

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, <i>et al.</i> ,)	
	)	CIVIL ACTION NO.
<i>Plaintiffs,</i>	)	SA-11-CA-360-OLG-JES-XR
	)	[Lead case]
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
MEXICAN AMERICAN LEGISLATIVE	)	CIVIL ACTION NO.
CAUCUS, TEXAS HOUSE OF	)	SA-11-CA-361-OLG-JES-XR
REPRESENTATIVES (MALC),	)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
TEXAS LATINO REDISTRICTING TASK	)	CIVIL ACTION NO.
FORCE, <i>et al.</i>,	)	SA-11-CA-490-OLG-JES-XR
	)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
RICK PERRY,)	
)	
<i>Defendant.</i>)	
_____)	

MARAGARITA V. QUESADA, <i>et al.</i>,	)	CIVIL ACTION NO.
<i>Plaintiffs,</i>	)	SA-11-CA-592-OLG-JES-XR
	)	[Consolidated case]
)	
v.)	
)	
RICK PERRY, <i>et al.</i> ,)	
<i>Defendants.</i>)	
_____)	
)	
JOHN T. MORRIS,	)	CIVIL ACTION NO.
<i>Plaintiff,</i>	)	SA-11-CA-615-OLG-JES-XR
	)	[Consolidated case]
)	
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
<i>Defendants.</i>)	
_____)	
)	
EDDIE RODRIGUEZ, <i>et al.</i>,	)	CIVIL ACTION NO.
<i>Plaintiffs,</i>	)	SA-11-CA-635-OLG-JES-XR
	)	[Consolidated case]
)	
v.)	
)	
RICK PERRY, <i>et al.</i> ,)	
<i>Defendants.</i>)	

**STATE DEFENDANTS’ RESPONSE TO DEPARTMENT OF JUSTICE’S
BRIEF ON INTERIM MAPS**

DOJ’s brief misunderstands Supreme Court precedent and ignores the evidence adduced at the two-week trial in this case. DOJ claims that newly enacted congressional district 23 violates Section 2 of the Voting Rights Act and should therefore be redrawn by this Court. But CD 23, which has 63.8% Hispanic Voting Age Population and 58.5% Hispanic Citizen Voting Age Population, plainly provides Hispanic voters the *opportunity* to elect their candidates of choice. To the extent Hispanic voters are not successful in doing so, this is only because of low

voter cohesion and low voter turnout, neither of which the Legislature was required to account for when maintaining this overwhelmingly Hispanic district. DOJ submits an expert report and proposes its own revisions to CD 23. While DOJ is wrong that revising CD 23 is legally justified, its proposed redraw of the district correctly reflects the need to use the legislatively enacted plans as the starting point for any court-ordered revisions, interim or otherwise. *See* DOJ Statement at 15 (Doc. 504).

DOJ also argues for the recognition of so-called “coalition districts.” That argument fails as a matter of law and fact.

ARGUMENT

I. DOJ’s Approach to CD 23 Disregards Two Decades of Supreme Court Precedent Interpreting Both Section 2’s “Equal Opportunity” Standard and the Equal Protection Clause.

DOJ claims that, with respect to CD 23, Plaintiffs have satisfied the *Gingles* pre-conditions and the totality of circumstances test, which would compel a revision of CD 23 so as to “provide[] Hispanic voters with the opportunity to elect their preferred candidate.” *Id.* at 7. But DOJ fails to address the evidence offered at trial, the text of Section 2, or the past two decades of precedent interpreting and constraining Section 2.

A. *The Statutory Text Calls for Equality of Opportunity—Not a Guarantee of Electoral Success for Whatever Candidate is Preferred by at Least 51% of Minority Voters.*

DOJ insists that Hispanic voters in CD 23 will not have the equal “opportunity” guaranteed by Section 2 unless the district is redrawn to increase its Hispanic Voting Age Population from 63.8% to 73%. *Id.* at 15. (proposing to populate CD 23 with 73% HVAP and 62.8% HCVAP). Despite its claim that CD 23 must have 73% HVAP to perform, DOJ curiously contends that, as of 2010, benchmark CD 23 was “performing” at only 62.8% HVAP. *See* Lisa

Handley Report at 5 (Ex. A). Nevertheless, according to DOJ, the Legislature's decision to *increase* the district's HVAP from 62.8% to 63.8% (and to increase the percentage of Spanish-Surnamed Registered Voters from 52.4% to 54.8%) somehow *decreases* Hispanic voters' opportunity to elect their candidates of choice.

According to DOJ, Section 2's straightforward requirement that all voters be afforded an equal *opportunity* to elect candidates of choice somehow mandates the creation of racially gerrymandered districts in which those candidates of choice are virtually *guaranteed* to win elections. Of course, Section 2's text says no such thing. Rather, the text, which goes unmentioned in DOJ's brief, assures citizens of any race that the political process will be "*equally open*" in that no racial group will have "*less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973 (emphasis added). In construing this text, the Supreme Court has repeatedly rejected the view of Section 2 proffered in DOJ's brief. The Court's decision in *LULAC v. Perry* conclusively establishes that "the ultimate right of § 2 is *equality of opportunity, not a guarantee of electoral success* for minority-preferred candidates of whatever race." 548 U.S. 399, 428 (2006) (emphasis supplied) (internal citations omitted). Because Section 2 is about ensuring equal opportunity, not guaranteeing electoral results, the Court has made clear that "minority voters are not immune from the obligation to pull, haul, and trade to find [the] common political ground" necessary to elect their preferred candidates. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1997).¹

¹ Notably, the Supreme Court in *De Grandy* quotes a book written in part by DOJ's own expert, Lisa Handley, to support the proposition that Section 2's race-conscious calculus is the "politics of the second-best." *De Grandy*, 512 U.S. at 1020 (quoting B. Grofman, L. Handley, & R. Niemi, *MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY* 136 (1992)).

Neither DOJ nor Plaintiffs can refute that the Legislature’s decision to populate CD 23 with 63.8% HVAP, 58.5% HCVAP, and 54.8% SSVR provides Hispanic voters with at least an equal “opportunity” to elect the candidate of their choice. If the overwhelming Hispanic majority in CD 23—which is stronger in the enacted plan than it was in the benchmark plan—will indeed “pull, haul, and trade” to elect its “candidates of choice,” those candidates will be elected without fail. This equal electoral opportunity—not a guarantee of electoral results—is all that Section 2 requires. *LULAC v. Perry*, 548 U.S. at 428.

B. DOJ Ignores or Misconstrues the Evidence Adduced in the Two-Week Trial in this Case.

DOJ alleges, contrary to the evidence at trial, that CD23 was drawn “deliberately to include precincts in which Hispanic voters have a significantly lower turnout.” DOJ Statement at 13. But according to the un rebutted testimony at trial, turnout data was unavailable, and therefore not considered, when the district was drawn. Trial Tr. at 956:11-957:24. Even if there were any evidentiary support for DOJ’s allegation—and there is none—an equal opportunity is not deprived when voters who unquestionably have the *opportunity* to control electoral outcomes *choose* not to vote. Just as Section 2’s guarantee of equal opportunity does not guarantee electoral success, it also does not guarantee voter turnout. Getting out the vote is surely part of the obligation to “pull, haul, and trade” to win elections, which the Supreme Court recognized in *Johnson v. De Grandy*. 512 U.S. at 1020. If Hispanic voters in CD 23, aware of a contest between two Hispanic candidates for Congress (one a Democrat and the other Republican), simply decide to stay home, those voters nevertheless had every opportunity to control the outcome of the election. If minority voters freely choose to forego this opportunity, the solution

is better voter turnout—not judicially mandated districts drawn to guarantee electoral victory for the Democratic Party.³

In an effort to bolster its factually baseless charge that the Legislature “targeted” low-turnout Hispanic precincts, DOJ provides a chart showing the expected decline in Hispanic turnout in newly enacted CD 23. DOJ Statement at 13. But DOJ fails to account for the fact that the district was redrawn to remedy an over-population of approximately 150,000 people.⁴ Thus, the turnout of *all* ethnicities will decline in the new district—not because of discrimination but because Texas was compelled by the one person-one vote principle to put fewer voters in the district.

The raw turnout estimates relied upon by DOJ are misleading because they do not take into account the overall population reduction in CD 23. Rather than looking at raw turnout numbers, DOJ should have compared the *percentage* of Hispanics that turned out to vote in the benchmark to the *percentage* that are expected to turn out under the enacted plan. This calculation could have been done based on the same racially polarized voting analyses the DOJ used to create its misleading chart. As the chart below reflects, on a *percentage* basis the expected Hispanic turnout in newly enacted CD 23 is roughly the same as—and in some cases higher than—it was in the benchmark.

³ DOJ also misconstrues Dr. Alford’s testimony, claiming (falsely) that he testified that CD 23 does not provide an opportunity for Hispanic voters to elect a candidate of their choice. DOJ Statement at 12. In reality, Dr. Alford testified repeatedly (and correctly) that, while CD 23 provides the opportunity to elect required by Section 2, the district was not “performing” or “effective” under the benchmark plan or the enacted plan because it was not electing the Democrat said to be preferred by a bare majority of Hispanic voters. Trial Tr. at 1859:24-1860:4 (defining “latino opportunity district as one in which there is an opportunity for Hispanics to constitute the majority of the turned-out vote and in which . . . when they vote cohesively they can control the outcome”); *see also* Report of John Alford in Section 5 at 2-4 (Ex. B) (Civil Action No. 1:11-cv-01303 (Doc. 72)).

⁴ CD23 in the benchmark plan was overpopulated at 847,651, while the legislatively enacted district was populated at the ideal population, 698,488.

	Benchmark Estimated Turnout Percent for Hispanic Voting Age Population	Proposed Estimated Turnout Percent for Hispanic Age Population
2002	18.4	19.4
2004	26.9	27.1
2006	15.4	15.0
2008	26.1	27.2
2010	13.9	13.7

See State's Trial Exhibit D-2, Racially Polarized Voting Report for C100 and C185, Congressional District 23, Table T1.

Thus, even setting aside the un rebutted evidence that turnout numbers were neither available nor considered when the Legislature drew CD 23, the data do not support DOJ's allegation that the Legislature populated CD 23 with low-turnout precincts. The data do, however, support an inference that the Legislature added *Republican-leaning* Hispanic voters to CD 23. But the existence of these voters—and the fact that despite being 62.8% Hispanic, CD 23 often favors Republicans—only further shows that Hispanic voters in West Texas do not vote with sufficient cohesion to satisfy *Gingles* and justify a race-based judicial redraw of the district. Protection of incumbents along partisan lines is a longstanding traditional redistricting principle completely unrelated to race. The Legislature did not violate the Voting Rights Act by giving a greater voice to Hispanic voters who would like to continue to be represented by Congressman Quico Canseco.

C. DOJ's Strained Reading of Section 2 Raises Significant Equal Protection Concerns.

The Supreme Court has repeatedly held that construing the VRA to require that traditional redistricting principles be subordinated to race-based line-drawing implicates the Equal Protection Clause and triggers strict scrutiny. This is true both of redistricting plans drawn by state Legislatures, *e.g.*, *Shaw v. Hunt*, 517 U.S. 899, 904-05 (1996), and plans drawn by federal courts, *Abrams v. Johnson*, 521 U.S. 74, 79 (1997) (“When faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.”).⁶ DOJ’s brief does not mention these cases or discuss the equal protection implications of its proposed revisions to CD 23.

Despite the Supreme Court’s repeated warnings against subordinating traditional redistricting principles to racial consideration, DOJ urges a redraw of CD 23 entirely on the basis of race in order to unseat the incumbent, assuring application of strict scrutiny. But DOJ offers no compelling justification for the disparate racial treatment it proposes. While DOJ suggests that all “non-Anglo citizens [are] subjected to common discrimination on account of race,” *id.* at 21, the “discrimination” DOJ refers to consists only of a supposed pattern of racially polarized voting. But the “polarization” evidence in this case—which DOJ makes no effort to rebut—conclusively establishes that partisan affiliation, not race, accounts for differences in voting patterns. DOJ’s position appears to be that there is discrimination when White voters prefer the

⁶ See also *Parents Involved in Community Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 729 (2007) (rejecting proportionality as justification for race-conscious decision making and observing that “[a]llowing racial balancing as a compelling end in itself would effectively assure that race will always be relevant in American life, and that the ultimate goal of eliminating entirely from governmental decisionmaking such irrelevant factors as a human being’s race will never be achieved”) (internal quotations omitted).

so-called “Anglo candidate”—in this case the *Hispanic incumbent*, Francisco Canseco—at the same 75% rate as they would vote for a White⁷ or Black Republican.⁸ In DOJ’s view, this kind of “discrimination” warrants a race-based remedy any time at least 50% of Hispanics (and African Americans) would prefer a Democrat, regardless of the candidate’s race.⁹ This is absurd. The voting patterns in CD 23 are readily explained by partisan preference, not race, and neither DOJ nor Plaintiffs can point to any evidence to the contrary. As a result, there is no racial injury in CD 23, and no race-based judicial redraw of the district is authorized. *LULAC v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (en banc) (holding that no Section 2 claim exists “[w]hen the record indisputably proves that partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens. . .”), *cert. denied*, 510 U.S. 1071 (1993).

Likewise, DOJ offers no narrowly tailored fix to whatever it claims is wrong with CD 23. DOJ’s approach does not seek to ensure Hispanic voters an equal opportunity to elect their candidate of choice. Rather, DOJ seeks to ensure that defeat of the Hispanic Republican incumbent is highly likely, if not certain. DOJ attempts to justify its objection to a district with 63.8% HVAP and 58.5% HCVAP by arguing that a Hispanic supermajority is necessary in light of low Hispanic turnout. DOJ Statement at 13-14. But the failure to vote at all is also the failure to vote cohesively. Under *Gingles* and *LULAC v. Perry*, Section 2 does not require the creation of districts that guarantee electoral success to minority groups that do not vote cohesively—much less minority groups that, despite overwhelming numerical majorities, fail to control

⁷ See Report of Pls’ Expert Morgan Kousser at Table 6 showing non-Latino support for Anglo and Hispanic candidates to be functionally identical (Doc. 128).

⁸ See Rebuttal Report of John Alford at 4 (Dkt. 308).

⁹ See Dep. of Lisa Handley at 12:11-16 (Ex. C) (opining that polarized “bloc voting” exists wherever 51% of White voters support one candidate and 51% of minority voters support another candidate).

elections because many of their members choose not to vote. This Court should reject the invitation of DOJ and the Plaintiffs to concoct a judicial remedy where none is authorized.

II. Section 2 Does Not Require the Creation of So-Called “Coalition Districts,” and Even If It Did, There is No Evidence in this Case that Any True Coalition Districts Exist.

DOJ’s arguments regarding “coalition districts” should be rejected. To begin with, Section 2 does not require the creation of bi-racial coalition districts when no single, geographically compact minority group is large enough to make up the majority in a district. *See Bartlett v. Strickland*, 129 S. Ct. 1231, 1243 (2009) (“Nothing in § 2 grants special protection to a minority group’s right to form political coalitions.”); State’s Post-Trial Brief at 21-22 (Doc. 411) (collecting cases rejecting coalition-district theory). But even if coalition districts could theoretically qualify as protected Section 2 districts, it would only be where there is extreme voting cohesion between minority groups. This requirement would help ensure that what is accomplished when courts re-draw district lines is remediation of racial discrimination, not protection of political preference.

In *Grove v. Emison*, a wary Supreme Court explained:

In the present case, even if we make the dubious assumption that the minority voters were “geographically compact,” there was quite obviously a higher than usual need for the second of the *Gingles* showings. Assuming (without deciding) that it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with § 2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation, proof of minority political cohesion is all the more essential.

507 U.S. 25, 41, 42 (1993) (citing *Badillo v. Stockton*, 956 F.2d 884, 891 (9th Cir. 1992); *Concerned Citizens of Hardee County v. Hardee County Bd. of Comm’rs*, 906 F.2d 524 (11th Cir. 1990); *Campos v. Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988), *cert. denied*, 492 U.S. 905 (1989)). In *Session v. Perry*, the district court, examining evidence similar to the

evidence in this case, explained: “Properly confined, the Act implements the fundamentals of factions. Unconfined it reaches into the political market and supports persons joined, not by race but by common view. Serious constitutional questions loom at that juncture.” 298 F. Supp. 2d 451, 483-84, (E.D. Tex. 2004), *aff’d in part, rev’d in part on other grounds, vacated in part sub. nom. LULAC v. Perry*, 548 U.S. 399 (2006). The Court continued, “[t]hat there is no cohesion between Black and Latino voters in the primary contests is beyond serious dispute.” *Id.* at 484.

The *Session* court expressly rejected the coalition district claim in that case. *Id.* It did so notwithstanding the presence of *Campos v. Baytown* in Fifth Circuit jurisprudence. *See* 840 F.2d at 1244. DOJ relies heavily on *Campos*, but that holding was questioned by a majority of the Fifth Circuit judges who participated in the en banc poll, 849 F.2d at 944-46, and it cannot be squared with the Supreme Court’s reasoning in *Bartlett*, *see* 129 S. Ct. at 1243. In any event, *Grove* makes clear that, even if coalition-districts are cognizable at all under Section 2, cross-racial voter cohesion is an essential element of any coalition-district claim. The uncontroverted evidence in this case indicates that while African Americans and Latinos form political coalitions in general elections, they vote very much *against* each others’ candidates in primary elections. As Dr. Alford explained in his Section 5 deposition, “Hispanics are voting as a block to defeat the Black candidate of choice.” Dep. of John Alford in Section 5 at 191-92 (Ex. D). The rebuttal report of Plaintiff’s expert, Dr. Engstrom, illustrates this phenomenon (Docs. 284, 307). *See, e.g.*, Richard Engstrom Report at 55-59 (Doc. 307) (Tarrant County: Supreme Court candidate Yanez receives 89.3% of Hispanic primary vote; 42.2% of African American vote; Land Commissioner candidate Uribe receives 99.8% of Hispanic vote; 24.1% African-American vote). And Congressman Al Green confirmed the data by testifying that districts containing

large numbers of African Americans and Hispanics exhibit not bi-racial bloc voting, but inter-racial “tension.” Trial Tr. at 1364:24.

In sum, because there is no evidence in the record that African Americans and Latinos vote cohesively, neither DOJ nor Plaintiffs can prove a coalition district claim (even if such a claim existed) with respect to any of the redistricting maps under question.

III. DOJ’s Proportionality Claims Are Baseless.

In *Johnson v. De Grandy*, the Supreme Court held that Section 2 normally does not mandate the creation of additional minority opportunity districts where “rough proportionality” exists between the number of minority opportunity districts and the minority group’s overall share of the population. 512 U.S. 997, 1023-24 (1994). This principle applies even where, unlike here, the *Gingles* factors have been established. *Id.* DOJ turns *De Grandy* completely on its head, arguing that a lack of perfect proportionality means the Legislature’s maps fail the totality of the circumstances test. DOJ Statement at 15-18. The Supreme Court, however, has rejected the notion that the Voting Rights Act requires proportional representation. *See Abrams v. Johnson*, 521 U.S. 74, 97-98 (1997). Indeed, the plain language of Section 2 provides “nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” 42 U.S.C. 1973.

DOJ’s approach to proportionality would require the creation of nine congressional districts that essentially guarantee victory to favored candidates on election day—something the Supreme Court has rejected as to a single district let alone an entire plan. *LULAC v. Perry*, 548 US at 428. Moreover, DOJ’s arithmetic ignores the fact that two districts—CD 23 and CD 27—were not effective under the benchmark and had, in fact, elected Republicans. *See* Alford Section 5 Report at 2-5 (Ex. B). Under the enacted plan, there are two additional districts that

will be likely to elect Hispanic voters' preferred candidate. Dep. of John Alford in Section 5 at 234:7-235:9 (Ex. D) (noting 5 of 32 congressional districts were "effective" under the benchmark, while 7 of 36 are likely to be "effective" under the enacted plan). Viewed properly, the Legislature's plan includes 22.2% Hispanic opportunity districts—a number "roughly" proportional to the state's eligible Hispanic Citizen Voting Age Population.

CONCLUSION

Because neither Plaintiffs nor DOJ have demonstrated a probability that CD 23 violates the law in any way, this Court should order an interim map that leaves the district as the Legislature drew it. In addition, both the law as announced by the Supreme Court and the evidence offered in this case preclude the judicial creation of "coalition districts."

Dated: November 15, 2011

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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, <i>et al.</i> ,)	
	)	CIVIL ACTION NO.
<i>Plaintiffs,</i>	)	SA-11-CA-360-OLG-JES-XR
	)	[Lead case]
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
MEXICAN AMERICAN LEGISLATIVE	)	CIVIL ACTION NO.
CAUCUS, TEXAS HOUSE OF	)	SA-11-CA-361-OLG-JES-XR
REPRESENTATIVES (MALC),	)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
TEXAS LATINO REDISTRICTING TASK	)	CIVIL ACTION NO.
FORCE, <i>et al.</i>,	)	SA-11-CA-490-OLG-JES-XR
	)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
RICK PERRY,)	
)	
<i>Defendant.</i>)	
_____)	

MARAGARITA V. QUESADA, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

) CIVIL ACTION NO.
) SA-11-CA-592-OLG-JES-XR
) [Consolidated case]

JOHN T. MORRIS,

Plaintiff,

v.

STATE OF TEXAS, *et al.*,

Defendants.

) CIVIL ACTION NO.
) SA-11-CA-615-OLG-JES-XR
) [Consolidated case]

EDDIE RODRIGUEZ, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

) CIVIL ACTION NO.
) SA-11-CA-635-OLG-JES-XR
) [Consolidated case]

**STATE DEFENANTS' RESPONSE TO DEPARTMENT OF JUSTICE'S
BRIEF ON INTERIM MAPS**

Exhibit A

Report of Lisa Handley

A Section 5 Voting Rights Analysis of the Proposed Texas Congressional Plan

Prepared by Dr. Lisa Handley
Principal, Frontier International Electoral Consulting

1.0 Introduction

My comparison of the current Texas congressional plan (Benchmark Plan) to the congressional plan proposed by the State of Texas (Proposed Plan) leads me to the conclusion that the Proposed Plan violates Section 5 of the Voting Rights Act. Although the State of Texas gained four seats in the 2010 reapportionment (increasing the Texas congressional delegation from 32 to 36 members), an increase due primarily to the increase in the Hispanic population,¹ the Proposed Plan includes no additional districts that provide minority voters with the ability to elect candidates of their choice. Minority voters have the ability to elect minority-preferred candidates in 31.3% of the districts (10 districts out of a total of 32 districts) in the Benchmark Plan, but only 27.8% of the districts in the Proposed Plan (10 districts out of a total of 36 districts) provide minority voters with the ability to elect candidates of choice to office. Perhaps even more striking, under the Benchmark Plan, 6,001,286 minorities reside in districts that provide them with the ability to elect their preferred candidates. However, under the Proposed Plan this number falls to 5,605,011; 396,275 fewer blacks and Hispanics reside in effective minority districts in the Proposed Plan than in the Benchmark Plan.

Scope of Project I was asked by the US Department of Justice to conduct a voting rights analysis of the proposed Texas congressional plan to ascertain whether the Proposed Plan satisfies the requirements of Section 5 of the Voting Rights Act of 1965.

Professional Background and Experience I have advised numerous jurisdictions and other clients on voting rights-related issues and have served as an expert in dozens of voting rights and redistricting cases. My clients have included scores of state and local jurisdictions, a number of national civil rights organizations, the U.S. Department of Justice, and such international organizations as the United Nations.

I have been actively involved in researching, writing and teaching on subjects relating to voting rights, including minority representation, electoral system design and redistricting. I co-authored a book, *Minority Representation and the Quest for Voting Equality* (Cambridge University Press, 1992), and numerous articles, as well as co-edited a volume (*Redistricting in Comparative Perspective*, Oxford University Press, 2008) on these subjects. I have taught several political science courses, both at the undergraduate and graduate level, related to

¹The US Census reports that the population of the State of Texas increased by 4,293,741 (from 20,851,820 to 25,145,561) between 2000 and 2010. The Hispanic population increased by 2,791,255 (from 6,669,666 in 2000 to 9,460,921); the non-Hispanic white population, on the other hand, increased by 464,032 (from 10,933,313 to 11,397,345). The Hispanic population growth therefore accounts for 65% of the population growth in the State of Texas between 2000 and 2010.

representation and redistricting. I hold a Ph.D. in political science from George Washington University.

I have been a principal of Frontier International Electoral Consulting since co-founding the company in 1998. Frontier IEC specializes in providing electoral assistance in transitional democracies and post-conflict countries.

2.0 The Benchmark Plan

The congressional plan from which retrogression is to be measured is the current Texas congressional plan considered in conjunction with the 2010 census data (the Benchmark Plan). In the Benchmark Plan there are ten congressional districts with significant minority populations: Districts 9, 15, 16, 18, 20, 23, 27, 28, 29, and 30. As will be demonstrated below, all of these districts provide minority voters with the ability to elect candidates of their choice to office.

Table 1: Congressional Districts in the Benchmark Plan with Significant Minority Populations

District	%HVAP	%HCVAP	%SSVR 2010	%BVAP	Hispanic Population	Black Population	Hispanic + Black Population ²
9	38.9	19.1	15.8	36.3	310931	269443	571691
15	78.7	71.9	70.7	1.9	649297	13748	659953
16	79.1	74.5	67.6	3.5	617465	29102	640184
18	39.0	22.3	18.1	37.9	313533	271104	577869
20	68.0	63.8	58.1	7.7	509144	58233	559532
23	62.8	58.4	52.0	4.0	562913	34566	591878
27	69.2	63.8	59.4	2.6	543306	20112	559593
28	75.7	68.3	65.6	1.8	672129	15455	684459
29	72.3	56.0	51.3	10.7	514861	72061	581464
30	34.7	19.8	14.0	42.5	280508	299520	574663
TOTAL					4974087	1083344	6001286

State of Texas Population Percentage Approach In their complaint, the State of Texas indicated that their determination of whether a district offered minority voters an ability to elect candidates of choice was based on the demographic composition of the districts alone.³ The set of population percentage cutoffs listed in the brief, chosen without any

²The black and Hispanic population columns cannot be added to produce “Hispanic + Black” population or black Hispanics would be double-counted. The information on which this table relies is found primarily in a set of reports produced by the Texas Legislative Council labeled “Red-100 and Red-202.”

³Although the State notes in their complaint that they created an additional congressional district with a BVAP of 37.6% and a new congressional district was drawn with a HVAP “over 50%,” their count of

analysis to determine if these served as a valid indication of minority opportunity,⁴ listed in the brief are as follows:

- Hispanic Voting Age Population (HVAP) greater than 60%
- Hispanic Citizen Voting Age population (HCVAP) greater than 50%
- Spanish Surname Voter Registration (SSVR) greater than 50%
- Black Voting Age Population (BVAP) greater than 40%

While the demographic composition of a district is certainly the valid starting point for a determination of whether a district provides minority voters with an ability to elect candidates of their choice to office, this approach fails to take into account the actual voting performance of the districts – that is, whether the minority districts succeeded in electing minority-preferred candidates over the course of the decade.⁵

As a consequence of the decision to rely solely on a set of minority population percentage cutoffs, the State contends that the Benchmark Plan contains only eight Benchmark districts that offer minorities the ability to elect candidates of choice: seven districts that offer Hispanic voters the ability to elect candidates of choice and one district that provides black voters an ability to elect candidates of choice.

By adopting a population percentage approach to identifying Benchmark minority districts, the State fails to include in the Benchmark number of minority districts two minority districts that have consistently elected minority-preferred candidates to Congress: Districts 9 and 18. When the actual election performance of congressional districts is taken into account, all ten districts with significant minority populations in the Benchmark Plan provide minority voters with the ability to elect candidates of their choice to office.

Election-Focused Approach I have developed two election-based indices for determining if a district provides minority voters with an ability to elect candidates of choice over the past decade. Using the demographic composition of the Benchmark districts as my starting point

effective minority districts in the Benchmark and Proposed Plans indicate that they adhered to the cutoff percentages as listed.

⁴Although the State (both the Texas Legislative Council and the Office of the Attorney General) produced scores of reports to inform the redistricting process, the State did not include much of this data in their brief. I, however, have relied extensively on the State's reports to prepare this report.

⁵The US Department of Justice guidelines state: "In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district. As noted above, census data alone may not provide sufficient indicia of electoral behavior to make the requisite determination." *Federal Register* /Vol. 76, No. 27 /Wednesday, February 9, 2011.

– I considered only districts with minority voting age population percentages greater than 50% – I calculated values for each congressional district on these two indices.

The first, and most probative, index is a measure of the district’s ability to elect a minority-preferred candidate to Congress. I refer to this as the *Endogenous Effectiveness Index*. This index simply measures the percentage of contests since the districts were redrawn in 2004 (some districts were redrawn again prior to the 2006 election hence there are only three contests to consider with regard to these districts) that the minority-preferred candidate won.

It is important to consider the ability of minorities to elect their preferred candidate over time, rather than focus on a single election. For example, turnout (both white and minority) varies depending on whether the election is held in a presidential election year and this can impact the ability of minorities to elect a candidate of choice.⁶

The second index is the *Exogenous Effectiveness Index*. It measures the ability of a set of statewide minority-preferred candidates to carry the congressional district at issue. The elections indexed were five general election contests (in each instance the highest contest on the ticket to include a Hispanic candidate that was preferred by Hispanic and black voters), one from each election cycle over the course of the decade:⁷ the 2002 race for Governor (Tony Sanchez ran as the Democratic nominee); the 2004 race for Court of Criminal Appeals, Place 6 (which included J.R. Molina, a Hispanic Democrat); the 2006 race for Lieutenant Governor (Maria Alvarado ran as the Democratic nominee in this contest); the 2008 race for US Senate (Richard Noriega was the Democratic candidate); and the 2010 race for Lieutenant Governor (which included Linda Chavez-Thomas, a Hispanic Democrat). All of the information used to create this index was compiled by the State of Texas and appear in a report labeled “RpvaMulti_AllCandStandard_PLANC100”. This included the results of a district-by-district racial bloc voting analysis used to ensure that the Hispanic candidate was in fact the minority-preferred candidate in every district considered. (Appendix B lists the raw information used to tabulate district scores for this index.)

Applying the Election-Focused Approach Table 2, below, includes the Hispanic voting age population (HVAP), Hispanic citizen voting age population (HCVAP), Spanish surname voter registration (SSVR), and black voting age population figures for all majority Hispanic congressional districts (based on voting age population). In addition, the table indicates the scores of each district on both the Endogenous and Exogenous Effectiveness Indices. The

⁶This is just one example of a factor that may impact the ability of minorities to elect their preferred candidates. Other factors may include demographic shifts within the district and the degree of racial polarization, particularly the amount of white crossover vote.

⁷It is important to consider the voting patterns and the results of a series of elections over the course of the decade rather than simply rely on a single election to determine if the district offers minorities an ability to elect candidates of choice.

same information is reported for all congressional districts over 36% black in voting age population in Table 3, below.

Table 2: Benchmark Congressional Districts Greater than 50% Hispanic in Voting Age Population and their Scores on the Effectiveness Indices

District	% HVAP	% HCVAP	% SSVR 2010	% BVAP	State House Representation	Endogenous Minority Effectiveness Index	Exogenous Minority Effectiveness Index
16	79.1	74.5	67.6	3.5	HD 2004-2010	100	100
15	78.7	71.9	70.7	1.9	HD 2006-2010*	100	100
28	75.7	68.3	65.6	1.8	HD 2006-2010*	100	100
29	72.3	56.0	51.3	10.7	H-P WD 2004-2010	100	100
27	69.2	63.8	59.4	2.6	WR 2010;2HD 2004-2008	75	60
20	68.0	63.8	58.1	7.7	HD 2004-2010	100	100
23	62.8	58.4	52.0	4.0	HR 2010; HD 2006-2008*	67	40

*Districts redrawn by court order prior to the 2006 election include 15, 23 and 28. (All districts were redrawn prior to the 2004 election.) Abbreviations: HD = Hispanic Democrat; WD = White Democrat; HR = Hispanic Republican; WR = White Republican; H-P WD = Hispanic-Preferred White Democrat

Table 3: Benchmark Congressional Districts Greater than 36% Black in Voting Age Population and their Scores on the Effectiveness Indices

District	% BVAP	% HVAP	% HCVAP	% SSVR 2010	State House Representation	Endogenous Minority Effectiveness Index	Exogenous Minority Effectiveness Index
30	42.5	34.7	19.8	14.0	BD 2004-2010	100	100
18	37.9	39.0	22.3	18.1	BD 2006-2010	100	100
9	36.3	38.9	19.1	15.8	BD 2006-2010	100	100

*Abbreviations: BD = Black Democrat

Hispanic voters in all of the districts in Table 2 demonstrated an ability to elect their preferred candidates at least a majority of the time over the course of the decade.⁸ Each of these districts scored higher than 50 on the Endogenous Index and averaged at least 50 on both of the scores. Because the Endogenous Index is more probative than the Exogenous Index, I have given it more weight by considering it separately (a district is deemed

⁸ Although the Hispanic-preferred candidate is usually a Hispanic Democrat, in District 29 the candidate of choice of Hispanic voters is clearly the white Democratic incumbent, Rep. Gene Green. An analysis of voting patterns by race/ethnicity indicates that he is the choice of Hispanic voters even when, as in 2010, his opponent is Hispanic. (See Appendix D.)

ineffective if it scores less than 50 on this index) and then averaging this score with the Exogenous Index when making my determination of minority effectiveness.⁹

Applying the same Election-Focused Approach to minority districts that have significant black populations,¹⁰ Table 3 demonstrates that there are three minority districts that provide black voters with the ability to elect candidates of choice in the Benchmark Plan. All three of these districts have consistently elected minority-preferred candidates to office, and all three of them also scored 100 on the Exogenous Effectiveness Index.

The State of Texas, however, argues that there is only one district in the Benchmark Plan that offers black voters the ability to elect candidates of choice to office. The State does this by adopting the arbitrary cutoff of 40% black voting age population – a cutoff that leads the State to exclude Districts 9 and 18 from the count, despite the fact that both of these districts have consistently elected a black-preferred African American Democrat to office since the districts were redrawn in 2004.

Conclusion When the ability to elect minority-preferred candidates to office is taken as the bellwether rather than simple population percentages, the Benchmark Plan includes ten minority districts that offer minority voters the ability to elect minority-preferred candidates, rather than the eight effective minority districts the State contends exist in the Benchmark Plan.

3.0 Proposed Plan

Because the State of Texas was awarded an additional four congressional seats in the 2010 reapportionment, a comparison of the relative strength of minority voters in the Benchmark and the Proposed Plan is not a simple tally of the number of districts that offer minority voters the ability to elect candidates of choice – it is a comparison of the percentage of districts that provide this opportunity.

Relying on the same set of minority cutoff percentages as those used to identify a Benchmark district that provides minority voters with an ability to elect candidates of choice, the State contends there are nine effective minority districts (a gain of one) in the Proposed Plan: seven districts that provide Hispanic voters with the ability to elect their

⁹Although the Endogenous Index is more probative when determining if a district offers minority voters the ability to elect candidates of choice to the State House, the Exogenous Index has been included to provide a relative measure of effectiveness when comparing the Benchmark to Proposed districts. (There have obviously been no state house elections under the Proposed Plan.)

¹⁰Because all districts greater than 36% black in voting age population consistently elect minority-preferred candidates to office this table lists all of these districts in descending order of black population. (These districts are all majority minority in composition, with the plurality group being black.)

candidates of choice and two that offer black voters the ability to elect black-preferred candidates.

Although the Endogenous Effectiveness Index cannot be employed when examining proposed districts, the Exogenous Effectiveness Index provides a good indication of the relative effectiveness of these newly configured districts in providing minorities with the ability to elect candidates of choice. This index is based on a recompilation of the election results from the same five statewide elections incorporated in the Exogenous Index for the Benchmark Plan. In this case, however, the election returns must be recompiled to conform to the proposed district boundaries. This recompilation was prepared by the State and can be found in a report labeled “RpvaMulti_AllCandStandard_PLANC185”.¹¹ The results of tallying up the percentage of contests that the minority-preferred candidates would win in each districts is found in Tables 4 and 5 in the column labeled Exogenous Effectiveness Index. (The raw information can be found in Appendix C.)

Table 4: Proposed Congressional Districts Greater than 50% Hispanic in Voting Age Population and their Scores on the Exogenous Effectiveness Index

District	% HVAP	% HCVAP	% SSVR 2010	% BVAP	Incumbent Residing in District	Exogenous Minority Effectiveness Index
34	79.0	71.7	71.1	1.7	None	100
16	77.6	72.7	65.7	3.8	HD (Reyes)	100
15	77.2	71.0	66.5	2.1	HD (Hinojosa)	80
28	73.6	65.9	62.8	5.6	HD (Cuellar)	100
29	71.7	56.3	51.6	12.4	H-P WD (Green)	100
20	66.0	62.9	55.6	5.7	HD (Gonzalez)	100
23	63.8	58.5	54.1	2.7	HR (Conseco)	0
35	58.3	51.9	43.8	10.4	None	100

**The shaded district is a majority Hispanic district that does not offer Hispanic voters the ability to elect candidates of choice based on its score on the Exogenous Index.*

Table 5: Proposed Congressional Districts Greater than 36% Black in Voting Age Population and their Scores on the Exogenous Index

District	% BVAP	% HVAP	% HCVAP	% SSVR 2010	Incumbent Residing in District	Exogenous Minority Effectiveness Index
30	46.5	35.6	20.6	14.8	BD (Johnson)	100
18	40.5	31.9	17.4	13.6	BD (Jackson Lee)	100
9	37.6	35.8	18.3	14.6	BD (Green)	100

¹¹Although the State had this information – and much more – at their disposal, none of this information was included in their complaint.

Hispanic Districts Using the Population Percentage Approach, the State contends that the Proposed Plan offers seven districts that provide Hispanics the ability to elect candidates of their choice: Congressional Districts 15, 16, 20, 23, 28, 29 and 34. However, one of these proposed majority Hispanic districts does not, in fact, offer this opportunity. According to the Election-Focused Approach, District 23 will simply not provide Hispanic voters with the ability to elect Hispanic-preferred candidates:¹² the Exogenous Index score is 0 for this district and the incumbent in the district, Rep. Francisco Consecro, is not the Hispanic-preferred candidate.¹³

On the other hand, there is a newly created seat in the Proposed Plan that the State does not include in its tally because it does not meet the Hispanic cutoff percentage of 60% HVAP (though it is mentioned in the complaint) that does, in fact, provide Hispanic voters with the ability to elect minority-preferred candidates: District 35. District 35, although it is less than 60% in HVAP (it is 58.3% in HVAP), has an Exogenous Index score of 100 (and is an open seat). Thus, using the Election-Focused Approach, this brings the number of effective Hispanic districts to seven – the same number of effective Hispanic districts as in the Benchmark Plan. Given the increase in the number of congressional seats in Texas after the reapportionment, however, this represents a decrease in the percentage of seats that provide Hispanic voters with the ability to elect candidates of choice: 21.9% to 19.4%.

Plurality Black Districts The State contends that the Proposed Plan increases the number of districts that provide black voters with the ability to elect candidates of their choice from one in the Benchmark to two. But the State has done this simply by taking District 18, which is already an effective minority district according to the Election-Focused Approach, and adding enough black population to the district to bump it over the cutoff percentage – it is increased from its present 37.9% BVAP to 40.5% BVAP in the Proposed Plan. Because the Election-Focused Approach already included this district in the count of effective districts in

¹²Although plaintiff's expert John Alford employed a much broader index of 48 statewide elections in his report – the vast majority of which do not include minority candidates – he reached a similar conclusion with regard to the decline in minority effectiveness in District 23. He found that Democrats won 46% of the 48 contested statewide elections under the Benchmark district but under Proposed District 23 this percentage dropped to only 29%. However, he ignored the most relevant factor: this district elected a Hispanic-preferred Hispanic Democrat to Congress after the district was redrawn in 2006. Rep. Ciro Rodriquez served for two of the three terms the district was in existence. (Alford expert report, filed 10/14/11.)

¹³A racial bloc voting analysis of the 2010 general election contest in District 23 indicates that the overwhelming majority of Hispanics voted for Ciro Rodriquez, the Hispanic Democratic incumbent, rather than for Francisco Consecro. White voters, however, strongly favored Consecro. (See Appendix D.)

the Benchmark Plan, there is no gain in the number of effective minority districts when plurality black districts alone are considered.¹⁴

Minorities Provided with the Ability to Elect Minority-Preferred Candidates Table 6, below, replicates the information found in Table 1 (Benchmark Plan) for the Proposed Congressional Plan. The totals in the last three columns denote the number of minorities (Hispanics, blacks and Hispanics and blacks combined, with Hispanic blacks counted only once) residing in districts that would provide them with the ability to elect candidates of their choice to Congress. A comparison of this table to Table 1 indicates that 395,022 fewer blacks and Hispanics would reside in effective minority districts in the Proposed Plan than in the Benchmark Plan.¹⁵ In fact, when the Hispanic population alone is considered, 479,704 fewer Hispanics would reside in such districts.

Table 6: Effective Congressional Districts in the Proposed Plan

District	%HVAP	%HCVAP	%SSVR 2010	%BVAP	Hispanic Population	Black Population	Hispanic + Black Population
9	35.8	18.3	14.6	37.6	271030	267466	530075
15	77.2	71.0	66.5	2.1	562999	14063	574180
16	77.6	72.7	65.7	3.8	559725	28848	582365
18	31.9	17.4	13.6	40.5	253915	284314	531871
20	66.0	62.9	55.6	5.7	483902	42792	519807
28	73.6	65.9	62.8	5.6	538754	39337	573777
29	71.7	56.3	51.6	12.4	525996	85885	605971
30	35.6	20.6	14.8	46.5	281665	318810	594810
34	79.0	71.7	71.1	1.7	577578	11175	586017
35	58.3	51.9	43.8	10.4	438819	75336	506138
TOTAL					4494383	1168026	5605011

4.0 Retrogression Not Unavoidable

One approach to avoiding retrogression would have been for the State to retain District 23 as an effective minority district in the Proposed Plan. In order to determine if this is possible,¹⁶ I drew an illustrative congressional plan with the Proposed Plan as my base map,

¹⁴The Election-Focused Approach includes District 9 as an effective minority district in both the Benchmark and the Proposed Plan.

¹⁵This was accomplished by taking the minority population in over-populated minority districts out and, rather than creating more minority districts, submerging these minorities in neighboring majority white districts.

¹⁶According to the US Department of Justice guidelines, "In considering whether less retrogressive alternative plans are available, the Department of Justice looks to plans that were actually considered or

focusing on modifying the district boundaries only in the general area of Proposed District 23. I was able to redraw District 23 in a manner that would provide minority voters with the ability to elect candidates of their choice to office.

I reassigned VTDs between Districts 11, 16, 20, 21, 23 and 28 (the other 30 congressional districts have exactly the same boundaries in the illustrative plan as in the Proposed Plan) making certain I did not adversely effect the Exogenous Index scores of Districts 16, 20 or 28 – they are still 100 under the illustrative plan.

District 23 in the illustrative plan is 73.9% in HVAP and 67.5% in HCVAP. The Exogenous Index score for District 23 in the illustrative plan is 80.¹⁷ The population data and the map for this plan are attached to this report in Appendix E.

5.0 Conclusion

A summary count of the number of effective minority districts in the Benchmark and Proposed Plan, depending upon whether the Population Percentage or the Election-Focused Approach is employed, can be found in Table 7, below.

Table 7: Comparison of Effective Minority Districts in the Benchmark and Proposed Plan, State of Texas Percentage Approach and Election-Focused Approach

	Benchmark Plan: Effective Districts		Proposed Plan: Effective Districts	
	State of TX Percentage Approach	Election- Focused Approach	State of TX Percentage Approach	Election- Focused Approach
Hispanic Districts	15	15	15	15
	16	16	16	16
	20	20	20	20
	23	23	23	
	27	27		

drawn by the submitting jurisdiction, as well as alternative plans presented or made known to the submitting jurisdiction by interested citizens or others. In addition, the Department may develop illustrative alternative plans for use in its analysis, taking into consideration the jurisdiction's redistricting principles. If it is determined that a reasonable alternative plan exists that is nonretrogressive or less retrogressive than the submitted plan, the Attorney General will interpose an objection." *Federal Register* /Vol. 76, No. 27 /Wednesday, February 9, 2011.

¹⁷ I was unable to run the illustrative plan through the redistricting application used by the State of Texas therefore the recomputed election results reported for this plan are based on whole VTDs. However, in order to equalize the population across congressional districts, I split five VTDs in the plan. This will have a minimal effect on the recomputed election results.

	Benchmark Plan: Effective Districts		Proposed Plan: Effective Districts	
	State of TX Percentage Approach	Election- Focused Approach	State of TX Percentage Approach	Election- Focused Approach
	28	28	28	28
	29	29	29	29
			34	34
				35
TOTAL Hispanic	7/32 21.9%	7/32 21.9%	7/36 19.4%	7/36 19.4%
Black Districts		9		9
		18	18	18
	30	30	30	30
Total Black	1/32 3.1%	3/32 9.4%	2/36 5.6%	3/36 8.3%
TOTAL	8/32 25%	10/32 31.3%	9/36 25%	10/36 27.7%

The State of Texas, by relying on the minority population percentages of the congressional districts without any analysis to determine if the percentages chosen are meaningful, argues that the Proposed Plan increases the number of effective minority districts by one and thus maintains the same percentage (25%) of effective minority districts in the Proposed Plan as in the Benchmark Plan.

When the actual election performance of the minority districts is taken into account, however, it is clear that the Proposed Plan is retrogressive. The percentage of districts that offer minority voters the ability to elect candidates of their choice in the Benchmark Plan is 31.3% of the total number of 32 districts. In the Proposed Plan, this percentage decreases to 27.7% because the State maintains the same number of effective minority districts despite the increase in the total number of districts from 32 to 36. In addition, if the Proposed Plan were to be enacted, a substantial number of Hispanics (479,704) would no longer reside in districts that provide them with the ability to elect their preferred candidates. This is particularly egregious given the gain in congressional seats is due in large part to the growth in the Hispanic population.

Appendices

Appendix A Table Comparing Benchmark and Proposed Minority Districts Using the State of Texas Population Percentage Approach and Election-Focused Approach

Appendix B Summary Table of Texas Legislative Council Data Used to Create Exogenous Index for Benchmark Districts

Appendix C Summary Table of Texas Legislative Council Data Used to Create Exogenous Index for Proposed Districts

Appendix D Results of Racial Bloc Voting Analysis for Select Congressional Contests

Appendix E Population Data and Map for Illustrative Congressional Plan District 23

Appendix A:
Comparison of Benchmark and Proposed Minority Districts
Using the State of Texas Population Percentage Approach and Election-Focused Approach

	Benchmark Plan: Effective Districts		Proposed Plan: Effective Districts		Comments on Differences between the Lists
	State of TX Percentage Approach	Election- Focused Approach	State of TX Percentage Approach	Election- Focused Approach	
Hispanic Districts	15	15	15	15	
	16	16	16	16	
	20	20	20	20	
	23	23	23		The State counts District 23 as effective in the Proposed Plan although it scores a 0 on the Exogenous Index and the incumbent in the seat is not a Hispanic-preferred candidate
	27	27			District 27 is redrawn in the Proposed Plan with a HVAP below 50%
	28	28	28	28	
	29	29	29	29	
			34	34	
				35	Although District 35 is less than 60%HVAP (and less the 50%SSVR), the Exogenous Index score indicates that this new open seat is likely to be an effective minority district under the Election-Focused Approach
TOTAL Hispanic	7/32 21.9%	7/32 21.9%	7/36 19.4%	7/36 19.4%	

	Benchmark Plan: Effective Districts		Proposed Plan: Effective Districts		Comments on Differences between the Lists
	State of TX Percentage Approach	Election- Focused Approach	State of TX Percentage Approach	Election- Focused Approach	
Black Districts		9		9	Although the State does not count District 9 an effective district in either the Benchmark or the Proposed Plan (it is 36.3% BVAP in the Benchmark Plan and 37.9% BVAP in the Proposed Plan hence falls below the 40% BVAP cutoff in both instances), it scores 100 on both of the Indexes in the Benchmark Plan and a 100 on the Exogenous Index in the Proposed Plan.
		18	18	18	District 18 is 37.9% BVAP in the Benchmark Plan and is not counted by the State as an effective district because it is less than 40% BVAP. However, it has Endogenous and Exogenous Index scores of 100 and therefore is included in the list of effective Benchmark districts using the Election-Focused Approach. In the Proposed Plan, the BVAP is increased to 40.5% so the State includes it as an effective district.
	30	30	30	30	
Total Black	1/32 3.1%	3/32 9.4%	2/36 5.6%	3/36 8.3%	
TOTAL	8/32 25%	10/32 31.3%	9/36 25%	10/36 27.7%	

Appendix B: Summary Table of State of Texas Data Used to Create Exogenous Index for Benchmark Districts

	2002 GE: Governor				2004 GE: Court of Criminal Appeals, Place 6				2006 GE: Lt. Governor			
	Sanchez				Molina				Alvarado			
Plan100 District	Estimates of % Hispanic/ Black and (Anglo) Votes for Hispanic Candidate	Actual # Votes	Actual # Votes for opponent	Percent Votes	Estimates of % Hispanic/ Black and (Anglo) Votes for Hispanic Candidate	Actual # Votes	Actual # Votes for opponent	Percent Votes	Estimates of % Hispanic/ Black and (Anglo) Votes for Hispanic Candidate	Actual # Votes	Actual # Votes for opponent	Percent Votes
9	94.6 (0)	65903	30038	68.7%	97.2 (15.0)	111874	42442	72.5%	93.3 (19.1)	51718	24166	68.2%
15	91.4 (23.7)	62935	40859	60.6%	84.2 (25.9)	82829	59329	58.3%	94.0 (24.3)%	42956	37173	53.6%
16	87.0 (24.3)	62863	34637	64.5%	80.8 (29.7)	96709	56832	63.0%	78.2 (27.9)	47090	36900	56.1%
18	99.8 (33.3)	79287	29572	72.8%	100 (40.3)	125958	42735	74.7%	98.9 (45.3)	59072	24368	70.8%
20	80.6 (17.7)	60599	37295	61.9%	79.5 (30.3)	103079	61724	62.5%	77.4 (33.0)	51351	35003	59.5%
23	88.7 (11.2)	64148	63573	50.2%	84.7 (18.4)	95185	97832	49.3%	83.3 (20.0)	57249	65067	46.8%
27	85.5 (19.7)	63470	52457	54.7%	85.5 (19.6)	90345	76176	54.3%	84.1 (20.8)	51223	54133	48.6%
28	92.9 (10.5)	77160	40590	65.5%	84.1 (20.2)	85409	67981	55.7%	89.1 (21.0)	43301	41855	50.8%
29	90.2 (3.4)	44640	24644	64.4%	80.6 (21.3)	64690	39264	62.2%	87.5 (23.0)	29403	19416	60.2%
30	96.8 (27.3)	90941	27480	76.8%	91.5 (37.0)	134912	39704	77.3%	100 (44.4)	73287	24939	74.6%

	2008 GE: US Senate				2010 GE: Lt. Governor			
	Noriega				Chavez-Thomas			
Plan100 District	Estimates of % Hispanic/ Black and (Anglo) Votes for Hispanic Candidate	Actual # Votes	Actual # Votes for opponent	Percent Votes	Estimates of % Hispanic/ Black and (Anglo) Votes for Hispanic Candidate	Actual # Votes	Actual # Votes for opponent	Percent Votes
9	97.6 (28.4)	134208	37984	77.9%	97.4 (15.0)	78339	26490	74.7%
15	90.2 (21.5)	100691	61020	62.3%	92.8 (13.9)	51413	42211	54.9%
16	83.7 (34.0)	114550	55382	67.4%	81.7 (32.0)	47450	33489	58.6%
18	100 (43.9)	148432	40604	78.5%	100 (36.0)	87555	32135	73.2%
20	80.9 (38.0)	114094	58305	66.2%	78.4 (31.3)	52875	36067	59.4%
23	92.5 (22.5)	120432	111210	52.0%	98.4 (16.1)	62397	81325	43.4%
27	87.7 (22.0)	98036	76908	56.0%	88.8 (17.0)	47801	54717	46.6%
28	89.7 (19.6)	103369	70638	59.4%	90.4 (12.6)	53369	53438	50.0%
29	91.6 (23.3)	72068	32924	68.6%	92.7 (17.5)	40644	24477	62.4%
30	100 (42.0)	162986	38749	80.8%	100 (39.0)	89301	23215	79.4%

Appendix C: Summary Table of State of Texas Data Used to Create Exogenous Index for Benchmark Districts

	2002 GE: Governor			004 GE: Court of Criminal Appeals, Place			2006 GE: Lt. Governor			2008 GE: US Senate		
	Sanchez			Molina			Alvarado			Noriega		
Plan 185	Actual # Votes	Actual # Votes for opponent	Percent Votes	Actual # Votes	Actual # Votes for opponent	Percent Votes	Actual # Votes	Actual # Votes for opponent	Percent Votes	Actual # Votes	Actual # Votes for opponent	Percent Votes
9	58923	26396	69.1%	102510	39441	72.2%	48534	22731	68.1%	128425	37263	77.5%
15	45459	32499	58.3%	61062	51860	54.1%	30160	30820	49.5%	79810	52900	60.1%
16	57415	34077	62.8%	89365	55230	61.8%	43850	36232	54.8%	105555	53984	66.2%
18	85231	30975	73.3%	137142	42145	76.5%	67002	25769	72.2%	161999	40482	80.0%
20	54236	40443	57.3%	94991	68367	58.1%	49823	39584	55.7%	112894	71153	61.3%
28	67892	31247	68.5%	96219	52703	64.6%	38812	31668	55.1%	94346	54306	63.5%
29	46515	21486	68.4%	67046	35417	65.4%	30657	17347	63.9%	76939	29933	72.0%
30	91382	30216	75.2%	135139	40947	76.7%	72864	26886	73.0%	164315	36525	81.8%
34	57196	37510	60.4%	77030	51961	59.7%	41901	35051	54.5%	89416	52886	62.8%
35	49099	32704	60.0%	86521	53761	61.7%	43446	31893	57.7%	99605	56381	63.9%
23	54676	57843	48.6%	72583	84551	46.2%	43250	57809	42.8%	87024	93608	48.2%

2010 GE: Lt. Governor			
Chavez-Thomas			
Plan 185	Actual # Votes	Actual # Votes for opponent	Percent Votes
9	76264	26268	74.4%
15	39714	38074	51.1%
16	44331	32898	57.4%
18	96195	30724	75.8%
20	52212	45364	53.5%
28	48612	38351	55.9%
29	43550	22304	66.1%
30	91536	22913	80.0%
34	44131	37340	54.2%
35	46760	36272	56.3%
23	45135	71158	38.8%

Appendix D:
Results of Racial Bloc Voting Analysis for Select Congressional Contests

Contest and Candidates	Candidate Information		Estimates of the Percentage of White and Minority Voters Casting a Vote for each of the Candidates					
	Party	Race	White Voters			Hispanic Voters		
			Homogenous Precinct	Bivariate Regression	Ecological inference	Homogeneous Precinct	Bivariate Regression	Ecological inference
2010 General: CD 23								
Rodriquez	D	H	17.4	10.8	12.4	82.5	86.8	84.2
Conseco	R	H	75.5	83.8	81.9	13.2	10.5	11.2
others			7.1	5.4	6.3	4.2	2.7	3.9

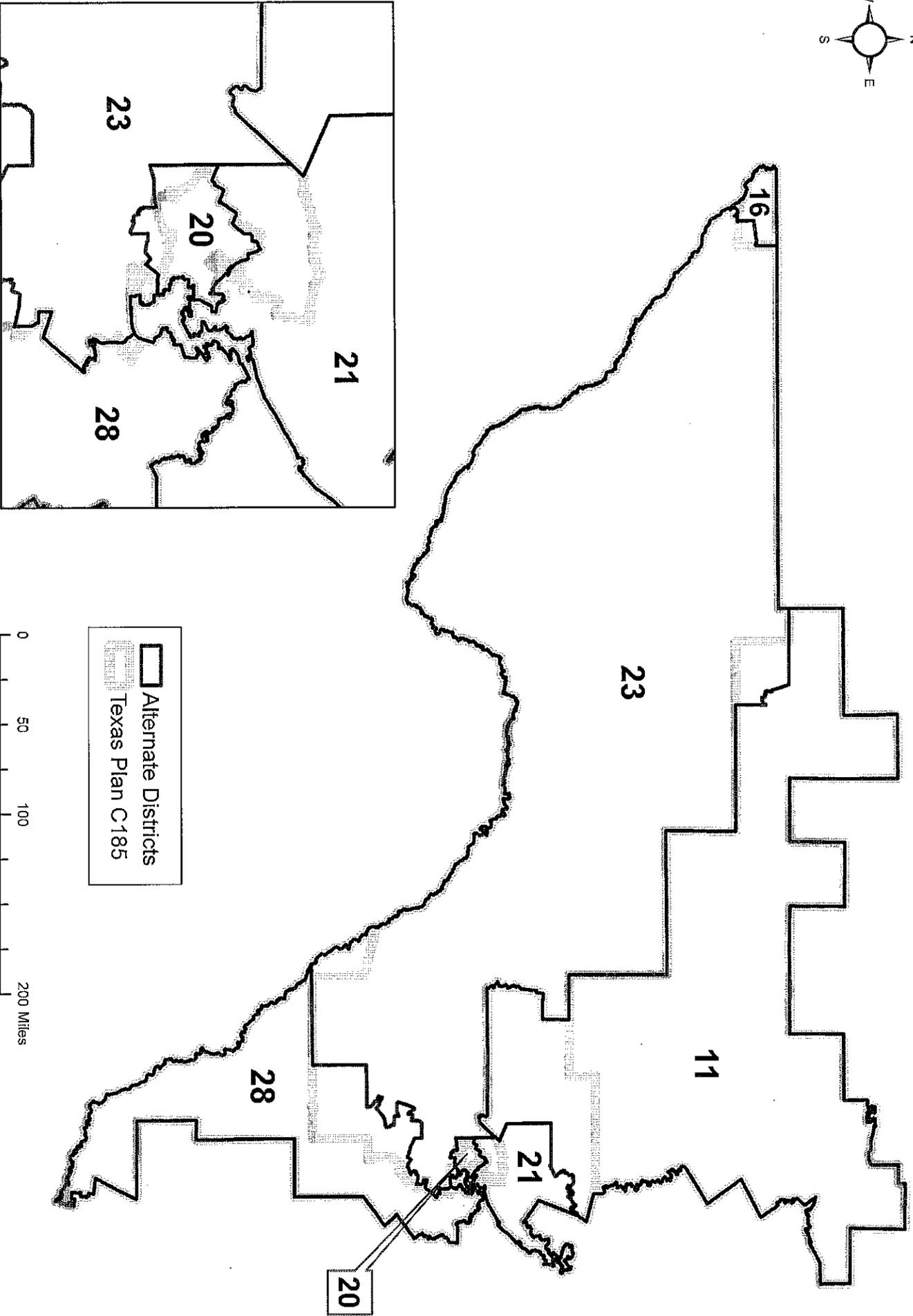
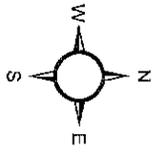
Contest and Candidates	Candidate Information		Estimates of the Percentage of White and Minority Voters Casting a Vote for each of the Candidates					
	Party	Race	White Voters			Hispanic Voters		
			Homogenous Precinct	Bivariate Regression	Ecological inference	Homogeneous Precinct	Bivariate Regression	Ecological inference
2010 General: CD 29								
Green	D	W	52.2	54.2	53.8	77.2	83.0	79.4
Morales	R	H	46.8	44.6	45.5	21.7	15.5	18.7
Walters	L	W	1.0	1.1	1.0	1.1	1.6	1.4

Appendix E:
Population Data and Map for Illustrative Plan

Alternate District	Population	Deviation	VAP	Hispanic VAP	Percent Hispanic VAP	Black(NH) VAP	Percent Black(NH) VAP	White(NH) VAP	Percent White(NH) VAP
11	698,472	-16	533,363	125,181	23.5	16,131	3.0	381,327	71.5
16	698,489	1	494,062	383,821	77.7	15,497	3.1	83,862	17.0
20	698,500	12	508,819	316,185	62.1	28,822	5.7	141,271	27.8
21	698,475	13	543,654	134,421	24.7	18,699	3.4	363,068	66.8
23	698,486	-2	486,270	359,581	73.9	9047	1.9	111,750	23.0
28	698,490	2	472,971	341,717	72.2	23,926	5.1	98,827	20.9

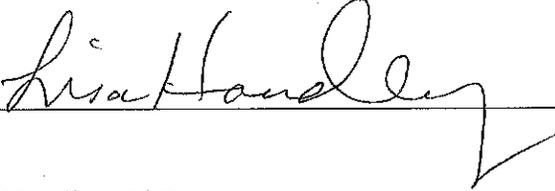
Alternate District	Citizen VAP (est.)	Hispanic Citizen VAP (est.)	Percent Hispanic Citizen VAP
11	482,638	91,067	18.9
16	360,940	263,374	73.0
20	417,099	249,451	59.8
21	462,118	95,676	20.7
23	372,339	251,162	67.5
28	330,140	211,606	64.1

Texas Congressional: Alternate Redistricting Plan



I declare under penalty of perjury, that the foregoing is true and correct.

Executed this 19 day of October 2011.



A handwritten signature in cursive script, reading "Lisa Handley", is written over a horizontal line. The signature is fluid and extends slightly below the line.

Lisa Handley, PhD.

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

MEXICAN AMERICAN LEGISLATIVE
CAUCUS, TEXAS HOUSE OF
REPRESENTATIVES (MALC),

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

TEXAS LATINO REDISTRICTING TASK
FORCE, *et al.*,

Plaintiffs,

v.

RICK PERRY,

Defendant.

)
) CIVIL ACTION NO.
) SA-11-CA-360-OLG-JES-XR
) [Lead case]

)
) CIVIL ACTION NO.
) SA-11-CA-361-OLG-JES-XR
) [Consolidated case]

)
) CIVIL ACTION NO.
) SA-11-CA-490-OLG-JES-XR
) [Consolidated case]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
 and ERIC H. HOLDER, JR. in his)
 official capacity as Attorney General)
 of the United States,)
)
 Defendants,)
)
)
 WENDY DAVIS, *et al.*,)
)
 Defendant-Intervenors.)

