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

**LEAGUE OF UNITED LATIN  
AMERICAN CITIZENS, et al.,  
Plaintiffs,**

**3:21-CV-00259-DCG-JES-JVB**

**v.**

**1:40 p.m. to 6:03 p.m.**

**GREG ABBOTT, IN HIS OFFICIAL  
CAPACITY AS GOVERNOR OF THE  
STATE OF TEXAS, et al.,  
Defendants.**

**OCTOBER 7, 2025**

**INJUNCTION HEARING  
BEFORE THE HONORABLE DAVID C. GUADERRAMA  
THE HONORABLE JERRY E. SMITH  
AND THE HONORABLE JEFFREY V. BROWN  
AFTERNOON SESSION, DAY 6 OF 9 DAYS**

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2 Also Present:  
3 Mr. Richard Rienstra

4 Court Reporter:  
5 Leticia Perez, RMR, CRR  
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7 El Paso, Texas 79901

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Leticia D. Perez  
525 Magoffin Avenue  
El Paso, Texas 79901

13:40 1

**PROCEEDINGS**

JUDGE GUADERRAMA: All right. Mr. Kincaid's on the witness stand and witness has been passed.

So Mr. --

MR. GABER: Gaber.

JUDGE GUADERRAMA: Gaber.

MR. GABER: We all tend to merge.

**ADAM KINCAID,**

previously duly sworn by the Court, was examined and testified as follows:

**CROSS-EXAMINATION**

**BY MR. GABER:**

Q. Good afternoon, Mr. Kincaid. How are you doing?

A. Good. How are you?

Q. Good, thanks.

We've met before, right, at that 15-hour deposition?

A. That's right.

Q. Now, there was some argument earlier. The Court heard that you and I had gotten into a Twitter fight. I did not take it as a fight. I thought it was some good banter.

Was that your impression, as well?

A. It was a good conversation.

Q. All right. If anyone wants to read it, they can go read about contiguity, right?

A. I would like --

14:16 1 Q. Go ahead.

2 A. Nothing.

3 Q. If you have anything else on Missouri, I'd love to hear it.

4 Now, how did you come to testify here today? Was that  
5 voluntary? Are you here by subpoena? How did you get here?

6 A. Voluntary. Voluntary.

7 Q. And whose -- at whose request?

8 A. Um, I guess, Ryan and I talked about it a few weeks ago,  
9 Ryan Kercher, and so -- yeah. Just kept -- part of an ongoing  
10 conversation.

11 Q. Have you reached out to Mr. Kercher or had he reached out  
12 to you?

13 A. I -- I don't remember that.

14 Q. It's possible that you reached out to him?

15 A. My attorneys might have. They were in touch with him,  
16 so...

17 Q. Was it your idea that you would want to testify here in  
18 court?

19 A. It wasn't my idea, but I was willing to do it.

20 Q. To your recollection, had the State reached out to you  
21 first, or did you, through your attorney, reach out to  
22 Mr. Kercher first?

23 A. I really don't recall how that got going.

24 Q. Now, you said in your direct that maybe back in, I think,  
25 February or March, White House -- you were aware that people

14:18 1 were meeting with White House officials about Texas  
2 redistricting. Is that right?

3 A. That's correct.

4 Q. Who -- which people were meeting with White House officials  
5 that you were aware of?

6 A. Robin Armstrong.

7 Q. Anyone else?

8 A. Not that I'm aware of.

9 Q. Okay. And you mentioned that Robin Armstrong was going  
10 around DC and asking about redistricting, and that each time he  
11 would do that, he would be sent to you. Is that right?

12 A. That -- yes.

13 Q. About how many times did you have conversations with  
14 Mr. Armstrong to that effect?

15 A. I had one primary conversation with Mr. Armstrong.

16 Q. And when was that?

17 A. I don't recall the exact date. I think it was in March.

18 Q. And when did you become aware that he was talking to folks  
19 at the White House about Texas redistricting?

20 A. When he reached out to me.

21 Q. How long was that conversation?

22 A. Not very long.

23 Q. And how did you have that conversation? By phone, Zoom,  
24 something else?

25 A. I believe he called me.

14:19 1 Q. And what did he say?

