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

League of United Latin American

Citizens, et al.

Plaintiffs,
V.

Greg Abbott, et al.,

Defendants.

Case No. 3:21-cv-00259
[Lead Case]

## DEFENDANTS' RESPONSE IN OPPOSITION TO LULAC PLAINTIFFS' MOTION TO REOPEN DISCOVERY

In 2020-years before State Defendants retained him as an expert and before census data was even released—Sean Trende drew a few Texas congressional districts and tweeted about it. When asked at his deposition, Trende explained that he drew them "entirely for [his] own entertainment." After the deposition, LULAC asked for the corresponding maps. Although LULAC was not entitled to the maps, that issue was irrelevant because neither Mr. Trende nor Dave's Redistricting, LLC ("Dave's") had retained copies.

Reopening discovery would not lead to relevant evidence, and the factors LULAC cites do not support reopening discovery. For these reasons, LULAC has not shown good cause. State Defendants therefore respectfully ask that the Court deny the motion to reopen discovery.

## BACKGROUND

On July 18, 2022, State Defendants designated Sean Trende as a testifying expert. ECF 444. Five days later, State Defendants served Mr. Trende's expert report and related materials on the plaintiffs. Expert discovery closed on August 3, 2022. ECF 325. But the parties agreed to hold Mr. Trende's deposition out of time on September 2, 2022. See Ex. 1, Transcript of the Deposition of Sean Trende
sought copies of the 2020 maps. ${ }^{1}$
When LULAC asked for the shapefiles for the 2020 districts that Trende drew, State Defendants disputed that LULAC was entitled to the documents but nonetheless conferred with Mr. Trende who, after a thorough and diligent review, confirmed that he no longer had those maps in his possession. See ECF 617, Ex. D, at 9 (Sept. 20, 2022 email); see also Ex. 2, Declaration of Sean Trende ("Trende Decl.") 【 2. This included confirming that the 2020 maps did not remain in Mr. Trende's folders on Dave's Redistricting App, where he would have drawn the 2020 districts. See ECF 617, Ex. D, at 7 (Sept. 21, 2022 email); see also Trende Decl. © 2. In hopes of saving the parties and the Court time, State Defendants relayed their understanding to LULAC. See ECF 617, Ex. D, at 7 (Sept. 21, 2022).

About a week and a half later, LULAC emailed State Defendants on a new issue. See ECF 617, Ex. D, at 7 (Sept. 30, 2022). LULAC explained that it had "spoken to counsel for Dave's," who noted that Dave's "ha[d] in its possession five maps related to Texas redistricting connected to Mr. Trende's account(s)"—all of which "were created on or after July 1, 2022." Id. State Defendants again conferred with Mr. Trende. Mr. Trende is not able to see map-creation dates in his Dave's Redistricting App. See Trende Decl. © 4. But Dave's told him that there had been a misunderstanding and that there are no Texas redistricting maps in his account created on or after July 1, 2022. Trende Decl. ๆ 4. Confirming this, LULAC's motion includes a copy of its exchange with counsel for Dave's, who explained "that the earlier statement that there are five Texas maps connected to Mr. Trende's account created after July 1, 2022 was based on misreading of the data and is incorrect." ECF 617, Ex. D, at 14. Dave's also requested that LULAC "not rely on that [incorrect] information in drafting [its] subpoena." Id.

## ARGUMENT

Discovery should not be reopened. A scheduling order may be modified only for good cause.

[^0]Fed. R. Civ. P. 16(b)(4). Yet LULAC has not-and cannot-show good cause for two reasons. First, reopening discovery will not lead to relevant evidence. Second, the factors that LULAC cites in support of reopening discovery actually cut against reopening discovery. Moreover, this Court has repeatedly made clear that, although "[c]ounsel may by agreement continue discovery beyond the deadline" in the scheduling order," "there will be no intervention by the Court except in extraordinary circumstances." ECF 325 ब 6; ECF 69 - 6. LULAC has not demonstrated extraordinary circumstances. For these reasons, the motion should be denied.

## I. Reopening Discovery Will N ot Yield Relevant Evidence

"In determining whether to amend the scheduling order to allow more time to conduct discovery, courts consider a number of factors, including . . . the likelihood that discovery will lead to relevant evidence[.]" 3 Moore's Federal Practice § 16.14 (2022). The mere possibility that discovery will lead to relevant evidence is not enough to satisfy the good-cause requirement. See Sanford $v$. Pershing LLC, No. 3:15-cv-3832, 2022 WL 1590752, at *3 (N.D. Tex. Jan. 14, 2022) (finding no good cause where the movant "merely speculate[d]" that reopening discovery "might 'yield relevant evidence"'). Here, there is not even a possibility of relevant evidence.

LULAC seeks to reopen discovery because it has "been unsuccessful in obtaining Mr. Trende's maps" in which "he created two new majority-minority Texas congressional districts." See ECF 617 at 1. LULAC believes that these 2020 maps will show that Trende "concluded that the minority populations in the Houston and Dallas areas are sufficiently compact that it is 'easy' to create two new ma-jority-minority congressional districts." See ECF 617 at 8 . That is wrong for two reasons.

First, reopening discovery would be futile because neither Mr. Trende nor Dave's has the maps that LULAC seeks. Mr. Trende cannot locate the 2020 maps in his personal files. See Trende Decl. $\mathbb{\|} 2$. Nor can he locate them in his folders on Dave’s Redistricting App. See Trende Decl. 【 2. Mr. Trende only ever drew "these lines . . . for [his] own entertainment." See Trende Decl. 【 3. In fact, he did not
recall drawing these 2020 maps until he was reminded of his old tweet during the deposition. See Tr . 148:15-16 ("I don’t even remember really [drawing these] until you reminded me."). Indeed, the map referenced in the tweet was "an earlier map drawn for the 39-seat configuration that Texas was previously to be awarded." See Trende Decl. © 3. And he "was not able to locate or identify the maps referenced in the tweet" as they "do not appear in [his] personal files or in [his] folders on Dave's Redistricting App." See id.

Second, even if LULAC could obtain the maps through reopened discovery, they likely would not be probative of anything. Mr. Trende was not involved in the Legislature's process for drawing districts, and the maps were not part of the analysis provided in his expert report. See Trende Decl. If 3 ("[T]he map referenced in my tweet was not among the facts or data I considered in forming the opinions I set forth in my expert report."). And when he drew the districts in question "for [his] own entertainment," Tr. 148:6, the census numbers relevant to this case had not yet even been released, see Trende Decl. 『| 3 ("[T]he 2020 Census results . . . were not released until April 26, 2021[.]"). Indeed, at the time, it was expected that Texas would have 39 congressional districts to draw. See Trende Decl.【 3. In any event, LULAC has its own experts and mapdrawers who can determine the feasibility of drawing any demonstrative districts it desires. See ECF 305.

LULAC also seeks five Texas maps connected to Mr. Trende's account that it was initially told were created after July 1, 2022. See ECF 617 at 5 . But as Dave's informed LULAC, there are no Texas congressional maps connected to Mr. Trende's account that were created on or after July 1, 2022. See ECF 617, Ex. D at 14 (Oct. 3, 2022 email) ("[T]he earlier statement that there are five Texas maps connected to Mr. Trende's account created after July 1, 2022, was based on misreading of the data and is incorrect."). And Mr. Trende has "provided [to State Defendants] all materials that [he] relied on in preparing [his] expert report," see Trende Decl. ब1 1, and State Defendants in turn provided all such materials to plaintiffs. "This included all facts or data that [he] considered when forming the
opinions expressed in [his] report." See id.
To the extent LULAC is seeking those five maps in particular regardless of creation date, they would not be discoverable. An expert witness's report "must contain" "the facts or data considered by the witness in forming" "all opinions the witness will express." FED. R. Civ. P. 26(a)(2). And courts in the Western District of Texas have not "permit[ted] discovery of documents and information that are not enumerated in Rule 26(a)(2)(B)" that also lack "a close nexus to the items enumerated therein." D'Souza v. Marmaxx Operating Corp., No., 2017 WL 1322243, at *5 (Apr. 7, 2017) (Guaderrama, J.). But the five maps LULAC purports to seek are not part of "the facts or data that [Trende] considered when forming the opinions expressed in his report." See Trende Decl. ๆ| 4. Nor are they " $\|$ connected to [his] work as an expert witness in this matter." See id. Nor are they " $\square$ related to the opinions that [he has] expressed in [his] report." See id. For these reasons, even setting the date issue aside, the five maps originally identified as created in 2022 would not be discoverable.

In sum, this is not an instance in which a plaintiff is seeking "the opportunity to obtain discovery that [it] should have already received." Contra Ormeno v. 3624 Georgia Ave., Inc., 309 F.R.D. 29, 34 (D.D.C. 2015). Rather, this is an exercise in futility. The evidence sought is not relevant. As such, good cause does not exist to reopen discovery, and the motion should be denied.

## II. The Factors That LULAC Cites Counsel Against Reopening Discovery

LULAC agrees that there must be good cause to modify a scheduling order and reopen discovery. See ECF 617 at 6. LULAC focuses on four factors that district courts frequently evaluate in deciding whether to modify a scheduling order-"(1) the explanation for the failure to timely move for a modification of the scheduling order; (2) the importance of the modification; (3) potential prejudice in allowing the modification; and (4) the availability of a continuance to cure such prejudice." Id. (quoting Gibson v. United States, No. 1:18-cv-626, 2021 WL 6617723, at *1 (W.D. Tex. Mar. 15, 2021)). But these factors cut against granting the motion to reopen.

For one thing, LULAC has not adequately explained its failure to move for a modification of the scheduling order until now. LULAC underscores that it "first learned that Mr. Trende used his Dave's Redistricting App account to draw two additional minority opportunity Texas congressional districts during his September 2, 2022 deposition—after the close of fact discovery on July 15, 2022." See ECF 617 at 6. That Mr. Trende drew Texas congressional districts in 2020 was public information. It was available on Mr. Trende's Twitter account. That is how the United States raised the issue at Mr. Trende's deposition. LULAC does not explain why it could not have discovered this information and thus sought the maps sooner. See Tolan v. Cotton, No. 4:09-cv-1324, 2015 Wl 4874925, at *3 (S.D. Tex. Aug. 14, 2015) (holding that, in effectively what was "nothing more than an effort to re-open discovery," the facts sought by the movants were "facts that [they] should have discovered").

What is more, LULAC mischaracterizes the second factor they cite. It argues that "the importance of the evidence sought also weighs strongly in favor of modifying the scheduling order." See ECF 617 at 8 . But the factor does not inquire into the importance of the evidence. Rather, it is "the importance of the modification." Gibson, 2021 WL 6617723, at *1. Since the evidence is not otherwise discoverable, modifying the scheduling order to reopen discovery is inconsequential-and thereby not important. But even if the issue were the importance of the evidence, the evidence is not important. Maps that were (1) drawn based on out-of-date data, (2) unrelated to the Legislature's drafting efforts, and (3) not the basis for Mr. Trende's expert report are not material to this case. That is presumably why no other plaintiffs have sought this information, moved to reopen discovery, or joined LULAC's motion.

Prolonging discovery would prejudice both Defendants and Dave's by requiring them to spend more resources on irrelevant discovery. A continuance would not cure that prejudice because it would not allow them to recover the resources once expended.

Lastly, "[w]hat constitutes good cause sufficient to justify the modification of a scheduling order necessarily varies with the circumstances of each case." 6A Wright \& Miller, Federal PracTICE \& Procedure $\mathbb{\$} 1522.2$ ( 3 d ed.). In Gibson, the movant sought to reopen discovery because of changes in the minor plaintiff's medical conditions that raised new issues "previously believed to be unnecessary" to consider. 2021 WL 661723, at *1. But the circumstances here are meaningfully different. To reiterate, even if LULAC could obtain the maps through reopened discovery, the maps are unlikely to be probative of anything. Again, Mr. Trende was not involved in the Legislature's process for drawing districts, and he has already provided all materials that were a part of the analysis provided in his expert report. The districts in question he drew merely "for [his] own entertainment." Tr. 148:6.

## CONCLUSION

For the reasons explained above, Defendants respectfully ask that the Court deny the motion.

Date: October 24, 2022

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## Certificate of Service

I certify that a true and accurate copy of the foregoing document was filed electronically (via
CM/ECF) on October 24, 2022, and that all counsel of record were served by CM/ECF.

Ls/ Ari M. Herbert<br>Ari M. Herbert

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IN THE UNITED STATES DISTRICT COURT
    WESTERN DISTRICT OF TEXAS
                        EL PASO DIVISION
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League of United Latin :
American Citizens, et al., :
Plaintiffs, :
vs. : Case No.
Greg Abbott, et al., :
Defendants. :
DEPOSITION OF SEAN P. TRENDE
Friday, September 2, 2022
9:00 a.m.
Squire Patton Boggs
41 South High Street
Suite 2000
Columbus, Ohio 43215-6101
SUSAN L. COOTS, RPR
REGISTERED PROFESSIONAL REPORTER






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## for example?

MR. KERCHER: Object to the form.
A. Because that's what the SMC algorithm is supposed to do. Dr. Imai has disclaimed SMC, then maybe it doesn't.
Q. So there is a connection to what you put in
the initial parent parameters that define the distribution, and that's what gives you a control on your sample, right?
A. That's right.
Q. Okay. How did you know that your sample was representative?

MR. KERCHER: Object to the form.
A. Again, this is something that has been used
in redistricting litigation, and the paper, which is
probably -- from probably the second-most prominent
political methodologist in political science, has been
run and tested to ensure it produces a representative
sample given certain parameters.
Q. Okay. So a representative sample would be close to what the set of plans that the legislature might have considered, right? Strike that.

A representative sample in this case would have to be close to the set of plans that the Texas legislature considered, right?

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A. That's right.
Q. In your report -- And we'll hone in on, you
know, specific -- some of your dotplots. But in your
report, you analyzed these ensembles from the
perspective of minority CVAP share, right?
A. That's one of the things I did. Yes.
Q. Okay. And you analyzed, again, these draws
from the perspective of the democratic vote share in
the Biden/Trump election, right?
A. That's correct.
Q. The 100,000 ensembles that you get, that's a
sample, right?
A. It's one ensemble. But the 100,000 maps you
get are samples.
Q. Okay. Thank you.
Is it possible to have biases in a sample?
A. Have what?
Q. Biases.
A. You would have to define that term.
Q. How do you know that your sample is not
skewed?
    MR. KERCHER: Object to the form.
A. In what sense?
Q. How do you know that your sample contains,
you know, plans that are not -- highly not compact,
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                            Page 21
            MR. KERCHER: Objection to the form.
    A. That's what you would shoot for. Yes.
Q. Did you know what parameters the Texas
legislature looked at in drawing their plans?
A. No, but I wasn't trying to ensure that my
ensemble drew from the same distribution as the Texas
legislature.
Q. Okay. What distribution were you trying to
ensure that your ensemble drew from?
A. I was trying to see if I was drawing from
the same ensemble as Dr. Duchin.
Q. Got it. Okay
How were you able to verify that your
ensemble was drawing from the same distribution as
Dr. Duchin?
A. I compared our outputs and they were
consistently the same.
Q. Okay. But you didn't know what parameters
she used, right?
A. No. Like I said, I compared our outputs
that we put out in the case; they were the same
outputs.
Q. Okay. So other than looking at similarities
or inferring that your distribution and her
distribution were the same, did you do anything else

|  | to verify that your sample essentially looked good? |
| :---: | :---: |
| 2 | MR. KERCHER: Object to the form. |
| 3 | A. Well, understanding how the SMC algorithm |
| 4 | works and what it's supposed to produce, yes. And |
| 5 | I actually do think, at least for the first run or |
| 6 | two, I looked at the compactness of the sample |
| 7 | compared to the compactness of the legislative maps. |
| 8 | But, even then, the legislative maps have some odd |
| 9 | districts, so I don't know. I'm pretty sure I did |
| 10 | that, though. |
| 11 | Q. Again, MCMC, it gives -- it's a |
| 12 | probabilistic model, right? |
| 13 | A. That's right. |
| 14 | Q. And is there a level of uncertainty in |
| 15 | probabilistic models? |
| 16 | A. By definition. |
| 17 | Q. Okay. So when you ran a chain and it gave |
| 18 | you an output, did you conduct any error rate |
| 19 | analysis? Sorry. Correct me. My terminology might |
| 20 | be off. Did you conduct any -- Did you look at the |
| 21 | error rates between that output and your target |
| 22 | output? |
| 23 | MR. KERCHER: Object to the form. |
| 24 | A. Yes. |
| 25 | Q. Do you report those error rates anywhere in |

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because if the legislature had partisan goals, she should have controlled for those. But, beyond that, that's the extent of my -- beyond that, it's an objection about interpretation.
Q. Okay. So when you say that she should have controlled for partisan goals, are you saying that she should have put in partisanship as a parameter in her algorithm when she ran it?

MR. KERCHER: Objection to the form. Misstates his testimony.
A. The legislature was trying to draw 25 Republican districts, and that was a goal. And she's trying to, within that universe, control for -and I should say sufficiently Republican districts. She's trying to determine whether race was the predominant factor. Yes, she should have controlled for 25 sufficiently Republican districts.

