

FILED

October 17, 2025

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

BY: Diego Cesena
DEPUTY

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4	LEAGUE OF UNITED LATIN	§	3:21-CV-00259-DCG-JES-JVB
5	AMERICAN CITIZENS, ET AL	§	
6		§	
7	V.	§	8:59 A.M. TO 1:00 P.M.
8		§	
9	GREG ABBOTT, IN HIS	§	
10	OFFICIAL CAPACITY AS	§	
11	GOVERNOR OF THE STATE OF	§	
12	TEXAS, ET AL	§	OCTOBER 9, 2025

**PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE DAVID C. GUADERRAMA,
HONORABLE JERRY E. SMITH
AND HONORABLE JEFFREY V. BROWN
DAY 8 (MORNING SESSION) OF 9 DAYS**

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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

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**DAY 8
(PRELIMINARY INJUNCTION)**

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JUDGE GUADERRAMA: Good morning, everyone.

Please be seated.

08:59:51

So, Mr. Fox, here we go. Dr. Lewis on the witness stand. Whenever you are ready.

09:00:04

MR. FOX: Good morning, Your Honors. Before I begin, I know Judge Brown had asked for copies of rebuttal reports. I have a copy of our rebuttal report. I have three of them in case all three of you would like them. I think some of the other plaintiff groups probably have theirs.

Can I approach to provide those to the Court?

09:00:12

JUDGE GUADERRAMA: Yes, sir. Please.

MR. DUNN: I also have the reports of Dr. Barreto. I wasn't sure whether all of them or just the rebuttal, so I just got all three.

Shall I hand those up?

09:00:24

JUDGE GUADERRAMA: Thank you, Mr. Dunn.

MS. PERALES: If I might approach, Your Honor.

JUDGE GUADERRAMA: Yes, ma'am. You have got yours as well?

09:00:34

MS. PERALES: Yes. And we did print out all of the reports because we weren't sure, and we like to over-prepare.

1 JUDGE GUADERRAMA: Thank you.

2 MS. PERALES: I'm going to leave them here with
3 Mr. Velez. Thank you.

4 MR. FOX: I would say I will. We did not print
09:00:41 5 out the initial reports, so if Your Honor would like one,
6 happy to have one over to you after lunch.

7 JUDGE GUADERRAMA: All right. Mr. Fox.

8 **JEFFREY B. LEWIS, Ph.D,**

9 having been previously duly sworn, testified as follows:

09:00:55 10 **CROSS-EXAMINATION (continued)**

11 BY MR. FOX:

12 **Q.** Good morning, Dr. Lewis.

13 **A.** Good morning.

14 **Q.** Now, Dr. Lewis, one thing you could analyze in your
09:01:03 15 field of study is whether two different racial groups tend
16 to vote in the same way or in a different way in
17 elections; is that right?

18 **A.** Yes. I think I could.

19 **Q.** You wouldn't want to just assume that two different
09:01:14 20 racial groups tend to vote in the same way, would you?

21 **A.** I suppose it would depend on the purpose. If I was
22 only interested in sort of the average of the two, I might
23 not be interested in the composition.

24 **Q.** But if you say you knew how one racial group voted,
09:01:34 25 you wouldn't want to just assume that some other racial

1 group voted in that same way, would you?

2 **A.** Again, I guess for the purposes of determining whether
3 two groups voted differently, I would not want to, no.

09:01:50

4 **Q.** So, for example, if for some part of your analysis you
5 needed to know, for whatever reason, how Asian voters in
6 Texas tended to vote, you wouldn't want to just assume
7 that they vote the same way as White voters, would you?

8 **A.** If I needed to know how Asian voters voted, I
9 wouldn't -- I'm sorry.

09:02:10

10 Could you restate your question for me?

11 **Q.** Yes.

12 If for some aspect of your analysis you needed to know
13 how Asian voters in Texas tended to vote, you wouldn't
14 want to just assume they vote the same way as White
15 voters, would you?

09:02:21

16 **A.** I guess I would need more information about the
17 situation, you know. In some cases, in work that I have
18 done where there are racial groupings that are very small,
19 sometimes those would be combined into a category of White
20 voters that would include those others.

09:02:50

21 **Q.** Texas has a pretty substantial Asian population,
22 doesn't it?

23 **A.** In parts of Texas, I suspect that's -- that's true.

24 **Q.** Are you aware that according to the 2019 to 2023

09:03:06

25 American Community Survey there are almost 1 million Asian

1 voters in Texas or Asian eligible voters in Texas?

2 **A.** I couldn't tell you. I couldn't tell you that that's
3 how many there were, but it doesn't surprise me.

09:03:21

4 **Q.** And are you aware that Asian eligible voters make up
5 as much as 18.7 percent of eligible voters in some Texas
6 congressional districts?

7 **A.** Again, it doesn't surprise me; but I couldn't have
8 told you that.

9 **Q.** Not something you looked at?

09:03:32

10 **A.** Not something I looked at.

11 **Q.** Now, if you wanted to know how Asian voters in Texas
12 tend to vote, you could run an ecological inference
13 analysis to try to answer that question, right?

09:03:46

14 **MR. BERG:** Your Honor, objection to relevance.
15 There is no claim as to Asian voters. If Mr. Fox has a
16 question about the claims in this case --

17 **MR. FOX:** Your Honor, I will get there.

18 **JUDGE GUADERRAMA:** All right. Let's get there.

09:04:04

19 **A.** I -- you know, I didn't run any ecological inference
20 estimation in this matter. I relied on the estimates of
21 Professor Ansolabehere.

22 **BY MR. FOX:**

23 **Q.** Did you look at Dr. Ansolabehere's underlying
24 analysis?

09:04:13

25 **A.** I did, yes.

1 Q. Do you recall that Dr. Ansolabehere did, in that
2 underlying analysis, include EI estimates for Asian voters
3 in Texas?

4 A. I believe that he did.

09:04:22

5 Q. So if you needed for your analysis to see how Asian
6 voters in Texas tend to vote, you could have looked at
7 Dr. Ansolabehere's analysis for that information; is that
8 right?

09:04:35

9 A. I think that's true, yes. It would have provided
10 estimates, yeah.

11 Q. To your recollection was there any point in your
12 analysis when you needed to have an estimate for how Asian
13 voters in Texas tend to vote?

09:04:56

14 A. I'm trying to think. I'm not -- I'm not sure
15 that -- I'm not sure that there was.

16 Q. Okay. Let's pull up your code file again, which is
17 Gonzales 68.

18 MR. FOX: If we could, Mr. Medina.

19 BY MR. FOX:

09:05:16

20 Q. If we could go to -- do you recognize this, again, as
21 your code file from this matter?

22 A. I do.

23 MR. FOX: If we could go to page 4, please,
24 Mr. Medina.

09:05:24

25 BY MR. FOX:

1 Q. In the -- towards the middle of that page, Dr. Lewis,
2 do you see a function that starts with the word --

3 MR. FOX: If we could zoom in on the function
4 that starts with the word -- sorry. It's page 4. Yes.

09:05:33

5 BY MR. FOX:

6 Q. Do you see a function, it's about two-thirds of the
7 way down. There is a function that says [as read:]
8 Mutate implied average Dem.

9 Do you see that?

09:05:46

10 MR. FOX: Maybe if we could zoom in on that.

11 A. Yes.

12 BY MR. FOX:

13 Q. And do you see there in this function what you are
14 doing essentially is multiplying an estimate for
15 Democratic support of a particular racial or ethnic group
16 by the population of that particular racial or ethnic
17 group; is that right?

09:05:58

18 A. Yes.

19 Q. And so you multiply the estimate for Black support for
20 Democrats by the population of Democrats -- or I'm
21 sorry -- by the population of Black eligible voters,
22 right?

09:06:11

23 A. Yes.

24 Q. And you multiply the Hispanic estimate by the number
25 of Hispanic eligible voters?

09:06:20

1 **A.** Yes.

2 **Q.** And then you multiply the White estimate by the sum of
3 the number of White eligible voters and Asian eligible
4 voters; is that right?

09:06:30

5 **A.** Yes.

6 **Q.** So in doing this, you are assuming that Asian voters
7 vote like White voters; is that right?

8 **A.** For the purposes of calculating that variable, yeah.

09:06:45

9 **Q.** And you did that even though you could have looked to
10 Dr. Ansolabehere's data to actually get an estimate for
11 how Asian voters vote; is that right?

12 **A.** Yes.

13 MR. FOX: We can take that down, Mr. Medina.
14 Thank you.

09:06:55

15 If we can go back to your report, State 570, page 4,
16 Figure 1.

17 BY MR. FOX:

18 **Q.** You talked about these plots on your direct
19 examination some, right?

09:07:10

20 **A.** I do -- or did.

21 **Q.** To be clear, these are plots, the black dots, of every
22 precinct in Texas; is that right?

23 **A.** Every precinct for which data on the level of Trump
24 support and the percent of Black voters was included in

09:07:31

25 Dr. Ansolabehere's datasets.

1 Q. It's not divided by district in any way?

2 A. It is not divided by district, no.

3 Q. So this is a pure statewide analysis?

4 A. That's right.

09:07:41

5 Q. If Hispanic voters, for example, in different
6 districts vote differently, this doesn't reflect that at
7 all, correct?

8 A. You couldn't infer that they did from this. That's
9 true.

09:07:57

10 Q. And I want to make sure I understand what it is that
11 you think this chart shows. You're not trying to say,
12 Dr. Lewis, that this chart says something about the role
13 of race in politics generally, are you?

14 A. I am not.

09:08:12

15 Q. And you are not trying to say, for example, that race
16 and racial attitudes do not play an important role in
17 affecting political beliefs, are you?

18 A. I am not.

09:08:23

19 Q. You don't cite any literature on that issue in your
20 report?

21 A. I do not.

22 Q. And that's not something you are offering an opinion
23 on at all?

24 A. That's correct.

09:08:33

25 MR. FOX: Now, if we could go to the next page,

1 page 5, Figure 2.

2 BY MR. FOX:

3 **Q.** Similarly, this is a statewide analysis, right,
4 Dr. Lewis?

09:08:43 5 **A.** That is correct.

6 **Q.** It doesn't reflect any differences between particular
7 districts?

8 **A.** That's correct.

9 **Q.** And similarly, you are not saying with this analysis
10 that race and racial attitudes don't play an important
11 part in political beliefs?

12 **A.** I am not saying that -- I think you said a double
13 negative there, so I want to be sure that I answer in the
14 correct way. So maybe if you would just restate the
15 question, I'll be sure to answer the question correctly.

16 **Q.** I appreciate that.

17 So are you saying in this chart that race and racial
18 attitudes do not play an important role in political
19 beliefs?

09:09:14 20 **A.** I am not.

21 **Q.** Thank you.

22 MR. FOX: If we could go now to page 7 of your
23 report.

24 BY MR. FOX:

09:09:25 25 **Q.** Do you see on the screen Table 1 of your report?

1 **A.** I do.

2 **Q.** I have a series of questions about this table.

3 First, this too is a statewide analysis, right,
4 Dr. Lewis?

09:09:36 5 **A.** Yes. It aggregates across the whole state.

6 **Q.** So this too does not reflect any particular effect of
7 any particular district, correct?

8 **A.** That's correct. Well, I -- only in the sense that the
9 whole is the sum of the parts.

09:09:53 10 **Q.** Now, in this chart you have separated the voting age
11 citizens by party, right?

12 **A.** That's right.

13 **Q.** But there is no party registration in Texas, correct?

14 **A.** Correct.

09:10:09 15 **Q.** And you did not look, in preparing this data, at how
16 voters in Texas, like whether they had voted in the
17 Democratic primary or the Republican primary?

18 **A.** No, I did not.

09:10:22 19 **Q.** In fact, you didn't actually try to separate voters
20 into Democrats and Republicans at all, did you?

21 **A.** Yeah. What -- what I mean there, I think I described
22 this yesterday, by Democrat and Republican, is people who
23 have a preference for the Democratic candidate or the
24 Republican candidate in each of the contests considered by

09:10:45 25 Dr. Ansolabehere.

1 Q. And when you meant preference, you determined that
2 just by how they cast their vote, right?

3 A. By the shares, by the estimated shares of those groups
4 that cast votes for those candidates.

09:10:55 5 Q. So if a voter voted for President Trump in the
6 presidential contest but for Colin Allred in the Senate
7 contest, how is that reflected on your chart?

8 A. Well, this is just averaging across all of the
9 contests and all the districts.

09:11:12 10 Q. So is that voter sort of counted in part as a Democrat
11 and in part as a Republican in this analysis?

12 A. Yes. Because for the purposes of some of those
13 contests, they are a Democrat or they have a preference
14 for Democrat and then others they have a preference for
09:11:25 15 Republican.

16 Q. So we can't really look at this and tell like --
17 because that voter is an individual person, right?

18 A. That voter is an individual person, yes.

09:11:40 19 Q. So we can't really look at this and tell did this map
20 help that voter, right? That's not a question that this
21 analysis can answer?

22 A. With respect to any specific voter?

23 Q. Correct.

09:11:49 24 A. No. With respect to any specific voter, I don't know
25 what their preference was, so I can't say what the share

1 of times that they cast votes on things.

2 **Q.** And for a voter to cast some Democratic votes and some
3 Republican votes, they are actually counted on both sides
4 of your chart, right?

09:12:05 5 **A.** They would have a percentage, you know, like what
6 fraction of times they vote on either side.

7 **Q.** And to be fair, this classification approach of
8 Democrat versus Republican, that's your innovation, right,
9 Dr. Lewis?

09:12:20 10 **A.** Again, by Democrat and Republican, you are just
11 talking about how often people who vote for different
12 parties are electing the candidate of choice.

13 **Q.** But you cite for this analysis a report by a Dr. Max
14 Palmer in North Carolina?

09:12:34 15 **A.** That's right.

16 **Q.** He didn't separate voters into Democrat and Republican
17 in this way, right?

18 **A.** I don't believe so.

19 **Q.** So that's something that you came up with?

09:12:42 20 **A.** That's, yeah, an extension to what he did.

21 **Q.** And you don't cite any literature to support that
22 approach of desegregating Democrats from Republicans,
23 right?

24 **A.** I do not.

09:12:57 25 **Q.** More broadly, is it your view in presenting this data

1 that higher percentages are better?

2 **A.** I think that is the interpretation of Dr. Palmer. I
3 was -- I was asked to produce this chart and not
4 necessarily to judge it. But I would say that the
09:13:22 5 differences are certainly something that you could say
6 that having the rate go up or down is meaningful. I think
7 the rate is also meaningful.

8 I suspect one could have some argument about whether
9 it is always an indication of less or more, I would say,
09:13:45 10 voting power to have that number go up or down.

11 **Q.** Yeah. So, Dr. Lewis, I'm not asking for Dr. Palmer's
12 opinion. Dr. Palmer is not here, right?

13 **A.** I don't know Dr. Palmer. I don't know that he is here
14 or not.

09:13:58 15 **Q.** Well, you are here, right?

16 **A.** I am here, yes.

17 **Q.** And you offered this report?

18 **A.** I did.

19 **Q.** And it sounds like you are not sure that these numbers
09:14:04 20 have any particular significance at all; is that right?

21 **A.** Well, they represent what they are -- they are what
22 they purport to be. So, again, to the extent that -- and
23 I think a quite reasonable extent to which you can say
24 that if the chances of voting for the winning candidate go
09:14:30 25 down, a map is less favorable to you, relative to a

1 previous map, that's an indication of reduced voting
2 power.

3 **Q.** Well, let me ask you this, Dr. Lewis. You are
4 familiar with the concept of packing in redistricting?

09:14:44

5 **A.** I am.

6 **Q.** And if you have a district that is packed, what does
7 that mean?

09:14:59

8 **A.** Well, one way to think about that is the concept
9 that's often referred to as wasted votes. So if you have
10 a district that's packed, you can diminish -- if you pack
11 a district, you can diminish the voting power of the group
12 by increasing the size of its winning majority beyond what
13 is necessary to elect the candidate of that group's
14 choice.

09:15:18

15 **Q.** And, Dr. Lewis, this idea of wasted votes in a packed
16 district, this analysis doesn't account for that at all,
17 does it?

18 **A.** It does not.

09:15:28

19 **Q.** In fact, a packed district would look great on this
20 analysis; isn't that right?

21 **A.** If you have a -- if all of the members of a particular
22 group lived in a district that that group carried, then,
23 yeah, 100 percent of those people would appear to vote for
24 the winning candidate.

09:15:52

25 **Q.** Isn't what actually matters, Dr. Lewis, the number of

1 districts in which a given group has the opportunity to
2 elect its candidates of choice?

09:16:12

3 **A.** That is an important -- that is an important -- I
4 don't know if it's the thing that is important. I think
5 it probably just depends on what the question is a little
6 bit. But I think there is a sense in which you might
7 imagine that, at the very least, there is more effective
8 representation in places where more of the voters get to
9 vote or are voting for the candidate that wins.

09:16:31

10 **Q.** But to answer my question, isn't a very important
11 issue the number of districts in which a given group has
12 the opportunity to elect their candidates of choice?

13 **A.** Certainly in litigation around the voting rights
14 that's a very commonly considered quantity.

09:16:49

15 **Q.** And this percentages that you have here don't bear any
16 direct relationship to that question. Isn't that true?

17 **A.** They don't answer that question, no.

18 **Q.** Now, Black voters in Texas, you would agree,
19 overwhelmingly vote for Democratic candidates, yes?

09:17:08

20 **A.** Yeah. I believe Dr. Ansolabehere's estimates are sort
21 of statewide. Maybe about 83 percent or something like
22 that.

09:17:22

23 **Q.** So the row for Black voters in the Democrat section of
24 this chart, that is a much larger group of voters than the
25 row for Black voters in the Republican section of this

1 chart; is that right?

2 **A.** The percentages, yeah. The number of people who
3 comprise the percentages in that row is a much larger
4 number of people, yeah.

09:17:37

5 **Q.** So it would be a mistake, Dr. Lewis, to look at these
6 numbers and say, well, it hurt Black Democrats by
7 10 percent, but it helped Black Republicans by 12 percent,
8 so that's basically a wash.

9 That would not be accurate; isn't that right?

09:17:52

10 **A.** That's correct.

11 **Q.** And, similarly, if there are more Hispanic votes for
12 Democrats than there are Hispanic votes for Republicans,
13 then it would not be accurate to say, well, a loss of
14 12 percent, a gain of 11 percent, that's basically a wash.

09:18:06

15 That would be inaccurate, too, right, Dr. Lewis?

16 **A.** Correct.

17 **Q.** And, in fact, to figure this out, you would need to
18 just combine those and get a total and see the effect on
19 the groups as a whole; is that right?

09:18:18

20 **A.** Yes.

21 **Q.** And I think you said yesterday you did that analysis,
22 didn't you?

23 **A.** I did.

24 **Q.** And your code includes code to create a table of that
25 analysis, doesn't it?

09:18:25

1 **A.** It does.

2 MR. FOX: If we could pull up, Mr. Medina,
3 Gonzales 73.

4 BY MR. FOX:

09:18:36 5 **Q.** Do you recognize this -- and maybe the formatting is a
6 little different. But do you recognize this as the table
7 that is output by your code if you run your code as you
8 wrote it?

9 **A.** I do.

09:18:44 10 **Q.** And you see here it has Democrat and then White,
11 Black, and Hispanic, right?

12 **A.** I do.

13 **Q.** And that's just like in your report?

14 **A.** I believe so.

09:18:50 15 **Q.** And then it has Republican White, Black, and Hispanic,
16 right?

17 **A.** It does.

18 **Q.** And that's just like in your report?

19 **A.** Yes.

09:18:57 20 **Q.** And then it has a total White, Black, and Hispanic,
21 right?

22 **A.** Yes.

23 **Q.** And you left that off your report?

24 **A.** Inadvertently, yes.

09:19:05 25 **Q.** Well, it's one-third of this chart, right?

1 **A.** It is.

2 **Q.** And if you look at the total, you can see that it
3 keeps things for White voters about the same, but it hurts
4 Black voters overall and it hurts Hispanics overall by
5 your metrics, right?

09:19:19

6 **A.** Yes.

7 **Q.** And that wasn't something that you included in your
8 report?

9 **A.** It's something I meant to include in my report.

09:19:24

10 **Q.** Who made the decision to omit that from your report?

11 **A.** I don't know that any decision was made or who would
12 have made it.

13 **Q.** So either someone decided and you don't remember who,
14 or you just carelessly left it out? Is that your
15 testimony?

09:19:37

16 **A.** It's not a question of remembering. I don't -- I
17 don't know how that -- how that happened.

18 **Q.** Is it just a coincidence, Dr. Lewis, that the part of
19 this table that was left off is the part that shows the
20 net harm of this map to minority voters, according to your
21 analysis?

09:19:53

22 **A.** I don't know. What I can say is, in my opinion, it
23 would -- you know, it would -- if it was someone's intent
24 to leave it out for the purposes that you are I think

09:20:08

25 implying, I can say that I think that that was a pretty

1 unfortunate decision because it's a very, very obvious
2 point.

09:20:25

3 That because there are more of the two groups
4 of -- you know, more White voters who are Republicans and
5 more Black voters who were Democrats, that the impact in
6 terms of this measure and the estimates that we get within
7 each group, when those are averaged, that the net effect
8 is going to be the one that you see in the third row.

09:20:40

9 So I don't see any particular benefit to having
10 omitted it for any reason. But, again, I can't speak to
11 that because I simply don't know.

12 **Q.** Well, Dr. Lewis, who wrote your report?

13 **A.** I did.

09:20:55

14 **Q.** So the person who left this off must have been you,
15 no?

16 **A.** So the way that the filing of this report worked is
17 that I gave the documents to folks to format in a way
18 that's appropriate for submission and also to help with
19 typos and so forth, do some copyediting.

09:21:23

20 And then there was -- after that process had been
21 engaged in, I made some other suggested edits and so
22 forth. There were some -- there was some back-and-forth.

09:21:43

23 And at some point -- at some point in that
24 back-and-forth, apparently these rows were lost and I
25 didn't -- I didn't notice.

1 Q. Is it your testimony that they were included in your
2 original draft of this report?

3 A. Yes.

09:21:50

4 Q. And then somewhere in the back-and-forth with your
5 lawyers this piece was removed?

6 A. Yes.

7 Q. And you didn't notice that before you signed the final
8 report?

9 A. That's correct.

09:21:57

10 Q. And you don't know why your lawyers left it off?

11 A. I don't know that they intended to. And I don't know
12 what their intention was that they did.

13 Q. Can you, as you sit here today, tell me whether your
14 lawyers made any other changes to your report that you
15 didn't notice?

09:22:14

16 A. I'm not aware of any.

17 Q. Finally, Dr. Lewis --

18 MR. FOX: We can take that down, Mr. Medina. I
19 think we can disconnect.

09:22:23

20 BY MR. FOX:

21 Q. I want to ask you a few questions about a subject
22 matter that to be clear I do not want any privileged
23 information.

24 Do you understand that?

09:22:30

25 A. I do.

1 Q. I understand that in addition to being an expert
2 witness in these proceedings, you, yes or no, served as an
3 expert for the Senate in evaluating these maps?

4 MS. MCKNIGHT: Objection, Your Honors. It's
09:22:43 5 important for me to raise this issue now. I appreciate
6 where Mr. Fox is going. I want to alert the Court that
7 this testimony is -- the questions will elicit testimony
8 that is covered under a straightforward application of the
9 *Kovel* doctrine.

10 As you know, the *Kovel* doctrine covers when
11 technicians are hired by lawyers to support lawyers in
12 developing legal counsel. That work and those
13 communications are protected as attorney-client privilege.

14 JUDGE GUADERRAMA: Is that what he is asking for
09:23:13 15 or just asking if he was hired to do that?

16 MR. FOX: Your Honor, I'm just asking for the
17 fact of whether he was. I do not -- I want to be clear
18 I'm not asking for a waiver of privilege. I don't at this
19 point want him to waive privilege.

09:23:25 20 JUDGE GUADERRAMA: Just go slowly and give her a
21 chance to object in case she feels like she needs to.

22 BY MR. FOX:

23 Q. So, Dr. Lewis, you also worked, yes or no, as an
24 expert for the Texas Senate in connection with the recent
09:23:36 25 redistricting, yes?

1 **A.** Yes.

2 **Q.** And you did not mention that work in your report, yes
3 or no?

4 **A.** I did not.

09:23:49

5 **Q.** So to be clear, you were describing in your report an
6 analysis of the Texas map, right?