2 A. He said that he was -- no, he believed it was possible to  
3 redraw the Texas Congressional Map to pick up more seats, and  
4 that he had been talking to people in DC about it, and that he  
5 kept being told to talk to me.

6 Q. Did he give any justification for why it was appropriate to  
7 do mid-decade redistricting in Texas at that time?

8 A. I don't recall that specifically.

9 Q. He's the county commissioner in the Galveston County  
10 Commissioners Court. Is that right?

11 A. That's correct.

12 Q. And did you know that about him prior to your conversation?

13 A. Yeah, yeah.

14 Q. And did you and he talk about the *Petteway* case in that  
15 conversation?

16 A. I don't remember talking to him about *Petteway* in that  
17 conversation, no.

18 Q. Okay. Have you talked to him about *Petteway* before?

19 A. It came up in a separate -- second conversation, yes, but  
20 not the first one.

21 Q. All right. And what did he say about the *Petteway* case?

22 A. He -- he referred to it as a big win, and it gave them the  
23 opportunity to redraw.

24 Q. Gave them the opportunity to --

25 A. Republicans the opportunity to redraw.

14:20 1 Q. And to redraw what? Texas' congressional map?

2 A. Yeah.

3 Q. Okay. And what did he say was his rationale based on  
4 *Petteway*?

5 A. I didn't get into a rationale.

6 Q. Okay. And did you agree with him in his view that that was  
7 a rationale to redraw?

8 A. Not directly, no.

9 Q. And explain what you mean by that.

10 A. My view of *Petteway* was that the Fifth Circuit had ruled  
11 that coalition districts were not required but were not  
12 necessarily prohibited.

13 Q. And you gained that view by reading the *Petteway* decision?

14 A. I gained that view from the *Petteway* decision, yes. Yeah.  
15 But it was also my take on the case before the case was  
16 decided, too.

17 Q. Did you read *Petteway* shortly after it was released?

18 A. The Fifth Circuit?

19 Q. Yes.

20 A. Yes, I did.

21 Q. Did you relay to Mr. Armstrong that it was your view that  
22 the *Petteway* case meant that there wasn't a requirement to  
23 create coalition districts in the Fifth Circuit, but the  
24 corollary to eliminate them was not -- didn't follow from the  
25 case?

14:21 1 A. What I told him is that I didn't think that it  
2 prohibited -- prohibited them, but did not require them either.  
3 Q. Okay. And you told Mr. Armstrong that?  
4 A. I believe so.  
5 Q. Have you had any other conversations with people where you  
6 have relayed that same sentiment?  
7 A. I think there was a New York Post article back in 2024 to  
8 that same effect.  
9 Q. I don't need to show it to you then, because you have  
10 repeated it here. And what about anyone else related to Texas  
11 redistricting? Who all that has something to do with Texas  
12 redistricting have you said that to?  
13 A. It's been my general view of that case, so it's hard for me  
14 to ballpark who all I would have talked to about it, because  
15 that's typically my response.  
16 Q. Okay. Are there people -- for example, in the White House,  
17 are there people -- have you talked about Texas redistricting  
18 with folks in the White House?  
19 A. Yes.  
20 Q. Who?  
21 A. Um, I talked to James Blair.  
22 Q. James Blair?  
23 A. Mm-hmm.  
24 Q. Who is he?  
25 A. I think he's deputy chief of staff.

14:23 1 Q. Okay. And when did that conversation happen?

2 A. It's been ongoing for a few months now.

3 Q. When did it start?

4 A. I don't remember when I first talked to James. It might  
5 have been around March, as well.

6 Q. And your conversations with him were ongoing from March  
7 forward?

8 A. Yes.

9 Q. To today?

10 A. Not today.

11 Q. Maybe not today, but -- you've been here today. But  
12 through the current time?

13 A. True.

14 Q. Okay. And you told Mr. Blair your view of the *Petteway*  
15 decision?

16 A. No.

17 Q. Okay.

18 A. I don't think that's ever come up.

19 Q. Okay. Who -- who else at the White House did you talk to?

20 A. About *Petteway* or just broadly?

21 Q. About Texas redistricting -- Texas mid-decade 2025  
22 redistricting.

23 A. Matt Brasseaux.

24 Q. And who is that?

25 A. He's the White House political director.

14:24 1 Q. And when were those conversations?