Case No. 11-CV-01303
(RMC-TBG-BAH)
[Three-Judge Panel]

**PLAINTIFF STATE OF TEXAS' NOTICE OF FILING OF EXPERT REPORT
OF JOHN ALFORD**

Pursuant to the Scheduling Order of September 22, 2011 (Dkt. 51), Plaintiff State of Texas respectfully submits the expert report of John Alford, Ph.D. Additional information specified by Fed. R. Civ. P. 26 regarding Dr. Alford was submitted on October 3, 2011 (Dkt. 60).

Dated: October 14, 2011

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent the Court's electronic notification system to the following parties on October 14, 2011:

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Background

Several key facts from the trial in San Antonio provide important background for the issues here. All are discussed and documented in my reports from that case, and in the reports of other experts for the various plaintiffs. The first point is that the influence of partisanship on vote choice in Texas now rivals the importance of the race or ethnicity of a candidate as a cue to voting. This makes partisan forces increasingly difficult to separate from racial and ethnic ones. With regard to cohesion, Black voters remain the most cohesive general election voters in Texas, typically voting at levels at or above 90 percent for Democratic candidates. A majority of Anglos vote for Republican candidates, at levels of cohesion somewhat lower (and much more variable) than Black voter cohesion. Hispanic cohesion is the most variable, with some areas producing cohesion in the high 80s and other contests producing estimates of cohesion as low as 60 percent.

While we can still identify a candidate of choice, even as cohesion falls as low as 60 percent (technically there is a candidate of choice as long as some candidate gets 50 percent plus one vote, and that is the working definition that undergirds the analysis here), the combination of variability of partisanship and associated weaker cohesion, particularly among Hispanics and Anglos, combined with the decoupling of candidate race and ethnicity from the voting patterns of racial and ethnic groups complicates the landscape. For example, the lower levels of cohesion among Hispanic voters can lead to increasingly packed 60 to 70 percent, but still insecure, Hispanic districts sitting alongside increasingly unpacked 35 to 40 percent, and very secure, Black districts. As another example, any district that has a Democratic voter majority in the general election will by definition typically elect the candidate of choice of Black and Hispanic voters at high rates, even if Black and Hispanic population numbers are well below majority.

Because these 'tri-ethnic' coalitions are driven by partisanship, they cannot be easily disentangled from partisanship, and can make issues of where to draw the line short of protecting all Democratic districts a difficult one.

Congressional Plan

DOJ

The DOJ statement to the court dated September 23rd states that the adopted congressional plan provides minority citizens an opportunity to elect candidates of choice in ten districts (seven Hispanic districts: 15, 16, 20, 28, 29, 34, 35, and three Black districts: 9, 18, and 30). The only dispute seems to be on how to treat the changes in old Districts 23 and 27. In relation to this issue the DOJ statement to the court indicates that in my expert report in *Perez v. Perry*, I wrote that "benchmark District 23 is not an opportunity district for Hispanic voters". I did not say that in my report, and I include below the entire section of my report dealing with the comparison of old and proposed congressional districts.

The existing congressional plan (C100) was drawn in part by the court as a modification of the existing legislative plan, and as of 2010 included 10 districts that were intended to be effective minority districts. Seven Hispanic districts, numbers 15, 16, 20, 23, 27, 28 and 29 (all above 60% Hispanic voting age population), and three Black districts, numbers 9, 18 and 30 (all at about 40% Black voting age population). Looking at the 2010 elections clearly shows that despite growth in the Hispanic population between 2000 and 2010, the Hispanic districts were not all performing as expected (this is in contrast to the three Black districts that continue to be very effective). Specifically, District 23 which was a part of the focus of the court's editing of the 2004 map, was clearly shifting Republican (in 2010 White received 47.4% of the vote in the district,

Chavez-Thompson received 41.7% of the vote, and Uribe received 43.6%). Also, in the 2010 election, then Rep. Rodriguez, who had first run in the court re-drawn 23rd district in the 2006 special election winning with 54.3%, was reelected in 2008 with 55.8%, but lost the election in 2010 and received only 44.4% of the vote. As a consequence, the current representative for District 23 is Rep. Canseco, a Republican. District 27 showed similar Republican tendencies for 2010 with White receiving 49.2% Chavez-Thompson receiving 44.8%, and Uribe receiving 46.4%. The district also elected Republican Rep. Farenthold over incumbent Rep. Ortiz who received 47.1% of the vote (and had up to then been the only person to represent the 27th). District 28 showed signs that it might be on the weak side; with the 2010 results (White receiving 53.9%, Chavez-Thompson receiving 48.0%, and Uribe receiving 51.3%). The remaining four Hispanic districts showed solidly Democratic results in 2010.

The adopted plan offers the newly elected Republicans in the 23rd and 27th a good chance to hang on, and this reflects the role of partisanship in the drafting of the plan as pointed out by Dr. McDonald in his report. The 23rd remains majority Hispanic, but its election numbers shift decidedly pro-Republican. The 27th shifts out of the majority Hispanic category all together. In return, the adopted plan adds the 34th (essentially a replacement for the 27th), a district with solid Democratic election numbers, and the 35th, a district that is relatively low (only 62.8%) on population numbers, but is solid on Democratic election numbers. The only notably close Hispanic opportunity district in the adopted plan is the 15th, even though it remains over 80% in Hispanic total population and over 66% SSRV, but it is no weaker than the 28th under the old plan. So the adopted plan provides seven districts that have performing Democratic numbers in 2010 (not a

good Democratic year), with one of the seven a close district. In contrast, the existing plan ended a decade of Hispanic population growth in 2010 with five performing Hispanic districts, with one of the five a close district. Thus the adopted map takes the state from five performing districts in the existing plan to seven performing districts in the new map.

The report does not in any place state that District 23 is not an opportunity district (nor did I assert this for District 27). If the focus is simply on numerical demographic opportunity, then this is a simple matter. See attached OAG tables of district demographics and the OAG ten contest reconstituted election analysis in the appendix. Baseline District 23 had a Hispanic citizen voting age population (CVAP) percentage of 58.4 and a Spanish surname registered voter (SSRV) percentage of 52.0. Adopted District 23 has a modestly higher Hispanic CVAP percentage of 58.5 and a SSRV percentage of 54.1 percent. Baseline District 27 had a Hispanic CVAP percentage of 63.8 and a SSRV percentage of 59.7. Adopted District 34 (which is District 27 reconfigured to exclude Nueces County) has a higher Hispanic CVAP percentage of 71.7 and a SSRV percentage of 71.1 percent. With an outright majority of the registered voters, Hispanics in either district need only turn out and vote cohesively at levels equal to Anglo voters and their candidate of choice cannot be defeated by Anglo voters. By this standard both District 23 and District 27 were opportunity districts, and both replacements (District 23 and District 34) are more solid opportunity districts in the adopted plan. District 35 in the adopted plan, with a Hispanic CVAP percentage of 51.9, counts as a new minority district.

The discussion in my report was not aimed at the question of whether or not these were opportunity districts (they clearly were) but rather on a more 'functional' analysis of the performance of the districts in terms of electing candidates of choice (as the Department of

Justice itself recommends in its guidance). Both District 23 and District 27 failed to elect the candidate of choice of Hispanic voters in 2010. A closer look at the performance of each district in reconstituted elections over the last decade indicates that for District 23 this was not an anomaly. Attached Table 1 looks at all the elections as DOJ suggests, even if it departs from the traditional focus on minority versus non-minority contests. As detailed in Table 1, the Democratic candidate was the winner in less than half (22 of 48) of the 48 contested statewide races since 2002 based on votes cast in the geography of old District 23. All of the ten minority districts in the state performed well in two of the five election years - the 2002 and 2008 elections (where state Republican numbers were very low - see attached party chart).

However, in 2004, 2006 and 2010, while most of the minority districts still performed very well, the 23rd District showed substantial weakness. Only one Democratic statewide candidate across the 24 contested elections in these three election years won in the territory of the 23rd District. For the 23rd District the strong performance in the 2008 general election was the anomaly, and that was also the only general election in which the 23rd District (in any of its varied configurations) had elected the Hispanic candidate of choice to Congress since it was split to create the 28th District in the redistricting that preceded the 1992 elections.

Looking at the statewide election history in the 27th District indicates similar, if less pronounced, weakness in its performance. Looking at the full decade in Table 1, the Democratic candidate was the winner in about two-thirds (33 of 48) of the 48 contested statewide races based on votes cast in the geography of the old District 27. In 2004, 2006 and 2010, 9 Democratic statewide candidates across the 24 contested elections won in the territory of the 27th District, a better showing for Hispanic candidates of choice than in the 23rd District, but still much weaker than any of the other minority districts in Texas. The next weakest is the 28th District, but in the

28th a solid 19 of the 24 contests in these three election years were won by Democrats. In the 15th District it was 21 out of 24 wins for the Democrat, and in all of the remaining minority districts (the 9th, 16th, 18th, 20th, 29th, and 30th) the Democrats won 24 out of 24 statewide contests in those election years. Also see the attached OAG table for a similar analysis focused more specifically on minority candidate contests.

Taking this more 'functional' view of the minority districts in the old and adopted plan reinforces the purely population view discussed above for District 27. Democrats win baseline District 27 in 33 of the 48 contested statewide races (69 percent). In adopted District 34, Democrats win a much more secure 45 of the 48 contested statewide races (94 percent). For District 23 this functional approach clarifies the status of old and adopted District 23. The adopted plan shifts District 23 from 22 of 48 Democratic wins (46 percent) to 14 of 48 Democratic wins (29 percent). So while District 23 remains a majority Hispanic district in both adult citizen population and registered voters, the performance of the district drops from just below a half to just below a third. Adopted District 35 in contrast performs in 48 of 48 contests over this period (100 percent).

One way of summing up this functionalist approach is to look at the relative gains and losses in district security. Old District 27 at 69 percent exhibits some real risk of failing to perform, and this risk is not just hypothetical, as the 2010 election resulted in the election of an Anglo Republican who was not the candidate of choice of Hispanic voters. The adopted 34th District substantially reduces the risk of non-performance in moving up 25 percentage points to 94 percent. Old District 23 at 46 percent exhibits a substantial likelihood of not performing and moves 17 percentage points lower in adopted District 23. These two shifts could be viewed as rough offsets. New District 35, with a 100 percent performance would be a net gain. This would

lead to a conclusion broadly similar to the population demographics approach discussed above, with a net gain of essentially one district or perhaps two, depending on how ones views the performance of the old 27th district both historically and in the most recent election, for the adopted plan.

House Plan

DOJ

The DOJ statement mentions five specific House districts. Districts 33, 35, 41, and 117 are listed as districts that provided an opportunity to elect under the old plan but are claimed to no longer provide an opportunity to elect under the adopted plan. District 149 is mentioned separately as being under continuing analysis. The change in District 33 results from the fact that the number of districts in Nueces County (which most recently elected three Republicans to its three house seats) was reduced from three to two. The creation of District 148, which the DOJ statement lists as a district in the adopted plan in which Hispanic citizens will have the ability to elect a candidate of choice, offsets this loss.

Old District 35 has a Hispanic CVAP of 54.6 percent and a SSRV of 54.3 percent. In the adopted plan these numbers are reduced slightly to a CVAP of 52.5 percent and a SSRV of 52.7 percent, but District 35 remains majority Hispanic in both adult citizens and registered voters. Turning to the election analysis reported in Table 2, Democrats win old District 35 in 28 of the 48 contested statewide races (58 percent). In adopted District 35 this drops to 23 of 48 (48 percent). For a comparison that places more emphasis on traditional Anglo versus minority candidate contests, see the OAG ten contest analyses in the appendix.

Old District 41 has a Hispanic CVAP of 77.5 percent and a SSRV of 68.7 percent. In the adopted plan these numbers are reduced slightly to a CVAP of 72.1 percent and a SSRV of 63.0

percent, but District 41 clearly remains strongly majority Hispanic in both adult citizens and registered voters. Turning to election analysis, Democrats win old District 41 in 32 of the 48 contested statewide races (67 percent). In adopted District 41, this drops to 23 of 48 (48 percent). For a comparison that places more emphasis on traditional Anglo versus minority candidate contests see the OAG ten contest analysis in the appendix.

Old District 117 has an Hispanic CVAP of 58.8 percent and a SSRV of 50.3 percent. In the adopted plan these numbers shift slightly to a CVAP of 63.8 percent and a SSRV of 50.1 percent, but District 117 remains majority Hispanic in both adult citizens and registered voters. Turning to election analysis, Democrats win old District 117 in 29 of the 48 contested statewide races (60 percent). In adopted District 117, this drops to 16 of 48 (33 percent). For a comparison that places more emphasis on traditional Anglo versus minority candidate contests see the OAG ten contest analysis in the appendix.

While performance is reduced to some degree in each of these districts, the impact varies depending on which index of elections is relied upon, and all remain majority Hispanic districts. And also, while there is a drop in performance in these districts, there are increases in performance in other Hispanic majority districts. For example, District 34 moves from 27 of 48 (56 percent) up to 37 of 48 (77 percent). District 74 moves from 24 of 48 (50 percent) up to 46 of 48 (96 percent). District 118 moves from 35 of 48 (73 percent) up to 46 of 48 (96 percent). Note that old District 74, with 24 of 48 (50 percent) Democratic wins is listed in the DOJ statement as one of the old districts in which Hispanic citizens currently have the ability to elect a candidate of choice, while adopted District 35 and adopted District 41, both at 23 of 48 (48 percent) Democratic wins, are listed in the DOJ statement as adopted districts in which Hispanic citizens will not have the ability to elect a candidate of choice.

District 149 in the old plan is lost from Harris County in the adopted plan as a consequence of the reduction in the number of districts in Harris County from 25 in the old plan to 24 in the adopted plan. The DOJ statement does not indicate what the potential issue is with District 149. It is not a majority district for any single minority group, or any combination of two minority groups. The only way to reach a citizen majority would be by combining Blacks plus Hispanics plus Asians. In addition, as Table 2 shows, it is not a district that performs very well for Democrats, with only 9 of 48 (19 percent) Democratic wins over the last decade.

Table 3 provides a cohesion estimation for old District 149. The method of analysis is the Hierarchical Multinomial-Dirichlet Ecological Inference Model for $R \times C$ Tables developed by Gary King and his colleagues and widely recognized as the most accurate way of making ecological inferences about levels of support among multiple groups for multiple candidates using precinct level data. The method is a generalization of Gary King's EI method as applied to 2×2 tables (i.e., situations with two candidates and two groups). It allows one to simultaneously estimate support for all (including more than two) groups for all (including more than two) candidates and accounts for the various constraints that must hold among across candidates within groups and across groups over candidates. The method is explained in Rosen, O., Jiang, W., King, G., and Tanner, M. A. (2001), "Bayesian and Frequentist Inference for Ecological Inference: The $R \times C$ Case," *Statistica Neerlandica*, 55, 134–156.

Moreover, the cohesion analysis reported in Table 3 shows no clear pattern of cohesion among these three voter groups, a finding that is consistent with the conclusions of plaintiffs' experts Dr. Murray and Dr. Engstrom in their recent reports and testimony in the *Perez v. Perry* case. While Asian voters were not explicitly analyzed, both experts concluded that the evidence

showed that Black and Hispanic voters were not cohesive in primary elections. Of the 13 Democratic primaries featuring minority candidates in Table 3, less than half have a majority of Blacks, Hispanics, and Others (mostly Asians) voting together, and often the cohesion within each voting group is very low as well.

House Plan

Intervenors

There were four additional House districts (26, 101, 106, and 144) and two Senate districts (10, 15) that were identified by intervenors as potentially relevant because coalitions of different ethnic or racial groups (some combination of Hispanics, Blacks, and the mostly Asian group "Other") could form a joint majority in the district if they voted cohesively together. A cohesion analysis like the one presented for District 149 in Table 3 is provided below in Tables 4 through 8.

Old House District 26 has a 53.5 percent Anglo CVAP, indicating that even if Blacks, Hispanics and Others were all voting cohesively they would still not constitute a majority in the district. In the majority of the 13 elections in Table 4, we do not see the three groups voting together. Table 2 shows a zero percent Democratic win performance for the district. Old House District 101 has a 61.3 percent Anglo CVAP, indicating that even if Blacks, Hispanics and Others were all voting cohesively they would still not constitute a majority in the district. Table 2 shows only a 19 percent Democratic win performance for the district. In contrast, adopted District 101 shows a 90 percent Democratic win performance for the district. The results in Table 5 indicate that in the majority of the 13 elections we do not see the three groups voting together.

Old House District 106 has a 52.0 percent Anglo CVAP, indicating that even if Blacks, Hispanics and Others were all voting cohesively they would still not constitute a majority in the district. In the majority of the 13 elections in Table 6 we do not see the three groups voting together. Table 2 shows only a 19 percent Democratic win performance for the district. Old House District 144 has a 51.4 percent Anglo CVAP, indicating that even if Blacks, Hispanics and Others were all voting cohesively they would still not constitute a majority in the district. Table 2 shows a zero percent Democratic win performance for the district. The results in Table 7 indicate that in the majority of the 13 elections we do not see the three groups voting together.

Old Senate District 15 has a 40.7 percent Anglo CVAP, indicating that if Blacks and Hispanics were voting cohesively they could constitute a majority in the district. The Asian proportion in the district is too small to allow a Black plus Asian, or a Hispanic plus Asian majority coalition. The results in Table 8 indicate that in the majority of the 13 elections we do not see Blacks and Hispanics voting together. Moreover, while the percent of the CVAP in the district that is Black or Hispanic does drop from the old district to the adopted district (with the Anglo CVAP moving up from 40.7 to 46.7), the analysis in Table 9 indicates that the Democratic performance of Senate District 15 remains unchanged at 98 percent in the adopted plan.

Old Senate District 10 has a 62.7 percent Anglo CVAP, indicating that even if Blacks, Hispanics and Others were all voting cohesively they would still not constitute a majority in the district. Moreover, the analysis in Table 9 indicates that the Democratic performance of old Senate District 15 is zero percent Democratic and remains unchanged at zero percent in the adopted plan.

As the above discussion indicates, all of the districts that intervenors have brought forward, beyond those cited by DOJ, suffer from multiple empirical flaws. These districts fail, usually on several key points, to qualify as suitable grounds to challenge Section 5 preclearance of the adopted plans.

Table 1: Reconstituted Elections 2002-2010 for Congressional Districts

District Plan	all races 2002-2010		2002		2004		2006		2008		2010	
	Dem Wins	races	Dem Wins	races	Dem Wins	races	Dem Wins	races	Dem Wins	races	Dem Wins	races
23 c100	22	48	13	16	0	4	1	10	8	8	0	10
23 c185	14	48	8	16	0	4	1	10	5	8	0	10
27 c100	33	48	15	16	3	4	5	10	8	8	2	10
34 c185	45	48	16	16	3	4	9	10	8	8	9	10
35 c185	48	48	16	16	4	4	10	10	8	8	10	10

Table 2: Reconstituted Elections 2002-2010 for State House Districts

District	Plan	all races 2002-2010			2002		2004		2006		2008		2010	
		Dem wins	races	percent	Dem wins	races	Dem wins	races	Dem wins	races	Dem wins	races	Dem wins	races
26	h100	0	48	0%	0	16	0	4	0	10	0	8	0	10
26	h283	0	48	0%	0	16	0	4	0	10	0	8	0	10
33	h100	32	48	67%	15	16	3	4	4	10	8	8	2	10
33	h283	0	48	0%	0	16	0	4	0	10	0	8	0	10
34	h100	27	48	56%	13	16	2	4	4	10	7	8	0	10
34	h283	37	48	77%	15	16	3	4	6	10	8	8	5	10
35	h100	28	48	58%	14	16	2	4	6	10	6	8	0	10
35	h283	23	48	48%	12	16	1	4	4	10	6	8	0	10
41	h100	32	48	67%	13	16	1	4	3	10	8	8	7	10
41	h283	23	48	48%	12	16	1	4	2	10	8	8	0	10
43	h100	41	48	85%	16	16	3	4	6	10	8	8	8	10
43	h283	45	48	94%	16	16	3	4	9	10	8	8	9	10
54	h100	1	48	2%	0	16	0	4	0	10	1	8	0	10
54	h283	1	48	2%	0	16	0	4	0	10	1	8	0	10
74	h100	24	48	50%	14	16	0	4	3	10	7	8	0	10
74	h283	46	48	96%	16	16	3	4	9	10	8	8	10	10
80	h100	41	48	85%	16	16	3	4	6	10	8	8	8	10
80	h283	48	48	100%	16	16	4	4	10	10	8	8	10	10
101	h100	9	48	19%	0	16	0	4	0	10	8	8	1	10
101	h283	43	48	90%	14	16	3	4	8	10	8	8	10	10
106	h100	9	48	19%	0	16	0	4	0	10	8	8	1	10
106	h283	0	48	0%	0	16	0	4	0	10	0	8	0	10
117	h100	29	48	60%	14	16	1	4	5	10	8	8	1	10
117	h283	16	48	33%	7	16	0	4	1	10	8	8	0	10
118	h100	35	48	73%	15	16	3	4	7	10	8	8	2	10
118	h283	46	48	96%	16	16	3	4	10	10	8	8	9	10
144	h100	0	48	0%	0	16	0	4	0	10	0	8	0	10
144	h283	0	48	0%	0	16	0	4	0	10	0	8	0	10
149	h100	9	48	19%	0	16	0	4	0	10	8	8	1	10
149	h283	0	48	0%	0	16	0	4	0	10	0	8	0	10

Table 3: Ecological Inference Estimates of Voter Cohesion in Old House District 149

Year	Office	Candidates	statewide vote	Ethnicity of candidate	Estimates Support for candidates by voter groups				Majority Support
					Anglo	Black	Hispanic	Other	
2002	AgCom	DE_LEON_ERNESTO	43 H		0.30	0.30	0.87	0.90	HO
	AgCom	RAMSAY_TOM	56 A		0.70	0.70	0.13	0.10	AB
	LandComm	BERNSEN_DAVID	62 A		0.81	0.70	0.25	0.34	AB
	LandComm	MADRIGAL_RAY	38 O		0.19	0.30	0.75	0.66	HO
	Gov	COMBINED_HISP	93 H		0.98	0.96	0.96	0.95	ABHO
	Gov	LYON_BILL	4 O		0.01	0.01	0.01	0.01	
	Gov	WORLDPEACE_JOHN	3 A		0.02	0.03	0.03	0.04	
	Senator	COMBINED_ANGLO	33 A		0.89	0.17	0.51	0.16	AH
	Senator	KIRK_RON	33 B		0.05	0.73	0.08	0.62	BO
	Senator	MORALES_VICTOR	33 H		0.06	0.11	0.41	0.22	
2006	AgCom	GILBERT_HANK	71 A		0.81	0.68	0.504	0.85	ABHO
	AgCom	MELTON_KOECADEE	29 B		0.19	0.32	0.496	0.15	
	LtGov	COMBINED_HISP	64 H		0.43	0.54	0.55	0.79	BHO
	LtGov	GRANT_BENJAMIN	36 A		0.57	0.46	0.45	0.21	A
2008	Pres	COMBINED_ANGLO	53 A		0.43	0.09	0.63	0.61	HO
	Pres	OBAMA_BARACK	47 B		0.57	0.91	0.37	0.39	AB
	RRCom3	COMBINED_ANGLO	76 A		0.70	0.77	0.77	0.82	ABHO
	RRCom3	HALL_ART	24 B		0.30	0.23	0.23	0.18	
	Senator	COMBINED_ANGLO	49 A		0.40	0.64	0.29	0.80	BO
	Senator	NORIEGA_RICHARD	51 H		0.60	0.36	0.71	0.20	AH
	SupCt7	CRUZ_BALTASAR	44 H		0.35	0.43	0.63	0.26	H
	SupCt7	HOUSTON_SAM	56 A		0.65	0.57	0.37	0.74	ABO
	SupCt8	CRISS_SUSAN	49 A		0.57	0.48	0.15	0.32	A
	SupCt8	YANEZ_LINDA	51 H		0.43	0.52	0.85	0.68	BHO
2010	LandComm	BURTON_BILL	48 B		0.47	0.72	0.51	0.84	BHO
	LandComm	URIBE_HECTOR	52 H		0.53	0.28	0.49	0.16	A
	LtGov	CHAVEZ_THOMPSON_LINDA	53 H		0.23	0.495	0.55	0.53	HO
	LtGov	COMBINED_ANGLO	47 A		0.77	0.505	0.45	0.47	AB

Table 4: Ecological Inference Estimates of Voter Cohesion in Old House District 26

Year	Office	Candidates	statewide vote	Ethnicity of candidate	Estimates Support for candidates by voter groups				Majority Support
					Anglo	Black	Hispanic	Other	
2002	AgCom	DE_LEON_ERNESTO	43	H	0.33	0.57	0.88	0.62	BHO
	AgCom	RAMSAY_TOM	56	A	0.67	0.43	0.12	0.38	A
	LandComm	BERNSEN_DAVID	62	A	0.67	0.51	0.15	0.73	ABO
	LandComm	MADRIGAL_RAY	38	O	0.33	0.49	0.85	0.27	H
	Gov	COMBINED_HISP	93	H	0.98	0.94	0.93	0.96	ABHO
	Gov	LYON_BILL	4	O	0.01	0.02	0.02	0.01	
	Gov	WORLDPEACE_JOHN	3	A	0.01	0.04	0.04	0.03	
	Senator	COMBINED_ANGLO	33	A	0.73	0.07	0.36	0.39	A
	Senator	KIRK_RON	33	B	0.13	0.75	0.04	0.52	BO
	Senator	MORALES_VICTOR	33	H	0.13	0.19	0.60	0.09	H
2006	AgCom	GILBERT_HANK	71	A	0.73	0.44	0.768	0.53	AHO
	AgCom	MELTON_KOECADDEE	29	B	0.27	0.56	0.232	0.47	B
	LtGov	COMBINED_HISP	64	H	0.50	0.62	0.96	0.71	BHO
	LtGov	GRANT_BENJAMIN	36	A	0.50	0.38	0.04	0.29	A
2008	Pres	COMBINED_ANGLO	53	A	0.52	0.02	0.73	0.43	AH
	Pres	OBAMA_BARACK	47	B	0.48	0.98	0.27	0.57	BO
	RRCom3	COMBINED_ANGLO	76	A	0.80	0.64	0.91	0.74	ABHO
	RRCom3	HALL_ART	24	B	0.20	0.36	0.09	0.26	
	Senator	COMBINED_ANGLO	49	A	0.48	0.66	0.29	0.68	BO
	Senator	NORIEGA_RICHARD	51	H	0.52	0.34	0.71	0.32	AH
	SupCt7	CRUZ_BALTASAR	44	H	0.42	0.46	0.82	0.50	H
	SupCt7	HOUSTON_SAM	56	A	0.58	0.54	0.18	0.50	ABO
	SupCt8	CRISS_SUSAN	49	A	0.60	0.26	0.25	0.21	A
	SupCt8	YANEZ_LINDA	51	H	0.40	0.74	0.75	0.79	BHO
2010	LandComm	BURTON_BILL	48	B	0.42	0.77	0.58	0.63	BHO
	LandComm	URIBE_HECTOR	52	H	0.58	0.23	0.42	0.37	A
	LtGov	CHAVEZ_THOMPSON_LINDA	53	H	0.37	0.238	0.91	0.64	HO
	LtGov	COMBINED_ANGLO	47	A	0.63	0.762	0.09	0.36	AB

Table 5: Ecological Inference Estimates of Voter Cohesion in Old House District 101

Year	Office	Candidates	statewide vote	Ethnicity of candidate	Estimates Support for candidates from voter groups				Majority Support
					Anglo	Black	Hispanic	Other	
2002	AgCom	DE_LEON_ERNESTO	43	H	0.34	0.33	0.30	0.63	O
	AgCom	RAMSAY_TOM	56	A	0.66	0.67	0.70	0.37	ABH
	LandComm	BERNSEN_DAVID	62	A	0.65	0.87	0.48	0.73	ABO
	LandComm	MADRIGAL_RAY	38	O	0.35	0.13	0.52	0.27	H
	Gov	COMBINED_HISP	93	H	0.94	0.93	0.94	0.89	ABHO
	Gov	LYON_BILL	4	O	0.04	0.03	0.03	0.04	
	Gov	WORLDPEACE_JOHN	3	A	0.02	0.04	0.03	0.07	
	Senator	COMBINED_ANGLO	33	A	0.16	0.02	0.09	0.15	
	Senator	KIRK_RON	33	B	0.52	0.95	0.40	0.66	ABO
Senator	MORALES_VICTOR	33	H	0.31	0.03	0.51	0.19	H	
2006	AgCom	GILBERT_HANK	71	A	0.81	0.25	0.876	0.44	AH
	AgCom	MELTON_KOECADDEE	29	B	0.19	0.75	0.124	0.56	BO
	LtGov	COMBINED_HISP	64	H	0.53	0.53	0.55	0.72	ABHO
	LtGov	GRANT_BENJAMIN	36	A	0.47	0.47	0.45	0.28	
2008	Pres	COMBINED_ANGLO	53	A	0.68	0.02	0.57	0.06	AH
	Pres	OBAMA_BARACK	47	B	0.32	0.98	0.43	0.94	BO
	RRCom3	COMBINED_ANGLO	76	A	0.83	0.62	0.87	0.59	ABHO
	RRCom3	HALL_ART	24	B	0.17	0.38	0.13	0.41	
	Senator	COMBINED_ANGLO	49	A	0.64	0.54	0.36	0.42	AB
	Senator	NORIEGA_RICHARD	51	H	0.36	0.46	0.64	0.58	HO
	SupCt7	CRUZ_BALTASAR	44	H	0.20	0.57	0.53	0.73	BHO
	SupCt7	HOUSTON_SAM	56	A	0.80	0.43	0.47	0.27	A
	SupCt8	CRISS_SUSAN	49	A	0.71	0.25	0.45	0.22	A
	SupCt8	YANEZ_LINDA	51	H	0.29	0.75	0.55	0.78	BHO
2010	LandComm	BURTON_BILL	48	B	0.70	0.18	0.85	0.29	AH
	LandComm	URIBE_HECTOR	52	H	0.30	0.82	0.15	0.71	BO
	LtGov	CHAVEZ_THOMPSON_LINDA	53	H	0.35	0.857	0.26	0.61	BO
	LtGov	COMBINED_ANGLO	47	A	0.65	0.143	0.74	0.39	AH

Table 6: Ecological Inference Estimates of Voter Cohesion in Old House District 106

Year	Office	Candidates	statewide vote	Ethnicity of candidate	Estimates Support for candidates from voter groups					Majority Support
					Anglo	Black	Hispanic	Other	Support	
2002	AgCom	DE_LEON_ERNESTO	43	H	0.34	0.54	0.55	0.72	BHO	
	AgCom	RAMSAY_TOM	56	A	0.66	0.46	0.45	0.28	A	
	LandComm	BERNSEN_DAVID	62	A	0.53	0.31	0.65	0.51	AHO	
	LandComm	MADRIGAL_RAY	38	O	0.47	0.69	0.35	0.49	B	
	Gov	COMBINED_HISP	93	H	0.95	0.96	0.94	0.89	ABHO	
	Gov	LYON_BILL	4	O	0.02	0.01	0.03	0.04		
	Gov	WORLDPEACE_JOHN	3	A	0.03	0.03	0.03	0.07		
	Senator	COMBINED_ANGLO	33	A	0.13	0.01	0.19	0.04		
	Senator	KIRK_RON	33	B	0.61	0.94	0.31	0.85	ABO	
	Senator	MORALES_VICTOR	33	H	0.27	0.05	0.50	0.10	H	
2006	AgCom	GILBERT_HANK	71	A	0.74	0.53	0.721	0.57	ABHO	
	AgCom	MELTON_KOECADDEE	29	B	0.26	0.47	0.279	0.43		
	LtGov	COMBINED_HISP	64	H	0.53	0.72	0.56	0.60	ABHO	
	LtGov	GRANT_BENJAMIN	36	A	0.47	0.28	0.44	0.40		
2008	Pres	COMBINED_ANGLO	53	A	0.50	0.02	0.74	0.15	AH	
	Pres	OBAMA_BARACK	47	B	0.50	0.98	0.26	0.85	BO	
	RRCom3	COMBINED_ANGLO	76	A	0.90	0.67	0.71	0.65	ABHO	
	RRCom3	HALL_ART	24	B	0.10	0.33	0.29	0.35		
	Senator	COMBINED_ANGLO	49	A	0.47	0.56	0.46	0.56	BO	
	Senator	NORIEGA_RICHARD	51	H	0.53	0.44	0.54	0.44	AH	
	SupCt7	CRUZ_BALTASAR	44	H	0.39	0.46	0.53	0.51	HO	
	SupCt7	HOUSTON_SAM	56	A	0.61	0.54	0.47	0.49	AB	
	SupCt8	CRISS_SUSAN	49	A	0.56	0.65	0.41	0.64	ABO	
	SupCt8	YANEZ_LINDA	51	H	0.44	0.35	0.59	0.36	H	
2010	LandComm	BURTON_BILL	48	B	0.60	0.73	0.45	0.21	AB	
	LandComm	URIBE_HECTOR	52	H	0.40	0.27	0.55	0.79	HO	
	LtGov	CHAVEZ_THOMPSON_LINDA	53	H	0.40	0.478	0.61	0.70	HO	
	LtGov	COMBINED_ANGLO	47	A	0.60	0.522	0.39	0.30	AB	

Table 7: Ecological Inference Estimates of Voter Cohesion in Old House District 144

Year	Office	Candidates	statewide vote	Ethnicity of candidate	Estimates Support for candidates from voter groups				Majority Support
					Anglo	Black	Hispanic	Other	
2002	AgCom	DE_LEON_ERNESTO	43	H	0.34	0.72	0.44	0.88	BO
	AgCom	RAMSAY_TOM	56	A	0.66	0.28	0.56	0.12	AH
	LandComm	BERNSEN_DAVID	62	A	0.66	0.55	0.62	0.26	ABH
	LandComm	MADRIGAL_RAY	38	O	0.34	0.45	0.38	0.74	O
	Gov	COMBINED_HISP	93	H	0.97	0.91	0.94	0.91	ABHO
	Gov	LYON_BILL	4	O	0.01	0.03	0.03	0.03	
	Gov	WORLDPEACE_JOHN	3	A	0.02	0.06	0.03	0.06	
	Senator	COMBINED_ANGLO	33	A	0.91	0.41	0.69	0.06	AH
	Senator	KIRK_RON	33	B	0.03	0.22	0.05	0.74	O
Senator	MORALES_VICTOR	33	H	0.06	0.37	0.26	0.20		
2006	AgCom	GILBERT_HANK	71	A	0.94	0.30	0.765	0.47	AH
	AgCom	MELTON_KOECADDEE	29	B	0.06	0.70	0.235	0.53	BO
	LtGov	COMBINED_HISP	64	H	0.53	0.59	0.41	0.92	ABO
	LtGov	GRANT_BENJAMIN	36	A	0.47	0.41	0.59	0.08	H
2008	Pres	COMBINED_ANGLO	53	A	0.70	0.02	0.80	0.06	AH
	Pres	OBAMA_BARACK	47	B	0.30	0.98	0.20	0.94	BO
	RRCom3	COMBINED_ANGLO	76	A	0.81	0.74	0.75	0.75	ABHO
	RRCom3	HALL_ART	24	B	0.19	0.26	0.25	0.25	
	Senator	COMBINED_ANGLO	49	A	0.58	0.44	0.31	0.14	A
	Senator	NORIEGA_RICHARD	51	H	0.42	0.56	0.69	0.86	BHO
	SupCt7	CRUZ_BALTASAR	44	H	0.27	0.36	0.62	0.77	HO
	SupCt7	HOUSTON_SAM	56	A	0.73	0.64	0.38	0.23	AB
	SupCt8	CRISS_SUSAN	49	A	0.60	0.34	0.28	0.09	A
	SupCt8	YANEZ_LINDA	51	H	0.40	0.66	0.72	0.91	BHO
2010	LandComm	BURTON_BILL	48	B	0.67	0.79	0.53	0.12	ABH
	LandComm	URIBE_HECTOR	52	H	0.33	0.21	0.47	0.88	O
	LtGov	CHAVEZ_THOMPSON_LINDA	53	H	0.38	0.348	0.58	0.75	HO
	LtGov	COMBINED_ANGLO	47	A	0.62	0.652	0.42	0.25	AB

Table 8: Ecological Inference Estimates of Voter Cohesion in Old Senate District 15

Year	Office	Candidates	statewide vote	Ethnicity of candidate	Estimates Support for candidates from voter groups				Majority Support
					Anglo	Black	Hispanic	Other	
2002	AgCom	DE_LEON_ERNESTO	43	H	0.31	0.44	0.64	0.97	HO
	AgCom	RAMSAY_TOM	56	A	0.69	0.56	0.36	0.03	AB
	LandComm	BERNSEN_DAVID	62	A	0.76	0.73	0.45	0.11	AB
	LandComm	MADRIGAL_RAY	38	O	0.24	0.27	0.55	0.89	HO
	Gov	COMBINED_HISP	93	H	0.95	0.98	0.98	0.84	ABHO
	Gov	LYON_BILL	4	O	0.03	0.01	0.01	0.09	
	Gov	WORLDPEACE_JOHN	3	A	0.02	0.01	0.01	0.07	
	Senator	COMBINED_ANGLO	33	A	0.87	0.31	0.49	0.01	A
	Senator	KIRK_RON	33	B	0.03	0.67	0.10	0.90	BO
	Senator	MORALES_VICTOR	33	H	0.10	0.02	0.41	0.09	
2006	AgCom	GILBERT_HANK	71	A	0.91	0.47	0.748	0.32	AH
	AgCom	MELTON_KOECADDEE	29	B	0.09	0.53	0.252	0.68	BO
	LtGov	COMBINED_HISP	64	H	0.52	0.47	0.63	0.81	AHO
	LtGov	GRANT_BENJAMIN	36	A	0.48	0.53	0.37	0.19	B
2008	Pres	COMBINED_ANGLO	53	A	0.64	0.01	0.61	0.05	AH
	Pres	OBAMA_BARACK	47	B	0.36	0.99	0.39	0.95	BO
	RRCom3	COMBINED_ANGLO	76	A	0.73	0.79	0.72	0.77	ABHO
	RRCom3	HALL_ART	24	B	0.27	0.21	0.28	0.23	
	Senator	COMBINED_ANGLO	49	A	0.41	0.56	0.44	0.56	BO
	Senator	NORIEGA_RICHARD	51	H	0.59	0.44	0.56	0.44	AH
	SupCt7	CRUZ_BALTASAR	44	H	0.32	0.20	0.58	0.68	HO
	SupCt7	HOUSTON_SAM	56	A	0.68	0.80	0.42	0.32	AB
	SupCt8	CRISS_SUSAN	49	A	0.58	0.50	0.23	0.18	AB
	SupCt8	YANEZ_LINDA	51	H	0.42	0.50	0.77	0.82	HO
2010	LandComm	BURTON_BILL	48	B	0.47	0.85	0.58	0.62	BHO
	LandComm	URIBE_HECTOR	52	H	0.53	0.15	0.42	0.38	A
	LtGov	CHAVEZ_THOMPSON_LINDA	53	H	0.33	0.446	0.41	0.88	O
	LtGov	COMBINED_ANGLO	47	A	0.67	0.554	0.59	0.12	ABH

Table 9: Reconstituted Elections 2002-2010 for State Senate Districts

District	Plan	all races 2002-2010		2002		2004		2006		2008		2010		
		Dem wins	races	percent	Dem wins	races	Dem wins	races	Dem wins	races	Dem wins	races	Dem wins	races
10	s100	0	48	0%	0	16	0	4	0	10	0	8	0	10
10	s148	0	48	0%	0	16	0	4	0	10	0	8	0	10
15	s100	47	48	98%	15	16	4	4	10	10	8	8	10	10
15	s148	47	48	98%	15	16	4	4	10	10	8	8	10	10

House Districts Objected to in Identification of Issues (Docket #53)

DOJ		Incumbent	Anglo	BVAP	HVAP	HCVAP	Other	SSVR	REA
District #									
33	Torres	H100	31.2	4.6	61.9	60.4		55.3	6
	(new)	H283	73	6.8	13.5	8.5		6.5	0
35	Aliseda	H100	38.2	4.4	56.4	54.6		55.3	5
	Aliseda	H283	40.6	3.3	54.9	52.5		53.4	4
41	Gonzales	H100	14.8	0.8	81.8	77.5		69.2	7
	Pena	H283	19.7	1	76.2	72.1		64.6	5
117	Garza	H100	31.1	6.6	58.7	58.8		50.8	5
	Garza	H283	29	4.4	62.7	63.8		50.1	2
149*	Vo	H100	26.6	22.9	30.2	19	21.1	15.9	0
	(new)	H283	69.8	5.1	16.3	12.9	9.1	10	0

*DOJ notes that its analysis has not been completed on this district yet and that "minority citizens may also have the ability to elect their preferred candidates of choice" in HD 149

House Districts with Improved Reconstituted Election Performance

	A	B	C	D	E	F	G	H	I	J
	District #	Incumbent		Anglo	BVAP	HVAP	Other	HCVAP	SSVR	REA
1										
2	34	Scott	H100	33.3	3.9	61.6	1.5	58.2	53.8	6
3		(Scott/Torres)	H283	27.4	3.8	67.7	1.4	64.6	60.8	9
4	43	Lozano	H100	20.8	1.7	76.3	1.5	71.7	71.8	9
5		Lozano	H283	20.8	1.6	76.5	1.4	71.7	72.4	10
6	74	Gallego	H100	30.8	2.4	65.8	1.3	59.7	56.7	4
7		Gallego	H283	20.5	1.9	76.6	1.3	69.4	67.6	10
8	80	King	H100	22.7	1.7	74.3	1.5	67.2	69.7	9
9		King	H283	12	1.2	86.1	1.1	79.7	79	10
10	118	Farias	H100	29.9	3.8	58.7	4.2	61.9	55.2	7
11		Farias	H283	29	4.4	64.8	2.3	64.7	60.3	10

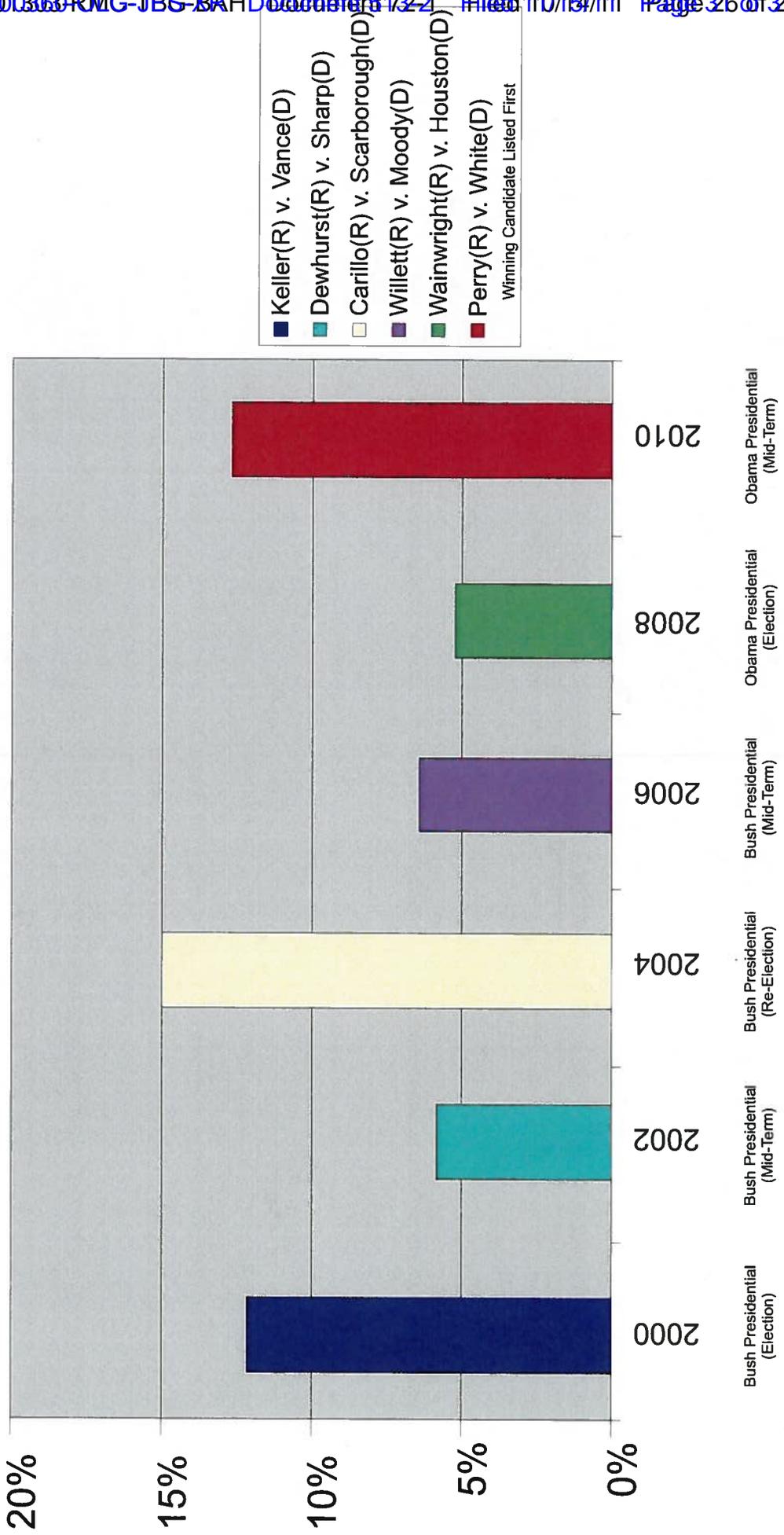
C100 District 27 and C185 Districts 34 & 35					
PLAN	DISTRICT	HVAP	HCVAP	SSVR	RECONSTITUTED ELECTION ANALYSIS
C100	27	69.2%	63.8%	61.1%	6 of 10
C185	34	79.0%	71.7%	71.9%	10 of 10
C185	35	58.3%	51.9%	45.0%	10 of 10

Source: Red Appl Report Red109 for C100 and C185

The Evolution of District 23			
PLAN	HCVAP	SSVR	RECONSTITUTED ELECTION ANALYSIS
1151C (court-drawn upon failure of 77 th Legislature to enact a plan)	57.5%	55.3%	N/A
1374C (struck down in <i>LULAC v. Perry</i>)	46%	44%	N/A
C100 (court-drawn on remand from <i>LULAC v. Perry</i>)	58.4%	52.6%	3 of 10
C185 (enacted by the 82 nd Legislature)	58.5%	54.8%	1 of 10

Source: Red Appl RED 106 & 202 Reports for C100 and C185; *Session v. Perry*, 298 F. Supp. 2d 451, 496 (E.D. Tex. 2004), *rev'd sub nom. LULAC v. Perry*, 548 U.S. 399 (2006).

Narrowest Margin in a Statewide Race



**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, <i>et al.</i> ,)	
	)	CIVIL ACTION NO.
<i>Plaintiffs,</i>	)	SA-11-CA-360-OLG-JES-XR
	)	[Lead case]
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
MEXICAN AMERICAN LEGISLATIVE	)	CIVIL ACTION NO.
CAUCUS, TEXAS HOUSE OF	)	SA-11-CA-361-OLG-JES-XR
REPRESENTATIVES (MALC),	)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
TEXAS LATINO REDISTRICTING TASK	)	CIVIL ACTION NO.
FORCE, <i>et al.</i>,	)	SA-11-CA-490-OLG-JES-XR
	)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
RICK PERRY,)	
)	
<i>Defendant.</i>)	
_____)	

In The Matter Of:
State of Texas v.
United States of America, et al.

Lisa Handley, Ph.D.
October 24, 2011

Feder Reporting Company
810 Capitol Square Place, SW
Washington, D.C. 20024
(202)863-0000
feder@federreporting.com

1 IN THE UNITED STATES DISTRICT COURT
1 FOR THE DISTRICT OF COLUMBIA

2 STATE OF TEXAS :

3 Plaintiff :

3 :

4 vs. :

4 :

5 UNITED STATES OF AMERICA:

5 and ERIC H. HOLDER, JR.,:

6 in his official capacity:

6 as Attorney General of :

7 the United States :

7 Defendants :

8 :

8 WENDY DAVIS, et al. :

9 Defendant-Intervenors :

9 :

10 MEXICAN AMERICAN : Civil Action No.

10 LEGISLATIVE CAUCUS : 1:11-EV-1303

11 Defendant-Intervenor : (RMC-TBG-BAH)

11 : Three-Judge Court

12 GREG GONZALES, et al. :

12 Defendant-Intervenors :

13 :

13 TEXAS LEGISLATIVE :

14 BLACK CAUCUS :
Feder Reporting Company
202.863.0000

14 Defendant-Intervenor :

1 called for oral examination by counsel for
2 Plaintiff, at the offices of the U.S.
3 Department of Justice, Civil Rights Division,
4 1800 G Street, N.W., 7th Floor, Washington,
5 D.C., beginning at 12:05 p.m., before Zev V.
6 Feder, CSR, a Notary Public in and for the
7 District of Columbia, when were present on
8 behalf of the respective parties:

9

10 On Behalf of the Plaintiff:

11 BY: DAVID C. MATTAX, ESQ.

11 BY: BRUCE D. COHEN, ESQ., ESQ.

12 Office of the Attorney General of Texas

12 209 West 14th Street, 8th Floor

13 Austin, Texas 78701

13 (512) 463-0879

14

14 On Behalf of the Defendants:

15

15 BY: TIM MELLETT, ESQ.

16 U.S. Department of Justice

16 Civil Rights Division

17 Room 7254-NWB

17 950 Pennsylvania Avenue, N.W.

18 Washington, D.C. 20530

18 (202) 307-6262

19

Feder Reporting Company
202.863.0000

20

1 On behalf of Defendant-Intervenor Texas Latino
1 Redistricting Task Force:

2
3 BY: NINA PERALES, ESQ. (Via Telephone)
3 Mexican American Legal Defense &
4 Educational Fund
4 110 Broadway, Suite 300
5 San Antonio, Texas 78205
5 (210) 224-5476

6
7 + + +

8 C O N T E N T S

9 WITNESS: LISA HANDLEY, Ph.D.

10	EXAMINATION BY:	PAGE
11	MR. MATTAX	6
12	MR. COHEN	190
13	MR. MELLETT	-

14 EXHIBITS

15	DEPOSITION NO.	MARKED FOR IDENTIFICATION
16	1. "United States' Identification of	
16	Elections Considered"	73
17		
18	2. "A Section 5 Voting Rights Analysis of	
18	the Proposed Texas State House Plan"	75
19		
20	3. "A Section 5 Voting Rights Analysis of	
20	the Proposed Texas 202-863-0000 Feder Reporting Company Plan"	75

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EXHIBITS (Continued)

DEPOSITION NO. MARKED FOR IDENTIFICATION

4. "District Election Analysis,
Congressional Districts - PlanC100, 2010
General Election 103

5. "A Voting Rights Analysis of the Proposed
Alaska State Legislative Plans: Measuring the
Degree of Racial Bloc Voting and Determining
the Effectiveness of Proposed Minority
Districts" 142

6. "District Election Analysis, House
Districts - PlanH100, 2010 General
Election" 176

7. "Population and Voter Data with Voter
Registration Comparison, House Districts -
PlanH100" 187

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P R O C E E D I N G S

Whereupon,

LISA HANDLEY, Ph.D.

was called for examination by counsel and,
having been duly sworn by the Notary, was
examined and testified as follows:

MR. MATTAX: Since we have someone
on the phone, let's state our appearances for
the record.

My name is David Mattax. I am
with the Attorney General's Office. I am here
for the State of Texas.

MR. COHEN: I am Bruce Cohen with
the Attorney General's Office, too.

MR. MELLETT: I am Tim Mellett and
I am with the United States.

MS. PERALES: Nina Perales for the
Latino Task Force, Defendant-Intervenor.

Good morning, Dr. Handley.

THE WITNESS: Good morning.

MR. MATTAX: Is there anyone else

1 on the telephone? (Pause.)

2 Thank you.

3 EXAMINATION BY COUNSEL FOR PLAINTIFF

4 BY MR. MATTAX:

5 Q. Would you please state your name?

6 A. Lisa Handley.

7 Q. Would you briefly describe what
8 your occupation is?

9 A. I am a director of a company and I
10 specialize in consulting, mostly for the U.N.
11 these days.

12 Q. And in your capacity as a
13 consultant for the U.N., what does that
14 entail?

15 A. I do post-conflict elections, help
16 set up elections in places like Afghanistan.

17 MR. COHEN: Let's take one second.

18 (Discussion off the record.)

19 BY MR. MATTAX:

20 Q. In addition to post-conflict
21 elections consulting, have you done any
22 consulting with respect to redistricting in

1 the United States?

2 A. Yes, a considerable amount.

3 Q. And this election cycle, have you
4 done any consulting?

5 A. I have.

6 Q. For which? Please describe what
7 that is.

8 A. I am working for the State of
9 Alaska, which is a Section 5 state, and they
10 have asked me to come in and ensure that the
11 plan that they drew would meet Section 5
12 standards.

13 I am working with Miami-Dade
14 County, which is not a Section 5 jurisdiction
15 but it is, of course, a Section 2
16 jurisdiction.

17 I am working with the State of
18 Massachusetts.

19 I have done some work in Colorado.

20 That's all I can remember, at the
21 moment, anyway.

22 Q. We should also add the one that

1 you are here to testify about today.

2 A. Yes.

3 Q. What is the one you are going to
4 testify about today?

5 A. The Justice Department has asked
6 me to look into the proposed plans, House and
7 Congress, for the State of Texas.

8 Q. Has the Department of Justice
9 asked you to look at the Senate plan for the
10 State of Texas?

11 A. No.

12 Q. Did you ask them why they didn't
13 ask?

14 A. No.

15 Q. Have you looked at the Senate
16 plan?

17 A. No.

18 Q. Did you file a report in this
19 case?

20 A. I filed two reports. One for
21 Congress; one for the State House.

22 Q. Did you file a report in the State

1 of Alaska case?

2 A. Yes. It wasn't a case.

3 Q. Can you explain what report you
4 filed in Alaska?

5 A. The redistricting commission asked
6 me to look into voting patterns and I wrote a
7 report that discussed the voting patterns and
8 then, when they drew a plan, I also looked at
9 that plan and appended the report to discuss
10 the plan that they drafted and accepted.

11 Q. And did that plan find
12 retrogression or not?

13 A. It precleared the Justice
14 Department a week or two ago.

15 Q. Did you file any type of report in
16 Miami-Dade County?

17 A. No. I take that back. I did do a
18 five page report. As to whether it went to
19 the Commissioner or not, I am not sure.

20 Q. Since that is Section 2, that
21 would not have been sent to the Justice
22 Department for any reason, to your knowledge?

1 A. That's correct.

2 Q. You said something for the State
3 of Massachusetts. Was there a report there?

4 A. No.

5 Q. And what about Colorado?

6 A. A brief report for the attorney.
7 I don't know if it went to the redistricting
8 commission or not.

9 Q. So in the report you did for
10 Colorado with respect to the redistricting
11 commission, what were you looking at?
12 Section 2 or Section 5?

13 A. Section 2.

14 Q. And with respect to Section 2, did
15 you find they needed to draw any additional
16 districts in Colorado?

17 A. I looked at one very specific
18 area, the San Luis Valley, where there was
19 already a district. And I recommended that
20 they maintain that district.

21 Q. And when you made determinations
22 with respect to whether a state retain a

1 district, what are you looking for in trying
2 to make that determination?

3 A. Whether the voting is polarized or
4 not and, if the district ceased to be there,
5 whether I thought that the minority-preferred
6 candidate would be elected.

7 Q. In determining racial
8 polarization, what procedure do you use to
9 make that determination?

10 A. I use three approaches.
11 Homogeneous precinct analysis, bivariate
12 ecological regression, and ecological
13 inference.

14 Q. What do those three things
15 measure?

16 A. They are estimates of the group's
17 voting patterns.

18 Q. And so do you do that for each
19 different minority group, or for the majority
20 group, or for which groups do you do that?

21 A. Well, it depends. For example, in
22 Alaska, when we do it for the nonnative

1 population and the native population, but you
2 would do each group individually.

3 Q. And at what level do you need to
4 find voting patterns to establish that it is
5 racially polarized? How do we know what is
6 racially polarized?

7 A. If whites voting alone would have
8 elected different candidates than minorities
9 voting alone, voting would have been
10 polarized.

11 Q. So if I understand that, if I have
12 a figure that says 51 percent of whites would
13 vote for candidate X and 51 percent of a
14 minority would vote for candidate Y, would
15 that constitute racial polarization?

16 A. Yes.

17 Q. Upon what do you reach that
18 conclusion? Is that something you came up
19 with on your own? Is that something based
20 upon other people's research? Is that based
21 upon a court case?

22 A. Thornburg v. Gingles.

1 Q. So we are clear on the record,
2 your interpretation of Thornburg v. Gingles,
3 is it a 51 percent of -- we are assuming the
4 white would be the majority in my example
5 here -- of the white majority votes for one
6 candidate, and 51 percent of a minority votes
7 for another candidate, that constitutes racial
8 polarization?

9 A. That is how you interpret the
10 separate electorates test, yes. That is not
11 typically the case. But under those
12 circumstances, yes. Again, you very rarely,
13 if ever, find those circumstances.

14 Q. What sort of circumstances do you
15 normally find?

16 A. I should take that back. For
17 example, in Alaska it may be the case that you
18 find a majority of whites voting one way and a
19 very large majority of whites voting for the
20 native-preferred candidate. But that
21 certainly wasn't the case in the elections
22 that I looked at in Texas, for example.

1 Q. I guess, so I can be clear on the
2 general propositions, before we get to the
3 specific -- if I get to Alaska -- I am not
4 going to get to Alaska since I didn't look at
5 Alaska -- but before you get to the specific
6 things in Texas, I am trying to get to the
7 understanding of how you determine racial
8 polarization.

9 Getting back to my hypothetical,
10 let's assume that there is a Congressional
11 district and you look at it and you see that
12 51 percent of one racial group votes for
13 candidate X and 49 percent votes for candidate
14 Y, and it flips, depending on if it is two
15 races in that district. Let's say the whites
16 vote 51 for candidate X and let's say blacks
17 vote 51 percent for candidate Y. Then that
18 would be a racially polarized district?

19 A. That particular contest would be
20 polarized. You wouldn't make a decision on
21 the basis of a single contest.

22 Once again, you would have to have

1 all three estimates showing that. I am not
2 necessarily sure that, in an instance where it
3 is that close, all three estimates would
4 consistently show that.

5 Q. So when you say that you can't
6 make this determination based on a single
7 contest, how many contests do you generally
8 need?

9 A. If you are trying to determine if
10 voting is racially polarized or not, you would
11 look at as many endogenous contests as is
12 practicable, I suppose.

13 Q. Let's define for the record what
14 you mean by an endogenous contest.

15 A. The office at issue.

16 Q. And so taking a typical
17 Congressional race, and, again, in Texas there
18 may be variations depending on when maps were
19 drawn, but let's just take a typical ten year
20 period between one census and another,
21 theoretically you would have five elections
22 for Congress. Would that be correct?

1 A. Yes.

2 Q. And you look at those five races
3 and that would be your endogenous elections.
4 Is that right?

5 A. Yes.

6 Q. So if in those five elections
7 three of them went one way and two of them
8 went the other way, what would you conclude
9 from that?

10 A. That in a majority of cases the
11 contests were polarized.

12 Q. Are there other races you would be
13 looking at in that Congressional district?
14 Let me strike that and posit what else
15 happens. We all know in a Congressional
16 district you will have lots of races.
17 Generally speaking, I am sure in some places
18 maybe it is not the case. But in most places
19 a Congressional district will be made up of a
20 number of State House districts, for example.

21 Would it help the analysis to look
22 at what happened in State House races to

1 determine whether or not there is racially
2 polarized voting in that Congressional
3 district?

4 A. Yes. If you didn't have a
5 sufficient number of endogenous elections, you
6 would presumably go to exogenous elections.

7 Q. So define for us what exogenous
8 means.

9 A. Elections for offices not at
10 issue. So, in your example, the State House
11 contests.

12 Q. And what about looking at -- if a
13 district had a metropolitan area, for example,
14 of some size, would it be useful to look at
15 metropolitan elections for City Council, for
16 judges, things like that?

17 A. If necessary, yes.

18 Q. And, likewise, going at a broader
19 level, is it useful to look at statewide
20 offices and how the voters in a particular
21 district voted in a statewide office?

22 A. Yes.

1 Q. Let's get back to the example that
2 we posited in the five endogenous elections in
3 a particular Congressional district and, in
4 our hypothesis, three voted for, one time, for
5 let's say the Democrat, for lack of a better
6 way to do this, and two for the Republican.
7 That's my hypothesis. Are you with me so far?

8 A. Yes.

9 Q. What if I look at the statewide
10 races and found that the majority of them
11 voted Republican? Would that change your
12 conclusion that, based on endogenous, that a
13 Democrat would win that district? Strike
14 that. That's not what you were talking about.

15 Would that change your conclusion
16 that was a racially polarized district?

17 A. I am sorry. The endogenous
18 elections we have three of the five being
19 polarized.

20 Q. Correct.

21 A. And then the statewide they are
22 polarized, as well?

1 Q. The other way. They vote
2 differently. So, for example, let's just say,
3 for example, let's start with there is a
4 minority candidate for the Congressional race.
5 And that minority candidate runs five times
6 and wins three times, and an Anglo candidate
7 wins twice. Would you consider that racially
8 polarized?

9 A. What we are doing in the racially
10 polarized, we are seeing how whites and
11 Hispanics vote. So when you say that the
12 white wins twice, I am going to assume what
13 you mean is that the majority of whites voted
14 which way and the majority of Hispanics voted
15 which way.

16 MR. MELLETT: I will ask you not
17 to assume. Anything there, he can clarify his
18 question, if he wants to know about voters or
19 if he wants to know about candidates.

20 BY MR. MATTAX:

21 Q. I haven't gotten to that level of
22 detail right now. I am looking at the

1 overall, who one the race.

2 What I am trying to find out is,
3 what I am hypothesizing is this is what I
4 would consider to be a dichotomy, that in this
5 particular Congressional district we are
6 positing that three of the five times, let's
7 call it the Hispanic, the Hispanic won that
8 race, but in looking at the statewide
9 elections that the majority of the candidates
10 that won were Anglo. Would that make a
11 difference in your analysis?

12 A. I am sorry, that is somewhat
13 irrelevant to my analysis. But you are not
14 telling me what some Hispanics are actually
15 voting.

16 Q. Let's do it this way, then. Let's
17 get back to my hypothetical of the 51 percent.
18 Again, this is trying to get an understanding
19 of how your analysis works. Not trying to
20 apply it to real world situations right now.
21 Just so I can understand.