7 **A.** I am describing in my report things related to two
8 Texas maps.

09:24:11

9 **Q.** You didn't see fit to mention that you had done other
10 work related to this Texas map?

11 **A.** I don't know that I have.

12 MR. FOX: Thank you very much, Dr. Lewis. No
13 further questions.

14 **CROSS-EXAMINATION**

09:24:33

15 BY MS. PERALES:

16 **Q.** Good morning, Dr. Lewis.

17 **A.** Good morning.

09:24:46

18 **Q.** My name is Nina Perales. I represent the LULAC
19 plaintiffs. I'd like to show, if we could, State
20 Exhibit 570, which is your report in this case, Dr. Lewis.

21 And when we get it up, I'd like to go to page 2,
22 paragraph 2. Down towards the bottom of your paragraph 2,
23 I believe you list five cases in your last sentence in
24 which you testified as an expert; is that correct?

09:25:31

25 **A.** Yes.

1 Q. I'd like to talk to you about three of those five
2 cases. In *Yumori-Kaku v. City of Santa Clara*, the trial
3 Court did not credit your analysis and instead credited
4 the plaintiff's expert's analysis instead, correct?

09:25:55 5 A. I don't know.

6 Q. In *Nairne v. Ardoin* -- with apologies to Mr. Berg, who
7 said it should probably be pronounced in French, I can't
8 do that, so I'm just going to ask you about *Nairne v.*
9 *Ardoin*, the district court also did not credit your

09:26:18 10 analysis and credited instead the analysis of the
11 plaintiff's expert; isn't that right?

12 A. I don't know.

13 Q. And then finally, in *Robinson v. Ardoin*, the district
14 court wrote about your analysis, quote, [as read:] His
15 opinion is simply unsupported by sufficient data and is
16 accordingly unreliable; is that right?

09:26:38

17 A. I don't know.

18 Q. And did the district court then subsequently get
19 affirmed -- on appeal, are you aware that the Fifth
20 Circuit affirmed the Section 2 analysis but reversed the
21 preliminary injunction?

09:27:00

22 A. I don't know.

23 Q. Let's go to page 4 and Figure 1. You note here that
24 you plotted with dots the votes for President Trump in
25 November 2024 in 8,386 Texas voting precincts; is that

09:27:29

1 correct?

2 **A.** Yes. I believe so.

3 **Q.** And you -- in your left-hand column, you plotted those
4 precincts with one axis being votes for President Trump,
09:27:50 5 the other axis is votes for Governor Abbott; is that
6 right?

7 **A.** Yes.

8 MS. PERALES: And if we could zoom in to the
9 left-hand scatterplot.

09:28:08 10 BY MS. PERALES:

11 **Q.** Here you concluded that among precincts with the same
12 level of support for candidate Abbott in 2022, there is
13 relatively little variation in support for candidate Trump
14 two years later, correct?

09:28:20 15 **A.** Yes.

16 **Q.** So if we could put it more plainly, what you are
17 saying here is that Republicans vote Republican, correct?

18 **A.** Yes.

19 MS. PERALES: If we could zoom in to the
09:28:33 20 scatterplot on the right, the third scatterplot.

21 BY MS. PERALES:

22 **Q.** So, again, each of these dots is a Texas precinct,
23 correct?

24 **A.** Yes.

09:28:49 25 **Q.** And the placement of each of these dots in the

1 scatterplot is based on the results of the casting of the
2 total number of votes in the precinct, correct?

3 You did not plot these precincts based on something
4 less than the total number of votes for either Trump or
5 someone else?

09:29:14

6 **A.** If I understand what you mean, no, I did not.

7 **Q.** Okay. So when we look at any one of these dots, the
8 votes that produced the location of the dot on the
9 scatterplot could be cast by some combination of Anglo and
10 Hispanic voters, correct?

09:29:32

11 **A.** And surely were, yes.

12 **Q.** And it's also possible that votes that produced the
13 location of any of these dots could have been cast by
14 Black and Hispanic voters in combination, correct?

09:29:46

15 **A.** Yes. As well as Asian and any other group in that
16 precinct.

17 **Q.** Thank you. You took care of my next question.

18 **A.** I just, you know, help where I can.

19 **Q.** Thank you.

09:29:57

20 And so you don't report an estimate from this
21 scatterplot of Latino support for Trump in the 2024
22 general, correct?

23 **A.** The only place with which something like that could be
24 inferred is in the particular case where the percent of
25 the precinct that is Hispanic is effectively 100 percent.

09:30:16

1 And in that case, exactly as you just described, there is
2 no one else to be doing that voting of any other group;
3 and so we know in those cases that that's the voting of
4 that group.

09:30:32

5 But otherwise, no. And I think important here -- and
6 I spoke maybe too informally -- when you said to me --
7 you're just saying that Republicans vote Republican. And
8 I think that's probably true, but that's not what the
9 graph shows.

09:30:51

10 What the graph shows is that the places that produced,
11 you know, about 25 percent Republican vote the last time
12 produce about 25 percent Republican vote this time. If
13 you look at places that are various degrees Hispanic, some
14 of those, as you can see, for example, many of the other
15 voters, may be Black. And in those places you are going
16 to see very low support for Trump. And in other places,
17 those might be Anglos, in which case you will see very
18 high support for Trump.

09:31:10

19 **Q.** Thank you.

09:31:25

20 **A.** All of that is true.

21 **Q.** Thank you. I appreciate that.

09:31:40

22 We're going to get to your homogeneous precinct
23 analysis in a moment. What I just want to clarify for the
24 Court is that in this scatterplot, for all the reasons you
25 have articulated, you don't report an estimate for Latino

1 support for Trump in the 2024 general election, correct?

2 That's a yes or no.

3 **A.** No. That is not the intention of this plot.

09:31:58

4 **Q.** Okay. So it is correct that you don't report an
5 estimate. Yes, you agree with me?

6 **A.** I'm sorry. There's a lot of negation going on there.

7 I do not report or draw an inference about that, other
8 than the way that we discussed previously.

09:32:15

9 **Q.** And in your model here, you didn't weight the
10 precincts by the size of the population living in the
11 precinct, did you?

12 **A.** No. I can't recall. I may have -- it is possible
13 that the precincts are, I don't recall, shaded by the
14 number of voters in them or something. I don't believe
15 they are. So I think the answer to your question is no.

09:32:29

16 **Q.** And is it also true that you didn't weight the
17 precincts by votes cast, correct?

18 **A.** I believe that's correct, yes.

09:32:41

19 **Q.** And you didn't filter out precincts with less than
20 five voters, correct?

21 **A.** I may not have. No. I don't recall if I did or not.

22 **Q.** So with all of those things being true, a
23 low-population precinct in the rural countryside with 50
24 people in it counts the same in your analysis as a
25 high-population precinct in the city with 2,000 people in

09:32:56

1 it, right?

2 **A.** I'm not sure what "counts the same" means.

3 **Q.** The precinct with 50 people in it and the precinct
4 with 2,000 people in it carry the same value in your
5 analysis?

09:33:23

6 **A.** They -- I believe it is true that they cannot be
7 differentiated in the plot.

8 **Q.** And so if rural, smaller precincts, for example, tend
9 to vote more for Trump in this election, and you are
10 weighting those the same as larger precincts that might
11 not have as much support for Trump, that would pull your
12 line, wouldn't it?

09:33:48

13 **A.** You are talking about the blue line there?

14 **Q.** Yes.

09:34:04

15 **A.** Right. So, again, I -- again, what I'm thinking of in
16 this plot is sort of what to guess is true about a
17 precinct that has a particular Hispanic population about
18 how they are likely to manifest a vote for Trump. And for
19 that question, I'm not sure that it matters how many
20 people voted or lived in those places.

09:34:34

21 However, it would matter if one wanted to infer
22 something I think about the quantity, that you may be more
23 interested in, which would relate to how Hispanic voters
24 vote or sort of what the average across all voters that
25 live in certain kind of precincts might be.

09:34:55

1 Q. So did you start that answer with a "yes, it would
2 pull the line"?

3 A. It would pull the line.

4 Q. Okay. Thank you.

09:35:05

5 A. Well, I mean, again, if you wanted to draw a line that
6 represented the population averaged number relative to the
7 precinct averaged number -- I'm not sure that you do; but
8 if you did, it would do what you said.

09:35:23

9 Q. You do have a blue line on your scatterplot, don't
10 you?

11 A. I do.

12 Q. And that blue line is an attempt at what we used to
13 call many years ago the line of best fit?

14 A. It is a line of best fit.

09:35:32

15 Q. It is a line of best fit. Thank you.

16 A. Well, it's not a line. It's a curve. Yeah. But it's
17 attempting to estimate the average level of Trump support
18 among precincts that share a common size of Hispanic
19 population.

09:35:49

20 Q. And so is your answer yes to my question that if there
21 is something systematic about smaller precincts showing
22 increased support for President Trump, if that were
23 systematic throughout, it would affect where your blue
24 line is on this scatterplot, correct?

09:36:13

25 A. If I wanted the blue line to represent the population

1 weighted precinct average.

2 **Q.** Thank you.

3 You don't report a correlation coefficient here, do
4 you?

09:36:33 5 **A.** I don't recall that I do.

6 **Q.** And it is correct that this scatterplot does not show
7 a positive relationship between precinct percent Hispanic
8 CVAP and support for Trump, correct?

9 **A.** That's correct.

09:36:47 10 **Q.** And because these dots represent Texas's over 8,000
11 precincts, you are not telling us anything here about
12 specifically the precincts in CD 9 in Plan C2333, correct?

13 **A.** That's right. They are in there somewhere.

14 **Q.** And, similarly, you are not telling us anything about
09:37:14 15 specifically the precincts in CD 29, correct?

16 **A.** They are included, but not differentiated.

17 **Q.** And then, finally, with respect to CD 35, you would
18 also agree this scatterplot does not present us the dots
19 just for CD 35 and Hispanic population and support for
09:37:39 20 Trump, correct?

21 **A.** Yes. The same answer as to the previous.

22 **Q.** And these scatterplots that you have in Figure 1 that
23 are in the middle and on the right, they only look at one
24 election; is that correct?

09:37:54 25 **A.** Yes.

1 Q. Now you use ecological inference to estimate vote
2 choice by race in your academic work; isn't that correct?

3 A. I've -- yes. I probably, in my dissertation, I did
4 that. And I have written papers about the use of that or
5 the methods of ecological inference. I haven't used
6 ecological inference very much in my subsequent work.

09:38:14

7 Q. And if a year from now I hired you to estimate vote
8 choice by race in a minority voting rights case, you would
9 use ecological inference or some variation of EI, wouldn't
10 you, to do that?

09:38:32

11 A. Yeah. Depending on the nature of the matter, I would,
12 yes.

13 Q. But that's not what you did in this scatterplot, is
14 it?

09:38:44

15 A. No.

16 MS. PERALES: Can we go now to the next exhibit,
17 which is a screenshot of code.

18 BY MS. PERALES:

19 Q. Dr. Lewis, this is a code that you used in your
20 previous scatterplot, is it not?

09:39:09

21 A. No.

22 Q. No?

23 A. I don't -- it's -- it's not the code that generates
24 the scatterplot.

09:39:21

25 Q. Okay. Do you recognize this as a code that generates

1 anything in your report?

2 **A.** I think that the first row of that code counts the
3 number of precincts in the -- in the -- in the dataset
4 that underlies those that are used to make those
5 scatterplots that have a CVAP Hispanic percentage greater
6 than 95 percent and then summarizes the vote data for U.S.
7 president among those precincts.

8 **Q.** So what we're seeing here is your code on Hispanic
9 CVAP and your code on support for Trump?

10 **A.** Among precincts that have over 95 percent support for
11 Trump. I'm sorry. Not -- Hispanic composition.

12 **Q.** I see. I see. I see. Okay.

13 So this is for your homogeneous precinct analysis,
14 which I'm just about to get to.

15 So that we don't have to call this up again, could you
16 confirm for me that here you do not use a weighted mean?

17 **A.** Yeah. That's right. We're just looking at precincts.

18 **Q.** Thank you.

19 Let's take this down and go to page 5 of your report,
20 which is State Exhibit 570. We're going to look at your
21 Figure 2, and we're going to look at the scatterplot on
22 the left.

23 **A.** Yeah.

24 **Q.** Again, on the left we're looking at support for
25 candidate Abbott in 2022 and support for candidate Trump

1 in 2024. And as I believe you have explained before, what
2 this line shows is that if 25 percent of the precinct
3 supported candidate Abbott in 2022, it's likely 25 percent
4 of the precinct supported candidate Trump in 2024. That's
5 right?

09:41:33

6 **A.** Yes.

7 **Q.** So that's also basically showing us that Republicans
8 vote Republican?

9 **A.** Places tend to vote the same amount Republican over
10 time.

09:41:42

11 **Q.** Thank you.

12 Let's go to the scatterplot on the right.

13 Is it correct to say that in this scatterplot on the
14 right you combine Black and Hispanic voters in this
15 scatterplot?

09:41:55

16 **A.** I -- I base the prediction of Trump support on the
17 information about both of those groups. So in that sense
18 I combine that information, although I don't think it's
19 correct to say that I combine those groups.

09:42:15

20 **Q.** This scatterplot does not show us -- well, the dots on
21 this scatterplot and their location on the scatterplot is
22 a result of you plotting information about Black voters
23 and plotting information about Latino voters; is that
24 right?

09:42:35

25 **A.** I wouldn't say plotting. I would say modeling. So I

1 have a mathematical model that specifies a function into
2 which the share of the precinct that is a CVAP that is
3 Black and the share that is Hispanic are entered as
4 inputs. And out the other end comes a guess about what
5 the level of Trump support in that precinct would be.

09:42:59

6 **Q.** Thank you for the clarification. And I apologize.
7 This has got to be incredibly painful for you. And I
8 probably sound like the most incompetent graduate student
9 in the world coming to you after office hours. So I just
10 apologize for the poor use of words.

09:43:15

11 I will take the word "modeling." And then based on
12 your clarification, what your model does is it takes into
13 account for any precinct the percent CVAP Hispanic and the
14 percent CVAP Black; is that right?

09:43:33

15 **A.** Yes. That's right. There is probably a place for you
16 in our Ph.D program if you would like to.

17 **Q.** It's hard to imagine anything worse than being in
18 trial over and over again, but you nailed it, Dr. Lewis.
19 That would be so much worse.

09:43:52

20 Let's go now to your homogeneous precinct analysis.
21 In your homogeneous precinct analysis, you looked at 252
22 precincts that you identified as greater than 95 percent
23 Hispanic CVAP; is that correct?

24 **A.** I did.

09:44:15

25 **Q.** And that's 252 precincts out of 8,386 total Texas

1 voting precincts, correct?

2 **A.** Yes.

3 **Q.** So your analysis is -- the one in your report on
4 paragraph 12 where you say the average support for Trump
09:44:36 5 is 47 percent, that's based on 3 percent of all Texas
6 precincts, correct?

7 **A.** Yes.

8 **Q.** And, in other words, your homogeneous precinct
9 analysis excludes 97 percent of Texas precincts, correct?

10 **A.** Yes.

11 **Q.** Let's take a look at where your homogeneous precincts
12 are located.

13 MS. PERALES: If we could show Demonstrative 1.

14 BY MS. PERALES:

15 **Q.** Dr. Lewis, did you visualize the location of the
16 homogeneous precincts that you studied for your estimates
17 of Latino support?

18 **A.** No.

19 **Q.** Would you agree with me that many of them are along
09:45:21 20 the -- many of them are in counties along the Texas-Mexico
21 border?

22 **A.** That's what the graph shows. If the orange-shaded
23 precincts are -- or I guess those are probably precincts
24 or combinations of precincts are the ones that are

09:45:40 25 95 percent Hispanic CVAP.

1 Q. And then it's hard to see, but if we go to Bexar
2 County and zoom in a tiny bit, there is just a little
3 cluster right in there as well, isn't there?

4 A. Yes.

09:45:52 5 Q. And it turns out some of them are actually in CD 35,
6 aren't they? Or perhaps you don't know.

7 A. I don't know.

8 Q. Okay.

9 MS. PERALES: We can -- we can take this down
09:46:06 10 now.

11 BY MS. PERALES:

12 Q. I'm going to show you a spreadsheet of the 252
13 precincts that you used in your homogeneous precinct
14 analysis.

09:46:19 15 MS. PERALES: If we could show the demonstrative
16 exhibit that is the spreadsheet.

17 BY MS. PERALES:

18 Q. So, Dr. Lewis, this is a spreadsheet we made of the
19 252 precincts that you identified in your report
09:47:04 20 materials. And you'll notice with me the first one is
21 listed as Bexar, and that's on line 3 of the Excel or
22 Row 3 of the Excel, correct?

23 A. I'm sorry. It's very small.

24 Q. Oh, we can make it bigger. Thank you.

09:47:27 25 So Row 3 starts with Bexar; is that right?

1 **A.** Yes.

2 **Q.** Okay. And then if we just sort of scroll our way
3 down, we'll see, as we get down towards the bottom, it
4 ends at 254.

09:47:42

5 Do you see that row?

6 **A.** I do.

7 **Q.** Okay. So that's 252; is that right?

8 **A.** Because there are two header rows, I guess that could
9 be true.

09:47:56

10 **Q.** And you'll notice here we've got different names of
11 counties.

12 Do you know where Hidalgo County is on the map?

13 **A.** No.

14 **Q.** I'm sorry?

09:48:05

15 **A.** No, I do not.

16 **Q.** Thank you.

17 Do you know where Webb County is on the map?

18 **A.** No, I do not.

19 **Q.** Do you know where Cameron County is on the map?

09:48:12

20 **A.** No, I do not.

21 JUDGE GUADERRAMA: Ms. Perales, do you know what
22 exhibit number this is?

23 MS. PERALES: This is a demonstrative exhibit.

24 For now we were planning to mark it and move it into

09:48:23

25 evidence at the end of the examination, along with some

1 other exhibits from the examination of Mr. Kincaid.

2 JUDGE GUADERRAMA: Just so the record knows what
3 we're talking about, does it have a number or something we
4 can -- even though you are going to introduce it later.

09:48:41 5 Just so that the record knows this is what we're talking
6 about.

7 MS. PERALES: We are going to mark this Exhibit
8 Number 1404.

9 JUDGE GUADERRAMA: Thank you.

09:48:51 10 MS. PERALES: And the map that we just covered
11 with Dr. Lewis we will mark 1405.

12 BY MS. PERALES:

13 Q. Dr. Lewis, when you were doing your homogeneous
14 precinct analysis, did you happen to notice that a lot of
09:49:23 15 the homogeneous precincts were associated with certain
16 county names, such as, for example, Hidalgo?

17 A. No. I didn't.

18 Q. Does that mean that you did not look at the county
19 names?

09:49:37 20 A. That's correct.

21 Q. And so for that reason then, you wouldn't have been
22 able to look at them on a map like the map that we showed
23 you in Exhibit 1404; is that right?

24 A. I don't know what 1404 is.

09:49:58 25 Q. So a moment ago, you and I looked at a map with some

1 orange precincts on it; is that correct?

2 **A.** Yes, we did.

3 **Q.** And for the purpose of the record I will tell you that
4 we're marking that Exhibit 1405. And that's not something
09:50:15 5 you have to answer.

6 But reflecting on that map that we looked at a moment
7 ago with the orange precincts on it, would it be fair to
8 say that because you did not look at the county names that
9 the homogeneous precincts were coming from, you wouldn't
09:50:32 10 have been able to look at those counties on a map; is that
11 correct?

12 **A.** That is correct.

13 **Q.** Okay. We'd like to sort the spreadsheet by votes
14 cast, which is column C.

09:51:19 15 Dr. Lewis, we just need a moment to re-establish our
16 connection.

17 MS. PERALES: Sort from lowest to highest,
18 please. And if we could zoom in a little bit.

19 BY MS. PERALES:

09:51:57 20 **Q.** Dr. Lewis, do you observe with me that in the list of
21 counties which -- the list of precincts which we have now
22 sorted by total votes, the first precinct is in Val Verde
23 County and it has a total of four votes; is that correct?

24 **A.** Yes.

09:52:18 25 **Q.** And then if we go down to the bottom of the list, we

1 see a host of precincts that cast more than 2,000 votes in
2 the precinct; is that right?

09:52:47

3 **A.** I see one that maybe is as large as -- well, I
4 can't -- it's too small to read. It might be even
5 large -- it might be 3,000 -- your cursor was confusing
6 me, but yeah. 2,000 at least. Yeah. For sure.

7 **Q.** Thank you.

8 So if we scroll up a little bit to lines 240 and 241,
9 we see total votes cast over 1,700; is that right?

09:53:13

10 **A.** Yes.

11 **Q.** Those are both precincts in El Paso.

12 Do you see that?

13 **A.** I see that that's how they are labeled, yes.

09:53:28

14 **Q.** And because you did not use a weighted mean in your
15 code, each of these precincts goes in as a single value,
16 correct?

09:53:50

17 **A.** Each of them is given the same weight. In other
18 words, what I represented there was that average and I
19 think some other features of the distribution of the
20 precinct values. I did not represent or mean to represent
21 this as what I think you're suggesting I meant to
22 represent, which is the -- that the average across all
23 people who live in precincts of that type. I did not mean
24 to represent that. And I don't think I characterize it as

09:54:15

25 such in my report.

1 Q. Understood.

2 A. But if it's helpful for me to say that to you, I'm
3 happy to do it.

4 Q. It is.

09:54:21

5 I'm exploring your statement in paragraph 12 that
6 47 percent of Latino voters supported Trump. Your
7 estimate is 47 percent based on your homogeneous precinct
8 analysis. And so I'm just trying to elucidate that these

09:54:40

9 two precincts that we see in El Paso County, with over
10 1,700 votes each, that come in roughly at 34.1 percent
11 Trump and 47.7 Trump, are weighted equally with that
12 precinct in Val Verde County that had four votes cast and
13 was 75 percent for Trump; is that correct?

09:55:01

14 A. Yes. As I said, I believe what I meant to
15 characterize -- and I hope I didn't misspeak in the
16 report -- was, again, not what the average support for
17 Trump was across all voters living in such precincts but
18 what the distribution of support was across those
19 precincts.

09:55:17

20 Q. Equally weighted, correct? Because you've got to get
21 to 47 percent somehow.

09:55:34

22 A. Yes. No. I get to -- if I had weighted them in the
23 way that you suggest, then it would have given the number
24 that I think you were suggesting that I implied, which it
25 wouldn't, I think. I mean, I don't know. I haven't done

1 the calculation. But I suspect it wouldn't.

2 **Q.** Well, let's do a little bit of looking at some of
3 these counties. Let's go ahead and sort the precincts by
4 county and starting at the top.

09:55:55 5 Do you see that when we sort the precincts by county
6 name, the first county that comes up is Bexar County,
7 correct?

8 **A.** Yes.

9 **Q.** And the "X" is pronounced like an "H." I hope that's
10 not confusing to you.

11 **A.** No. I am aware of that.

12 **Q.** Thank you.

13 So if we go down to the bottom of the Bexar County
14 precincts, we are -- we find ourselves with about 31 Bexar
09:56:22 15 County precincts, right, because the list starts on
16 line 3.

17 Would you agree with me?

18 **A.** Yes.

19 **Q.** So if you were to take, just as an experiment or a
09:56:33 20 little exercise, all the votes cast for Trump in the '24
21 general election and divide them into all the votes cast,
22 we would get about 31.7 percent support for Trump in the
23 Bexar County homogeneous precincts, correct?

24 **A.** I'm sorry. You'll have to say that again for me.

09:56:58 25 That was too much verbal math for me. Let's try that

1 again.

2 **Q.** Let's go to the very top so you can see the column
3 headings. I think that might help.

09:57:19

4 Do you see in the -- you see the Texas Legislative
5 Council election results in columns F, G, H, and I; is
6 that right?

7 **A.** Yes. It's a bit of an eye test, but yes. I do, yes.

8 **Q.** Okay.

09:57:29

9 MS. PERALES: Maybe we can make the view a little
10 bit more closer to 200 percent.

11 BY MS. PERALES:

12 **Q.** So if we scroll to the right we'll see TLC election
13 results.

14 Do you see that there?

09:57:36

15 **A.** I do.

16 **Q.** And in the far right we have a percent for each
17 precinct, correct?

18 **A.** Percent support for Trump, yes.

19 **Q.** Yes.

