February 16, 2023

The Honorable Judge Andrew M. Edison United States Magistrate Judge United States District Court 601 Rosenberg, Seventh Floor Galveston, TX 77550

Re: Petteway et. al, v. Galveston County, et al., Civil Action No. 3:22-cv-00057

Dear Judge Edison,

The parties seek a ruling from this Court concerning whether certain instructions not to answer questions on the basis of privilege were proper. This dispute involves questions asked of Commissioners Joseph Giusti and Darrell Apffel, County Judge Mark Henry, Mr. Tyler Drummond, and Mr. Nathan Sigler about their discussions and interactions with Mr. Dale Oldham. Relatedly, Plaintiffs seek an order instructing Mr. Oldham and Mr. Thomas Bryan to answer questions concerning the political, strategic, or policy decisions concerning the redistricting process in Galveston County in their upcoming depositions that are currently scheduled for the week of March 13th. Defendants contend that it is improper for Plaintiffs to request an advisory opinion regarding hypothetical questions and topics that are not before this Court.

I. Plaintiffs' Position

Plaintiffs maintain that Defendants have not met their burden of showing that the attorney-client privilege protects conversations involving Mr. Oldham.

In April 2021, the Galveston County Commissioners Court hired Mr. Oldham to assist in carrying out its duty to redistrict Commissioners Court precincts by drafting map proposals for the commissioners court's consideration. His retainer also covered the map-drawing services of an expert demographer, Mr. Bryan. Despite the clear policy and strategic work Mr. Oldham and Mr. Bryan performed, Defendants now erroneously assert attorney-client privilege over nearly all communications with those individuals.

First, "a statement is privileged only if it was for the 'primary purpose' of legal advice or services." *LULAC v. Abbott* ("*LULAC IV*"), 342 F.R.D. 227, 232 (W.D. Tex. 2022) (quoting *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997)). Courts applying the attorney-client privilege in redistricting cases have consistently held that individuals do not provide legal advice merely by virtue of being lawyers retained to aid in the redistricting legislative process. *See, e.g., LULAC v. Abbott* ("*LULAC III*"), No. EP-21-CV-00259, 2022 WL 3353409 *4 (W.D. Tex. Aug. 12, 2022) (holding that documents "concerning advice on political, strategic or policy issues are not shielded from disclosure by the attorney-client privilege") (citation omitted). ¹

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¹ The authority on this point is uncontroverted. *See also Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645, at *2 (E.D. Wis. Dec. 20, 2011) (finding that communications between redistricting consultant and outside counsel were not privileged because they likely "concerned"

Second, "[f]acts within the client's knowledge are not privileged, even if the client learned those facts through communications with counsel." *LULAC IV*, 342 F.R.D. at 235.

In LULAC IV, the Texas statewide redistricting case, the court recently evaluated questions at a deposition seeking to uncover policy advice or underlying facts, as opposed to legal advice. Id. at 233. There, the court found no privilege over answers to questions "inquiring exclusively about [the legislator's] personal knowledge, his actions (or inaction), and empirical features of the redistricting plans." Id. For example, the plaintiffs could inquire about whether a proposed plan "created two new majority Hispanic [voting age population] districts as compared to the prior plan," whether he "review[ed] any analysis of racial block voting, otherwise known as racially polarize[d] voting in drawing up" the plan, and whether the initial plan "decrease[d] Latino population share" in a specific district. Id.

These questions are analogous to questions Plaintiffs have already attempted to ask Defendants and County employees regarding the policy deliberations during the 2021 redistricting process in the depositions of Judge Mark Henry, Commissioner Darrell Apffel, Commissioner Joseph Giusti, and County employees Tyler Drummond and Nathan Sigler. *See generally* Pls.' Ex. 1. For example, Plaintiffs have asked about the decision to create a coastal commissioner precinct comprised of Galveston Island and the Bolivar Peninsula, *id.* at ¶ 10; whether the Defendants considered or received racial demographic data, *id.* at ¶ 17; and whether the Defendants considered maintaining Commissioner Precinct 3 as a majority-minority district, *id.* at ¶ 22. These are plainly questions pertaining to strategic and political decisions made during the County's 2021 redistricting process.

Yet, Defendants ignored the existing precedent and objected on the basis of an astonishingly broad interpretation of attorney-client privilege, instructing the deponents not to answer. For example, after a series of overbroad objections, Counsel for the NAACP Plaintiffs asked Judge Henry: "So you are not willing to say whether or not you were aware of a fact later if that fact was told to you by counsel and only counsel?" Pls.' Ex. 4 Henry Dep. 262:15-18. Judge Henry responded, "I guess, yes." *Id.* Despite Counsel's assertion that this "oversimplif[ied]" the objection, Judge Henry himself acknowledged that was his understanding of his attorneys' instruction to him. *Id.*

Third, to the extent any privilege exists over the communications, Defendants waived this privilege through their own testimony. Specifically, Defendants have waived privilege with regard to any communications related to draft maps; any communications related to population, including shifts in population, demographic data, *etc.*; and procedures related to the redistricting process. For example, during Commissioner Apffel's deposition, when asked what was discussed during a meeting with Mr. Oldham, Commissioner Apffel stated, "The maps and population." Pls.' Ex. 2 Apffel Dep. 97:9-10. Later, he stated the lawyers spoke to him about "identifying the procedure

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advice on political, strategic, or policy issues"); *S.C. State Conf. of NAACP v. Alexander*, No. 21-CV-03302-TJH-MBS-RMG, 2022 WL 2375798, at *5 (D.S.C. Apr. 27, 2022) (rejecting assertions of attorney-client privilege over redistricting communications concerning "legislative strategy"); *Perez v. Perry*, No. SA-11-CV-360-OLG-JES-XR, 2014 WL 3359324, at *1, 2014 U.S. Dist. LEXIS 93294, at *15. (W.D. Tex. July 9, 2014) (noting that attorney-client privilege does not protect communications between legislator and outside counsel where "the topics of these communications are political in nature").

that was going to take place." *Id.* 116:13-14. Additionally, when Commissioner Giusti was asked about his meeting with Mr. Oldham and Mr. Bryan, he disclosed that he "did look at a couple of maps on Zoom." Pls.' Ex. 3 Giusti Dep. 54:21-55:17; *cf.* Pls.' Ex. 2 Apffel 152:25-153:10 (objecting to a similar line of questioning).

On January 31, 2023, this Court ordered Plaintiffs to outline the specific questions that Plaintiffs seek to ask Defendants and their staff regarding conversations with Mr. Oldham. Plaintiffs have identified the questions previously asked as well as additional questions in Exhibit 1. Plaintiffs now seek a ruling from this Court on whether Plaintiffs are permitted to ask the questions listed in Exhibit 1 and any reasonable follow-up questions that will naturally flow from the answers to those questions.

Finally, Plaintiffs also seek a ruling from this Court regarding the scope of information that Plaintiffs may ask about in the depositions of Mr. Oldham and Mr. Bryan. "[Q]uestions about the rationale behind legislative choices do not necessarily transgress privilege, even if the answers have legal consequences or expose the [government body] to legal liability." *LULAC IV*, 342 F.R.D. at 235. Deposition testimony has made clear that Mr. Oldham was retained to "draft the map" in 2021. *E.g.*, Pls.' Ex. 4 Henry Dep. 140:2-141:4. Plaintiffs intend to depose Mr. Oldham and Mr. Bryan regarding the political and technical decision-making that informed the map-drawing redistricting process in Galveston County. In light of the previous privilege assertions made by Defendants, Plaintiffs seek an order instructing Mr. Oldham and Mr. Bryan to answer any questions concerning political, strategic, or policy decisions or objectives concerning the 2021 redistricting process in Galveston County. Defendants cannot use potential liability as a broad shield to prevent Plaintiffs from learning whether certain facts, such as racial demographic data, were considered during the 2021 redistricting process in Galveston County.

* * *

In sum, Plaintiffs seek an order reopening the depositions of Judge Mark Henry, Commissioner Darrell Apffel, Commissioner Joseph Giusti, and County employees Tyler Drummond and Nathan Sigler, and instructing the witnesses to answer the questions listed in Plaintiffs' Exhibit 1, as well as reasonable follow-up questions. Additionally, Plaintiffs request that the Court order future deponents to answer similar questions. Finally, Plaintiffs request that Mr. Oldham and Mr. Bryan be instructed to answer questions concerning the political, strategic, or policy decisions concerning the redistricting process in Galveston County.

II. Defendants' Position

The U.S. Supreme Court describes the process of redistricting as a "legal obstacle course" requiring legislators to avoid competing hazards of liability: the Fourteenth Amendment's prohibition against racial gerrymandering and Section 2 of the Voting Rights Act's requirement that legislators periodically consider race. *See Abbott v. Perez*, 138 S. Ct. 2305, 2315 (2018). For Commissioners to navigate this complex legal thicket, the attorney-client privilege is essential. *See United States v. Chen*, 99 F.3d 1495, 1499 (9th Cir. 1996) (citing *United States v. Zolin*, 491 U.S. 554, 562 (1989).

Defendants hired Mr. Oldham and Holtzman Vogel to help navigate the legal obstacle course of redistricting and provide Galveston County with legal advice. Defs' Ex. 1. Holtzman Vogel stated that they would provide a separate person, a technical expert, "to draw the map." *Id.*

Plaintiffs agree that the "technical expert" to draw the map was Tom Bryan, not Mr. Oldham. Henry Dep. 204:1-14. It is also understandable that witnesses testified that Mr. Oldham drew the map when they never met Mr. Bryan. See, e.g., Henry Dep. 147:20-22. Commissioners Apffel and Giusti however testified that Mr. Oldham was legal counsel and Mr. Bryan was the map demographer. Apffel: 96:10-12, 106:12-17. Giusti Dep. 54:24-25, 55:1. And although the Plaintiffs try to characterize Mr. Oldham as a political consultant, see, e.g., Giusti Dep. 51: 8-12, even Plaintiffs acknowledge that Mr. Oldham is a lawyer. Henry Dep. 127:8-11, 138:1-5, 265:14-16; Giusti Dep. 302:1-4; Apffel Dep. 32:22-24. Mr. Oldham even defended the county before this Court during the last round of redistricting. Plaintiffs cannot intercept communications with Mr. Oldham.²

First, the underlying facts exception to the attorney-client privilege requires a witness to testify to facts within their personal knowledge. This is uncontroversial as the attorney-client privilege protects communications, not facts. Thurmond v. Compaq Computer Corp., 198 F.R.D. 475, 479 (E.D. Tex. 2000). Still protected, however, are communications of and about those facts; and this basic misunderstanding is a major source of the dispute here. Opposing counsel may ask a witness "what do you know about the accident?" but opposing counsel cannot ask "what did you tell your lawyer about the accident?" Id. The attorney-client privilege also prohibits counsel from asking questions where the answers would reveal the substance of confidential attorney-client communications. See id. at 482. Plaintiffs' hypothetical questions demonstrate that they misunderstand the underlying facts exception. The majority of Plaintiffs' hypothetical questions listed in Plaintiffs' Exhibit 1 seek communications with Mr. Oldham, not facts within the witnesses' personal knowledge. See, e.g., Pls.' Ex. 1 at ¶¶ 2, 5, 6, 7, 8, 11, 12, 15, 16).

Importantly, Defendants privilege assertions are not "blanket"-style objections. Defendants have properly answered questions as to their understanding but objected when the question required the witness to reveal communications with counsel. Giusti Dep. 27:17-25; 47:19-25; 296:11-14; *Compare* Giusti Dep. 87:16-25, 88:1 (attorney-client privilege instruction because question asked about Commissioner Giusti's opportunity to present redistricting preferences) with id. at 88:2-15 (Commissioner Giusti explaining his redistricting preferences when asked what his preferences were). Apffel Dep. 136:5-13; Henry Dep. 234:12-25. Proper instructions were also given when the answer to the question would reveal the substance of confidential attorney-client communications. *See, e.g.*, Henry Dep. 204:7-14 (premising the question with whether the witness became aware of a fact during pre-deposition meetings with counsel and answer would have revealed those very communications); *Thurmond*, 198 F.R.D. at 482.

Although, and importantly, some of Plaintiffs' questions drew cautionary instructions from Defendants' counsel, **all but seven questions were answered.** Defs.' Ex. 2. In fact, the three questions highlighted in Plaintiffs submission above were answered. Defs.' Ex. 3.

² Defendants have also invoked the attorney work-product protection for some of their questions.

³ Plaintiffs overstate *LULAC IV*'s holding. The court held that questions calling for attorney-client communications were generally privileged. *LULAC IV*, 342 F.R.D. at 235.

Second, although the attorney-client privilege protects only legal advice and not political, strategic, or policy advice, Plaintiffs' argument would destroy the privilege to unravel all communications with counsel. Communications giving non-legal advice are still privileged when the communications are tethered to the legal implications of that advice. Exxon Mobil Corp. v. Hill, 751 F.3d 379, 381-82 (5th Cir. 2014). Thus, for example, a criterion adhering to the one person, one vote constitutional principle can create legal liability under Fourteenth Amendment's prohibition against racial gerrymandering. See Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 271-72 (2015). A criterion achieving compactness also triggers legal liability under both Section 2 of the Voting Rights Act and the Fourteenth Amendment's prohibition against racial gerrymandering. Gingles, 478 U.S. at 50-51; League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 433-35 (2006). Even conversations regarding drawing districts for partisan advantage can trigger legal liability under the Fourteenth Amendment's one person, one vote principle when population deviations are systematically skewed to favor one political party. Larios v. Cox, 300 F. Supp. 2d 1320, 1329 (N.D. Ga. 2004) (three-judge court) aff'd. mem. 542 U.S. 947 (2004). Questions about whether Mr. Oldham discussed or reviewed racial demographic data with the Commissioners also triggers potential liability under Section 2 and Fourteenth Amendment. Abbott, 138 S. Ct. at 2315. The Commissioners rightly retained legal counsel to help traverse this minefield.

Furthermore, in determining whether the attorney-client privilege applies, context is key. Exxon Mobil Corp., 751 F.3d at 382. For example, in all three cases that Plaintiffs cite, the context demonstrated that the person at the center of the privilege fight was acting in a political/policy making capacity, not a legal capacity. Baldus v. Members of the Wis. Gov't Accountability Bd., No. 11-cv-562, 2011 U.S. Dist. LEXIS 146869 *4, 9-11 (E.D. Wis. Dec. 20, 2011) (holding that communications between legislator and non-lawyer government relations specialist not protected under attorney-client privilege because the non-lawyer was likely providing political/policy advice, not legal advice); see also Perez v. Perry, No. 11-cv-360, 2014 U.S. Dist. LEXIS 93294 at *15-16 (W.D. Tex. July 9, 2014) (holding that the attorney-client privilege does not protect comments from chief of staff to legislator and legislator's political consultant concerning the "political ramifications of pending legislation[]" because it was untethered from any discussion of the legislation's legal implications) (internal quotation marks omitted) (citing Exxon Mobil Corp.). The record establishes that Mr. Oldham was hired as an attorney to provide legal advice concerning redistricting. Plaintiffs have not adduced any evidence to indicate that Mr. Oldham was providing any political or policy advice that "was divorced from its legal implications." Exxon Mobil Corp., 751 F.3d at 382.

Third, Plaintiffs are wrong that to assert that Commissioners Apffel's and Giusti's short non-substantive responses to questions waive any attorney-client privilege, much less all privileged communications. The Fifth Circuit has long recognized that waiver occurs only when a "significant portion" of the attorney-client communication is revealed. *United States v. El Paso Co.*, 682 F.2d 530, 538 (5th Cir. 1982). These short responses contained topics of conversation, not the substance of the conversation, and therefore are not even privileged. *RLIS, Inc. v. Cerner Corp.*, No. 3:12-CV-209, 2014 WL 12599509, at *1 (S.D. Tex. Dec. 24, 2014).

Respectfully submitted, February 16, 2023

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Exhibit 1

List of Proposed Questions

Questions to Defendant Commissioners and Defendant County Judge Henry:

- 1. In your phone conference(s) with Mr. Oldham, what steps were identified that would be taken to undergo the redistricting process? *E.g.*, Ex. 2 Apffel Dep. 133:22 134:16; Ex. 3 Giusti Dep. 60:14-16.
- 2. Did Mr. Oldham talk to you about redistricting criteria? What redistricting criteria were identified in your conversation(s) with Mr. Oldham? *E.g.*, Ex. 2 Apffel Dep. 135:4-136:4, 139:3-7; Ex. 3 Giusti Dep. 52:14-15, 296:15-18.
- 3. What is your understanding of traditional redistricting criteria, based on your conversation with Mr. Oldham? *E.g.*, Ex. 2 Apffel Dep. 139:3-7; Ex. 3 Giusti Dep. 296:15-18.
- 4. What do you need to consider when drawing the maps? *E.g.*, Ex. 2 Apffel Dep. 137:7-138:18.
- 5. Did Mr. Oldham discuss any factors to consider during the redistricting process with you? *E.g.*, Ex. 2 Apffel Dep. 139:3-7.
- 6. Did you receive any materials in your meeting(s) with Mr. Oldham? What materials did you receive? *E.g.*, Ex. 3 Giusti Dep. 50:23-24, 302:1-4.
- 7. In your meeting(s) with Mr. Oldham, did you discuss the Voting Rights Act? *E.g.*, Ex. 2 Apffel Dep. 140:2-15.
- 8. In your meeting(s) with Mr. Oldham, did you discuss the U.S. Constitution? *E.g.*, Ex. 2 Apffel Dep. 140:16-22; Ex. 3 Giusti Dep. 297:13-16.
- 9. In your meeting(s) with Mr. Oldham, did you discuss any policy objectives for redistricting? What policy objectives did you discuss? *E.g.*, Ex. 2 Apffel Dep. 141:9-16; Ex. 3 Giusti Dep 297:23-298:1, 298:11-13.
- 10. In your meeting(s) with Mr. Oldham, did you discuss the need or desire for drawing a coastal precinct? *E.g.*, Ex. 2 Apffel Dep. 142:6-12; Ex. 3 Giusti Dep. 119:22-25, 299:12-14.
- 11. In your meeting(s) with Mr. Oldham, did you discuss the impact of any proposed changes on the Bolivar Peninsula, and the constituents that live there? *E.g.*, Ex. 2 Apffel Dep. 152:8-15.
- 12. In your meeting(s) with Mr. Oldham, did you discuss the impact of any proposed changes on the Black and Latino residents of Galveston County? *E.g.*, Ex. 2 Apffel Dep. 151:25-152:7, 152:16-24; Ex. 3 Giusti Dep. 300:23 to 301:2; Ex. 4 Henry Dep. 241:20-242:5, 242:6-243:2
- 13. Did Mr. Oldham ask you what your ideal map would look like? *E.g.*, Ex. 2 Apffel Dep. 149:3-18; 150:22-151:3; Ex. 3 Giusti Dep. 87:16-19; Ex. 4 Henry Dep. 141:20-143:9.
- 14. Did Mr. Oldham ask you which redistricting factors were important to you? *E.g.*, Apfell Dep. 151:4-10.
- 15. Did you discuss the issue of precinct splitting in your discussion(s) with Mr. Oldham? *E.g.*, Ex. 5 Sigler Dep. 71:23-72:7.
- 16. Did you review any census data in your discussion(s) with Mr. Oldham? *E.g.*, Ex. 2 Giusti Dep. 294:7-12, 295:1-6, 295:15-16.

- 17. Did you receive any racial demographic data from Mr. Oldham? *E.g.*, Ex. 2 Apffel Dep. 143:3-7, 144:7-17; Ex. 3 Giusti Dep. 302:1-4, 302:23-24; Ex. 4 Henry Dep. 261:17-262:14, 261:17-262:14.
- 18. Did you have any opportunity to present your preferences for redistricting during your meeting with Mr. Oldham? *E.g.*, Ex. 3 Giusti Dep. 87:16-19, 240:2-3; Ex. 4 Henry Dep. 141:1-19.
- 19. How did Mr. Oldham present the proposed maps to you? For example, did he present those maps via Zoom, or did he use any other software to show you the precincts? *E.g.*, Ex. 2 Apffel Dep. 152:25-154:3; Ex. 3 Giusti Dep. 55:15-21.
- 20. How many map proposals were presented to you by Mr. Oldham? *E.g.*, Ex. 3 Giusti Dep. 55:15-21, 96:4-22.
- 21. Did you ever have an occasion to speak with any of the other Commissioners or their staff and Mr. Oldham about the redistricting process? *E.g.*, Ex. 3 Giusti Dep. 163:4-8.
- 22. Did you have any discussion with Mr. Oldham regarding Precinct 3 being a majority-minority population? *E.g.*, Ex. 4 Henry Dep. 241:20-242:5.
- 23. Are you aware that Thomas Bryan was a map drawer that provided technical expertise about the maps? *E.g.*, Ex. 4 Henry Dep. 204:21-205:21.

Questions to County Employees:

- 24. Did Mr. Oldham talk to you about redistricting criteria? What redistricting criteria were identified in your conversation(s) with Mr. Oldham? *E.g.*, Ex. 6 Drummond Dep. 198:5-16.
- What is your understanding of traditional redistricting criteria, based on your conversation with Mr. Oldham? *E.g.*, Ex. 6 Drummond Dep. 198:5-16; 199:1-6.
- 26. Did you discuss the impact of any proposed changes on the Bolivar Peninsula, and the constituents that live there with Mr. Oldham? *E.g.*, Ex. 6 Drummond Dep. 89:2-90:2.
- 27. Did you discuss the issue of precinct splitting in your discussion(s) with Mr. Oldham? *E.g.*, Sigler Dep. 71:23-72:7, 72:8-12.
- 28. Did you receive any racial demographic data from Mr. Oldham? *E.g.*, Ex. 6 Drummond Dep. 200:6-15.
- 29. Did you review any census data in your discussion(s) with Mr. Oldham?
- 30. Did you discuss the impact of any proposed changes on the Black and Latino residents of Galveston County with Mr. Oldham?
- 31. Are you aware that Thomas Bryan was a map drawer that provided technical expertise about the maps?