2 A. Same timeline.

3 Q. And they've continued through the current period?

4 A. Yes.

5 Q. Anyone else?

6 A. Those have been the two primary ones I've talked to about  
7 it.

8 Q. And did you talk to either of them about the *Petteway*  
9 decision?

10 A. I don't recall talking to either of them about *Petteway*.

11 Q. Did Mr. Armstrong, to your knowledge, have conversations  
12 with either Mr. Blair or Mr. -- and I -- is it Presso?

13 A. Brasseaux.

14 Q. Brasseaux.

15 Did Mr. Armstrong talk to either of them?

16 A. I have no idea.

17 Q. Okay. Who sent Mr. Armstrong your way?

18 A. I don't think he's ever told me that.

19 Q. Okay.

20 A. He just said he talked to people, and that people told him  
21 to talk to me.

22 Q. And did the conversation with Mr. Armstrong happen before  
23 or after the conversation with the two folks from the White  
24 House?

25 A. Probably around the same time.

14:25 1 Q. Did you ever talk to President Trump about Texas mid-decade  
2 redistricting?  
3 A. I have not.  
4 Q. Have you ever talked to President Trump?  
5 A. I have not.  
6 Q. Okay. You've never met him?  
7 A. I saw him once at the RNC, but no.  
8 Q. Now, you said on direct that you talked to a number of  
9 members of the GOP Congressional Delegation in Texas. Who were  
10 those?  
11 A. I don't think I said that.  
12 Q. You had instructions from them?  
13 A. Yeah.  
14 Q. Okay. Did those instructions -- have you -- did you talk  
15 to anyone in the GOP Congressional Delegation about the  
16 mid-decade redistricting?  
17 A. I didn't talk to any members of the delegation directly,  
18 no.  
19 Q. Okay. Who was your intermediary to gain instructions from  
20 them?  
21 A. Chris Gober.  
22 Q. Chris Gober. Is Chris Gober your attorney?  
23 A. No.  
24 Q. You do not have an attorney-client relationship with him?  
25 A. We do through the Republican National Committee.

14:26 1 Q. And so do you view him as legal counsel for you?  
2 A. He wasn't counsel for me. He was representing the  
3 delegation.  
4 Q. He represents the delegation, not the RNC.  
5 A. He's on contract from the RNC to represent the delegation.  
6 Q. Okay. Do you have a personal lawyer as it relates to Texas  
7 mid-decade redistricting?  
8 A. Phil is representing me today.  
9 Q. Mr. Strach?  
10 A. Yes.  
11 Q. And do you have an attorney-client relationship related to  
12 Texas redistricting with any other lawyer, to your knowledge?  
13 A. I was retained by Chris Gober during the first round of  
14 Texas redistricting in 2021. So my assumption has been that  
15 that relationship is ongoing.  
16 Q. What about with respect to Butler Snow? Do you have  
17 attorney-client relationship with them?  
18 A. I do not.  
19 Q. And BakerHostetler?  
20 A. I do not.  
21 Q. Have you talked to Mr. Blair or Mr. Brasseaux about  
22 testifying in this case?  
23 A. Yes.  
24 Q. And what -- when were those conversations?  
25 A. The last couple weeks.

14:27 1 Q. And who initiated those conversations?  
2 A. They've just been part of ongoing conversations.  
3 Q. Are these happening by telephone, text message, some other  
4 form of messaging?  
5 A. Some other form of messaging.  
6 Q. And which form is that?  
7 A. Signal.  
8 Q. And are those messages set to delete at a certain period of  
9 time?  
10 A. Yes.  
11 Q. How frequently?  
12 A. I don't recall.  
13 Q. Is it -- do you think it's every day? Every --  
14 A. Probably every day, somewhere in there.  
15 Q. Okay. And how long have you been having those Signal  
16 messages with the White House?  
17 A. On and off for a couple months now. Several months.  
18 Q. Did you initiate that form of communication, or is that  
19 something that the White House initiated with you?  
20 A. I think they initiated it.  
21 Q. And so would the White House have been the one who set the  
22 deletion period in that Signal chat?  
23 A. I don't recall that.  
24 Q. Do you recall you setting it?  
25 A. I don't recall that, either.

