the entire district which spans from the

1 western edge of Tarrant County all the way over through Dallas
2 County connects disparate and widely separated communities
3 by very thin areas and is indistinguishable from the districts
4 the Supreme Court struck down in those '90s cases.

5 That's what happens when you try to draw an additional
6 Latino congressional seat in North Texas. You violate the
7 equal protection clause.

8 So what's left of the defendant's discriminatory purpose
9 case? When we look properly at the equal protection clause and
10 how it hemmed in Texas' ability to do more from minority
11 voters, what's left is a grab bag of complaints about
12 individual legislators and those involved in the process, and
13 let's be clear about what's going on.

14 Every single action taken by virtually every single
15 person from the time redistricting started in Texas leading up
16 through today was taken with the knowledge that this case would
17 be litigated in Section 2 or Section 5. And the evidence has
18 to be viewed through that lense.

19 What the evidence will show is that the process was fair
20 and it was open and that the redistricting committee in the
21 Texas House and the others involved in redistricting listened
22 to the concerns of the minority voters and their
23 representatives.

24 In fact, we have a list here of all of the things that
25 were done, not all of the things, of many of the things, a

1 subset of the things that were done to satisfy the concerns of
2 minority voters and their representatives in redistricting.

3 Now there's partisanship in Texas, it's true. But the
4 process here was bipartisan. The Speaker of the House in Texas
5 is a republican elected by, amongst others, all 49 democrats
6 who voted for the Speaker of the House Joe Straus.

7 And democrat members, you'll hear evidence today, had
8 enormous influence over drawing the districts maps for the
9 House. In fact, Representative Mike Villarreal of Bexar
10 County, that's where San Antonio is, was the vice chairman of
11 the redistricting committee and drew the entire Bexar County
12 map with the help of his other members of his delegation.

13 That's ten seats out of 150 right there. Democrats had
14 access, minority voters had access, and in sum the evidence
15 will show what one of the Justice Department's own witnesses
16 told me under oath just a few days ago, this is Representative
17 Joe Farias who will testify in this trial, DOJ witness.

18 In your opinion was the adoption of plan H283 the Texas
19 House redistricting motivated by racial purposes? He was
20 there. I don't believe it was. I think it was partisan, but
21 not racial.

22 Your Honors, on the Texas House our case rests largely
23 on the credibility of one person. His name is Gerardo
24 Interiano. He was the map drawer for the Texas House. And his
25 credibility determines the discriminatory purpose case. Texas

1 is proud to rest its case on the credibility of this man and
2 you'll hear him testify today.

3 In conclusion, none of the three maps retrogress under
4 Section 5 and none of them were enacted with any discriminatory
5 purpose, and on February 3rd my partner John Hughes and I will
6 come back here and ask you to enter judgment for Texas a
7 preclearance for all three maps.

8 Thank you.

9 JUDGE COLLYER: Thank you very much.

10 For counting purposes, you used up 48 and a half
11 minutes.

12 MR. MORTARA: Thank you, Your Honor.

13 JUDGE COLLYER: Does Texas have a witness to call?

14 MR. HUGHES: We do, Your Honor.

15 JUDGE COLLYER: Is your witness handy?

16 MR. HUGHES: He is handy. It will be about two or
17 three minutes.

18 JUDGE COLLYER: You don't have two or three minutes.
19 You are going to use up time.

20 MR. HUGHES: It's our time, we understand, Your
21 Honor.

22 He is here and it's Representative Todd Hunter.

23 JUDGE COLLYER: Just one second, sir. If you can
24 stay standing, you need to be sworn.

25 PLAINTIFF STATE WITNESS TODD HUNTER SWORN

1 JUDGE HOWELL: Good morning, Representative Hunter.

2 THE WITNESS: Good morning, Judge Howell.

3 MR. HUGHES: I apologize, Judge. I'm representing
4 technical difficulties for one moment.

5 MR. SELLS: Your Honor, Bryan Sells for United
6 States.

7 Can we ask for a rule on witnesses?

8 JUDGE COLLYER: Are there any witnesses who will
9 testify later in this case in the courtroom?

10 MR. MORTARA: Yes, there are, Your Honor.

11 JUDGE COLLYER: Are you an expert or are you
12 non-expert?

13 A WITNESS: Non-expert, ma'am.

14 JUDGE COLLYER: Sir, I'm sorry to have to tell you
15 but you need to excuse yourself until you are called and then
16 you can stay.

17 THE WITNESS: Yes.

18 JUDGE COLLYER: Thank you, sir.

19 MR. SELLS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. HUGHES:

22 Q. Good morning, Representative Hunter?

23 A. Good morning.

24 MR. HUGHES: Good morning, Your Honors, my name is
25 John Hughes. I haven't appeared before you before and I'm

1 pleased to do so this morning.

2 BY MR. HUGHES:

3 Q. Representative Hunter, could you begin by introducing
4 yourself to the Court?

5 A. Your Honors, my name is Todd Hunter. I'm the State
6 Representative from District 32.

7 Q. Representative Hunter, we're going to look at a lot of
8 maps in this case and I'd like you to testify, just tell me and
9 I'll point where House --

10 JUDGE COLLYER: We're talking about a House District?

11 BY MR. HUGHES:

12 Q. Yes, where House District 32 is located on the map?

13 I can point if you just point me in the right direction?

14 A. Stand by the map, it's right down there where it says
15 Nueces. That would be the start of District 32, that's the
16 South Texas region.

17 Q. Representative Hunter, is Corpus Christi located in Nueces
18 County?

19 A. Yes, sir.

20 Q. How long have you lived in Corpus Christi?

21 A. Since 1978.

22 Q. What do you in Corpus Christi in addition to your work in
23 the House?

24 A. I'm a lawyer since the legislature part-time supposedly.

25 Q. Representative Hunter, how long have you been a member of

1 the Texas House of Representatives?

2 A. Your Honors, I have served twice. I have served from 1989
3 to 1997. I took a break for 11 years, and I came back in 2009.

4 Q. Representative Hunter, during your first stint in the
5 Texas House, what was your party affiliation?

6 A. I was a democrat.

7 Q. And during your second stint where you are now what is
8 your party affiliation?

9 A. I'm a republican.

10 Q. Without an elaborate description, can you briefly describe
11 the decision process in moving from one party to the other?

12 A. Well, it's more than that. Just so the Court knows, I was
13 raised by a Republican Party Chairman in Oklahoma. I was the
14 State Teenage Republican President of Oklahoma for two years.

15 I worked for a State Republican Senator in Texas and I
16 moved to Corpus Christi in 1978, ran in 1988. Primarily Texas
17 was a democrat state. U.S. Senator Lloyd Benson was the
18 prominent figure. Ran as a democrat. And then I took a break,
19 and came back as a republican.

20 Q. Representative Hunter, can you briefly describe the
21 reasons for the break in your service in the Texas House?

22 A. The Texas legislature is a little bit different probably
23 than most states. It is as I said supposedly a part-time, but
24 I broke for 11 years because when I ran for office my children
25 were one and two, and then my daughter was born while I was in

1 session.

2 In 1997 I'm a baseball fan, so I had back then we didn't
3 have computers and cell phones as technology has advanced
4 today. I had to listen to a baseball game through a cell phone
5 land line. I decided I can always be a politician but can't
6 raise the kids, so I left for 11 years.

7 Q. Most recently you were elected back to the House in 2008;
8 is that right?

9 A. Yes, sir.

10 Q. So I would like to fast forward to more recent times.

11 If you were elected in 2008, does that mean you would
12 actually start serving in 2009?

13 A. Yes, you're sworn in January of odd number of years.

14 Q. Can you tell us what, let me back up.

15 Do you get credit in terms of seniority in the Texas House
16 for the time that you previously served in the 1990s?

17 A. Yes, the eight years follows your service, so I'm
18 currently 12 years.

19 Q. And when you were sworn in again in 2009, what leadership
20 positions did you obtain in the House in 2009?

21 A. In 2009 when I came back I was appointed as a senior
22 member to the judiciary and civil jurisprudence committee of
23 Texas.

24 That committee oversaw the judicial branch as well as what
25 we call the civil practices. It did not deal with the criminal

1 jurisprudence. Then I was also on the insurance committee and
2 general investigation and ethics.

3 Q. How did your responsibilities as chairman of the judiciary
4 and civil jurisprudence committee involve redistricting and
5 specifically the redistricting issues in this case, the Texas
6 House, Senate and U.S. Congress?

7 A. Well, technically the judiciary deals with venue issues.
8 It deals with Courts of Appeals in Texas. The configuration of
9 the counties within Court of Appeals, and Texas goes through a
10 redistricting process with courts.

11 In addition, we were considered the law committee for the
12 House. For example, we had a rarity where we had a retired
13 district judge who is a member of that particular committee.
14 So it's a well seasoned with legal background. That's the
15 nature of the committee. But then a second role took place.

16 In 2010, there is a redistricting committee and a judiciary
17 committee. And the thought was why not hold joint hearings
18 around the State of Texas with both committees being involved.

19 It would increase participation in the House from, I think
20 the redistricting committee was 15 back then, but it would
21 increase it to 26 people. And we would go and work jointly and
22 the chairman of the redistricting committee suggested to me and
23 I agreed. So through 2010 we were engaged in public input.

24 Q. Just to be clear, what was the subject matter of these
25 public hearings that you described that occurred in 2010?

1 A. The subject matter was, and I should explain this to the
2 Court. I have been through three redistricting processes
3 through my years. I live in South Texas, and so it was one of
4 my ideas to open public input in recognition of redistricting
5 so that people had an opportunity.

6 I have gone through my years of service and I know we're in
7 litigation and the law plays a part, but the general public
8 wakes up and says how did you get to be my public official.

9 So part of my role was to work with redistricting and go
10 around the state and allow folks to have input and I live in
11 South Texas, and I wanted to make sure that South Texas got
12 input.

13 Q. Representative Hunter, have you worked with us to help
14 prepare a time line that shows the location and dates of the,
15 of these hearings, these public hearings that occurred in 2010?

16 A. Yes.

17 Q. Is that time line what I've got on your giant board over
18 here?

19 A. Yes.

20 MR. HUGHES: And may I approach the board; is that
21 okay?

22 JUDGE COLLYER: As long as you bring a microphone
23 with you.

24 Ms. White, do we have a microphone to give him?

25 THE DEPUTY CLERK: We do, Your Honor. I just don't

1 know where it is.

2 JUDGE COLLYER: I'm sorry, we were out of this
3 courtroom last week for carpeting so we're not, we're just,
4 just, just, back home. For all of you, you like our carpeting?

5 Thank you.

6 MR. HUGHES: It's lovely.

7 JUDGE COLLYER: I appreciate that.

8 MR. HEBERT: Your Honor, Gerald Hebert for the Davis
9 intervenors. I have a laser pointer that he can use from the
10 witness stand.

11 JUDGE COLLYER: Well, we need him by a mic and Ms.
12 White will have a mic or he can use your laser pointer.

13 MR. HUGHES: I might take you up on that, Hebert. I
14 will feel like less of a game show host without the microphone.

15 JUDGE COLLYER: Thank you, Mr. Hebert.

16 BY MR. HUGHES:

17 Q. So Representative Hunter, we're not going to march through
18 all of these. Let me ask you this.

19 Who are some of the groups that testified at these public
20 hearings that occurred in 2010?

21 A. Well, the chart shows some of the groups which we put up
22 here is to show input. For example, you have LULAC, you have
23 MALC, MALDEF. They came up with the D for the Democrat Party
24 on this. You have the NAACP.

25 But in addition, you had several several other groups for

1 example, the Hispanic Chambers of Commerce, they were very
2 active in my region. Various Chambers of Chambers across the
3 state.

4 We involved business community, education community. We
5 tried to get word out to as many groups as we can so that they
6 can at least start talking about it. But these are some of the
7 ones noteworthy for the people.

8 Q. Representative Hunter, were these hearings held throughout
9 the State of Texas to get kind of a geographic representative
10 input?

11 A. Absolutely. This is all west, east, north, south and what
12 we call central.

13 Q. In your own words can you describe the purpose of these
14 hearings?

15 A. Well, the purpose was the following: We wanted folks to
16 know redistricting was coming. We wanted to explain the
17 process, but we wanted them to have input.

18 We went through the entire state. We had enough basic
19 information that we knew the direction of Texas was going on
20 population. But the concept of the hearings was to let people
21 have as much input into the process before the formal process
22 started in 2011.

23 Q. I want to follow up on something you just said. You
24 mentioned that you had enough basic information to talk about
25 the process in 2010.

1 What kind of information are you referring to?

2 A. At most of the hearings the state demographer would be
3 there. The state demographer had accumulated information to
4 show us the Texas growth trends.

5 For example, we knew going into this process and most all
6 legislators that had any input or desire to get involved in
7 redistricting knew the following: Texas was growing. Texas
8 was probably going to be the second largest populated state.

9 We knew the Houston zone was populated, the Dallas-Fort
10 Worth area was populated. What we call the Austin-San Antonia
11 corridor was populated. And then what we called the Valley
12 which is, we have to distinguish that, you're going to hear
13 that. Valley is below Corpus Christi. And that was a growth
14 area as well.

15 So going into the process what we also knew West Texas was
16 raising in population. And we had preliminary census
17 information. I can't give you the details. But we were
18 informed and provided general estimates of where the census was
19 going.

20 JUDGE COLLYER: Can I ask a question?

21 West Texas is where the terrible drought is, is it not?

22 THE WITNESS: Well, really right now all of Texas.

23 JUDGE COLLYER: But in West Texas it has been going
24 on for some time?

25 THE WITNESS: Yes, it certainly has.

1 JUDGE COLLYER: Okay.

2 BY MR. HUGHES:

3 Q. Representative Hunter, were these public hearings that
4 occurred in 2010, were there members of both parties in
5 attendance at these meetings?

6 A. Absolutely because there was a concerted effort in '10 to
7 make sure we engaged both parties into the process.

8 Q. And in connection with these 2010 public hearings was
9 there an effort to reach out to local political
10 representatives, local members of the House to encourage their
11 participation in these public hearings?

12 A. We sent notices out, we sent information, we can't compel
13 people to come. But people were notified of the hearings and
14 so were all hundred and eighty-one members of the legislature
15 being the House and the Senate.

16 Because the program was, even though two committees were
17 handling this, we made it clear anybody in the legislature
18 could attend and participate, and we had a lots of people
19 participating who didn't sit on these committees, but notice
20 was always given to papers, given to public officials and some
21 hearings we had a very very good response. Some we did not.
22 But that's the nature of a hearing.

23 Q. Representative Hunter, one of the issues in this case
24 concern the impact of the Texas maps on Hispanic voters, and I
25 want to ask you were there any efforts made to outreach to

1 Hispanic voters in connection with these hearings?

2 A. Absolutely. I can give you kind of a different view than
3 you'll hear for the trial.

4 As of November before 7:30 P.M. on election day 2010, when
5 you look at South Texas, I was the only Anglo state public
6 official at that point in time.

7 I have lived in the community since 1978. It's a great
8 cultural blended area. South Texas gets along. And we work
9 together, doesn't matter what the party is.

10 So folks like me on both sides of the aisle made a big
11 effort because we knew Hispanic growth was coming to Texas. We
12 would get involved in Latino, Latina Hispanic discussions but
13 some of us tried to make it clear and engage groups to be
14 involved. And so yes, you had it on both sides of the aisles
15 Anglos and Hispanics working to make sure that they knew about
16 the process.

17 Q. Representative Hunter, were translation services offered
18 at these hearings?

19 A. Absolutely. That was an idea that I came up with and had
20 it approved at every hearing we had a translator interpreter,
21 and we would announce it in Spanish and English and we gave
22 that service to anybody that needed it.

23 Q. Representative Hunter, was there any limit on who could
24 testify at these public hearings that occurred in 2010?

25 A. There was no limit to who could testify. Now they would

1 put time limits, but no limit who could testify and at every
2 hearing everybody was let know that they had until December
3 31st to add anything else in writing to the legislature. So
4 even though you had a hearing, they had until December 31st to
5 turn in any information.

6 JUDGE GRIFFITH: May I ask a question?

7 I'm a little confused. Was this a committee hearing?

8 THE WITNESS: Yes.

9 JUDGE GRIFFITH: So how many members of the committee
10 were there typically?

11 THE WITNESS: I'll try to explain it because he's
12 going to ask me questions and you'll see the uniqueness of how
13 the Texas legislature operates.

14 Fifteen member district committee and it was an 11
15 member judiciary committee. We made the concept to have two
16 subcommittees of each hearing of three members. So six people
17 would conduct the hearing; however, any member of the
18 legislature could sit with us at the podium or at the table.

19 So even though you might have six people conducting,
20 Your Honor, you could have 12 people asking questions.

21 JUDGE GRIFFITH: But you would always have at least
22 six?

23 THE WITNESS: Well, I would tell you that we always
24 had at least four so that we could conduct the hearing.

25 JUDGE GRIFFITH: Was that bipartisan representation?

1 THE WITNESS: Yes, yes.

2 JUDGE GRIFFITH: Thank you.

3 BY MR. HUGHES:

4 Q. Representative Hunter, do you believe these public
5 hearings in 2010 were a productive process?

6 A. I absolutely did.

7 Q. Can you expound upon that?

8 A. Well, we went all over the state. We raised the issue of
9 redistricting, we gave people an opportunity to provide input.
10 We have people coming to the hearing and actually propose maps
11 even before we had the official census data.

12 We had people to come in before us to tell us about growth.
13 We had people come in who were able to be told how they could
14 be involved in the process in 2011. It raised awareness in
15 Texas. I feel that we at least accomplished not surprising
16 folks at the last minute.

17 Q. Now Representative Hunter, we're going to talk about 2011
18 in a minute because, of course, that's when the actual maps
19 were drawn and in 2010, I think you will explain in a minute
20 that Texas didn't have all of the final census data that it
21 needed to draw the maps.

22 So my question for you is why have these hearings in 2010
23 in light of that?

24 A. We knew we would not get the official census until
25 probably February, March, April. This is what we were thinking

1 in 2010. But we had enough demographic information.

2 We had enough trend information and as I said, we were
3 informed that there were certain census information that was
4 available to us. So we were able to pretty much calculate who
5 was going into a growth zone, who was not going into a growth
6 zone.

7 And we were able pretty much to focus especially there was
8 the argument in 2010 Texas was going to gain, we didn't know if
9 we were going to get two to four congressional seats. Very
10 well known. We just didn't know the number.

11 So these hearings brought us all around the state. We were
12 able to clarify this and everybody pretty much knew the basics.
13 We didn't know the specifics, but we were not going to draw
14 maps until we got certified information.

15 Q. Representative Hunter, would there have been time to have
16 these kinds of hearings with members of Congress traveling the
17 state to get public input during the legislative session in
18 2011?

19 A. In my opinion practically no because of the way the
20 legislature of Texas works.

21 Q. And that's a nice segway into the next topic I want to
22 explore with you which is what happened in 2011.

23 But before we get into the details, I think some of us here
24 are not from Texas and might not understand some of the
25 peculiarity's of the Texas legislative process.

1 Maybe we can start on that topic and you can explain to us
2 how frequently the Texas legislature meets?

3 A. I'm considered now old in the process. When I started I
4 was one of the young. And the process has changed a little,
5 but here's how Texas works.

6 By the State Constitution we meet once every two years. It
7 is considered a part-time legislature. They pay the
8 legislators approximately \$600 bucks a month, minus taxes, you
9 are in the \$400 range. You shouldn't be running for money on
10 something like that.

11 We meet a hundred and forty days. It starts the second
12 Tuesday of odd numbered years. You cannot come back into
13 session unless the governor calls you by special session,
14 nobody has the authority but the governor.

15 Procedurally this is what happens from a practical
16 standpoint. We get sworn in on that second Tuesday. However,
17 you have no committees beginning the January of the session.
18 There is nothing.

19 We pass House rules within hopefully a week of when we get
20 sworn in. After the House rules are adopted, then committees
21 generally do not get appointed until late, late January or
22 early portion of February. I'm just talking the House side.