The whole way that this works is by ruling
out alternative explanations. And if you don't control for it, you don't really rule out the explanation.
Q. Uh-huh. So when you -- I'm just trying to understand. When you say "control for it," is it basically analyzing the ensembles for a particular property? Is that what you mean by "control for it"?
your report?
A. No, because I was comparing to Dr. Duchin's
output.
Q. Okay. Did you look at any standard
deviations of your outputs and compare them to the
target distribution?
A. No.
Q. So is it fair to say that you don't dispute
Dr. Duchin's methods with respect to ensembles?
MR. KERCHER: Object to the form.
A. Yeah. In the report, I don't give any
objections to the GerryChain approach.
Q. Okay. And then is it fair to say that you
don't dispute the results of Dr. Duchin's simulation?
MR. KERCHER: Object to the form.
BY MS. CHAUDHURI:
Q. Is that right?
A. Yeah. I wasn't asked to look at the
GerryChain model itself and don't have anything in the
report objecting to it.
Q. Okay. So your only dispute as to her
ensemble analysis is the interpretation of her
outputs, right?
MR. KERCHER: Object to the form.
A. Well, I don't know that that's quite right

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A. So there's a couple ways you can do it.
Q. Okay.
A. You can do it by controlling the parameters
to ensure that you are doing the same thing the
legislature is doing. Or you can -- Well, actually,
I guess three ways. Can you freeze certain districts
in place.
Q. Uh-huh.
A. So, for example, in the Maryland case, when
we were trying to demonstrate that politics was the
explanation, one of the approaches we used for the
Voting Rights Act District -- I guess in New York as
well -- was to just take the precincts for their
Voting Rights Act Districts out of the ensembles to
guarantee that the map would perform at least as well
as the enacted -- the ensembles would perform at least
as well as the Enacted Map on the Voting Rights Act.
Or -- and this was another thing that was
done in Maryland -- you can discard maps that don't
achieve a certain target for Voting Rights Act
performance.
Q. Okay.
A. I shouldn't say "discard." You can filter
them from your analysis
Q. Got it. And if you analyze the ensemble for

| 1 | Page 26 <br> 1 |
| :--- | :--- |
| 2 | certain properties, say you analyze the ensemble for |

[^1]

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So when you say a "fourth majority CVAP
district," are you still looking at District 4 in figure 26 ?
A. I think that's actually the fourth sentence, not the third.
Q. Thank you.
A. Just because this transcript is going to follow me around for the rest of my life. Sorry if that's pedantic.
Q. No, no, no. Correct me if I'm wrong.

So yes, the fourth sentence.
A. Yeah. And that is, obviously, in
simulation. That's right, yeah. That's what those sentences say.
Q. When you say that "A fourth majority CVAP district is not naturally occurring," what do you mean when you say that?
A. So if you look at my simulations and

Dr. Duchin's simulations, the fourth district tends not to be majority CVAP. So if you're just drawing race- and politics-blind maps, you're not going to tend to get a fourth majority/majority CVAP district in the Dallas/Fort Worth area using the seven districts that Dr. Duchin has selected.
Q. Okay. If you look at the black dot on the
drawn without respect to politics would not tend to create -- We would not expect a map drawn without respect to politics to create four districts where Donald Trump won in excess of 55 percent of the vote.

I think in that answer I sometimes said Donald Trump at 45 percent. This is Joe Biden vote share, so it would be Donald Trump at 55 percent. Q. Okay. So you're saying if the process was politically neutral, then it would be more likely that that fourth district would have a higher Democratic vote share, right?
A. I said we would expect --
Q. Okay.
A. -- a politically neutral process to produce a higher Democratic vote share.
Q. Okay. I think I understand. Thank you. So I have some questions about figure 26 on Page 42. If you look at the first paragraph, the third sentence that starts with the word "Note." You say, "Note, too, that in both Dr. Duchin's and my simulations, the Enacted Plan produces the same number of minority CVAP majority districts as race- and politics-blind simulation expects. In other words, a fourth majority CVAP district is not naturally occurring."

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fourth column, again, I'm looking at figure 26, the black dot is towards the bottom of the red portion of the column. Do you see that?
A. Yes.
Q. Okay. Does that mean that the black dot State's Enacted Plan is more extreme than the rest of the plans in the distribution?

MR. KERCHER: Object to the form.
A. No
Q. It doesn't? If the black dot is lower in the column, it doesn't mean that it's more of an outlier than all of the plans that are the dots above it?

MR. KERCHER: Object to the form.
A. The fourth column -- the fourth dot is within the distribution, so it is not more extreme than all of the plans of the ensemble.
Q. But it's towards the bottom of the distribution. Does that make any kind of difference? MR. KERCHER: Object to the form. A. You asked me if it was more extreme than all of the plans in the distribution. That is untrue. There are obviously plans with even lower CVAP than the distribution; so it's flatly wrong to say it's more extreme than all of the plans in the ensemble.

| Q. Okay. Well, then, how do I tell what <br> percentile the black dot represents? What percentile within the distribution? <br> A. If you're interested in that, you can look at the code that I produced which will generate the ensembles, and you can pull that information from the code. You could look at a boxplot. My experience from the Maryland case is that normal human beings see a boxplot and their eyes glaze over, given the expletive I received from the judge when the boxplot went up. <br> Q. Oh, no. Uh-oh. <br> A. So I shouldn't say "expletive." She didn't curse at me, but she was very dismayed. So Dr. Imai has also used dotplots, and it's a built-in feature of the redist package. I find that this is a more intuitive way to produce the data, even if you do lose some visually -- some information in the process. <br> Q. So can you eyeball the percentile from your dotplot? <br> A. No. <br> A. But the data are available if you're interested in it. <br> Q. I'm just trying to understand. You say a <br> the distribution the State's Enacted Plan falls with respect to race? <br> MR. KERCHER: Objection. Form. <br> A. I didn't say that. <br> Q. Okay. So stepping back, again, in some of these dotplots you've shown that the State's Enacted Plans were racial outliers, and figure 27 -- I'm sorry. That the State's Enacted Plan were partisan outliers, and figure 27 represents that, right? <br> MR. KERCHER: Object to the form. <br> A. Yes. That is one of the things that figure <br> 27 shows. <br> Q. Okay. And in some of your dotplots, you've also shown that the State's plan are racial outliers, right? <br> MR. KERCHER: Object to the form. <br> A. Right. And the point here is that, in a world where race and politics correlated, you're going to tend to get both; something that appears as a racial outlier will also appear as a political outlier. <br> Dr. Duchin's report only showed that the maps were racial outliers. I wanted to show that they were political outliers as well, not to contest what her findings are. | majority CVAP district is not naturally occurring. <br> But my question is how do you know that the State's <br> Enacted Plan is not extreme in how low the minority <br> CVAP is? <br> MR. KERCHER: Object to the form. <br> A. Those are two concepts that aren't really <br> related. The statement about it being naturally <br> occurring or not naturally occurring has to do with <br> where the center of the distribution is. An inference <br> about the dotplot or the Enacted Map has to do with where that black dot is. <br> Q. So wouldn't an inference that the State's <br> Enacted Plan had a lower CVAP share than all of the <br> other plans in the distribution, wouldn't that tell <br> you something about whether the process was racially <br> neutral or not? <br> MR. KERCHER: Object to the form. <br> A. No, because you aren't also controlling for <br> politics, which in a state -- As I say on Page 43, "In a world where race and politics often correlate, it's sometimes difficult to sort the two out. What to do in that situation is a question for lawyers to argue about and judges to decide." <br> Q. Okay. So you're saying that it's not necessarily helpful to know whether this -- where in <br> I say, on Page 43, which, for legal <br> purposes, which is not what I'm here to decide. For legal purposes, I will let you all fight over that, and the judge decide, which is the proper thing for an expert to do I believe. <br> Q. Uh-huh. So your maps -- your ensemble analysis doesn't necessarily rule out race as a motivation -- as motivation of the legislature, does it? <br> MR. KERCHER: Object to the form. <br> A. Well, as you stated at the beginning, it's a probabilistic inquiry so you never rule out anything with statistics. But what it does show is that politics -- the maps are also political outliers consistent with political gerrymandering. <br> Q. Okay. But it's possible that race may have been a driving force behind the legislature's -- their Enacted Maps, right? <br> MR. KERCHER: Object to the form. Asked and answered. Misstates his testimony. <br> A. You know, I'm not here to talk about all of the things that could be possible. I know there is an entire universe of fact testimony that's going on in this case that I am blissfully unaware of. |
| :---: | :---: |


| Page 38 |  |
| :---: | :---: |
| 1 | really meant to show is that these maps are also |
| 2 | political outliers, without disputing the data that |
| 3 | Dr. Duchin shows. |
| 4 | Q. Did you look at the correlation between |
| 5 | politics and race? |
| 6 | MR. KERCHER: Object to the form. |
| 7 | A. I did not. I believe Dr. Kousser estimated |
| 8 | it at like .67, but I don't know if that's right or |
| 9 | not. |
| 10 | Q. Did you look at the racial features of plans |
| 11 | that were more partisan in your ensemble? |
| 12 | MR. KERCHER: Object to the form. |
| 13 | A. No, because I think there were only a |
| 14 | handful of plans that are as -- Matter of fact, there |
| 15 | are no plans that match the partisanship of what the |
| 16 | legislature did. |
| 17 | Q. Can you elaborate on that? What do you mean |
| 18 | by that? |
| 19 | A. Well, if you look at Districts 5 and 6, the |
| 20 | Enacted Plans fall completely outside of the |
| 21 | distribution of the drawn maps. So I cannot pull out |
| 22 | maps from the ensemble that reflect the political |
| 23 | distribution of maps that the legislature enacted. |
| 24 | Q. Sorry. Which figure are you referring to? |
| 25 | A. This is in reference to figure 27. |

any of the columns. If I did, I apologize. But
I don't know about "way above." It is above the
distribution.
But my point is that, in a world where race and politics are correlated, when you produce two districts that are political outliers, you're also -there is a good chance you're going to produce a district that's a racial outlier inadvertently, even if you are drawing blind to race.
Q. Okay. Couldn't it be evidence -- couldn't your ensembles also be evidence that race was more of a factor than partisanship, if it's both an outlier in terms of race and partisanship?

MR. KERCHER: Object to the form.
A. Again, "evidence" is a legal term of art.

I don't know how people are going to use this in court or would intend to use it. My guess is -- or my sense is no because the ensembles produced at the end of the day produced the same number of minority majority districts as you would expect from a race-drawn plan.

So there are the same number of districts where the minority group would tend to be a majority in it. But there are not the same number of districts where either Donald Trump won or where Donald Trump performed very well.
Q. Okay. And with respect to 5 and 6, can you repeat what you said?
A. Yes. You can see from looking at the Enacted Plan compared to the ensemble.
Q. Uh-huh.
A. And I'm not 100 percent sure about 5 because I forgot to bring my readers, but I'm sure about 6 . Those districts are more Democratic than anything that appears in the ensemble. So you can't really -- And even with respect to District 4, there is only a -there are only a handful of maps that are Republican as that district is.

So you can't really filter out just the districts -- just the maps that produce four districts where Donald Trump won in excess of 55 percent of the vote and where that third district is almost

60 percent Trump, which is what pushes those other two down or up on the map, because they don't exist in the ensemble.
Q. Okay. But if you go to column six in figure 26, the black dot is way above the blue portion of the column, right?

MR. KERCHER: Object to the form.
A. It's above the -- I don't know about way above, and I don't think I used that with respect to

Page 41
I think looking at this data, politics is a better example or a better explanation for what went on, but I suppose you could try to offer it up as evidence for a racial claim.
Q. Okay. Did you study, again, a subset of districts from your ensemble that were Republican leaning?
A. No, because the maps -- the Enacted Plans don't produce just Republican-leaning districts. They produced four districts that Donald Trump won overwhelmingly, which is the goal.
Q. Okay. So to understand how race and politics correlate, would it have been helpful to control your ensemble and your 100,000, you know, simulations and only look at the Republican-leaning districts?

MR. KERCHER: Object to the form.
A. No, because the district didn't try to draw -- or the Republicans didn't draw a map where Donald Trump or Joe Biden won 51 percent of the vote, which would be a Republican-leaning district, given that he won naturally with 52 percent of the vote. And that's understandable.

I can -- You know, if you draw a
50.001 percent Trump district in the Dallas suburbs


| 1 | Page 46 <br> So one way to do that was -- two things were |
| :---: | :---: |
| 2 | developed at about the same time in the mid 1900s. |
| 3 | The first is the Method of Bounds -- And all of thi |
| 4 | is necessary to answering the question about |
| 5 | Ecological Inference. |
| 6 | One of these is the Method of Bounds, which |
| 7 | is you can look at a precinct, and -- Well, I guess, |
| 8 | the other issue is that if you're just looking a |
| 9 | precinct-level data, you can have a district that is |
| 10 | 70/80 -- or 70/30 percent African American, and vote |
| 11 | 70/30 Democrat, but you don't know whether all of the |
| 12 | African Americans are voting Democrat, or, you know, |
| 13 | 90 percent are, and whatever the -- it would be, like, |
| 14 | 20 percent of the non-African Americans are voting |
| 15 | Democrat as well. |
| 16 | So what the Method of Bounds does -- That's |
|  | called the Ecological -- the problem of Ecological |
| 18 | Inference. |
| 19 | What the Method of Bounds does is say, Okay. |
| 20 | We can't know with -- or we don't know with precision |
| 21 | what the vote share is that Blacks are voting |
| 22 | Republican or Demonstrate. But since Blacks are |
| 23 | 70 percent of the population, and 70 percent of the |
| 24 | votes are for Democrats, there's a lower bound on how |
|  | heavy Black Republican voting can be and still produce |

[^2] bound as well. I think in the example I gave, it's 100 percent.

There is also Ecological Regression, which is when you conduct a regression analysis of the aerial units on the demographics of the aerial units on vote share.

The problem with that is that you will frequently produce estimates in excess of 100 percent, which is, Yogi Berra aside, not possible.

So those were the kind of two going approaches for a long time; and then, in the 1990s, there was renewed interest in other methods. One method is Ecological Inference, which is a lengthy algorithm which draws on -- an iterative algorithm that draws on both ecological regression and Ecological Inference -- or Method of Bounds, using the Method of Bounds to kind of bend the line that regression analysis produces to ensure it doesn't go past the bounds of zero or 1 .
Q. Okay. To your knowledge, has EI, which is the acronym for Ecological Inference, has it been accepted by the courts?
A. To my knowledge, it has.
Q. Okay. And you're aware of the Homogenous

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whether one method or another method is better for understanding how people voted?

MR. KERCHER: Object to the form.
A. I wasn't asked to look at that.
Q. Okay. In your understanding -- or to your knowledge, is -- Homogenous Precinct, has that method been accepted by the courts?
A. I don't know.
Q. Are you familiar with the concept of peer review?
A. Yes.
Q. What does it mean to you?
A. So peer review is being -- having an article
submission or book reviewed in a double-blind
situation where you don't know the reviewers. And, at
least in theory, the reviewers don't know who wrote
the article; and they give such analysis and opinions
on whether the book or article is suitable for
publication.
Q. Uh-huh. And do you have an opinion as to
whether peer review is an important factor in
assessing whether a method is sound or not?
MR. KERCHER: Object to the form.
A. I believe it's one with the Daubert factors on a legal context. Yes.

| Q. But in an expert context, outside of the <br> legal context? <br> MR. KERCHER: Object to the form. <br> A. It can be useful. But a lot of junk gets <br> through peer review, and there is a lot of sound <br> analysis out there that isn't produced in <br> peer-reviewed journals. <br> Q. Okay. So you mentioned earlier that SMC is <br> a peer-reviewed method that you've used, right? <br> A. I don't think I said it was peer-reviewed. <br> I said it was accepted by courts in multiple <br> circumstances. <br> Q. Okay. So you don't know whether it's <br> peer-reviewed or not? <br> MR. KERCHER: Object to the form. Misstates <br> his testimony. <br> You can answer. <br> A. My understanding is it's under submission. <br> I don't know if it has completed peer review or not. <br> Q. Okay. Are you familiar with the Election <br> Law Journal? <br> A. Yes. <br> Q. Is it an accepted authority in your field? <br> A. I mean, it produces peer-reviewed <br> literature. That doesn't mean -- and people will rely <br> critiques of Dr. Duchin's demonstration plans. <br> In various places in your report, you critique <br> Dr. Duchin's demonstration plans, right? <br> A. That's correct. <br> Q. Okay. Let's turn to Page 115 of your <br> report. Okay. Can you tell me what was the purpose <br> of your critique of Dr. Duchin's plans? <br> MR. KERCHER: Object to the form. <br> A. I was asked by counsel to review her demonstration plans and I did that. <br> Q. Okay. And if you look at the second sentence, correct me if I'm wrong on this, but it says, "The purpose of this, to my understanding, is to satisfy Gingles prong 1:" <br> And then you say, "Demonstrating that <br> minority group is sufficiently numerous and compact to create a majority in a district." Did I read that right? <br> A. Yes. <br> Q. Okay. So what is your understanding of what the Gingles 1 prong requires? <br> A. It would be better with the Gingles decision in front of me. And, first, to clarify this, in that sentence you just read, since we're just talking about my purpose, is not a reference to my purpose. The | on some of those articles. That doesn't mean that everything that's published in it is good. <br> Q. Okay. And you're familiar with, I guess, the editors of the Election Law Journal? <br> $\operatorname{MR}$. KERCHER: Object to the form. <br> A. The last I checked, which was a while ago, <br> Paul Gronke was the editor. I don't know who is the editor now, and I certainly haven't looked at the masthead. <br> Q. Are you familiar with Richard Hasen? <br> A. Yes. <br> Q. Is he an accepted authority in your field? <br> A. Elections, in general, yes. I don't know if <br> he's done much for gerrymandering. But, yeah, he <br> does -- he tends to be more on what we call the vote supression cases. <br> Q. And are you familiar with Dan Lowenstein? <br> A. That name is familiar. <br> Q. Do you have an opinion as to whether he's an accepted authority in the field of election? <br> A. I'm not as familiar with his work. I don't think I've seen him much in the gerrymandering literature. If he's on their masthead, I'm sure he has some expertise in some field of election law. Q. Okay. So I want to ask you about your <br> purpose in that sentence is referring to what I understand Drs. Duchin and Morales to be doing. <br> It would be better with the Gingles decision in front of me. But my understanding of Gingles prong 1 is that, for a Voting Rights Act district to be required, or however you want to phrase it, a minority opportunity district, you, first, have to demonstrate that the minority group is sufficiently numerous and compact to create a majority in the district. <br> Q. Okay. So compactness is a requirement. <br> What's your understanding of how compactness is -- Sorry. Strike that. <br> What's your understanding of how compactness is measured for the purposes of Gingles 1? <br> A. Well, that is an excellent question that -and Gingles is G-I-N-G-L-E-S. That is an excellent question that we will probably get some insight from the Court on when it renders its decision in the Alabama case. <br> My understanding, from reading Gingles, is that it is a reference to the minority group itself, not to the shape of the district; although, it is frequently referred to in terms of the district shape. |
| :---: | :---: |