EXHIBIT 2

Excerpts from the Deposition of Darrell Apffel on January 5, 2023

From Page: Line Number	To Page: Line Number
97:9	97:19
116:13	116:14
133:22	134:16
135:4	136:4
136:14	137:1
137:7	138:18
139:3	139:7
140:2	140:15
140:16	140:22
141:9	141:16
142:6	142:12
143:3	143:7
144:7	144:17
144:18	146:6
149:3	149:18
150:7	150:21
150:22	151:3
151:4	151:10
151:25	152:7
152:8	152:15
152:16	152:24
152:25	153:13
153:14	153:21
153:22	154:3

Page 1 1 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS 2 GALVESTON DIVISION 3 HONORABLE TERRY PETTEWAY, * ET AL., 4 PLAINTIFFS, 5 * CASE NO. 3:22-CV-00057 VS. 6 GALVESTON COUNTY, ET AL.,* 7 **DEFENDANTS.** 8 9 *********** 10 ORAL AND VIDEOTAPED DEPOSITION OF DARRELL APFFEL 11 **JANUARY 5, 2023** *********** 12 13 14 ORAL AND VIDEOTAPED DEPOSITION OF DARRELL 15 APFFEL, produced as a witness at the instance of 16 the PLAINTIFF(S), and duly sworn, was taken in the 17 above-styled and numbered cause on JANUARY 5, 2023, 18 from 9:17 A.M. to 6:01 P.M., before AMY PRIGMORE, 19 CSR, in and for the State of Texas, reported by 20 stenographic means, at the offices of GREER HERZ & ADAMS, One Moody Plaza 18th Floor, Galveston, 21 22 Texas, pursuant to the Federal Rules of Civil 23 Procedure and the provisions stated on the record 24 or attached hereto. 25

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21	ALSO PRESENT:
= =	Ray Burchette, Videographer
22	
23	
24	
25	
_	

Page 97 1 So, this meeting took place in his 2 conference room, but he was not there? 3 Α. Correct. That's -- it's a central meeting 4 place. 5 Do you regularly have meetings in his conference room without him there? 6 7 Of course. We all do. It's a county 8 building. It's a -- it's my conference room, too. 9 0. What did you discuss? 10 The maps and population. Α. 11 MR. RUSSO: Let me just caution the 12 witness about revealing attorney-client privileged 13 communications, and that specifically is 14 communications between Mr. Oldham, Mr. Ready, 15 advising the county as to legal issues for which 16 they were retained. 17 THE WITNESS: Okay. 18 MR. RUSSO: But other than that, you 19 can answer. 20 MS. CHEN: And to that, we'll also 21 state on the record our argument against that 22 assertion of attorney-client privilege with respect 23 to conversations with Dale Oldham, on redistricting 24 matters, as we've discussed. And our letter to the

judge --

Page 116 1 we'll again preserve our arguments, as to what --2 What -- what was going to happen -- the what 3 is that he and his firm had an expert who would 4 look at the census data and create maps equalizing 5 the population among the precincts. That's what I understood. 6 7 (BY MS. VALL-LLOBERA) So during that 8 September conference call, they already had a 9 mapping expert. 10 Is that correct? 11 I don't know that. Α. 12 Q. Who was speaking to you about who --13 Α. The lawyers. The lawyers, identifying the 14 procedure that was going to take place. 15 Q. You just said he and his firm had an expert. 16 I now know, because I ended up 17 meeting with him in that meeting I referred you to, 18 the only other meeting I had, where the expert was 19 on the Zoom. 20 And did he specifically mention him then? Ι

And did he specifically mention him then? I don't recall.

- Q. When did you first see the census data?
- A. I don't recall. When it came out.

Well, when you say did -- yeah, I -- I don't ever remember seeing the data, like in a big

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Page 133 1 But after that, when he met with me, I conference. 2 was aware that he was going to meet with everyone. 3 At this September 8, 2021, meeting, did Mr. Oldham provide an overview of the 2021 4 5 redistricting process? 6 I -- I'm not sure, but when you say that, I 7 don't know. 8 Did he provide an overview of the 2011 9 redistricting process? 10 No, we didn't discuss it. 11 Did you discuss the 2011 redistricting 0. 12 process at all? 13 Α. No. 14 Back to the 2021 redistricting process. 0. 15 Did he provide an overview of the process, 16 such as referring a -- to a timeline? 17 MR. RUSSO: Counsel, asked and 18 answered. 19 Yes. I mean, he -- we talked about what Α. 20 ultimately was going to happen, and what -- what 21 happened, I should say. 22 0. (BY MS. VALL-LLOBERA) Did you identify 23 deadlines by which redistricting had to occur? 24 We knew that it had to have --Α. 25 MR. RUSSO: Let me just interpose

Page 134 1 the objection. 2 On attorney-client privilege 3 grounds, in terms of, you know, the -- what the process -- what or -- what you were doing, is --4 5 has already been stated, frankly, on the record. 6 But just be very careful here about 7 revealing conversations between counsel and the 8 county, related to the redistricting effort. 9 Other than that, you can answer, 10 which is a very fine line. 11 My understanding was that we were behind, 12 because the census data had taken so long to come 13 out, and that we needed to finish by the end of the 14 vear. 15 And so, that timeline was established, just 16 because of my understanding. That's the only 17 timeline we knew -- I knew of. 18 (BY MS. VALL-LLOBERA) At this meeting, Q. 19 you -- did you review the census data? 20 Α. Like I said, I didn't have a stack in front 21 We -- I -- and Mr. Oldham talked to us 22 about certain things, the population and so forth, 23 that... 24 At this time, you -- you already knew that

the populations would have to be rebalanced,

Page 135 1 correct? 2 Α. That was my general understanding, yes, of the whole redistricting every ten years, period. 3 Did Mr. Oldham talk to you about 4 5 redistricting criteria? 6 MR. RUSSO: Objection. Don't --7 objection, based on privilege, and instruct the 8 witness not to answer. 9 MS. VALL-LLOBERA: And we'll reserve 10 our arguments that these conversations are not 11 privileged. 12 MR. RUSSO: The objection is on the 13 record. 14 MS. VALL-LLOBERA: We'll have 15 several of these questions. Would you be amenable 16 to stipulating that you object and we'll preserve 17 our arguments, without reiterating our full 18 arguments? 19 MR. RUSSO: Without you re --20 reiterating your arguments? I mean, I -- my 21 objection stands. Whether you argue against it or 22 not, doesn't matter. 23 I mean, if you want to ask all the 24 questions, I'll pose the objection as -- as 25 necessary. I -- I understand you don't agree with

Page 136

our position, but I don't -- you know, it's deposition procedure. I just need to make sure I maintain my -- and preserve the objections for the record.

- Q. (BY MS. VALL-LLOBERA) Did -- without revealing the substance of any conversations with counsel, as we sit here today, what is your understanding of traditional redistricting criteria?
- A. The county grows by people. The precincts become imbalanced by people. And we are required to continually balance the representation of the people.
- Q. Specifically, how do you have to rebalance the populations?
 - A. In my simple little way --

MR. RUSSO: Let me object -- just let me interpose -- interpose the objection on attorney-client privilege grounds. And you've heard the basis before.

So don't reveal conversations or information you've learned from Dale, related to the redistricting effort.

A. Well, my simple understanding is to -- to redraw the lines to balance the population, to be

Page 137 1 within compliance with the law. 2 Q. (BY MS. VALL-LLOBERA) Is the only criteria 3 for redistricting that the numbers line up? Α. I don't know. 4 5 You've stated that the imbalances needed to 6 be corrected, based on population shifts. 7 What -- do you need to consider anything 8 other than population numbers, in redrawing maps? 9 Α. I don't --10 MR. RUSSO: Same objection on 11 attorney-client privilege grounds. 12 To the extent you can answer without 13 revealing conversations between the county, you, 14 and any of your counsel, you can answer. 15 MS. VALL-LLOBERA: And we 16 preserve --17 Α. I trust that the people we hired to do the 18 job, do it in compliance with the law. 19 Q. (BY MS. VALL-LLOBERA) Are there any other 20 factors considered in drawing the maps? 21 I don't know. Α. 22 Earlier, you stated that you were looking 23 to -- to cut Bolivar. 24 Was that a factor that you were considering 25 in redrawing the maps?

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A. No, I wasn't looking to cut Bolivar. I wasn't looking to cut anyone. I was understanding that in order to balance the -- the four precincts, that I would have to give up something and give it to someone else, to -- to make that -- to accomplish that.

And so, that's -- that's what I understood.

- Q. When looking at what areas you could peel off of your district, what factors did you consider?
- A. I've told you, that made sense to me. And part of that analysis, in -- the -- the Excel spreadsheet, I was trying to see how many -- I was trying to see the numbers by the voting precincts to say, okay, we can give up this -- 103 and 104, because I have to -- for a 20-minute meeting in by -- in High Island, I have to drive four hours, because of the ferry, the geographical split between the -- the island and the peninsula.

But -- so, it was -- I was thinking, okay, this -- this is what makes sense. If I've got to give something up, I'll give up this.

- Q. Did you consider any other factors?
- A. I wasn't --

MR. RUSSO: Object as vague.

Page 139 1 -- considering factors. I was just looking at numbers. (BY MS. VALL-LLOBERA) Did Mr. Oldham 0. discuss any factors? Objection. MR. RUSSO: I'll instruct the witness not to 7 answer, based upon attorney-client privilege. (BY MS. VALL-LLOBERA) If a constituent 0. asked you about the redistricting process and asked 10 what kind of things you were thinking about in 11 redrawing the maps, what would you have said --12 what would you say? 13 Α. I would say our county grew by whatever 14 number, 80,000 people, whatever the number was. I 15 don't remember the number. 16 And the law requires us to balance the 17 precincts, based on that population, and we've 18 hired a law firm and a demographer to -- to do that 19 for us the best way possible to be within the 20 bounds of the law. 21 Did you discuss the Voting Rights Act? 22 Α. Never. 23 MR. RUSSO: Objection. 24 What -- what are you talking about?

Are you talking about a meeting with -- who are --

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Page 140 1 with who? 2 0. (BY MS. VALL-LLOBERA) Referring still to 3 the September 8, 2021, meeting, and your other 4 meeting with Mr. Oldham, the in-person conference, 5 did you discuss the Voting Rights Act? I'm going to object to 6 MR. RUSSO: 7 that and instruct the witness not to answer based upon attorney-client privilege. 8 9 MS. VALL-LLOBERA: We'll preserve 10 our arguments that these are not protected 11 communications. 12 And for clarification, when I said never, it Α. 13 was because I thought you were talking about 14 constituents still. I didn't have those 15 conversations. 16 (BY MS. VALL-LLOBERA) Did you discuss the 17 U.S. Constitution? 18 MR. RUSSO: Objection. Instruct the 19 witness not to answer, based on attorney-client 20 privilege. 21 MS. VALL-LLOBERA: And we preserve 22 our arguments. 23 (BY MS. VALL-LLOBERA) Without revealing the Ο. 24 substance -- without -- without revealing the 25 substance of any conversations with counsel, as we

Page 141 1 sit here today, what is your understanding of the 2 Voting Rights Act? 3 Α. I've answered that twice. 4 Without revealing the substance of any 0. 5 conversations with counsel, as we sit here today, what is your understanding of the requirements of 6 7 the U.S. Constitution with regard to redistricting? 8 Α. I don't know. Did you discuss policy objectives with 9 10 Mr. Oldham? 11 MR. RUSSO: Same objection, 12 attorney-client privilege, instruct the witness not 13 to answer. 14 MS. VALL-LLOBERA: And we preserve 15 our arguments that these are not privileged 16 communications. 17 (BY MS. VALL-LLOBERA) Did you discuss Q. 18 policy objectives with the other commissioners? 19 Α. No. 20 Wait. MR. RUSSO: Let me clarify 21 it. When? Anytime? 22 (BY MS. VALL-LLOBERA) Okay. I'll rephrase. 23 Did you discuss policy objectives with other 24 commissioners during -- between the two meetings 25 you had with Mr. Oldham?

Page 142 1 Α. No. 2 Q. During your two meetings with Mr. Oldham 3 that we previously referred to, did you discuss political objectives? 4 5 Α. No. 6 During those two meetings, did you discuss 7 the need or desire for a coastal precinct? 8 MR. RUSSO: Let me object, and 9 instruct the witness not to answer that question, 10 based on attorney-client privilege. 11 MS. VALL-LLOBERA: And we preserve 12 our arguments that these are not privileged. (BY MS. VALL-LLOBERA) Did you run an RPV 13 Q. 14 analysis -- excuse me. 15 Separate from these two meetings, did you 16 run an RPV analysis? 17 MR. RUSSO: Objection; vague and 18 ambiguous. 19 I don't know what -- I don't understand the 20 question. 21 (BY MS. VALL-LLOBERA) RPV stands for 22 racial -- racially polarized voting. 23 Are you familiar with the term, racially 24 polarized voting? 25 I am not. Α.

Page 143 1 Have you heard this term before? Q. 2 Α. I have not. 3 So Mr. Oldham and you did not discuss an RPV Q. 4 analysis in either of these meetings? 5 MR. RUSSO: Let me object based upon 6 the attorney-client privilege, and instruct the 7 witness not to answer. 8 MS. VALL-LLOBERA: And we preserve 9 our arguments that these are not privileged 10 communications. 11 (BY MS. VALL-LLOBERA) Have you ever seen an 12 RPV analysis? 13 Α. No. 14 0. Generally --15 Α. Maybe, but I didn't know what I was looking 16 at. 17 Q. When might you have seen an RPV analysis? 18 MR. RUSSO: Object as ambiguous. 19 Α. During the process --20 MR. RUSSO: And again, are you 21 talking about in the conversation with his 22 attorneys --23 MS. VALL-LLOBERA: Generally. 24 MR. RUSSO: -- or any time? 25 Q. (BY MS. VALL-LLOBERA) Generally, when might

Page 144 1 have you --2 MS. VALL-LLOBERA: The witness 3 stated that he may have seen an RPV analysis, in 4 answer to my question, have you ever seen an RPV 5 analysis. MR. RUSSO: 6 Okay. 7 (BY MS. VALL-LLOBERA) So my follow-up Q. 8 questions, still in the context of have you ever 9 seen an RPV analysis, was, when might you have seen 10 one. 11 MR. RUSSO: Again --12 Α. I wouldn't know. 13 MR. RUSSO: -- we can't -- he's not 14 going to answer a question as to whether he saw an 15 RPV analysis with his lawyers present. 16 So other than that, he can answer 17 your question. 18 Q. (BY MS. VALL-LLOBERA) Has anyone ever tried 19 to explain RPV to you? 20 MR. RUSSO: Again, same objection. 21 It's not limited to conversations with lawyers and 22 counsel. 23 To the extent you can answer the 24 question without referring to communications in 25 consultation with lawyers and counsel on that

Page 145 1 question, you can answer. 2 MS. VALL-LLOBERA: Underlying facts 3 learned by a witness are not privileged just 4 because they were conveyed by counsel. 5 MR. RUSSO: But --6 MS. VALL-LLOBERA: I am merely 7 stating --8 MR. RUSSO: We can -- we can 9 have the --10 MS. VALL-LLOBERA: -- for the 11 record --12 MR. RUSSO: We can have the 13 colloquy, if you'd like to. The problem is, is 14 that I -- I don't know whether he's had 15 conversations with lawyers, and I need to make sure 16 that what he's telling you does not come from a 17 conversation with counsel, in terms of how 18 they're -- they're going to do redistricting 19 effort, or even related to our conversations 20 dealing with this case. 21 Well, I don't recall. So let's -- well, 22 that will -- I don't know. 23 MR. RUSSO: I mean, do you 24 understand what I'm saying, Counsel? It's very 25 possible that we looked at an RPV count between the

Page 146 1 two of us. 2 Surely not claiming that's something 3 you're entitled to know. 4 I'm -- so I'm suggesting you clean 5 your questions up at least a little bit, so that it -- we don't have to keep doing this. 6 7 Did you consider the (BY MS. VALL-LLOBERA) impact on minority populations when you were going 8 9 through the redistricting process? 10 Α. I would have to say yes. 11 0. How? 12 Α. I knew that equalizing the population was 13 going to change precinct lines. But I never saw it 14 as a deterrent for someone to represent the people 15 or win office. 16 How did that relate to impacting minority 17 populations? 18 I don't understand your question. 19 MS. VALL-LLOBERA: If the court 20 reporter could read --21 You said did I consider it. And I said yes. 22 Now, this question is a follow-up to that or I 23 don't --24 MS. VALL-LLOBERA: Could you read 25 his -- and Mr. Apffel's answer to my prior

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with proposals on how to modify the maps?

A. They did not.

Q. In your communications -- in your meetings with Mr. Oldham, did you discuss geographic modifications to the maps?

MR. RUSSO: Again, same objection related to attorney-client communications, specific to the legal services, and the relationship -- the legal services relationship in providing counsel to the county.

- A. Can you read me that question one more time, please?
- Q. (BY MS. VALL-LLOBERA) In your two meetings with Mr. Oldham, did anyone propose geographic modifications to the maps, to -- to the existing map?
- A. The demographer would -- did, in the -- the in-person meeting.
- Q. How many -- how many maps did you -- did you see?
- A. We didn't have maps in that meeting. He was just discussing how to balance the -- the population, among the four precincts, and you -- you know, clicking on this one to move it, saying if we move this one, that will bring down the

Page 150 1 number in Precinct 4 and add to Precinct 3. 2 can click out 103 and 104, and add them to 3 Precinct 2, that will get -- that will get you in Precinct 1, where you need to be. 4 5 And he was showing it. That's the only --6 that was it. 7 Did you share with Mr. Oldham, or his 8 mapping expert, what your ideal map would look 9 like? 10 I didn't draw a map. Jay did --Α. MR. RUSSO: Hold on. Just -- hang 11 12 on a second. 13 THE WITNESS: I'm sorry. 14 MR. RUSSO: Please let me interpose 15 an objection related to attorney-client privilege. 16 Same objection with that line of 17 Do not discuss communications between questioning. 18 the county and its counsel. 19 MS. VALL-LLOBERA: And we preserve 20 our arguments that these communications are not 21 privileged. 22 Q. (BY MS. VALL-LLOBERA) Did Mr. Oldham ask 23 you what your ideal map would look like? 24 MR. RUSSO: Objection, based upon 25 attorney-client privilege.

Page 151 1 MS. VALL-LLOBERA: And we preserve 2 our arguments that these are not privileged 3 communications. 4 (BY MS. VALL-LLOBERA) Were you asked about Ο. 5 what factors you thought were important? 6 MR. RUSSO: Same objection. 7 Objection, based on attorney-client privilege. MS. VALL-LLOBERA: And we preserve 8 9 our arguments that these are not privileged 10 communications. 11 (BY MS. VALL-LLOBERA) How long was the 12 phone call with Mr. Oldham? I've answered that. Certainly less than 30 13 Α. 14 minutes. 15 Q. And the --16 But I don't recall how long. Α. 17 And the in-person meeting? Q. 18 Α. Hour and a half, hour. 19 When you were -- when you were discussing Q. 20 proposed changes to the maps with the mapping 21 expert, did you see a map that you liked? 22 Α. I didn't see a map. 23 Did you discuss communities of interest? Ο. 24 I don't know what that means. Α. 25 Did you discuss the impact of any proposed 0.

	Page 152
1	changes on any specific communities or groups of
2	people?
3	MR. RUSSO: Object, based upon
4	attorney-client privilege.
5	MS. VALL-LLOBERA: And we preserve
6	our arguments that these aren't privileged
7	communications.
8	Q. (BY MS. VALL-LLOBERA) Did you discuss the
9	impact of any proposed changes on Bolivar, and the
10	constituents that live there?
11	MR. RUSSO: Object, based on
12	attorney-client privilege.
13	MS. VALL-LLOBERA: And and we
L 4	preserve our arguments that these are not
15	privileged communications.
16	Q. (BY MS. VALL-LLOBERA) Did you discuss the
17	impact of any proposed changes on people of color,
18	specifically on black and brown residents in
19	Galveston County?
20	MR. RUSSO: Object, based upon
21	attorney-client privilege.
22	MS. VALL-LLOBERA: We preserve our
23	arguments that these are not privileged
24	communications.
25	Q. (BY MS. VALL-LLOBERA) Earlier, you said, we

Page 153 1 didn't have -- earlier, you said you didn't have 2 maps in the meeting, that you were just discussing 3 how to balance the population. And you referred to 4 the map drawn -- clicking on precincts. 5 What -- what was he clicking on? MR. RUSSO: Let me object, based 6 7 upon attorney-client privilege. 8 Α. I -- what --9 MR. RUSSO: And instruct you not to 10 answer. 11 MS. VALL-LLOBERA: And we preserve 12 our arguments that these were not privileged 13 communications. 14 (BY MS. VALL-LLOBERA) What were you looking 15 at during this meeting? 16 MR. RUSSO: Object, based upon 17 attorney-client privilege. Instruct the witness 18 not to answer. 19 MS. VALL-LLOBERA: We preserve our 20 arguments that these were not privileged 21 communications. 22 Q. (BY MS. VALL-LLOBERA) Previously, you said 23 you did not look at a map during this meeting, but 24 you did meet with a mapping expert. 25 What were you looking at?

	Page 154
1	MR. RUSSO: Same objection, based on
2	attorney-client privilege.
3	MS. VALL-LLOBERA: And preserve
4	MR. RUSSO: And let me ask you a
5	clarifying question for the record.
6	Was the expert that was there, to
7	your knowledge, there on behalf of the
8	Mr. Oldham
9	THE WITNESS: Absolutely.
10	MS. VALL-LLOBERA: Counsel
11	MR. RUSSO: as part as part of
12	his work?
13	THE WITNESS: Absolutely.
14	MS. VALL-LLOBERA: Excuse me, are
15	you
16	MR. RUSSO: I'm clarifying the
17	privilege being asserted. The expert there, was
18	there at the behest of the counsel.
19	MS. CHEN: And performing a service
20	for the county.
21	MR. RUSSO: As a as a lawyer.
22	MS. CHEN: As a policy
23	MR. RUSSO: Brought in by a lawyer.
24	MS. CHEN: (unintelligible)
25	legislative critical objective

EXHIBIT 3

Excerpts from the Deposition of Joseph Giusti on January 5, 2023

From Page: Line Number	To Page: Line Number
97:9	97:19
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297:23	298:10
298:11	299:11
299:12	300:2
300:23	301:9
302:1	302:8
302:23	303:7

Page 1 1 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS 2 GALVESTON DIVISION 3 HONORABLE TERRY PETTEWAY, et al., 4 Plaintiffs, 5 VS. 6 Case No. 3:22-cv-00057 GALVESTON COUNTY, et al., 7 Defendants. 8 9 10 ORAL AND VIDEOTAPED DEPOSITION OF 11 12 JOSEPH GIUSTI 13 JANUARY 6, 2023 14 (Reported Remotely) 15 16 17 ORAL AND VIDEOTAPED DEPOSITION OF JOSEPH 18 GIUSTI, produced as a witness at the instance of the 19 United States and duly sworn, was taken via 20 videoconference in the above-styled and numbered cause on the 6th day of January, 2023, from 9:23 a.m. to 21 22 6:01 p.m., before Marsha Yarberry, Certified Shorthand 23 Reporter in and for the State of Texas, reported by machine shorthand, in Galveston, Texas, pursuant to the 24 Federal Rules of Civil Procedure. 25

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Page 50 1 Α. Not that I recall. 2 Did you discuss redistricting criteria with Q. 3 any of the other commissioners during the 2021 redistricting process? 4 5 Α. Yes, to some degree, I guess, during the 6 meetings we had. 7 Q. And what meetings are you referring to? 8 Α. We had a meeting I guess in September. 9 And who was present during that meeting? Ο. The first meeting would have been myself, Paul 10 11 Ready, Mr. Oldham. I don't remember if he was in 12 person or on Zoom. I think he was there in person. 13 don't remember. And that's all I recall. Yourself, Paul Ready, who is the county 14 Ο. 15 attorney? 16 Α. Yes. 17 Ο. And Mr. Oldham, who is the redistricting 18 consultant? 19 Α. Correct. 20 Q. And that was September. Do you remember the 21 day? I don't. 2.2 Α. 23 And did you receive any materials during that Ο. 24 meeting related to redistricting criteria? 25 MS. OLALDE: I'm going to object to any

Page 51 1 request for attorney-client privileged communications 2 or attorney-client privileged work product. To the 3 extent you're asking about facts, the witness can 4 answer. 5 But otherwise I will instruct you not to 6 answer. 7 THE WITNESS: Okay. MR. GEAR: And we will reserve our 8 9 arguments that we do not believe that attorney-client privilege applies to Dale Oldham as the redistricting 10 11 consultant. 12 MS. OLALDE: He's an attorney, but yes. 13 MS. CHEN: And if you'd like to see -- we sent a letter yesterday to Joseph Russo --14 15 THE REPORTER: I can't hear whoever is 16 talking right now. 17 MS. CHEN: Sarah Chen. And I'm just 18 noting that we sent a letter with piecemeal on this 19 privilege point to Joseph Russo yesterday. If you 20 would like to see it, we're happy to send it to you as 21 well. 2.2 Thank you, Sarah. I think MS. OLALDE: 23 this is probably something that the court needs to 24 resolve at this point, though. I do understand that 25 you sent a letter.