23 So for the legislature to begin any process even the budget
24 you're probably not even beginning until February. Then if you
25 look at the House rules we end at the end of May, there are

1 deadlines for House bills and Senate bills at the beginning of
2 May.

3 So your legislature for actual legislative consideration is
4 about middle of February to that very beginning part of May.
5 And that's the key time period to pass or not pass legislation
6 and then we don't come back unless the governor calls us.

7 Q. Representative Hunter, you've talked about this session
8 that runs from January to late May, maybe sometimes early June
9 odd number of years.

10 Do you refer to that as the regular session?

11 A. It's called the regular general session.

12 Q. If the governor calls you back, is that referred to as the
13 special session?

14 A. It's a special session.

15 Q. In terms of redistricting for the Texas House map and
16 Senate map, does that need to be completed during the regular
17 session?

18 A. Well, for the Court there's two rules. The State House
19 and State Senate map if they're not completed within that
20 general session, the legislature loses control and it goes to a
21 specific group called the legislative redistricting board. I
22 believe it's comprised of all republicans in '11.

23 JUDGE GRIFFITH: So how is that board chosen? Those
24 gubernatorial appointments?

25 THE WITNESS: I cannot tell Your Honor if -- they're

1 not gubernatorial because the governor, lieutenant governor,
2 the general land office, the comptroller are on there and I
3 can't remember the fifth.

4 JUDGE GRIFFITH: Okay.

5 THE WITNESS: But I think it is set in statute as to
6 who stays on, and the Speaker of the House is on there and so
7 those five are set for that particular, but I believe it's
8 statutory.

9 Congress, however, you can go to special session, they
10 don't necessarily go to that board.

11 BY MR. HUGHES:

12 Q. Representative Hunter, did members of the House both
13 democratic and republican members want to avoid having the LRB
14 draw the maps?

15 A. Let's just say that when we're there in 2011, if you have
16 a 101 republicans, and you have 49 democrats, and if we don't
17 do it, it's going to go to a five member republican committee.
18 Most of the comments was they wanted the legislators to do
19 their map.

20 Q. Okay. You mentioned the Congress map. Did that map in
21 fact have to get considered in a special session?

22 A. Yes.

23 Q. Now let's, let's now move into the 2011 session. When, I
24 think you've testified that would be convened in early January;
25 is that right?

1 A. Second Tuesday in January.

2 Q. Okay, and when was the redistricting committee formed
3 during the 2011 legislative session?

4 A. The redistricting committee, I can't remember the exact
5 dates the committee came out. But it would have been in
6 February.

7 Q. Were you on the redistricting committee?

8 A. Yes.

9 Q. Were there members of the Democratic Party on the
10 redistricting committee?

11 A. Yes.

12 Q. All right?

13 A. Vice chairman, from San Antonio.

14 Q. Were there other democrats other than the vice chairman?

15 A. Yes, Houston had a representative from there. You had
16 Fort Worth had a Representative from there, and the gentleman
17 who is from South Texas now in North Texas was on there.

18 Q. So the redistricting committee was formed in late January,
19 late January or early February?

20 A. I believe it was February.

21 Q. When did the redistricting committee receive the final
22 census data that it needed from the United States in order to
23 start actually drawing maps to become final maps?

24 A. I believe it was around February 17th, right in that time
25 period.

1 Q. Is that what we're showing here on your time line?

2 A. Yes, there it is, right there.

3 Q. I think you have testified already that the legislative
4 session ends in May, but you've got to have business done
5 before the end of May in order to get bills enacted; is that
6 right?

7 A. That's correct.

8 Q. Based on your experience in the House, you know, starting
9 in February 17, how long did the redistricting committee have
10 to get final maps ready and presented to the redistricting
11 committee and then to the floor in order to give, you know, the
12 bill concerning the map a reasonable chance to pass through the
13 legislative process and avoid the LRB?

14 A. This is another unique rule to Texas. It would have had
15 to have been done in April because of the committee that I
16 chair called calendars.

17 JUDGE COLLYER: Can you repeat that word?

18 THE WITNESS: Calendars.

19 JUDGE COLLYER: Thank you, sir.

20 BY MR. HUGHES:

21 Q. Did you have more you wanted to say?

22 A. Texas has a unique system where no bill can be set. When
23 the redistricting committee acts or any committee acts, they're
24 all treated the same. And the bill is set by my committee.

25 If you don't get it during a certain time, you can't get it

1 set necessarily because of the rules. So April was pretty much
2 the green light time to get it done. If you go beyond April,
3 you're really, you have a hard time passing bills.

4 Q. After the redistricting committee received final census
5 data from the U.S. Government on the 17th of February, what did
6 it need to do with that data in order to start the map drawing
7 process?

8 A. Texas over the years has a system once they get the
9 certified census information, they have to input it into a
10 program called the Redappl System. And they take it and it
11 takes a few days to get it into the system. Once it gets into
12 the system and all members and general groups have access to
13 the map drawing with the census maps --

14 JUDGE COLLYER: Can I ask a question?

15 The 140 days of the duration of the legislature; is that
16 legislative days or calendar days?

17 THE WITNESS: It's a 140 continuous days from
18 January, Tuesday, Tuesday in January forward.

19 JUDGE COLLYER: What is the end date of that, May
20 something?

21 THE WITNESS: It's generally around Memorial Day.
22 Every time it always falls around Memorial Day.

23 JUDGE COLLYER: Thank you.

24 BY MR. HUGHES:

25 Q. Representative Hunter, you mentioned RedAppl as the

1 software used to draw the maps. Did all the members of the
2 House have access to the RedAppl program?

3 A. Once it's programmed, yes, once the information is
4 inputted.

5 Q. Representative Hunter, who is chairman of the House
6 redistricting committee?

7 A. Burt Solomons.

8 Q. Did Mr. Solomons explain to you and other members of the
9 committee his goals for the redistricting process?

10 A. He explained to the committee under the House.

11 Q. What were his goals?

12 A. The goals basically told to the House on the House floor
13 and it was given to the committee was the following is that he
14 wanted everybody to start meeting in groups. If you are for
15 example, West Texas, make sure that the West Texas folks met.
16 South Texas, you know, there are certain areas like San
17 Antonio, Dallas, encouraged the groups to meet.

18 On top of that, he was encouraging everybody to understand
19 the RedAppl Program so that you can start coming up with your
20 configurations. And he set deadlines that he wanted to make so
21 that you could get members inputted in so that you could meet
22 that late April.

23 Now April had not been definitely set, but that was the
24 general time period that we would have to look at. So those
25 were the goals. It was very well understood.

1 I will tell you new members or members who have never been
2 through redistricting, it's a large task because until you go
3 through this process, it's very difficult sometimes to grasp,
4 but generally everybody gets involved. But those are the
5 goals.

6 JUDGE HOWELL: Can I just ask a follow up question
7 about the access meant all the members of the House had to the
8 RedAppl Program data. Mechanically how did they have access?
9 Via one person who actually ran the computer and spit out
10 answers to questions that were posed or was there a centralized
11 computer that people could go to?

12 What does that mean in practical terms to have access to
13 the RedAppl Program census data?

14 THE WITNESS: Your Honor, every member could go to
15 their computer terminal in their office and their staff and
16 there's a program that you push the button and it will take you
17 to Corpus Christi, and then the map zone will come up or the
18 whole State of Texas will come up. And it gives you the
19 ability to reshape or to look at precincts or to look at areas
20 so staff and members had access.

21 Now, some staff and some offices were stripped of access
22 just so that somebody didn't get in I guess to mess with the
23 computer. But generally all staff and members designated could
24 go right into the computer in their office and there's a
25 special setting where you could go to it.

1 JUDGE GRIFFITH: You're part-time, is your staff
2 full-time year around?

3 THE WITNESS: Yes. They actually, most members have
4 part-time and full-time staff. Generally sessions the staff
5 are full and then you get a generally lower budget when you're
6 not in the full session.

7 We generally are budgeted more during session and then
8 less out of session. But most of the staff during session are
9 full-time.

10 BY MR. HUGHES:

11 Q. Representative Hunter, after the census data came in and
12 the RedAppl Program was ready to go, were there looking over
13 your time line, additional hearings, public hearings concerning
14 redistricting?

15 A. Yes. During the 2011 hearing, and a lot of this
16 information people were aware of from 2010. But as it's noted
17 you have a House hearing on March 15th, and you had March 24th
18 right here.

19 And then you also had further hearings that, yes, 2011 we
20 did. They were primarily focused in Austin and because of the
21 computer, and I should make sure that the Court knows this. I
22 believe almost all 2010 and '11 were audio video webcast.

23 So you could participate or observe by your computer as
24 well. So if you couldn't physically get there, there was a way
25 to at least observe and you could call in or make contact.

1 Q. If members of the House who were not on the redistricting
2 committee wanted to meet with or provide information to the
3 redistricting committee was that a possibility?

4 A. Actually, the same thing for all of the House committees,
5 you could meet with the chairman, you could meet with the
6 staff, you could meet with the members. A pretty open process.
7 Members can, they know that pretty much right after they get
8 into the system.

9 Q. Were members --

10 JUDGE HOWELL: Can I interrupt one more second?

11 In addition to the members and the staff having access
12 to all of the RedAppl applications census data, was this
13 information also made available to the public somehow?

14 THE WITNESS: Yes, it was. I'm not a hundred percent
15 sure on the procedure. But for example, I gave access to one
16 of the independent groups. So I do know that members had the
17 ability for example, if there was an outside group that wanted
18 to also be engaged, they could be given access as well.
19 Because I did that.

20 What groups did, I don't know.

21 BY MR. HUGHES:

22 Q. Representative Hunter, based on your experience in the
23 redistricting process, were members of the Democratic Party
24 given input into the 2011 redistricting process?

25 A. Both parties were provided input into the system and into

1 the whole process.

2 Q. I think you were just asked the question about advocacy
3 groups that were interested in the process. Based on your
4 experience were advocacy groups like MALDEF, MALC, LULAC, NAACP
5 some of the parties in this case, were they given the
6 opportunity to provide input into the 2011 redistricting
7 process?

8 A. The answer is yes, and as most of the groups are in here
9 they've been involved in for many years and the answer in 2011
10 is very similar.

11 Q. Now going along on your time line. I think we see here on
12 April 7, there was a hearing on the Congressional Districts. I
13 just want to ask you, there was, were there separate hearings
14 on the Congress map that were distinct from the hearings
15 related to the House map?

16 A. I should explain this for clarification. The House we
17 have a unique unwritten rule. The House does the House map.
18 The Senate does the Senate map. And in both the House and the
19 Senate do Congress and the State Board of Education and that's
20 how they procedurally do it.

21 So there were separate hearings for congressional
22 redistricting and the State House.

23 Q. Moving along your time line, when was the House map that
24 was prepared by the redistricting committee first publicly
25 released?

1 A. Well, the committee hearings the release you have on here
2 April 13th. Then you have the hearings on the Floor Debate on
3 the 15th, 17th and 27th of April.

4 Q. Just to be clear, were the committee hearings, the
5 redistricting committee hearings on the House map held on the
6 15th and 17th of April?

7 A. Yes.

8 Q. Then the Floor Debate was later?

9 A. 27th.

10 Q. Okay. Were groups, advocacy groups that were interested
11 in the map permitted to provide testimony during the
12 redistricting committee hearings?

13 A. Before, during and even after.

14 Q. What about the Floor Debate on the 27th? Were members of
15 the Democratic Party permitted to identify concerns with the
16 map that had been proposed, or publicly released on April 13th?

17 A. The way the Floor, for the Court, the Floor Debates are
18 restricted only to the House members. So both parties are
19 involved.

20 However, any House member can okay for distribution any
21 information from any group to pass to us during the Floor
22 Debate.

23 Q. During the Floor Debate, were amendments to the map
24 considered that at the request of members of the Democratic
25 Party for example, Harris County?

1 A. Yes.

2 Q. Can you explain that?

3 A. The way the process works is during the committee hearings
4 you can offer amendments, and if you are not on the committee
5 you go to a committee member and ask them to offer the
6 amendment.

7 Then in the floor anybody in the House can offer an
8 amendment or what we call an amendment to the amendment. So
9 everybody had the opportunity.

10 Q. What happened on the floor with respect to Harris County?
11 And what part of the state is Harris County?

12 A. Well, Harris County is Houston which is basically the
13 Southeast portion of the state.

14 Simply for the Court, what happened in Harris County is
15 apparently during the process primarily with certain democrat
16 members, maps had been turned in probably by staff that may
17 have lost some of their community or neighborhoods and may have
18 been inaccurate.

19 Giving him credit, the Speaker of the House basically had
20 to stand at ease to allow Harris County and certain members to
21 go and get that resolved during the Floor Debate.

22 I do know that occurred. But I was not involved in the
23 specific negotiations but the opportunity was provided and if I
24 remember right, a lot of times the maps are proposed by the
25 member through their staff and I think some errors were made

1 but they got fixed and two of the members in particular they
2 resolved to my knowledge that day.

3 Q. Representative Hunter, redistricting was not the only
4 legislation considered by the Texas House during 2011, was it?

5 A. No.

6 Q. Were there other major pieces of legislation considered in
7 2011?

8 A. Since I'm the calendars chairman I'm either loved or not
9 loved by what gets set.

10 If you take the February to the Memorial Day and you have
11 to actually come into that first part of May, they had to do
12 redistricting, they had to do the budget.

13 Texas has an odd system on the budget. They do it based on
14 two years not annual. So it's a larger process. Then we have
15 what's called the sunset which is an awkward name. What sunset
16 means is you extend or not extend the life of agencies. We had
17 approximately 15 of those that we had to do.

18 And then you had public school finance. Well, the system
19 of a 140 days which is actually reduced we had to do all of
20 that during that time period.

21 So those were the major issues and then on top of that, the
22 governor declared emergency items of five issues which were
23 heavy issues so what ended up happening is you do have a
24 shrinking time and in my role is to make sure that we reach all
25 of those before the deadlines disappear.

1 Q. Did the procedures and process related to the
2 redistricting bill differ markedly in any way from the
3 procedures and process for the other major business considered
4 by the House?

5 A. No, they're all basically large bills. It doesn't really
6 matter whether they're large, medium or small bill. The
7 procedures are going to apply basically the same.

8 Q. Representative Hunter, when you served in the 1990s, did
9 you go through a redistricting process then?

10 A. Yes, twice. I've had many different districts throughout
11 these time periods. I have been through it twice. And I've,
12 and I have been through the whole process, and I've been able
13 to compare pretty much what you're going through here today.

14 Q. Which party was in charge or had a majority of the
15 representatives in the Texas House during the 1990
16 redistricting process that you referred to?

17 A. Pretty much reversed. In the '90s Texas as I said was
18 primarily a democrat state. And the percentages were high in
19 the House for the democrats.

20 Then today it's reversed, the republicans are the high
21 percentage. So democrat then, republican now.

22 Q. Can you compare the process, the redistricting process
23 that you went through in the 1990s to this most recent round
24 redistricting in 2011?

25 A. Yes, I can. In the '90s again, you don't have all of the

1 computer technology that we have today and the electronic
2 filing and the input. But I thought '11 based on '10 was much
3 more open and actually got it on the radar for the folks in
4 Texas almost six months before the process started. And that
5 was purposeful because of me and a handful that had been
6 through this before.

7 So I think it was more open, more engaging. Unfortunately,
8 in redistricting the combativeness has not changed.

9 Q. Representative Hunter, a few last questions about the
10 process in 2011. Based on your experience, do you believe the
11 House map was drawn or passed with a racially discriminatory
12 purpose?

13 A. No.

14 MR. FREEMAN: Objection.

15 JUDGE COLLYER: Thank you.

16 MR. FREEMAN: My apologies, Your Honor.

17 Objection. My name is Dan Freeman on behalf of the
18 United States.

19 And the question asked of the ultimate issue in this
20 litigation.

21 JUDGE COLLYER: Well, more than that, it's a lay
22 opinion.

23 That's all right, we are going to accept it.

24 Keep going.

25 MR. FREEMAN: Thank you.

1 BY MR. HUGHES:

2 Q. Do you have the question in mind, Representative Hunter?

3 A. No.

4 Q. Let me ask it again?

5 JUDGE COLLYER: He answered it.

6 MR. HUGHES: Oh, he did answer. He said no.

7 I was going to follow up and ask him to explain why you
8 think that?

9 JUDGE COLLYER: That's all right, we know the answer.

10 Go ahead. Keep going.

11 BY MR. HUGHES:

12 Q. Based on your experience, Representative Hunter, do you
13 believe anyone was denied the opportunity to offer their views
14 on the proposed map?

15 A. No.

16 Q. Now Chairman Hunter, I want to shift gears away from the
17 process in the time line to talk about your area of the map.
18 And I think you've already told us you are from Nueces?

19 A. I live in Nueces.

20 Q. And were you involved with helping with the changes that
21 occurred and the drawing of the House map as it relates to
22 Nueces County?

23 A. For the Court I have the personal knowledge on the State
24 House maps for the Nueces County and the Congressional.

25 Q. Now Representative Hunter, I'm showing you what's been

1 marked as Texas Plaintiff's Exhibit 88. And this is side by
2 side comparison. On the left hand side we have what the map
3 that was put in place in 2001 with the districts that you
4 currently represent, and then the map on the right was, is the
5 map that was enacted in 2011 by the Texas legislature.

6 Starting with the map on the left, how many districts had
7 representatives or how many representatives did Nueces County
8 have in that map?

9 A. This is the 2001?

10 Q. Correct.

11 A. It had three, two fully in Nueces, one personally in
12 Nueces.

13 Q. Which districts were fully in Nueces?

14 A. Well, I know them as their area but it's 34 and 33.

15 Q. Which district was both in Nueces and in some of these
16 other counties?

17 A. My District 32.

18 Q. Your district just to be clear, can you identify the
19 counties in addition to Nueces that it occupied under this map?

20 A. That's correct, four counties.

21 Q. What was the party affiliation of, what is the party
22 affiliation of the three representatives that represent the
23 districts in Nueces County that we see here?

24 A. All republican.

25 Q. And talking about Nueces County specifically, what is the

1 political leaning based on your experience of Nueces County?

2 A. Well, the political leaning today is Nueces County unlike
3 the Valley is trending republican and is very high on Hispanic
4 republicans. We are going republican. It is the first time
5 since reconstruction that we have a commissioner's court, so
6 Nueces very strong.

7 For example, for the Court here is a South Texas County
8 that McCain wins. And so these three districts with, or the
9 whole county is trending republican and so are the other
10 counties surrounding it.

11 Q. Representative -- I'm sorry --

12 A. That's not the same when they talk about the Valley.
13 Those are two different distinct areas.

14 Q. In 2011 when the final census data was provided, what did
15 you learn about what had happened to the population in Nueces
16 County?

17 A. Let me explain this to the Court and in 1989 I represented
18 two counties.

19 I was the third person in Nueces, again, they had three.
20 Since 1989 we've had three state representatives.

21 Throughout the years I kept basically picking up other
22 counties through the redistricting process. It was pretty well
23 understood Nueces was probably going to lose eventually a
24 position just because we don't have a Metropolitan growth.

25 I was hoping because I'm going to tell you, I have a

1 history. I have represented some of these people since 1989.
2 I have a very close connection.

3 One of the counties my wife's family is from. So I was
4 hoping in 2010 that we could have three representatives. I
5 still was hoping in 2011 and then they came into my office
6 probably because they knew my concern and told me that the
7 census came out and that Nueces would only get two.

8 JUDGE COLLYER: I don't understand this map.

9 Tell me where Nueces County is? Is it all of those
10 areas?

11 MR. HUGHES: Let me blow it up again, Your Honor.

12 THE COURT: Don't blow it up because you're going to
13 lose something.

14 Is Nueces County the areas covered by something called
15 San Patricio or is that a different county?

16 MR. HUGHES: Maybe I can answer that or the witness.

17 JUDGE COLLYER: No, the witness should answer.

18 THE WITNESS: Your Honor, the map he has here is not
19 giving you clarity of Nueces.

20 On the two side by sides, on the one on the left where
21 it says 34 and 33 right there, that pink, yellow and white is
22 all Nueces County.

