

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 24, 2012  
 capacity as Attorney General of : 9:05 a.m.  
 the United States : Day Six  
 :  
 Defendants, and :  
 :  
 Wendy Davis, et al., :  
 :  
 Intervenor-Defendants :  
 -----x

A.M. SESSION  
TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLES  
ROSEMARY M. COLLYER and BERYL A. HOWELL  
UNITED STATES DISTRICT JUDGES

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

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1           JUDGE COLLYER: Good morning everyone. I'm sorry, we  
2 are a few minutes late. We were trying to figure out, I need  
3 as you remember, I have to leave here just before 9:30 to run  
4 to another courtroom which turns out to be two floors down in  
5 order to hold a very short criminal matter at which time I'll  
6 return. So I'll probably be gone ten minutes, okay.

7           So Ms. White is going to leave to make sure that that's  
8 all set up and everybody is waiting, you know, the Judge never  
9 comes out until everybody is waiting. You have to keep people  
10 waiting or they don't have, you know proper -- any way, so if  
11 they're all waiting she will come back and I'll take off and  
12 you'll just sort of pause for a moment and then I'll be back.

13           I apologize to you for that.

14           The next thing I want to say is that we would like for  
15 all defendants by noon before we break a list of every district  
16 that you think this Court needs to address. Senate, I assume  
17 you all know Senate District 10. So let's talk about well,  
18 Senate District 10. Luckily, there's only one of them. The  
19 House Districts, and the Congressional Districts that you think  
20 are at issue in some fashion.

21           If you told us what the fashion was that would be nice,  
22 but since you're sitting here in trial, we don't actually  
23 require that, we just want to know which ones.

24           JUDGE HOWELL: We do have a ten minute break.

25           JUDGE COLLYER: Absolutely, I forgot that. They do

1 have a ten minute break, yes, they can consult and come up with  
2 a list. Because we need to know that by noon.

3 I will say that we are, in light of the Western District  
4 of Texas' request, we are in the process of trying to figure  
5 out what we might best do, if anything, to be responsive to  
6 them and to you. I mean, this is beyond my can at this very  
7 minute, so I'm just saying we're trying to figure it out.

8 One of the things we might be doing is changing the date  
9 for closing arguments, and I just want to warn you all, you are  
10 all grown, you will all say I can't possibly be there, I have  
11 to be somewhere else, well, you know, so do we.

12 Yes, sir?

13 MR. GARZA: Just a point of clarification, Your  
14 Honor. Jose Garza for the Mexican American Legislative Caucus.

15 In terms of designating districts is that for  
16 retrogression or districts that we believe should be looked at  
17 on the intent issues as well?

18 JUDGE COLLYER: On both.

19 MR. GARZA: On both.

20 JUDGE COLLYER: If you could separate them that would  
21 be most helpful because the analysis is different. But on  
22 both.

23 MR. GARZA: Yes, Your Honor.

24 JUDGE COLLYER: So that we'll have an idea how broad  
25 a swarth of geography we're talking here other than the entire

1 State of Texas which is a broad swarth.

2 Are we ready? Is there anything else that I should add?

3 Well, we need to clarify this with Judge Griffith's  
4 schedule. But the closing argument that we're aiming for is on  
5 Tuesday rather than Friday, so that would be the 31st. That's  
6 what we're aiming for.

7 Now you have to understand I have a trial that starts on  
8 the 30th. So this is not the smoothest way for me to endear  
9 myself to a jury of 16 people, but I can't let the Judges in  
10 need go unrecognized.

11 You guys, I know you have needs, but Judges in need, I  
12 mean, never mind, I didn't say that.

13 If there's any reporter here who reports me on this, I'm  
14 going to be --

15 Yes, sir, I'm sorry, Mr. Devaney.

16 MR. DEVANEY: Good morning, Your Honor, John Devaney  
17 for Gonzalez intervenors.

18 As mentioned last night that we have a brief on  
19 coalition districts. I now have hard copies.

20 JUDGE COLLYER: Very good.

21 MR. DEVANEY: Shall I approach?

22 JUDGE COLLYER: You can give them to Ms. White and if  
23 you give us two and give them to the clerks who are the brain  
24 trust, we'll be very happy.

25 Thank you, sir.

1 All right, what can we do next?

2 MR. HUGHES: Your Honor, if that takes care of all of  
3 your business, the State of Texas is ready to call Senator Kel  
4 Seliger. He filed as you know a written direct testimony.

5 JUDGE COLLYER: Yes, sir.

6 MR. HUGHES: So he gets the opportunity to sit for  
7 cross examination.

8 JUDGE COLLYER: Senator Seliger, if you're here,  
9 could you come forward, please.

10 PLAINTIFF WITNESS SENATOR KEL SELIGER SWORN

11 JUDGE HOWELL: Good morning.

12 MS. PERALES: Good morning, Your Honor.

13 Nina Perales for the Latino Task Force.

14 May I approach the witness to give him clean copies of  
15 his prior depositions?

16 JUDGE COLLYER: Yes, ma'am.

17 CROSS EXAMINATION

18 BY MS. PERALES:

19 Q. Good morning, Senator.

20 A. Good morning.

21 Q. I should call you Chairman. Good morning, Chairman?

22 A. No, you don't have to.

23 Q. I'm going to ask you questions about Congressional  
24 Redistricting. And you chaired the Senate select committee on  
25 redistricting in the Senate, correct?

1 A. Yes.

2 Q. And your committee worked on and eventually voted out a  
3 Congressional Redistricting plan, correct?

4 A. That's correct.

5 Q. Torrey, I know it's early in the morning, but can you give  
6 me C 100 on Red Viewer -- DistrictViewer.

7 We talked before in your deposition and when we talked  
8 about what districts were Latino opportunity districts in the  
9 benchmark for congressional, you gave me the numbers of the  
10 districts that you felt were Latino opportunity districts, and  
11 so if we can just zoom in to the bottom half of the State.

12 It is correct that you identified as Latino opportunity  
13 districts moving from the west Congressional District 16 and El  
14 Paso, Sylvester Reyes, big West Texas 23, Congressional  
15 District 28, out of Laredo, Henry Cuellar, Congressional  
16 District 20 out of San Antonio, Charley Gonzalez.

17 Congressional District 15 out of Hidalgo County, Ruben  
18 Hinojosa. Congressional District 27 out of Brownsville, Corpus  
19 Christi held by Blake Farenthold, and then the last one would  
20 be all the way over in Houston Congressional 29, Gene Green.

21 Is that correct?

22 A. That's correct, yes, ma'am.

23 Q. You talked with me in your deposition also, you said that  
24 you believe in the benchmark plan Congressional District 23 was  
25 an opportunity district for Latinos, correct?



1 A. Yes, ma'am.

2 Q. And also with respect to 23, you believed that a district  
3 is a Latino opportunity district if it elects the Latino  
4 preferred candidate two out of three times, correct?

5 A. I don't know if I recall that was my exact response.

6 Q. If you can pull your deposition from September 1?

7 A. Okay.

8 Q. Go ahead and take a look at page 20?

9 A. Okay.

10 Q. And line 16 through 23 you were very humble about it. You  
11 said -- is it true that you said based upon my body of  
12 knowledge, meager though it is, yes, I think that's a logical  
13 conclusion?

14 A. Okay.

15 Q. And when you set out to make changes to Congressional  
16 District 23, in this redistricting process, you testified that  
17 your goal was to figure out if there was any way in political  
18 terms you could help Congressman Canseco hold that seat,  
19 correct?

20 A. Yes, ma'am.

21 Q. Congressman Canseco is the incumbent of 23 right now,  
22 correct?

23 A. Correct.

24 Q. And he was elected in the year 2010?

25 A. Yes, ma'am.

1 Q. With respect to your attempt in the Senate to meet that  
2 goal of making the district politically safer for Mr. Canseco,  
3 you testified that on your side, on the Senate side we didn't  
4 really do a good job, we just couldn't satisfy ourselves,  
5 correct?

6 A. Correct.

7 Q. And you further testified that you hadn't done a really  
8 good job with 23 because in order to keep it as an opportunity  
9 district, we just couldn't piece it together where it served  
10 Congressman Canseco and we wanted to if we could?

11 A. Correct.

12 Q. Thank you.

13 And during these efforts you formed the impression that if  
14 you made Congressional District 23 too much of a sure thing for  
15 Mr. Canseco, then you would be compromising its status as an  
16 opportunity district and you couldn't do that, correct?

17 A. Yes, ma'am.

18 Q. Can we keep the same view, but change the map to C 185,  
19 please.

20 I want to make sure that you have something to look at.

21 A. Thank you.

22 Q. So after your efforts in the Senate to draw a  
23 congressional map you testified that the House came up with  
24 their design for Congressional 23 and you thought it was good,  
25 so you agreed to it, correct?

1 A. Yes, ma'am, I believe this is it, is it not?

2 Q. Yes.

3 A. Thank you.

4 Q. This is the enacted Congressional 23 plan, the one that  
5 finally passed.

6 You also testified that the architecture for District 23  
7 came over from the House, correct?

8 A. Yes, ma'am.

9 Q. When we talked about this in your deposition you testified  
10 that although you believed that Mr. Canseco was also the  
11 preferred candidate of Latino voters, and 23 was in the  
12 benchmark, a majority Latino district, you did want to change  
13 it to make it safer for Mr. Canseco, yes?

14 A. If possible, yes.

15 Q. And you wanted to make it safer you explained because you  
16 thought that the 2010 election in which he was elected to this  
17 district was a bit of an aberration and you didn't know if  
18 District 23 was reliable for Mr. Canseco, correct?

19 A. Or any republican.

20 Q. Okay, but particularly for the incumbent that was there?

21 A. The incumbent, yes, ma'am.

22 Q. And you also testified that you thought it was possible  
23 Mr. Canseco might lose Congressional District 23 in the 2012  
24 election if the district was not reconfigured in some way,  
25 correct?

1 A. Yes, ma'am.

2 Q. And you testified while you were working on the Senate  
3 side on the draft of Congressional 23 you looked at voting  
4 patterns and you looked at ethnicity, and you would go into  
5 various counties and see what you could do to change the  
6 district, correct? That's on page 15 of that same deposition?

7 A. Yes, I believe so.

8 Page 15 did you say?

9 Q. Page 15. Go ahead, I want you to be comfortable?

10 A. Thank you.

11 Q. Lines 12 through 20.

12 A. Okay, thank you.

13 Q. It's true that you looked at voting patterns and ethnicity  
14 and you would go into various counties to see what you could do  
15 to change the district, correct?

16 A. Correct.

17 Q. You even looked at splitting Webb County to reach your  
18 goal of Congressional 23. And let me see if this works. Okay.

19 I'm circling Webb County for you badly on the monitor. You  
20 said you even looked at splitting Webb County to reach your  
21 goal for 23, but you didn't do that in the end because the  
22 Supreme Court had criticized the Webb County split in  
23 LULAC v. Perry, correct?

24 A. Correct.

25 JUDGE COLLYER: And Webb County is the one with 28 on

1 it down in the Southern Texas?

2 MS. PERALES: That's correct. Yes.

3 BY MS. PERALES:

4 Q. In the final version, Chairman, Webb County was not  
5 included in Congressional District 23; is that correct?

6 A. I believe that's correct, yes, ma'am.

7 Q. Can you zoom in a little bit to Maverick County, just a  
8 little. Oh, no, just come in a little closer to 28.

9 Thank you.

10 But you did end up in the final plan splitting neighboring  
11 Maverick County; is that correct?

12 A. Yes, ma'am.

13 JUDGE COLLYER: And Maverick County I would note for  
14 the record is northwest of Wells County, Wells County being  
15 Number 28, District 28 and Maverick County being immediately  
16 Northwest of it.

17 MS. PERALES: Your Honor, if I might Webb, that is  
18 Webb County. W-E-B-B.

19 JUDGE COLLYER: Oh, Webb. You said Webb, I said Webb  
20 then I looked at this and thought it, sorry.

21 You are correct, of course.

22 BY MS. PERALES:

23 Q. With respect to Congressional 23 in the adopted plan, you  
24 understood that Congressional 23 was a Latino opportunity in  
25 the new plan, adopted in the new plan?

1 A. Yes, ma'am.

2 Q. You testified that nobody ever told you in the  
3 Congressional District 23 in the adopted plan was predicted to  
4 elect the preferred candidate in one out of 10 elections,  
5 correct?

6 A. No, ma'am.

7 Q. Your testimony was that no one ever told you that,  
8 correct?

9 A. Right.

10 Q. You also testified that if you had understood that  
11 Mr. Canseco was not the Latino preferred candidate, but you  
12 knew that you were taking steps to make this district safer for  
13 Mr. Canseco that would have created a concern in your mind  
14 regarding compliance with the Voting Rights Act, correct?

15 A. Yes, it would.

16 Q. You further testified that it was your understanding from  
17 counsel that you were required to build the districts that can  
18 elect the candidate of choice, and if somebody had told you  
19 clearly that Canseco was not the candidate of choice to you  
20 this would have been a violation of the Voting Rights Act,  
21 correct?

22 A. In a layman's view, yes, ma'am.

23 Q. I think it's a very good layman's view, Senator. You  
24 don't know why some of these West Texas -- if we can just go to  
25 District 23, please.

1       You need to zoom out a tiny bit because it is a big  
2 district.

3       Senator, you don't know why some of these West Texas  
4 counties north of the Pecos River, and here I'm going to  
5 indicate the Pecos River. I know you're from a little bit  
6 further north of that in Maryland.

7       You don't know why some of these counties north of the  
8 Pecos River were added to Congressional 23? I mean, like  
9 Loving, Ward, Winkler, Crane, Upton and Regan that was down by  
10 your House counterparts?

11 A.    That's correct.

12 Q.    You don't know why Maverick was cut in the new plan while  
13 it was previously maintained whole in the benchmark?

14 A.    That's correct.

15 Q.    You don't ever recall exploring whether the changes to  
16 Congressional 23 would impact Mr. Canseco's ability to be  
17 nominated in a contested republican primary, correct?

18 A.    I asked if the map that we were going to vote on was going  
19 to be legal and the answer was, I don't know if it was  
20 unequivocal, but it was certainly yes.

21 Q.    But while you were changing and altering Congressional 23  
22 for the benefit of Mr. Canseco, you were not examining what  
23 changes might have been occurring in the dynamics of the  
24 republican primary that might have made it either easier or  
25 more difficult for him to win a contested primary, correct?

1 A. I didn't do the changes and alterations.

2 Q. So you didn't look into any primary effects, correct?

3 A. No, ma'am. I simply asked the question.

4 Q. Okay?

5 A. What the effect was and was it legal or not.

6 Q. I'm going to show Chairman a demonstrative exhibit. It is  
7 Defendant's 745 and it is a comparison map although I can't get  
8 the whole thing on here, so I'm going to have to ask you these  
9 questions one at a time.

10 The top half is the benchmark and the bottom half is the  
11 State's enacted plan so we can look at them side by side.

12 I'd like to turn with you to Congressional District 27 on  
13 the gulf coast. The incumbent of Congressional District 27 is  
14 Blake Farenthold who won in 2010, correct?

15 A. Yes, ma'am.

16 Q. And Mr. Farenthold defeated a 27 year incumbent Mr.  
17 Solomon Ortez, yes?

18 A. Yes.

19 Q. And Mr. Farenthold squeaked through that election with a  
20 margin victory of 722 votes didn't he?

21 A. I wasn't aware of the margin.

22 Q. You knew it was small?

23 A. I knew it was small.

24 Q. You testified that you believed Mr. Farenthold was not the  
25 Latino candidate of choice, correct?



1 A. I believe that's correct, I don't think he was.

2 Q. Now in terms of what was done to Congressional District 27  
3 from the benchmark plan to the enacted plan, if you can see in  
4 the benchmark plan Nueces County is in Congressional District  
5 27, right?

6 A. Right.

7 Q. In the enacted plan Nueces County has been placed into the  
8 yellow district, the new 27, which is much farther north and  
9 then there's another District 34 that comes up out of Cameron  
10 County and sort of wraps around and goes up to the north of  
11 Nueces, correct?

12 A. Correct.

13 Q. And you described to me that you made this change after  
14 meeting with the republicans in the Congressional 23 delegation  
15 and they asked you would you mind looking if there is a way to  
16 give Mr. Farenthold a good chance to hold that district,  
17 correct?

18 A. Correct.

19 Q. And you described Congressional District 27 in the  
20 benchmark as clearly an opportunity district, correct?

21 A. Did I call it clearly an opportunity district?

22 Q. Page 25. Lines 22 and then flowing over to the next page.

23 A. Okay.

24 Q. So you said in your mind it was clearly an opportunity  
25 district in the benchmark, yes?

1 A. Yes, ma'am.

2 Q. And you believed that with respect to the new  
3 configuration of District 27 where Nueces County is now matched  
4 up with northern counties that this is a district that  
5 Representative Farenthold can hold, correct?

6 A. Correct.

7 Q. You created this as what is showing on the exhibit as a  
8 brown district, you created 34 because you said you felt you  
9 were clearly required to create an opportunity district coming  
10 out of the valley, correct?

11 A. That's correct.

12 Q. And just to clarify for the Court, Mr. Farenthold lives in  
13 Nueces County doesn't he?

14 A. Corpus Cristi, yes, ma'am.

15 Q. I'm now showing Defense Exhibit 746.

16 A. I didn't draw this did I?

17 Q. No, but I did share it with counsel for the State last  
18 night to make sure that we weren't to going have any problems  
19 here.

20 I will represent to you that this map with the backup data  
21 that goes behind it simply shades counties that are either over  
22 50 percent or under 50 percent Hispanic citizen voting age  
23 population.

24 And you testified in your deposition that you are aware  
25 that Nueces County is a majority Latino county, correct?

1 A. I believe that's correct, yes, ma'am.

2 Q. I'm showing Defendant's 744 now which is a map of the  
3 South Texas Latino majority districts in the enacted plan C  
4 185. You agree with me when we talked about it in your  
5 deposition --

6 Let me just point out Nueces County which is part of the  
7 new 28 is no longer within this configuration of South Texas  
8 Latino majority districts.

9 You agree with me instead of taking all of Nueces County  
10 and placing it up out of the South Texas Congressional 23  
11 Latino district configuration, it would have been possible to  
12 take Mr. Farenthold's neighborhood there along Gulf Shore Drive  
13 in Corpus Christi and pair it with counties to the north and  
14 make him a safer district and leave the remainder of Nueces  
15 County's population in the district that runs down to Cameron  
16 County, didn't you?

17 A. I'm sorry, I don't recall that. I lost that. Can you  
18 point that out to me in the deposition?

19 Q. Yes, it's just a little bit further in your deposition,  
20 page 27. Lines 16 through 22.

21 A. Okay.

22 Q. So with respect to whether -- Mr. Farenthold, he lives  
23 right along Gulf Shore Drive, a very lovely area of Corpus  
24 Christi. When we talked about this, you said conceptually it  
25 was possible to basically take his neighborhood in Nueces

1 County which is right there in the blue dot on the map and  
2 match that up with some northern counties to make him a safer  
3 district, but it was also possible to have left the remainder  
4 of the Nueces County population in the South Texas  
5 configuration, correct?

6 A. Conceptually.

7 Q. If you would turn with me back again -- no, I'm going to  
8 skip that one. We'll go faster, Senator.

9 When we talked about the addition of some of these West  
10 Texas counties that we talked about a moment ago north of the  
11 Pecos River and these Loving, Ward, Crane, Winkler, when we  
12 talked about the addition of those counties to Congressional 23  
13 you agreed with me that because Congressional 23 was  
14 overpopulated, it was certainly possible to have simply pulled  
15 Congressional 23 closer down towards the border and not have  
16 gone into those northern counties, correct?

17 A. I think conceptually, correct.

18 Q. You agree with me that if the State had pulled  
19 Congressional District 23, contracted it down closer to the  
20 border Latino voters in that situation would have also  
21 determined the outcome of the election, correct?