Q. (By Mr. Gear) So did you receive any written materials related to criteria during the September meeting?

MS. OLALDE: Objection to any attorney-client privileged communications or attorney-client -- attorney work product that may have been addressed or discussed during this meeting.

If you're looking only at facts, you may answer only to the extent you have particular facts to share but not communications.

- Q. (By Mr. Gear) So the question is did you receive any materials.
 - A. I -- probably. I don't recall what.
- Q. Do you recall what was discussed related to redistricting criteria?

MS. OLALDE: Objection, same instruction to the witness not to reveal any attorney-client privileged communications or work product.

MR. GEAR: And, again, we reserve the -- our argument that attorney-client privilege is not -- does not apply to Dale Oldham.

Q. (By Mr. Gear) So following the September meeting with yourself, Mr. Ready, and Mr. Oldham, did you have any discussions with commissioners related to redistricting criteria?

Page 54 1 MS. OLALDE: Objection; speculation. 2 You can answer. You can answer. 3 MR. GEAR: Well, let me rephrase that. MS. OLALDE: 4 Sure. 5 (By Mr. Gear) When did the 2021 redistricting Ο. process begin for the commissioners court? 6 It would have been about the time frame you 8 mentioned. The exact -- sounds about right. 9 And so what was the name of the redistricting Ο. firm that you and the commissioners ultimately decided? 10 11 I don't recall the name of the firm. I just 12 remember Mr. Oldham. 13 And what was your understanding of the services that Mr. Oldham would provide to the county 14 15 commissioners? 16 That he would take the census that we were Α. 17 getting in, and he would take that -- the numbers from 18 that and basically lay it out and give us a couple of 19 options to choose from on what he determined was the 20 best and legal maps that he could come up with. 21 And other than Mr. Oldham, was there any other consultant that you personally dealt with during the 2.2 23 2021 redistricting process? 24 He had a -- he had a demographer, I guess, 25 that did the map -- the actual map drawing, but I never

Page 55 1 really dealt with him. 2 Did you meet with that demographer at all in 3 any capacity? Not that I recall, other than on the Zoom 4 5 meeting, I believe. 6 Ο. Is that the same September Zoom meeting that 7 you referred to? No. That would have been later. 8 Α. 9 Do you recall the time period in which he was involved? 10 11 October I want to say. Α. 12 Q. I'm sorry. Did you say you don't recall his 13 name? I do not. 14 Α. Did that demographer provide you with any 15 written information or maps of any kind? 16 17 We did look at a couple of maps on Zoom. Α. 18 MS. OLALDE: And, again, I'm going to ask 19 that the witness not reveal any attorney-client 20 privileged communications or work product and instruct 21 him not to answer to that extent. 2.2 MR. GEAR: And, again, we reserve our 23 rights that to -- against the claim that 24 attorney-client privilege applies to Dale Oldham. 25 Q. (By Mr. Gear) So did you have an opportunity

Page 60 1 process that were discussed in public, in a public 2 commissioners court meeting? 3 Α. Not that I recall. Were there any guidelines related to the 4 Ο. 5 timing of the commissioners court redistricting process 6 that were formally adopted as a resolution by the 7 commissioners court? 8 MS. OLALDE: Objection; form. 9 Go ahead. THE WITNESS: Not that I recall. 10 11 (By Mr. Gear) Were there any guidelines that Ο. 12 were reduced to writing by the commissioners court? 13 Α. Not that I recall. Can you explain what, if any, guidelines for 14 the 2021 redistricting process were discussed amongst 15 16 the commissioners? 17 MS. OLALDE: Objection to the extent your 18 question calls for any response that would reveal 19 discussions with Mr. Oldham or in executive session. 20 Otherwise you can answer. MR. GEAR: Again, we reserve the -- our 21 right to raise the argument that attorney-client 2.2 23 privilege does not apply to Mr. Oldham. (By Mr. Gear) But if you can answer --24 0. 25 Α. That I don't recall.

Page 77 1 Commissioner Holmes? 2 Commissioner Holmes, myself, I believe Tyler Α. 3 Drummond, and possibly Jed Webb. Who is Jed Webb? 4 Ο. 5 Α. Jed was -- at the time Jed -- Jed is gone now from the county, but at the time Jed was the -- kind of 6 7 a communication guy but more governmental relations. And I believe you indicated that there was 8 a -- that you had met with the demographer, the 9 redistricting demographer? 10 11 He was on Zoom. Α. 12 And so the October 2021 meeting, was that a Ο. 13 Zoom meeting or was that an in-person meeting? Mostly in person, but the demographer, I 14 15 believe, was Zoom with maps. 16 And was that during that same October '21 Ο. 17 meeting where the demographer was on Zoom? 18 Α. Yes. 19 Was there anyone else present such as staff, Q. your staff, for example? 20 21 Α. No, sir. So can you tell me what was discussed during 22 Ο. 23 the October 2021 meeting? MS. OLALDE: Objection, and instruct the 24 25 witness not to answer with respect to any

attorney-client privileged information or work product data that was shared during the meeting.

MR. GEAR: And, again, we'll reserve the claim that the attorney-client privilege does not apply to Dale Oldham. And you're directing him not to answer?

MS. OLALDE: I am.

- Q. (By Mr. Gear) Can you tell me during that October 2021 meeting with the individuals you identified whether or not there were any text messages or emails that were exchanged prior to that meeting?
 - A. Not that I recall.
- Q. Can you tell me following that meeting was any of the information that you discussed during that meeting reduced to a written form of any kind?
 - A. Not that I'm aware of other than the maps.
- Q. So maps were shared with the commissioners that were present?
 - A. Yes.

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- Q. And would this -- would the October 2021 meeting have occurred prior to the posting of the plans on the county website?
 - A. I believe so.
- Q. Did you personally prepare anything in writing to memorialize your communication during this meeting?

Page 84 1 Α. 13th. 2 September 13th. Thank you. Did you meet with Q. 3 Attorney Ready and Mr. Oldham? I don't remember if Mr. Oldham was in person 4 5 or Zoom, but yes. 6 Ο. But he did attend the meeting and --Α. Yes. And was that meeting related to the 2021 8 Q. 9 redistricting process? Α. 10 Yes. 11 And did you receive any materials related to Ο. 12 the redistricting process prior to the September 13th 13 meeting? Not that I recall. 14 Did you receive any materials while you were 15 present during the September 13th meeting that relate 16 17 to the 2021 redistricting process? 18 MS. OLALDE: Objection; form. 19 THE WITNESS: Not that I recall. 20 Q. (By Mr. Gear) So what did you discuss during 21 that September 13th meeting? 2.2 MS. OLALDE: Objection. And I'm going to 23 instruct the witness not to answer about any 24 attorney-client privileged communications or contain 25 work product that was discussed in the meeting.

- MR. GEAR: We reserve our right to raise the argument that attorney-client privilege is not -- does not apply to Mr. Oldham.
 - Q. (By Mr. Gear) So other than the September 13th meeting and the October 19th meeting which you've identified, did you meet at any other times with Mr. Oldham?
 - A. I think initially when we hired him he was at that meeting.
- Q. And did you have any discussions with Mr. Oldham prior to hiring him?
- 12 A. No, sir.

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- Q. So other than the fact that he was present at the commissioners court meeting, you didn't have any independent conversation with him.
- 16 A. Correct.
- MR. GEAR: Can we put up Exhibit 4, please, Zach?
 - Q. (By Mr. Gear) Can you identify this document for me, please? Have you seen it before I guess I should ask.
 - A. I don't recall seeing it before.
 - Q. And for the record this is Defendants Bates Stamp No. 00015162. Can you tell me -- can you read the subject line for me, please?

redistricting process assisting you?

- A. No, sir. I mean, she's on this memo as an attendee, but I don't remember if she was or not, to be honest. I don't think she was.
- Q. Do you have any recollection if Yesenia reduced the discussions that took place during this meeting into any written form?
 - A. No.

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- Q. Just so I'm clear on the record, so
 September 13th and October 19th, 2021, were the only
 dates that you met with Dale Oldham? Is that correct?
 - A. Yes, sir, other than the initial hiring.
- Q. Where you did not have any independent discussion --
 - A. Correct.
 - Q. So during the time -- strike that. So did you have an opportunity to present your preferences regarding the changes you wanted to see for Precinct 2 during the 2021 redistricting process?
 - MS. OLALDE: Objection. I'm going to instruct the witness not to answer with respect to conversations that were had with Mr. Oldham.
- Otherwise, you can answer. Based on attorney-client privileged work product.
- THE WITNESS: That would have been our

conversations.

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- Q. (By Mr. Gear) Let me -- let me change the frame of that question.
- What preferences did you want to see -- what changes did you want to see to Precinct 2 during the 2021 redistricting process?
- A. Me personally, there were a couple of things.

 One was to level out the population amongst the precincts. Two was probably to, as I mentioned earlier, clarify the lines as to who was where to make it easier for the public to understand who their commissioners were, to keep my house in my precinct and to keep my mom and dad's house in my precinct.
 - Q. Anything else?
- A. Nope.
- Q. I believe you testified to this previously about confusion as to where the commissioners' lines fell in the previous redistricting plan. What are you basing that concern upon?
- A. I guess we -- just personal experience. We would get phone calls from constituents requesting help, and it would be things that weren't -- that were on the edge of my precinct but not in my precinct, or vice versa, they were in my precinct and they were calling someone else because the lines at times were --

- with Mr. Oldham, but if it comes down to just a number, which I believe is what the question is asking, the witness can answer as to number.
- Q. (By Mr. Gear) And that was the question, how many plans did you review during the 2021 redistricting process.
 - A. I want to say at some point I saw four.
- Q. And can you tell me -- did you see all those plans at one time, or did you see them over a course or period?
 - A. I think at one time.

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- Q. Can you tell me where you saw the four plans -- the four 2021 redistricting plans, when did you review those plans?
- MS. OLALDE: And I'm going to object as to attorney-client privilege and work product and ask the witness not to reveal any attorney-client privileged communications or any attorney-client work product and instruct him not to answer.
- MR. GEAR: So to be clear, the question was when did he review the plans. I didn't ask him about details or discussions related --
- MS. OLALDE: As to date -- as to date you can answer.
- 25 THE WITNESS: I believe it was in one of

A. Yes, sir. Originally from -- Judge Henry's was October 29th.

MR. GEAR: And I believe -- again, I believe we've discussed this on and perhaps off the record that you will be providing us with the Facebook posts and the comments that go along with it.

MS. OLALDE: I -- we did email that. In fact, I emailed that just during the deposition. I know you probably haven't had a chance to see it, yeah, but it's the same thing that you just handed

Mr. Giusti.

- Q. (By Mr. Gear) So did you post anything else on social media related to redistricting other than what we're looking at here?
 - A. Not that I recall, no, sir.
- Q. And other than the two or three comments that you received on social media posts, your Facebook post, do you recall receiving any other comments related to the 2021 redistricting process that would have come on your social media posts?
 - A. No, sir.

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Q. So did you ever have -- during the course of the 2021 redistricting process, did you have an occasion to speak with Commissioner Holmes regarding the creation of a coastal precinct?

Page 120 1 MS. OLALDE: I'm sorry. What was the 2 time frame? I apologize. 3 MR. GEAR: During the 2021 redistricting 4 process. 5 MS. OLALDE: Okay. And I'm going to 6 object to the extent you're -- the substance of your 7 question would contain the attorney-client privileged communications or work product information. 8 9 Otherwise you may answer. (By Mr. Gear) And I want to be clear that --10 Ο. 11 being careful to avoid any discussions that may have 12 taken place with attorneys, did you have an occasion to 13 speak with Mr. Holmes regarding the creation of a coastal precinct during the 2021 redistricting process? 14 15 MS. OLALDE: And the same objection. 16 MR. GEAR: And again we will -- I'll 17 reserve our claim that the 2021 redistricting process 18 and attorney-client privilege does not apply to Dale 19 Oldham. 20 (By Mr. Gear) But you can answer. Q. 21 Not that I recall. It would -- had we discussed that, it would have been during that --2.2 23 MS. OLALDE: Okay. I'm going to just --24 THE WITNESS: So there you go. 25 MS. OLALDE: -- ask you not to testify

- about anything that would have been discussed during those meetings. Thank you.
- Q. (By Mr. Gear) So changing the subject now, you're saying that you've commented on the posted plan. So the posted plan -- when was it actually posted to the county website?
 - A. I'm not positive. Based on Judge Henry's post on the 29th, I'm assuming that's about the same time it went live because his post basically is telling people, "Here's the plan. Comments, please."
 - Q. So focusing on the October 29th date, is it correct that the commissioners court posted Maps 1 and 2 to the county website?
- A. Yes.

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- Q. Were you involved in those discussions to post
 Map 1 and 2 to the county website?
- 17 A. Not that I recall.
 - Q. Were you involved in the decision-making process in any capacity to post Maps 1 and 2 to the county website?
 - A. Not that I recall.
 - Q. When did you -- when were you made aware that Maps 1 and 2 would be posted to the county website?
- A. I want to say the day they were posted or even the day after.

- Dickinson, and I don't remember if he went all the way into League City or not. I think he might have had a piece of League City.
- Q. So during the -- strike that. At any point during the 2021 redistricting process did you have any communications with any of the other commissioners or their staff regarding maintaining your core cities in Precinct 2?
- MS. OLALDE: Objection. I would ask the witness not to answer to reveal any privileged communications, attorney-client privileged communications, or attorney work product and any conversations where Mr. Oldham was involved.

But other than that you may answer.

- Q. (By Mr. Gear) So let's start with did you have any discussions.
 - A. Not that I recall.

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- Q. During the 2021 redistricting process did you have any discussions with Commissioner Holmes regarding maintaining the core of Precinct 3?
 - A. Not that I recall.
- Q. So are you familiar with the Carver Park area in Precinct 3?
- 24 (Reporter clarification)
 - Q. (By Mr. Gear) Are you familiar with the

A. No.

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Q. Did you ever share any ideas or opinions about the maps to Commissioner Holmes in 2021?

MS. OLALDE: Objection. And I will instruct the witness not to answer with respect to any kind of attorney-client privileged conversations or attorney work product that was discussed during a meeting with Mr. Oldham.

Otherwise you can answer.

THE WITNESS: With Commissioner Holmes, not that I recall.

- Q. (By Mr. Silberstein) Earlier you said that when a community member submitted a redistricting plan, you said there's really not a written procedure if someone emailed the redistricting proposal to the judge's office. Is that true?
 - A. I think so, yes.
- Q. But if you distributed -- if Holmes distributed the maps to the rest of the commissioners, at some point you knew the question would come in and -- sorry. Let me rephrase.

If Judge Henry distributed the maps to the rest of the commissioners -- and I'm just quoting him -- "At some point, you know, the questions would come in are we discussing this and now do we have more

Page 294

and Maps 2. Under Map 1, would the population center

of your precinct have shifted as much?

A. I'm sorry. Under Map 1? I'm trying to

envision it.

Q. The one that had all of Galveston Island -
A. No, it would not have shifted as much.

Q. So let's just turn back to the September phone

call you said you had with Dale Oldham. Exhibit 4

showed the calendar invitation. And this is my final

line of question itself. We're almost there.

Did you review any -- any census data during that call?

MS. OLALDE: Objection. I'm going to ask the witness not to answer as it would reveal any attorney-client privileged communications and/or attorney work product communications that were shared in the meeting with Mr. Oldham.

MR. SILBERSTEIN: We're going to reserve our arguments on the attorney-client privilege issue that they're not privileged communications.

MS. OLALDE: Just one second.

Mister -- the videographer, how much time

is left?

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THE VIDEOGRAPHER: 11 minutes.

MS. OLALDE: Thank you.

(By Mr. Silberstein) Did you review any 1 2 census data during that call? 3 MR. SILBERSTEIN: I'm going to keep 4 asking questions in order to clarify the record and reserve our rights to reopen the deposition on these 5 6 and other questions. 7 MS. OLALDE: I understand. And I 8 understand what you have to do, but if you could reask 9 the question. Sorry. 10 (By Mr. Silberstein) Did you review any 11 census data during the call? 12 MS. OLALDE: I'm going to object on the 13 basis of attorney-client privilege and attorney work 14 product and instruct the witness not to answer. 15 (By Mr. Silberstein) Did you discuss the 16 meaning of any census data? 17 MS. OLALDE: Again, I'm going to object 18 on the basis of attorney-client privilege and attorney 19 work product and instruct the witness not to answer as 20 to conversations that were had with the attorney who 21 was retained to provide legal advice. THE REPORTER: Could you speak up, 22 23 please? 24 MS. OLALDE: Certainly. I apologize. 25 It's late in the day. We've been going for a while.

1 MR. SILBERSTEIN: That it is. MS. OLALDE: I apologize. I'm objecting 2 3 on the basis of attorney-client privilege and attorney work product and instructing the witness not to answer. 4 5 (By Mr. Silberstein) And I'm only asking Ο. about your understanding here. Did you understand the 6 7 need to redistrict due to population imbalances? 8 MS. OLALDE: Objection. 9 Are you asking for understandings based -- what are you asking? Vague, confusing. 10 11 (By Mr. Silberstein) In -- in the 2021 12 redistricting process, did you understand that there 13 was a need to redistrict due to population imbalances? 14 Α. Yes. Did -- during your calls -- during your calls 15 16 with the other commissioners, did you ever discuss 17 traditional redistricting -- what traditional 18 redistricting criteria were? 19 MS. OLALDE: Objection; asked and 20 answered. I'm going to instruct the witness not to 21 answer to the extent any conversations took place before -- or with Mr. Dale Oldham on the basis of 2.2 23 attorney-client privilege and also attorney work 24 product. 25 But to the extent your answer does not

Page 297 1 incorporate those communications you may answer. 2 THE WITNESS: With the other 3 commissioners, I do not recall that. (By Mr. Silberstein) As you sit right here 4 5 today, can you name any traditional redistricting 6 criteria? MS. OLALDE: Objection; asked and 8 answered. 9 You can answer. THE WITNESS: The population, the idea of 10 11 trying to make the precinct lines understandable by the 12 public. That's the majority of it. 13 Ο. (By Mr. Silberstein) In the September call with Mr. Oldham and other commissioners pending your 14 October meeting with Mr. Holmes, did you ever discuss 15 16 the U.S. constitution? 17 MS. OLALDE: Again, I'm going to object 18 on the basis of attorney-client privilege and attorney 19 work product and instruct the witness not to answer as 20 to communications had in meetings with Mr. Oldham. 21 MR. SILBERSTEIN: We'll reserve our arguments. These are not privileged communications. 2.2 23 (By Mr. Silberstein) In the September call Ο. 24 with Mr. Oldham and the other commissioners and in your

October meeting with Mr. Holmes, did you discuss policy

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1 objectives? If so, what were those objectives? 2 I'm objecting as to MS. OLALDE: 3 compound. I'm also objecting to a request for 4 attorney-client privileged communications and attorney work product and instructing the witness not to answer 5 with respect to communications in meetings with 6 7 Mr. Oldham, privileged communications in meetings with 8 Mr. Oldham. 9 MR. SILBERSTEIN: We will reserve our 10 arguments. These are not privileged communications. 11 (By Mr. Silberstein) In the -- in the two 12 meetings we've been discussing did you discuss 13 political objectives? 14 I'm going to object on the MS. OLALDE: 15 basis of attorney-client privilege, attorney work 16 product, and instruct the witness not to answer with 17 respect to communications -- privileged communications 18 that took place with Mr. Oldham about redistricting. 19 Q. (By Mr. Silberstein) Can you extend -- can 20 you answer to the extent not privileged the objectives 21 that you discussed with the other commissioners about 22 the 2021 redistricting? 23 MS. OLALDE: Just to be clear for the record, you're asking about anything that did not take 24 25 place in the meeting with Dale Oldham?

1 MR. SILBERSTEIN: Anything, whether in or 2 out of the meeting, to the extent it is not privileged communications with Mr. Oldham. 3 Instruct the witness not to 4 MS. OLALDE: 5 answer to the extent it's attorney-client privilege or 6 discussion of attorney work product in a conversation 7 with Mr. Oldham about 2021 redistricting. 8 To the extent you had communications that 9 were outside of these meetings with Mr. Oldham, you can 10 answer. 11 THE WITNESS: Not that I recall. 12 Q. (By Mr. Silberstein) And in these two 13 meetings we've been discussing again, did you discuss the need or desire for a coastal precinct? 14 15 MS. OLALDE: Again, same objection and 16 instruction. 17 Can we -- is it okay if -- will you be 18 arguing that we waived anything if I don't talk for --19 okay. Same objection. 20 MR. SILBERSTEIN: I am okay with that. 21 Yes. MS. OLALDE: Same objections. I see --2.2 23 for the record, I see nods from all counsel, right? 24 All counsel. Same objection, same instruction. 25 MR. SILBERSTEIN: And we're reserving our

1 arguments, same arguments on our end.

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MS. OLALDE: For the record I am nodding.

- Q. (By Mr. Silberstein) Can you answer about the need or desire for a coastal precinct with -- to the extent non-privileged communications with the other commissioners?
- MS. OLALDE: And just for the record, I am -- that would entail conversations that were not had with Dale Oldham, and same objection, same instruction for conversations that were had with Dale Oldham.
- So if it was outside of a conversation with Dale Oldham, you can answer.
- THE WITNESS: Can I get clarification?

 At what point?
 - Q. (By Mr. Silberstein) At any point during your -- during the 2021 redistricting process.
 - A. After the maps came out, there was a little bit of discussion -- I don't remember who with -- about the fact that, "Wow, a coastal precinct."
 - Q. So the first discussion about a coastal precinct came after the maps were enacted?
 - A. From my end, yes.
 - Q. Back to the two meetings we've been discussing, did you discuss the communities of interest during these meetings? Specifically did you discuss

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(By Mr. Silberstein) In the -- in the 2021 redistricting process, did you receive racial demographic information from Mr. Oldham or any other redistricting counsel? MS. OLALDE: Same objection and same instruction, which is attorney-client privilege, attorney work product, and instructing the witness not to answer. (By Mr. Silberstein) Did you receive racial Ο. demographic info from Paul Ready? MS. OLALDE: I am going to instruct the witness not to answer as to communications with counsel for the county on the basis of attorney work product and also attorney-client privilege. I instruct you not to answer. Q. (By Mr. Silberstein) Did you receive any racial demographic information from Nathan Sigler? Not that I recall. I mean, no. I mean, I Α. don't think so. How about from another member of commissioners Q. court or any of their staff? Α. No. You never received racial demographic Ο. information from anybody?