09:57:42

20 And then what I'm interested in is columns G and H.

21 Do you see where G is votes cast for President Trump?

22 **A.** I do.

23 **Q.** And do you see H, which is total votes cast for
24 president in the 2024 general?

09:58:01

25 **A.** I do.

1 Q. Okay. And you can use those two columns to get the
2 percent that you get on the far right, right, for each
3 precinct?

09:58:19

4 A. Yeah. I mean, I guess there must be some other
5 candidate for president going on there, for example, 88
6 plus 46 isn't 135, so I'm not sure exactly what is going
7 on there. But I would say close enough for the work that
8 we're doing today.

09:58:35

9 Q. And if we're interested in percent for Trump, we have
10 the votes for Trump, correct?

11 A. We do have. It appears so, yes.

12 Q. And we have total votes, correct?

13 A. Yes. I'm just not sure what they are the total of.
14 But yes.

09:58:46

15 Q. Assume with me that they are total votes cast, which
16 is what?

17 A. Across all candidates.

18 Q. Across all candidates, that is right.

19 A. Including those not shown, yes.

09:58:56

20 Q. Including those not shown.

21 A. Okay. Fair enough.

22 Q. So with our two columns, G and H, and we have about
23 31 Bexar County precincts, if we scroll down, what we end
24 up with is 4,614 votes cast for candidate Trump and 14,549
25 votes cast in total. And that comes out to 31.7 percent.

09:59:15

1 If those numbers were true, we would know that that's the
2 average support for Trump in the Bexar County homogeneous
3 precincts weighted by votes, correct?

09:59:39

4 **A.** Yes. So, in other words, if you totaled up everybody
5 across Bexar County, the total number of votes for Trump
6 and the total number of votes cast, and divided those two
7 numbers, that would give you the number that you keep
8 asking me about, which is the fraction of all people
9 in -- who voted in that contest in Bexar -- in Bexar --
10 see, I almost did it there -- who voted for Trump.

10:00:00

11 **Q.** And so if we flip the number and we look at Latino
12 support for their preferred candidate, it's going to be
13 not Trump at about 69 percent-ish, correct?

14 **A.** You are going to have to help me.

10:00:23

15 **Q.** 68.3.

16 **A.** Help me understand where we are looking here.

17 **Q.** If we take the flip side of 31.7.

18 **A.** Well, let's call it 32. And then 68 would be left.

19 **Q.** Okay.

10:00:34

20 **A.** But what -- where does the 32 come from?

21 **Q.** 31.7.

22 **A.** 31.7. Yeah.

23 **Q.** Okay. And did you have a chance to look at
24 Dr. Collingwood's report in this case?

10:00:50

25 **A.** I did.

1 Q. Did you notice that when Dr. Collingwood did his EI
2 analysis on the nine Bexar County homogeneous precincts in
3 CD 35 for the U.S. Senate election in the '24 general,
4 this homogeneous precinct-based estimate falls between
5 Dr. Collingwood's estimates based on EI and RxC?

10:01:11

6 A. I didn't notice. I wasn't trying to make such a
7 comparison.

8 Q. Well, if it's any comfort, they landed all in about
9 the same place.

10:01:29

10 A. Yeah. You would expect that they would.

11 Q. Given these similarities, or certainly to the extent
12 that your numbers once weighted fall in line with
13 Dr. Collingwood's, there really isn't a basis, is there,
14 for your suggestion on paragraph 12 that Dr. Collingwood's
15 estimates may overstate the true level of Hispanic
16 cohesion in Texas elections, right?

10:01:51

17 A. Could you show me what you are referring to in my
18 report, just so I understand exactly?

19 MS. PERALES: Let's go to State -- I believe it's
20 570. Paragraph 12, please. If we could make that a
21 little bit bigger.

10:02:04

22 A. Please.

23 BY MS. PERALES:

24 Q. So one thing you do here in this last sentence is you
25 mash together two different experts' estimates, right?

10:02:59

1 You are talking about Professor Ansolabehere and
2 Collingwood at the same time, right? The last sentence.

3 **A.** Yes.

4 **Q.** But Dr. Collingwood's estimates were around

10:03:18 5 70 percent, weren't they?

6 **A.** I think we just decided 68.

7 **Q.** 68. That's right.

8 And your EI estimate, for example, in Bexar -- your --
9 I'm sorry.

10:03:33 10 Your homogeneous precinct analysis estimate in Bexar
11 County using weighted precincts comes in right close to
12 that number, doesn't it?

13 **A.** What I say here --

14 **Q.** Well, no. I'm just asking yes or no.

10:03:53 15 **A.** Oh, okay. I'm sorry. I misunderstood.

16 **Q.** Based on our --

17 **A.** I misunderstood.

18 **Q.** Based on our exercise, using Bexar County homogeneous
19 precincts --

10:03:59 20 **A.** Yes.

21 **Q.** -- because you looked at homogeneous. You didn't do
22 EI. You didn't do RxC. Your number, if we're just
23 looking at Bexar County, we're actually looking at support
24 for Trump, comes in right close to 70 percent for Latinos,
10:04:10 25 right?

1 **A.** Yes.

2 **Q.** For cohesion?

3 **A.** Yes. But I -- again, I think you just characterized
4 that as my number. And that's the exercise that you and I
5 just did together.

10:04:19

6 **Q.** Of course.

7 **A.** What I was doing is exactly I believe what is reported
8 in that paragraph, which is not a homogeneous precinct
9 analysis of the sort that you and I just undertook
10 together.

10:04:36

11 **Q.** I understand.

12 **A.** Which I'm not saying is unuseful. But I just want to
13 draw the distinction. And I think I understand why you
14 are saying this --

10:04:43

15 **Q.** I understand, Dr. Lewis.

16 **A.** -- but I would just, you know, want to point out here
17 that the claim that I'm making is simply that -- is simply
18 that --

19 **Q.** Dr. Lewis, I'm not asking you about that.

10:04:55

20 MS. PERALES: And I have to object --

21 THE WITNESS: Okay.

22 MS. PERALES: -- as non-responsive --

23 JUDGE GUADERRAMA: Sustained.

24 MS. PERALES: -- after the point where it got

10:05:01

25 derailed.

1 BY MS. PERALES:

2 **Q.** And I just want you to know, I understand what you
3 did; and it's my job here to explore the contours of that.
4 Okay?

10:05:13 5 **A.** My apologies.

6 **Q.** And I know that Mr. Berg is probably taking copious
7 notes on a redirect examination, so you may get a chance
8 to finish what you were saying with him.

9 You'll agree with me that Dr. Collingwood did not
10 analyze Hispanic voting statewide, did he?

11 **A.** He did not.

12 **Q.** I'd like to go to Figure 3 on page 6. You had a
13 discussion about Figure 3 with Mr. Fox, I believe. The
14 number that shows up here in this chart in the column for
15 Plan C2333 for CD 9 looks like the midpoint there of
16 77 percent, correct?

17 **A.** Yes. It does. Again, hard to see across there, but
18 I'll take your word for it.

19 MS. PERALES: Can we zoom into the right-hand
20 half of this, the right-hand column. Because it's just
21 for C2333.

22 BY MS. PERALES:

23 **Q.** And you see Districts 35, 9, and 29 are adjacent to
24 each other here; is that right? They are listed one after
10:06:52 25 the next?

1 **A.** One -- yes. Correct.

2 **Q.** 29 -- I'm sorry. 35, 9, and 29, they are listed next
3 to each other, right?

4 **A.** Yes.

10:06:59

5 **Q.** And, respectively, the numbers that appear on this
6 table are for the midpoint of Hispanic -- support for the
7 Hispanic preferred candidate, 79, 77, and 70; is that
8 correct?

10:07:22

9 **A.** They are the average across all of the contests that
10 Professor Ansolabehere estimated cohesion for. So not
11 necessarily midpoint. You can see they don't all fall
12 equally between the high and low number.

13 **Q.** And, again, when we are looking at this table, you are
14 not telling us how many Hispanic voters are casting
15 ballots in these districts, correct?

10:07:42

16 **A.** No.

17 **Q.** And so if we look sort of further down, like
18 District 19, which is fourth from the bottom, you don't
19 report that the Hispanic citizen voting age population is
20 only 6 percent in that district, correct?

10:08:02

21 **A.** I don't report that. I believe that I'm only
22 presenting the precincts that are the -- I should say the
23 districts that had a Hispanic voting age population of
24 more than 20 percent. But I could be wrong.

10:08:24

25 **Q.** Well, I'm asking about Hispanic citizen voting age

1 population.

2 **A.** Yes. CVAP, yeah.

3 **Q.** Right. Okay.

4 MS. PERALES: Let's go to page 7.

10:08:44

5 BY MS. PERALES:

6 **Q.** I just wanted to follow-up on one or two questions by
7 Mr. Fox about Table 1.

8 Can you explain for the Court, if you know, what is
9 ticket splitting?

10:08:54

10 **A.** Sure. Ticket splitting is a colloquial term used to
11 characterize people who, in the marking of their ballot,
12 cross multiple partisan offices, indicating a vote for
13 more than one party.

14 **Q.** Thank you, Dr. Lewis.

10:09:45

15 MS. PERALES: I pass the witness.

16 JUDGE GUADERRAMA: Mr. McCaffity.

17 MR. McCAFFITY: Good morning.

18 **CROSS-EXAMINATION**

19 BY MR. McCAFFITY:

10:09:59

20 **Q.** Good morning, Dr. Lewis. My name is Sean McCaffity.
21 I represent the Mexican American Legislative Caucus.

22 We have never met before, right?

23 **A.** Good morning. Nice to meet you.

24 **Q.** Nice to meet you.

10:10:10

25 Did I hear you correctly in your direct examination

1 yesterday that you were -- also served as a consulting
2 expert for the State of Texas in the 2011 redistricting
3 cycle?

4 **A.** Yes. I believe that's correct.

10:10:24

5 **Q.** Did you help the State with those maps during the
6 process at all? I don't want to know what you did, but
7 did you just -- you just helped them?

10:10:46

8 **A.** I was retained by them to look at features of various
9 plans that were, as I recall, proposed or -- I don't know
10 how formally or -- I don't really recall. But it was
11 mostly looking at various plans.

12 **Q.** All right. You did not list that engagement on your
13 CV, right?

10:11:05

14 **A.** I -- oh, no. No. I did. The *Perez* case is what I
15 was engaged in.

16 **Q.** Okay. That's the case the same year, that cycle, the
17 State House, the Senate, and the congressional maps had to
18 be redrawn because of issues with the Voting Rights Act?

19 **A.** I don't recall.

10:11:19

20 **Q.** Do you generally stand by the data and methods
21 employed by co-authors of papers you write with?

22 **A.** I don't -- I don't know that I do that as a rule. But
23 I think I co-author with generally smart people. So
24 generally I would have an expectation that that would be
25 true, and I'm not sure that I would categorically say what

10:11:45

1 you just said.

2 **Q.** You co-authored a recent article about using
3 anonymized ballots in the election analysis, right?

4 **A.** I did.

10:11:55 5 **Q.** And you authored that -- co-authored that with Michael
6 Morse and Shiro Kuriwaki?

7 **A.** I did.

8 **Q.** Do you stand by the data and methods in that work?

9 **A.** I do.

10:12:06 10 **Q.** When you engage in a research project or an expert
11 report, do you attempt to validate or replicate datasets
12 you work with to make sure you are working with the best
13 data?

14 **A.** Yes. To the extent that I can, I do.

10:12:17 15 **Q.** Well, I mean, if you are retained as an expert or you
16 are doing the statistical work of your own for career
17 research, don't you want to make sure that your data is
18 accurate?

19 **A.** As accurate as it can be within the constraints, yeah.

10:12:32 20 **Q.** All right. You wrote a paper in the past with a
21 gentleman named Mr. Michael LaCour, correct?

22 **A.** I don't believe I have ever written a paper with
23 Mr. LaCour.

24 **Q.** I'm sorry. You were his dissertation -- on his
10:12:45 25 dissertation committee?

1 **A.** I was.

2 **Q.** You served as the department chair at UCLA when he was
3 getting his Ph.D?

4 **A.** I did.

10:12:58 5 **Q.** And he wrote a report -- well, actually, in 2012, did
6 you -- or 2013, did you write an article with Lynn
7 Vavreck, Mr. LaCour, and Mr. Simon Jackman?

8 **A.** I don't recall that I did.

9 MR. McCAFFITY: Sonni, can you pull up -- I don't
10:13:17 10 know if I have that.

11 BY MR. McCAFFITY:

12 **Q.** Do you recall the article "Digital Fingerprints: A
13 New Method for Measuring Political Advertising"?

14 **A.** Oh, yeah. Look at that. I -- I wouldn't have
10:13:29 15 recalled that -- I honestly -- I guess it's -- oh, I see.
16 It was a presentation made at a conference. I don't
17 recall that. But yeah.

18 **Q.** It was a paper presented at the APSA, right?

19 **A.** Yeah. It appears to be.

10:13:44 20 **Q.** And you wrote that with Lynn Vavreck?

21 **A.** Yes.

22 **Q.** And she was Mr. LaCour's advisor at UCLA, correct?

23 **A.** She was the chair of his dissertation committee, yeah.

24 **Q.** And she is also your wife?

10:14:05 25 **A.** That's correct.

1 Q. You are aware that Mr. LaCour was caught in a huge
2 scandal in the scientific community in 2015, right?

3 A. I am --

4 MR. BERG: Your Honor, this is pretty far afield.
10:14:15 5 Someone he used to teach.

6 JUDGE GUADERRAMA: Right. I'm going to sustain
7 that unless you can show how this witness is related to
8 that.

9 BY MR. McCAFFITY:

10:14:22 10 Q. You were Mr. LaCour's department chair at the time?

11 A. I certainly was.

12 Q. Okay.

13 MR. McCAFFITY: Can you pull up the screenshot of
14 the Fox article.

10:14:29 15 BY MR. McCAFFITY:

16 Q. And your wife was on his dissertation committee?

17 A. She was the chair of his dissertation committee.

18 Q. As the chair of his dissertation committee, did she
19 get to sign off on his research?

10:14:43 20 MR. BERG: Your Honor, is he asking Dr. Lewis to
21 testify as to the credibility of his wife?

22 MR. McCAFFITY: Your Honor, I think the size and
23 scope of this will be clear based on his role at UCLA and
24 how it affects his credibility. Whether or not you think
10:15:00 25 it's that important or not, that's up to you guys; but it

1 does go to his credibility.

2 MR. BERG: I just ask if this gets too far afield
3 that you rein it in, Your Honor.

4 JUDGE GUADERRAMA: Yeah. Whatever this witness
10:15:11 5 did absolutely affects his credibility. What his wife
6 does doesn't affect his credibility, mine, or yours, I
7 mean...

8 MR. McCAFFITY: Agreed.

9 BY MR. McCAFFITY:

10:15:19 10 **Q.** But at the time, you were the department chair,
11 correct?

12 **A.** I was.

13 **Q.** And you understood that there was a student being
14 advised by your wife that was caught in what at least this
10:15:34 15 article on Fox at the time said was the biggest fraud in
16 political science?

17 **A.** I am aware of that, yes.

18 **Q.** And the reason it was caught was because he actually
19 faked an entire dataset for an article that went
10:15:50 20 relatively public -- was relatively popularized?

21 MR. BERG: Your Honor, could we encourage
22 Mr. McCaffity to get to the point if this relates to
23 Dr. Lewis's credibility?

24 JUDGE GUADERRAMA: Yeah. Go on.

10:16:00 25 **A.** Yeah. He authored a paper with a very senior

1 professor I think then at Yale, now at Columbia. And
2 exactly as you described. It turned out that data that he
3 represented as actual data had been fabricated.

4 BY MR. McCAFFITY:

10:16:20

5 **Q.** Did you go back and check the data that was in the
6 paper that you co-authored with him in 2012 to see if it
7 was fabricated?

8 **A.** I don't -- I don't recall. I don't believe that paper
9 went forward, but I don't know.

10:16:38

10 **Q.** So you don't recall doing any checking of the data
11 after, a couple of years after that paper, the person you
12 wrote the other paper with was found to have fabricated an
13 entire set of dataset?

10:16:53

14 **A.** Again, you are talking about something that happened
15 13 years ago. What I can tell you is that, one, there was
16 an enormous response, as you might imagine, to this
17 revelation.

10:17:15

18 And there was a great effort made to, at that time,
19 determine the scope of damage to science that might have
20 been done to projects that he worked on that did involve
21 attempting to validate and replicate any claim that he
22 could be associated with. And there, in fact, was I
23 believe at least one other paper where the same situation
24 was found.

10:17:35

25 I don't specifically recall the outcome in this case,

1 but I don't -- I -- you know, again, I would have to
2 reflect on that. I mean, I don't even remember what his
3 role would have been. He would have been a graduate
4 student on that project. So he wouldn't have been able, I
5 don't think -- yeah.

10:17:56

6 **Q.** Okay. Fair enough.

7 That based on the size and scope of that scandal, and
8 as you put it the giant response, that you learned that a
9 standard and best practice is to double-check the data
10 that you are relying on when you are doing your research
11 for expert opinions?

10:18:09

12 **A.** I don't know that the one has to do with the other.
13 But certainly it's good to have the greatest confidence in
14 the data that you can have, yeah.

10:18:25

15 **Q.** And that includes making sure that you would do things
16 as an expert in your field to either validate data or
17 replicate data to ensure that it is accurate?

18 **A.** Within the constraints, yeah.

19 **Q.** All right. And you typically do that in your practice
20 now, right?

10:18:40

21 **A.** As before, yeah. Then and now. Again, within the
22 constraints of the --

23 **Q.** But in this case you didn't attempt to replicate the
24 data of Dr. Ansolabehere or Dr. Collingwood. You just
25 accepted it at face value?

10:18:57

1 **A.** I -- are you suggesting that Dr. Ansolabehere's data
2 is fraudulent?

3 **Q.** No. I'm asking about your methodological practices
4 and whether you, in every instance, try to do the best
10:19:14 5 practice of methodological quantitative analysis of a
6 political science Ph.D. and, in this case, you accepted
7 the data as -- on its face.

8 **A.** I -- I did. And I represent the findings as the
9 findings for -- created under those conditions.

10:19:38 10 **Q.** All right. And did you replicate or validate the data
11 that Dr. Palmer used in the North Carolina case that you
12 relied on?

13 **A.** I don't -- wait a minute. Say that again?

14 **Q.** In the North Carolina case, you used Dr. Palmer's
10:19:56 15 report that you have cited in your opinion as something
16 that you followed and built upon in order to do your
17 analysis in this report.

18 Do you remember that?

19 **A.** I -- there is a reference. And there is the use
10:20:12 20 of -- there is the calculation of a quantity. There is a
21 quantity that was calculated in a different matter by
22 Professor Palmer. And I calculate that quantity, or a
23 similar quantity, and we have already established earlier,
24 as I said it's, you know, an elaboration of but something
10:20:32 25 built on that same underlying idea of counting the

1 fraction times.

2 **Q.** Okay. So you know what I'm talking about, the
3 Dr. Palmer report?

10:20:42

4 **A.** Yeah. I just -- I thought that you were asking me
5 about data from North Carolina.

6 **Q.** I am.

10:20:56

7 In using his report and his analysis to build your
8 opinion, did you go back and make sure that he was doing
9 it right and check his data, replicate it or validate it
10 in any way; or did you just accept his report?

11 **A.** I am trying to understand -- I -- well, I mean, yeah.
12 Let's just say this. No. I did -- I did not make any
13 effort to validate --

14 **Q.** All right. Thank you.

10:21:11

15 **A.** -- what it is that he -- what -- the conclusions that
16 he drew from the methodology that he applied.

17 **Q.** So you don't know one way or the other whether the
18 data he used was either accurate or inaccurate?

19 **A.** In -- no. I do not.

10:21:28

20 **Q.** All right. In this case you issued a report on
21 September 22nd. We've looked at it in this case already,
22 right?

10:21:46

23 You agree that data about voters from the voter file
24 is more accurate -- more accurate than estimates of voting
25 from demographic data alone?

1 **A.** I think so. I think, if I understand what you mean,
2 yes. I believe that's what I said.

3 **Q.** I mean, well, you say in your report directly
4 [as read:] I agree with LULAC plaintiffs' expert
10:22:01 5 Professor Loren Collingwood's conclusion that estimating
6 the racial/ethnic composition of the actual voters in each
7 voting precinct when attempting to infer voter behavior by
8 racial/ethnic group is the better approach in this case.

9 Right?

10:22:15 10 **A.** Yes.

11 **Q.** Did you review all of the expert reports that were
12 issued in this case on the topic of racially polarized
13 voting?

14 **A.** I reviewed the two that I was provided.

10:22:25 15 **Q.** So is that a no, you didn't review any of the other
16 reports?

17 **A.** Well, the problem is I don't know what other reports
18 there might be, because I was only provided with two.

19 **Q.** So you are not aware of Dr. Barreto's report because
10:22:36 20 you did not review it?

21 **A.** I am now aware of it because there was reference to
22 it. I believe -- I could infer that it existed in
23 conversation that was happening in this court yesterday,
24 but I was not previously aware of such a report.

10:22:51 25 **Q.** Were you aware that Dr. Barreto used BISG to determine

1 the composition of the actual voters across 14
2 congressional districts?

10:23:06

3 **A.** It would not surprise me that he did that. As I was
4 not aware that he had written on this, I would have to say
5 that I did not know that.

6 **Q.** You could have used a BISG voter file data in
7 Dr. Barreto's report like you did in -- used the
8 Ansolabehere and Collingwood report if you knew about it,
9 right?

10:23:19

10 **A.** I could have. Although, if what you tell me is true
11 that he only looked at 14 districts and I don't know how
12 many contests, I wouldn't have been able to answer the
13 questions that bear on the variation across the whole
14 state that were the thing I was asked to do.

10:23:33

15 **Q.** But you could have gotten at least some idea about
16 those 14 districts?

17 **A.** That I could have.

18 **Q.** Did you ask if there were any other reports that you
19 could look at from the State?

10:23:43

20 **A.** I did not.

21 **Q.** And the State didn't volunteer to you that there were
22 other reports that could have had data that would be
23 important to your considerations?

24 **A.** They did not.

10:23:53

25 **Q.** Do you agree that -- generally that experts should be

1 objective when they are retained to offer opinions to a
2 court of law?

3 **A.** Yes.

10:24:15

4 **Q.** And that includes being independent and disinterested
5 as to the subject matter on which they are testifying?

6 **A.** Yes.

10:24:27

7 **Q.** And I am aware you likely get paid. So other than the
8 financial arrangement where an expert is compensated for
9 the work they are doing, you agree that they should be
10 interested in -- independent and disinterested in actually
11 offering the opinions?

12 **A.** Yes.

10:24:40

13 **Q.** And your report does not disclose that you were
14 retained for the Texas Senate in the 2025 Texas
15 congressional redistrict map drawing?

16 **A.** It -- it does not.

17 **Q.** Your report here, in fact, is an effort to defend at
18 least some of the work that you did in the special session
19 for the Texas Senate, at least implicitly, right?

10:24:59

20 MS. MCKNIGHT: Objection, Your Honor. This is
21 encroaching the *Kovel* doctrine, the work that Dr. Lewis
22 did during the legislative session, which is not at issue
23 in his report. In his report he has been clear that his
24 report data -- the data and the information he relied on
25 is Dr. Ansolabehere's and it's all disclosed in his

10:25:13

1 report.

2 MR. McCAFFITY: I don't think I'm going -- I said
3 very directly "implicitly."

10:25:23

4 JUDGE GUADERRAMA: I'll sustain the objection to
5 that question. If you want to ask another that doesn't
6 trample upon that.

7 BY MR. McCAFFITY:

8 Q. Is the result of your work that is being used by the
9 State to defend the Texas maps?

10:25:35

10 A. In --

11 MS. McKNIGHT: Your Honor --

12 A. -- the report that was filed here?

13 BY MR. McCAFFITY:

14 Q. Here. This report.

10:25:42

15 A. Is being used to defend the -- well, it's offered by
16 the defense, so I suppose that's true.

17 Q. The same Texas maps you worked on during the 2025
18 congressional redistricting?

10:25:53

19 MS. McKNIGHT: Objection, Your Honor. This is
20 going to the heart of the *Kovel* doctrine. He did work.
21 He is trying to elicit testimony, admissions that are
22 believed separate work that is protected by
23 attorney-client privilege.

24 JUDGE GUADERRAMA: Sustained.

10:26:08

25 JUDGE BROWN: How many lawyers are going to make

1 objections for the State on this witness? Is it just the
2 two of you?