22 A. Did I not say in there that it would clearly be a more  
23 democrat outcome?

24 Q. No. Take a look at page 38.

25 A. Thirty-eight?

1 Q. Yes. Is there a 38 in your deposition? I surely hope so.  
2 Take a look at 38, lines 15 through 19.

3 And I asked you: Okay, if you had pulled the district down  
4 closer towards the border, Latino voters in that situation  
5 would they have also determined the outcome of the election and  
6 you testified I think they would?

7 A. Right.

8 Q. But you testified that you never asked your staff to  
9 explore the possibility of arranging the South Texas districts  
10 to make 23 a district in which Latino voters had a  
11 significantly greater share of the voter registration than they  
12 did in the benchmark, correct?

13 A. I asked the staff if the map here was legal to everyone.

14 Q. You testified that you never looked at whether it was  
15 possible to draw the South Texas configuration to include this  
16 new I-35 district here, this is a new district, and still have  
17 all of the districts elect a Latino preferred candidate the  
18 majority of the time, correct?

19 A. Would you ask that again, please?

20 Q. Yes. Let me ask it the way I wrote it down.

21 You testified that you never looked at whether it was  
22 possible to draw the South Texas configuration from the gulf  
23 coast all the way to El Paso to include the new Latino District  
24 35 and still significantly increase the Spanish surname voter  
25 registration in District 23, correct?

1 A. Clearly we drew 35, but you're asking did we look at 35 as  
2 part of 23?

3 Q. I'm asking whether you looked at the whole group of  
4 districts together so adding the new 35 but also making sure  
5 that 23 had the ability to elect a Latino preferred candidate  
6 the majority of the time or draw the new I-35 district and then  
7 in this configuration, in this group of districts that I'm  
8 showing you here make sure that 23 had a very strong Spanish  
9 surname voter registration?

10 It's correct that you didn't really look at them that way?

11 A. I don't think so because it appeared evident that 23 was  
12 going to be, have a very high, be a Spanish surname voter  
13 registration or Hispanic citizen voting age population. It was  
14 going to be that way in any case.

15 Q. So on this map which gives the Spanish surname voter  
16 registration of 54.8 you didn't look at creating a  
17 configuration of all of these South Texas districts where 23  
18 would have a higher surname voter registration than 54.8,  
19 correct?

20 A. No, ma'am.

21 Q. So my statement is correct?

22 A. I guess so. The goal was in 23 and as we sat around and  
23 talked about this is that Judge Higginbotham had set the  
24 benchmark and that would be a good goal. It was judicially set  
25 that seemed reliable, that was the intent. So in my mind that

1 was our goal.

2 Q. And so did you --

3 JUDGE COLLYER: I'm sorry, excuse me. I didn't  
4 understand that.

5 You said the goal as we sat around and talked about it  
6 Judge Higginbotham said that was our goal.

7 THE WITNESS: No, Judge Higginbotham at that time had  
8 set the benchmark.

9 JUDGE COLLYER: What was that? What do you mean by  
10 that?

11 THE WITNESS: In 2000 --

12 JUDGE COLLYER: I understand the time. What was the  
13 benchmark that Judge Higginbotham set?

14 THE WITNESS: My understanding is that it was the  
15 percentage that we needed to give either in this case Hispanic  
16 voting age population.

17 JUDGE COLLYER: What percentage was that?

18 THE WITNESS: My assumption was in this 54.8 percent.

19 JUDGE COLLYER: I'm sorry, excuse me for interpreting  
20 you.

21 I'm just trying to figure out how Judge Higginbotham's  
22 decision guided your analysis here.

23 Did he say majority, did he say at least 53 percent?  
24 What was it that you and, of course, sir, you understand this  
25 is not our profession?

1 THE WITNESS: Right.

2 JUDGE COLLYER: A Senator, that's okay. So I'm  
3 dealing with what do you think we're dealing with rather than  
4 reality. I don't even know what Judge Higginbotham said, I  
5 can't remember right now.

6 What is it that you said he had said that would guide  
7 you?

8 THE WITNESS: My impression of it was that he had set  
9 the benchmark and that's what we should aim for.

10 JUDGE COLLYER: But what was the benchmark?

11 THE WITNESS: I'm sorry, I don't recall precisely  
12 what it was.

13 JUDGE COLLYER: I'm sorry. I have to run. I have  
14 another matter but I promise I won't be very long, I just need  
15 to get it started, okay.

16 (Witness excused.)

17 (Recess at 9:30 a.m.)

18 (Proceedings resumed at 9:45 a.m.)

19 (Witness resumes the stand.)

20 JUDGE COLLYER: Thank you everybody, I appreciate  
21 your courtesy.

22 MS. PERALES: Thank you, Your Honor.

23 JUDGE COLLYER: Ms. Perales.

24 MS. PERALES: I'm ready.

25 BY MS. PERALES:



1 Q. So would it be fair to say then that while you were  
2 working on the South Texas portion of the congressional map and  
3 you had added in the new Congressional District 35, did you  
4 look at whether it was possible to increase the Spanish surname  
5 voter registration of Congressional District 23 above the  
6 benchmark or significantly above the benchmark?

7 A. I do not recall doing that.

8 Q. Do you understand this region generally had become more  
9 populous and more Hispanic since the redrawing of this map  
10 after the Supreme Court case?

11 A. My impression was more Latino, more populous because it  
12 included so much of those sparsely populated counties in Texas.

13 No, I was not aware of that.

14 JUDGE HOWELL: Senator Seliger, did I understand you  
15 correctly that you relied on House map drawers for the  
16 Congressional District 23 drawing?

17 THE WITNESS: Actually, for most of the Congressional  
18 map.

19 JUDGE HOWELL: For most of the congressional map you  
20 relied on the House to provide that to you?

21 THE WITNESS: Yes, ma'am.

22 We both did drafts and when we got them together to talk  
23 about them, we decided that the House product was a better one,  
24 so I agreed with the House Chairman that we'd work off that  
25 map. They asked us to change anything we wanted to change and

1 so we relied on their word to a very good extent.

2 JUDGE HOWELL: Do you know whose work it was from the  
3 House side that in drawing these maps that you relied on?

4 THE WITNESS: Gerardo Interiano and Ryan Downton were  
5 the ones along with Mr. Davis that I spoke with along with my  
6 staff.

7 JUDGE HOWELL: I can tell from your testimony in your  
8 prefile declaration that you were very concerned with  
9 compliance with the Voting Rights Act?

10 THE WITNESS: Yes, ma'am.

11 JUDGE HOWELL: So in your discussions with them did  
12 you ask, in terms of Section 5 compliance, what the number of  
13 minority ability to elect districts were that was your target  
14 for Voting Rights Act compliance for the congressional plan?

15 THE WITNESS: I did not, Your Honor.

16 I asked them what they had drawn was it legal under the  
17 Voting Rights Act.

18 JUDGE HOWELL: But you never got actual numbers?

19 THE WITNESS: No, ma'am.

20 JUDGE HOWELL: Go ahead.

21 THE WITNESS: They might have showed me the numbers  
22 and things like that, but in the end, I wanted to know the end  
23 result was it legal or not legal. That's how I was going to  
24 make my judgment as to whether it should be included in the  
25 map.

1           JUDGE HOWELL: Even if you didn't get numbers, this  
2 is the total number of ability to elect Hispanic ability,  
3 minority ability to elect districts into the House plan, the  
4 Senate plan, the Congressional plan.

5           Did you understand that they were using HVAP as the  
6 demographic statistic that they would apply to evaluate whether  
7 there was a minority ability to elect district?

8           THE WITNESS: You know, in a lot of them I looked at  
9 those statistics they would show it to me. In RedAppl there is  
10 a data bar that goes under the map or over the map that shows  
11 those things and so it was available on all those maps on the  
12 RedAppl.

13          JUDGE HOWELL: So which statistic were you  
14 particularly focused on?

15          THE WITNESS: I didn't focus necessarily on the  
16 statistic, but the opinion on our legal counsel as to whether  
17 or not it met legal muster. I wasn't going to do the  
18 calculation.

19          JUDGE HOWELL: I thought I heard you say that you  
20 looked at each VAP.

21          THE WITNESS: It's one of the things we looked at.  
22 HVAP, Black VAP and Spanish surname voting registration, I'm  
23 sure there are some other statistics there that were on there.

24          JUDGE HOWELL: All right. Thank you.

25          Sorry.

1 BY MS. PERALES:

2 Q. Senator, is it fair to say that the map -- well, let me  
3 ask you this.

4 Are you aware that Nueces County has about 340,000 people  
5 in it?

6 A. I am.

7 Q. That's roughly half the size of the Congressional District  
8 in the new plan, correct?

9 A. Correct.

10 Q. Is it fair to say that the final product enacted by the  
11 State for the South Texas configuration of districts cuts  
12 Nueces County, the Latino majority Nueces County, which is  
13 almost half the size of a Congressional District, out of the  
14 configuration and as a result, we have a Congressional 23 that  
15 elects the Latino preferred candidate only one out of ten  
16 times?

17 A. Are you asking did I know that doing that with Nueces  
18 County had the resulting effect in District 23, no, I'm sorry  
19 not.

20 Q. But we do see that the final plan does cut Nueces County  
21 out and that Congressional 23 has a Spanish surname voting  
22 registration of 54.8, correct?

23 A. Yes, ma'am.

24 Q. I would like you to keep that number in your mind, the  
25 54.8 for Congressional 23 and take a look at this map which is

1 Defendant's 743.

2 This is, these are the Latino South Texas configuration  
3 districts for plan C 131. Is it correct to say that the Senate  
4 select committee considered a proposed alternative  
5 Congressional map from the vice chair of the committee, Senator  
6 Gallegos.

7 Do you recall that?

8 A. I recall that he offered an amendment specifically which  
9 map I don't, I'm sorry.

10 Q. It was actually I believe, Senator, on the floor, do you  
11 remember Senator Gallegos, Senator Lucio and Senator Uresti  
12 together offering an amendment on the Senate floor, plan C 131,  
13 and that would have been June 6th around the time that you were  
14 passing this plan out to the Senate?

15 A. I remember them offering amendments. Specific amendment  
16 I'm sorry, I don't.

17 Q. So were you aware that in this configuration Congressional  
18 District 23 elects the Latino preferred candidate ten out of  
19 ten times?

20 A. I don't know if that was offered in debate. I'm sure it  
21 was.

22 JUDGE COLLYER: You say Congressional 23, but in this  
23 configuration it's labeled 28?

24 MS. PERALES: That's correct, Your Honor.

25 JUDGE COLLYER: Okay. The area that is Congressional

1 23, the past Congressional map 185 is on this -- what document  
2 was this?

3 MS. PERALES: This is Defendant's 743.

4 JUDGE COLLYER: -- 743 is actually labeled  
5 Congressional 28 and it has a Spanish surname voter  
6 registration of 68.7 percent.

7 MS. PERALES: Thank you, Your Honor.

8 JUDGE COLLYER: And it doesn't include the counties  
9 north of the Pecos River?

10 MS. PERALES: It does not, Your Honor.

11 BY MS. PERALES:

12 Q. Mr. Chairman, I will direct your attention to the big West  
13 Texas district in this map, and I need to compare it to the  
14 Congressional 23 in the enacted map. Although in this map it  
15 happens to have a different number on it.

16 Do you remember that these amendments that were offered by  
17 the vice chair Senator Gallegos were not passed on the Senate  
18 floor that day?

19 A. I do recall.

20 Q. And to follow up on a question asked by the Court I know  
21 that you were concerned about Section 5 retrogression and that  
22 appears to be the reason that you included an offset district  
23 here, District 34 for the loss essentially of Latino  
24 opportunity in 27, correct?

25 A. I don't know if that was the calculation. I thought we

1 were required to put in the district.

2 Q. Okay. So you weren't really thinking about it in terms of  
3 well, we've lost 27, we need to make sure we have 34 to offset  
4 it?

5 A. No, ma'am. I think it was required by on its own merits.

6 Q. And so that's what I wanted to get to with you. Is that  
7 if we're just looking not no longer under retrogression or  
8 under Section 5, but if we're looking under Section 2 of the  
9 Voting Rights Act and how many districts overall should be  
10 drawn to provide Latino opportunity, did you ever form a  
11 concern that you may not have been drawing enough opportunity  
12 districts in South Texas?

13 A. I had asked the staff to ensure that we drew every  
14 district we were required to draw under Section 2.

15 Q. I don't think that I have any more questions for you,  
16 Senator, on this exhibit which is C 131.

17 But I did want to talk to you for a minute about  
18 republicans and democrats. We had a good conversation in your  
19 deposition about that.

20 You agree with me that Latino voters can vote republican  
21 don't you?

22 A. Certainly.

23 Q. And it's your opinion that perhaps at the moment more  
24 Latinos don't vote republican because republicans haven't done  
25 a very good job of reaching out to Latino voters, correct?

1 A. I agree with that.

2 Q. And you testified that it was your opinion that more  
3 republicans hadn't done a very good job of reaching out because  
4 they'd quote keep coming up with proposals to declare English  
5 the official language of Texas to no good end and things like  
6 that, yes?

7 A. Yes, ma'am.

8 Q. And you also mentioned that some of the positions related  
9 to immigration might have been not such a good job of reaching  
10 out to Latinos, correct?

11 A. That's correct.

12 Q. And you think it is possible, don't you that a Latino  
13 majority district could prefer a republican candidate in the  
14 general election, couldn't it?

15 A. Yes.

16 Q. But then you also testified that in your mind if the State  
17 created a new Latino opportunity district that was not required  
18 by the Voting Rights Act that in your mind that meant creating  
19 a democratic district, correct?

20 A. That's a motivation I would ascribe to the folks who  
21 offered that district, yes.

22 Q. All right. And if you would look at your deposition on  
23 page 11 near the bottom, page 11, line 22 over to page 12, line  
24 15.

25 Is it fair to say that at least then you said that creating



1 a non-required Latino opportunity district was in your mind  
2 creating a democratic district?

3 A. Yes, ma'am.

4 Q. And is it fair to say that you didn't want to create any  
5 more of what you thought of as democratic districts unless you  
6 had to, correct?

7 A. I think that's fair to say.

8 Q. Okay. Now moving over just a couple of questions on the  
9 process. Is it correct to say that the Senate select committee  
10 on redistricting did not hold any hearings on proposed  
11 Congressional Redistricting plan during the regular session?

12 Your committee regular session that you had no hearings on the  
13 proposed Congressional plan during the regular?

14 A. That's correct. We scheduled one, cancelled it I believe.

15 Q. Yes, and that was May 19th. Scheduled then cancelled,  
16 correct?

17 A. Yes.

18 Q. And then during the special session which happened after  
19 the regular session the bill for the Congressional map moved  
20 through the special session passing through the House and  
21 Senate in about two weeks, correct?

22 A. I think that's correct.

23 Q. And my last question is on the Texas House. Other than  
24 getting a reassurance from Chairman Burt Solomons that the  
25 Texas House map sent for your consideration complied with the

1 Voting Rights Act, is it fair to say that you didn't make any  
2 analysis of the House map to see whether it confirmed with the  
3 Voting Rights Act?

4 A. That is correct.

5 MS. PERALES: Thank you.

6 I pass the witness. Thank you very much, Senator.

7 THE WITNESS: Thank you.

8 MR. HEBERT: May I proceed, Your Honor?

9 JUDGE COLLYER: Please go right ahead, sir.

10 CROSS EXAMINATION

11 BY MR. HEBERT:

12 Q. For the record, the Senator's sworn declaration which  
13 constitutes his direct testimony is Plaintiff's Exhibit 162.  
14 We have just marked that.

15 So that I want to start with that, Senator Seliger, and I  
16 noticed on the last page of your sworn statement you have a  
17 paragraph 19 in which you discuss the fact that you were made  
18 aware of Latino population growth in Texas, and that when you  
19 heard about the growth it says you asked your counsel on  
20 redistricting if growth alone was enough to compel the drawing  
21 of districts under the Voting Rights Act, and then it says  
22 based on his advice I concluded it was not that simple, that's  
23 your testimony, is that right?

24 A. Yes, sir.

25 Q. I want to talk with you about that growth and I would like

1 to bring up if I could the Tarrant and Dallas County areas of  
2 the Congressional map, so if we could bring up Defendant's 107,  
3 please, and focus on the upper right corner of that.

4 Senator Seliger, are you aware of the fact that the  
5 population growth in this two county area according to the 2010  
6 census indicates that there are now 2.1 million black and  
7 Latino persons living in this two county area? You know that  
8 don't you?

9 A. Yes, sir.

10 Q. And you're also aware that in the Harris County area there  
11 are also approximately 2.1 million black and Latinos? You are  
12 aware of that too according to the 2010 census?

13 A. Yes, sir.

14 Q. How many ability to elect districts are there in Harris  
15 County Congressional districts? There's Sheila Jackson Lee,  
16 would you agree with me there?

17 A. I would.

18 Q. Gene Green?

19 A. Yeah, Gene Green.

20 Q. And Al Green?

21 A. Yes.

22 Q. So that's three. How many under the proposed State plan,  
23 Congressional plan, how many ability to elect districts are  
24 there in the Tarrant Dallas County area?

25 A. None.

1 Q. Eddie Bernice Johnson?

2 A. Eddie Bernice Johnson, I'm sorry.

3 Q. So there's only one even though they both have roughly,  
4 those two areas of the State have roughly the same numbers?

5 A. That's right.

6 Q. I'm showing you here a map which was proposed during the  
7 legislative session by I believe Senator West a Congressional  
8 map. It's C 192.

9 Again, Your Honors, this Exhibit Number is 107.

10 Now this, these Districts 34, and 35 were proposed as  
11 ability to elect minority districts, correct, and if we could,  
12 could you scroll down?

13 A. I can't tell you that, I didn't draw it.

14 Q. Do you know what the racial composition is of these two  
15 districts?

16 A. I do not.

17 Q. According to Exhibit 107, District 34 -- we want to go  
18 down to the bottom of the exhibit where the statistics are,  
19 please, and we'll look it up District 34, and District 35.

20 JUDGE COLLYER: It's very gratifying when the lawyer  
21 has to go tell the techees, it hardly ever happens.

22 MR. HEBERT: Especially in my case.

23 JUDGE COLLYER: No, no, I'm very impressed.

24 You understand that don't you, Senator?

25 THE WITNESS: I do.

1 JUDGE COLLYER: Yes.

2 THE WITNESS: If we could just find a 12 year old.

3 BY MR. HEBERT:

4 Q. If we could blow that up a little bit so that we could  
5 focus in on 34 and 35 in particular.

6 On the far right five columns we have the percentage Anglo,  
7 percentage black, percentage Hispanic, percentage black  
8 Hispanic and percentage other.

9 Do you see that, Senator?

10 A. I do.

11 Q. On this exhibit, if you look at District 34 and then go to  
12 the far right it shows that the voting age population  
13 percentage which is the bottom of the dark shaded area shows  
14 that District 34 is only 20 percent Anglo and a combined 77.1  
15 percent black and Hispanic.

16 Do you see that?

17 A. I do.

18 Q. All right. Then if you look below that on District 35 you  
19 see that District 35 is only 33.6 percent Anglo and it's 59.5  
20 percent black and Hispanic.

21 Do you see that?

22 A. Yes, sir.

23 Q. So these are two new proposed majority minority districts  
24 in the Dallas Fort Worth area, correct?

25 A. Right.

1 Q. And the Senate rejected this map, correct?

2 A. Yes, sir.

3 Q. And was that along a party line vote?

4 A. I believe there was.

5 Q. And all minorities in the Senate, all of the minority  
6 Senators, by minorities I don't mean political, no, I mean  
7 racial ethnic minority, they voted for this map?

8 A. All of the democrats did.

9 Q. And all of the minority did?

10 A. Yes, sir.

11 Q. Racial and ethnic minority?

12 A. Yes, sir.

13 Q. In the Tarrant County area, just Tarrant now, not Dallas.  
14 Let me stop at Dallas, you are aware of the fact that according  
15 to the 2000 census, Dallas County lost 200,000 Anglos?