Not that I recall.

Page 303 1 MS. OLALDE: Objection. Objection. 2 To the extent your answer would involve 3 any kind of attorney-client privileged information, 4 attorney work product, I instruct you not to answer. 5 Otherwise you can answer. 6 THE WITNESS: Outside of that, not that I 7 recall. 8 MR. SILBERSTEIN: Well, we won't need a 9 countdown because the moment has come. But as you 10 know, NAACP plaintiffs will reserve the right to keep 11 the deposition open pending determination of the 12 attorney-client privilege issues by the court. Do you 13 have any questions? 14 MS. OLALDE: Defendants will reserve. 15 MR. SILBERSTEIN: That concludes the 16 deposition. 17 THE VIDEOGRAPHER: Going off the video 18 record. The time is 6:01. 19 (Deposition concluded at 6:01 p.m.) 20 21 2.2 23 24 25

EXHIBIT 4

Excerpts from the Deposition of Mark Henry on January 17, 2023

From Page: Line Number	To Page: Line Number
141:1	141:19
141:20	143:9
204:21	205:21
241:20	242:5
242:6	243:2
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260:19	261:11
261:17	262:14
262:15	262:18
262:19	265:8
265:18	266:4
266:13	266:23
266:24	267:4

Page 1 1 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS 2 GALVESTON DIVISION 3 HONORABLE TERRY) 4 PETTEWAY, et al.)) Case No. 3:22-cv-00057 5 VS.) 6 GALVESTON COUNTY, et al.) 7 ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY 8 **JANUARY 17, 2023** 9 ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY, 10 produced as a witness at the instance of the Plaintiff and 11 12 duly sworn, was taken in the above styled and numbered 13 cause on Tuesday, January 17, 2023, from 9:08 a.m. to 14 6:07 p.m., before Janalyn Elkins, CSR, in and for the 15 State of Texas, reported by computerized stenotype 16 machine, via Zoom, pursuant to the Federal Rules of Civil 17 Procedure and any provisions stated on the record herein. 18 19 20 21 22 23 24 25

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Page 140 1 pull up Document 34. This is going to be Exhibit 20. (Exhibit No. 20 was marked.) 2 3 0. (BY MS. KLEIN) While we're waiting for it to 4 load, let me ask you, what was your expectation for the 5 scope of work your redistricting counsel would provide 6 for you in the 2021 redistricting process? 7 What was my expectation about the scope of his 8 work? What did you think Holtzman Vogel was going to 9 10 do for you with respect to the 2021 redistricting 11 process? 12 I -- well, I want to be clear that my belief 13 was that Dale was really the person that I was hiring. 14 Holtzman Vogel comes with him. I understand that. But 15 that Dale would get us a legally compliant map that gets 16 us in balance for the -- with the census data we have 17 available. 18 Q. So your understanding was that Dale would draft 19 the map for you? 20 Α. Yes. 21 Did you have the understanding he would draft 22 several maps for you? 23 I don't know that I gave him an upper and lower Α. 24 The more maps he drafts, the more he charges us. 25 But, you know, it could be more than one.

Page 141 1 Did you give him any concept maps or 2 description before he started drafting? 3 A. Concept maps, no, I don't know how to do that. 4 Drafts -- I'm sorry. Direction --5 MR. RUSSO: Before you complete, facts 6 related to the representation, legal -- the legal services are okay, but don't provide or disclose 7 8 communications between you and Mr. Oldham specifically 9 related for legal services. 10 THE WITNESS: Well, I think that's what I 11 would be answering. 12 MR. RUSSO: Well, the difference being the 13 facts as to -- again, you talked about what he was 14 supposed to do for you. 15 THE WITNESS: Okay. 16 MR. RUSSO: That's fine. But how he's 17 going to do it is a different question. Do you 18 understand? 19 Yes, I think. THE WITNESS: 20 Q. (BY MS. KLEIN) Let me separate this out. 21 not going to ask you about what Dale thought about the 22 legal requirements. I'm not going to ask you what 23 Mr. Oldham thought, you know, about what was legally 24 required or advice he gave you specifically.

But I do want to know about, you know, the

Page 142 1 drafting process, just the maps and the ideas you had, 2 not about whether they were legal or not or anything, 3 but just if you had an idea geographically -- putting 4 all the legal stuff aside if you had an idea 5 geographically that you shared with Mr. Oldham when you 6 retained him about what the maps or proposed maps should look like? 7 8 THE WITNESS: Is that okay? 9 MR. RUSSO: There's no question pending. 10 She's just making a statement so... 11 (BY MS. KLEIN) So I'll ask the question. 12 you share with him any geographic concept ideas about 13 what one or more proposed maps should look like? 14 Again, you can answer in hiring MR. RUSSO: 15 and what the general retainage was about and for. 16 specifics as to him providing legal services or 17 financial matters or what the facts could be related to 18 specific advice he was providing are off the table. 19 Well, then I guess I can't THE WITNESS: 20 answer that. 21 MS. KLEIN: Okay. I'm going to interpose, 22 just for the record preserve the right -- because I 23 understand this is related to an issue that's pending 24 before the Court. So -- so I'm going to just preserve 25 the right to ask that question again if we get a

Page 143 1 different determination from the Court in the future on 2 this issue. But I'm going to keep asking this line of 3 questions and just to preserve our rights. MR. RUSSO: I understand. 4 MS. JAYARAMAN: Hi, this is Tharuni 5 Jayaraman for the United States. The United States also 6 7 joins in preserving. 8 MS. RICHARDSON: Petteway plaintiff joins 9 in the reservation as well. 10 (BY MS. KLEIN) Apart from wanting a legal map, Ο. 11 did you have any other goals or objectives for how the 12 county commissioners' new precincts should look? 13 MR. RUSSO: Same reservation in terms of 14 the attorney-client privilege. To the extent that you 15 can describe the general retainage, that's okay. 16 would waive --17 THE WITNESS: Can I step out and ask him a 18 question? Because I don't know -- I just don't know if 19 this is privileged or not. 20 MS. KLEIN: We can go off the record if you 21 want. 22 THE WITNESS: Yes. 23 MS. KLEIN: But before that, let me just 24 clarify. That question, I didn't ask anything about an 25 attorney anywhere. I'm just asking about Judge Henry's

Q. And it says -- and on the far right is a privilege note, (Reading:) Communication from map-drawer to redistricting counsel, re: preparation of first draft map for legal review and posing questions re: redistricting constitutional requirements and traditional redistricting criteria.

So this was sent from -- we can see in the columns from Tom Bryan to Jason Torchinsky. So -- and Tom Bryan, you said you -- earlier I remember you saying you heard about his name in prep.

- A. Just recently, right.
- Q. Okay. And he's -- and did you become aware that he was a technical expert for map drawing used during the process?

MR. RUSSO: Hold on a second. Do not reveal communications between yourself and attorneys in prep session. So other than that you can answer.

THE WITNESS: Okay.

MR. RUSSO: If you knew about him ahead of time, fine.

- Q. (BY MS. KLEIN) Are you aware now standing here today that Tom Bryan was a map drawer that provided technical expertise?
- MR. RUSSO: Same objection. On attorney-client privilege to the extent that you learned

	Page 205
1	that during conversations with attorneys.
2	MS. KLEIN: So an underlying fact is not
3	privileged just because counsel hears it.
4	MR. RUSSO: You're asking him whether he
5	knows a person and
6	MS. KLEIN: I'm not asking
7	MR. RUSSO: he's already told you that
8	he learned about it in prep. You're continuing to ask
9	him about how he learned about it.
10	MS. KLEIN: I want to know
11	MR. RUSSO: So you're out of bounds. Real
12	simple, you're asking about privileged communications.
13	MS. KLEIN: I'm asking about a fact
14	whether he's aware of a fact.
15	MR. RUSSO: You can ask him other than his
16	communications with counsel whether he's aware of who
17	Tom Bryan is.
18	MS. KLEIN: Well, we're just going to have
19	to agree to disagree on this point.
20	MR. RUSSO: Well, I'm not creating a
21	privilege.
22	Q. (BY MS. KLEIN) So this map that Tom Bryan sent
23	to Mr. Torchinsky, are you aware of whether you saw this
24	map before it was sent from Tom Bryan to Mr. Torchinsky?
25	A. I doubt I did.

Page 241 1 to have been true for the other commissioners? A. Do not know. 2 3 Ο. And then the goal was to have -- the last 4 sentence says, (Reading:) There was a sense that the 5 prior map looked gerrymandered. 6 Do you agree with that statement? I do. 7 Α. What does "gerrymandered" mean to you? Ο. 9 Moving lines in a -- in not necessarily in a Α. 10 sensible manner in order to achieve a specific goal. 11 And which part of the prior map looked 12 gerrymandered? 13 Α. Precinct 3. And I understand it had to be 14 so... 15 Q. What do you mean it had to be? 16 My understanding from the 2011 redistricting is we had to make every effort to keep a majority/minority 17 18 precinct. And the only way we could achieve that was to 19 have the precinct look like it did. 20 So you knew that by changing things the way you 21 did in Map Proposal 2 you were getting rid of that 22 majority/minority precinct, right? 23 MR. RUSSO: Objection, calls for 24 speculation. 25 THE WITNESS: And what I know would have

Page 242 1 come to me through one of my lawyers. MR. RUSSO: Object on the basis of 2 3 attorney-client privilege. To the extent the 4 conversations she asked about happened with your 5 lawyers, do not disclose it. 6 (BY MS. KLEIN) Were you aware -- I'm not 7 asking you what your lawyers told you or whether you 8 agreed with it or whether you -- any of those 9 discussions. 10 But when you chose Map Proposal 2, at that 11 moment in time you were aware, weren't you, that that 12 majority/minority Precinct 3 that you had to keep in 13 2011 that you were breaking that up between all four 14 remaining precincts, right? 15 MR. RUSSO: Objection to the extent it 16 calls for a legal conclusion. And same objection 17 related to attorney-client privilege. 18 THE WITNESS: Yeah, the information would 19 have come from an attorney working on our behalf. 20 MS. KLEIN: Okay. I'm going -- I'm just 21 going to preserve for the record that I dispute that 22 privilege objection and we're going to reserve the right 23 to call the commissioner back once we get a court

Petteway will join.

MS. RICHARDSON:

determination on it.

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Page 243 1 MS. JAYARAMAN: United States joins as well. 2 3 0. (BY MS. KLEIN) Okay. The fourth factor, I'm reading from the page, considered -- was minimizing the 4 5 splitting of voting precincts. Do you know what that 6 one means? 7 I assume that what they are saying here is that 8 we did not want to -- well, some voting precincts had to 9 be split. They were overpopulated. But except for those voting precincts, trying not to split up voting 10 11 precincts further. 12 Q. What -- isn't it true that the Commissioner's 13 Court adopted voting precincts after this redistricting 14 cycle? 15 I do not remember. No, I thought we did it --16 I thought we did it the same day. 17 So you did it either the same day or after, 18 right? 19 Probably. Α. 20 Q. So if you were passing voting precincts either 21 the same day or after, why did you have to -- that means 22 that you were revising them, right? 23 A. We had to change some of them because we were

overpopulated and you had another group threaten to sue

us if we didn't get the population down to less than

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- Republican, for example, leaning precinct, he would rather not get it changed be a Democrat leaning precinct.
- Q. What about Commissioner Holmes? Are you aware of how his precinct, which we've already talked about, was split in the new map between four, how it would be impacted by as far as partisan composition?
- A. This is going to come back to a conversation from my lawyer to me.
- Q. So you were aware, but whatever you were aware of came from your attorney, right?
- MR. RUSSO: Let me object and respond to that to the extent you have to disclose attorney-client privileged communications. And I'm going to instruct him not to answer.
 - Q. (BY MS. KLEIN) So without telling --
- MS. KLEIN: So I'm going to reserve our prior right to recall him as we've already stated on the record several times.
 - MS. JAYARAMAN: The United States joins.
 - MS. RICHARDSON: Petteway joins.
- Q. (BY MS. KLEIN) And so without disclosing the content of those conversations, you talked with your counsel about partisan composition?
 - A. I would more accurately describe it as he told

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Page 260 1 cut things down a little bit if I can just confer with the other counsel. 2 3 VIDEOGRAPHER: The time is 3:16. Off the 4 record. 5 (Brief recess.) 6 VIDEOGRAPHER: The time is 3:37. Back on the record. 7 8 0. (BY MS. KLEIN) I'm just going to ask you a few 9 follow-up questions to clarify a thing that we just went 10 over. 11 Α. Okay. 12 First of all, you mentioned that you had 13 discussed -- maybe discussed criteria with one of the 14 commissioners but not more. Which -- which commissioner 15 were you referring to? 16 I don't know if I said criteria. But as far as 17 the process -- and maybe it was criteria. I don't 18 recall. Commissioner Apfel. 19 So we have this back and forth privilege 20 objection and you were saying that -- when I asked you 21 about racial data, about partisan data, you said 22 whatever you knew you would have heard from your 23 attorneys. Can you just specify which attorneys you're 24 thinking of when you said your attorneys? 25 THE WITNESS: That's okay?

MR. RUSSO: Yeah. I'm sorry. I'm just -- which conversation are you speaking about?

Q. (BY MS. KLEIN) Right before the break I was asking, you know, with respect to your awareness of, you know, racial breakdown by Map Proposal 2 district and your awareness of that.

And you said that you couldn't answer -- if

I remember correctly, you said you couldn't answer

because it was told to you, whatever you knew was told

to you by your attorneys. Do you remember that?

A. Yes.

- Q. So which is who, which attorneys is what I'm asking?
 - MR. RUSSO: You can answer that.
- THE WITNESS: Dale Oldham primarily. To a lesser extent Joe Nixon in 2011-2012.
- Q. (BY MS. KLEIN) Okay. And Just to clarify the privilege objection and whether or not you're going to answer, so you -- your position is you are not willing to confirm whether you were aware of any of these, you know, racial data or partisan data facts at a later date after learning them from an attorney, correct?

MR. RUSSO: Well, let me just tell you what my objection is. It's not to reveal conversations that he or information he got from the attorney. If he got

it later from someplace else, that's -- that's not what we're objecting to. It's not a point in time, in other words. It's who the conversation was with.

Q. (BY MS. KLEIN) So you are not willing -pursuant to your counsel's instruction, you are not
willing to tell me whether you were aware of a
particular fact if that fact was told to you by your
attorney?

MR. RUSSO: That's like it's an oversimplification of our objection but...

THE WITNESS: And I will also say that that's the only place I got the information from. So there was not a point where someone else gave me information that would not be privileged information.

- Q. (BY MS. KLEIN) So you are not willing to say whether or not you were aware of a fact later if that fact was told to you by counsel and only counsel?
 - A. I guess, yes.

MS. KLEIN: So is that attorney-client privilege?

MR. RUSSO: That's -- I think that's an oversimplification. What we would need to get into this is particular questions on the record or -- we've had this conversation. You've asked questions and we've objected. To be able to just sort of incapsulate the

argument here, I mean, you can look at the letter brief and go into the witness with it is probably improper.

But the point is it's going to -- it dependent upon the question that you're asking the way you're asking him.

MS. KLEIN: I am going to be fully forthright that I do not understand your privilege objection and the basis for it. So I am trying to understand that you are instructing your -- and you're not the witness in this and that's why I'm talking to him because he's following your advice.

But -- and I want to make sure he understands what he is not willing to provide. I want to make sure the witness understands what testimony he is not willing to provide in this deposition. So that's why I'm going through him. I'm not trying to get between you two.

MR. RUSSO: Sure.

MS. KLEIN: And I'm -- I'm just confirming that if he was shown -- if he was shown partisan data from his attorney, he is not willing to testify about his awareness of that partisan data at a later date because he says he only got it from his attorney. Am I understanding it correctly?

MR. RUSSO: No, again. That's over -- overly simplified. The point of the objection and the

privilege is to prevent disclosure of communications related to the provision of legal services. So to the extent that the facts are provided with a specific regard and primarily for the purpose of providing legal services, those communications are not going to be disclosed.

MS. KLEIN: So if I don't -- I don't care about the context of this. I don't care if he was -- why he was reviewing them. I don't care what questions about legal advice he was -- I don't care about any of that.

All I want to know is if at a later date and specifically when he was choosing Map Proposal 2, I want to know what data he was aware of at the point he was choosing Map Proposal 2, which I believe was, based on our testimony, around October 29th when he made that Facebook post.

MR. RUSSO: Right. And here's the answer to my response and this is what I've instructed the witness. To the extent that provision of data or facts is balled up with Mr. Oldham providing legal services, he can't answer that question. If it's just here's some facts, that's it. That's a different story. If it's just here, look at the -- look at the data.

MS. KLEIN: But I'm not asking for the

Page 265 1 context of them at all. I'm not going to follow up --2 MR. RUSSO: I get it. And the problem is 3 is that we've got to rely on the witness to say the 4 communication basically was part of providing legal 5 services, and I think he's established that. 6 But -- so the idea or notion that, well, 7 you know, there are objections just based upon one thing 8 or another is -- again, it's oversimplifying. 9 MS. KLEIN: All right. Maybe I'll just 10 probe a little bit. 11 (BY MS. KLEIN) How was the discussion of 12 partisan data part of the provision of legal advice? 13 mean, was -- let me ask this first. 14 Was any discussion you had with your 15 lawyers about partisan data part of the provision of 16 legal advice? 17 Α. What was that? Was the -- was any -- you said that you 18 Q. 19 couldn't answer what -- you couldn't answer me what 20 exact partisan data you had seen when you voted for Map 21 Proposal 2 or before you had voted for Map Proposal 2 22 what you were aware of because you had learned that from 23 your attorney. So let me ask you this.

was that part of you seeking or them providing specific

When you learned that from your attorney,

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Page 266 1 legal advice? 2 I'd say yes. It wasn't strictly -- that's it. 3 MR. RUSSO: But that's where the privilege 4 applies. 5 Ο. (BY MS. KLEIN) You know -- so is your 6 understanding that compliance with state and federal law 7 relates to the partisan composition of the precincts 8 you'd be voting on? 9 MR. RUSSO: Object as speculative and calls 10 for a legal conclusion. 11 THE WITNESS: So I would ask again. 12 I --13 Q. (BY MS. KLEIN) Was -- is your understanding 14 based on that answer that the partisan composition of 15 the enacted precincts for commissioners you'd be voting 16 on was related to their legal compliance to whether they 17 were legally compliant? 18 I can't say --Α. 19 MR. RUSSO: You responded that the 20 discussion that you're asking about factually relates to 21 the provision of legal services. That's all we can 22 provide you. I mean, that's where the privilege 23 applies. So I think we've established that. 24 Ο. (BY MS. KLEIN) So what would you say -- so if 25 you learned certain facts from an attorney, are you

- saying that you can never discuss that again with anybody?
- A. I think that I'd be saying that I am allowed to not discuss that with anybody.
- Q. So have you talked with anybody besides your attorneys about the partisan composition of the enacted 2021 commissioner's precinct map?
- A. I don't know who it would be. Honestly, most people don't care.
- Q. If a constituent asked you, hey, when you voted for Map Proposal 2, did you know that, you know, each commissioner's precinct was going to be a Republican precinct, how would you answer that question?
 - A. My belief would be yes.
- Q. And why would your belief be yes to that question?
- A. Because I simply don't think it's possible to draw a precinct that would elect a Democrat without making it look like a handprint as I described it.
 - Q. And why do you believe that?
- A. Just based on the numbers that I see in the general election. If 34 percent tend to vote Democrat in a gubernatorial year and they're all spread all across the county, you don't have 25 percent in any one location.