22 Let's say in our Congressional

1 district that we have five elections and three
2 of them go for the minority and two of them go
3 for the nonminority. And if you look at that,
4 you are seeing that the majority of the
5 Hispanics in that district voted for the
6 minority candidate three times out of five.
7 And then the other two times, what would be
8 the explanation, then? Would it be lack of
9 turnout? Or that they changed their mind as
10 to why, if you determine that was racially
11 polarized, that the Democrat didn't continue
12 to win? Excuse me, that the Hispanic didn't
13 continue to win.

14 A. You haven't filled in all the
15 pieces there yet.

16 Q. What pieces have I omitted?

17 A. What are the Hispanics doing in
18 the contests in which -- you didn't even tell
19 me how they voted. You simply said, okay, in
20 two instances the Anglo wins and in three
21 instances the Hispanic wins. Is that correct?

22 Q. Uh-huh.

1 A. What I need to know is what
2 Hispanics and whites are doing in terms of
3 their voting behavior to make an assumption
4 about racially polarized voting.

5 Q. What if the Anglo voters in the
6 district are voting for Hispanic candidates at
7 more than 50 percent? Would that show racial
8 polarization?

9 A. It is not the race of the
10 candidate. It is whether the candidate is
11 preferred by Hispanic voters or not.

12 Q. So in determining whether
13 Hispanics prefer a candidate or not, then is
14 it the party or how do you determine that, if
15 it is not the race? How are we putting a
16 label on the Hispanic-preferred candidate of
17 choice? By party?

18 A. No, we look at how Hispanics
19 voted.

20 Q. So if Hispanics voted for a
21 Republican Hispanic, would that be the
22 candidate of choice?

1 A. If the majority of Hispanics voted
2 for a Hispanic Republican, then the Hispanic
3 Republican would be the minority-preferred
4 candidate in that instance.

5 Q. And if the majority of Hispanics
6 voted for an Anglo in a particular district
7 would the Anglo be the candidate of choice?

8 A. Yes.

9 Q. In looking at endogenous elections
10 in our proposed sort of hypothetical district,
11 if both candidates were Anglo could there be a
12 minority candidate of choice?

13 A. Yes.

14 Q. And how would one determine which
15 of the Anglos was the minority candidate of
16 choice?

17 A. You would determine the percentage
18 of minorities that supported either candidate,
19 both candidates.

20 Q. So in our five elections for a
21 Congressional district in a ten year period,
22 would you just look, then, at those five

1 elections and see what the minorities, how the
2 minorities voted in those five elections to
3 determine who the candidate of choice was for
4 that district, or would you need to look at
5 the exogenous elections, too?

6 A. It depends on what we are doing.

7 Q. Help me out on that. When would I
8 not look at exogenous elections and when would
9 I look for exogenous elections?

10 A. If I wanted to know how the
11 district fared in electing minority-preferred
12 candidates to a specific office, that office
13 would be most relevant, yes.

14 Q. When would I look at exogenous
15 elections, then? For what purpose would I use
16 those?

17 A. If you were doing an interracial
18 bloc voting analysis and you had, say, an
19 insufficient number of endogenous elections,
20 you would go to exogenous elections.

21 Q. What is the sufficient number of
22 endogenous elections upon which you can base

1 your conclusion?

2 A. What conclusion --

3 Q. What is -- sorry to interrupt.

4 What is the minimum number of endogenous
5 elections upon which you can base a conclusion
6 that there is racially polarized voting in a
7 Congressional district?

8 A. I don't have an answer to that.
9 It depends on the circumstances.

10 Q. But there could be circumstances
11 where, if I understand your testimony
12 correctly, there are an insufficient number of
13 endogenous elections to determine whether
14 there is racially polarized voting and you
15 would look at exogenous elections?

16 A. If, for example, I had a
17 jurisdiction in which only one minority ran
18 for the office one time, I would certainly go
19 to exogenous elections.

20 Q. How do you weave in, if you will,
21 the exogenous elections into your analysis to
22 determine whether or not there is racially

1 polarized voting in that district?

2 A. How do I weave them in?

3 Q. Let me ask it a different way.

4 You concluded -- under this hypothetical, you
5 are assuming that you didn't have enough
6 endogenous elections to be confident in your
7 conclusion. Okay?

8 A. Okay.

9 Q. Then you say, okay, now I will
10 look at exogenous elections to see if it gives
11 me more data. Correct?

12 A. Okay.

13 Q. What data do you look at and then
14 how does that data ultimately influence your
15 decision?

16 A. It depends on the circumstances.
17 I mean, any individual case is different. I
18 don't know how to answer that in the abstract.

19 Q. What I am trying to get at, in
20 general terms, is why -- how do you use an
21 exogenous election to add to your analysis of
22 the endogenous elections? What other data

1 does it give you?

2 A. It gives me more contests with
3 minority candidates in them to determine if
4 voting is polarized or not when there is a
5 minority candidate.

6 Q. What if there aren't enough
7 minority candidates in a particular district?
8 Is there a way to determine whether there is
9 racially polarized voting, then?

10 A. You could look at contests with
11 only white candidates, I suppose, but the
12 preferred method is to focus on elections that
13 offer minorities an opportunity to vote for a
14 minority candidate.

15 Q. We are in a bit of a quandary,
16 then. If we are in a situation, then, where
17 you have a district -- let's hypothize this
18 one -- where only white candidates run, and
19 you have a substantial minority population in
20 that district. Can you ever determine whether
21 there is racially polarized voting if there
22 just aren't any minorities that ever run?

1 A. Do you mean for that particular
2 office or do you mean in general?

3 Q. Let's start with for that
4 particular office. Then we can move on.
5 Let's just assume that for that particular
6 Congressional district in our five election
7 time frame it is always two Anglos running
8 against each other. Can you determine whether
9 there is racially polarized voting based on
10 endogenous elections?

11 A. You can certainly see what the
12 voting patterns were for those candidates. If
13 the whites and minorities prefer different
14 candidates, the voting would, in fact, be
15 polarized. The problem would come if you
16 didn't find polarization. You would still not
17 know what would happen if you had a minority
18 candidate running.

19 Q. In determining Section 2 or
20 Section 5, is all you are looking at whether a
21 particular area is racially polarized? Are
22 there other things you have to look at for the

1 analysis you performed?

2 A. Well, the analysis is different
3 whether you are looking at Section 2 or
4 Section 5. The comparable part is -- well, it
5 is different.

6 Q. Let's start out, what is the same
7 and what is not the same? Is there anything
8 that is the same?

9 A. In both instances you would be
10 determining if voting was polarized or not.
11 Under Section 2 you would see if, for example,
12 the minorities met the first prong of Gingles,
13 and if you could draw a district and yet
14 neglected to draw a district, given that was
15 polarized and minorities were cohesive.

16 Under Section 5 you would be
17 determining how many effective districts.
18 That is, how many districts provide minorities
19 with the ability to elect under a benchmark
20 plan versus a proposed plan.

21 Q. Does the cohesiveness of the
22 voters make a difference under Section 5?

1 A. (Pause). The cohesiveness would
2 come in to play if you were talking about
3 whether you had an effective district or not.
4 So, indirectly, I suppose so.

5 Q. What do you mean by an effective
6 district?

7 A. I am using the word effective
8 interchangeably with ability to elect. That
9 is, a district that usually elects a
10 minority-preferred candidate to office.

11 Q. What does usually elects a
12 minority-preferred candidate mean?

13 A. Certainly more than 50 percent of
14 the time.

15 Q. Now, when a new map is drawn
16 during a redistricting, I presume, since the
17 districts -- theoretically, I suppose, the
18 districts could remain identical. But let's,
19 for my hypothetical, presume the districts do
20 not remain identical. They are drawn
21 differently. There is a different geographic
22 shape to them. How can one determine whether

1 or not the new districts are effective or not
2 effective?

3 A. In Texas we had a lot of
4 information about proposed districts. We had
5 something particularly valuable and that is
6 recompiled election results.

7 Q. And what is a recompiled election
8 result?

9 A. Statewide elections that occurred
10 under the old districts were retabulated up to
11 conform to the new proposed district lines.
12 So we could determine if a particular
13 candidate would carry that proposed district
14 or not.

15 Q. And why is that useful?

16 A. It would allow you to see if the
17 minority-preferred candidates were carrying
18 the proposed districts.

19 Q. I guess I am a little confused
20 there because we have a new district. Would
21 you determine -- in looking at the new
22 district, what elections are you looking at in

1 the new district to determine if the
2 minority-preferred candidate continues to
3 elect?

4 A. What we can't do most of the time
5 is look at endogenous elections because, in
6 fact, the lines have changed, so we have to
7 turn to statewide elections that include
8 minority candidates to determine if that
9 minority would carry the newly configured
10 district.

11 Q. And what happens if you get a
12 situation where the minority doesn't carry
13 that new district, looking at the exogenous
14 elections? Then what do you do? What is the
15 next step in your analysis?

16 A. Well, I would be looking at that
17 over -- I would look at that pattern over more
18 than one election, but the idea would be to
19 look at a series of elections and determine if
20 the minority-preferred candidate carried that
21 district.

22 Q. And I guess that's what I am a

1 little confused about. You keep saying the
2 minority-preferred candidate but you are
3 looking at, I assume, a group of exogenous
4 elections. Are you talking about the
5 minority-preferred candidate in each of those
6 exogenous elections?

7 A. That's correct.

8 Q. So in looking at the exogenous
9 elections, would you first have to determine
10 in each election who the minority-preferred
11 candidate is?

12 A. That's correct.

13 Q. And in any particular
14 Congressional district, I assume there are
15 dozens of exogenous elections. You can look
16 at these reports but I am just saying in
17 general terms. There is more than one
18 exogenous election in a Congressional
19 district, obviously.

20 MR. MELLETT: Is this in reference
21 to Texas? Is this a specific question?

22 BY MR. MATTAX:

1 Q. In general. I would assume, if
2 you say statewide, in any state you are going
3 to have a governor or something else. You
4 have more than one exogenous election in any
5 particular Congressional district.

6 A. Yes.

7 Q. So how do you pick which ones to
8 look at, I guess? Do you look at them all?

9 A. What are we attempting to do here?

10 Q. We are getting back to determining
11 now whether or not, since you have a new
12 district, whether or not the -- I guess the
13 way to put it would be you determine that a
14 candidate won the majority of the endogenous
15 elections. More than 50 percent of the time
16 that candidate won the endogenous elections.
17 So that becomes the preferred candidate of
18 choice.

19 Now we have a new district so we
20 are going to look at exogenous elections to
21 see if that person is going to win those
22 elections. We are guessing. We are trying to

1 figure out whether those new districts will
2 elect that person. I assume that's the point
3 of the exercise.

4 A. Okay.

5 Q. Is that the point of the exercise?
6 Is that what you are doing?

7 A. I don't know what you mean by
8 "that person" but the point of the exercise is
9 to determine whether the proposed district
10 would elect a minority-preferred candidate.

11 Q. Since there is more than one
12 exogenous election, how does one decide which
13 ones to pick? Or does one look at them all?
14 Or both?

15 A. Both what?

16 Q. Pick some or look at all of them?

17 A. (Pause.)

18 Q. So we can understand, are we
19 picking or choosing or do we have a
20 methodology to choose? For example, I am not
21 going to look at the dogcatcher in that county
22 because it is too small of an election. Or I

1 am not going to look at the governor because
2 it is too big of an election. How do we
3 decide which endogenous elections to look at
4 to see if it works?

5 A. Exogenous elections.

6 Q. Exogenous, yes.

7 A. First you are going to need a
8 contest that encompasses at least that area.
9 So dogcatcher isn't going to work. It is too
10 small an area in that particular district,
11 since we are talking, I guess, about
12 Congressional districts.

13 Q. Congressional is our issue here
14 right now.

15 A. So in terms of Congressional
16 districts, we are going to have to turn to
17 statewide contests.

18 Q. Okay.

19 A. The second thing you want is you
20 want a minority candidate who is competing in
21 that office. And not only a minority
22 candidate but we need to know that that

1 minority candidate is minority-preferred.

2 Q. So what if, on the statewide
3 level, you don't have any minority candidates?
4 You just have Anglos. Can you not do the
5 exogenous analysis?

6 A. You could. It would not tell you
7 nearly as much.

8 Q. What would it tell you?

9 A. Well, it would tell you that, for
10 example, a white minority-preferred candidate
11 might win this contest. It wouldn't tell you
12 if a minority minority-preferred candidate
13 would win this contest. So if the white
14 minority-preferred candidate didn't win, then
15 you might be able to assume that a minority
16 minority-preferred candidate didn't win.
17 However, if the white minority-preferred
18 candidate won, I am not sure that you could
19 assume from that that the minority
20 minority-preferred candidate would win.

21 Q. So if I understand that, it would
22 be, in your view, a valid assumption to make,

1 if the Anglo minority-preferred candidate
2 lost, under that analysis, that a minority
3 minority-preferred candidate would also lose?

4 A. Yes, if voting were polarized,
5 yes.

6 Q. But you could not conclude that if
7 an Anglo minority-preferred candidate won, you
8 could not conclude that a minority
9 minority-preferred candidate would win. Is
10 that correct?

11 A. If voting was polarized, that's
12 correct.

13 Q. Why not? Why couldn't you make
14 that determination?

15 A. Because whites might be willing to
16 vote for a white minority-preferred candidate
17 but not for a minority minority-preferred
18 candidate.

19 Q. Is it also the case for different
20 minorities, different minority groups? In the
21 sense, if you had multiple minority groups, is
22 it possible that a minority group would not be

1 as willing to vote for a different minority
2 candidate?

3 A. Do you want to elaborate on that
4 question?

5 Q. I am taking as an assumption your
6 answer that you can't determine whether, if a
7 minority -- if an Anglo minority-preferred
8 candidate wins an election, you can't conclude
9 that the minority minority-preferred candidate
10 would win.

11 A. That's correct.

12 Q. What I am positing now is, what if
13 you had multiple minorities in a district,
14 more than one? Would the same hold true?
15 Let's say, for example, that a minority
16 Hispanic had been winning in the past and the
17 exogenous elections would indicate a minority
18 black would now win. Would that be relevant
19 to whether or not the Hispanic
20 minority-preferred candidate would still be
21 effective in that district?

22 A. Well, the first thing you would do

1 is determine if the minority-preferred
2 candidate was, in fact, preferred by each and
3 every minority group that you were interested
4 in. So if the Hispanic candidate was, in
5 fact, black-preferred, that would tell you
6 something. If that Hispanic candidate was not
7 black-preferred -- I am getting my groups
8 mixed up -- then the fact that the
9 Hispanic-preferred candidate won would not
10 tell you very much about what would happen
11 with a black-preferred candidate.

12 Q. So then it is important to
13 determine, for purposes of whether a Hispanic
14 candidate is preferred or a black candidate is
15 preferred, to determine how within a
16 particular district blacks voted, Hispanics
17 voted, if I understand your answer correctly.

18 A. You would want to know if your
19 candidate was preferred by Hispanic voters and
20 by black voters.

21 Q. Do you ever look at exogenous
22 elections in existing districts to make a

1 determination as to whether the
2 minority-preferred candidate would win in an
3 existing district or do you only look at
4 endogenous elections?

5 MR. MELLETT: Just to be clear,
6 are we talking in general or is this
7 specifically --

8 MR. MATTAX: In general.

9 THE WITNESS: I am sorry, repeat
10 the question.

11 BY MR. MATTAX:

12 Q. Do you only look at the exogenous
13 elections to determine whether, in a new map,
14 a district is performing or is there some
15 relevance to using exogenous elections to
16 determine if a district is performing for a
17 benchmark?

18 A. The first part of the question and
19 second part didn't get together.

20 Q. Let's go back to my five elections
21 in a ten year cycle. Let's say an Hispanic
22 wins five out of five. And let's say that the

1 Hispanic candidate of choice loses a hundred
2 percent of every exogenous election anybody
3 can ever find. What is that district?

4 A. You said Hispanic candidate. Do
5 you mean a Hispanic-preferred candidate?

6 Q. Correct. Or perhaps -- this is
7 two answers. Let's assume it is
8 Hispanic-preferred. Then I want to have
9 another. I have got to figure out what that
10 means. What does it mean to have an Hispanic
11 elected five out of five times and then the
12 conclusion being that's an Hispanic candidate
13 of choice. But then looking at every
14 exogenous election, the Hispanic candidate of
15 choice doesn't win. What would that tell you
16 about that district?

17 A. That Hispanics are able to elect
18 their candidate of choice to the office at
19 issue.

20 I am assuming that we are talking
21 about Hispanic-preferred. That's why I asked
22 you that question.

1 Q. We will use Hispanic-preferred.

2 Then what would explain the fact
3 that, in the exogenous elections, the Hispanic
4 candidate of choice doesn't win?

5 A. I could posit some possibilities.

6 Q. Okay.

7 A. Would you like me to do that?

8 Q. If you would like.

9 A. Perhaps a Hispanic-preferred
10 candidate is getting white crossover vote.

11 Q. Let's stop there. There is one
12 example. In this example, if the
13 Hispanic-preferred candidate is getting white
14 crossover vote in order to win five out of
15 five elections, is that a protected district
16 in a benchmark plan?

17 MR. MELLETT: When you say
18 protected, do you mean under Section 5?

19 MR. MATTAX: Let's start with
20 Section 5.

21 THE WITNESS: I need a little more
22 information than that.

1 BY MR. MATTAX:

2 Q. Let's assume -- and I will just
3 pull these numbers out of my head -- that you
4 have 60 percent Hispanic voting age population
5 in a district, 40 percent Anglo voting age
6 population that comprises the district, and in
7 the Congressional race the Hispanic candidate
8 of choice -- let's not even say candidate of
9 choice. Let's use Ds and Rs to make it
10 easier. Let's just say the Hispanic Democrat
11 wins five out of five endogenous elections and
12 a Republican wins every single exogenous
13 election. What kind of a district is it?

14 A. What kind of a district is it?

15 Q. Is it a performing district? Is
16 it a crossover district? Is it an "I don't
17 know what the district is"? Is it a "That
18 doesn't make sense" district? "Your
19 statistics must be wrong"?

20 A. It is a Congressional district
21 that minority candidates, minority voters are
22 able to elect their candidate of choice

1 consistently throughout the decade.

2 Q. Can you make a conclusion based on
3 that that it is a protected district under
4 Section 5?

5 A. I would say it is a protected
6 district under Section 5, yes.

7 Q. This is what I am driving at. So
8 the fact that in the exogenous elections the
9 minority-preferred candidate never wins is not
10 relevant to determine whether it is a
11 protected district?

12 A. Let's say, for example, minorities
13 say, "I can elect a candidate of choice to
14 Congress but I am never going to succeed in
15 statewide elections so I am not even going to
16 cast a ballot for statewide office. My
17 candidate will never win." It doesn't mean
18 that the Congressional district is not a
19 protected district.

20 Q. What reason would I have to not
21 vote, then -- let's get back, then, to
22 positing a different scenario versus that type

1 of a candidate winning five out of five
2 elections. Let's say it wins three out of
3 five. What explanation then could there be
4 for that person who is a minority-preferred
5 candidate of choice in that district losing
6 two out of five elections?

7 A. I can start positing some
8 examples. Is that what you want me to do?

9 Q. My question is, if they are losing
10 two out of five, it can't be because they
11 didn't feel like they could win in a statewide
12 race, because that's not the issue there. And
13 so they would be voting, you would assume, for
14 that candidate, wouldn't you?

15 A. Yes.

16 Q. So why would they lose, then, if
17 it was a performing minority district?

18 A. It is possible, for example, that
19 whites turned out in a higher than average
20 amount and that the whites who turned out were
21 less likely to vote for that candidate.

22 Q. Did you look at trending at all to

1 see, over that ten year period, whether
2 election patterns were changing?

3 A. Be more specific.

4 Q. What would this tell you about a
5 district? The Hispanic-preferred candidate of
6 choice in the first election cycle wins 60
7 percent of the vote. In the second election
8 cycle 55 percent of the vote. In the third
9 election cycle 51 percent of the vote. So he
10 has won three in a row. And the fourth
11 election cycle 48 percent of the vote. He
12 loses. And in the fifth election cycle
13 45 percent of the vote. He loses. Is that a
14 performing district?

15 A. I did look at the possibility that
16 that was a trend, so I guess the answer to
17 your -- what was the original question?

18 Q. Did you look at trending?

19 MR. MELLETT: Is this specific to
20 Texas or is this general, again?

21 BY MR. MATTAX:

22 Q. Right now we are talking general.

1 Do you think trending is important to look at,
2 is what I am driving at, and I gave you an
3 example of what I meant by trending. Would
4 that be important to your analysis?

5 And there could be two answers.
6 One answer could be, "I never look at
7 trending, ergo, it is not relevant to my
8 analysis," or, "I always look at trending
9 because it is relevant to my analysis." Let's
10 start with that question.

11 MR. MELLETT: Well, I think there
12 could be -- I don't think she should be
13 limited to two answers. I think you should
14 answer as you think is most appropriate.

15 BY MR. MATTAX:

16 Q. Do you always consider trending in
17 your analysis?

18 A. No.

19 Q. Do you ever consider trending in
20 your analysis?

21 A. Yes.

22 Q. When?

1 A. When I have a wealth of data in
2 front of me and it is possible to look at
3 patterns over the course of the decade, I do
4 to some degree look at patterns over the
5 decade.

6 Q. So let me go back to my
7 hypothetical and you tell me whether you think
8 this is a performing district.

9 In my hypothetical, in election
10 one the Hispanic-preferred candidate got 60
11 percent of the vote and won. Election two,
12 55 percent of the vote and won. Election
13 three, 51 percent of the vote and won.
14 Election four, 49 percent of the vote and
15 lost. Election five, 45 percent of the vote
16 and lost. Would that trending be relevant to
17 a conclusion as to whether that was a
18 performing district or not?

19 A. I guess what I would do in that
20 instance is go back and actually look and see
21 if I was losing Hispanic population in that
22 district.

1 Q. And that could be an explanation,
2 less Hispanics there?

3 A. That's correct.

4 Q. What if you were gaining Hispanic
5 population?

6 A. (Pause.) I guess I would look to
7 see if I was gaining Hispanic citizen
8 population or not.

9 Q. What difference does that make?

10 A. (Pause.)

11 Q. What difference does Hispanic
12 citizen voting age population make to that
13 analysis?

14 A. If the district was gaining
15 population but losing Hispanic citizen voting
16 age population, then it is losing Hispanic
17 voters.

18 Q. So in determining the number of
19 Hispanic voters in a district, you look at
20 citizen voting age population?

21 A. If you have it. You could also
22 look at spanish surname voter registration.

1 Q. What is that?

2 A. It is a look at the number of
3 spanish surnames appearing on the voter
4 registration list.

5 Q. Why is that relevant?

6 A. It would give you an indication of
7 what proportion of your population was in
8 fact -- what proportion of your registered
9 voter population was Hispanic.

10 Q. Is looking at SSVR percentages
11 relevant in a Section 5 case?

12 A. It depends on what you mean by
13 relevant. It is something you could consider.

14 Q. Let me ask a different question.
15 Do you ever look at SSVR in forming opinions
16 in Section 5 cases?

17 A. If I were looking at trending, for
18 example, I might look at SSVR.

19 Q. What type of trending?

20 A. To determine if I was losing
21 Hispanic voter population or gaining Hispanic
22 voter population.

1 Q. So is it more important for
2 trending purposes to look at SSVR to determine
3 whether you are gaining or losing spanish
4 voting population or just the voting age
5 population of Hispanics?

6 A. If I was attempting to determine
7 if I were gaining or losing Hispanic voters, I
8 would have to turn to SSVR if I had it rather
9 than voting age population.

10 Q. And the reason for that is?

11 A. Because Hispanic voting age
12 population wouldn't necessarily indicate if I
13 had voters or not.

14 Q. Is that because Hispanic voting
15 age population includes noncitizens?

16 A. That's correct.

17 Q. So then in looking at a Section 5
18 analysis, for purposes of determining whether
19 a district is electing a preferred candidate
20 of choice, a minority, does it make any
21 difference whether you look at SSVR or
22 Hispanic citizen -- excuse me, Hispanic voting

1 age population? How is it relevant in
2 Section 5 between voting age population and
3 spanish surname voter registration?

4 A. Both are relevant. Neither of
5 them alone tells me very much at all, however.

6 Q. So what do you need to look at
7 besides those two things?

8 A. In making a Section 5
9 determination?

10 Q. Yes.

11 A. I need to be able to determine if
12 the district is electing a minority-preferred
13 candidate or not.

14 Q. Let me write these down.
15 What else? Anything else?

16 A. Well, to determine the benchmark,
17 what I am doing is looking to see if the
18 Hispanic-preferred candidate,
19 minority-preferred candidate, is consistently
20 winning. And then in terms of the proposed
21 plan, I need to determine if I think the
22 district is likely to elect a

1 minority-preferred candidate.

2 Q. And then in determining whether a
3 district is protected, do you need to look at
4 SSVR?

5 MR. MELLETT: This is, again,
6 Section 5?

7 MR. MATTAX: Section 5.

8 THE WITNESS: It is certainly
9 something I could look at. What I am much
10 more interested in is whether the district is
11 an effective minority district. That could
12 come into play but, again, it is whether it is
13 electing the minority-preferred candidate
14 consistently that is the focus.

15 BY MR. MATTAX:

16 Q. So my next hypothetical would be,
17 what if the SSVR district was 40 percent
18 Hispanic and your analysis showed that it was
19 electing the Hispanic-preferred candidate of
20 choice, would you say that was a protected
21 district?

22 A. You would have to give me a little

1 more information about that district but
2 probably.

3 Q. So if there is not 50 percent of
4 the Hispanic citizen or SSVR in that district,
5 but you say it is protected, does that mean it
6 is a crossover district?

7 A. I don't know. What is a crossover
8 district?

9 Q. I think my understanding of a
10 crossover district -- let me ask this. Have
11 you never heard of a crossover district?

12 A. I don't use the term.

13 Q. Let's describe what terms you use
14 for districts. Do you have different terms
15 for district or is it just one term, a
16 minority-preferred candidate of choice elects
17 to that district, or are there different terms
18 for that?

19 A. (Pause.)

20 Q. Let me back up, give you a
21 hypothetical. You have a district with 80
22 percent citizen Hispanics in it and they vote

1 for the Hispanic-preferred candidate of choice
2 in that district. It seems to me, without any
3 white voters at all, you have enough Hispanics
4 in that district to elect a Hispanic-preferred
5 candidate. Are you with me so far?

6 A. With you.

7 Q. I have a district with 40 percent
8 Hispanic citizen voting age population in it.
9 It seems to me that they are not going to, on
10 a regular basis, be able to elect their
11 candidate of choice by themselves because they
12 are not 50 percent of the district. Are you
13 with me so far?

14 A. Still with you.

15 Q. So when you see a district that
16 has 40 percent Hispanic and yet you call it
17 protected, then what is being added to that
18 district? Are there whites voting for that
19 Hispanic candidate of choice? Is that what
20 makes it a performing district?

21 A. Could be whites, could be blacks,
22 could be Asians.

1 Q. Does it make any difference in
2 your analysis who it is?

3 A. If the minority-preferred minority
4 candidate is consistently elected, it is an
5 effective district.

6 Q. Then I take it it doesn't make any
7 difference to you whether it is whites
8 crossing over or blacks as to whether or not
9 it is a performing district.

10 A. That's correct.

11 Q. So then when we go through your
12 analysis, I will ask you a series of questions
13 but I assume the answer is going to be no.
14 That when I see one of these districts, it may
15 be 30 percent, 40 percent Hispanic, and you
16 have concluded that they are performing
17 districts, that you did not determine who else
18 was voting besides Hispanics for that
19 candidate.

20 MR. MELLETT: Objection. Assuming
21 facts not in evidence. We need to have
22 specific districts.

1 BY MR. MATTAX:

2 Q. So is it possible that you did do
3 that analysis, then?

4 A. What analysis?

5 Q. Determine who in addition to
6 Hispanics was voting for the preferred
7 candidate of choice, in a district that had
8 less than 50 percent Hispanic citizen voting
9 age population.

10 MR. MELLETT: Same objection in
11 that you are talking about this in general.
12 If you have a specific question about a
13 district, let's ask about the specific
14 district.

15 BY MR. MATTAX:

16 Q. Then I will ask the question this
17 way. In your analysis of Texas, Section 5,
18 were there any districts that you looked at
19 that were less than 50 percent Hispanic
20 citizen voting age population that you
21 consider to be performing districts that you
22 did an analysis in to determine who else

1 besides the Hispanics were voting for the
2 Hispanic candidate of choice?

3 A. That's sort of a two part
4 question. Do you want to break it into its
5 two parts?

6 Q. Let's go to the first part. Were
7 there any districts in Texas in your analysis
8 that had less than 40 percent Hispanic citizen
9 voting age population that you said were
10 protected?

11 A. I would have to look at my report.

12 Q. Okay.

13 Which report are you looking at?

14 A. I have two reports in front of me.
15 One is the State House report --

16 MR. MELLETT: Do you want to mark
17 it as an exhibit?

18 MR. MATTAX: Sure. I want to see
19 which one she is referring to.

20 BY MR. MATTAX:

21 Q. Are you going to refer to both of
22 them for this?

1 A. Could do.

2 Q. For purposes of answering my
3 question.

4 A. Does your question refer to both
5 of them?

6 Q. No. My question referred to, did
7 you do an analysis of any district that was
8 less than 40 percent Hispanic citizen voting
9 age population that you found was protected to
10 determine who besides Hispanics were voting
11 for their preferred candidate of choice. You
12 said, "I will have to look at my report." And
13 my question is, which report do you want to
14 look at?

15 A. That wasn't your question. Your
16 question was did I find any districts with
17 less than 50 percent Hispanic citizen voting
18 age population effective. I said you had to
19 break it into two parts. I think that was the
20 question you asked me. And that is what I am
21 going to refer to in my report.

22 Q. We will get to your reports in a

1 little bit.

2 MR. MELLETT: So we aren't going
3 to the reports? We are not going to introduce
4 them right now?

5 MR. MATTAX: We are still doing
6 general stuff.

7 MR. MELLETT: You can put your
8 reports away.

9 MR. MATTAX: I have copies here.
10 We can mark them at the appropriate time.

11 BY MR. MATTAX:

12 Q. You said -- let me see if I
13 recollect your testimony correctly. Correct
14 me if I am wrong. I mentioned the term
15 crossover. You either said you didn't know
16 the term or you didn't use it. Is it you have
17 never heard of it or that you just don't use
18 it?

19 A. I don't use the term.

20 Q. What about the term coalition?
21 Have you heard of that?

22 A. Yes.

1 Q. Do you use that?

2 A. (Pause). I am not sure. Possibly
3 in my writings I have.

4 (Discussion off the record.)

5 BY MR. MATTAX:

6 Q. Influence. Have you ever heard of
7 that district? Have you ever heard of that
8 term?

9 A. Yes.

10 Q. Competitive?

11 A. Yes.

12 Q. So tell me, if you know, what you
13 think the definition of crossover is.

14 A. (Pause.)

15 Q. Do you have a view on what a
16 crossover district is? Yes or no?

17 MR. MELLETT: Are you talking
18 about in a specific setting? Is this tied to
19 something specific?

20 MR. MATTAX: Voting rights.

21 MR. MELLETT: Any voting rights
22 anywhere somebody is using the term crossover?

1 MR. MATTAX: If she has heard of
2 it, and if she is aware of it, and if she has
3 an understanding of what it means. If the
4 answer is no, that's fine.

5 MR. MELLETT: I will object on
6 vagueness.

7 THE WITNESS: Repeat the question?

8 BY MR. MATTAX:

9 Q. Have you ever heard someone use
10 the term crossover district?

11 A. Yes.

12 Q. Where did you hear that?

13 A. I am not sure.

14 Q. Have you ever read it in a court
15 case?

16 A. Possibly.

17 Q. Do you know what court case that
18 may have been?

19 A. No.

20 Q. Have you ever heard the term
21 coalition district?

22 A. Yes.

1 Q. Where have you heard the term
2 coalition district?

3 A. I can't specify. I don't know.

4 Q. Have you ever read it in a court
5 case?

6 A. I don't know.

7 Q. Influence district, have you ever
8 heard the term influence district?

9 A. Yes.

10 Q. Where did you hear that?

11 A. I couldn't specify.

12 Q. And I think we mentioned
13 competitive district, as well. Have you heard
14 the term competitive district?

15 A. Yes.

16 Q. Where have you heard that?

17 A. Again, I can't point to a specific
18 source.

19 Q. Have you ever heard of that in a
20 court -- do you ever recall reading that in a
21 court case anywhere?

22 A. It was an issue in the Arizona

1 litigation that I was involved in.

2 Q. So what was the Arizona
3 litigation?

4 A. This is a decade ago.

5 Arizona has a law that districts
6 must be as competitive -- that a plan must
7 offer some degree of competitiveness. I am
8 not really sure.

9 Q. In what context do you recall
10 being involved in that?

11 A. A colleague and I were involved in
12 the court case. My colleague did the
13 competitiveness part of the analysis. I did
14 the voting rights part of the analysis.

15 Q. And in the context of a voting
16 rights analysis do you ever -- is the term
17 competitive district ever used, to your
18 knowledge, in the context of voting rights
19 analysis?

20 A. I am not sure what you mean.

21 Q. Let's do it this way, then.

22 Does the term crossover, in a

1 Section 5 case, have a defined meaning, to
2 your knowledge?

3 A. Does the word crossover -- repeat
4 the whole question.

5 Q. Does the term crossover, in a
6 Section 5 analysis, have a defined meaning to
7 your knowledge?

8 MR. MELLETT: Objection. Vague.
9 I am not sure if you are talking about court
10 cases, if you are talking about her analysis.

11 MR. MATTAX: I will ask another
12 question.

13 BY MR. MATTAX:

14 Q. Does the term crossover have a
15 defined legal meaning in a Voting Rights Act
16 case, to your knowledge?

17 A. I am not specifically aware of a
18 definition of crossover.

19 Q. Do you have a general
20 understanding of what it means?

21 A. I think people might -- I think I
22 know what it means but I am not positive.

1 Q. What do you think it means?

2 A. Let me back up. I don't even have
3 a definition of it well enough versed in my
4 mind to deal with that word.

5 Q. I take it, then, that you wouldn't
6 have an opinion on whether a crossover
7 district is protected under Section 5 of the
8 Voting Rights Act.

9 A. That would be correct. I don't
10 have an opinion.

11 Q. In the context of a Section 5
12 Voting Rights Act case, do you know what a
13 coalition district is?

14 MR. MELLETT: Again, for
15 clarification, are you talking about a
16 specific court case that you are referring to?
17 What is the -- are you talking about her
18 analysis? Again, I am unclear.

19 BY MR. MATTAX:

20 Q. Do you have a definition in terms
21 of Section 5 for a coalition district?

22 A. I have used the word coalition

1 district. Whether you mean specifically under
2 Section 5, I guess I don't have a definition
3 for coalition district specific to Section 5.

4 (Discussion off the record.)

5 (A recess was taken.)

6 BY MR. MATTAX:

7 Q. We are back on the record after a
8 short break. Let me finish up this line of
9 questioning and then we will move on to mark
10 some of this stuff.

11 We were talking about coalition
12 districts. I think I had asked you if you had
13 a definition of them. Then I think you were
14 interrupted. Did you have a definition,
15 within the context of Section 5, as to what a
16 coalition district is, or have you ever used
17 that term?

18 A. I believe I have used the term. I
19 don't know if I have used it specifically in
20 the context of Section 5. But in the context
21 of voting rights in general, I have used the
22 term.

1 Q. And how did you use the term?

2 A. Coalition district would be a
3 district in which more than one minority group
4 voted consistently together to elect a
5 minority-preferred candidate.

6 Q. And do you have an opinion as to
7 whether or not a coalition district is a
8 protected district under Section 5 of the
9 Voting Rights Act?

10 A. I wonder if you are using that
11 term differently when you ask that question.

12 Q. Okay.

13 MR. MELLETT: Do you --

14 THE WITNESS: I don't think she is
15 finished with her answer.

16 MR. MELLETT: I was just trying to
17 clarify, is that in the way that she uses it?
18 Is that your question? As opposed to some
19 other definition of coalition?

20 MR. MATTAX: However she wanted to
21 answer the question is fine with me.

22 THE WITNESS: You could have a

1 district that was, for example, 50 percent
2 hispanic, 30 percent black, and it would
3 consistently elect a minority-preferred
4 candidate. And I would say in that instance
5 it is protected.

6 BY MR. MATTAX:

7 Q. What about an influence district?
8 Have you ever heard that term used before?

9 A. Yes.

10 Q. What is your understanding of what
11 that term means?

12 A. An influence district is a
13 district in which minorities have an influence
14 over who is elected but is unable to
15 consistently elect candidates of their choice.

16 Q. Do you have an opinion as to
17 whether or not an influence district is
18 protected under Section 5?

19 A. (Pause). I would say that that is
20 a legal question that I am unclear of the
21 answer to.

22 Q. Have you ever participated in

1 filing any amicus curiae briefs with any
2 courts with respect to any of these terms we
3 have been talking about today, taking an
4 opinion as to whether they are protected under
5 Section 5, or -- let's start with that
6 question.

7 MR. MELLETT: Do you mean whether
8 she?

9 MR. MATTAX: She. Whether she has
10 participated or assisted in the filing of any
11 amicus curiae briefs that dealt with any of
12 the terms we have been discussing today,
13 specifically crossover districts, coalition
14 districts, or influence districts.

15 THE WITNESS: I don't remember.

16 BY MR. MATTAX:

17 Q. Lastly, I think we talked about
18 the term competitive district. Do you have a
19 definition or do you have an understanding of
20 what a competitive district is in a Section 5
21 voting rights analysis case?

22 MR. MELLETT: Objection. Asked

1 and answered.

2 MR. MATTAX: Was it?

3 MR. MELLETT: Yes. We talked
4 about the whole situation with Arizona.

5 MR. MATTAX: I apologize. Then
6 she said at the end of the day that she didn't
7 remember. I'm trying to find out if she has
8 an understanding of what a competitive
9 district is.

10 THE WITNESS: The word
11 competitive, as I described it with regard to
12 Arizona, was --

13 BY MR. MATTAX:

14 Q. Was not Section 5?

15 A. That's correct. It was political
16 competitiveness.

17 Q. So for purposes of the Voting
18 Rights Act you have not heard the term
19 competitive used?

20 A. I may have run across it. I don't
21 use it myself.

22 Q. And you don't recall ever seeing

1 that in a court case or any knowledge of it?

2 MR. MELLETT: (Inaudible to
3 reporter.)

4 MR. MATTAX: Arizona she said was
5 political, not Voting Rights Act.

6 BY MR. MATTAX:

7 Q. Now I am just trying to clarify
8 whether, in a Voting Rights Act context, you
9 have ever used it or heard it.

10 A. I may have.

11 Q. But you don't recollect right now?

12 A. No.

13 MR. MATTAX: Let's mark this big
14 thing here so we can get it out of your way.
15 That is Exhibit 1.

16 (Document referred to marked
17 Deposition Exhibit No. 1 for identification
18 and subsequently attached to the deposition.)

19 BY MR. MATTAX:

20 Q. Let me show you what has been
21 marked as Deposition Exhibit Number 1. Have
22 you ever seen this document before?

1 A. I have not.

2 Well, I haven't seen these first
3 few pages.

4 Q. Let me direct you to the second
5 page.

6 On the second page, in the third
7 paragraph, the first sentence says the United
8 States has identified retrogression from the
9 benchmark to the proposed plan in five
10 districts in the Texas House of
11 Representatives: 33, 35, 41, 117, and 149.

12 Do you agree with that statement?

13 A. I would have to refresh my memory
14 by looking at my own report.

15 Q. Let's go ahead then -- hold on.

16 (Discussion off the record.)

17 BY MR. MATTAX:

18 Q. Would you like to look at your
19 House plan first?

20 A. These are House-specifics.

21 MR. MATTAX: Let's mark as Exhibit
22 Number 2 Section 5 Voting Right Analysis of

1 Proposed State House Plan prepared by Lisa
2 Handley.

3 (Document referred to marked
4 Deposition Exhibit No. 2 for identification
5 and subsequently attached to the deposition.)

6 BY MR. MATTAX:

7 Q. Let me hand you what has been
8 marked as Handley Exhibit Number 2. Can you
9 identify this for the record, please?

10 A. Yes. This is the report I
11 prepared for this case for the State House
12 plan.

13 Q. Did you also propose a report for
14 the Congressional plan?

15 A. Yes.

16 MR. MATTAX: Let me mark this as
17 Handley Number 3.

18 MR. MELLETT: Let me go off the
19 record for a second.

20 (Discussion off the record.)

21 (Document referred to marked
22 Deposition Exhibit No. 3 for identification

1 and subsequently attached to the deposition.)

2 BY MR. MATTAX:

3 Q. Let me hand you what has been
4 marked as Handley Deposition Exhibit Number 3.
5 Could you identify that, please?

6 A. This is the report I prepared for
7 this case for the Congressional plan.

8 Q. Let me go back to the question we
9 had on the table, which was with respect to
10 Handley Deposition Exhibit Number 1, which is
11 the United States' Identification of Elections
12 considered. And on page two it identifies
13 five districts that the United States claims
14 retrogressed from the benchmark plan:
15 Districts 33, 35, 41, 117 and 49.

16 My question to you was do you
17 agree with that?

18 A. I am going to look at my report
19 and answer that question.

20 Q. Please do.

21 A. (Pause). 33 I agree with.

22 35 I agree with.

1 41 I can't make the determination.

2 117 I agree with.

3 149 I agree with.

4 Q. How do you characterize those
5 districts? Or do you characterize those
6 districts in your report?

7 A. How do I characterize them?
8 (Pause).

9 I characterize them as effective
10 districts under the benchmark plan; as not
11 effective districts under the proposed plan.

12 Q. Let's turn to, it looks like,
13 page 6 of Exhibit 1, which is the United
14 States report.

15 As best I can tell, it looks like
16 the United States is asserting that Benchmark
17 Congressional District 23 and Benchmark
18 Congressional District 27 retrogressed. Is
19 that your understanding from reading this
20 page? And if you need to take your time,
21 please do.

22 MR. MELLETT: Objection. The

1 document speaks for itself. And she has
2 already said she had not seen this document
3 before.

4 MR. MATTAX: I understand that.
5 That's why I gave her the opportunity to take
6 her time to read it. I need to know whether
7 she agrees with your conclusions or not. This
8 is what the United States has asserted. I
9 want to know if your expert agrees with what
10 the United States asserted.

11 THE WITNESS: Okay. So you would
12 like me to read this page?

13 BY MR. MATTAX:

14 Q. I would like you to tell me
15 whether or not you agree with what the United
16 States has asserted here. If you need to read
17 this in detail, please do. If you can tell me
18 right now without reading it, that's fine,
19 too. I just need to know whether you agree
20 with what the United States has said in this
21 document.

22 A. (Pause). Okay. This document

1 just explains what the United States looked at
2 in making their determination. I am not sure
3 what I am supposed to agree with or not.

4 Q. Did the United States determine
5 whether or not those districts retrogressed?

6 MR. MELLETT: You are asking the
7 United States, not her? Is that your
8 question?

9 MR. MATTAX: I am asking for her
10 understanding of that document. It advises
11 her as to whether or not -- let me just put it
12 this way.

13 BY MR. MATTAX:

14 Q. Do you agree with the analysis of
15 the United States of America in the case in
16 which you filed an expert report?

17 MR. MELLETT: Objection in terms
18 of vagueness. If you are asking specifically
19 what her findings are on 23 and 27, why don't
20 we go there?

21 MR. MATTAX: Let me ask my
22 question again.

1 BY MR. MATTAX:

2 Q. The United States of America has
3 filed a pleading in the United States District
4 Court alleging what they think is wrong with
5 the Texas plan. My question is, as the expert
6 for the United States of America, do you agree
7 with the United States of America? Yes or no?

8 MR. MELLETT: Objection. She
9 already said that she hadn't read this
10 specific document. If what you want her to do
11 is to read the document, then we can go ahead
12 and do that. But she already said she didn't
13 read this specific document.

14 BY MR. MATTAX:

15 Q. So, as we sit here today, you
16 don't have an opinion as to whether your
17 report is consistent with or not consistent
18 with the United States' position in this case?

19 A. I don't know what the United
20 States' position in this case is. I have not
21 read their brief.

22 Q. Thank you. Let's put that out of

1 the way. Since you haven't read it, there is
2 no reason to consider it.

3 So let's look at your
4 Congressional report.

5 (Discussion off the record.)

6 BY MR. MATTAX:

7 Q. Let's focus, then, on your
8 Congressional report. I am looking at the
9 introduction to your report. I see that
10 minority voters -- I am looking at the very
11 middle of it. It says minority voters have
12 the ability to elect minority-preferred
13 candidates. I am paraphrasing. You can add
14 to this. I am not going to use the
15 percentages. I am not looking at the specific
16 numbers right now.

17 Does your report conclude that in
18 the benchmark plan there are ten Congressional
19 districts that minority-preferred candidates
20 can elect their candidate of choice?

21 A. Yes.

22 Q. And does your report conclude

1 that, in the proposed plan, there are ten
2 districts in which the minority-preferred
3 candidate can elect their candidate of choice?

4 A. Yes.

5 Q. My question, then, is there are
6 no -- there are the same number of districts
7 in both plans that can elect their candidate
8 of choice. Is that correct?

9 A. Well, there is a different number
10 of districts in the two plans. So there are
11 ten out of 32 in the benchmark, and ten out of
12 36 in the proposed plan.

13 Q. Is it your understanding of
14 retrogression that you could still retrogress
15 even if you keep the same number of districts
16 performing?

17 A. In the instance where you both
18 increase the number of districts, the minority
19 population increases but the number of
20 minorities in effective minority districts
21 decreases, I would say you have retrogression.

22 Q. What I am trying to drive at here

1 is the difference between a Section 2 case and
2 a Section 5 case. We discussed earlier that
3 you are familiar with Section 2 cases. In
4 Section 2 cases, I understand, there has been
5 growth or an additional district that could be
6 drawn, a minority opportunity district that
7 could be drawn.

8 Is that a fair statement of what a
9 Section 2 case is all about? And, if not,
10 please characterize it however you would like
11 to.

12 A. Well, there wouldn't necessarily
13 have to be growth. There could be an instance
14 where you have no minority district and one
15 could have easily been drawn. I don't know
16 that growth is necessarily relevant to
17 Section 2. It might be.

18 Q. So Section 2, then, would be that
19 after a -- during a redistricting cycle, a
20 minority district could be drawn that hadn't
21 been drawn before? Is that what we are
22 saying?

1 A. Well, Section 2 isn't relevant
2 just to redistricting. In a general sense
3 Section 2 is, could you have drawn more
4 minority districts in a situation where
5 minorities are cohesive, whites are bloc
6 voting against minorities, and also they meet
7 the first prong of Gingles. That is, they are
8 sufficiently large and geographically compact
9 to create the district.

10 Q. What I am trying to understand is
11 the difference between a Section 5 case and a
12 Section 2 case. Because it seems to me that
13 you have ten districts in the benchmark plan
14 and ten districts in the proposed plan, the
15 same number of districts. Isn't that correct?

16 A. Again, you don't have the same
17 number of districts. You have 32 districts in
18 the benchmark and 36 districts in the proposed
19 plan.

20 Q. You have the same number of
21 performing districts, according to your
22 analysis?

1 A. You have ten in the benchmark and
2 ten in the proposed. However, you have 32
3 districts in the benchmark and 36 in the
4 proposed.

5 Q. And my question is, you are
6 hypothesizing, I suppose, that you should have
7 drawn an additional or more Hispanic
8 districts. And the question is, is that a
9 Section 2 issue or a Section 5 issue? Because
10 you have the same number of performing
11 districts between both plans. Ten and ten.
12 But you are saying it is retrogressive,
13 indicating you think they needed to draw more.
14 And I am trying to understand, what is the
15 point of Section 2 and what is the point of
16 Section 5?

17 A. Section 5 is looking to see if
18 minorities have the same ability to elect.
19 And, in fact, they had 31 percent of the
20 districts effective in the benchmark but it
21 declines to less than 28 percent in the
22 proposed plan.

1 Moreover, you have fewer
2 minorities in effective minority districts in
3 the proposed plan than in the benchmark. Both
4 of those seem relevant to a Section 5 case to
5 me.

6 Q. Are you familiar with any court
7 case that has held that, when keeping the same
8 number of districts between two plans,
9 nevertheless, it is retrogression because you
10 didn't create another one?

11 MR. MELLETT: Objection to the
12 characterization in terms of you are talking
13 about an increase in districts but you aren't
14 talking about the number of total, the
15 denominator. You are talking about the
16 numerator?

17 BY MR. MATTAX:

18 Q. Are you aware of a court case that
19 supports your conclusion?

20 A. What conclusion?

21 Q. That this plan retrogresses
22 because it did not increase the number of

1 minority districts.

2 A. In a situation in which the number
3 of districts overall increased by four?

4 Q. Correct.

5 A. I don't think there has been an
6 instance where the number of districts have
7 increased by four.

8 Q. So what is the basis for your
9 conclusion? Just your personal view?

10 A. (Pause). My personal view checked
11 with some attorneys.

12 Q. What attorneys did you check with?

13 A. At the very least, some Department
14 of Justice attorneys.

15 Q. Let me try to steer clear of
16 privilege here.

17 I will be blunt about it. Did the
18 Department of Justice attorneys instruct you
19 whether or not you should find retrogression
20 or not?

21 A. No.

22 Q. What prompted you, then, to seek

1 guidance from the Department of Justice?

2 A. I told them what my findings were
3 and said I was unclear, in terms of the law,
4 whether my argument was my own argument or
5 legally based.

6 Q. And your argument is basically a
7 proportionality argument?

8 MR. MELLETT: Objection to
9 characterization. It mischaracterizes what
10 the witness has stated.

11 BY MR. MATTAX:

12 Q. Would you characterize your
13 argument as a proportionality argument?

14 A. Proportionality is part of it.
15 Again, in terms of raw numbers, we do have
16 fewer blacks and Hispanics, particularly
17 Hispanics, in effective districts. So it is
18 two part. It is -- it is really three part.
19 Not only do you have an increase in the number
20 of seats, but you have an increase that
21 increases, in large measure, due to a growth
22 in Hispanic population. And the third

1 component of that is the fact that now fewer
2 Hispanics reside in effective minority
3 districts.

4 Q. Let me provide you this
5 hypothetical, then. Would you still conclude
6 that the proposed plan retrogresses if the
7 proportion of the districts was the same, but
8 fewer minorities live in the districts that
9 elect the candidate of choice?

10 A. Repeat the question?

11 Q. You gave me two reasons why you
12 think the Texas map, the Congressional map,
13 retrogresses. One, that a smaller percentage
14 of the districts elects the candidate of
15 choice, and a fewer number of blacks and
16 Hispanics reside in an effective minority
17 district. Is that correct?

18 A. That's correct.

19 Q. My hypothetical was, what if the
20 percentage was the same but fewer blacks and
21 Hispanics resided in the effective minority
22 districts. Would that make a difference?

1 Strike that. Would that still be
2 retrogression?

3 A. I guess it would depend on the
4 circumstances. If you were, for example,
5 packing minorities in order to do that -- it
6 would depend on the circumstances,
7 circumstance-specific. You would have to give
8 me a very specific example.

9 Q. What percentage of the growth of
10 Hispanics in Texas was citizens?

11 A. I don't know the answer to that.

12 Q. Let's turn to page five of your
13 report. Turn to District 23, table two.

14 You noted there that this is the
15 benchmark plan, I presume?

16 A. That's correct.

17 Q. Do you know what the percentage of
18 Hispanic voting age population is in the
19 proposed plan?

20 A. For District 23? I could look at
21 the table further back in the report and tell
22 you.

1 Q. Is it relevant?

2 A. Well, you just asked the question,
3 so I assume --

4 Q. Before we get to it, if you don't
5 think it is relevant, I don't want to have you
6 waste your time. Do you think it is relevant
7 to your analysis what the percentage of
8 Hispanic voting age population is in
9 District 23 in making a determination as to
10 whether District 23 is performing or not?

11 A. In some circumstances, it could be
12 relevant. Say, for example, you took a
13 district that was 60 percent and you made it
14 20 percent. That would be relevant. Let's
15 say you took a district that was 60 percent
16 and made it 61 percent. No, it wouldn't be
17 relevant. So it depends on the circumstances.

18 Q. Is this a district where -- what
19 kind of district is this? Do they keep the
20 percentage the same or did they decrease it?

21 A. I will look at the table and tell
22 you. (Pause).

1 What percentage?

2 Q. Percentage of Hispanic voting age
3 population.

4 A. Percentage of Hispanic voting age
5 population in 23. 62.8 in the benchmark and
6 63.8 in the proposed.

7 Q. So a marginal increase.

8 A. Is that a question?

9 Q. Yes, that was a question. That is
10 a marginal increase?

11 A. Well, it is an increase of one
12 percentage point.

13 Q. Which is pretty marginal?

14 A. Could be.

15 Q. As opposed to a substantial
16 decrease, as you were discussing before?

17 A. It is not a substantial decrease.

18 Q. What about the Hispanic citizen
19 voting age population? Did that remain the
20 same, increase or decrease?

21 A. In the benchmark it is 58.4. In
22 the proposed it is 58.5.

1 Q. And in Spanish surname voter
2 registration?

3 A. It is 52 in the benchmark and 54.1
4 in the proposed.

5 Q. Does the proposed -- based on
6 those numbers alone, could you make a
7 determination as to whether a district gave
8 the Hispanics the opportunity to elect their
9 candidate of choice?

10 A. No.

11 Q. Why cannot a district that has
12 58.4 percent of the citizen voting age
13 population not provide that group the
14 opportunity to elect the candidate of their
15 choice?

16 A. Because, when you look at election
17 performance, you will see that that district
18 simply cannot elect the Hispanic-preferred
19 candidate in the exogenous index, which is all
20 we have to go on in the proposed plan.

21 Q. I think we are mixing and matching
22 our questions. I am trying to not find out

1 what you think happened, but why that doesn't
2 have the opportunity to do it.

3 It seems like 58.4 percent is more
4 than ample people to control the district.

5 A. (Pause.)

6 Q. Or 58.5 percent.

7 A. I wouldn't look at just the
8 percentage. I would look at the effectiveness
9 of the district to determine if it is
10 effective or not.

11 Q. I understand that. You are
12 answering a different question than I am
13 asking. I am asking the question, doesn't
14 that give them the opportunity to do it?
15 Doesn't that give -- 58.5 percent seems to me
16 to be a sufficient majority of the population
17 in that district that, if that group of voters
18 voted cohesively, they could, if they chose
19 to, elect the candidate of their choice.

20 MR. MELLETT: Objection. It has
21 been asked and answered.

22 MR. MATTAX: No, it has not. She

1 has said she looked at performance.

2 MR. MELLETT: You don't like the
3 answer but the fact is that she is giving you
4 an answer to your question.

5 BY MR. MATTAX:

6 Q. Why doesn't it have the
7 opportunity to elect?

8 A. I guess that I am a little bit
9 confused about your terminology, on the one
10 hand. Because I don't use -- I mean,
11 opportunity to elect sounds like Section 2
12 versus Section 5, which is, is it effective
13 and does it continue to be effective.

14 It was effective. It isn't
15 effective.

16 Q. The exogenous minority effective
17 index is 40 percent for this district, isn't
18 it?

19 A. In the benchmark.

20 Q. And you consider that to be an
21 effective district?

22 A. I consider it to be a district in

1 which two-thirds of the time the
2 minority-preferred candidate was elected. The
3 endogenous index is 67.

4 Q. How many elections is that?

5 A. How many elections is what?

6 Q. 67 percent.

7 A. In the three elections in which
8 this district had that shape, two of them
9 produced a Hispanic-preferred candidate.

10 Q. So your testimony is two out of
11 three elections is sufficient to make a
12 determination?

13 A. Two out of three elections is all
14 we have for this particular district. It was
15 redrawn in 2006.

16 Q. I understand that. That's all the
17 elections we have. My question isn't that is
18 all the elections we have. My question is, is
19 that enough elections for you as an expert to
20 make a determination, based solely on three
21 elections, that that is an effective district?

22 A. Those are the only districts --

1 those are the only elections that exist for
2 that district. And the question is how
3 effective is that district? Well, two out of
4 three times it elected the minority-preferred
5 candidate.

6 Q. And the exogenous elections, how
7 many times did it elect the minority-preferred
8 candidate?

9 A. 40 percent of the time in the
10 benchmark.

11 Q. Is that two out of five elections?

12 A. It is not two out of five.

13 Q. How many elections is it?

14 A. It is 40 percent.

15 Q. Of how many elections?

16 A. There are -- I am sorry, that's
17 right. Sorry about that. It is two out of
18 five.

19 Q. How many endogenous elections will
20 the candidate win in the proposed plan?

21 A. My best prediction is none.

22 Q. And that is based upon the

1 exogenous election results?

2 A. That is correct. Since the
3 district changed its shape and the individuals
4 that reside in it, the only way I have to
5 estimate how well that district will do is to
6 look at exogenous elections. It is not the
7 case in the benchmark. It is the case in the
8 proposed plans.

9 Q. In the benchmark plan do you know
10 how many, looking at all the elections, and
11 let's just say 20,000 -- I wish it was
12 20,000 -- 2010, if you look at all the
13 elections in Benchmark 23, do you know how
14 many preferred candidates of choice won?

15 A. I don't know what you are talking
16 about.

17 Q. How many exogenous elections were
18 reported for District 23 in 2010?

19 A. How many exogenous elections were
20 reported? No idea what you are talking about.

21 (Discussion off the record.)

22 BY MR. MATTAX:

1 Q. Where did you select your
2 exogenous elections from?

3 A. Do you mean the specific report?
4 It is a report produced by the State of Texas.

5 Q. My question is, in that report, do
6 you know how many exogenous elections there
7 are?

8 A. No.

9 Q. For 2010?

10 A. Do I know how many exist for 2010?

11 Q. Correct.

12 A. No.

13 Q. Would it make any difference to
14 your analysis to look at those elections?

15 A. What elections?

16 Q. Those additional exogenous
17 elections for 2010 in Benchmark District 23.

18 A. That's not how I constructed my
19 index.

20 Q. My question was, would it make any
21 difference to your analysis if we looked at
22 them?

1 A. Given that my index included only
2 one election from each year, no.

3 Q. What about exogenous? Would it
4 make a difference to your exogenous?

5 A. I am sorry, I thought you said
6 exogenous. I am sorry. I misunderstood your
7 question.

8 MR. MELLETT: I thought you had
9 said exogenous, too.

10 BY MR. MATTAX:

11 Q. That's what I thought. You said
12 you only looked at how many exogenous
13 elections?

14 A. One for each year.

15 Q. For how many years?

16 A. 2002, 4, 6, 8 and 10. One for
17 each of those years, exogenous elections.

18 Q. So you have looked at a total of
19 eight elections to determine whether District
20 23 is performing or not in the benchmark plan?

21 A. There were three endogenous
22 elections, which are more important. So I

1 don't want you to throw them all together.

2 Q. But the total elections you looked
3 at is eight over --

4 A. Three elections are included in
5 the endogenous index; five in the exogenous
6 index.

7 Q. Do you know how many -- I think
8 you have already answered that. Let me see if
9 I can find something to mark.

10 Let's go off the record for a
11 second.

12 (Discussion off the record.)

13 (A recess was taken at 2:11 p.m.)

14 (The deposition resumed at 3:28
15 p.m.)

16 BY MR. MATTAX:

17 Q. If you can look at Deposition
18 Exhibit Number 3 which is the Congressional,
19 please. And we were looking at page five of
20 that when we last left.

21 Did we want to try to call
22 somebody on the phone?

1 MR. MELLETT: I am sorry, that's
2 right.

3 (Discussion off the record.)

4 BY MR. MATTAX:

5 Q. Let's go back on the record.

6 When we broke some time ago we had
7 been discussing the difference between
8 endogenous and exogenous minority
9 effectiveness index. And particularly I was
10 referring to your table two.

11 Let's go back and refresh. With
12 respect to the exogenous minority
13 effectiveness index and the benchmark plan,
14 you show District 23 at a 40. Please describe
15 what you meant by that.

16 A. It means that in two of the five
17 elections included in my index the
18 minority-preferred minority candidate carried
19 the existing benchmark district.

20 Q. So by contrasting three of the
21 five elections you looked at, they would not
22 have?

1 A. That's correct.

2 Q. And then we were discussing where
3 you got that data from. And I believe you
4 said it was from some reports that were
5 generated by the State of Texas.

6 Let me mark what is called Red 225
7 and let us hope this is the report you were
8 referring to. This is Red 225 from the 2010
9 general election. Mark that as Number 4.

10 (Document referred to marked
11 Deposition Exhibit No. 4 for identification
12 and subsequently attached to the deposition.)

13 BY MR. MATTAX:

14 Q. Let me hand you what has been
15 marked as Handley Exhibit Number 4.

16 Would this be the election results
17 from which you looked at your elections?

18 A. No.

19 Q. Do you know what report it was?

20 A. I marked it in here. Hold on a
21 second.

22 Q. Let's take a look and see if we

1 have one here.

2 A. (Pause). On page four, RMPVA
3 multi-underscore all candidates standard,
4 underscore, PLANC100 is where I got the data.

5 Q. Is there an attachment to your
6 report that shows what those elections were
7 which you looked at?

8 A. Well, right in that paragraph
9 where I took the report name is the list of
10 elections.

11 Q. Let's look at Appendix B.
12 (Pause.)

13 A. Okay.

14 Q. Is Appendix B the elections you
15 were looking at?

16 A. Yes.

17 Q. Since we are looking at District
18 27, then, which of the four race -- you said
19 you looked at five races. Which were the two
20 that the minority-preferred candidate didn't
21 win, and which are the three that the
22 minority-preferred candidate did not win, if I

1 am understanding this correctly?

2 MR. MELLETT: What district are
3 you talking about?

4 MR. MATTAX: 23. We are still
5 talking about 23.

6 MR. MELLETT: I thought you said
7 27.

8 MR. MATTAX: I am incorrect. I
9 apologize. Thank you for correcting me.

10 I think the only issue we probably
11 have with the Congressional plan is 23, so
12 let's focus on 23.

13 THE WITNESS: And the question?

14 BY MR. MATTAX:

15 Q. Well, according to your exogenous
16 table you have an exogenous minority
17 effectiveness index of 40.

18 A. Okay.

19 Q. I think we discussed that means
20 that two elections the minority candidate
21 wins; two exogenous elections the minority
22 candidate will win; and three elections the

1 minority candidate lost. Is that correct?