23 THE COURT: Right.

24 THE WITNESS: On the right one, it's the pink and the
25 white.

1 JUDGE COLLYER: Hold on.

2 So San Patricio, Aransas and Refugio, Calhoun, those are
3 different counties?

4 THE WITNESS: Correct.

5 JUDGE COLLYER: So tell me how it is that House
6 District 32 has anything to do with Nueces County?

7 THE WITNESS: In the past, Your Honor, there was
8 enough population to have two and a half or two and a third, so
9 you could draw 34, 33. And then the Coastal Zone which I
10 represent had enough to have people to make up another district
11 and they added San Patricio, Aransas and Calhoun.

12 MR. HUGHES: I think I may understand the basis of
13 the confusion.

14 BY MR. HUGHES:

15 Q. Chairman Hunter, is this pink shaded area here in the old
16 benchmark map, what district is that?

17 A. It's 34.

18 Q. This yellow shaded area here in the benchmark map, what
19 district is that?

20 A. It's 33.

21 Q. And this white shaded area here that includes Nueces
22 County, San Patricio, Aransas and Calhoun what district is
23 that?

24 A. My District 32.

25 JUDGE COLLYER: Okay. So 33 is the heart of Corpus

1 Christi?

2 BY MR. HUGHES:

3 Q. Chairman Hunter?

4 A. I would prefer to say the central part, the central area.

5 JUDGE COLLYER: That's actually what I meant so I
6 appreciate the correction.

7 BY MR. HUGHES:

8 Q. Do you also represent part of Corpus Christi,
9 Representative Hunter?

10 A. Yes.

11 Q. I think we were talking about going to just two districts
12 in Nueces County was that, you didn't want that to happen, did
13 you?

14 A. Absolutely not. It's not good politically because you're
15 losing a vote.

16 Q. But in the end were you told that there was no choice?

17 A. They came in and they asked, basically so the Court knows
18 the Speaker's office and the legislative counsel came in to
19 tell me the census results said it's not good for Nueces
20 County. The numbers are showing that the population did not
21 grow like the rest of the state, it looks like you are only
22 going to get two, that was in February.

23 I said well, I still want to try to draw three. You know,
24 over the next handful of weeks we tried, but I was continually
25 told by the redistricting group there's just no way they could

1 do it without violating the rest of the map.

2 Q. Now Representative Hunter, I want to show you now just an
3 image of the Nueces map that was enacted in 2011 that's
4 Plaintiff's Exhibit 86. Just for clarity, does the blue line
5 that I'm pointing to here on the screen, does that represent
6 the border of Nueces County?

7 A. I can't tell if it's blue, but yes, the green to the pink
8 that's the border between San Patricio and Nueces.

9 Q. In this map how many districts are in Nueces County?

10 A. Two.

11 Q. What are the two districts that are contained in Nueces
12 County?

13 A. 34 and 32 which is what we consider locally the western
14 and the eastern portion of the county.

15 Q. Are Districts 34 and 32 entirely contained in Nueces
16 County?

17 A. Yes.

18 Q. Your district is which one?

19 A. 32.

20 Q. Is the, does the star here represent approximately where
21 you live within that district?

22 A. I think, I believe so.

23 Q. Representative Hunter, were you involved in helping to
24 draw the districts in Nueces County so there would be these two
25 districts?

1 A. Yes.

2 Q. Can you explain to the Court the considerations that went
3 into that process?

4 A. I have a -- Once I was told we had to do two. And what we
5 did as chairman, and not everybody does this, I go to the
6 redistricting committee and say I want to draw a map and I have
7 my staff take it in, they give us the input. I physically was
8 not the one drawing. I was actually having staff doing it back
9 and forth for me to look at.

10 Historically Nueces, the western portion, is a larger in
11 the Hispanic population and the eastern portion is not as
12 populated on the Hispanic side. The western portion has had
13 more of a history of democrat voting than the eastern side has.

14 The eastern side is Coastal Zone. It is hurricane
15 coastal water issues. Western side more agricultural and more
16 of what you call the route to the Valley where you'll see a lot
17 of the highways going.

18 So the thought process was we only get two. We were
19 told by the redistricting group and I mean, the committee and
20 all other sources, we cannot water down based on the Voting
21 Rights Act that particular segment.

22 And so we tried to do everything we could to not do
23 that. And that's how the general simple process on how we came
24 up with the two maps.

25 Q. Were the names of the, are the names of the other two

1 republican representatives that are currently serving from
2 Nueces are those the names we see here on the maps?

3 A. Yes.

4 Q. Scott and Torres?

5 A. Yes.

6 Q. And does it appear here that Representative Scott and
7 Torres are now at least according to this map placed in
8 District 34?

9 A. Yes.

10 Q. Representative Hunter, do you know a man named Abel
11 Herrero?

12 A. Yes.

13 Q. Did he ever talk to you about redistricting of the Nueces
14 County districts?

15 A. After some time this fall. After the process was over.

16 Q. Did he ever talk to you before that map was enacted?

17 A. In 2010 he was part of the process on the hearings. 2011
18 did not hear from him.

19 Q. Before the map was enacted did he ever express any
20 concerns about the redistricting of Nueces?

21 A. He provided me no input until after it was final.

22 Q. Representative Hunter, I want to touch briefly on the map
23 for the U.S. Congress. Can you just briefly describe the
24 process and procedures as related to the House redistricting
25 committee's involvement in working on the map for the U.S.

1 Congress?

2 A. U.S. Congressional map did not have the same deadline. As
3 we got into the session, they knew they could, if a special
4 session was called it could be placed there. Some other
5 matters it looked like you were going to have a special session
6 just because time was running out on several issues.

7 So we held hearings and general information overall. We
8 got some information. But time ran out of the regular session
9 and the governor assigned it as a special session item where
10 hearings were held and the map was passed in special session in
11 June.

12 Q. Representative Hunter, did some of the testimony at these
13 public hearings that occurred in 2010, did some of the
14 testimony relate to issues related to the congressional map?

15 A. Absolutely. All of the hearings in 2010 would provide
16 anybody an opportunity for Congressional maps. We had several
17 proposed throughout that time. In fact, what's not shown on
18 the chart is when I came to Washington D.C. to give input.

19 Q. Tell us about that, did you come to Washington D.C. to
20 give input from the Texas delegation concerning redistricting
21 issue?

22 A. Yes, in 2010 in September I was in Washington D.C. and met
23 with democrats and republicans letting them know about this
24 process, letting them know if they wanted to provide any input
25 to please let me know.

1 And it's not unusual that I would go talk with both sides
2 of the aisle since I've served with most of these individuals
3 that are in Congress and their personal friends.

4 Q. Who, which members, do you recall which members of that
5 Congressional delegation you met with to talk about
6 redistricting?

7 A. I met with Congressman Clay, I met with Congressman
8 Doggett, I met with Congressman Gonzales, I believe I met with
9 Congressman Shelia Jackson Lee.

10 Q. What's the party affiliation of the members you just
11 mentioned?

12 A. You just asked me what democrats. I met with republicans
13 too, but they were democrats.

14 Q. Can you tell us which republicans you met with?

15 A. I met with Lamar Smith, I met with Pete Sessions, I met
16 with I think the Texas Congressional Republican group has a
17 lunch and I went to them. I met with Congressman Marchant, he
18 served with us, Colberson Brady.

19 Q. Did you explain --

20 A. Paul.

21 Q. Did you explain to all of the Congressional delegates that
22 you met with that they could provide you information and
23 concerns relating to redistricting?

24 A. Absolutely.

25 Q. I now want to focus on the congressional map as it relates

1 to your involvement with it.

2 Did you have any involvement in helping with certain areas
3 of the Congressional map?

4 A. As I said earlier, I was only involved in 2011 with the
5 Nueces County Congressional.

6 Q. I want to show you what's Plaintiff's Exhibit PX 87. And
7 this is a side by side. On the left we have the congressional
8 map as it was in the benchmark plan. Then on the right we have
9 the congressional map as was enacted in 2011.

10 Which part of this map looking at the part on the right
11 hand side did you have involvement with in the drawing of the
12 map?

13 A. 27.

14 Q. In comparing the two maps, can you describe the change
15 generally in the geographic makeup of Congressional District
16 27?

17 JUDGE COLLYER: You have about five minutes -- no,
18 I'm wrong, never mind. You're right, eight minutes before we
19 take a break.

20 MR. HUGHES: Okay, actually, I think that will be
21 perfect.

22 THE WITNESS: For the last several years Nueces
23 County Congressional went south. Over the last 15 years
24 there's been discussion about the deep valley that you've
25 talked about having their congressional and let Nueces have

1 their own congressional.

2 I believe it was Congressman Bill Patten who
3 historically had the mid coast section. Basically the mid
4 coast section they call it the coastal planes which is fairly
5 similar to what has occurred in the past, and that was formed
6 over discussions of these hearings and with various members.

7 BY MR. HUGHES:

8 Q. Does District 34 on the right hand side, does that
9 represent a new district in the congressional map?

10 A. Yes.

11 Q. Now, Representative Hunter, we talked about your role in
12 the redistricting process going all the way back to 2010
13 especially as it relates to Nueces County both on the House map
14 and in the Congressional map.

15 And I want to ask you given your involvement in those
16 aspects of the map, did any of the advocacy groups that are
17 involved here in this case like MALDEF or MALC, NAACP and LULAC
18 come to you and raise concerns about these areas of either map
19 during the redistricting process?

20 A. The bottom line is this. We held the 2010 hearings. We
21 had 2011 hearings. Everybody was given an opportunity to visit
22 personally. My view is called genuineness. If you really had
23 a complaint on the House, Senate, Congressional map, why would
24 nobody come visit with me personally? I received no personal
25 visits.

1 I heard a little bit on the House floor for the first time
2 and to this day, nobody has come in and visited with me
3 personally. I've heard about the attacks, that's natural,
4 that's litigation, but I want the Court to know nobody during
5 my process took one effort to come visit with me personally on
6 redistricting.

7 I guess as a lawyer, I question that no effort was made to
8 really tell me why there was a problem.

9 MR. HUGHES: Thank you, Representative Hunter. Those
10 are my questions.

11 JUDGE HOWELL: Can I just follow up on that?

12 I mean, so it's your understanding, whether or not
13 people came to visit with you personally, no one raised any
14 concerns about the maps, the congressional map, in any of the
15 hearings either?

16 THE WITNESS: No. I said during the hearings they
17 did. I'm saying nobody ever made an effort -- for example,
18 Your Honor, there's discussion you'll hear about the
19 congressional map and how the counties or two versus three in
20 Nueces, why didn't, it's very natural we all work together,
21 groups here have done this for 20 to 30 years.

22 My view is why don't they come in to me during a 140
23 days or during 2010 and say Todd, would you take a look at this
24 map and see if this can work?

25 The only time I ever heard anything was in the hearing

1 or very briefly on the House floor.

2 I think the Texas system is to try to work together and
3 to try to get plans adopted and there was an encouragement for
4 groups to get together. Never heard from anybody personally
5 outside the hearing process.

6 MR. HUGHES: Those are all of my questions.

7 Thank you, Representative Hunter.

8 JUDGE COLLYER: All right, thank you.

9 Did Texas have another witness?

10 MR. HUGHES: I assume there's cross examination.

11 JUDGE COLLYER: Oh, cross examination.

12 MR. HUGHES: Would now be a good time for our break,
13 Your Honor?

14 JUDGE COLLYER: Yes, now would be more than a good
15 time but we still have five minutes left, so we're going to go
16 to cross examination.

17 MR. FREEMAN: Would you like me to begin?

18 JUDGE COLLYER: Yes.

19 MR. FREEMAN: Just going to take a moment to take
20 these down.

21 MR. SELLS: Can we have a time count?

22 JUDGE COLLYER: We have used up, Texas has used up 56
23 minutes -- No, an hour and 56 minutes.

24 MR. SELLS: Thank you.

25 MR. FREEMAN: Good afternoon, Your Honors, my name is

1 Dan Freeman on behalf of the United States.

2 CROSS EXAMINATION

3 BY MR. FREEMAN:

4 Q. And good afternoon -- good morning, my apologies --
5 Representative Hunters'. Good to see again.

6 JUDGE COLLYER: Dan Freeman?

7 MR. FREEMAN: Yes.

8 JUDGE COLLYER: And you are from the Department of
9 Justice?

10 MR. FREEMAN: Yes.

11 JUDGE COLLYER: Thank you, sir.

12 MR. FREEMAN: Thank you.

13 BY MR. FREEMAN:

14 Q. Representative Hunter, I'm hoping we can clear up a few
15 issues specific to the redistricting committee in the Texas
16 House of Representatives.

17 Now as you said, you were a member of the redistricting
18 committee during the eighty second legislature, the last
19 session; is that correct?

20 A. Yes.

21 Q. But you weren't chairman of that committee?

22 A. No.

23 Q. Representative Burt Solomons was chairman of the
24 redistricting committee, correct?

25 A. Correct.

1 Q. In fact, your role in redistricting was to use the process
2 set up by Chairman Solomons once we were in the eighty second
3 legislature; is that correct?

4 A. The part of the process.

5 Q. That's fine.

6 You weren't included on any e-mails among Chairman
7 Solomons', his staff or the Speaker's staff determining whether
8 to show statewide maps to some legislators before others, were
9 you?

10 A. No, I don't recall that.

11 Q. You weren't included on any such e-mails to set up the
12 schedule for the release of the chairman statewide draft were
13 you?

14 A. I may have had some verbal contact but don't remember
15 anything in writing.

16 Q. And you weren't included on any such e-mails planning on
17 how soon the committee would hold hearings after those maps
18 were released, were you?

19 A. I don't believe, I think you're correct.

20 Q. And Representative Hunter, you weren't included on any
21 such e-mails deciding hearings schedule were you?

22 A. Verbally I was probably talked to. In writing, probably
23 not.

24 Q. Representative Hunter, you're the chairman of the calendar
25 committee. Isn't that correct?

1 A. Yes.

2 Q. And the calendar committee is in charge of setting bills
3 on the calendar for Floor Debate; is that correct?

4 A. Yes.

5 Q. So in fact, with regard to the scheduling of redistricting
6 your only role was to set the redistricting bill on the
7 calendar for Floor Debate once the bill was ready; is that
8 correct?

9 A. As calendar chair or as a member of the committee?

10 Q. During the eighty second legislature as a whole your role
11 with regard to the schedule of redistricting was only to set
12 the bill for debate on the floor once the bill was ready; is
13 that correct?

14 A. Technically correct.

15 Q. In order to set a bill on the calendar for Floor Debate
16 you have to know when the bill has been voted out of committee
17 and is ready for the floor, am I right?

18 A. Correct.

19 Q. But you don't know whether you had any conversations with
20 Chairman Solomons about the timing of the House redistricting
21 bill until it was ready, isn't that right?

22 A. There may have been verbal discussions where chairman come
23 to me as calendar saying hey, we're looking at this time period
24 of April. But specifically e-mails, I don't remember.

25 Q. But in terms of conversations with Chairman Solomons

1 specifically to redistricting, you don't remember any such
2 conversations with regard to that bill, do you?

3 A. I do not remember specific conversation.

4 Q. Now you described earlier the 2010 hearings as opening up
5 the process to public input for redistricting, but am I correct
6 that there was no final census data available during 2010?

7 A. There was no final census data, correct.

8 JUDGE COLLYER: All right, we've reached 10:15, we're
9 going to take a break.

10 MR. FREEMAN: Thank you, Your Honor.

11 (Witness excused.)

12 (Morning recess @ 10:15 a.m.)

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1 (Proceedings resumed at 10:30 a.m.)

2 JUDGE COLLYER: Go right ahead, sir.

3 MR. FREEMAN: Thank you.

4 **CROSS-EXAMINATION (Cont'd)**

5 BY MR. FREEMAN:

6 Q. Representative Hunter, just to get back to what we were
7 speaking about before in the schedule of the House
8 Redistricting Committee.

9 Now, you had testified during your direct that all
10 committee, all committee acts, once they come out, they're all
11 treated the same; is that correct?

12 A. On the procedure.

13 Q. But isn't it the case that you all had a discussion with
14 Chairman Solomons that once the redistricting bill was ready,
15 it would be calendared right away; isn't that the case?

16 A. I told him that redistricting, that was not all I told
17 him, but yes, that's part of it, yes.

18 Q. So Representative Hunter, I'd like to turn now to the
19 principles that guided the 2011 redistricting process.

20 Now, you were aware that redistricting that the
21 redistricting bills had to comply with federal law; correct?

22 A. With the federal and state law during our process.

23 Q. And by state law, do you mean specifically the Texas
24 County Line Rule?

25 A. Yes.

1 Q. But Representative Hunter, you testified during your
2 direct that Chairman Solomons explained goals to the committee;
3 is that correct?

4 A. Correct.

5 Q. But Representative Hunter, you don't know any of the
6 principles that Chairman Solomons set out to guide the house
7 redistricting, do you?

8 A. I know some of the principles he laid out.

9 Q. Representative Hunter, your deposition was taken in this
10 case; isn't that correct?

11 A. Yes.

12 Q. And during your deposition you swore an oath to tell the
13 truth?

14 A. Yes.

15 Q. But isn't it the case in your deposition that when I asked
16 you, "Do you recall any principles that Chair Solomons --

17 THE COURT: Wait. You have another page reference to
18 counsel?

19 MR. HUGHES: Page and line.

20 MR. FREEMAN: I apologize.

21 MR. HUGHES: Thank you.

22 THE COURT: Page reference is sufficient, you're a
23 fast reader, I'm sure.

24 MR. FREEMAN: I'm happy to give you the line as well.
25 It's page 58, on line 9, I asked --

1 THE COURT: You don't need to put it up.

2 Please, come on, guys.

3 BY MR. FREEMAN:

4 Q. I asked, "Do you recall any principles that Chairman
5 Solomons set out to guide the House redistricting?"

6 And you said specifically, "No."

7 MR. HUGHES: On objection, Your Honor, it's improper
8 impeachment, he's not reading the entirety of his answer.

9 JUDGE COLLYER: All right, well, read the entirety of
10 his answer, please.

11 MR. FREEMAN: Happy to.

12 BY MR. FREEMAN:

13 Q. I asked, "Okay. Do you recall any principles that
14 Chairman Solomons set out to guide the House redistricting?"

15 You responded, "Specifically no, but he did announce
16 certain things on the House floor, and announced things in the
17 committee."

18 And then I further asked, "Do you remember him using the
19 phrase, 'member driven plan'?"

20 And you responded, "I don't."

21 MR. HUGHES: Objection, Your Honor, this is all
22 improper impeachment. He didn't even ask him --

23 JUDGE COLLYER: That's fine. We are going keep
24 going. Objection overruled.

25 MR. HUGHES: May I ask if there are going to be

1 further references to the deposition that Representative Hunter
2 be provided a copy of it so that he can see his answers in
3 context?

4 JUDGE COLLYER: That's not the way you do it. He's
5 on cross-examination. If you wish to rehabilitate later, you
6 can you do that. Go ahead, sir.

7 MR. FREEMAN: Thank you.

8 BY MR. FREEMAN:

9 Q. Now, Representative Hunter, I don't know whether the House
10 Redistricting committee was ever told that racially polarized
11 voting analysis was ever available, do you?

12 A. I don't recall.

13 Q. You don't know if you yourself ever received racially
14 polarized voting analysis, do you?

15 A. I don't recall.

16 Q. And you don't know whether you ever looked at statistics
17 concerning Hispanic citizen voting age population in specific
18 districts, do you?

19 A. I think that I did see some, but specifically I don't
20 recall.

21 Q. And you don't recall because you don't know; is that
22 correct?

23 A. Well, no, I've seen information in my area about Hispanic
24 numbers, and I know Hispanic numbers in my area, but I don't
25 remember any specific document or information that you or

1 anybody gave us.