| group itself, can you clarify that a little more? <br> What does that mean vis-a-vis compactness? <br> A. Well, you can imagine a district that is <br> shaped like a square. <br> Q. Uh-huh. <br> A. And there is a minority group that is <br> 12.5 percent of the population of the district in the upper-left corner; 12.5 percent of the population of the district in the upper-right corner; 12.5 percent of the population of the district in the lower-right corner; and 12.6 percent of the population of the district in the lower-left corner. <br> Q. Okay. <br> A. In that situation, you would have a district where the Convex Hull Score is 1, but I don't think under any reasonable definition the minority group itself would be considered compact. <br> You have four clusters at the four extremities of the districts. So that is how I think of the difference between district compactness and population compactness. <br> Q. Okay. So you're saying that, if the district was square, its compactness score, and you're using a -- whatever scale you mentioned, and I don't remember what it was -- but that that district has <br> Q. I know you said it would be helpful to have Gingles in front of you. But do you -- sitting here today, without Gingles in front of you, do you have any recollection as to whether the Gingles court talked about compactness the way you did as part of Gingles 1 ? <br> A. Yes. <br> Q. You do. The Gingles court -- Did the <br> Gingles court say that the minority population has to be close together? <br> MR. KERCHER: Object to the form. <br> If you have a copy of the case, that would probably be helpful. <br> A. My recitation of Gingles prong 1, I believe, is pretty close to a quotation from the opinion that the minority group has to be sufficiently numerous and compact. And before that sentence in the opinion, maybe two or three sentences earlier, there is a reference to the compactness of the minority group. Q. Okay. <br> A. So that's my recollection. But at the end of the day, this is a legal fight that I suspect you all will have either here or in the Supreme Court in a different case. | a -- is compact in terms of its score, in terms of its shape. But because the minority population lives in different corners, that the minority population, itself, is not necessarily compact, right? <br> A. That's the example. Yes. And the metric is the Convex Hull Metric. If you wanted to use the more commonly used Reock, the compactness score for the district would be, like, .65, which is still relatively compact. <br> Q. Do you have a sense of how geographically dispersed the minority groups have to be to meet or not meet compactness goals under Gingles 1? <br> A. No. I'm not sure how compact the districts have to be to meet compactness goals under Gingles 1 because all of these metrics we have have the problem that they don't really have good cutoffs. And so as Justice O'Connor famously wrote, "This is an area where appearances do matter." It inevitably becomes more of a I-know-it-when-I-see-it-type test. <br> Q. Uh-huh. And is that -- Do you recall which case she said that in? <br> A. I don't, but it should be in Westlaw. <br> Q. Okay. Was it Voinovich that she said it in? <br> You don't remember? <br> A. (Witness shakes head.) <br> maybe it's three. I don't know. Anyway, it's the last sentence. It says, "A State's Enacted Plan, however, is not necessarily a good comparator. If a state pursues a partisan gerrymander, and its partisan goal outweighs its compactness goal, then its enacted districts may not be very compact." <br> Do you see that sentence -- two sentences? <br> A. I see the final two sentences of the <br> paragraph. Yes. <br> Q. Okay. Thanks. <br> So you were talking about compactness in terms of the Polsby-Popper scores, right? <br> A. Yes. <br> Q. So can you explain what you meant in <br> writing -- or when you wrote that, "The enacted plan is not a good comparator for the compactness of demonstration plans," why isn't it a good comparator? <br> A. Because the Enacted Plan's districts can be extremely non-compact without being a racial gerrymander. It could be a partisan gerrymander. <br> If I were looking for compactness under the old Maryland plan, I certainly would not want to use those districts as a definition of what a compact district would be. <br> Q. Okay. So how does that relate to, if at |
| :---: | :---: |



|  | e 62 |  | Page 63 |
| :---: | :---: | :---: | :---: |
|  | A. I do |  | A. |
| 2 | Q. Okay. So to eval -- Did you conduct |  | iterature which is focused on the shapes of |
|  | evaluation as to whether these minority groups form |  | icts and was developed in a |
|  |  |  | dering |
| 5 | RCHER |  | tests you would use for assessing the |
| 6 | UDH |  | compactness of the individuals. |
| 7 | Q. |  | $u$ |
| 8 | MR. KERCHER: Object to the form |  |  |
| 9 | A. I |  | any of the |
|  | relevant to |  | roposed congressional districts that you |
|  |  |  |  |
| 12 | Q. Did you evaluate whether there are cultural | 12 | CHER: Object to the form. |
| 13 | components that tie togethe | 13 | No, because I'm conducting this analysis |
| 14 | MR. KERCI |  | posed VRA |
| 15 | A. |  | that is seeking, to my understanding, to |
| 16 | Q. Did you speak with anybody at, say, | 16 | strate a minority group that is sufficiently |
| 17 | Texas NAACP or LULAC, or other civic engagement groups | 17 | act and numerous to constitute a majority number |
| 18 | about whether these minority communities form |  | district. It's a very specific inquiry that |
| 19 | communities of interest in proposed District 32? | 19 | 't have much to do with a Shaw claim, fo |
| 20 | KERCHER |  | example, necessarily. |
| 21 | A. I believe I would be terminated if I look to | 21 | And is your opinion as to where the |
|  | LULAC or the NAACP. But no, I -- for the other civic |  | minorities are located in the district, is it based on |
|  |  |  |  |
| 24 | Q. | 24 | MR. KERCHER: Object to the form. |
| 25 | the minority populations in proposed District 32? |  | A. As Justice O'Connor wrote, this is something |
|  |  |  |  |
|  |  |  | tle and . 141 is just right is tough to come up |
| 2 | hese -- Actually, I get in some of these Shaw |  | cutoff. So it has the same amount |
| 3 | it |  | etion as any compactness requirement that |
| 4 | pps. Looking at the location of the minorit |  | undertaken. |
|  | groups here |  | But a Reock score describes the shape; how |
|  | y. And so do you have an opinion |  | mpact the physical shape of a district is, right |
| 7 | raphically close the minority |  | A. Oh, that's right. |
|  | be to meet the compactness requirement unde |  |  |
|  | Gingles |  | you were asking me about interpretation; |
|  | A. |  | interpretation of Reock scores requires |
| 11 | I'd certainly be interested in seeing it; but, to my |  | ion usually |
|  | understanding, that type of ruling hasn't been made |  | know, as we've established, as |
| 13 | Maybe after the Alabama case, we'll |  | ying to figure out whether minorities living in |
|  | of how that lies, if a |  | ferent corners of a district constitute a compac |
| 15 | I don't know a specific threshold. I just know that |  | group, right? |
|  | it's fairly obvious for something like figure 85 that |  | A. I'm sorry. Can you repeat that? |
| 17 | those groups aren't compact. |  | Q. Sorry. But that requires a level of |
| 18 | Q. Uh-huh. Okay. So there is a certain amount | 18 | interpretation. |
|  | of discretion that you had to use to conclude tha | 19 | MR. KERCHER: Object to the form |
| 20 | these groups were not compact, right? |  | A. I think the example that I gave is |
| 21 | A. For all compactness inquiries, including | 21 | I don't think you can make a less compact grouping |
| 22 | inquiry into the copaness of district, | 22 | ving the group equally divided at corners of a |
| 23 | etion used because a Reock score is effectively |  | are. And so if that is too much discretion being |
| 24 | meaningless. There have been attempts to give it some |  | d, then you've effectively eliminated the |
|  | meaning. But at the end of the day, whether . 14 is |  |  |



|  | Page 70 |  | Page 71 |
| :---: | :---: | :---: | :---: |
|  | A. I did. |  | districts? |
| 2 | Q. Okay. For the alternative -- for the | 2 | A. So it looks like there are a couple of |
|  | proposed districts that you have critiqued, did you |  | ints. The first is that the proposed district is |
| 4 | critique any of the alternative proposals that were |  | less compact than other districts in the area to the |
| 5 | provided by D |  | 's |
| 6 | A. | 6 | w |
|  | significantly from what was in her initial report or | 7 | rcent of the vote, which there's no |
| 8 | not. | 8 | ation that this district would consistently |
| 9 | Q. Okay. So your -- So would it be fair to say | 9 | elect Democratic candidates. |
|  | that the demonstration plans that you looked at were | 10 | lly, there is not a demonstratio |
|  | from her initi |  | that the district population is -- that a minority |
| 12 | ER | 12 | n of the distr |
|  | A. I don't know. | 13 | Q. Okay. So the first sentence when you -- |
| 14 | Q. Okay. And you wouldn't be able to tell me |  | over the first point that you made, that the proposed |
|  | which of her plans you were critiquing, whether it was | 15 | district is less compact than any other district in |
|  | from her supplemental report or her initial report, |  | the area, are you looking at Reock scores, or are you |
| 17 | ri | 17 | ng at the minority compactness? |
| 18 | MR. KERCHER: Object to the form. |  | A. I think neither. I believe I was looking at |
| 19 | A. Not as I sit here. You would be able to |  | boy-Popper score. Or it could be Reock |
| 20 | tell | 20 | you're looking at the shape of -- th |
| 21 | Q. Okay. So let's turn back to Page 203 of |  | compactness of the shape of the district, right? |
| 22 | your report. I'd like |  | A. That's right. To the extent that the shape |
| 23 | pa | 23 | of the district and the proposed approach to the shape |
| 24 | p |  | of the district from earlier are valid approaches. |
|  | districts. What was your critique of the Brazoria |  | This is not more compact -- This is less compact than |
|  | Page 72 |  | Page 73 |
|  | other districts in the area. |  | A. I don't think there's anything wrong with |
| 2 | Q. Okay. Earlier, for other districts in the | 2 | conducting an analysis under the opposing expert's |
|  | area, that's according to the state's plan, right? | 3 | andard, rather than taking for granted that the |
| 4 | A. I think that's right |  | court is going to accept your analysis of why that |
| 5 | Q. Okay. And so you necessarily would have had | 5 | ndard is bad. |
|  | to compare the Polsby-Popper of Duchin's propo | 6 | Q. Okay. So you did that analysis just for the |
|  | district to the Polsby-Popper -- the state's othe | 7 | have that? |
|  | districts in the area, | 8 | A. Yes. Belt and suspenders |
|  | Duchin's district is less compa | 9 | Q. Okay. But it doesn't -- it's not |
|  | districts, right? | 10 | cessarily -- so your Polsby-Popper compactness |
| 11 | A. | 11 | alysis for Brazoria doesn't necessarily -- Strike |
| 12 | Q. And, earlier, do you recall on Page 115, if | 12 | that. |
| 13 | we can go back | 13 | your Polsby-Popper analysis as to |
| 14 | look at the second, or maybe the -- second-to-last | 14 | zoria, that is not necessarily a relevan |
| 15 | sentence of the second paragraph, and you've said | 15 | consideration for Gingles 1, right? |
| 16 | "A State's Enacted Plan, however, is not necessarily a | 16 | R. KERCHER: Object to the form. |
| 17 | good comparator." D | 17 | A. I would urge the court to say that that sort |
| 18 | A. Ye | 18 | of analysis is not relevant to Gingles 1 and strike |
| 19 | Q. Okay. S | 19 | Dr. -- or ignore Dr. Duchin's analysis along those |
| 20 | ily a good comparator, then why did you even | 20 | es as w |
| 21 | conduct this | 21 | Q. And as to the other demonstration districts |
| 22 | proposed district vis-a-vis the state's districts? | 22 | at you looked at, you know, the Carmen Miranda |
| 23 | A. Because the court may disagree with me about | 23 | strict, the Lubbock districts, the Denton-Wise |
|  | ement. |  | oposed districts, you didn't conduct this kind of |
| 25 | Q. Okay. |  | analysis, right, in comparing those districts to the |



|  | Page 78 |
| :---: | :---: |
| 1 | answer, not an estimate -- |
| 2 | Q. Okay. |
| 3 | A. -- of how many precincts were split. |
| 4 | Q. Uh-huh. Okay. And then, if you look at the |
| 5 | bottom sentence, it starts with "Rather." So it |
| 6 | reads, "Rather than simply dividing by the number of |
| 7 | blocks, analysts usually weight census blocks by some |
| 8 | number." |
| 9 | Can you explain that? What did you mean |
| 10 | when you said "analysts weight census blocks by some |
| 11 | number"? |
| 12 | A. So assume -- Let's just make it simple -- |
| 13 | Q. Okay. |
| 14 | A. -- and say that the precinct has one block |
| 15 | with 100 people in it, and 50 blocks that are empty; |
| 16 | it's parkland, or a river, or something like that. If |
| 17 | you split the district down the middle, you wouldn't |
| 18 | want to assign the vote share 50/50 because one of |
| 19 | those districts is made up entirely of blocks with no |
| 20 | population. |
| 21 | Q. Uh-huh. |
| 22 | A. So when assigning the votes, you would look |
| 23 | at the census block with 100 people in it, note that |
| 24 | it has 100 percent of the population of the district |
| 25 | in it, and assign all of the votes to that block, and |

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well. So you would be, you know, putting an estimate on top of an estimate, as opposed to VAP, which is a census number. You could, but it would be using an estimate of where the populations are.
Q. In Texas, there's a marked difference between VAP and CVAP, would you agree, for at least some populations?

MR. KERCHER: Object to the form.
A. For some populations. Yes.
Q. Okay. So would it have been useful to, you
know, conduct this analysis based on CVAP, given that some populations, there's, again, a huge discrepancy between VAP and CVAP?

MR. KERCHER: Object to the form.
A. Again, my problem with that approach --

I don't know that it would be completely invalid.
But my problem with that approach is that the -- Well,
on top of that, the CVAP comes from the ACS data which
is an estimate. And then, on top of that, you have to estimate it down to the block level, and then you're estimating vote share on top of that.

Perhaps, if Donald Trump had won his census
lawsuit, we would have the citizen population
specifically at the block level or the census
question. But we don't have that data, and so I think
A. And as I understand it, the CVAP isn't
available at the block level so you would have to
project that down with an estimation technique as

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you would be really risking yourself if you were to pile inference upon inference upon inference in that fashion.
Q. Uh-huh.
A. That is not to imply that Donald Trump should have won the census lawsuit, which I don't think he should have; but had he, we would have that data.
Q. Okay. But this is a -- That's a different way of figuring out the weight of the votes in the precinct by using the metric of CVAP, right?

MR. KERCHER: Object to the form.
A. If you use CVAP, you are using a different
data set to weight for, so I guess you could frame that as a different method.

MS. CHAUDHURI: I would like to introduce another document as an exhibit. This is the -- Sorry. I'm just looking for if I have another color copy of this document to give you, Mr. Trende.

So let's mark this as Exhibit 3.

And, thereupon, Plaintiff's Exhibit No. 3 was marked for purposes of identification.

BY MS. CHAUDHURI:


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are correlated is likely going to have an effect on the racial composition of those districts as well.
Q. Uh-huh. Okay. So, hypothetically, if a subset of ensemble plans were drawn where the Trump share is higher than 50 percent, say, it's like 60 percent, that would necessarily decrease the number of drops, right, from the ensemble?
A. You're going to have to rephrase that. I don't understand the question.
Q. Okay. So if you're limiting the ensemble subset --
A. Are we talking about Dr. Duchin's ensemble?
Q. I'm talking about Dr. Duchin's ensemble.

Yes.
So, hypothetically, if you're limiting the subsets, and you're saying, Okay. I want to control for all the districts in this ensemble that have greater than 60 percent Trump share, so they're solidly Republican. Do you understand that?
A. Uh-huh.
Q. So if you did that, and then you analyzed that subset for other properties and wanted to compare those other properties to the properties in the state's plan, is that, in your opinion, a proper comparison?
A. Not as I sit here off the top of my head.
Q. I'd like you to turn to Page 14 of her
rebuttal report. And did you conduct any analysis of
Dr. Duchin's analysis in the rebuttal report?
MR. KERCHER: Object to the form.
A. I read it and thought about it. I didn't do
any additional work.
Q. Okay. So Page 14, Dr. Duchin has a table.
Do you have any opinions about this table?
A. Yes.
Q. Can you share them?
A. I don't think it's useful.
Q. Why not?
A. For the reason we discussed at some length
earlier in the deposition. I don't think it's enough
to have as many districts where Trump beats Biden.
You need to look at districts where the partisanship
of the map where Trump is beating Biden by a
substantial margin, in the third and fourth most
Republican districts where that occurs. Because if
you're only looking at districts where Trump beats
Biden up to 50.0001 percent, Biden -- the process of
pushing down Biden's vote share from 49.99 percent to
45 percent in a universe where race and partisanship
Page 85
MR. KERCHER: Object to the form.
You can answer.
A. You'd have to look at the specifics of the
ensemble, but it would -- if you had four 60 percent
Trump districts, at least 60 percent of the Trump
districts in all the ensemble maps, it would solve the
problem of only looking at 50.001 percent Trump
districts.
Q. Uh-huh. And if, hypothetically, in this,
again, smaller subset of solidly Republican districts
that you drew from Dr. Duchin's ensemble, you were to
hypothetically find that the State's Enacted Plan
compared to the subset vis-a-vis race was extreme,
what would that tell you?
MR. KERCHER: Object to the form.
BY MS. CHAUDHURI:
Q. If anything?
MR. KERCHER: Same objection.
A. As I said before, it would depend on the
particulars of the ensemble and how well it's
controlling for all the factors considered by the
legislature.
Again, there's a fact discovery side of this
case going on that I know nothing about, or very
little about, so it's hard to say. It would be a

|  | Page 86 <br> 1 |
| :--- | :--- |
| 2 | stronger argument for it than what we have right here |
| 3 | which is the, you know, number of four Trump-won |
| 4 | Q. $\quad$ And strong argument for what? You said |
| 5 | "it." For what? |
| 6 | A. Oh, that you had controlled for politics. |
| 7 | Q. Okay. If you were hypothetically to find |
| 8 | that in those solid Republican subset districts that |
| 9 | compared to the cVAP level in those districts, the |
| 10 | state CVAP level in its Enacted District was much |
| 11 | lower, then would that tell you that -- potentially, |
| 12 | possibly, allow you to infer that racial |
| 13 | considerations drove the process as opposed to |
| 14 | political considerations? |
| 15 | $\quad$ MR. KERCHER: Object to the form. |
| 16 | A. Again, it would depend on the particulars of |
| 17 | the ensemble and how well they control for other |
| 18 | factors being used by the legislature. You know, |
| 19 | you've phrased it as "possible." So I suppose it's |
| 20 | possible, but there's a whole bunch of other stuff you |
| 21 | would need to consider. |
| 22 | Q. Okay. I'm just trying to understand, you |
| 23 | know, what you can rule out and what you cannot rule |
| 24 | out as possible causes. It sounds like, in this type |
| 25 | of analysis, it is possible that that's your |

Page 88
going to have a handful of maps to evaluate. Because
they are, you know, so far afield of the ensemble in
terms of politics, it's very difficult to do.
Q. Okay. So now, your conclusion that it was politics that drove the redistricting, it's not based on discussions that you had with map drawers, is it?