2 A. That's correct.

3 Q. Now I am looking at Appendix B
4 attached to your report. Is this table
5 showing those results?

6 A. Yes.

7 Q. Now what I am asking, based on
8 Appendix B, what are the three races in which
9 the minority candidate lost in the exogenous
10 races?

11 A. The 2004 GE Court of Criminal
12 Appeals.

13 Q. Okay. Play six?

14 A. The 2006 lieutenant governor,
15 general election. And the 2010 lieutenant
16 governor.

17 Q. Let me have you look at what has
18 been marked as Handley Exhibit 4.

19 Are you familiar with the Red
20 Apple Reports that are generated by the Texas
21 Legislative Council?

22 A. Well, I have seen some of them. I

1 don't know how many there are. I would have
2 to say it depends on which one you are talking
3 about.

4 Q. Let's look at Red 225. Do you
5 know what this report does?

6 A. I know a little bit about it.

7 Q. What do you know about it?

8 A. That this is recompiled election
9 results for a whole bunch of contests.

10 Q. So if you turn to page 62 of 91,
11 which shows up here in the top right-hand
12 corner, look for District 23. Which is on
13 page 62. It is about halfway through.

14 A. I see.

15 Q. Or just look for District 23.

16 A. (Pause). Okay. I have District
17 23.

18 Q. And this would include the
19 lieutenant governor -- this is the Plan C100
20 which is the benchmark plan. Correct?

21 A. Plan C100 is the benchmark plan,
22 yes.

1 Q. This would show on this data from
2 the legislative council that, in fact, as you
3 said, Lieutenant Governor Dewhurst beat Chavez
4 Thompson in the lieutenant governor's race.

5 A. That's correct.

6 Q. And the difference was about,
7 according to the data -- it speaks for
8 itself -- but it is 54.4 percent and
9 41.7 percent, is that correct, according to
10 this document?

11 A. Yes.

12 Q. Did you look at any of the other
13 races that are in District 23 to determine who
14 won the race?

15 A. I did not other than the
16 endogenous contest.

17 Q. So, for example, you will see
18 District 11, which is kind of bizarre. It has
19 four votes at the very top. So that is
20 something to completely throw out since that
21 it is not in District 11. Do you see what I
22 am saying, then?

1 A. Yes.

2 Q. Then U.S. Rep 23, that was your
3 endogenous election? Canseco and Rodriguez.

4 A. Yes.

5 Q. And that's where Canseco won?

6 A. Correct.

7 Q. And you claim he is not the
8 candidate of choice?

9 A. That's correct.

10 Q. And is he a Republican?

11 A. That's correct.

12 Q. Then you see the next race is the
13 governor, right below, 23?

14 A. Yes.

15 Q. And did a Republican win that
16 race?

17 A. The Republican won that race.

18 Q. And then the Dewhurst race, which
19 we just discussed, Dewhurst was a Republican?

20 A. Yes.

21 Q. And the Attorney General's race?

22 A. Yes.

1 Q. The next race was not contested.
2 And land commissioner, and a Republican won
3 that race, as well?

4 A. (Pause.)

5 Q. Comptroller. Well, it was
6 contested with a Libertarian.

7 MR. COHEN: And a Green Party?

8 BY MR. MATTAX:

9 Q. And a Green Party. I shouldn't
10 say noncontested. The two major parties
11 didn't contest that race.

12 A. Okay.

13 Q. I can go through this whole list.
14 But I can represent to you, my basic data on
15 this shows in the 2010 election approximately
16 50 Republicans won and approximately 15
17 Democrats won in races in District 23.

18 Does that fact have any effect on
19 your analysis as to whether or not District 23
20 was performing or not?

21 A. No.

22 Q. Why not?

1 A. Well, because you lumped a whole
2 bunch of elections across years I am not sure
3 of to determine this. That's not what I did.

4 First of all, the election had to
5 have a minority candidate in it. I suspect
6 most of these do not. Second, I chose one
7 from each year so that, for example, 2010
8 wasn't overrepresented. Neither was 2008.

9 So, no.

10 Q. Would this give you any indication
11 of whether or not District 23 was a Republican
12 district or a Democratic district?

13 A. Not without knowing more
14 information.

15 Q. If you went back and looked at
16 2008, would going through these numbers tell
17 you whether it was a Republican district or a
18 Democratic district?

19 A. Again, you would have to go
20 through and tell me a bit about each of these
21 elections. And, again, if you have got
22 elections with four people in it -- I mean, I

1 haven't really looked at each of these
2 elections and the percentage of people from
3 that election that fall in this district. So
4 I can't answer that question.

5 Q. Would it be relevant if a lot of
6 Hispanic Democrats lost in this district?

7 A. Not without more information.

8 Q. Would it be relevant if Hispanic
9 Republicans won in this district?

10 A. Not without more information.

11 Q. Given the fact that there were
12 approximately 65 contested elections in
13 District 23, why wouldn't you look at more
14 information in those elections versus just
15 relying on just five elections during a ten
16 year time period?

17 A. I was interested in only contests
18 that included minorities who are
19 minority-preferred. And I didn't want to
20 overrepresent any given year. Hence I chose
21 one from each year.

22 Now, I did actually compare, for

1 example, the one that I chose to another top
2 of the ticket to make sure that I would get
3 the same results. But I specifically chose
4 one top of the ticket contest.

5 Q. And I guess we will just move on
6 from this and talk about a couple of other
7 things. But I guess what is interesting to me
8 in District 23 is you concluded that the
9 District 23 and Plan C100 elected the minority
10 candidate choice based on three elections.

11 A. That is the only three endogenous
12 elections that existed.

13 Q. And the five exogenous elections
14 you looked at the minority-preferred candidate
15 of choice did not win the majority of the
16 time, did they?

17 A. That's correct.

18 Q. Based upon the representation
19 which I have made to you, and the data will
20 speak for itself, at least in the 2010
21 election of approximately 65 contests,
22 50 percent, 50/50 of them went to the

1 Republicans. And you did no analysis to
2 determine if that affected your conclusion?

3 A. Certainly not irrelevant.

4 Q. What if Congressman Canseco had
5 won -- what if this is all postponed until
6 2012 -- so we are going to do a hypothetical
7 here -- and Congressman Canseco wins the 2012
8 election.

9 MR. MELLETT: Just for
10 clarification, so we have the exact same
11 district?

12 MR. MATTAX: Yes. Same district.

13 BY MR. MATTAX:

14 Q. Let's assume the same district.
15 And he won the 2012 election. It was two to
16 two. Who would the minority-preferred
17 candidate of choice be?

18 A. Who would the minority-preferred
19 candidate of choice be?

20 Q. Right.

21 A. Well, it would depend on who the
22 majority of the Hispanics voted for. We need

1 to include that.

2 Q. Would it be a performing district?

3 A. Who did the majority of Hispanics
4 vote for?

5 Q. Let's assume they voted for Ciro
6 Rodriguez. Let's assume Ciro Rodriguez and
7 Representative Canseco, they were the two that
8 ran the last race.

9 A. They did run in 2010.

10 Q. And the Republican, Canseco, beat
11 the Democrat, Ciro Rodriguez. Correct?

12 A. Yes.

13 Q. And it is your view that
14 Congressman Canseco was not the preferred
15 candidate of choice?

16 A. That's correct. The majority of
17 Hispanics did not vote for him.

18 Q. Let's assume that happens again in
19 the next election. So in 2012 Representative
20 Canseco wins again. Would it change your
21 analysis as to who the preferred candidate of
22 choice was?

1 A. No.

2 Q. Would it change your analysis of
3 whether it was a protected district?

4 MR. MELLETT: Are you referring to
5 Section 5?

6 MR. MATTAX: Correct. Under
7 Section 5.

8 THE WITNESS: I am assuming what
9 you mean is now you have four elections?

10 BY MR. MATTAX:

11 Q. Four endogenous elections tied two
12 to two.

13 A. Tied two to two.

14 Luckily, I didn't have to answer
15 that question because 50 percent is a toughy.

16 Q. Well, I know we used the term
17 competitive election in a different context
18 earlier. But I know there has been that
19 discussion at least in the Section 2
20 litigation. But to me it seems like a
21 competitive district is where you have two
22 relatively evenly matched candidates and,

1 depending on circumstances, one can win or the
2 other one can win.

3 What I am trying to drive at is,
4 when you have a district like that, where you
5 have two Hispanic candidates, both of whom
6 have enough people to win, apparently, since
7 they both won, how do you pick which one is
8 supposed to win?

9 A. (Pause.)

10 Q. Isn't that what we are doing here?
11 Picking which one we want to win doing this
12 analysis?

13 A. How do I pick which one is
14 supposed to win? I have no idea how to answer
15 that question.

16 Q. So the question is, really, do
17 they have the opportunity to win?

18 MR. MELLETT: Are you talking
19 about the Section 2 contest?

20 MR. MATTAX: Section 5. This is
21 all Section 5.

22 THE WITNESS: I would say that the

1 district -- I guess I would posit a sliding
2 scale of effectiveness, and I am not sure
3 where the courts would come down on a 50/50.

4 BY MR. MATTAX:

5 Q. Have you been in a case in which
6 the courts have had to address the situation
7 where you only had three endogenous elections,
8 which were two to one, and five exogenous
9 elections, which were two to three, to have a
10 court determine whether or not that was a
11 protected district?

12 A. I don't know.

13 Q. Are you basing your determination
14 that this is a protected district based upon
15 your personal opinion?

16 A. Based upon the fact that the
17 minority-preferred candidate won the office in
18 question more than half of the time. So,
19 usually.

20 Q. Two out of three times.

21 A. (Indicating.) Usually.

22 Q. Let's turn to page -- look at this

1 Appendix A which I think is a summary of the
2 different districts in the different plans.

3 MR. MELLETT: This is still in
4 three?

5 MR. MATTAX: Yes, Exhibit 3, your
6 Appendix A.

7 THE WITNESS: I wonder if I could
8 make a correction to this report.

9 BY MR. MATTAX:

10 Q. If you believe it is inaccurate in
11 any way, you should make a correction to this
12 report. And today would be a better day to do
13 it than tomorrow, so I don't have to redepose
14 you.

15 A. Appendix C, Summary Table of State
16 of Texas Data Used to Correct Exogenous Index
17 for benchmark Districts. In fact, that is the
18 proposed district. That was a cut and paste
19 in which I didn't change the word to proposed.

20 I believe the same is true in that
21 other report.

22 MR. MELLETT: Counsel, just to let

1 you know, that when we file tomorrow, we are
2 going to go ahead and make that correction
3 because it is a clerical error.

4 BY MR. MATTAX:

5 Q. So Appendix C should read Proposed
6 Districts?

7 A. That's correct.

8 Q. Appendix B, is that correct? Any
9 changes to Appendix B?

10 A. No, that is the benchmark.

11 Q. Appendix A?

12 A. No.

13 Q. Appendix D?

14 A. No.

15 Q. Since I am on D, real quick, is
16 this your racially polarized voting analysis?

17 A. This is the results of two
18 contests that I analyzed personally.

19 Q. For what purpose did you analyze
20 them?

21 A. To determine, in the instance of
22 Congressional District 23, if Canseco was the

1 Hispanic-preferred candidate or not. And in
2 the instance of Congressional District 29
3 whether Green was the Hispanic-preferred
4 candidate or not.

5 Q. And do you have any claims that
6 District 29 retrogressed?

7 A. No.

8 Q. So the sum and substance of your
9 racially polarized analysis for CD 23 is
10 contained in Appendix D?

11 A. Repeat the question?

12 Q. Is there any other data besides
13 the one chart for the 2010 general election in
14 Appendix D showing racially polarized voting
15 analysis for CD 23?

16 A. Is there anything else in the
17 report? Is that the question?

18 Q. Yes.

19 A. There is nothing else in the
20 report.

21 Q. Let's go --

22 A. Sorry, that's not true. Let me

1 think about this for a second. (Pause).

2 Appendix B indicates the results
3 of a racially polarized set of contests in 23.

4 Q. Okay. Understood.

5 Look at your Appendix A now. Just
6 looking at the Hispanic districts right now,
7 you have listed 23 -- and this is going to be
8 a little repetitive but I want to make sure I
9 understand this chart.

10 You have listed 23 in the
11 election-focused column as being effective.
12 Is that correct?

13 A. Under the benchmark.

14 Q. And that is based on the three
15 endogenous elections?

16 A. Correct.

17 Q. And you have not listed it as
18 effective under the election-focused approach
19 in the proposed plan?

20 A. That is correct.

21 Q. And that is based on exogenous
22 elections?

1 A. Correct.

2 Q. Under the benchmark plan it was
3 not a performing district under the exogenous
4 elections, either?

5 A. The district got a 40 on the
6 exogenous index.

7 They did perform.

8 Q. Do you consider that 40 percent to
9 be a performing district?

10 A. Again, the endogenous index is
11 more relevant in the benchmark than the
12 exogenous index.

13 Q. But for purposes of comparing,
14 since there are no endogenous election results
15 for the proposed district, I am just trying to
16 say comparing the exogenous elections in the
17 benchmark plan, the proposed plan, they were
18 both less than 50 percent?

19 A. It went from 40 percent to
20 zero percent.

21 Q. And you have 34 as a new district.
22 Is that performing?

1 A. Yes.

2 Q. And 35 as a new district, and that
3 is performing?

4 A. According to the election-focused.
5 Not according to the State of Texas.

6 Q. But according to you, you would
7 consider it performing?

8 A. That's correct.

9 Q. So that's where you end up with
10 saying there were seven performing in the
11 benchmark and seven performing in the proposed
12 plan?

13 A. Yes. 23 was not performing. 35
14 is performing.

15 Q. If 23, based on exogenous -- this
16 is a hypothetical. Bear with me. If CD 23 in
17 the benchmark plan based upon exogenous
18 elections is considered not to be performing,
19 would that change your opinion as to whether
20 or not the Congressional plan violated
21 Section 5?

22 A. I wouldn't make a decision based

1 on the exogenous elections, given that I have
2 endogenous elections.

3 Q. Let's go back to the
4 proportionality real quick. Then we will move
5 on to the House.

6 (Discussion off the record.)

7 BY MR. MATTAX:

8 Q. In looking at your ultimate
9 conclusion on retrogression, I believe you
10 compared -- let's go to the bottom of this
11 page, the last page of your appendix, the back
12 of your Appendix A here.

13 You were saying 10 out of 32 was
14 the benchmark plan and 10 out of 36 is the
15 proposed plan. Therefore, it is
16 retrogressive. Is that correct?

17 A. I am sorry, I didn't hear the last
18 part of it.

19 Q. It is 10 out of 36 under the
20 proposed plan and that's what makes it
21 retrogressive?

22 A. Sorry. Repeat the question from

1 the beginning.

2 Q. In looking at your totals down
3 here in this chart, you have 10 out of 32
4 districts in the benchmark plan, and 10 out of
5 36 in the proposed plan, and then you have
6 percentages underneath them showing 31.3
7 percent and 27.7 percent.

8 A. That's correct.

9 Q. Are those percentages what lead
10 you to conclude that it is retrogressive?

11 A. In part, yes.

12 Q. If you were to eliminate the black
13 districts, what impact if any would that have
14 on your conclusion?

15 A. I am sorry?

16 Q. Well, are you suggesting you could
17 have drawn additional black districts in this
18 plan or there was a retrogression of black
19 districts?

20 A. There were -- yes. The answer is
21 yes.

22 Q. There was a retrogression of black

1 districts?

2 A. That's correct.

3 Q. Which district was retrogressed?

4 A. Using the -- there were, again, 32
5 districts in the benchmark and 36 districts in
6 the proposed. So you went from 9.4 to 8.3.

7 Q. Correct.

8 So, based upon that, you concluded
9 that the black Congressional districts
10 retrogressed, as well?

11 A. (Pause.)

12 Q. Is that correct?

13 A. (Pause). Yes, the percentage is
14 lower.

15 Q. Does that mean that you concluded
16 they retrogressed?

17 A. I guess I would have to say I
18 focused on the plan as a whole and totaled up
19 the numbers. But, percentage-wise, it is
20 lower.

21 Q. Well, let's assume, then, in
22 response to that, that District 23 had

1 remained effective under your analysis. Then
2 looking at your appendix, that would have been
3 11 out of 36. Would that have been
4 retrogressive?

5 A. (Pause). I don't think so, but I
6 would need you to do the percentages for me.
7 I don't believe so.

8 Q. Well, if the percentage was lower,
9 would it retrogress?

10 A. Possibly.

11 MR. MATTAX: Can we take a break
12 and get a calculator?

13 (Discussion off the record.)

14 MR. MATTAX: While we are doing
15 that let me just look through my notes here.

16 (Pause).

17 (Discussion off the record.)

18 MR. MELLETT: 30.55 percent.

19 MR. COHEN: That's what I got,
20 too.

21 BY MR. MATTAX:

22 Q. Assuming the election-focused

1 approach in the proposed plan was
2 30.55 percent, which is less than
3 31.3 percent, the percentage in the election
4 focused approach in the benchmark plan, would
5 you conclude that the proposed plan violated
6 Section 5?

7 A. I suppose I would need to know, at
8 least in part, how many of the additional
9 districts could have been Hispanic.
10 Certainly, if you could only draw one
11 additional Hispanic district, it would be
12 unavoidable retrogression, in which case it
13 would not be retrogressive.

14 Q. But you do conclude that, based on
15 mere percentages, it was retrogression. The
16 question would be whether it was unavoidable
17 retrogression?

18 A. No. As I said before, in part, it
19 was based on the percentages. There was also
20 the fact that you had fewer minorities in
21 effective seats.

22 And the fact that you could have

1 created an additional Hispanic district and
2 did not.

3 Q. But we were under my operating
4 assumption that you had 11 out of 36
5 districts. And, we were trying to do a
6 hypothetical. So let me redo the hypothetical
7 so I can understand your analysis here.

8 Under the hypothetical there are
9 11 out of 36 performing districts in the
10 proposed plan, and there were 10 out of 32
11 districts in the benchmark plan, which means
12 that the proposed plan would have
13 30.55 percent and the benchmark would have
14 31.3 percent.

15 My question to you was, would that
16 be a retrogressive plan?

17 A. The answer is there is not enough
18 information.

19 Q. So percentages are insufficient to
20 make a determination?

21 A. Not in all cases. Say the
22 percentage went from 60 to 30. It would

1 depend.

2 MR. MATTAX: Let me confer with
3 him for five minutes, see if we are done with
4 Congress. Then we will start on the House.

5 (Discussion off the record.)

6 (A recess was taken.)

7 BY MR. MATTAX:

8 Q. We are getting back to your
9 Congressional report, which is Exhibit
10 Number 3, I think. Turn to Page 3.
11 Footnote 5.

12 Could you just read for the record
13 what this paragraph says and then, after that,
14 what you interpret it to mean?

15 A. Footnote 5?

16 Q. Yes.

17 A. U.S. Department of Justice
18 guidelines state: "In determining whether the
19 ability to elect exists in the benchmark plan
20 and whether it continues in the proposed plan,
21 the Attorney General does not rely on any
22 predetermined or fixed demographic percentages

1 at any point in the assessment. Rather, in
2 the Department's view, this determination
3 requires a functional analysis of the
4 electoral behavior within the particular
5 jurisdiction or election district. As noted
6 above, census data alone may not provide
7 sufficient indicia of electoral behavior to
8 make the requisite determination."

9 Q. And you cited this in your report?

10 A. That's correct.

11 Q. For what purpose?

12 A. (Pause). For the purpose of
13 indicating that I was not the only one that
14 thought you should go beyond simply looking at
15 the demographics of the composition of the
16 district.

17 Q. Did you perform the functional
18 analysis referred to by the Department of
19 Justice here?

20 A. Indeed, yes.

21 Q. So is this the functional analysis
22 that the Department of Justice has adopted?

1 A. This is the analysis I did.

2 Q. How do we know if it is the
3 functional analysis that the Department of
4 Justice is referring to in this Federal
5 Register site?

6 A. I guess you would have to ask the
7 Department of Justice.

8 Q. So it could be different?

9 A. This was certainly a functional
10 analysis.

11 Q. So if someone were to do a
12 functional analysis and disagreed with you,
13 how would we know which analysis the Attorney
14 General thought was proper? Could we, from
15 what you have read or what you know?

16 A. Well, I assume the Justice
17 Department could tell you. Perhaps a judge
18 could tell you.

19 Q. But you couldn't know now, as we
20 sit here today?

21 A. I couldn't know what?

22 Q. What the correct functional

1 analysis is you are supposed to perform.

2 A. I believe I have done the correct
3 functional analysis. By functional, I take it
4 to mean election approach.

5 Q. So has this effectiveness index
6 been adopted by other experts?

7 A. I don't know.

8 Q. Has this effectiveness index been
9 adopted by the Department of Justice?

10 A. I don't know if they adopt
11 indexes.

12 Q. Do you know what functional
13 analysis the State of Texas should have used
14 based on this guidance?

15 A. I know they should have looked at
16 more than demographics. They should have
17 looked at elections with minority-preferred
18 minority candidates.

19 Q. Do you know whether or not that
20 was done?

21 A. I know lots and lots of
22 information was out there to do it. I saw no

1 signs that it was used in the complaint.

2 Q. Have you reviewed any of the
3 discovery in this case or in the Section 2
4 case to determine whether it was done?

5 A. Discovery? I am afraid I don't
6 know what the term --

7 Q. Depositions.

8 MR. MELLETT: Can I just -- I am
9 unsure in terms of your question. Are you
10 talking about whether or not there have been
11 any experts that have conducted a functional
12 analysis or whether the State of Texas did it?

13 MR. MATTAX: No, I just asked her
14 the question as to whether or not the State of
15 Texas did a functional analysis and she said
16 she was not sure.

17 Let's just ask the question again.
18 We will start over.

19 BY MR. MATTAX:

20 Q. Do you know whether or not the
21 State of Texas did a functional analysis in
22 drawing the Congressional and, for that,

1 matter, the House plan?

2 A. I know the State of Texas compiled
3 all the information making it possible. And I
4 know it didn't show up in the complaint.
5 Beyond that, I couldn't say.

6 Q. Are there other functional
7 analyses that could be done besides the
8 effectiveness index?

9 A. Well, the effectiveness index is
10 my term for looking at the actual performance,
11 electoral performance of the district. I
12 think that functional analysis means electoral
13 performance, whether you call it index or not.
14 You might call it something else.

15 Q. If the State of Texas looked at
16 say ten elections for electoral performance
17 versus five, would that be acceptable to the
18 Department of Justice?

19 A. Not necessarily.

20 Q. Why not?

21 A. It depends on the elections. It
22 depends on the years. It depends on the

1 candidates.

2 Q. And what guidance does the
3 Department of Justice give you to tell you
4 what elections to look at?

5 A. Since the aim is looking at the
6 ability of minority candidates,
7 minority-preferred minority candidates to win,
8 I guess I have that degree of direction. I
9 also know that endogenous elections are more
10 probative than exogenous elections.

11 Q. Did you get any instructions from
12 the Department of Justice in this case on
13 whether to look at five general elections for
14 exogenous, or ten or twenty?

15 A. Do you mean did I -- no, I did the
16 analysis first.

17 Q. So there is nothing written down
18 anywhere, there is nothing anybody told you to
19 say, when you do your effectiveness index,
20 here is the way we want you to do it?

21 A. There might be something written
22 down. I don't know.

1 Q. Do different experts approach this
2 task differently?

3 A. Do different experts approach this
4 what differently?

5 Q. Do they approach the task of
6 determining the effectiveness of elections in
7 a manner different than you?

8 A. I don't know.

9 Q. I guess my question is your
10 methodology is not universally accepted?

11 A. What methodology?

12 Q. The effectiveness index concept
13 you use, picking five general elections and
14 the methodology that went into your report in
15 this case?

16 A. I think the word methodology is
17 misused. But I don't know of any sort of
18 rules suggesting that you look at five
19 elections.

20 Q. So I am clear on the record, why
21 did you only pick five general elections for
22 your exogenous comparison?

1 A. I picked one from --

2 MR. MELLETT: Objection. Asked
3 and answered. We have done this before.

4 BY MR. MATTAX:

5 Q. Humor me. I apologize. Then we
6 will move on.

7 A. I picked one for each year that
8 there was an election during the period we are
9 talking about, between redistrictings. I did
10 that because I didn't want any given year, any
11 single year to dominate. Second of all, I
12 chose a top of the ticket Hispanic -- an
13 election that occurred that included a
14 Hispanic candidate that I knew was
15 Hispanic-preferred.

16 Q. Did you look at any primary
17 elections?

18 A. What do you mean by did I look at
19 any?

20 Q. Were any primary election results
21 included in any of the analyses that you have
22 put forward in your reports?

1 A. I have analyzed a primary election
2 or two, yes.

3 Q. Which primaries did you analyze in
4 the Congressional map?

5 A. None in the Congressional map.
6 Well, none that I can remember.

7 Do you mean that I personally
8 analyzed?

9 Q. That you personally analyzed.

10 A. That's correct.

11 Q. Or that were part of your report?

12 A. That's correct.

13 Q. So there were no -- so the record
14 is clear, there were no primaries that either
15 you analyzed or that comprise your report for
16 the Congress. Is that correct?

17 A. I believe that's correct.

18 Q. You mentioned, and I think you
19 have mentioned you only filed -- I think we
20 had some discussion on whether the report was
21 filed or not. But I do want to mention, you
22 said you prepared one report for the State of

1 Alaska showing there was no retrogression in
2 the State's plan for this cycle. Is that
3 correct?

4 A. That's correct.

5 Q. So that would have been done very
6 recently?

7 A. About 70 days ago I suppose it is
8 was filed with the Department of Justice.

9 Q. Is the methodology used in that
10 report the same as the methodology you used
11 here?

12 A. In Alaska we had no statewide
13 elections that included minorities that were
14 minority-preferred. So, in fact, there were
15 not five elections that I could look at in
16 terms of recompiled election results.

17 Q. For exogenous elections?

18 A. That's correct.

19 Q. So with respect to endogenous
20 elections, did you perform the same type of
21 analysis?

22 A. Yes.

1 Q. As you sit here today, is there
2 anything inconsistent in that report that you
3 can think of today with the reports that you
4 filed in this case?

5 A. No.

6 Q. I am not going to spend time going
7 over it, but I am going to mark it for the
8 record. Then we can look at it, and ask you a
9 couple of questions.

10 MR. MATTAX: Let me mark Number 5.

11 (Document referred to marked
12 Deposition Exhibit No. 5 for identification
13 and subsequently attached to the deposition.)

14 BY MR. MATTAX:

15 Q. Let me represent to you that I
16 looked on the internet and found this report.
17 It has your name on it. So you will need to
18 take your time to look at that and tell me if
19 this is, in fact, the plan -- excuse me, the
20 report you filed in Alaska. Take your time to
21 make sure it is the right report.

22 A. (Pause). It is.

1 Q. Turn to page 21 of 31 of this
2 report. I noticed a terminology that you used
3 in this report we haven't talked about today.

4 A. I am sorry, repeat the page?

5 Q. 21 of 31.

6 It says under the benchmark
7 plan -- and I am looking under 4.1, the third
8 paragraph. In the middle of that paragraph it
9 says, "One district that might best be
10 characterized as an equal opportunity
11 district, District 6."

12 What is an equal opportunity
13 district, in your mind?

14 A. Here I meant a district that did
15 not elect a candidate of choice on every
16 occasion, an endogenous candidate of choice on
17 every occasion.

18 Q. Did you conclude, then, that
19 District 6 was a protected district in this
20 plan?

21 A. Yes.

22 Q. Was District 6 maintained?

1 A. Yes.

2 Well, District 6 was redrawn, but
3 the same number of districts were maintained.

4 Q. Help me. I am sorry. Did that
5 change your answer? Was District 6 performing
6 and did it still perform? Or was it redrawn?

7 A. The same number -- the state was
8 completely redrawn, so there is no District 6
9 that looks like the old district. District 6
10 was included in the benchmark number and the
11 number of districts in the benchmark number
12 showed up in the proposed plan.

13 Q. Let me turn to page 28 of 31 and
14 help me understand what you meant by this
15 quotation you have here.

16 It says -- and we are getting back
17 to this District 6. And you have the
18 benchmark plan provided four effective and at
19 least one equal opportunity district.

20 So was District 6 an effective
21 district or not?

22 A. It was a protected district.

1 Q. Where does it say that, so I will
2 know?

3 A. Again, if you count up the number
4 of districts in the benchmark and compare it
5 to what is proposed, you will see the same
6 number.

7 Q. Could you do that for me real
8 quick? I don't want to spend much more time
9 on this. If you can tell me the numbers, that
10 would be useful.

11 A. Okay. The benchmark included four
12 effective and one equal opportunity. The
13 proclamation plan included five effective
14 districts. That would be four plus one, five.
15 The proclamation plan, five.

16 Q. The next chart I am looking at has
17 six in it. That is what is confusing me a
18 little bit.

19 A. It includes Southeast Alaska,
20 which is not benchmark District 6.

21 Q. Are there six performing then?

22 A. District 34 is in Southeast

1 Alaska. It is not performing but it has a
2 substantial Alaskan native population and,
3 hence, it is included in this chart.

4 Q. District 34?

5 A. It is District 5 in the old plan
6 and District 34 --

7 Q. I got you.

8 Let me see if there is anything
9 else I saw on this. If not, we will move on.
10 (Pause).

11 Do different districts have to
12 have different percentages of minority voters
13 in which to become effective?

14 A. You have to do a functional
15 analysis. It may be the case that a district
16 in one specific area can elect, as in Alaska,
17 at 40 percent, while another district in a
18 different area requires a higher percentage.

19 Q. Why would that be?

20 A. It could be turnout. It could be
21 white versus minority turnout. It could be
22 something else.

1 Q. Could it be the crossover of the
2 white vote?

3 A. Yes, it could be.

4 Q. What is -- let's go ahead and look
5 at the House plan now. So we can look at
6 the -- to follow right up on what we were just
7 talking about. Look at the House plan, which
8 I think we have marked as Number 2.

9 You have one of these districts --
10 I will find it here -- that only has 20 -- I
11 am looking at page five of your report and it
12 looks like it is District 137. It only has
13 25.6 HCVAP. But I think you have
14 characterized this as a Hispanic district. Is
15 that correct?

16 A. I will look at mine. (Pause).

17 MR. MELLETT: I am sorry, what was
18 the number?

19 MR. MATTAX: 137.

20 (Discussion off the record.)

21 THE WITNESS: You have to repeat
22 the question.

1 BY MR. MATTAX:

2 Q. I am looking at page five of your
3 report. I am looking at a chart that says
4 table one. I am looking at a district that
5 says 137 that has a percentage HCVAP as
6 25.6 percent. The way I interpreted your
7 report was you called that an Hispanic
8 district.

9 My question is, is that true,
10 question 1? Do you consider 137 an Hispanic
11 district?

12 A. The district is 59.8 percent
13 Hispanic in voting age population. So, yes, I
14 consider that Hispanic district.

15 Q. Do you consider that a performing
16 district?

17 A. I do.

18 Q. So my question is, with
19 25.6 percent of the population, that can't be
20 performing based solely on the Hispanic vote,
21 can it?

22 A. It could be Hispanics are voting

1 with blacks and they are electing. It could
2 be that whites aren't turning out in this
3 district. Well, so, you know, the answer is I
4 don't know. It could be Hispanics alone. It
5 might not be Hispanics alone.

6 Q. Could it be Hispanics and whites?

7 A. It could be.

8 Q. Would that be a crossover
9 district, like we were discussing in Alaska?

10 A. A crossover district?

11 Q. Right.

12 MR. MELLETT: Objection.
13 Mischaracterized the testimony.

14 MR. MATTAX: I thought that's what
15 she said in Alaska. That's okay.

16 BY MR. MATTAX:

17 Q. If whites cross over to vote with
18 Hispanics, in your view, would that create a
19 protected district?

20 A. I need more information than that.

21 Q. Let me give you a hypothetical.
22 You have a district that has 25.6 percent

1 Hispanic citizen voting age population, and
2 the turnout is 100 percent and they all vote
3 for the Hispanic candidate. Would that be
4 sufficient to elect their candidate of choice?

5 A. It would depend.

6 Q. What analysis did you do of
7 District 137 to answer that question?

8 MR. MELLETT: Do you mean in your
9 hypothetical?

10 MR. MATTAX: She has listed it as
11 an effective performing district. I assume
12 she did some analysis to determine how
13 25.6 percent HCVAP could be a performing
14 district.

15 MR. MELLETT: I am sorry, you had
16 just gone from your hypothetical. You are off
17 your hypothetical? That's what I wanted to
18 clarify.

19 MR. MATTAX: Sure.

20 BY MR. MATTAX:

21 Q. We will stay on the hypothetical.
22 I am just trying to figure out if 25.6 percent

1 of the HCVAP vote for the minority candidate
2 and 25 percent of the Anglos vote for the
3 minority candidate, which would create a
4 majority, would you consider that a crossover
5 district?

6 A. I know that blacks voted for the
7 candidate. I don't know if whites did or not.
8 I can't remember.

9 Q. I am just trying to be clear on
10 what your analysis. I am not trying to put
11 words in your mouth here. I just want to know
12 what you did or didn't do.

13 Do you know if 137 is or is not a
14 white crossover district?

15 A. I know that the district elects
16 the Hispanic-preferred candidate. Whether it
17 does that with no white vote or some white
18 vote, I do not know.

19 Q. What about 51 that also has
20 45.8 percent HCVAP? Does that do that with
21 white crossover vote?

22 A. I don't know.

1 Q. And 148 that has 42.1, does that
2 do that with white crossover vote?

3 A. I don't know.

4 Q. And District 90 that has 47.9,
5 does that do that with white crossover vote?

6 A. I am sorry, which district?

7 Q. 90.

8 A. (Pause). I misspoke. I can
9 answer these questions to some degree.

10 90 and 137, I did do a racial bloc
11 voting analysis of the 2010 general. There
12 was white crossover vote. Whether that was
13 sufficient to elect the candidate of choice, I
14 am unclear about that. But there is white
15 crossover vote.

16 Q. Let me ask the opposite of the
17 question, then. Without the white crossover
18 vote, would it have been sufficient to elect
19 the candidate of choice?

20 A. I don't know the answer to that.

21 Q. Let's go back to Government
22 Exhibit Number 1. You don't have to get it if

1 you remember. I asked you a question about
2 whether you agreed with, on the House side,
3 districts that they had mentioned. And they
4 mentioned 33.

5 Let's try to find 33 on your chart
6 here on the benchmark plan.

7 So 33, here, I see has 80 percent
8 endogenous and 60 percent exogenous, looking
9 at your chart here. Is that correct?

10 A. Yes.

11 Q. The one right above it, 78, which
12 has 56.2 percent HCVAP, has 20 percent
13 endogenous and 20 percent exogenous. Is that
14 correct?

15 A. That is.

16 Q. And then let me jump up to another
17 one that has a 20 percent exogenous, which is
18 74. Do you consider this one performing?

19 A. It has a 100 on the endogenous
20 index, which in terms of the benchmark, is
21 more probative. So, yes.

22 Q. We may come back to this chart in

1 a minute. But let me jump to your chart table
2 three which is on page seven.

3 When you say additional benchmark
4 minority State House districts, what does that
5 mean?

6 A. These are districts that are more
7 than 50 percent minority in composition that
8 elect minorities that are minority-preferred
9 to office.

10 Q. Do you know whether these
11 districts require white voters to vote to
12 elect the minority candidates of choice?

13 A. There may or may not be crossover
14 vote.

15 Q. Do you know if the crossover vote
16 is necessary to elect the candidate of choice?

17 A. I do not.

18 Q. Would it make any difference to
19 your analysis if it did?

20 A. That factor alone, no.

21 Q. Just sticking with this table so
22 we can sort of focus on one thing for a while

1 and try to go through a sort of series of
2 questions with it.

3 In table three you have four
4 districts that you call additional benchmarks:
5 Numbers 27, 120, 46 and 149. Did you do any
6 racially polarized voting analyses of those
7 districts?

8 A. Yes.

9 Q. Is that included in your report?

10 A. (Pause). No.

11 Q. Was that data provided -- was the
12 data establishing racial polarization in those
13 districts provided to the United States
14 Government?

15 A. I am sorry?

16 Q. Let me back up. You testified
17 that with Districts 27 -- this is House
18 Districts 27, 120, 46 and 149, that you did a
19 racially polarized voting analysis. Is that
20 correct.

21 A. No.

22 Q. You did not do one?

1 A. You asked me if I did any of those
2 districts. I did do it of one of those
3 districts.

4 Q. Thank you. Which district did you
5 do it for?

6 A. 149.

7 Q. Is that included in your report?

8 A. No, it is not.

9 Q. So the record is clear, for 27,
10 120, and 46, you did not do a racially
11 polarized voting analysis. Is that correct?

12 A. I better back up. I am not
13 positive. I don't think I did.

14 Q. And for 149 you recall doing one.
15 Is that correct?

16 A. Yes.

17 Q. And is that included in your
18 report?

19 A. No.

20 Q. Is any of the data underlying that
21 analysis, was that given to the Department of
22 Justice?

1 A. Well, I assume so.

2 Q. Do they have it? Do they have the
3 data underlying that?

4 A. That's where I got, yes.

5 Q. It is a little difficult, since I
6 don't have it in your report. But do you
7 recall what your findings were on District
8 149?

9 A. I looked at 149 to ensure that
10 blacks and Hispanics were supporting the
11 incumbent. And I looked at 2000 -- at least
12 2008 and 2010. And the analysis showed that
13 blacks and Hispanics did support the Asian
14 Democrat.

15 Q. Looking at these statistics it
16 would appear to me that neither the blacks nor
17 the Hispanics nor the Asians could elect their
18 candidate of choice by themselves. Is that
19 fair to say?

20 A. It would depend on turnout rates.

21 Q. So for purposes of your analysis,
22 is it your understanding of the Voting Rights

1 Act that, if a minority can elect their
2 preferred candidate of choice but could only
3 do so with the assistance of either other
4 minorities or Anglo voters, that that district
5 would be a protected district?

6 MR. MELLETT: Under Section 5 of
7 the Voting Rights Act?

8 MR. MATTAX: Under Section 5 of
9 the Voting Rights Act.

10 THE WITNESS: It would depend on
11 the circumstances.

12 BY MR. MATTAX:

13 Q. What circumstances would those be?

14 A. In this particular instance we
15 have a minority consistently elected in a
16 district in which minorities control the
17 district.

18 Q. So is it an Asian district, then?

19 A. It is a minority district.

20 Q. Just so I can understand your
21 analysis, if I had a district that was
22 26 percent black citizen voting age population

1 and 26 Hispanic citizen voting age population,
2 and your analysis showed that they elected the
3 candidate of choice, that would be a protected
4 district?

5 A. I can't answer that without more
6 information.

7 Q. Is it important to determine
8 whether or not the blacks support the Hispanic
9 candidate of choice in a primary to determine
10 whether or not the black candidate of choice
11 is elected in a general election?

12 A. In a district that it is
13 not majority-- you will have to give me --

14 Q. In a district that is not majority
15 black.

16 A. Repeat the question with all of
17 the information.

18 Q. Sure. Is it important to
19 determine, in determining whether a district
20 elects the black candidate of choice, in a
21 district that has an equal number of Hispanics
22 and black voters of voting age population and

1 citizens, to determine whether, in a primary,
2 the district elects the black candidate of
3 choice?

4 A. That would be very useful
5 information to have.

6 Q. If you had primary information
7 that showed, in a district, that in the
8 primaries Hispanics voted -- hypothetically,
9 in a primary you had a black candidate and you
10 had an Hispanic candidate in the primary. If
11 the Hispanics voted overwhelmingly for the
12 Hispanic candidate and the blacks voted
13 overwhelmingly for the black candidate, would
14 the Hispanic candidate be the black candidate
15 of choice in that district?

16 A. You are talking about a primary
17 election-specific to that office, in other
18 words?

19 Q. Correct.

20 A. So a particular candidate runs
21 State House for any primary in which their
22 choice is different.

1 Q. In which there is a competition
2 between an Hispanic candidate and a black
3 candidate. My question is, if the blacks vote
4 in that district for the black candidate, is
5 the Hispanic candidate the black candidate of
6 choice?

7 A. Under the circumstances that I
8 just mentioned, that is, that is the office at
9 issue, no. Well, they are the candidate of
10 choice once you come to the general. But
11 certainly not in the primary.

12 Q. Let's look at page nine of your
13 report.

14 I am looking at Footnote 14. Can
15 you elaborate on what you are trying to
16 establish with Footnote 14?

17 A. That the Hispanic who ran -- I was
18 trying to determine if the Hispanic who ran
19 was the Hispanic-preferred candidate or not.

20 Maybe I mean if the Hispanic who
21 won. Because there could have been two
22 Hispanics against each other.

1 Q. So if the Hispanic who won was a
2 Republican in an Hispanic district that could
3 elect the Hispanic candidate of choice, would
4 that make the Republican the Hispanic
5 candidate of choice?

6 A. I would need to do a racial bloc
7 voting analysis to determine if it was the
8 Hispanic-preferred candidate.

9 Q. Going back to the United States'
10 identification of elections considered, they
11 mentioned 149, which we have just discussed a
12 moment ago. That was the district that we
13 discussed that has an Asian.

14 A. Yes.

15 Q. They also mentioned Districts 35,
16 41 and 117. Are those Republican or
17 Democratic districts?

18 A. I don't know.

19 Q. Is the incumbent a Republican?

20 A. I can look and see.

21 Q. Okay.

22 A. Give me the numbers again.

1 Q. 33.

2 A. (Pause). 33 is represented by a
3 Hispanic Republican.

4 Q. 35.

5 A. 35 is currently represented by a
6 Hispanic Republican.

7 Q. 41.

8 A. 41 is represented by a Hispanic
9 Democrat.

10 Q. Who is that?

11 A. No. Hispanic Republican.

12 Q. And 117?

13 A. He was a Hispanic Democrat when he
14 was elected. Sorry. He is now a Republican.

15 Q. And 117?

16 A. What is the question?

17 Q. 117, who are they represented by?

18 A. A Hispanic Republican.

19 Q. So if my understanding is correct,
20 of the five districts the United States has
21 identified, they have identified 149, which
22 you characterized as an additional benchmark

1 minority district that has 26 percent blacks
2 citizen voting age population, 19 percent
3 Hispanic, and 16 percent Asian. Then they
4 identified four districts held by a
5 Republican.

6 A. The four districts are currently
7 represented by Hispanic Republicans.

8 Q. I believe you said that you didn't
9 have an opinion on 41, so let's skip that.

10 But is it your opinion that the
11 Republicans in Districts 33, 35 and 117 are
12 not the candidates of choice?

13 A. 35, 78 and 117?

14 Q. No. 33, 35 and 117.

15 A. Yes, that's correct.

16 Q. Is that because they are
17 Republicans?

18 A. No, that's because I did a racial
19 bloc voting analysis.

20 Q. But they are Hispanics, though. I
21 assume there is no racial animus by Hispanics
22 against Hispanics. Or is my assumption

1 incorrect in those districts?

2 A. I did a racial bloc voting
3 analysis and the Hispanics preferred a
4 Democrat whether he was Hispanic or not.

5 Q. Is it your conclusion then, at
6 least in Districts 33, 35 and 117, the race of
7 the candidate is irrelevant?

8 A. It is my conclusion that Hispanics
9 did not prefer the Hispanic Republican. I
10 don't know if the opposition was Republican --
11 not Republican. Whether the opposition was
12 Hispanic or not.

13 MR. MATTAX: Let's go off the
14 record for a second.

15 (Discussion off the record.)

16 BY MR. MATTAX:

17 Q. I guess this is what I am driving
18 at to try to understand, when you are talking
19 about the Hispanic candidate of choice in
20 Texas, it seems like you are saying it is just
21 who the Democrat is.

22 MR. MELLETT: Objection.

1 Mischaracterization of testimony.

2 BY MR. MATTAX:

3 Q. We have three districts we just
4 talked about where it was the Republican
5 candidate was an Hispanic. And you concluded
6 they were not the candidate of choice.

7 A. I did a racial bloc voting
8 analysis and determined they were not the
9 candidate of choice.

10 Q. Obviously, it is not based upon
11 race, then, that determined it. The voters
12 aren't voting based on race.

13 A. I can only tell you that the
14 Hispanic-preferred candidate in these contests
15 was not the Hispanic Republicans.

16 Q. In what circumstances would you
17 consider an Hispanic Republican district to be
18 a protected district?

19 A. I don't know what you mean by
20 Hispanic Republican district.

21 Q. A district in which an Hispanic
22 Republican is the incumbent.

1 A. That's not a -- the district is
2 not a Hispanic Republican district.

3 Q. Are there any circumstances in
4 which a district -- or the incumbent is an
5 Hispanic Republican, is a protected district?

6 A. In Florida.

7 Q. I take it, then, that you don't
8 believe there are any such districts in Texas?

9 A. I didn't see any instance of a
10 district in which Hispanics, a majority of
11 Hispanics preferred a Republican Hispanic.

12 Q. Well, in order for a Republican
13 Hispanic to win a district in Texas, would you
14 agree with me, based on your analysis, that
15 Anglo voters would have to vote for that
16 Hispanic?

17 A. In the examples that I looked at,
18 the Hispanic Republican won with white vote,
19 not Hispanic vote.

20 Q. So is it your view that if Anglos
21 vote for a Hispanic candidate, there is still
22 racial polarization?

1 A. There is racial polarization if
2 Anglos and Hispanics consistently vote for
3 different candidates irrespective of the race
4 of the candidates.

5 Q. And I guess this is what I am
6 trying to drive at. In your understanding of
7 the Voting Rights Act, if Republican Hispanics
8 are winning in Texas, with Anglo support,
9 then, obviously, Anglos in those districts
10 don't have any discriminatory view or any
11 problem voting for an Hispanic in those
12 districts?

13 MR. MELLETT: Objection.

14 BY MR. MATTAX:

15 Q. Otherwise, they couldn't be
16 elected?

17 MR. MELLETT: Objection. Calls
18 for speculation as to what is or is not in the
19 voters' minds in terms of discriminatory
20 intent.

21 BY MR. MATTAX:

22 Q. Sure. Do you have an

1 understanding of the point of the Voting
2 Rights Act, why it was enacted?

3 A. I do.

4 Q. What is your understanding?

5 A. From my perspective what I am
6 attempting to determine is if voting is
7 polarized or not. And if voting is polarized,
8 whether the minority-preferred candidate is
9 usually losing. And, if so, then we need to
10 protect minority groups, whether it is
11 Section 2 or Section 5, from a bloc voting
12 majority.

13 Q. And I believe your testimony is
14 that, in making that determination, it is
15 irrelevant what the race of the candidate is?

16 MR. MELLETT: Objection.
17 Mischaracterizes testimony.

18 BY MR. MATTAX:

19 Q. Answer the question.

20 A. I am looking at the voting
21 patterns of the voters and not the race of the
22 candidates. Although, when I do a racial bloc

1 voting analysis, I focus on candidates on
2 contests that include minorities so that
3 minorities do, in fact, have the option to
4 vote for minority candidates.

5 Q. So what I am trying to find out is
6 how do we determine, in a situation that we
7 have described in Districts 33, 35 and 117,
8 where the incumbent is a Republican Hispanic,
9 but he is not the preferred candidate of
10 choice of the minorities -- it can't be based
11 on race because he is the candidate of the
12 same race?

13 A. What can't be based on race?

14 Q. The decision.

15 A. What decision?

16 Q. Whatever the decision to vote is.
17 You are going to either vote for him or
18 against him.

19 A. Okay.

20 Q. So it must be based on party.

21 A. What must be based on party?

22 Q. The decision to vote.

1 A. The decision to vote? I don't
2 think so.

3 MR. MELLETT: Is there a question?

4 BY MR. MATTAX:

5 Q. If it is not based upon the race
6 of the candidate, why would someone -- I am
7 trying to find out, you have an Hispanic
8 candidate and you have a majority Hispanic in
9 the district. Do you have any belief as to
10 whether Hispanics vote for Hispanic candidates
11 because of their race?

12 A. I did a racial bloc voting
13 analysis and determined that Hispanics did not
14 vote for the Hispanic Republican in the three
15 contests that we are talking about in 2010.

16 Q. Did they vote for an Hispanic
17 Democrat or a white Democrat?

18 A. I could possibly answer that
19 question. Give me the districts again.

20 MR. COHEN: 117.

21 BY MR. MATTAX:

22 Q. 117.

1 A. 117, a white Democrat.

2 MR. MELLETT: 35.

3 MR. MATTAX: You can look at 35,
4 if you would like.

5 She said give her a district. I
6 gave her a district.

7 (Discussion off the record.)

8 THE WITNESS: 35, a Hispanic
9 Democrat.

10 BY MR. MATTAX:

11 Q. And he lost to an Hispanic
12 Republican? Or she lost to an Hispanic
13 Republican?

14 A. I don't know if it is a he or she.
15 But the Hispanic Republican won.

16 Q. And 33?

17 A. We don't have 33 here. (Pause).

18 Q. If I were to begin an analysis to
19 determine whether or not I was going to
20 retrogress, in looking at Hispanic
21 districts -- because I think you are aware the
22 State of Texas chose to look at districts that

1 were greater than 50 percent Hispanic citizen
2 voting age population.

3 What metric did you choose to
4 start your looking? Every district in the
5 state, all 150?

6 A. No. The first thing I did was a
7 threshold representation chart in which I
8 looked at the percentage minority of all of
9 the districts and who was elected, whether a
10 minority was elected or not. And determined,
11 that, in fact, no minorities were elected from
12 districts under 50 percent minority. So I
13 focused on districts over 50 percent minority.
14 And then did a functional analysis looking at
15 the election -- looking at the elections
16 within those districts to determine if they
17 were effective or not.

18 Q. Is that what your table four is
19 purporting to represent?

20 A. I am sorry. You were talking
21 about the benchmark. Table four is the
22 proposed district.

1 Q. I am sorry. Is that what you did
2 in table one?

3 A. Yes.

4 Q. Turning back to 137, since we
5 talked about that a bit, and if we compare the
6 two tables, you have 25 percent -- 25.6
7 percent HCVAP in the benchmark for 137.
8 That's table one.

9 A. Say the number again?

10 Q. 25.6.

11 A. 25.6 HCVAP.

12 Q. Right.

13 A. Uh-huh.

14 Q. And the proposed district you have
15 26.3 percent HCVAP.

16 A. Yes.

17 Q. Do you consider both of those to
18 be Hispanic districts?

19 A. They are consistently electing the
20 Hispanic-preferred candidate. So, yes.

21 Q. Do you believe in your racially
22 polarized voting analysis that, as a general

1 proposition, Hispanics prefer Democrats as
2 their preferred candidates of choice?

3 MR. MELLETT: Just to be clear, is
4 this all elections in Texas?

5 MR. MATTAX: Yes.

6 MR. MELLETT: Thank you.

7 THE WITNESS: I guess that would
8 be a problem in nonpartisan elections.

9 BY MR. MATTAX:

10 Q. I am sorry?

11 A. In nonpartisan elections I expect
12 Hispanics aren't voting for Democrats.

13 Q. In partisan elections, do you
14 expect them to vote for Democrats?

15 A. In Texas, Hispanics tend to vote
16 Democratic, yes. They don't necessarily, for
17 example, in Florida. But they do in Texas.

18 Q. So regardless of the percentage of
19 the citizen voting age population in a
20 district, if it elected a Democrat and it had
21 Hispanics in it, would it be a protected
22 district?

1 A. You would have to give me more
2 information than that.

3 MR. MATTAX: Let's take a short
4 break so I can figure out where my documents
5 are.

6 (A recess was taken.)

7 MR. MATTAX: Let's mark this as
8 Exhibit 6.

9 (Document referred to marked
10 Deposition Exhibit No. 6 for identification
11 and subsequently attached to the deposition.)

12 BY MR. MATTAX:

13 Q. Let me show you what has been
14 marked as Exhibit Number 6. We have been
15 talking about 117. So let's see if we can
16 find 117. It will be in order so it is
17 probably going to be about two-thirds of the
18 way through.

19 Why don't we state for the record
20 what the numbers are. If you wish to take the
21 time to go through them all, you may.

22 But in looking at the 2010 general

1 election in House District 117, and all of the
2 different elections that are listed here, and
3 looking at all the districts listed here that
4 occur in District 117 in the 2010 general
5 election under the benchmark plan, I count 42
6 races in which the Republican won and three in
7 which the Democrat won.

8 Would that be relevant to your
9 analysis?

10 A. Not without knowing a great deal
11 about this contest, no.

12 And that one specific year, in any
13 case.

14 Q. Well, if we went back, would it
15 make any difference if we went back multiple
16 years? I am just talking about the principle
17 of looking at the number of Republicans that
18 win versus the number of Democrats. Is that
19 useful?

20 A. Not without knowing more about the
21 contests. For example, did they include a
22 minority candidate?

1 Q. We know, for example, lieutenant
2 governor, because you looked at it, the third
3 one down, included a minority candidate that
4 lost. Is that relevant?

5 A. I am sorry, repeat the question.

6 Q. Lieutenant governor.

7 A. Lieutenant governor included a
8 Hispanic candidate. That's correct.

9 Q. And the Hispanic lost. Would that
10 be relevant?

11 A. I included that in my index, yes.

12 Q. And what about land commissioner?
13 In this district, Republican Patterson got
14 51 percent and the Democrat 45 percent.

15 A. Again, I already looked at an
16 election in that particular year and
17 determined that the exogenous election index
18 for that particular year would be zero.

19 Q. So I guess the fact that the tally
20 was 42 to 3 doesn't add anything to your
21 analysis because you already concluded that it
22 wasn't performing?

1 A. I would never have lumped all of
2 those elections in there. But, in fact, I did
3 conclude it wasn't performing.

4 Q. Did you --

5 A. In that particular year.

6 Q. I understand.

7 We talked about trending, I think,
8 earlier on in your deposition. Did you do any
9 trending analysis to see whether this district
10 was trending Republican?

11 A. I looked to see if districts were
12 losing Hispanic population when I looked at
13 trending.

14 Q. Is it relevant to determine
15 whether or not Hispanics tend to be voting
16 more for Republicans over time?

17 A. Is it relevant to what?

18 Q. To your analysis.

19 MR. MELLETT: Objection. Assumes
20 facts not in evidence.

21 BY MR. MATTAX:

22 Q. In a trending analysis, is it

1 relevant to determine whether or not Hispanics
2 are voting for more Republicans over time or
3 is that not relevant?

4 A. I am not even really sure what you
5 mean by trending analysis.

6 Q. Sure. Let's take a court drawn
7 district, District 23 in Congress, that was
8 drawn by a court to elect the preferred
9 candidate of choice. Is it electing the
10 preferred candidate of choice, then?

11 A. It did not in 2000 -- I am sorry,
12 which district? I am sorry.

13 Q. Congressional 23.

14 A. You switched districts on me.

15 Congressional District 23 did not
16 elect the Hispanic-preferred candidate in
17 2010. It did in the other two Congressional
18 contests.

19 Q. If we look at those percentages,
20 if two or three Hispanic percentage points
21 change, in other words, a few Hispanics who
22 used to vote Democrat decide to vote

1 Republican and that shifts the makeup of the
2 district, does that affect your analysis at
3 all?

4 MR. MELLETT: So this is a
5 hypothetical?

6 MR. MATTAX: Correct.

7 THE WITNESS: If the
8 Hispanic-preferred candidate shifts from
9 Democratic to Republican? Is that what we are
10 saying?

11 BY MR. MATTAX:

12 Q. No. I am just saying -- what I am
13 trying to establish is the concept, which you
14 can agree with or disagree with, that the
15 districts are not static, that just because an
16 Hispanic may vote for a Democrat one day does
17 not necessarily mean they will vote for a
18 Democrat the next day, that there are other
19 factors in there. I am trying to see whether
20 or not it plays into your analysis, if at all,
21 that there would be data, if there is data
22 showing a district, fewer Hispanics in a

1 district voting Democrat and more Hispanics in
2 a district voting Republican. Is that
3 relevant to your analysis at all?

4 A. I still don't have enough facts.
5 Are we now talking about the
6 Hispanic-preferred candidate being Republican?

7 Q. No. Because not enough people
8 have changed their votes. Say, for example,
9 that in one district 20 percent of Hispanics
10 vote for a Republican and the next year
11 40 percent of the Hispanics vote for
12 Republican. Would the Republican be the
13 Hispanic candidate of choice?

14 A. Are we basing a trend on two
15 elections?

16 Q. I am just giving you those facts.
17 I am asking you what your analysis would be.

18 A. It is not enough to establish a
19 trend.

20 Q. So you would not be able to
21 determine in that situation who the Hispanic
22 candidate of choice was?

1 A. I would. I would do a racial bloc
2 voting analysis to determine that. I wouldn't
3 look at whatever hypothetical you are
4 proposing.

5 Q. I guess what I am trying to do is
6 place the two ends of the spectrum into this
7 racial bloc voting analysis here. Because I
8 think we have already identified the fact that
9 Anglos do vote for Hispanic Republicans. I
10 think you will agree with me on that.

11 A. In the contests that I analyzed,
12 Anglos voted for the Hispanic Republican.

13 Q. We are making the assumption in
14 your analysis that the districts were static.
15 In other words, that this district was
16 racially polarized and it was voting and the
17 Hispanics were voting for the Democratic
18 candidate, and, therefore, the Democratic
19 candidate was the candidate of choice. That's
20 what your analysis has shown in some of the
21 districts. Is that correct?

22 A. There is a lot of different pieces

1 to that. I don't know why you would say this
2 district is static. I don't know why -- you
3 are going to have to do better.

4 Q. Sure. You are trying to project
5 over the next ten years what a district is
6 supposed to look like when you do this
7 Section 5 voting analysis, aren't you?

8 A. No.

9 Q. Let's do this hypothetical. This
10 is what I am driving at here. Then maybe we
11 can move off of this.

12 You have five endogenous elections
13 in that ten year period. And the first one it
14 votes Democrat, the second one it votes
15 Democrat, the third one it votes Democrat, the
16 fourth one it votes Republican, and the fifth
17 one it votes Republican. Yet your racially
18 polarized voting continues to show the
19 Hispanic candidate of choice is a Democrat.

20 Is it relevant to you that that
21 trend towards voting Republican, that that
22 district is now electing a Republican? Is it

1 relevant to you to find out why? Or do you
2 simply look at your racially polarized voting
3 analysis and say, well, the Democrat is the
4 preferred candidate of choice; it doesn't make
5 any difference that in the last two elections
6 the Republican won?

7 A. (Pause.) I did a racial bloc
8 voting of contests and determined whether I
9 had the Hispanic-preferred candidate or not.
10 So I am a little bit puzzled what it is that
11 you think I should be doing here.

12 Q. Well, what we have is a situation
13 where the current incumbent in several
14 districts is an Hispanic Republican that,
15 based on your analysis, needs to be removed,
16 because they won the election --

17 MR. MELLETT: Objection to the
18 characterization about "needs to be removed."

19 BY MR. MATTAX:

20 Q. Your view is they are not the
21 Hispanic candidate of choice and, therefore,
22 the district has to be drawn in such a way

1 that someone else gets elected. Right?

2 A. The candidate is not the
3 Hispanic-preferred candidate. Whether you
4 keep him in that district and up the
5 percentage -- I mean, it is not based on what
6 that candidate -- where that candidate is
7 sitting. It is based on the fact that he is
8 not the Hispanic-preferred candidate. I am
9 not saying anything about where you should put
10 him.

11 Q. Give me a second to look at the
12 chart.

13 You can look at Appendix A if you
14 want, too. I think we talked about most of
15 these.

16 MR. MELLETT: I am sorry, this is
17 in the House plan?

18 MR. MATTAX: The House plan,
19 Appendix A. (Pause).

20 I don't have an extra copy of this
21 for some reason. Let me go ahead and mark --
22 this is Red 202. We will just go through this

1 exercise very quickly.

2 Red 202 is a summary of the voter
3 registration data for House districts in Plan
4 100, the benchmark plan. Districts,
5 obviously, 1 through 150. Let's mark that as
6 the next exhibit, Number 7.

7 (Document referred to marked
8 Deposition Exhibit No. 7 for identification
9 and subsequently attached to the deposition.)

10 BY MR. MATTAX:

11 Q. Based upon your understanding of
12 the guidance given by the Department of
13 Justice as to how to determine whether or not,
14 when you are drawing a map in this cycle, your
15 map complies with the Voting Rights Act, how
16 would you identify the districts that you
17 would need to look at to make sure they don't
18 retrogress?

19 MR. MELLETT: Objection. Lack of
20 foundation. We haven't established that she
21 has actually looked at this at all.

22 BY MR. MATTAX:

1 Q. This is a map that shows the
2 percentages of the Anglo voters and the black
3 voters.

4 A. This is not a map.

5 Q. Excuse me, a chart. A chart that
6 shows the percentages of the different voters
7 in the districts.

8 I guess what I am trying to find
9 out, based on the guidance, as you understand
10 it from the DOJ, how is the legislature
11 supposed to identify which districts to be
12 concerned about?

13 MR. MELLETT: Objection. Calls
14 speculation on the possible legislature.

15 BY MR. MATTAX:

16 Q. What would be your understanding
17 from the guidance the DOJ has given as to how
18 the legislator would do that, if you were
19 advising the legislator, legislature, based on
20 the guidance DOJ has given?

21 A. I would do an election-specific
22 analysis like the state actually did do.

1 Q. Of a 150 different --

2 A. They did a lot more than that.

3 Actually, they did it for the Senate and the
4 Congress, as well.

5 Q. Based on that analysis, if it was
6 concluded that a particular district elected
7 less than 50 percent of the preferred
8 candidate of choice, would it be safe for the
9 legislature to assume that was not a protected
10 district?

11 MR. MELLETT: Is this on the
12 benchmark or the proposed?

13 MR. MATTAX: On the benchmark.

14 THE WITNESS: Is this the
15 endogenous or the exogenous?

16 BY MR. MATTAX:

17 Q. On the data that you said the
18 state had that you just mentioned.

19 A. I know the data that I used. I
20 don't know what additional data the state had.

21 Q. All right. Let's just have that.
22 We don't need to go over that anymore.

1 MR. MATTAX: Let's take a five
2 minute break and finish up and go home.

3 (Discussion off the record.)

4 (A recess was taken.)

5 BY MR. COHEN:

6 Q. Dr. Hanley, you have talked
7 extensively about the three endogenous
8 elections in Congressional District 23.
9 Right?