2 Q. And again, we're on page 65 of the deposition, line 4 to
3 be specific, when I asked, "Do you recall looking at that
4 data," and this was racial block voting, racially polarized
5 voting data of Hispanic citizen voting age population data, you
6 responded "no"?

7 A. To that question, agreed.

8 Q. So in terms of looking at Hispanic citizen voting age
9 population data, you did not look at that data; is that
10 correct?

11 A. If you are asking if the document was given with that, I
12 agree with you. I have general knowledge.

13 Q. You have general knowledge of the Hispanic citizen voting
14 age population data?

15 A. And some, as I said, in my area.

16 Q. That's fine.

17 Now, Representative Hunter, during the redistricting
18 process, you didn't seek any input from the Chairman of the
19 Mexican American Legislative Caucus Trey Martinez Fischer, did
20 you?

21 A. Did I personally go off to talk to him about
22 redistricting?

23 Q. You didn't visit with him, did you?

24 A. Well, we generally visited, since he sits four feet away
25 from me. But did I go have a formal meeting, no.

1 Q. Did you visit with him about redistricting?

2 A. We had general discussions on redistricting.

3 Q. In fact, you know so little about the redistricting
4 process that when I showed you a map of your district during
5 your deposition, you couldn't even recognize your district;
6 isn't that the case?

7 A. You'll have to explain that, I don't know. The answer is
8 I disagree with you.

9 Q. During your deposition I showed you a map of your
10 district; is that correct?

11 A. Yeah.

12 Q. And when I showed you a map of your district, you told me
13 that you were not able to recognize that map?

14 JUDGE COLLYER: Excuse me. Which district are we
15 talking about?

16 MR. FREEMAN: The proposed district, Your Honor.

17 JUDGE COLLYER: Thank you.

18 BY MR. FREEMAN:

19 Q. When I showed you a map of your proposed district and the
20 proposed map for Nueces County, you couldn't even recognize
21 that map; is that correct?

22 A. I can't recall.

23 Q. Well, let's see if we can refresh your recollection then.

24 I'm putting in front of Representative Hunter page 142 of
25 his deposition, and if we can start at line 16.

1 I asked, or if you can just read that, that's fine.

2 And then in one moment I'll put that exhibit in front of
3 you as well.

4 A. You want me to read the question?

5 Q. Just take a look and see if you can -- if you can refresh
6 your recollection. And let me know if you'd like to go to the
7 next page.

8 A. All right.

9 MR. HUGHES: And, Your Honor, may I ask that the
10 witness, this series of questions and the answers is about a
11 specific exhibit that was shown during the deposition. May I
12 ask the witness be provided -- thank you, Mr. Freeman.

13 BY MR. FREEMAN:

14 Q. You all set?

15 A. (No verbal response.)

16 Q. And now here's the exhibit.

17 A. Okay.

18 Q. So let's return to the question real quickly.

19 So isn't it the case that when I showed you during your
20 deposition a picture of your own district, you couldn't
21 recognize that district in the proposed plan; is that correct?

22 A. I couldn't recognize the document you gave me.

23 Q. Is the document not clear to be a map of your proposed
24 district, sir?

25 A. It is not the best description or photograph of what we

1 used. I have no idea if this is what you drew or this is
2 official, but to me it's a gray zone.

3 Q. If you look at the top of the document, isn't it correct
4 that that says district viewer Texas legislative counsel?

5 A. Yes.

6 Q. And it indicates that your district has some very
7 recognizable features along its border?

8 A. You mean by the water?

9 Q. I mean the border between District 32 and District 34.

10 A. It has a border, I'm not sure what you're saying, is that
11 you see 34 and 32, the answer is yes.

12 Q. That's fine.

13 Well, Representative Hunter, let's take a look at your own
14 district.

15 And perhaps, I know we're having technical problems. Why
16 don't we just leave this exhibit up.

17 Representative Hunter, as you testified, there are two
18 districts in Nueces County under the proposed plan; correct?

19 A. You're talking about the legislative plan.

20 Q. The proposed plan that's at issue in --

21 A. In this case, yes.

22 Q. Representative Hunter, you've described District 32 as the
23 eastern portion of Nueces County; is that correct?

24 A. Correct.

25 Q. And you've described District 34 as the western portion of

1 Nueces County?

2 A. Correct.

3 Q. But Representative Hunter, the line between the eastern
4 and western districts is not a straight line north to south; is
5 that correct?

6 A. That's correct.

7 Q. But you don't know why the line makes particular twists
8 and turns, do you?

9 A. No, I don't know why it makes particular twists and turns.

10 Q. And you don't know what communities are moved into
11 District 32 by those kinks in the boundary, the communities
12 that would have been in District 34 if the line were straight,
13 do you?

14 A. I do know, as I told you in the deposition, if we drove
15 the area, I do not in connection with this map.

16 Q. That you -- oh, if you drove the area.

17 But when the map was being drawn up, you didn't know; is
18 that correct?

19 A. I can't tell from this map which precincts and
20 neighborhoods are in it. I can tell you if I go into that zone
21 or you tell me exactly if that's the South Shores Division.
22 Port Aransas, I can tell you everything about it.

23 Q. Well, perhaps this area right there, the area that is
24 largely circled by District 34, but is in district 32. Can you
25 identify that area?

1 A. No, I told you unless you and I were physically in that
2 those neighborhoods, I can't tell you on that map because I
3 can't tell what streets and what area that is.

4 Q. And the same applies to this dog leg here? The one that's
5 circled?

6 A. I thought that's what you were asking me, but yes.

7 Q. And the line splits several precincts within Nueces
8 County; is that correct?

9 A. You had indicated that in the deposition, and I told you
10 as an officer of the court, if you say, then I'll agree.

11 Q. But except for Precinct 64, you don't know what
12 communities are affected by those splits, do you?

13 A. Again, without being physically there, I cannot.

14 Q. Okay.

15 Now, Representative Hunter, you testified during your
16 direct about your role as the representative from Nueces
17 County, the sole representative from Nueces County on the
18 Redistricting Committee, and you said that it was important to
19 make sure that south Texas got input; correct?

20 A. Yes.

21 Q. But District 33, as we discussed earlier, was moved from
22 Nueces County to elsewhere in the state; is that correct?

23 A. I don't agree with the way you phrased the question, no.

24 Q. District 33 in the benchmark plan was within Nueces
25 County; is that correct?

1 A. District 33 used to be a main district in Nueces.

2 Q. And District 33 under the proposed plan is no longer
3 within Nueces County; is that correct?

4 A. Correct.

5 Q. Fair enough. And the loss of District 33 as you said in
6 your direct will take a voice away from your area in the
7 capitol; is that correct?

8 A. Absolutely.

9 Q. And you said that the issue was brought up to you, in your
10 direct, you said on the house floor for the first time, that
11 there could be Voting Rights Act implications of this; is isn't
12 that correct?

13 A. No, I think I told you throughout the whole process we had
14 to be very cognizant of the Voting Rights Act.

15 Q. But specifically with the complaint about the loss of
16 District 33, you said that if people had issues, they should
17 have visited with you earlier, and that it was brought up on
18 the house floor for the first time; is that correct?

19 A. First time I actually remember it in a formal setting,
20 you're correct. But the general concept had been raised in
21 some hearings, yes.

22 Q. Can you perhaps make a distinction?

23 A. Yes, I can.

24 Q. Well, strike that, that's all right.

25 A. Oh.

1 Q. You mean with regard to the specific problems created by
2 the fact that District 33 would no longer been in Nueces County
3 in the proposed plan; is that correct?

4 A. I don't understand the question. District 33 is not in
5 the proposed plan.

6 Q. But I'm talking about people bringing up that issue to
7 you. That you testified that it was brought up on the House
8 floor for the first time; isn't that correct?

9 A. It was brought up on the house floor with formal
10 solutions. And I said that I was very bothered that if this
11 was such a concern, why did they just wait and not come in --
12 we all worked together. This isn't a deal where you hide
13 behind a log. The whole process is floored. And what I told
14 you was why wouldn't you come in and say, hey, there's a
15 problem, here's a way to fix it. It was never brought to me
16 personally.

17 Q. The committee hearings on the proposed map after the first
18 proposed map came out, that was a part of that -- that process
19 when you could solve problems; isn't that correct?

20 A. It was a part, but it's the formal part of the process.
21 By the time you get to the committee hearing, you hope that you
22 work with the members to come up with amendments that have been
23 discussed, that are agreed to or not. Not a surprise.

24 Q. As a member of the Redistricting Committee, you attended
25 the first public hearing on the committee substitute; am I

1 right?

2 A. Yes.

3 Q. I would like to play a videotape of that hearing for you.
4 This is Exhibit 608 for the United States. The clip begins at
5 minute 1230 of that first redistricting hearing that you
6 attended.

7 (Videotape played.)

8 BY MR. FREEMAN:

9 Q. So isn't it true, sir, that Luis Figueroa of MALDEF raised
10 this issue with you during the committee process, that it was
11 not an ambush on the floor?

12 A. It was raised in the committee process. I've been
13 consistent about that. I'm saying if you're genuine, why don't
14 you come into the office like most everybody else to propose
15 the amendments before you announce it on the floor of the House
16 or announce it in a hearing?

17 If you're really genuine on trying to help and preserve,
18 use the process. It's not one of these just to show up to a
19 hearing where I've never seen or heard or been provided any
20 information. Yes, the issue has been raised. No, no genuine
21 effort was ever made to resolve.

22 Q. Now, MALDEF proposed a plan at that hearing that would
23 have included three districts in Nueces County; is that
24 correct?

25 A. I believe so, I believe that they had a -- I don't know

1 which group, but somebody offered a map at one of the hearings.

2 Q. And two other suggestions made by MALDEF, increasing the
3 Spanish surname registered voter share in Districts 90 and 148
4 were taken into consideration after they were made at that
5 committee hearing; is that correct?

6 A. Based on my knowledge, maybe.

7 Q. Representative Hunter, I'd like to talk to you very
8 quickly about where the incumbents live under the proposed
9 House plan?

10 Now, I have maps, but, in fact, your lawyers have provided
11 much prettier maps than I have so I'm going to use their maps
12 if that's all right.

13 Representative Hunter, you testified that you have two --
14 that your staffers worked on this redistricting for you, but
15 that they ran things by you and that they didn't act
16 independently from you; is that correct?

17 A. That's correct. The buck stops with me no matter what
18 happens.

19 Q. But you didn't focus on placing particular incumbents in
20 certain districts, did you?

21 A. No.

22 Q. But isn't it the case that both Connie Scott and Raul
23 Torres are in District 34, whereas you are the only incumbent
24 in District 32?

25 A. Absolutely correct.

1 Q. But you didn't ask your staff to put Representative Torres
2 in the same district as Representative Scott, did you?

3 A. No, I never even knew where Torres lived.

4 Q. But if you didn't know where Torres lived, isn't it
5 surprising that the district lines reach out in a dog leg to
6 pick up his house right there?

7 A. If you asked in the deposition, yes, it's surprising, but
8 it's no [sic] surprising that this is any different than what
9 occurred in 2001 with that map.

10 Q. We're just talking about this map for right now.

11 A. To answer your question, I did not know where anybody
12 personally lived, and when this was drawn, I've never even been
13 to his house.

14 Q. And wouldn't it also be surprising if the map reached out
15 to pick up former Representative Solomon Ortiz right there?

16 A. Is he in -- are you saying he's in the district?

17 Q. I'm saying in that dog leg that's part of 34, would that
18 also surprise you?

19 A. No, I'm surprised those two live that close together

20 Q. But isn't it then the case that every Hispanic current and
21 former representative from the last eight years or so has all
22 been drawn into District 34?

23 A. I don't understand your question.

24 Q. Well, isn't it the case that the only other Hispanic
25 representative from Nueces County in the last eight years is

1 Abel Herrero; correct?

2 A. In Nueces County or 34?

3 Q. In Nueces County?

4 A. No, you had Solomon Ortiz, Jr. was a member.

5 Q. Yes. Solomon Ortiz, Jr., Raul Torres and Abel Herrero;
6 correct?

7 A. Right, correct.

8 Q. And Abel Herrero lives in Robstown; correct?

9 A. It's my understanding. He lists as Robstown.

10 Q. And Robstown is to the west of Corpus Christi; correct?

11 A. It's the western portion.

12 Q. And Raul Torres lives in this dog leg here; correct?

13 A. I am presuming you're accurate. I do not know.

14 Q. Well, this is your counsel's map.

15 A. Well, I hope he's right. But I do not know. This is what
16 we were given on the residents and they were then placed on the
17 map.

18 Q. So if Abel Herrero lived somewhere over here.

19 A. Uh-huh.

20 Q. And Raul Torres lives here, and Solomon Ortiz, Jr. lives
21 here. Isn't it --

22 A. No, that would be inaccurate, you have an inaccurate
23 question. That's not Robstown.

24 Q. Well, somewhere to the west of Corpus Christi. I
25 apologize for not having it precisely.

1 If Abel Herrero lives west of Corpus Christi, Raul Torres
2 lives in that dog leg, an Solomon Ortiz, Jr. also lives in that
3 dog leg, isn't it the case that the current and former Hispanic
4 representatives from the last eight years or so from Nueces
5 County have all been drawn into District 34 and out of your
6 district?

7 A. If that's where they live, that's how that map shows.

8 Q. Okay.

9 Now, Representative Hunter, you said that south Texas
10 delegation gets along and works well together; is that the
11 case?

12 A. That is correct.

13 Q. And would you describe Representative Raul Torres as
14 truthful?

15 A. I'm not sure that I can tell you who is truthful or not
16 truthful. But I can tell you he's a good person.

17 Q. So Representative Raul Torres would not lie under oath; is
18 that correct?

19 A. That I don't know.

20 Q. Representative Hunter, did you ever suggest to
21 Representative Torres that you would not support any of his
22 work if he did not agree to your proposed redistricting plan
23 for Nueces County?

24 A. Absolutely not. In fact, I think I sent all his bills.

25 Q. And Representative -- well, isn't it the case that he did

1 eventually agree to your plan for Nueces County?

2 A. To me, he continually agreed to it. We had discussions,
3 but he continually agreed.

4 Q. Representative Hunter, did you ever get into a loud fight
5 with representative Connie Scott concerning your redistricting
6 plan for Nueces County?

7 A. No.

8 Q. And did you ever make Representative Scott cry during
9 discussions of the Nueces County redistricting?

10 A. Representative Connie Scott is probably tougher than I am.
11 The answer is no.

12 Q. Okay. Just a couple more things. In fact, I think I'm
13 going to wrap up right there and pass you over to José Garza.

14 MR. GARZA: José Garza for the Mexican American
15 legislative caucus.

16 **CROSS-EXAMINATION**

17 BY MR. GARZA:

18 Q. Juice a few questions, Chairman. You mentioned that in
19 2010, the joint committee held hearings across the state. And
20 you mentioned that a number of groups testified before the
21 committee. The Mexican American Legal Defense Fund, LULAC, the
22 Hispanic Chamber.

23 Isn't it true that almost unanimously these groups talked
24 about the increase in Latino population in Texas?

25 A. Absolutely correct.

1 Q. And almost unanimously they voiced the request that
2 additional Latino seats be included in any redistricting that
3 were drawn for all of the seats?

4 A. I'm not sure on all of them, but that was certainly a
5 theme.

6 Q. Okay. And the Joint Committee did not issue any reports;
7 is that correct?

8 A. No, I believe the Redistricting Committee did a report.

9 Q. The Joint Committee after the hearings were held did not
10 issue a report regarding --

11 A. Jointly, no.

12 Q. And didn't issue any analysis of the testimony; is that
13 correct?

14 A. That's correct.

15 Q. And provided no guidelines as a result of those hearings
16 across the state; isn't that correct?

17 A. Not sure what you --

18 Q. For redistricting?

19 A. Guidelines for the redistricting procedure?

20 Q. Guidelines for redistricting based on the testimony that
21 was --

22 A. Yeah, I don't think that would've -- that that occurred.

23 Q. Okay.

24 JUDGE COLLYER: Well, if not, how in the world were
25 people supposed to know what was said during those hearings?

1 THE WITNESS: The Redistricting Committee had its
2 clerk and their staff, and then the judiciary had my clerk and
3 staff because we were invited to jointly, we would not prepare
4 a final report. But it was announced to the legislature that
5 all information that was taken in to the clerks could be
6 provided to any member, any house group. On top of it, there
7 are videos that were made of each of the hearings by webcast.

8 JUDGE COLLYER: But no summary report. This is what
9 we heard from the citizens of Texas in this area or that area
10 was provided?

11 THE WITNESS: Right, there was no written committee
12 report, yes, Your Honor, that's correct.

13 BY MR. GARZA:

14 Q. And you mentioned in direct that you were upset that
15 none -- at none of these pre-hearings, and I call them
16 pre-hearings because there was no census data available yet; is
17 that correct?

18 A. No, there was census data, there was no final certified
19 census data.

20 Q. There was no data that could be used actually, official
21 data that could be used for redistricting; isn't that correct?

22 A. I agree with that.

23 Q. All right. And there were no suggested plans from the
24 legislature or the leadership to be reviewed during these
25 hearings; is that correct?

1 A. To my knowledge, you're correct.

2 Q. Okay. So there couldn't have been any complaints at that
3 stage that you've eliminated this district or you've drawn this
4 district improperly; isn't that correct?

5 A. On elimination of districts, I agree.

6 Q. In fact, there were, once the data was released, once the
7 committee was actually formed in the Texas House of
8 Representatives, there were hearings held in a number of
9 organizations and individuals testified before those
10 committees, even before there were any plans laid out; isn't
11 that correct?

12 A. I believe that's correct.

13 Q. And as the Government pointed out, Mr. Figueroa
14 specifically complained after the release of the map that
15 Nueces County -- that the legislative proposal eliminated the
16 Latino opportunity to redistrict in Nueces County; isn't that
17 correct?

18 A. Was that the clip that you showed me?

19 Q. Yes.

20 A. Whenever that clip was, I'm sure, but I don't know when.

21 Q. Right. Now, even before the committee laid out its plan,
22 though, there were groups that came to the committee and
23 because the discussion about Nueces County wasn't a surprise;
24 isn't that correct?

25 A. It was not a surprise because we lost, we didn't have the

1 population growth, and we were being told only two.

2 Q. And there were discussions about, within the legislature,
3 including questions that you raised, about whether there was
4 some way to keep three districts in Nueces County; isn't that
5 correct?

6 A. That is correct.

7 Q. All right. And, in fact, I testified before the committee
8 as counsel for MALC and offered my opinion that elimination of
9 District 33 or elimination of one of the two Latino opportunity
10 districts in Nueces County would violate Section 5; isn't that
11 correct?

12 A. I can't remember.

13 Q. And that was before I testified, even before there was a
14 plan laid out; isn't that correct?

15 A. I can't remember.

16 Q. Now, you mentioned that Chairman Solomons had set out
17 goals, and you mentioned three in your direct testimony, that
18 the legislators should meet in groups was the first one. And
19 that he encouraged the groups to get familiar with red apple,
20 and finally that he would set deadlines.

21 And then you gave as examples of how that -- those goals
22 worked Harris County; is that correct.

23 A. Well, I think I explained Harris County on the floor of
24 the House.

25 Q. On the floor of the house --

1 A. That's right.

2 Q. -- there was that sort of cooperation, I think is what you
3 meant --

4 A. Correct.

5 Q. -- by showing that as an example.

6 Isn't it, in fact, true that with regard to Harris County
7 the involvement of the minority and democratic members of the
8 delegation was limited?

9 A. I have no idea.

10 Q. For instance, you don't -- you weren't at the trial in
11 Texas where the testimony was that the democratic legislators
12 were told they could change their districts any way they
13 wanted, but they had to leave the rest of the map alone?

14 A. I was not there.

15 MR. HUGHES: Your Honor, I object. At this point
16 Mr. Garza is testifying and apparently attempting to impeach
17 the witness.

18 JUDGE COLLYER: This is cross-examination, he's
19 allowed to ask him these questions. Go ahead.

20 THE WITNESS: I was not there.

21 BY MR. GARZA:

22 Q. All right. So you weren't aware of that -- that edict to
23 the minority members of the Harris delegation they could only
24 have input as to their specific districts.