MR. KERCHER: Object to the form. Misstates his testimony and his conclusions.

You can answer, if you know.
A. I didn't testify that it was politics. My report says it's consistent with the political draw. There's a whole universe of fact testimony that's being conducted in the case, which I haven't reviewed, that may give further illustration on what the direct intent is.
Q. Okay. So your report doesn't offer any conclusions on what the intent was; it just shows that politics may have been considered?

MR. KERCHER: Object to the form. Report speaks for itself.

You can answer, if you know.
A. The report says that it's consistent with politics as a cause. But, you know, the ultimate conclusion of intent is a legal conclusion that I try to avoid testifying to and is dependent on a broader
testimony, right?
MR. KERCHER: Object to the form. Misstates his testimony. Compound and vague.
A. Yeah. My testimony is that, if you want -In a world where -- especially in a world where race and politics are correlated, you want to look at these ensembles and determine that race is the factor, you need to actually do a control -- a good control for politics.

No control for politics, which is what we saw in the initial Duchin report, is not good, and controlling only for four districts where Donald Trump got at least 50.0001 percent of the vote is not useful, at least in a scenario where the legislature had drawn things up to you at least 55 percent Trump performance.
Q. Uh-huh. And if you had to control for politics, how would you do it?

MR. KERCHER: Object to the form.
A. Well, as I've said, I don't know that you can do that at all here because the districts that were drawn fall outside the ensemble -- outside of all of the plans on the ensemble for partisanship. So trying to match or come extremely close to what the district -- what the legislature did, you're, at best,

Page 89
inquiry. This is just suggesting that it is consistent with politics.
Q. Okay. And, you know, hypothetically, is it -- if mapmakers -- if you knew that the mapmakers were aware of where certain racial groups lived in the districts, would you say it would be easy for them to draw maps that had a desired partisan effect?

MR. KERCHER: Object to the form. Vague. Calls for speculation.
A. No.
Q. Why not?
A. Well, for one thing, the white population in these districts is politically diverse. There are areas of Dallas where you get a lot of white liberals. And so just knowing the racial makeup, you may draw in too many people from Deep Ellum that that would skew the partisanship of the district away from what you would expect it to be if you were just doing a crude racial analysis.
Q. Okay. Do you have opinion as to whether a partisan gerrymander can also be a racial gerrymander? MR. KERCHER: Object to the form. A. I haven't looked at that here.
Q. But you have looked at whether there is evidence that could support whether the state's plan


|  | Page 94 |  | ge 9 |
| :---: | :---: | :---: | :---: |
| 1 | A. I don't believe so. |  | of Exhibit 1. Mr. Trende, in the second-to-the-last |
| 2 | Q. And nothing in your report critiques |  | nce, in the second paragraph of Page 9, do you |
| 3 | Dr. Logan's |  | t, "As the decade progressed, the suburbs |
| 4 | A. At least not di |  | swung towards Democrats' |
| 5 | Q. And you don't plan to offer an opinion on | 5 | A. |
| 6 | Dr. Rogan -- |  | Trende, are you aware that Texas's |
| 7 | correct? |  | population grew in the last ten years? |
| 8 | A. Again, not directly. I don't know. | 8 | A. |
| 9 | I've never even read the Logan report or seen it. But | 9 | Q. Are you aware that Texas's minority |
| 10 | some -- If my opinions are relevant to it, counsel may |  | population in the suburbs grew in the last ten years? |
|  | use it that | 11 | A. |
| 12 | Q. And nothing in your report critiques | 12 | Q. Was the movement of the minority population |
| 13 | Dr. Enos's report, correct? | 13 | nto the suburbs one factor as to why the suburbs |
| 14 | A. Not | 14 | ng towards Democrats in Texas? |
| 15 | Q. You don't plan to offer an opinion on | 15 | A. To the extent the minority groups are voting |
|  | Dr. Enos's r | 16 | cratic, increased minority population in the |
| 17 | A. Again | 17 | burbs would produce movement towards Democrats; but |
| 18 | Q. Do you plan to do that |  | ny specific analysis of Texas |
| 19 | A. Well, like I'd said, some of the things that | 19 | Q. In your report, Mr. Trende, do you describe |
|  | I say may | 20 | owing trend towards Democratic support in th |
|  | know how counsel might use it. But if there's overlap |  | DFW region? |
| 22 | between his report and other reports, I guess it would | 22 | A. Yes. |
| 23 | be in response to it, but I wouldn't be commenting on | 23 | And are you aware that the DFW area grew in |
| 24 | it directly |  | the last ten years? |
|  | Q. Mr. Trende, could you please turn to Page 9 | 25 |  |
|  | Page 96 |  | Page 97 |
| 1 | Q. Are you aware that the minority population |  | I'd be surprised if it didn't. |
|  | grew in DFW in the last | 2 | . Trende, are you aware that in |
| 3 | A. That's my | 3 | n Antonio, the minority population grew in the last |
| 4 | Q. And were you aware that the minority |  | n years? |
| 5 | population grew in the DFW suburbs? | 5 | A. It's my understanding |
| 6 | A. That' | 6 | Q. Mr. Trende, are you aware that the minority |
| 7 | Q. And, Mr. Trende, do you believe that |  | population grew in San Antonio in the last ten years |
| 8 | minority growth in the DFW suburbs was one reason for | 8 | in the suburbs? |
|  | why the suburbs swung towards the Democrat? | 9 | MR. KERCHER: Object to the form. Assumes |
| 10 | A. Again, to the extent that the minority |  | facts not in evidence. |
| 11 | groups | 11 | A. That's my understanding |
| 12 | suburbs would push the suburbs towards the Democrats, | 12 | Q. And do you believe that the minority growth |
| 13 | assuming that those suburbs didn't have white voters | 13 | in the suburbs of San Antonio was one reason for why |
| 14 | who were even | 14 | the suburbs swung towards the Democrats? |
| 15 | begin with. | 15 | KERCHER: Object to the form. |
| 16 | Q. Mr. Trende, do you describe in your report a | 16 | A. Again, to the extent that those minority |
| 17 | growin | 17 | oups are voting more heavily Democratic than |
| 18 | which is the San Antonio/El Paso area? | 18 | previous residents of the areas they moved to, that |
| 19 | A. I know -- Yeah. I don't know if I discussed | 19 | would turn those area towards the Democrats or push |
| 20 | that. | 20 | reas towards the Democrats |
| 21 | Q. Mr. Trende, are you aware that the | 21 | Q. Mr. Trende, have you ever written on how the |
| 22 | population of San Antonio and El Paso grew in the last | 22 | growth of the Latino population would impact the |
| 23 | ten years? | 23 | Republican vote in Texas? |
| 24 | A. I know that with respect to San Antonio, and | 24 | A. Yes. |
| 25 | don't know one way or the other with El Paso; though, |  | Q. Did you do that in your book, "The Last |


|  | Page 98 |
| :---: | :---: |
| 1 | Majority - Why The Future of Government Is Up For |
| 2 | Grabs And Who Will Take It"? |
| 3 | A. I don't remember. |
| 4 | Q. Do you remember what you wrote about the |
| 5 | growth of the Latino population and how that would |
| 6 | impact the Republican vote in Texas? |
| 7 | A. I don't remember. |
| 8 |  |
| 9 | And, thereupon, Plaintiff's Exhibit No. 4 |
| 10 | was marked for purposes of identification. |
| 11 |  |
| 12 | BY MS. ANDERSON: |
| 13 | Q. Mr. Trende, the court reporter has handed |
| 14 | you what has been marked as Exhibit 3. Mr. Trende, |
| 15 | what did I just hand to you? |
| 16 | A. I believe this is Exhibit 4. |
| 17 | Q. Oh, sorry. Exhibit 4. |
| 18 | A. And this is the title page or the cover of |
| 19 | my book. I've forgotten 7th and 8th grade English. |
| 20 | I have no idea what these two pages are called, but |
| 21 | they're from the intro, and then one page out of the |
| 22 | book. |
| 23 | Q. And what page is that? |
| 24 | A. Page No. 145. |
| 25 | Q. And who drafted this book? |

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bring the one page?
    MS. ANDERSON: Just the one page.
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BY MS. ANDERSON:
Q. If you go up to the top, it says, "In Texas,
the Latino share of the electorate would have to
almost triple before Rick Perry would have been
threatened with a loss. This not to dismiss the
challenge that the growing Latino population presents
for the GOP, but rather to put it in perspective - the
critical mass necessary to create the problem is
probably still some years off. And if Latino vote
falls off trend, as it did in 2010, those numbers will
take longer to arrive."
Mr. Trende, does that part of Page 145 deal
with Texas?

MR. KERCHER: Object to the form.
My question still stands. I appreciate you reading more from the page you provided, but did you bring the book?

MS. ANDERSON: I did not bring the book.
BY MS. ANDERSON:
Q. So if you could just answer as to what he sees.
A. I don't know the broader context. What's on Page 144 may -- you know, when I go home and pull out true and accurate copy of Page 145 of the book, "The Lost Majority - Why The Future of Government Is Up For Grabs And Who Will Take It"?

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A. I don't.
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Q. And then, Mr. Trende, could I please turn
your attention to the first paragraph on Page 145.
And do you see the sentence, I believe it's the third
sentence on Page 145 that says, "This is not to
dismiss the challenge that the growing Latino
population presents for the GOP, but rather to put it
in perspective - the critical mass necessary to create
the problem is probably still some years off. And if
the Latino vote falls off trend, as it did in 2010,
those numbers will take longer to arrive."
Is that a correct reading of that, what's on
the page?
A. Yes.
Q. And were you referring to Texas with that
statement?

MR. KERCHER: Object to the form.
You don't have a copy of the whole book so he can get the context of the page, or did you just

Page 101
my copy, may alter my view. But those sentences that
you're referring to are talking about Texas.
Q. And do you recall what year the book was written?
A. I wrote it with my middle son in the Baby Bjorn, so that would be early 2011.
Q. And have your opinions changed that you just read on Page 145 since then?
A. They've modified somewhat.
Q. How so?
A. Well, first, I don't think the Hispanic population is as heavily Democratic as people expected it would be back in 2011. And even Ruy Teixeira, who is one of the authors of "The Emerging Democratic Majority," to which this book is a response, has -- or a modification more than a response, even Ruy Teixeira has backed off of that view.

And, second, if you go -- And this is the importance of having the broader context. If you go down to the second half of the page, there's a discussion of what is really the main thesis of the book which is that politics doesn't go in straight lines. People respond to contingency. And so trying to do a straight-line projection of how growth in one demographic group or another can affect things in the


| that an accurate statement of yours on Page 99? <br> MR. KERCHER: Object to the fact that you <br> didn't read the whole sentence. <br> A. It's not the whole sentence, but those are <br> the first two phrases of that sentence, or clauses. <br> I don't know which is which. <br> Q. Is the rest of the sentence, "The Enacted <br> Map contains the same number of districts where <br> minority groups are a majority of the citizen voting <br> each population as we find in the ensemble"? <br> MR. KERCHER: Object to the form. <br> A. Yes. That is the second or third <br> clause/phrase of the sentence. <br> Q. So I have a question. What do you mean by the phrase, "map drawers care about politics"? <br> A. Well, it has to be -- that phrase has to be read in the context of the entire sentence, and, really, the report. But the Enacted Map deviates from the -- which is referring -- First off, we're referring to the charts, figures 71 and 72 found on Pages 100 and 101. <br> And if you are in a place where race correlates with politics, and if the map drawers are motivated by politics in their drawing, you wouldn't necessarily expect an ensemble -- an Enacted Map to <br> it is not going to make the meaning of the report change. <br> BY MS. ANDERSON: <br> Q. You can answer. <br> A. I don't recall the exact phrasing of the question to answer yes or no. But the report is about whether the maps are consistent with politics. I know that there's an entire universe of fact discovery being done that I am not aware of that may go more directly to the question of intent. This is just saying that the map is consistent with the particular outcome. It is not a statement of their intent. <br> Q. And, Mr. Trende, do you know who drew the congressional map? <br> A. No. <br> Q. So you never spoke to the map drawers? <br> MR. KERCHER: Object to the form. <br> A. No, that's not the inquiry I'm conducting. <br> I'm not trying to figure out exactly what their intent is. I'm trying to figure out whether the outcome is consistent with a political intent. <br> Q. Mr. Trende, did you say earlier that race and politics often correlate and it can sometimes be difficult to sort race and politics out? | match up with the racial demographics of the ensemble, even if the map drawers are in different politics. <br> Because if there is a correlation, as you move around the political makeup of the districts, you will also change the racial makeups of the district, even if you're completely ignorant or indifferent to race. Q. Mr. Trende, which map drawers were you referring to with that statement? <br> MR. KERCHER: Object to the form. <br> A. Well, it doesn't say "the map drawers." It just says, "In a place where race correlates with politics and map drawers care about politics." <br> Q. So that's an assumption that you're making? <br> MR. KERCHER: Object to the form. <br> Q. So map drawers care about politics, why is <br> that not an assumption that you're making? <br> MR. KERCHER: Object to the form. <br> A. Because it's conditional. We would expect <br> this in a place where race correlates with politics and map drawers care about politics. <br> Q. So you're not saying the Texas legislature necessarily cared about politics with that statement? <br> MR. KERCHER: Object to the form. The report speaks for itself and taking three words out of <br> A. I don't remember my exact testimony, but something -- at least something to that effect; that when race and politics correlate, it's difficult to sort out which is which. <br> Q. How do political scientists generally go about sorting race and politics? <br> MR. KERCHER: Object to the form. <br> A. I don't know that you can make a specific statement on that. Most of the political science literature isn't really concerned with that; it's something that comes up in litigation. But I think more for this inquiry, I'm just looking at whether it's consistent with politics and not trying to sort them out. <br> Q. Mr. Trende, have you ever, in any other context, tried to sort out race and politics for any other expert report or academic scholarship or any other reason? <br> MR. KERCHER: Object to the form. <br> You can answer. <br> A. Yes. <br> Q. How did you go about trying to sort out race and politics in the other circumstance? <br> A. So, for example, in the Maryland case, one of the objections possibly was that Maryland is |
| :---: | :---: |








|  | 134 |  | 5 |
| :---: | :---: | :---: | :---: |
| 1 | A. Yes. |  | court finding of intentional racial discrimination in |
| 2 | Q. And you were referring to the DFW |  | he past decade? |
| 3 | Congressional districts with this quote, correct? |  | MR. KERCHER: Object to the form. |
| 4 | A. Yes |  |  |
| 5 | Q. And, |  | MS. ANDERSON: Why don't we just take a |
| 6 | sion as to the DFW configuration as a whole or |  | 10-minute break |
| 7 | any specific Congressional district with this state? |  | THE WITNESS: All right. |
| 8 | RCHER: Object to the | 8 | ess tak |
| 9 | A. This was with reference to the seven |  | BY MS. ANDERSON: |
| 10 | districts that Dr. Duchin had identified because this | 10 | Q. Mr. Trende, how many pages of your report |
|  | is in response to Dr. Duchin | 11 | icated to Congressional District 23? |
| 12 | Q. And what history are you referring to? | 12 | MR. KERCHER: Object to the form. |
| 13 | A. The histories of the districts that are at | 13 | A. I don't know. |
| 14 | the beginning of each discussion of the districts. So | 14 | Q. Would it be fair to say that you used two |
| 15 | the motivation | 15 | ges to discuss CD 23 specifically? |
| 16 | that's tucked into the captions of one of Dr. Duchin's | 16 | MR. KERCHER: Same objection. |
| 17 | reports, or one of Dr. Duchin's tables, that says | 17 | A. I doubt |
| 18 | something to the effect that the Sixth District | 18 | you doubt it? |
| 19 | sprawls needlessly through counties south of Dallas. | 19 | A. Because I don't think that's right. |
| 20 | And so I think it's important context to know that, | 20 | How much time did you spend drafting the |
| 21 | with the exception of the awful 1990s map, the | 21 | your report that relate to Congressiona |
| 22 | districts have -- the Sixth District has generally | 22 | District 23? |
| 23 | gone through the rural areas south of Dallas | 23 | MR. KERCHER: Object to the form. |
| 24 | Q. Mr. Trende, are you aware that the history | 24 | A. I have no clue. |
| 25 | of the DFW Congressional configuration includes a | 25 | Q. Mr. Trende, would you please turn to Page 98 |
|  | Page 136 |  | age 137 |
| 1 | of your report. Mr. Trende, what do the dots on the |  | A. I did not. |
| 2 | dotplot that is figure 69 on Page 98 represent? |  | Q. And then, Mr. Trende, are you aware of a |
| 3 | A. The white population of Congressional |  | 2011 -- or that the 2011 version of Congressional |
| 4 | districts in Austin/Sa |  | rict 23 was found to have been drawn with |
| 5 | Q. Is that the Voting Age Population or the | 5 | iscriminatory intent by the court? |
| 6 | white population? | 6 | R. KERCHER: Object to the form |
| 7 | A. It would be the CVAP, non-Hispanic | 7 | ve never read the Perez v Abbott |
| 8 | population. |  | sion. |
|  | Q. Does each dot represent 10 people or | 9 | Q. Are you aware of it? |
| 10 | 100 people? | 10 | , KERCHER: Same objection. |
|  | A. It's whatever I intended to use |  | A. Yes, I just used its name. I'm aware of it, |
| 12 | Q. I think you |  | but I've never read it, and I don't know the specific |
| 13 | A. No, I think I was consistent. So probably | 13 | ngs of |
|  | 10. You would be able to tell from the code |  | Q. But you knew which court decision involved |
|  | I provided. |  | CD 23, correct? |
| 16 | Q. Mr. Trende, did you create a dotplot similar | 16 | MR. KERCHER: Object to the form. |
| 17 | to figure 69 for the African-American population? | 17 | A. I didn't say it involved CD 23. But that's |
| 18 | A. No. I think there is something that has the | 18 | the main case coming out of the 2011 map draw that |
| 19 | African-American and Hispanic population |  | I'm aware of, so I assume that's the decision you're |
| 20 | Dr. Duchin's reports, but I could be wrong. | 20 | referencing. |
| 21 | Actually, no. I don't think she does that | 21 | Q. Are you aware that in the previous decade |
| 22 | for Austin/San Antonio | 22 | fore 2011 a court found that a version of |
| 23 | Q. And then I take it, Mr. Trende, you did not | 23 | Congressional District 23 violated the Voting Rights |
| 24 | do a dotplot similar to figure 69 for the Hispanic | 24 | Act? |
| 25 | population? |  | MR. KERCHER: Object to the form. |