3 MS. MCKNIGHT: Yes, Your Honor.

4 I beg your pardon, Your Honor. My name is Kate
10:26:16 5 McKnight, and I'm from BakerHostetler. I'm here as I
6 represent Senator Phil King. And as you heard from
7 Senator Phil King in testimony, he engaged legal counsel
8 at the time of the legislative redrawing. So I am here to
9 defend his attorney-client privilege over work that we did
10:26:31 10 for him during the legislative process.

11 JUDGE BROWN: All right. Thank you for the
12 clarification. I didn't know how many lawyers were going
13 to stand up at that table.

14 MR. McCAFFITY: And I'm sorry. Did you sustain
10:26:41 15 the objection, Your Honor? Thank you.

16 JUDGE GUADERRAMA: To the question before --

17 MR. McCAFFITY: Yes.

18 JUDGE GUADERRAMA: -- and then this one also.

19 MR. McCAFFITY: Yeah. As to the last one. I
10:26:52 20 knew for the first one. Okay. Fair enough.

21 BY MR. McCAFFITY:

22 Q. Do you think you can be objective in issuing a report
23 to the State of Texas defending the map in this litigation
24 even though you worked in the Senate to help Texas pass
10:27:10 25 the map?

1 **A.** Yes. Although, I don't know that I did the second
2 thing in your question.

3 **Q.** Well, you were retained by the Texas Senate or Senator
4 King. We just heard that, right?

10:27:28 5 **A.** That's true.

6 **Q.** And you -- in this case, in your report, I believe you
7 have said a number of times that you used the data that
8 was provided by the plaintiffs' experts because there
9 wasn't enough time for you to produce a complete set of
10 estimates?

10:27:45 11 **A.** That's correct.

12 **Q.** Even though you have been working with the Texas
13 congressional map since August of 2025?

14 MR. BERG: Objection. Misstates testimony.

10:28:02 15 JUDGE GUADERRAMA: I'll overrule that objection.
16 He can answer.

17 THE WITNESS: So I think in order to answer that
18 question I would have to characterize the extent of my
19 engagement.

10:28:16 20 MS. McKNIGHT: And so therefore, Your Honor, I do
21 need to assert the *Kovel* doctrine objection related to
22 attorney-client privilege.

23 JUDGE GUADERRAMA: I'll sustain that objection.

24 MR. McCAFFITY: Okay.

10:28:29 25 BY MR. McCAFFITY:

1 Q. Can we agree, at least, that you were aware of Texas
2 congressional redistricting in August of 2025 and had the
3 ability to look at data, publicly-available or not,
4 related to Texas's congressional map in 2025 or
5 August 2025?

10:28:42

6 A. I believe that that would be true regardless of
7 whether I had been retained.

8 Q. Right. But if you were just a random professor at
9 UCLA you might not have an interest in specifically the
10 Texas congressional map, but here you had that
11 opportunity, right?

10:28:56

12 A. I don't know what you mean by "opportunity."

13 Q. All right. With respect to your specific report of
14 not having enough time to do a more thorough analysis, the
15 time constraints that you put on it, that's an excuse that
16 you have given in other cases before, correct?

10:29:12

17 A. When it's been true, yes.

18 Q. And you agree with me that other courts have rejected
19 that excuse as less than persuasive?

10:29:27

20 A. I don't know if that's true or not.

21 Q. We talked a little bit -- I think you talked about the
22 *Ardoin* case? I don't know if I said that right either.
23 It was the Middle District of Louisiana.

24 A. Yes.

10:29:40

25 Q. There was one filed by a plaintiff, I believe, of the

1 name of Robinson. There's probably a group of them.

2 Do you recall this case?

3 **A.** I do.

4 **Q.** In 2022?

10:29:49

5 **A.** If you say so. You know, I don't have my report in
6 front of me to --

7 **Q.** Okay. Well, and I don't know when the case was
8 actually filed. But the Court actually issued an opinion
9 in 2022.

10:29:59

10 Did you read the opinion?

11 **A.** No, I did not.

12 **Q.** So you were not aware of the report of the Court in
13 the opinion at 605 F. Supp. 3rd 759 that said [as read:]
14 Dr. Lewis's conclusion that districts with as little as
15 30 percent BVAP could perform for Black preferred
16 candidates due to White crossover voting was based on his
17 analysis of one exogenous election. His opinion is simply
18 unsupported by sufficient data and is accordingly
19 unreliable. Dr. Lewis states that further analysis was
20 not possible due to time limitations. The Court finds
21 this excuse less than persuasive, especially since
22 Dr. Lewis performed his analysis using the data gathered
23 by Dr. Palmer.

10:30:18

10:30:35

24 You are not aware of that?

10:30:47

25 **A.** That is correct.

1 Q. You had the data available of the plaintiffs in this
2 case. Why didn't you do a more thorough analysis?

3 A. You know, I had ten days to do this. And the amount
4 of computation that would have been required to do
5 everything in a way that I think would have gone beyond
6 what Professor Ansolabehere did was not that amount of
7 time -- computational time and my own time, wasn't
8 sufficient to provide that.

9 Q. You haven't done any follow-up work to try to verify
10 or validate or make your opinions more thorough since the
11 time of your report either, have you?

12 A. I have not been asked to do that, no.

13 Q. Well, as an expert and a professor of quantitative
14 political methodology, I mean, wouldn't you think, if you
15 were going to say, hey, here is an opinion but I am
16 constrained by time, that you would continue to work to
17 determine if your opinion is actually correct or not?

18 A. Again, I wrote a report that's offered; and that's
19 what we're discussing today. So, no, I did not continue
20 to...

21 Q. All right. There was also a case -- I believe it's
22 maybe an affiliated case in the Middle District of
23 Louisiana in 2024. The plaintiff is Nairne.

24 Are you familiar with this case?

25 A. Yes.

1 Q. And were you aware that the Court in that case --
2 well, did you read the opinion that was issued in that
3 case?

4 A. I did not.

10:32:31

5 Q. So it's 715 F. Supp 3d 808, the Middle District of
6 Louisiana in 2024 issued an opinion. And are you aware
7 that they rejected your opinion as no evidence that Black
8 preferred candidates will consistently prevail in election
9 districts that are less than 50 percent BVAP?

10:32:50

10 A. I am not.

11 Q. In 2018 you were an expert in a case *Kaku* -- I'm
12 saying that wrong, I'm sure -- *Kaku v. City of Santa*
13 *Clara*?

14 A. Yes.

10:33:05

15 Q. And in that opinion the Superior Court of California
16 for the County of Santa Clara also viewed your opinions as
17 not as probative or not as reliable as Dr. Kousser's
18 opinions, which it adopted, right?

19 A. I haven't read that opinion.

10:33:22

20 Q. You have read it?

21 A. I have not read that opinion. I'm sorry.

22 Q. Okay. So you are not aware that they looked at --
23 specifically looked at your critique of data based on --

24 JUDGE SMITH: He said he wasn't aware of the

10:33:31

25 opinion. You've already asked that, and it's been

1 answered.

2 MR. McCAFFITY: Well --

3 JUDGE SMITH: He said he wasn't aware of the
4 opinion.

10:33:40 5 BY MR. McCAFFITY:

6 **Q.** Were you aware of any critiques by the opposing
7 counsel about the homogeneity analysis you did in that
8 case?

9 **A.** I don't recall.

10:33:52 10 **Q.** You don't recall any of it.

11 What about any critiques of your aggregation bias
12 analysis in that case?

13 **A.** You are talking about *Santa Clara*?

14 **Q.** Uh-huh.

10:34:06 15 **A.** I'm asking. Could you rephrase the question, please?

16 **Q.** Are you aware of any of the critiques of your
17 aggregation bias opinion in the *Santa Clara* case?

18 **A.** I don't specifically recall.

19 **Q.** And since you don't recall the opinion, you don't know
10:34:19 20 if the Court accepted your opinions as reliable or not?

21 **A.** I do not.

22 **Q.** You've already talked about the North Carolina case in
23 *Common Lewis v.* -- or *Common Cause v. Lewis* -- not you
24 Lewis, right?

10:34:41 25 **A.** That's correct.

1 Q. All right.

2 A. That would be a conflict, I think.

3 Q. That's right.

10:34:50

4 And you also were hired by BakerHostetler in that
5 case, right?

6 A. That's correct.

7 Q. And there was another case that you opined on voting
8 issues, *Pico Neighborhood Association v. Santa Monica*.

9 Do you recall that case?

10:35:02

10 A. I do.

11 Q. Did you read the opinion in that case?

12 A. I did not.

13 Q. Were you aware that the opinion rejected your claim of
14 the lack of data from predominantly Hispanic precincts
15 rendered EI estimates unreliable?

10:35:13

16 A. I am not.

17 Q. In your expert report where you disclose in
18 paragraph 2 your testifying expert cases, you disclosed
19 the *Yumori-Kaku* case, right?

10:35:40

20 A. Uh-huh. Yes.

21 Q. And the *Pico Neighborhood* case, right?

22 A. Yes.

23 Q. And the *Nairne* and the *Robinson* case. Is that four?
24 Two, three, four. Right?

10:35:53

25 A. Yes.

1 Q. And the *North Carolina League of Conservation Voters v*
2 *Hall*. Is that a different case than the *Common Cause v.*
3 *Lewis* case or is it the same case?

4 A. I don't know.

10:36:03

5 Q. Okay. So -- and then the *Common Cause* case is not
6 listed here, I don't think. Oh, no, it is. It's up
7 above, where you were retained as an expert.

8 But as far as cases you have testified in, those are
9 the five, right?

10:36:18

10 A. I believe that is correct.

11 Q. Do you know what the Court did with your opinion in
12 the *League of Conservation Voters v. Hall* case?

13 A. I don't.

10:36:33

14 Q. So if the Court either rejected as unreliable or
15 refused to credit your opinion as more probative than the
16 opposing counsel's expert in four out of the five, would
17 you agree with me that that's only like a potentially
18 20 percent success rate for your opinions?

19 A. I would agree that one out of five is 20 percent, yes.

10:37:10

20 MR. McCAFFITY: All right, Your Honor. I pass
21 the witness.

22 JUDGE GUADERRAMA: Anyone else from the
23 plaintiffs? Yes, sir.

10:37:36

24 MR. NOTZON: Good morning. Robert Notzon for the
25 congressional intervenors.

CROSS-EXAMINATION

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BY MR. NOTZON:

Q. Good morning, Dr. Lewis.

A. Good morning.

10:37:42

Q. How many contracts do you have with the State of Texas in 2025?

A. I have no contracts with the State of Texas.

Q. Okay. Are you operating under the same contract that you worked for the Senate in your work here?

10:37:57

A. I don't have a formal contract.

Q. Are you working under the same agreement that you worked for the Senate as you are working under here?

10:38:17

A. Neither do I have a formal agreement; but I have a working arrangement, I would say. And there is not a stark delineation there. I just continue to do the things that were assigned and that we agreed that I would do under the terms. So I couldn't say that they were the same or not the same.

Q. So have you had the same point of contact that you get --

10:38:33

A. That's right.

Q. -- your instructions from?

A. I'm sorry. I didn't let you finish your question.

Q. That's right.

10:38:37

The same point of contact that you get your

1 instructions from?

2 **A.** Correct.

3 **Q.** In both the Senate work and here?

4 **A.** That's correct.

10:38:46 5 **Q.** And are your rates paid the same, the \$700 an hour for
6 both of them?

7 **A.** That's correct.

8 **Q.** And the entire time your work was limited to comparing
9 C2333 with C2193?

10:39:07 10 **A.** No.

11 **Q.** It's broader than that?

12 **A.** I'm sorry. Maybe I misunderstood your question. Are
13 you asking what I did for the Senate?

14 **Q.** No.

10:39:18 15 The whole work that you have been doing for the State
16 of Texas that's related to what you are doing now.

17 MS. MCKNIGHT: Your Honor, I do need to lodge an
18 objection to the extent that is seeking information about
19 the work he did for the legislature. He just confirmed
10:39:34 20 that he is seeking the answer for all of the work he has
21 done. And I would ask that he cabin his question to the
22 work that Dr. Lewis has done for this case.

23 JUDGE GUADERRAMA: I'll sustain that objection.

24 Ms. McKnight, can you give me the citation of that

10:39:45 25 case you have been citing, please?

1 MS. McKNIGHT: Of course, Your Honor. This is
2 the *Kovel* case. It's out of the Supreme Court. It's a
3 1961 case. It's the *Kovel* case, K-o-v-e-l. It is a 1961
4 case out of the United States Supreme Court. It has been
5 adopted in the Fifth Circuit and applied by districts in
6 the Fifth Circuit.

10:40:04

7 Your Honor, if you give me a moment, I can pull up the
8 precise citation for you.

9 JUDGE GUADERRAMA: We'll come back to you at the
10 next break so we can just continue while you get that for
11 us.

10:40:18

12 MS. McKNIGHT: Pardon me, sir. I'm sorry to
13 interrupt. The citation for the *Kovel* case is 296 F.2d --
14 oh, pardon me, Your Honor. Give me a moment. That's the
15 Second Circuit cite.

10:40:35

16 JUDGE GUADERRAMA: We'll come back to you at the
17 next break. Go ahead, Mr. Notzon.

18 MS. PERALES: I'm sorry to interrupt, Your Honor.
19 And I'm not exactly objecting. But would it be possible
20 for counsel who do plan to speak on this side of the room
21 to enter an appearance in the case so that we are able to
22 keep track of what is going on with these disputes and any
23 further communication we might need to have?

10:40:46

24 JUDGE GUADERRAMA: I think Ms. McKnight was
25 introduced to us a couple of days ago.

10:41:01

1 MS. McKNIGHT: I was, Your Honor, but thank you
2 for the note. I'm here -- I did not expect to speak here,
3 but it's because of an issue that plaintiffs started
4 raising on examinations. I have not had time yet to file
10:41:13 5 a formal note of pro hac vice application, but I'm happy
6 to do so. I have a paper copy here that's completed. And
7 I'm also happy to handle it in a less formal way to state
8 that my name is Kate McKnight. I'm with BakerHostetler.
9 I'm here because I represent Senator Phil King.

10:41:32 10 JUDGE GUADERRAMA: All right. Have you ever been
11 here pro hac before?

12 MS. McKNIGHT: I have not been pro hac in this
13 court before. I have been pro hac'd in many other federal
14 courts, Your Honor.

10:41:40 15 JUDGE GUADERRAMA: In the Western District, have
16 you before?

17 MS. McKNIGHT: No, Your Honor.

18 JUDGE GUADERRAMA: All right.

19 MR. NOTZON: Thank you, Your Honor.

10:41:49 20 BY MR. NOTZON:

21 **Q.** So your work in this preliminary injunction hearing
22 has been on a statewide basis, not on a district level?

23 **A.** I present analysis at -- well, all the things that we
24 have seen today, so yeah. I mean, there are -- some of it
10:42:12 25 is presenting information district by district. And some

1 of it is presenting data from every district. And then
2 some of it is aggregating across all of the districts.

3 **Q.** Okay. I'll ask you some more questions about that
4 later.

10:42:29

5 You admit that your cohesion numbers that you use may
6 overstate Hispanic cohesion, correct?

7 **A.** Yes.

10:42:52

8 **Q.** And you claim that past partisan vote, Abbott 2022,
9 explains 96 percent of the variation in the Trump 2024
10 support, correct?

11 **A.** Yes.

12 **Q.** Did you develop that methodology used in coming up
13 with that conclusion?

14 **A.** No.

10:43:03

15 **Q.** Okay. Who did develop it?

16 **A.** I think that's -- effectively, that's a linear
17 regression. So you are asking me who first presented
18 linear regression?

19 **Q.** Perhaps that was a bad question.

10:43:24

20 I am not trying to go to the actual mathematical
21 methodology; but the idea that you had to analyze one
22 election, one Republican election against another one two
23 years later, that use of the methodology, the term
24 "methodology" in this case.

10:43:48

25 **A.** Yeah. I was asked to see if it was -- to what degree

1 it was possible and with what fidelity one could, in a
2 sense, predict the outcome of a subsequent election, given
3 information about the previous election. And that sort of
4 forecasting, if you like, is a very standard thing in
5 statistical or econometric practice.

10:44:19

6 **Q.** And have you used that particular use of that method
7 in other cases --

8 **A.** No.

9 **Q.** -- to try to -- let me finish the question. Sorry.

10:44:33

10 -- to disentangle partisanship from race, or is this
11 the first time you are using that --

12 **A.** I am --

13 **Q.** -- that technique. Let's call it a technique instead
14 of a methodology.

10:44:46

15 **A.** I am not attempting to disentangle partisanship from
16 race.

17 **Q.** Really? Okay.

18 Have you ever used what you did as a technique in this
19 case, as represented in Figure 1 in your report, in any
20 other case?

10:45:05

21 **A.** I have never been asked before to opine on the degree
22 to which subsequent partisan voting in precincts could be
23 predicted by previous Republican or partisan voting in
24 precincts. So I have not done that.

10:45:23

25 **Q.** Have you ever seen -- I'm sorry.

1 **A.** So the answer is no, because I have never been asked
2 to.

3 **Q.** Have you ever seen any other expert use that technique
4 in a race dilution or racial gerrymander case?

10:45:41 5 **A.** I have never seen anyone pose or answer the question
6 does previous partisan support predict future partisan
7 support in any vote dilution matter that I have been
8 involved in before.

9 **Q.** And in reaching -- you've concluded that partisanship
10:46:04 10 predicts future outcomes better than race?

11 **A.** That's right.

12 **Q.** That's your broad -- that's a very broad statement,
13 isn't it?

14 **A.** Well, I think it's caveated that we're talking about
10:46:19 15 contemporary Texas and we're talking about a very short
16 period of time.

17 **Q.** So that's not what your report says when you make the
18 conclusion that partisanship predicts better than race.
19 You just say that without any cabin or limitation,
10:46:37 20 correct?

21 **A.** Well, I state the question that I was asked, which I
22 think implies the scope of the answer.

23 **Q.** Yes or no? You didn't make that limitation in your
24 conclusion in your report, did you?

10:46:49 25 **A.** I --

1 Q. Yes or no?

2 A. I guess I will say no.

3 Q. I will take a step back.

10:47:14

4 How long have you been working for the State in 2025
5 related to redistricting?

6 A. I believe I worked -- oh, in 2025. We are talking
7 about, again, this is the --

8 Q. Very recent past.

10:47:29

9 A. -- the engagement that Ms. McKnight was referring to.
10 I think I was --

11 Q. Just to be clear, I am not limiting it to just the
12 courtroom. I'm asking about timing for all the work you
13 have done, which is not covered by the privilege. So...

10:47:48

14 A. Sure. I don't know what the wall clock -- I don't
15 know the total of the lapsed hours are. I know that the
16 total number of different days on which I did any work at
17 all on it is I believe seven.

18 Q. Do you remember when you started?

19 A. I believe August 1st.

10:47:58

20 Q. Okay. Have you put --

21 MS. MCKNIGHT: Pardon me, Your Honor. I had
22 understood counsel to be eliciting testimony about his
23 work in this case. And he said all non-privileged work.
24 And then I'm concerned about the answer that's being
25 elicited as related to work prior to the case.

10:48:10

1 JUDGE GUADERRAMA: Well, I thought it was limited
2 to the work he did in this case. He said seven days
3 starting August 1st.

10:48:23

4 THE WITNESS: Well, I misunderstood then. I
5 apologize.

6 MR. NOTZON: I opened my question to the work
7 that he has done for the State of Texas --

8 JUDGE GUADERRAMA: In this case.

10:48:34

9 MR. NOTZON: -- at any time in 2025 related to
10 this, whether it's for the legislature -- whether it was
11 for the Senate or here, because timing and how long he has
12 worked is not part of the privilege.

13 JUDGE GUADERRAMA: Well, I suppose that might be
14 true. So...

10:48:48

15 THE WITNESS: In that case, it would be helpful
16 if you would restate your question and I'll try to answer
17 its precisely now that I have a better understanding of
18 what you are asking.

19 BY MR. NOTZON:

10:48:56

20 **Q.** Well, you've answered August 1st, which I think
21 includes information related to your work not related to
22 this preliminary injunction hearing, correct?

23 **A.** That's correct.

10:49:07

24 **Q.** Okay. And that's the first time in 2025 that you
25 started working for the State of Texas?

1 **A.** Correct.

2 **Q.** And that was your work -- that started your work with
3 the Senate?

4 **A.** Right.

10:49:14 5 **Q.** Okay. And the seven days you mentioned, is that seven
6 days since August 1st?

7 **A.** It's the subsequent seven days.

8 **Q.** Yes.

9 **A.** So the first day on which I recorded any effort, I
10:49:27 10 believe, was the 1st of August and the last day was the
11 7th.

12 **Q.** Okay. When you say seven days, is that some amount of
13 time during that day or is that seven times 24?

14 **A.** Yes. Way less than seven times 24. Yeah. I'm
10:49:46 15 hardworking but not that hardworking.

16 **Q.** Okay. Well, I mean, at \$700 an hour it makes a
17 difference.

18 Have you spent more time working for the Senate than
19 you have spent working for this preliminary injunction
10:50:08 20 hearing?

21 **A.** No. I don't believe so, no.

22 **Q.** You have already surpassed your work, the time you
23 worked for the Senate in your work for the preliminary
24 injunction hearing?

10:50:15 25 **A.** Yes. This is -- the work -- yes. I guess it's

1 difficult for me to characterize, but yes. That's
2 correct. I have worked, I believe, many more hours at
3 this point on the second one.

4 **Q.** Okay. Back to the technique, the Figure 1 technique.
10:50:40 5 Your data doesn't really support such an expansive
6 conclusion without limitation, correct? I think you
7 already answered my question that you are trying to say
8 that it shouldn't be taken as an expansive statement that
9 partisanship is a better predictor for the future than
10:50:59 10 race in elections, correct?

11 **A.** The evidence that I presented would not support such a
12 generalization.

13 **Q.** And that would be because several things. It only
14 related to comparing two elections, correct, of the one
10:51:17 15 limitation?

16 **A.** It would. I don't think that's a significant
17 limitation in this case, but it is a potential limitation
18 and why it might not hold in a general election.

19 **Q.** Okay. I didn't ask about how important the limitation
10:51:30 20 was. I am just asking about limitations. Okay?

21 **A.** Sure.

22 **Q.** And it only covered a two-year period of time?

23 **A.** Yes. Over the last two years.

24 **Q.** Okay. And it didn't include actual voter data,
10:51:48 25 correct?

1 **A.** Well, the votes cast were actual voter data. I don't
2 think that's what you mean.

3 **Q.** No.

4 MR. NOTZON: So can we get Figure 1 up? Does
10:52:05 5 somebody have that ability?

6 Thank you.

7 And just the charts. Yeah.

8 BY MR. NOTZON:

9 **Q.** Okay. Are you saying there is voter -- actual voter
10:52:45 10 data in the first chart?

11 **A.** The positions on the y-axis in all three charts are
12 the results of the vote count in each precinct in the
13 Trump presidential contest.

14 **Q.** Okay. But on the x-axis for percent Black voters and
10:53:11 15 percent Hispanic voters, those are not voter data?

16 **A.** Those -- yeah. So I guess you could mean two
17 different things when you say "voters." You can think
18 about the voters in a kind of abstract way, like all the
19 people that could potentially have voted.

10:53:27 20 **Q.** Which is how you mean it here?

21 **A.** And that's how I mean it.

22 **Q.** Okay. Potential voters?

23 **A.** Well, people who are -- yes. In a very broad sense,
24 what we're looking at here really -- and maybe it would
10:53:37 25 have been better labeled as percent Black citizen age

1 voting population.

2 **Q.** Right. And Hispanic, et cetera?

3 **A.** Correct.

4 **Q.** But that's a very different number than people who
5 actually voted, correct?

10:53:49

6 **A.** Those percentages, the percentages of the
7 electorate -- of the people that actually turn out in the
8 polls and the percentages of the CVAP, yeah, may not
9 correspond.

10:54:04

10 **Q.** Okay. And it actually includes people that aren't
11 even registered to vote, correct?

12 **A.** Certainly.

13 **Q.** And it doesn't account for turnout?

14 **A.** Correct.

10:54:16

15 **Q.** Which is a major difference in elections in Texas?

16 **A.** Certainly.

17 **Q.** If you look at -- you are saying that the Black
18 modeling does not apply, which I appreciate your integrity
19 on that use of the term.