25 A. You said Harris County?

1 Q. Harris County.

2 A. No, I had no personal involvement.

3 Q. And with regard to Hidalgo County, were you aware that all
4 of the members of the delegation from Hidalgo County opposed
5 all but one of the members of the delegation from Hidalgo
6 County opposed the final configuration of the plan for Hidalgo
7 County?

8 A. Is Guillen part of Hidalgo or not?

9 Q. No, he is not.

10 A. Okay. So it would be Peña that's your main objection? I
11 do not remember how many were for it or against it.

12 Q. Other than Representative Peña from Hidalgo County, you're
13 aware that none of the other members currently representing
14 districts in Hidalgo County supported the configuration of
15 Hidalgo County?

16 A. I can't remember what they did.

17 Q. All right.

18 Now, you also testified that you were concerned that none
19 of these objections about the coastal congressional district
20 that you talked about were ever articulated; is that correct?

21 A. I don't remember saying it that way.

22 Q. Okay. Well, you are aware that alternative plans for
23 south Texas congressional districts were submitted both on the
24 House floor and by advocacy groups; isn't that correct?

25 A. On the congressional, the answer is yes.

1 Q. And all of those maintain Nueces County, Nueces County
2 with a coastal district going south; isn't that correct?

3 A. That I can't remember, that all of them were just
4 southern.

5 Q. All right. And, in fact, the proposals that were
6 submitted on alternative plans were not just submitted during
7 these hearings, but also on the House floor; isn't that
8 correct?

9 A. I believe you're right, some of them were put on the House
10 floor.

11 Q. And the House floor was very extensive; right? I mean, it
12 went till two or three in the morning, it was a full day of
13 hearing on amendments; isn't that correct?

14 A. I can't remember how long we go on some of these hearings,
15 but I'm sure it was intense.

16 Q. Right. And the Mexican American legislative caucus,
17 which, by the way, is an official caucus of the House of
18 Representatives, submitted a number of proposals both as to the
19 State House and the Congress that had alternatives for Nueces
20 County; isn't that correct?

21 A. I don't remember who submitted them, but on the House
22 floor, which I mentioned as the formal part of the process,
23 some proposals were made.

24 Q. And all of those were rejected; isn't that correct?

25 A. I don't believe many amendments, not only in south Texas,

1 but even north Texas were adopted.

2 MR. GARZA: Pass the witness, Your Honor.

3 JUDGE COLLYER: Thank you, Mr. Garza.

4 Is there any other defense lawyer? Mr. Mellett?

5 MR. MELLETT: Your Honor, just to let you know in
6 general, what we are doing is we are having one counsel for the
7 United States and one for intervenors, and then we will cease
8 our cross-examination.

9 JUDGE COLLYER: That's very helpful. Let me know.
10 All right, then, Mr. Hughes, isn't it? Yes.

11 MR. HUGHES: Yes, brief redirect.

12 **REDIRECT EXAMINATION**

13 BY MR. HUGHES:

14 Q. Representative Hunter, you were asked some questions
15 during Mr. Freeman's questioning about what is now the district
16 in Nueces County; do you recall those?

17 A. Yes.

18 Q. Okay. And there was much focus on this area of the map
19 where Representative Torres lives; you recall that?

20 A. Yes.

21 Q. And I think there was mention of someone named Abel
22 Herrero and someone named Solomon Ortiz, Jr. Who are those
23 people?

24 A. Abel Herrero was defeated by republican Connie Scott in
25 2010. Solomon Ortiz, Jr. was defeated by republican Raul

1 Torres in 2010.

2 Q. What is the party affiliation of Able Herrero and Solomon
3 Ortiz, Jr?

4 A. It's democrat.

5 Q. And based on your experience living in Nueces County,
6 would Solomon Ortiz, Jr. and Abel Herrero be more likely to win
7 an election in what is now District 34 of the western part of
8 Nueces County or in your district?

9 A. You mean the one I proposed?

10 Q. Yes, sir.

11 A. So the Court understands, under my proposal, I have
12 reduced my republican numbers compared to the plan that I have
13 and increased the democrat numbers compared to what was going
14 on before.

15 So it would be, I'm not going make election predictions,
16 but if I was a person living in the western portion of that
17 county, they're going to be doing very well.

18 Q. And just to be clear, do you think it's more likely that
19 Able Herrero and Solomon Ortiz, Jr. --

20 A. Yes.

21 Q. -- could win in 32 as -- in 34 as opposed to your
22 district?

23 A. Compared to 32, the answer is yes. The answer is very
24 much yes.

25 Q. And what was the party affiliation of, I think we -- the

1 party affiliation of Scott and Torres was the same as yours;
2 right?

3 A. Correct.

4 Q. All three republican. Who was the senior member of the
5 delegation from Nueces County?

6 A. Unfortunately, it's me, thank you for senior instead of
7 the old one.

8 Q. And are you familiar with the concept of pairing of
9 members in redistricting?

10 A. I understand the concept.

11 Q. Does it surprise you as the senior member of the
12 republican delegation of the entire delegation from Nueces
13 County that the junior members were paired and you weren't?

14 A. Historically that is what has happened. On this
15 particular one, I didn't even -- I knew where Connie Scott and
16 I know where Abel Herrero live, because they're completely in
17 the other. Torres, I did not even know where he lived. But
18 this is not unnatural that a senior member is not the one
19 paired.

20 Q. Did you talk to Representative Torres about his views of
21 the map that you had proposed during the redistricting process?

22 A. Talked with both Scott and Torres.

23 Q. Did Representative Torres send you an e-mail indicating
24 his view about what you had proposed to do to Nueces County?

25 MR. FREEMAN: Objection, Your Honor, he's leading the

1 witness.

2 JUDGE COLLYER: It is leading, but I'll let the
3 question be answered. That's just a "yes" or a "no."

4 THE WITNESS: Yes.

5 BY MR. HUGHES:

6 Q. Okay. I'd like to show you that e-mail. Can you see this
7 document, Representative Hunter?

8 A. Yes.

9 JUDGE COLLYER: And what's the exhibit number?

10 MR. HUGHES: Your Honor, I don't have this marked as
11 an exhibit. I can mark it as the next one in the sequence for
12 the Court. It's Bates number LP --

13 JUDGE COLLYER: I'm sorry, it needs to be numbered as
14 an exhibit now before you show it to a witness or talk about it
15 so that anybody who is looking at this later knows what you're
16 talking about.

17 MR. HUGHES: Okay.

18 JUDGE COLLYER: What's the next number?

19 MR. HUGHES: Plaintiff's Exhibit 90.

20 THE COURT: Thank you.

21 MR. HUGHES: You're welcome, Your Honor. I
22 apologize.

23 JUDGE COLLYER: I knew somebody back there knew.
24 There's somebody back there who's on top of this.

25 MR. HUGHES: We have a large team.

1 JUDGE COLLYER: That's not what I meant. I just
2 meant there was somebody really smart about your exhibits.

3 BY MR. HUGHES:

4 Q. Looking at what will be marked as Plaintiff's Exhibit 90,
5 Representative Hunter, is this an e-mail that Raul Torres, that
6 Representative Torres sent to you and Connie Scott on April 18,
7 2011?

8 A. Yes.

9 Q. And harkening back to our time line, was this after the
10 map was publicly released on April 13?

11 A. Yes.

12 MR. FREEMAN: Objection, Your Honor, every question
13 is leading.

14 JUDGE COLLYER: They are leading, so be careful.
15 They're not -- the ones that have been leading so far are not
16 terribly important, but if you want to get into anything of
17 substance, don't ask a leading question.

18 MR. HUGHES: Thank you, Your Honor, with my time
19 constraints, I've been trying to move things along, but I will
20 be -- I will be careful.

21 BY MR. HUGHES:

22 Q. What did Representative Torres express to you in this
23 e-mail?

24 JUDGE COLLYER: Why don't you direct him to a section
25 of the e-mail, it would be much easier.

1 MR. HUGHES: Okay.

2 BY MR. HUGHES:

3 Q. Do you see the paragraph that says, "I have made my
4 decision"?

5 A. Yes.

6 Q. Did Representative Torres write you on April 18, 2011, "I
7 have made my decision regarding Todd's request last Friday,
8 which was to leave his proposed map stand without challenge"?

9 A. Yes.

10 Q. Did he write, "I have decided that the good of the many
11 outweigh the needs of just one of us"?

12 A. Yes.

13 Q. Did he write, "Therefore, despite the fact that I both and
14 HRT," what is HRT?

15 A. I believe it's the Hispanic Republicans of Texas.

16 Q. Okay. Did he write, "Therefore, despite the fact that
17 both I and HRT have great concerns over the layout of the
18 proposed redistricting map for Nueces County because of the
19 perceived lower percentage of available republican voters in
20 the proposed district, I believe that it is my duty to do my
21 part to keep us all on the same page of understanding." Did he
22 write that?

23 A. Oh, yes, yes.

24 Q. Thank you, representative Hunter.

25 MR. HUGHES: No further questions.

1 (Witness excused.)

2 JUDGE COLLYER: Does Texas have another witness?

3 MR. MORTARA: Yes, we do, Your Honor. We'll call
4 Gerardo Interiano. He's being retrieved right now.

5 JUDGE COLLYER: Thank you, sir.

6 (Pause.)

7 JUDGE COLLYER: You can come forward, sir, please,
8 right over here.

9 THE DEPUTY CLERK: Remain standing and raise your
10 right hand.

11 **GERARDO INTERIANO, STATE OF TEXAS WITNESS, SWORN**

12 THE DEPUTY CLERK: Please be seated.

13 THE WITNESS: Thank you.

14 JUDGE COLLYER: Can you move the microphone down a
15 little so it will pick up your voice?

16 THE WITNESS: Ye.

17 S, Your Honor.

18 JUDGE COLLYER: Thank you.

19 **DIRECT EXAMINATION**

20 BY MR. MORTARA:

21 Q. Mr. Interiano, could you introduce yourself to the Court?

22 A. Good morning. My name is Geraldo Interiano. I was
23 counsel to Speaker Straus during the 82nd legislature.

24 Q. And how long have you worked with Speaker Straus?

25 A. I began working for him in October of 2010.

1 Q. Could you tell the Court a little bit about your
2 background and education?

3 A. Sure. I was born in California, but I was raised in El
4 Salvador, which is where my family is from. I moved to the
5 United States in 1989. I grew up in Houston, went to high
6 school in Houston. Moved to Austin to go to the University of
7 Texas. Went, got my undergrad in economics, and I stayed and
8 went straight through to law school, and I graduated from law
9 school in 2006.

10 Q. What did you do after law school?

11 A. I went straight -- straight out of law school, I was
12 campaign manager to Congressman Smith. From there, I did a
13 very, very short stint for the Texas House Appropriations
14 Committee. Went to go work for Governor Perry for six months.
15 Went back to Congressman Smith, where I was his district
16 director. And then from there I went -- came to D.C. and was
17 here for about two and a half years as his legislative director
18 and left as his deputy chief of staff.

19 Q. And Congressman Smith, is that Congressman Lamar Smith?

20 A. Yes, sir, I'm sorry.

21 Q. Is Congressman Lamar Smith a republican?

22 A. He is.

23 Q. And are you a member of the republican party?

24 A. I am.

25 Q. How would you describe your role in Texas's redistricting?

1 A. I was part of the Speaker's -- I was the lead staffer on
2 Speaker Straus's team, and my responsibilities was to work with
3 all the members to ensure that we passed a legal map; that it
4 was a fair and open process. And I was there to assist the
5 members with anything that they needed from facilitating legal
6 advice to the map drawing process and showing them how to use
7 red apple.

8 Q. Before you took on this assignment on redistricting, had
9 you ever worked on redistricting before?

10 A. I briefly worked on it when I was with Congressman Smith.
11 While I was in D.C., Speaker Straus was elected as the new
12 speaker, and Congressman Smith and Speaker Straus had a long
13 relationship. Speaker Straus was actually Congressman Smith's
14 campaign manager in 1986.

15 So when the speaker was elected, the Texas republican
16 delegation elected Congressman Smith to be the liaison to the
17 state legislature knowing that redistricting was around the
18 corner. So I started working a little bit with Congressman
19 Smith and the members here.

20 Mainly it was communications with the U.S. Census in trying
21 to figure out the time line of the information that was going
22 to be provided, and I started leading up on the laws. I did
23 not know when I started doing that, that I would end up in
24 Texas. But I certainly started trying to brief as much as I
25 could.

1 Q. And what kind of other training did you receive before you
2 started your redistricting efforts?

3 A. I attended several conferences that are put on by the
4 National Conference of State Legislatures. It's more commonly
5 known as NCSL. I attended one their redistricting conferences
6 here in Washington D.C. and another one in Austin.

7 I read anything that I could get my hands on from NCSL's
8 redistricting book to looking through legislative council's
9 website. Any, you know, major cases and just trying to get
10 myself as caught up as I could.

11 Q. And you mentioned legislative council. What is that?

12 A. The Texas Legislative Council is an entity in the state
13 legislature which is there to help the members with anything
14 from drafting legislation to providing legal advice. They're
15 there to, you know, explain to us what the Texas laws are in
16 open records.

17 What they are, you know, in our case on redistricting, they
18 were a massive resource for us. I compared them, at least my
19 understanding when I came to Texas, was they were more of a
20 combination of the Office of the General Council at the House,
21 U.S. House of Representatives and the Congressional Research
22 Service. They were there to provide us with anything and
23 everything, and is comprised of mostly attorneys, but there's
24 certainly others that are not attorneys on staff.

25 Q. And of all of the time you spent training before you

1 started actually drawings maps, what did you spend the most
2 time doing?

3 A. Well, as soon as I took the job, I probably spent close to
4 a thousand hours on RedAppl and just familiarizing myself with
5 the software. At this point, RedAppl, because it was a network
6 based program, the only data that it had in it was the most
7 recent census information, which was from 2000. There was no
8 way to update the software with any new numbers. There was no
9 estimates from the U.S. Census. So I was basically playing
10 with the 2000 numbers just trying to figure out how to use the
11 software and familiarize myself with the software that I would
12 be using once we did receive the census data so as to not waste
13 time when we did receive that information.

14 Q. Now, you had training in RedAppl. Who did you get that
15 from?

16 A. Legislative Council. I attended several of the trainings
17 that were available to all the members and their staffs. But
18 they also went ahead and did a one-on-one training with me
19 because I was going to be working so closely with all the
20 members and with that software.

21 Q. Could you describe for the Court in general the process by
22 which you drew the House map?

23 A. Sure. I always tell folks, in many ways I think a map
24 drawer is a little bit confusing because one of my roles was
25 considering that the instructions from the Speaker and the

1 Chairman was that this was going to be a process that was
2 member driven. The members had control of the map, all
3 members. So in many ways, my role was more of putting a puzzle
4 together.

5 Members would provide me with their districts, whatever
6 they wanted, whether, you know, in some cases we would get only
7 one option from members, in some cases we'd get three, four, or
8 five. And it was my responsibility to try to put the pieces
9 together to create a map where there was a 150 districts that
10 fit together, that all of the geography was taken up, and, you
11 know, that process took quite a bit of time in working with the
12 members and in making sure again that they guided the process.
13 This was their map. And I was simply there to facilitate the
14 creation of that map.

15 Q. How many different members did you work with while you
16 were drawing the House map?

17 A. I would honestly say that there are probably less than ten
18 members that I did not talk to in the redistricting process.
19 But for the most part, I was there to work with all members.
20 They came to my office. I visited with them on the floor. I
21 worked with their staffs. I started meeting with members
22 before the data even arrived. Just to start getting an
23 understanding from them on what they would like to have seen,
24 or what -- how they would like to see the process run.

25 I was meeting with democrats, republicans, and anybody that

1 basically would have me.

2 Q. How many republicans in the Texas House and how many
3 democrats?

4 A. Currently there's a 101 republicans and 49 democrats.

5 Q. Did anyone else work with House members in drawing their
6 districts other than yourself?

7 A. Ryan Downton was the general counsel to the committee, and
8 Bonnie Bruce was the committee clerk. Both of them
9 communicated with members, but I was the lead on that State
10 House map.

11 Q. And did the district, did the members themselves also have
12 staff that were involved in drawing districts?

13 A. Absolutely. And then the members worked on it themselves.
14 I mean, redistricting is arguably the most personal process to
15 members. So it was something that they took very personally,
16 and in many cases I worked directly with them and not their
17 staffs. It varied from member to member.

18 Q. Did Speaker Straus give you any instructions before you
19 started the work of drawing the Texas House map?

20 A. Yes, he wanted to make sure that it was a fair process.
21 And that the ultimate result was a legal map that was going to
22 pass legal scrutiny. The specific instructions as far as, you
23 know, working on the map, it was regarding the members' input.
24 That this was to be a member driven process, and that it was
25 very important for the speaker that we worked with all members.

1 And in that regard, it meant that we would try to pair the
2 least number of members. We did not want to go after any
3 individual member regardless of party affiliation. The goal
4 was to work with them.

5 And then the reality of that is, you know, considering that
6 we had a 101 republicans, the reality is that there were going
7 to be more republicans in the map because it was a member
8 driven process, and because in the end the goal was to make
9 sure that these members had the opportunity to be involved in
10 the process.

11 Q. Did you expect the new House map to gain or lose
12 republican seats?

13 A. I expected it to lose. 2010 was an election where
14 republicans won several new seats in the State House. The
15 reality of the map that we produced in the end, even with the
16 goal of making sure that we would pair the least number of
17 members, the original map that was unveiled had eight pairings.
18 So that was 16 members that were in paired districts. Seven of
19 those pairings were republicans. And there was only one
20 pairing of democrats in the entire map.

21 Q. Who was that pairing of democrats?

22 A. It was Hubert Vo and Scott Hochberg.

23 Q. Who did you get legal advice from while you were drawing
24 the map?

25 A. Primarily it was legislative council through David Hanna

1 and Jeff Archer. As soon as I came on staff, the first entity
2 that I started working with was legislative council. It's also
3 known as TLC, which I will sometimes use.

4 Jeff Archer and David Hanna, particularly David Hanna.
5 Jeff Archer was on a very limited basis, but David Hanna knows
6 this map as well as anybody else. I worked extremely closely
7 with him. He was somebody that I talked to on a daily basis
8 the closer that we got to the date once we received the data.

9 Obviously, I would also talk to the Office of the Attorney
10 General and the Speaker's Office had also hired Baker, Botts to
11 provide us advice.

12 Q. To be clear, Mr. Interiano, I'm not going to ask you any
13 questions about the specific advice you received from Baker,
14 Botts. But we will talk about the legal advice you received
15 from TLC pursuant to the Court's ruling; do you understand?

16 A. Yes, sir.

17 Q. Was there ever a time when David Hanna raised a concern
18 about Voting Rights Act compliance, then you did not address
19 it?

20 A. No. You know anytime that David brought something to me,
21 it was something that David -- David has gone through this,
22 through several different cycles. I took his advice very
23 seriously. He's somebody who knows the process. I worked with
24 him very closely. Anytime that he brought something to me, it
25 something that we discussed amongst ourselves on the committee,

1 it was something that I raised to the Speaker and to the
2 Chairman.

3 I would, you know, go through them, look at the things that
4 he was asking me to look further into and make changes wherever
5 we needed to make changes based on his advice.

6 Q. Did anyone from TLC ever advise you that the final Texas
7 House map violated Section 5 of the Voting Rights Act?

8 A. No, they did not.

9 Q. Was TLC able to give you a final opinion on whether the
10 Texas House map complied with Section 5?

11 A. They did not. My understanding from David Hanna was that
12 the guidance that had been provided to us was rather vague, and
13 that he did not feel comfortable making a final determination
14 on whether that map was retrogressive or not.

15 Q. What guidance are you referring to?

16 A. The 2011 guidance from the Department of Justice in
17 combination with the 2001 letter that the State of Texas
18 received from the Department of Justice.