| to drive racism underground. Officers may well <br> Page 142 <br> concoct convincing post hoc rationalizations for their missteps." <br> Q. So, Mr. Trende, do you believe that <br> decision-makers always admit when they make a decision involving race? <br> MR. KERCHER: Object to the form. <br> A. I don't think they would necessarily always <br> do that. No. <br> Q. Mr. Trende, do you believe that <br> decision-makers sometimes concoct post hoc <br> rationalizations for decisions involving race? <br> MR. KERCHER: Object to the form. <br> A. I'm sure there are instances where they do <br> it. As I suggest, they may well do it. <br> Q. And, Mr. Trende, do you believe <br> decision-makers sometimes make decisions involving <br> race, even when the statistics are not so compelling <br> in showing racial intent? <br> MR. KERCHER: Same objection. <br> A. Can you ask me that again? <br> Q. Sure. Do you believe that decision-makers <br> sometimes make decisions involving race even when <br> statistics are not so compelling in showing racial intent? <br> Clinton Presidency, so I could not tell you what I meant when I wrote it back then. And this is the conclusion -- This is in the conclusion, so I would probably have to reread the entire article to get the entire context. <br> What I think it says is that you only have cases where police thought this was the solution, which I think was reversed incorporating equal protection norms into the Fourth Amendment definition of reasonableness; that this solution only affects cases with an admission that race played a factor or where there's just overwhelmingly compelling statistics. <br> I don't think it necessarily admits or opines or that I ever had knowledge of whether there are cases that it wouldn't necessarily cover. <br> Q. Could you please turn to Page 369 of your note. <br> A. What I would say, to finish that answer, is that I would have wanted it to cover these other situations, and so to the extent those other situations existed, this would be imperfect. <br> Q. So I'm going to direct you to the paragraph that starts, "With these two steps." And if you go down to the sentence that begins with, "In other | MR. KERCHER: Object to the form. <br> A. Do I believe -- Can we break that down <br> because the negative in there is throwing me off given what's written here. Or phrase it without a negative. <br> Q. Sure. Sometimes do decision-makers make <br> decisions that involve race where the statistics <br> aren't strong enough to show that racial intent <br> exists, but there still was race considered in the <br> decision-making process? <br> MR. KERCHER: Object to the form. <br> A. I don't know whether that's the case or not. <br> Q. Could you please explain what you meant by, <br> "To be sure, the suggestion offered isn't perfect. It would affect only those cases where a police officer admits to pulling over African Americans due to their race or where the statistics are so compelling that there can simply be no other rational explanation"? <br> With that statement, are you saying that sometimes racial profiling occurs even where the statistics are not so compelling, that there's no other rational explanation other than race for the stop? <br> MR. KERCHER: Object to the form. Asked and answered. Vague. <br> A. I wrote this in the waning days of the <br> words." Do you see that? <br> A. Yes. <br> Q. Okay. Did you write on Page 369, "In other words, his motivation is simply to enforce the law; the racial categorization is a means rather than an end." <br> Does that accurately reflect the statement that you made on Page 369? <br> A. Yes. <br> Q. So is it true, Mr. Trende, that race is <br> sometimes used as a means to accomplish an aim? <br> MR. KERCHER: Object to the form. <br> A. I don't think so, because the last -- the <br> preceding sentence that we skipped over talks about <br> "assume a certain scenario." So I'm discussing a <br> hypothetical. Again, I wrote this 22 years ago. <br> Q. Mr. Trende, did you read Dr. Roden's report in this case? <br> A. I saw it, and looked at portions of it. <br> I don't know that I read every word of it. <br> Q. Do you plan to offer an opinion on <br> Dr. Roden's report in this case? <br> A. I don't have plans to offer any particular opinions. I'll ask the questions that counsel -- <br> I'll answer the questions that counsel asks me. |
| :---: | :---: |


| 1 | Page 146 |
| :---: | :---: |
| 2 | And, thereupon, Plaintiff's Exhibit No. 10 |
| 3 | was marked for purposes of identification. |
| 4 |  |
| 5 | BY MS. Anderson: |
| 6 | Q. Mr. Trende, the court reporter has handed |
| 7 | you what has been marked as Exhibit 10. Mr. Trende, |
| 8 | what is the document that she just handed you? |
| 9 | A. This is three tweets. |
| 10 | Q. And when is it dated, the first one? |
| 11 | A. December 14th, 2020. |
| 12 | Q. And who drafted the tweet? |
| 13 | A. I wrote the tweet. |
| 14 | Q. And do you have any reason to believe that |
| 15 | this is -- to disagree with the fact that this is a |
| 16 | true and correct copy of your tweet? |
| 17 | A. No, I don't have any reason to disagree. |
| 18 | Q. And, Mr. Trende, does your tweet say, "Been |
| 19 | playing around with Texas maps, and it's pretty easy |
| 20 | to draw three new R districts, draw two minority |
| 21 | opportunity districts by making 7 and 32 |
| 22 | minority-majority; make 23 majority-Trump, while |
| 23 | keeping around 66 percent Hispanic and make Texas 28 |
| 24 | heavily Trump while keeping around 66 percent |
| 25 | Hispanic." |

Page 148
minority-majority, which I don't think they were in
the previous iteration.
Q. And, Mr. Trende, did you draw any other minority opportunity districts in Texas?
A. I don't think so. Again, this is something that was done entirely for my own entertainment, so I don't remember the specifics of it.
Q. So you drew a new minority-majority

Congressional district in Harris County, correct?
A. I turned 7 into one.
Q. And what were the boundaries of 7 that you
drew?
A. I have no clue.
Q. Do you recall what it looked like?
A. Not even a little bit. I don't even
remember really doing this until you reminded me.
Q. And what was the racial composition of the
new minority-majority Congressional district in Harris
County?
A. I have no clue. I did it for my own entertainment.
Q. Did you create -- Was the Hispanic CVAP over 50 percent in that district?
A. I honestly have no idea.
Q. And, Mr. Trende, you drew a new

Page 147
A. That's what it says, yes.
Q. And, Mr. Trende, what data did you use to draw the Constitutional districts that you discuss in this tweet?
A. Data's Redistricting App.
Q. What data did you use in Data's Redistricting App?
A. Whatever Data's Redistricting Map makes available.
Q. Did you use racial data in drawing these Congressional districts referenced in your tweet?
A. I don't know. There's a subsection of Twitter called "Election Twitter" that likes to draw maps and map out scenarios. I think I drew a map in Illinois that was, like, 16-1 Democratic, and one in Ohio that it was 13 or 13-2 by taking every precinct along I-71 and linking them together. So I don't know what I was doing. This was for my own entertainment. I know it's hard to believe for someone not in my line of work how that could be entertaining, but...
Q. And then, Mr. Trende, what do you mean by your statement that "It's pretty easy" for you to draw two new minority-majority Congressional districts in Texas?
A. That it wasn't difficult to make 7 and 32

Page 149
minority-majority Congressional district in the DFW area, correct?
A. It appears I turned 32 into a minority-majority district. That should probably -Yeah, that's 32. That's Olson's office.
Q. And what did that district look like?
A. I don't know.
Q. Do you recall what the boundaries were?
A. No.
Q. What was the racial composition of the DFW

Congressional area district that was the new minority-majority district?
A. I have no idea.
Q. Did you look at racial data in drawing the DFW district?
A. I would guess that, since I said it was minority-majority, I would have checked the minority population of it.
Q. Is it also true for the new minority opportunity district that you drew in Harris County? A. Since I said it was minority-majority, then I would have at least looked at the output of the district to see where it landed.

MS. ANDERSON: Could we have a two-minute break.




| I believe you've used the term "bear on." So I was hoping to use your vocabulary there. <br> So putting aside what lawyers might or might do, is it fair to say then that, from your perspective, the dotplots are what could potentially touch on what is in Dr. Morales's reports? <br> MR. KERCHER: Object to the form. <br> A. <br> As I sit here today, that's what I could <br> see. Yes. <br> Q. Would you agree with me that the compactness of Enacted Districts in a state shows us what a state considers acceptable for compactness of districts? <br> MR. KERCHER: Object to the form. <br> A. At least in some context, yes. <br> Q. And when you say "some context," what is <br> outside? What are the contexts outside of my statement? <br> A. Well, a state is probably right -- it is probably drawing its maps with, if there is any, state constitutional considerations of compactness in mind. <br> There could also be a federal standard for compactness under the Voting Rights Act which wouldn't necessarily have to be conterminous with the state line or the state definition. <br> If the State didn't think a certain area was <br> Enacted District -- let's assume it's not a majority-minority district, even if it's less compact than the average, the State still believes that people in that district share enough common interests to warrant bringing them together in a district, correct? <br> MR. KERCHER: Object to the form. <br> Speculative. <br> A. If the State is trying to draw a political gerrymander, they might be trying to do the opposite of that; draw in people who have opposing interests. So I'm not sure I could agree with that. <br> Q. Is it also possible that a State could draw a district that's less compact than the average because the State does believe that people in that district share enough common interests to be brought together? <br> MR. KERCHER: Same objection. <br> A. In an abstract sense, it could be possible. <br> Yes. <br> Q. Are you familiar with the term "Texas <br> Legislative Council"? <br> A. No. <br> Q. Have you relied on in your work in this case, any reports provided by the Texas Legislative Council, also known as the TLC? | protected by the Voting Rights Act, they might see something as acceptable for compactness that wouldn't be acceptable in the VRA context. <br> Or to use another example, if you were drawing a district in Louisiana, and the State wanted to draw a district across the southern border and up the western border, I would imagine they have no problem with that. <br> But if you wanted to draw it up the eastern border and across the northern border, even with similar degrees of compactness, the State might be weary of that since they would be drawing the district substantially similar to what was struck down by the Supreme Court in the 1990s. So there are ways that I might think it could be different. <br> Q. Let's put aside the consideration of race for a moment and attempt to comply or not comply with the Voting Rights Act. Would you agree with me that the compactness of Enacted Districts that are not majority-minority shows us what the State considers acceptable for compactness generally? <br> MR. KERCHER: Object to the form. <br> A. At least to the -- within the boundaries of any state restrictions, yes. <br> Q. Would you agree with me that when a State <br> A. Not that I know of. <br> Q. Are you aware of the term Red Appel as a redistricting software in Texas? <br> A. Yes. <br> Q. Do you know if Red Appel is provided by the <br> Texas Legislative Council? <br> MR. KERCHER: Object to the form. <br> A. I don't know. <br> Q. Are you aware of whether users of Red Appel <br> are able to see compactness scores generated for them by the system? <br> MR. KERCHER: Same objection. <br> A. I believe Mr. Korbel suggested that is the case. I don't know whether it's correct or not. <br> Q. Do you have any reason to doubt reports or data provided by the Texas Legislative Council on compactness of districts? <br> MR. KERCHER: Object to the form. <br> A. I don't know anything about them, so I don't have any reason to believe or disbelieve it. <br> Q. Would you agree that people who live in the same city can share common interests? <br> MR. KERCHER: Object to the form. <br> A. People who live in the same city can share common interests. |
| :---: | :---: |




|  | it more Republican? Page 174 |  | Page 175 <br> Q. Okay. 77 and 79 together give us a picture. |
| :---: | :---: | :---: | :---: |
| 2 | A. Well, that is laid out in the full paragraph | 2 | Turn, if you would, to Page 195 of your |
|  | on Page 104. It takes in 186,725 residents from the | 3 | report. Do you see where you say there, "In the 2021 |
|  | 28th; 53,071 residents from the 34th that are around |  | cial Election, Republicans picked up District 118"? |
|  | cent |  | the middle paragraph, last sente |
| 6 | 55 percent for Trump overall. It gave 89,000 |  | A. I do see that |
|  | dents to the 28th, and 192,000 to the 34t | 7 | Q. District 118 is a Latino-majority district |
| 8 | ublica |  | Co |
|  | as well. But the residents going to the 34th were | 9 | A. I don't know. |
| 10 | heavily Democratic, making the district on balan | 10 | Q. Do you view the election of the Republican |
|  | m | 11 | te John Lujan in the 2021 Special Election in |
| 12 | Q. You include a figure here of 73 that shows | 12 | House District 118 to be evidence of Latino voters |
| 13 | changes to 15 in the southern end of the district; is | 13 | to vote Republican |
|  | . | 14 | HER: Object to the form. |
| 15 | A. That's correct | 15 | A. I don't think I put anything in there one |
| 16 | Q. We don't have a corresponding figure for | 16 | way or the other |
|  | changes made | 1 | Q. Does that mean that you have no opinion |
| 18 | that right? | 18 | ing whether the 2021 Special Election in 118 |
| 19 | A. I think I did it that way because you can | 19 | evidences Latino voters shifting to vote Republican? |
|  | see the changes to the northern end of the district in | 20 | A. Ye |
| 21 | figure 79. | 21 | Q. Let's go to Page 206 of your report. Do you |
| 22 | Q. Figure 79 is District 34? | 22 | see the section heading here in your report, Section |
| 23 | A. Yeah. And I think that's where the 15th, at | 23 | 8, Recent Polling Data? |
| 2 | 1 | 24 | A. Ye |
|  | northern end of the district. Also 77. |  | Q. And in your report, you discuss, "A sharp |
|  | Page 176 |  | ge 177 |
|  | shift of Hispanic voters toward the Republican | 1 | ctions of your report? |
| 2 | Party." Do you see that in the third line of | 2 | MR. KERCHER: Object to the form. |
| 3 | second paragraph | 3 | This report was written in order, so that's |
| 4 | A. |  | aid it's written at the end. It would be |
| 5 | Q. So I'm curious about this section of your |  | toward the end of the process |
|  | report. Were you asked to write this section of your |  | Q. Okay. So this section which begins on |
|  | r y |  | 206, and ends on Page 208, you wrote last in |
|  | sections of your report looking at the alternativ |  | terms of the sections of your report; is that right? |
|  | maps? |  | A. Yes |
|  | HER | 10 | Q. What's the connection between this |
| 11 | rney-client communication. It's a Rule 26 |  | discussion of Hispanics shifting to the Republican |
|  | communication. It's privileged. I'll instruct t | 12 | Party and the other observations in your report about |
|  | witness not to answer |  | redistricting plans were drawn |
| 14 | BY MS. PERALES | 14 | ERCHER: Object to the form |
|  | Q. When did you write this Section 8? | 15 | A. I don't know |
|  | , | 16 | Is this last section here, Section 8, a |
| 17 | wer | 17 | nuation of your observations that south Texas |
| 18 | A. | 18 | Congressional Districts were drawn to leverage the |
| 19 | Q. Towards the end or toward the beginning? | 19 | emerging strength of the Hispanic Republican vote? |
| 20 | A. It's Section 8, so it would have bee | 20 | form. |
|  | written towards the end. | 21 | You can answer |
| 22 | Q. Well, only if you wrote the report from what | 22 | A. I think it's relevant to it, but I don't |
|  | we see now as the beginning to the end. But I'm more |  | know that it's a direct outgrowth of it |
|  | curious about the time when you wrote Section 8. Did | 24 | Q. Now, sticking with Page 206 specifically, |
|  | you write Section 8 at a time later than the preceding |  | okay. Second paragraph, second sentence that begins |



| so that is certainly my experience from discussions with people who analyze elections. I have the example of this New York Times article written on it, but I think an awful lot of people were surprised to see Starr, S-T-A-R-R, and Zapata, Z-A-P-A-T-A -- but I'm sure I'm butchering the proper pronunciation of that -- Counties doing what they did. <br> Q. Okay. So what I've heard you say is speaking to political observers, The New York Times article and the results for Trump in Starr and Zapata Counties; is that right? <br> A. Yes. <br> Q. Now, does The New York Times article address voting by Hispanics in the Rio Grande Valley? <br> A. I don't know. <br> Q. You also in your report cite a paper <br> authored, and I'm going to completely butcher this name, Kuriwaki, and then Dr. Ansolabehere and others; is that right? You have a cite to that article on Page 206; is that right? <br> A. Yes. <br> Q. Now, with respect to that article, the authors of the paper did not run Ecological Inference on votes cast by a Spanish surname, correct? <br> A. That's correct. <br> and Anglos prefer the same Presidential candidate in 2016" ; is that right? <br> A. There are districts where the point estimates are the same for whites. And Hispanics are almost the same. <br> Q. So I'd like to talk to you about some districts that are not on this list. Would you agree with me that Congressional District 15 is not on the list? <br> A. That's correct. <br> Q. And Congressional District 15 is in south <br> Texas, correct? <br> A. Correct. <br> Q. Congressional District 23 is not on the <br> list, correct? <br> A. Correct. <br> Q. And Congressional District 23 spans along <br> the U.S./Mexico border from El Paso to San Antonio, correct? <br> A. Yes. <br> Q. Congressional District 28 is not on the <br> list, correct? <br> A. Correct. <br> Q. Congressional District 28 is also in south <br> Texas and touches the border, correct? | Q. And for their data, the authors used the <br> 2016 and 2020 CCES, which is the Cooperative <br> Congressional Election Study, correct? <br> A. Correct. <br> Q. And the CCES is a survey in which <br> individuals self-report their race and their candidate <br> choice; is that correct? <br> A. Correct. <br> Q. And the paper that you cite only focuses on <br> the Presidential race of 2016 and then 2020, correct? <br> A. Correct. <br> Q. And because it's a survey, there are only <br> about 125 respondents per Congressional District, correct? <br> A. Correct. <br> Q. Do you recall that paper saying that there <br> were only 13 voting respondents who are nonwhite on <br> average for each Congressional District? <br> A. I do not. <br> Q. And that paper concluded that there was an <br> increase among Hispanics in Texas from 2016 to 2020 in <br> the vote for Trump, correct? <br> A. I believe that's correct. Yes. <br> Q. Now, going over onto Page 207, you list some <br> districts where the paper that you cite says, "Latinos <br> A. Correct. <br> Q. Congressional District 34 is not on this <br> list, correct? <br> A. That's right. <br> Q. Congressional District 34 is in south Texas <br> and also touches the border, correct? <br> A. Yes. <br> Q. So excluding Congressional District 16, <br> which is in El Paso, the remaining Texas <br> border-touching districts are not on your list, correct? <br> A. Correct. <br> Q. I'd like to talk about the election that you mentioned on Page 206. But before that, I just want to talk about the very short reference that you had about House District 118 electing a Republican in Bexar County in a special election. We had talked about that a moment ago. <br> You had talked -- Do you want me to refer you back to that page before I go -- <br> A. No. If we're talking about the previous section, I thought you were talking about it here, and I was scratching my head. <br> Q. No. I just want -- The order in my outline is just to start with District 118 in Bexar County, |
| :---: | :---: |







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kind of like Jarndyce and Jarndyce; it goes on for the
entire decade. I'm just not that familiar with it.
Q. Let's talk about the case before it on
CD 23. You mentioned that you thought that case was
largely about Congressional District 25 not being an
offset to 23. Do you recall that testimony?
A. Yes. That's my understanding of LULAC.
Q. Do you remember the court ruling in LULAC
that, in response to the growing participation that
threatened the CD 23 Henry Bonilla incumbency, the
State divided the cohesive Latino community in Webb
County, moving about 100,000 Latinos to District 28,
which was already a Latino opportunity district, and
leaving the rest in a district where they now have
little hope of electing their candidate of choice?
    MR. KERCHER: Same objections.
A. Yes
Q. Do you recall the Supreme Court in LULAC
v Perry concluding that the changes to CD 23 bear the
mark of intentional discrimination that could give
rise to an equal protection violation?
    MR. KERCHER: Same objection.
A. I don't.
Q. But would it be fair to say, then, that in
your report's discussion of CD 23, you did not take
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Page 208
case in May or June, and formally retained in June of
this year; is that correct?
A. I believe that's right.
Q. Prior to your retention as an expert in this
case, did you discuss the Texas 2021 redistricting
process with any past or present members of the Texas
Legislature?
MR. KERCHER: Object to the form.
You can answer.
A. Not to my knowledge
Q. Prior to your retention, did you discuss the
2021 redistricting process with any past or present
members of the Texas Governor's Office?
MR. KERCHER: Object to the form
A. Not to my knowledge.
Q. Prior to your retention as an expert in this
case, did you discuss the Texas 2021 redistricting
process with any past or present members of the Texas
Office of the Attorney General?
MR. KERCHER: Object to the form.
A. Prior to my retention I would have had
preliminary conversations with the attorneys. But
beyond that, no, not to my knowledge.
Q. Okay. No discussions unrelated to your
retention?