10:54:38

20 And for Hispanic you see it's really broad. It's very
21 messy, not tight on the line of best fit as the first
22 chart, correct?

23 **A.** You are asking about Figure 2; is that correct?

24 **Q.** No. Figure 1. And I'm talking about the three charts
25 there.

10:54:57

1 **A.** I see.

2 **Q.** Or do you --

3 **A.** Well, you referenced a model.

4 **Q.** Aren't those models?

10:55:03 5 **A.** These are just plotting data.

6 **Q.** Well, you don't have an actual voter there. You are
7 modeling what happens, correct?

8 **A.** I'm simply asking the question: How well can you
9 predict Trump support, given knowledge of the Black and
10 Hispanic citizen voting age population in each precinct?

10:55:27 11 **Q.** Without accounting for turnout, without accounting for
12 who is actually registered, without accounting for who
13 actually voted?

14 **A.** I --

10:55:41 15 **Q.** You could have done that?

16 **A.** I plotted two variables against each other. I think
17 what you are suggesting is that I should have plotted two
18 different variables against each other.

19 **Q.** And it would have been more accurate?

10:55:51 20 **A.** I believe that -- I mean, I don't know for sure
21 whether it would be -- whether the distribution of those
22 points would be less in one case or the other. I -- if
23 you want me to speculate, because I haven't actually --
24 and I can't. I was not in a position to do it. If I

10:56:11 25 actually did it, I believe that there would be somewhat

1 less dispersion along a similar line, but I don't expect
2 that you would get anywhere near what you are seeing in
3 the left-hand column.

10:56:29

4 **Q.** Well, in the left chart, those -- that's voter data
5 versus voter data, right?

6 **A.** Exactly.

7 **Q.** So you actually have a tighter picture there because
8 you actually have actual data, actual voter data?

9 **A.** Exactly.

10:56:40

10 **Q.** Okay.

11 **A.** And also because partisanship is a better predictor of
12 partisanship at the precinct level.

13 **Q.** According to you?

14 **A.** According to these pictures.

10:56:52

15 **Q.** According to your interpretation of these pictures?

16 **A.** Correct.

17 **Q.** Okay. If you look at the percent Black vote chart and
18 if you see, starting about 35 to 40 percent, you are as
19 tight on the line of best fit and going to 100 as you are
20 on the first chart there, correct?

10:57:17

21 **A.** Yeah. I'm not exactly sure what that point is. But
22 as I said in the report, as you move to higher and higher
23 Black percentages, you get tighter and tighter
24 predictions.

10:57:29

25 **Q.** Yeah. And you understand that it's been testified and

1 accepted that 35 percent Black vote in a district at
2 35 percent can have the ability to elect in Texas?

3 **A.** I'm not aware of that.

10:57:51

4 **Q.** Okay. So that performance in that second chart makes
5 sense even if it's a prediction and not actual data,
6 according to the testimony of Dr. Murray that's been
7 accepted by Dr. Alford as well?

10:58:08

8 **A.** Yeah. What we are plotting here are precincts. And
9 so, again, the very simple question is, if you were trying
10 to figure out what Trump --

11 MR. NOTZON: Object as nonresponsive.

12 JUDGE GUADERRAMA: Sustained.

13 THE WITNESS: Sorry.

14 BY MR. NOTZON:

10:58:18

15 **Q.** How long did your analysis take to do those three
16 charts? Just the first chart, how long did that take?

17 **A.** I don't recall. I don't recall. I'm sorry.

18 **Q.** Minutes?

19 **A.** No. Many more than minutes.

10:58:34

20 **Q.** Okay. A couple of minutes?

21 **A.** Hours, at least. Yeah. Some number of hours.

22 **Q.** Why would it take hours? You just put the data from
23 the one election against the other.

10:58:55

24 **A.** Yes. But, again, the work there is to, you know, take
25 these data, understand what they mean, and develop them to

1 the point that the chart can be made. So if you mean
2 literally rendering the chart after the data has been
3 organized, then, yes, minutes or seconds or something like
4 that.

10:59:07

5 **Q.** You have to organize the data? It didn't come to you
6 this way?

7 **A.** There were, you know, a number of files that were
8 presented to me. I had to go through the files and figure
9 out what those limits were on each one.

10:59:23

10 **Q.** You only did one election versus another election,
11 only two years apart, correct?

12 **A.** That is what I present here, yes.

13 **Q.** You didn't validate this idea, this technique, did
14 you? You didn't use other elections, did you? Yes or no?

10:59:37

15 **A.** I looked at other elections to see if it was similar,
16 yes.

17 **Q.** You didn't publish it?

18 **A.** I did not.

19 **Q.** You did not.

10:59:47

20 So we have no notice of what you found or didn't find
21 in your other work that you now say that you did that you
22 don't say you did in your report, correct?

23 **A.** No. And I don't represent conclusions on the basis of
24 that.

11:00:03

25 **Q.** And isn't it important to validate your results before

1 you state a conclusion, a broad conclusion like
2 partisanship is more predictive than race, and try -- in
3 the state of Texas? Wouldn't you want to validate that?

4 **A.** I believe that I did, yeah.

11:00:23 5 **Q.** There is no validation reported in this report, is
6 there?

7 **A.** I did not say that I have done that in the report,
8 yes.

9 **Q.** There is no way for another expert to look at your
11:00:38 10 report, which you know is a process of getting to the
11 truth in litigation, voting litigation, is to have
12 experts' techniques and methodologies tested by others,
13 correct?

14 **A.** Correct.

11:00:50 15 **Q.** Peer reviewed?

16 **A.** Correct.

17 **Q.** Strong peer reviewed?

18 You don't have -- you have not provided any of our
19 experts with that information, correct?

11:00:57 20 **A.** I have provided the code that generates these tables
21 that also generates similar columns for all of the '22 and
22 '24 statewide contests.

23 **Q.** You didn't provide any validation information, did
24 you?

11:01:13 25 **A.** Well --

1 JUDGE BROWN: That's asked and answered.

2 MR. NOTZON: Yes, sir.

3 JUDGE GUADERRAMA: And it is time for our morning
4 break. So let's go ahead and do that.

11:01:27 5 Ms. McKnight -- Ms. McKnight, before we come back, if
6 you would file your application and pay the fee.

7 And have you found the citation to the Supreme Court
8 yet?

9 MS. MCKNIGHT: I have, Your Honor.

11:01:39 10 JUDGE GUADERRAMA: What is that Supreme Court
11 citation?

12 MS. MCKNIGHT: So it's *U.S. v. Kovel*, K-o-v-e-l.
13 It's 296 F.2d 918, 1961.

14 Would you like me to give you the Fifth Circuit case
11:01:52 15 adopting it and the --

16 JUDGE GUADERRAMA: This is a United States
17 Supreme Court cite?

18 MS. MCKNIGHT: Yes. Yes, Your Honor.

19 MR. THOMPSON: No, Your Honor.

11:02:00 20 JUDGE GUADERRAMA: Fed. 2d?

21 MR. THOMPSON: Your Honor, it's the Second
22 Circuit.

23 MS. MCKNIGHT: Oh.

24 MR. THOMPSON: This isn't my issue. Just on
11:02:03 25 general knowledge, I believe *Kovel* to be a Second Circuit

1 opinion. I do.

2 JUDGE GUADERRAMA: So it never went to the
3 Supreme Court?

4 MR. THOMPSON: Not to my knowledge.

11:02:09

5 MS. MCKNIGHT: I beg your pardon.

6 JUDGE GUADERRAMA: So this is a Second Circuit
7 citation and the Fifth Circuit cited it in a different
8 case.

11:02:21

9 MS. MCKNIGHT: I beg your -- I am ashamed that I
10 said it was Supreme Court. I beg Your Honor for
11 misstating that. I would not intend to do that.

12 Second Circuit. Let me give you the Fifth Circuit
13 case adopting it. I think it's important here.

14 JUDGE GUADERRAMA: Yes, ma'am.

11:02:36

15 MS. MCKNIGHT: The Fifth Circuit case adopting
16 the *Kovel* doctrine is *U.S. v. The El Paso Company*. The
17 citation is 682 F.2d 530. That's a 1982 case out of the
18 Fifth Circuit. You will want to pincite pages 538 and
19 541.

11:03:03

20 Let me give you one additional citation. That is for
21 *Milburn v. United States*. That is the Western District of
22 Texas in 2010 stated [as read:] This circuit, like most,
23 has adopted the *Kovel* text. That citation is 804 F. Supp
24 2d 544.

11:03:27

25 Those cases will illustrate for you the test. It was

1 technical in nature, the hiring of the person it enabled
2 giving legal counsel, and it was protected in confidence.
3 Those are the three elements you'll need to look for.

4 JUDGE GUADERRAMA: Thank you.

11:03:44

5 MS. MCKNIGHT: Thank you, Your Honor.

6 MR. VELEZ: This court stands in recess.

7 (Recess from 11:07 a.m. to 11:17 a.m.)

8 JUDGE GUADERRAMA: Be seated, please.

9 Dr. Lewis is on the witness stand.

11:17:30

10 Mr. Notzon.

11 MR. NOTZON: Thank you.

12 BY MR. NOTZON:

13 **Q.** Dr. Lewis, did you consider -- without going into any
14 details, this is kind of a "yes" or "no" question -- did
15 you consider any part of your work for the Senate in
16 writing your report for this hearing?

11:17:42

17 **A.** No. I did not.

18 **Q.** And you are not offering an opinion that Plan C2333
19 complies with Section 2 of the Voting Rights Act, correct?

11:18:00

20 MR. BERG: Your Honor, Ms. McKnight obviously is
21 not here but that feels like that's over the privilege
22 potentially.

23 JUDGE GUADERRAMA: That is what? I'm sorry.

24 MR. BERG: Over the privilege.

11:18:14

25 JUDGE BROWN: I understood it to be, he is not

1 offering any --

2 MR. BERG: To the extent that Dr. Lewis performed
3 VRA compliance, counsel is now asking his thoughts on VRA
4 compliance on the map.

11:18:25 5 MR. NOTZON: I'm sorry. That's a fair
6 misunderstanding.

7 BY MR. NOTZON:

8 Q. Related to your opinion in this hearing, cabined to
9 that, you are not offering -- you are not offering an
11:18:41 10 opinion that C2333 complies with the Voting Rights Act,
11 correct?

12 A. No, I'm not.

13 Q. And you are not saying that minorities retain an equal
14 opportunity to elect preferred candidates in any
11:18:56 15 particular district in this map, correct?

16 A. No, I'm not.

17 Q. And you didn't analyze the effect of C2333 on any
18 ability to elect districts in the map --

19 A. That's correct.

11:19:10 20 Q. -- for minority voters?

21 MS. McKNIGHT: As long as -- pardon me, Your
22 Honor. As long as the answer is cabined to his work in
23 this case, we --

24 MR. NOTZON: So cabined.

11:19:22 25 THE WITNESS: Could you restate the question,

1 please?

2 BY MR. NOTZON:

3 **Q.** Sure.

4 You did not analyze the effect of C2333 on any ability
11:19:29 5 to elect congressional districts for minority voters in
6 Texas?

7 **A.** No, I did not.

8 **Q.** And so your report is purely descriptive of partisan
9 patterns and not a legal compliance analysis, correct?

11:19:49 10 **A.** If I understand what you mean by legal compliance
11 analysis, yes.

12 MR. NOTZON: Okay. Pass the witness, Your Honor.

13 JUDGE GUADERRAMA: Mr. Berg.

14 MR. BERG: Thank you, Your Honor. Just a little
11:19:59 15 clean up.

16 **REDIRECT EXAMINATION**

17 BY MR. BERG:

18 **Q.** Dr. Lewis, when you were talking with Ms. Perales, you
19 were going through Excel sheets and talking about the raw
11:20:29 20 numbers in support of Trump or Abbott.

21 Do you recall that?

22 **A.** I do.

23 **Q.** If we heard testimony that the map drawer used voting
24 percentages for precincts rather than raw numbers of
11:20:39 25 votes, would that be consistent with your review of voting

1 percentages in support of Trump or Abbott?

2 **A.** I'm sorry. You would have to restate that. I don't
3 understand the question.

11:20:54

4 **Q.** Are you aware whether the map drawer used voting
5 percentages from precincts rather than raw numbers of
6 votes?

7 **A.** I am not aware.

8 **Q.** Are you aware of whether the mapmaker considered split
9 ticket voters?

11:21:08

10 **A.** I am not aware.

11 **Q.** Would you agree with Ms. Perales that Republicans vote
12 Republican?

13 **A.** I think what I can say, based on the analysis
14 presented in my report, is that places -- precincts that
15 support Republicans at a certain level in one election
16 tend to support Republicans in a similar level in other
17 elections.

11:21:25

18 **Q.** Do you recall being asked by Mr. Fox, the first
19 attorney that crossed you, about your code and one small
20 portion of that code that contained White and Asian
21 voters?

11:21:41

22 **A.** I do.

23 **Q.** And you produced that code with your report, correct?

24 **A.** I beg your pardon?

11:21:50

25 **Q.** You produced that code with your report?

1 **A.** Yes, I did.

2 **Q.** Are you aware of any plaintiffs' experts identifying
3 in their rebuttal reports that this particular use of code
4 affected the accuracy of your results?

11:22:09 5 **A.** No, I'm not.

6 **Q.** Are you aware that Dr. Ansolabehere said in his
7 rebuttal report that, quote, [as read:] CD 7 also has a
8 substantial Asian population, but I did not analyze Asian
9 voting patterns?

11:22:24 10 **A.** I don't recall that he did.

11 MR. BERG: Richard, could you please bring up
12 State 570, Dr. Lewis's report, paragraph 12.

13 BY MR. BERG:

14 **Q.** Dr. Lewis, while you were talking with my friend
11:22:53 15 Ms. Perales, you were asked questions about analyses you
16 performed on Texas precincts with a Hispanic CVAP of
17 95 percent or more.

18 Do you remember that?

19 **A.** I do.

11:23:02 20 **Q.** Now, you have testified about Voting Rights Act's
21 claims before, correct?

22 **A.** I have.

23 **Q.** Were Ms. Perales' questions the type of questions that
24 you would expect to respond to in a hearing about the
11:23:18 25 Voting Rights Act?

1 **A.** Yes.

2 **Q.** When you were preparing your September 22nd report,
3 did you understand yourself to be conducting a Voting
4 Rights Act analysis?

11:23:27

5 **A.** No.

6 **Q.** Did you conduct a homogeneous precinct analysis?

7 **A.** No.

11:23:43

8 **Q.** Dr. Lewis, you write in paragraph 12 [as read:] Even
9 as the size of the Hispanic population approaches
10 100 percent, there is substantial variation in support for
11 Trump in 2024.

12 Did I read that correctly?

13 **A.** Yes.

11:23:57

14 **Q.** Dr. Lewis, why did you analyze Texas precincts where
15 almost all the eligible voters were Hispanic?

16 **A.** I looked at those -- at those precincts to sort of get
17 a calibration of the Hispanic cohesiveness numbers that
18 were being presented in the figure that we talked about
19 earlier.

11:24:21

20 **Q.** And what did your analysis of these 95 percent plus
21 Hispanic CVAP precincts find?

22 **A.** Yeah. So just what it says. It says just what it
23 says there. That in less than eight -- that no
24 homogeneous precinct in the state gave President Trump

11:24:38

25 less than 18 percent support and that 75 percent of those

1 precincts gave him 39 percent support.

2 So that's just sort of tagging the sort of middle of
3 the district -- well, the middle 50 percent of that range
4 that is shown in the table or the figure, I should say, at
5 100 percent -- or above 95.

11:24:57

6 **Q.** And when you were talking with Ms. Perales, she showed
7 you a demonstrative map, which we're now calling
8 LULAC 1405.

9 Do you remember that, with the orange coloring?

11:25:09

10 **A.** I do.

11 **Q.** And you'll recall that most of the orange was along
12 the southern Texas border?

13 **A.** I do.

14 **Q.** Based on your conclusions in paragraph 12, does it
15 surprise you that President Trump did very well in those
16 areas in 2024?

11:25:18

17 **A.** I -- maybe just restate the question. I'm not sure I
18 understand.

19 **Q.** Are you aware that President Trump did well in South
20 Texas along the border in 2024?

11:25:38

21 **A.** I didn't have very long with those spreadsheets, but I
22 believe that's what they show.

23 MR. BERG: Richard, would you please bring up
24 Gonzales Exhibit 68. That's the PDF we saw earlier of
25 Dr. Lewis's code. Could we please go to page 8. Could we

11:25:56

1 zoom in.

2 BY MR. BERG:

3 **Q.** Dr. Lewis, is this your code?

4 **A.** It appears to be, yes.

11:26:06

5 **Q.** Does this code show the 20 percent population
6 threshold that we talked about yesterday on direct?

7 **A.** It does.

11:26:23

8 **Q.** And you relied upon this 20 percent filter, not a
9 95 percent filter, when you were conducting the
10 scatterplot in your report?

11 **A.** I did. Oh, no. I'm sorry. These are the cohesion
12 plots. I don't recall if this was applied in the case of
13 the scatterplots.

11:26:45

14 MR. BERG: Richard, could we go to paragraph 8 of
15 State 570.

16 BY MR. BERG:

17 **Q.** And we talked about how your precinct analysis of
18 8,386 precincts was used for the scatterplot, right?

19 **A.** Yes.

11:27:04

20 **Q.** Not the 252 number?

21 **A.** That's right.

22 MR. BERG: Could we go to Figure 1 on page 4,
23 please, Richard.

24 BY MR. BERG:

11:27:20

25 **Q.** This was brought up on cross.

1 How did you account for the differences in this report
2 in election data and racial data to perform this
3 comparison?

11:27:36

4 **A.** You are going to have to restate the question. I'm
5 sorry.

11:27:53

6 **Q.** How did you account for using election data and the
7 racial data to perform the comparison in Figure 1,
8 particularly the -- I'm asking how did you account for the
9 differences in information in the first draft and the
10 second two drafts?

11:28:13

11 **A.** Again, if I understand what you are asking, the point
12 is that along the blue line would be a kind of prediction
13 that one might make about what the support for Trump would
14 be at, say, different levels of Black CVAP or Hispanic
15 CVAP. And then the dots kind of show the dispersion of
16 the actual precinct results that occurred in those places.

11:28:30

17 And so I guess, if I am understanding, how much of the
18 Trump support could be accounted for has to do with how
19 much dispersion there is around that line, if that's what
20 you are asking.

21 **Q.** Are you aware of any literature that says that race is
22 a better predictor of future voting than past partisan
23 performance?

24 **A.** I am not.

11:28:39

25 **Q.** Do you think that past partisan performance is a

1 better indicator of future voting than race?

2 **A.** I do.

3 MR. BERG: Richard, could we go to paragraph 14
4 on page 5.

11:29:12

5 BY MR. BERG:

6 **Q.** I think we touched on this or hinted around it a
7 couple times on cross.

11:29:19

8 Dr. Lewis, what did Professor Ansolabehere's estimates
9 show about Hispanic cohesion in districts with Hispanic
10 population of 20 percent or more?

11 **A.** I guess I will just read this. [As read:] The rates
12 of Hispanic cohesion in contests in districts with
13 substantial (over 20 percent) Hispanic population were
14 less than 60 percent nearly 23 percent of the time, which
15 is more often than they were over 80 percent.

11:29:34

16 **Q.** And you were asked several questions about the data
17 used in maps and elections considered; is that correct?

18 **A.** Yes. I think so.

11:29:54

19 **Q.** Did you use any North Carolina election data from
20 Dr. Palmer in preparing your report?

21 **A.** I did not.

22 **Q.** You instead relied upon the data of Dr. Ansolabehere,
23 correct?

24 **A.** I did.

11:30:01

25 **Q.** And is it your understanding that Dr. Ansolabehere's

1 data included all statewide elections in Texas from 2020
2 to 2024?

3 **A.** It is.

4 **Q.** So it would be fair to say that you only considered
5 two elections in your analysis?

11:30:14

6 **A.** If by "election" you mean all of the contests held at
7 a particular November general election, yeah.

8 **Q.** What was your answer to that?

9 **A.** I believe the answer is yes. Could you maybe restate
10 the question? We'll just do it again.

11:30:31

11 **Q.** Yeah.

12 Did you consider more than two election -- two
13 election contests in your analysis?

14 **A.** Could you maybe be more specific about which analysis
15 that you are referring to? Because in many instances,
16 yes. And in others, I'm not so sure.

11:30:47

17 **Q.** Through your use of Dr. Ansolabehere's election on
18 statewide -- all statewide election contests over three
19 years, did you consider more than two election contests?

11:31:08

20 **A.** Yes.

21 **Q.** Yesterday on direct we started out with you
22 acknowledging that Footnote 2 depicted something that was
23 inaccurate in your original report.

24 Do you recall that?

11:31:29

25 **A.** I do.

1 MR. BERG: Richard, could we please go to the
2 bottom of page 5 and beginning of page 6 starting with,
3 "Even though Professor Ansolabehere's estimates" and then
4 could we highlight down. Thank you.

11:32:07

5 BY MR. BERG:

6 Q. So you say [as read:] Even though Professor
7 Ansolabehere's estimates are higher than Professor
8 Collingwood's estimates (and higher than those suggested
9 by the consideration of homogeneous precincts above), they
10 reveal a great deal of variation in cohesion and include
11 numerous districts in which one or more Democrat
12 candidates are estimated to have received less than 60 or
13 even 50 percent of the Hispanic vote.

11:32:20

14 Did I read that correctly?

11:32:33

15 A. Yes.

16 Q. Dr. Lewis, was the inaccuracy in Footnote 2 an error
17 of trans -- was it a transpositional error or a population
18 error?

11:32:52

19 A. If I understand what you mean by "transpositional," I
20 believe it was a transpositional error.

21 Q. Does that transpositional error in Footnote 2 alter
22 your conclusions that Dr. Ansolabehere's estimates, quote,
23 [as read:] ...reveal a great deal of variation in cohesion
24 and include numerous districts in which one or more
25 Democratic candidates are estimated to have received less

11:33:08

1 than 60 or even 50 percent of the Hispanic vote?

2 **A.** No.

3 MR. BERG: Richard, you can take that down.

4 BY MR. BERG:

11:33:20 5 **Q.** Yesterday on cross plaintiffs asked you about a 2019
6 North Carolina case, *Common Cause v. Lewis*.

7 Do you recall that?

8 **A.** I do.

9 **Q.** A different Lewis?

11:33:32 10 **A.** Yes.

11 **Q.** Did you conduct a BVAP needed to win analysis in that
12 case?

13 **A.** I believe that I did.

14 **Q.** And plaintiffs' counsel yesterday suggested that there
15 was an issue with your credibility in that case because
16 you issued a correction; is that correct? Is that right?

17 **A.** I believe so, yes.

18 **Q.** And I understood you at the time not to recall the
19 case particularly, so I would like to refresh your memory
11:33:56 20 and show you something that plaintiffs' counsel did not
21 pull up.

22 MR. BERG: Can we pull up the language of the
23 final judgment -- from final judgment in that case, which
24 cites your work. Could we go to the last page, page 357.

11:34:22 25 And if we could see the date.

1 BY MR. BERG:

2 **Q.** And this judgment was dated September 3rd, 2029 [sic],
3 Dr. Lewis?

4 **A.** 2019.

11:34:32 5 **Q.** Sorry. 2029 would be very impressive.

6 **A.** Yes.

7 MR. BERG: Can we go to paragraph 679 on page 280
8 of the final judgment.

9 BY MR. BERG:

11:34:48 10 **Q.** Dr. Lewis, would you take a minute to read this
11 paragraph.

12 **A.** Yes.

13 I'm finished.

14 **Q.** Did you see anywhere in that paragraph that the Court
11:35:23 15 found your work not to be credible?

16 **A.** I did not.

17 **Q.** Does it appear to you instead that the Court relied on
18 your work to make findings in this case?

19 **A.** It does.

11:35:33 20 **Q.** Okay. And let's look at which party asked the Court
21 to rely on the accuracy of your report of your work.

22 MR. BERG: If we turn to page 279, paragraph 678.

23 BY MR. BERG:

24 **Q.** Dr. Lewis, do you see the reference to your amended
11:36:00 25 report, Table 4, in this paragraph?

1 **A.** I do.

2 **Q.** And the citation to Plaintiffs' Exhibit 773?

3 **A.** I do.

11:36:15

4 **Q.** So you were -- although you were paid by the
5 defendants, the plaintiffs relied upon your report.