16 A. From the 2000?

17 Q. I may have misspoke. From 2000 to 2010 a comparison of  
18 the census showed that Dallas lost approximately 200,000 Anglos  
19 over the course of the decade, are you aware of that fact?

20 A. I might have been told it, no, sir.

21 Q. Do you have any reason to disagree with that?

22 A. I have no knowledge to the contrary.

23 Q. With regard to Tarrant County do you happen to know, are  
24 you aware of the fact that of the growth in Tarrant County over  
25 the course of the last decade only four percent of that growth

1 was Anglo?

2 A. It might have been pointed out in debate, but no, I don't  
3 know it.

4 Q. Are you aware of the fact that in Tarrant County over the  
5 course of decade the growth of blacks in Tarrant County was 48  
6 percent, are you aware of that?

7 A. No.

8 Q. According to the census in Tarrant County the growth of  
9 Hispanics was 70 percent of the growth, are you aware of that?

10 A. No, sir.

11 Q. So if those statistics are what the census shows, you  
12 don't have any reason to contradict those, you don't know?

13 A. I don't know.

14 Q. Now I want to stick with the Congressional map for a  
15 minute. I want to bring up if I could an Exhibit 788, please.

16 I want to ask you a question about this exhibit. You don't  
17 need to read it yet or you can listen to my question first, and  
18 I'll give you an opportunity to read it, I promise.

19 What I wanted to know is did you ever talk to Doug Davis  
20 and he was your staff director, right?

21 A. He was the committee director, yes, sir.

22 Q. Did you ever tell him that, did you ever ask him to bring  
23 up an idea with the House lawyers Mr. Interiano or Mr. Downton  
24 that if after you passed the Congressional map if you filed in  
25 D.C. and drew a bad panel of Judges up here that you could

1 always call, ask the governor to call another special session,  
2 did you ever talk with Mr. Davis about that possibility?

3 A. No, sir.

4 Q. All right. I want you to now look at Exhibit 788 and I  
5 want you to see here where Mr. Interiano says, and this is the  
6 paragraph that says talked to Doug again and he is still  
7 hinting that this would force us to go to conference, and  
8 that's Doug Davis, correct?

9 A. Yes, sir.

10 Q. He thought, his thought was having the House leave it as  
11 is and if you guys decide that it's best to change it, then  
12 have the Senate send us to conference.

13 He then goes on and this is the question I want to ask you.

14 A. I'm sorry, where are you reading? Is it okay if I follow  
15 along?

16 Q. Yes, the paragraph that begins with also talked to Doug?

17 A. Okay.

18 Q. The third sentence says the other issue that Doug brought  
19 up that we hadn't considered is that if we get a really bad  
20 panel and have serious concerns about the direction that things  
21 are going that we can try to appeal to the governor and call  
22 another special. Period.

23 And then he says Daniel, I agree that that is extremely  
24 unlikely but nonetheless, we didn't consider it, and that's in  
25 a parenthetical.



1       So my question to you, Senator, is well first, who is  
2 Daniel Hodge?

3 A.    He is a first Assistant Attorney General State of Texas.

4 Q.    And there is three lawyers listed there with the law firm  
5 of Baker and Botts also to whom this e-mail was sent?

6 A.    I'm sorry, I wouldn't know.

7 Q.    You don't see the Bakerbotts.com e-mail on there?

8 A.    Yes.

9 Q.    Stacey Napier she's seated here at counsel table for the  
10 State of Texas, correct?

11 A.    She is.

12 Q.    Did you ever have any discussion with Mr. Doug Davis about  
13 the fact that hey, if things are going bad up here in D.C. we  
14 can always get the governor to change our plan and come up with  
15 a new one?

16 A.    Never.

17 Q.    Now also in your direct testimony you said that you relied  
18 on Mr. Doug Davis to draw the maps for the Senate committee,  
19 correct?

20 A.    Yes, sir.

21 Q.    You didn't actually hire Mr. Davis, did you?

22 A.    Yes, I did as committee director.

23 Q.    Did you interview him for the job?

24 A.    No because he works for the Texas Senate, I knew him  
25 anyway and, and he had experience in redistricting 2001, 2003.

1 The members of the committee seemed to be amenable to the idea,  
2 so I hired him.

3 Q. And did you hire him after the session started?

4 A. No, I hired him before the session started.

5 Q. Okay. But you weren't the committee chair until after the  
6 session started or before?

7 A. I was named committee chair in late summer, early spring  
8 of 2010.

9 Q. Now the, you have never had prior to this round of  
10 redistricting, you had no experience in redistricting?

11 A. No, sir.

12 Q. And in fact, you entered the legislature in 2004; isn't  
13 that's correct?

14 A. Correct.

15 Q. And you are not an attorney?

16 A. I am not.

17 Q. You are a businessman?

18 A. Yes, sir.

19 Q. Now do you know how Mr. Davis came to your attention?

20 A. I don't know who first recommended to me that we hire  
21 Doug.

22 Q. All right. Now at the time that you retained him as your  
23 director, he was working for the Lieutenant Governor David  
24 Dewhurst, correct?

25 A. Yes.

1 Q. The Senate parliamentarian, who is that?

2 A. Karina Davis.

3 Q. Is Karina Davis -- what's the parliamentarian's jobs,  
4 duties, just one or two sentence description?

5 A. To see that the proceedings of the Texas Senate follow the  
6 Constitution and the rules of the Senate.

7 Q. Is a parliamentarian suppose to be only helping one side  
8 of the aisles or a parliamentarian for all of the Senators?

9 A. The parliamentarian for all of the Senators.

10 Q. And Karina Davis is actually the wife of Doug Davis isn't  
11 she?

12 A. She is.

13 Q. And she was involved in the redistricting of the State  
14 Senate wasn't she?

15 A. Not in my level. I never spoke about a redistricting  
16 issue with her until it was, until parliamentary matters  
17 regarding the bill came up.

18 Q. But you know Doug Davis spoke with her about Senate  
19 redistricting didn't you?

20 A. I did not know that. I assume he spoke with his wife.

21 Q. But you don't know that David Hanna spoke to Karina Davis  
22 about redistricting?

23 A. No, sir, not at all.

24 Q. Okay. We're going to get to that in a bit.

25 Defendant's Exhibit 633, please -- I'm sorry, 637.

1 Now what's a pre-enrolled bill, Senator Seliger?

2 A. I'm not sure I can give you the exact definition of a  
3 pre-enrolled bill.

4 Q. Have you ever heard the expression pre-enrolled?

5 A. Maybe one time in the past.

6 Q. Did it come up in the Senate redistricting process this  
7 time around, do you know?

8 A. Not to me.

9 Q. Are you aware of the fact that Mr. Doug Davis and Karina  
10 Davis and David Hanna exchanged an e-mail regarding a  
11 pre-enrolled, having the Senate have a pre-enrolled bill for a  
12 redistricting plan?

13 A. I read a news account of that last week but prior to that  
14 absolutely not.

15 Q. Mr. Davis operated as the staff director of the Senate  
16 Redistricting Committee under your direction and control,  
17 correct?

18 A. Yes, sir.

19 Q. Now the minority members of the Senate Redistricting  
20 Committee, the vice chair of the committee was Senator Mario  
21 Gallegos?

22 A. Correct.

23 Q. And he is a Latino?

24 A. He is.

25 Q. Who are the other minorities on the Senate Redistricting

1 Committee?

2 A. Senator West, Senator Zaffirini, I believe Senator Uresti.

3 I'm not sure I remember the rest of the committee members.

4 Q. And they asked you to consider the possibility of them

5 being allowed to hire their own counsel during the

6 redistricting process, correct?

7 A. Only Senator Gallegos suggested early on in our

8 organizational stage to hire a minority majority counsel and he

9 wanted to hire a Rolando Rios.

10 Q. And you did not agree with that and did not and you

11 rejected that as committee chair?

12 A. I did.

13 Q. Didn't Senator Gallegos say to you that he was asking on

14 behalf of the minority members of the Senate?

15 A. He may very well have. I do not remember that exact

16 exchange.

17 Q. Have you had any experience with Voting Rights Act issues

18 prior to the time you took on Senate redistricting?

19 A. I had sat through the debate committee on the floor on

20 voter ID but as it related to elections no, sir.

21 Q. And that debate was when?

22 A. It would have been 2009 session.

23 Q. In fact, the legislature enacted a voter ID bill in 2011

24 session?

25 A. Yes, sir.

1 Q. That was a racially charged bill?

2 A. It was.

3 Q. And redistricting was a racially charged issue as well,  
4 correct?

5 A. I think that's an accurate description.

6 Q. And minorities voted against, all of the minorities in the  
7 Senate voted against the voter ID bill, correct?

8 A. I don't recall the exact vote.

9 Q. Now the formal process of redistricting in the 2011  
10 session, you actually began drawing maps really from day one,  
11 correct?

12 A. Yes, sir.

13 Q. All right. And you consulted with your colleagues about  
14 the maps?

15 A. I did not a lot before the session.

16 Q. No, I meant during the session?

17 A. Yes, sir.

18 Q. I want to focus on the period from January to May of 2011?

19 A. Okay.

20 Q. You drew maps, proposed maps on computers with Mr. Davis  
21 from really day one?

22 A. Yes, sir.

23 Q. At one point Senator Wendy Davis asked you if you could  
24 show her her district and you told her that you would  
25 eventually, but you were having problems resolving Senator

1 Nelson's overpopulation.

2 Do you remember that, telling her that?

3 A. I don't recall telling her it was Senator Nelson's  
4 population because there were a lot of issues in the Dallas  
5 Fort Worth area, but certainly that was one of them.

6 JUDGE COLLYER: Can I ask a question?

7 What is the population criterion for a Senate District?

8 THE WITNESS: The ideal number is 800, 11,000.

9 JUDGE COLLYER: Eight hundred eleven?

10 THE WITNESS: Yes, ma'am.

11 JUDGE COLLYER: And you are allowed to go plus or  
12 minus five or ten percent?

13 THE WITNESS: Plus or minus five percent.

14 JUDGE COLLYER: Thank you.

15 BY MR. HEBERT:

16 Q. Senator Davis, her district was within the five percent  
17 range of deviation when the census came out, correct?

18 A. I believe that is correct.

19 Q. It was around two percent over?

20 A. It may very well have been.

21 Q. And so technically at least for one person one vote  
22 purposes her District didn't need to change in order to comply  
23 with that requirement, correct?

24 A. I think I was advised of that, yes.

25 Q. Now how did you determine, now you're the chairman, how

1 did you determine which Senate districts in the plan would be  
2 protected under the Voting Rights Act against retrogression?

3 A. I asked legal counsel which districts would be protected.

4 Q. What was your understanding of that?

5 A. That the ones currently represented by minority members,  
6 that was my understanding.

7 Q. So your understanding was that only if a district was held  
8 by a minority that it would be protected under the Voting  
9 Rights Act?

10 A. Well, not entirely because that doesn't address Gene  
11 Green's District in Houston. But given the way I asked the  
12 question, it was that we had to look at those that were  
13 currently represented by minorities.

14 Q. Those would be the protected districts?

15 A. Yes.

16 Q. So if Wendy Davis were African American then you would  
17 have determined that Senate District 10 was a protected  
18 district?

19 A. I would have asked. I would not have made that  
20 determination just because she was minority.

21 Q. You told me just now that if it was represented by a  
22 minority that it would be a protected district?

23 A. No, sir.

24 I would have asked legal counsel if it was protected and  
25 that was my understanding going forward that certainly the



1 districts that were represented by minority districts had to be  
2 viewed in that fashion.

3 Q. Why is it that a district has to be represented by a  
4 minority in order to be protected under the Voting Rights Act?

5 A. Clearly it doesn't if one looks at Congressional Districts  
6 by Representative Gene Green in Houston.

7 Q. What about the fact that does a district have to be a  
8 majority black district or majority Latino district in order to  
9 be protected under the Voting Rights Act in your view as a  
10 layman?

11 A. You are asking for a legal judgment and the clearest view  
12 for a layman is if it's a majority minority district, then it  
13 may very well be protected.

14 Q. A majority minority district may very well be protected,  
15 is that your testimony?

16 A. Yes, sir.

17 Q. It doesn't have to be majority black, it can be a  
18 combination of black and Latino, is that your understanding?

19 A. You are asking me now about the legality about the  
20 coalition district. I have no such legal judgment there.

21 Q. I'm asking you as a Senate Redistricting Committee chair  
22 if your understanding during the process was that a district in  
23 which blacks and Latinos together constituted over 50 percent  
24 of the voting age population in the district would such a  
25 district have been protected under the Voting Rights Act?

1 A. My understanding of my legal advice that that coalition  
2 district was not in most cases compelling in that respect.

3 Q. And why would that be? What was your understanding of  
4 that?

5 A. Because coalition districts are not -- I don't know what  
6 best way to put it.

7 I don't know if they're not recognized or there is no  
8 compulsion to create or maintain what would be a coalition  
9 district.

10 Q. So is it your testimony then that because neither blacks  
11 nor Latinos in the coalition district exceed 50 percent of the  
12 population by themselves either group that that would  
13 automatically mean that that's a coalition district and not  
14 entitled to protection under the Voting Rights Act?

15 Is that your understanding?

16 A. I'm sorry, you are asking me automatically and nothing was  
17 automatic.

18 Q. Well, take out the word automatically.

19 Would a district that neither blacks nor Latinos  
20 constituted over 50 percent by themselves then, but together  
21 exceeded 50 percent, would such a district in your view be  
22 protected under the Voting Rights Act?

23 A. I don't have a view. That's why I have legal counsel.

24 Q. So you don't know as a layman whether or not a district  
25 that is say 23 percent -- I mean 41 percent black and 39

1 percent Latino and therefore, about almost 80 percent minority  
2 whether that kind of a district would be protected under the  
3 Voting Rights Act?

4 A. Unless I was informed by legal counsel and if I was then  
5 sobeit.

6 Q. In fact, isn't that the composition of Senator West, an  
7 African American's district in District 23 in the Senate plan?

8 A. I can't tell you.

9 Q. Isn't it a fact that Senator Ellis' district, who  
10 testified here the other day, District 13, that his district is  
11 only 48 percent VAP and 28 percent Hispanic VAP?

12 A. I'm sorry, I don't have the statistics.

13 Q. And there are heavily minority districts and yet neither  
14 the blacks or Latinos constitute a majority in either of those  
15 districts do they?

16 A. Apparently not.

17 Q. And yet you deemed those districts protected under the  
18 Voting Rights Act, correct?

19 A. I was advised so.

20 Q. You took that advice and you followed it?

21 A. Yes, sir.

22 Q. And you maintained those districts as opportunity or  
23 ability to elect districts, didn't you?

24 A. Yes, sir.

25 Q. But you didn't do that with regard to Senate District 10?

1 A. Correct.

2 Q. Are you aware of the fact that Senate District 10 under  
3 the 2010 census is a majority minority district in total  
4 population?

5 A. I was told by legal counsel it was not a majority minority  
6 district.

7 Q. I asked you about total population, are you aware of the  
8 fact that it was 52.4 percent total population minority in that  
9 district?

10 A. I'm sure I was advised if that is the fact at some point.  
11 I don't recall it.

12 Q. Let's go back to 2010?

13 JUDGE COLLYER: I have a question.

14 So when it comes to Senate District 10, who or how did  
15 you think that Senator Davis was elected?

16 Who voted for her?

17 THE WITNESS: I can't tell you exactly who voted for  
18 her.

19 I can tell you that it was a year of I think substantial  
20 turn out in populations that had not voted before. Senator  
21 Davis ran a very good campaign and worked very hard at it.

22 Her opponent didn't run nearly as good a campaign.  
23 That's how she got elected.

24 JUDGE COLLYER: So you don't have any idea as to the  
25 persons who voted for her?

1 THE WITNESS: No, ma'am.

2 JUDGE COLLYER: Senator, I have to say you're a very  
3 smart man. You have been a Senator in this State of Texas a  
4 very long time.

5 It's hard for me to credit your answer that you don't  
6 know, that you don't know just automatically who elected whom.  
7 Of course you know. Everybody would know. Everybody in the  
8 Senate would know who and how people got there because you are  
9 all politicians and you need to know.

10 Now I find it very hard to take your -- I mean, I can, I  
11 have no reason except that it is not sensible to me that you  
12 would not know. I can't believe that. Everybody knows.

13 The Dallas Tribune, everybody in the whole place knows  
14 and knew then. So how do you not know? And how did you not  
15 know in 2010 and 11?

16 THE WITNESS: Because I didn't ask for that analysis,  
17 she won the election.

18 JUDGE COLLYER: You didn't need to ask, you already  
19 knew didn't you?

20 THE WITNESS: If the question is do I think most of  
21 the minorities voted for Senator Davis? Well, that would be my  
22 presumption.

23 JUDGE COLLYER: Okay.

24 THE WITNESS: But my question when composing the  
25 district --

1 JUDGE COLLYER: No, no, no. I'm not asking about  
2 composing the district.

3 I'm asking about common political sense in the State of  
4 Texas. How did Wendy Davis get elected to the Senate?

5 THE WITNESS: For the reasons that I pointed out.  
6 She got, I think she got a lot of independent vote. I think I  
7 was told that she was successful in the minority population as  
8 democrats are in Dallas Fort Worth.

9 JUDGE COLLYER: Thank you, sir.

10 Go ahead.

11 BY MR. HEBERT:

12 Q. Are you aware of the fact in following up on the Court's  
13 question, you were aware of those facts about that she had  
14 attracted a lot of Fort Worth minority voters and that was how  
15 she got elected, you were aware of that fact when you drew the  
16 Senate map, correct?

17 A. Specifically then? No, sir.

18 Q. Mr. Davis was though, wasn't he and he --

19 A. Quite likely, yes.

20 Q. He was, wasn't he?

21 A. Quite likely, yes.

22 Q. And did you or Mr. Davis -- let me start just with you.

23 If you know if Mr. Davis did, please bring that to my

24 attention. But do you know, did you particularly look -- let

25 me go back.

1           You knew going into the Senate redistricting process that  
2 the issue about Senate District 10 was going to be a big issue,  
3 correct?

4 A.    Yes, sir.

5 Q.    And you knew that because people had come to you and said,  
6 republicans, one of the major goals of redistricting should be  
7 to get rid of Wendy Davis didn't they?

8 A.    Yes, sir.

9 Q.    You said I see or I understand when they told you that  
10 didn't you?

11 A.    Yes, sir.

12 Q.    And in fact, that was a goal that you pursued in the  
13 redistricting wasn't it?

14 A.    A fact what?

15 Q.    In fact, you accomplished that goal?

16 A.    No, I don't concede that.

17 Q.    But you made her district more difficult politically for  
18 her, would you concede that?

19 A.    Yes, sir.

20 Q.    By making it more difficult for her politically one way to  
21 do that would be to take out her most reliable voters wouldn't  
22 it?

23 A.    We were looking at taking out democratic voters.

24 Q.    You looked at taking out Southeast Fort Worth in  
25 particular didn't you? In fact, you did take out Southeast

1 Fort Worth?

2 A. Yes, sir.

3 Q. You ran it down in District 22 in Senator Birdwell's  
4 District?

5 A. Correct.

6 Q. You knew they were African Americans, the voters that you  
7 were moving? You knew that they were democrats?

8 A. I was told that they were democrats. That was really my  
9 focus.

10 Q. You never really were told that Fort Worth, the third  
11 largest concentration of African Americans in the State that  
12 when you were moving them out of Senate District 10 your  
13 testimony under oath today is that you didn't know that that  
14 was a black area?

15 A. No, sir. I was told that it was largely African American  
16 at some point.

17 Q. During the session?

18 A. Yes, sir.

19 Q. And you were aware of communities like Everman and Forest  
20 Hills and others in there that were being moved out and you  
21 knew that those were minority neighborhoods?