EXHIBIT 5

Excerpts from the Deposition of Nathan Sigler on December 19, 2022

From Page: Line Number	To Page: Line Number
71:23	72:12
136:14	138:11

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Page 1
 1
              IN THE UNITED STATES DISTRICT COURT
                   SOUTHERN DISTRICT OF TEXAS
 2
                       GALVESTON DIVISION
 3
     HONORABLE TERRY PETTEWAY,
     et al.,
 4
                                   )
                Plaintiffs,
 5
                                   ) Case No. 3:22-cv-00057
                                   )
                vs.
 6
     GALVESTON COUNTY, et al.,
 7
                Defendants.
 8
9
10
11
                   REMOTE ORAL DEPOSITION OF
12
                         NATHAN SIGLER
13
                       DECEMBER 19, 2022
14
                         9:14 a.m. CST
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16
17
                    Witness Appearing From:
18
                        Galveston, Texas
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21
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24
             Conducted Remotely Via Videoconference
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Page 2
1
                            APPEARANCES
               REMOTE
2
    ON BEHALF OF THE UNITED STATES:
3
         MS. THARUNI JAYARAMAN
         MS. CATHERINE MEZA
4
         MR. BRUCE GEAR
         MS. K'SHAANI SMITH
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         CIVIL RIGHTS DIVISION
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         Galveston, Texas 77550
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         jrusso@greerherz.com
         jraschkeelton@greerherz.com
25
```

Page 3 1 ON BEHALF OF THE NAACP PLAINTIFFS (Dickinson Bay Area Branch NAACP, Galveston Branch NAACP, Mainland Branch NAACP, Galveston LULAC Council 151, Edna 2. Courville, Joe A. Compian, and Leon Phillips): 3 MS. KATHRYN GARRETT 4 MR. RICHARD MANCINO WILKIE FARR & GALLAGHER, LLP 5 787 Seventh Avenue New York, New York 10019 kgarrett@wilkie.com 6 rmancino@wilkie.com 7 MS. MOLLY ZHU WILKIE FARR & GALLAGHER, LLP 8 300 North LaSalle Drive 9 Chicago, Illinois 60654-3406 mzhu@wilkie.com 10 MR. JOAQUIN GONZALEZ 11 MS. SARAH CHEN TEXAS CIVIL RIGHTS PROJECT 12 1405 Montopolis Drive Austin, Texas 78741 13 joaquin@texascivilrightsproject.org sarah@texascivilrightsproject.org 14 15 16 ALSO PRESENT: 17 Ms. Brittany Wake - Civil Rights Analyst, Voting Section, Civil Rights Division, Department of Justice 18 19 Mr. Clint Thomas - Veritext Zoom Tech 20 21 2.2 23 24 25

Clark to discuss the conflicts?

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- A. It wasn't specifically to discuss the conflicts. We would just review the maps, and if there was something of note, that we noticed a split, it wasn't necessarily just me. It could be anybody that discovered it.
- Q. When you say "reviewed the maps," what maps were you reviewing with Commissioner Clark?
- A. Of the layers from the state, the commissioner precincts, and the voting precincts.
- Q. And you said it could be anybody that discovered it. Were there other --
 - A. I'm sorry. You cut out.
- Q. Sorry. You said -- you said that there may be anybody that discovered it. Were there other people also looking for conflicts?
 - A. I don't know.
- Q. So what did you mean by "anybody that discovered it"?
- A. Commissioner Clark could have discovered some. Dale could have discovered some. Beyond that, I don't know.
- Q. Why were you meeting with Mr. Oldham to discuss these splits?
 - MR. RUSSO: Counsel, let me interpose an

- objection just to remind the witness not the disclose privileged communications between he and Mr. Oldham, to the extent there were attorney-client privileged conversations. But to the extent you can answer the question without disclosing those communications, you can answer.
 - A. Could you repeat the question?
 - Q. Sure. Why were you meeting with Mr. Oldham to discuss these conflicts?
- 11 A. I'm going to take the advice of my

12 | counsel.

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MS. JAYARAMAN: Sure. Cathy, can you pull up Tab 6, please.

MR. RUSSO: Same objection.

- 15 (Exhibit 5 marked)
 - Q. Believe that Sigler Exhibit 5 should now be up for -- up in the Marked Exhibits folder. Do you have it in front of you?
 - A. Yes.
 - Q. Great. Mr. Sigler, I'm showing you what has been marked as Sigler Exhibit 5 which is Bates stamped DEFS00020457 through DEFS00020461. Have you seen Sigler Exhibit 5 before?
 - A. Thank you. Sorry. I'm taking over the mouse for a second.

of perjury that the foregoing is true and correct?

A. I do.

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- Q. Okay. So now using the printed page numbers on the bottom of Sigler Exhibit 13, let's turn to page 18 of Sigler Exhibit 13.
 - A. You said number 18? I'm sorry.
- Q. Yes, 18 using the printed page numbers, and that's page, yeah, 18. Please let me know when you're there.
- MR. RUSSO: The page numbers are on the bottom.
- 12 A. Okay. Oh, okay. Okay.

 13 MR. RUSSO: Okay. He's ready.
 - Q. Okay. At the very top of the page, it says, "On November 1st, 2021, Nathan Sigler and Dale Oldham scheduled a Zoom call. Upon information and belief, this call concerned the verification of what was posted to the website." Do you see that?
 - A. Yes.
 - Q. Would you agree with defendants' assertion that your Zoom call on November 1st, 2021, with Mr. Oldham concerned the verification of what was posted to the Galveston website?
 - A. Could you repeat that question, please?
 - Q. Sure. Do you agree with defendants'

assertion that your Zoom call on November 1st, 2021, with Mr. Oldham concerned the verification of what was posted to the Galveston website?

A. I believe so.

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- Q. What do you mean by "I believe so"?

 MR. RUSSO: Let me just caution the

 witness that we're not disclosing conversations

 other than what is stated in the interrogatories.

 So if there are other conversations with Mr. Oldham,

 we're not disclosing that on the basis of privilege.

 To the extent you can answer her question,

 you can.
- A. And is this regarding commissioner -- the redistricting for commissioner precincts or redistricting for voting precincts?
- Q. I do not know. I wanted to know if you agreed with defendants' assertion that your Zoom call on November 1st, 2021, with Mr. Oldham concerned the verification of what was posted to the Galveston County website.

MR. RUSSO: Objection, asked and answered.

- A. I don't remember the specifics of what was talked about in that conversation.
- Q. When I asked the question a moment ago, you said, "I believe so." And then I asked, "What

do you mean by 'believe so,'" and then I don't

believe you answered that. So what did you mean by

"I believe so"?

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MR. RUSSO: Again, the witness is being admonished in connection with disclosing conversations that are between the county and an attorney hired to represent them on the basis of attorney-client privilege.

To the extent you can answer the question without revealing such other communications, you can answer.

- Q. So, Mr. Sigler, do you disagree that your November 1st, 2021, Zoom call with Mr. Oldham concerned what was posted to the Galveston County website?
 - A. Can you repeat that question, please?
- Q. Absolutely. Do you disagree that your November 1st, 2021, Zoom call with Mr. Oldham concerned what was posted to the Galveston County website?
- A. I do not. I don't recall what the specifics of the conversation were.
- Q. Okay. What was posted to the Galveston County website during the 2021 redistricting cycle?
 - A. I'm not sure. I'm not sure if it was -- I

EXHIBIT 6

Excerpts from the Deposition of Tyler Drummond on January 18, 2023

From Page: Line Number	To Page: Line Number
87:16	89:1
89:2	90:2
197:16	199:6
199:7	199:16
200:6	200:15

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Page 1
1
              IN THE UNITED STATES DISTRICT COURT
              FOR THE SOUTHERN DISTRICT OF TEXAS
 2
                      GALVESTON DIVISION
 3
      HONORABLE TERRY
 4
      PETTEWAY, et al.,
                                CASE NO. 3:22-cv-00057
5
        Plaintiffs,
     V.
 6
 7
      GALVESTON COUNTY, et
8
      al.,
9
        Defendants.
10
     ******************
11
               ORAL AND VIDEOTAPED DEPOSITION OF
12
                        TYLER DRUMMOND
13
                       JANUARY 18, 2023
     ****************
14
15
          ORAL AND VIDEOTAPED DEPOSITION of TYLER
16
     DRUMMOND, produced as a witness at the instance of the
     Plaintiffs, and duly sworn, was taken in the
17
     above-styled and numbered cause on January 18, 2023,
     from 9:12 a.m. to 5:13 p.m., before Mendy A.
18
     Schneider, CSR, RPR, in and for the State of Texas,
     recorded by machine shorthand, at the offices of
     GREER, HERZ & ADAMS, 2525 South Shore Boulevard,
19
     Suite 203, League City, Texas, pursuant to the Texas
20
     Rules of Civil Procedure and the provisions stated on
     the record or attached hereto; that the deposition
21
     shall be read and signed.
22
23
24
25
```

		Page 2
1		APPEARANCES
2		
	FOR	THE DEFENDANT:
3		ANGIE OLALDE
		JOSEPH R. RUSSO, JR.
4		JORDAN RASCHKE ELTON
_		GREER, HERZ & ADAMS
5		2525 South Shore Blvd., Suite 203
		League City, Texas 77573
6		281.480.5278
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8	F∩P	THE NAACP:
0	FOR	RICHARD MANCINO (Real-time)
9		KATHRYN GARRETT (Real-time)
		DIANA C. VALL-LLOBERA (Remote and real-time)
10		ANDREW SILBERSTEIN (Remote)
		MOLLY ZHU (Real-time)
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17		schene texasciviliightsproject.org
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	FOR	TYLER DRUMMOND:
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25		mforero@holtzmanvogel.com
25		

Page 3 1 A P P E A R A N C E S (CONTINUED) 2 FOR THE DEPARTMENT OF JUSTICE: 3 THARUNI A. JAYARAMAN (Real-time) CATHERINE MEZA (Real-time) BRUCE GEAR (Remote) 4 US DEPT OF JUSTICE 5 950 Pennsylvania Avenue NW Washington, DC 20530 202.305.5194 6 Tharuni.jayaraman@usdoj.gov 7 ZACHARY NEWKIRK (Remote) 8 PERKINS COIE 700 13th Street, NW, Suite 800 9 Washington, D.C. 20005 202.654.6200 10 11 FOR PLAINTIFF HONORABLE TERRY PETTEWAY: VERONICA RICHARDSON 12 MARK GABER Campaign Legal Center 13 1101 14th St. NW, Suite 400 Washington, DC 20005 14 202.736.2200 Mgaber@campaignlegal.org 15 Vrichardson@campaignlegal.org 16 ALSO PRESENT: 17 DANIEL ALPIZAR, Videographer BRITTANY WAKE DAWUAN NORWOOD 18 19 20 21 22 23 24 25

Page 87 1 Α. Correct. 2 Okay. Now, I don't want to get into -- well, Q. 3 was this a -- a -- a phone call to discuss whether Mr. Oldham should be retained or could be 4 5 retained in connection with the redistricting process? I can't recall the -- if this happened after 6 7 that e-mail with Paul Ready that he copied me on or 8 not. 9 Ο. Yeah. 10 Α. Did it? 11 I believe so, yes. 0. 12 Α. This would have been in follow-up to 13 discuss whatever Paul Ready and Dale Oldham had been 14 working out from this e-mail that you showed me 15 previously. 16 Okay. Was there a discussion on that phone 17 call of what services Mr. Oldham would provide? I believe so. 18 Α. 19 Okay. Do you recall what services Mr. Oldham Q. 20 said he could provide? Not specifically, outside of retaining him 21 22 for the redistricting. Like specific services I can't 23 recall. 24 Q. Okay. 25 Yeah. Α.

Page 88 1 Was there a discussion of price? 0. 2 Possibly. I can't recall the specifics. Α. 3 was two year -- two years ago, over two years ago, so 4 it could have. 5 Okay. Did Judge Henry have anything to say 0. 6 on this call? 7 For example, did he -- did he explain to Mr. Oldham what he was looking for through having 8 9 Oldham work on the redistricting process? 10 Α. Possibly. I don't recall the specifics in 11 the conversation. 12 Okay. Do you recall a discussion on this Q. call of Precinct 3? 13 14 MS. OLALDE: Objection to the extent 15 that this request would reveal attorney-client 16 privileged data or information, communications with 17 Mr. Oldham, and instruct the witness not to answer to 18 that extent. Otherwise, you can answer. 19 (BY MR. MANCINO) Can you figure that out? Q. 20 Can you answer? You asked if I recall if Precinct 3 was 21 Α. 22 brought up? 23 Yeah. 0. 24 Α. Was that your question? 25 Yeah. 0.

Page 89 1 No, I can't recall. Α. 2 Okay. Was the Bolivar Peninsula a topic that Q. 3 came up? 4 MS. OLALDE: Object --5 Q. (BY MR. MANCINO) And I don't know what, you know, may have been said about it. 6 7 Α. Yeah. 8 Q. Just the topic. 9 Α. Sure. 10 MS. OLALDE: And, again, I'm going to 11 object to the specifics of conversations with 12 Mr. Oldham on the basis of attorney-client privilege 13 and instruct the witness not to answer to the extent 14 that your answer would contain any communications that 15 occurred. Otherwise, you can answer. 16 Petteway plaintiffs MS. VALL-LLOBERA: 17 would like to preserve our prior objections to any communications related to Dale Oldham as those issues 18 19 before the court, we would just like to --20 (Discussion off the record.) 21 MS. VALL-LLOBERA: Pettteway plaintiffs 22 would like to preserve our prior objection to this 23 privilege claim just based on prior decisions 24 currently before the court regarding Dale Oldham's 25 attorney-client privilege status, so...

Page 90 1 MS. MEZA: And the United States joins 2 in that preservation of objection. MR. MANCINO: Okay. Let's look at 3 4 Tab 12. 5 (Marked Drummond Exhibit No. 8.) (Discussion off the record.) 6 (BY MR. MANCINO) Okay. Tab 12 is now going 7 Q. 8 to be Exhibit 8. 9 (Discussion off the record.) 10 (BY MR. MANCINO) And it's an e-mail from Paul Q. 11 Ready to an e-mail address dloesq, I believe, at 12 aol.com. And from other information, we've learned 13 that that's Dale -- I'll represent that that's Dale 14 Oldham's e-mail address. 15 And it's a chain of e-mails, is it not, 16 Mr. Drummond? 17 Α. It appears, yes. 18 Q. Okay. And you're on these e-mails at 19 least --20 Α. Some. 21 -- at some point in the chain? 22 Α. I'm copied on some of the e-mails in Yes. 23 this chain. 24 Okay. What was -- what was -- what was this 0. 25 e-mail chain concerning itself with as it relates to

Page 197 1 retention of the Holtzman firm would be considered 2 didn't make into the public record? 3 I'm sorry, rephrase the question. Α. 4 0. Yes. 5 Did you ever hear or learn that the -the Holtzman's engagement letter and this other 6 7 documentation, which was backup for the agenda item for the Commissioner Court to consider retaining this 8 9 firm didn't make it into the public record? 10 Α. I don't -- I don't recall. 11 Okay. Do you -- do you recall forwarding 0. 12 this same documentation to Mr. Ferguson who made a 13 request for it? 14 I don't recall off the top of my head that I 15 did. 16 All right. Let me just -- we touched Okay. 17 on this before, and by "this," I mean your communications with Dale Oldham. And I just want to 18 19 make a record of -- ask you some questions about 20 topics that you may have discussed with Mr. Oldham --21 Oldham, okay. 22 So Mr. Oldham was retained by the County 23 to assist with the redistricting process? 24 Α. Yes. 25 0. And you had communications with him from time

Page 198 1 to time? 2 Α. Yes. 3 Q. Including telephone conversations? 4 Α. Yes. 5 Q. Okay. In -- in any of your discussions with Mr. Oldham, did you discuss a topic like the 6 7 redistricting criteria to be applied in drawing new 8 maps for Galveston County? 9 MS. OLALDE: I'm going to object to any 10 communications that would have occurred with 11 Mr. Oldham that contain, you know, privileged 12 information. 13 So to the extent you had a conversation 14 with Mr. Oldham that delved into substantive issues 15 like counsel has asked about, I'm going to instruct 16 you not to answer. Otherwise, you can answer. 17 MS. RICHARDSON: Petteway plaintiffs are 18 going to reserve, again, their objection to that --19 the substance of that privilege claim. 20 MS. MEZA: And the United States joins 21 in that reservation. 22 MR. MANCINO: And me too. 23 Α. Can you restate that question --24 Q. (BY MR. MANCINO) Sure. 25 Α. -- before the objection?

Page 199

- Q. In -- in -- in any of your communications with Mr. Oldham, concerning the redistricting work that he was performing, did you discuss what redistricting criteria, if any, he was using?

 MS. OLALDE: Same objection.
 - A. Not that I can recall.
- Q. (BY MR. MANCINO) Okay. Did you discuss with Mr. Oldham any population analyses he might have run?

MS. OLALDE: I'm going to object. It's the same basis for the objection, counsel. Would you like to repeat everything out, or can we just say same? Is that cool with you?

MR. MANCINO: Yeah, that's fine.

MS. OLALDE: Same instruction as well.

MS. RICHARDSON: Same reservation.

- A. Again, not that I can recall.
- Q. (BY MR. MANCINO) In any of these communications -- strike that.

When you were talking with Mr. Oldham, there were occasions when other -- others were present on the call?

- A. Yes.
- Q. Okay. In any of those conversations, was there a discussion about whether and how Mr. Oldham would pull population out of benchmark Precinct 3 and

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Page 200 1 split it up among Precincts 1, 2 and 4? Same First Amendment --2 MS. OLALDE: sorry, same attorney-client privileged objection. 3 And same instruction. 4 5 Α. Yeah, not that I can recall. 6 Ο. (BY MR. MANCINO) Did you discuss with 7 Mr. Oldham, or overhear discussions between Mr. Oldham and somebody else, about whether he did an analysis of 8 9 black voting age population and Latin voting age 10 population in Precinct 3? 11 MS. OLALDE: Same objection based on 12 attorney-client privilege; also work product. 13 And same instruction. 14 MR. MANCINO: Okay. 15 Not that I can recall. Α. 16 (BY MR. MANCINO) Okay. Now, thinking back to 17 what we've covered today, including your interaction with Commissioner Holmes at a time when he was 18 19 commissioner -- well, strike that. 20 Having in mind our prior discussion about 21 Precinct 3, the benchmark Precinct 3, were you aware 22 that Precinct 3, again before the adoption of this new 23 map, had a substantial black and Latino population? 24 Α. Yes. 25 Q. And were you aware that the voters, including

DEFENDANTS' EXHIBIT 1



2300 N Street, NW, Suite 643A Washington, DC 20037 202-737-8808

15405 John Marshall Hwy Haymarket, VA 20169 540-341-8808

January 20, 2021

VIA EMAIL

paul@ready.law
Galveston County, Texas
c/o Paul Ready
Ready Law Firm, PLLC
1300 McGowen Street
Suite 120
Houston, TX 77004

Re: Holtzman Vogel Josefiak Torchinsky PLLC Engagement Letter

Dear Mr. Ready:

We are very pleased to provide legal services to you and to provide this engagement letter which will set forth the current fee arrangement and terms under which Holtzman Vogel Josefiak Torchinsky, PLLC ("Counsel" or the "Firm") will represent Galveston County, Texas ("Client") in connection with legal advice relating to the creation of the Galveston County Commission map.

Specifically, the Firm has been engaged to provide legal representation and advice regarding redistricting in Galveston County, Texas, including provision of a technical expert to draw the map. The firm will be associated with Dale Oldham, P.C. in representation on this matter.

The terms of our engagement, which shall apply to all matters pertaining to this engagement and the relationship between Client and the Firm, are set forth on the following pages. If you approve of the terms, please execute this agreement in the space provided and return it to my office.

At this time, our Texas Bar attorney Phil Gordon (Of Counsel at HVJT), assisted by Dale Oldham and Jason Torchinsky will be primarily responsible for overseeing representation and will serve as your principal contacts with respect to this engagement. Other partners, associates and professional staff will also be engaged to assist as may be appropriate. Please contact us with any questions or concerns that you may have about our work or any other aspect of our representation.

We look forward to working with you and appreciate your confidence in our firm.

Sincerely,

Jill Holtzman Vogel

Commencement of Representation

To protect both Client and Counsel, this agreement will not take effect until Client returns a signed copy of this Agreement.

Legal Fees

Counsel is charging Client a flat fee of Eighty Thousand Dollars (\$80,000) plus any authorized expenses for which Counsel will provide the representation set forth above. This one-time flat fee is to be paid on the following schedule:

- \$10,000 upon execution of this engagement letter;
- \$15,000 per month beginning the month the Texas PL 94 data is released for each of 4 months;
- \$10,000 upon adoption of the maps.

Any additional legal work outside the scope of the representation set forth above will be charged at Counsel's usual and customary hourly fees, including legal fees and expenses to be charged for any litigation over the maps. Hourly fees range from \$350 per hour for junior associates to \$1,300 for senior partners (billed in .25 hour increments). Billable rates are established by the rate for services as measured by the local Washington-area market. Our statements for professional services will be based upon the amount of time spent by partners, associates, paralegals, and other professionals who perform services on your behalf and their respective hourly rates as then in effect

Costs and Expenses

Counsel will bill separately for any out-of-pocket expenses arising out of this agreement, including costs and expenses incurred for computer research, delivery charges, agency costs and filing fees.

Client Discharge or Counsel Withdrawal

Client may discharge Counsel at any time and Counsel may withdraw at any time at Counsel's discretion. In either such circumstance, Client agrees to sign the documents necessary to permit Counsel to withdraw.

Client has been informed that among the events that should be expected to cause Counsel's withdrawal from this matter are Client's breach of any portion of this Agreement (including its payment provisions), Client's refusal to cooperate with Counsel, or to follow Counsel's advice on a material matter, or any other fact or circumstance that would render Counsel's continuing representation unlawful, unethical, or impractical.

Disclaimer of Guarantee

Nothing in this Agreement and nothing in Counsel's statements to Client will be construed as a promise or guarantee regarding any outcome in Client's legal matters.

No advice is given regarding tax consequences, and Counsel specifically is not providing tax advice, although questions relating to tax matters may very well come up during the course of representation. Client agrees to seek tax advice elsewhere, and to hold Counsel harmless from any tax effects.

Effective Date and Severability

This agreement will take effect when Client has performed the conditions stated in paragraph one, but its effective date will be retroactive to the date Counsel first provided services, if earlier. Even if this Agreement does not take effect, Client will be obligated to pay Counsel the reasonable value of any services Counsel may have performed for Client.

The provision of this Agreement is severable. This means that if one or more provisions of this Agreement are found to be void or unenforceable for any reason, the remaining provisions of this Agreement will still apply.

Scope of Client Engagement

Unless otherwise noted, the client for purposes of this representation is the Client, and not any affiliates of such person or entity.

Counsel represents many other companies and individuals in a variety of matters. It is possible that during the course of the representation, other present or future clients will have disputes with you. As a condition to undertaking the current representation, it is agreed that Counsel may continue to represent or in the future undertake to represent existing or new clients in matters not substantially related to the current representation, even if the interests of such other clients are directly adverse to your interests. This consent shall not apply in the event that during the course of representation Counsel has obtained sensitive, proprietary, or other confidential information, of a non-public nature, that could be used to the advantage of such other client or to your disadvantage in any matter for which Counsel is approached for representation by that client.

Termination of Representation

Client has the right at any time to terminate representation upon notice to Counsel. Such termination does not, however, relieve Client of the obligation to pay for all services rendered and expenses paid or incurred on behalf of the client prior to or in connection with such termination.

Conclusion of Representation

The Counsel-client relationship is terminated upon completion of the services that Counsel has been retained to perform. If Counsel is later retained to perform further or additional services, the Counsel-client relationship will be revived subject to these terms of engagement, as they may be supplemented or changed at that time.