6 Is that a fair depiction of this paragraph?

7 **A.** I am not sure of the sort of legal meaning of "relied
8 on," but that certainly would be the colloquium in there.

11:36:33

9 **Q.** Would it surprise you to know that the plaintiffs'
10 lawyers in this case that relied upon your report were
11 Mr. Fox's colleagues at Elias Law?

12 **A.** I would be neither surprised nor unsurprised by that.

11:36:55

13 **Q.** Dr. Lewis, would you ever -- why would you ever
14 produce a report where the math shows something that is
15 adverse to your client's claims?

16 **A.** Because it's the truth.

17 **Q.** What should that tell our Court about whether you
18 would ever make conclusions inconsistent with your
19 statistical analysis just because someone was paying you?

11:37:09

20 **A.** I would never do such a thing.

21 **Q.** Now, Dr. Lewis, I believe this was also touched on in
22 cross. Did you testify just two years later in another
23 North Carolina case?

11:37:29

24 **MR. BERG:** Can we pull up what I'll refer to as
25 the *NCLCV* case. Pull up that judgment and go to page 1.

1 BY MR. BERG:

2 **Q.** This was in Wade County, North Carolina, in the
3 General Court of Justice, Superior Court Division, the
4 same court as *Common Cause*, correct?

11:37:46

5 **A.** I don't precisely recall, but that appears to be the
6 case, yeah.

7 **Q.** Let's turn to where the Court discussed your work on
8 this case, page 191. We see the part labeled "Defendants'
9 expert Jeffrey Lewis"?

11:38:05

10 **A.** I see it. It would be helpful to enlarge it.

11 **Q.** Yeah. I can't pull that up.

12 MR. BERG: Richard, could we pull up a
13 side-to-side of pages 191 and 192. Can we zoom in on
14 paragraph 595 so we can actually see? Thank you.

11:38:42

15 BY MR. BERG:

16 **Q.** Dr. Lewis, would you take a moment to read this
17 paragraph?

18 **A.** Yes.

19 Yes. I have finished.

11:39:00

20 **Q.** And this paragraph references Dr. Duchin, who also
21 appears in this case. I don't know if you are aware of
22 that.

23 **A.** I am.

24 **Q.** Does it appear to you that the Court in the *NCLCV* case
25 relied on your analysis in order to conclude, quote

11:39:14

1 [as read:] That in no district, enacted or in 2020, does
2 it appear that a majority of BVAP was needed for that
3 district to regularly generate majority support for
4 minority-preferred candidates in the reconstituted
5 elections?

11:39:30

6 **A.** That's what it would appear to me, yes.

7 MR. BERG: Richard, could we take that down and
8 bring Dr. Lewis's report back up, State 570. Go to
9 paragraph 8. Could we put above that Figure 2. And could
10 we highlight the first sentence in paragraph 8.

11:40:17

11 BY MR. BERG:

12 **Q.** So it says [as read:] For the purpose of
13 extrapolating partisan voting behavior in Texas voting
14 precincts into the near future, past partisan voting is
15 far more powerful than racial/ethnic demographics.

11:40:34

16 Did I read that correctly, Dr. Lewis?

17 **A.** Yes.

18 **Q.** Has any questioning during this hearing cast any doubt
19 on your conclusions in that paragraph?

11:40:46

20 **A.** No.

21 MR. BERG: Richard, could we please go to
22 paragraph 17 of Dr. Lewis's September 22nd report.

23 BY MR. BERG:

24 **Q.** Dr. Lewis, has any questioning during this hearing
25 cast any doubt on your conclusion that the enacted plan

11:41:15

1 plainly disadvantages Democrats of any race?

2 **A.** No.

3 **Q.** Has anything in this hearing cast doubt on your
4 conclusion that the enacted plan provides Black and
5 Hispanic Republican voters with an increase in win rates?

11:41:34

6 **A.** No.

7 MR. BERG: Thank you. I pass the witness.

8 JUDGE GUADERRAMA: Mr. Fox.

9 MR. FOX: Briefly, Your Honor. Thank you.

11:41:48

10 **RECROSS-EXAMINATION**

11 BY MR. FOX:

12 **Q.** Dr. Lewis, I was going to let this lie on some of the
13 questions; but I have a few more questions for you about
14 *Lewis v. Common Cause*.

11:41:56

15 MR. FOX: Mr. Medina, could you pull up, please,
16 what has been marked as Gonzales Exhibit 69.

17 BY MR. FOX:

18 **Q.** Do you see on your screen a filing from *Lewis v.*
19 *Common Cause*?

11:42:19

20 **A.** I do.

21 **Q.** And this is a plaintiff's emergency motion to compel
22 legislative defendants to produce revised calculations of
23 Dr. Jeffrey Lewis.

24 Do you see that?

11:42:28

25 **A.** I do.

1 Q. If we can go down to page 3, you see here -- do you
2 see starting on the first full paragraph here, it says
3 [as read:] Several hours after Dr. Lewis's deposition
4 ended, plaintiffs emailed legislative defendants
5 requesting that they send Dr. Lewis's revised numbers for
6 the far right column of Table 4, which he testified he has
7 already calculated, by 12:00 p.m. the next day.

11:42:45

8 Do you see that?

9 A. I do.

11:42:56

10 Q. Then you see that thereafter the parties exchanged
11 witness lists for trial, and you were listed on the
12 witness list.

13 Do you see that?

14 A. I do. Although now I can't.

11:43:05

15 MR. FOX: One moment, here.

16 MR. MEDINA: Sorry.

17 BY MR. FOX:

18 Q. And do you see that they exchanged exhibit lists which
19 included your original exhibit list with the error?

11:43:29

20 Do you see that?

21 A. It's very small.

22 MR. FOX: Could we blow up that part, Mr. Medina.

23 BY MR. FOX:

24 Q. It's that "on July 1st" paragraph.

11:43:38

25 A. I see.

1 Q. Do you see that?

2 A. Yeah. I do see that. I see [as read:] Legislative
3 defendants served their exhibit list, which includes
4 Dr. Lewis's original table.

11:43:47

5 Q. [As read:] With his admittedly erroneous Black CVAP
6 thresholds.

7 Yes?

8 A. Yes.

11:43:52

9 Q. And then do you see that plaintiff's counsel followed
10 up with defense counsel and asked for the revised --

11 MR. BERG: Your Honor, I object as to
12 irrelevance. This appears to be lawyering back and forth
13 about referencing Dr. Lewis's credibility, which I am
14 assuming Mr. Fox is trying to go for.

11:44:06

15 MR. FOX: Your Honor, there was a suggestion
16 during redirect that this withdrawal of Dr. Lewis did not
17 involve his credibility, that the Court still relied on
18 it. And, unfortunately, I think that brings into question
19 exactly what happened in *Lewis*, and I'm just trying to
20 establish exactly what happened in *Lewis*.

11:44:18

21 JUDGE GUADERRAMA: But the testimony is going to
22 come from the witness, right, not you?

23 MR. FOX: Of course.

11:44:26

24 JUDGE GUADERRAMA: All right. I'll overrule the
25 objection.

1 BY MR. FOX:

2 **Q.** Do you see here that plaintiffs' counsel asked for
3 your data again?

11:44:37

4 **A.** You are saying "late in the evening of July 2nd" is
5 where you are talking about?

6 **Q.** Yes.

7 **A.** Yes.

8 **Q.** Okay. And then you saw this was a motion to compel
9 production of your data, right?

11:44:43

10 **A.** Yes. That's how you characterized it, and I think
11 that is what it said.

12 MR. FOX: Could we pull up, please, Gonzales
13 Exhibit 70. Sorry. It must be 71. I'm looking for the
14 legislative defendants' response.

11:45:03

15 BY MR. FOX:

16 **Q.** Do you see this as another filing from that case?

17 **A.** I do.

18 **Q.** Do you see this as the legislative defendants'
19 response to that motion we were just looking at?

11:45:12

20 **A.** Yeah. That is how it's titled.

21 MR. FOX: And if you'll scroll down a bit on this
22 page.

23 MR. BERG: Your Honor, I just note for the record
24 that 69, 70, and 71 are all new.

11:45:29

25 MR. FOX: We provided these actually.

1 MR. BERG: 69 and 71?

2 MR. FOX: We provided these by email, I think, if
3 not last night, either last night or the night before. I
4 do believe they should have them.

11:45:42 5 MS. THORBURN: That's fine. I could be wrong.

6 JUDGE GUADERRAMA: All right.

7 MR. FOX: I will try it one more time and then
8 I'll just ask the question, Dr. Lewis, and we'll see if
9 you recall. Scroll down a bit. If you can blow up the
10 bottom paragraph there, Mr. Medina.

11:46:38

11 BY MR. FOX:

12 **Q.** Do you see here that what defense counsel said was
13 [as read:] In an effort to prioritize and streamline the
14 trial presentation, legislative defendants no longer
15 intend to call Dr. Lewis as an expert witness and withdraw
16 the exhibits associated with his report.

11:46:52

17 Do you see that?

18 **A.** Just above the "Exhibit 71" sticker; is that right?

19 **Q.** Yes.

11:47:05

20 **A.** Yes.

21 **Q.** Do you see that?

22 **A.** I do. Yes.

23 **Q.** And so your counsel withdrew you from the witness
24 list, and they withdrew your report from their exhibit

11:47:14

25 list; is that right?

1 **A.** That is what this appears to state, yes.

2 **Q.** Okay.

11:47:24

3 MR. FOX: And then if we could, Mr. Medina, pull
4 up the judgment from this case, which is a new document,
5 although it was just shown to Mr. Lewis on redirect. If
6 we could go down to the portion about Dr. -- that mentions
7 Dr. Lewis that he was just shown.

8 BY MR. FOX:

11:47:47

9 **Q.** And you see there it says [as read:] Legislative
10 defendants chose not to have Dr. Lewis testify at trial.

11 Do you see that?

12 **A.** Yes.

13 **Q.** Okay.

11:48:04

14 MR. FOX: And then if we could go down to the
15 next reference.

16 BY MR. FOX:

17 **Q.** And you see that this paragraph, which you were just
18 shown, this is describing plaintiffs' expert Dr. Chen's
19 analysis; is that right?

11:48:22

20 **A.** I see a Dr. Chen referenced several times.

21 **Q.** Yes. And it's not -- it's saying that Dr. Chen
22 determined how many of his simulations in those county
23 groupings contained districts exceeding Dr. Lewis's BVAP
24 threshold estimates, right?

11:48:39

25 **A.** That appears to be what it says, yes.

1 Q. So this is talking about Dr. Chen's response to your
2 report, which was then ultimately withdrawn; isn't that
3 right?

4 A. I assume so, yes.

11:48:52 5 Q. Thank you.

6 MR. FOX: No further questions, Your Honor.

7 MR. BERG: Nothing further. May Dr. Lewis be
8 excused?

9 JUDGE GUADERRAMA: Let me see if plaintiffs have
11:49:01 10 anything.

11 MS. PERALES: Nothing further, Your Honor.

12 JUDGE GUADERRAMA: All right. May Dr. Lewis be
13 permanently excused?

14 MR. FOX: Yes, sir.

11:49:07 15 MS. PERALES: Yes, Your Honor.

16 THE COURT: Mr. Berg? Excused?

17 MR. BERG: Yes, sir.

18 JUDGE GUADERRAMA: Dr. Lewis, thanks for coming
19 in, sir. You are excused and free to go.

11:49:18 20 THE WITNESS: Thank you very much.

21 JUDGE GUADERRAMA: Who is your next witness?

22 MR. DUNN: I believe we're resuming the
23 cross-examination of Senator King.

24 JUDGE GUADERRAMA: Okay. So Senator King is the
11:49:27 25 next witness.

1 MR. DUNN: We may end up needing to reset this
2 connection here in the floor, but we'll give it a go.

3 JUDGE GUADERRAMA: Good morning, Senator. You
4 remain under oath.

11:49:57 5 THE WITNESS: Thank you, sir.

6 JUDGE GUADERRAMA: Mr. Dunn, whenever you are
7 ready.

8 MR. DUNN: Thank you, Your Honors.

9 **SENATOR PHIL KING.**

11:50:00 10 having been previously duly sworn, testified as follows:

11 **CROSS-EXAMINATION (continued)**

12 BY MR. DUNN:

13 **Q.** Hello, Senator. Good to see you again. Happy
14 Thursday. Sorry you had to fly back and forth, though.

11:50:10 15 Well, since we have been on it in this discussion
16 today -- well, let me just start here.

17 Is there anything about your testimony on Monday that
18 you want to revise or update?

19 **A.** Not that I can think of.

11:50:22 20 **Q.** Have you been kept abreast of the testimony here this
21 week?

22 **A.** No.

23 **Q.** Now, there has been evidence in this case that the
24 Senate, your lawyers, hired a political scientist to give

11:50:35 25 them some advice.

1 Are you aware of that generally?

2 **A.** Generally, yes.

3 **Q.** Do you know the name of that political scientist?

4 **A.** I do not.

11:50:42 5 **Q.** Have you ever met with the person?

6 **A.** No.

7 MR. WASSDORF: Your Honor, could we pause for a
8 moment until Ms. McKnight gets back here?

9 JUDGE GUADERRAMA: Where is she?

11:50:53 10 MR. WASSDORF: I'm not sure, Your Honor.

11 JUDGE GUADERRAMA: You know, if she is going to
12 represent this witness, she needs to be here.

13 MR. WASSDORF: Thank you.

14 JUDGE GUADERRAMA: We'll wait a minute, Mr. Dunn.

11:51:10 15 MR. DUNN: Yes, sir. I only have one more
16 question on the subject.

17 JUDGE GUADERRAMA: Is it objectionable?

18 MR. DUNN: One of these folks will figure out
19 one.

11:51:27 20 BY MR. DUNN:

21 **Q.** So all I wanted to ask you, and it seems clear from
22 your testimony so far, it's fair to say that in none of
23 the legislative proceedings did you or anybody identify
24 the political scientist to the Senate?

11:51:38 25 **A.** No. I have had no impact on that. No discussions.

1 Q. Okay. All right. When we finished on Monday, we were
2 just starting to talk about a particular clip, and it's
3 only about 30 seconds long. So rather than test
4 everybody's memory, I'll just play it again without
5 objection.

11:51:54

6 This is Exhibit 308. Page 25, line 25, to 26, line 6.
7 And, Senator, that's the July 30th Senate committee
8 hearing that you chaired.

9 (Video played.)

11:52:32

10 SENATOR KING: It really seems that all that
11 matters is what -- what is in the four corners of that
12 document, what are within the parameters of each district
13 on that map. And so I don't really see any purpose that
14 his testimony -- I don't see any -- how his testimony
15 would provide any relevant information to the committee's
16 decision of do we like that map. First off, is it legal?
17 And do we like the way it's drawn?

11:52:53

18 (Video concluded.)

19 BY MR. DUNN:

11:53:08

20 Q. So that was a discussion that you were taking part in
21 as to whether or not Mr. Kincaid should come give
22 testimony to the committee.

23 Do you recall that generally?

24 A. Yes.

11:53:16

25 Q. And your opinion was it didn't really matter what he

1 did in drawing the map. Fair enough?

2 **A.** My opinion was that I was just concerned with the
3 content, what the four corners of the map was that was
4 before us.

11:53:29

5 **Q.** And, in fact, at that point, you hadn't spoken with
6 Mr. Kincaid at all about the particular parameters of the
7 map or how he drew it?

8 **A.** That's correct.

11:53:39

9 **Q.** And all the way through the vote in the Senate, you
10 never had that conversation with him?

11 **A.** We never discussed the details of the map, yes.

11:53:55

12 **Q.** And you again stated this opinion on the floor of the
13 Senate on August 22nd, that you didn't see what relevance
14 Mr. Kincaid's testimony about exactly how he drew the map,
15 what it had to do with the question of whether the body
16 should adopt it. Isn't that fair to say?

17 **A.** I would have to look. I don't remember the statement,
18 but that is -- I don't remember the particular floor
19 statement, but I'll take your word for it.

11:54:07

20 **Q.** Well, whether it was said, that is your opinion?

21 **A.** Could you restate my opinion?

22 **Q.** Sure.

11:54:21

23 That you don't believe that Mr. Kincaid's testimony
24 about why he made the particular decisions in the map was
25 relevant to whether the Texas Senate should pass the plan?

1 **A.** I believe what ultimately was important was whether
2 the map was legal with regard to the VRA and all other
3 applicable law. I have no idea what anybody's intent was
4 in the drafting of a map, but I was looking at the final
5 product. So, yes, the final product is what was important
6 to me.

11:54:49

7 **Q.** Well, and you only saw the final product, right? You
8 only saw the versions that were filed in the House that
9 you then filed during each of the special sessions,

11:55:01

10 correct?

11 **A.** That is correct.

12 **Q.** You weren't involved in any interim steps of the map,
13 true?

14 **A.** That is correct.

11:55:08

15 **Q.** I want to revisit your communications with Mr. Kincaid
16 that we talked about on Monday.

17 And I'm happy to replay, if you would like me to, but
18 I showed, if you recall, an exchange you had with Senator
19 Gutierrez on August the 22nd.

11:55:31

20 Do you remember that?

21 **A.** Yes, I do.

22 **Q.** And you identified three communications that you had
23 with Mr. Kincaid.

24 Do you recall that?

11:55:35

25 **A.** Yes. I was in error. There were actually four at

1 that time.

2 **Q.** And you recalled here in court that there was a fourth
3 one. That's -- the fourth one that you did not identify
4 to the senators is the phone call you made to Mr. Kincaid
5 to ask to what use he used racial data. Is that fair?

11:55:45

6 **A.** It was actually the third of our discussions, the
7 third or the fourth.

8 **Q.** Okay. Well, now that we've got the numbering right,
9 my question is a bit different.

11:55:59

10 The conversation that you didn't tell the senators,
11 you didn't tell Senator Gutierrez about on August 22nd,
12 was the conversation that you had with Mr. Kincaid where
13 you asked about his use of racial data. True?

14 **A.** I believe after I realized I had made an error in that
15 statement, I think I'm correct in saying at the next
16 hearing I corrected that; but I would have to go back and
17 look.

11:56:19

18 **Q.** Well, you did. You came back -- and the Court has
19 seen this. You came back and talked about how you had a
20 hard time getting lawyers and the Attorney General's
21 office couldn't help you. But you didn't mention anything
22 about a fourth conversation with Mr. Kincaid where you
23 asked him specifically whether he used racial data.

11:56:30

24 **A.** It was the third conversation. And, yes, I did call
25 him and ask him if he had used racial data because I had

11:56:43

1 been asked so many times on the floor and in committee.

2 And I finally thought, well, I'll just call him and ask
3 him.

11:56:57

4 And so I picked up the phone and I said, Mr. Kincaid,
5 just one question for you. I don't want to talk about the
6 map. Did you use racial data in drawing this map? And he
7 responded, no, I did not.

11:57:11

8 **Q.** Well, it seems like when Senator Gutierrez asked you
9 about your contacts with Mr. Kincaid and you could recall
10 three of them, that might be the first one at the front of
11 your lobe that you would think of.

12 Don't you agree?

11:57:24

13 **A.** I don't disagree with that except for the fact that
14 that was in the middle or toward the end, possibly even,
15 of a four- to six-hour debate where I had been standing on
16 the floor as the sole member representing that map, that
17 bill. And, you know, it's just easy to make a mistake
18 when you have been through that long a debate.

11:57:40

19 **Q.** Well, let's focus on your testimony then here on
20 Monday about your communications with Mr. Kincaid.

21 Do you recall you testified that you ran into him at
22 the ALEC conference?

23 **A.** Yes. We met at the ALEC conference, had sat down and
24 had a cup of coffee.

11:57:53

25 **Q.** Sat down and had a cup of coffee is your testimony

1 today?

2 **A.** Well, I think I had a cup of coffee.

3 **Q.** And was there anybody else at that meeting other than
4 you and Mr. Kincaid?

11:58:04

5 **A.** You know, it seems like there may have been someone
6 else randomly sitting at the table; but I don't remember
7 for sure. It was a very short meeting.

8 **Q.** What can you tell us about that person?

9 **A.** I really don't remember.

11:58:17

10 **Q.** You can't tell me --

11 **A.** It was -- it was in the lobby of the conference. And
12 we bumped into each other. And I said, let's grab a
13 chair. And the Starbucks is right there at the lobby.
14 And I went and grabbed a coffee. And we talked probably
15 five, seven minutes.

11:58:32

16 **Q.** Look in the back of your mind and see if you can tell
17 me who else.

18 **A.** I'm not even sure --

19 **Q.** Was it a man or woman? Tall or short?

11:58:39

20 **A.** I'm not even sure there was someone else there.

21 **Q.** You don't recall Senator Hinojosa being there with you
22 of Nueces County?

23 **A.** You know, you may be correct. That may have been who
24 it was.

11:58:56

25 **Q.** And so if it's been stated under oath in this

1 courtroom that you didn't run into Mr. Kincaid, you had a
2 phone call with him the day before to arrange a meeting
3 with Mr. Kincaid, that testimony is false, in your
4 opinion?

11:59:10 5 **A.** I don't remember a phone call with Adam Kincaid
6 at -- during the ALEC.

7 **Q.** You were asked here in this court on Monday whether --
8 you might recall I asked: Did you get one bit of
9 information about the map from Mr. Kincaid at that ALEC
10 meeting?

11 Do you recall that testimony on Monday?

12 **A.** Yes.

13 **Q.** And I specifically asked you if you were told in that
14 meeting whether or not the map was going to make changes
11:59:36 15 to five districts.

16 Do you recall being asked that on Monday?

17 **A.** Yes.

18 **Q.** And you said, no, I didn't want to know anything about
19 the map. That was your testimony here.

11:59:44 20 **A.** My recollection of the meeting was that when we sat
21 down and I told Adam it looks like I'm going to be
22 chairman of the committee and so I don't want to talk
23 anything about the map.

24 **Q.** And so if it's been stated under oath here in this
12:00:00 25 courtroom in that chair by a different witness that you

1 were -- you specifically asked about the number of
2 districts that would be affected and were told five would
3 be affected, that testimony was false, in your opinion?

4 **A.** It's either incorrect or I'm remembering incorrectly.

12:00:13

5 **Q.** I want to go back to some of these legislative
6 proceedings. And I'll take you to the August 7th
7 committee hearing, which is Exhibit 312.

8 And I guess before I play you this excerpt let me just
9 ask a question. You were asked during your direct
10 testimony on Monday about the hearings on August 6th and
11 August the 7th that you held.

12:00:43

12 Do you remember those generally?

13 **A.** Generally, yes.

14 **Q.** The August 6th one was where you had invited people to
15 come testify, and experts, lawyers, and they didn't
16 appear. True?

12:00:53

17 **A.** That is correct.

18 **Q.** And on August the 7th you held public testimony and
19 several members -- many members of the public showed up
20 and testified. Is that true?

12:01:07

21 **A.** I think we had over 40.

22 **Q.** Now, you sent out the invitation to the experts,
23 according to the exhibits that your lawyer showed, the
24 very day before, on August the 5th. That's when you

12:01:21

25 invited these experts to the August 6th hearing.

1 Is that your recollection?

12:01:39

2 **A.** I would have to look. I would -- whatever we did, we
3 followed what was the standard normal process for the
4 Senate. I would have to look and see what dates we sent
5 it out.

6 **Q.** Well, your lawyer showed you State's Exhibit 1219,
7 which was one of the invitations. It was dated August 5th
8 at 12:51 a.m.

12:01:51

9 But it sounds like you can't confirm that it was on
10 August the 5th?

11 **A.** Well, if that's the date on it, then it's accurate.

12:02:03

12 **Q.** One of the things that happened with this August 6th
13 and August 7th hearing is that instead of being held
14 remotely, as the earlier hearings had been held, this one
15 was now going to be held in person. Is that true?

16 **A.** That's correct.

12:02:15

17 **Q.** And so these experts, assuming they did, whenever they
18 got invited, would have had to travel to the capitol on
19 whatever notice they got and appear in person and testify
20 at the committee. Is that true?

21 **A.** It was an in-person testimony. That's correct. As
22 were --

23 **Q.** I'm sorry. Go ahead.

12:02:25

24 **A.** I was going to say, as were the 40-plus people that
25 showed up the next day for public testimony.

1 Q. And as hearings were being held, despite the fact that
2 Democrats had left the state and were proclaiming that
3 they would not return until this legislative session
4 ended?

12:02:40 5 A. Yes. That's correct.