22 A. I was told that they were.

23 Q. You knew all that but despite knowing all of that and  
24 knowing that Senate District 10 was going to be a focal point,  
25 you went ahead and put those minority voters in the district



1 that goes past Waco another more than a hundred miles away?

2 A. Yes, sir.

3 Q. And that's an Anglo dominated district, Senate District  
4 22?

5 A. I think it is majority Anglo but I don't know what the  
6 figure is.

7 Q. What percentage of minorities are in your district, do you  
8 know that?

9 A. I don't.

10 Q. You don't know what the percentage of Latinos are in your  
11 district?

12 A. No. I think it's 30 to 40 percent.

13 Q. What percentage of blacks are in your district?

14 A. I don't, I think it's somewhere between 12 and 20.

15 Q. Twenty percent, 12 to 20 percent?

16 A. Yes, sir.

17 Q. Would you be surprised to learn that it's only 5 percent,  
18 Senator?

19 A. Yes, I would be a little surprised.

20 Q. Well, that's what the exhibit shows and I'll get that  
21 number for you. Exhibit 151, Defendant's Exhibit 151.

22 JUDGE COLLYER: So your testimony would be on your  
23 own understanding of the population of your district that it  
24 has a majority of minorities, blacks and Hispanic? Were those  
25 the numbers you just gave?

1 THE WITNESS: Incorrectly, yeah, I thought it could  
2 possibly be.

3 JUDGE COLLYER: Where are you from?

4 THE WITNESS: I'm from Amarillo.

5 JUDGE COLLYER: Thank you.

6 BY MR. HEBERT:

7 Q. That's essentially a panhandle district?

8 A. Mostly Panhandle goes all the way through the South Plains  
9 and into the Crane, Odessa.

10 JUDGE COLLYER: Into the where? I am sorry.

11 THE WITNESS: Into the Premier basin, Midland,  
12 Odessa, Crane County.

13 BY MR. HEBERT:

14 Q. Now in fact, the redistricting hearings that you had back  
15 in the fall of 2010, you did not conduct any hearings in Fort  
16 Worth at all, did you?

17 A. We had a joint hearing with the House in Arlington.

18 Q. And that was a joint hearing so that was a Senate and  
19 House hearing?

20 A. Yes, sir.

21 Q. And wasn't it a fact that you were requested by certain  
22 minority members from Tarrant County of the legislature to hold  
23 a hearing in Fort Worth?

24 A. I'm sorry, I don't recall that.

25 Q. You don't remember that.

1        Now in your, in the Arlington hearing Senator Davis  
2 actually had her district director, because she was out of  
3 state, read a letter expressing her views as to what she  
4 thought should happen with her district.

5        Do you remember that?

6 A.    Yes, I do.

7 Q.    Did you attend that hearing?

8 A.    Yes, I did.

9 Q.    Do you recall what those concerns were?

10 A.    The only one I recall was that the district be located  
11 completely in Tarrant County.

12 Q.    You don't remember that she asked that the minority  
13 communities not be broken up?

14 A.    No, sir, I don't.

15 Q.    And you don't remember also that she asked particularly  
16 about having Lake Como restored to Senate District 10 because  
17 it had been taken out in 2001?

18 A.    No, sir.

19 Q.    You don't remember that either?

20 A.    No, sir.

21 Q.    So the only thing that you remember about her statement is  
22 the fact that her district wanted to be in Tarrant County?

23 A.    Yes, sir.

24 Q.    In fact, Senator, when you drew the map Senate District 10  
25 the only thing that you complied with regard to Senator Davis'

1 request in the fall hearing and throughout the session was that  
2 her district still be in Tarrant County? That was the only  
3 thing that you were able to honor?

4 A. That is correct.

5 Q. You couldn't honor all of the other requests about  
6 protecting the minority populations, correct?

7 A. No, sir.

8 Q. Now you say in your statement that in fact the House, the  
9 Senate passed the plan by a vote of 29 to 2 on page 9 of your  
10 statement which was marked Plaintiff's Exhibit 162.

11 Do you remember that? It's on paragraph 9, sir, of your  
12 statement?

13 A. I'm sorry, line what?

14 Q. I'm sorry, it's actually not your deposition, sir. This  
15 is your sworn statement.

16 A. Oh, okay, I'm sorry.

17 MR. HUGHES: I don't think he has copy. You can just  
18 ask him.

19 BY MR. HEBERT:

20 Q. What I'm asking you is you said in your statement that  
21 plan 148, the Senate plan, that you had passed, passed the  
22 Senate by a vote of 29 to 2.

23 A. On at least one of the votes, yes.

24 Q. I believe it might have been on final passage it was 29 to  
25 2.

1 Do you remember that?

2 A. I believe that's correct.

3 Q. In fact, you don't mean to create the impression that with  
4 regard to those 29 people who voted in favor of it that all 29  
5 who voted to pass the plan did so because they supported what  
6 was done to Senate District 10, do you?

7 A. No.

8 Q. In fact, all of the democrats in the Senate issued a  
9 statement before the final vote which included all of the  
10 minorities in the Texas Senate saying that specifically they  
11 opposed what was being done to Senate District 10 and supported  
12 Senator Davis' and Senator Zaffirini's amendments to change  
13 District 10 back to, put all of the minorities back together,  
14 correct?

15 A. They did, contradicting their vote.

16 Q. And they expressed the view also that they didn't want it  
17 to go to the LRB and that's why they were voting on final  
18 passage. They also said that didn't they?

19 A. They did say that.

20 Q. You say it passed the Texas House by a vote of 96 to 47.

21 Are you aware of the fact that all of the democratic  
22 members of the House voted against the Senate map?

23 A. Yes, sir.

24 Q. All right. Are you aware of the fact that the only  
25 minorities to vote yes on the map were a handful of republican

1 Latinos?

2 A. I believe I do recall it, yes.

3 Q. Isn't it a fact that what is kind of standard operating  
4 procedure or the usual practices that you don't mess with the  
5 House map and they don't mess with the Senate map?

6 A. I was told that was tradition, yes, sir.

7 Q. And yet that tradition was broken in 2011 wasn't it?

8 A. Yes, sir.

9 Q. It was broken in the House because minorities tried to put  
10 the Senate District 10 back together again didn't they?

11 A. I don't know what their total motivation was in the House.  
12 A lot of people wanted to run for the Senate, and there are  
13 certain configurations that would probably help them.

14 Q. Representative Veasey put forward a map in the House to  
15 fix Senate District 10 and restore it to a minority ability to  
16 elect district, right?

17 A. We saw it as a map that would allow Senator Davis to be  
18 reelected.

19 Q. And that would have been an ability to be reelected  
20 because the minority communities in Senate District 10 would  
21 have been rejoined, correct?

22 A. I can't tell you what his motivation was.

23 Q. I'm not asking his motivation. I'm asking what the plan,  
24 the plan that was offered in the House was similar to the plan  
25 that had been offered in the Senate in the sense that it put

1 the minority neighborhoods back together in Senate District 10?

2 A. I believe that's correct.

3 Q. And that was voted down in the House, correct?

4 A. Yes, sir.

5 JUDGE HOWELL: I just want to be absolutely clear  
6 based on a line of questions.

7 You understood that the neighborhoods being removed from  
8 Senate District 10 were largely black neighborhoods if I  
9 understood your testimony correctly on that?

10 THE WITNESS: I think there was one I was informed on  
11 in the part of the districts that went into District 22.

12 JUDGE HOWELL: Okay, so you just knew that there was  
13 only one, your understanding was that the change to Senate  
14 District 10 was that there was only one largely black  
15 neighborhood that was being removed?

16 THE WITNESS: It's more of an area than just a  
17 neighborhood in that it goes up into District 10.

18 I was told that at some point during the proceeding that  
19 was largely African American.

20 MR. HEBERT: If I may follow up, Your Honor.

21 BY MR. HEBERT:

22 Q. You were also informed that you, that the north side  
23 neighborhoods also known as the Stockyards area that in fact  
24 that's a highly Latino area? You were informed of that too?

25 A. I believe at some point I was told that.

1 Q. You took that area out of Senate District 10 and put it  
2 into Senate District 12 which is now dominated by Denton  
3 County?

4 A. Right, Senator Nelson's district.

5 Q. You knew that in the black area, you knew that Hispanics  
6 were being taken out on the north side?

7 A. Yes, sir.

8 Q. Did you ever look at the political dynamics of what  
9 happened in the 2008 race between Senator Davis and Senator  
10 Brimer?

11 A. No, sir, I did not.

12 Q. Is it not a fact that the whole District 10 was going to  
13 be the big issue in redistricting, you didn't go back and look  
14 at how the people voted in the district?

15 A. No, sir.

16 Q. You didn't know that the get out and vote was in the  
17 district?

18 A. No, sir.

19 Q. Did you look at how much money was spent by the candidates  
20 in that race?

21 A. No, sir.

22 Q. Did you look at what Senator Davis did to mobilize her  
23 voters in that district?

24 A. No.

25 Q. Did you look at the fact that there was population growth



1 in that district?

2 A. I think I was aware that there was population growth.

3 Q. So at least you were aware of that?

4 A. Yes.

5 Q. Did you look at the voter turn in that race?

6 A. I'm sure I saw a percentage voter turn out at some point,  
7 sure.

8 Q. Did you review the 2001 submission by the State of Texas  
9 in which they predicted that the district would grow into a  
10 possible minority opportunity district?

11 A. No. I saw that after the redistricting process.

12 Q. You didn't look at any of that stuff?

13 A. No. I was on the ballot in 2008 too. That's what I was  
14 concentrating on.

15 Q. I'm talking about in 2011 when you were redrawing the maps  
16 you didn't go back and try to get any of that?

17 A. How much money that a candidate spent and what flare  
18 getting out, what their effort looks like was of no interest to  
19 me.

20 JUDGE HOWELL: Can I stop you for just a second on  
21 the voter turn out.

22 You did say that you were aware that part of the reason  
23 that Senator Davis won was because she run a good campaign?

24 THE WITNESS: Yes.

25 JUDGE HOWELL: And she had gotten a lot of voter turn

1 out in the communities that there hadn't been a turn out  
2 before?

3 THE WITNESS: Not ones in the communities who had  
4 voted before but voters who had not voted before.

5 JUDGE HOWELL: Voters who had not voted before?

6 THE WITNESS: Yes, ma'am.

7 JUDGE HOWELL: Do you think that it has an impact on  
8 voters on whether or not they turn out to vote, take time out  
9 of their day to do it if they think they're going to have an  
10 impact? If their vote is really going to have an impact on the  
11 vote?

12 THE WITNESS: I think that's motivation for all  
13 voters.

14 JUDGE HOWELL: Right. So do you think it's going to  
15 have an impact on voters in these black and Latino communities  
16 that have been moved out of S D 10, being moved into more Anglo  
17 communities, do you have a, do you think it's going to have an  
18 effect on their voter turn out in their new districts?

19 THE WITNESS: I'm sorry, would you ask that again?

20 JUDGE HOWELL: Do you think it's going to have an  
21 impact on these voters who had, were new voters who were  
22 turning out, you know, for the first time let's say for Wendy  
23 Davis? I think that was your testimony.

24 She had gotten voters who weren't turning out before to  
25 turn out and vote for her election in S D 10, and some of those

1 voters maybe in the Latino neighborhoods and the black  
2 neighborhoods that are now being moved to more Anglo districts,  
3 do you think that's going to have an impact on their turn out  
4 in these new more Anglo districts?

5 THE WITNESS: No, ma'am because I think the biggest  
6 motivator for those voters was the fact that President Obama  
7 was on the ballot and also running a very good campaign.

8 JUDGE HOWELL: So the voter turn out you think in  
9 2010 had to do with the presidential election or 2008 was the  
10 presidential election?

11 THE WITNESS: Yeah, 2008. Yeah.

12 BY MR. HEBERT:

13 Q. Senator Seliger, I know we are getting close to a break I  
14 believe.

15 JUDGE COLLYER: We're not going to break until  
16 eleven. We actually had a break earlier and since broke for  
17 and you all were courteous to let me, I thought we would go to  
18 eleven.

19 MR. HEBERT: Thank you for that.

20 BY MR. HEBERT:

21 Q. I believe you testified in your deposition that at one  
22 point you brought maps to Senator Shapiro, Senator Nelson, and  
23 Senator Harris.

24 Do you remember that testimony?

25 A. Yes, I do.

1 Q. So you actually visited them in their offices with a map,  
2 correct?

3 A. I did.

4 Q. And nobody ever brought a map to Wendy Davis though did  
5 they?

6 A. Doug Davis went to her office to talk to her. I don't  
7 know whether or not he brought a map or worked off a map that  
8 she had.

9 Q. We have testimony from Mr. Davis in this case, he has  
10 already testified. We have testimony from Senator Davis.

11 You are not aware that any map was ever brought by Doug  
12 Davis to Senator Davis?

13 A. I'm not.

14 Q. Okay. But you brought maps to those other three Senators?

15 A. I worked off Senator Nelson's computer and brought the map  
16 to Senator Shapiro.

17 Q. And you also showed it to Senator Harris?

18 A. Senator Harris, yes.

19 Q. And they're all Anglos aren't they?

20 A. Yes.

21 Q. And they all represent that majority Anglo don't they?

22 A. I believe they are.

23 Q. Now I want you to identify for me, sir, if you can the  
24 commonalities of interest that are within Senate District 10  
25 under the benchmark map?

1 A. I don't know if they're commonality of interest, if there  
2 is a commonality of interest.

3 Q. So your definition of a commonality of interest is Tarrant  
4 County and that's how you would describe it?

5 A. To talk about some of them that's the one that I think  
6 most obvious all of those people live in Tarrant County.

7 Q. What other commonality of interest do they have other than  
8 being residents, I'll add one Texas, they live in Texas, right?

9 A. Yes.

10 Q. So what other values or interests, particularized needs do  
11 the voters within Senate District 10, what are their  
12 commonality of interest?

13 A. I'm sorry, I don't live there. I wouldn't know that I can  
14 characterize District 10 accurately.

15 Q. Did you actually try to identify communities within Senate  
16 District 10 to protect in the redistricting?

17 A. No, sir.

18 Q. You never did that?

19 A. No.

20 Q. All right. Isn't it a fact that one of the criteria that  
21 the Senate said it was going to follow in 2011 was to protect  
22 communities of interest, that was one, and respect them, wasn't  
23 that true?

24 A. Yes, but that wasn't the only motivation.

25 Q. And yet notwithstanding the fact that you had as a

1 criterion to protect communities of interest you never even  
2 undertook an evaluation of interest of communities within  
3 Senate District 10, correct?

4 A. No.

5 Q. Can we bring up that exhibit, please? I do have a correct  
6 number. Exhibit 63, page 5.

7 This is when I was asking you earlier about Karina Davis,  
8 do you remember that?

9 A. Yes.

10 Q. We are going to do that next. If you can. Thank you.

11 Here is an e-mail from David Hanna to Karina Davis with a  
12 carbon copy to Doug Davis entitled pre doing the committee  
13 report.

14 It says, this is Mr. Hanna talking, no bueno. RedAppl time  
15 stamps everything when it assigns a plan. Doing it Thursday  
16 would create a paper trail that some amendments would not be  
17 going to be considered at all. Don't think this is due deed  
18 (sic) for preclearance is the best approach to do afterwards  
19 and we'll go as fast as possible, do you see that?

20 A. I do.

21 Q. The fact is in your testimony I want to make sure that I  
22 understand it. Your testimony is that you never knew anything  
23 about this?

24 A. Nothing.

25 Q. And yet the hearing was going to be the next day,

1 Thursday, May the 12th?

2 A. Yes.

3 Q. In fact, you had the committee hearing that day and voted  
4 out the plan?

5 A. Yes, sir.

6 Q. You knew by May 11th that none of the amendments that  
7 Senator Davis was going to offer was going to pass? You knew  
8 that you had the votes or you wouldn't have had the hearing?

9 A. Yeah, yes. There were, there were other amendments  
10 though.

11 Q. Pardon me?

12 A. There were other amendments though.

13 Q. Right, right. But with regard to Senator Davis'  
14 amendments, none of those other amendments were to put Senate  
15 District 10 back together with regard to the minority  
16 population, were they?

17 A. No.

18 Q. You said Karina Davis was the parliamentarian, where were,  
19 would Mr. Hanna -- what's the procedure for going to the  
20 parliamentarian in the Senate? Do you know that?

21 A. Anyone in the Senate can go to the parliamentarian. His  
22 motivation to hers, I don't have a clue.

23 Q. But did you ever instruct Mr. Davis to ask the  
24 parliamentarian how you could precook this so that it would be  
25 a fate of complete by the time you got to the committee

1 hearing?

2 A. Absolutely not.

3 Q. But it appears here that Mr. Hanna is responding to a  
4 request to do exactly that because he entitles it pre doing the  
5 committee report.

6 Do you see that?

7 A. I do.

8 Q. We don't know what was sent to him because the State  
9 hasn't produced that e-mail. So you don't know what Mr. Hanna  
10 is actually responding to do you?

11 A. Absolutely not.

12 Q. But he's not giving it approval because he's using the  
13 term no bueno?

14 A. Right.

15 Q. And that means not good?

16 A. Right.

17 MR. HEBERT: I have nothing further.

18 Thank you for the time, Senator.

19 JUDGE COLLYER: Thank you very much.

20 Does anybody else have questions for the Senator?

21 Mr. Devaney.

22 MR. DEVANEY: Thank you, Your Honor. I'll be brief.

23 JUDGE COLLYER: Good morning.

24 CROSS EXAMINATION

25



1 BY MR. DEVANEY:

2 Q. On behalf of the Gonzalez intervenors.

3 Sir, John Devaney, nice meeting you.

4 A. Nice meeting you.

5 Q. I just want to follow up on a discussion you had with Mr.  
6 Hebert about coalition districts.

7 Did you recall that you had that discussion?

8 A. Yes.

9 Q. I think you said for legal advice you relied on Mr. Doug  
10 Davis; is that correct?

11 A. Doug Davis and committee counsel Michael Morrison, David  
12 Quinn and Robert Heath.

13 Q. It's my understanding that Mr. Davis instructed you the  
14 coalition districts are not protected under the Voting Rights  
15 Act, is that correct?

16 A. I don't know that he made that exclusive statement, but  
17 that was largely what I took from that, yes.

18 Q. So all of the work that you performed on the Congressional  
19 map, the Senate map, you assumed the coalition districts were  
20 not protected; is that correct?

21 A. Unless told otherwise.

22 Q. I'm sorry?

23 A. Unless told otherwise by counsel.

24 Q. Did anyone else tell you otherwise?

25 A. No.

1 MR. DEVANEY: Thank you. That's all I have.

2 Thank you.

3 JUDGE COLLYER: You're welcome.

4 Any further questions from the State of Texas?

5 MR. HUGHES: Yes, Your Honor.

6 (Pause.)

7 JUDGE COLLYER: This is redirect.

8 THE WITNESS: Thank you.

9 JUDGE COLLYER: You're welcome.

10 MR. HUGHES: Your Honor, if you'll bear with me one  
11 moment while I test my tech savvy.

12 (Pause.)

13 May I proceed?

14 JUDGE COLLYER: Yes, please go right ahead, sir.

15 MR. HUGHES: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. HUGHES:

18 Q. Good morning, Senator.

19 A. Good morning.

20 Q. Senator Seliger, I would like to talk with you first about  
21 the vote in the Senate on the final Senate map. I think you  
22 talked with Mr. Hebert about that and that you testified the  
23 vote was a 29 for, 2 against?

24 A. Right.

25 Q. Do you recall who the two against were?

1 A. Senators Davis and Ellis.

2 Q. Other than Senators Davis and Ellis, all of the democrats  
3 and all of the democrats that represent minority voters voted  
4 for the Senate map; is that right?

5 A. They did.

6 Q. And you talked about this with Mr. Hebert. At the same  
7 time those Senator voted for the Senate map they put a letter  
8 into the record expressing some concerns with the Senate map;  
9 is that a fair description?