Page 207
into account the possibility that Texas may be going for a three-peat here in CD 23?

MR. KERCHER: Object to the form.
A. Because I am doing my analysis here on whether it is consistent with a political outcome, then, no, I wasn't looking at whether it was a similar tact to what you're representing the Court held in LULAC, or what I take you to be representing as the Court's holding in LULAC.

MS. PERALES: Thank you. I'll pass the witness.

MR. BRACHMAN: Go off the record. Take a 10-minute break.
(Recess taken.)

## EXAMINATION

BY MR. BRACHMAN:
Q. Mr. Trende, welcome back. My name is Paul Brachman. I'm a lawyer with the Fair Maps Texas Action Committee. And like Ms. Perales, I will try not to go over things we've already covered or ask you questions you've already answered. I'll do my best to be efficient.

I believe you testified earlier that you were first approached about your retention in this

Page 209
A. Yes, not to my knowledge.
Q. Okay. Prior to your retention as an expert
in this case, did you discuss the Texas 2021
redistricting process with anyone from the law firm of
Butler Snow?
MR. KERCHER: Object to the form.
$\quad$ You can answer.
I have never heard of that law firm, so not

A. $\quad$| Okay. I just want to ask a couple of |
| :--- |
| Q. my knowledge. |
| questions similar to some others you've been asked, |
| but related to my client about the scope of your |
| retention. |
| If you could turn to Exhibit 1 , Page 6, |

please. I'm focused on the paragraph at the bottom of
the page under Scope of Engagement. I just want to
ask you about the second-to-last sentence where you
say, "In the course of this, I respond to points made
in the expert reports of Dr. Jay Morgan Kousser,
Dr. Moon Duchin, Dr. Christina Morales, and
Mr. George Korbel." Do you see that?
A. Yes.
Q.
that you respond to any points made by
Dr. Callingwood; is that correct?
Q. Okay. Prior to your retention as an expert in this case, did you discuss the Texas 2021 redistricting process with anyone from the law firm of Butler Snow?

MR. KERCHER: Object to the form
You can answer.
A. I have never heard of that law firm, so not to my knowledge.
Q. Okay. I just want to ask a couple of questions similar to some others you've been asked, out related to my client about the scope of your retention

If you could turn to Exhibit 1, Page 6, please. I'm focused on the paragraph at the bottom of the page under Scope of Engagement. I just want to ask you about the second-to-last sentence where you say, "In the course of this, I respond to points made in the expert reports of Dr . Jay Morgan Kousser, Dr. Moon Duchin, Dr. Christina Morales, and Mr. George Korbel." Do you see that?
A. Yes
O. Okay. You do not say in your expert report Dr. Callingwood; is that correct?

|  | Page 210 |  | 211 |
| :---: | :---: | :---: | :---: |
|  | A. |  | reviewed the expert rebuttal report of Tony Fairfax? |
| 2 | Q. You do not say anywhere in your expert | 2 | A. Briefly. |
| 3 | report in this case that you respond to points made by |  | Q. Okay. I don't mean this to be a trick |
| 4 | . Spencer; is that correct? |  | estion. I know it was responding to your report. |
| 5 | A. Yeah. I don't even know who these peopl |  | to clarify, for the record, there's nothing |
| 6 | are. So yes. |  | your expert report that responds to Mr. Fairfax's |
| 7 | Q. Based on that answer, is it fair to say that |  | port, correct? |
| 8 | you have not reviewed Dr. Callingwood's report |  | A. There may be points made in it that would be |
| 9 | A. I have not |  | sive. But, obviously, it was not written with |
|  | Q. Also fair to say you've not reviewed |  | ility to see the future and what he would write. |
| 11 | Dr. Spencer's |  | hat |
| 12 | A. I have | 12 | Q. So sitting here today, do you intend to |
| 13 | Q. Okay. You do not say in your expert report | 13 | offer a report responding to Mr. Fairfax's report? |
| 14 | u respo | 14 | KERCHER: Object to the |
| 15 | rr | 15 | A. I don't have any intentions to write |
| 16 | A. That's correct | 16 | nal reports sitting here today. |
| 17 | Q. Have you reviewed the expert report | 17 | Okay. Is there anywhere in your report |
| 18 | Dr. Martinez in | 18 | you analyze the demonstrative maps proffered by |
| 19 | A. I don't believe | 19 | e Fair Maps Plaintiffs in this case? |
| 20 | Q. To your knowledge, have you reviewed any | 20 | MR. KERCHER: Object to the form |
| 21 | expert reports | 21 | You can answe |
| 22 | Fair Maps Plain | 22 | A. Not to my knowledge. |
| 23 | A. If those are all of your experts, | 23 | Q. Sitting here today, are you aware -- Strike |
| 24 | t. | 24 | that. |
| 25 | Q. I have one more to ask you about. Have you | 25 | Sitting here today, have you reviewed any of |
|  | Page 212 |  | Page 213 |
| 1 | the demonstrative alternative maps proffered by the | 1 | can answer, if you understand the |
| 2 | Fair Maps Plaintiffs? |  | question. |
| 3 | I may have come across them at the Texas | 3 | If the -- That is true, assuming that the |
| 4 | istricting website, |  | rales and Duchin maps are in the public record. |
| 5 | Q. Okay. And fair to say, based on that |  | Q. Okay. Fair enough. |
| 6 | wer, that your expert report does not contain any |  | A. I don't know what other maps would be |
| 7 | specific analysis of any demonstrativ | 7 | Okay. You have not considered any draft |
|  | by the Fair Maps Plaintiffs in this case? |  | aps drawn by the map drawers who created the Enacted |
|  | A. Not to my knowledg |  | Plan that are not in the public record, correct? |
| 10 | Q. Now, on Page 7 of your report, Exhibi | 10 | RRCHER: Object to the form. |
| 11 | Section 4, you list the data relied | 11 | A. Not to my knowledge. |
| 12 | construction of datasets. Do you see that section? | 12 | Q. Do you have personal knowledge of the data |
| 13 | A. | 13 | he map drawers who created the Enacted Plan |
| 14 | Q. And are the materials listed in that section | 14 | considered as part of the map-drawing process? |
| 15 | a comprehensive and complete description of all of the | 15 | MR. KERCHER: Object to the form. |
| 16 | rials that you relied | 16 |  |
| 17 | ions in this case | 17 | Do you have personal knowledge of what |
| 18 | MR. KERCHER: Object to the |  | ftware the map drawers who created the Enacted Plan |
| 19 | wer |  | sed in the 2021 redistricting process? |
| 20 | A. | 20 | MR. KERCHER: Object to the form. Asked and |
| 21 | Q. Other than materials that are in the public | 21 | answered. |
| 22 | record, you did not consider any draft maps that may | 22 | A. Yeah. I think I mentioned, in one of |
| 23 | en created as part of the 2021 redistricting |  | Mr. Korbel's PowerPoints I think it talks about Red |
|  | process, correct? |  | ppel. A-P-P-E-L. And so that's how I became aware |
| 25 | MR. KERCHER: Object to the form. |  | of that. |


|  | Page 21 |  | Page 215 |
| :---: | :---: | :---: | :---: |
|  | Q. Do you have any personal knowledge of what | 1 | advantage"? |
|  | filters or settings in Red Appel the map drawers used | 2 | A. The ability of the Republican Party to win |
| 3 | in creating the Enact |  | the legislature and United States Congress in |
| 4 | MR. KERCHER: Object to the form. Asked and |  | the State of |
| 5 | ans | 5 | Q. Do you have a definition of a "safe |
| 6 | A. I | 6 | "? |
| 7 | Q. As part of your work in this case did you | 7 | MR. KERCHER: Object to the form. |
| 8 | interview any individuals who drew the 2021 Enacted | 8 | ans |
| 9 | Maps? | 9 | A. That's something that people quibble over. |
| 10 | MR. KERCHER: Object to the form. Asked and |  | But, generally speaking, I'm not sure of any |
| 11 | answered. | 11 | ricts -- I'm not sure there are more than one or |
| 12 | A. I wasn't asked to do anything like that, so |  | two districts that are less than say 46 percent Trump |
| 13 | I did not. | 13 | Democrats won -- and I mean Trump 2020 -- that |
| 14 | Q. I'll ask you about some terminology in your | 14 | Democrats won in the last Congressional Election. |
| 15 | report. If you'll | 15 | Of course, if I were doing it, I would be |
|  | please. The last sentence of the first paragrap |  | ing forward as well. If you were trying to draw a |
| 17 | re |  | with political advantage, you want that to be a |
| 18 | historical context behind the districts, of the | 18 | rable advantage so that might bump things down a |
| 19 | districts themselves, and of their political and | 19 | bit |
| 20 | racial composition clearly demonstrates that they are | 20 | Q. Is there any quantitative expected margin in |
| 21 | consistent with districts drawn to substantially | 21 | tory that you used to define a safe district for |
| 22 | improve the political advantage of the Republican | 22 | of your report in this case? |
| 23 | Party." Did I read that correctly? | 23 | RCHER: Object to the form |
| 24 | A. | 24 | A. I'm not sure I talk much about what a safe |
| 25 | Q. Okay. What's your definition of "political | 25 | district would be. It's that Donald Trump's vote |
|  | Page 216 |  | Page 217 |
|  | share in many of these districts is improved, which |  | t know exactly where the threshold is for |
| 2 | improves the ability of Re |  | stantial improvement. But when you're taking |
| 3 | district. |  | ricts that Joe Biden won and turning them into |
| 4 | Q. So there was no specific numeric |  | districts that Donald Trump won by 20, I think under |
|  | improvement that you considered as qualifying |  | general use of the word, that's a substantial |
| 6 | roving the political advantage of the Republican |  | improvement in the political advantage of th |
|  | Party? As long as it improved it by 1 percent, that | 7 | Republican Party. |
|  | was sufficient? | 8 | Q. Okay. Is there any specific number |
| 9 | . KERCHER: Object to the form. |  | districts, for purposes of your report in this case, |
| 10 | A. I don't know about that. But when you look | 10 | that needed to flip from districts that Biden won to |
|  | at -- What the sentence means is, when you look at the | 11 | heavy Trump-favorite districts in order to |
|  | changes, it's clear that these districts, many o |  | substantially improve the political advantage of the |
| 13 | which improved Donald Trump's vote share by | 13 | Republican Party? |
|  | substantially more than a point, taken as a whol | 14 | KERCHER: Same objection |
| 15 | they improved the political advantage of the | 15 | It's the same basis answer. We can quibble |
| 16 | Republican Party in the State of Texas | 16 | about where that threshold is. I don't know where |
| 17 | Q. Focusing specifically on the language from | 17 | bbble turns into a beard, but my co-counsel clearly |
|  | the report that I just read, is there a numerical -- |  | has a beard; and it's sort of the same thing here. |
| 19 | I'll withdraw that and I'll ask a better question. | 19 | re one district in the entire stat |
| 20 | Is there a number that you had in mind that | 20 | that it improved by 1 point, I probably wouldn't use |
| 21 | es with substantially improve the political |  | the word "substantially." But I don't think there's |
| 22 | advantage of the Republican Party? |  | any reasonable doubt that the Republican Party's |
| 23 | MR. KERCHER: Object to | 23 | political advantage has been substantially improved as |
| 24 | A. You know, this game gets played any time an |  | a result of these maps. |
|  | adjective or an adverb gets inserted in a report. I |  | Q. That's fair enough. But as between the |



| Republicans who are opposed to Mr. Trump and have been throughout his political career, correct? <br> MR. KERCHER: Object to the form. <br> A. Yes. I live next to some of them. <br> Q. Okay. You've heard, for example, of "Never <br> Trumpers"? <br> MR. KERCHER: Same objection. <br> A. Yes. <br> Q. And what's your understanding of a Never <br> Trumper? <br> MR. KERCHER: Same objection. <br> A. They are Republicans who would never vote <br> for President Trump. <br> Q. Okay. So is it fair to say, then, that <br> Mr. Trump's performance is not necessarily predictive <br> of the performance of any other particular Republican candidate for office? <br> MR. KERCHER: Object to the form. <br> A. Actually, President Trump's performance is <br> generally pretty predictive of who won. So, in 2016, <br> I don't think there were any senate states that Trump <br> failed to carry, or that Trump carried that a <br> Republican did not, and vice versa. That was the <br> first time that happened in history, or at least recent history. <br> correct? <br> A. Yes. <br> Q. And then you go on to note that Republicans also had a close call in the 8th where the Republican won 51.18 percent of the vote, and the 9th where the senator won with 54.3 percent of the vote, correct? <br> MR. KERCHER: Object to the form. <br> A. $\quad 54.03$. <br> Q. Thank you. Yeah. With that correction, is that correct? <br> A. Yes. <br> Q. Okay. And then you note that, in 2020, <br> Trump won just 47.7 percent of the vote in the 8 th, and 50.1 percent in the 9 th, correct? <br> A. Correct. <br> Q. Okay. So the support for Trump in the <br> 8th and 9th state senate districts was lower than the support for Republican senate candidates, correct? <br> A. Yes. <br> Q. Is it fair to say that's a phenomenon that could be present in other districts throughout the state? <br> MR. KERCHER: Object to the form. <br> A. I haven't looked, but it could be present. <br> I'd also note that the two districts that they did | In 2020, I think the only crossover state <br> was Maine where Susan Collins is a political athlete who kind of does her own thing. Most of the Biden districts were won by Democrats. Most of even the swing Trump districts were won by Republicans, so I don't think I can say -- I don't think I can agree with you. <br> Q. Okay. Let me ask a more precise question. <br> Is it fair to say that Mr. Trump's level of support in any given precinct is not necessarily predictive of the level of support for other Republican candidates? MR. KERCHER: Object to the form. <br> A. $\quad$ There may be precincts that vote for Joe Biden, but voted for other Republicans and vice versa, but it's probably the strongest predictor we have. Q. If you would turn to Page 140 of your report, please. Maybe I'll try it with an example. In this page of your report here you're discussing the state's senate districts in Dallas/Fort Worth area, correct? <br> A. Correct. <br> Q. And in the second paragraph on this page, you note that, in the 2018 and 2020 elections, Republicans lost two senate seats in the area; the 10th in Tarrant County and 16th in Dallas County, <br> lose had even lower Trump vote shares. So just because something is predictive doesn't mean the cutoff is necessarily exactly at 50 percent. <br> Q. Okay. <br> A. In fact, it's almost, I mean, it's almost a <br> 1 to 1 . The senator won 54 percent in the 9 th and 51 percent in the 8th, and Trump -- so that's a 3-point difference? <br> Trump won 50.1 percent in the 9th and 47.7 percent in the 8th, so 2.4 percent difference. So in regression terms, there would be an intercept, but it would have a pretty tight fit. <br> Q. There is nevertheless a difference in the level of support, correct? <br> A. Well, in the level. But you had asked me if it's predictive. And it doesn't have to be a one-to-one correspondence for something to be predictive. It just has to be consistent. <br> Q. In your report, when you evaluate the extent to which any particular district is shored up, using your terminology, that analysis is based on Mr. Trump's vote share in the 2020 election, correct? MR. KERCHER: Object to the form. <br> A. Yes. Republicans tend to do better in districts where Mr. Trump does better. |
| :---: | :---: |