19 Q. Without TLC, what did you do to come to your own
20 conclusions about the Texas House map in Section 5?

21 A. I visited with the Attorney General's Office. They
22 provided us with what we call the regression analysis. That
23 was one of the -- one of the components that was mentioned in
24 both the guidance and the letter which was the importance of
25 doing an election analysis, and we went through several

1 versions of those. I continued to talk to TLC as the process
2 moved forward.

3 David Hanna provided several memos to me. You know, it was
4 an ongoing process. It was something that never stopped until
5 the day that we passed the map on final reading. You know,
6 even while we were still on the floor, David Hanna was next to
7 me on many occasions visiting about the amendments and making
8 sure that any amendments that were going to be made to the map
9 were not going to change the fact that we believed the map was
10 compliant with the Voting Rights Act.

11 Q. Were you certain about what election analysis test to use
12 to decide whether there was a retrogression in the House map?

13 A. I was not. Again, the guidance that had been provided to
14 us was too vague for us to make a final determination as to how
15 to conduct the election analysis.

16 Even if the Department of Justice would have provided us
17 the specifics, it was certainly something that we would have
18 done. The goal from the very beginning was to pass a map that
19 was fair, that was legal, and that was going to pass the legal
20 scrutiny for these members. Again, we invested a great deal of
21 time, and it was our goal from the very beginning to make sure
22 that we had a legal map.

23 Q. Did you use one metric to determine whether you had a
24 legal map or many?

25 A. We used every metric that we could think of. You know, we

1 looked at the Spanish surname voter registration. We looked at
2 the black voting age population. We looked at the Hispanic
3 citizenship voting age population, and we looked at the
4 elections.

5 Our goal was to try to at least meet, if not surpass, every
6 benchmark that we thought was going to be -- could potentially
7 be used by the Department of Justice. We didn't want to give
8 them any reason to not pre-clear the map. And, you know, part
9 of our concern throughout the process is we genuinely didn't
10 know which one of those benchmarks the Department of Justice
11 was going to focus on.

12 There was a great deal of focus in the process on that
13 fifty percent Spanish surname voter registration, and that's
14 what David Hanna based a great deal of his legal advice to us,
15 but that was based on the letter that the Department of Justice
16 had given Texas in 2001.

17 Q. Shifting focus, Mr. Interiano, did you use race or
18 ethnicity in drawing the House map for Texas?

19 A. Only insofar as it was necessary to abide by the Voting
20 Rights Act. It was something that you never feel comfortable
21 doing, but it was my understanding that it was necessary in
22 order for us to pass a legal map.

23 Q. Can you give me an example of how you used race to draw
24 maps to comply with the Voting Rights Act?

25 A. We would essentially look at the benchmark plan, see what

1 the SSVR or what the HCVAP was, and try to keep those numbers
2 at the benchmark or above or as close as we could get them.

3 You know, a perfect example of a district where we couldn't
4 get it was Representative Deshotel. He's in Southeast Texas,
5 and we tried to keep it as close as we could. We worked with
6 his office, and he was pleased with the end result. But I
7 believe that district is one or two points lower. And that was
8 because there was not enough black population in Jefferson
9 County to have maintained that percentage higher.

10 Q. How would you know where the people of different races
11 live when you were drawing maps using race to comply with the
12 Voting Rights Act?

13 A. One of the things that RedAppl allows us to do is that you
14 can turn on what's called shading, and it will show you the
15 shading in RedAppl based on counties and VTDs. VTDs are voter
16 tabulation districts which to us are essentially precincts. So
17 you can turn that on and you just start taking precincts in and
18 out, making sure that as you go along, you're looking at the
19 statistics, at the bottom of the screen you'll have a
20 statistics bar, and on that bar you can see the statistics move
21 and shift as you go through the process, and we made sure that
22 we kept it at the benchmark or as close to the benchmark as we
23 could.

24 Q. Did you ever consider using race to draw the maps beyond
25 what you believed the Voting Rights Act required?

1 A. No, I did not. In fact, it was always my understanding
2 that the equal protection clause would have prevented us from
3 doing that.

4 Q. Did you ever experiment to see if it was possible to draw
5 additional Latino minority districts in your map?

6 A. We did.

7 Q. And why did you do that?

8 A. It was something that, you know, for example, members
9 would often come up to us and ask us if it was possible to do
10 X, Y or Z, they wanted to try to create a different district in
11 south Texas or try to create a new district in Harris County.
12 It was always something that we took into consideration, and we
13 wanted, you know, at the time to make sure we were in
14 compliance with Section 2 of the Voting Rights Act.

15 So we took any of the comments that were given to us
16 seriously, and we did our best to try to make the determination
17 on whether those districts were mandatory or not.

18 Q. Did anyone ever ask you to draw districts using race in
19 the circumstance where the Voting Rights Act was not involved?

20 A. No, sir.

21 Q. Mr. Interiano, we've already heard a little bit about the
22 Texas County Line Rule. I want to show you a provision of the
23 Texas Constitution. Are you familiar with the Texas
24 Constitutional County Line Rule?

25 A. Yes, sir.

1 MR. MORTARA: Your Honor, may I display to the
2 witness?

3 THE COURT: Yes.

4 BY MR. MORTARA:

5 Q. On the screen, Mr. Interiano, you will see a section of
6 the Texas Constitution. Is this the Texas Constitutional
7 County Line Rule?

8 A. Yes, sir.

9 Q. What did you do to understand the County Line Rule before
10 you started drawing maps?

11 A. I spent several hours with David Hanna. Coming from the
12 federal side, I was not too familiar with the County Line Rule,
13 so David Hanna had to bring me up to speed quite a bit, and
14 even though he did bring me up to speed, there were many, you
15 know, he -- many times that I would still continue to run
16 questions by him to make sure that we were not violation of the
17 County Line Rule.

18 Q. Did you attend a presentation given about the County Line
19 Rule?

20 A. I did. David Hanna provided one to the committee, and I
21 was present at that presentation.

22 Q. And did Mr. Hanna use a PowerPoint at that presentation?

23 A. He did.

24 MR. MORTARA: Your Honor, may I publish?

25 JUDGE COLLYER: Yes, to whom?

1 MR. MORTARA: To the witness, the presentation at
2 issue.

3 JUDGE COLLYER: Oh, yes.

4 MR. MORTARA: There was a concern earlier about
5 leading, I want to make sure that Your Honor is okay with the
6 way I'm conducting the examination.

7 JUDGE COLLYER: Are we okay?

8 JUDGE HOWELL: Yes.

9 JUDGE COLLYER: We're okay.

10 BY MR. MORTARA:

11 Q. Mr. Interiano, Plaintiff's Exhibit 9 is a PowerPoint
12 presentation of the County Line Rule for House districts David
13 R. Hanna. Is this the presentation that was given by David
14 Hanna?

15 A. Yes, sir.

16 Q. You were there on March 1st of 2011?

17 A. Yes, sir.

18 MR. MORTARA: Your Honor, as a matter of procedure,
19 would you like us to offer exhibits as they go or would you
20 prefer --

21 JUDGE COLLYER: Yes. I'm assuming, if nobody
22 objects, that any exhibit that's used is actually offered into
23 evidence.

24 MR. MORTARA: So I need not say we offer Plaintiff's
25 Exhibit 9?

1 JUDGE COLLYER: Unless somebody jumps up and wants to
2 argue about it, I'm assuming that any exhibit that's -- that's
3 in use has been checked out with opposing counsel and it's
4 coming in.

5 MR. MORTARA: And for the record, we have an
6 agreement to send exhibits the night before, and we'll work out
7 between ourselves that we'll give objections to the other side
8 before we start in the morning to save time, as long as that's
9 okay with the defendants.

10 JUDGE COLLYER: That's fine.

11 MR. MORTARA: Thank you, Your Honor.

12 BY MR. MORTARA:

13 Q. Mr. Interiano, I'm going to ask you to explain the County
14 Line Rule to the Court, but I know from experience it's
15 somewhat complicated.

16 Could you please -- I'm going to put up a map that shows
17 the Texas counties. And this is a demonstrative. Did you help
18 us prepare a demonstrative on the Texas counties and their
19 allotment?

20 A. Yes.

21 Q. And I'm going to blow up the map here in the area of
22 Dallas/Fort Worth. And could you explain to the Court what
23 these numbers are and how the Texas County Line Rule works in
24 this area of the map?

25 A. The Texas County Line Rule gives us several things. The

1 first one is the apportionment of the number of districts that
2 a county should have. In many ways in Texas, and the easiest
3 way for me to explain it is to think of the State of Texas as
4 the United States.

5 A determination is made by the U.S. Census on how many
6 congressional seats each state should have based on the
7 population that the state has. In Texas we make that
8 determination based on the counties. So, for example. In
9 Dallas you see 14.13, so that's the number of state house seats
10 that the county -- that Dallas County needs to receive. In the
11 rural areas it's a percentage of those seats.

12 The first portion is more of an apportionment issue, and
13 that comes from the part of the Constitution where it says that
14 they should receive as nearly as may be a number of seats.

15 The second issue that's addressed is the issue of
16 surpluses. What the Constitution has said is that, and the way
17 that it's been interpreted, is that a county needs to receive
18 as many districts inside of the county as are possible. And
19 that the surplus that remains in the larger counties cannot be
20 split. And that surplus has to be joined with either other
21 counties or another surplus as if it were its own county.

22 So I'll begin by addressing on this map Ellis County, for
23 example. Ellis County, which is immediately south of Dallas,
24 has .89 seats. If you look around Ellis County, none of those
25 whole counties are large -- are small enough to be put together

1 with Ellis County to create a district.

2 So what we had to do in this map is that Henderson County
3 had to actually be split. In theory you could have split Ellis
4 County or you could have split any of other counties around it.
5 But the decision was made to split Henderson between Ellis and
6 Kaufman in order to abide by one person, one vote. So that --
7 those three counties made up two different districts.

8 In regards to the surplus, I'll use Smith County as an
9 example. Smith County has 1.25, so Smith County has to have
10 one district entirely within it, which is, as you can see now,
11 is District 6. And the remainder of Smith County has to be
12 combined with other whole counties to create another district.

13 Some folks asked us in the process, for example, why Gregg
14 County was not combined with Smith when it was almost perfectly
15 two districts. East Texas is arguably one of the hardest
16 portions of the map to draw because of the geography. Unlike
17 west Texas where you have a grid, in east Texas the county
18 lines do not -- are not contiguous in the way that they are in
19 west Texas.

20 So if you were to have put Gregg County with the remainder
21 of Smith, you would have had other problems in east Texas where
22 you would have ended up with extra counties that we could not
23 have two other districts because of the population. So those
24 are the types of issues that we had to look at as we were
25 drawing the maps. And like I said, it's very much putting a

1 puzzle together.

2 Q. And Mr. Interiano, thank you for that explanation.

3 MR. MORTARA: Your Honor, I'd ask, if you understand
4 the County Line Rule and you're happy, we can stop or I can
5 continue to asking. My only goal is that the understanding of
6 the County Line Rule be obtained.

7 JUDGE COLLYER: We got it.

8 MR. MORTARA: Thank you, Your Honor.

9 BY MR. MORTARA:

10 Q. Legally, Mr. Interiano, did you understand the County Line
11 Rule, how did you understand the County Line Rule in relation
12 to federal law?

13 A. I understood the County Line Rule to be under federal law.
14 Federal law would certainly trump the County Line Rule, and,
15 you know, a perfect example is Henderson County. In Henderson
16 County one person, one vote trump the County Line Rule. That's
17 the reason why Henderson County was split.

18 Q. Are there any other violations of the constitutional
19 County Line Rule in the proposed H283 house map?

20 A. There are not, that's the only one.

21 Q. I want to talk about a few other instances of the
22 application of the County Line Rule. Mr. Interiano, you were
23 not here, but we talked at length today about Nueces County.
24 Can you just very briefly for the Court describe what happened
25 with Nueces County and the County Line Rule?

1 A. Nueces County was also one of the big legal issues and big
2 legal questions that we had in this map. As you can see,
3 Nueces County is allotted 2.03 districts. But currently there
4 are three members that live in Nueces County.

5 In consultation with David Hanna, he and I made the
6 decision that Nueces County needed to have two districts and
7 only two districts. We informed Chairman Hunter and the rest
8 of the Nueces County delegation that they would only be getting
9 two seats as a result of the fact that Nueces County grew at a
10 slower rate than the rest of the state, so they got two seats.

11 Q. Did this create any kind of problems in drawing the map?

12 A. Yes. Nueces County currently has two majority minority
13 districts. Those are Representative Connie Scott and
14 Representative Raul Torres.

15 But the population of Nueces County as a whole is roughly
16 49 point -- I'm sorry, the Spanish Surname Voter Registration
17 of Nueces County as a whole is 49.6 or 49.7, something like
18 that, but it was below 50 percent. So mathematically we knew
19 that there was no way that we could create two districts that
20 were above a 50 percent SSVR.

21 David and I looked at the possibility of making both of
22 them, you know, 49.6. But our concern at that point was that
23 neither one of them would be above that 50 percent benchmark.

24 Q. Mr. Interiano, there has also been discussion of Harris
25 County. Showing Harris County on the screen.

1 How many members was Harris County entitled to after the
2 2010 census?

3 A. We believe there was 24. According to, if you do the
4 straight math, you get 24.41. There was quite a bit of debate
5 as to whether Harris County should have 24 or 25. But in the
6 end, to both David and I, the portion of the Constitution that
7 says that a county needs to have as nearly as may be a number
8 of seats means that it means a number. It is not an option of
9 which number. And to us, 24.41 is simply closer to 24 than it
10 is to 25, and that's the reason why Harris County had 24 seats.

11 Q. You referred a couple of times to decisions that you and
12 Mr. Hanna made. How did those decisions get communicated to
13 members or to leadership in the House?

14 A. When those types of legal questions would arise, I would
15 visit with Chairman Solomons and the speaker, explain to them
16 the situation, make sure that they understood it, and at that
17 point we would approach the delegation and present that
18 information to them.

19 In regards to Harris County, it's another one of those
20 complicated areas. Chairman Wayne Smith and Chairman Senfronia
21 Thompson began working on a map before the census information
22 was even released.

23 Our instructions to them at the time was draw 24 and the 25
24 map because we don't know what the population is going to be
25 until we get the census information.

1 Once we got the census information and saw that it was
2 24.4, we still waited on that decision as to finalize whether
3 it was going to be 24 or 25. And the reason for that was that
4 you had to draw the rest of the state and make sure that you
5 could fit 126 districts into the rest of the state in order for
6 Harris County to have 24. We didn't know if it was going to be
7 possible due to the geographies, and if it was not possible, we
8 knew that it was going to lead to a county line split somewhere
9 else.

10 So instead of having a rural county be split, we knew that
11 that county line could be broken within Harris County to give
12 Harris County 25 seats. And we had that flexibility in the
13 process.

14 Once we were able to put the pieces together to recognize
15 that the 126 seats could have been drawn in the rest of the
16 map, the decision was made that Harris County would only have
17 24.

18 Q. And you're referring to a puzzle. Is it the
19 constitutional County Line Rule that causes it to be a puzzle
20 or something else?

21 A. It's everything. It's the equal protection clause of
22 making sure -- I'm sorry, one person, one vote of making sure
23 that the deviation remains within that ten percent, and that
24 ten percent deviation is obviously plus or minus five plus
25 seven minus three. We had that flexibility, but it's also the

1 county line. I mean, those are the puzzles that we had to do.

2 Q. Coming back to Harris County, did anyone object on the
3 House floor to Harris County having only 24 -- withdrawn.

4 Mr. Interiano, were you present for the House floor
5 debates?

6 A. Yes.

7 Q. Did anyone object to Harris County having only 24
8 districts in the House map?

9 A. Yes. The democratic delegation in Harris County objected
10 to them having only 24 and not 245.

11 Q. And on the House floor, what arguments did they make in
12 favor of Harris County having 25 districts?

13 A. Primarily history. Harris County felt that, one, they're
14 the largest county and that there should be an exception made
15 because they are the largest county; and two, in 2000, Harris
16 County had 24.46 seats. And when the Legislative Redistricting
17 Board drew the map in 2001, they gave Harris County 25. And
18 they felt that because Harris County had gotten 25, that they
19 should have received 25 again this time.

20 The other argument was that they gained population. But
21 what they -- what I was -- hard for me to explain to them, and
22 I've tried on several occasions, was that even though they had
23 gained population, they were still growing at a slower rate
24 than the rest of the state, which was shown by the fact that
25 they went from 24.46 seats to 24.41. And that necessitated

1 them being down to 24 seats.

2 Q. You referred to the Legislative Redistricting Board, could
3 you briefly describe that?

4 A. The Legislative Redistricting Board is made up of the
5 speaker, the lieutenant governor, the attorney general, the
6 comptroller, and the land commissioner.

7 And in the case that the state legislature does not pass a
8 house map or a senate map during the regular session, then the
9 Legislative Redistricting Board essentially comes alive, and
10 they're the ones that will draw the maps for the state. It's
11 not something that you can do in a special session, and it's
12 not something that goes to the courts.

13 Q. Who made the decision to award Harris County only 24
14 seats?

15 A. David Hanna and I.

16 Q. Did Representative Beverly Woolley or any other member of
17 the Harris delegation make the decision on 24 seats?

18 A. No. We communicated that decision to Representative
19 Woolley as soon as we recognized that that was the way that it
20 needed to go forward.

21 Q. I want to shift focus to the actual drawing of the map in
22 Harris County, and then come back to the 24, 25 issue.

23 What was your involvement with the drawing of the map in
24 the Harris County redistricting?

25 A. My initial involvement was very small. My primary

1 involvement in Harris County was several amendments that were
2 drafted the two days that the redistricting map was on the
3 House floor.

4 Q. Do you know how the Harris County map was drawn before it
5 came to the House floor?

6 A. Yes, once Representative Woolley and the Harris County
7 republican delegation began meeting, they hired an attorney,
8 Mike Hall and Scott Simms, who I believe worked for Mike Hall,
9 to start drawing a map, and they worked together on the map
10 that was presented to the committee.

11 Q. When you informed the Harris County delegation that there
12 were only going to be 24 seats, did you think it was going to
13 be likely that the Harris County delegation was going to be
14 able to work together, democrats and republicans, to draw a
15 map?

16 A. No, and the reason for that is at this point, you know, we
17 knew we had a good idea of the voting rights districts in
18 Harris County. David Hanna and I had extensive conversations
19 about which were the districts that were going to need to be
20 eliminated. Dallas County was in a similar situation. Dallas
21 County actually went from 16 seats to 14. And Dallas County,
22 because all the districts were protected by the Voting Rights
23 Act, we had to eliminate two republican seats in Dallas County.

24 In Harris, we knew that it could be any of the republican
25 seats, but after talking to David Hanna, we also believed that

1 it was possible to pair Scott Hochberg and Hubert Vo because we
2 did not believe that either one of those districts would have
3 fallen under the definition of a coalition district.

4 If the courts would have found or do find that coalition
5 district are protected by the Voting Rights Act, then we
6 believed that the district that was going to most likely be
7 protected by the Voting Rights Act was Scott Hochberg's
8 district.

9 As a result, what we instructed the Harris County
10 delegation is that the demographics of that district, that was
11 the combination of Hochberg and Vo, needed to more closely
12 assemble Mr. Hochberg's district rather than Mr. Vo's.

13 Q. Why did you and David Hanna conclude that Hubert Vo was
14 not protected?

15 A. David Hanna provided me a memo, and in his memo he said
16 that he thought it would have been a novel idea for two, three
17 or potentially four -- I'm sorry, for three or four different
18 groups to be placed together into a coalition district and for
19 the court to find that three or four groups would be a
20 protected district.

21 MR. MORTARA: Your Honor, indulgence on our time
22 while I get a board to put up?

23 (Pause.)

24 MR. MORTARA: Your Honor, for the Court's
25 information, this is Amanda Saliga, and she is the person who

1 knows everything. She's also on our team.