10 A. Yes.

11 Q. Are you familiar with the facts of
12 the first of those three elections, 2006?

13 A. Familiar with the facts? I guess
14 it would depend on the facts you are referring
15 to.

16 Q. Did you know there was a runoff
17 for that election?

18 A. Possibly.

19 Q. Do you know what the margins were
20 for that election?

21 A. I might have looked at it at some
22 point. I don't know off the top of my head,

1 no.

2 MR. COHEN: I have no further
3 questions. I pass the witness.

4 MR. MATTAX: Any questions?

5 MR. MELLETT: I have no questions.

6 (Discussion off the record.)

7 THE WITNESS: I will waive.

8 (By stipulation of counsel, and
9 agreement of the witness, reading and
10 signature waived.)

11 (Whereupon, at 5:54 p.m., the
12 deposition was concluded.)

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CERTIFICATE OF NOTARY PUBLIC

I, Zev V. Feder, the officer before whom the foregoing deposition was taken, do hereby certify that the witness, whose testimony appears in the foregoing deposition, was duly sworn by me; that the testimony of said witness was taken by me in shorthand and thereafter reduced to computer type under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Notary Public in and for
The District of Columbia

My Commission Expires:
April 14, 2012

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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, <i>et al.</i> ,)	
	)	CIVIL ACTION NO.
<i>Plaintiffs,</i>	)	SA-11-CA-360-OLG-JES-XR
	)	[Lead case]
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
MEXICAN AMERICAN LEGISLATIVE	)	CIVIL ACTION NO.
CAUCUS, TEXAS HOUSE OF	)	SA-11-CA-361-OLG-JES-XR
REPRESENTATIVES (MALC),	)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	
)	
TEXAS LATINO REDISTRICTING TASK	)	CIVIL ACTION NO.
FORCE, <i>et al.</i>,	)	SA-11-CA-490-OLG-JES-XR
	)	[Consolidated case]
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
RICK PERRY,)	
)	
<i>Defendant.</i>)	
_____)	

1	THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA STATE OF TEXAS,) Plaintiff,) VS.) UNITED STATES OF AMERICA AND) ERIC H. HOLDER, JR., IN HIS) OFFICIAL CAPACITY AS ATTORNEY) GENERAL OF THE UNITED STATES,) Defendants,) WENDY DAVIS, ET AL,) CIVIL ACTION NO. Defendant-Intervenors,) 1:11-EV-1303) (RMC-TBG-BAH) MEXICAN AMERICAN LEGISLATIVE) THREE-JUDGE COURT CAUCUS,) Defendant-Intervenors,) GREG GONZALEZ, ET AL,) Defendant-Intervenors,) TEXAS LEGISLATIVE BLACK) CAUCUS,) Defendant-Intervenors,) TEXAS LATINO REDISTRICTING) TASK FORCE,) Defendant-Intervenor,) TEXAS STATE CONFERENCE OF) NAACP BRANCHES, ET AL,) Defendant-Intervenors.) ***** ORAL DEPOSITION OF JOHN ALFORD, Ph.D. OCTOBER 25, 2011 *****	3
2	1 ORAL DEPOSITION OF JOHN ALFORD, Ph.D., produced as 2 a witness at the instance of the Davis Intervenors, was 3 duly sworn, was taken in the above-styled and numbered 4 cause on the OCTOBER 25, 2011, from 10:05 a.m. to 5 6:26 p.m., before Chris Carpenter, CSR, in and for the 6 State of Texas, reported by machine shorthand, at the 7 offices of Attorney General of Texas, 209 West 14th 8 Street, Ground Floor, Austin, Texas 78701, pursuant to 9 the Federal Rules of Civil Procedure and the provisions 10 stated on the record or attached hereto. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	4

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ALSO PRESENT:
 Randy Stevenson, Ph.D.

I N D E X

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5

1 MR. SELLS: Bryan Sells for the
2 Defendants, United States, and Eric Holder.
3 MR. HICKS: Renea Hicks for the Defendant-
4 Intervenor Gonzalez.
5 MR. SCHENCK: David Schenck for the
6 Declaratory Plaintiff, State of Texas.
7 MR. STEVENSON: Randy Stevenson with the
8 Declaratory Plaintiff, State of the Texas.
9 JOHN ALFORD, Ph.D.,
10 having been first duly sworn to testify the truth, the
11 whole truth, and nothing but the truth, testified as
12 follows:
13 EXAMINATION
14 BY MR. SELLS:
15 Q. Would you please state your name for the
16 record?
17 A. John Alford.
18 Q. Dr. Alford, did you bring someone with you
19 today from Rice University?
20 A. No, I did not.
21 Q. Who is Randy Stevenson?
22 A. He's a colleague of mine at Rice University.
23 Q. Okay. So when I said bring, how did Randy
24 Stevenson get here?
25 A. I don't know.

6

1 Q. Okay.
2 MR. SELLS: Is Mr. Stevenson an attorney?
3 MR. SCHENCK: No. He is working with me.
4 MR. SELLS: Okay. Do you expect him to
5 say anything?
6 MR. SCHENCK: No.
7 MR. SELLS: Okay. The reason I ask is,
8 because he if he is not an attorney, he is not subject
9 to all the ethical rules that we are under and can't be
10 sanctioned by the court, and if he's going to say
11 something, I would want him to say it under oath.
12 MR. SCHENCK: Yeah. That's fine.
13 MR. SELLS: That's fine.
14 Q. (BY MR. SELLS) Okay. Dr. Alford, my name Bryan
15 Sells, and as you heard as we did our introductions, I'm
16 with the Defendants, United States and Eric Holder.
17 I know you have been deposed before,
18 probably many times, but I want to go over just a couple
19 of ground rules, if that's okay?
20 A. Yes.
21 Q. As you know, this is being recorded
22 stenographically, and the court reporter can't take down
23 nonverbal responses, so would you please respond
24 verbally to my questions?
25 A. I will do my best.

7

1 Q. Great. Thank you. And I will try to ask my
2 questions verbally, too. Sometimes I am not always
3 clear. If you don't understand a question that I ask,
4 would you please let me know so that I can clarify it
5 for you?
6 A. Yes.
7 Q. Likewise, sometimes I don't always speak
8 loudly, and so if you don't hear a question I ask, would
9 you please let me know so that I can restate it for you?
10 A. Yes.
11 Q. Thank you.
12 Is there any reason why you would not be
13 able to answer my questions fully and truthfully here
14 today?
15 A. No.
16 Q. What did you do to prepare for this deposition?
17 A. I read back over my report, looked back at a
18 couple of the standard, kind of, TLC number of things,
19 trying to remind myself of -- trying to get my mind off
20 of the Senate, the State Senate case that's come up in
21 the meantime, and that I wrote a report for, and get
22 back on track with this. I had looked briefly at Lisa
23 Hanley's report. I think that's about it.
24 Q. It's my understanding that Dr. Hanley has
25 submitted two reports in this case. Did you look at

8

1 both of them or just one?
2 A. Is there -- so there's -- I know there's a --
3 so are the -- the State House and the Congress are two
4 separate reports? Is that --
5 Q. That's my understanding, yes.
6 A. Okay. I didn't -- I just want to make sure
7 there wasn't a supplemental report that I hadn't seen.
8 So I just -- you know, I just thought of them as the
9 report. But, yes, I have looked at both the report that
10 deals with Congress and the report that deals with the
11 State House.
12 Q. Okay. They may show up in the pleadings filed
13 as one report. I don't know.
14 I would like to go ahead and mark
15 Exhibit 1, which I believe is your report.
16 And while I am doing that, can you tell me
17 if there is anything else you did to prepare?
18 ((Exhibit 1 marked for identification.)
19 A. I'm trying to think of what else I might have
20 looked at. I think that's what I looked at.
21 Q. Okay. Did you talk to anyone?
22 A. I spoke with Mr. Schenck this morning when I
23 got here.
24 Q. Anyone else?
25 A. You mean related to the case? No.



9

1 Q. I mean, specifically in preparation for this
2 deposition?

3 A. Oh. I spoke to -- by phone, I spoke to Bruce
4 Cullen and David Mattax.

5 Q. Anyone else?

6 A. I think that's it.

7 Q. I have put Government Exhibit 1 in front of
8 you. Do you recognize that?

9 A. Yes. That's my report in this case.

10 Q. Okay. Does this report contain a complete
11 statement of all the opinions that you will express in
12 this case and the basis and the reasons for them?

13 A. I believe so. It obviously was written before
14 I had a chance to read Lisa Hanley's report, so we're
15 going to talk about that. I guess that's probably not
16 in the report, so, but...

17 Q. Well, I'm not sure whether your answer is a yes
18 or no. Do you expect to offer opinions that go beyond
19 what is in here?

20 A. Yes.

21 Q. As to the opinions that are in here, in
22 Government Exhibit 1, does this report contain all of
23 the bases and reasons for your opinions?

24 A. Yes.

25 Q. Does this report contain all of the facts or

10

1 data that you considered when forming your opinions that
2 are reflected in this report?

3 A. And the sources of the information I looked at
4 are -- I think are indicated in the report. I don't
5 think the report contains -- I mean, there's, like,
6 probably thousands of pages of state reports and so
7 forth. So they are not contained in the report, but, I
8 mean, the reference is what that report is based on.

9 Q. Okay. There's no other facts or data that
10 aren't referenced in some way in the report that you
11 considered in forming the opinions that are reflected in
12 that report?

13 A. I suppose that -- I mean, it's hard to say. I
14 have sat through trials on issues in this case and heard
15 lots of discussion. I have the read reports from other
16 experts in the Section 2 case. So, I mean, I don't
17 know. In the sense that those things may have -- may,
18 sort of, be a part of how I am thinking about the case
19 or... But in terms of, sort of, the basic facts laid out
20 in the report, that's -- the report references what that
21 is based on. And I know more about this than I could
22 possibly put in a report, and I don't -- so I guess
23 that's the best I can say there.

24 Q. Right. I know you've been at this for a long
25 time. How about if we restrict it to data? Is there

11

1 any data that you relied on in forming these opinions
2 reflected in Government Exhibit 1 that isn't referenced
3 there?

4 A. I don't think so. I mean, when we talk about
5 the cohesion -- obviously, there is a cohesion analysis
6 that was presented in the Section 2 case, both in my
7 analysis and in the analysis by other experts that's
8 referenced in terms of some of the discussion about
9 cohesion related to coalition districts or voting for
10 Democratic candidates, things like that. But I think
11 that's fairly clear. I've tried to make it clear in the
12 report, so...

13 Q. You're not aware of data cache, c-a-c-h-e, that
14 you relied on in forming your opinions that is not
15 disclosed in this report in some way?

16 A. I mean, if there is something that isn't
17 specifically referenced here but that would have been in
18 my mind, it would certainly be included in the materials
19 that were disclosed in the Section 2 case, because
20 that's -- that would be the full compass of the data
21 that I have seen.

22 Q. Does Government Exhibit 1 contain any and all
23 exhibits that you will use to summarize or support your
24 opinions?

25 A. As far as I know, it includes the things that I

12

1 would use to support the opinion in terms of what's in
2 the report, yes. Again, if I'm asked to do something in
3 response to Dr. Hanley's report, that might be -- it
4 might require something other than this. But in terms
5 of the report, yes.

6 Q. Does this report contain a list of all other
7 cases in which you have testified as an expert at trial
8 or by deposition in the last in four years?

9 A. I believe it does. Does it have my -- my vitae
10 attached? It's not attached to this.

11 Q. So that would be a no?

12 A. In the copy that I provided, that would be a
13 no.

14 Q. Okay. Well, since you referenced your vitae,
15 let me show you what is going to be marked as Government
16 Exhibit 2.

17 (Exhibit 2 marked for identification.)

18 MR. SELLS: And David, I apologize in
19 advance. You get the bad toner copy.

20 MR. SCHENCK: That's fine.

21 MR. SELLS: I'm not even sure if it's a
22 whole copy, but...

23 MR. SCHENCK: That's fine.

24 Q. (By MR. SELLS) Do you recognize Government
25 Exhibit 2?



13

1 A. This looks like a September 2009 copy of my
2 vitae.
3 Q. Is there a more recent copy of your vitae?
4 A. There should be an October 2011 copy.
5 Q. Where could I go to find that?
6 A. Well, I intended it to be attached as a PDF to
7 the end of this report. Obviously, somewhere that
8 didn't make it -- that didn't make it through.
9 Q. Is this the vitae that appears on your
10 departmental website currently?
11 A. I have no idea what vitae appears on my
12 departmental website. I'd be happy to take a look.
13 Q. Well, tell me: Does this vitae identify all of
14 the cases in which you have testified as an expert at
15 trial or by deposition in the last four years?
16 A. Well, I'm guessing that it's -- it's 2009. It
17 probably stops short. Farmers Branch, Irving --
18 Irving. So I think this -- obviously, this consolidated
19 state case is -- the Section 2 case in San Antonio is
20 not listed here.
21 MR. SCHENCK: Just to clarify the record,
22 when you -- the "here" that we are referring to is
23 Exhibit 2?
24 THE WITNESS: Sorry. Yes. I mean this
25 copy, being 2009, doesn't reference the state case. And

14

1 I don't believe I have testified in anything else. I
2 think the last case I testified in before the state
3 would have been the Irving case, one of the Irving
4 cases. So I think that's -- and I can check, but I
5 think that's -- basically that's the addition, would be
6 the state case.
7 But I normally would -- in that listing,
8 obviously, I list cases I testified in as well as cases
9 I am working on or have worked on. So there are other
10 -- there are other matters I'm working on. But I think
11 that's -- the state case I think is the only other one
12 that I have testified in.
13 Q. (By MR. SELLS) Okay. Which of these cases
14 listed on your CV that is Government Exhibit 2 are
15 Section 5 cases?
16 A. I am not sure that any are Section 5, going
17 back four years and going back before that, I really
18 wouldn't know, just off the top of my head, whether they
19 were -- and I'm assuming most of these are probably
20 Section 2 cases, and I think that's true for the cases
21 listed. Going back to -- going back to 2006, and I
22 think those are all Section 2 cases.
23 Q. How about prior to 2006?
24 A. I just -- I really don't know. At least some
25 of this is -- some of these are where I have worked for

15

1 cities drawing districts and would be involved in the
2 Section 2 submission or explanations of -- I'm sorry --
3 Section 5 submission or explanations. But going back to
4 cases that are -- you jump basically to things that are
5 ten years ago, and I don't really, off of the top of my
6 head, know whether those -- what those issues those
7 involved.
8 Q. Well, let me ask you this: Have you ever
9 participated or consulted in a Section 5 case before?
10 A. I mean, I think everything I've done in
11 redistricting has been subject to Section 2, maybe with
12 the exception of Wisconsin. I think mostly the stuff I
13 do is in covered states. So I'm drawing district plans
14 or if we're in court, there is Section 5 issues there.
15 I don't think I have ever been involved in a Section 5
16 lawsuit in the sense of, you know, a district court in
17 Washington. I don't think I have.
18 Q. How about consulting on a Section 5
19 administrative submission; have you ever done that?
20 A. Yes.
21 Q. Is that reflected in the CV?
22 A. Any place where -- well, what's listed here is
23 not testimony. But if I'm an expert for a city or a
24 jurisdiction consulting on redistricting, it's almost
25 certainly going to involve a Section 5 submission, since

16

1 I'm helping them draw a district plan or something of
2 that sort or changes in polling places.
3 So, I mean, just off the top of my head, I
4 worked for Pasadena Independent School District. It had
5 to do with some polling place changes. There was some
6 language issue responses to a justice about
7 Section 5. Baytown. Goose Creek ISD. There are
8 Section 5 issues. Harris County, there is Section 5
9 issues. I assume some of the previous work with City of
10 Houston probably involved Section 5. Lamar. Galveston,
11 Galveston ISD.
12 Q. In any of those --
13 A. The --
14 Q. Go ahead.
15 A. Somewhere in early 2000 with the state of
16 Texas, there were Section 5 issues involving the LRB.
17 LRB plans.
18 Q. In any of those Section 5 matters that you just
19 listed, did you submit comment or other materials as
20 part of the administrative process?
21 A. I think in -- there may have been -- in some of
22 the submissions made by school districts or cities,
23 there may have been some narrative that was provided as
24 part of assisting them in their redistricting
25 process. I don't think there is anything I would



17

1 characterize as a report. And typically, the Section 5
2 submissions are made by the lawyer for the city or the
3 school district, and so they produce the material, the
4 formal write-up and so forth.

5 I obviously had some input into the write-
6 up that went up to DOJ for the LRB issues in Texas. I
7 had spoke with -- I went with the Attorney General to
8 Washington and -- to meet with the staff at the DOJ on
9 the LRB issues. But I didn't write the -- I mean, I had
10 some input, but I didn't write the report that went up.
11 That was done by the lawyers. And that's the best I can
12 recall.

13 Q. Okay. So this is your first time submitting a
14 full-on report in a Section 5 matter, either judicial or
15 administrative preclearance?

16 A. I think that would be true, yes.

17 Q. Is there anything in this CV, which is
18 Government Exhibit 2, you're aware of that is
19 inaccurate?

20 A. No.

21 Q. Is there anything in Government Exhibit 1 that
22 you're aware of, as you sit here today, that is
23 inaccurate?

24 A. No.

25 Q. Do you understand the term endogenous,

18

1 e-n-d-o-g-e-n-o-u-s?

2 A. Yes.

3 Q. What does it mean?

4 A. In this context, the endogenous is usually
5 intended to reference what's sometimes called the
6 election on all fours. So if this were a case involving
7 the State House of Texas, endogenous elections would be
8 elections to the State House. If it was a mayoral issue
9 or a city council, it would be the city council or the
10 mayor elections. Then other elections to other offices,
11 and presumably similar geography, would be considered
12 exogenous elections.

13 MR. SCHENCK: I'm sorry. Do you want to
14 spell exogenous?

15 MR. SELLS: E-x-o-g-e-n-o-u-s. Thank
16 you. That's one of those words on my list.

17 MR. SCHENCK: Actually, I had thought to
18 jump in, but I thought I'd let you do it.

19 THE WITNESS: I won't jump in because my
20 spelling will be no help at all.

21 Q. (By MR. SELLS) Why do we distinguish between
22 endogenous and exogenous in the context of a voting
23 matter?

24 A. Historically, we distinguish because there
25 often were, more often than not, no endogenous elections

19

1 that were thought to be particularly probative. So in a
2 jurisdiction that had never had an election with a
3 serious minority candidate and if we were interested in
4 focusing on the degree to which various groups in the
5 population might be willing to vote for, or perhaps vote
6 cohesively for a minority candidate, the absence of
7 those elections would make it difficult, if all we had
8 were endogenous elections, to judge the performance of
9 the election system. And it seemed -- it's my
10 understanding that, at least it seemed to the court,
11 perverse, that that could keep you from being able to
12 make some judgment of that, since that might, in fact,
13 itself reflect precisely the issues that were at -- in
14 contention. And so the practice of using exogenous
15 elections to provide those kinds of contests in that
16 same geography or in a broader, often in broader
17 geography, developed.

18 So say the -- throughout the course of, at
19 least the period I have been involved in litigation,
20 almost all cases are based on some combination of
21 analysis of endogenous and exogenous elections.

22 And then, of course, the other side of
23 that is that when you're -- when you're trying to look
24 forward to what a particular change might produce,
25 alteration of the plan might produce, there is a value

20

1 of exogenous elections, in the reconstructed election
2 sense, reconstituted election sense, that they allow you
3 to cover the full geography of the proposed district,
4 and endogenous elections don't.

5 Q. So endogenous elections don't exist for the a
6 proposed plan, right?

7 A. They exist for a proposed plan, but not for the
8 totality of the plan. So they'll -- if you look at an
9 exogenous election report, the endogenous elections are
10 almost always included in the basic printout, but they
11 are included as in -- so if I looked at proposed
12 District 1, I would see endogenous elections for old
13 District 1, as well as perhaps District 2 and District
14 12, and whatever the geography that had been added to
15 the district. So I would see a subset of the old
16 district, or the proposed district and with other
17 districts brought in. And since those are different
18 elections, they just don't -- they're not easy to sum up
19 into something that is gives you as full a picture as an
20 exogenous election. But assuming the exogenous election
21 exists in a geography larger than an encompassing
22 geography for the proposed district.

23 Q. Are endogenous elections generally regarded as
24 more probative?

25 A. Yes. If you can -- again, if you have the



21	1 capability to -- a sufficient number and range of 2 endogenous elections, they are generally preferred and 3 considered more probative than exogenous elections. 4 Q. And do you consider them more probative under 5 those circumstances? 6 A. Well, it does depend on what you're trying to 7 understand about the geography. If you're trying to 8 understand how -- most of this analysis is developed for 9 the purpose of understanding Gingles 2 and 3, so 10 understanding cohesion and polarization. And if your 11 purpose is to understand how it is that voters cast 12 votes, particularly where there are candidates from 13 racial minorities, then understanding how they vote in 14 the endogenous election is more useful than 15 understanding how they vote in exogenous election, if 16 the two are otherwise equal. 17 Q. I heard you mention just a moment ago races 18 with minority candidates in them? 19 A. Yes. 20 Q. If I call those interracial elections, will you 21 understand what I mean? 22 A. Yes. 23 Q. If you have a term you prefer, I would be happy 24 to use that. 25 A. I don't have a shorthand term. I don't know	23	1 if we have -- they have the opportunity to do so. 2 Q. Do interracial elections help us to understand 3 whether minority voters have the ability to elect 4 candidates of their choice? 5 A. They certainly -- they certainly are helpful in 6 that analysis that leads us to being able to make some 7 judgment about electing candidates of choice in some 8 circumstances, yes. They may not be the only 9 information that will be useful, but they are certainly 10 useful in making that judgment. 11 Q. How so? 12 A. They -- in a context, for example, where 13 peoples' vote is, in fact, being driven by preferences 14 for candidates of a particular race or ethnicity, they 15 help us utilize that degree of voting cohesion or voting 16 opposition in combination with demographic information, 17 like the proportion of registered voters, for example, 18 to draw conclusions about how the intersection of those 19 two factors might affect ability to elect candidates of 20 choice. And they both -- they both help us understand 21 what the candidate of choice is, and then help us 22 understand the ability to elect, given the context of 23 the district. 24 Q. If your analysis showed that minority voters 25 were only able to elect their candidates in
22	1 one. There should be one, because it's something we use 2 as lot, right, particularly the feature -- what I would 3 assume by that you mean a contest that features a 4 serious minority candidate and a serious majority 5 candidate, basically, so an Anglo and a Hispanic and an 6 Anglo and a black, so that you have a full chance to see 7 voters express their preferences for the race and 8 ethnicity of candidates in a single election. So I'll 9 assume that's what you're referencing by interracial 10 contest. 11 Q. Okay. And why are interracial contests, as you 12 have described them, important? 13 A. They are important cause they help us 14 understand the degree to which the race or ethnicity of 15 a particular candidate might affect the voting behavior 16 of groups in the electorate. 17 So, in particular, in assessing cohesion 18 and polarization, they will help us understand the 19 degree to which minority voters, for example, vote 20 cohesively for minority candidates when they are not -- 21 when all of the candidates are not, for example, 22 minority candidates, and there is actually competition. 23 And then they will help us understand the 24 degree to which Anglo voters will vote in opposition to 25 minority candidates in an election, again if there's --	24	1 noninterracial elections, in other words, Anglo-Anglo 2 elections, but were not able to elect their candidates 3 of choice in interracial elections when they preferred a 4 minority candidate, would you say under those 5 circumstances that minority voters had the ability to 6 elect their preferred candidates of choice? 7 A. And maybe this is good time to make clear that 8 I'm -- I will try not to offer legal opinions. I used 9 to think I had legal opinions, but I don't think so 10 anymore. I have been disabused of the notion that I 11 have any clue as to how all this works out as a legal 12 matter. But as a -- I mean, I do have a -- sort of, as 13 my take on this, in a research sense or in a personal... 14 My view of that is that a situation in which minorities 15 have a chance to -- an opportunity to elect only 16 candidates that would not be their preferred candidate, 17 if there was a candidate of their race or ethnicity, is 18 not an opportunity to elect a candidate of choice. 19 Q. It's kind of like an opportunity to have any 20 flavor of ice cream as long as it's vanilla? 21 A. I mean, in a sense it is. I mean, and I don't 22 want to be unfair, because I know this is one of those 23 really difficult areas where there is a big separation 24 between what we might use something for to understand 25 how voters are voting, and then what a court might use



25

1 something for as a standard for making a judgment, for
2 example, about a district where there -- where those may
3 be two quite -- quite different issues.
4 So I think the -- you know, candidate of
5 choice in the -- in a nonlegal sense, a candidate of
6 choice just means the candidate that received the most
7 votes from that group. And so that may be -- there is a
8 candidate choice of minorities regardless of the nature
9 of the contest at the level of candidates. And those
10 are candidates of choice. And so in that sense,
11 minorities are electing candidates of choice. I guess,
12 I don't think that that's -- despite some language to
13 the contrary, I don't -- I assume that's not the actual
14 point of having a Voting Rights Act.
15 Q. Since you have mentioned candidates of choice,
16 I'd like to give you a couple of hypotheticals, if I
17 might, and ask you about the candidates of choice in
18 these hypotheticals, okay?
19 A. All right.
20 Q. It's probably easiest if I write them down, so
21 that we don't have keep all of these numbers in our
22 head. Is that okay?
23 A. I would appreciate that.
24 Q. And I will go ahead and mark these as exhibits,
25 and so the world can forever see my awful handwriting.

26

1 But I am creating an election right now
2 with three racial groups, Anglos, black, and Hispanics,
3 and two candidates, Abel and Baker.
4 A. All right.
5 Q. Okay? (Marking document.) And then I'm going
6 to put in some percentages here, which is vote share.
7 Do you understand what I mean when I say vote share?
8 A. So this is -- the vote share meaning not the
9 share of the vote within the groups for the candidates,
10 but the -- or sorry -- would be the vote share. So for
11 Hispanics it would be the proportion of Hispanics who
12 voted for Abel, the proportion for Baker, and not the
13 proportion of Abel's votes that came from Hispanics?
14 Q. Correct.
15 A. Okay.
16 Q. So each racial group row will add up to a
17 hundred.
18 (Exhibit 3 marked for identification.)
19 Q. I have marked this as Exhibit 3.
20 And for the record, Anglo voters gave 50
21 percent of their votes to Abel and 50 percent to Baker.
22 A. All right.
23 Q. Black voters gave zero percent of their vote to
24 Abel and a hundred percent to Baker. And Hispanic
25 voters gave zero percent to Abel and a hundred percent

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1 to Baker.
2 A. Okay.
3 Q. Do see that?
4 A. Yes.
5 Q. Do you see candidates of choice in that
6 election?
7 A. Baker is the candidate of choice of black and
8 Hispanic voters, based on that.
9 Q. I'm sorry. I didn't hear the end of your
10 answer.
11 A. Based on this, on this hypothetical, Baker is
12 the candidate of choice of black and Hispanic voters.
13 Q. Okay. I'm going to take it back and mark
14 "Hypo 1" at the top of it, just so we don't lose track.
15 Do you have a pen with you?
16 A. I have a pencil.
17 Q. A pencil? Okay. Would you circle the
18 candidates of choice?
19 A. (Marking document).
20 Q. Okay. I am creating now Hypo 2. The same
21 candidates, the same groups. (Marking document.)
22 And for the record, Anglo voters in this
23 hypo have given, once again, 50 percent to Abel and 50
24 percent of their votes to Baker. Black voters have
25 given 49 percent of their votes to Abel and 51 percent

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1 to Baker, and Hispanic voters have given 51 percent of
2 their votes to Abel and 49 percent to Baker.
3 And this is Government Exhibit 4.
4 (Exhibit 4 marked for identification.)
5 Q. (BY MR. SELLS) And the witness has circled --
6 A. So I'm circling for, in this case, the 51
7 percent for Baker would indicate that in a -- sort of a
8 purely technical sense, Baker is the candidate of choice
9 of black voters, and that similarly, in a purely
10 technical sense, Abel is the candidate of choice of
11 Hispanics. And, in fact, of course, if we look at this
12 in a sensible way, there is really no difference in
13 candidate of choice for any of the voters in the
14 election, since Anglos are splitting 50-50. Blacks
15 51-49. Hispanics 51-49. Basically everybody is
16 splitting their vote between the candidates.
17 So in a technical sense, we have a
18 candidate of choice, as we would any time we have one
19 extra vote, and then in a sort of more sensible kind of
20 way, there is no apparent racial pattern to the voting
21 at all.
22 Q. Okay. Okay. I am creating Hypothetical
23 number 3. (Marking document.)
24 Before we go to Hypothetical number 3, let
25 me ask you another question about Hypothetical number 2



29

1 and number 1.
2 If I were to tell you that Baker won that
3 election, both of them, in Hypothetical 1 and
4 hypothetical 2, which are Government Exhibits 3 and 4,
5 would you say that black voters were able to elect their
6 candidates of choice in those two elections?
7 A. Again, in a -- in one election -- and I think
8 in a -- basically where there is a cohesive candidate of
9 choice, a cohesive vote, and so the candidate receiving
10 cohesive black vote is elected in Hypothetical 1. So
11 there -- in that case, that's clearly true.
12 Here, there is no cohesive black voting.
13 And so as it happens, at least our estimate of that
14 vote, breaks 51-49. So in a technical sense, the
15 candidate of choice of black voter is elected. But,
16 again, there is no black cohesion. So I think that's --
17 those are substantively, and obviously, very different
18 cases. But in a, sort of in a technical sense, the
19 result is the same with regard to the black candidate of
20 choice being elected in both cases.
21 Q. Okay. This is Hypothetical number 3, and it's
22 Government Exhibit 5.
23 (Exhibit 5 marked for identification.)
24 Q. (BY MR. SELLS) This is hypothetical has two
25 elections on it. The first is identical to Hypothetical

30

1 number 2, only I have labeled it Primary Election. And
2 the second, which I have labeled General Election, is no
3 longer between Abel and Baker. It's between Cain and
4 Baker. No relation to Herman Cain.
5 So again, in -- we've got Anglo, black,
6 and Hispanic voters. And in the general election
7 between Cain and Baker, Anglo voters give 90 percent of
8 their votes to Cain and 10 percent to Baker. Black
9 voters give zero percent of their votes to Cain and a
10 hundred percent to Baker. And Hispanic voters give zero
11 percent of their votes to Cain and a hundred percent to
12 Baker.
13 First of all, would you identify the
14 candidates of choice for me?
15 A. (Marking document).
16 Q. And in this case, what have you circled?
17 A. In the -- what you have labeled the Primary,
18 the candidate -- there is no candidate of choice for
19 Anglos. The black candidate of choice is Baker. Again,
20 51 percent, so the technical candidate of choice. The
21 Hispanic candidate of choice, in a technical sense in
22 the primary, is Abel, with 51 percent of the vote.
23 In the general election, Anglos give 90
24 percent of their vote to Cain, so Cain becomes the
25 candidate of choice. Blacks give a hundred percent of

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1 their vote to Baker. Baker becomes the candidate of
2 choice. And the Hispanics give a hundred percent of
3 their vote to Baker, so in that election Baker is
4 candidate of choice.
5 Q. In this election, would you say that black
6 voters elected their candidate of choice?
7 A. In the general election?
8 Q. Well, one doesn't get elected in a primary,
9 right, one gets nominated.
10 A. All right.
11 Q. Do you disagree with that?
12 A. No.
13 Q. Okay. So were black voters able to elect their
14 candidate of choice?
15 A. In the general election, the candidate of
16 choice of black voters was elected, assuming Baker wins
17 the election. I don't know if you mentioned that.
18 Q. I didn't mention that. Thank you. But yes,
19 Baker wins.
20 A. Yes.
21 Q. And were Hispanic voters able to elect their
22 candidate of choice?
23 A. Technically, Hispanic voters were not -- or
24 sorry. In the general election, the Hispanic voters
25 elect their candidate of choice.

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1 Q. I think I've got my last hypothetical, and it's
2 number 4.
3 A. Or 6.
4 Q. It's Government Exhibit 6.
5 A. Oh, I'm sorry.
6 Q. Hypo 4.
7 A. You're right. I'm sorry.
8 Q. (Marking document.) Hypo 4, which is Government
9 Exhibit 6.
10 (Exhibit 6 marked for identification.)
11 Q. (BY MR. SELLS) Okay. And this is going to be
12 identical to Hypo number 3, except for the primary
13 election. So here again, we have got the three racial
14 groups, Anglos, blacks and Hispanics, and in the
15 primary, two candidates, Abel and Baker. And I screwed
16 up on the hypothetical. I'm going to start over.
17 A. It had to happen eventually. It's a lot to
18 keep straight. I certainly appreciate the fact that you
19 decided to write these down, because I can just imagine
20 us this in a...
21 Q. And if my hotel had a better business center, I
22 would have had them printed out.
23 MR. SCHENCK: It's going to take you a
24 minute to write that, do you think?
25 MR. SELLS: Sure. Do you want to go off



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1 the record for a minute?
2 MR. SCHENCK: Sure.
3 (Recess from 11:07 a.m. to 11:09 a.m.)
4 MR. SELLS: Back on the record. I
5 appreciate everyone's indulgence.
6 I am handing the witness Government
7 Exhibit 6, Hypo 4. This is a -- the same two elections
8 that we saw in Hypo 3. We have a primary election
9 between Abel and Baker. Anglos voters gave 50 percent
10 to each candidate. Black voters gave a hundred percent
11 to Baker. Hispanic voters give a hundred percent to
12 Abel. And then we have the general election between
13 Cain and Baker, so Baker won the primary. And Anglo
14 voters, in the general, give 90 percent of their votes
15 to Cain and 10 percent to Baker. Black voters give zero
16 to Cain and a hundred to Baker, and Hispanics give zero
17 to Cain and a hundred percent to Baker.
18 So first, would you please identify the
19 candidates of choice?
20 A. All right. So in the primary, the candidate of
21 choice of Anglos is undetermined. The candidate of
22 choice of black voters is Baker. The candidate of
23 choice of Hispanic voters is Abel.
24 In the general election, the candidate of
25 choice of Anglos is Cain. The candidate of choice of

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1 black voters is Baker. The candidate of choice of
2 Hispanic voters is Baker.
3 Q. And you see I have put a little "W" by Baker's
4 name on this hypothetical, indicating that Baker won.
5 Would you say in this instance that black voters elected
6 their candidate of choice?
7 A. In the general election, black voters elected
8 their candidate of choice.
9 Q. And how about Hispanic voters?
10 A. In the general election, Hispanic voters
11 selected their candidate of choice.
12 Q. Do you know what multicollinearity is?
13 A. Yes.
14 Q. Can you describe for it me?
15 A. Multicollinearity is a statistical matter, is a
16 situation in which there is shared variance between two
17 variables, typically two independent variables, and we
18 are unable, in the -- and we think of that as a
19 difficulty in a model -- we are unable to, without
20 additional information, disentangle or attribute the
21 shared variance to one or the other of those variables.
22 Q. Is it a good thing or a bad thing?
23 A. Oh, that's very hard to say. Statisticians
24 don't much care for it. If your interest is simply in
25 fully understanding the independent effects of two

35

1 variables, then multicollinearity can be a bad thing.
2 And it occurs in the world a lot, and it can also be an
3 informative thing. So I mean, I think -- I'm always --
4 I have never liked the notion that diagnostic standards
5 in statistics are simply ways of identifying a problem
6 to be fixed. Like everything else that a model reveals,
7 they reveal something about the world, the fact that
8 things are multicollinear. And the model may be simply
9 a data flaw or a model flaw, but it may also tell us
10 that these things are multicollinear in the world. So I
11 think they are -- beauty is in the eye of the
12 beholder. I don't find them distasteful personally, if
13 that's what you mean by good. If we're trying to
14 understand the independent effects of the two variables
15 or the nature of their shared effect, then usually we
16 would want to try to bring more information to bear and
17 reduce the degree of multicollinearity. It does --
18 multicollinearity reduces our statistical confidence in
19 the estimates.
20 Q. Does multicollinearity bias the estimates in
21 any systematic way?
22 A. It would depend on the estimates. Ordinary
23 least squares is -- remains unbiased in the face of
24 multicollinearity. Ordinary least squares is unbiased
25 in the face of multicollinearity. Inefficient, but

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1 unbiased.
2 Q. What do you mean by inefficient?
3 A. Inefficient in that it -- the standard errors
4 grow, so we have a larger standard error in the face of
5 what are confidence interval around our estimates, but
6 the estimates themselves are unbiased.
7 Q. Would that mean, then, that your estimates are
8 less likely to be statistically significant because they
9 have larger standard errors?
10 A. All other things being equal, yes.
11 Q. Does the issue of multicollinearity arise in
12 voting analysis?
13 A. It does.
14 Q. When does it arise?
15 A. Obviously, it arises broadly for all sorts of
16 things where we're trying to explain a particular kind
17 of voting behavior. It can arise in a particular data
18 situation, when we have basically two variables that
19 take on the same values across our cases, and so
20 don't -- basically don't provide us a way of
21 disentangling two variables. So in a particular
22 analytical situation, we might easily have
23 multicollinearity.
24 So if we were interested in whether people
25 usually vote for tall candidates or short candidates, we



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1 are also interested in whether people have a preference
2 for candidates with a full head of hair or candidates
3 that are going bald, then if we have Sub A for
4 presidential election going in, in which the tall
5 candidate has a full head of hair, so Rick Perry is
6 running for the Republicans, then the Democrats are --
7 have a -- well, of course, Obama is at least as tall as
8 Rick Perry, so there goes my analogy. But suppose the
9 Democrats nominated some short guy without any hair.
10 It's hard to imagine, but the Democrats do that kind of
11 thing every now and then. So there we would have a case
12 where we would not be able to disentangle the effect of
13 height, which we know the tall candidate usually wins,
14 and, you know, good hair, which, at least in mythology
15 somewhere, good hair is important.

16 So we couldn't disentangle them. So what
17 we want to do, of course, it's fairly obvious there, we
18 want to add some more cases in which we actually had
19 those things going in the opposite directions. We're
20 going to swap those, and then being good political
21 scientists, we would probably also want to swap things
22 like which one was running from which party and et
23 cetera, et cetera.

24 Q. In the circumstance of Section 2 or Section 5
25 analysis -- or let me just say more broadly -- voting

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1 Rights Act analysis, when does multicollinearity arise?
2 A. Well, and certainly one case would be if you
3 have an election which you have a minority candidate
4 running as a Democrat and an Anglo candidate running as
5 the Republican, then you are trying to decide if the
6 voting behavior of the voters was affected by
7 partisanship or by the race ethnicity of the candidates,
8 where, if you had an election or a series of election in
9 which the minority candidate is always the Democrat, you
10 would have a hard time disentangling the party voting
11 from racial or ethnic voting.

12 Q. So multicollinearity would only arise if you
13 are doing a multivariate analysis, right?
14 A. I mean, it's important that you -- you
15 recognize it -- it's important that you recognize what
16 your model is, not simply what the model you're testing
17 is, I guess, is one way of putting that.

18 So if you're drawing conclusions -- you
19 may be drawing conclusions about -- you may have a
20 bivariate model in which you are drawings conclusions
21 about something that obviously has multivariate
22 implications. You just simply -- you have a censored
23 variable. But you just basically didn't throw the other
24 variable in to find out it was multicollinear.

25 So we could do a simple analysis of did

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1 blacks vote for the black candidate, in which all of the
2 elections the black candidate is the Democrat, then we
3 find out that blacks vote for black candidates.

4 We could do an election in which the only
5 only black candidate is the Republican candidate for the
6 Supreme Court, and we find out that all whites vote for
7 the black candidate and blacks all vote for the white
8 candidate. In that case, neither of those are
9 multivariate analyses, but they are -- because we have
10 left out a variable in which we have multicollinearity
11 potential, multicollinearity issues at some level.

12 Although in that particular case, if we
13 just compare those two cases, we don't have
14 multicollinearity, and we have effectively separated the
15 two variables. They are no longer collinear. In that
16 case, our analysis would let us distinguish quite nicely
17 which, that the operating variable there is party and
18 not race or ethnicity.

19 On the contrary, if we saw the opposite
20 result, obviously, we would disentangle it the other
21 way; that the operative variable was race and ethnicity
22 rather than party. And something in between would leave
23 us with a less determined result.

24 Q. Could you run ordinary least squares analysis
25 with more than one racial group at a time, such that

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1 it's a multivariate analysis?
2 A. Yes.
3 Q. And could we have multicollinearity under those
4 circumstances?
5 A. To the extent that we had less than -- to the
6 extent that there was shared variance in the proportion
7 minorities, that they didn't vary in sort of random
8 fashion, that they varied in some meaningful way, and
9 therefore there is some correlation, for example,
10 between percent black and percent Hispanic, then we
11 would have multicollinearity.

12 Q. And if you were trying to estimate the percent
13 black and the percent Hispanic vote share for a certain
14 candidate, in a multivariate way like that, how would
15 the presence of multicollinearity affect your
16 interpretation of the results?
17 A. It would -- to the extent that the proportion
18 for racial groups was correlated, it would increase the
19 standard errors of your estimates. So you would have
20 less confidence in the individual estimates, if there
21 was in fact -- you would have less confidence than you
22 might otherwise think based on the sample size because
23 of the degree of intercorrelation between the
24 explanatory variables, and that would be reflected in
25 increased standard errors.



41	1 Q. And the increased standard errors would reduce 2 your likelihood of finding statistical significance of 3 the model? 4 A. It would reduce the likelihood of you finding 5 statistical significance for the individual slope 6 parameters, but not for the model. 7 Q. Okay. If what matters is the relationship 8 between the race of the voter and votes for the 9 candidates, would you want to run that in a bivariate 10 way or a multivariate way? 11 A. It would depend on whether there were 12 significant multiple racial groups. If there are 13 multiple racial groups in the population, then you would 14 typically -- if you -- if you have a population that 15 consists of blacks, Hispanics and Anglos, for example, 16 and if you run a bivariate model that basically just 17 takes blacks as the explanatory variable, then you 18 eliminated the problem of multicollinearity, right? 19 Such magic. A lot of statistical magic. But you have 20 introduced an omitted variable problem. So now your 21 model is not properly specified. And so in no real 22 sense have you made the multicollinearity problem go 23 away, right? It just won't be diagnosed as 24 multicollinearity because you have bivariate estimate. 25 So the bivariate estimate will be affected	43	1 better estimate by including them. 2 Q. Well, let me ask you about the opposite 3 scenario, where, in fact, you only do have two groups, 4 whether it be black and white or Hispanic and white. 5 Under those circumstances, would you be better off 6 running the multivariate model or the bivariate model? 7 A. If you only have two groups, you won't have a 8 multivariate model. There won't be another variable to 9 put in. I mean, the intercept will take the value for 10 one of those two groups, and so you'll just -- and you 11 can't put proportion black and proportion white both 12 into the model, if all you have is black and white. The 13 matrix won't invert, right? There's... 14 Q. Okay. But the scenario I have in mind is 15 something, let's say, as -- you've got a territory 16 district, we'll call it, that is 60 percent Hispanic, 35 17 percent Anglo, and 5 percent black. So you have very 18 small numbers. But you do have data on blacks. So it's 19 not zero. Under those circumstances, would you want to 20 use the multivariate model, including black, or a 21 bivariate model, just Anglo and Hispanic? 22 A. It's going to depend on how those percentages 23 are distributed across the actual units that you are 24 doing the analysis on, less than it depends on how they 25 are distributed in the aggregate.
42	1 by the fact that you have failed to properly identify 2 the important racial groups on the independent variable 3 side of the equation. 4 So I guess given the choice, if you are 5 interested in sort of getting the best indicator, all 6 other things being equal, you would probably be better 7 off to specify the model correctly, and at least be -- 8 and therefore deal with the degree of multicollinearity 9 in an apparent way as opposed to simply sweeping it 10 under the -- under the model. 11 Q. And when you say specify the model correctly, 12 do I understand you correctly to mean if you've got 13 multiple racial groups in significant numbers, you 14 should use the multivariate analysis so that you take 15 into account all the groups simultaneously? 16 A. Well, again, all other things being equal, if 17 you have the appropriate data and can utilize the 18 multiple racial groups, you should get a more stable 19 estimate of any particular group by using all of that 20 information rather than by throwing that out. 21 If what you have in population are 22 basically just blacks and whites, then, obviously, there 23 is not another issue there. But to the extent that you 24 have those multiple groups, then you have -- and you 25 have comparable data on them, you typically would get a	44	1 So if the 5 percent black, for example, 2 is -- they are a series of a hundred percent black 3 precincts, and then there are a series of no black 4 precincts, it's that distribution within the data set 5 that's going to make the biggest difference to how 6 that's going to work out in the estimator and not the 7 relative -- if you have a very small number of blacks 8 distributed in a very uneven fashion, that will give you 9 a pretty good estimate. And you can have a larger 10 number of blacks distributed in a way that's not helpful 11 to you, that is exactly the same across all the 12 precincts that won't give you very helpful information. 13 So it's the distribution that's more 14 important. But in general, assuming that it is both 15 small and presumably not particularly usefully 16 distributed, then it's not going to make that much 17 difference to your estimate of interest, whether you 18 include it or don't include it. 19 MR. SELLS: We've been going a little over 20 an hour. How about we take a bathroom break, so the 21 rest of us can use the men's room. Is that all right? 22 THE WITNESS: Yes. 23 MR. SELLS: All right. Off the record. 24 (Recess from 11:30 p.m. to 12:02 p.m.) 25 MR. SELLS: Okay. Back on the record



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1 after a break.
2 Q. (BY MR. SELLS) Dr. Alford, did you talk with
3 anyone during the break?
4 A. I spoke with Mr. Schenck and Mr. Stevenson.
5 Q. And what did you talk about?
6 A. Mostly trying to figure out where we were going
7 with all this. I guess I am somewhat mystified,
8 particularly about the multicollinearity issue. So we
9 speculated about where that might be going, without any
10 success, I might add, at least not any that I felt
11 confident about.
12 Q. What was y'all's best guess?
13 A. Well, there was -- some opinion was that this
14 was centered around some issues with cohesion analysis;
15 that maybe there was something somewhere in all the
16 cohesion analysis from the Section 2 trial that maybe
17 were -- and obviously, my initial reaction was to think
18 of this as having to do with party and race. As you
19 know, I kind of went off on the wrong tangent there,
20 where you were interested in something else. So I guess
21 that's sort of the consensus opinion is, it had
22 something to do with some cohesion analysis, but...
23 Q. Did you know that attorneys sometimes ask
24 questions for no reason at all?
25 A. I -- I hope that's true.

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1 MR. SCHENCK: Judges certainly think so,
2 most of the time, and jurors probably even more so.
3 THE WITNESS: Well, I won't be that harsh.
4 Q. (BY MR. SELLS) Did you talk about anything else
5 during the break?
6 A. There was some discussion about the
7 hypotheticals and about the -- you know, whether I was
8 sort of sufficiently explaining my beliefs about how
9 those might connect up in some way as opposed to just
10 answering technically what's true in each of those
11 stages.
12 Q. Did you all discuss changing any of the answers
13 you gave during the morning session?
14 A. No.
15 Q. When did the State of Texas first contact you
16 about becoming involved in the 2011 redistricting
17 process?
18 A. It was in the spring of 2011. I'm thinking it
19 was April. But it could have been -- the first contact
20 may have been a little bit earlier, but I think it was
21 about April.
22 Q. Do you know if it was early April or late
23 April?
24 A. I think probably early. But -- and it could
25 have even been late March, because I know at the first

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1 contact, I indicated I would want to talk to some other
2 people before I made a decision. And I think, if I'm
3 not mistaken, that basically there was a contract
4 produced sometime around the middle or toward the end of
5 April. So given that I took some time to talk to
6 people, that first contact would -- I would guess would
7 be either late March or early April.
8 Q. Well, you anticipated my next question, which
9 was: When did you decide to become involved? And that
10 would have been mid to late April?
11 A. Yeah. My recollection is that I actually
12 signed a contract toward the end of April. That's -- I
13 mean, there is a contract somewhere with a date on it.
14 But that's my recollection.
15 Q. And what were you engaged to do?
16 A. To assist the state in dealing with the,
17 basically the Voting Rights Act issues particularly
18 related to voting behavior that would come up in
19 challenges to the various state plans. So Board of
20 Education, Senate, House, and Congress.
21 Q. You are engaged specifically to deal with the
22 Voting Rights Act challenges?
23 A. Yeah, I guess, I mean, obviously -- or maybe
24 not obviously, I shouldn't say, because you're a lawyer,
25 so... And I mean that in the right way, that is, that

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1 you are more analytical in your thinking about these
2 issues. But, so they are obviously discussing both
3 Section 5 and Section 2. So in the sense of, you know,
4 that these will have to be precleared, obviously, and so
5 they would -- all right. And they're -- basically that
6 they had legal responsibilities with regard to these
7 plans, that is, preclearance, and then Section 2
8 challenges, and my assisting them in providing an expert
9 opinion on those issues. Initially, I think that the
10 notion was that that might or might not involve
11 testimony, and then at some point, there was a
12 determination much later, I guess, that I would actually
13 testify.
14 Q. When was that determination made?
15 A. I am thinking summer, maybe even toward the
16 end. Mid toward the end of summer.
17 Q. So if I have my timeline right, you were hired
18 before any of the plans was actually adopted?
19 A. That would be my guess, although I don't
20 actually know -- I haven't followed the timeline of
21 adoption specifically. But my recollection is, I was
22 hired before plans were actually -- certainly before the
23 governor signed any of the plans. And then I don't know
24 where about the exact time line or whatever it falls
25 from there.



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1 Q. When did you begin work?
2 A. The first thing I did was ask for, sort of,
3 representative sets of the data products that the state
4 was producing so we could talk about whether those would
5 be sufficient for my analysis or not. And then we
6 talked about -- I talked with the data people about
7 refining some of that and doing things that -- you know,
8 what sort of things would make sense. And then, of
9 course, when actual plans got adopted, then we started
10 applying that to -- that analysis to actual plans.
11 Q. Okay. I want to follow up on several things
12 that you just said. First, I heard you say that you
13 asked for representative sets of data that the state
14 produced. Can you tell me a little bit more about what
15 you mean by that?
16 A. So they're -- where there a series of kind of
17 demographic profiles that are produced, just as a Red
18 225 as an election report. There's like a Red 103
19 that's, I think, a citizen data or something. So there
20 are a series of reports, in addition to which the data
21 people at the Office of the Attorney General were
22 running regression analysis looking at voter cohesion.
23 So that's basically kind of the -- sort of
24 the demographic materials that sum up the nature of the
25 districts. The reconstituted election analysis, that's

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1 a standard part of the TLC package. And there was -- I
2 think at that stage, there was independent reconstituted
3 election analysis being done by the Office of the
4 Attorney General, and then there was a voter ecological
5 regression analysis of voter cohesion.
6 Q. Just to be clear, what you have just listed for
7 me is the universe of data that you received when you
8 asked for essentially what y'all have?
9 A. Well, I was, at that point, mainly concerned
10 about the form in which stuff was being produced, that
11 is, how that might be better summarized, whatever, and
12 having some idea of sort of the breadth of what was
13 going on, and I believe that's the -- reports
14 addressing, various reports addressing those issues were
15 the -- what I received at that stage.
16 And I think -- although I am not certain,
17 I think that set may have been on a proposed -- well, I
18 was on a proposed plan, because nothing was adopted.
19 And it may have been on a -- for some reason, I think it
20 might have been on a State House proposed plan, but I'm
21 not sure.
22 Q. I think the next thing I heard you say was that
23 you then refined -- I think the word that you used was
24 refined -- the sets of data that were available to you
25 and what you would be looking at? Did I get that right?

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1 A. Yes. So two basic things: One is for my own
2 purposes producing tables that brought together
3 information that sat in different tables. So when I
4 look at the demographics of districts, for example, I
5 would want to see both Spanish surname voter and citizen
6 proportions for Hispanic and black in a single table,
7 and TLC doesn't produce them as a single table. It
8 produces the Spanish surname voter in an election table;
9 it produces VAP and general population in a table, and
10 it produces citizenship in a separate table. And so
11 what I would want to see, in looking at a district, is
12 see all of the demographics in one place, so that I
13 could look across a row.
14 Q. And so did someone construct that report for
15 you?
16 A. No. In the end, that was -- that was one of
17 the things that -- because of a variety of time
18 constraints and other data issues, we never actually got
19 a nice table with everything in one place. So I spent
20 my time flipping between reports.
21 Q. I know that feeling.
22 Did the state ever do any custom reports
23 at your instruction?
24 A. The one thing that we developed across this
25 period of time is the capability for the state to do an

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1 ecological inference analysis rather than the analysis
2 they had been doing, which was an ecological regression
3 analysis. So there -- at some point, that, the sort of
4 ecological regression estimates were produced, I would
5 guess had not been produced before, and were produced
6 specifically for this issue, primarily to parallel. So
7 this came, sort of, later on, the parallel analysis done
8 by several of the experts, the plaintiffs' experts in
9 the Section 2 case.
10 Q. When did this take place that you developed the
11 EI analysis with the state?
12 A. I don't really know when that process started,
13 in the sense that I just can't recall when that
14 discussion got going. But it's been an evolving
15 project. So it basically continued to evolve over the
16 course of preparing my expert report for the Section 2
17 case. But I don't know exactly when that process
18 started. There's a lot of back and forth in getting
19 that worked out.
20 Q. Was EI something that you used and relied on
21 prior to the passage of the plans?
22 A. It's not something I have traditionally used,
23 but Richard Engstrom has convinced me that it's the
24 better way to go. So I had done this analysis for
25 another case in which he was the expert on the other



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1 side. And in the -- as the reports came in, it was
 2 clear -- and so I knew that he would be using that
 3 technique, and I was convinced that thus it would be
 4 useful to be able to replicate that. And we started
 5 discussion earlier.

6 As it turned out, other experts were also
 7 relying on that. So it became kind of a central
 8 methodology for that -- for this case. But it's -- and
 9 I'd say this is the first case where I relied primarily
 10 on ecological inference results as opposed to ecological
 11 regression results.

12 Q. Okay. But the question I am trying to answer
 13 is whether you used EI that you developed with the state
 14 in the time period between your initial engagement and
 15 when the governor signed the bills much later?

16 A. No, I don't know -- not that I know of. Or
 17 wait a minute. I should clarify that. When I first
 18 discussed EI with the state data people, they had said
 19 that they were -- that they had been working on trying
 20 to implement EI and were having some issues about how
 21 exactly to do that. And so I don't -- it's possible
 22 that that -- what they were working on there, that that
 23 process had something to do with -- with what would have
 24 occurred before the signing of the bills. The analysis
 25 that was produced for me was not produced at that point,

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1 but I guess it's possible there was an analysis
 2 produced.

3 Q. So among all of the data that was available to
 4 you from various arms of the state, did you have a
 5 standard package of reports that you wanted to receive
 6 for any given plan?

7 A. I -- sort of -- I don't know about a package of
 8 reports, but, you know, the basic information that I
 9 wanted to have for -- for the plans. So I wanted the --
 10 obviously, the full set of demographics, including
 11 citizenship and the registered vote data. And I wanted
 12 the reconstituted election analysis. And then to the
 13 extent that we could get cohesion analysis that let us
 14 address basically the cohesion analysis that was being
 15 presented by the plaintiffs' experts in the Section 2
 16 case, I wanted cohesion analysis.

17 Q. Anything other than those three things that you
 18 regularly relied on in the course of your work?

19 A. I can't think of any.

20 Q. The first item you mentioned, a full set of
 21 demographics, did that come from Red Apple in one of the
 22 Red reports, or did that come from some other source?

23 A. I think almost everything came from -- my
 24 recollection, at least, is almost all of that came in a
 25 Red report. So that I know the citizenship analysis I

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1 was looking at, and I'm pretty sure was out of a Red
 2 report. The reconstituted elections are Red 225. And
 3 certainly the SSRV is out of the -- that's available
 4 even on District Viewer, right? That's in the -- what
 5 they call their election report in District Viewer.

6 Q. The reconstituted election analysis, the Red
 7 225 report --

8 A. Yes.

9 Q. -- did you ever receive reconstituted election
 10 analysis that was prepared by the Office of the Attorney
 11 General?

12 A. They had a reconstituted election analysis
 13 based on a subset of elections, so it was not the full,
 14 here are all the elections in the jurisdiction. So I
 15 think it was a -- I think an index of ten elections.
 16 And I received that for -- I'm sure for baseline and
 17 probably for the adopted plans.

18 Q. Have you heard that report being referred to as
 19 the DEA report?

20 A. That sounds familiar. I remember thinking,
 21 when I saw it, that it sounded like something quite
 22 different than what it was.

23 Q. I think that's stands for District Election
 24 Analysis.

25 A. I think that's correct.

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1 Q. The third item you mentioned was the cohesion
 2 analysis. That was regression analysis performed by the
 3 Office of the Attorney General?

4 A. I think -- and so the first thing I saw, there
 5 was a regression report being prepared by the Office of
 6 the Attorney General using ordinary least squares in a,
 7 kind of an experimental attempt to do something EI-like
 8 when we talked about that. Yes. I don't think that's
 9 TLC. I think that's -- that's something that's done at
 10 Office of the Attorney General.

11 Q. I want to try to get a sense of when you were
 12 doing your work with these materials. Were you
 13 reviewing these materials and analyzing these materials
 14 for proposed plans as well as the final adopted plans?

15 A. I don't think I did any analysis on proposed
 16 plans. I think the -- that first set of information I
 17 got was for proposed plans, because I don't think
 18 anything had been adopted at that stage. So I was
 19 working on that to get an idea of sort of what was
 20 available, but not for the purpose of actually analyzing
 21 a particular proposed plan.

22 There was -- one of the times that I
 23 visited with the AG's office, there was discussion of, I
 24 think, maybe a DEA number for a proposed plan. And
 25 that's the only time I recall any discussion about --



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1 specifically about sort of comparing proposed plans.
2 And that was not a -- and that's not a comparison I did,
3 but just a comparison that somebody else had done of --
4 I think it may have been -- I don't know if it was -- I
5 think it was -- I don't know -- proposed against
6 proposed or proposed against baseline. But there was
7 discussion about a DEA number for a plan.
8 Q. I'm not sure I understand what you mean by a
9 DEA number.
10 A. And so this -- again, the -- this index of ten
11 elections that was being -- the report that was being
12 prepared where you could look at the -- you know, what
13 proportion of the ten selected elections the Democratic
14 candidate was elected. And so there was some discussion
15 about some district in a proposed plan and about, you
16 know, what variation of that number meant; that was a
17 six different than a four or something like that.
18 Q. Did you have any view on whether a six is
19 different than a four?
20 A. I don't actually remember what the particular
21 comparison was. But my recollection is, I didn't think
22 that those were -- that those two numbers -- and I think
23 they represented -- I think now the number was one thing
24 in one proposed plan and one thing in another proposed
25 plan, and they struck me as basically substantively the

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1 same number. So I said I don't think it matters; that
2 those are substantively the same number.
3 Q. Is it still your view today that six out of ten
4 elections and winning four out of ten elections is
5 substantively the same?
6 A. Again, I don't think that was the -- I'm just
7 giving that as an example. I don't think those were the
8 actual -- I'm fairly sure those weren't the actual
9 numbers, because I think they are -- I mean, I would
10 have been prompted to say, well, they may not be
11 substantively different, because this is a selected
12 index, and they are fairly close to each other, and we
13 don't know anything about their representativeness.
14 But, I mean, I certainly wouldn't have said -- you know,
15 that's -- you know, one of those is above five and one
16 is below five, so there will be a lot of made of that,
17 whether it's substantively different or not. So my
18 recollection is it's two numbers fairly close to each
19 other, but both on the same side of five, which would
20 lead me to think it really doesn't matter, right?
21 But in terms of your general point, no, I
22 don't think making a lot of small differences on
23 selected or competitive indexes of election outcome is
24 terribly useful.
25 Q. Why not?

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1 A. Well, whether the elections are selected at
2 random or whether they are the complete set of available
3 elections or whether they are selected for some
4 particular purpose, I mean, they can be selected for the
5 purpose of making an index look a certain way. They can
6 be selected without regard to what they might look
7 like. But regardless, they are selections.
8 I think there is some advantage to having
9 the selection be all the elections that were presented
10 to us, and all the ones we have actual data for. So I
11 kind of have a preference for a more comprehensive
12 index, but I understand why other people like more
13 selective indexes. But in all of those cases, they are
14 simply what we had available to look at, and they
15 represent a limited set of the possible realities.
16 We were using them to make -- so there is
17 uncertainty built into that itself, and then we are
18 using it, typically, to make some -- or often to make
19 some projection in which we are gauging a possible
20 future. And given the uncertainty in both of those
21 tasks, I think it's important to be cognizant, something
22 that's -- I point out someplace that I think there is
23 some distinction being made between a 50 percent number
24 and at 48 percent number. That's just -- and the data
25 doesn't support that kind of a degree of difference.

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1 And I think the other -- the other thing
2 that I think is -- I think having some bright line
3 standard in which, for example, 51 means something very
4 different than 49, it can be really useful in something
5 where like 51 really does mean something different than
6 49, like in the outcome of an election, where one person
7 gets elected and the other doesn't. 51 percent of the
8 elections breaking one way versus 49 percent of the
9 elections, but nobody is being elected by that. It's
10 not comprehensive in any broader sense.
11 So I think they are -- that's not a very
12 large difference, and it doesn't become a more important
13 difference when it straddles some arbitrary line like
14 50. 98 and 99 are not really different than each other,
15 and 97 and 99 aren't really different than each other,
16 and 49 and 51 aren't different than each other in this
17 context.
18 So I think there is much too much being
19 made about the notion that somehow -- that this data is
20 exact or that this data provides the ability to make
21 brightline distinctions. I think it provides the
22 ability to characterize, generally characterize
23 performance in districts, generally characterize some
24 districts as performing better than others. But I think
25 you can easily make too much the distinction,



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1 particularly where the differences are small, or where
2 the differences are one index to another. I think you
3 basically look at all the indexes.
4 And my view is that the indexes pretty
5 much tell you the same thing substantively, but that
6 they often do tell you something differently
7 mathematically. And they don't have any mathematical
8 properties by magic. They just have the ones that we
9 get from analyzing the data. And in this case, they are
10 -- they are not particularly precise estimates of either
11 the past or the future.
12 Q. Do you think the indexes can be useful to
13 measure changes from a benchmark district to a proposed,
14 if you hold the races in the index constant?
15 A. I think if you hold the -- again, if you're
16 comparing apples to apples, they can be helpful in
17 comparison, again, you know, keeping in mind that they
18 characterize kind of ranges. I think they characterize
19 districts that are almost certain to elect, districts
20 that are -- that are almost certain not to elect, and
21 then districts that will sometimes elect and sometimes
22 not elect. I think that's probably -- if I was going to
23 divide them up kind of in the ranges, I think that's
24 kind of the range. And as you get in, but like there is
25 no precise number that says one point here, this is a

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1 whatever, right, but just to those characterized general
2 ranges.
3 So to the extent you compare apples to
4 apples and you've got an existing plan versus a proposed
5 plan and they are clearly in different parts of that
6 range, I think that can be -- that can be helpful. I
7 think that's exactly why you would want to do this.
8 It's not -- it doesn't take into account some other
9 things that are important that we would need to think
10 about, but it's useful -- that's a useful piece of
11 information to have when we're looking -- so looking
12 toward a district's performance, our future expectation
13 about an adopted district's performance, I think that's
14 a useful piece of information about the district.
15 Q. Can indexes help you determine whether
16 performance is more likely than not to happen?
17 MR. SCHENCK: Object to the extent it
18 calls for a legal opinion. I know that Dr. Alford
19 indicated at the beginning he is comfortable talking
20 about social science, and I don't want to over object.
21 I know you've got a deposition to take here. But to the
22 extent that you're okay with him answering on his
23 opinion, understanding that it's a social science
24 opinion, that's fine. Is that okay?
25 MR. SELLS: Sure.