6 Q. It might be reasonable for people to conclude that
7 these hearings were a waste of time. Would you agree?

8 A. No.

9 Q. Well, is it your testimony that any of the public
10 input or expert input, for that matter, that came before
11 your committee was factored into the map that you passed
12 and -- that you filed and passed?

13 A. I can't speak for the other senators, but I can tell
14 you that I paid attention to each person who testified and
15 took their testimony into account, whether they were there
16 as an expert or they were there as invited testimony or as
17 a citizen.

18 Q. You took it into account in your decision-making?

19 A. Yes.

12:03:34 20 Q. Is that what I'm hearing?

21 A. Yes. Yes.

22 Q. Does it surprise you to learn that the map drawer, who
23 testified here this week, said that there was no bit of
24 the public testimony that factored into his

12:03:45 25 decision-making in drawing the map?

1 **A.** I'm assuming that whoever drew the map -- anyone that
2 drew the map drew it before the public hearings on the
3 map.

12:04:04

4 **Q.** I guess my point is: Don't you think by the time we
5 got to August 6th or 7th that it was reasonable for people
6 to conclude that these hearings were a sham and that
7 anything said wasn't going to actually matter?

12:04:21

8 **A.** Well, absolutely not. And, in fact, some members
9 voted against the map. I presume because, in part, of the
10 public testimony that they had heard. And then I also
11 testified that I changed one of my objectives, one of my
12 goals for the process, to having the map be more compact
13 because of the testimony that we had heard in the
14 information gathering hearings.

12:04:37

15 **Q.** Okay. You changed your opinion that you wanted a map
16 more compact, but you developed that opinion after the map
17 was drawn and filed with the legislature. Isn't that fair
18 to say?

19 **A.** The first map, yes, that's correct.

12:04:54

20 **Q.** And if the map drawer has testified here that he
21 considered compactness back when he was drawing the map in
22 June, there is no connection between your change of mind
23 and what the map drawer did, is there?

12:05:10

24 **A.** I can't speculate about what he was thinking or his
25 intent.

1 Q. Now, I would like to show you Exhibit 312, which is an
2 excerpt from the August 7 hearing, which is the public
3 testimony hearing of that week.

12:05:26

4 A. And just to make sure I understand. This is SB-4
5 during the first called special session, correct?

6 Q. Yes, sir.

7 A. Thank you.

8 (Video played.)

12:05:45

9 SENATOR MILES: Did you express any concern about
10 the potential of racial gerrymandering or intentional
11 discrimination while attempting to comply with the DOJ
12 letter to the lieutenant governor? Did you-all have any
13 discussion in that manner? Gerrymandering?

12:06:01

14 SENATOR KING: I think I mentioned to him that I
15 thought the DOJ letter unnecessarily confused this
16 process.

17 SENATOR MILES: You thought the DOJ letter
18 confused the process?

19 SENATOR KING: Yes. I --

12:06:10

20 SENATOR MILES: You expressed that with him?

21 SENATOR KING: I -- yeah. I think in discussing
22 it with him, I've mentioned that the DOJ letter, I
23 thought, unnecessarily confused the redistricting process.

12:06:24

24 SENATOR MILES: And can you share his response
25 with us?

1 SENATOR KING: To be honest, I don't recall.

2 SENATOR MILES: Don't recall. Okay.

3 (Video concluded.)

4 MR. DUNN: That was 208, line 2 to 208, line 24.

12:06:36

5 BY MR. DUNN:

6 **Q.** Do you have a better recollection today of your
7 conversation with the lieutenant governor on this score?

8 **A.** That was my first question. I wasn't sure who the
9 third party was. Can you back it up a little bit more?

12:06:47

10 I'm not sure I understood the full context of Senator
11 Miles' questioning, please.

12 **Q.** Absolutely.

13 I started at line 2, where my cursor is, Senator.
14 There is the prior page. Take a moment to review that.

12:07:15

15 Let me know if you would like to see more.

16 **A.** (Witness reading.)

17 I'm sorry. Could you repeat the question? I'll try
18 to answer it.

19 **Q.** Yes, sir.

12:08:20

20 I'm focused on the part here at the end where you had
21 a conversation with the lieutenant governor about the
22 Department of Justice letter. It ends here on line 208 --
23 excuse me -- page 208, line 24. And if you want to read
24 between 14 and 24 again just to get you in the right spot.

12:08:36

25 I can play it for you, too, if that's easier.

1 **A.** No. I think I know where we are at.

2 **Q.** Okay. So Senator Miles asked you about this
3 conversation you had with the lieutenant governor where
4 you expressed the opinion that the DOJ letter
5 unnecessarily confused the process. Is that true?

12:08:47

6 **A.** Yes. That was the general discussion.

7 **Q.** And was that your opinion?

8 **A.** Yes.

9 **Q.** And that is the first time in all of the legislative
10 record that I see you express that opinion publicly. Can
11 you recall having done it prior?

12:08:59

12 **A.** I think when we were doing the initial Senate
13 resolution to establish the committee we had a four-hour
14 debate on the floor that day, on July 21st, I believe. I
15 think I was asked about the letter at that time. And I
16 said something to the effect of that I had -- I wasn't
17 taking the letter into account. It wasn't addressed to me
18 or anyone in the legislature. And I understood that the
19 Attorney General had already responded to it. And I
20 didn't think it was relevant to what we were doing in
21 redistricting, something to that effect.

12:09:21

12:09:38

22 **Q.** Well, we'll have to agree to disagree with what you
23 expressed in the first day of session. You did ultimately
24 express that later in the session.

12:09:51

25 But my review of the evidence admitted in this case is

1 this is the first time you began to sort of undermine the
2 Department of Justice letter as part of the reason that
3 this redistricting was taking place.

4 You recall that differently, it sounds like?

12:10:04

5 **A.** Yes. I honestly never took the letter into account.
6 I didn't think it mattered. The governor had put the
7 subject matter of congressional redistricting on the call,
8 and my job as the chair was to run a committee that could
9 consider that legislative agenda.

12:10:21

10 **Q.** And now Senator Miles said can you share with us his
11 response, the lieutenant governor's response.

12 Your answer then was I don't recall.

13 Is your memory any better today?

12:10:35

14 **A.** No. It was -- I had very few direct discussions with
15 the lieutenant governor on redistricting. He gave me a
16 great deal of latitude.

17 **Q.** All right. Now I'd like to go to the August 17th
18 committee hearing, which is Exhibit 314.

12:11:07

19 **A.** Forgive me. I'm sorry. What date did you say this
20 was? Which hearing?

21 **Q.** August 17th.

22 (Video played.)

12:11:19

23 SENATOR ALVARADO: Thank you. Chairman King, I
24 wanted to ask a few questions on the origination of the
25 map because I'm still trying to figure out. I mean, I

1 think I have an idea, but I'm not -- I wanted some
2 clarity.

3 Who actually drew this map?

4 SENATOR CREIGHTON: Senator King?

12:11:29

5 SENATOR KING: So we adopted -- I adopted and
6 filed the House map, the House map as we've talked about
7 it before. My understanding was that it was drawn by the
8 National Redistricting Trust --

9 (Video concluded.)

12:11:56

10 BY MR. DUNN:

11 **Q.** Now, this concludes -- I played from 102, line 25 to
12 103, line 5.

13 This, you acknowledge that the National Republican
14 Redistricting Trust drew the map?

12:12:09

15 **A.** That's my general understanding. Although, I'm
16 assuming that it was a collaborative process. There were
17 probably a number of people involved in drawing that map.
18 I really don't know.

12:12:30

19 **Q.** And by August -- this hearing is August the 17th. Do
20 you have any idea when it is that the map that Mr. Kincaid
21 drew landed with the lawyers for Chairman Hunter?

22 **A.** No.

12:12:47

23 **Q.** The testimony here is that that took place on July the
24 23rd. And it sounds to me like you were out of the loop
25 in terms of the delivery of that map.

1 Is that fair to say?

2 **A.** Yes.

12:13:02

3 **Q.** Now I want to back up just a little bit. You have
4 testified, I believe on Monday, but separately in the
5 recordings, that you only watched parts of the House
6 proceedings. Is that fair?

7 **A.** Yeah. Very little. Probably a total of 15 minutes,
8 20 minutes.

12:13:12

9 **Q.** I want to show you an excerpt from one of those. This
10 is Exhibit 309, page 877, line 23 to 878, line 12.

11 (Video played.)

12:13:47

12 REPRESENTATIVE TURNER: Okay. So -- and I
13 promise this is the only question about Adam Kincaid --
14 but Senator -- Senator King is clearly identified. Okay.
15 So, Senator King has clearly identified Adam Kincaid as
16 the map drawer.

17 Do you have any reason to doubt Senator King on that?

12:14:05

18 REPRESENTATIVE HUNTER: Let me tell you
19 something. I have no idea. I heard that he mentioned it.
20 So I'm not here to say that he is right or wrong. I heard
21 he made the mention. Representative, I don't know any
22 details of his communication with Adam Kincaid.

23 (Video concluded.)

24 BY MR. DUNN:

12:14:23

25 **Q.** That ended at 878, line 12, if I hadn't mentioned

1 that.

2 But Chairman Hunter gives the impression that he
3 doesn't know about Adam Kincaid or his involvement. Would
4 you agree?

12:14:35 5 **A.** That's what it sounded like, yes.

6 **Q.** And so if it is in fact true that Mr. Kincaid
7 transmitted on July 23rd the map that would be filed by
8 Chairman Hunter here on August the 1st, Chairman Hunter is
9 not sharing that information. Isn't that fair to say?

12:14:55 10 **A.** I can only comment on what I heard him say.

11 **Q.** Did you have any contact with Chairman Hunter about
12 these details?

13 **A.** No.

14 **Q.** Is that the normal legislative process, that the
15 Senate sponsor for the legislation doesn't interact with
16 the House sponsor for the legislation?

17 **A.** It depends on the bill. In this case, I had other
18 things I was working on during that time. And, again, as
19 I stated, the original intent was for it to be a House
12:15:28 20 bill. And so I just didn't have that need to interact
21 with Todd Hunter.

22 **Q.** When you got informed by the lieutenant governor that
23 the House would be going first, as you told us on Monday,
24 is that also when you were told limit your contact with
12:15:46 25 Chairman Hunter?

1 **A.** I was never told to limit my contact with the House.

2 **Q.** That was a decision you made?

3 **A.** Well, it really wasn't a decision. It was just the
4 natural process. We were in a special session. I had
5 other issues I was working on as well; and, you know, it
6 was just very busy. There wasn't a need to have any
7 in-depth discussions with the House at that point.

8 **Q.** Now, on -- also on Exhibit 309, again, the August 1st
9 House committee hearing, page 832, line 7 to 832, line 22.

10 (Video played.)

11 REPRESENTATIVE GERVIN-HAWKINS: Gotcha. And, so
12 really then, the chair and/or his confidants gave him the
13 scope of work and all you did was collect the end result?

14 REPRESENTATIVE HUNTER: No. Because I don't know
15 what the Chair knew, but I don't think the Chair knows
16 much more than me on all of this.

17 So all I can tell you is: When you are asked, just
18 like you are -- a member is asked to file a bill presented
19 and I agree with it, I did it. But the origin, the
20 specifics, the development, it involves a lot of privilege
21 and a lot of specific information. I'm not part of that
22 discussion.

23 (Video concluded.)

24 BY MR. DUNN:

25 **Q.** I want to show you one more, and then I'll ask you

1 about it. This is the same Exhibit 309, page 88, line 9
2 to page 90, line 1.

3 (Video played.)

4 SENATOR THOMPSON: -- had not made resolution, we
12:17:55 5 are being asked by the governor to consider redistricting
6 again; and I'm trying to figure out whether or not the
7 same person, Adam Kincaid, helped us in 2021, was he the
8 person that was kind enough to help us with the amendment?
9 You the chair -- you were the chair.

10 REPRESENTATIVE HUNTER: No. I did not deal with
11 Adam Kincaid.

12 SENATOR THOMPSON: So, to your knowledge, he was
13 not a person who participated in these configuration of
14 the redistricting then, because we were operating on the
12:18:29 15 census that we had just gotten. We're operating on those
16 same census that we had in 2021.

17 REPRESENTATIVE HUNTER: Whatever Adam Kincaid's
18 role was in 2021, I do not know.

19 SENATOR THOMPSON: Okay. And did he help you
12:18:44 20 draw this map?

21 REPRESENTATIVE HUNTER: Adam Kincaid?

22 SENATOR THOMPSON: Yeah.

23 REPRESENTATIVE HUNTER: No.

24 (Video concluded.)

12:18:50 25 MR. DUNN: Ending 89, line 5.

1 BY MR. DUNN:

2 **Q.** So Chairman Hunter says to his colleagues in the House
3 that he didn't know what role Adam Kincaid played in 2021.

4 Did you hear that?

12:19:02 5 **A.** Yes. And -- I did hear that.

6 **Q.** And he also told his colleagues categorically, Ms. T
7 asked him, did he help you draw this map?

8 Chairman Hunter says, Adam Kincaid?

9 Ms. T says yes or yeah.

12:19:17 10 And Representative Hunter says no.

11 That's what he told him. Is that true?

12 **A.** Yes. But I think I may understand where some of the
13 confusion is here, if you would like me to explain it.

14 **Q.** I'm sure your lawyer is competent enough to ask you.

12:19:39 15 All right. Now I want to turn to Exhibit 314. This
16 is the August 17th committee hearing, page 104, line 20 to
17 105, line 18.

18 (Video played.)

12:19:50 19 SENATOR ALVARADO: Thank you. It is widely known
20 that he drew the 2021 maps and then very recently, like
21 months ago, was in court defending those maps, correct?

22 SENATOR KING: Yes, that's my understanding.

23 SENATOR ALVARADO: And then he had a change of
24 heart and said, even though I swore, testified in court
12:20:11 25 and defended the maps I drew, now I'm going to draw these

1 other maps?

2 SENATOR KING: Well, you'd have to ask him that.

3 SENATOR ALVARADO: Okay.

4 SENATOR KING: With my --

12:20:19

5 SENATOR ALVARADO: I would have loved to, but he
6 didn't answer to our invitation.

7 SENATOR KING: Let me answer, please. I would --
8 you would have to ask him that, and I know you have wanted
9 to subpoena him and the committee chose not to do that.

12:20:31

10 But my understanding is that he was requested to draw a
11 map that increased Republican representation in the state
12 of Texas, and that is what this map does.

13 SENATOR ALVARADO: And that request came from
14 who?

12:20:44

15 SENATOR KING: I do not know. I'm assuming
16 it -- you have seen the same media coverage that I have,
17 but I have not spoken with anyone at the White House. I
18 have not spoken with anyone --

19 (Video concluded.)

12:20:57

20 MR. DUNN: "-- at the justice department," he
21 says. Ending at 105, line 18.

22 BY MR. DUNN:

23 Q. Now, in there you reference to Senator Alvarado, she
24 has a question about the map, and you defer her to

12:21:13

25 Mr. Kincaid. Is that fair?

1 **A.** This is how it is always done in congressional
2 redistricting.

3 **Q.** I didn't ask you that.

4 I asked you if Senator Alvarado asked you a question
12:21:29 5 and you deferred her to Mr. Kincaid?

6 **A.** I explained to her that I did not know the answer to
7 that question.

8 **Q.** Now, you recall the testimony here on Monday, I asked
9 you -- you mentioned that you had Mr. Kincaid's phone
12:21:39 10 number in your cell phone.

11 Do you recall that?

12 **A.** Yes.

13 **Q.** And I said did it ever occur to you, since you had
14 that number and your colleagues were asking for it, to
12:21:47 15 just call him up and ask him to come down and talk to the
16 committee?

17 Do you remember that discussion we had on Monday?

18 **A.** I do.

19 **Q.** And you said nobody ever asked me to do that.

12:21:56 20 Do you remember that?

21 **A.** That sounds correct. Nobody did ever ask me to do
22 that.

23 **Q.** And so if it's been the testimony here that in fact
24 you did call Mr. Kincaid and ask him to come to the
12:22:09 25 committee and testify, and he told you he was too busy and

1 couldn't spare three days, that testimony, in your view,
2 is false?

3 **A.** Could you repeat that, please?

4 **Q.** Sure.

12:22:18

5 If it's been the testimony in this courtroom that you
6 actually did call Mr. Kincaid and asked him to come
7 testify to the committee and that he was unable because he
8 didn't have three days to spare to have that meeting, if
9 that's been the testimony in this courtroom, it's your

12:22:34

10 opinion that testimony is false?

11 **A.** It would be incorrect. I sent him a letter as an
12 invitation.

13 **Q.** Now I'd like to go to the August 21st Senate committee
14 hearing. That's the hearing where you pass out the bill
15 in the second special session that will go to the floor on
16 the 22nd. Is that fair?

12:22:54

17 **A.** No. I don't think so. I think on
18 August 21st -- well, let me back up. Would this have been
19 H.B. 4 or S.B. 4?

12:23:11

20 **Q.** This would have been H.B. 4 in the second special
21 session.

22 **A.** Yes. That's correct.

23 **Q.** Page 11, line 18 to page 12, line 13.

24 (Video played.)

12:23:28

25 SENATOR MILES: Okay. Would you agree that by us

1 voting on a committee substitute on which no testimony can
2 be given or was given in the House, we are actually
3 shutting out even more constituents from this process?

12:23:45

4 SENATOR KING: No. Not at all. As I said, we
5 had over 200 people testify during the course of what, the
6 last six weeks or so.

7 SENATOR MILES: The substitute is making some
8 changes; is that correct?

12:23:56

9 SENATOR KING: It is different than the companion
10 S.B. 4.

11 SENATOR MILES: And would you agree with me that
12 we're not allowing constituents to comment on the
13 differences that you just agreed that we're making?

12:24:08

14 SENATOR KING: No. I think anybody -- the public
15 portal is still open. Anyone could still file comments
16 about it. And they can, of course, reach out to us. And
17 we're just taking the same process that we use all the
18 time on all different types of bills and subject matters
19 with regard to when a companion bill catches up with the
20 bill filed before the Senate.

12:24:26

21 (Video concluded.)

22 MR. DUNN: Ending on page 12, line 13.

23 BY MR. DUNN:

12:24:34

24 Q. There Senator Miles is raising his concern with you
25 that the Senate committee is about to pass out the House

1 bill for Senate floor consideration and there has not been
2 any public testimony in that special session about that
3 particular bill.

4 Was that not his complaint?

12:24:47 5 **A.** Yes. But he was not being accurate.

6 **Q.** Well, I understand it's your opinion that you had
7 hearings in the first special session and that those were
8 sufficient.

9 **A.** And in the second special session.

12:24:58 10 **Q.** And you had one public hearing in the second special
11 session before the bill was before the committee; is that
12 true?

13 **A.** We had had a hearing just a few days before, had over
14 40 people testify on the companion bill S.B. 4 to H.B. 4,
15 which the committee was considering at that time. And
16 normal Senate practice is that you don't have to have a
17 hearing with public testimony when you have a companion
18 bill catching up with the Senate bill.

12:25:31 19 **Q.** All right. And Senator Miles's rebuttal, if you will
20 call it that, to your argument, was that in the House the
21 bill had changed and the bill was now different than the
22 bill that you had prior taken public testimony on. Isn't
23 that true?

12:25:47 24 **A.** It had minor changes, which is very common between a
25 companion and a bill that is filed.

1 Q. Minor changes. That's how you describe the change
2 from 2331 to 2333?

3 A. They were not sufficiently substantive to require
4 public testimony. And we would also be hearing those on
5 the floor in a few days. And anyone would have had the
6 opportunity to provide amendments to that bill or to file
7 a substitute map, which no one did.

12:26:03

8 Q. Well, now, you know why Senator Miles was keyed in on
9 this, don't you? You know what change it was that has got
10 his attention, don't you?

12:26:22

11 A. Senator Miles was very attune to the entire process
12 from day one.

13 Q. I'm asking you. Do you know what change it was that
14 happened between 2331 and 2333 that had Senator Miles's
15 attention?

12:26:36

16 A. Senator Miles was exceptionally concerned about the
17 Harris County area throughout the process.

18 Q. Because there were changes made to CD 9 between those
19 two versions, -31 and -33, were there not?

12:26:51

20 A. That is correct.

21 Q. And those changes affected very significantly the
22 political performance, which you did look at, of CD 9.
23 Isn't that true?

24 A. Yes. If I recall, primarily by adding in Liberty
25 County. It also improved the compactness of the district,

12:27:05

1 I believe.

2 **Q.** And it also made these changes in a way that ensured
3 that that district would be majority Hispanic CVAP but
4 would perform for a Republican?

12:27:16 5 **A.** I have never looked at the racial data.

6 **Q.** So you don't know the Hispanic part, but you know the
7 perform for a Republican part?

8 **A.** Yes.

9 **Q.** All right. Now I want to transition to the floor
10 debate, which is Brooks Exhibit 318, page 71, line 22 to
11 72, line 33.

12 (Video played.)

13 SENATOR KING: So H.B. 4 as it came out of the
14 House, H.B. 4 that's before us, I don't have any personal
15 knowledge as to who physically drew the map. No.

16 SENATOR COOK: Do you know who knows who drew the
17 map?

18 SENATOR KING: I'm assuming it was a product of
19 the House author and their counsel.

12:28:19 20 (Video concluded.)

21 BY MR. DUNN:

22 **Q.** Do you remember having a discussion with Senator Cook
23 that day?

24 **A.** Yes.

12:28:25 25 **Q.** And do you recall that it happened early in the day?

1 She was one of the first senators to question you?

2 **A.** I'll certainly take your word for that.

3 **Q.** And so from these excerpts of the legislative debate
4 that we have shown between Monday and today, on the first
5 day of the session, when you were taking up the rule, you
6 didn't know who drew the map.

12:28:42

7 And later in the hearing you recognized that it's the
8 National Republican Redistricting Trust, and you
9 acknowledge at least once that it was Kincaid.

12:28:56

10 Now you are here on the floor debate on August 22nd
11 and you are telling Senator Cook.

12 [As read:] Do you know who drew the map?

13 [As read:] I'm assuming it was the product of the
14 House author and their counsel.

12:29:07

15 You say in the prior line, 23, [as read:] I don't have
16 any personal knowledge as to who physically drew the map.

17 That's what you told Senator Cook on that last day of
18 the debate; isn't that true?

19 **A.** Well --

12:29:19

20 **Q.** I'm not asking you for an explanation. I'm asking if
21 that's what you said.

22 **A.** What I said I said. But that's not a "yes" or "no"
23 answer. I understand how the House operates. When they
24 do amendments in committee, it's a collaborative process.

12:29:34

25 So whether it was drawn by leg. counsel, which would be my

1 guess that leg. counsel made those amendments, edits, that
2 would be the normal practice for the House, having spent
3 12 terms there. So that's why I don't know who physically
4 drew it.

12:29:48

5 But it is a collaborative process once it gets into
6 committee and they start doing amendments and things like
7 that. So that's a correct answer.

12:30:06

8 **Q.** I guess the piece I can't understand is you met with
9 Mr. Kincaid three days or so before the session -- first
10 special session started, and you can't just be clean about
11 it the whole time. Why not?

12 **A.** I'm being completely clean about it. I never had a
13 substantive conversation with Adam Kincaid about the
14 details of the map.

12:30:22

15 **Q.** I'm going to take you now to the same debate,
16 page -- page 34, line 5 to page 34, line 9.

17 (Video played.)

12:30:42

18 SENATOR MENENDEZ: Right. But I was just asking
19 about the urban counties that have been cut into little
20 strips.

21 SENATOR KING: Again, I haven't looked at any
22 racial data.

23 (Video concluded.)

24 BY MR. DUNN:

12:30:47

25 **Q.** Senator Menendez makes a concern known to you at that

1 point about these strips that go into urban areas.

2 You heard him make that complaint?

3 **A.** Yes.

4 **Q.** Now, if I recall the testimony to your lawyer

12:30:59

5 correctly on Monday, you were on the chair of the House

6 redistrict -- no, excuse me -- you carried the

7 congressional bill in 2003 redistricting in the House; is

8 that right?

9 **A.** Yes. That's correct.

12:31:11

10 **Q.** And, in fact, that map ultimately had to be redrawn in
11 response to court orders. Is that true?

12 **A.** That is correct.

13 **Q.** You were also involved, as you told your lawyer and
14 this court, in 2011 on redistricting maps. Is that true?

12:31:25

15 **A.** That is correct.