14:28 1 Q. Okay. But what you know is that, about once a day, those  
2 are set to disappear?

3 A. Yeah.

4 Q. What did you talk about, with respect to your testimony,  
5 with either Mr. Blair or Mr. Brasseaux or anyone else at the  
6 White House?

7 A. Just that I was coming to testify. Not any details about  
8 what I was going to say.

9 Q. Okay. And did they have any questions for you in that  
10 regard?

11 A. No.

12 Q. What else have you talked about with them over Signal?

13 A. Our overall redistricting effort nationally.

14 Q. What states does that include?

15 A. Um, well, all the ones -- I guess, there are -- so that  
16 would be Indiana, Missouri, New Hampshire, Nebraska, Kansas,  
17 Florida, Ohio, North Carolina. And I think that's it.

18 Q. Reminds me of the "Fifty Nifty United States" song that we  
19 learned in elementary school.

20 How long have you been having these conversations?  
21 When did they start with -- with these White House folks on --  
22 about mid-decade redistricting across the country?

23 A. I don't know. Probably in earnest in April/May.

24 Q. Aside from these two gentlemen at the White House, are  
25 there other national officials within the Republican Party that

14:30 1 you have been having conversations about Texas redistricting  
2 with?

3 A. National figures. Can you be more specific about who --

4 Q. Anyone who is -- like the chair of the RNC, for example?

5 A. No.

6 Q. Okay. Anyone at the RNC?

7 A. I don't believe so, no.

8 Q. What about the Republican Congressional -- what is it  
9 called, the NRCC? Is that National Republican Congressional  
10 Committee?

11 A. No.

12 Q. So no one at the body dealing with congressional elections  
13 for Republicans, you haven't talked to?

14 A. I've talked to them, but not intensely, not on an ongoing  
15 basis, about everything.

16 Q. Now, with respect to the redistricting process here in  
17 Texas, you said that you had -- you thought, maybe four or five  
18 conversations -- three, four, or five conversations with  
19 Senator King. Is that right?

20 A. Yeah, that's right.

21 Q. Can you sort of start with the first one, and then tell me  
22 what that was and roughly when it was and what you talked  
23 about?

24 A. Yeah. The first time I talked to Senator King was in late  
25 June. He reached out to me, and he asked me if I was involved

14:31 1 with, you know, the Texas redistricting. He asked me first if  
2 it was happening -- if it was actually something that was going  
3 on. And then asked if I was involved. And I replied that I --  
4 it was ongoing, and that I was involved.

5 Q. Did you -- just to go out of order here for a minute, did  
6 you watch any of the floor proceedings of the Texas House or  
7 Senate during the Texas redistricting process?

8 A. Not much of it, but some of it.

9 Q. Okay. Did you hear Senator King say that on the House  
10 floor?

11 A. Say what? That he had talked to me --

12 Q. That he had talked to you?

13 A. Yeah.

14 Q. Okay. Have you seen all of the clips of him, to your  
15 knowledge, saying that he talked to you?

16 A. I doubt I've seen all of them. I'm not sure what that  
17 would be.

18 Q. Okay.

19 A. I mean, I knew that one --

20 Q. Okay.

21 A. -- because someone tagged me in a post on X about it, so...

22 Q. So when was the second conversation that -- was that the  
23 extent of the -- of the discussion you had with Senator King in  
24 that conversation?

25 A. He mentioned that he was glad I was involved.

14:33 1 Q. Okay. Did he say why?

2 A. Yeah. Because I know what I'm doing. "Good. I'm glad  
3 someone that knows what they're doing is involved."

4 Q. When was the second conversation?

5 A. It was a couple weeks later, about mid-July.

6 Q. And was that a conversation -- or where did that happen?

7 A. We met at ALEC, the American Legislative Exchange Council  
8 conference, in Indianapolis.

9 Q. And what did you discuss?

10 A. So we just kind of sat down, and he asked me, you know,  
11 "How's it going?" I said, "Good, you know. Anything else we  
12 should talk about?" He said, "How many seats are we talking?"  
13 I said, "Five seats. It's going to be a five-seat pickup."  
14 Yeah. And that was mostly just pleasantries, that sort of  
15 thing.