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1 A. Certainly in the sense that we're looking at
2 them retrospectively, they tell us something about
3 likely -- more likely than not or less likely than
4 not. In the sense that we're projecting toward the
5 future, we don't really have a very -- obviously, in the
6 sense of the index itself, we're not reporting any
7 measures of -- that would suggest that our index is in
8 fact a projection or an estimate. That is, we don't
9 have standard errors associated with this as we project
10 forward, precisely because we -- given the nature of
11 this technique, we don't know what -- how we could
12 construct, necessarily, those standard errors, whether
13 that would -- we would actually be -- have a useful way
14 of knowing exactly how much we don't -- we don't know.
15 So I think if you're -- if you're basically
16 saying can this give us a brightline standard between
17 likely to elect and not likely to elect, that's going to
18 be just basically say at this percentage, the district
19 performs, and at one point below, that it doesn't
20 perform. I mean, given what I have said previously,
21 you're probably aware, I wouldn't think that was
22 particularly useful.
23 I do think as you move out on the
24 extremes, I think they give you -- they certainly -- I
25 would certainly be comfortable saying that they tell us

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1 something about the likelihood. I mean, as that index
2 falls towards zero, it indicates that the likelihood of
3 electing is dropping. Obviously, it's not zero. And
4 that's part of the dispute in this case is, we have
5 several districts that have indexes of zero and have
6 elected candidates of choice. So that's -- that in
7 itself suggests that if the index can be zero across 48
8 elections, and yet in elections -- precisely the same
9 election in which the index is zero, the candidate of
10 choice being elected in that election tells us that it
11 can't be a perfect predictor of the future, because it
12 isn't even a perfect predictor of the past.
13 So I think -- I still thinks it obviously
14 adds some information, so we know that this is a less
15 likely event to occur, but we can't say it won't occur.
16 And the reverse being true as well. A district could
17 appear to perform at a hundred percent, and not perform
18 in a particular election. But the likelihood that a
19 district won't perform I think -- begin treating this in
20 fairly broad ranges, the likelihood a district won't
21 perform in the future increases as the index for the
22 elections drops.
23 Q. (BY MR. SELLS) Is the reverse of that also
24 true, that the likelihood that a district will
25 perform --



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1 A. Yes.
2 Q. -- is uncertain but also increases?
3 A. So again, all other things being equal, right?
4 There are other things we would want to think about; is
5 there an incumbent and so forth. But all other things
6 being equal, the reverse is true as well; that that
7 factor, as we are thinking about that in our looking
8 toward the future of the district, that would, again,
9 tell -- give us a sense of the likelihood that the
10 district would elect a candidate of choice as opposed to
11 a simple dichotomy of it's going to elect or it's not
12 going to elect.
13 Q. Going back to those three categories of data
14 that you used, that is, the demographics, the
15 reconstituted elections, and the regression analysis,
16 starting with the demographics, tell me how you used
17 that in your analysis.
18 A. Well, I think the most -- the most obvious use
19 of the demographics is to assess whether a district is a
20 majority-minority district or not. So that gives you an
21 indication of, is the district majority-minority, as
22 well as some indication of how -- how majority-
23 minority. Is it narrowly majority-minority? Is it
24 substantially majority-minority? It gives you some idea
25 of the mix of race and ethnicity in the district,

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1 independent of which group is the majority group in the
2 district, so you can see whether there is a balance of
3 other groups.
4 For Hispanic districts, the Spanish
5 surname registration number gives you, I think, a very
6 good on-the-ground indicator of the potential for
7 Hispanics to control elections in the district. It
8 gives you -- I believe gives you a better -- looking
9 across districts, it gives you a better indicator of the
10 actual --- it gives you a kind of a control on CVAP
11 estimation, the stability of which varies a bit. And I
12 think that's probably it.
13 Q. What's the point of looking at demographic data
14 to determine whether a district is majority or minority?
15 A. Well, I think there's a practical reason to do
16 it, and then there is a legal reason to do it. I think
17 the practical reason to do it is that, if you're looking
18 at a district, and you can be reasonably confident that
19 there is a voter majority in a particular ethnic group,
20 then you have established a kind of practical baseline
21 for the district, which is, is this a group that voting
22 cohesively could withstand any attempt to vote
23 cohesively against it.
24 Q. Does total population tell you that?
25 A. No, it doesn't.

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1 Q. Does voting age population tell you that?
2 A. Not always, no.
3 Q. Does citizen voting age population tell you
4 that?
5 A. It's closer.
6 Q. Does Spanish surname voter registration tell
7 you that?
8 A. It gets you probably the best number we've got
9 for that issue related to whether Hispanic voters can
10 control a district. So they are certainly well
11 positioned to control a district if they are the
12 majority, outright majority of the registered voters.
13 That seems to me that that -- basically the only issue
14 to be overcome, then, is relative turnout, and if you
15 are politically cohesive and actually in a fight where
16 these issues really matter, presumably, then given the
17 current election system in Texas, I don't think turnout
18 issues are -- any longer represent really insurmountable
19 barriers. You basically can -- you should be able to
20 come fairly close to matching turnout.
21 And certainly, if you think about pulling
22 back from that, if Hispanics have a total population
23 majority in a district, how likely is that voting
24 cohesively they could turn out and control the election.
25 In some districts in Texas, that's very likely, and in

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1 other districts, it's physically impossible. So just as
2 a number, it just doesn't really help you a lot.
3 If you have age differences, in which you
4 have in the Hispanic population, so that the VAP number
5 would be a better number. If you have citizen numbers.
6 If you have areas where 50 percent of the adult
7 Hispanics are not citizens, then you're going have
8 registration differences.
9 For all of the issues about the estimation
10 of CVAP in the current round of redistricting, it -- and
11 there are issues with that -- it does track more closely
12 with registered voter proportions than does VAP or total
13 population. So I think those two numbers, you're
14 getting closer to what you would need on the ground to
15 control a district.
16 Q. What you are really trying to get at are
17 eligible voters, right?
18 A. Yes.
19 Q. For African Americans, is it also true that
20 citizen voting age population is going to get you closer
21 to the number of eligible voters than either total
22 population or voting age population?
23 A. Yes.
24 Q. And, in fact, in a district that has a high
25 noncitizen Hispanic population, you would want to look



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1 at African American citizen voting age population share
2 because it's likely to be higher than the voting age
3 population share because of the presence of those
4 noncitizens, right?

5 A. That's correct. So in a district that's
6 mainly -- that's overwhelmingly composed of blacks and
7 Anglos, there is not going to be much substantive
8 difference. There will be a VAP difference, because
9 there are -- the black population is a younger
10 population, though not as much younger as it used to
11 be. But citizenship levels are roughly comparable
12 between Anglos and blacks. They are not -- they are
13 often not for Hispanics. There are areas where that is
14 not true at all. They are comparable across all three.

15 But for many areas in Texas, particularly
16 urban areas, there are substantial differences. And so
17 in that setting, I would be more comfortable with
18 citizen numbers across the board. I would be most
19 comfortable with registered voter numbers, but unlike
20 Georgia, where you register by race, you don't in Texas,
21 and so that's a -- that leaves you with an uneven data
22 set.

23 There is some analysis you can do with
24 SSVRRV, depending on how you like those initials. I've
25 always liked them SS -- SSRV, and the state likes them

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1 SSVR. But the Spanish surname voter allows you to do
2 some analysis there that's more precise for Hispanics,
3 but in the process, you give up the opportunity to have
4 a comparable measure for blacks and for Asians where you
5 don't have registration.

6 Q. If you are looking at an urban district, say,
7 in Harris County or Dallas County, where you might have
8 a significant presence of blacks and Hispanics, you
9 would want to look at the CVAP for both groups so you
10 could compare apples to apples, if you were trying to
11 get at eligible voter strength?

12 A. Yes. So that's -- I mean, that's the way I
13 would view -- if I was looking at 18th in Harris County,
14 for example, I mean, that's -- that's how I would view
15 that population is by looking at the CVAP.

16 Q. The black CVAP?

17 A. The -- yeah, black, Anglo, and Hispanic CVAP.
18 I mean, the 18th is basically -- I mean, it's
19 essentially like a 50-50 district, I think. In black
20 citizen population, it's about -- it's either at or just
21 under 50 percent; whereas in VAP, it's probably, what,
22 40 percent, something like that. So generally, though,
23 blacks districts that have been in the 45 percent range,
24 at least in Texas, have been above 50 percent in black
25 CVAP.

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1 Q. The second thing you mentioned, the
2 reconstituted election analyses, how did you use those
3 as you an undertook your work?

4 A. Again, as we have discussed a bit, the
5 reconstituted election analysis lets you do one thing
6 that's fairly obvious, which is, you can look at the
7 existing districts and how they performed over the last
8 decade, and then you can look at how -- how exogenous
9 elections would have played out in the -- in various
10 proposals, again, over the last past decade.

11 So it gives you an actual -- an actual
12 view of the districts, existing districts in the past,
13 and a pretty good hypothetical of the proposed districts
14 in the past, but that is a hypothetical. And then from
15 that, you could -- you can basically make some
16 presumptions about the future of both -- both what would
17 have happened in the existing districts had they gone
18 forward, and what might happen in various proposed
19 districts, in terms of likelihood to -- for example, in
20 terms of the likelihood to elect candidates of a
21 particular ethnicity, in terms of likelihood of electing
22 candidates of a particular party, in terms of the
23 likelihood of electing candidates of choice. So you can
24 -- that's an analysis you can play forward where there
25 are reconstituted elections.

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1 Q. I heard you say that the reconstituted election
2 analyses of proposed plans are just pretty good. You
3 qualified that statement. Can you tell me what you
4 meant by that?

5 A. Well, the -- I mean, the -- you have -- you
6 have an actual election in the district that you can
7 compare to the reconstituted elections going back in the
8 existing districts. So in a sense, you have a kind of a
9 check on that, that allows you to do -- I mean, the one
10 thing it allows you to do is, as you look across those
11 districts, you can see if there is a particular
12 statewide race, for example, that tracks more closely
13 with the endogenous election, and then you have sort of
14 some confidence on where that number is likely to fall
15 as opposed to relying on something -- I mean, some
16 people like to rely on a -- like a high watermark number
17 for a particular party or something like that, and they
18 are -- because you have the endogenous election, you can
19 look at that against the endogenous election.

20 And the voters that are voting are -- that
21 are -- in your reconstituted elections of those results
22 are all for voters who actually saw that ballot, in the
23 sense that when you reconstitute a statewide election,
24 they saw the ballot that you're interested in that
25 district, because they actually see the representative



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1 in that district as well as the governor's race, and
2 that isn't strictly true when you move backward in
3 proposed districts.
4 So those are -- my guess is that in the
5 great scheme of things, those are quite modest
6 differences. But that's the -- what one of those is --
7 one of those -- one of those things represent actual
8 votes that were accumulated in that way, and therefore
9 reflected a ballot, and the other reflects strictly a
10 reconstituted election.
11 Q. Will proposed districts that split VTDs or
12 precincts introduce error into the reconstituted
13 analysis of those proposed districts?
14 A. When you have -- when a district splits the
15 VTD, it will always introduce some degree of error.
16 There a variety of ways you can -- there are decisions
17 you can make about how to handle splitting a VTD, but
18 splitting VTDs do reduce the accuracy of
19 reconstituting. And so that would be another area where
20 that's more likely to occur in a proposed than it is in
21 an existing plan, obviously. So that would introduce --
22 and the degree of error depends, obviously, on the
23 number, the relative number of split precincts to the
24 number of precincts in the -- in the district.
25 And in addition to the -- at least

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1 potentially to the -- to the possibility that the split
2 precincts may in some way be unique or unusual to the
3 district, to the extent that those kinds of precincts
4 are already represented in the mix of precincts in the
5 districts, they don't produce -- they don't produce big
6 differences, but there -- I mean, they certainly could
7 be a reason for caution.
8 Q. So I heard you say basically two things that
9 would give you reason for caution. Number one is if the
10 share of the population that comes from split precincts
11 is large as a share of the population of the district as
12 a whole?
13 A. Yes.
14 Q. Okay. And the other thing is if there is some
15 bias in the way the precinct is split so that there is
16 not uniformity of voting patterns across the precinct;
17 is that right?
18 A. And then, again, that depends on how the
19 precinct is actually being allocated, right? So if all
20 the split precincts are being left out or left in, or if
21 they are, you know, plus, minus 50, it's going to -- how
22 much of that will affect it depends on how they're being
23 allocated. But certainly the more -- the more different
24 that is from -- basically the more actual information
25 that is introduced by that, the more likely it would be

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1 to affect the index number.
2 Q. Did you conduct any analysis of the effect of
3 split precincts upon any of reconstituted election
4 analyses that you looked at?
5 A. No.
6 Q. The last item of data that you mentioned were
7 the regression analyses. I think you also called them
8 cohesion analyses. Can you tell me how you used those
9 in the course of your work?
10 A. I guess the most basic use is to establish a
11 candidate of choice, and because that -- as it turns
12 out, that's relatively straightforward, because it
13 establishes that the candidate of choice of black voters
14 is a Democrat, and the candidate of choice of Hispanic
15 voters is a Democrat, and the candidate of choice of
16 Anglo voters is the Republican. And so that turns out
17 to make, sort of, the rest of the process pretty easy.
18 You basically just -- that's -- that's
19 what you find, right? So there are some -- obviously,
20 there is more of interest there than just that. There
21 is -- the level of cohesion for black voters is very
22 high. That analysis shows that uniformly across the
23 state. The level of cohesion for Hispanic voters is not
24 as high as for black voters, and varies much more across
25 the state than black cohesion does. Anglo cohesion is

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1 lower than black cohesion and also variable across the
2 state.
3 Q. And when you said that you find that blacks and
4 Hispanics prefer the Democratic candidate, you are
5 talking about in Texas, right?
6 A. Yeah. This analysis is all for Texas.
7 Q. Okay.
8 A. I think it probably applies to some other
9 states, and I know there are states that it wouldn't
10 apply to parts of, certainly.
11 Q. Well, I just want to be clear that you are
12 saying that based upon these regression analyses that
13 you looked at for Texas, and you are not making some
14 general assumption about those racial groups?
15 A. Right. Each of the characterizations I made
16 are based exclusively on data for Texas and extensively
17 on data for Texas. There is a lot of data for Texas,
18 and not just data I analyze, but data that the other
19 experts and the plaintiffs' experts in the Section 2
20 trial analyzed. So we've got lots of analysis now of
21 Texas elections all over Texas. And everything I said
22 there is -- could basically -- it's a reasonable
23 characterization that all of that evidence from all of
24 the experts, with the exception, maybe, of Allan
25 Lichtman.



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1 Q. Dr. Alford, across all of those extensive
2 analyses that you looked at and that you just discussed,
3 do you recall ever having seen data that led you to
4 conclude that black voters had preferred a Republican
5 candidate?
6 A. I don't see any indication from this decade of
7 elections that -- any of the analyses I saw that showed
8 that black candidates preferred the Republican candidate
9 in the generally election.
10 Q. Black voters, you mean?
11 A. Black voters. Sorry.
12 Q. And across all those analyses, did you see any
13 data that led you to conclude that Hispanic voters
14 preferred the Republican candidate?
15 A. Again, the cohesion there is lower, so there
16 are several pieces of evidence that suggest that there
17 is as much as a 60-40 split, 40 percent Republican, 60
18 percent Democrat. But I didn't see anything that
19 suggested anyplace where there was like a 51 percent
20 Republican split in the Hispanic vote. So the candidate
21 of choice, for Hispanics and blacks in all the analyses
22 I have seen in partisan elections, is the Democrat in
23 the partisan election. It's just more cohesively a
24 choice for blacks than it is for Hispanics.
25 Q. By the way, have you analyzed any nonpartisan

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1 elections?
2 A. Yes.
3 Q. In the course of this work in the Texas
4 redistricting process?
5 A. In the course of this analysis, only to the
6 extent that people sometimes refer to primaries as
7 nonpartisan elections, and certainly, you can't vote a
8 straight party ticket, and so they are not partisan in
9 that sense, in the sense that the candidates all share
10 partisanship. But they are not truly nonpartisan in the
11 sense that -- well, I shouldn't say truly nonpartisan,
12 because we all know in the current era, there is no such
13 thing as truly nonpartisan. But they are not legally
14 nonpartisan, I guess, in the strict sense that, say, a
15 nonpartisan school board election, for example, where
16 there is no party identification on the ballot. There
17 is no party primary process. So I haven't looked at any
18 of those kind of elections, but I certainly looked at
19 primaries where voting takes place without a party cue.
20 Q. So getting back to the regression analyses that
21 you got from the Office of the Attorney General, how
22 would you go about identifying which candidates were the
23 candidates of choice of minorities in a particular
24 district?
25 A. The analysis gives you an indication of the

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1 proportion of vote being cast for particular
2 candidates. If you have a two-candidate race, then you
3 just look for the candidate receiving the majority, the
4 estimated majority of the vote from that particular race
5 or ethnic group. In a three-party race, you can look
6 for the candidate receiving the plurality of the
7 vote. It just depends on how you want to -- some people
8 treat that differently, but that's the basic procedure.
9 You look at the estimated distribution of votes, and
10 sort of keeping in mind the sort of limitations of that
11 analysis, you make that determination based on where the
12 majority of the vote is being cast based on the
13 estimate.
14 Q. And how would you use those three items of
15 data, the demographic analysis, the reconstituted
16 election analysis, and the regression analysis, to make
17 a determination in a particular election about whether
18 minority voters were able to elect their preferred
19 candidate of choice?
20 A. In a particular election or in a particular
21 district, you would just look at the -- so you have
22 candidate of choice based simply on where the majority
23 of the vote or the plurality of the vote is being cast
24 by that group, and then you simply look at who won the
25 election.

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1 Q. On the reconstituted election analysis?
2 A. If you're doing -- if you're doing
3 reconstituted election analysis on the reconstituted
4 election analysis, if you're doing endogenous analysis
5 on the endogenous election. So whether you are looking
6 at an endogenous election or a reconstituted election or
7 exogenous elections, that's the basic. You know the
8 candidate of choice. So in this case, that, again,
9 turns out to be a straightforward procedure. You simply
10 look at whether the Democrat won the election. As long
11 as they are partisan elections, the Democrat wins the
12 election, and then the candidate of choice, the
13 minorities in the district, a place for blacks and
14 Hispanics, won the election.
15 Q. Did you conduct any analysis of endogenous
16 elections over the course of your work for the state
17 this year?
18 A. It seems to me that there are some -- I mean,
19 certainly -- you know, the discussion of how many times
20 did this candidate get elected, or, you know, did the
21 candidate of choice get elected in 2010, right, so that
22 in a -- I don't know what you call it -- a historical
23 sense, there is certainly discussion of that.
24 And I think there is -- at some point,
25 there is probably -- we probably did some cohesion and



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1 polarization analysis on -- and I'm just not certain
2 that it was actually done. And I think at some point
3 this issue came up and someone said, "Well, how do you
4 know in this specific election that the candidate of
5 choice was a Democrat?" And so I think it's possible
6 that there was some analysis to confirm that at some
7 point. But that's -- I don't think I relied on that in
8 making my -- my determinations in my report are based on
9 the more general analysis.
10 So, I mean, I have seen, from other
11 experts, election analysis on the endogenous elections,
12 and I think we may have confirmed that analysis -- I
13 want to add that to the compass of the things in which I
14 have not ever seen an example of an election in which
15 the candidate of choice of Hispanic or black voters was
16 the Republican candidate in the general election,
17 barring, of course, the Republican candidate not having
18 a Democratic opponent. And Republicans running against
19 Libertarians, they are the candidate of choice of
20 everybody in an election, except, perhaps, Libertarians.
21 MR. SCHENCK: It's a little bit after
22 1:00. When would you like to break?
23 MR. SELLS: This is a good time. I was
24 just going to suggest that. So let's go off the record
25 for lunch.

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1 MR. SCHENCK: Great.
2 (Lunch recess.)
3 MR. SELLS: Okay. Back on the record
4 after lunch.
5 BY MR. SELLS:
6 Q. Dr. Alford, before lunch, when he were talking
7 about the kinds of data that you had available to you as
8 you did your work in this case -- or I should say, in
9 the redistricting process, and we talked about the three
10 kinds of data, generally speaking, the demographic data,
11 the reconstituted election analysis, and the regression
12 analysis. Do you recall all of that discussion from the
13 hour before lunch?
14 A. Yes.
15 Q. I want to show you what I will mark as -- I
16 guess we're up to 7 -- Government Exhibit 7.
17 (Exhibit 7 marked for identification.)
18 MR. SELLS: I was only able to print out
19 two copies of this. So, David, do you mind sharing?
20 Thank you.
21 MR. SCHENCK: Of course not.
22 Q. (BY MR. SELLS) Now, I will represent to you
23 that this is an excerpt of a much, much larger set of
24 regression analyses, and this is for District 27 in plan
25 H-100, which is the benchmark House plan. Do you see

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1 those designations on the front first page?
2 A. Yes.
3 Q. Okay. With the understanding that this is just
4 an excerpt, does this look like the regression analyses
5 that were provided to you as you undertook your work in
6 the redistricting process?
7 A. Yes.
8 Q. Now, this is about 26 pages. Would you look
9 over all of the pages to see if, in fact, these are all
10 the kinds of -- scratch that.
11 Would you look over them to make sure that
12 you would get all of these tables?
13 A. (Viewing document.) That looks like the whole
14 packet.
15 Q. Okay. Great. As you would receive these --
16 actually, let me back up. And this is one district out
17 of a plan, and the larger report is some 3500 pages.
18 Does that sound familiar to you?
19 A. That sounds familiar.
20 Q. As you would go about your work, are there some
21 of these tables in this report that you would use more
22 frequently than others?
23 A. No.
24 Q. If you wanted to identify the minority-
25 preferred candidates in a particular election, what

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1 table would you use?
2 A. I didn't actually rely on this analysis.
3 Q. You did not?
4 A. No.
5 Q. What role in your work did this analysis play?
6 A. This analysis is what encouraged me to want to
7 have an EI analysis done. I just wasn't very confident
8 that this was performing the way I would like to see it
9 perform. It just seemed to me that this was not the,
10 sort of, the direction to go, so I basically didn't rely
11 on this.
12 Q. Okay. You relied more than the EI analysis?
13 A. Yes.
14 Q. Then did you run these EI analyses yourself?
15 A. No.
16 Q. Who did?
17 A. Randy Stevenson did, for some of it, and for
18 some of it, it was run by Faulk and his people.
19 Q. Who is Faulk?
20 A. The person doing this analysis, or heading the
21 analysis for the OAG. David Faulk.
22 Q. David Faulk?
23 A. Yes. Sorry.
24 Q. So when Mr. Stevenson was running the EI
25 analysis, he was working for you?



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1 A. No. He was working for -- I guess with David
2 Faulk and for the Attorney General's Office.
3 Q. Okay. So he was contracted separately?
4 A. Yes.
5 Q. And you relied on their EI analysis?
6 A. Yes.
7 Q. Did you find, by and large, that it coincided
8 or agreed with what has been marked Government
9 Exhibit 7?
10 A. I didn't -- I don't know if they made that
11 comparison, but I didn't make that comparison. I was
12 primarily concerned with getting an analysis that I was
13 confident was as stable as possible, given that we were
14 dealing with multiple minority groups and sometimes with
15 low populations in some of those groups, and that were
16 compatible with the analysis being done by other experts
17 in the Section 2 case. So what I was pegging the
18 analysis to, in terms of making sure that it was working
19 appropriately was the analysis that -- particularly the
20 analysis that we had from Richard Engstrom, his EI
21 analysis. He had the most comprehensive set of EI
22 analysis in the Section 2 case, so we basically
23 replicated a sub sample of his analysis to make sure we
24 were getting things that, given the variations that's
25 inherent in EI was within the standard error.

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1 And when we were comfortable that we were
2 doing that, that allowed us to fill in some things. He
3 didn't have a statewide EI analysis, so we could fill in
4 some other things that we thought were useful extensions
5 of what was provided here and there by other experts in
6 that case. But I didn't compare that directly back to
7 this. It would be an interesting exercise, and I don't
8 know whether it would validate that I was wrong, and
9 this would have been perfectly fine all along or not.
10 But we were under, obviously, a considerable time
11 constraint in that we were just looking to move forward
12 and get something that would be appropriate to use at
13 trial.
14 Q. Can you tell me what gave rise to your concern
15 about the analyses that are exemplified in Government
16 Exhibit 7?
17 A. My recollection is, the first time I looked at
18 this, was just seeing some numbers where the, sort of,
19 validated numbers just didn't make sense to me in
20 comparison to the project, so that the analysis would --
21 it's sort of lots of examples where the analysis was
22 basically pegging different groups at a hundred percent,
23 which is something that's a known issue with -- with
24 where regression as opposed to ecological inference.
25 And so there was a lot of that going on in

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1 the analysis, which would suggest it's not really giving
2 you a very -- it's not responding very well in the
3 estimation sets. And then there were just other --
4 other estimates that just looked to me to be, sort of,
5 to vary, kind of, implausibly across the couple of
6 tables that I looked at, and I just didn't feel that
7 that was -- it seemed to me that was symptomatic of an
8 analysis technique that was, in fact, not very robust
9 for the data set that was being thrown at it. And I was
10 already inclined to move to an EI form of analysis
11 anyway. So that's really the last -- that sort of brief
12 look was the last time I looked at any -- with any
13 detail at any of the RPVA printouts.
14 Q. Your initial re-running of Richard Engstrom's
15 analyses confirmed, in your mind, that he had run it
16 properly?
17 A. We were not ever able to determine how he ran
18 the analysis. So for whatever reason, in the report and
19 deposition, at trial, there was never an actual explicit
20 indication of what form of EI he was running or under
21 what set of procedures. So we basically just had to try
22 some different kinds of assumptions and techniques until
23 we got a technique that matched reasonably well with his
24 and matched reasonably well with some other analysis
25 from other experts, and then based on that, we were

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1 comfortable with the fact that we were getting numbers
2 that made sense, given what we had to work with as a
3 data set and moved forward from that.
4 And what we ended up with an analysis that
5 was of some detail, obviously different, but broadly
6 comparable across all of the experts. To the degree
7 that it analyzed a particular election or a particular
8 geography, we ended up with broadly comparable results
9 across all the experts in the case, with the exception
10 of Allan Lichtman.
11 Q. Once you validated the results obtained by the
12 other experts, did you then rely on their analyses?
13 A. I was -- my concern was primarily in ensuring
14 that the court could make a decision based on what it
15 thought about the facts, not by having to pick
16 somebody's facts. And I think in the areas like this,
17 where the techniques are relatively well established,
18 even with something with something like EI, that's a
19 little bit new, and where the data sets are in common,
20 we're all getting this from the same place. But that's
21 sort of the minimum you should expect, is to be able to
22 basically agree on a set of facts, and then worry about
23 what you draw from them. So I was satisfied with that.
24 And I don't think I drew any conclusions
25 that were unique to the analysis I did. There was not a



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1 statewide analysis, and I think that was a helpful thing
2 to have, the statewide numbers.
3 And I think in -- if I'm not confusing one
4 of the other cases going on at this moment, I think
5 there was a supplemental analysis in which Engstrom may
6 have run EI on -- specifically on the 23rd and 27th,
7 which I think, I can't remember if we actually
8 replicated or not, but it didn't look to me like it was
9 out of line. I don't know that I -- I was late in the
10 stream of things, but I think -- I certainly would have
11 been comfortable relying on that for those districts.
12 Q. Well, did you use anyone's EI analysis to
13 construct an index number or some sort of indication of
14 how many elections out of ten were won by the candidate
15 of choice of minority voters?
16 A. Well, I said, I didn't see in any of our
17 analysis or anyone else's analysis any indication that
18 there was -- where there was any election in the
19 statewide database in which the candidate of choice was
20 not the Democrat. So the indexes that I used were based
21 simply on counting the number of Democrats that win in
22 the elections, not based on doing that analysis
23 independently for each of those contests.
24 Q. Who prepared the indexes that you looked at?
25 A. I did. Well, we said earlier that there was

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1 the -- a ten election index that was -- so this -- I
2 mean, I don't know. But I assume this is prepared
3 primarily for the purposes of helping with the drawing
4 of plans. And I assume that's what the ten race index
5 was originally prepared for as well. So I have seen
6 that, and I talk about that in the report. But the
7 index of the 48 contests, I just did that myself out of
8 Red 225.
9 Q. I would like to show you what I'll mark as
10 Government Exhibit 8.
11 (Exhibit 8 marked for identification.)
12 Q. (BY MR. SELLS) And I'm going to ask if you
13 recognize that document?
14 MR. SELLS: David, I do have a copy of
15 this for you.
16 MR. SCHENCK: Okay. Brian, you did take
17 the deposition of the LTS people, right?
18 MR. SELLS: Yes, I did.
19 MR. SCHENCK: Okay.
20 MR. SELLS: It seems like a year ago.
21 MR. SCHENCK: Yeah. I just want to make
22 sure. I think we have talked about these before in the
23 other deposition. You got what you needed there from
24 them, right?
25 MR. SELLS: I think I got a lot of what I

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1 needed from them.
2 MR. SCHENCK: Okay. Good.
3 MR. SELLS: But their perspective is not
4 necessarily the same as Dr. Alford's, of course.
5 MR. SCHENCK: Sure.
6 Q. (By MR. SELLS) Do you recognize this document
7 or something like it?
8 A. I mean, it's -- this looks, to me -- I can't
9 say for certain, but it looks to me like this is the ten
10 election index that we talked about earlier. I mean, I
11 counted. There's ten elections, so I'm guessing, and
12 they look like -- that they seemed like familiar
13 elections. So I'm guessing this would be the ten
14 election index. And so it -- and I'm assuming this is
15 congressional; is that right?
16 Q. Plan C-100 is congressional, yes.
17 A. Right. And I don't know what the 118 is, but
18 it must be some proposed.
19 Q. Well, my question to you is: Were you ever
20 provided a spreadsheet that looked similar to this in
21 form?
22 A. It's very possible. I mean, there was -- you
23 know, at one point, there was just an FTP site set up
24 for information, and then I was also shipped,
25 overnighted a set of thumb drives that had all kinds of

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1 volumes of material on them. And I think -- I mean,
2 there was -- we talked earlier about there was some
3 discussion about index differences across two districts
4 at a meeting. This may have been -- something like this
5 may have been what was being discussed there.
6 So, it doesn't look unfamiliar to me, but
7 it's not something that I -- I didn't have a lot of
8 these, or, I mean, I didn't have, sort of, this kind of
9 format. For example, I didn't have a C-100 and a C-185
10 that I was relying on to do, you know, these kinds of
11 index numbers, whatever. More typically, what I would
12 just see is an index number. Somebody would say this is
13 this plan is a 6 out of 10, and this plan is a 3 out of
14 10, something like that.
15 Q. Okay. I'm going to ask essentially the same
16 question about this next exhibit, which is Number 9.
17 (Exhibit 9 marked for identification.)
18 Q. (BY MR. SELLS) Do you recognize this document?
19 A. Again, I may well have been provided this, but
20 I don't -- I don't recognize the document. I have seen
21 a lot of things like this and this information in a lot
22 different places, but I don't recall actually seeing
23 this particular set of information on one table in this
24 form.
25 Q. What is this a table of?



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1 A. Well, it's congressional, and it looks like
2 it's the 36th District, so it's some proposed plan.
3 Population, the black voting age proportion, the
4 Hispanic voting age proportion, the black plus Hispanic
5 proportion, and then what I assume would be the vote
6 percent in 2010, general Republican for Perry, and
7 Republican vote percent for General Abbott.
8 Q. Do you see in the upper left-hand corner in the
9 cell B2, is a RA-300?
10 A. Yes.
11 Q. Do you remember receiving RA reports from time
12 to time?
13 A. I may have. I don't specifically recall at
14 this point. I don't recall a RA.
15 Q. Next I would like you to focus on your work in
16 the Perez versus Perry case, the Section 2 case?
17 A. All right.
18 Q. Which I think was a consolidated set of cases.
19 But do you know what litigation I am talking about?
20 A. Yes.
21 Q. And did you play a role in that case?
22 A. Yes.
23 Q. What was your role?
24 A. I was one of the experts for the state.
25 Q. Do you recall when you specifically turned your

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1 attention to that case?
2 A. There -- so we have laid out, kind of, sort of
3 the preliminary things that were done to put in place
4 the ability to analyze data for that. And then the --
5 with the expert reports coming in from the plaintiffs
6 would have been when I basically shifted over to
7 focusing on -- directly on that case.
8 Q. What were you asked to do in that case?
9 A. To respond to a subset of the expert reports.
10 So there were lots of -- there were lots of plaintiffs.
11 There were lots of reports, and there was a very short
12 time schedule. So I was asked to respond to a subset of
13 the expert reports to deal with the -- the kind of
14 overarching background issues related to Sections 2 and
15 3. So things like the degree of cohesion in various
16 groups and polarization and so forth, to the extent that
17 it applied to all of the plans. And then to the extent
18 that dealing with specific plans, to focus on the
19 congressional plan.
20 Q. Who was tasked with focusing on the other
21 plans?
22 A. I don't know.
23 Q. Were you ever asked to look the House plan, for
24 example?
25 A. When we talk about early on, there was some

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1 discussion of the House plan in terms of, you know, some
2 district performance kinds of things. And I am sure
3 that, and obviously, in a very general way, talking
4 about how, you know, how all of these issues might apply
5 to any plan early on. And I just don't recall that
6 there was -- I mean, I was focused on trying get through
7 the analysis, the expert reports, and deal with the
8 congressional side. There may have been some parallel
9 kinds of things that had come up related to the House
10 plan, but other than my report on the House plan, I
11 didn't testify on the House plan.
12 Q. Do you know if anyone else was working on the
13 House plan?
14 A. You know, I assume there was some testimony
15 about the House plan, but I don't know what the -- you
16 know, who would have been actually doing that or what
17 nature of that was. I didn't attend the whole trial, so
18 I don't -- I don't know.
19 Q. I'm going to ask my question again, so that I'm
20 sure that I understand your answer, because I may not
21 have been clear. But do you know whether there was
22 someone else tasked with analyzing the House plan in the
23 Perez versus Perry litigation for State of Texas?
24 A. I know that Randy Stevenson was doing some
25 parallel analysis, but I don't know who he was doing

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1 that for. And I know he was -- when he was working with
2 David Faulk and the OAG's office in setting up the
3 programs to do all the analysis and work through the EI
4 stuff, I know that involved both House and
5 congressional. Maybe other, I don't know. But I know
6 it involved House and congressional. But I don't -- I
7 know I wasn't -- he wasn't doing that to provide it to
8 me, so... And I don't know who he was doing it to
9 provide it to.
10 Q. You said a moment ago that you had some initial
11 or early discussions of the House district performance
12 with the performance of the House plan?
13 A. Yes.
14 Q. Can you tell me what you meant by that?
15 A. So there was -- in a meeting this issue came
16 up. We had some -- there was some discussions back and
17 forth about -- so we had an initial meeting where I sort
18 of laid out what I thought were the, sort of, reasonable
19 ways to approach both the data issues and analysis
20 related to constructing plans and dealing with Section 2
21 and Section 5. And then, sort of, later in the process,
22 there were some discussions about, sort of, particular
23 -- so, no, I didn't do any analysis after that on any of
24 the proposed plans. But there were discussions about
25 something like an index like this. This one, you know,



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1 performs in 1 out of 10, this one performs in 2 out of
 2 10, or 3 out of 10. And some question about is that a
 3 -- as we talked about here, would that be an important
 4 difference, is that not an important difference.
 5 So basically, asking me what I thought of,
 6 given this analysis that had been done, what I thought
 7 of that difference between two somethings, I don't know,
 8 between adopt -- they weren't adopted, but plans about
 9 to be adopted or plans in discussion, something like
 10 that.
 11 So I was not sent information and asked to
 12 do analysis on the plans, but there were some
 13 discussions where there was some of this kind of stuff
 14 that had been developed, and basically I was asked what
 15 I took to be, sort of, how did this fit in to what I had
 16 talked about before about generally, these are the kinds
 17 of things you want to look at or this is what these
 18 things mean.
 19 Q. And what was your response?
 20 A. On the one -- the one time I recall
 21 specifically, there was some difference that was a small
 22 difference in index values and roughly what I would
 23 consider to be the same range, and I said I don't think
 24 that that -- that that in itself is not really the way
 25 to choose between these two plans; that I think that's

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1 not the -- that's not a determining choice between the
 2 two plans. If that's -- you know, if there's other
 3 things that are involved, other things are involved.
 4 But if this is what it's about, I wouldn't say a plan
 5 would or would not fly on the basis of that just one --
 6 that one difference. And I don't recall exactly what,
 7 in all this stuff, that difference was, except that it
 8 was -- it was a difference that was -- that I considered
 9 to be substantively unimportant, either in size or in
 10 the fact that it was all in the same range.
 11 Q. Was that a discussion of a particular district,
 12 or the plan as a whole?
 13 A. My recollection is that that was discussions of
 14 particular districts and focusing on a particular --
 15 there was a later discussion about the congressional
 16 plan, where I think that was focused on 23. And then
 17 this earlier discussion about the House plan, I have no
 18 idea. Basically from the beginning, did not follow the
 19 issues in the House plan closely at all. So I have no
 20 idea what district it might have been or set of
 21 districts, but...
 22 Q. When did this initial meeting take place at
 23 which you laid out your understanding of Section 2 and
 24 Section 5?
 25 A. There was a general discussion before I was

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1 under contract, so we just came up to talk about the
 2 idea and sort of exchange views, thought it was useful
 3 to have at least some idea of what I might think about
 4 doing. So we talked about that at that meeting.
 5 And then there was a subsequent meeting
 6 with -- I think it was maybe more or some different set
 7 of people, I don't know -- where we sort of went through
 8 in sort of more detail here are the -- here are the data
 9 products, here's the ones that I think are sort of
 10 things important, here's where things not important.
 11 Q. And when did that meeting take place?
 12 A. I would guess probably in April, but I'm -- it
 13 would be more toward the end of April.
 14 Q. Okay. So there were two such meetings, an
 15 initial meeting before you went under contract and a
 16 lengthier meeting afterwards?
 17 A. Yes.
 18 Q. Is that correct?
 19 A. Yes.
 20 Q. Who else was at the initial meeting?
 21 A. The initial meeting. David was at the initial
 22 meeting. Stacey Napier was at the meeting. I'm trying
 23 to think. Who else would have been there? Oh, David
 24 Mattax would have been at the meeting. Bruce Cohen
 25 might have been there. That's -- I mean, I'm sort of

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1 trying to look around the table, but since we had
 2 several meetings in that same room with different
 3 people. I didn't see General Abbott.
 4 Q. How about David Faulk?
 5 A. No.
 6 Q. Any members of the legislature?
 7 A. Let me back up. David Faulk could have been
 8 there. I just don't recall David Faulk being there.
 9 When I said no, it was if I was certain of that, but I
 10 don't think David Faulk was there. But he could have
 11 been. I don't think there were any members of the
 12 legislature there unless they were masquerading as
 13 attorneys. I didn't see any -- any members of the
 14 legislature.
 15 Q. Any staff members of the legislature that you
 16 remember at that initial meeting?
 17 A. Not that I know of.
 18 Q. And who was at the second meeting that you
 19 talked about at the end of April?
 20 A. It's the similar cast of characters. I don't
 21 remember specifically who might have been at one or the
 22 other.
 23 Q. And going back to the initial meeting, what did
 24 you lay out as your understanding of Section 5?
 25 MR. SCHENCK: I'm going to object to the



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1 extent it calls for a legal conclusion. Subject to our
2 earlier understanding, I'm fine with him answering.
3 MR. SELLS: Sure.
4 A. I mean, I think I mostly laid out sort of what
5 -- basically what I saw as my role in the process, that
6 my role was to provide, sort of, factual information
7 that was relevant to Section 5 and Section 2 that would
8 be useful for them in making decisions that would be
9 sort of something they could rely on in the sense that
10 it would be the kind of thing they could expect to see
11 from other experts, regardless of whose side they were
12 on, that I wasn't going to provide analysis that wasn't
13 just what the analysis was. I suggested they retain me
14 as a consulting expert, so that if they didn't like what
15 I said, they could get rid of me.
16 I told them I would charge more if I was
17 testifying expert than a consulting expert, because it
18 wasn't as much fun. We talked about, based on my
19 previous work with David Faulk, that, sort of, how that
20 would work, that there is a great deal of work that
21 needed to be done and that most of the early work would
22 not be, sort of, not directly applicable work, but would
23 be sort setting the stage for doing the kinds of things
24 that we would need to do.
25 And I'm not -- I have this discussion with

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1 lots of potential employers at various times, so I'm not
2 sure exactly what. I certainly would have said
3 something about, sort of, basic notions about
4 retrogression, that basically retrogression is going
5 backwards, and that that's sort of kind of baseline kind
6 of consideration, and then beyond that, you got broader
7 issues, Section 2, that they are not exactly the same
8 issues, that there's kind of an uncertain standing of
9 where I am concerned, with basically with, you know,
10 what's the factual information that's useful here.
11 There's -- in my view, at least, there is more certainty
12 about the demographics side of Section 5 and more
13 certainty about, sort of, the Gingles one, two, three
14 threshold on Section 2. And it's less clear how Gingles
15 fits in to Section 5, other than it somehow has to fit
16 in, but it's not really clear how.
17 So sort of that's, sort of, what I was
18 trying to lay out was kind of what would be the -- what
19 kind of factual information and in what kind of form
20 could be provided for those two tasks. And I think
21 that's -- I think that's pretty much it.
22 Q. I heard you say that Section 5 is about going
23 backwards. Did you indicate how you would measure
24 whether a proposed plan went backwards?
25 A. I may have. I don't -- I mean, I don't recall

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1 that specifically. I mean, I think that -- I'm sort of
2 illustrating uses of data, which was kind of the purpose
3 there, that that would have been, sort of, the
4 discussion about the kinds of demographic data that let
5 you characterize districts in existing plans and in
6 adopted plans. So the importance of citizenship data,
7 the importance of SSRV. I just don't know beyond that.
8 Q. Jumping ahead to the second meeting, which you
9 said happened at the end of April, did you discuss your
10 understanding of how a plan goes backwards and how you
11 would measure that?
12 A. I think there -- I'm not certain if it was in
13 that meeting or some later conversation that there may
14 have been more discussion of the role of the
15 reconstituted election analysis and giving you some idea
16 about district performance. I think that's about it.
17 Q. At any time during either the first meeting or
18 the second meeting, did you say or express the view that
19 retrogression could be measured simply on the basis of
20 demographic data?
21 A. I don't think so.
22 Q. And that wouldn't be consistent with your
23 understanding, as a social scientist, of what
24 retrogression is, right?
25 A. I am not sure there is a social science

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1 understanding of what retrogression is. But, again, I'd
2 love to say we got that all worked out, and it's just
3 confusing in the legal arena.
4 But I think -- I mean, that's one of the
5 things that we specifically discussed, was that this is
6 not going to be something where you can simply do a
7 clear-cut analysis and just have a simple answer for
8 it. I think that's something everybody was well aware
9 of; that this was going to be -- I don't think anybody
10 thought at any point that this was not going to be
11 litigated, right? So this is Texas. We litigate all of
12 our redistricting. So it's pretty clear we are headed
13 into a litigation situation, and that that would be -- I
14 mean, I just never -- my view has always been that you
15 need to know what all the information is. You can have
16 your own legal opinions about which piece of that's
17 important or not important or whatever, but that's not
18 my job, to work all of that out, thankfully. My job is
19 just to -- so that you know what the facts are. So I
20 would -- I would not provide someone with just a pure
21 demographic analysis for retrogression unless the
22 situation was basically, you know.
23 And so, I mean, I have certainly done
24 Department of Justice filings for small municipalities
25 where there simply isn't an issue, you're basically



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1 moving a few people around; all of the population
2 numbers and demographics stay the same for the minority
3 districts, and they're filed like that, and there was no
4 election analysis done of any kind. But in a state
5 case, so that just doesn't -- I just don't think
6 that's -- again, it's Texas, a state case in Texas. So
7 maybe there are some states where it's so uncontested
8 and uncontroversial, that that's all you need. But I
9 just don't think -- it really doesn't matter what I
10 thing is the appropriate standard. Other people don't
11 think that, and therefore, you're going to have to be
12 prepared to deal with more than just, you know, a simple
13 demographic analysis. I mean, you have to have more
14 than that.

15 Q. Okay. Well, I want to be as crystal clear as
16 we can be here today, and specifically I want to know --
17 I want you to confirm that you never told anyone at
18 either of these two meetings that retrogression could be
19 measured in this case by simply referencing demographic
20 data.

21 A. Well, I mean, if you mean could be in the sense
22 that, you know, if you want to make the case that this
23 is what Section 5 is about, then you can just measure
24 that with demographic data. I mean, I certainly would
25 -- I don't know if I said that, but I would say that.

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1 But if someone wants to -- if someone
2 wants to advance their case on the basis that this is
3 what Section 5 is about, it's about districts that are
4 majority and that districts that remain majority, then
5 all you would need to advance that is demographic
6 data. But that's not my view of what would be the most
7 effective way to move forward on getting preclearance.

8 Q. Okay. Let me try asking it a third way: At
9 either of these two meetings, did you advise anyone that
10 according to your understanding, that retrogression is
11 measured simply by reference to demographic data?

12 A. No, I don't think so.

13 THE COURT REPORTER: I could take a break?
14 MR. SELLS: Certainly.
15 (Recess from at 2:49 p.m. to 2:57 p.m.)

16 Q. (By MR. SELLS) At either of the two meetings
17 that we have been discussing, were you asked to give an
18 opinion on whether the House plan was retrogressive?

19 A. The State House. I don't want to get confused
20 about this, because I think of the national government,
21 the House, to me, is the Congress. I think -- I mean,
22 at that stage, I think we were still talking about
23 standards and information I could provide. I don't
24 think there was -- I don't think there was some
25 discussion of that sort.

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1 Q. When did your attention turn to this case, the
2 Section 5 case, and Section 5 issues generally?
3 A. Well, basically after the completion of trial
4 in the Section 2 case.
5 Q. And that was in September sometime?
6 A. Yes.
7 Q. And you hadn't done any Section 5 analysis
8 before then?
9 A. I don't -- well, I don't recall anything
10 specifically related to Section 5. Obviously, there
11 is -- you know, there's lots of overlap in terms of the
12 kinds of analysis. But I don't think I had done
13 anything that was -- I could be wrong. There's just a
14 lot -- there was a lot going on in that six weeks. So I
15 don't -- I don't know. But offhand, I don't recall
16 anything that was Section 5 as distinct from Section 2.

17 Q. Did you receive any instructions about your
18 role in the Section 5 case?
19 A. At some point, I was told that they would --
20 that they would need a report. I'm not sure that before
21 that I was even clear. I have not been involved in a,
22 as I said before, in a Section 2 case that has gone to
23 the D.C. Court, so I really didn't know how this would
24 be handled. But they told me that they would need a
25 report and a deadline for the report, and that's what I

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1 recall. I started working on my report.
2 Q. You don't recall any other any other
3 instructions?
4 A. I think I was sent a copy of the motion for
5 summary judgment when it was produced, the DOJ
6 response. I can't remember if it was one or two.
7 Basically there was one general and then one specific.
8 And there was some discussion that I would be responding
9 to the -- primarily to the specific, the indications of
10 concern from DOJ, you know, beyond just sort of the
11 general retrogression analysis. And that's what I
12 recall.

13 Q. When you say you were asked to respond to
14 specific areas of concern, can you be more detailed as
15 to what your instructions were?
16 A. I don't -- I don't recall in any more detail
17 than that. So, I mean, I was looking through, basically
18 saying I'm going to respond to the dealing with the
19 district issues that are here, and then as I -- there
20 was -- I think somebody else put together -- or Stacey
21 Napier maybe put together a list of the specific
22 districts that were being mentioned either by Justice or
23 by intervenors. So I wanted to be able to look at the
24 intervenor list without necessarily going through and
25 reading through all of that. I think that's -- but I



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1 think that's pretty much it.
2 Q. You weren't told how to respond or what sort of
3 analysis you should put in your report?
4 A. I'm just trying to recall a specific
5 conversation. So, I mean, I think there was some back
6 and forth about -- about the particular districts. I
7 don't recall anything of this sort of, in that sense of
8 it, you know, this should be -- this kind of analysis
9 should be in or this kind of analysis shouldn't or... I
10 don't recall that.
11 Q. I would like to draw your attention to House
12 District 27 in the benchmark plan, which happens to be
13 the one that you have in front of you, the regression
14 for, but you don't necessarily need to refer to
15 that. Do you have House District 27 in mind?
16 A. I'm just looking at the -- and I don't -- off
17 the top of my head, I don't know a thing about House
18 District 27. It looks like it is, according to this, 36
19 percent black, 23 percent Hispanic, about 5 percent
20 Asian, and it looks as though it's got strong
21 performance numbers.
22 Q. Do you recall whether the minority-preferred
23 candidate won election to the House from District 27?
24 A. I don't recall, but I was given this number, so
25 I would assume that that would be the case.

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1 Q. Is that a district in which you would conclude
2 that minority voters have the ability to elect
3 candidates of their choice to the Texas House?
4 MR. SCHENCK: Objection. Calls for a
5 legal conclusion. Subject to the objection, the witness
6 will answer.
7 A. Well, the effectiveness numbers would indicate
8 that it's a democratic majority district, and I would
9 assume that's what we would see. Looking at any of the
10 exogenous analysis, it's -- it's not a majority black or
11 a majority Hispanic district, so it would have to be a
12 coalition district to reach minority status -- or
13 majority status. And so, I mean, that -- it's, in my
14 view, would not be an effective Hispanic district or an
15 effective black district. It would be a coalition
16 district. So in the general election, the candidate of
17 choice of blacks, Hispanics, and Anglos, Anglo Democrats
18 in that election will the Democrat, and the candidate of
19 choice of black, Hispanic, and Anglo Republicans would
20 be the Republican, and if the Democratic candidate is
21 elected, then in the general election, that would be the
22 election of candidate of choice of black and Hispanic
23 voters.
24 Q. (By MR. SELLS) That was a rather long answer to
25 what I intended it, and it was a pretty simple yes-or-no

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1 question. But I think it was yes, that you would
2 conclude that the minority-preferred candidate of choice
3 was elected -- or the minority voters have the ability
4 in that district --
5 MR. SCHENCK: Objection. Asked and
6 answered.
7 A. And I'm not trying to split hairs or anything,
8 but I've had some bad experience with basically saying
9 things that seem to me to be obvious and responsive, and
10 then having them turned back around in ways that are --
11 that obviously take them out of context.
12 So I just want to make clear that -- that
13 I don't think there is evidence that blacks and
14 Hispanics constitute a single cohesive minority. I
15 think they are politically cohesive in this district.
16 Lacking political cohesion, I think --
17 well, you just said that the minority candidate of
18 choice was elected suggests there is -- it's maybe a
19 combined minority, or that we can just say that's the
20 minority candidate of choice.
21 And these groups are not politically
22 cohesive, so in the -- in the general election, the
23 candidate that gets -- that will become the candidate of
24 is choice, by virtue of the Democratic nomination, I
25 suspect would be elected in this district.

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1 So I just want to be clear that I don't
2 think that this is -- that this is a district that has
3 -- I mean, it's not a district that I would analyze, if
4 I was looking at a set of districts for this purpose,
5 simply because it's not a district that has a majority-
6 minority population, in which that minority population
7 is a politically cohesive minority.
8 Q. (By MR. SELLS) Have you done any analysis as to
9 whether -- scratch that.
10 Do you know who has represented that
11 district over the course of the last decade?
12 A. No, I don't.
13 Q. If I were to tell that you it has been
14 represented by either a Hispanic or a black Democrat
15 over the last decade, would that affect your conclusion?
16 A. No.
17 Q. How could a Democrat win that seat if that
18 Democrat is not the candidate of choice of both black
19 and Hispanic voters, given the demographic numbers that
20 you have just identified for me?
21 A. By being the candidate of choice of one of
22 those groups plus Anglos.
23 Q. But you don't know whether that is in fact the
24 case, do you?
25 A. No. You were just saying how could they,



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1 and that's how they could.
2 Q. But you have said earlier that in every race
3 you have looked at, the Democrat is always the candidate
4 of choice in the general election?
5 A. Well --
6 Q. Of minority voters, I should add.
7 A. Right. I mean, so I'm assuming that roughly 40
8 percent of the voters are Anglos?
9 Q. Do you have the numbers in front of you?
10 A. It's 36.4 percent black and 23.2 percent
11 Hispanic, so that should mean something like half, or
12 maybe a little better than half, of the turned-out vote
13 might be minority.
14 Q. You're saying that based on the voting age
15 population figures?
16 A. Yes.
17 Q. And you don't -- you haven't run any turn-out
18 analysis of that district, have you?
19 A. No.
20 Q. If it turned out that in fact black voters are
21 a much more substantial share of the turnout, would that
22 affect your view?
23 A. Well, the larger the share they make up of the
24 turnout, then the more cohesive the -- but that would
25 preclude certain other mathematical possibilities.

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1 Q. Have you done any analysis of the endogenous
2 races in District 27 to determine whether the candidate
3 who prevailed in each of the five general elections over
4 the last decade was in fact the candidate of choice of
5 black and Hispanic voters in that district?
6 A. I'm sorry. Was this -- do you know if this was
7 one of the districts that was in either the Justice or
8 any of the intervenors? I don't see it.
9 Q. I don't believe it's in your report.
10 A. Then there may have been some analysis, but
11 what I was focusing analysis on were districts that have
12 been raised as issues by either the Justice Department
13 or by the intervenors. So if there was analysis done, I
14 probably haven't looked at it directly.
15 I would assume that it would show that
16 blacks vote cohesively for the Democratic candidate in
17 the general election, probably about 90 percent; that it
18 would show Hispanics voting cohesively in the general
19 election for the Democratic candidate, probably at a
20 level below that, 80 percent; and Anglos probably voting
21 -- Anglos are a little trickier, because it would depend
22 on where the district is located. But Anglos voting for
23 the Republican candidate at 70 something percent maybe.
24 Q. So that's an instance where Hispanics voters
25 would have had the ability to elect their candidate of

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1 choice over the course of the decade, because their
2 candidate of choice would have been the Democratic
3 candidate, right?
4 A. Right.
5 Q. And that's an instance where black voters would
6 have had the ability to elect candidates of their
7 choice, because their candidate of choice would have
8 been the Democratic candidate and they would have
9 favored that Democratic candidate quite heavily,
10 according to your analysis?
11 A. Right. So in the general election, both blacks
12 and Hispanics in the general would have the chance to
13 elect their candidate of choice.
14 But, I mean, the issue for me, and I
15 assume the reason that it's not listed somewhere else,
16 is just -- I don't know why it's not listed somewhere
17 else. But the issue for me is, what we have just said
18 is true of any Democratic district in the United
19 States. Minorities, blacks and Hispanics -- well,
20 immediately, you got to take out Miami.
21 So let's just say for Texas, for any
22 Democratic district in Texas, it's true that blacks and
23 Hispanics located in Democratic districts vote for their
24 candidate of choice, typically the Democrat in the
25 general election, and if the district is majority

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1 Democratic, that candidate is elected. And if it's not
2 majority Democratic, the candidate is not elected.
3 So, my beginning for this analysis is to
4 assume that the benchmark districts in state of Texas
5 are not all the Democratic districts in the state of
6 Texas. Well, I mean, that's the assumption that I made
7 in going into the analysis. And then beyond that,
8 looked specifically at districts that were identified as
9 districts in question by intervenors or by the Justice
10 Department.
11 Q. But this is a majority-minority district,
12 right?
13 A. In a combined -- I mean, as a coalition
14 district or...
15 Q. I'm not characterizing it as anything as other
16 than majority-minority.
17 A. All right. Yeah, but as long as you don't mean
18 anything legal by majority-minority. If you add up the
19 minorities, they constitute a majority in the district.
20 Q. Is that true at the VAP level?
21 A. Well, it's certainly true at the VAP level.
22 Q. Is it true at the CVAP level?
23 A. Again, I'm going on the data that's in front of
24 me, which is from Lisa Hanley's report. But I assume
25 it's reliable, and in that case, it's true at the CVAP



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1 level as well. We don't have the SSRV here, so I don't
2 know what it is. I assume it's lower than the 23
3 percent, but probably -- my guess would be about 19,
4 something like that. So, I mean, it could be a close
5 call in terms of voters, but, again, I'm not concerned.
6 My concern is not with, if when we add all
7 those up, we come up with a close call. I mean, they
8 can all add up to 56 percent, or they can all add up to
9 46 percent. It's that they -- it's that none of them
10 individually adds up to 50 percent plus one. So it's a
11 coalition district. And there is just no evidence
12 anywhere that blacks and Hispanics are cohesive in the
13 Democratic primary, and in fact, vote, more often than
14 not, vote for opposite candidates.
15 And my view is that if -- if a group is
16 not -- if a group is politically cohesive, they will
17 support the same candidates in the primary. If they
18 don't support the same candidates in the primary, then
19 to argue that they end up supporting the same candidate
20 in the general election is just simply not a useful way
21 of characterizing an election system that's functioning
22 in the way that the Voting Rights Act envisions an
23 election system function.
24 Q. And if the law turns out not to support that
25 view, you would conclude that this an ability-to-elect

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1 district for minorities?
2 A. Then I would want to do the actual analysis on
3 the district. I didn't do -- or discuss that in my
4 report, because I would not assume that that's -- that's
5 the case. But if it turns out that is the case, then
6 that's -- then you would go about doing that analysis
7 by, as you did, as was the case for the other districts.
8 So I'm not objecting to the -- to the way
9 this is done, just simply to the fact that it's -- it's
10 a district that is majority only in the sense that you
11 put together two groups that in Texas are not
12 politically cohesive.
13 Q. If there is a substantial number of blacks and
14 Hispanic voters in a district, are they required to
15 settle on a candidate at some point before the election
16 process begins?
17 MR. SCHENCK: Objection. Calls for a
18 legal conclusion.
19 A. I don't think they are required to do
20 anything. I think they're -- they're allowed to have
21 their own candidates of choice, which they evidently
22 do. I have no problem with that.
23 And I just think it's -- these are groups
24 that either -- that you basically either can treat as a
25 single group or you can't. If you can treat them as a

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1 single group, they are politically cohesive. If they
2 are politically cohesive, then -- I mean, there's a
3 perfectly good reason to treat a group as cohesive. If
4 the group is not cohesive and you treat the group as
5 cohesive, you just -- I mean, there's a lot of political
6 mischief in that. If you basically don't tend to favor
7 each other's candidates, but actually you prefer Anglos
8 to each other's candidates, then, sort of, basically
9 equalizing, treating as basically the same a district
10 that's composed of, sort of, two roughly equal-sized
11 minority groups that don't agree on candidates of
12 preference in the primary, but are treated as if the
13 same is a district that is 56 percent Hispanic or 56
14 percent black, I don't think is -- is useful
15 politically. I don't think it's useful.
16 I mean, this is what Dick Murray was
17 talking about at the Section 2 trial. When we're
18 talking about tension districts, this would be, I think,
19 a good example of his tension district, in which there
20 are, sort of, genuine political differences between
21 these groups, and putting them together in a district
22 doesn't solve those political tensions.
23 And I guess -- you know, and if the state
24 wants to put them together or doesn't want to put them
25 together, I mean, I'm not saying that I have a

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1 particular policy position in mind here. I just think
2 that in my experience, that this is not -- districts
3 that are not composed of and could not be composed of
4 cohesive minority groups are not districts that I would
5 say are districts that would count as baseline districts
6 or as minority districts.
7 And all -- all the voters are required to
8 do to, to be voters in a protected district, are meet
9 the definition of a protected district. And so I guess
10 -- I'm not trying to require them to do anything in the
11 process leading up to the primary. But I think treating
12 this as a single to cohesive majority -- minority group
13 is requiring them to do something in the process of
14 leading up to the primary. So I'm perfectly happy with
15 what they are doing, which is preferring their own
16 candidates to the candidates of other group, or maybe
17 preferring Anglo candidates to the candidate of the
18 other group.
19 Q. (By MR. SELLS) I am going to give you a Hypo
20 Number 5. And I think we're up to Exhibit 10.
21 A. I think it's 9. Unless I have stolen 10.
22 MR. SELLS: I have a 9.
23 (Exhibit 10 marked for identification.)
24 MR. SELLS: And for the record, this is a
25 Primary and a General Election.