10 A. Yes.

11 Q. In that letter included statements that the map that they  
12 were voting for violated the Voting Rights Act and the U.S.  
13 Constitution and so forth?

14 A. Right.

15 Q. And the justification put in that letter for why those  
16 Senators voted for the map, notwithstanding the conclusions  
17 that they supposedly reached about whether the map violated the  
18 Voting Rights Act of the Constitution, the justification is  
19 that those Senators didn't want the LRB to draw the map; is  
20 that right?

21 MR. HEBERT: Your Honor, I'm going to object to the  
22 question. The exhibit speaks for itself, it's part of the  
23 record.

24 JUDGE COLLYER: It is, but it's okay, since it does  
25 and we're in a truncated trial.

1           But don't lead your own witness. I mean, this is a very  
2 leading process, so far. So don't lead your own witness, okay.

3           MR. HUGHES: Just trying to get to the punch line.

4           JUDGE COLLYER: I understand.

5           MR. HUGHES: Much like has been done in the past but  
6 I will.

7           JUDGE COLLYER: You understand --

8           MR. HUGHES: I understand.

9           JUDGE COLLYER: -- this is your witness as opposed to  
10 their witness.

11           But I agree with you that this is sort of foundational,  
12 so go ahead.

13           MR. HUGHES: Thank you, Your Honor.

14 BY MR. HUGHES:

15 Q.    What is the LRB, Senator?

16 A.    Legislative Redistricting Board.

17 Q.    What circumstances would cause the Legislative  
18 Redistricting Board to have to draw the Senate map?

19 A.    If the legislature cannot pass a map, a legislative map or  
20 State Board of Education, it defaults to the Legislative  
21 Redistricting Board which is statewide officials.

22 Q.    Is it the idea there that if there aren't enough votes to  
23 get a map out of the Senate and House then whatever map doesn't  
24 get through in the regular session, then what happens?

25 A.    We still have to have a map and pass, we still have to

1 have a map and so it has to default somewhere if the  
2 legislature can't do it, and so the Texas Constitution it goes  
3 to the Legislative Redistricting Board.

4 Q. So to avoid the Legislative Redistricting Board, the  
5 Senate map had to pass in the Senate, right?

6 A. Yes.

7 Q. The vote was 29 to 2. There's a rule in the Senate to get  
8 something to a floor, how many votes do you need to get a bill  
9 to the floor in order to have consideration for final passage?

10 A. Two-thirds of the members present. With everyone present  
11 that's 21.

12 Q. Once the bill is actually on the floor and up to a vote  
13 for final passage, how many votes are required in that  
14 instance?

15 A. Simple majority, 16 votes.

16 Q. So is it true that every single democrat in the Senate  
17 could have voted against this bill as, and it still would have  
18 avoid the Legislative Redistricting Board?

19 A. Absolutely.

20 Q. Now you were asked by Mr. Hebert about whether, whether  
21 you knew the amendments Senator Davis wanted to her district  
22 were going to fail. I think you said you did, you knew you had  
23 the votes and then you offered there were other amendments, but  
24 I don't think you were able to talk about those.

25 Can you tell us what those other amendments were?

1 A. I had an amendment. I believe Senator Fraser had an  
2 amendment, and there might have been another, but a couple of  
3 amendments went on in committee I believe.

4 Q. Do you recall that Senator Zaffirini had an amendment to  
5 her district?

6 A. Yes, but I thought that amendment went on on the floor.

7 Q. Okay. Did Senator Zaffirini have an amendment to her  
8 district on the floor?

9 A. Yes.

10 Q. Did that pass?

11 A. It did, but it might have been offered by either Senator  
12 Watson or Senator Uresti because it effected all three of them.

13 Q. What is the party affiliation of those Senators?

14 A. They're all democrats.

15 Q. And the amendment offered on the floor for those Senators  
16 to some of their districts, what happened to them?

17 A. I accepted the amendment.

18 Q. Now you testified about or talked with Mr. Hebert about  
19 Doug Davis?

20 JUDGE COLLYER: I'm sorry, forgive me for  
21 interrupting.

22 What was the jest of the amendment posed by Senator  
23 Zaffirini?

24 THE WITNESS: In constructing Senator Zaffirini's  
25 district she had a small part of Bexar County, San Antonio.

1           When we drew that map she moved out of Bexar County into  
2 Travis County, she wanted it back into Bexar County. I forget  
3 what Senator Uresti wanted, but it would come out of his  
4 district. And then when Senator Watson and then when we drew  
5 that map Uresti that's why it's sort of a three way agreement.

6           JUDGE COLLYER: Okay. So the three of them agreed to  
7 various swamps among them?

8           THE WITNESS: Yes, ma'am.

9           JUDGE COLLYER: And on that basis everybody said  
10 fine?

11           THE WITNESS: Everybody said fine. The lawyer said  
12 that, particularly with Senator Zaffirini and Senator Uresti I  
13 know I had to be careful it was acceptable there.

14           JUDGE COLLYER: Thank you.

15           MR. HUGHES: May I proceed?

16           JUDGE COLLYER: Yes.

17           MR. HUGHES: Thank you, Your Honor.

18 BY MR. HUGHES:

19 Q. You talked with Mr. Hebert about Doug Davis, and can you  
20 describe the relationship that Doug Davis had with you and the  
21 Senate Redistricting Committee?

22 A. I can't comment on his relationship with the rest of the  
23 committee. He was our committee director, he was in charge of  
24 the business committee, the conduct, the information  
25 disseminated, all of that sort of thing.

1 His relationship with me we talked almost every day.

2 Q. And you testified that Mr. Davis, that this witness', his  
3 first time in redistricting he had had a prior experience in  
4 redistricting; is that right?

5 A. Yes, sir, in 2001 and 2003.

6 Q. And who made the decision to bring Mr. Davis on to work  
7 for the Senate Redistricting Committee on drawing the maps?

8 A. I did.

9 Q. And did any of the democrats on the Senate Redistricting  
10 Committee oppose that decision that you made?

11 A. They did not.

12 Q. Now talking about the procedures for passing the Senate  
13 map and the Congress map, were there any procedural  
14 irregularities in connection with passing the maps out of the  
15 Senate?

16 A. I'm not, because I wasn't there when they passed before,  
17 I'm not sure what would be considered irregularity because  
18 there's always debate and descent and things like that.

19 Going to a special session to the Congressional map, I  
20 think -- well, it happened in 2003. But in terms of irregular,  
21 no.

22 Q. Senator Seliger, I think Mr. Hebert asked you whether the  
23 democrat members of the Senate Redistricting Committee were  
24 permitted or were permitted to hire their own outside counsel.

25 Do you recall that discussion you had with Mr. Hebert?



1 A. Right.

2 Q. Did the Senate Redistricting Committee hire outside  
3 counsel in connection with the redistricting process?

4 A. Yes.

5 Q. And did it hire some law professor from Baylor University?

6 A. Yes, sir. Mr. Heath who is an adjunct professor at the  
7 University of Texas.

8 Q. Were those outside counsel just hired by the republican  
9 members of the committee or were they hired by the committee?

10 A. They were hired by the committee.

11 Q. Did every single member of the Senate Redistricting  
12 Committee, if they wanted to, have access to talk to those  
13 outside counsel about redistricting?

14 A. Yes, but that discussion was really held with only one  
15 other member.

16 Q. Who was that other Senator West?

17 JUDGE COLLYER: What was the role of these particular  
18 professors?

19 THE WITNESS: They were general counsel and they  
20 don't draw maps. They were there to vet the maps as we drew  
21 them and to inform me or anyone else on the committee whether  
22 they were legal or not.

23 JUDGE COLLYER: Thank you.

24 Sir, we're at eleven so I'm going to break now, okay.

25 MR. HUGHES: Perfect. Thank you.

1           JUDGE COLLYER: We have been running this on a time  
2 basis, Senator, so we're going to break at eleven and we'll be  
3 back in 15 minutes, okay.

4           THE WITNESS: Yes, ma'am.

5           (Witness excused.)

6           (Morning recess at 11:00 a.m.)

7           (Proceedings resumed at 11:15 a.m.)

8           JUDGE COLLYER: Whenever you're ready, Mr. Hughes.

9           MR. HUGHES: Thank you, Your Honor.

10                           **REDIRECT EXAMINATION (Cont'd)**

11 BY MR. HUGHES:

12 Q. Welcome back, Senator Seliger.

13 A. Thank you.

14 Q. We're almost finished.

15 I want to now shift gears back to an hour or so ago when  
16 you were talking with Ms. Perales, and she asked you a number  
17 of questions about Congressional District 23. Do you recall  
18 having a discussion about that?

19 A. Right.

20 Q. And one of the things that came up during that testimony  
21 was that you talked about how this was a -- that Congressional  
22 District 23 was a court-drawn district, and that Judge  
23 Higginbotham had drawn it to a certain benchmark. Do you  
24 recall that testimony?

25 A. I do.

1 Q. And was the benchmark that you were referring to in that  
2 testimony, does that refer to the demographic characteristics  
3 of Senate District -- Congress District 23 as drawn by Judge  
4 Higginbotham in terms of Hispanic citizen voting age population  
5 and SSVR and things like that, is that the benchmark you're  
6 referring to?

7 A. That's my understanding of it, yes, sir.

8 Q. Okay. And when drawing the map, did you and those working  
9 on your behalf attempt to maintain those benchmark demographic  
10 levels that had been characteristic of the congressional  
11 district as drawn by Judge Higginbotham?

12 A. They told me that's what they were trying to do.

13 Q. Okay. And you talked about how -- that you at times would  
14 look at the computer what the RedAppl on it, and you could see  
15 an output of some of this different demographic data at the  
16 bottom or the top of the screen; right?

17 A. Yes.

18 Q. Okay. And so you're familiar that RedAppl has a  
19 demographic data for the different districts in the maps so you  
20 can see what SSVR is, what HCVAP is, you're familiar with them?

21 A. Yes.

22 Q. And so I'd like to just, so it's clear for everybody,  
23 because I thought there was a little confusion, I want to look  
24 at that data for Congress District 23 in the benchmark. And  
25 this is Plaintiff's Exhibit 11, page 10.

1           And Senator Seliger, you see at the top of this exhibit  
2 page that it refers to the Congressional District's Plan C100?

3 A.    Yes.

4 Q.    Do you understand that's the benchmark plan?

5 A.    Okay.

6 Q.    And down here, do you see where it says 23, can you see  
7 that or is it too small? Should I try to make it --

8 A.    No, I can see it.

9 Q.    Okay. And you understand this is the RedAppl output for  
10 demographic data for Congressional District 23?

11 A.    Right.

12 Q.    What do you see for HCVAP for Congressional District 23 as  
13 drawn by Judge Higginbotham?

14 A.    Fifty-eight point four.

15 Q.    What do you see for SSVR for Congressional District 23 as  
16 drawn by Judge Higginbotham?

17 A.    Fifty-two.

18 Q.    And now I'd like to look at the same data as -- for the  
19 Congressional District 23 as enacted, and that's Plaintiff's  
20 Exhibit 12, page 11. And you see we're looking at same basic  
21 thing, just for Plan 185; right?

22 A.    Yes, sir.

23 Q.    Okay. And you see -- I apologize to you and the Court  
24 that the font is so small, but you see down here Congress  
25 District 23?

1 A. I do.

2 Q. And what is the HCVAP for the enacted Congress District  
3 22?

4 A. Fifty-eight point five.

5 Q. And what about the SSVR?

6 A. It's 54.8.

7 Q. Okay. And having looked at all of this demographic data  
8 and the demographic data for the district as drawn by Judge  
9 Higginbotham, what do you see in that data?

10 A. It would seem to me to be consistent.

11 Q. Now, when you were working on the map and talking to your  
12 advisors, think about the Congress map, did you ask your  
13 advisors whether the map was legal as a whole?

14 A. Yes.

15 Q. And do you have confidence that they provided you candid  
16 advice about whether they thought the Congressional map was  
17 legal as a whole?

18 A. Yes, sir.

19 Q. And what did they tell you about whether the map was legal  
20 as a whole?

21 A. They told me that -- that it was a legal map, that they  
22 also told me there was no sure thing and it would be a contest,  
23 and that was it.

24 MR. HUGHES: Thank you, Senator.

25 Mr. Hebert, since I'm next with Professor Alford, I will

1 just leave my computer here if that doesn't interfere with you.

2 JUDGE COLLYER: Did you want to do recross?

3 MR. HEBERT: Recross. Five minutes.

4 MR. HUGHES: I don't think that we've had that yet.  
5 I'm not sure it's appropriate. I'm just trying to cover what  
6 was brought up in the cross-examination, Your Honor.

7 JUDGE COLLYER: What would you address?

8 MR. HEBERT: I want to address the issue of the  
9 hiring of these law professors that were just referenced in the  
10 cross with a couple of points from their prior work with the  
11 committee and address that one issue.

12 And I also want to talk about very quickly the statement  
13 of the senators as to why they voted 29 to 2, which was also  
14 brought up in cross.

15 And then the final issue was the committee counsel, the  
16 law professors again in the Senate on the Congressional map. I  
17 want to bring to the Court's attention the fact that they --  
18 they answered questions from Senator Jackson Lee that, in fact,  
19 they didn't even get to see the Congressional map.

20 JUDGE COLLYER: Okay.

21 MR. HUGHES: Your Honor, I think this is all outside  
22 the scope of what I covered in my redirect. As to the law  
23 professors, I merely asked whether the democrats had access to  
24 them because there was an implication that maybe they were shut  
25 out of the outside counsel process, and everything else he has

1 identified has nothing to do with what I asked him. Sort of  
2 what I asked during cross-examination.

3 JUDGE COLLYER: I'm going to let him use his own  
4 time, it's his time that he's using, so.

5 MR. HUGHES: Thank you, Your Honor.

6 JUDGE COLLYER: Thank you, sir.

7 MR. HEBERT: I believe my recross will be about five  
8 minutes, hopefully.

9 **RECROSS-EXAMINATION**

10 BY MR. HEBERT:

11 Q. The professors that were hired you said Quinn, Larson, and  
12 Mr. Heath?

13 A. Correct.

14 Q. Okay. And he's a adjunct professor at UT?

15 A. Right.

16 Q. And those are the same people who had been hired by, your  
17 understanding is they were the same law professors and legal  
18 counsel, outside counsel that were hired in 2001; correct?

19 A. Was not aware.

20 Q. You weren't aware?

21 A. No, I wasn't there.

22 Q. I thought you testified that the reason they were here  
23 this time or they were -- maybe it was Mr. Davis.

24 A. Okay.

25 Q. Are you aware of the fact that they were legal counsel in

1 2003?

2 A. I am now.

3 Q. And are you aware of the fact that the House map in 2001  
4 that came over to the Senate was approved was actually objected  
5 to by the Justice Department, that those law professors gave a  
6 stamp of approval to?

7 A. No, actually I'm not aware of that.

8 Q. Are you aware of the fact that the Senate map passed in  
9 2001 and was challenged in court by minority voters as a  
10 violation of the Voting Rights Act?

11 A. I know it was challenged.

12 Q. All right. Are you aware of the fact that in 2003, these  
13 same three lawyers also advised the state with regard to  
14 redistricting when the redistricting of the congressional  
15 districts took place?

16 A. No, sir, I was not aware.

17 Q. Okay. Are you aware of the fact that that plan adopted in  
18 2003 was eventually struck down by the United States Supreme  
19 Court in part?

20 MR. HEBERT: I'll try to go a little slower, I  
21 apologize.

22 JUDGE COLLYER: Only if you want a record.

23 THE WITNESS: Would you ask it again? I think the  
24 answer is no. I'm really not aware of it.

25 BY MR. HEBERT:



1 Q. You're not aware of the, in 2003, the redistricting of  
2 Congressional District's Plan, that that plan was struck down  
3 by the Supreme Court in *LULAC v. Perry*?

4 A. Okay, yes.

5 MR. HEBERT: Could we bring up Plaintiff's Exhibit  
6 159? And I'd like to go to page 24 of the exhibit, please.  
7 I'm sorry, no -- yes, page 24 of the exhibit.

8 Exhibit 150 -- Defendant's Exhibit 159 and go to page 24  
9 of that document.

10 BY MR. HEBERT:

11 Q. Now, at the very first paragraph, this is the statement of  
12 the democratic senators in the Senate expressing why they would  
13 vote in final passage or why they would vote to bring the bill  
14 up, isn't it?

15 A. Yes, sir.

16 Q. This is the May 17th Senate Journal. And paragraph, the  
17 first full paragraph says that, "Each of us represent  
18 majority/minority districts where minority citizens have  
19 demonstrated the ability to elect their candidate of choice."

20 They go on to talk about how they accept that  
21 responsibility to protect minority voters, and then it says,  
22 "In light of this, we want to make clear that any vote by any  
23 of us to suspend the rules, or to vote in support of CSSB 31,"  
24 that was the Senate plan; correct?

25 A. Yes, sir.

1 Q. "Either on passage to end grows every or on final passage  
2 should not be interpreted as endorsement as the practice used  
3 to develop the plan or the configuration of the plan in all  
4 parts of our state." Do you see that?

5 A. I do.

6 Q. Do you remember that statement being entered into the  
7 record?

8 A. I did.

9 MR. HEBERT: If we could scroll down, please, to the  
10 next page. I'm sorry, to that same page. I'm sorry. The  
11 bottom of the -- the bottom -- yeah, right there. Thank you.

12 BY MR. HEBERT:

13 Q. And it says, the paragraph that begins, "We all know." It  
14 actually notes in the second sentence, doesn't it, Senator,  
15 these senators noting that by reconfiguring District 10 as an  
16 Anglo controlled district, the ability of senators who  
17 represent minority opportunity districts to form a coalition to  
18 block retrogressive provisions harmful for our constituents  
19 would be reduced, and they note that at the same time the clout  
20 of senators representing Anglo controlled districts would be  
21 enhanced.

22 You remember that statement, don't you?

23 A. I do.

24 Q. And so notwithstanding the fact that that -- that was  
25 brought to your attention, all of the Anglos on the republican

1 side voted to enact the Senate map notwithstanding these  
2 concerns?

3 A. They did.

4 Q. Okay.

5 MR. HEBERT: Now, could you scroll to the next page  
6 so we can just see who signed that?

7 BY MR. HEBERT:

8 Q. If you'll look at the top, you see all of the names of the  
9 senators who were there. Those are all of the 12 democrats in  
10 the Senate?

11 A. They are.

12 Q. And Senator Gallegos you said was Vice Chair of the  
13 committee, he signed?

14 A. Sure.

15 Q. Senator West was on the committee, he signed?

16 A. Yes.

17 Q. Senator Uresti was on the committee, he signed?

18 A. Yes, sir.

19 Q. And Senator Zaffirini, she also signed?

20 A. Yes, sir.

21 Q. Defendant's Exhibit 370, we've got one last, then we will  
22 be finished.

23 Now, with regard to these professors, Morrison, you said?

24 A. Yes, sir.

25 MR. HEBERT: If we could go to page -- I'm sorry,

1 I'll wait till it comes up. Defendant's Exhibit 370.

2 BY MR. HEBERT:

3 Q. Isn't it a fact that Senator West asked Mr. Morrison when  
4 the congressional plan, we're talking congressional, so let me  
5 make sure that we don't get confused.

6 And that was in June of 2011 that, in fact, when the  
7 Congressional map was being considered in the Senate, isn't it  
8 a fact that Senator West asked Professor Morrison when he saw  
9 the plan, and he said, "I just saw it just now, the same time  
10 you did"?

11 A. Right.

12 Q. All right.

13 MR. HEBERT: And if we could, can you go to the page  
14 3 of that exhibit, please?

15 And if you could go to the next page, please. Is there  
16 a next page? Could you go to page 2?

17 MR. HUGHES: Your Honor, I'm going to object. I'm  
18 not sure what this exhibit is. It does not appear to be a full  
19 transcript of the hearing. It appears to be excerpts, maybe  
20 some foundation could be laid or some explanation. I'm not  
21 sure what we're looking at. And I would hate to have something  
22 partially excerpted.