2 JUDGE COLLYER: I already knew it. I can tell
3 because she was the one who gave us the number.

4 MR. MORTARA: Yes, you're correct, Your Honor.

5 JUDGE COLLYER: She's my new best friend.

6 MR. MORTARA: I'm sorry, Your Honor, that I'm not.

7 JUDGE COLLYER: That's all right, you didn't know the
8 number.

9 BY MR. MORTARA:

10 Q. Mr. Interiano, what is Bexar County?

11 A. Bexar County is where the City of San Antonio is located.
12 That is also where Speaker Straus is a member of that
13 delegation.

14 Q. And how do you spell Bexar County?

15 A. B-E-X-A-R.

16 Q. Were you involved in drafting the Bexar County map?

17 A. I was.

18 Q. Is Bexar County something called a drop-in county?

19 A. It is.

20 Q. Could you explain to the Court what a drop-in county is?

21 A. A drop-in county is essentially a separate map, it's a
22 county that you can drop into the map that will not affect the
23 remainder of the map. It essentially does not affect the
24 puzzle because it does not -- it does not exceed the confines
25 of the county geography.

1 Q. What does that mean about your freedom to draw the
2 districts within the county?

3 A. It means that members are free to draw them however they
4 wish, and it's something that we can literally just drop into
5 the rest of the map.

6 Q. Why did you get involved with the map drawing in Bexar
7 County?

8 A. I was more involved with Bexar County than anything else
9 because that's where Speaker Straus is a member of that
10 delegation.

11 Q. Could you explain to the Court in general how the Bexar
12 County delegation worked on the map?

13 A. They worked extremely well. Representative Villarreal was
14 the vice-chairman of the Redistricting Committee, and he was
15 the lead. He was the one that put the meetings together, he's
16 the one that worked with the members. He did the drafts of the
17 map. He put the pieces together. I was there to assist the
18 delegation as we went through the process, but obviously
19 because this was a member driven process, Representative
20 Villarreal was the lead on it, and I was just there to help
21 them through it.

22 Q. And what was Speaker Straus's involvement?

23 A. Speaker Straus was actually not that involved. The
24 delegation at one point asked me, because the speaker would
25 often not be in these meetings, to go to the speaker to get his

1 ideal district so that they could put his district in and draw
2 around it.

3 I visited with the speaker, and his instructions to me was
4 that they should all draw their districts first, and that once
5 they had all drawn their districts, that the remainder would be
6 his district, and that if there were any changes around the
7 edges that we would address those, but that he wanted the
8 members to draw their districts first.

9 Q. I want to walk through with you the contributions of each
10 member to the map.

11 A. Sure.

12 Q. Speaker Straus, you just said what he did. Did he
13 ultimately agree with the map as drawn?

14 A. He did.

15 JUDGE COLLYER: And which is his district?

16 THE WITNESS: One twenty-one, that's the green one on
17 the north side.

18 JUDGE COLLYER: Thank you.

19 MR. MORTARA: Here, Your Honor.

20 BY MR. MORTARA:

21 Q. And you mentioned Vice-chairman Villarreal. Which of
22 these members adjudicated differences of opinion between the
23 members about who should get what?

24 A. In many ways that was Vice-chairman Villarreal. What he
25 did was he took all the districts that the members had

1 submitted, he overlaid them on top of one another. And he is
2 the one that worked with the members to determine, you know,
3 when there was a conflict who should get what piece, and in
4 some cases where there were open areas that hadn't been
5 selected, where those areas needed to go. And his district on
6 the map is District 123, which is the blue one in the center.

7 Q. And he is democrat or republican?

8 A. He's a democrat.

9 Q. Is he a member of MALC?

10 A. He is.

11 Q. Did Vice-chairman Villarreal, after he adjudicated the
12 disputes, ultimately agree and light the map or approve of the
13 map that came out of the Bexar County delegation?

14 A. He did, he signed off on the map.

15 Q. Can you tell the Court about Representative McClendon's
16 district?

17 A. Representative Ruth Jones McClendon is the most senior
18 member of the delegation, so she's the dean of the delegation,
19 and she was also very instrumental in these meetings and in
20 coordinating these meetings. Her district is District 120.
21 She's an African-American. She's the only African-American
22 member of the Bexar County delegation. And she was very
23 pleased, from what I understand, in the end with the results of
24 her map.

25 Q. Moving more quickly now, could you briefly explain the

1 roles of Representatives Gutierrez, Menendez and Castro?

2 A. They were involved just like any other member, and they
3 were a part of the process and were happy with the results of
4 the map.

5 Q. Who is Representative Martinez Fischer?

6 A. He is a democrat member of the Bexar County delegation,
7 and he's also the chairman of the Mexican American Legislative
8 Caucus, which is also known as MALC.

9 Q. Did Representative Martinez Fischer have input into the
10 Bexar County districts?

11 A. Absolutely. He was there along with the other members,
12 and in the end he was pleased with the map.

13 Q. And what about Representative Larson?

14 A. Yeah, he was there. He's a republican member, his
15 district is 122, and he was also pleased with the map.

16 Q. And I want to talk a little about how the Bexar County
17 delegation worked together. Can you describe what would
18 happen?

19 A. Sure. We would meet, we must have met three or four times
20 as a delegation. Sometimes, you know, their staff members were
21 there. They would work together. They'd try to figure out who
22 was going to get what. What changes were going to be made to
23 districts in order to make sure that we had a map that the
24 members all supported. The goal was to get everybody pleased
25 with the map.

1 Q. Now, who is Representative Garza?

2 A. He is a new member of the legislature, and he is a
3 Hispanic republican in District 117.

4 Q. And did Representative Garza get all he wanted out of the
5 map?

6 A. He did not. There were portions that he wanted that were
7 more republican or more affluent for fund-raising purposes, but
8 in his case our goal was to keep his district above that 50
9 percent SSVR. And if I recall correctly, in the benchmark plan
10 it was 50.7, and I think we got it to slightly above 50
11 percent.

12 Q. And did Representative Garza ever ask Representative
13 Villarreal for a portion of the map that Representative
14 Villarreal said he could not have?

15 A. He did.

16 Q. And why did Representative -- well, do you know, were you
17 there when Representative Villarreal told -- withdrawn.

18 Do you know why Representative Villarreal told
19 Representative Garza he could not have that piece?

20 A. Yes, because his district had to remain above 50 percent
21 SSVR.

22 Q. Ultimately was Representative Garza pleased with the map?

23 A. Yes, he was.

24 Q. The last name on the list is Representative Farias. Who
25 is Representative Farias?

1 A. Representative Farias is a Hispanic democrat.

2 Q. And was he happy with the results of the mapping?

3 A. He was not. For the most part, he liked the way that his
4 district was drawn. He wanted his district to be, you know,
5 more democratic. There was portions of the map that he wanted
6 in south San Antonio, particularly the community of Summerset,
7 and that was something that Representative Garza also wanted,
8 and in the end the decision was made for Representative Garza
9 to represent that region.

10 Q. Why did Representative Farias did not get the community of
11 Summerset that he was after?

12 A. In order to keep the numbers the way that they were, and
13 by that I mean the demographic and the political numbers. We
14 could not find a way to do that without that community of
15 Summerset. We told Representative Farias that if he could find
16 a way to do it, that we would certainly look at it, and I never
17 saw a proposal that did that.

18 Q. Could you explain to the Court what you meant by to keep
19 the political numbers?

20 A. The speaker made it very clear from the very beginning, as
21 did the chairman, that the goal of this map was to give members
22 the opportunity to be reelected. And the concern was that if
23 you started removing some of those communities from
24 Representative Garza's district, that he would not be afforded
25 that opportunity.

1 Q. And ultimately Representative Farias did not agree with
2 the map?

3 A. He did not.

4 Q. I want to move on now to discuss Hidalgo County. Were you
5 involved in the draft of the map in Hidalgo County?

6 A. I was.

7 Q. And I'm going to zoom in on the screen on the South Valley
8 area. And even further to the sub-area that includes Hidalgo.
9 Can you see that okay, Mr. Interiano?

10 A. Yes, sir.

11 Q. Is Hidalgo County a drop-in map?

12 A. It is not.

13 Q. Why not?

14 A. Because it has a surplus. The blue portion of the map is
15 something that spills over into other counties, so as a result
16 of that, it has an impact on the remainder of the map.

17 Q. Now, were any representatives that represent --

18 JUDGE COLLYER: Just a second. The blue portion of
19 Hidalgo County bleeds over. How many people live in the blue
20 portion of Hidalgo County?

21 THE WITNESS: I don't recall, I'm sorry.

22 JUDGE COLLYER: Well, what is the community down
23 along the river there? What are the communities?

24 THE WITNESS: You have the community of Edinburg,
25 McCallen, and there are some cities down there.

1 JUDGE COLLYER: Okay. Thank you. Just trying to get
2 my geography.

3 THE WITNESS: Sure.

4 BY MR. MORTARA:

5 Q. Mr. Interiano, for clarification, when you were saying
6 blue portion, did you mean the District 31 there?

7 A. I did.

8 Q. And who is the representative from District 31?

9 A. Representative Guillen.

10 Q. And he represents a large geographic portion of Hidalgo
11 County?

12 A. He does now, he did not previously.

13 And then to clarify your question, Your Honor, that blue
14 portion is actually very rural. I don't recall there were any
15 specific cities in that.

16 JUDGE COLLYER: It sort of looks like it.

17 THE WITNESS: Yes, ma'am.

18 BY MR. MORTARA:

19 Q. What did you do in connection with the drawing of the
20 Hidalgo County districts?

21 A. I was very involved in that, and I drew those districts at
22 the direction of Chairman Guillen and Chairman Peña.

23 Q. And did you involve the other members of the Hidalgo
24 delegation in drawing the map?

25 A. They were provided proposals to me, but they were not as

1 involved.

2 Q. And why did you not -- why were they not as involved from
3 your perspective?

4 A. Representative Peña is a five term incumbent who had one
5 re-election as a democrat, and at the end of 2010, he switched
6 political parties from republican to democrat -- I'm sorry,
7 from democrat to republican. As result of that party switch,
8 there was a great deal of animosity towards Representative Peña
9 from the democrats in south Texas.

10 The impact of that was that there was, I did not believe
11 that there was any way that the democrats were going to agree
12 to protect a republican in south Texas.

13 Furthermore, I also, because Hidalgo County is so densely
14 populated with Hispanics, I also did not believe that there was
15 a way to draw those districts in a way that would have violated
16 the Voting Rights Act. Essentially anywhere that you click,
17 it's got a very dense population of Hispanics.

18 Q. When you say there was no way to draw a district that
19 would violate the Voting Rights Act, what do you mean in
20 connection with the other members, not Peña and Guillen?

21 A. Essentially any district that you gave those members was
22 going to be very Hispanic and very democrat. South Texas,
23 particularly Hidalgo and Cameron County are still democratic
24 strongholds, and I knew that any district that was provided to
25 them was going to continue to elect those members and they

1 would have the opportunity to be reelected.

2 Q. I want to talk a little bit mechanically about how
3 District 41 was assembled. What specifically did you do in the
4 redistricting software to draw the district?

5 A. I mentioned earlier that you have the shading feature.
6 That shading feature can show both racial when it's necessary
7 as well as political. Because it's so densely populated in
8 south Texas with Hispanics and with democrats, what I did was I
9 turned on the republican shading, and you can see where the
10 republicans lived in Hidalgo County, and I tried to draw a
11 district where Representative Peña would have at least as good
12 of an opportunity to be reelected as we could.

13 The reality is, is that 41 is not a republican district.
14 It is certainly more republican than what it was before. But
15 in order for Representative Peña to be elected as a republican
16 in District 41, he not only was going to have to be the
17 candidate of choice of the Latino community, but he was also
18 going to need crossover votes from democrats in order for him
19 to be reelected.

20 Q. Is Representative Peña running for re-election?

21 A. Not right now.

22 Q. Did you help us prepare a demonstrative to illustrate how
23 you drew House District 41?

24 A. I did.

25 MR. MORTARA: Your Honor, may I publish?

1 JUDGE COLLYER: Yes.

2 BY MR. MORTARA:

3 Q. I'm showing Plaintiff's Exhibit 77, which is a drawing of
4 District 41. Could you explain how this demonstrative shows
5 the approach you took?

6 A. Sure. This is the shading that you see, at the top it
7 says VTD level, that's also a precinct, the voter tabulation
8 districts. And if you look at the -- on the bottom left-hand
9 side, it shows the republican strength. The darker the green,
10 the more republican. We tried to find as much of the
11 republican voters as we could in that region, put into that
12 district to have Representative Peña have an opportunity, at
13 least a better opportunity to be reelected.

14 Q. We've heard a little bit about precincts and splitting
15 precincts. What is a precinct in relation to a VTD?

16 A. It's essentially the same thing.

17 Q. And are there split precincts in House District 41?

18 A. There are.

19 Q. And I want to go through just a few of them to see if you
20 know why they are there.

21 The faint gray lines on the drawings are VTDs; is that
22 right?

23 A. Yes, sir.

24 Q. And there are some splits of the VTDs roundabout
25 Representative Peña's house; is that correct?

1 A. That's correct.

2 Q. Why are these VTDs split?

3 A. Because we wanted to get his house in and some of the
4 areas that he knew. The areas where these are his neighbors
5 that he was familiar with. These were democrats that he felt
6 would vote for him because they knew him. And this increased
7 his opportunity to be reelected.

8 Q. Mr. Interiano, we've heard a lot about drawing districts
9 to include or not include incumbents already. Is it a
10 requirement in Texas law that someone running from Texas has to
11 live in the district?

12 A. Yes, sir.

13 Q. There are some other splits over here, and what the
14 demonstrative shows is V. Gonzales. Do you see that?

15 A. Yes, sir.

16 Q. Why are these precincts split?

17 A. This was in order to not pair Representative Peña and
18 Representative Gonzales. Again, the goal of the map was to
19 pair the least number of members, and we didn't feel that it
20 was necessary to have two members paired when you had an open
21 district without an incumbent right next to it.

22 As you can see, this is actually -- the area that she lives
23 in is more republican than other portions of the map, so it was
24 certainly something that would have been helpful to
25 Representative Peña, but in going with the principles that were

1 given to us by Speaker Straus and Chairman Solomons, we split
2 those precincts to get her house out of the district.

3 Q. And there's another split over here that has nobody's
4 house where this greenish block is cut by the district line.
5 Can you explain why there's a precinct split where there's
6 nobody's house?

7 A. That was done there to remove the yellow portion. If you
8 would have put that entire precinct, it would have been sealed
9 into the district. So we split the precinct to get that
10 portion out of the district.

11 Q. If you touch the screen --

12 JUDGE COLLYER: Wait, wait, wait. Say that again.
13 To get the yellow portion out?

14 THE WITNESS: Yes, ma'am.

15 BY MR. MORTARA:

16 Q. Touch the screen, Mr. Interiano, where the yellow portion
17 is. You can even draw.

18 JUDGE COLLYER: Okay, so you're telling me that the
19 district in question is to the right?

20 THE WITNESS: Yes, ma'am. It's inside -- well, yes,
21 ma'am, it's the yellow -- I'll point on this one. We wanted to
22 get that portion out of District 41, and in order to do that we
23 had to cut through there.

24 JUDGE COLLYER: I see why you did that. And why did
25 you want to get that portion out of District 41?

1 THE WITNESS: Because it's a very heavy democrat
2 area, and we wanted to increase the republican performance of
3 that district.

4 JUDGE COLLYER: Thank you.

5 BY MR. MORTARA:

6 Q. Now, Mr. Interiano, there are other precinct cuts in this
7 map, including a few that run up this line here, I'm blowing up
8 now, do you remember why these were cut?

9 A. I don't recall specifics of the rest of the precincts,
10 those are the ones that I could recall. But I'll tell you that
11 in this regard often members just wanted to have the districts,
12 and I hate to put it this way, but look pretty. It was to make
13 lines straighter, in some cases follow roads. So there were a
14 variety of reasons, but we tried to make it easier. When you
15 followed roads or you had straight lines, it was also easier
16 for the voters, and often following the road would require
17 splitting up a precinct.

18 JUDGE GRIFFITH: You don't have to apologize for
19 that. The Supreme Court has said the same thing, it needs look
20 pretty.

21 BY MR. MORTARA:

22 Q. Did you ever use racial or ethnic information to split a
23 voter tabulation district in drawing House District 41?

24 A. No, I did not believe that was available to me.

25 Q. Did Representatives Peña or Guillen ever instruct you to

1 draw these district lines on the basis of race?

2 A. No, sir.

3 Q. Mr. Interiano, I'm sure the Court might be curious, why
4 was Representative Guillen involved in drawing Representative
5 Peña's district?

6 A. Representative Guillen and Representative Peña are very
7 good friends, and he was there to see that we could draw a
8 district where Representative Peña would have the opportunity
9 to return to the legislature as a republican.

10 Q. Mr. Interiano, can you describe the process by which you
11 worked with Peña and Guillen to draw the map in terms of how
12 you met?

13 A. Sure. We usually met in my office. They would both come
14 or sometimes just Representative Guillen or just Representative
15 Peña, and they would provide me instructions on which portions
16 of the district to put in and which portions of the district to
17 take out, usually with this shading on.

18 JUDGE COLLYER: Could I ask a question? Do you have
19 this to show the original? This is the proposed district.
20 What did the original look like?

21 MR. MORTARA: Yes, I can, Your Honor. It might be a
22 little while in there, Your Honor, because I wasn't prepared
23 for this, but I think I know where I can get it quite easily.

24 JUDGE COLLYER: Was it called District 41 before?

25 MR. MORTARA: Your Honor, the district numbers

1 changed. Representative Peña's district used to be 41. And
2 Representative Gonzales's district used to be 40. Or maybe I'm
3 wrong about that, now that I look -- no, I think I am right.
4 Can I ask the witness, Your Honor, because I'm not sure.

5 JUDGE COLLYER: Yes.

6 THE WITNESS: In this map, which is the benchmark,
7 Representative Peña's District 40, and Representative Gonzales
8 is District 41.

9 JUDGE COLLYER: So Representative Peña represented
10 the area of the county with fewer people?

11 THE WITNESS: The more rural area, yes, ma'am. But I
12 also believe that District 40 right where that star is on the
13 edge, which is where Representative Peña lives, is also the
14 City of Edinburg.

15 JUDGE COLLYER: Thank you.

16 BY MR. MORTARA:

17 Q. Did you always know why Representatives Peña and Guillen
18 were telling you to do things when drawing the map?

19 A. No, sir.

20 Q. Did, with your experience drawing the districts with them,
21 did you come to an honest belief one way or the other about
22 whether they were using racial information to draw that map?

23 A. No, sir, I always had the impression that this was done as
24 a -- in order to give Representative Peña the opportunity to be
25 reelected and to draw a republican district for him to run in.

1 Q. What would you have done if you had ever concluded or
2 thought that any member was telling you to draw district lines
3 on the basis of race?

4 A. I would have --

5 JUDGE COLLYER: Sustained.

6 BY MR. MORTARA:

7 Q. Did you receive any instructions from Speaker Straus or
8 Chairman Solomons about what to do if you thought that someone
9 was asking you to draw a map in an illegal way?

10 A. Yes, I was certainly to report that to the speaker, to the
11 chairman, and make sure that it was something that was
12 addressed.

13 Q. I want to shift focus now to the process of nearing the
14 completion of the map.

15 As the map started to fall into place with the drop-ins
16 coming in and -- I'm sorry. I'm going use the phrase "rural
17 grid." Do you know what that means?

18 A. I'm sorry?

19 Q. Rural grid, do you know what that means?

20 A. I don't.

21 Q. The rural portion of the map, the non-drop-in portion,
22 what do you call that?

23 A. Just the rural areas.

24 Q. As the map started to fall into place with the drop-ins
25 and then the rural portion of the map, how did you continue to

1 monitor Voting Rights Act compliance?

2 A. I would regularly talk to David Hanna. I would have him
3 come in, do memos for me. They were ongoing conversations by
4 e-mail, by phone, in person. Like I said, as we got closer to
5 that point, David Hanna and I were talking on a daily basis.