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1 Q. (By MR. SELLS) Anglo, black, and Hispanic
2 voters, and in the primary its candidates Abel and
3 Baker. Anglos split their vote down the middle for Abel
4 and Baker. Black voters give a hundred percent of their
5 votes to Abel. Hispanic voters give a hundred percent
6 of their votes to Baker. Baker wins, and makes it
7 through to the general election against Cain. Again
8 Anglos are split 50-50. And in the general election,
9 black and Hispanic voters give a hundred percent of
10 their votes to Baker. So in this instance, Baker gets
11 the same share of the Hispanic vote, but whereas Baker
12 got zero of the black vote in the primary, she now gets
13 a hundred percent of the black vote in the general.
14 A. So we're doing the circle the candidate of
15 choice?
16 Q. Yes. And would you mark Baker as the winner in
17 the general, too.
18 A. Okay. So Baker obviously wins the primary and
19 the general?
20 Q. Yes.
21 A. So in the primary, Anglos split 50-50. There's
22 no candidate of choice. The candidate of choice of
23 black voters is Abel at a hundred percent. The
24 candidate of choice of Hispanic voters is Baker at a
25 hundred percent. In the general election, Anglos split

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1 evenly between Cain and Baker, so they have no candidate
2 of choice. Black candidates voted a hundred percent for
3 Baker. Baker is the candidate of choice in the general.
4 Hispanics a hundred percent for Baker. Baker is the
5 candidate of choice of Hispanics in the general
6 election.
7 Q. Actually, this looks like Hypo number 4, which
8 was hiding under a piece of paper there.
9 Which candidate did black voters like
10 more?
11 A. I assume --
12 Q. Abel or Baker?
13 A. I assume Abel.
14 Q. Why do you assume Abel?
15 A. Well, because you told me they voted a hundred
16 percent for Abel. Am I reading that correctly? Black
17 candidates vote a hundred percent for Abel?
18 Q. They also voted a hundred percent for Baker.
19 A. Yeah.
20 Q. Under what circumstances is the candidate who
21 gets a hundred percent of the black vote not the black
22 candidate of choice?
23 A. Under no circumstance. In the general
24 election, the candidate who gets 50 plus one percent of
25 the vote is the candidate of choice. It's a technical

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1 definition, that I don't find in this case, to be
2 particularly useful at all. I mean, this is exactly the
3 case in which -- if you have at large elections in the
4 state and your population is entirely black and Anglo,
5 and blacks are, as they have been since the New Deal,
6 regularly Democratic voters in the general election,
7 this is exactly the circumstance, in which black
8 candidates will not be able to be nominated in the
9 primary despite being the candidate of choice of blacks
10 in the primary. And then in every case will be the
11 candidate of choice of 90 percent choice of Democrats in
12 the general election, the white candidate who was not
13 their candidate of choice.
14 So I think just focusing on the general
15 election as if it were -- I mean, this is, of course,
16 exactly why we have a Voting Rights Act in the first
17 place was precisely of that election situation, in which
18 blacks were unable to nominate candidates, but were
19 nonetheless voting for their candidate of choice,
20 Governor Wallace or whoever it was, who was the Democrat
21 in the general election. But that candidate -- the only
22 stipulation was, that candidate couldn't be black,
23 because the black candidate couldn't make it out of the
24 primary in Texas because, of course, blacks couldn't
25 vote in the primary. But there you can say, well, okay,

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1 it's all about the general election. We don't have to
2 worry about the primary at all, because blacks aren't
3 even allowed to vote in the primary, so who is their
4 candidate of choice in the general election? It's white
5 Democrats in the general election.
6 Q. Could you use other cues and information to
7 determine whether the candidate that gets the most black
8 votes in the general election is the candidate of choice
9 of black voters?
10 A. As I understand the term "candidate of choice,"
11 it's simply -- it is simply a mathematical result of the
12 election analysis. It's the candidate that receives the
13 majority or the plurality of the vote from that group.
14 So whether that would be their most
15 preferred candidate in an ideal world, I don't think we
16 have an analysis to show whether that would be their
17 ideal candidate in a preferred world.
18 We do know that that candidate ran against
19 another candidate in a different process, right? So for
20 the -- in this case, for the blacks who voted in the
21 Democratic primary, clearly Baker was not their
22 preference. They clearly preferred Abel.
23 And so in this particular district, they
24 are not able to control the primary, and so the
25 candidate that they give no votes for will be the



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1 general election candidate, at which point they are free
2 to now free cast all of votes for a candidate they gave
3 no votes to at all, as a candidate they would have
4 preferred not to have nominated. They simply would -- I
5 mean, to argue that they actually prefer that candidate
6 over the Republican candidate is quite different than
7 saying that's the candidate they would have liked to
8 have put in place or the person they would like
9 representing their interests.

10 The fact that the candidate is Hispanic in
11 this case is no different than if the candidate that
12 wins is Anglo. The Democratic candidate that wins in
13 this election could be an Anglo candidate winning the
14 election, right, and that Anglo that candidate will be
15 the candidate of choice of minority voters.

16 Q. Is there no substantive difference, in your
17 view, between black voters in Hypothetical 5 supporting
18 Baker enthusiastically because she has won them over by
19 campaigning in their communities, supporting their
20 issues, getting the endorsement of Abel, for example,
21 versus black voters going to the polls, holding their
22 nose, and voting for the least evil?

23 A. There are all kinds of possible ways in which
24 this coalition could emerge in the general election, and
25 those would involve, obviously, different kinds of

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1 things, right? There may have been genuine coalition
2 building. There may be all kinds of things going on.

3 In a contested primary following this
4 election, we might see a contested primary in which
5 Baker will now become the candidate of choice of a
6 hundred percent of black voters. But at this stage,
7 what we know about Baker is, Baker is not that
8 preference.

9 And what we know from looking at not my
10 analysis, but plaintiffs expert's analysis, from looking
11 at a raft of primary elections in Texas over the last
12 decade, we know that blacks and Hispanics typically vote
13 opposite each other in primaries, and we know that
14 blacks and Hispanics of different levels give a majority
15 of their votes to the Democratic candidate regardless of
16 whether the Democratic candidate is Anglo, black or
17 Hispanic, and regardless of whether the Republican
18 candidate is Anglo, black, or Hispanic.

19 So that's not a multicollinearity issue.
20 We actually can separate out all the variables, and we
21 separate out all the variables in the general election.
22 The vote, in the general election, is irrespective of
23 the race or ethnicity of the candidate. It's based on
24 the party of the candidate.
25 So to me, I just have a hard time

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1 understanding how this -- the fact that blacks,
2 Hispanics, and some Anglos in Texas are Democrats, and
3 therefore vote Democrat in the election, and in that
4 election vote without regard for race or ethnicity,
5 somehow magically makes that a political -- a
6 politically cohesive group, if they are not in fact
7 politically cohesive in, for example, the primary.

8 Q. So I gather it would be your position that
9 blacks and Hispanics are not entitled to settle any
10 intracoalition differences in primary elections; that
11 they have to do it at some other point in the election
12 process?

13 A. They are entitled to settle those differences
14 anyplace and anywhere they want. Anywhere. I don't
15 care how that is settled. That's not my issue at all.

16 The issue is whether they ought to be
17 considered to be a single minority group. It is not
18 whether they should be considered to be two minority
19 groups that settle their differences in the primary or
20 that work things out or that like each other in the
21 general, or that have the same policy aims.

22 The question is whether they ought to be
23 simply defined as a single minority group for purposes
24 of the Voting Rights Act, and I just don't think that's
25 an action to be taken lightly.

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1 And I particularly think that it's
2 pernicious to say if you basically have your differences
3 in the primary but sort them out in the general, you
4 are, therefore -- there is no issue. You are a minority
5 group that is effectively represented, because that
6 means that blacks were effectively represented through
7 the entire one-party history of the South.

8 And to argue that, some people do, that
9 that doesn't matter, because in the one-party South, the
10 primary was tantamount to election, and if you won the
11 primary, you were elected. So in fact, you could move
12 that step back, and you had to be cohesive in the
13 primary because the primary was tantamount to election.
14 In most of the districts in Texas, the primary is
15 tantamount to election, too. It's certainly tantamount
16 to election in most of the minority districts in Texas.
17 And if the Democratic primary is tantamount to election
18 in Congressional District 18, then I just -- I can't see
19 where this distinction is taking us in terms of
20 basically finding a standard we can apply and apply with
21 some consistency. It just seems to me it undermines the
22 entire point of the Voting Rights Act.

23 Q. So you would see no difference between David
24 Duke or George Wallace, rabid, rabid Democratic
25 segregationists, although David Duke later became a



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1 Republican, and someone like Bill Reynolds or Doro
2 Olivo, who represented District 27?
3 A. I see all the difference in the world between
4 those individuals. That isn't my point at all.
5 My point is just as an analytical matter,
6 if you are going to allow the general election, allow a
7 group that gives no support to a candidate in a primary,
8 when they have a choice of someone of their racial or
9 ethnic group, or when they don't, right, because this --
10 the cohesion -- the cohesion isn't evident, even if
11 there not a Hispanic candidate in the primary.
12 So if blacks have a choice between a
13 Hispanic and an Anglo candidate in a primary, they are
14 typically going to give the majority of their votes to
15 the Anglo candidate. So it's not that there is a black
16 candidate there that's pulling that off; it's that's
17 their preference. And if they give no votes to that
18 candidate in a contested primary, they are going to be
19 therefore -- whether it's the blacks or the Hispanics,
20 so they are going to be melded into a minority group in
21 which they no longer have a specific legal identity,
22 simply on the basis of what happened in that general
23 election, in a state where we have a mass of evidence
24 that shows that that decision in the general has nothing
25 to do, right?

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1 If this decision in the -- if this
2 decision here is a reflection of racial cohesion, if
3 this is a decision that blacks say, well, we want to
4 vote for the Hispanic because this is a minority group
5 that we're politically cohesive with, that would be
6 different. But we find no evidence of that at all.
7 We find the evidence that all that happens
8 in the general election is partisanship takes over, and
9 if partisanship -- in this case, we know that racial and
10 ethnic voting is distinctive. These are polarized
11 groups, right? This is racial polarization between
12 blacks and Hispanics. So we have perfect evidence of
13 complete racial polarization. Blacks vote as a block to
14 defeat the Hispanics' candidate of choice. Hispanics
15 vote as a block to defeat black candidates of choice.
16 So we have now proved racial polarization.
17 Having proved racial polarization on the basis of party,
18 not on the basis of anything to do with race or
19 ethnicity of candidates, but on the basis of party,
20 we're going to set that aside and define these two
21 groups as politically cohesive, I think that undermines
22 everything about the basic functioning of the Voting
23 Rights Act.
24 I just don't -- I don't understand how the
25 Voting Rights Act can become something which in the name

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1 of preference for the Democratic candidate, a party
2 candidate, irrespective of race, ethnicity, that that
3 can become to trump preference for a candidate of your
4 own racial and ethnic group such that candidates of your
5 own racial or ethnic group cannot be elected out of the
6 district.
7 Q. So it's your understanding that the Voting
8 Rights Act protects minority voters' ability to choose
9 candidates of their choice, as long as they don't make
10 that decision on the basis of party?
11 MR. SCHENCK: Objection, it calls for a
12 legal conclusion. Subject to the objection, you may
13 answer.
14 A. I guess to be I should be clear, since I'm
15 going on off a tirade here about the Voting Rights Act,
16 that I'm not -- I'm not a lawyer, and I'm not talking
17 about my legal understanding of the Voting Rights Act.
18 I am talking about what I think the Voting
19 Rights Act -- what I understood the Voting Rights Act to
20 be addressing and what I think -- what I understand to
21 be the enormous success of the Voting Rights Act.
22 So given that how, I understand that, I'm
23 -- I mean, what -- it's just not my choice to make of
24 what the law is in terms of the Voting Rights Act.
25 Q. (BY MR. SELLS) Okay. But I'm asking for your

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1 understanding, and you have been --
2 MR. SCHENCK: And I'm fine with him
3 continuing to give that understanding, by the way. I
4 just want to make my objection so the record is clear.
5 MR. SELLS: Sure.
6 Q. (BY MR. SELLS) And you have gone at length
7 about what your understanding is. It sounds to me like
8 your understanding is consistent with the view that
9 black and Hispanic voters don't have protection for
10 their ability to choose if they choose to vote along
11 party lines?
12 A. You can certainly make that argument, but that
13 is not the point I am making here.
14 Q. Isn't --
15 A. I can say this. If I believed, just as, that
16 is, in my understanding of the law, that if, in fact,
17 the fact it has been demonstrated in court that in the
18 general election there is no impact of the race or
19 ethnicity of the candidate beyond party, that that meant
20 that there was nothing to be protected, since it was
21 just a party preference, then none of these districts
22 would be protected. There would be no protected
23 districts in Texas, because in the general election in
24 Texas, the voting is on the basis of partisanship and
25 not on the basis of the race or ethnicity of the



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1 candidates. I think that's a rather extreme position to
2 take, and it's not the position I am taking and it's not
3 the position I am taking here.
4 Q. Well, it sounds to me like the position that
5 you are taking in the coalition districts, as you have
6 described them.
7 A. If that were my position in coalition
8 districts, then if you move this over here and say that
9 that happens dependably, right, so we do -- just like we
10 would do for a general election, we do a primary
11 election analysis, and we find that blacks and Hispanics
12 vote cohesively for the same candidates in the primary.
13 Then if my argument was that if it's all
14 voting on the basis of Democratic party in the general
15 if it's not in a protected district, that would suggest
16 that it's impossible to have a protected district.
17 The reason for studying the primaries is
18 to find out if, in fact, these are two politically
19 cohesive groups. They are not politically cohesive
20 groups, and because they are not politically cohesive,
21 then you can't combine them on the basis of what happens
22 here, because what happens here, happens because of
23 party. Now, if they are a politically cohesive group
24 here, let's say, Hispanics and Hispanics, so I know of
25 no analysis in Texas that shows that there are

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1 cognizable groups of Hispanics of sufficient size that
2 are not politically cohesive.
3 And so this will be -- for example, in
4 Florida, we could look at Hispanics in Immokalee and
5 Hispanics in Miami. They are not politically cohesive.
6 Hispanics in Immokalee are overwhelmingly Democratic,
7 and Hispanics in Miami, at least traditionally, were
8 overwhelmingly Republican, becoming less so all the
9 time. So there we'd have a genuine within Hispanic
10 issue. If we show, as we do in Texas, that Hispanics
11 are politically cohesive, then the fact that in the
12 general election that vote is based on party, I would
13 not say, in my view, would exclude the possibility that
14 Texas still has some districts that are covered under
15 the Voting Rights Act.
16 So it's -- it is not either of these
17 singly, but the two in combination that I think make --
18 make this an issue that can't, basically, be resolved on
19 the basis of the Democratic allegiance in the general
20 election without substantially undermining the what else
21 you do with the Voting Rights Act.
22 Q. If the court disagrees with you as to the
23 requirement of cohesion in the primary election, there
24 would be no question in your mind that District 27 is an
25 ability-to-elect district, right?

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1 A. And again, if the court disagrees with me or
2 the Justice Department disagrees with me or one of the
3 intervenors disagrees with me, then I would want to do
4 an analysis of that district. But if we did the
5 analysis of the district and find that the groups are
6 cohesive in the general election, and the district is a
7 dependably Democratic district, then that's exactly the
8 fact pattern you look for, to look for a district that
9 would be a protected minority district.
10 So not -- there is no different standard
11 here. Assuming that meets the standard of the -- if
12 that falls in the same range as the black and Hispanic
13 districts that we are talking about elsewhere in the
14 plan to which Justice says they have no objection, then
15 they would be -- this would be a district that would be,
16 without objection, considered to be a benchmark
17 district, and if drawn like this, would be an
18 appropriate match for that in an adopted plan.
19 Q. What analysis would you want to do of District
20 27 under those circumstances?
21 A. The analysis would be no different than the
22 analysis for any of the other minority districts. There
23 you would, having established a population majority, you
24 simply treat those two groups as if they were a single
25 cognizable minority group, take a look at those numbers,

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1 see if they are a majority, that gets us out of the
2 influence district issue. If that's a majority, then
3 you've got a majority district, and then you would
4 simply move on to looking at the -- at whether in the
5 adopted plan, that number had been moved up or down and
6 across the majority line. If you want to make a
7 brightline cut at reducing a majority district to a
8 minority district, and then looking at the reconstituted
9 elections, if the district was performing in the old
10 plan, if the district is likely to perform similarly in
11 the new plan.
12 Q. Well, just as to the benchmark plan, if it
13 turned out that cohesion in the primary was not required
14 and cohesion in the general, and if we were only trying
15 to determine whether the benchmark district was one in
16 which minority voters had the ability to elect, and it
17 turned out that the Democratic candidate won
18 overwhelmingly in all five general elections over the
19 course of the decade, what further analysis would you
20 want to do, to determine whether that is, in fact, a
21 district in which minority voters have the ability to
22 elect candidates of their choice to the House?
23 A. I mean, I would want to see the statewide
24 numbers as well, just because if you're going to be
25 comparing this to another district, that's going to be



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1 your comparison baseline. But I don't think you would
2 have to have those numbers, in the sense of just asking
3 that question about past performance of the district.
4 Q. I want to turn your attention to District 148
5 in the benchmark House plan.
6 A. All right. And just to simplify, is this a
7 district that I'll find --
8 Q. In your report? I don't think so.
9 A. Okay.
10 Q. It's mentioned in your report, but I don't
11 think it's in any of your tables.
12 A. And is this a black or Hispanic district?
13 Q. It's a Hispanic district.
14 A. Hispanic district. All right.
15 Q. And I'll represent to you, as an officer of the
16 court, that it has been represented by Jessica Farrar,
17 herself an Hispanic, for much more than this decade. I
18 don't know if her first election was '94, I think.
19 Maybe '92. Maybe '96. But she has won reelection over
20 the course of the decade.
21 A. All right.
22 Q. Do you need more information to determine if
23 Representative Farrar is the minority candidate of
24 choice in that district?
25 A. Representative Farrar is a Democratic?

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1 Q. She is.
2 A. Then I would be fairly certain that she is the
3 candidate of choice of minorities in the district.
4 Q. And do you need more information to determine
5 whether 148 is a district in which minority voters have
6 the ability to elect candidates of their choice to the
7 Texas House?
8 A. Again, we're, like, basically have the same
9 issue here. This is a -- Hispanics constitute about 40
10 percent of the voters or the citizen population in the
11 district, so, so long as the district is drawn to be
12 Democratic, they will have the ability in the general to
13 elect the candidate of their choice.
14 Q. And have they demonstrated that ability by
15 electing and reelecting Jessica Farrar over the last
16 decade?
17 A. Yes.
18 Q. I'm going to ask the same -- the same question
19 with regard to benchmark District 149, which I know is
20 one that you have analyzed; at least you have analyzed
21 the primary elections in exogenous contests.
22 A. All right.
23 Q. But that's one in which Representative Hubert
24 Vo has won election and reelection since 2002, I
25 believe. Let me double check that.

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1 MR. SELLS: Does that sound right to you?
2 MR. SCHENCK: It sounds about right.
3 Q. (BY MR. SELLS) I think he first won election in
4 2004, maybe. But he certainly has been reelected in
5 2010, 2008, and 2006.
6 A. Yes.
7 Q. First of all, is that a majority-minority
8 district?
9 A. Well, here, we have to go three -- three
10 minorities to get to the majority, because it's not
11 majority in terms of black and Hispanic. It's not
12 majority in terms of Asian and Hispanic, or Asian and
13 black. But if we add Asian, black, and Hispanic, then
14 we get majority.
15 Q. So yes, it is majority-minority district?
16 A. Again, if by that definition you mean summing
17 up those three minority groups and you reach a majority,
18 then that would be true.
19 Q. That's a majority of CVAP?
20 A. That's a majority of CVAP.
21 Q. Okay. And based on Hubert Vo's reelection, I
22 believe three times to the House to from District 149,
23 would that be a district in which minority voters have
24 demonstrated the ability to elect a candidate of choice
25 to the House?

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1 A. Again, assuming -- I don't think I have seen
2 the -- do we have the general election -- I'm not sure
3 that I have seen general election analysis in that
4 district for Asian. I don't know how the Asian -- I
5 don't what the cohesion analysis is for Asian in that
6 district. That may be someplace, but I'm not seeing it
7 right now.
8 So when we talked earlier about that we
9 have bundles of evidence that allow us to be fairly
10 cavalier about saying that blacks are likely voting --
11 the candidate of choice of black voters is the
12 Democrats, the candidate of choice of Hispanic voters is
13 the Democrat, we don't have the same kind of analysis to
14 say offhand that the candidate of choice of Asian voters
15 is a Democrat.
16 So with that caveat, I would say in
17 electing Hubert Vo, blacks are electing their candidates
18 of choice, black voters in that district. Hispanic
19 voters in that district are electing their candidate of
20 choice in the general election, and I'm not sure about
21 Asian voters.
22 MR. SELLS: Would now be an okay time to
23 take a short break?
24 THE WITNESS: Sure.
25 (Recess from 3:53 p.m. to 4:05 p.m.)



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1 MR. SELLS: Back on the record after
2 another short break.
3 Q. (BY MR. SELLS) We talked about benchmark House
4 Districts 27 and 148. I don't want to spend as much
5 time on the next one, but I want to direct your
6 attention to benchmark Congressional District 18, and I
7 simply want to ask maybe by way of summary: Is this
8 another district where essentially the only thing that
9 is preventing you from concluding that it is a district
10 in which minority voters have the ability to elect
11 candidates of their choice to the U.S. House is this
12 assumption that cohesion in primaries is required for
13 that conclusion?
14 A. In 18, it would depend on -- and my
15 recollection of 18 is that it's 49 percent black,
16 something like that. Is that even close to being
17 correct? I see you shaking your head.
18 Q. I don't have those numbers committed to memory.
19 A. Well, so my recollection is -- my recollection
20 is that the black CVAP for 18 is right around 49
21 percent, somewhere in that range, so that's an open
22 question as to whether that's a majority black district
23 or not. It certainly would give me a Red Apple. In
24 five minutes, I can make it a majority black district.
25 And I guess that's where, I think, to be a little bit

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1 careful about -- that's why I think it's important to
2 look carefully at the minority numbers. So that's --
3 rather than being a district that's balanced between two
4 or three minorities, that's a district that is at or
5 close to being at a majority black district, as are the
6 other two black congressional districts.
7 Q. But benchmark Congressional District 18 would
8 be a majority-minority if you aggregated them?
9 A. If you -- well, if you aggregated minorities,
10 it would be -- clearly be majority-minority. But I
11 think it's -- there was also a question on whether it's
12 a majority-minority on black alone. It's not on
13 Hispanic, not close, of course. But I think it is very
14 close to being majority, if not majority black citizen
15 voting age population.
16 Q. Well, do you conclude, as it is now, that
17 benchmark Congressional District 18 is a district in
18 which black voters have the ability to elect candidates
19 of their choice to Congress?
20 A. Yes.
21 Q. Sticking with the congressional plan, but
22 turning now to the proposed plan, is proposed
23 Congressional District 35 one in which you conclude that
24 minority voters will have the ability to elect
25 candidates of their choice to Congress?

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1 A. (Viewing documents.) Yes.
2 Q. And it's also your conclusion that proposed
3 District 23 is not a district in which minority voters
4 will have the ability to elect candidates of their
5 choice to Congress, right?
6 A. I guess we better be careful here, because I
7 think this maybe exactly where I tend get into trouble.
8 MR. SCHENCK: Let me object to the extent
9 it calls for a legal conclusion, but subject to the
10 objection, you may answer.
11 A. All right. So I don't think there is any
12 question that Hispanics have the ability to elect a
13 candidate choice in the 23rd. They have a majority of
14 the registered vote. 54 or 55 percent of the registered
15 voters are Hispanic. So Hispanics have the ability to
16 elect a candidate of choice in that district, and that
17 ability can't be defeated by cohesive Anglo block
18 voting. That's why you make a district majority-
19 minority. So it's a majority-minority district. It's a
20 single majority-minority district. It's Hispanic.
21 Hispanics, all Hispanics have to do is turn out and vote
22 as cohesively as Anglo voters turn out and vote, and
23 they control the district. So in that sense, and in
24 just a numerical sense, that's an ability to elect
25 district. That's just a fact. There is an ability to

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1 elect a candidate of choice there.
2 Then I think if you move to the sort of
3 the functional analysis that DOJ is recommending, you
4 would want to say how likely is that to happen under
5 that district, and that's where you look at the election
6 analysis. And what you see in the election analysis is
7 that basically current patterns of cross-over voting and
8 turnout remain in place, but that's not likely to happen
9 all that often. And so if you are looking for a
10 district that will -- that will perform regularly,
11 that's a district that probably is not going to be one
12 of your better performing districts. But I don't think
13 there's any question that it still is an ability-to-
14 elect district.
15 Q. As you have just --
16 A. And again, as -- which is -- yeah, what I have
17 just said is what I am thinking of. And if there is
18 some -- if ability to elect means something else in a
19 legal sense, I apologize. In the sense that Hispanics,
20 if they vote as cohesively as Anglos, cannot be blocked
21 in their choice by Anglo block voting. It's an ability-
22 to-elect district. It's a majority Hispanic registered
23 voter district.
24 Q. Okay. But your analysis is that more likely
25 than not, Hispanics will not elect their candidate of



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1 choice to Congress in that seat?
2 MR. SCHENCK: Objection, calls for a legal
3 conclusion.
4 A. Based on the election analysis, as well as just
5 the past history of the 23rd, I'd say, you know, even
6 without election analysis, anybody would say that's got
7 to be a toss-up proposition for the 23rd. It's always
8 been a problematic district in all of its incarnations.
9 But based on the election analysis, I
10 would say that -- I mean, all other things being equal,
11 my projection would be that that would not be a district
12 that I would count as a district that is -- has a high
13 probability of electing a candidate of choice based on
14 the statewide election returns and the reconstituted
15 election analysis.
16 Q. (By MR. SELLS) Would you say a less than 50
17 percent probability?
18 MR. SCHENCK: The same objections.
19 A. I mean, I would prefer to say the -- that is
20 less than 50 percent is kind of -- its performance
21 index, almost no matter how you calculate it, is below
22 50 percent. How that actually -- we don't really know
23 how that turns into -- we have no analysis from anybody
24 that connects those performance indexes in a
25 regression analysis to actual performance by going

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1 back, say, to 2000 and looking forward. It would be an
2 interesting thing to do.
3 So I would hesitate to say that that term
4 translates directly into the likelihood of performing.
5 So a district that performs half the time in statewide
6 elections may or may not be a 50-50 chance of performing
7 in a given election. But it certainly -- its past
8 performance is less than -- it elects candidates of
9 choice less than half the time. So I'd say -- and I
10 think it's roughly -- isn't it roughly the same
11 territory as Herbert Vo's district, if I'm not mistaken?
12 Q. (By MR. SELLS) Well, I'm not sure I would agree
13 with that because --
14 A. I'm just thinking in terms of the index.
15 Again, I'm just trying to make my point that we can't
16 just translate the probabilities directly, because I
17 think Herbert Vo's district is a 19 percent performing
18 district. And I don't think it automatically means that
19 there's only a 19 percent chance of electing Herbert Vo.
20 Q. Turning back to the House side, again, on the
21 proposed, is it your conclusion that minority voters in
22 the House District 35 will be more likely than not able
23 to elect candidates of their choice to the State House?
24 A. Yes.
25 Q. That they will be?

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1 A. That they will be able to elect candidates of
2 choice.
3 Q. On what do you base that conclusion?
4 A. It has a hundred percent performance index.
5 Q. Are we talking about the same district here,
6 proposed district 35 on the State House side?
7 A. I'm sorry. House for me always means House of
8 Representatives. I can't help it. I'm a national
9 politician. When you say the House, it's House of
10 Representatives, and I guess -- I don't know what they
11 -- do they call it the House of Representatives in
12 Texas? Do they really? Well, amazing. So there you
13 go. Okay. Let's -- they should be forced to start
14 their numbering at 37.
15 So I guess the question on State House
16 District 35 is that the -- the exogenous number is below
17 50, so, and it's certainly not a certain district, but
18 it's in sort of -- it's in that -- it's in that 50
19 percent range plus or minus.
20 Q. Do you disagree with Lisa Hanley's conclusion
21 that it is not an ability-to-elect district?
22 A. Maybe I'm looking at the wrong -- hold on. So
23 this is H-283. This proposed District 35. So this is a
24 district that's 53 percent Spanish surname registered
25 voters and elect Democrats half the time? Well, in the

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1 sense that its Hispanic surname registered voter
2 majority has the ability to elect in the sense that if
3 Hispanics vote cohesively, at least as cohesively as
4 Anglos, then they can't be blocked out by nonHispanic
5 voters. And then turning to the election analysis, it
6 looks like it's basically a toss-up district in terms of
7 its performance, elects Democrats half the time,
8 Republicans half the time.
9 So I wouldn't say that it's not -- I
10 wouldn't say it's a district that doesn't provide the
11 ability to elect, and I wouldn't say it was a district
12 that would not -- and based on this analysis, we would
13 expect it to perform sometimes and not perform
14 sometimes. So it's not going to be a district that would
15 be basically kind of an automatic, you know, performing
16 district like C18, but it's certainly a district that's
17 -- that is where voters have elected Democrats and where
18 Hispanics are a majority of the registered voters.
19 Q. And when you say Democrats win half the time
20 there you're weighting -- w-e-i-g-h-t-i-n-g -- white-
21 white contests, the same as interracial contests, right?
22 A. I count everybody as a Democrat who runs on the
23 Democratic ticket. I don't discriminate on the basis of
24 race or ethnicity. But I can look back here and see
25 what the -- right? We can get -- well, so Lisa gets a



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1 40, and the big number is a 48, and in the REA or the
2 DEA, it's a 4. So I guess everybody is in the --
3 somewhere in that 40 percent range, which, I think is
4 that -- I think of that range that sits around the
5 middle there, that kind of 40 to 60 area. I mean,
6 everybody agrees that there is -- obviously, that's --
7 regardless of how you look at that, there are a
8 substantial number of minority Democrats are being
9 elected in the district and a substantial number of
10 Democrats are being elected in the district.
11 Q. And there is also no question that that
12 district gets worse from the benchmark to the proposed,
13 right?
14 A. Gets worse in what sense? Does it -- are you
15 talking about worse in demographics or worse in vote
16 performance?
17 Q. Vote performance.
18 A. (Viewing documents.) It doesn't look that
19 different to me, but maybe I'm missing something. And I
20 think I -- I had it at 58, and now it's at 48.
21 Q. It's a 20 percent drop? That's not significant
22 to you?
23 A. I mean, it's ten percentage points, 58 to 48.
24 Q. So roughly 18 percent?
25 A. I mean, it's -- I guess it's more likely to be

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1 down than it is to be up. But, I mean, we have been
2 through the whole notion of how precise are these
3 estimates. And, I mean, that's -- so in terms of that
4 middle range, the district is moving from somewhere in
5 the middle of the range to maybe somewhere towards --
6 just slightly more toward the top middle of the range or
7 something. I mean, of the 48 elections, what are we
8 talking about; like three elections that were
9 different? And how different are they? I mean, we
10 haven't even talked about that.
11 And so many of these elections are very
12 close elections, and when the candidate wins with 49.2
13 percent of the vote over someone else who got 49.1
14 percent of the vote, and a third-party candidate got
15 something else, how does that go in to our analysis?
16 Does it go in as one-tenth of a percent? No. It goes
17 in as a hundred percent, one whole election.
18 So given that a lot of these are close
19 elections, and given that this difference over 48
20 elections is basically a handful of elections different,
21 I don't consider it to be a big change.
22 Q. Okay. If it were 47 percent, would it be a big
23 change from 58 percent to 47 percent?
24 A. No.
25 Q. How about 58 percent to 46 percent?

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1 A. No.
2 MR. SCHENCK: Objection, asked and
3 answered.
4 Q. (By MR. SELLS) At what point would it become a
5 big deal to you?
6 A. It would not, at any point, become a big deal
7 to me. I guess that's the best I can say about these
8 numbers, is that there are numbers we could see that
9 would -- where we would say that looks like a pretty big
10 change, and there are numbers that look like they are
11 not a pretty big change.
12 But we can't compare any two sets of
13 numbers that are one percentage point apart and say
14 that's where it becomes a big deal. It just gradually
15 -- why is the frog in the water? It just gradually gets
16 hotter, and at some point, you probably would say, if
17 you just gave me that straight out, right? A hundred to
18 zero is a big deal, but there is no point along that
19 hundred to zero where we can say, that's exactly where
20 it becomes a big deal, because each of those successive
21 comparisons is a comparison that involves half an
22 election, and the difference of half an election is just
23 not that big a difference.
24 Q. Looking at the data that you have laid out for
25 District 35, would you say that minority voters in

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1 District 35 are more likely than not to elect their
2 candidate of choice to the House?
3 A. I don't know.
4 Q. Isn't that what you have to determine for
5 purposes of deciding retrogression?
6 MR. SCHENCK: That's up to DOJ, isn't it?
7 They're trying to figure that out.
8 A. I don't know.
9 MR. SELLS: Counsel, would you keep the
10 editorial comments to yourself?
11 MR. SCHENCK: Let me restate that.
12 Objection, calls for a legal conclusion that we've all
13 be trying to make.
14 A. I don't -- I don't know. I mean, I think,
15 obviously, part of this notion of moving to this broader
16 functional analysis is, I guess, to provide some way of
17 -- of some set of brightline test that in doing this
18 functional analysis you could reach, and at least I
19 don't see that we're at that stage.
20 I don't think I was given that kind of
21 guidance from anybody, and I -- and having done all this
22 analysis and read Lisa's Abel analysis, I don't see
23 anything here that establishes that kind of brightline.
24 We don't have the tools to say, with that
25 kind of certainty, that an index of 50 percent means



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1 equally likely to elect and an index of 48 percent means
2 not. I mean, that's the difference between having a
3 majority of a district and having a majority of some
4 index that's an unweighted sum of a bunch of different
5 elections chosen for a variety of reasons.
6 I mean, when we talk about district
7 population, we know not only where to get that district
8 population from the U.S. Census Bureau, we know how to
9 sum those categories up, right, because there is -- they
10 are right there. So this is the way -- this is the only
11 standard for how you deal with the categories, and
12 here's what you do when have both blacks and Hispanics.
13 Here's how you treat it. Treat them as one for the
14 first purpose. Treat them as the other for the other
15 purpose. And so everybody does it. Everybody gets the
16 same numbers, and that's really not in dispute. People
17 know what they're doing when they are dealing with those
18 numbers. Here, it is not clear what exactly the
19 purpose -- or not the purpose, but what exactly the cut
20 line is in this kind of analysis. So I just don't know.
21 Q. (By MR. SELLS) Okay. Well, about two and a
22 half hours ago, you told me that your job in the
23 Section 5 case was trying to determine whether minority
24 voters are worse off. Do you remember explaining to me
25 what your basic understanding of retrogression was?

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1 A. Right.
2 Q. So at some point, you have to make that
3 determination, right?
4 A. Right. And currently, based on the DOJ
5 guidance, that worse off has to -- has to be this
6 functional analysis that involves election performance
7 and so forth.
8 Q. Well, let me ask you a different question.
9 If you were to do that analysis based on
10 numbers, you'd want to be comparing apples to apples,
11 and so you'd want to look at CVAP, right?
12 A. Right.
13 Q. Okay. So you'd want to look at, if it were
14 simply a brightline test, excuse me, based on the
15 demographic numbers that you were just talking about
16 that are available to everyone, you would want to look
17 at districts, the number of districts in which minority
18 voters are a majority of the citizen voting age
19 population in the district, right, and compare that with
20 the number of districts in which minority voters are the
21 citizen voting age population majority in the proposed
22 plan?
23 A. Correct.
24 Q. Right? And minority voters in that case would
25 be worse off if there were fewer majority-minority CVAP

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1 districts, right?
2 A. Correct.
3 Q. Okay. If that's not the standard, how do you
4 go about determining whether there is a -- whether the
5 ability of minority voters to elect candidates have been
6 diminished?
7 A. I think that's a difficult question in part
8 because that earlier demographic standard simply, right,
9 as tractable as it is, glosses over some stuff. And so
10 it's made tractable by glossing over some stuff. So it
11 is tractable, but there it is. And in this functional
12 analysis, you are trying to basically to reapproach that
13 and not gloss over some of those things. And I think
14 that's the reason that there -- and one reason to gloss
15 them over is that they are -- they are not as tractable
16 in an analytical question.
17 And in a case that works you would like to
18 be -- my preference, as I said before, is everybody has
19 the same facts, and then they can figure out what to do
20 with them. And here, we have this kind of changing set
21 of facts. I mean, I'm pleased that they are as close as
22 they are in terms of the elections that were selected
23 and the basic results in terms of performance. But they
24 aren't as precise, and they represent -- the notion that
25 part of the tractability of the brightline standard on

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1 population is that it doesn't attempt to take into
2 account the relative stability of the individual
3 districts, but just looks at the number of districts.
4 So you've got 12 districts that are majority in the old
5 plan, and 12 districts are majority in the new plan, so
6 I can check it off. But the 12 districts might be more
7 or less secure or other kinds of things. And the issue
8 there is that that means that there is some number,
9 then, that isn't 12. That it's something else, right,
10 because districts can have fractional value. So the
11 district that never -- that never elects, to me, would
12 seem to have some lower fractional value than a district
13 that always elects. But I don't know exactly how that
14 fractional value ought to be figured in.
15 So I guess if you're -- if you try, sort
16 of meld the two standards, which has an appeal to it,
17 then if you think about, so if you had a district that
18 was 50 plus 1, and it went to 50 minus 1, it's off the
19 list, right? It's retrogression. The district was
20 majority. It's minority. It's gone. So if you have a
21 district that elects in 26 out of 48, and then the
22 district elects in 25 or 23 out of 48, it's like is that
23 -- is that basically everything up is on the list, and
24 everything off is off the list, or is the comparison
25 between them what's relevant? So if a district performs



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1 76 percent of the time, and in the new plan, performs 74
2 percent of time, that's backwards. Is that off? Is
3 that no longer a district?
4 So given that we don't -- on the basis of
5 these numbers, we don't have a clear divider between
6 performance and nonperformance, but we have a gradation,
7 it makes it more difficult to decide what you're going
8 do with that gradation. Do you sum that up across
9 districts? Do you simply look for any, however slight,
10 difference in the index? I just don't -- I just don't
11 -- I just think that's not -- if that was the standard,
12 then that should have been the enunciated standard. I
13 thought the enunciated standard was that this would be a
14 functional, a broadly functional analysis which, to me,
15 suggested something more like a totality of
16 circumstances, in which case, any one particular number
17 would not be a brightline number, but you'd take all
18 those numbers in context and say what does this -- I
19 mean, to me, I take all these numbers in context, and I
20 look at the plan, and I don't think any one of those,
21 aside from where there has been a brightline standard
22 established on population. I just don't think that you
23 can take any of these others and just say automatically
24 if it's dropped by a percentage point or two percentage
25 points or five percentage points, that therefore, this

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1 is not a performing district and this was a performing
2 district, given that the districts may have been
3 performing at about the same level in both of the -- in
4 both of the plans.
5 Q. Do you know how many years the Voting Rights
6 Act has been in effect?
7 A. More than 50? Does that seem reasonable?
8 Q. If I reminded you that it's the Voting Rights
9 Act of 1965, would that help?
10 A. Less than 50?
11 Q. Yeah. I think it's about 46.
12 A. Coming up on a big anniversary?
13 Q. Is that right?
14 A. Most of our lifetime?
15 Q. And do you know how old the retrogression
16 standard is?
17 A. The retrogression standard, it must be almost
18 as old, I would think.
19 Q. And do you know whether the courts have been
20 applying the retrogression standard over the course of
21 those many decades?
22 A. I assume they have.
23 Q. Have you undertaken to read any of the cases in
24 which courts have applied the retrogression standard in
25 the context of redistricting?

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1 A. I read parts of some of the cases.
2 Q. Which cases have you read?
3 A. I couldn't even tell you names of them. That's
4 one good reason why I didn't go to law school. I'm not
5 good at citation, which actually hurts in my profession
6 as well. But I mean, that's -- you know, my sense, my
7 broad sense of that area is that there just seems to be
8 a lot of back and forth going on, and maybe it's clear
9 to lawyers, but, you know, it's not clear to me that all
10 that has been worked out in some completely
11 straightforward way; otherwise, I assume we wouldn't be
12 here. But that's just -- and certainly what I have read
13 hasn't -- hasn't provided me with -- in this particular
14 area of statistical analysis, I don't recall reading a
15 case in which this kind of data was brought in and there
16 is some new brightline standard as there is in the
17 Gingles 1.
18 Q. Is it impossible for you to conceive of
19 operationalizing making minority voters worse off in
20 some way that would actually look at election results?
21 A. No. I think we can -- we can operationalize
22 that. I don't think we want to deceive ourselves about
23 the precision in which we can operationalize it. But I
24 think we can -- again, we can sort of divides districts
25 up into districts that are very likely to elect and

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1 districts that are likely to elect sometimes not others
2 and districts that are not very likely to elect, and
3 then on that basis, we could make comparisons about
4 which districts are, sort of, much more likely to elect
5 or much less likely to elect or whatever we want to do
6 within those -- within those regions.
7 Q. And if the standard were more likely than not
8 to elect, you could implement that too, right?
9 A. And we can do that in one of two of ways: We
10 could do that in this kind of, you know, being sensible
11 about what that data actually tells us, or we could do
12 it in just a purely mechanical sense. But if we do it
13 in a purely mechanical sense, then we're going to have
14 to have some firm definition of what goes into the
15 sausage grinder, because otherwise, the number that
16 comes out is not going to be a single number, it's going
17 to be, as it is here, it's all these different numbers.
18 Are we supposed to use elections that only involve
19 minority candidates? Does it have to be with major
20 party opposition? Does it have to go back a decade?
21 Does it include everything or just the major states,
22 right?
23 So, you'll have to fix all those
24 definitions before you'll be able to then say, okay,
25 here's -- there is some degree of arbitrariness in that,



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1 and there's some degree of arbitrariness in the result,
2 but that's what we're going to live with, and here's the
3 standard. It's, you know, 50 percent, or because that's
4 a pleasing number for everybody, or it's 80 percent or
5 it's 20 percent.
6 Q. And if we decided to do this not in a
7 mechanistic way that you just described, but rather to
8 rely on all relevant evidence to make our conclusion
9 about whether minority voters are more likely than not
10 to be able to elect candidates of their choice, we could
11 do that, right?
12 A. I think you can -- yeah, right. You can try to
13 sum those up in some kind of subjective way, which I
14 think is probably more realistic, given the variability
15 of the data, and then more problematic from the
16 perspective of jurisdictions who are trying to apply
17 that in advance in making districting decisions, so...
18 Q. But if one were concerned about protecting
19 minority voting rights, you would want to look at all
20 relevant data to make as accurate a decision as you
21 could about that, wouldn't you?
22 A. I mean, there are time limits even for us, and
23 we're involved in a lengthy legal proceeding after the
24 fact. When you are trying to draw districts, you look
25 at lots of information, including lots of information

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1 that helps you to protect minority districts. But I'm
2 not sure that the kind of analysis we are talking about
3 here us is likely to be completely available on the spot
4 to redistrictors. And I'm not -- and certainly, I would
5 not have -- like I said, I think if you -- if you want
6 this kind of analysis to form a basis, then it needs to
7 be specified to jurisdictions in that way.
8 Q. This kind of analysis was available to the
9 State of Texas in the 2011 redistricting process, right?
10 A. Some form of this, yes.
11 Q. And in fact, some form of that is one of the
12 exhibits that you have in front of you, right?
13 A. Right.
14 Q. The regression analyses. I think it's
15 Exhibit 7.
16 A. The retrogression or the regression?
17 Q. Regression.
18 A. Yes.
19 Q. This morning, you mentioned that -- or I asked
20 you if your report contained all the opinions that you
21 anticipate expressing in this case, and you carved out a
22 little exception for responding to Lisa Hanley's
23 report. Do you expect to offer opinions about Lisa
24 Hanley's report?
25 A. Assuming I'll be asked to, yes.

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1 Q. Have you been asked to?
2 A. No. In the sense of writing a response or a
3 report in response to her report?
4 Q. That's one sense in which it could be.
5 A. As far as I know, unless I got an e-mail while
6 I was in here, I haven't been asked to write a report in
7 response to her report. But obviously, as we have
8 discussed here, how her report matches up this report
9 and so forth is all being discussed, so...
10 Q. Have you formed any opinions about Lisa
11 Hanley's report at this time?
12 A. I have not had a chance to do anything beyond
13 read through it, so I haven't looked very carefully.
14 And some of the things we have talked about are things
15 where I have been trying to go back and forth between
16 the two. I mean, the two things that I have -- there
17 does seem to be, sort of, lots of -- I don't want to say
18 confusion, but there is sort of a question like which
19 districts belong in the tables, what to do with
20 coalition districts and so forth. So there are tables
21 in there and sub tables and so forth. So, I mean, there
22 is some question there.
23 I had some question about switching, or
24 basically comparing endogenous to exogenous, going back
25 and forth. I mean, I think you got a -- when you

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1 compare the -- if you're just going to come up with a
2 numerical comparison of an adopted plan against a
3 benchmark plan, then you're going to have to look at --
4 you're going to have to look at exogenous elections.
5 You don't have anything else to look at.
6 So I think it's useful, obviously useful
7 to look at endogenous, and that's part of all -- you
8 want to keep in your head when you're thinking about the
9 plans as a whole. But I don't think you can just
10 basically make a kind of apples to oranges comparison.
11 Q. And do you think that Lisa Hanley makes an
12 apples to oranges comparison?
13 A. I don't know, because like I said, all I did
14 was just read through it. But it looked -- I mean, at
15 some point, there was some discussion about some
16 mathematical way of combining the endogenous and
17 exogenous indexes, or if this is over that, then this
18 goes to something. I can't remember what the detail
19 was. But I remember thinking that it's not at all
20 obvious to me what choice you would make or why you
21 would make a particular choice in how you combine those
22 up. And certainly, unless the final comparison is
23 exogenous to exogenous, then I would be uncomfortable
24 with some mechanical combination without other
25 justification of endogenous, exogenous numbers.



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1 Q. Would it be fair to say that comparing
2 exogenous to exogenous gives you a sense of the change
3 from the benchmark to the proposed, but looking at the
4 endogenous elections in the benchmark gives you the best
5 sense of whether the district is currently able to elect
6 or I should say minority voters in the district are
7 currently able to elect candidates of their choice in
8 that district?
9 A. It gives you an indication of if they have
10 elected candidates of choice in the district. I don't
11 think that's a better measure, necessarily, of ability
12 to elect, because it's a measure much more dependent on
13 the nature of the candidates and candidacies and so
14 force. So the ability is a function of, if we sweep the
15 slate clean and start over and people want to know where
16 to run for office, then we're going to say, you know,
17 take a look at the minority numbers, right, and take a
18 look at the Democratic performance of the district. I
19 mean, that's the way you decide how likely -- if you're
20 going to put money into running in a district, look at
21 the numbers on the district, and those numbers are how
22 Democratic is this district and what are the minority
23 population numbers in the district.
24 So I think those are quite good numbers
25 for going forward. And there is certainly something in

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1 the -- but endogenous is a single election often with a
2 single candidate, and I think is -- again, mechanically
3 combining them, I think, is something my quick -- at
4 least my quick look at Lisa's report -- and this is
5 something I would want to look at much more carefully --
6 but my quick count was that if we just count exogenous,
7 the new plan has more over 50 percent exogenous, which I
8 take to be some standard of hers, that if we just look
9 at districts that are exogenous districts performing,
10 there are more exogenous performance above 50 percent in
11 the new plan than they were in the baseline plan.
12 And I think the same is true if you just
13 ignore performance altogether and just look at the, you
14 know, at the population numbers. I think there's, there
15 you gain a district or something based on her table.
16 So I think those -- again, those are both
17 two, sort of, straightforward ways of looking at that
18 analysis. And I know that's not -- her analysis
19 involves some more issues that I haven't worked through,
20 in terms of how she combines indexes and so forth. But
21 at least those two things look to me to be -- based on
22 that comparison, looked to me to be indicators that the
23 proposed plan is probably not going backwards, on at
24 least those two measures, from the baseline.
25 Q. Are you talking about the House or the

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1 congressional plan?
2 A. Well, I'm talking about the House plan. And by
3 this plan, actually, the State House plan.
4 Q. Okay.
5 A. The congressional is another issue.
6 Q. Any other opinions about Lisa Hanley's report?
7 A. Not off the top of my head.
8 Q. Would you agree with me that it's beautifully
9 written and extremely well reasoned? (Laughing.) I'm
10 just kidding. You don't have to answer that.
11 A. I have a lot of respect for Lisa Hanley, and I
12 think she has undertaken the task with verve, and for a
13 political scientist, she does write remarkably well. So
14 I'll agree with you with that.
15 I think we might -- well, I think we
16 clearly disagree about the upshot of all of this, but
17 what I'm hoping is, if I can look at this carefully
18 enough, that we are disagreeing about interpretation,
19 which is fine to have in a report, but it's ultimately
20 the responsibility of someone other than Lisa and I, and
21 that we can kind of reduce -- what I would hope to do in
22 a response is to reduce our two reports to a set of
23 facts we agree on, and then let somebody else decide
24 what to make of it.
25 Q. Last week, I deposited designees of the Office of

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1 the Attorney General, including a Dr. Zahn, who works
2 under David Faulk. I think it's Z-a-h-n?
3 MR. SELLS: Is that right?
4 MR. SCHENCK: Yes.
5 Q. (BY MR. SELLS) And he told me that he had not
6 been able to prepare for his deposition because he was
7 gathering data for the state's expert. Was that you?
8 A. I have no idea.
9 Q. Are you aware of any analyses being run by the
10 state in the last week or two or expected to be run in
11 the coming weeks with regard to either the congressional
12 plan or the State House plan?
13 A. I'm going to think carefully, because we are
14 responding to a Senate lawsuit, and so I am having to
15 think about --
16 MR. SCHENCK: The question is House or
17 Congress.
18 Q. (BY MR. SELLS) Yeah. The question is House or
19 Congress.
20 A. It seems to me that somewhere in this --
21 somewhere in this there's a request for some analysis of
22 -- and it may be EI analysis on some of the districts we
23 were talking about in either the general or the
24 endogenous. I guess it's possible that there was --
25 somewhere in the discussion we asked if we could see



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1 that. There's -- there is a raft of -- at the beginning
2 of this process, or fairly early in this process, I
3 think there was some question about a fairly
4 comprehensive EI analysis for all of the districts
5 under -- under question here, both general and primary.
6 And I think what we got was, what we were
7 able to accomplish was the primary, which was where we
8 established the priority. And beyond that, I really
9 can't remember where, what all else there might have
10 been or what might still out there. And I tend to work
11 on what I get in time to actually do it. So we got the
12 primary results in time for the report, and then I moved
13 forward from there. And I haven't gone back to, sort
14 of, look back to see what was requested before that.
15 I'm just -- and he would know what was requested, I
16 guess.
17 As far as I can remember, if I had to say
18 what it might be, I would say it's probably EI analysis
19 on the particular districts that are -- are in dispute
20 with either the Justice or the plaintiff intervenors.
21 But I'm not a hundred percent certain of that.
22 MR. SELLS: Renea, are you ready? I think
23 I'm at a point where I can pass the witness to you. I
24 may have a couple of follow-up questions. But rather
25 than taking a break for me to figure that out, I think

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1 it makes sense just to pass Renea, if that's okay with
2 everyone.
3 MR. SCHENCK: That's fine.
4 EXAMINATION
5 BY MR. HICKS:
6 Q. Dr. Alford, Renea Hicks for the Gonzalez
7 Defendant Inventors.
8 In your report, do you offer any opinions
9 on issues concerning intentional discrimination under
10 the Section 5, just so I'm clear?
11 A. No.
12 Q. Nothing?
13 A. No.
14 Q. And you haven't been asked to do that?
15 A. No.
16 Q. I realize that's probably implicit in your
17 earlier answers, but I wanted to cover the intent issue.
18 I'm going to skip around. It will go
19 faster if I do that.
20 You testified about your use of
21 Dr. Engstrom's analysis from -- in the Perez case, that
22 you basically looked at his analysis and worked from
23 that. Am I understanding how you did this?
24 A. Yes.
25 Q. Okay. You said you couldn't determine how he

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1 ran the analysis, and I didn't understand what you meant
2 by that.
3 A. It's -- I mean, you know, if you think about a
4 standard ecological regression, which is just regression
5 analysis, there really isn't any -- there isn't anything
6 to understand, right? You get a program like SPSS, or
7 Excel, for that matter, and you put in two columns of
8 data, and you do a regression, and out comes the
9 answer. And there's some -- you know, there are
10 variations on that, in terms of weighting and double
11 regression. But none of that is -- there's never any
12 question about what -- so, for example, what -- how are
13 you actually estimating the regression? Well, you're
14 estimating the way all regressions are estimated,
15 right? It's just a -- it's a co-variance matrix that's
16 flipped. So, there's no mystery there.
17 With ecological inference, is a -- is a
18 more complicated way of doing analysis. And while there
19 is a kind of standard, kind of a package of commands you
20 can download to do bivariate ecological inference. So
21 there, there really is also not a whole lot of
22 question. There are several competing approaches to how
23 to do this kind of analysis, which is an analysis with
24 multiple candidates, and more importantly, multiple
25 racial groups. So it's -- that's not, sort of, a

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1 traditional or original EI as a bivariate technique,
2 which everybody understands and which can be done quite
3 straightforwardly.
4 And then multivariate IR is, there are --
5 there are a variety of difficult ways it can be
6 deployed, and there are a variety different ways of
7 doing the estimation. Some of those are things
8 concerning starting points. and these are iterative
9 techniques that can take a very long time to actually
10 produce a result, because they are iterating, so they
11 can go through hundreds of thousands of iterations
12 trying to find an appropriate minima. And so starting
13 estimates can be important, not only for efficiency, but
14 they can be influential in what the final result is
15 coming out. And so there's a technique. What we
16 finally centered on is a technique that actually uses a
17 kind of, sort of, roughly OLS-style weighted regression
18 to define starting points, and then lets the process run
19 from those starting points, and it's both more efficient
20 and tends to come to agreement more often, I guess. And
21 that's the one that produces the results that are most
22 similar to Engstrom's analysis.
23 But if you go back and look at Engstrom's
24 deposition or his testimony, when he is asked about
25 that, he just says, we put the -- we took the numbers,



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1 and we put them into R, and we got the answers back
2 out. Now, that just -- what numbers? What -- R is a
3 package in which you write the routines to do this kind
4 of analysis. It doesn't have NR or a place where you
5 click, you know, R by C ecological inference, and an
6 answer comes out. So that's what we spend the time
7 doing, is trying to figure out -- at some point, I'm
8 going to, when all this over, I'm going to ask Dick if
9 that's -- if we did get to the technique that he was
10 using, or if he was just using a technique that
11 basically tends to come up with the same answer, because
12 I am genuinely curious about that.

13 Q. So you didn't communicate with him directly
14 or indirectly while you were trying to figure out how he
15 ran his analysis?

16 A. I was -- no. I was just never sure if that was
17 an appropriate thing to do. I felt like I communicated
18 with him indirectly by asking that someone ask him that
19 question, and he was asked that question and didn't
20 answer it, and, you know, was pretty straightforward
21 about that, so I figured, well, then, well, when all the
22 shooting match is over, then I'll ask him this on a
23 friendly basis.

24 Q. So why did you use his analysis? You said you
25 used his analysis. That's where you -- that you went

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1 with -- I don't understand what you were saying when you
2 said, "Well, I decided his was the best way of going at
3 this."

4 A. And so he -- he had the most -- the analysis
5 that was the most comprehensive, in terms of the regions
6 he covered. right? So he covered the major metropolitan
7 areas, plus the Valley. He did analysis using what I
8 think to be sort of the right independent variables, and
9 he did the most EI analysis of anybody on the case.

10 So if we were going to basically converge
11 on EI analysis, that gave us the most -- the most
12 leverage to converge on something, I guess, to figure
13 out if this was -- had to do with which region we ran
14 things on. Our goal was to supplement with some
15 analysis of our own, including statewide analysis that
16 wasn't available there, but I didn't want to be sort of
17 a battle of technique. There's -- it's no court that's
18 going to understand -- it's hard enough to get a court
19 to understand what's going on in ordinary least squares
20 regression, and as far as I'm concerned, you can explain
21 that to a six year old. But you cannot -- you cannot
22 get past the estimation techniques here to get people to
23 make clear decisions. And so having, sort of, a fairly
24 difficult-to-understand technique producing
25 substantively different results in the trial, didn't

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1 seem to me to be useful. So I was perfectly willing to
2 go with Engstrom's results, but we needed more. We
3 needed statewide and some other things he wasn't
4 running, and I wanted to be sure that there wasn't some
5 mistake inadvertent in his analysis. I have complete
6 trust in Richard Engstrom's integrity and ability to do
7 analysis, but everybody can make mistakes in doing
8 analysis. You put in a -- you flip a candidate name or
9 something, you end up, you're doing the whole result
10 backwards.

11 Q. When you said you did statewide, what do you
12 mean?

13 A. So he has analysis for voter cohesion in the
14 Valley, and he has voter cohesion in Dallas County,
15 Tarrant County, Bexar County, Travis County, and Harris
16 County. And that's it. And agreeable -- I mean, that
17 is, in some people's perspective, virtually all of
18 Texas. But there is a remainder, right. So the
19 majority -- I think in the end, he covered something
20 like a total of 50-some counties, and that leaves, you
21 know, a bunch of counties in a state like Texas
22 unaccounted for.

23 So we wanted to make sure that these
24 patterns, for two -- two reasons. It wasn't just that
25 that was not a complete coverage of Texas, but it is a

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1 coverage of a particular part of Texas, so that the
2 Valley is distinctive, both because it's overwhelmingly
3 Hispanic, and because the Hispanic population is
4 demographically different than the Hispanic population
5 in urban areas. And then the urban areas are all urban
6 areas, and not just urban areas, but he did not do
7 SMSAs. So when he did Harris County --

8 MR. SCHENCK: Standard Metropolitan
9 Statistical Area.

10 Q. (By MR. HICKS) When he what?

11 A. So when he did Harris County, which would be
12 one way of sort of representing so what are things like
13 in the Houston area, that -- Harris County is -- it's
14 basically the -- is sort of dominated by the Houston
15 central city part of the SMSA, and obviously ignores
16 Brazoria County and Galveston County and Chambers County
17 and so forth, and the same is true for the other
18 metropolitan areas. And so it's not just that it's
19 missing, say, West Texas counties or East Texas
20 counties, but it's missing all of the voters in the
21 counties that surround all of the metropolitan areas in
22 Texas. And so we just thought it was appropriate to
23 have -- because we intended to talk about a lot of this
24 analysis as a backdrop to congressional elections and as
25 a backdrop to the House election, so I would not be



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1 directly analyzing for that to be an appropriate -- to
2 be appropriately saying this is a useful analysis for
3 elections, regardless of whether it's the Congress, the
4 House, the Senate, or the sort of elections it needed to
5 be. Somebody needed to put in a statewide analysis.
6 In addition, we had some other data that
7 was statewide that didn't fit particularly well with
8 anybody's analysis for some of the individual counties,
9 for example.
10 Q. Like what?
11 A. Like the cross-over, the exit poll data, which
12 is all statewide. And so we did exit poll data
13 statewide. We did other data that it didn't match with
14 an immediate questions -- at least to me the immediate
15 question would be: Is the exit poll data not matching
16 because it's a different way of gauging opinion, or is
17 it not matching because there is nothing for it to
18 match, because there is no statewide analysis anywhere
19 in the case. So I thought it was important, if we were
20 going to use the exit polling, which was not my idea,
21 either. That's Dick Murray's idea. But if we were
22 going to expand on Dick Murray's exit poll data, then we
23 needed somewhere an EI analysis statewide so that we
24 could say this is what the exit poll shows statewide,
25 and this is what the analysis shows statewide, and then

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1 to the extent there are differences between them, they
2 are differences about technique, and not differences
3 about geographic coverage.
4 Q. And when you said he had the right independent
5 variables, what do you mean? What were they?
6 A. Okay. So at each stage of the analysis, he
7 would move as close as he could to -- basically to
8 turned-out vote by race and ethnicity. And sometimes
9 that means sometimes you are fairly far back from that,
10 and other times you are much closer.
11 So when he ran -- he did some analysis on
12 Hispanic vote, where he ran actual turned-out proportion
13 Hispanic, so Spanish surname, not registered voter, but
14 turned-out voter. So that in a case where you -- in a
15 place where you're only -- where you have that data
16 available, which he had for 2010, and where you are not
17 concerned, because the population proportions of black
18 and Asian are very small, you can run that analysis, and
19 where he could, that's what he ran with. And when he
20 backed up to someplace like Dallas where he needed to
21 have proportion black, then he moved to a CVAP analysis,
22 so he could compare where you put the -- where you put
23 multiple independent variables in, you have to make sure
24 they have the same measurement base.
25 Q. But when you said that he had the right

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1 independent variables and you discussed the part about
2 turnout, using the turnout, why is that better for
3 purposes of what you were trying to do?
4 A. If your -- when you're -- you cannot directly
5 estimate the property you are interested in when you
6 have ecological data, and so you are having to estimate
7 it from -- from a different unit of analysis than the
8 unit of analysis you care about. So what we care about,
9 in the cohesion analysis, is how voters are casting
10 their votes. And since we don't have access to that,
11 absent an exit poll, and even there, there is other
12 questions about that, we have to do that from some level
13 of aggregation. And so there is several things that
14 become important in that case, one having to do with
15 variation across units and so forth. But at least one
16 of those concerns is that you -- given that there is a
17 lot of error inherent in that process, you would like to
18 characterize the population of the precinct as
19 accurately as possible, meaning as close to the
20 characterization of voters as possible rather than
21 something more removed.
22 Q. As I recall, he testified in the facts of that,
23 he never did an analysis of the behavior of Anglo
24 voters. Do you recall that?
25 A. To the extent that -- I believe in most

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1 cases --
2 Q. The voting behavior of Anglo voters.
3 A. Right. So in most cases, he was doing what
4 people would traditionally do in cases like this, which
5 is, he would allow Anglos to -- the Anglo category to be
6 the intercept.
7 Q. He didn't have an Anglo category, did he?
8 A. That's what is intercept. So his -- all right.
9 So the intercept -- in a normal -- sort of normal
10 bivariate regression, for example, there is no Anglo
11 percentage. There is only the black percentage or only
12 the Hispanic percentage. And of course the technique is
13 -- the estimation technique is picking up the unmeasured
14 group in the intercept of an analysis.
15 Q. Yeah. But he testified in his deposition in
16 the Perez case that he didn't do Anglo voting. He had a
17 category for "other," which included Anglo, right?
18 A. Right. The intercept will always include
19 everybody except the measured category.
20 Q. And that's what he did, right?
21 A. And so, again, that's why I define it as
22 traditional, because in all traditional regression
23 analysis of voting behavior, it's the unmeasured
24 category that falls out in this. And a black-white case
25 is treated as white, even though it actually is not,



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1 it's just everybody except blacks.
2 So in his case, that would mean that in --
3 when he was doing multivariate analysis, that he was not
4 directly measuring Asian, and therefore, his other
5 category -- when he had black and Hispanic in there, his
6 other category would include Asians.
7 Q. And that's what he did, right?
8 A. That's what he did, yes.
9 Q. So it never breaks it out for Anglo, right?
10 A. When he --
11 Q. I may not be asking this right.
12 A. I think you're asking it right, but I think
13 guess -- I guess -- I guess what Dick would say was, he
14 never provided any testimony about Anglo cohesion. That
15 seems like a fairly large gap for given his
16 responsibilities in the case.
17 So the category is other, but he certainly
18 talked about -- I mean, I don't believe he reached a
19 conclusion about whether Anglos were voting as a block
20 to defeat the candidate of minorities, and he could have
21 hardly reached that conclusion if he didn't do some
22 analysis he thought was probative about how Anglos vote.
23 Q. I understand that. But in the analysis that
24 you used, he didn't use -- he didn't separate out Anglo
25 within the category of other, did he?