23 JUDGE COLLYER: Well, it's Defendant's Exhibit 370.  
24 How long has it been anticipated that this would be an exhibit?  
25 It's got a low number.

1 MR. HEBERT: That was disclosed earlier, last week,  
2 you know, when we were disclosing exhibits to the other side.

3 BY MR. HEBERT:

4 Q. This is an excerpt from a committee hearing. And I can  
5 ask the witness, I'm happy to lay a foundation by saying you  
6 were at the committee hearing in June, a congressional hearing?

7 A. I was.

8 MR. HEBERT: And there's a statement there by  
9 Mr. Morrison which is at 4:51:42, if we could blow that up.

10 BY MR. HEBERT:

11 Q. Mr. Morrison was the outside one of the professors?

12 A. Yes, sir.

13 Q. And he talked about how the process had been really  
14 different this time, didn't he?

15 A. Yes, sir.

16 Q. And he talked about how the -- nobody has had the  
17 opportunity to study the redistricting plans as has been done  
18 in the past or what you would want to do ideally, didn't he?  
19 Do you remember him telling the committee that?

20 A. Right.

21 Q. And finally, when Senator West said, "Well, remind me how  
22 we did it in 2003," he says, "Yeah, we went all over the  
23 state."

24 Do you see that as you said earlier today, "We spent 16  
25 hours in one place and 20 in another." Do you remember that?

1 A. Yes.

2 Q. And Senator Zaffirini actually got him to acknowledge  
3 that, as well as Senator West, that, in fact, the professors  
4 never really saw the Congressional map until that morning;  
5 correct?

6 A. Right.

7 Q. So you went and sought the advice of the professors when  
8 you thought it gave you the answer you wanted, but when it came  
9 to an answer with the map that they didn't comply with, you  
10 didn't go to them; isn't that true?

11 A. No, sir, it's not.

12 MR. HEBERT: No further questions.

13 JUDGE COLLYER: Anything further?

14 MR. HUGHES: No, Your Honor, no further questions.

15 JUDGE COLLYER: All right. Senator Seliger, thank  
16 you for coming. You're excused.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness excused.)

19 JUDGE COLLYER: Go ahead, sir, who do want to call?

20 MR. HUGHES: We call, Texas calls Professor Alford.

21 JUDGE COLLYER: All right.

22 MR. HUGHES: As you know, he submitted written direct  
23 testimony, but I think I have negotiated for 19 minutes --

24 JUDGE COLLYER: Nineteen minutes, oh, my.

25 MR. HUGHES: -- with Your Honor yesterday. But maybe

1 you can begrudge me an extra minute or two if necessary.

2 JUDGE COLLYER: Come forward, if you would, please,  
3 Professor, right over here.

4 **PROFESSOR JOHN ALFORD, PLAINTIFF WITNESS, SWORN**

5 THE DEPUTY CLERK: You may be seated.

6 JUDGE COLLYER: Go right ahead when you're ready.

7 MR. HUGHES: Thank you, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. HUGHES:

10 Q. Good morning, Professor Alford.

11 A. Good morning.

12 Q. Could you introduce yourself to the Court, please?

13 A. I'm Professor John Alford from Rice University.

14 Q. Would you give the Court a brief background of your  
15 experience in redistricting?

16 A. I have been involved in redistricting for 25 years or so.  
17 I've worked for states localities, I've drawn districts. I've  
18 been involved in court challenges to districts. I've worked  
19 for plaintiffs and defendants. I work primarily for  
20 jurisdictions.

21 Q. Professor Alford, before we get to the substance of your  
22 analysis in this case, can you just tell us your political  
23 party affiliation?

24 A. Yes, this actually comes up in redistricting quite a bit  
25 so when I went to work for the State of Texas in 2001 for then

1 General, Attorney General John Cornyn, now Senator Cornyn. One  
2 of the questions was why they should hire me because I'm a  
3 democrat, liberal democrat. We had a nice discussion about  
4 that. I convinced him it was a good idea. He probably  
5 regretted it when I testified against the state in 2003 after  
6 the redistricting and then somehow despite that, the state has  
7 hired me again, and so I think that's -- I don't know if that's  
8 an indication of the wisdom of the state or what that might be,  
9 but I have had an on again/off again history with the State of  
10 Texas.

11 Q. Professor Alford, let's now turn to -- I want to just give  
12 the Court a brief overview of your analysis before you're  
13 turned over for cross-examination.

14 Did you primarily focus your analysis in this case on the  
15 issue of whether the Texas House and Congress maps decreased  
16 the ability of Hispanic voters to elect their candidates of  
17 choice?

18 A. I did. The time has been brief here, and there is not, as  
19 I understand and clearly the analysis of the Black districts is  
20 really not at issue here. There's not a question about their  
21 retrogression raised by the Department of Justice, and so I  
22 thought it was appropriate to focus analysis where there is  
23 clearly dispute about the maps.

24 Q. And let's -- using the -- I know you looked at all three  
25 of them, the maps; right?



1 A. Yes.

2 Q. Using the House map, Texas House map as an example, once  
3 you decided to look at Hispanic voters' ability to elect their  
4 candidates of choice, did you look at a subset of districts in  
5 the House map to analyze that issue?

6 A. Yes, the first thing that you have to do when you've made  
7 a decision so we're going to take a look and see how this does  
8 with regard to the Hispanic districts is we have to decide  
9 which districts in the state to look at. We need a subset, we  
10 can't look at all 150 districts to do this effectively.

11 There are a variety of ways you can draw that line. I  
12 followed the decision made by Professor Handley and drew the  
13 line where she was the Department of Justice expert, she draw  
14 the line at Hispanic voting age majority, so I used that same  
15 line to distinguish the districts we should be looking at as  
16 opposed to the ones that would be left out.

17 Q. And, Dr. Handley is whose expert?

18 A. Department of Justice.

19 Q. And once you decided to use the districts selected by the  
20 Department of Justice's expert as relevant to the Hispanic  
21 voters' ability to elect, what analysis did you perform on  
22 those districts for the benchmark and enacted plans?

23 A. The reconstituted election analysis, which is the same  
24 analysis, basic procedure used to compare maps by both the  
25 Department of Justice expert and in the past redistricting, as

1 well as by typically used to compare proposed plans in the  
2 redistricting process.

3 Q. And the Court has heard some explanation of reconstituted  
4 election analysis already, so very briefly explain the  
5 reconstituted election analysis that you did here in this case.

6 A. I think the most important thing to recognize is that  
7 reconstituted elections are not sort of academic projections of  
8 what might have happened. They are -- we take a contest that  
9 took place statewide. And that way we know that we'll have the  
10 same candidates being presented to all the voters in every  
11 precinct in the state.

12 And with that, we can then draw any map we want. And then  
13 we capture a set of precincts, we then total that election up  
14 as if it took place in that set of precincts.

15 And so, for example, the race for lieutenant governor,  
16 Chavez-Thompson in that race loses statewide. Well, there are  
17 numerous districts you could form out of precincts where she  
18 would do better or worse. And so you can draw that, you can  
19 say, well, if that -- this is very much like the spirit of a  
20 single member district analysis in the Section 2 case.

21 You say, well, wait a minute. But let's say we draw the  
22 district here, what would have happened. When we say what  
23 would have happened, we don't mean let's use our imagination.  
24 We mean let's look at the actual precincts, the actual votes  
25 cast, and let's see whether that candidate of choice, in this

1 case Chavez-Thompson, would have won that election, by how much  
2 they would have won that election.

3 And so we are taking actual elections that took place with  
4 actual candidates of choice in the state, and then we are just  
5 simply adding the numbers up to tell us what the voters in that  
6 district really did in that election faced with an actual  
7 candidate of choice running, in the case of these races,  
8 against an Anglo on the other side.

9 So these are very solid indicators. And they are very  
10 useful indicators because when we make those comparisons, we're  
11 comparing exactly the same contest on the exact same date  
12 across those voters. So that even if I'm comparing a district  
13 in West Texas to East Texas, it's the behavior of the actual  
14 voters in those precincts on that day and in 2002 when they  
15 went to the polls, or in modern terms also their early vote and  
16 so forth.

17 So these are not hypotheticals in any sense. They're not  
18 projections in any sense. They're actual election results that  
19 had they been taking place in that particular proposed or  
20 benchmark district, whatever results in an actual success. So  
21 I treat those results as successes because that's exactly what  
22 they would have been had we decided that election based on  
23 those voters' actual voting behavior.

24 Q. Professor Alford, to run a reconstituted election  
25 analysis, you've got to select elections to use for the

1 analysis, how did you select the elections you used for the  
2 analysis that you're presenting here?

3 JUDGE COLLYER: He just told us. He used the  
4 elections that Professor Handley used, didn't he?

5 MR. HUGHES: He may have said that.

6 JUDGE COLLYER: Didn't you say that? I'm sorry. If  
7 you didn't say that, is that true?

8 MR. HUGHES: There's more to the story than that.

9 THE WITNESS: If I didn't say it, I'll say it now. I  
10 used the elections that Professor Handley used. So there are a  
11 variety of ways you could select these elections. Professor  
12 Handley chose to select a single election from each of the  
13 election years over the last decade. And that is not  
14 necessarily what I would choose, because I wouldn't necessarily  
15 choose that as the set of elections, but I think it's a  
16 defensible choice. She defended that choice.

17 And importantly, it's a choice, I think one of the most  
18 important things here is to allow the Court to make factual  
19 comparisons and not wonder about is this because I chose a  
20 different set of elections, so I mean, it's very important  
21 wherever we can to keep as much similar so that we can see what  
22 the real differences are. So that's -- the first thing is to  
23 use that index and see what the answer is with that precise set  
24 of elections.

25 I also used what's called the OAG 10. This is a set of

1 ten elections which includes all five of the elections selected  
2 by Professor Handley. I included it because it's the election  
3 index that was actually used in the redistricting process in  
4 Texas. At least that's my understanding.

5 I was shown result, reconstituted election results using  
6 that index before the adoption of plans in Texas. So it's my  
7 assumption that it was, in fact, utilized to some extent. And  
8 it did exist prior to the adoption of the plans. And also is a  
9 larger index, which I think is generally appropriate. The more  
10 elections we can get in.

11 My first take of this I used 48 elections, which is a  
12 very large election index. And I still think there's good  
13 argument for that. But I accept the argument that it may be  
14 more straightforward to focus on races that actually involve  
15 minority candidates. And so I again used the Handley 5 index,  
16 I used the OAG index, which is broader, includes the Handley  
17 elections as well as some other minority contests.

18 And then also looked at a five election index that  
19 focuses on the five most recent contests, that covers the 2008,  
20 2010 cycle. That's an on year/off year cycle. The most recent  
21 plays out with the voters. The closest set of voters are the  
22 voters that actually are in Texas now, we know there's been a  
23 population change.

24 So just as when we do cohesion analysis, we typically  
25 use 2010 or maybe 2010 or 2008. There's some value in seeing

1 if we look at what's happening in the most recent pair of on  
2 year/off year elections, does that really look different. And  
3 we can easily miss something in the index, for example, that  
4 was telling us maybe about how things were in 2002, 2004, and  
5 so I think it's a good sort of a check of our analysis to know  
6 if that was also true if we used the most recent election pair.

7 BY MR. HUGHES:

8 Q. Professor Alford, have you compiled a table in the  
9 submission you gave to the Court that compiles the results of  
10 the reconstituted election analysis for the elections that you  
11 just described?

12 A. Yes, and that's the table you'll see on the screen.

13 Q. And what --

14 JUDGE HOWELL: Can I just stop for a second?

15 MR. HUGHES: Yes.

16 JUDGE HOWELL: As you're picking the elections, I  
17 mean, clearly I think we all understand that, you know, your  
18 results are only as good as what goes in to formulate those  
19 results.

20 I mean, isn't it sometimes important in doing this  
21 reconstituted election analysis to also mark trends? I mean, I  
22 didn't actually see sort of trending information in your report  
23 so that if you did use 48 elections, let's say over the past  
24 decade, not only what you get sort of the percentage one by one  
25 group versus another, could you also track how it was trending

1 over time, and is that -- does that play a role at all in this  
2 reconstituted election analysis?

3 THE WITNESS: There's a great deal you can do with  
4 reconstituted election analysis. And certainly the notion of  
5 having at least one index that's sort of forward weighted gets  
6 at some of that.

7 And certainly it's true, I'm pleased you like my 48  
8 election index, it's true that if you broaden that, you also  
9 would have more data points to look at those kinds of details  
10 within districts. I just think that here the time constraints  
11 have been such. This is not really the normal way experts work  
12 or courts or the lawyers work. And I think that's -- we know  
13 all that, we're all under those kinds of time constraints. So  
14 we --

15 My concern was that if I stayed with the 48 election  
16 index, which I have reason to be happier with, we would end up  
17 here with you looking at a result from a 48 election index and  
18 a result from Dr. Handley's 5 index, and so, wait a minute, how  
19 much of this is the choice of elections.

20 The other point that is very important is, as you'll see  
21 in this analysis, it actually does not matter a great deal what  
22 elections. The smaller the number of elections, the greater  
23 chance that one election might actually make a difference in  
24 the district. But if we use the reconstituted election  
25 analysis properly, and if we look at it across as we did here,

1 different sets of elections, it is surprisingly stable, and  
2 it's surprisingly stable because what we do with the index,  
3 whatever elections we chose to put in it, we compare the two  
4 plans on those elections, then we look at the difference  
5 between them.

6           And so while it's true that if I use, say, the Bill  
7 White governor's race, I might get a different index value for  
8 a particular district. Bill White's a popular democrat, top of  
9 the ticket. So, I mean, he did better in these districts than,  
10 say, Chavez-Thompson did. His democratic performance was  
11 better.

12           So it's true that I would get a higher number if I used  
13 Bill White. But I would also get a higher number on the  
14 benchmark plan, for example, if I used. So the number would go  
15 up on both the benchmark and proposed, and you would tend to  
16 subtract out.

17           So the fact that we're using it comparatively means  
18 we're really -- the absolute value of the index is not as  
19 important as the comparative value. And that doesn't solve all  
20 of the problems. There are districts, as we move across the  
21 state and different races played out differently. Bill White  
22 did better in Harris County, he's from Houston, than he did in  
23 El Paso.

24           JUDGE HOWELL: I think -- I think -- let me see if I  
25 can make my question better.



1           It seems like the reports we're getting from the  
2 reconstituted election analysis is very static. This group won  
3 five out of five elections, this group won four out of four  
4 elections over the past decade. I guess my question is, is it  
5 simply not part of the reconstituted election analysis to do  
6 trends that they may have won five out of the last ten  
7 elections, but it's really important to note that the five  
8 they've won were in the last two years or the last four years  
9 so that the trend is that this particular group was gaining  
10 voting strength, is that not relevant?

11           THE WITNESS: I think it is relevant. In some of the  
12 analysis, and again I apologize that I might be confusing San  
13 Antonio with here, because for me it's just -- I'm doing  
14 reports, but there's certainly been discussion of that, you  
15 certainly see that in the reconstituted elections in the 23rd  
16 District, for example, you see trends in the 23rd.

17           And I think one way -- I guess my view of that is we  
18 certainly would want to be cautious if there are trends that  
19 would make current election results give us a very different  
20 picture than, say, results from 2002, 2004.

21           If it's the case that basically just a static stay  
22 on analysis gives us a different result, then you should see  
23 that result highlighted by an index that equally weights 2002  
24 and 2010, which would be the Handley 5 election index.

25           And then if you compare that to election index, the five

1 elections all in 2008, 2010, so it's the change in the  
2 population of Texas has made those elections different, then  
3 where you'll see that is in the difference between using the  
4 most recent five elections and evenly split, evenly distributed  
5 Handley index.

6           And in theory, the OAG would be somewhere in between.  
7 The OAG tends to weight a little bit forward. It's a little  
8 more future weighted than the Handley index. But that would be  
9 the difference. If this -- sort of if the plan is  
10 retrogressive now, but wouldn't have been in the past, you'll  
11 see that in the contrast between the Handley index and the --  
12 the most recent five OAG index.

13           JUDGE HOWELL: Okay.

14 BY MR. HUGHES:

15 Q. Professor Alford, I have on the screen a table from your  
16 report, I believe -- or from your written direct testimony,  
17 which I believe is Plaintiff's Exhibit 175. Does this table  
18 from your report show the results of your reconstituted  
19 election analysis both for the election selected by Dr.  
20 Handley, the OAG 10, and the most recent five elections that  
21 you were just talking about with Judge Howell?

22 A. Yes, it does.

23 Q. And what do each of the numbers in this table represent?  
24 Do they represent instances where Hispanic voters were able to  
25 elect the candidate of their choice?

1 A. Yes. I think that's -- we've experimented a bit and  
2 there's -- about the format of tables as back and forth, I  
3 guess, as we move through this in the sense of initially  
4 adopted the format used by Professor Handley, and I ultimately  
5 ended up with this format because I think it's the least  
6 amenable to misunderstanding.

7 Each of those numbers represents an actual reconstituted  
8 election in that district in which the Hispanic candidate of  
9 choice would have been elected in that district by totaling up  
10 those votes. So if we look at District 33 in the benchmark,  
11 there are five elections in the Handley index.

12 In three of those five elections, the Hispanic candidate of  
13 choice would have been elected had District 33 been the  
14 constituency for each of those five statewide elections. So  
15 that would be a -- that's a three out of five, but it  
16 represents three actual elections.

17 One of the things I think this makes clear is that one of  
18 the questions that comes up a lot and confusingly is about our  
19 ability to elect districts. And I think it's really important  
20 to remember that before we get to this stage in the table, we  
21 have already taken out all the districts that are not majority  
22 voting age population Hispanic districts. So they have a kind  
23 of demographic potential to elect already.

24 And if you look at the table, you'll see that down that  
25 benchmark line, you'll see that every one of them has at least

1 one election in which the district actually would have elected  
2 a Hispanic candidate of choice.

3 So the one thing that should be clear, at least, is that  
4 all of the benchmark districts that we're looking at are  
5 districts that have, in fact, demonstrated an ability to elect  
6 at least one time a Hispanic candidate of choice. So we're  
7 talking really here about relative ability to elect, not  
8 whether there was an ability to elect or not.

9 I'd contrast that by looking in adopted District 33.

10 JUDGE HOWELL: Well, I mean, I'm glad you put this  
11 chart up because this actually is -- I was actually interested  
12 as I was reading all these expert reports, because it seems to  
13 me we're dealing with Texas has had this population explosion  
14 over the last decade. So looking at what happened in  
15 elections, even statewide in 2002, are interesting. But isn't  
16 it, given the huge population growth, more interesting, more  
17 relevant in assessing ability to elect to look at, let's say  
18 elections that are more recent, which is this five most recent  
19 election in the OAG because Handley goes back to 2002, 2004.

20 So that's, given this huge population explosion, it  
21 seems like a little dated. But I mean, I -- anyway, that's --  
22 so isn't it, if you're interested in a state with the specific  
23 facts we have in this case with a population explosion, isn't  
24 it most relevant to look at these last columns of the five most  
25 recent elections?

1           THE WITNESS: I would say generally in my experience  
2 in redistricting, we always start with the most recent  
3 elections, then we add past elections until we feel we have  
4 enough data to make a good analysis. And so very often we do  
5 go back an entire decade.

6           So if I was looking sometimes at the city council, for  
7 example, looking at a multi-member case. There may not be a  
8 minority contested election unless I go back six years or ten  
9 years. And so you would go back until you find some data you  
10 need.

11           It wouldn't be appropriate to basically say, well, I'll  
12 only look at the two most recent elections, they don't involve  
13 any minority candidates so I can't do a polarization analysis.  
14 But there definitely is -- you do start with the most recent,  
15 and as you go back, you're disciplined by the fact you're going  
16 back.