6 Q. Did you have to talk to anybody other than David Hanna?

7 A. Yes, once we had a map that we could submit to the
8 Attorney General's Office, we provided it to the Attorney
9 General's Office as a draft so that they could run the election
10 analysis for us. But that wasn't something that we did until
11 we had a final, a draft to submit.

12 Q. Mr. Interiano, why did you not get the election analysis
13 from Mr. Hanna?

14 A. I asked David Hanna. When I, you know, when I began this
15 process, I thought that the legislative council did everything
16 for the legislature in regards to redistricting. In fact, at
17 one point I figured that they were the ones that actually did
18 the submission to the Department of Justice.

19 It wasn't until I asked David Hanna about the election
20 analysis that he said that he did not do it. Neither did the
21 legislative council, and that he did not feel comfortable doing
22 the election analysis.

23 It was my understanding that he did not feel comfortable
24 for two reasons. One is that he literally did not know how to
25 do it because there had never been any instructions on how to

1 do an election analysis; and two, because the election analysis
2 has partisanship issues, he was concerned that being the
3 legislative council was a non-partisan agency that it would
4 open himself up to accusations of partisanship. So it was at
5 that point that he informed me that I needed to go to the
6 Attorney General's Office for them to do that analysis for me.

7 Q. At the point where you needed the election analysis, did
8 Mr. Hanna still have a role to play in assessing Voting Rights
9 Act compliance?

10 A. Absolutely. We continued to work with him, and I shared
11 that information sometimes via phone with him. We would talk
12 through the process. We would look to the demographics as
13 districts were changing. We would look at the elections as
14 districts were changing. Again, it was an ongoing process and
15 a daily ritual.

16 Q. Was Mr. Hanna's input at the point when you were going to
17 the Office of the Attorney General, was it limited to
18 demographic analysis?

19 A. Primarily, yes, sir.

20 Q. And how did he communicate to you this demographic only
21 analysis he was doing?

22 A. In memos.

23 Q. And how did you get the --

24 JUDGE COLLYER: Excuse me one second. When you say
25 "demographic analysis," what exactly are you talking about?

1 THE WITNESS: He would literally, it was very much a
2 black and white issue with David. What he would do is he would
3 provide these memos for me where if a district, he would take
4 the benchmark plan and show me the SSVR, the black voting age
5 population, whatever the statistic we were looking at, and show
6 me whether it had gone up or it had gone down compared to
7 the --

8 JUDGE COLLYER: Okay. But what I mean is what was he
9 using for that purpose, what statistic?

10 THE WITNESS: He was using SSVR, black voting age
11 population, and I believe at one point Hispanic citizenship
12 voting age population.

13 JUDGE COLLYER: But mostly throughout, it was SSVR?

14 THE WITNESS: Yes, ma'am.

15 JUDGE COLLYER: Thank you.

16 MR. MORTARA: Your Honor, we're going to offer those
17 memos very shortly.

18 JUDGE COLLYER: That's okay. I just wanted to follow
19 the testimony. Thank you for your help. Go on, I'm sorry I
20 interrupted.

21 BY MR. MORTARA:

22 Q. Mr. Interiano, there's David Hanna with the demographic
23 only analysis, and there's the Office of Attorney General with
24 the election analysis. How did you get the election analysis
25 from the Office of Attorney General, in what format?

1 A. I mean, I know that I got the full report several times.
2 Those full reports are 3500 pages, so I would lie to you if I
3 told you that I read through the entire thing. But, the Office
4 of the Attorney General did provide me summaries, and those
5 were the summaries that I based it on.

6 As we got closer to when the map was on the floor and
7 changes were being made, whether it was through amendments or
8 through requests from members, some of those conversations took
9 place via phone where I would call the Attorney General's
10 Office, send them something, and just say hey, just tell me,
11 you know, how did this district change via phone, and in some
12 cases there was no paper trail.

13 Q. I want to show you first the demographic only analysis,
14 and then we'll take a look at the OAG summaries.

15 MR. MORTARA: Your Honor, I'm going to publicize the
16 first of these memoranda.

17 BY MR. MORTARA:

18 Q. What is shown on the screen right now is Plaintiff's
19 Exhibit 3. Mr. Interiano, could you tell us?

20 A. Yes, that is the first memo that was provided to me by
21 David Hanna.

22 Q. And could you describe in general what Mr. Hanna did here?
23 I know you just did it for Judge Collyer, but in general using
24 the memo, could you describe?

25 A. As you can see, 2001, here is what the black population

1 was, here's what the black voting age population was. Then
2 going to current versus the proposed, so he would provide all
3 three of those numbers for me, and then a quick summary on what
4 his thoughts were.

5 Q. Is there any election analysis in this memo, Plaintiff's
6 Exhibit 3?

7 A. None whatsoever.

8 Q. Is there an election analysis in any of the memos
9 Mr. Hanna gave you?

10 A. No.

11 Q. And how did you respond to the concerns of Mr. Hanna in
12 these memos?

13 A. We would address them. In the places where he said that
14 we needed to look into them further, we did, and the places
15 where we could make the changes, we did.

16 Q. Now, does Mr. Hanna's memo ever address possible offsets?
17 And what I mean by offsets is a decrease in performance in one
18 district and an increase in another?

19 A. They can't. I mean, the memos can't show these offsets
20 because he did not know how to do an election analysis. So
21 there was no way for him to ever address offsets in his memo.

22 Q. Mr. Interiano, is this the only memo you received?

23 A. No, I received three.

24 MR. MORTARA: I'm going to publicize the next in the
25 series, Your Honor.

1 BY MR. MORTARA:

2 Q. Is this the second or the third memo, to your
3 recollection, Mr. Interiano?

4 A. I believe that's the second memo.

5 Q. And what leads you to believe that this is the second
6 memo?

7 A. If you see at the top it says H110, and that was one of
8 the drafts that I had submitted to David at the time.

9 Q. And were there changes between the first and second memo
10 to your recollection?

11 A. That I don't recall, I'm sorry.

12 JUDGE COLLYER: Well, the second one, the one you
13 looked at just now a second ago, Plaintiff's Exhibit 3. That
14 it seemed to address black voting age population. Did it also
15 address SSVR later?

16 MR. MORTARA: Your Honor, I'll put back up 3.

17 JUDGE COLLYER: You can just -- somebody tell me.

18 THE WITNESS: In that same memo, if you see on the
19 first page, it was District 22, which was an African-American
20 district, so he only put BVAP for the African-American
21 districts and only SSVR for the Spanish or the Hispanic
22 districts.

23 JUDGE COLLYER: So the first memo went through more
24 than just a black minority voting analysis?

25 THE WITNESS: Yes, ma'am, he did all of the

1 districts.

2 JUDGE COLLYER: Okay. I'm sorry, I just wanted --

3 JUDGE HOWELL: Do we know what the dates of these
4 memos are, like how much time elapsed between the first and
5 second memo, over what period of time we're looking at here?

6 MR. MORTARA: Your Honor, the answer is I do, but I
7 don't know what that the witness does. Would you like me to
8 answer?

9 JUDGE COLLYER: Do you know, sir?

10 THE WITNESS: I believe that they were within a week
11 and possibly the first or second week of April.

12 JUDGE HOWELL: And all three memos were within that
13 period of time?

14 THE WITNESS: Yes, ma'am.

15 MR. MORTARA: Your Honor, I fear that the witness has
16 testified in a very slight way inaccurately because of his
17 recollection, would you like me to clarify?

18 JUDGE COLLYER: Sure, go ahead.

19 JUDGE HOWELL: Yes.

20 MR. MORTARA: The first memo is, I believe April 6th.
21 The second is, I believe somewhere around April 10th, but the
22 third is definitely April 20th. And we know that from the
23 names they were given on the electronic files that we were to
24 produce to the United States and defendants.

25 JUDGE HOWELL: So it's not from cover e-mails or

1 anything like that?

2 MR. MORTARA: No, ma'am, no, Your Honor.

3 May I continue?

4 JUDGE COLLYER: Yep.

5 BY MR. MORTARA:

6 Q. I'm showing you on the screen now another memo. Do you
7 think this is the third memo?

8 A. Yes, this was the final memo that he provided to me.

9 Q. And how do you know this is the third memo?

10 A. Because it's Plan H153, and right next to it it says
11 CSHB150. That's Committee Substitute House Bill 150, which is
12 the bill that came out of the committee.

13 Q. This is the last memo, and so I want to ask you again,
14 what in general --

15 JUDGE COLLYER: Can I clarify for the record that the
16 first Hanna memo, which was apparently dated April 6th, is
17 Plaintiff's Exhibit 3; the second one, dated April 10th, is
18 Plaintiff's Exhibit 4; and the third one that's on the screen
19 right now is Plaintiff's Exhibit 5.

20 MR. MORTARA: That's correct, Your Honor, and I need
21 to clarify the April 10th date. April 12th, please excuse me,
22 Your Honor. I speak from memory and sometimes I --

23 JUDGE COLLYER: The font of all knowledge has spoken.

24 THE WITNESS: If you'd like, we could put her on the
25 stand rather than me.

1 JUDGE COLLYER: No, no, no, that's okay.

2 BY MR. MORTARA:

3 Q. Mr. Interiano, I'm sorry, I was failing to listen as I was
4 heeding the Court. Could you please explain why you think this
5 is the third memo?

6 A. Because of the title of it. It says CSHB150, that was the
7 bill that came out of committee.

8 Q. And I want to ask you again what you did in response to
9 any of the things listed in this memo?

10 A. We would address them. In many circumstance, in the first
11 paragraph, as an example, David would tell me that further
12 election analysis was necessary, which was something that was
13 being conducted in an ongoing way through the Attorney
14 General's Office.

15 Q. And were you satisfied when the map went to the House
16 floor that you had addressed all of Mr. Hanna's concerns either
17 directly or by consulting election analysis?

18 A. Yes, sir.

19 Q. After Mr. Hanna sent you these memos, did he ever, after
20 that map came out of committee, do any additional analysis for
21 you of demographics in the House plan?

22 A. He did, he sent me one additional e-mail.

23 Q. And what did he talk about in that e-mail?

24 A. He talked about the number of districts that were above
25 the 50 percent SSVR portion and the HCVAP in comparison between

1 the benchmark, the plan passed by the committee, as well as an
2 additional plan.

3 MR. MORTARA: Your Honor, I'm going to publish
4 Plaintiff's Exhibit 6.

5 JUDGE COLLYER: All right.

6 BY MR. MORTARA:

7 Q. And Mr. Interiano, is this the e-mail you recall?

8 A. Yes, sir.

9 Q. And it's from David Hanna to you and Ryan Downton; is that
10 correct?

11 A. Correct.

12 Q. And the date is April 21st, 2011. Is that date
13 significant?

14 A. I believe that was the date after the committee passed the
15 bill.

16 Q. And Mr. Interiano, what do you understand Mr. Hanna to
17 have been communicating to you in this memo?

18 A. He was communicating that essentially the number of
19 districts where the SSVR was above 50 percent was one
20 additional district compared to the benchmark plan.

21 Q. Mr. Interiano, there's something called SSVR total reg on
22 the left and non-suspense in the middle. Can you explain the
23 difference?

24 A. I can explain it very briefly. Essentially what it means
25 is non-suspense voters are the ones that don't have any

1 problems with the Secretary of State's Office. As David
2 mentions at the bottom of this e-mail, non-suspense voters are
3 the ones that have always been used, it's what's available to
4 us in RedAppl, and those were the numbers that David
5 recommended that we look at.

6 Q. And down at the bottom --

7 JUDGE COLLYER: What does that mean, have no problems
8 with the Secretary of State?

9 THE WITNESS: I am not a hundred percent sure what
10 that means. My understanding was that you just needed to look
11 at non-suspense.

12 JUDGE COLLYER: Okay.

13 BY MR. MORTARA:

14 Q. At the bottom Mr. Hanna discusses using non-suspense
15 versus total. Can you read to the Court what he says?

16 A. In 2001, we used only the non-suspense SSVR numbers on our
17 system. No one complained that there is really no factual
18 basis for using total registration over non-suspense
19 registration in calculating SSVR that we know of. The best
20 merger might be somewhere in between.

21 Q. When you were drawing the maps, was it possible for you to
22 use total registration in RedAppl?

23 A. As we were drawing it, no, I do not believe it was.

24 Q. I want to refer you to the second full paragraph, and it
25 begins, "I listened again to Luis's testimony." Did you know

1 who was talking about, Luis?

2 A. Yes, he was talking about Luis Figueroa, who works for
3 MALDEF.

4 Q. And it says Luis was talking about districts from the
5 MALDEF plan with an SSVR over 50 percent. Do you see that?

6 A. Yes. In fact, one of the things that David and I
7 discussed in regards to this e-mail that even MALDEF was using
8 the non-suspense count in that testimony.

9 Q. Why was it important -- withdrawn.

10 You ask Mr. Hanna to prepare this memo?

11 A. No.

12 Q. Did you both -- withdrawn.

13 Did you feel it was important, the number of districts that
14 were over 50 percent SSVR?

15 A. Yes, I believe that was one of the factors that we were
16 looking at.

17 Q. Did Mr. Hanna ever communicate to you that he thought that
18 was important as well?

19 A. Absolutely. He based his opinion and we had many
20 discussions on this, on DOJ's 2001 letter.

21 Q. That was my next question. Where did you get the idea
22 from?

23 A. 2001 letter from Department of Justice.

24 Q. I'm showing on the screen Plaintiff's Exhibit 1,
25 Mr. Interiano, is this the 2001 letter?

1 A. Yes, sir.

2 Q. And does it refer to a 50 percent SSVR benchmark?

3 A. It does.

4 Q. I'll find it for you.

5 Is this the passage that you were thinking of?

6 A. Yes, sir.

7 Q. Could you read to the Court the sentence beginning

8 "Although"?

9 A. "Although there's an increase in the number of districts
10 in which Hispanics are a majority of the voting age population,
11 the number of districts in which the level of Spanish surname
12 registration is more than 50 percent decreases by two as
13 compared to the benchmark."

14 Q. Now, Mr. Interiano, did you draw the conclusion from this
15 letter from the Justice Department from 2001 that SSVR 50
16 percent was the only thing you should look at?

17 A. No, sir.

18 Q. Why not?

19 A. Because further on in their letter they also discuss an
20 election analysis.

21 Q. And I'm showing you the second paragraph. Could you read
22 the first sentence?

23 A. "As described more fully below, when coupled with an
24 analysis of election returns and other factors, we conclude
25 that minority voting strength has been unnecessarily reduced in

1 Bexar County, south Texas and west Texas.

2 Q. And did the Department of Justice grant Texas
3 pre-clearance of its House map in 2001?

4 A. No, they did not.

5 Q. And it says, "as described more fully below when coupled
6 with an analysis of election returns." Do you see that?

7 A. Yes, sir.

8 Q. Is there any description in this letter of the election
9 analysis the Justice Department did?

10 A. No, sir.

11 Q. Did the DOJ publish guidance for Section 5 in relation to
12 redistricting this year?

13 A. Yes, sir.

14 Q. Did you review that guidance?

15 A. Yes, sir.

16 MR. MORTARA: Your Honor, I'm going to publicize
17 Plaintiff's Exhibit 2, which is the Department of Justice
18 guidance.

19 BY MR. MORTARA:

20 Q. Mr. Interiano, it's dated February 9th, 2011. When did
21 you read this guidance?

22 A. As soon as it came out.

23 Q. Do you know when Mr. Hanna read this guidance?

24 A. Probably at the same time.

25 Q. Did you review this guidance to see if it was the same or

1 different from the 2001 letter?

2 A. Yes, sir.

3 Q. Did you find any information in this guidance about
4 election analysis?

5 A. It mentions a functional analysis, but that's the extent
6 of it.

7 Q. And I'm going to show you a passage on page 3 of the
8 guidance. Is this the passage you were thinking about?

9 A. Yes, sir.

10 Q. And could you read the first sentence?

11 A. "In determining whether the ability to elect exists in the
12 benchmark plan and whether it continues in the proposed plan,
13 the Attorney General does not rely on any predetermined or
14 fixed demographic percentages at any point in the assessment."

15 Q. Did you rely only on fixed demographic percentages?

16 A. No, sir.

17 Q. And what's the next sentence say?

18 A. "Rather in the department's view, this determination
19 requires a functional analysis of the electoral behavior within
20 the particular jurisdiction or election district."

21 Q. Mr. Interiano, is there any other information in the
22 guidance about this functional analysis?

23 A. No, sir, in fact, I recall a conversation with David where
24 I asked him if we had learned anything new that would help us,
25 and he said that he did not believe we did.

1 Q. Mr. Interiano, if the Department of Justice had published
2 guidance on how to choose elections and conduct an election or
3 functional analysis, what would you have done with that?

4 A. I would have followed it.

5 Q. Why?

6 A. Because we wanted to have a legal map. We spent a great
7 deal of time, and in the end the goal was to pass a map that
8 would uphold legal scrutiny.

9 JUDGE COLLYER: If I can ask a question. You said
10 that you didn't rely only on demographics, and I know that you
11 had discussions with members, as you described with
12 Representative, House Delegate Representative Peña and others,
13 what else did you rely on besides demographics of SSVR and
14 discussions with House members?

15 THE WITNESS: It would be the election analysis that
16 was provided to us by the Attorney General's Office.

17 JUDGE COLLYER: Okay, we haven't got to that yet;
18 right?

19 MR. MORTARA: No, I'm going to publicize that shortly
20 after we discuss some particular issues.

21 JUDGE COLLYER: That's fine. I just wanted to make
22 sure I was still in the game. Okay.

23 JUDGE HOWELL: Can I just, while we're addressing
24 questions here.

25 JUDGE COLLYER: Yes.

1 JUDGE HOWELL: Can I just go back for a second to
2 this difference between the SSVR regular and the SSVR
3 non-suspense, which you don't really understand what the
4 difference is, but could you at least -- to at least understand
5 whether the numbers are bigger for SSVR non-suspense versus
6 regular and were the experts using one version of SSVR versus
7 another?

8 THE WITNESS: To the best of my recollection, almost
9 everybody used the non-suspense.

10 JUDGE HOWELL: Non-suspense, okay.

11 THE WITNESS: Total registration, I think, if I
12 recall correctly, I think it's a bigger universe, and once you
13 remove those voters that had some sort of problem with the
14 Secretary of State's Office, it was that non-suspense number.

15 JUDGE HOWELL: Okay. So the SSVR non-suspense that
16 you relied on was actually a smaller number than the SSVR total
17 regular?

18 THE WITNESS: That's my understanding, yes, ma'am.

19 MR. MORTARA: Your Honor, I could offer some
20 clarification based on my understanding. But again I don't
21 want to testify.

22 JUDGE HOWELL: Well, hopefully some of the experts --

23 MR. MORTARA: Okay.

24 JUDGE HOWELL: -- so I think that was my main
25 question, whether we were using a bigger number or a smaller

1 number.

2 MR. MORTARA: Does Your Honor have a preference about
3 breaking at this moment? I think we have two minutes left.

4 JUDGE COLLYER: They're your two minutes.

5 MR. MORTARA: I would like to break this moment and
6 have and have an extra two minute lunch.

7 JUDGE COLLYER: All right. We'll break at this
8 moment and have an extra two minute lunch by the grace of the
9 State of Texas. Thank you, Texas, we all appreciate the extra
10 two minutes.

11 Thank you, everybody. We'll see you back here at two
12 o'clock.

13 THE DEPUTY CLERK: All rise.

14 JUDGE COLLYER: Please don't talk to anybody about
15 your testimony during the break, okay?

16 THE WITNESS: Yes, ma'am.

17 JUDGE COLLYER: Thank you.

18 (Court recessed for lunch at 12:29 p.m.)
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Opening Statement by Mr. Mortara

10

Direct Cross Redirect Recross

On behalf of the Plaintiff:

Todd Hunter

By Mr. Hughes

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By Mr. Freeman

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Gerardo Interiano

By Mr. Mortara

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CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by the United States District Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

Crystal M. Pilgrim, RPR

Date

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