| second paragraph, says, "The district gives up 371,209 <br> former residents," correct? <br> A. Correct. <br> Q. That means the map drawers chose to move <br> those former residents somewhere else, right? <br> MR. KERCHER: Object to the form. <br> A. Yes. Assuming they made the choice. No <br> need to get into a word game or word battle there. <br> Q. Sure. Have you analyzed what the <br> demographic breakdown of those 371,209 voters is? <br> A. No. <br> Q. Now, in exchange for those 371,209, there <br> were new voters who were added to CD 3, correct? <br> A. Correct. <br> Q. And you did not analyze the demographics of those voters who were added to CD 3, correct? <br> A. Correct. <br> Q. Okay. And the net effect of the change to <br> CD 3 was that it goes from a 49.5 percent Biden to a <br> 42.7 percent, correct? <br> A. Correct. <br> Q. And that qualifies as shoring up the <br> district, correct? <br> A. Clearly. <br> Q. Okay. For purposes of your report, would <br> reporter to mark this as Exhibit 11. <br> And, thereupon, Plaintiff's Exhibit No. 11 <br> was marked for purposes of identification. <br> BY MR. BRACHMAN: <br> Q. Mr. Trende, what I've handed you is a compilation of maps that were included in the expert rebuttal report of Tony Fairfax. I'll just first ask you, have you seen these before? <br> A. I looked through his report, so I would have laid eyes on them. <br> Q. Okay. If you would -- There are page <br> numbers down at the bottom sort of centered. If you <br> would turn to 136, please. Up at the top of this map, <br> do you see, it says, Texas Congressional Districts <br> 2021 Enacted Plan column? <br> A. Yes. <br> Q. And in the bottom-right corner, do you see <br> the legend indicates that the green shading is showing <br> AAPI voter CVAP percentage? <br> A. Yes. <br> Q. Okay. Looking at this map, would you agree <br> with me that the western boundary of Congressional <br> District 3 zigzags and divides AAPI communities? | you consider CD 3 shored up if the expect -- or if the Biden vote share had been reduced to, say, <br> 47.5 percent? <br> MR. KERCHER: Objection. Calls for speculation. <br> A. I would still say you shored up Republican strength. You didn't do -- you didn't do it as strongly or substantially as if you took it down to 42.7. But yeah. <br> Q. Okay. And the same -- would the same be true if the Biden vote share was reduced to 48.5 percent? <br> MR. KERCHER: Same objection. <br> A. You would be shoring up Republican <br> performance in the district. <br> Q. Okay. Turning back to Page 11 and looking at figure 2. Do you know whether the green lines representing the Enacted Plan cut through or divide any minority communities? <br> A. I do not. <br> Q. You didn't evaluate that for purposes of your report, correct? <br> A. That's right. I wasn't asked to look at the minority outcomes. <br> MR. BRACHMAN: Okay. I'll ask the court <br> MR. KERCHER: Object to the form. <br> A. Well, it certainly zigzags. If you want to represent that all these of the shaded areas form an AAPI community, then it would divide those communities. I don't know that that's the case. I don't know if I put those in tandem in such a way that it sort of suggests that it zigzags in order to divide those communities. <br> Q. Fair enough. You would at least agree with me that the western border of Congressional District 3 has precincts with percentages greater than 25 percent AAPI voters on the east side and some on the west side of the district -- of the line, correct? <br> MR. KERCHER: Object to the form. <br> A. Yeah. I don't know if it would be better or worse if it segregated them or if it divided them like this; but it does seem to divide them. <br> Q. Okay. And you are not offering the opinion that this exact border -- western border of CD 3 was necessary to shore up that district, are you? <br> MR. KERCHER: Object to the form. <br> A. There may be other ways to draw it. I mean, there's almost always hundreds of ways to draw district boundaries. My only opinion is the way they drew it is consistent with trying to shore up |
| :---: | :---: |


|  | Page 234 |  | Page 235 |
| :---: | :---: | :---: | :---: |
|  | Republican vote strength. |  | and/or divide any communities of color, correct |
| 2 | Q. You haven't analyzed whether it would be | 2 | . KERCHER: |
|  | possible to produce | 3 | A. |
|  | the Trump 2020 vote share for CD 3 without separating | 4 | Q. Now, turning over to Page 20, you observed |
|  | AAPI voters as |  | , |
| 6 | right? |  | rump won by just 3 points to one where he |
| 7 | A. I haven't | 7 | received 62 percent of the two-party vote, correct? |
| 8 | Q. Okay. I'm going to go back to your report, | 8 | A. |
| 9 | Exhibit 1. Take a look at Page 19, please. Figure 8 | 9 | Q. And that's a 59 percent improvement, right? |
|  | shows Congressional District 6 Benchmark versus | 10 | A. A what? |
|  | Enacted Plan, | 11 | Q. A 59 percent improvement? Oh, no. |
| 12 | A. Corr | 12 | rry. I'm getting my math wrong. |
| 13 | Q. And in your description of $C D 6$, as you did | 13 | Let me ask the question this way. Is there |
|  | with | 14 | sser amount of improveme |
| 15 | moved out of the district and the number of voters who | 15 | ied as shoring up the district? |
|  | were moved | 16 | KERCHER: Object to the form. |
| 17 | A. Corr | 17 | A. I mean, any improvement would be shoring it |
| 18 | Q. And as with CD 3, you have not analyzed and |  | up. It might not make it -- it might not shore it up |
| 19 | you're not offering any opinion on the demographics of | 19 | enough to make the legislature or incumbent |
| 20 | those voters, | 20 | comfortable in the district, but it would be shoring |
| 21 | MR KERCHER |  | it up. |
| 22 | A. I didn't look at the racial demographic | 22 | Q. Okay. Take a look back at Exhibit 11, if |
| 23 | those voters | 23 | uld, the collection of maps. Please look at |
| 24 | Q. And as with CD 3, you don't know whether the | 24 | Page 134. Do you see this is labeled as Texas |
|  | green lines for the Enacted Plan for CD 6 cut through | 25 | Congressional District's 2021 Enacted Plan, |
|  | Page 236 |  | Page 237 |
| 1 | Dallas/Fort Worth? | 1 | rs in CD 33 and in CD 6. It looks to me like the |
| 2 | A. | 2 | precincts that are placed into District 6 tend to be |
| 3 | Q. And in the bottom left, I'll call | 3 | ss heavily Latino than the ones in 33 |
| 4 | there's a legend that indicates that the purpl | 4 | Q. Okay. And fair to say that the district |
|  | shading on this map represents Latino CVAP percentage. | 5 | lines for $C D 33, C D 30, C D 32$ also divide Latino |
| 6 | Do you see that? | 6 | voters? |
| 7 | A. Ye | 7 | MR. KERCHER: Object to the form. Calls for |
| 8 | Q. Okay | 8 | speculation. Misstates the previous testimony. |
| 9 | A. I'm colorblind, so I'll accept your | 9 | we |
|  | representation that it's purple. I can make | 10 | A. Looks like there are Hispanic and Latino |
|  | gradations. |  | precincts on either side of the lines for 32, 30, and |
| 12 | Q. Okay | 12 | 33. |
| 13 | A. It looks | 13 | Q. Okay. Let's go back to Exhibit 1, please, |
| 14 | Q. Okay. | 14 | on Page 28. At the bottom of Page 28, you observed |
| 15 | legend the indicator for Congressional District 6? |  | that CD 30 overall is a district that goes from one |
| 16 | A. Yes. Down to the bottom right | 16 | where Trump won 19.1 percent of the vote to one where |
| 17 | legend, yeah | 17 | he won 21.3 percent of the vote, correct? |
| 18 | Q. And you can see the black boundary lines for | 18 | A. Yes. |
| 19 | CD 6? | 19 | Q. And that increase constitutes shoring up for |
| 20 | A. Y | 20 | urposes of your report, correct? |
| 21 | Q. Okay. And is it fair to say that those | 21 | A. It would be a shoring up of Republican |
| 22 | lines appear to divide Latino voters in CD 6 from | 22 | voting strength in that district, although it would be |
| 23 | Latino voters in, for example, CD 33? | 23 | fairly useless. |
| 24 | MR. KERCHER: Object to the form |  | Q. Okay. And if you look at the following |
| 25 | A. There are certainly Latino or Hispanic |  | page, Page 30, where you analyze District 32, and |



| MR. KERCHER: Object to the form. <br> Speculative. Asked and answered. <br> A. I can't rule out the possibility that there <br> might be another approach out there that would achieve the same shoring up that the legislature did without splitting the precincts, the VIDs, in the way they are here. <br> Q. Sticking with this exhibit, if you'll turn, please, to Page 152. I'm sorry. Exhibit 11. Do you see that this map is labeled Texas Senate Districts 2021 Enacted Plan, Tarrant County? <br> A. Yes. <br> Q. In the lower right-hand corner, do you see a legend that indicates that the color shading on this map reflects Latino CVAP percentage? <br> A. Yes. <br> Q. Would you agree with me, looking at the <br> lines for Senate Districts 9, 10, and 22, that they divide the Latino CVAP in Tarrant County? <br> A. I'll agree that there are VIDs with Latino <br> CVAP in excess of 25.01 percent on both sides of the lines that you mentioned. <br> Q. And to the extent that these district lines <br> result in shoring up of Republican political <br> advantage, you are not offering the opinion that it <br> A. That's correct. <br> Q. Okay. Staying on Exhibit 11, if you'll turn with me to Page 149, please. Do you see that this map is labeled Texas Senate District's 2021 Enacted Plan, Fort Bend? <br> A. Yes. <br> Q. And in the lower right-hand corner, do you <br> see there is a legend that indicates the colored <br> shading reflects AAPI CVAP percentages? <br> A. Yes. <br> Q. Would you agree with me that the boundaries <br> of the Enacted Plan between Senate Districts 13 and 17 divide AAPI voters in the Fort Bend area? <br> MR. KERCHER: Object to the form of the question. <br> A. I would agree that there are precincts in the Fort Bend area with an AAPI CVAP in excess of .25 on both sides of the lines. <br> Q. And you're not offering the opinion that these specific boundaries were necessary to shore up any Republican partisan advantage in the Fort Bend area, correct? <br> MR. KERCHER: Object to the form of the question. You can answer. <br> A. I haven't considered whether alternative | Page 243 <br> was impossible to achieve that result -- Strike that. <br> You are not offering the opinion that these <br> specific district boundaries were necessary to achieve any shoring up of Republican partisan advantage in these districts, correct? <br> $\operatorname{MR}$. KERCHER: Object to the form of the question. <br> You may answer. <br> A. Yeah. I don't know if other lines would achieve the legislature's goals. <br> Q. And you can't rule out the possibility that the legislature could have shored up Republican political advantage in Tarrant County with districts that would have kept more of the Latino CVAP together in a single district, correct? <br> MR. KERCHER: Same objections. <br> A. Yeah. I don't know if there's a way to do that that would achieve the legislature's goals and that wouldn't run you -- as with all these maps, it wouldn't run you into some other sort of packing claims, so I don't know. <br> Q. Okay. And you're not offering an opinion on that, correct? <br> MR. KERCHER: Same objections. Asked and answered. <br> lines would achieve the legislature's goals in a way that wouldn't also run you into a Shaw claim or a packing claim. <br> Q. And you have not considered whether it would be possible to shore up Republican partisan advantage in Fort Bend senate districts while keeping more of the AAPI voters together in a single district, correct? <br> MR. KERCHER: Object to the form. <br> A. I haven't looked to see if alternative lines would keep those groups -- exist that would keep those groups more together that would achieve the legislature's goals while avoiding some other types of lawsuit. <br> Q. Okay. Staying on this exhibit, turn to <br> Page 140, please. Do you see that this map is labeled Texas House Districts 2001 Enacted Plan, Fort Bend? <br> A. Yes. <br> Q. And in the lower right-hand corner, do you <br> see there is a legend that indicates the colored shading reflects Latino CVAP in the Fort Bend area? <br> A. Yes. <br> Q. Okay. Looking at this map, would you agree with me that the boundaries of House District 26, the western boundary divides Latino CVAP, Latino voters -- |
| :---: | :---: |



|  |  |  |  |
| :---: | :---: | :---: | :---: |
|  | MR. KERCHER: Object to the form, |  | more detail than I can make |
|  | A. I did not. I only looked at the final maps. |  | Okay. If you'll look back at Exhibit 11 |
|  | Nothing has changed in the last 10 seconds. |  | that we were just looking at, that's the color-shaded |
|  | Mr. BRACHMAN: Okay. Mark this as Exhibit |  | You would agree with me that this is a dif |
|  | 12, |  | configuration of the Hels |
|  |  |  |  |
|  | ibit No. 12 |  | uration of House Districts 55 and 54 and what is |
|  | was marked for purposes of identification. |  | ed under the Enacted Plan Map, correct? |
|  |  |  | (RCHER: Object to the form of the |
|  | BY Mr. BRACHMAN: |  |  |
|  | Q. | 11 | You may answer. |
|  | considered this | 12 | A. Page 144 of Exhibit 11 is diffe |
|  | redistricti |  | 12, which |
| 14 | A. Bell and | 14 | st asking if they are different? |
|  | Q. And in this plan, District 54 includes part | 15 | MR. KERCHER: Same objection. |
| 16 | of Lampases County and part of Bell County, correct? | 16 | A. |
|  | A. I think it includes all of Lampases and pat |  | know whether the boundaries that are |
|  | of | 18 | reflected in Exhibit 11, the color-shaded map, were |
|  | Q. Fair enough. And the part of Bell County |  | as part of an amendment process during the |
|  | that's included in this plan, the eastern boundary of |  | tricting |
|  | Di |  | Mr. KERCHER: Object to the form of the |
|  | th | 22 |  |
|  | to -- Looks like that might be State Highway 109. Do |  | A. No. I don't know anything about the |
|  | you see that? | 24 | except that this looks an awful lot like the |
| 25 | A. I don't have my readers, so that's a little |  | benchmark plan, which I'm assuming is malapportioned. |
|  | Pag $\begin{array}{r}\text { Pag } \\ \hline\end{array}$ |  | Page 2 <br> ting plan, legislators discussed the fact |
|  | whether a district formation like what's reflected in |  | at the enacted western boundary of District 55 split |
| 3 | Exhibit 12 would have achieve |  | rican-American cormunity in Killeen, that has no |
|  | correct? |  | mpact on your opinion about the reason the boundary |
| 5 | MR. KERCHER: Object to the form of the |  | was drawn that way, correct? |
|  | que |  | Mr. KERCHER: Obj |
| 7 | A. Yeah. I don't know if you could have kept |  | estion. He's already testified that he didn't rely |
| 8 | the benchmark plan |  | any of the legislative history in reaching any of |
|  |  |  | onclusions. You already have the testimony that |
|  | Q. Okay. And you also don't know whether the | 10 | need 15 times on this question |
| 11 | district boundaries reflected in Exhibit 12 would hav | 11 | You may answer this question, Mr. Trende. |
|  | improved -- Well, strike | 12 | think you smuggled in an incorrect |
|  | You don't know whether it was necessary to |  | premise, which is that I'm offering an opinion on the |
|  | the western boundaries of District 55 dividing |  | n for this being drawn. They could have been |
| 15 | Killeen to shore up Republican partisan advantage in | 15 | rent to the splitting of the African-American |
|  | Bell County, do you? |  | ty as a means of trying to achieve their |
|  | Mr. KERCHER: 0 |  | n objective, if such existed. But regard |
|  | A. |  | nion that I'm offering is that it is consistent |
|  | Q. You're not offering that opinion in | 19 | with improving their partisan performance in the area. |
| 20 | report, correct? | 20 | Mr. BRACHMAN: Can we go off the record for |
|  | KERCHER |  | nutes? I'm just going to check my notes. I may |
|  | A. That's right. The only opinion I'm offering | 22 | rly done, Mr. Trende. |
|  | is that the district lines that were produced are | 23 | ss taken.) |
|  | consistent with shoring up Republican voting strength. | 24 | BY Mr. BRACHMAN: |
|  | Q. And if, during the debate on the House |  | Q. We're back on the record. Mr. Trende, |



| choice, but it could hypothetically skew the white candidate of choice in the Primary. <br> Q. And it would skew the distribution of votes <br> between Primary candidates, correct? <br> MR. KERCHER: Same objection. <br> A. It could, but those voters are nevertheless <br> real and so Primary voters are Primary voters. <br> MR. BRACHMAN: Mr. Trende, I appreciate your <br> time today. I will pass the witness. <br> EXAMINATION <br> BY MR. MCCAFFITY: <br> Q. Mr. Trende, can you hear me? <br> A. I can. <br> Q. My name is Sean McCaffity; I represent the <br> Mexican American Legislative Caucus. I'm going to try to be really brief with you. Okay? <br> A. That is a-okay. <br> Q. I figured it would be. <br> Before we get started, I want to follow up <br> on one thing, though. I think the tweet that was introduced into evidence as I think Exhibit 10, the December 14th, 2020, tweet. Do you know what I'm talking about? <br> A. Yes. <br> Q. Yeah. Do you believe there's tension <br> between making CD 3 a majority Trump district and also a majority Hispanic district? <br> $\operatorname{MR}$. KERCHER: Object to the form. <br> A. I don't know. I haven't looked at that. <br> Q. All right. Do you know what percent of the Hispanic vote Trump did receive in CD 23 in 2020? <br> A. I don't think anyone knows that with specificity. We have estimates of varying value. Q. Okay. If you would take your expert report, please, and turn with me to Page 132. This is the section of the report where you respond directly to some of Dr. Kousser's report, correct? <br> A. That's correct. <br> Q. The first sentence on Page 132 says, "Much of the Kousser report is dealt with generally above." <br> In what way or what did you mean when you were trying to refer to the sections above as being responsive to the Kousser report generally? <br> A. So the Kousser report talks a lot about the ways the districts were constructed. And so rather than repeating everything that had been written above about the construction of the districts, it just seemed useful to -- it just seemed useful to make the reference. | Q. All right. In that tweet, you generally <br> talk about you were "nerding out" and drawing for <br> Texas and said it was possible to draw a map in CD 23 <br> while keeping it two-thirds Hispanic and majority <br> Trump, correct? <br> A. I think that's right. Yeah. <br> Q. So why did you tweet about making CD 23 <br> majority Trump while keeping it 66 percent Hispanic? <br> A. Honestly, I understand why you all are <br> gravitating to this tweet. We have put more thought <br> into this tweet in this deposition than I probably did <br> writing it. I just wanted to draw a heavily <br> Republican map that, loosely speaking, would seem to satisfy VRA constraints and see if it could be done. <br> The same reason I say you can do a six-way <br> pizza-mander of Travis County, even though it doesn't mean you should. And to underscore how non-rigorous I was being, one of my reasons you wouldn't necessarily do that is "Oh, come on" reasons. <br> Q. Okay. Do you usually tweet about noteworthy political commentary? <br> $\operatorname{MR}$. KERCHER: Object to the form of the <br> question. <br> A. I tweet about noteworthy political commentary, but I also tweet for fun. <br> The other thing is that, as you may recall, originally there were different due dates for response to Kousser and response to Duchin. <br> Q. Uh-huh. <br> A. And so I think the way it was initially <br> constructed was a short-ish response to Kousser. And then, once we got the extension on Kousser and Duchin, it just got merged in this way. <br> Q. Okay. So, generally speaking, when you were talking about the demographic population shifts in and out of districts how the various districts were shifted during the 2021 redistricting cycle, that's what you're referring to when you say, "Much of the Kousser report is dealt with generally above"? <br> A. That's correct. <br> Q. All right. You do not do a specific <br> analysis of the circumstantial evidence of intent, right? <br> A. That's correct. <br> Q. You don't do an analysis -- <br> A. Well, except to the extent that something <br> like the simulations would be circumstantial evidence of intent. <br> Q. Okay. Fair. You don't do an analysis of the Arlington Heights factors in your report, correct? |
| :---: | :---: |