Agreed to and Accepted:

Name:	Galveston County, Texas

By: Mark Henry, County Judge

Date: April 5, 2021

DEFENDANTS' EXHIBIT 2

Case 3:22-cv-00057 Document 105-8 Filed on 02/16/23 in TXSD Page 2 of 13 Case No. 3:22-cv-00057 Page 2 of 13

Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sidlar	Commissioner Henry
Questions to County Employees: 1. In your phone conference(s) with Mr. Oldham, what steps were	Apffel 133:22 - 134:17	Giusti Dep. 60:14-61:6	Nathan Sigler	Commissioner Henry
identified that would be taken to undergo the redistricting process? E.g.,		Glusti Dep. 00.14-01.0		
Ex. 2 Apffel Dep. 133:22 - 134:16; Ex. 3 Giusti Dep. 60:14-16.	Page 133	Page 60		
2x127 prici 5cp. 155:22 15 1116, 2x1 5 61450 5cp. 66:17 16:	22 Q. (BY MS. VALL-LLOBERA) Did you identify	14 Q. Can you explain what, if any, guidelines for		
	23 deadlines by which redistricting had to occur?	15 the 2021 redistricting process were discussed amongst		
	24 A. We knew that it had to have	16 the commissioners?		
	25 MR. RUSSO: Let me just interpose	17 MS. OLALDE: Objection to the extent your		
		18 question calls for any response that would reveal		
	Page 134	19 discussions with Mr. Oldham or in executive session.		
	1 the objection.	20 Otherwise you can answer.		
	2 On attorney-client privilege	21 MR. GEAR: Again, we reserve the – our		
	3 grounds, in terms of, you know, the what the	22 right to raise the argument that attorney-client		
	4 process what or what you were doing, is	23 privilege does not apply to Mr. Oldham.		
	5 has already been stated, frankly, on the record. 6 But just be very careful here about	24 Q. (By Mr. Gear) But if you can answer 25 A. That I don't recall.		
	7 revealing conversations between counsel and the	25 A. Tracti don t recail.		
	8 county, related to the redistricting effort.	Page 61		
	9 Other than that, you can answer,	1 Q. So just to be clear, your answer has been you		
	10 which is a very fine line.	2 don't recall if any guidelines were reduced to writing.		
	11 A. My understanding was that we were behind,	3 Does that mean they weren't reduced to writing?		
	12 because the census data had taken so long to come	4 MS. OLALDE: Objection; asked and		
	13 out, and that we needed to finish by the end of the	5 answered.		
	14 year.	6 THE WITNESS: It means I don't recall.		
	15 And so, that timeline was established, just			
	16 because of my understanding. That's the only			
	17 timeline we knew – I knew of.			
Did Mr. Oldham talk to you about redistricting criteria? What	Apffel Dep. 135:4-139:2	Giusti Dep. 52:14-53:4, 296:15-297:12 (see below)		
redistricting criteria were identified in your conversation(s) with Mr.				
Oldham? E.g., Ex. 2 Apffel Dep. 135:4-136:4, 139:3-7; Ex. 3 Giusti Dep.	Page 135	Page 52		
52:14-15, 296:15-18.	4 Q. Did Mr. Oldham talk to you about	14 Q. Do you recall what was discussed related to		
	5 redistricting criteria?	15 redistricting criteria?		
	6 MR. RUSSO: Objection. Don't	16 MS. OLALDE: Objection, same instruction		
	7 objection, based on privilege, and instruct the	17 to the witness not to reveal any attorney-client		
	8 witness not to answer.	18 privileged communications or work product.		
	9 MS. VALL-LLOBERA: And we'll reserve	19 MR. GEAR: And, again, we reserve the		
	10 our arguments that these conversations are not	20 our argument that attorney-client privilege is not		
	11 privileged.	21 does not apply to Dale Oldham.		
	12 MR. RUSSO: The objection is on the	22 Q. (By Mr. Gear) So following the September		
	13 record.	23 meeting with yourself, Mr. Ready, and Mr. Oldham, did		
	14 MS. VALL-LLOBERA: We'll have	24 you have any discussions with commissioners related to		
	15 several of these questions. Would you be amenable	25 redistricting criteria?		
	16 to stipulating that you object and we'll preserve	l		
	17 our arguments, without reiterating our full	Page 53 1 A. I don't recall, sir.		
	18 arguments? 19 MR. RUSSO: Without you re	2 Q. Based on your understanding, was there a		
	20 reiterating your arguments? I mean, I my	3 decision made to establish redistricting criteria?		
	21 objection stands. Whether you argue against it or	4 A. I don't recall that either.		
	22 not, doesn't matter.	A. Luon Crecan triat entrer.		
	23 I mean, if you want to ask all the			
	24 questions, I'll pose the objection as as			
	25 necessary. 1 I understand you don't agree with			
1				
	Page 136			
1	1 our position, but I don't you know, it's			
1	2 deposition procedure. I just need to make sure I			
	3 maintain my and preserve the objections for the			
	4 record.			
	5 Q. (BY MS. VALL-LLOBERA) Did without			
1	6 revealing the substance of any conversations with			
1	7 counsel, as we sit here today, what is your			
1	8 understanding of traditional redistricting			
	9 criteria?			
1	10 A. The county grows by people. The precincts			
1	11 become imbalanced by people. And we are required			
1	12 to continually balance the representation of the			
1	13 people.			
	14 Q. Specifically, how do you have to rebalance			
	15 the populations?			
1	16 A. In my simple little way			
1	17 MR. RUSSO: Let me object – just			
1	18 let me interpose – interpose the objection on			
1	19 attorney-client privilege grounds. And you've 20 heard the basis before.			
	EZU DEATU THE DASIS DETOTE.			
				1
	21 So don't reveal conversations or			
	21 So don't reveal conversations or 22 information you've learned from Dale, related to			
	21 So don't reveal conversations or 22 information you've learned from Dale, related to 23 the redistricting effort.			
	21 So don't reveal conversations or 22 information you've learned from Dale, related to			

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Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
	Page 137			
	1 within compliance with the law. 2 Q. (BY MS. VALL-LLOBERA) Is the only criteria			
	3 for redistricting that the numbers line up?			
	4 A. I don't know.			
	5 Q. You've stated that the imbalances needed to			
	6 be corrected, based on population shifts.			
	7 What do you need to consider anything			
	8 other than population numbers, in redrawing maps?			
	9 A. I don't			
	10 MR. RUSSO: Same objection on 11 attorney-client privilege grounds.			
	12 To the extent you can answer without			
	13 revealing conversations between the county, you,			
	14 and any of your counsel, you can answer.			
	15 MS. VALL-LLOBERA: And we			
	16 preserve			
	17 A. I trust that the people we hired to do the			
	18 job, do it in compliance with the law.			
	19 Q. (BY MS. VALL-LLOBERA) Are there any other			
	20 factors considered in drawing the maps? 21 A. I don't know.			
	22 Q. Earlier, you stated that you were looking			
	23 to – to cut Bolivar.			
	24 Was that a factor that you were considering			
	25 in redrawing the maps?			
	Page 138			
	1 A. No, I wasn't looking to cut Bolivar. I			
	2 wasn't looking to cut anyone. I was understanding			
	3 that in order to balance the the four precincts,			
	4 that I would have to give up something and give it			
	5 to someone else, to to make that to			
	6 accomplish that.			
	7 And so, that's – that's what I understood.			
	8 Q. When looking at what areas you could peel			
	9 off of your district, what factors did you 10 consider?			
	11 A. I've told you, that made sense to me. And			
	12 part of that analysis, in the the Excel			
	13 spreadsheet, I was trying to see how many – I was			
	14 trying to see the numbers by the voting precincts			
	15 to say, okay, we can give up this 103 and 104,			
	16 because I have to for a 20-minute meeting in			
	17 by — in High Island, I have to drive four hours,			
	18 because of the ferry, the geographical split			
	19 between the the island and the peninsula.			
	20 But so, it was I was thinking, okay,			
	21 this — this is what makes sense. If I've got to 22 give something up, I'll give up this.			
	23 Q. Did you consider any other factors?			
	24 A. I wasn't			
	25 MR. RUSSO: Object as vague.			
	. ,			
	Page 139		 	
	1 A considering factors. I was just looking			
	2 at numbers.			
3. What is your understanding of traditional redistricting criteria, based		Giusti Dep. 296:15-297:12		
your conversation with Mr. Oldham? E.g., Ex. 2 Apffel Dep. 139:3-7; Ex. 3				
Giusti Dep. 296:15-18.	3 Q. (BY MS. VALL-LLOBERA) Did Mr. Oldham	Page 296		
	4 discuss any factors?	15 Q. Did during your calls during your calls		
	5 MR. RUSSO: Objection. 6 I'll instruct the witness not to	16 with the other commissioners, did you ever discuss		
	7 answer, based upon attorney-client privilege.	17 traditional redistricting – what traditional 18 redistricting criteria were?		
	7 answer, based upon attorney-client privilege. 8 Q. (BY MS. VALL-LLOBERA) If a constituent	19 MS. OLALDE: Objection; asked and		
	9 asked you about the redistricting process and asked	20 answered. I'm going to instruct the witness not to		
	10 what kind of things you were thinking about in	21 answer to the extent any conversations took place		
	11 redrawing the maps, what would you have said	22 before or with Mr. Dale Oldham on the basis of		
	12 what would you say?	23 attorney-client privilege and also attorney work		
	13 A. I would say our county grew by whatever	24 product.		
	14 number, 80,000 people, whatever the number was. I	25 But to the extent your answer does not		
	15 don't remember the number.	Page 297		
	16 And the law requires us to balance the	1 incorporate those communications you may answer.		
	17 precincts, based on that population, and we've	2 THE WITNESS: With the other		
	18 hired a law firm and a demographer to — to do that 19 for us the best way possible to be within the	3 commissioners, I do not recall that. 4 Q. (By Mr. Silberstein) As you sit right here		
	20 bounds of the law.	4 Q. (By Mr. Siberstein) As you sit right here 5 today, can you name any traditional redistricting		
		6 criteria?		
		7 MS. OLALDE: Objection; asked and		
		8 answered.		
		9 You can answer.		
		10 THE WITNESS: The population, the idea of		
		11 trying to make the precinct lines understandable by the		
		12 public. That's the majority of it.		

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Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler Commissioner Henry
4. What do you need to consider when drawing the maps? E.g., Ex. 2 Apffel Dep. 137:7-138:18.	Apffel Dep. 137:5-138:18		
лупсі дер. 137.7-130.10.	5 Q. You've stated that the imbalances needed to		
	6 be corrected, based on population shifts.		
	7 What do you need to consider anything		
	8 other than population numbers, in redrawing maps? 9 A. I don't		
	10 MR. RUSSO: Same objection on		
	11 attorney-client privilege grounds.		
	12 To the extent you can answer without		
	13 revealing conversations between the county, you, 14 and any of your counsel, you can answer.		
	15 MS. VALL-LLOBERA: And we		
	16 preserve		
	17 A. I trust that the people we hired to do the		
	18 job, do it in compliance with the law.		
	See also response to Question 2		
5. Did Mr. Oldham discuss any factors to consider during the redistricting			
process with you? E.g., Ex. 2 Apffel Dep. 139:3-7.			
	3 Q. (BY MS. VALL-LLOBERA) Did Mr. Oldham		
	4 discuss any factors? 5 MR. RUSSO: Objection.		
	6 I'll instruct the witness not to		
	7 answer, based upon attorney-client privilege.		
	8 Q. (BY MS. VALL-LLOBERA) If a constituent		
	9 asked you about the redistricting process and asked 10 what kind of things you were thinking about in		
	11 redrawing the maps, what would you have said		
	12 what would you say?		
	13 A. I would say our county grew by whatever		
	14 number, 80,000 people, whatever the number was. 15 don't remember the number.		
	16 And the law requires us to balance the		
	17 precincts, based on that population, and we've		
	18 hired a law firm and a demographer to – to do that		
	19 for us the best way possible to be within the 20 bounds of the law.		
Did you receive any materials in your meeting(s) with Mr. Oldham?	20 bounds of the law.	Giusti Dep. 50:23-52:13, 302:1-25	
What materials did you receive? E.g., Ex. 3 Giusti Dep. 50:23-24, 302:1-4.		Page 50	
g, , , , , , , , , , ,		23 Q. And did you receive any materials during that	
		24 meeting related to redistricting criteria?	
		25 MS. OLALDE: I'm going to object to any	
		Page 51 1 request for attorney-client privileged communications	
		2 or attorney-client privileged work product. To the	
		3 extent you're asking about facts, the witness can	
		4 answer.	
		5 But otherwise I will instruct you not to 6 answer.	
		7 THE WITNESS: Okay.	
		8 MR. GEAR: And we will reserve our	
		9 arguments that we do not believe that attorney-client	
		10 privilege applies to Dale Oldham as the redistricting 11 consultant.	
		12 MS. OLALDE: He's an attorney, but yes.	
		13 MS. CHEN: And if you'd like to see we	
		14 sent a letter yesterday to Joseph Russo	
		15 THE REPORTER: I can't hear whoever is 16 talking right now.	
		17 MS. CHEN: Sarah Chen. And I'm just	
		18 noting that we sent a letter with piecemeal on this	
		19 privilege point to Joseph Russo yesterday. If you	
		20 would like to see it, we're happy to send it to you as 21 well.	
		Page 51 (cont)	
		22 MS. OLALDE: Thank you, Sarah. I think	
		23 this is probably something that the court needs to	
		24 resolve at this point, though. I do understand that 25 you sent a letter.	
		Page 52	
		1 Q. (By Mr. Gear) So did you receive any written	
		2 materials related to criteria during the September	
		3 meeting? 4 MS. OLALDE: Objection to any	
		Page 51 (cont)	
		22 MS. OLALDE: Thank you, Sarah. I think	
		23 this is probably something that the court needs to	
		24 resolve at this point, though. I do understand that 25 you sent a letter.	
		Page 52	
		1 Q. (By Mr. Gear) So did you receive any written	
		2 materials related to criteria during the September	
		3 meeting? 4 MS. OLALDE: Objection to any	
		4 MS. OLALDE: Objection to any 5 attorney-client privileged communications or	
		6 attorney-client – attorney work product that may have	
		7 been addressed or discussed during this meeting.	
		8 If you're looking only at facts, you may	
		9 answer only to the extent you have particular facts to	
		10 share but not communications. 11 Q. (By Mr. Gear) So the question is did you	
		12 receive any materials.	
		13 A. I – probably. I don't recall what.	
	+	+	+

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Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
and the county employees.		Page 302	-80	
		1 Q. (By Mr. Silberstein) In the in the 2021		
		2 redistricting process, did you receive racial 3 demographic information from Mr. Oldham or any other		
		4 redistricting counsel?		
		5 MS. OLALDE: Same objection and same		
		6 instruction, which is attorney-client privilege,		
		7 attorney work product, and instructing the witness not 8 to answer.		
		9 Q. (By Mr. Silberstein) Did you receive racial		
		10 demographic info from Paul Ready?		
		11 MS. OLALDE: I am going to instruct the		
		12 witness not to answer as to communications with counsel 13 for the county on the basis of attorney work product		
		14 and also attorney-client privilege.		
		15 l instruct you not to answer.		
		16 Q. (By Mr. Silberstein) Did you receive any		
		17 racial demographic information from Nathan Sigler? 18 A. Not that I recall. I mean, no. I mean, I		
		19 don't think so.		
		20 Q. How about from another member of commissioners		
		21 court or any of their staff? 22 A. No.		
		23 Q. You never received racial demographic		
		24 information from anybody?		
		25 A. Not that I recall.		
7. In your meeting(s) with Mr. Oldham, did you discuss the Voting Righ				
Act? E.g., Ex. 2 Apffel Dep. 140:2-15.	Page 139 21 Q. Did you discuss the Voting Rights Act?			
	22 A. Never.			
	23 MR. RUSSO: Objection.			
	24 What what are you talking about?			
	25 Are you talking about a meeting with who are Page 140			
	2 Q. (BY MS. VALL-LLOBERA) Referring still to			
	3 the September 8, 2021, meeting, and your other			
	4 meeting with Mr. Oldham, the in-person conference,			
	5 did you discuss the Voting Rights Act? 6 MR. RUSSO: I'm going to object to			
	7 that and instruct the witness not to answer based			
	8 upon attorney-client privilege.			
	9 MS. VALL-LLOBERA: We'll preserve 10 our arguments that these are not protected			
	11 communications.			
	12 A. And for clarification, when I said never, it			
	13 was because I thought you were talking about			
	14 constituents still. I didn't have those 15 conversations.			
8. In your meeting(s) with Mr. Oldham, did you discuss the U.S.	Apffel Dep. 140:2 - 141:8			
Constitution? E.g., Ex. 2 Apffel Dep. 140:16-22; Ex. 3 Giusti Dep. 297:13				
	3 the September 8, 2021, meeting, and your other 4 meeting with Mr. Oldham, the in-person conference,			
	5 did you discuss the Voting Rights Act?			
	6 MR. RUSSO: I'm going to object to			
	7 that and instruct the witness not to answer based 8 upon attorney-client privilege.			
	9 MS. VALL-LLOBERA: We'll preserve			
	10 our arguments that these are not protected			
	11 communications. 12 A. And for clarification, when I said never, it			
	13 was because I thought you were talking about			
	14 constituents still. I didn't have those			
	15 conversations.			
	16 Q. (BY MS. VALL-LLOBERA) Did you discuss the 17 U.S. Constitution?			
	18 MR. RUSSO: Objection. Instruct the			
	19 witness not to answer, based on attorney-client			
	20 privilege.			
	21 MS. VALL-LLOBERA: And we preserve 22 our arguments.			
	23 Q. (BY MS. VALL-LLOBERA) Without revealing the			
	24 substance without without revealing the			
	25 substance of any conversations with counsel, as we			
	Page 141 1 sit here today, what is your understanding of the			
	1 sit here today, what is your understanding of the 2 Voting Rights Act?			
	3 A. I've answered that twice.			
	4 Q. Without revealing the substance of any			
	5 conversations with counsel, as we sit here today,			
	6 what is your understanding of the requirements of 7 the U.S. Constitution with regard to redistricting?			
	8 A. I don't know.			

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Questions to County Employees:	Commissioner APFFEL Apffel Dep. 141:9-19	Commissioner Giusti Giusti Dep 297:23-299:11	Nathan Sigler Commissioner Henry
 In your meeting(s) with Mr. Oldham, did you discuss any policy objectives for redistricting? What policy objectives did you discuss? E.g., 	Aprile: Dep. 141.3-13	Giusti Dep 297:23-299:11 Page 297	
Ex. 2 Apffel Dep. 141:9-16; Ex. 3 Giusti Dep 297:23-298:1, 298:11-13.	9 Q. Did you discuss policy objectives with	23 Q. (By Mr. Silberstein) In the September call	
	10 Mr. Oldham?	24 with Mr. Oldham and the other commissioners and in your	
	11 MR. RUSSO: Same objection,	25 October meeting with Mr. Holmes, did you discuss policy	
	12 attorney-client privilege, instruct the witness not 13 to answer.	Page 298 1 objectives? If so, what were those objectives?	
	14 MS. VALL-LLOBERA: And we preserve	2 MS. OLALDE: I'm objecting as to	
	15 our arguments that these are not privileged	3 compound. I'm also objecting to a request for	
	16 communications.	4 attorney-client privileged communications and attorney	
	17 Q. (BY MS. VALL-LLOBERA) Did you discuss	5 work product and instructing the witness not to answer	
	18 policy objectives with the other commissioners? 19 A. No.	6 with respect to communications in meetings with 7 Mr. Oldham, privileged communications in meetings with	
		8 Mr. Oldham.	
		9 MR. SILBERSTEIN: We will reserve our	
		10 arguments. These are not privileged communications.	
		11 Q. (By Mr. Silberstein) In the in the two 12 meetings we've been discussing did you discuss	
		13 political objectives?	
		14 MS. OLALDE: I'm going to object on the	
		15 basis of attorney-client privilege, attorney work	
		16 product, and instruct the witness not to answer with	
		Desc 200 (2004)	
		Page 298 (cont) 17 respect to communications privileged communications	
		18 that took place with Mr. Oldham about redistricting.	
		19 Q. (By Mr. Silberstein) Can you extend can	
		20 you answer to the extent not privileged the objectives	
		21 that you discussed with the other commissioners about 22 the 2021 redistricting?	
		23 MS. OLALDE: Just to be clear for the	
		24 record, you're asking about anything that did not take	
		25 place in the meeting with Dale Oldham?	
		page 299 1 MR. SILBERSTEIN: Anything, whether in or	
		2 out of the meeting, to the extent it is not privileged	
		3 communications with Mr. Oldham.	
		4 MS. OLALDE: Instruct the witness not to	
		5 answer to the extent it's attorney-client privilege or	
		6 discussion of attorney work product in a conversation 7 with Mr. Oldham about 2021 redistricting.	
		8 To the extent you had communications that	
		9 were outside of these meetings with Mr. Oldham, you can	
		10 answer.	
		11 THE WITNESS: Not that I recall.	
 In your meeting(s) with Mr. Oldham, did you discuss the need or desire for drawing a coastal precinct? E.g., Ex. 2 Apffel Dep. 142:6-12; Ex. 3 	Apffel Dep. 142:6-12	Giusti Dep. 119:22-120:22, 299:12-300:22	
Giusti Dep. 119:22-25, 299:12-14.	6 Q. During those two meetings, did you discuss	Page 119	
	7 the need or desire for a coastal precinct?	22 Q. So did you ever have during the course of	
	8 MR. RUSSO: Let me object, and	23 the 2021 redistricting process, did you have an	
	8 MR. RUSSO: Let me object, and 9 instruct the witness not to answer that question,	23 the 2021 redistricting process, did you have an 24 occasion to speak with Commissioner Holmes regarding	
	8 MR. RUSSO: Let me object, and 9 instruct the witness not to answer that question, 10 based on attorney-client privilege.	23 the 2021 redistricting process, did you have an 24 occasion to speak with Commissioner Holmes regarding 25 the creation of a coastal precinct?	
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	8 MR. RUSSO: Let me object, and 9 instruct the witness not to answer that question, 10 based on attorney-client privilege. 11 MS. VALL-LLOBERA: And we preserve 12 our arguments that these are not privileged. 13 Q. (BY MS. VALL-LLOBERA) Did you run an RPV	23 the 2021 redistricting process, did you have an 24 occasion to speak with Commissioner Holmes regarding 25 the creation of a coastal precinct? Page 120 1 MS. OLALDE: I'm sorry. What was the 2 time frame? I apologize.	
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Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
Questions to county Employees.	COMMISSIONER AT THE	Page 300	Hadran Signer	Commissioner Henry
		1 arguments, same arguments on our end.		
		2 MS. OLALDE: For the record I am nodding.		
		3 Q. (By Mr. Silberstein) Can you answer about the		
		4 need or desire for a coastal precinct with to the		
		5 extent non-privileged communications with the other		
		6 commissioners?		
		7 MS. OLALDE: And just for the record, I		
		8 am that would entail conversations that were not had		
		9 with Dale Oldham, and same objection, same instruction		
		10 for conversations that were had with Dale Oldham.		
		11 So if it was outside of a conversation		
		12 with Dale Oldham, you can answer.		
		13 THE WITNESS: Can I get clarification?		
		14 At what point?		
		15 Q. (By Mr. Silberstein) At any point during		
		16 your during the 2021 redistricting process.		
		17 A. After the maps came out, there was a little		
		18 bit of discussion I don't remember who with about		
		19 the fact that, "Wow, a coastal precinct."		
		20 Q. So the first discussion about a coastal		
		21 precinct came after the maps were enacted?		
		22 A. From my end, yes.		
11. In your meeting(s) with Mr. Oldham, did you discuss the impact of any	Anffel Den 152:8-15			+
proposed changes on the Bolivar Peninsula, and the constituents that live				
there? E.g., Ex. 2 Apffel Dep. 152:8-15.	8 Q. (BY MS. VALL-LLOBERA) Did you discuss the			
Green 2.89, Ext. 2.70/101 Dept. 102.0 10.	9 impact of any proposed changes on Bolivar, and the			
	10 constituents that live there?			
	11 MR. RUSSO: Object, based on			
	12 attorney-client privilege.			
	13 MS. VALL-LLOBERA: And and we			
	14 preserve our arguments that these are not			
	15 privileged communications.			
	16 Q. (BY MS. VALL-LLOBERA) Did you discuss the			
	17 impact of any proposed changes on people of color,			
	18 specifically on black and brown residents in			
	19 Galveston County?			
	20 MR. RUSSO: Object, based upon			
	21 attorney-client privilege.			
12. In your meeting(s) with Mr. Oldham, did you discuss the impact of any	Apffel Dep. 151:25-152:7, 152:16-24	Giusti Dep. 300:23 - 301:6		Henry Dep. 241:20-242:5, 242:6-243:2
proposed changes on the Black and Latino residents of Galveston County?		·		
E.g., Ex. 2 Apffel Dep. 151:25-152:7, 152:16-24; Ex. 3 Giusti Dep. 300:23 to		Page 300		Page 241
301:2; Ex. 4 Henry Dep. 241:20-242:5, 242:6-243:2	25 Q. Did you discuss the impact of any proposed	23 Q. Back to the two meetings we've been		20 Q. So you knew that by changing things the way you
	Page 152	24 discussing, did you discuss the communities of interest		21 did in Map Proposal 2 you were getting rid of that
	1 changes on any specific communities or groups of	25 during these meetings? Specifically did you discuss		22 majority/minority precinct, right?
	2 people?			23 MR. RUSSO: Objection, calls for
	3 MR. RUSSO: Object, based upon	Page 301		24 speculation.
	4 attorney-client privilege.	1 the impact of any proposed changes on communities of		25 THE WITNESS: And what I know would have
	5 MS. VALL-LLOBERA: And we preserve	2 interest?		Page 242
	6 our arguments that these aren't privileged	3 MS. OLALDE: I'm going to object on the		1 come to me through one of my lawyers.
	7 communications.			2 MR. RUSSO: Object on the basis of
	7 communications.	4 basis of attorney-client privilege and work product and		
	Page 153 (cont)	5 am instructing the witness not to answer. Same 6 objection, same instruction.		3 attorney-client privilege. To the extent the 4 conversations she asked about happened with your
	Page 152 (cont) 16 Q. (BY MS. VALL-LLOBERA) Did you discuss the	o objection, same distruction.		4 conversations she asked about happened with your 5 lawyers, do not disclose it.
				6 Q. (BY MS. KLEIN) Were you aware — I'm not
	17 impact of any proposed changes on people of color, 18 specifically on black and brown residents in			7 asking you what your lawyers told you or whether you
	19 Galveston County?			
	20 MR. RUSSO: Object, based upon			8 agreed with it or whether you any of those 9 discussions.
				9 discussions. 10 But when you chose Map Proposal 2, at that
	21 attorney-client privilege.			
	22 MS. VALL-LLOBERA: We preserve our			11 moment in time you were aware, weren't you, that that
	23 arguments that these are not privileged			
	24 COMMUNICACIONS.			
				Page 242 (cont)
				12 majority/minority Precinct 3 that you had to keep in
				13 2011 that you were breaking that up between all four
				14 remaining precincts, right?
				15 MR. RUSSO: Objection to the extent it
				16 calls for a legal conclusion. And same objection
				17 related to attorney-client privilege.
				18 THE WITNESS: Yeah, the information would
				19 have come from an attorney working on our behalf.
				20 MS. KLEIN: Okay. I'm going — I'm just
				21 going to preserve for the record that I dispute that
				22 privilege objection and we're going to reserve the right
				23 to call the commissioner back once we get a court
				24 determination on it.
				25 MS. RICHARDSON: Petteway will join.
				Page 243 1 MS. JAYARAMAN: United States joins as
				2 well.