16 **Q.** And you recall those maps had to be redrawn in
17 response to court orders?

18 **A.** I believe that's correct.

19 **Q.** And you also recall that the reason that the map, at
20 least in part, had to be redrawn is because in Tarrant
21 County specifically a lightning bolt was used, as the
22 Court described it, to go into Tarrant County and pick up
23 minority population and combine it with rural areas.

12:31:36

24 You recall that, don't you?

12:31:50

25 **A.** Are you referring to the congressional map in 2011?

1 Q. Yes.

2 A. I wasn't intimately involved in that map.

3 Q. So it's your testimony here you don't recall those
4 facts?

12:31:59 5 A. Not specifically. I wasn't on the redistricting
6 committee in 2011 in the House then.

7 Q. Let me take you to Exhibit 307 from these special
8 sessions this summer, 2025, page 155, line 21 to 156, line
9 19.

12:32:26 10 (Video played.)

11 SENATOR KING: Members, any other questions?

12 Congressman, again, we're so grateful you are here
13 today. You and I share a lot of the same territory with
14 our districts overlapping. In fact, I think we talked
15 about it before that I grew up out in Handley.

12:32:37

16 CONGRESSMAN VEASEY: Yeah, that's right.

17 SENATOR KING: Yeah. And your district is one of
18 the most unusually shaped, the way it contracts around.

19 I'm trying to remember. You said it went out in Parker
20 County. Was that Joe Barton's old district in the --

12:32:53

21 CONGRESSMAN VEASEY: No. If you look at the way
22 that -- if you go back and look at the first map that was
23 passed in 2011 in the state legislature, it was basically
24 part of a big portion of Parker County. It came through

12:33:11

25 like southwest Fort Worth and ended up in Arlington, close

1 to UTA. And if I'm not mistaken, Representative Williams
2 was going to run in that district before he ultimately ran
3 in District 25 after the courts redrew the districts.

12:33:28

4 SENATOR KING: Okay. I was trying to remember
5 how that came about.

6 Thank you again for being here. And I hope you'll
7 come back as we continue through this process in the
8 coming weeks.

9 (Video concluded.)

12:33:36

10 MR. DUNN: Ending on 156, line 18.

11 BY MR. DUNN:

12:33:50

12 Q. So you actually had a discussion during these special
13 sessions with Congressman Veasey about how it is that
14 Congressional District 33 came out of the litigation from
15 2011?

16 A. Yes. That was our discussion.

17 Q. And that's your area of the state. Fair to say?

18 A. It is.

12:34:02

19 Q. In fact, as we talked about it a bit on Monday, you
20 started off in the House and then because of redistricting
21 you moved to the Senate; is that right?

22 A. Well, I ran for the Senate after the 2021 Senate map
23 was redrawn. That is correct.

12:34:24

24 Q. And so is it your testimony here in court that you
25 weren't finely tuned into what was happening with the

1 congressional districts that you might be eligible to run
2 for?

12:34:36

3 **A.** Yes. Because traditionally, the way it's always
4 worked: The House draws the House map and sends it to the
5 Senate. The Senate draws the Senate map and sends it to
6 the House. And the congressional delegation presents the
7 legislature with what they would like to be the template
8 for us to start with. They present us their map.

12:34:54

9 That's why it was so normal for somebody like Adam
10 Kincaid in 2021, and then again in 2025, to be drafting a
11 map because they always have someone draft a map and bring
12 it to the legislature. And we generally try to honor and
13 start with that as a template with what the congressional
14 delegation has brought to us.

12:35:11

15 And that's why this whole thing was just so very
16 normal for a third party to be drawing the map because
17 that's -- the congressional delegation always brings us a
18 map.

19 **Q.** Are you through?

12:35:24

20 **A.** Yes, sir, I am.

21 **Q.** Whatever amount of attention you were paying to the
22 redraw of congressional districts to Tarrant County, you
23 were paying enough of attention to ask Congressman Veasey
24 about it right there on July 29th. Isn't that true?

12:35:40

25 **A.** Well, I used to serve with Marc Veasey, and I consider

1 him a friend. We overlap jurisdictions. And as much as
2 anything, I was just trying to be friendly and talk about
3 his district and have a rapport in the hearing.

12:35:57

4 **Q.** You referred to his district that the Court had drawn
5 in 2011 as oddly shaped. Do you recall making that
6 comment there in that clip?

7 **A.** Yes. Because it was very oddly shaped. It was kind
8 of a horseshoe, if I recall.

9 **Q.** That was a fact you could recall about the district?

12:36:11

10 **A.** Well, that's the -- that's the current configuration
11 of that district under the existing maps is it's kind of a
12 horseshoe.

12:36:40

13 **Q.** All right. Now I'd like to go back to the Senate
14 floor debate on August the 22nd, Exhibit 318. This is
15 page 24, line 20 to page 25, line 19.

16 (Video played.)

12:36:57

17 SENATOR MENENDEZ: Very good. Well, then, you
18 must be aware that each time Chairman Hunter has laid out
19 the map, he has listed specific districts and the race
20 population for those districts. So I'm not sure. Were
21 you aware of that? Did you -- were you able to watch that
22 part of his delivery?

23 SENATOR KING: I have actually watched very
24 little of the House --

12:37:12

25 SENATOR MENENDEZ: Okay.

1 SENATOR KING: -- hearings.

2 SENATOR MENENDEZ: All right. So if you missed
3 when Chairman Hunter listed the specific districts and the
4 race population for those districts, it to me, even though
12:37:27 5 you have been adamant that you have not looked at race
6 data, why is that? Why have you not -- if Chairman Hunter
7 has talked about race data, why have you not looked at
8 race data?

9 SENATOR KING: Well, because it's problematic and
12:37:39 10 confusing under the law and it gets -- it's very complex
11 as to how such data applies in redistricting. It's very
12 simple and very well-established in law that you can draw
13 maps on a partisan -- on a partisan basis. And so we've
14 looked at this from a partisan basis. It's my
15 understanding that that's the basis from which it was
12:37:58 16 drawn, and it performs in a manner that should improve
17 -- should be an improvement for a Republican candidate.

18 (Video concluded.)

19 MR. DUNN: Ending 25, line 19.

12:38:14 20 BY MR. DUNN:

21 **Q.** Senator Menendez's question to you was, if Chairman
22 Hunter has talked about race data, why have you not looked
23 at race data? And you gave that answer.

24 What was the answer to Senator Menendez's question?

12:38:28 25 **A.** His question as to why I had not looked at racial

1 data?

2 **Q.** If Chairman Hunter had looked at racial data and was
3 talking about it in the House, why had you not looked at
4 it?

12:38:39

5 **A.** So I don't know whether Chairman Hunter has looked at
6 racial data or not. We have not discussed that.

7 **Q.** Well, Senator Menendez just tells you right then that
8 he had.

9 **A.** Well, but I don't know if he is correct.

12:38:51

10 **Q.** Well, the Court has heard his testimony.

11 So your testimony under oath today is this is the
12 first moment you are learning that Chairman Hunter talked
13 about the racial characteristics of the districts in the
14 House on numerous occasions during the legislative debate?

12:39:08

15 **A.** I know that Chairman Hunter referred -- made -- my
16 understanding is -- again, I didn't listen to many of the
17 hearings. My understanding is that they had discussion
18 during the hearings on racial issues -- or not on race,
19 but on -- well, actually, I just can't even answer that.

12:39:26

20 I just don't know the answer.

21 All I know is that I didn't look at any racial data.
22 I do not know what Chairman Hunter looked at. No one has
23 told me that he has looked at racial data, nor that he has
24 testified in that way. And I don't know whether --

12:39:40

25 Senator Menendez I believe I answered his question

1 correctly on the video.

2 **Q.** Well, my question is a little bit different.

3 In the parts of the House -- you have already shown,
4 you have said it to the senators. You have said it here.

12:39:50 5 You did watch part of the House debates. True?

6 **A.** Probably not more than 15 or 20 minutes.

7 **Q.** And is it your testimony that in none of what you saw
8 or has been described to you that you were not aware until
9 today that Chairman Hunter was talking about racial data

12:40:07 10 on the House side?

11 **A.** I have never heard him talk about racial data.

12 **Q.** That's not my question, Senator.

13 **A.** Well, can you define "racial data" for me, what you
14 mean by that?

12:40:19 15 **Q.** Providing racial statistics on the individual
16 districts in the plan being considered.

17 **A.** I'm not aware of Chairman Hunter ever doing that. I
18 have no personal knowledge of that.

12:40:38 19 **Q.** All right. Now on the August 22nd floor debate,
20 page 23, line 8 to 23, line 23.

21 (Video played.)

22 SENATOR MENENDEZ: Thank you, Mr. President.

23 Thank you, Senator King.

24 Senator King, I heard your bill layout and, you know,
12:40:56 25 in your layout I heard you say your opening phrase, "when

1 I began this process." I was just curious, when did you
2 begin this process? Because we had a redistricting
3 committee during session, but I never heard anything about
4 a redistricting of maps at all during session. So when
12:41:12 5 did you come up with the thought or the idea of filing a
6 new map?

7 SENATOR KING: When -- a couple of weeks or so
8 before -- maybe a week or so before special -- the first
9 special session, I got a call from the lieutenant governor
12:41:27 10 asking if I would be willing to chair the redistricting
11 committee.

12 (Video concluded.)

13 BY MR. DUNN:

14 Q. What you tell the senator there is that it was just a
12:41:38 15 week or so before is when you started to work on
16 redistricting. Is that fair?

17 A. Yes. I didn't really start to work on it until the
18 lieutenant governor called me.

19 Q. Well, separately in the legislative debates you tell
12:41:53 20 senators that people were talking about it back during the
21 regular session.

22 Do you recall that?

23 A. I do. And then I later corrected that statement in
24 committee. What I was remembering was the -- having
12:42:08 25 invited the Attorney General's office to come over and

1 give me an update on the upcoming trial, because it
2 affected the Senate map. And they had come over and given
3 me a briefing in maybe mid-May or early May.

12:42:24

4 **Q.** We had a trial in this case in May or June. You've
5 referenced it many times during the legislative debate.
6 True?

7 **A.** Yes.

12:42:33

8 **Q.** Right there in that chair sat Senator Huffman and
9 answered the question that was asked: Is the Senate
10 considering taking up a new congressional map?

11 And she said, no, they are not.

12 But on June the 10th that wasn't true, was it?

13 **A.** What was the date that the president made his
14 announcement? June 9th?

12:42:52

15 **Q.** That's what you testified on Monday.

16 **A.** That was the first time I became aware that we might
17 be going to do congressional redistricting.

18 **Q.** Also on August 22nd, Exhibit 318, page 97, line 24 to
19 99, line 8.

12:43:14

20 (Video played.)

21 SENATOR WEST: Let's talk about Congressional
22 District 33 as it currently exists. Who is the
23 congressperson there right now?

24 SENATOR KING: Just a second. Let me get out

12:43:28

25 my --

1 SENATOR WEST: Is that Marc Veasey?

2 SENATOR KING: Marc Veasey, yes.

3 SENATOR WEST: Okay. How long has Marc Veasey
4 been the congressperson there?

12:43:37

5 SENATOR KING: Oh, I would say at least maybe 12,
6 14 years.

7 SENATOR WEST: Somewhere up in there. I think
8 so.

12:43:46

9 And that's been an African American performing
10 district, has it not?

11 SENATOR KING: I haven't looked at the racial
12 data for that district.

12:43:58

13 SENATOR WEST: Okay. But he has been there --
14 okay. So it could be a coalition district where African
15 Americans and Latinos have voted for him --

16 SENATOR KING: Again, I --

12:44:10

17 SENATOR WEST: -- it could be a -- it could be a
18 district where African Americans, Asians, Anglos, and
19 Hispanics vote for him, correct? You wouldn't know
20 because you haven't taken into consideration race for any
21 purpose in drafting this map; is that correct?

12:44:32

22 SENATOR KING: Well, generally, yes, I have not
23 taken racial data into consideration in drawing the map.
24 I do know in District 33 there is a large African American
25 community. There is a significant Hispanic community.

1 There is a significant White community. I mean, I grew up
2 in that community. I know that from that.

3 I served as a police officer there. I was a commander
4 of the police division over there. So I'm familiar with
5 it.

12:44:44

6 But I went to church there for a long time and got my
7 hair cut there until my barber died a few years ago.

8 SENATOR WEST: And I'm well aware --
9 (Video concluded.)

12:44:53

10 MR. DUNN: "And I'm well aware of that," Senator
11 West says at 99, line 9.

12 BY MR. DUNN:

13 **Q.** You also knew the characteristics of the urban
14 population in Tarrant County aside from your decades of
15 experience living there, from your decades of experience
16 in redistricting in Texas. Isn't that true?

12:45:06

17 **A.** All I can tell you is that I did not look at racial
18 data. My understanding is we're not supposed to unless we
19 have a compelling reason to do so, and I did not have a
20 compelling reason to do so. I was interested in political
21 performance.

12:45:25

22 **Q.** Are you a lawyer, Senator?

23 **A.** Yes.

24 **Q.** Are you familiar with the concept of willful
25 blindness?

12:45:35

1 **A.** No.

2 **Q.** Now I'm in the second volume of the August 22nd
3 debate, which is Brooks Exhibit 319, page 84, line 12 to
4 85, line 9.

12:45:52

5 (Video played.)

6 SENATOR ECKHARDT: You have shared with us that
7 your first knowledge of the map that's before us today was
8 when the lawyers in the House sent it to your chief of
9 staff on the 18th.

12:46:16

10 SENATOR KING: I don't think they sent it. I
11 think that they called my chief and said we just got a
12 call from the House counsel and be aware there is going to
13 be an amended map put out.

12:46:38

14 SENATOR ECKHARDT: And you have also shared with
15 us that Adam called you and said there were differences in
16 the map.

17 SENATOR KING: Yes. Interestingly at the same
18 time.

19 SENATOR ECKHARDT: Coincidentally?

12:46:50

20 SENATOR KING: I have no idea. I just thought it
21 was interesting that he called at the same time because
22 when I hung up, I picked up my phone and called my chief
23 of staff and said, "Are you aware of a new map?" And she
24 said she had just got a call.

12:47:01

25 SENATOR ECKHARDT: Just wanted to give you a

1 heads-up?

2 SENATOR KING: No. He was actually looking for a
3 contact with someone with the House.

4 (Video concluded.)

12:47:10 5 MR. DUNN: Excuse me. That ended on 85, line 9.

6 BY MR. DUNN:

7 Q. This is one of your conversations with Mr. Kincaid
8 that we talked about earlier today on Monday, right, that
9 you are now describing to Senator Eckhardt?

12:47:21 10 A. Yes.

11 Q. And one of the things that she asked you about is that
12 Mr. Kincaid informed you that there had been some changes
13 to the map.

14 Did you hear that just now?

12:47:28 15 A. Yes, I did.

16 Q. And is it your testimony that he also didn't share
17 with you one bit of information about what those changes
18 were when he made that call to you?

19 A. He asked --

12:47:43 20 Q. And --

21 A. I'll try to answer that if you want me to. I'm trying
22 to think back --

23 Q. Be my guest.

24 A. -- think back through the conversation.

12:47:52 25 He called looking for a member's phone number. He

1 said, Are you aware that the House is going to lay out a
2 substitute map today?

3 And I said, No, I'm not. And I said something to the
4 effect of, what are the -- what are they amending?

12:48:15 5 And he said they were amending the -- they were moving
6 Fort Bliss back into metropolitan CD 16, which had been
7 requested by Senator Blanco in the Senate. So I was aware
8 of that.

9 I believe Representative Moody had requested that in
12:48:32 10 the House, I had heard.

11 He said they were taking the split out of Navarro
12 County and that they were making some adjustments in the
13 Houston area.

14 And I said, okay, I don't want to know anything else
12:48:46 15 about it.

16 **Q.** And he honored that and told you nothing else other
17 than what you just shared with us?

18 **A.** I don't believe he told me anything else.

19 **Q.** And is that the normal way this works? The map drawer
12:49:00 20 from Virginia calls up the senator and tells him
21 procedurally here is what is going to happen next?

22 **A.** Well, as I said, he called. He said the reason I'm
23 calling, or something to that effect, the reason I'm
24 calling is I need to get -- he asked for a House member's
12:49:18 25 mobile number. And he said, by the way, are you aware.

1 So I -- I mean, it's a very interactive process all we
2 do on legislation.

3 **Q.** Well, I can see where you interacted with Kincaid.
4 You testified earlier today that you didn't interact with
5 Chairman Hunter.

12:49:33

6 **A.** You know, we talked a couple of times during the
7 session. We never talked about the bill. We talked about
8 are you planning on having a hearing or something like
9 that. But he knows how I work. I know how he works. We
10 both know how the House and Senate process works. We just
11 never really had a need to call up and discuss things.

12:49:48

12 **Q.** But you did have a need to speak with Mr. Kincaid four
13 times about the map?

14 **A.** I didn't have a need. That third call that you have
15 referred to, I had been asked enough times I thought I
16 just ought to pick up the phone and ask him the question.
17 The other times were just really almost anecdotal
18 discussions.

12:50:04

19 **Q.** Senator Eckhardt asked you at the end of this
20 [as read:] Did he just want to give you a heads-up?

12:50:19

21 And your response was [as read:] No. He was actually
22 looking for a contact with someone in the House.

23 That was your answer to her. Is that true?

24 **A.** Yes. That's true.

12:50:27

25 **Q.** Who was this contact in the House?

1 **A.** He was looking for Representative Steve Toth's mobile
2 number.

3 **Q.** Do you know why?

4 **A.** No. I didn't ask.

12:50:38 5 **Q.** As a former member, longtime member of the House and a
6 Senator, do you know why Representative Toth might be a
7 relevant person in this mapping discussion?

8 **A.** My guess was that he had -- I think by that time
9 Representative Toth had announced that he was going to run
12:50:55 10 for Congress. But to be honest, I just didn't have time
11 to get into a discussion or want to.

12 **Q.** What part of the state does Representative Toth
13 represent in the House, the State House?

14 **A.** He's southeast Texas. I think he takes in part of
12:51:10 15 Harris County.

16 **Q.** So the changes in Harris County are going to impact
17 Representative Toth?

18 **A.** I would think they would, but I'm not 100 percent sure
19 he has any of Harris County in his rep district.

12:51:22 20 **Q.** These changes that were made in Harris County to
21 Congressional District 9, what is your testimony as to
22 whether any of those changes were made as a result of
23 something Representative Toth wanted?

24 **A.** Oh, I have no idea. I just knew that at the end of
12:51:43 25 the day it improved Republican performance in the

1 district.

12:51:57

2 **Q.** It's been the testimony here from Mr. Kincaid that he
3 knew the identities by name of political scientists hired
4 by the House lawyers and by the Senate lawyers to analyze
5 this plan.

6 Do you know either of their names?

7 **A.** No.

12:52:10

8 **Q.** And despite the fact that he sent the map to the
9 lawyers for the House and that he was aware of the
10 political scientist advisor for the House, Mr. Kincaid
11 needed to call you to get Representative Toth's phone
12 number?

13 **A.** That is why he said he called me.

12:52:32

14 **Q.** Now I'd like to take you back again to the August 22nd
15 hearing, Brooks Exhibit 319, page 85, line 15 and 85,
16 line 18.

17 (Video played.)

12:52:51

18 SENATOR KING: Let me correct that. I'm not sure
19 I was in any of the hearings -- well, no. The hearing on
20 Monday when they laid it out, yes, I listened to parts of
21 it.

22 (Video concluded.)

23 BY MR. DUNN:

12:52:58

24 **Q.** The hearing on Monday was the hearing on the floor of
25 the House where Chairman Hunter laid out this bill. And

1 what you told Senator Eckhardt there is that you watched
2 parts of it.

3 Do you need to see it again?

4 **A.** No. I -- that -- I may have watched parts of it.

12:53:11 5 **Q.** Now I want to take you to that hearing, which was on
6 August 20th, Brooks Exhibit 316, page 29 -- well,
7 actually, I'll go to -- yeah. 29, line 19.

8 (Video played.)

9 REPRESENTATIVE HUNTER: Five districts for
10 partisan purposes. It's important to note, please note,
11 Members, four of the five new districts are
12 majority-minority Hispanic, what we call CVAP districts.
13 That's a citizen voting age population. Each of these
14 newly drawn districts now trend Republican in political
15 performance. While there is no guarantee of electorate
16 success, Republicans will now have an opportunity to
17 potentially win these districts.

18 The five new districts:

19 We have CD 9, 50.15 percent what we call Hispanic
12:54:06 20 citizen voting age population, that's HCVAP.

21 CD 28, which is approximately 86.72 percent HCVAP.

22 CD 32 remains a non-minority district.

23 CD 34, 71.93 percent HCVAP.

24 CD 35, 51.57 percent HCVAP.

12:54:59 25 This also improves political performance for

1 Republicans in districts CD 2, 8, 9, 17, 22, 38.

2 Some data points. Comparison to 2021. In 2021 there
3 were nine Hispanic majority age districts. In this plan
4 there are ten Hispanic majority age districts. In the
5 2021 plan there were seven Hispanic citizen voting age
6 districts and under this plan there are 8.

12:55:26

7 There are no Black CVAP districts under the 2021 plan.
8 In the proposed plan there are two majority Black CVAP
9 districts. CD 18, 50.71 percent Black CVAP compared to
10 38.99 percent in 2021. CD 30, 50.41 percent Black CVAP,
11 46 percent in 2021.

12:55:51

12 (Video concluded.)

13 MR. DUNN: Ending at 30, line 24.

14 BY MR. DUNN:

12:56:09

15 **Q.** Did you see that part of Chairman Hunter's layout on
16 the floor?

17 **A.** No.

18 **Q.** You just happened to miss that part?

19 **A.** No. I'm aware of it. I mean, every newspaper, every
20 Facebook post. It's -- there has been a lot of activity
21 on it. So I was aware that -- generally of the comments,
22 but I don't think I actually saw that part of the hearing.

12:56:25

23 **Q.** These Facebook posts, they happened around August 20th
24 when Chairman Hunter laid out the bill?

12:56:45

25 **A.** From August 9th on, the media was full, all the clip

1 services and everything, the comments and discussions and
2 a lot of speculation about redistricting.

3 **Q.** Do you have somebody in your office or somebody
4 somewhere that collects media clips for you daily?

12:56:59

5 **A.** No. I subscribe to certain services.

6 **Q.** Do those services summarize sort of the media of the
7 day that might be relevant that you might want to look at?

8 **A.** No. They usually have the headlines and what they
9 think is a relevant paragraph, and you just scroll

12:57:16

10 through.

11 **Q.** That's something that you regularly do?

12 **A.** Yes. Pretty much every day.

13 **Q.** Now, back to the floor debate in the Senate,

14 August 22nd, Brooks Exhibit 319. This goes back to the

12:57:29

15 beginning of the discussion, your discussion with Senator
16 Gutierrez. Page 14, line 9 to 14, line 25.

17 (Video played.)

18 SENATOR KING: Yes, sir.

19 SENATOR GUTIERREZ: Senator, you didn't look at

12:57:47

20 race. We can go on and on and on and you are going to
21 give me the same answer that you did not look at race as a
22 consideration of making these maps because you didn't
23 actually make the maps, correct?

24 SENATOR KING: That is correct.

12:57:58

25 SENATOR GUTIERREZ: Other people made the maps?

1 SENATOR KING: That is correct.

2 SENATOR GUTIERREZ: And you don't know whether
3 those people looked at race in creating these maps, do
4 you?

12:58:05

5 SENATOR KING: What I -- no. All I can tell you
6 is -- and I haven't inquired as to who physically drew the
7 maps. I haven't inquired as to the process who all was
8 involved in that. All I can tell you is that I am
9 confident -- I am confident that the map does not violate

12:58:30

10 VRA or any other applicable law and that it also will make
11 at least five districts perform better for Republican
12 candidates.

13 (Video concluded.)

14 BY MR. DUNN:

12:58:44

15 **Q.** And that's what you told Senator Gutierrez there?

16 **A.** That is what I said is what I said.

17 **Q.** Now, throughout the legislative debates, Senator
18 Alvarado asked you, as a member of the committee and as a
19 member of the Senate, numerous questions and you would
20 regularly tell her, I'm trying to be as straightforward
21 with you as I can.

12:59:01

22 Do you recall that?

23 **A.** I always tried to be.

24 **Q.** And you said on the Senate floor that you wanted this

12:59:17

25 to be a fair and transparent process. Is that what you