17           So in my experience, typically courts do not  
18 particularly like to see information that's over a decade old  
19 with regard to elections, particularly in a state that's as  
20 dynamic as this.

21           On the other hand, I'm not sure why, Mr. Hughes is going  
22 to be angry with me, but, and the State of Texas gets angry  
23 with me all the time, we already know that, so.

24           The advantage of Dr. Handley's five election index is  
25 that it does not treat any particular election as more

1 important than another. And so I think, again, if we have only  
2 that index, I would want to see something more. And so here is  
3 something more.

4 And with having said that, I think it's valuable to have  
5 that view as well, to know what an index that goes across that  
6 period tells us, that's as far back as we normally would want  
7 to go, that information is here. If we want to know that, we  
8 know it. And if you want to see something more current, you  
9 can see something more current, it may tell you something about  
10 the trend. So I guess that's my -- that's my view.

11 BY MR. HUGHES:

12 Q. Professor Alford --

13 MR. HUGHES: Did that answer your question, Your  
14 Honor?

15 JUDGE HOWELL: Yes.

16 BY MR. HUGHES:

17 Q. Professor Alford, just a couple more questions before I  
18 turn you over for cross-examination. You're only showing, I  
19 think ten districts here from the House. Are there more than  
20 that where -- that were identified as part of Dr. Handley's  
21 universe of a potential Hispanic ability to elect?

22 A. Yes, so the -- setting the standard at 50 or more Hispanic  
23 voting age population nets, I think 36 districts total. And  
24 there is in the appendix there's the full 36. And what you see  
25 is that with the exception of these ten, there simply isn't any

1 change across any of these index, across any of the plans, and  
2 so the idea here is to focus on, this is really, this is the  
3 compass of what we're talking about.

4 And there was a question earlier about which districts we  
5 are really talking about. And for the purposes of the  
6 districts that are not coalition or multi-member, this is the  
7 compass of the issue with regard to Hispanic districts in the  
8 Texas House plan.

9 Q. Professor Alford, looking at the table --

10 JUDGE COLLYER: Wait, wait, wait. So sorry.

11 MR. HUGHES: That's okay.

12 JUDGE COLLYER: You mean these are the ones that are  
13 in dispute, and that -- I mean, because this isn't all 36.  
14 Everybody can see it's the rest, and these are the ones in  
15 dispute?

16 THE WITNESS: I guess I should be careful because I  
17 think I answered a legal question.

18 JUDGE COLLYER: No, no.

19 THE WITNESS: I really do.

20 JUDGE COLLYER: It's a fact question, I promise, so  
21 you're welcome to, to tell me what --

22 THE WITNESS: In my experience in the Texas case, you  
23 could pull any district out of a state and put it in dispute.

24 But I guess what I meant to say and didn't say clearly  
25 was, these are the districts in which there is on anyone's

1 index, there is a change in the exogenous performance of the  
2 district. So the other districts all either don't perform at  
3 all or perform uniformly at some level.

4 And so from my view, the districts you will need to be  
5 looking at to understand the difference between the benchmark  
6 and the adopted plan are the districts in which there is a  
7 functional perform -- election performance change between the  
8 benchmark and the adopted plan.

9 And so the other districts are there, if you want to  
10 assure yourself when someone raises a district number that, in  
11 fact, nothing changed in that district, those are in the full  
12 36 table. But this all fits on a screen. And it happens to be  
13 most of what we would, I hope we really want to talk about.

14 BY MR. HUGHES:

15 Q. Professor Alford, looking at the table that's on the  
16 screen and the election successes reported on the table for the  
17 three different sets of analysis that you did, what does that  
18 lead you to conclude about the impact that the enacted Texas  
19 House map had on Hispanic voters' ability to elect their  
20 candidates of choice?

21 A. It leads me to believe that on a functional basis taken as  
22 a whole, the plan for the Texas House does not retrogress the  
23 ability of Hispanic voters to elect candidates of choice. It  
24 also allows us to see exactly why or exactly how that was  
25 achieved in the plan. I think this is maybe -- so let me just



1 say quickly, that that -- the summary number for that result is  
2 that in the Handley 5 index, there are 34 wins under the  
3 benchmark, 34 under the adopted, so there's no change.

4 In the OAG 10, there are 66 and 70, there are ten, it's a  
5 ten election rather than five, so that looks bigger, but  
6 basically it's in about the same range. That means on that  
7 index there are actually a gain of four elections which would  
8 be the equivalent of two, I guess, on a five election index.

9 And then in the most recent two, the pair of on year/off  
10 year, the most recent, using the OAG 10 races, there are 28 in  
11 the benchmark, 34 in the adopted, so it's a gain of six.

12 The next thing you can look at is you can just look at  
13 the -- that sum number, and you can see immediately where, at  
14 least I think where this impact comes from, and I think it's  
15 particularly useful to compare the Handley 5 to the OAG 5 most  
16 recent. Because what you see is that it doesn't change in the  
17 score of the adopted plan at all. The adopted plan looks just  
18 the same under the Handley 5 as it does under the OAG 10.

19 What's different is that the benchmark plan looks much less  
20 effective in providing actual election success in the most  
21 recent elections than it looks in the benchmark, which tells me  
22 something that you might not have expected, which is that as  
23 this change over time has resulted in the benchmark plan  
24 being -- having somewhat less performance than it had at the  
25 beginning of the decade. And I think we see actual examples of

1 that as we all know going district by district of changes in  
2 more recent elections. But --

3 JUDGE COLLYER: Well, heavens, there was apparently a  
4 huge change in 2010; right?

5 THE WITNESS: 2010 is a, again --

6 JUDGE COLLYER: Isn't that part of the issue here,  
7 that 2010, there was a huge change so different people are  
8 running things?

9 THE WITNESS: That's a really important point, but  
10 two things to remember. The index has both 22 in 2008, 2008 is  
11 a great democratic year. 2010 is a great republican year, so  
12 it pairs an on year/off year cycle. Good year/bad year. And  
13 then, the most important thing to remember, it's easy to say  
14 that, of course, that would be this way because 2010 was a  
15 really great year for republicans. It was a really great year  
16 for republicans in the benchmark plan and in the adopted plan.

17 But when we're comparing one plan to another, we're  
18 comparing them with the same set of elections. So it's true  
19 that republican numbers will go up in 2010, but the advantage  
20 of comparing apples to apples on re-elections across the entire  
21 state is that that plugs all of the votes; right?

22 JUDGE COLLYER: Uh-huh.

23 THE WITNESS: That comes up, when we subtract the  
24 two, it's gone. It really is fairly invariant to that kind  
25 of -- that kind of a change. So I would say that about the --

1 about the baseline.

2           And the other thing is I think I would be -- I am  
3 reassured that basically you can reach this conclusion in terms  
4 of the adopted plan on the basis of either of the indexes. On  
5 the basis of either index, you would get that result.

6           In fact, if you take the -- for the benchmark, you just  
7 say, look, let's put our thumb on the scale just a little bit.  
8 Let's score the benchmark with its worst score under any of the  
9 three indexes. All right. So let's make --

10           I'm sorry, it's best, right, let's make the benchmark as  
11 strong as we can possibly make the benchmark. And let's make  
12 the adopted as weak as we can possibly make the adopted. And  
13 if you -- you're sorting of letting your indexes provide that,  
14 you still get the same result. This is not -- it is not -- the  
15 choice of the index here is not what determines the outcome  
16 because all of the indexes show us that same basic result.

17           And then the other thing I would highlight is that if  
18 you want to know where that result came from, this --  
19 everything about the districts and their change is here in this  
20 table. So if we look at the first line, what happened in  
21 District 33? District 33 had three out of five actual election  
22 successes and it went to zero. This is what's called blowing  
23 up a district. This district is no longer a majority district,  
24 and it no longer has any ability to elect.

25           So that's what happened in 33, it's right there on the

1 index. It's three to zero, it's six to zero, it's two to zero.  
2 I don't care what elections you look at, that's the district  
3 that was there and went away.

4           And if you look at what happened in the 34th, the 34th  
5 is a slightly stronger district than it was prior. It went  
6 from three wins to four, in the Handley index from six to nine,  
7 in the OAG from two to four in the most recent election. So  
8 there was a substantial improvement in ability to elect in  
9 District 34, particularly when we look at recent elections.  
10 This is the most -- the most recent kinds of elections we have,  
11 this is a much more secure district. So you gain some security  
12 there.

13           That kind of information, as I understand the OAG  
14 standard, which I think is an appropriate one, that we take a  
15 functional look, and then we make that, we look across the  
16 plan. It just seems to me if you're going to talk about the  
17 ability to offset a change, one area of the plan, somewhere  
18 else in the plan, you need to know what actually changed  
19 everywhere in the plan. Then you can look at that district by  
20 district.

21           You can still reach a decision independent of that about  
22 what you think about the appropriateness of those changes, but  
23 it's important to know what the net effect of these changes  
24 were. And that's what this tells you, the net effect and  
25 exactly where every bit of the improvement came from and where

1 every piece of the decline came from.

2 BY MR. HUGHES:

3 Q. Professor Alford, did you perform a similar analysis for  
4 the Congressional map and the Senate map?

5 A. Yes, and that's included in my report.

6 Q. Okay.

7 MR. HUGHES: I thank you for the Court's indulgence,  
8 I think I used a few extra minutes, but I'll turn it over for  
9 cross-examination.

10 JUDGE COLLYER: Well, everybody has used a few extra  
11 minutes.

12 Who is going to do the cross-examination?

13 MR. SELLS: I am, Your Honor.

14 JUDGE COLLYER: Mr. Sells. All right.

15 When there were three judges here, we ran a very strict  
16 house, but now they say they're going finish a day early, and  
17 I'm going to hold them to it. A day, a whole day early.

18 THE WITNESS: I have to -- I can use that entire day.  
19 I'm a college professor --

20 JUDGE COLLYER: So can I. So I have been warned, let  
21 me say this in the open court. I have been warned that I need  
22 to corral your willingness to speak at length, so if I corral  
23 your willingness to speak at length, do not be insulted. It's  
24 our time table.

25 THE WITNESS: I will take no offense, Your Honor.

1 JUDGE COLLYER: Thank you, sir, I appreciate that.  
2 Go ahead.

3 MR. SELLS: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. SELLS:

6 Q. And good afternoon, Dr. Alford.

7 A. Good afternoon, Mr. Sells.

8 Q. As you know, I'm Bryan Sells for the United States and  
9 Attorney General Eric Holder. It's nice to see you again.  
10 It's hasn't been very long.

11 A. Yes, indeed, I think we meet every couple of days for  
12 several hours of discussion under oath.

13 Q. I have seen you more than my wife in the last two weeks,  
14 I'll tell you that.

15 A. That does not seem to me to be a good choice.

16 Q. Okay.

17 Now, Dr. Alford, you have submitted a number of reports in  
18 this case so far; have you not?

19 A. Yes.

20 Q. Okay. So I'd like to begin, if I might, just by  
21 clarifying the record on the series of reports that you've  
22 submitted so we can see the evolution of your analysis.

23 MR. SELLS: Would you please show the witness  
24 Defendant's Exhibit 319?

25 BY MR. SELLS:

1 Q. Dr. Alford, do you recognize Defendant's Exhibit 319 as  
2 your initial report in this case?

3 A. That looks like the beginning of the initial report, yes.

4 Q. That's the first page of it?

5 A. Yes.

6 Q. And that report was filed, according to the time stamp at  
7 the top, on October 14th, 2011?

8 A. I see that.

9 Q. And you were then deposed in this case a short time later  
10 on October 25th; do you remember that?

11 A. I remember I was deposed, I don't remember the time frame.

12 MR. SELLS: Would you please show the witness  
13 Defendant's Exhibit 790?

14 BY MR. SELLS:

15 Q. Now, Dr. Alford, do you recognize Exhibit 790 as your  
16 supplemental report in this case?

17 A. Yes, I do.

18 Q. And that report was dated Saturday, January 7th, 2012; is  
19 that right?

20 A. Again, if that's -- I don't recall the time, exact day or  
21 time, so.

22 Q. Does that sound right to you?

23 A. It sounds right.

24 Q. Okay.

25 JUDGE COLLYER: Is it dated on the last page?

1 MR. SELLS: Can we show Dr. Alford the last page?

2 JUDGE COLLYER: Oops, not dated, never mind. You can  
3 tell you're not a lawyer or a judge.

4 Go ahead.

5 BY MR. SELLS:

6 Q. And, Dr. Alford, you were deposed about that supplemental  
7 report on Wednesday, January 11th, in Austin, Texas; correct?

8 A. Yes, I believe that's correct.

9 Q. Okay. And then you submitted your pre-filed direct  
10 testimony last Tuesday, January 17th, and I don't know that we  
11 got a PX number, but we have a DX number 801.

12 MR. SELLS: Can we show 801 to Dr. Alford, please?

13 And let's go to the first page, his portion of the  
14 report. One more page, please.

15 BY MR. SELLS:

16 Q. Does that look like your pre-filed direct testimony in  
17 this case that was filed last Tuesday?

18 A. Yes, it does.

19 Q. You recognize that?

20 A. I recognize that page, yes.

21 Q. And you were deposed this past Sunday, January 22nd;  
22 correct?

23 A. Yes, that's correct.

24 Q. You testified at your deposition on January 11th, in  
25 Austin, that the process of writing your supplemental report



1 was a, quote, collaborative effort, end quote. Do you remember  
2 that?

3 A. Yes.

4 Q. And it was a collaboration between you, John Hughes, and  
5 Dr. Randy Stevenson, did I get those right?

6 A. That's correct.

7 Q. And who is Dr. Stevenson?

8 A. Dr. Stevenson is a professor at Rice University. He is an  
9 expert in the area of statistics, teaches our advance methods  
10 courses, and performs the data analysis, data formatting for  
11 this.

12 Q. And Dr. Stevenson's contracted separately by the State of  
13 Texas as far as you understand; correct?

14 A. Yes, he does not work for me, he works for the State of  
15 Texas.

16 Q. And his name appears nowhere on any of your reports, does  
17 it?

18 A. I don't know.

19 Q. Certainly not as an author?

20 A. No, he's not an author of the report.

21 Q. And John Hughes, who is a part of this collaborative  
22 effort, is esteemed counsel for the State of Texas, this  
23 good-looking gentleman over here?

24 A. Yes, he is.

25 MR. HUGHES: Thank you, Mr. Sells.

1 MR. SELLS: You're very welcome, friend.

2 JUDGE COLLYER: If I didn't know better, I'd say you  
3 guys are spending too much time together. Trials make strange  
4 friends, I know.

5 MR. SELLS: It's the Sunday morning deposition, and  
6 it was a bonding moment, Your Honor.

7 JUDGE COLLYER: Yes, hot coffee does that for people.

8 BY MR. SELLS:

9 Q. Now, Dr. Alford, do you remember that the three of you had  
10 convened in your office at Rice University on January 7th, 2012  
11 to bang out that supplemental report? Do you remember telling  
12 me that?

13 A. Yeah, I would struggle again trying to figure out exactly  
14 what day it was because normally I work every day of the week,  
15 they don't really vary much, but I think that's what we agreed  
16 was the date and the place.

17 Q. And during that collaborative effort Mr. Hughes was doing  
18 the typing?

19 A. Mr. Hughes was doing the typing, that's correct.

20 Q. And Dr. Stevenson was handling the tabular material and  
21 the cohesion analysis?

22 A. I think the cohesion analysis was already done. The  
23 tabular analysis was already done. What he was doing was  
24 moving that into table format so that it could be placed in the  
25 document.

1 Q. And during your deposition in Austin, you couldn't  
2 identify which parts of the text of your supplemental report  
3 actually came from which person, could you?

4 A. I mean, we went around and, you know, through this at some  
5 length so I guess it would depend on what you meant by which  
6 part of the text came from which person.

7 Q. Well, didn't you tell me in your deposition on page 10 at  
8 line 22 through 25 that, in fact, you couldn't identify which  
9 parts of the text of your supplemental report came from which  
10 person?

11 A. I told you that I authored the report. And I told you  
12 that I could not pick out a particular paragraph or sentence  
13 and tell you whether that particular paragraph or sentence or  
14 word choice, whether it was -- might have been a suggestion  
15 from either Mr. Hughes or Dr. Stevenson in terms of choice of  
16 words or grammatical correctedness [sic] or something like  
17 that.

18 MR. SELLS: Your Honor, may I approach the witness  
19 with his deposition, please?

20 JUDGE COLLYER: Yes, go right ahead.

21 MR. HUGHES: Mr. Sells, which one are you showing?

22 MR. SELLS: It's January 11th, 2012.

23 BY MR. SELLS:

24 Q. Dr. Alford, do you see page 10 in front of you, lines 22  
25 through 25? Do you have that in front of you?

1 A. Yes.

2 Q. And do you see where my question is, "As we go  
3 through this report, would you be able to identify for  
4 me which parts of it came from which person?"

5 And you answered: "Again, I'm not sure I could  
6 do that accurately."

7 Did I read that correctly?

8 A. Yes.

9 MR. HUGHES: Your Honor, I would ask that the entire  
10 answer to the question be used for impeachment.

11 JUDGE COLLYER: I think that is all irrelevant. Why  
12 don't you move on to something that's more important. Please.

13 BY MR. SELLS:

14 Q. Dr. Alford, let's talk about your first report.

15 A. All right.

16 Q. Defendant's Exhibit 319. Would it be fair to say that  
17 your initial report is substantially different in its  
18 methodology, if not in its conclusions, from your supplemental  
19 report and your pre-filed direct testimony prepared after Texas  
20 hired its new legal team?

21 A. Well, I think there is a central thread here. For me, at  
22 least, and maybe not as carefully or clearly expressed as  
23 possible. But there is a central thread that runs through my  
24 concerns in this case that began in San Antonio and follow all  
25 the way through.

1       There certainly, I've struggled in trying to make sure  
2 that's expressed as clearly as possible. I've struggled to  
3 make sure it is as closely compatible with the Department of  
4 Justice presentation as possible so that we know exactly what  
5 we're comparing here.

6       Certainly at the time I wrote the initial report I did not  
7 have Dr. Handley's report so I had relatively little guidance  
8 from the Department of Justice. I thought I was doing the  
9 right thing. I still believe I am looking at the right thing.

10       But what I have been trying to do over this process, taking  
11 both materials as they've come in, you know, in an unusually  
12 interactive fashion in this particular case, and gaining  
13 experience from basically trying to help you and Ms. Perales  
14 and others understand what I was apparently not expressing very  
15 well. I think the report gets better as it goes along, but I  
16 don't think there's a change in the thread of the report.

17       I do move from the 48 election analysis mentioned earlier  
18 to staying with an election analysis that's more compatible.  
19 The, sort of the way in which those things are meshed together,  
20 the DOJ guidance, Dr. Handley's report, those other materials,  
21 I think are distilled in a way that's most helpful to the  
22 Court. And that does involve more changes across there, and  
23 that's all, obviously all laid out in the reports.

24 Q.   Well, my question to you was, do you think it's a fair  
25 characterization to say that the methodology if not the

1 conclusions in your initial report are substantially different  
2 from your supplemental report and your pre-filed direct  
3 testimony, your methodology, Dr. Alford?

4 A. Well, I'm not looking at the initial report. But my  
5 recollection is the initial report relies on reconstituted  
6 election analysis to compare the benchmark and adopted that is  
7 what I consider my methodology.

8 Q. Well, isn't it true that you measured retrogression with a  
9 district counting approach in your initial report?

10 A. There is district counting in the initial report, yes.

11 Q. And isn't it true that that is how you measured  
12 retrogression?

13 A. Unless I'm confusing reports, I think if you'll go to  
14 the -- look at the entire report, you'll see that the  
15 discussion of how we -- how we basically, how we treat changes  
16 in districts. How we understand how an offset might be  
17 understood and a retrogression analysis is in the initial  
18 report. It is not at that point a fundamentally, a district  
19 counting approach. It certainly is not Dr. Handley's district  
20 counting approach.