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Part	Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
Note the second of the second		х. сх. 2 Артег Dep. 149:3-18; 150:22-151:3	Giusti Dep. 87:16-88:15		Henry Dep. 145:10-19 (141:20-145:9)
Reserved from the control of the con		3 Q. In your communications in your meetings	Page 87		10 Q. (BY MS. KLEIN) So putting aside Mr. Oldham, at
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However the state of the state					
Le la grande de la company de					
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Exercise and the second of the					
The state of the s					
Control of the contro		11 A. Can you read me that question one more time,			18 county would benefit greatly from having one coastal
Land Control of the C			24 attorney-client privileged work product.		19 precinct.
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September 1997 And September 199			7 A. Ivie personally, there were a couple of things.		
September 1997 And September 199			Page 98 (cont)		
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PARTICIPATION OF THE PROPERTY	14. Did Mr. Oldham ask you which redistricting factors were important to	o Apfell Dep. 151:4-10			
1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1,	you? E.g., Apfell Dep. 151:4-10.				
A MARIA SELVEN SERVICE THE SELVEN SELVEN SERVICE THE SELVEN SELVEN SERVICE THE SELVEN SELVEN SERVICE THE SELVEN SERVICE THE SELVEN SERVICE THE SELVEN SERVICE					
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Rep 29-1 7 C, Solf Y,		n?	Giusti Dep. 294:7-17, 295:1-6, 295:15-21.		
7 0. 50 let's just turn back to the September phone 8 oil all you said but which but Child that. A think it is my final 8 oil however the calendar invation. And this is my final 8 oil however the calendar invation. And this is my final 8 oil however the calendar invation. And this is my final 8 oil however the calendar invation of the calendar	E.g., Ex. 2 Giusti Dep. 294:7-12, 295:1-6, 295:15-16.				
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9 showed the calendar investation. And this is my final 10 line of question staff. We almost there. 11 Oil you review any — any census data 12 dump that cast? 13 duty our provise or post to pask 14 the visitions not to provise or ask 14 the visitions not to provise or ask 15 strong-you on product communications anariger 15 strong-you on product communications that were shared 17 in the meeting with Mar. Officiam. 18 pag 295 10 july Mr. Differential Officiam or you review any 18 strong-you on provise any 19 strong-you on the provise or you will not be a shared 19 strong-you on the provise or you will not be a shared 19 strong-you on the provise or you will not be a shared 19 strong-you on the provise or you will not be a shared 19 strong-you on the provise or you will not be a shared 19 strong-you on the provise or you will not be a shared 19 strong-you on the provise or you will not be a shared 19 strong-you or you will not be a shared 19 strong-you or you will not you provise and you will not be a shared					
10 line of quanton inset. We're almost three. 11 Did you review any reviews data 12 during that cal? 13 Ms. OLARE: Objection. I'm going to ask 14 the witness not to answer as it would revoid any 15 at throng view in principal communications and/or 15 at the witness not to answer as it would revoid any 15 at the witness not to answer as it would revoid any 16 at the witness not to answer as it would revoid any 17 in the menting with Mr. Oldhum. 18 peg 25 10 (ip Mr. Silberstein) Did you review any 2 census data during that cal?? 3 Ms. Silberstein Did you create and 3 reserve our rights to respect the deposition on these 18 years 25 (communication) 19 peg 25 (communication) 10 (ip Mr. Silberstein) Did you discuss the 19 peg 25 (communication) 10 (ip Mr. Silberstein) Did you discuss the 10 your discuss the discussion of the properties of the properti					
11 Only our review any any cristos data 12 during that call? 13 MS. OLADE. Objection. The going to ask 14 the witness not to answer as it would reveal any 15 stroney-client privileged communications and/or 16 stroney-work product communications that were shared 17 to the meeting with Mr. Olaham. Page 25 1. (by Mr. Silbertany) Did you review any 2. (b) Silbertany or going to keep 4 adding questions in order to clarify the record and 5 review our gridler to snepen the deposition on these 6 and other questions. Page 25 (communication) 15.0 (by Mr. Silbertany) Did did cours the 16 meeting of with Cours of the course our gridler of the course our gridler to snepen the deposition on these 6 and other questions. Page 25 (communication) 15.0 (by Mr. Silbertany) Did did cours the 16 meeting of any course our gridler of the course of the course our gridler					
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15 attorney clear privileged communications stat were shared 16 attorney work product communications that were shared 17 in the meeting with Mr. Collaham. Page 256 1 (1, (kg Mr. Siberstein) Did you review any 2 census data during that call? 3 MR. SIBERSTEIN. I'm going to keep 4 akwing questions in order to darity the record and 5 reserve our rights to reopen the deposition on these 5 and other questions. Page 256 (continued) 15 (2, (kg Mr. Siberstein) Did you discuss the 16 meaning of any creams stat? 17 MS. OLADE. Again, I'm going to be be 18 to the basis of attorney client privilege and attorney 19 work product and instruct the witness not to answer as 20 to commercations that the storney who			12 during that call?		
15 attomey work product communications and/or 16 attomey work product communications that were shared 17 in the meeting with Mr. Oldham. Page 295 1. C, Iliy Mr. Silbenstein) Did you review any 2. census data during that call? 3 MS. SILBERSTEIN: Pin going to keep 4. asking questions in order to clarify the record and 5 reserve our rights to reopen the deposition on these 6 and other questions. Page 295 (continued) 15 Q, Iliy Mr. Silbenstein) Did you discuss the 16 meaning of any census data? 17 MS. OLALDE. Again, Yim going to object 18 on the basis of attomey-client privilege and attorney 19 ow for product and instruct the witness not to answer as 20 to conversations that were had with the attorney who					
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19 work product and instruct the witness not to answer as 20 to conversations that were had with the attorney who			17 MS. OLALDE: Again, I'm going to object		
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Company Comp			4 MS. OLALDE: Sure.		
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7 asking you what your lawyers told you or whether you 8 agreed with I any or hose 9 discussions. 10 But when you chose Map Proposal 2, at that 11 moment inter you were aware, weren't you, that that 12 majority/minority Precinct 3 that you had to keep in Page 424 (cont) 13 2011 that you were breaking that up between all four 14 remaining precincts, right? 15 MR ARCO Objection to the extent it 16 calls for a legal conclusion. And same objection 17 related to attorney; either privilege. 18 The lated to attorney; either privilege. 18 The lated to attorney; either privilege.					
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19 have come from an attorney working on our behalf.					
					19 have come from an attorney working on our behalf.

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	Questions to County Employees:	Commissioner Giusti	Nathan Sigler	
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To compare the second compared to the compared	Questions to County Employees:	Drummond Tyler	Sigler Nathan	
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Fage 89 2. O, Olay, Was the Bolivar Peninsula a topic that 3. came up? 4MS OLADE: Object — 5. O, (By Max MAN(NO)) And I don't know what, you 6inow, may have been said about it. 7. A 'vaih. 8 Q. lust the topic. 9 A Sure. 10 NS. OLADE: And, again, "im going to 11 object to the specifies of conversations with 12 Mr. Oldham on the basis of attorney-kient privilege 13 and instruct the winters in to answer would contain any communications that 15 occurred. Otherwise, you can answer. 16 MS. VALL-LLOBERA: Petteway planintffs 17 would like to preserve up ripor objections to any	Peninsula, and the constituents that live there with Mr. Oldham? E.g., Ex.			
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4 MS. OLADE: Object— 5 Q. (BY MR. MANCNO) And I don't know what, you 6 know, may have been said about it. 7 A. Vetah. 8 Q. Just the topic. 9 A. Sure. 10 MS. OLADE: And, again, I'm going to 11 object to the specifics of conversations with 12 Mr. Olehan on the basis of attomey-client privilege 13 and instruct the witness not to answer to the extent 14 that your answer would contain any communications that 15 occurred. Otherwise, you can answer. 16 MS. VALL-LLOBERA: Petteway plaintiffs 17 would like to preserve our prior objections to any		2 Q. Okay. Was the Bolivar Peninsula a topic that		
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12 Mr. Oldham on the basis of attorney-client privilege 13 and instruct the witness not to answer to the extent 14 that your answer would contain any communications that 15 occurred. Otherwise, you can answer. 16 MS. VAL-LLOBERA: Petteway plaintiffs 17 would like to preserve our prior objections to any				
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Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
	Page 89 (cont)			
	19 before the court, we would just like to			
	20 (Discussion off the record.)			
	21 MS. VALL-LLOBERA: Pettteway plaintiffs			
	22 would like to preserve our prior objection to this			
	23 privilege claim just based on prior decisions			
	24 currently before the court regarding Dale Oldham's			
	25 attorney-client privilege status, so			
	Page 90			
	1 MS. MEZA: And the United States joins			
	2 in that preservation of objection.			
27. Did you discuss the issue of precinct splitting in your discussi	on(s) with		Sigler Dep. 71:23-72:12,	
Mr. Oldham? E.g., Sigler Dep. 71:23-72:7, 72:8-12.				
			Page 71	
			23 Q. Why were you meeting with Mr. Oldham to	
			24 discuss these splits?	
			25 MR. RUSSO: Counsel, let me interpose an	
			Page 72	
			1 objection just to remind the witness not the	
			2 disclose privileged communications between he and	
			3 Mr. Oldham, to the extent there were attorney-client	
			4 privileged conversations. But to the extent you can	
			5 answer the question without disclosing those	
			6 communications, you can answer.	
			7 A. Could you repeat the question?	
			8 Q. Sure. Why were you meeting with	
			9 Mr. Oldham to discuss these conflicts?	
			10 MR. RUSSO: Same objection.	
			11 A. I'm going to take the advice of my	
			12 counsel.	
28. Did you receive any racial demographic data from Mr. Oldha	m? E.g., Drummond Dep. 200:6-15		and the state of t	
Ex. 6 Drummond Dep. 200:6-15.	· · · · · · · · · · · · · · · · · · ·			
	6 Q. (BY MR. MANCINO) Did you discuss with			
	7 Mr. Oldham, or overhear discussions between Mr. Oldham			
	8 and somebody else, about whether he did an analysis of			
	9 black voting age population and Latin voting age			
	10 population in Precinct 3?			
	11 MS. OLALDE: Same objection based on			
	12 attorney-client privilege; also work product.			
	13 And same instruction.			
	14 MR. MANCINO: Okay.			
	15 A. Not that I can recall.			
29. Did you review any census data in your discussion(s) with Mr				
20. Did you discuss the impact of any proposed changes on the	Black and			
30. Did you discuss the impact of any proposed changes on the E	DIACK ATIU			
Latino residents of Galveston County with Mr. Oldham?				
31. Are you aware that Thomas Bryan was a map drawer that pro	ovided			
technical expertise about the maps?				
· ····································			1	<u> </u>

DEFENDANTS' EXHIBIT 3

Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
1. The decision to create a coastal commissioner	Giusti Dep. 106:4-109:	Henry Dep. 145:10-19, 174:16-24, 200:15-20; 238:15-23;	Apffel Dep. 184:8-18; 192:17-23; 195:20-25; 198: 17-21
precinct:			
	Page 106	Page 145	Page 184
	4 Q. Were you involved with any of the	10 Q. (BY MS. KLEIN) So putting aside Mr. Oldham, at	8 Q. Could you be more specific on who the idea
	5 commissioners in private communications regarding the	11 the when you at the beginning of this process,	9 of a coastal precinct was intriguing to?
	6 creation of a coastal precinct between 2014 and 2021?	12 right, in April when you were retaining counsel, what	10 A. Well, I say everybody. I'm just meaning
	7 A. Are we talking prior to the maps coming out?	13 were your own desires other than just a legal map,	11 that was the map that ultimately was that
	8 Q. Let me restate my question just so we're	14 your own desires for how the commissioners' precinct map	12 well, both of them I think both of those maps
	9 clear.	15 would look?	13 were Gulf Coast districts.
	10 So I'm asking you for a date range, 2014,	16 A. The thing that I had it wasn't just in	14 So, it was so it just kind of happened,
	11 when you were elected, to 2021, when the maps were	17 April. It was for many years before that I thought the	15 in the in the equalization of the population.
	12 ultimately adopted. Were you involved in any private	18 county would benefit greatly from having one coastal	16 And then it would it became a, well, this is
	13 discussions with any of the other commissioners on the	19 precinct.	17 a this is a great idea because of all of the
	14 court related to the creation of a coastal precinct?		18 coastal issues.
	15 MS. OLALDE: I'm going to object and ask	Page 174	
	16 the witness not to answer with respect to any	16 Q. I understand. You also said you felt strongly	Page 192
	17 attorney-client privilege or to any work product,	17 about this coastal precinct, right?	17 Q. Why did you ultimately vote for Map 2?
	18 shared communications.	18 A. That's something that had been coming for	18 A. Because I believed it was the best map to
	19 And otherwise you can answer.	19 years, yes.	19 equalize the population. And it created the
	20 THE WITNESS: Not that I recall.	20 Q. So is it fair to say like in general terms you	20 coastal district, which allowed one commissioner to
	21 Q. (By Mr. Gear) Was there any records of any	21 carried about the configuration of the precincts?	21 have the entire Gulf Coast district to deal with
	22 kind distributed by any of the county commissioners	22 A. In general terms I thought it would be far more	22 coastal issues, coastal agencies. And that was my
	23 related to the creation of a coastal precinct between	23 efficient for our county to have one commissioner	23 governing governing drive.
	24 2014 to 2021?	24 responsible for all coastal issues.	
	25 A. Not that I recall.	D 200	D 40F
	Page 107	Page 200	Page 195
	1 Q. Were there any written proposals or analysis	15 A. Again, you know, the commissioner cares about	20 Q. Did others at this excuse me.
	2 developed by the commissioners court as a result of	16 where the lines are drawn and I don't. So for me it was	21 Did people at that meeting express a desire
	3 related to the concept of the creation of a coastal	17 strictly I've got the coastal precinct that I thought	22 for a coastal precinct?
	4 precinct?	18 would be advantageous to the county. And beyond that,	23 A. They liked the idea very much. It
	5 MS. OLALDE: Objection; form.	19 the actual lines are for the commissioners to be okay 20 with.	24 Bolivar, more than anywhere, needed this district 25 to be like this.
	6 Q. (By Mr. Gear) Do you understand my question? 7 A. Not that I recall.	20 with.	25 to be like this.
		Page 229	Page 109
	8 Q. So was any type of analysis ever done by the 9 commissioners court regarding the development of a	Page 238 15 Q. How did you decide it would be Commissioner	Page 198 17 Q. And so, you cared about the the you
		16 Giusti?	
	10 coastal precinct?		18 know, the unique needs of the community
	11 MS. OLALDE: Objection; form.	17 A. I didn't. It's where his house fell. So upon	19 interests of these group of people who lived on 20 Bolivar and Galveston Island?
	12 And to the extent your answer would	18 Map Map No. 2, that's the one we adopted, Map No. 2, 19 he lived in the coastal precinct. And that's at some	21 A. Correct, the whole coastline.
	13 contain any attorney-client privilege or attorney work	•	21 A. Correct, tile whole coastille.
	14 product information or communication, I would instruct	20 point in that time frame I just went and said, "I want	
	15 you not to answer, but otherwise you may answer. 16 THE WITNESS: Not that I recall.	21 to make sure you're okay with this because I don't want	
	17 Q. (By Mr. Gear) So based on your knowledge,	22 to force you on it if you don't want to do it." And he 23 said, "I'm fine with it. I like it."	
	18 have there been any surveys or public polls conducted	23 Salu, TIII IIIIE WILITIL TIIKE IL.	
	19 by the commissioners court to determine the interest in		
	20 establishing a coastal precinct?		
	21 A. Not that I recall.		
	22 Q. So during the 2021 redistricting process, did		
	23 you engage in any communications with elected officials		
	24 in the City of Galveston related to the creation of a		
	25 coastal precinct?		
	23 coastal precinct:		

Case 3:22-cv-00057 Document 105-9 Filed on 02/16/23 in TXSD Page 3 of 6

Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
- Identification	Page 108	124861	- Commissioner Apriler
	1 A. No, sir.		
	2 Q. Did you engage in any communications with		
	3 elected officials from the Bolivar Peninsula related to		
	4 the creation of a coastal precinct?		
	5 A. No, sir.		
	6 Q. Did you engage in any communications with the		
	7 Galveston Chamber of Commerce related to the creation		
	8 of a coastal precinct? And again I'm talking about		
	9 this 2021.		
	10 A. Right. No, sir.		
	11 Q. Did you engage in any communications with the		
	12 Bolivar Peninsula related to the creation of a coastal		
	13 precinct?		
	14 MS. OLALDE: Objection; asked and		
	15 answered.		
	16 THE WITNESS: No, sir.		
	17 Q. (By Mr. Gear) And I may repeat questions from		
	18 time to time, and that's not intentional. It's not an		
	19 attempt to throw you off. And feel free to tell me if		
	20 you believe you've answered the question before.		
	21 So during the 2021 redistricting process,		
	22 did the commissioners court as a whole engage in any		
	23 communications with elected officials from any of the		
	24 cities in the City of Galveston related to the creation		
	25 of a coastal precinct?		
	Page 109		
	1 A. No, sir.		
	2 Q. Do you have any personal knowledge of any		
	3 commissioner or staff or their staff engaging in		
	4 communications with elected officials in any of the		
	5 cities in Galveston related to the creation of a		
	6 coastal precinct?		
	7 A. No, sir.		
	8 Q. Do you have any personal knowledge of any		
	9 commissioner or their staff engaging in communications		
	10 with any Chambers of Commerce from the various cities		
	11 in Galveston County related to the creation of a		
	12 coastal precinct?		
	13 A. No, sir.		

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Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
2. Whether Defendants considered or received racial	Giusti Dep. 250:14-15; 251:5-8; 302:16-25;	Henry Dep. 215:24-216:1; 217:3-16;	Apffel: 79:4-6, 142:23-25, 143:1-13, 160:10-161:17
demographic data:	3, 2 2 3, 2 2 3,		, , , , , , , , , , , , , , , , , , , ,
	Page 250	Page 215	Page 79
	14 Q. (By Mr. Silberstein) Mr. Giusti, do you	24 Q. (BY MS. KLEIN) I'll clarify. Are you aware of	4 Q. Did you know the racial makeup of your
	15 understand what racially polarized voting is?	25 what racially polaris voting study is?	5 precinct?
	16 A. Not really. I should say no. I mean no.		6 A. I do not.
	· · ·	Page 216	
	Page 251	1 A. No.	Page 142
	5 Q. (By Mr. Silberstein) And has anyone ever		23 Are you familiar with the term, racially
	6 discussed before me right now racially polarized voting	Page 217	24 polarized voting?
	7 with you?	3 Q. Scroll to the next page. This is a document	25 A. I am not.
	8 A. No, sir.	4 titled November 8, 2021. And the third paragraph says,	
		5 (Reading:) Voting patterns in Galveston County are	Page 143
	Page 302	6 definitely characterized by racially polarized voting.	1 Q. Have you heard this term before?
	16 Q. (By Mr. Silberstein) Did you receive any	7 So you don't your testimony is that you	2 A. I have not.
	17 racial demographic information from Nathan Sigler?	8 don't know what that means?	3 Q. So Mr. Oldham and you did not discuss an RPV
	18 A. Not that I recall. I mean, no. I mean, I	9 A. I do not recall having heard RVP or RPV	4 analysis in either of these meetings?
	19 don't think so.	10 before today.	5 MR. RUSSO: Let me object based upon
	20 Q. How about from another member of commissioners	11 Q. What about racially polarized voting?	6 the attorney-client privilege, and instruct the
	21 court or any of their staff?	12 A. No, I don't think so.	7 witness not to answer.
	22 A. No.	13 Q. And did you ever view a racially polarized	8 MS. VALL-LLOBERA: And we preserve
	23 Q. You never received racial demographic	14 voting study? Do you ever recall reviewing a study at	9 our arguments that these are not privileged
	24 information from anybody?	15 any point in the 2021 process?	10 communications.
	25 A. Not that I recall.	16 A. No.	11 Q. (BY MS. VALL-LLOBERA) Have you ever seen an
			12 RPV analysis?
			13 A. No.
			Page 160
			10 Q. Did you receive racial demographic
			11 information from Mr. Oldham?
			12 A. I wasn't concerned about race.
			13 Q. But did Mr. Oldham provide you with any
			14 racial demographic information?
			15 A. Huh-uh, not that I recall. Other than in
			16 our discussions and I mean, but no no, I 17 don't even recall that.
			18 Q. I'm a bit unclear. You did discuss racial
			19 demographics in your discussions
			20 A. No. That's why I say, I don't recall that.
			21 It was just population.
			22 Q. So you saw demographics on a TV screen?
			23 A. What's so what's demographics? I I
			24 don't know what demographics are.
			25 Q. So racial demographic did you see
			25 q. 55 (Solai dell'ographic dia you see
			Page 161
			1 information that showed the race of the people who
			2 lived in certain areas of Galveston County, as part
			3 of your redistricting process?
	1		or your redistricting process:

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Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
			Page 161 (cont)
			4 A. No. We were looking at population, and how
			5 to equalize that.
			6 Q. Did you look at the percentages of
			7 African-Americans or Hispanics in the county?
			8 A. No.
			9 Q. Are you are you aware currently, this
			10 day, are you aware of the percentage of
			11 African-Americans and Hispanics in Galveston
			12 County?
			13 A. I'm not.
			14 Q. Are you aware of the percentage of
			15 African-Americans or Hispanics in your precinct
			16 today?
			17 A. I'm not. I probably should be, but I'm not.
	Giusti: 163:18-21, 169:3-11, 174:7-19, 175:24-176:4	Henry Dep. 224:4-225:1; 236:16-20;	Plaintiffs did not ask him this question
3. Whether the Defendants considered maintaining	Page 168	Page 224	
Commissioner Precinct 3 as a majority-minority district:	18 Q. During the 2021 redistricting process did you	4 Did you ever ask for an option for Map	
	19 have any discussions with Commissioner Holmes regarding	5 Proposal 2 that had a coastal precinct that still kept	
	20 maintaining the core of Precinct 3?	6 Precinct 3 in that middle corridor we were talking about	
	21 A. Not that I recall.	7 earlier?	
		8 A. I doubt it.	
	Page 169	9 Q. Why do you doubt it?	
	3 Q. And what do you know about Carver Park?	10 A. I don't know why I would have done that. I	
	4 A. Not a lot, to be honest.	11 mean, this creates a coastal precinct and if you're	
	5 Q. Did your work as a police officer take you	12 going to start moving things around, then you're going	
	6 through that area at all?	13 to affect the whole four precincts.	
	7 A. No, sir.	14 Q. Did you ever ask for a map that would not have	
	8 Q. Was that any was that one of the areas that	15 split the old Precinct 3 among all four new precincts?	
	9 you were involved at all in community outreach when you	16 A. Every precinct had to change boundaries.	
	10 were a police officer?	17 Precinct 3 was underpopulated from the beginning. There	
	11 A. No, sir.	18 was no way to keep it intact. So aside from this, this	
		19 is saying that the coastal precinct was one of the	
	Page 174	20 things I want to get done.	
	7 Q. Do you have an opinion whether or not it was	21 Q. So you never asked whether there was a way to	
	8 necessary to reduce Precinct 3 under the adopted plan	22 preserve to prevent Precinct 3 from being split	
	9 to eliminate the majority-minority black and Hispanic	23 amongst all four new precincts?	
	10 voting age population?	24 A. I do not know where the splits occurred. I did	
	11 MS. OLALDE: Objection; argumentative.	25 not ask for anything other than these two maps after	

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Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
	Page 174 (cont)	Page 225	
	12 You may answer.	1 these were shown to me.	
	13 THE WITNESS: Based on going back to		
	14 sheer numbers of population, I don't know. I just	Page 236	
	15 don't know how else it could have been done, to be	16 Q. So, like, for example, like, keeping Precinct 3	
	16 honest. And from a layman's perspective, not knowing	17 together was not a factor that you felt was important?	
	17 where all the numbers are and looking at the maps that	18 Like you had felt uniting Galveston Island and Bolivar	
	18 were presented to us, I don't know how that could have	19 Peninsula was important, right?	
	19 changed much.	20 A. Correct.	
	Page 175		
	24 Q. Are you aware of any efforts to maintain, by		
	25 any of the commissioners or anyone responsible for		
	Page 176		
	1 drawing the 2021 redistricting plans, efforts to		
	2 maintain Precinct 3 as a majority-minority black and		
	3 Hispanic precinct?		
	4 A. Not that I'm aware of.		