| A. Not directly. I don't know if any of these <br> analyses would bear on the Arlington Heights factors, but not directly. <br> Q. You have not endeavored to formulate any <br> specific opinions applying the statistical measures <br> that you put forth in your report to the Arlington <br> Heights framework? <br> MR. KERCHER: Object to the form of the <br> question. <br> You can answer. <br> A. Asked that way, I'll agree. <br> Q. Similarly, you have not endeavored to apply <br> your statistical analysis of the -- that ultimately <br> support your opinion that the redistricting maps were <br> consistent with political outcomes to the Senate <br> factors under Section Two of the Voting Rights Act? <br> MR. KERCHER: Same objection. <br> You can answer. <br> A. The way it's phrased, yes, I haven't <br> endeavored to specifically do that. <br> Q. And your report doesn't outline any opinions <br> on either specific Arlington Heights factors or the <br> Senate factors? <br> A. That's correct. <br> Q. You do not do an analysis of the racial <br> Page 264 <br> outcomes. So, in that sense, we are on the same page. Q. All right. In the next paragraph, the second sentence says, "Where Kousser goes astray is leaping to the conclusion that because in his view, race and politics are intermixed, that they can be treated as the same quantity." Did I read that right? <br> A. That's correct. <br> Q. Why can race and politics not be treated as the same quantity? <br> A. Because being intermixed is not the same thing as being the same thing. If you have -- <br> Assuming I recall Dr. Kousser's report correctly, and assuming that the correlation is 67 percent between race and politics, those still aren't the same quantity, and there are places where they diverge that can be of interest and illuminate things. <br> Q. Do you agree that race and partisanship are correlated in Texas generally? <br> $\operatorname{MR}$. KERCHER: Object to the form of the question. <br> A. I haven't looked specifically at that, but there is almost certainly some correlation between race and politics in general. <br> Q. Do you agree that race and party politics are highly correlated in Texas? | demographics of the populations that were moved or <br> shifted out of the various districts, correct? <br> MR. KERCHER: Object to the form. <br> A. That's correct. <br> Q. All right. In this second full paragraph on <br> Page 132, you indicate that Kousser provides evidence <br> that "Texas line drawers reconfigured the electoral <br> districts in a way that safeguarded Texas Republicans' <br> future interest," right? <br> A. I'm sorry. Could you refer me to a line <br> number. <br> Q. It's the last sentence, basically, of the second paragraph. <br> A. That is what the sentence says. Yes. <br> Q. Okay. So is your essentially general <br> critique of Kousser that his evidence is just <br> consistent as well with a political outcome for the redistricting cycle? <br> MR. KERCHER: Object to the form of the question. <br> A. I don't know that that's -- I don't know <br> that that's correct. All I'm saying right there is, on this point, we agree that Republicans had suffered setbacks and that some of the evidence that <br> Dr. Kousser presents is consistent with political <br> MR. KERCHER: Same objection. <br> A. I don't know if . 67 -- if that is, in fact, the $R$ square that he recited -- would qualify as strongly or highly correlated; but there would be a fair degree of correlation. There are certainly some places where the correlation is stronger than others. Q. Do you agree that race and party politics are inextricably intertwined in Texas? <br> $\operatorname{MR}$. KERCHER: Object to the form of the question. <br> A. No. <br> Q. Why not? <br> A. Because there are areas specifically in <br> Dallas where you have white voters that are voting very heavily Democratic. <br> Q. Is that your only basis for why you believe they're not inextricably intertwined? <br> A. No. There are areas where Hispanic voters <br> give a fair number of votes to Republican candidates. <br> There are relationships that crop up, but they are not inevitable; and I don't think you can -- you're bound by them in every example. <br> Q. Do you take issue with any of the social or cultural historical background of Texas and why or how race and politics have become intermixed, whether or |
| :---: | :---: |


|  | ge 266 |  | Page 267 |
| :---: | :---: | :---: | :---: |
| 1 | not highly or generally? |  | vis |
| 2 | MR. KERCHER: Object to the form of the |  | County and Austin being another example. And some |
| 3 | tion |  | areas where minority voters aren't as overwhelmingly |
| 4 | A. I don't understand that question |  | Democratic. |
| 5 | Q. Have you done any analysis of the social, |  | Q. You didn't do any testing or statistical |
| 6 | - |  | analysis yourself about the correlation between race |
| 7 | current state |  | and party politics in Texa |
| 8 | understand why or why not race and party politics | 8 | . KERCHER: 0 O |
| , | Texas may or may |  |  |
|  | MR. KERCHER: | 10 | You can answer. |
|  | question. | 11 | A. That's correct |
| 12 | A. I did not. I did not do a historical | 12 | All right. If Dr. Kousser's premise is |
|  | an | 13 | ion is correct that race and |
| 14 | Democratic parties with respect to race in Texas | 14 | litics are intertwined, would it be fair to |
| 15 | Q. Is it fair to say that your critique of | 15 | say that your report would also show that the Enacted |
|  | Dr. Kousser's | 16 | Maps are "consiste |
| 17 | in | 17 | dering"? |
| 18 | certain instances, white voters might vote Democratic | 18 | MR. KERCHER: Object to the form of the |
|  | and, in certain instances, Hispanic voters might vote | 19 | question. |
| 20 | Republican? | 20 | A. That depends on what the law is on the race |
| 21 | MR. KERCHER: | 21 | litics being intermixed and what judges and |
|  | question | 22 | re supposed to do in that circumstanc |
| 23 | A. I won't agree with the characterization of | 23 | Q. Do you have an understanding of what the |
| 24 | it as anecdotal, but I will agree that the reason th | 24 | rent state of the law is on that issue? |
|  | I disagree with him is because there are areas of |  | MR. KERCHER: Object to the form of the |
|  | Page 268 |  | Page |
|  |  | 1 | wing -- you maybe would draw a white |
| 2 | A. I don't know anything about Fifth Circuit | 2 | strict and it would end up being heavily Democrati |
| 3 | law. My understanding from the Supreme Court is that, |  | some of the districts in the Dallas/Fort Worth |
|  | if there is a relationship between race and politics, |  | area. So no, I don't think I can agree with that |
| 5 | it's not incumbent upon the legislatures to sort them |  | Q. All right. What about if you were only |
| 6 | out. That's a Thomas opinion |  | ing to use race in a regional area or in a -- for |
| 7 | Q. Is it possible for a map drawer to obtain |  | fic districts as opposed to trying |
|  | partisan or political objectives by using race as a |  | the board state-wide? |
| 9 | factor? |  | MR. KERCHER: Objection. Calls for |
|  | R. KERCHER: Objection. Calls | 10 | tion. |
|  | speculation | 11 | A. I don't know whether it would be possible to |
| 12 | A. |  | as of |
|  | Q. Is it possible for a map drawer to obtain | 13 | Q. Why don't you know that? Is it because you |
|  | partisan or political objectives by using race as a |  | didn't do a racially polarized voting analysis? |
|  | factor? |  | A. No, it's because I didn't examine every area |
|  | CHER |  | xas to see how maps could be drawn there if I |
| 17 | A. I suppose you could, but it wouldn't be as |  | awing on the basis of rac |
|  | good as using p | 18 | But your report does not rule out that race |
| 19 | Q. Is it possible for a map drawer to obtain |  | used as a factor in the map-drawing process, |
| 20 | partisan or political objectives in Texas by using |  | just that the maps, as they ultimately were |
|  | race as a predominant factor? |  | lished, were consistent with also political |
| 22 | MR. KERCHER: Object to the form of the | 22 | es? |
| 23 | question. | 23 | MR. KERCHER: Objection, compound. |
|  | A. I don't know if you would be able to do that |  | objection, misstates testimony. |
|  | because you would have places like Austin where you | 25 | You may answer. |



|  | Page 274 |  | ge 2 |
| :---: | :---: | :---: | :---: |
| 1 | Flip to Page 133, which is the second hal |  | guess it's a choropleth map and not a heat map as |
| 2 | of your analysis of Dr. Kousser's report. In the |  | such. But if you look at figure 25 |
| 3 | first full paragraph, you talk about a heat map for |  | Okay. What page is that on |
| 4 | strict 24 |  | A. Page 40. |
| 5 | A. |  | Q. |
| 6 | Q. And you say, if you had looked at that, it |  | A. Yeah. These are -- the colors -- the |
| 7 | obvious that the white areas north of Dallas |  | recincts that are non-Hispanic white plurality are |
| 8 | t |  | d. So as you can see -- Well, it actually |
| 9 | her than racial lines. What heat map are you |  | doesn't come out that cleanly on the printout. |
|  | ferring to there? | 10 | But on -- In Dallas County, the district |
| 11 | A. Do I refer to a heat map |  | , almot perfectly |
| 12 | Q. Well, you do in the text there. That's why | 12 | boundary, even though it doesn't go perfectly along |
| 13 | I'm asking because there's not a citation, and I don't |  | the non-Hispanic white boundary |
| 14 | seeing it in the statistical information you |  | Q. For CD 6 or 24? |
| $15$ | produced. I'm trying to understand where you got | 15 | I'm sorry. CD 24 |
| 16 | this | 16 | Q. Okay. My copy, unfortunately, is not a |
|  | A. I'm sorry. I just -- I'm not trying to be |  | lor copy, so it's harder for me to see. I wanted to |
| 18 | disagreeable. Can you point me to the sentence that |  | -- I just wanted to know what you are referring to |
| 19 | has |  | there, so that helps me. I appreciate |
| 20 | Q. The second full -- Sorry. The third full | 20 | A. |
| 21 | sentence of the first full paragraph, 133, it says -- | 21 | And then, in the next paragraph, you talk |
| 22 | A. Okay. | 22 | - in the second sentence, you say, "When |
|  | Q. -- "Had Dr. Kousser provided." | 23 | examining the districts in Austin and Houston on a |
| 24 | A. I see it now. I see it. So I think what | 24 | level, we plainly see mapmakers making |
|  | I'm referring to there -- what I'm referring to, I |  | choices consistent with a political explanation." |
|  | Page 276 |  | Page 277 |
| 1 | That's on Page 133. The second sentence of |  | referring to the analysis earlier in your report for |
| 2 | the last paragraph. |  | each of the Houston and Austin Congressional Districts |
| 3 | A. Yes, I see that. |  | re you show how the maps or the populations were |
| 4 | Q. So what districts in Austin and Houston are |  | fted in this redistricting cycle? |
|  | you referring to there? | 5 | A. |
| 6 | A. So in the Houston area, I talk about |  | Okay. All right. Did you have a chance to |
|  | District 7, choices being made on a political basis, |  | see the rebuttal report from Dr. Kousser? |
| 8 | consistent with the political basis |  | A. |
| 9 | Q. Okay. |  | Q. All right. Do you remember -- have you |
|  | A. District 8, I talk about the political |  | formulated any opinions in response to Dr. Kousser's |
| 11 | effects of the way the map's drawn |  | rebuttal report? |
| 12 | District 9, I talk about only to the extent |  | A. Yeah. I read it and had reactions |
|  | that it's impacted by the way District 7 is drawn. |  | Q. I need to use my time to figure out what |
| 14 | District 14, I talk about the political -- |  | ur opinions are about that, so why don't you tell me |
| 15 | or I probably could have skipped it since we aren't |  | about your reactions to Dr. Kousser's rebuttal report. |
|  | talking much about Beaumont, but I talk about the |  | A. Off the top of my head, I couldn't do that |
| 17 | effects in Beaumont. |  | Q. Do you have any recollection of what |
| 18 | District 22, District 38, and Travis County. | 18 | opinions you formulated in response to his rebuttal |
|  | I talk about District 10, District 21, District 25, |  | report |
| 20 | insofar as it's being moved out of Travis County, |  | A. I'm sorry. Not in hour eight of the |
| 21 | District 31 and 37. | 21 | deposition. Everything is blurred together at this |
| 22 | Q. Okay. So you're not -- basically, when | 22 | point |
| 23 | you're talking about in this paragraph, rebutting | 23 | MR. McCAFFITY: Give me one second. Let's |
| 24 | Kousser, talking about the Austin and Houston |  | go off the record for a minute and let me find his |
|  | districts being examined on a precinct level, you're |  | rebuttal report and see if I can refresh his |



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# IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS <br> <br> EL PASO DIVISION 

 <br> <br> EL PASO DIVISION}

| League of United Latin American |
| :--- |
| Citizens, et al. |
| Plaintiffs, |
| V. |
| Greg AbBotT, et al., |
| Defendants. |

Case No. 3:21-cv-00259
[Lead Case]

## DECLARATION OF SEAN TRENDE

I, Sean Trende, am over the age of eighteen and am fully competent to make this declaration. I submit this declaration in support of Defendant State of Texas' Response in Opposition to the LULAC Plaintiffs' Motion to Reopen Discovery for the Limited Purpose of Seeking Specific Documents from Dave's Redistricting, LLC (ECF 617). I have personal knowledge of the facts stated herein and declare the following to be true and correct:

1. I have been retained as an expert witness by the State Defendants in this matter. In that capacity, I prepared an expert report. Upon completion of my report, I provided my report to counsel for State Defendants. I also provided them all materials that I relied on in preparing my expert report. This included all facts or data that I considered when forming the opinions expressed in my report. I was deposed in my expert capacity on September 2, 2022.
2. My understanding is that LULAC is seeking maps reflecting lines for Texas congressional districts, which were referenced in tweets that were introduced as Exhibit No. 10 in my deposition. I conducted a thorough and diligent review for these maps. But I was not able to locate or identify the maps referenced in the tweet. The maps referenced in the tweet do not appear in my personal files or in my folders on Dave's Redistricting App.
3. Furthermore, as I explained in my deposition, these lines would have only been drawn for my entertainment, and not for any professional reasons. Accordingly, I would not have made any special efforts to retain any such map. The map referenced in the tweet may have been saved over, may have been deleted. The tweet predated the 2020 Census results, which were not released until April 26, 2021, according to the Census Bureau's press release. See 2020 Census Apportionment Results Delivered to the President, U.S. Census Bureau (Apr. 26, 2021), https://www.census.gov/newsroom/press-releases/2021/2020-census-apportionment-
results.html. Therefore, the tweet reflects merely my speculation based upon an earlier map drawn for the 39-seat configuration Texas was previously expected to be awarded. I do not recall the context of this tweet among the thousands I have sent in the past two years. In any event, the map referenced in my tweet was not among the facts or data I considered in forming the opinions I in my expert report.
4. It is also my understanding that LULAC is seeking five Texas maps connected to my Dave's Redistricting App account that were initially thought to have been created on or after July 1, 2022. As a user of Dave's Redistricting App, I do not have the ability to see map-creation dates. But it is my understanding that Dave's Redistricting, LLC ("Dave's") does have that ability. From my discussion with Dave's, there are no Texas maps connected to my account that were created on or after July 1, 2022, and I have no reason not to believe Dave's. Any such maps that pre-date July 1, 2022 would have been provided to State Defendants if they helped me form the opinions I expressed in my report. Thus, any such maps are unconnected to my work as an expert witness in this matter and are therefore unrelated to the opinions that I have expressed in my report. Nor would they constitute any of the facts or data that I considered when forming the opinions expressed in my report since I have already provided all such materials.

I declare under penalty of perjury under the laws of the United States of America that to the best of my personal knowledge, the foregoing is true and correct.

Executed on October 21, 2022, in Columbus, Ohio.

Ls/ Sean Trende
SEan Trende


[^0]:    1 Nor has the United States or MALC joined LULAC's motion to reopen.

[^1]:    dot is an outlier, right?
    Page 28
    A. Yes.
    Q. Okay. So you're analyzing the same
    ensemble, but with respect to percent minority in
    figure 26 and percent Democratic in figure 27, are
    there any overlaps between the map -- the maps that
    you've considered? Does that make sense?
    MR. KERCHER: Object to the form.
    A. It does not.
    Q. Okay. I'll come back to that.
    If you go to the bottom of Page 43, the last
    sentence, it says, "Republicans sought to take an area
    where they would naturally win two or three seats and
    turn it into one where they win four."
    Can you tell me, in figure 27, which
    district is the fourth district that you're referring
    to?
    A. So, first off, that's not the last sentence.
    The last sentence has a preface to it. "But here, the
    data and history are more consistent with the
    political story."
    The fourth Republican district is the fourth
    column that is around 45 percent Donald Trump. So
    about 7 percentage points more Republican than the
    country as a whole. I believe that would make it

[^2]:    Precinct method as well?
    Page 48
    A. Yes.
    Q. Can you describe what that means to you?
    A. Yeah. HPA, which is -- or the Homogenous Precinct Analysis is when you look at districts with a minority population in excess of some threshold. I mean, ideally, you would have 100 percent minority precincts because, then, there is no problem of Ecological Inference. The voting rates of those Homogenous Precincts are going to be equal to the minority voting shares within those precincts.

    You know, you can take the threshold down to 90 percent and your error is going to be constrained by the Method of Bounds to be pretty small.
    Q. So Homogenous Precincts require the minority CVAP, or whatever VAP, whatever metric you're using, to be above a certain threshold to give meaningful data, right?
    A. That's right. The further you move away from 100 percent, the kind of broader the potential error margin is from the possible bounds. You want to be as close to 100 if you're doing that, as you can, but that's not always possible.
    Q. Okay. So, you know, in your study of the Texas districts, do you have an expert opinion as to