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1 A. No. So he's -- technically, he has no analysis
2 of Anglo block voting. But I think, again, technically,
3 I guess that's always true in this kind of analysis,
4 that there -- that that typically is not an estimated
5 category. But I think everybody accepts that. And he,
6 I think, specifically address the fact that there -- and
7 for the areas he was analyzing, there was not any
8 district in which there was an issue related to Asian
9 voters. And so, I mean, if we're going to be -- if
10 we're going to be careful about this at that level --
11 Q. That's all I'm trying to be.
12 A. Okay. Then we --
13 Q. I'm not trying to be difficult.
14 A. Right. Then I guess we haven't done that
15 analysis, either. But we've added the category Asian,
16 and therefore, we have a category that is technically, I
17 suppose an other category, which would include -- or
18 maybe we have a category other. I'm sorry. I'm not
19 sure. So would it be other or would it be Asian? I'd
20 have to look back and see.
21 But he would have had a category that
22 essentially would have been Anglo, had he put Asian in
23 as a variable. Having not put it in as a variable, he
24 is left with a category that includes both Anglos and
25 Asians. And for the districts he was looking and the

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1 areas was looking at, I think he viewed that, and I
2 probably would view it, too, as not consequential. I
3 don't think you would see any difference in the analysis
4 by bringing that in.
5 Q. When you said that you used his analysis, did
6 you use his analysis also in -- the analysis he did of
7 primaries, his approach to analyzing primary elections?
8 A. Well, we got -- we got results that were
9 broadly -- I think we actually -- I made a specific
10 comparison. I'm trying to remember. This is going back
11 a ways. But I think what we got were results that were
12 broadly similar to his analysis for primaries, so I
13 assume we must have used something similar.
14 Q. And you didn't see any problem with using this
15 approach in the databases he used for analyzing
16 primaries?
17 A. In this approach? I'm not sure...
18 Q. The ecological inference approach using the
19 same databases for purposes of doing that work for
20 analyzing the primaries.
21 A. I mean, as is always true, there are another
22 set of issues that arise in that analysis, but that's --
23 there is always with ecological, any kind of ecological
24 estimates, we make the best estimates we can. Our
25 results were similar to his. Our conclusions were the

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1 same as his.
2 Q. I know, but my question is: Underneath all
3 that, did you think that was an appropriate way to
4 approach it, in the primaries, not the general?
5 A. I mean, I don't know. I guess, I may have --
6 if I said something critical about Engstrom's approach
7 to primary analysis, I don't recall it, and I don't --
8 off the top of my head, I don't -- I thought he did an
9 adequate job of analyzing the primaries, and we found
10 similar results and relied on them. So he relied on his
11 results. We relied on ours. So I...
12 Q. And what role does analysis of the primaries
13 play in anything you have put in your report in the
14 section -- I'll call it the Section 5 case -- with
15 regard to Congressional? Does it play any role?
16 A. I think it's a relatively minor role.
17 Q. What is the minor role it plays?
18 A. I mean, the minor role --
19 Q. I just don't remember seeing anything of that.
20 Of course, I read everything pretty quickly.
21 A. I mean, I just think it's -- if I recall, it's
22 just sort of addressed in the, here's some stuff from
23 San Antonio that's useful. So, I mean, there are two
24 things that are not addressed in detail here that
25 nonetheless end up being important, and that is the very



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1 broad findings that are, I think, not in dispute in the
2 San Antonio trial, which is that in general elections,
3 voters vote on basis of the party of the candidates and
4 not on the basis of the candidate's race or ethnicity.
5 I think everybody pretty much came to that conclusion or
6 ER avoided that conclusion.
7 And on the other, that -- well, of the
8 people who looked at primaries, which would be Murray
9 and Engstrom and myself, we all conclude that blacks and
10 Hispanics are not cohesive in the Democratic primary.
11 Q. Where?
12 A. Where? In Texas.
13 Q. Each spot you looked?
14 A. Anyplace that anybody looked, they weren't
15 cohesive.
16 Q. And is the test of whether you have reached the
17 conclusion of whether they are cohesive or not the same
18 test you apply with respect to the general election?
19 A. I mean, it's basically the same -- it's a
20 similar kind of analysis, in which you just look and see
21 whether they -- you look first to see if people share a
22 candidate of choice, and then you look at whether in
23 that shared candidate of choice, their voting actually
24 reaches a level you would consider to be cohesion.
25 Q. Right. Is the level of cohesion, the measure

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1 of the level of cohesion, the same in the primary part
2 of this analysis as it is in the general election part?
3 A. I think it --
4 Q. By you?
5 A. I guess -- I suppose in some sense, it probably
6 is, although in effect you're so -- you basically don't
7 even reach some issue. So if I was analyzing Hispanics
8 alone, and one question will be to ask, sort of, look at
9 an election and see what the Hispanic candidate of
10 choice is, and then I ask the question are they voting
11 cohesively for that candidate. So if 60 percent of
12 Hispanics are voting for the Democratic candidate, I
13 wouldn't consider that to be cohesive voting in the
14 polarized voting sense. I consider that to be not very
15 -- a 40 percent cross-over doesn't strike me as
16 political cohesion.
17 So you would have a question about level,
18 right? So everybody pretty much agrees that if 90
19 percent of blacks vote cohesively, if that's 70 percent
20 versus 30 percent, you get into some area where people
21 might -- like minds might disagree. Other people argue
22 that 51 percent versus 49 percent is cohesive voting,
23 right? So there's a question about where you'd be. No
24 one questions that if you don't have the same candidate
25 of choice that you can't be voting cohesively.

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1 So here the issue is not are these two
2 groups voting cohesively by that, kind of, standard,
3 like are they at 60 percent? Are they at 70? Are they
4 90? They don't even have the same candidate of choice.
5 Q. Ever?
6 A. I think they -- with -- they occasionally have
7 the same candidate of choice, typically in races in
8 which the candidate who is not the candidate of choice
9 of any of the ethnic groups is getting like 5 percent of
10 the vote. So it's not that they never have the same
11 candidate of choice. They sometimes have the same
12 candidate of choice, but it's -- in the analysis I
13 looked at, it's -- I have not seen a case where in a
14 majority of the races, they have even the same candidate
15 of choice. When they do have the same candidate of
16 choice, they typically are not voting cohesively for the
17 candidate of choice. So they may have the same
18 candidate of choice, because 51 percent of Hispanics
19 voted for this candidate, and 62 percent of blacks voted
20 for the candidate. Well, that's -- that's an unusual
21 race, because they are voting for same candidate. They
22 have the same candidate of choice. But neither of the
23 group is voting cohesively.
24 So you're actually -- to get to your
25 point, the standard is the same, which means what you

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1 should be looking for is the groups voting cohesively
2 for the same candidate of choice. You don't even reach
3 that point, because there simply -- that pattern of
4 voting for the same candidate occurs in much less than
5 half of the cases, and so the issue of -- in that case,
6 the distribution across the elections eliminates the
7 possibility that you could come up with something that
8 would look like actual, actual cohesion in the sense of
9 90 percent or 70 percent voting across racial groups for
10 the same candidate.
11 Q. And so it wouldn't matter, for instance, if in
12 some Democratic primary, your analysis showed that --
13 let's say the candidate of choice in this primary race
14 of the Hispanic voters was Abel. Let me see if I can
15 remember this. And Abel was not the candidate of choice
16 of black voters in the Democratic primary, but Hispanic
17 voters voted for Abel only in about the 60 percent
18 range, and the black voters voted for Abel only in about
19 the 40 percent range, would you say that situation
20 showed that they are not cohesive; that you don't even
21 then have to look at anything else?
22 A. Okay. I think I'm getting this picture right
23 in my head, but I just want to make sure.
24 Q. I'm not sure I remembered it.
25 A. So that does not -- my view, and in this --



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1 what I say, I disagree with most plaintiffs' experts.
2 Most plaintiffs' experts would agree that if Anglos
3 voted 60-40 for Baker and Hispanics voted 60-40 for
4 Abel, that that would be an example of racially-
5 polarized voting. I think polarization means something
6 about moving toward opposite polls and not just being on
7 slightly different sides of the same issue. So my view
8 would be issue that's not racially-polarized voting.
9 Most plaintiffs' experts would say that is racially-
10 polarized voting.
11 Q. Right. But I want to go back to your view.
12 A. So, if in my view that's not racially-polarized
13 voting, that should give you some sense of -- right?
14 It's -- it is, in my view, not sufficiently polarized to
15 be racially-polarized voting.
16 Q. So there wouldn't be a lack cohesion in your
17 view?
18 A. So your definition of a lack of cohesion?
19 Q. I'm not -- no, I'm saying in your view.
20 A. Okay. My definition of a lack of cohesion is
21 not the existence of legally significant racially-
22 polarized voting, right? So, for example, if Anglos
23 vote 60-40 and blacks vote 40-60, I would say there is
24 not legally significant polarized voting. I would not
25 say that there is a legally significant political

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1 coalition between blacks and Anglos, right?
2 So what's important is, there is something
3 between legally significant polarized voting and the
4 complete opposite end of the scale, political cohesion
5 as a single minority group.
6 Q. Right. So let's go back to the political
7 cohesion question I had about the primary, where, if I
8 remember right, we said Abel wins.
9 A. Right.
10 Q. Abel had 60 percent, and he's the preferred
11 candidate of Hispanic voters. He goes 60 percent of
12 Hispanic voters' votes, and 40 percent of black voters'
13 votes. And I asked: Would that suggest to you that
14 there is not political cohesion between blacks and
15 Hispanics?
16 A. Absolutely. Absolutely. And again, it would
17 be true for blacks and Anglos, any group -- any group in
18 which people vote for opposite candidates, they can't be
19 politically cohesive. They don't necessarily reach the
20 level of being racially polarized. So I guess I would
21 say this analysis stops short of demonstrating legally
22 significant racially-polarized voting.
23 Q. Oh, can we --
24 MR. SCHENCK: This is getting --
25 A. Between blacks and Anglos. I'm not sure that

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1 it reaches that level. In my view, it probably doesn't
2 reach that level.
3 Q. So if --
4 A. But that's really a long, long way from --
5 that's a measure of how far you are from political
6 cohesion. You are basically not only not on the right
7 side, you're not staying on right sides of the
8 candidates, but you're actually moving sufficiently
9 apart, that in the minds of at least some people, their
10 voting is not -- not only not cohesive, it's not just
11 noncohesive, it's actually polarized. It's actually
12 going in the opposite direction at significant levels.
13 Q. So in the situation, going back to the 40
14 percent.
15 A. Right.
16 Q. The one we've been going through, would you say
17 that's not an -- while it, to you, it may indicate a
18 lack of political cohesion between Hispanics and blacks
19 as reflected the Democratic primary, it doesn't, to you,
20 suggest racially-polarized voting as between the two?
21 A. Right. In the sort of sense of legally
22 significant racially-polarized voting where you actually
23 have a cause of action based on the differences in
24 preference. So I wouldn't say in that case, but in a
25 legal sense, that Hispanics are voting as a block to

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1 defeat the black candidate of choice.
2 Q. And what -- what's your level to -- when you
3 get -- when -- when do you get to racially-polarized
4 voting, what you're calling legally significant? I'm
5 not asking for a legal opinion. I'm asking for what --
6 when you are talking about legally significant racially-
7 polarized voting, what levels are you talking about?
8 A. I think polarization indicates that people are
9 voting in opposite ways, and so I think things that,
10 sort of, around 90 versus 90, to me, is polarized. And
11 that may -- you know, you could go to 85, and I probably
12 wouldn't just jump off the ship. But you know how I am
13 about these things where you go down a step at a time.
14 But I think when you get down to, you
15 know, the 70-30 voting, it's -- there's -- I mean, that
16 doesn't strike me as polarization.
17 Q. So in -- in your opinion -- in your -- rather
18 in your report, in the Section 5 case, this case, do you
19 -- given your views about continuums and the brightlines
20 and so on, do you reach an opinion with respect to --
21 and offer an opinion with respect to retrogression in
22 plan C185?
23 A. I don't think it's necessary. I think the
24 facts speak for themselves.
25 Q. Will you please tell me what those facts are



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1 telling me?
 2 A. Well, I mean, I would say -- I mean, to
 3 different degrees.
 4 Q. Channeled facts.
 5 A. Okay. Channeled facts, then. I mean, quite
 6 honestly, I don't -- and it's not that I just don't
 7 think it's a good idea. I mean, in my experience, all
 8 experts want to be lawyers and all lawyers want to be
 9 experts, when it comes right down to these kinds of
 10 issues.
 11 Q. I don't believe either one. (Laughing.)
 12 A. So there you go. So I really don't envy
 13 lawyers, their task here at all. I don't -- even
 14 judges, their task here at all. This has really gotten
 15 to be a very complicated area, and partly for reasons, I
 16 think, that have to do with -- you know, that can be
 17 assigned, blame could be assigned to individual Supreme
 18 Court justices. But more broadly, I think we just sort
 19 of -- we are dealing with a more complicated world.
 20 Q. So you don't express an opinion to respect to
 21 retrogression in this -- in this report?
 22 A. I -- I mean, I think if you ask me to make that
 23 call, I'd be happy to make it for you.
 24 Q. Well, I'm not -- I'm asking, in the report, do
 25 you make that call?

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1 A. I believe I read the report. I don't think --
 2 I don't think that I, sort of, have a conclusion in
 3 which I say, "Therefore, there is no legal whatever or
 4 whatever."
 5 Q. Okay.
 6 A. I mean, I think it's...
 7 Q. You leave it to your lawyers to argue that, or
 8 the lawyers, not your lawyers?
 9 A. Yeah. Maybe I'm just defending too much on
 10 people's just sort of general sensibility. But I think
 11 again, my preference -- and this would be to have sort
 12 of a set of facts where you could pick which facts you
 13 think are important here, but within that set of facts,
 14 you basically would simply have that sort the undisputed
 15 across expert set of facts to make a determination on.
 16 I don't think -- and maybe I'm wrong here,
 17 but I don't think that there is anything in dispute in
 18 the congressional case. I could be wrong. But that's
 19 the way it strikes me, unless I'm misreading something.
 20 Q. I just don't understand what you mean by that.
 21 A. I mean, so, Lisa has got this different system,
 22 that I haven't quite worked out, for counting things up,
 23 and she counts things up and says I get less districts.
 24 That's -- I guess that's retrogression. And I count
 25 things up, and I get, you know, like one more district,

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1 and I guess that's not retrogression. Now, who is
 2 counting up right and all of that kind of stuff, I would
 3 just as soon not get into that.
 4 But my point is: When I count it up, I
 5 get a number that goes up, we discussed that, on the
 6 State House, and she gets a number that goes down. And
 7 so in that sense, we have a sort of factual
 8 disagreement, and then we can investigate what that's
 9 about and figure out who is counting the right districts
 10 or whatever.
 11 I mean, I don't see that -- I don't see
 12 that same -- I'm not seeing anything in Lisa's analysis
 13 anywhere, no matter how she counts things, that she sees
 14 a negative number for the number of minority districts
 15 in the proposed -- or the adopted congressional
 16 plan. She counts -- my understanding is, she counts 10
 17 and 10. And I have different ways of counting, but no
 18 matter how I count, I don't ever get anything that's
 19 lower than 10 and 10. So I don't see how anybody is --
 20 I mean, she has that one percentage thing, right, where
 21 she says, well, as a percentage of the districts, given
 22 the increase, and that -- I mean, that obviously anybody
 23 can do the percentage. That isn't -- that isn't an
 24 expert analysis or a disagreement between us. I think
 25 we both agree with how you come up with the percentage.

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1 But the number of districts, she sees -- she sees 10
 2 districts going in and 10 districts coming out.
 3 Q. Well, and I realize you said you've only had a
 4 chance to kind of read through it kind of quickly, but
 5 didn't her report -- I don't think we have it in
 6 evidence -- but just accept that I'm that reading from
 7 it, if you will, and this it at page 11. She says, "In
 8 addition, if the proposed plan were to be enacted, a
 9 substantial number of Hispanics, 479,704, would no
 10 longer reside in districts that provide them with the
 11 ability to elect their preferred candidates." And I
 12 believe this is stated as part of her analysis of -- for
 13 lack of a better term, I'll call the percentage approach
 14 to -- to retrogression.
 15 Do you disagree with taking that kind of
 16 approach to analyzing what happened to Hispanic voters
 17 with regard to their having a reduction in their
 18 opportunity to elect candidates of their choice? Where
 19 I read was from the last paragraph on page 11, just in
 20 case you couldn't find it.
 21 A. All right. So what she has done with the
 22 factual -- I mean, what I am looking at is -- I just
 23 looked at her summary table, and she says that based on
 24 the state of Texas percentage approach, we move from 8
 25 to 9 districts, and based on the election focused



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1 approach, which is, I take it, to be her approach, we
2 move from 10 to 10. So I'm just --
3 Q. But she also said what I read.
4 A. Right. So then -- then she does this
5 percentage computational thing and says, well, it moves
6 back a certain percentage. So, but again, what I'm
7 trying to focus on is sort of what we agreed on
8 factually. If you are counting districts, whether you
9 are counting them based on demographics or counting them
10 based on Lisa's election performance, not mine, but
11 hers, where you are counting districts in the
12 congressional case, she doesn't come up with a -- with a
13 decline. She comes up with it stays the same.
14 Q. That's -- just accepting that for the moment,
15 without getting argumentative of that, she's just
16 talking about the number of districts, right?
17 A. Yeah.
18 Q. And she comes out with, under your reading of
19 this, with the same number of districts that were in the
20 benchmark plan, right?
21 A. Right. So she says the states comes out -- if
22 you use the State's methodology, she reapplies that, you
23 come up with a gain of 1, and if you use her
24 methodology, you come out with 10 and 10.
25 Q. But she also has a discussion with respect to

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1 the proportion of comparison of Hispanic voting power,
2 not just district by district, right?
3 A. Right. With again, I don't --
4 Q. You didn't do --
5 A. I didn't compute that percentage. I mean,
6 that's just not a -- this is not a matter of expert
7 contribution to compute what percentage. The same
8 number is of 32 versus 36, right? If your argument is
9 that the state kept the number of districts the same,
10 and therefore the proportion is going down, then that's
11 simply -- right, that's a legal argument about what the
12 state's responsibility is under whatever, and there is
13 -- I'm not disputing her ability to calculate a
14 percentage. But I'm just saying that to the extent that
15 we are sort of -- what I'm trying to characterize is the
16 distinction between where we are on the House plan and
17 where we are on the congressional plan is that when we
18 count districts, Lisa and I come up with a different
19 answer on the House plan, and when we count districts,
20 Lisa and I come up with the same answer.
21 Q. Now, speaking of that, I know you haven't had a
22 chance -- and I'm guessing you haven't a chance to read
23 Dr. Ansolabehere's report in this case, right? Sorry.
24 Ansolabehere, A-n-s-o-l-a-b-e-h-e-r-e.
25 A. Has filed a report in the Section 5 case?

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1 Q. Yes.
2 A. On behalf of?
3 Q. Well, it will be -- it was exchanged. I don't
4 think it's been filed yet, because it will part of the
5 summary judgment filing, response filing. You haven't
6 had a chance to read that? You obviously haven't, since
7 you --
8 A. I have no idea that such a thing existed as a
9 expert report from a defendant intervenor?
10 Q. Yes.
11 A. Is that correct?
12 Q. I suspect there's going to be quite a few of
13 them. I'm not sure.
14 MR. SCHENCK: Oh, yes. Yes.
15 THE WITNESS: Oh, my gosh.
16 MR. SCHENCK: You're telling me.
17 MR. HICKS: So you're going to have even
18 more fun.
19 MR. SCHENCK: Well, I wouldn't assume
20 that.
21 Q. (BY MR. HICKS) Let's assume you're going to
22 have more fun for a second for purpose of this
23 question. I'm just kidding.
24 In his report, he says, on page 35,
25 speaking of the current District 25, that's the one that

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1 comes into -- is in Austin, the current District 25, not
2 the --
3 A. Doggett's --
4 Q. Yes.
5 A. -- old district?
6 Q. Or current district, depending on which way you
7 look at it. He says that he considers that a minority
8 opportunity district because of the high levels of white
9 cross-over voting. Do you have any reason to disagree
10 with that?
11 A. Yes.
12 Q. And why?
13 A. I -- and I love Professor Ansolabehere. He's a
14 brilliant guy. But I just think that approaches the
15 level of parody.
16 Q. Because?
17 A. Parody with D, by the way.
18 Q. Just explain why, though.
19 A. Well, several senses, I guess. One, I think it
20 makes much more clearly than the -- it's always hard for
21 me, because I keep thinking of plaintiffs, and this is
22 on opposite side now, so...
23 Q. Let me interrupt briefly to say, I realize it's
24 a bit unfair to ask you about this and to read this one
25 sentence without giving you the analysis around it. But



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1 since you reacted so quickly and strongly to it, I think
2 it would be helpful to have the reasons for that.
3 A. And we talked earlier about the fact that there
4 is an issue of crossing into an area in which you are
5 basically protecting a district on the basis of the
6 district being a Democratic majority district. And I
7 think that's an issue when you combine blacks and
8 Hispanics as combined minorities. It's an issue when
9 you combine blacks, Hispanics, and Asians as combined
10 minorities without any regard to for whether they are
11 politically cohesive. I think if you combine blacks,
12 Hispanics, Asians and Anglos and define the minority as
13 blacks, Hispanics, Asians, and Anglos, I think it's
14 difficult to see how that is anything other than simply
15 saying that -- I mean, if I'm not mistaken, that
16 particular coalition is in fact a description of every
17 Democratic district in the United States. It is a
18 combination, every district that votes majority
19 Democratic in the United States votes majority
20 Democratic as a consequence of a combination of black,
21 Hispanic, Asian, Anglo Democrats voting together in the
22 majority.
23 I just don't -- first of all, I think it's
24 -- okay, then we'll go in that direction in all -- all
25 Democratic districts are benchmark districts, right? So

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1 I'm perfectly fine with that. I can do the same
2 analysis I do now, but in many ways it will be
3 streamlined. But I just don't -- just individually, I
4 don't believe that that is what the Voting Rights Act is
5 designed to protect or that the court is going to allow
6 that to be what the Voting Rights Act protects. I
7 think, in fact, that view is damaging to the Voting
8 Rights Act because it plays into this notion that the
9 Voting Rights Act is, in fact, just a political football
10 being played by both sides on the basis of their
11 political aims and rather -- in a way that is, at least
12 to some degree, possibly quite inappropriate. So that's
13 one.
14 And the other -- the other issue, I think,
15 in that is that it raises some question -- I mean, it
16 raises some question of how you would -- what that's --
17 what that standard would -- how you would apply that
18 standard, given that you now have -- you're now
19 basically dividing each of those groups up along
20 partisan lines and then re-summing them. And I just
21 don't see that -- I don't see that as a tractable -- as
22 a tractable solution.
23 And the other thing is, I think it hinges
24 on this notion, of which I have -- and I apologize to
25 the -- to our particular place in geography for doing

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1 this -- but it hinges on this mythology that there this
2 unique disregard for race and ethnicity among Travis
3 County voters that just simply is a myth. The simple
4 fact is, that the only thing unusual about Travis County
5 is that because of where the county lines are drawn, and
6 because of where most of the Republicans in the larger
7 metropolitan area live, Travis County is able to produce
8 a Democratic majority in which you have Anglos, blacks,
9 and Hispanics voting together in reasonably large
10 numbers in the Democratic party. They are not unusually
11 cohesive in the primary. They are not more likely --
12 Anglos in the Democratic party are not more likely to
13 support other minority candidates. I think the
14 analysis, Engstrom's analysis, as well as my analysis
15 shows that blacks in Travis County are less likely to
16 support Hispanics candidates than any other metropolitan
17 area in the state. So this is not some --
18 Q. You're talking about in the primary?
19 A. In the primary. So this -- this is not some
20 magical absence that somehow Travis County has managed
21 to get beyond race and ethnicity. It is just simply
22 that the line that Travis County draws is a line that
23 happens to take into account, or bring into play, a
24 group in which basically you have -- to form a majority,
25 you would have to include all of the minority groups

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1 plus Anglos, and that in doing that, you still get a
2 group that votes Democratic.
3 Q. And your analysis of this, that you just
4 expressed, is dependent on taking into account what
5 happens in the Democratic primary, isn't it?
6 A. In the sense of -- again, I have a hard time
7 getting my head around this idea. But in the sense that
8 there needs to be some demonstration that there is a
9 cognizable minority group that has been offended in the
10 electoral process by having itself locked out by block
11 voting on the parts of the majority, I just have a hard
12 idea -- I have a hard time getting my head around a
13 concept that this group that includes Anglos is a group
14 that is cognizable as a minority. It's a minority --
15 Q. I don't think anybody has suggested that in
16 this report that I am reading from, just -- just so
17 that's clear.
18 A. Okay. Because I don't know how he is
19 characterizing the district. So is he characterizing it
20 as -- that it is a -- that it's not a coalition
21 district, that it's protected cross-over district?
22 Q. Well, first of all, I'll try to get through
23 this quickly. I didn't know it was going to go on that
24 long, but...
25 MR. SCHENCK: I would appreciate that. My



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1 calculation is, we're about 20 minutes away from seven
2 hours total.
3 MR. HICKS: I haven't been talking for
4 seven hours.
5 MR. SCHENCK: I'm sorry. You have to work
6 that out between the two of you.
7 MR. SELLS: Yeah. And I think we took
8 quite extensive breaks, too.
9 MR. SCHENCK: Well, that's. I'm willing
10 to go to 6:30, but...
11 MR. SELLS: I don't think we have --
12 MR. SCHENCK: I would hope --
13 MR. HICKS: I'm nearly finished.
14 THE WITNESS: I'll switch to yes, no and
15 maybe.
16 MR. HICKS: Yeah. There's another problem
17 with this, too. John likes to talk.
18 THE WITNESS: I am taking my share of the
19 blame.
20 Q. (BY MR. HICKS) Well, I'm not going to spend any
21 more time debating what he said. I would rather you
22 read it, and then I can ask you some questions about it.
23 So just as a political scientist, which is
24 what you are, if somebody came to you and said, I'm
25 going to give you this thing called a benchmark plan,

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1 and we're getting ready to have a new plan, it's a
2 districting plan, and we're getting ready to have a new
3 plan, but we're going to wait -- there's some things we
4 would like to do, but we're going to wait till we hear
5 from you, to get your advice. We're aren't even going
6 to show you lines yet for the new plan, where we're
7 talking about putting them. But we're giving you the
8 benchmark plan, and we're going to add four new
9 districts in this new plan, but we need to know what you
10 are going to tell us is the situation with respect to
11 the opportunities of minorities in the state of Texas to
12 elect the candidate of their choice under the benchmark
13 plan, so that we'll know where we can go under Section 5
14 from here. What would you do in your analysis? Not as
15 a lawyer or somebody told what to do by a lawyer, but
16 asked to do it as a political scientist. What would you
17 do, knowing what you know about the Voting Rights Act?
18 MR. SCHENCK: That's a lawyer.
19 Q. (BY MR. HICKS) Well, just knowing what you
20 know, whatever it is.
21 A. I would say that you would count up the number
22 of protected minority districts in your existing plan.
23 Q. What else?
24 A. And you would want to make sure that you --
25 that it's possible to do without being overly conscious

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1 of race in the variety of ways, including, most
2 obviously, the drawing outlines of the district; that
3 you would want not to have that number go down.
4 Q. And -- okay. So would you tell them that --
5 whether it made any difference by the fact that they are
6 adding four new districts in this new plan?
7 A. I mean, it's -- obviously, it makes a
8 difference if you add four new districts.
9 Q. But I mean with respect to this issue of don't
10 go down.
11 MR. SCHENCK: This is legal question.
12 MR. HICKS: No. I'm asking him as a
13 political scientist.
14 Q. (BY MR. HICKS) You are giving the analysis to
15 them as a political scientist.
16 MR. SCHENCK: Of what?
17 A. (BY MR. HICKS) Of what they have asked you to
18 do, to tell us what we need to do.
19 MR. SCHENCK: Which is what?
20 Q. (BY MR. HICKS) Where do we start from?
21 A. Okay. Well, so, I mean, what I would say is
22 that you -- if you are adding additional districts, then
23 you should-- as you would if you were adding districts
24 to a council or anything else -- then you should be
25 aware of the fact that with these additional districts

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1 and with the changes in the demography, you should look
2 to see if you have Section 2 liability beyond the
3 districts that you have already drawn in the existing
4 plan.
5 Q. Let's come back to that. You said you would
6 tell them you would want to see the protected minority
7 districts. And what would a protected minority district
8 be in the benchmark plan when you are sitting there
9 deciding how many there are?
10 A. I would look at the districts that are majority
11 single minority, and I think those are the districts
12 that people will end up counting up as the -- as the
13 safest count of benchmark districts.
14 Q. And as a political scientist, you wouldn't say
15 to them, well, I need to know what the population growth
16 that contributed to getting four new seats have to do
17 with this?
18 A. If -- you know, if people would stop paying
19 attention to this red herring of who contributed what to
20 the population growth, we would all have a much more
21 straightforward discussion.
22 Q. Well, that wasn't my question.
23 A. No, that was not. I would certainly warn
24 anybody I worked for, going forward, to be ready to
25 answer that question. But this notion that if 65



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1 percent of growth is attributed to this, or whatever,
2 you get 65 percent of the districts is -- I mean, it
3 ignores, first of all, the fact that that population
4 growth is not waiting outside the state to be added in
5 when you draw the district plan. That population growth
6 is in the districts. It's in the benchmark plan. When
7 you look at the benchmark districts and you say this
8 district is a majority Hispanic district. Well, why is
9 it a majority Hispanic district? Why is it a protected
10 majority Hispanic district? And the answer is because
11 the population in the state grew, and most of that
12 growth was Hispanic, and this district is now majority
13 Hispanic. That the growth in population is in the
14 districts. If the growths have been concentrated, then
15 when you do that Section 2 look, you're going to find
16 out that you are mandated to draw a district somewhere
17 because of that population growth.
18 If the population growth has been
19 distributed, you are going to find out that you are not,
20 and therefore, if you go about making a really extensive
21 effort to do that, on the basis of race-conscious
22 districting, that's probably not a good idea, and
23 certainly it's -- right? So you'll have a range of
24 things that you can consider doing, you'll have a range
25 of things that you'll have to do, and then you'll have a

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1 range of things that you will have to not do. And those
2 are based on looking at how that population is
3 distributed, and it really has -- obviously, the -- for
4 any given distribution of the population, the
5 likelihood, if it's maldistributed, that it would be --
6 create a Section 2 issue is clearly a function of how
7 maldistributed the -- both the population proportion is
8 and the population location. If it's evenly distributed
9 across the state, it just doesn't -- right? It will
10 then be in the existing districts, and it will not be --
11 it will not raise an issue, right? I mean, where this
12 comes out most frequently is in this issue of -- the
13 idea of drawing a district in Dallas, Tarrant County, a
14 Hispanic district. And, I mean, you could argue that
15 because the population of Texas has grown, the Hispanic
16 population has grown, you should therefore create a new
17 district in Dallas, Tarrant County. But the issue is
18 whether there is a population there. If you want to
19 voluntarily create a district that is plurality Hispanic
20 and you don't make it too ugly, and some of the plans I
21 have seen, seem to me, they are not too ugly, you are
22 certainly free to do that. I think it would be
23 commendable myself, but that's -- you know, I have my
24 own policy preferences. But I don't think that the -- I
25 wouldn't tell a client that they were mandated to create

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1 that district, but they have a Section 2 liability to
2 create that district. And I don't see how, even if they
3 did, the failure to create it could -- I mean, in this
4 example, the failure to create that district would
5 create retrogression; I don't see how you can mix the
6 two together quite that way. But maybe you can. I
7 don't know.
8 So I think the growth in population is
9 important. It's going to be in your districts to begin
10 with, and that's going to be important to look at, and
11 if it's concentrated in falling across districts, then
12 you will be able to draw a nice legal district, a new
13 district that's majority black or majority Hispanic, and
14 then you might want to think about doing that to -- both
15 for policy reasons and to avoid Section 2 trouble.
16 (Brief discussion held off the record.)
17 MR. HICKS: I don't have any other
18 questions.
19 MR. SELLS: I think I have four follow-up
20 questions, some of which is following up on him, some of
21 which is just stuff from my notes that I didn't get to,
22 and I'll try to ask them in ways that you can answer
23 succinctly.
24 FURTHER EXAMINATION
25 BY MR. SELLS:

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1 Q. First, you talked with Mr. Hicks a great deal
2 about cohesion. Cohesion is something that is measured
3 over time, correct?
4 A. It is measured in individual elections, and
5 then usually assessed over some set of elections over
6 some period of time.
7 Q. So if you want to know that group A -- whether
8 group A is cohesive with group B, you would want to look
9 at a number of elections over time?
10 A. Right. So normally we use a decade of
11 elections, assuming they are available, and you look at
12 that cohesion over time, yes.
13 Q. And you would want to look at a great number of
14 elections if you had those available to you, right?
15 A. You would want to look at all elections you
16 have available. The more the merrier.
17 Q. Would you turn to your report with me. I have
18 two questions very quickly about your report.
19 On what is page 9 of 26 at the top of your
20 report -- and for the record, this is one of those
21 government exhibits, but I don't have the number in
22 front of me. But I think it's Government Exhibit 1.
23 Yeah. And up at the top it says page 9 of 26.
24 A. Yes.
25 Q. And on this page, you describe some analyses



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1 that you did of District 149.
2 A. Yes.
3 Q. Do you see that? This R by C IE analysis?
4 A. Correct.
5 Q. What demographic data did you use as inputs for
6 that?
7 A. I am not certain. I would have to go back and
8 check.
9 Q. And your answer is you don't know?
10 A. Yeah. I'm not certain what -- I would -- it is
11 either voting age population or citizen voting age
12 population, and it's not indicated on this table, so I
13 would want to check and make sure which that is.
14 Q. Is it indicated anywhere else in your report?
15 A. Well, I don't know. It not in this section
16 here, which is the first time with that, so I would
17 guess that it probably is not.
18 Q. What would be the appropriate demographic data
19 to use for these analyses?
20 A. You could use -- there isn't an appropriate and
21 inappropriate, I guess. There are, sort of,
22 increasingly probative or increasingly stable or
23 whatever. So the most preferable data would be share of
24 turned-out vote. Backing up from that would be share of
25 registered vote. Backing up from that would be CVAP,

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1 and backing up from that would VAP, and backing up from
2 that would be population.
3 Q. And we already talked about you don't have
4 turnout of registered voters by race here in Texas, so
5 the best data you could have used for these analysis --
6 analyses were CVAP data, right?
7 A. Right. So we have my -- and I don't know,
8 again, where in the -- in this issue of trying to get
9 analysis generated, how far we got in generating this
10 analysis, but, I mean, my preference would be to
11 generate that analysis with CVAP. But whether -- I
12 don't recall whether we actually got CVAP analysis
13 working or whether we got VAP analysis working.
14 Q. Okay. Would you turn with me to page 14 of
15 26. And I want to ask you a question about your tables
16 -- actually.
17 A. It's Table 2?
18 Q. That's Table 2. But I want to ask you about
19 Tables 3, 4, 5, 6, 7, and 8.
20 A. Yes.
21 Q. Why did you not analyze any elections from
22 2004?
23 A. I don't think that they are -- I mean, I could
24 go back and look, but I don't think there's a 2004
25 primary statewide contest that has a -- a two-candidate

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1 race with a -- in which there is a candidate -- I think
2 the cutoff was maybe -- that there to be a minority
3 candidate that was getting more than 5 percent of the
4 vote or something.
5 Q. Are your cutoffs reflected in the report
6 somewhere?
7 A. Well, let's see. It doesn't sound like it does
8 in this -- there should be -- so, both of those things
9 should be in the discussion of the tables, and they are
10 not here.
11 Q. Okay. And Tables 3 through 8 are the tables --
12 or the analyses that you rely on for your conclusion
13 about cohesion in -- between minority voters in primary
14 elections; is that right?
15 A. As I say in the report, I'm -- that I'm looking
16 at those and that they confirm that I'm relying on that
17 and the analysis of Dr. Murray and the analysis of
18 Dr. Engstrom.
19 Q. Okay. Do you remember what elections
20 Dr. Murray and Dr. Engstrom looked at, specifically what
21 primary elections they looked at?
22 A. Dr. Murray was looking at primary elections in
23 Harris County. And I -- I don't recall what Engstrom's,
24 which primaries Engstrom was looking at, but he was
25 looking at several Democratic primaries.

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1 Q. Okay. And so I think my last question is: If
2 you wanted to really get a sense of how -- of whether
3 black and Hispanic voters were cohesive in the primary,
4 shouldn't you have looked at white-white elections?
5 A. You could certainly have looked at white-white
6 elections.
7 Q. Is that a yes?
8 A. I'm thinking it's probably no.
9 Q. Well, isn't it true that your analyses only
10 tell you whether black and Hispanic voters are cohesive
11 in a racially-competitive primary election?
12 A. Yes. And so if -- if this analysis suggested
13 that they were competitive, I would assume we would see
14 the same thing in an Anglo-Anglo race.
15 Q. But you haven't conducted any analyses of
16 Anglo-Anglo races?
17 A. Right.
18 Q. And it could well be the case that Anglo-Anglo
19 races or races that are otherwise not racially
20 competitive, you see very high levels of cohesion
21 between black and Hispanic voters in the Democratic
22 primary?
23 A. So I'm assuming I'm -- I have made this
24 selection of races involving minority candidates for the
25 same reason that Dr. Engstrom selected only races



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1 involving minority candidates, and that everybody else
 2 who does the other indexes, Lisa Hanley and so forth,
 3 all select races with minority candidates, which is that
 4 basically you find something there, and then, you know,
 5 you can -- you can -- okay. So, if what we find that is
 6 they are -- as I find and Dr. Engstrom finds and
 7 Dr. Murray finds and everybody I have ever talked to in
 8 Texas who knows anything about Texas politics finds that
 9 informally, anecdotally, or analytically, that these
 10 groups are not cohesive in general in the Democratic
 11 primary, if we find that is true when there is a
 12 Hispanic running against an Anglo or a black running
 13 against an Anglo, then the question would be so we could
 14 then go on and extend that analysis to look at all these
 15 Anglo-Anglo races, and if we found that they were
 16 cohesive in those races, what would that tell us, and
 17 the answer is that they are not politically cohesive.
 18 Q. Well, there are more Anglo-Anglo races than
 19 there are racially-competitive primaries; are there not?
 20 A. There are.
 21 Q. And if, in fact, it turned out that black and
 22 Hispanic voters were cohesive with each other in the
 23 overwhelming majority of Democratic primaries, that
 24 would go a long way towards establishing that, on the
 25 whole, black and Hispanic voters are cohesive in

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1 Democratic primaries, wouldn't it?
 2 A. I guess I just don't think that knowing that
 3 blacks and Hispanics vote cohesively, so long as there
 4 are only Anglo candidates to vote between, is the
 5 purpose of this inquiry.
 6 Q. Well, isn't the purpose of your inquiry, in
 7 Tables 3 to 8, to establish whether black and Hispanic
 8 voters vote cohesively, period?
 9 A. I guess maybe if I had assumed that that --
 10 that it was clear that we are looking at this in the
 11 context of a Voting Rights Act case, and so the question
 12 of whether there is numerically -- whether they are
 13 numerically competitive or not, when we throw in Anglo-
 14 Anglo races in a nonpartisan election is -- it's not --
 15 basically it doesn't -- it doesn't provide us that
 16 answer that we are looking for here.
 17 Q. Let me try it for maybe the fifth time in a
 18 slightly different way, because I think you are
 19 resisting answering my question.
 20 And the way I'll try it this way is: To
 21 the extent that you purport to draw conclusions about
 22 black and Hispanic cohesion generally, these analyses
 23 wouldn't do that, would they?
 24 A. So then I'll say you can have your -- sort of,
 25 your own decision about how to generate that notion that

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1 they form a political -- effective political coalition
 2 that could be treated as a single minority group.
 3 All I am demonstrating here and all that
 4 Dr. Engstrom demonstrates is that -- and maybe I should
 5 have been more careful in my language, which is, as he
 6 demonstrates and as this demonstrates, when there is a
 7 Hispanic candidate, that candidate is typically not the
 8 candidate of choice of blacks. When there is a black
 9 candidate, that candidate is typically not the candidate
 10 of choice of Hispanics. So in that sense -- in the
 11 sense that a group would be politically cohesive because
 12 they actually favor candidates of the other group over
 13 Anglos, they are not politically cohesive in that
 14 regard.
 15 If the issue is could they be politically
 16 cohesive in a world in which they are only allowed to
 17 vote for Anglos, I guess that is going to feed right
 18 into this whole model of a general election in which
 19 they will not be able to vote for candidates of choice
 20 on the basis of the fact that they are cohesive, and
 21 voting for candidates who are not black or Hispanic, but
 22 are Anglo, I just think that's not -- and quite frankly,
 23 it's -- I am not setting out to provide a full,
 24 complete, and comprehensive analysis of this issue,
 25 precisely because it's -- if you are going to present a

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1 district as a protected district, you are going to have
 2 to -- you are going to have to present evidence that the
 3 district -- that the minority groups within the district
 4 are politically cohesive and can be treated as a single
 5 minority group, and I don't know of any evidence of that
 6 in the Democratic primary anywhere in Texas.
 7 Q. And you haven't looked at Anglo-Anglo races,
 8 correct?
 9 A. I have not, and I don't see how that would be a
 10 particularly useful use of my time. Maybe Professor
 11 Engstrom would like to do that. He hasn't decided it
 12 was important yet, but he might decide that that's a
 13 useful way of spending his time.
 14 MR. SELLS: I'll pass back to --
 15 MR. HICKS: Mine are quick. I promise.
 16 FURTHER EXAMINATION
 17 BY MR. HICKS:
 18 Q. On your report, Exhibit 1, on page -- page 6 of
 19 page 6. It's numbered at the top. It is getting
 20 shuffled around, so it's hard to --
 21 A. It's being shuffled, but I think I can still
 22 get page 6.
 23 Q. Okay. At the end of the first paragraph you
 24 say, "Also see the attached OAG table."
 25 A. Yes.



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1 Q. Which table is that?
2 A. Okay. So you get past Table 9, and then you
3 get this -- the first of these tables that are in a
4 completely different format, and that's an attached OAG
5 table.
6 Q. That's what you mean by OAG table?
7 A. Yes.
8 Q. And the next one is an OAG table, too?
9 A. The next one is an OAG table.
10 Q. Okay.
11 A. And the next one is an OAG table.
12 Q. Okay.
13 A. And the next one is an OAG table.
14 Q. Okay. That helps.
15 A. And the next one is an OAG table.
16 Q. Thank you. All right.
17 Then at the first page, at the end of
18 first paragraph there, the first page of your report,
19 you say, "Hispanic cohesion is the most variable, with
20 some areas producing cohesion in the high 80s and other
21 contests producing estimates of cohesion as low as 60
22 percent." You mentioned areas about cohesion and
23 contests at 60 percent. What -- are you talking about
24 geographic areas and election contests in two different
25 censuses? I don't understand what you're saying there.

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1 A. All right. So, again, I guess because I'm --
2 we basically have estimates that range from --
3 Q. And this is my last set of questions, by the
4 way.
5 A. Okay. So we have estimates of Hispanic
6 cohesion that are as low as 60 percent, and those are
7 estimates that largely are coming out of either the
8 statewide exit poll analysis, I think that's --
9 Dr. Murray characterizes Hispanic cohesion as being
10 something like that in some parts of Harris County. And
11 then the estimates in the high 80s I think are estimates
12 that come -- that you see occasionally in some of the
13 areas that Engstrom was covering. I think you see that
14 sometimes in the -- maybe in his Valley estimation, if
15 I'm not mistaken; whereas in other areas that might be
16 in the 70s or something.
17 Q. All right. So these areas you are talking
18 about are geographic areas?
19 A. Right. So there's some geographic variation
20 that you see within people's estimates of Hispanic -- so
21 Hispanic cohesion in some contests will seem higher than
22 others. In some areas in the same contest, will be
23 different, whereas black cohesion, basically, it doesn't
24 vary across contests or methodology.
25 So black cohesion in the exit poll, in the

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1 presidential election, it looks just like black cohesion
2 in the exit poll for, you know, contests two years
3 before. It looks just like black cohesion in wherever
4 it's estimated around Texas. It all looks basically the
5 same.
6 Q. And you didn't do any -- produce any tables or
7 any detailed analysis about the Hispanic cohesion
8 variability by geographic region or election contest?
9 A. I mean, it's in the -- it's in all of
10 everybody's reports in the Section 2 case.
11 Q. That's what you're talking about?
12 A. That's what I'm talking about.
13 Q. Okay.
14 A. I'm talking about the -- I'm not talking about
15 an analysis, a particular analysis I hear, but broadly
16 that was what was in evidence in the Section 2 case.
17 Q. Okay.
18 MR. HICKS: Thank you.
19 MR. SCHENCK: I have a few questions.
20 MR. HICKS: Gee, we've been here for seven
21 hours.
22 MR. SCHENCK: You're free to leave.
23 (Laughing.)
24 EXAMINATION
25 BY MR. SCHENCK:

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1 Q. I just want to, sort of, clean up a couple of
2 things. Where are our hypos? Oh, there we are.
3 Let me first ask about: In your report
4 you looked at all 48 of the elections that were involved
5 or reported on Red 225; is that correct?
6 A. Right. All of the contested. So this would be
7 elections where there was both a Democrat and a
8 Republican running in the election, and the Republican
9 on Libertarian are not in there.
10 Q. Was there a reason that you chose to look at
11 all 48 elections related to the position, as you
12 understood it, coming from the Department of Justice?
13 A. I mean, I thought it was in order to try to
14 understand -- I was trying to understand where the
15 particular list of districts of concern came from. And
16 so I thought one way of starting would be to go back to
17 what I had done originally, which is look at, basically,
18 at everything in Red 225.
19 Q. Did you understand where the Department of
20 Justice had indicated to the court that it had looked at
21 everything?
22 A. I think I -- sort of my basic idea was that if
23 I looked at everything, I could probably figure out
24 where that -- where that set of districts came from, and
25 that's what I was able to figure out.



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1 Q. Okay. And did Red 225 involve racially
2 contested or interracial elections, to your knowledge?
3 A. Yes. All of the -- it involves all the
4 elections that are used by anybody else's index, in
5 addition to the broader set of elections.
6 Q. But it included elections in addition to the
7 racially-contested elections?
8 A. Yes. So the racially-contested elections are
9 in that set of elections.
10 Q. Okay. And the election data that was presented
11 to you as having been generated by the Office of
12 Attorney General in Government Exhibit 7, are you
13 familiar with that process?
14 A. Yes.
15 Q. Or the process that led to the creation of that
16 document?
17 A. I guess I would have to know what you mean by
18 the process that --
19 Q. Let me reask -- let me clarify my question.
20 Was this -- is Government's Exhibit 7 a
21 report on District 27 in plan H-100, the House benchmark
22 plan?
23 A. Yes.
24 Q. And is this part of a document that would be
25 roughly 3- or 4,000 pages, if all of the districts were

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1 put together?
2 A. Yeah. I think it's in excess of 3,000 pages.
3 Q. And I believe Mr. Sells asked you about your
4 involvement early in April or late in March and two
5 meetings with the Attorney General's Offices. Do you
6 recall that testimony?
7 A. Yes.
8 Q. Okay. Were you familiar with the prospect of
9 Attorney General's Office selecting racially-contested
10 elections in advance of the redistricting process
11 unfolding in the legislature?
12 A. Yes.
13 Q. Okay. When you met with the Office of Attorney
14 General in the two meetings that you testified about
15 earlier, was that after the DOJ had issued its guidance
16 to the states?
17 A. Yes.
18 Q. Okay. So were you and the Attorney General's
19 Office aware of the possibility that the standard could
20 include some form of functional election analysis?
21 A. I think that was clear from the -- that part of
22 the standard was clear it was going to include a
23 functional analysis.
24 Q. Did anyone at the Attorney General's Office
25 tell you that they were looking for you to give legal

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1 advice in terms of how to interpret either the
2 retrogression standard after the 2006 amendments to the
3 Voting Rights Act or the Department of Justice's
4 guidance?
5 A. No.
6 Q. And I believe you testified earlier about some
7 concerns about over reliance on race in districting.
8 Are you familiar, generally, with the
9 Supreme Court expressing some displeasure with
10 overreliance on race, even where it's said to be
11 compelled by attempts to comply with Section 5?
12 A. Yes.
13 Q. Over the past decade and a half?
14 A. Yes.
15 Q. Okay. You're familiar with the Supreme Court
16 handing down a decision called Georgia versus Ashcroft
17 in 2003?
18 A. Yes.
19 Q. Do you know whether the Supreme Court pushed
20 back on the idea of maintaining majority-minority
21 districts on the basis of race?
22 MR. SELLS: I'm going to object as
23 leading.
24 MR. SCHENCK: It's all right.
25 A. We discussed this earlier, and I am not a close

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1 follower of the court decisions in this area, but there
2 certainly has been a good deal of back and forth push
3 between the court and the Congress on these issues.
4 Q. (By MR. SCHENCK) Okay. So after 2003, did
5 Congress do anything, in your knowledge, to the Voting
6 Rights Act?
7 A. The Voting Rights Act has been changed to --
8 basically in a push back and forth between the courts
9 and Congress.
10 Q. To the extent of your knowledge as a social
11 scientist, has any court, since the amendments to the
12 Voting Rights Act or the decisions the court has handing
13 down attempted to establish or determine what the
14 retrogression standard will be going to forward?
15 A. I don't know of a decision that has clarified
16 that.
17 Q. Okay. And the Attorney General's Office did
18 not retain you for the purpose of providing legal
19 advice, correct?
20 A. That's correct.
21 Q. Let me look at Hypo number 2 with you, which is
22 Government's Exhibit Number 4. Could you read aloud
23 what the level of support is for candidates Abel and
24 Baker among Hispanic and black voters?
25 A. So among black voters, 51 percent support



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1 Baker, and among Hispanic voters, 51 percent support
2 Abel.
3 Q. Okay. And on the basis of these numbers, we
4 were able to identify a candidate of choice for each
5 ethnicity; is that correct?
6 A. Right. So they have different candidates of
7 choice.
8 Q. As levels of cohesion, as you understand it,
9 drop and get closer to, let's say, for the sake of
10 argument, 60-40 for Hispanic voters in Texas, to the
11 extent a state attempts to, either in compliance with
12 some understanding of federal law or for any other
13 reason, to draw districts to allow -- to separate, in
14 fact, voters on the basis of their race to allow one
15 group to have the likelihood, prospectively, of electing
16 a candidate of choice, do those districts have to look
17 stranger or get more heavily gerrymandered in order to
18 accommodate the lower level of cohesion?
19 MR. SELLS: Objection to form, leading.
20 MR. SCHENCK: Let me reask that question.
21 Q. (By MR. SCHENCK) As levels of cohesion drop and
22 approach the 51-49, for example, in Government's Exhibit
23 4, Hypothetical number 2, is your understanding of the
24 ability to draw a district to maintain the ability,
25 assuming we are treating ability as maintaining a

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1 likelihood of electing the candidate of choice affected?
2 A. I mean, it's other things being equal, the
3 lower cohesion for the minority group, the larger the
4 proportion of population the minority group will to make
5 up, but to some upper limit where the district will have
6 to be essentially exclusively one race or ethnicity.
7 Q. Okay. Did anyone ever ask you at any point to
8 meet with a legislator or a staffer of legislators in
9 connection with forming your opinions in this case?
10 A. No.
11 Q. Has anyone ever asked you to shade an opinion
12 or to change your opinion in order to please a member of
13 any legislative body of the state?
14 A. No. I don't think I have pleased very many
15 members of the legislative bodies in this state, and I
16 certainly wasn't asked to. Maybe they should have. I
17 don't know.
18 Q. Okay.
19 A. At this point, they're not speaking to me, so
20 there is no chance that will happen.
21 Q. Let me just ask you a couple of hypos -- or I'm
22 sorry, a couple of clean-up questions.
23 I believe there was some testimony earlier
24 about which plans that you had looked and when. I just
25 wanted to clean up. Do you have a recollection of

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1 looking at plans before they were voted on in this
2 case? I shouldn't say in this case. Strike that.
3 Do you have a recollection of whether you
4 were looking at plans as they were proposed, but before
5 they were passed?
6 A. I was not actively involved in a process of
7 analysis across proposed plans. But as I indicated,
8 there were conversations regarding a particular House
9 plan, and I think a particular congressional plan, both
10 of which may have been the ones that were finally
11 adopted. I don't know.
12 Q. Okay. And do you recall whether before the
13 final adoption of all four plans here, there were
14 communications between yourself and our office about the
15 actual final plans but prior to enactment?
16 A. Yes.
17 Q. Also, Mr. Sells asked you some questions about
18 the scope of your testimony in the Section 2 case. I
19 guess we can make this an exhibit. Would it help your
20 recollection to look back at your Section 2 report about
21 your scope of work?
22 A. Yes.
23 MR. SCHENCK: Yes, we will just pull this
24 thing out. I'm going to go ahead and mark this. Sorry,
25 I only have the one copy.

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1 MR. SELLS: That's okay.
2 MR. SCHENCK: Let me just read into the
3 record, if I can.
4 MR. SELLS: Sure.
5 MR. SCHENCK: Paragraph 1 on your report.
6 MR. HICKS: And just so it's clear, are
7 you showing him that report he did in Section 2, the
8 initial report?
9 MR. SCHENCK: I original Section 2 report.
10 MR. SELLS: Is this document 223-2?
11 MR. SCHENCK: Indeed it is.
12 MR. SELLS: Okay. I've got it.
13 MR. SCHENCK: Well done.
14 Q. (By Mr. Schenck) I am looking at, Brian, at
15 page 4, the top under the bold report. Page 5 of the
16 court stamping, page 4 of the Senate.
17 "The number of experts and volumes of
18 reports, material and analyses generated by this case is
19 unusually large. (Over 5,000 pages). The time to
20 respond has been unusually short. As a consequence, I
21 will be concentrating on the U.S. Congressional plan,
22 and primarily on issues related to Gingles Factors 2 and
23 3, but much of this analysis is relevant as background
24 for the electoral setting of all of the plans."
25 A. That's correct.



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1 Q. Okay. Now, do you recall testifying in the
2 Section 2 trial about the extent and causes for
3 racially-polarized voting in Texas?
4 A. Yes.
5 Q. And would that testimony have related to all of
6 the controversy before the Section 2 court, including
7 both the congressional and House plans?
8 A. Yes.
9 Q. Mr. Sells asked you a question about District
10 Number 148. Do you recall that House District Number
11 148?
12 A. Yes.
13 Q. Do you recall whether District 148 was a
14 majority-minority district under the benchmark plan?
15 A. My recollection is, is it was not a majority-
16 minority district under the benchmark plan.
17 Q. Okay. Lastly, in your original Section 2
18 report and your report in this case, what conclusions do
19 you come to about the effectiveness in terms of reliably
20 electing minority candidates of choice of Congressional
21 Districts 23 and 27 on the original benchmark
22 congressional plan?
23 A. 23 is obviously problematic in the benchmark
24 plan in terms of endogenous and exogenous
25 elections. 27, next to 23, is the next weakest. So if

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1 we array the minority districts from the weakest to the
2 most secure, or most secure to weakest, the weakest
3 district is 23, and the second weakest district is 27,
4 and then everything after that is really not -- it
5 doesn't really have perform -- much in the way of
6 performance issues.
7 Q. Okay. And was your opinion in the Section 2
8 case -- or was it your opinion in the Section 2 case
9 that 23 and 27 were not performing districts among the
10 seven benchmark districts in which Latinos constituted
11 the majority of the population?
12 A. You have to careful about remarks like that.
13 Those two districts did not perform in
14 endogenous elections in the 2010 election. So those two
15 districts, the state came into the redistricting era
16 with five districts that were electing -- that had
17 elected and were represented by candidates of choice and
18 two districts that were not represented by candidates of
19 choice.
20 Q. And coming out of the redistricting process
21 under the enacted plan, how many districts do we have in
22 which Latinos, if they are cohesive and voting in a way
23 that would entitle them to protection of the Voting
24 Rights Act, in which they could control the outcome of
25 the election?

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1 A. You will -- you have the original districts,
2 you have the -- a new district in 35, and you have in a
3 somewhat reduced level, a possible with appropriate
4 cohesion election, in District 23.
5 Q. Okay. So if we had seven districts in which
6 there were a majority of Latino eligible voters, let's
7 say HC VAP, do we have eight districts on the new plan
8 in which that majority is found?
9 A. Yes.
10 Q. Okay. And if we look in terms of performance
11 of the districts coming into the 2010 cycle, we had, as
12 I understand your prior testimony, five. How many
13 districts do you see on the proposed plan, as Mr. Sells
14 would call it, the enacted plan, as I would call it, in
15 which we would expect that it was likely that Hispanic
16 voters will elect a candidate of their choice?
17 A. Seven. So if the adopted plan is upheld, there
18 will be two additional Hispanic candidates of choice
19 elected in the upcoming election.
20 Q. Okay. So if all goes according to what the
21 expectations might be based on the past voting patterns,
22 in 2013, we would expect to see two more members of
23 Congress from the Texas congressional delegation that
24 would be selected by a majority of Latino voters?
25 A. That's correct.

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1 MR. SCHENCK: Thank you. Pass.
2 FURTHER EXAMINATION
3 BY MR. SELLS:
4 Q. I want to ask a follow-up question based on
5 Mr. Schenck's last line of questioning there, talking
6 about the number of districts in the benchmark and
7 proposed plans. And you have read Lisa Hanley's
8 report. It is clear you all have a disagreement about
9 whether certain districts are -- districts in which
10 minority voters have an ability to elect, right?
11 A. I wouldn't want to hear her answer to that
12 question, because I'm not sure we would disagree about,
13 sort of, a raw ability to elect. But I think we have
14 some disagreement about how to characterize districts in
15 terms of election performance.
16 Q. You have a dispute about whether these
17 districts will likely elect in the future, don't you?
18 A. So we have a disagreement about election
19 performance as opposed to just simple ability to elect.
20 Q. Okay.
21 MR. SELLS: That's it.
22 MR. SCHENCK: Okay. Read and sign.
23 (Signature reserved.)
24 (Deposition concluded at 6:26 p.m.)
25



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1 CHANGES AND SIGNATURE
 2 RE: STATE OF TEXAS VS. U.S.A, ET AL
 3 PAGE LINE CHANGE REASON
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 I, JOHN ALFORD, Ph.D., have read the foregoing
 21 deposition and hereby affix my signature that same is
 22 true and correct, except as noted above.
 23 _____
 24 JOHN ALFORD, Ph.D.
 25

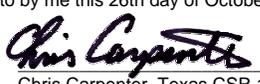
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1 THE STATE OF _____)
 2 COUNTY OF _____)
 3
 4 Before me, _____, on this day
 5 personally appeared JOHN ALFORD, Ph.D., known to me (or
 6 proved to me under oath or through _____
 7 (description of identity card or other document) to be
 8 the person whose name is subscribed to the foregoing
 9 instrument and acknowledged to me that they executed the
 10 same for the purposes and consideration therein
 11 expressed.
 12 Given under my hand and seal of office
 13 this _____ day of _____, 2011.
 14
 15 _____
 16 NOTARY PUBLIC IN AND FOR
 17 THE STATE OF _____
 18
 19
 20
 21
 22
 23
 24
 25

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1 THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF COLUMBIA
 3 STATE OF TEXAS,)
 4 Plaintiff,)
 5 VS.)
 6 UNITED STATES OF AMERICA AND)
 7 ERIC H. HOLDER, JR., IN HIS)
 8 OFFICIAL CAPACITY AS ATTORNEY)
 9 GENERAL OF THE UNITED STATES,)
 10 Defendants,)
 11)
 12 WENDY DAVIS, ET AL,) CIVIL ACTION NO.
 13 Defendant-Intervenors,) 1:11-EV-1303
 14) (RMC-TBG-BAH)
 15 MEXICAN AMERICAN LEGISLATIVE) THREE-JUDGE COURT
 16 CAUCUS,)
 17 Defendant-Intervenors,)
 18)
 19 GREG GONZALEZ, ET AL,)
 20 Defendant-Intervenors,)
 21)
 22 TEXAS LEGISLATIVE BLACK)
 23 CAUCUS,)
 24 Defendant-Intervenors,)
 25)
 26 TEXAS LATINO REDISTRICTING)
 27 TASK FORCE,)
 28 Defendant-Intervenor,)
 29)
 30 TEXAS STATE CONFERENCE OF)
 31 NAACP BRANCHES, ET AL,)
 32 Defendant-Intervenors.)
 33)
 34 REPORTER'S CERTIFICATION
 35 DEPOSITION OF JOHN ALFORD, Ph.D.
 36 OCTOBER 25, 2011
 37 I, Chris Carpenter, Certified Shorthand Reporter in
 38 and for the State of Texas, hereby certify to the
 39 following:
 40 That the witness, JOHN ALFORD, Ph.D., was duly sworn
 41 by the officer and that the transcript of the oral

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1 deposition is a true record of the testimony given by
 2 the witness;
 3 That the deposition transcript was submitted on the
 4 _____ day of _____, 2011, to the witness or to the
 5 attorney for the witness for examination, signature and
 6 return to _____, by
 7 _____, 2011; and if returned, the original
 8 transcript will forwarded to J. Gerald Hebert, the
 9 custodial attorney;
 10 That the amount of time used by each party at the
 11 deposition is as follows:
 12 Mr. Sells: 3 hour, 52 minutes
 13 Mr. Hicks: 1 hour, 1 minute
 14 Mr. Schenck: 17 minutes
 15
 16 I further certify that I am neither counsel for,
 17 related to, nor employed by any of the parties or
 18 attorneys in the action in which this proceeding was
 19 taken, and further that I am not financially or
 20 otherwise interested in the outcome of the action.
 21
 22 Certified to by me this 26th day of October, 2011
 23
 24  
 25 Chris Carpenter, Texas CSR 1151
 Expiration Date: 12/31/2012
 3101 Bee Caves Road, Suite 220
 Austin, TX 78746
 (512)328-5557
 Firm Registration No. 283