Page 1 1 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS 2 GALVESTON DIVISION 3 HONORABLE TERRY PETTEWAY, et al., 4 Plaintiffs, 5 VS. 6 Case No. 3:22-cv-00057 GALVESTON COUNTY, et al., 7 Defendants. 8 9 10 ORAL AND VIDEOTAPED DEPOSITION OF 11 12 JOSEPH GIUSTI 13 JANUARY 6, 2023 14 (Reported Remotely) 15 16 17 ORAL AND VIDEOTAPED DEPOSITION OF JOSEPH 18 GIUSTI, produced as a witness at the instance of the 19 United States and duly sworn, was taken via 20 videoconference in the above-styled and numbered cause on the 6th day of January, 2023, from 9:23 a.m. to 21 22 6:01 p.m., before Marsha Yarberry, Certified Shorthand 23 Reporter in and for the State of Texas, reported by machine shorthand, in Galveston, Texas, pursuant to the 24 Federal Rules of Civil Procedure. 25

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Page 27
 1
      2015?
 2
              Yes, sir.
         Α.
               And which commission precinct were you elected
 3
         Ο.
 4
      to?
 5
         Α.
              Precinct 2.
 6
         Ο.
               And how many times have you run for reelection
      for that position?
 7
               Just my third time recently.
 8
         Α.
 9
               And so you were elected in 2015. When would
         Ο.
      the reelection campaigns have been?
10
11
               It's a four-year term.
         Α.
12
               Four-year term. Okay. So the most recent
         Q.
13
     period would have been, what, 2022?
         Α.
              November.
14
15
              November.
         Ο.
16
         Α.
              Yeah.
              And so in 2014, based on your experience, your
17
18
     understanding, what was the racial demographic makeup
19
     of Precinct 2?
              Honestly I don't know the exact makeup. I've
20
21
     always felt the precinct was pretty well split,
22
     probably more Caucasian, maybe 45 -- 40, 45 percent
23
     Caucasian. And then -- well, maybe more than that,
24
     actually, in the old precinct. 50 percent, maybe even
     60 percent Caucasian.
25
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Make sure I'm on the right paragraph here.

Page 47

read paragraph 3 for the record?

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Α.

- "Whereas, it is the intent of the county to comply with the Voting Rights Act and with all other relevant law, including Shaw versus Reno jurisprudence and the
- 6 consent judgment and election orders in Hoskin versus
 7 Hannah, et al."
 - Q. What do you personally know about the Voting
 Rights Act as it applies to redistricting for Galveston
 County?
 - A. Very little. Nothing, actually.
 - Q. What do you know about other relevant laws as they apply to the redistricting process for Galveston County?
 - MS. OLALDE: Objection to the form to the extent you're asking for any kind of a legal opinion.

 Go ahead. You can answer.

18 (Reporter clarification)

- Q. (By Mr. Gear) And I'm asking for your understanding of what laws you were -- you were attempting to comply with when going through the 2021 redistricting process.
- A. The Voting Rights Act, which I know nothing about, really, other than it's supposed to be fair and impartial I guess is the way I would answer that.

Page 51 1 request for attorney-client privileged communications 2 or attorney-client privileged work product. To the 3 extent you're asking about facts, the witness can 4 answer. 5 But otherwise I will instruct you not to 6 answer. 7 THE WITNESS: Okay. MR. GEAR: And we will reserve our 8 9 arguments that we do not believe that attorney-client 10 privilege applies to Dale Oldham as the redistricting 11 consultant. 12 MS. OLALDE: He's an attorney, but yes. 13 MS. CHEN: And if you'd like to see -- we sent a letter yesterday to Joseph Russo --14 15 THE REPORTER: I can't hear whoever is 16 talking right now. 17 MS. CHEN: Sarah Chen. And I'm just 18 noting that we sent a letter with piecemeal on this 19 privilege point to Joseph Russo yesterday. If you 20 would like to see it, we're happy to send it to you as 21 well. 2.2 Thank you, Sarah. I think MS. OLALDE: 23 this is probably something that the court needs to resolve at this point, though. I do understand that 24 25 you sent a letter.

Page 55

really dealt with him.

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- Q. Did you meet with that demographer at all in any capacity?
- A. Not that I recall, other than on the Zoom meeting, I believe.
- Q. Is that the same September Zoom meeting that you referred to?
 - A. No. That would have been later.
- Q. Do you recall the time period in which he was involved?
- A. October I want to say.
- 12 Q. I'm sorry. Did you say you don't recall his name?
- 14 A. I do not.
 - Q. Did that demographer provide you with any written information or maps of any kind?
- 17 A. We did look at a couple of maps on Zoom.
- MS. OLALDE: And, again, I'm going to ask
 that the witness not reveal any attorney-client
 privileged communications or work product and instruct
 him not to answer to that extent.
 - MR. GEAR: And, again, we reserve our rights that to -- against the claim that attorney-client privilege applies to Dale Oldham.
 - Q. (By Mr. Gear) So did you have an opportunity

Page 87 1 redistricting process assisting you? 2 No, sir. I mean, she's on this memo as an Α. 3 attendee, but I don't remember if she was or not, to be honest. I don't think she was. 4 5 Do you have any recollection if Yesenia Ο. reduced the discussions that took place during this 6 7 meeting into any written form? 8 Α. No. 9 Ο. Just so I'm clear on the record, so September 13th and October 19th, 2021, were the only 10 11 dates that you met with Dale Oldham? Is that correct? 12 Α. Yes, sir, other than the initial hiring. 13 Where you did not have any independent discussion --14 15 Α. Correct. 16 So during the time -- strike that. So did you 17 have an opportunity to present your preferences 18 regarding the changes you wanted to see for Precinct 2 19 during the 2021 redistricting process? 20 MS. OLALDE: Objection. I'm going to instruct the witness not to answer with respect to 21 22 conversations that were had with Mr. Oldham. 23 Otherwise, you can answer. Based on 24 attorney-client privileged work product. THE WITNESS: That would have been our 25

Page 88 1 conversations. 2 Q. (By Mr. Gear) Let me -- let me change the frame of that question. 3 What preferences did you want to see --4 5 what changes did you want to see to Precinct 2 during the 2021 redistricting process? 6 7 Me personally, there were a couple of things. One was to level out the population amongst the 8 9 precincts. Two was probably to, as I mentioned 10 earlier, clarify the lines as to who was where to make 11 it easier for the public to understand who their 12 commissioners were, to keep my house in my precinct and 13 to keep my mom and dad's house in my precinct. 14 Anything else? 0. 15 Nope. Α. 16 I believe you testified to this previously Ο. 17 about confusion as to where the commissioners' lines 18 fell in the previous redistricting plan. What are you 19 basing that concern upon? 20 I guess we -- just personal experience. 21 would get phone calls from constituents requesting help, and it would be things that weren't -- that were 22 23 on the edge of my precinct but not in my precinct, or 24 vice versa, they were in my precinct and they were 25 calling someone else because the lines at times were --

Page 302

1 Q. (By Mr. Silberstein) In the -- in the 2021 2 redistricting process, did you receive racial demographic information from Mr. Oldham or any other 3 4 redistricting counsel? 5 MS. OLALDE: Same objection and same instruction, which is attorney-client privilege, 6 7 attorney work product, and instructing the witness not 8 to answer. 9 (By Mr. Silberstein) Did you receive racial Ο. demographic info from Paul Ready? 10 MS. OLALDE: I am going to instruct the 11 witness not to answer as to communications with counsel 12 13 for the county on the basis of attorney work product and also attorney-client privilege. 14 15 I instruct you not to answer. 16 (By Mr. Silberstein) Did you receive any Q. 17 racial demographic information from Nathan Sigler? 18 Not that I recall. I mean, no. I mean, I Α. 19 don't think so. How about from another member of commissioners 20 Q. 21 court or any of their staff? 2.2 Α. No. 2.3 You never received racial demographic Ο. 24 information from anybody? 25 Α. Not that I recall.

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Page 1
 1
                  IN THE UNITED STATES DISTRICT COURT
                   FOR THE SOUTHERN DISTRICT OF TEXAS
 2
                           GALVESTON DIVISION
 3
      HONORABLE TERRY
                                 )
 4
      PETTEWAY, et al.
                                 )
                                 )
                                    Case No. 3:22-cv-00057
 5
      VS.
                                 )
 6
      GALVESTON COUNTY, et
      al.
                                 )
 7
            ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY
 8
                            JANUARY 17, 2023
 9
           ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY,
10
      produced as a witness at the instance of the Plaintiff and
11
12
      duly sworn, was taken in the above styled and numbered
13
      cause on Tuesday, January 17, 2023, from 9:08 a.m. to
14
      6:07 p.m., before Janalyn Elkins, CSR, in and for the
15
      State of Texas, reported by computerized stenotype
16
      machine, via Zoom, pursuant to the Federal Rules of Civil
17
      Procedure and any provisions stated on the record herein.
18
19
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	Page 127
1	MR. RUSSO: Objection, calls for
2	speculation.
3	MS. KLEIN: If you could just let him
4	not speak over each other somehow.
5	MR. RUSSO: She's telling you to wait for
6	me.
7	THE WITNESS: Okay.
8	Q. (BY MS. KLEIN) So you say you sought out Dale.
9	Do you remember receiving Dale Oldham, rather, do you
LO	remember receiving communications from other perspective
L1	<pre>counsel for redistricting?</pre>
L2	A. I do not remember getting anything else.
13	Q. Okay. Let's pull one of those documents up.
L 4	This is Doc 15 and it will be Exhibit 16.
L5	(Exhibit No. 16 was marked.)
L 6	MS. KLEIN: So Alexa, that's Tab 15.
L7	Q. (BY MS. KLEIN) Just one more question on the
18	criteria issue. I'm sorry to go back and poke around.
L9	A. That's okay.
20	Q. You said, "probably." I heard you say,
21	"probably." Is there any reason you can think of that
22	you would need census numbers first before drafting up a
23	set of criteria to guide the redistricting process?
24	MR. RUSSO: Object. Calls for speculation.
25	Misstates the record. It's vague and ambiguous.

Page 138 1 Q. (BY MS. KLEIN) Other than Dale Oldham, do you know of any other counsel who worked -- who represented 2 3 you in the 2021 process that also specifically had 4 worked with you in 2011 on the redistricting process? 5 A. No, I -- no. 6 Q. Do you remember what discussion, if any, there 7 was in the April 2021 meeting where you decided to 8 retain counsel what discussion there was at that meeting 9 about retaining counsel? 10 There was no discussion. It's on consent. Α. 11 Which means it just goes to a vote? Ο. 12 Α. Right. 13 Q. Do you remember the vote on this item? 14 I do not. Unless someone pulled it off, it was Α. 15 everyone present, but I don't know who was present at 16 that meeting. 17 Let's go to the meeting minutes for this. 18 That's Tab 33. And this will be Exhibit 19. 19 (Exhibit No. 19 was marked.) 20 Q. (BY MS. KLEIN) Do you want to guess who voted 21 for and who voted against? 22 A. Was it --23 MR. RUSSO: Objection, calls for 24 speculation. 25 THE WITNESS: Was it removed from consent

Page 147 1 But do you know when you started discussing the 2021 2 redistricting process and planning after this letter was 3 executed? 4 It would have been at some point after this, 5 but exactly when I do not remember. 6 Scrolling back up to the first page of the 7 engagement letter, which I think is, like, PDF page 3 of 8 this document. Yeah, that's correct. 9 The second paragraph says, (Reading:) 10 Specifically, the firm has been engaged to provide legal 11 representation and advice regarding redistricting in 12 Galveston County, Texas, including provision of a 13 technical expert to draw the map. The firm will be 14 associated with Dale Oldham, PC and representation on 15 this matter. 16 Who's the technical expert referred to in 17 this? Do you know? 18 MR. RUSSO: Calls for speculation. 19 I don't know. THE WITNESS: 20 Q. (BY MS. KLEIN) Does Tom Bryan ring a bell? 21 A. I heard that name in preparation for this only. 22 That's the first time I've heard it. 23 Q. And then if we -- if we go down to the fourth paragraph, it says -- the fourth paragraph, it says, 24 25 (Reading:) At this time our Texas bar attorney,

Page 204 1 Q. And it says -- and on the far right is a 2 privilege note, (Reading:) Communication from 3 map-drawer to redistricting counsel, re: preparation of first draft map for legal review and posing questions 4 5 re: redistricting constitutional requirements and traditional redistricting criteria. 6 So this was sent from -- we can see in the 7 8 columns from Tom Bryan to Jason Torchinsky. So -- and 9 Tom Bryan, you said you -- earlier I remember you saying 10 you heard about his name in prep. 11 A. Just recently, right. 12 Q. Okay. And he's -- and did you become aware 13 that he was a technical expert for map drawing used 14 during the process? MR. RUSSO: Hold on a second. 15 Do not 16 reveal communications between yourself and attorneys in 17 prep session. So other than that you can answer. 18 THE WITNESS: Okay. 19 MR. RUSSO: If you knew about him ahead of 20 time, fine. 21 (BY MS. KLEIN) Are you aware now standing here 22 today that Tom Bryan was a map drawer that provided 23 technical expertise? 24 Same objection. MR. RUSSO: 25 attorney-client privilege to the extent that you learned

Page 234 1 know when they were finalized? A. No, I don't. 2 3 0. Okay. Do you know if these criteria 1 to 6 are 4 listed in order of priority? 5 Only -- I mean, I would say that No. 1 is the 6 highest priority, make sure they don't do anything that they can't do. Other than that, I haven't -- I haven't 7 8 seen the others to see if they are or not. 9 Okay. We'll go through them and then I'll ask Q. 10 you the question at the end. 11 Α. Okay. 12 Q. So the first factor that you said, (Reading:) 13 Compliance with the requirements under the 14th 14 Amendment to the US Constitution and Voting Rights Act, 15 what was your understanding of the requirements of the 16 Voting Rights Act in adopting the 2021 plan? 17 A. I wouldn't have one. That's, again, why we're 18 going pay to lawyers to do their job. 19 Q. So you didn't have an understanding of what the 20 Voting Rights Act would require when you were 21 considering whether to adopt Map 2 or Map 1? 22 MR. RUSSO: Objection, misstates prior 23 testimony. 24 THE WITNESS: My understanding is that the 25 Voting Rights Act has changed some. So, no, this is not

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something that I keep track of. And this is why we have a lawyer who are well versed in this area of the law.

- Q. (BY MS. KLEIN) The second sentence says,

 (Reading:) In particular, the most important factor in

 crafting the redistricting lines for the Commissioners

 Court precincts was the equalization of population and

 to make the four Commissioners Court precincts

 geographically sound.
 - A. Okay.

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- Q. What does geographically sound mean?
- A. As compact as you can get them is how I interpret this. Understanding this is a document from the court, not just from me.
 - Q. It's from your counsel.
- A. Correct. But I think -- well, I believe on behalf of the court, not just me.
 - Q. Okay.
- MR. RUSSO: Court meaning?
- 19 THE WITNESS: Commissioner's Court.
- Q. (BY MS. KLEIN) Commissioner's Court, yeah.
- Okay. The second factor is unified representation on Galveston Island and Bolivar
 Peninsula.
- MS. KLEIN: If we scroll down, Alexa. Just make sure I got that right.

Page 265 1 context of them at all. I'm not going to follow up --2 MR. RUSSO: I get it. And the problem is 3 is that we've got to rely on the witness to say the 4 communication basically was part of providing legal 5 services, and I think he's established that. 6 But -- so the idea or notion that, well, 7 you know, there are objections just based upon one thing 8 or another is -- again, it's oversimplifying. 9 MS. KLEIN: All right. Maybe I'll just 10 probe a little bit. 11 (BY MS. KLEIN) How was the discussion of 12 partisan data part of the provision of legal advice? 13 mean, was -- let me ask this first. 14 Was any discussion you had with your 15 lawyers about partisan data part of the provision of 16 legal advice? 17 Α. What was that? Was the -- was any -- you said that you 18 Q. 19 couldn't answer what -- you couldn't answer me what 20 exact partisan data you had seen when you voted for Map 21 Proposal 2 or before you had voted for Map Proposal 2 22 what you were aware of because you had learned that from 23 your attorney. So let me ask you this. 24 When you learned that from your attorney, 25 was that part of you seeking or them providing specific

Page 1 1 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS 2 GALVESTON DIVISION 3 HONORABLE TERRY PETTEWAY, * ET AL., 4 PLAINTIFFS, 5 * CASE NO. 3:22-CV-00057 VS. 6 GALVESTON COUNTY, ET AL.,* 7 **DEFENDANTS.** 8 9 *********** 10 ORAL AND VIDEOTAPED DEPOSITION OF DARRELL APFFEL 11 **JANUARY 5, 2023** *********** 12 13 14 ORAL AND VIDEOTAPED DEPOSITION OF DARRELL 15 APFFEL, produced as a witness at the instance of 16 the PLAINTIFF(S), and duly sworn, was taken in the 17 above-styled and numbered cause on JANUARY 5, 2023, 18 from 9:17 A.M. to 6:01 P.M., before AMY PRIGMORE, 19 CSR, in and for the State of Texas, reported by 20 stenographic means, at the offices of GREER HERZ & ADAMS, One Moody Plaza 18th Floor, Galveston, 21 22 Texas, pursuant to the Federal Rules of Civil 23 Procedure and the provisions stated on the record 24 or attached hereto. 25

Page 32 1 the county submitted a preclearance letter with 2 proposed maps to the DOJ, pursuant to Section 5 of 3 the Voting Rights Act? MR. RUSSO: Vague and ambiguous. 4 5 Was I aware? Maybe. But I don't recall. Α. 6 (BY MS. VALL-LLOBERA) But you did 7 understand that the DOJ had to approve the new maps 8 before they could be enacted. 9 Is that correct? 10 Not -- not specifically. I just knew what Α. 11 you said was the law. 12 What did you understand preclearance to 13 mean? 14 Α. I don't -- in the common sense, to me, it 15 means they had to approve it. But I don't know. 16 Do you know that the Department of Justice 17 rejected the county's submission? 18 Α. It obviously didn't matter. 19 Q. Why is that? 20 Α. Because the Federal court ruled that what 21 they did was sufficient and legal. 22 Q. Did you know that the attorney, Dalton 23 Oldham, was part of the team hired by the county to prepare that preclearance proposal? 24 25 A. No.

Page 96 1 Commissioner Clark and Dale Oldham take place? 2 I don't know. In the fall, before the maps 3 were approved, if you... The fall of 2021? 4 0. 5 Α. I only had one in-person meeting with Dale Oldham, so... 6 7 And it was this meeting? 0. 8 Α. Yes. 9 Who else was there? 10 Me, Dale Oldham, Ken Clark, Tyler -- Tyler 11 Drummond, and Paul Ready. And on the TV was our 12 expert map demographer. 13 Q. Where did this meeting take place? 14 Α. The county judge's conference room. 15 Q. And you said fall 2021, before the maps were 16 adopted, correct? 17 Α. Yes. 18 Could you be more precise, August or 19 September or October --20 Well, it's in the discovery, isn't it? I 21 thought it was -- I thought those dates were 22 listed, but possibly -- could I be -- yeah, August 23 or September. I don't remember those dates, but... 24 Q. And the -- Judge Henry was there, or no? 25 Α. No.

Page 106 1 Would it be unusual for only one 2 commissioner to get a proposal? 3 Α. No. Did you receive any proposals? 4 5 Α. No. 6 0. Going back to the approval of the contract 7 with Vogel and Oldham, when was -- when was 8 Mr. Oldham's contract approved? 9 Α. I believe -- I believe in April. 10 April 2021? Q. 11 Yes, ma'am. Α. 12 Q. What kind of services does Mr. Oldham 13 provide? 14 A. Again, it was all about determining --15 looking at the population and having his 16 demographer draw the maps, to equalize the 17 population. 18 Okay. What did you know about the 19 redistricting process? 20 Α. Nothing. 21 Ο. Did you see a proposal from him? 22 Α. That we approved? That -- that we 23 ultimately approved? Yes, I saw that. 24 Do you recall how much that proposal was Q. 25 for?

Page 136 our position, but I don't -- you know, it's I just need to make sure I deposition procedure. maintain my -- and preserve the objections for the record. Q. (BY MS. VALL-LLOBERA) Did -- without revealing the substance of any conversations with counsel, as we sit here today, what is your understanding of traditional redistricting criteria? The county grows by people. The precincts become imbalanced by people. And we are required to continually balance the representation of the people. Specifically, how do you have to rebalance the populations? In my simple little way --MR. RUSSO: Let me object -- just let me interpose -- interpose the objection on attorney-client privilege grounds. And you've heard the basis before. So don't reveal conversations or information you've learned from Dale, related to the redistricting effort. Well, my simple understanding is to -- to

redraw the lines to balance the population, to be

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