21 I included all the way through an attempt to try to --  
22 there is a district counting approach being advanced here by  
23 the Department of Justice's expert, that's very important  
24 because this is how people will understand retrogression for  
25 the next ten years, if not longer. In Texas that's important

1 because we just took a lot during the decade. Quite seriously,  
2 this is important guidance.

3 And so I try to make it as clear as possible what sort of a  
4 district county approach looks like. What the advantage of  
5 having the reconstituted election analysis is, and letting us  
6 understand how offsets work across the plan. And then with Dr.  
7 Handley's actual district counting approach available, how that  
8 is distinct in several ways from what I think is the most  
9 appropriate and useful way for jurisdictions and courts to  
10 fully examine what happens in the districting plan.

11 Q. Is it your testimony here today that you did not use a  
12 district counting approach in your initial report, yes or no?

13 A. I always have trouble when questions are phrased in the  
14 negative and I want to be sure that I'm answering correctly.  
15 There is a district counting approach included in the report,  
16 in the initial report as well as in the other reports.

17 Q. And district counting is how you measured retrogression in  
18 your initial report; correct?

19 A. It's one of the measures of retrogression in the initial  
20 report.

21 Q. Is there another measure of retrogression in your initial  
22 report?

23 A. Yes, and again, this is -- I had this discussion with the  
24 judges in San Antonio, so this well predates the issues here.  
25 The judges there were asking, already asking retrogression

1 questions, it's interesting. But that was the -- that was the  
2 context of that discussion.

3 And what that was about was how do we not -- not is there a  
4 change or isn't there, but how do we understand, how do we sum  
5 up, then, changes that may not be simply yes or no answers, but  
6 matters of degree. And that's what we were struggling with,  
7 and that's what I struggle with throughout, throughout how best  
8 to express that, and that expression is included in the first  
9 report.

10 MR. SELLS: Can we show Dr. Alford page 4 of his  
11 initial report, which is Defendant's Exhibit 319?

12 BY MR. SELLS:

13 Q. And, Dr. Alford, I'd like you to focus in on this sentence  
14 right there, beginning, "District 35 in the adopted plan for  
15 the Hispanic CVAP percentage of 51.9 counts as a new minority  
16 district." Do you see that?

17 A. Yes.

18 Q. And it counts as a new minority district because you were  
19 using the state's population threshold approach from their  
20 former legal position; correct?

21 A. If I could just look at the -- this begins by saying  
22 this -- by the standard, so I want to make sure I know what  
23 standard I'm talking about.

24 All right, so yes, so I'm saying if we focus simply on  
25 whether there is in the district an outright majority of



1 registered voters that have Spanish surnames, and that's a very  
2 stringent test for a majority. That if we focus on that, and  
3 then -- and then ask in what sense that provides opportunity.

4 One of the things I think has been confusing throughout all  
5 of this discussion is this sort of interchangeability of  
6 opportunity to elect, ability to elect, effective and  
7 performing. They sometimes all mean the same things, sometimes  
8 they mean different things.

9 All I'm intending to say here is that District 35 as  
10 adopted has a CVAP majority, and so it certainly would be a  
11 district to include in our, as in this case, eventually will  
12 include in our compass of Hispanic districts.

13 And if you want to, right, by that standard, if you want to  
14 judge this, the notion of opportunity solely on the basis of a  
15 kind of, like a sectionfied juos one (sic) which is that one  
16 baseline for looking at whether there's opportunity would be  
17 are the minority voters in the districts sufficiently numerous  
18 that all they have to do is vote at the levels of and with the  
19 degree of cohesion of the polarized Anglo voters to be able to  
20 still control the district, or to be able to win the district  
21 regardless of the level of turnout and cohesion of Anglos, as  
22 long as they turn out and are at the level of, and are at least  
23 as cohesive as the Anglo voters.

24 JUDGE COLLYER: I have a question for you.

25 You just said that by focusing, as long as we're

1 focusing on the outright majority, and I think that meant of a  
2 majority of the citizen voting age population, and then you  
3 said, "but that's a stringent test." What test would you  
4 advocate if not Hispanic citizen voting age population?

5 THE WITNESS: Again, if -- I would not advocate  
6 necessarily using that standard for which districts to look at.  
7 So we clearly are looking at districts here that are below  
8 that. There's a district that is in the table of districts, in  
9 the compass of districts that we're looking at here that is  
10 majority Hispanic voting age population, but is only 26 percent  
11 citizen Hispanic voting age population.

12 So again, if we were, in that sense, if we were looking  
13 at districts and said we want to see districts in which there  
14 is clearly a majority of one minority group, we want to  
15 question the standard that brought us down to 26 percent.

16 But on the other hand, I don't think we can set a bright  
17 line standard using CVAP, it is not available on a schedule  
18 that allows us to do that, and I think it's self --

19 JUDGE COLLYER: Could we set a bright line using  
20 SSVR?

21 THE WITNESS: Certainly you can set -- you can sort  
22 of set an upper line. If you're the majority of the registered  
23 voters, then nobody can stop you. You own the district. I  
24 mean, when you said turn-out vote, if you're interested in  
25 getting a candidate elected, you turnout vote you win the

1 district.

2 All right, so in the sense that I think here it's  
3 important, sometimes an opportunity district is used to  
4 indicate that this a district that functionally performs and  
5 provides ability to elect. I think that's an unfortunate use  
6 of the word opportunity because it suggests that you don't have  
7 opportunity until it's actually been exercised. I think that's  
8 certainly a very high standard for opportunity.

9 So I think this is one way of looking at what you might  
10 consider to be, is there -- is there sort of a basic, in one  
11 sense, is there a basic opportunity there. I just don't think  
12 you stop there.

13 JUDGE COLLYER: Singles in Section 2 and we're  
14 Section 5. So let me go back. What would you advocate as the  
15 right standard, if you needed a standard, if -- I mean, maybe  
16 you're saying there is no bright line standard, you have to  
17 look at an amalgam of things, in which case what amalgam of  
18 things? What is the test that you would advocate?

19 THE WITNESS: Well, there are two, there may be two  
20 potential --

21 JUDGE COLLYER: Maybe I should ask the question  
22 differently, fair is fair.

23 What was the measure instructed to you by Texas for you  
24 to use to identify districts in which there's a minority  
25 ability to elect and on which you base your analysis?

1           THE WITNESS: I was not instructed by Texas to take  
2 any particular approach with regard to a baseline number here.  
3 So as I indicated, I adopted Professor Handley's number in  
4 terms of which districts we would look for two reasons. One,  
5 because I think it clearly, I think going to population, and  
6 that brings up Senate 10, of course. If you go to population,  
7 you see a lot of districts that might come into population.  
8 Senate 10, for example, is, well, in population is a  
9 majority/minority district.

10           As soon as you move the voting age population, it is  
11 not. In citizen population, it's over 60 percent Anglo in  
12 citizen population. So I don't think it's really helpful to go  
13 out as far as population, but if Professor Handley had used  
14 population rather than voting age, I would have followed that  
15 same standard simply so that the Court has comparable sets of  
16 elections to look at.

17           That's an analytical task, I think, trying to decide how  
18 broadly to set that. The error of setting that too broadly is  
19 that maybe you'll look at some districts that you -- that  
20 aren't all that helpful. You can make that -- you can look at  
21 that and say this is all being driven by this district and it  
22 shouldn't be.

23           JUDGE COLLYER: Now, we've gotten to the point where  
24 I appreciate it, but we're out of time. We're not really out  
25 of time, but enough. Excuse me, sir, for being rude.

1           JUDGE HOWELL: Can I just follow up on one thing that  
2 you mentioned?

3           JUDGE COLLYER: Please.

4           JUDGE HOWELL: Because he brought up SD10, and that  
5 is, if you use as a baseline either HVAP or HCVAP, you're  
6 missing districts like SD10 where actual voters actually  
7 elected their candidate of choice; right? Isn't that one big  
8 gap in this analysis?

9           I mean, it's interesting to me that you start off by  
10 saying the really great thing about this retrogression analysis  
11 as you're talking about actual voters and how they actually  
12 voted and so on. And, in fact, you -- you're missing some  
13 coalition districts where actual voters actually came together  
14 to elect a minority candidate; right?

15           THE WITNESS: Yes, and so I think it's -- I think  
16 it's really important to say what we're doing at this stage in  
17 the analysis, so both Professor Handley and I began by saying  
18 here are the districts that are the Hispanic districts. Let's  
19 look at that and see what happened in the plan. Here are the  
20 districts that are Black districts, let's see what happened in  
21 the plan.

22           And then we proceed to examine the coalition districts.  
23 It's much harder to say exactly what the compass should be  
24 there. There are obviously disputes about that. What the  
25 Justice Department includes in the compass of that, does not

1 include some of the things, intervenors. We can look at all  
2 those districts as a separate category, but I think the first  
3 stage is to take, again, we agree in a variety of ways about  
4 what districts we should be looking at as Hispanic opportunity  
5 districts and what districts we should look at as Black  
6 opportunity districts.

7         Let's look at those and let's scrub the plan on that.  
8 At least we'll be clear, then, and one of the issues, I've  
9 struggled a bit with this myself. One of the things I want to  
10 just take in every district that's ever elected a minority  
11 candidate of choice in any election over a decade. I think  
12 it's important to realize what you'll be doing then in Texas.  
13 You will simply be taking in every district in which a democrat  
14 has ever won an election in the district.

15         And maybe that isn't a bad place to start in some sense.  
16 But I think it's not, from my view, it's not the best place to  
17 start a Voting Rights Act analysis. I think it should begin  
18 with the minority populations, looking first at the sole  
19 populations, looking secondly at the potential for coalition.  
20 And using the election analysis to inform ability to elect  
21 rather than the starting point that just says the starting  
22 point is all districts that -- where democrats are successful,  
23 and then let's kind of work backwards. I just think that's  
24 not -- to me, maybe it's esthetic, but I think it's not the  
25 best starting point.

1 JUDGE HOWELL: Okay.

2 JUDGE COLLYER: This is a good point at which to  
3 break. Sorry, Mr. Sells, we really interrupted you, but it's  
4 time to break for lunch.

5 I will remind everybody that at two o'clock we're  
6 gathering in Courtroom 5, which is on the second floor, it's  
7 not in the little cut-out where we are by the elevators, it's  
8 across the hall. That's where we're going to be for purposes  
9 of taking the testimony from somebody who's in San Antonio,  
10 whose name I --

11 MR. MELLETT: Representative Farias.

12 JUDGE COLLYER: Representative Farias.

13 MR. MORTARA: Your Honor, my partner Ashley Keller  
14 will be doing the cross-examination. He's not here, could I  
15 inquire of the time for direct?

16 MR. MELLETT: It will be approximately 20 minutes.

17 MR. MORTARA: Our cross will be short.

18 JUDGE COLLYER: Then he's not going to listen to the  
19 direct?

20 MR. MORTARA: No, he's going to be here at two --

21 JUDGE COLLYER: I was making a joke.

22 MR. MORTARA: Oh, I'm sorry.

23 JUDGE COLLYER: All right. It's okay. We've had  
24 that experience.

25 Thank you, everybody. We'll see you at two.

1 Yes, sir.

2 MR. MELLETT: I'm sorry, Your Honor, I wanted to  
3 inquire in terms of the list of districts that you had wanted.

4 JUDGE COLLYER: Yes.

5 MR. MELLETT: Did you want that to be filed?

6 JUDGE COLLYER: No, I want you to give me a list this  
7 very minute.

8 MR. MELLETT: Okay. Well, I can do that, Your Honor.  
9 Regarding the United States, the districts at issue, the -- in  
10 terms of retrogression in the House benchmark districts, the  
11 elimination of 33, District 33 and 149 are at issue because we  
12 contend there's no replacement in the proposed plan.

13 And then Benchmark Districts 35, 41 and 117, there is a  
14 reduction in the ability to elect.

15 Regarding intent in the House Plan, we believe that the  
16 districts in Harris County, and you know that's a drop-in map,  
17 and we really need to treat it as whole in terms of Harris  
18 County.

19 Nueces County with the elimination of 33, as well as the  
20 district's intent to retrogress regarding District 35, 41, 117,  
21 and we also contend that there's an issue of intent regarding  
22 the House plan up in Dallas, Tarrant Counties in District 93  
23 and 105. And that's what we have for the House Plan.

24 In terms of the Congressional Plan, and this is both for  
25 retrogression and intent in the Congressional Plan, we



1 highlight District 23 and 27. And the -- and then for intent  
2 only, Dallas and Tarrant area, we would identify the Districts  
3 6, 12, 26, 30 and 33 in the proposed plan.

4 And then we would add finally, Your Honor, that the  
5 failure to create an additional minority seat with the addition  
6 of four seats and the explosive minority population growth,  
7 also demonstrates intent in the Congressional Plan.

8 JUDGE COLLYER: Thank you, sir.

9 MR. GARZA: The Intervenor Mexican-American  
10 legislative caucus would join in the United States designation  
11 on retrogression in the Texas House Plan.

12 With regard to intent, however, MALC would point to the  
13 Court the allegation that we've made that use of population  
14 variance in terms of trying to meet one person/one vote was  
15 part of the evidence demonstrating intent, and that would be  
16 with regard to Harris County, Dallas County, Tarrant County,  
17 and Nueces County in particular.

18 The population variances in Harris County, Dallas  
19 County, Tarrant County and Nueces County, in particular, we  
20 believe that the plan as a whole uses population variances to  
21 disadvantage Latinos, but.

22 JUDGE COLLYER: Okay, thank you.

23 MR. DEVANEY: Your Honor, John Devaney on behalf of  
24 the Gonzalez intervenors.

25 With respect to the retrogression analysis, in addition

1 to the districts listed by the Department of Justice, we would  
2 also include District 25, a coalition district that is a  
3 minority ability district under the benchmark plan.

4           With respect to intentional discrimination, the  
5 dismantling of CD25 and the districts created from that, which  
6 include 10, 17, 21 and 25, are evidence of intentional  
7 discrimination.

8           To the extent it hasn't been stated already, Districts  
9 27 and 23 are also evidence of intentional discrimination. As  
10 is the lightning bolt in CD26 and its effect on CD12.

11           Thank you.

12           MR. TANNER: John Tanner with the Texas Legislative  
13 Black Caucus, Your Honor. Without repeating the many districts  
14 that others have mentioned, we would add Senate District 10 as  
15 retrogressive and also that retrogression was racially  
16 motivated.

17           In the House Plan, retrogression in House Districts 26,  
18 106, 144 and 149. We would also note that the overpopulation  
19 of minority districts, Latino districts, particularly in Harris  
20 County, directly flows into the retrogression in 144.

21           As to racial purpose, we'd highlight in the Dallas/Fort  
22 Worth area the failure to create a coalition district, and  
23 the -- the purpose generally as to the plan, District 25, 23,  
24 27. Also Congressional Districts 9, 18 and 30 for the reasons  
25 discussed by the members of Congress.

1 JUDGE COLLYER: I'm sorry, I've lost track.

2 MR. TANNER: I apologize.

3 JUDGE COLLYER: No, no, you were talking, and I just  
4 didn't get it written down. I got as far as the failure to  
5 create a coalition district in Dallas --

6 MR. TANNER: In Dallas/Fort Worth, particularly  
7 Tarrant County, Your Honor.

8 JUDGE COLLYER: I got that. Right. Okay. And then  
9 I missed something, you gave me a list of something, and I  
10 missed it.

11 MR. TANNER: Those are more congressional districts,  
12 Your Honor, without belaboring the list already provided, I'd  
13 cite Districts 9, 18 and 30, the Congress persons from which  
14 have testified in this matter. Again, racial purpose in Senate  
15 District 10 and in House Districts 26, 54.

16 JUDGE COLLYER: Yeah, I got those. I got those. You  
17 listed those.

18 MR. TANNER: Fifty-four. Those were as to  
19 retrogression, this is racial purpose, it's somewhat larger --

20 JUDGE COLLYER: Racial purpose, 26, 54.

21 MR. TANNER: 106, 144, 149, and also the failure to  
22 create a district to recognize the naturally occurring minority  
23 concentration in the northeast Dallas County, in the area of  
24 District 107 of the interim court plan written by Texas.

25 JUDGE HOWELL: Mr. Tanner, I'm sorry, I missed

1 your --

2 MR. TANNER: I apologize.

3 JUDGE HOWELL: What were you saying about the intent  
4 or purpose part of the House Plan, which were the numbers?

5 MR. TANNER: Twenty-six, 54, 101, 106, 144, 149, and  
6 also the area of Interim Plan 107, the San Antonio Court's  
7 Interim Plan in northeastern Dallas County.

8 Thank you, Your Honor.

9 JUDGE COLLYER: Thank you.

10 MR. VERA: Thank you, Your Honor. I'm Luis Vera from  
11 the League of United Latin-American Citizens. We concur with  
12 all the speakers before us as to the areas, but we specifically  
13 again filed suit in District 10. We believe that both  
14 retrogression and intentional discrimination existed in the  
15 removal of Senator Wendy Davis in Senate District 10.

16 In Congressional District 23, of course, we challenge  
17 that for, not only in the retrogression, but I think the  
18 evidence shows the purposeful discrimination by swapping out  
19 high Latino districts precincts, voting precincts for low  
20 turn-out voting precincts and shows intention. And Your  
21 Honors, we, again, we support all the other speakers before us.  
22 Thank you.

23 JUDGE COLLYER: Thank you.

24 MS. PERALES: Nina Perales for the Latino Task Force  
25 Intervenors.

1           With respect to retrogression, although the analysis is  
2 statewide, and there are a number of districts that could have  
3 been used as offsets, we would point specifically to the  
4 elimination of House District 33. And the reduction and the  
5 ability to elect in House District 117.

6           With respect to racial purpose, in the House, the  
7 failure to draw an additional district in Cameron and Hidalgo  
8 Counties. The elimination of House District 33. And the  
9 configuration of House District 78 in El Paso.

10           With respect to racial purpose in Congress, the south --  
11 not just Congressional District 23, but the south Texas  
12 configuration of Latino majority districts, and the failure to  
13 create 7. And then in the Dallas/Fort Worth area, racial  
14 purpose and the configuration of Congressional District 26 and  
15 its interlocking districts.

16           Thank you.

17           MR. HEBERT: Your Honor, Gerald Hebert for the Davis  
18 Intervenors. Our districts that we're challenging have been  
19 identified previously. I'm happy to specifically identify them  
20 associated with our case.

21           For retrogression and congressional districts, we  
22 challenge 23, 25 and 27. And for retrogression in the Senate,  
23 we challenge, obviously, Senate District 10.

24           On intent, we challenge the, what Ms. Perales just  
25 referred to as the interlocking districts in the Dallas/Fort

1 Worth region, 6, 12, 26, 30 and 33.

2 And then we also challenge by way of intent Senate  
3 District 10's configuration.

4 Thank you.

5 JUDGE COLLYER: All right.

6 MR. VERA: Your Honor, I forgot to mention, Luis Vera  
7 for the League of United Latin-American Citizens, Congressional  
8 District 25, that was the subject of LULAC's big challenge in  
9 the Section 2 corridor. I know the record has plenty of  
10 evidence there, plus what the Court heard today, but District  
11 25 is very concerned.

12 Thank you.

13 JUDGE COLLYER: Thank you.

14 All right, thank you, everybody. That's -- I don't know  
15 if that's helpful, but it's sort of helpful.

16 All right, we'll be back, two o'clock, downstairs.

17 THE DEPUTY CLERK: All rise.

18 (Luncheon recess @ 12:40 p.m.)

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**I-N-D-E-X**

**WITNESSES**

**On behalf of the Plaintiff:**

	<b><u>Direct</u></b>	<b><u>Cross</u></b>	<b><u>Redirect</u></b>	<b><u>Recross</u></b>
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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.

\_\_\_\_\_  
/s/Crystal M. Pilgrim, RPR

\_\_\_\_\_  
Date: January 25, 2012



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