16 Q. Did you talk about kind of the regions where those pickups  
17 would happen in the map?

18 A. No. I don't recall going to that level of detail with him,  
19 no.

20 Q. Okay. But you did talk about the map?

21 A. Broadly, yes. There was kind of open questioning at that  
22 point in time about whether or not we would actually be able to  
23 pick up five seats.

24 Q. Mm-hmm.

25 A. So I think...

14:34 1 Q. And he was curious about that?

2 A. Yeah. He was curious, like, "Is it actually five seats?"  
3 And I said, "Yes, five seats."

4 Q. And you confirmed that for him?

5 A. I believe so.

6 Q. Anything else you can remember about the conversation -- or  
7 about the new map that you were -- that you were drawing the  
8 map at that time?

9 A. I was working on the map, yes.

10 Q. This is mid-July. I think I've heard you say that that's  
11 when you were working on it in, like, late -- it was finished  
12 mid -- it was finished around mid-July, sort of.

13 A. I said it was finished in -- yeah, it was finished  
14 mid-July, so -- yeah.

15 Q. And how long did you talk with Senator King at the ALEC  
16 conference?

17 A. It wasn't more than a few minutes.

18 Q. Can you -- where were you? Were you in the hallway? Were  
19 you in a conference room? How did that happen?

20 A. I was at a table, yeah, in the hallway.

21 Q. And you just, like, happened to run into each other or had  
22 you made a plan to --

23 A. We planned to meet.

24 Q. Okay. How did that planning process happen? Did he call  
25 you, text you?

14:35 1 A. I think we spoke briefly the day before and said, "Hey,  
2 let's meet up at ALEC."

3 Q. Okay. And that was a phone call that he made?

4 A. Yeah. Or I made. I can't remember who talked to who --  
5 who called who.

6 Q. Do you remember which day of the ALEC conference you met?  
7 It was a -- was it a Friday, Saturday, Sunday?

8 A. No. It was during the week. It wasn't Friday, Saturday,  
9 Sunday.

10 Q. Okay.

11 A. But no, I don't remember which day it was.

12 Q. Okay. And you may have just -- I may have just asked you  
13 this, and you may have answered, but I've forgotten. How long  
14 did you meet with him?

15 A. Just a few minutes.

16 Q. Okay.

17 A. I don't remember it being a long meeting, no.

18 Q. Do you remember anything else he said to you in that  
19 meeting?

20 A. He mentioned something about, you know, getting the map  
21 done -- or, you know, working together to get the map done,  
22 something along those lines.

23 Q. And to that -- to that effect, did you do anything further  
24 with Senator King to work together to get the map done?

25 A. We talked again a couple of weeks later.

14:36 1 Q. And when was that?

2 A. I don't remember if that was in late July or early August.  
3 But it's just a few -- a couple weeks later.

4 Q. And how did that conversation come to pass?

5 A. I think I called him. I think I called him.

6 Q. Okay. Why was that?

7 A. I was just asking how things were going, if he needed  
8 anything. Just touching base.

9 Q. Do you -- so was this during -- was this after -- was this  
10 the second called session of the Texas Legislature?

11 A. I don't recall that. I mean, there was another call. I'm  
12 not sure if it was that one where we were talking about, you  
13 know, how things were going. He called me one time during the  
14 hearings.

15 Q. And when was that?

16 A. I -- I don't recall. It was in August.

17 Q. Okay. And what did he say in that conversation?

18 A. He wanted to make sure I -- he asked if I had received the  
19 invitation to come testify.

20 Q. Okay. And what did you say?

21 A. "Yes."

22 Q. And what else did you say?

23 A. "I couldn't make it to Austin."

24 Q. And how did he respond to that?

25 A. "Okay."

14:38 1 Q. And so that -- the general nature of that phone call was  
2 just calling you to say -- to ask if you'd gotten the  
3 invitation?

4 A. He wanted to make sure I knew I was invited to come.

5 Q. Okay.

6 A. He made a point to say that he had made a promise to the  
7 Democrat he was working with to, you know -- he would do that,  
8 so he did.

9 Q. And, well, did you give a rationale to him for why it  
10 was -- you were not able to accept that invitation?

11 A. I didn't get into my schedule or anything like that. I  
12 just said I couldn't make it to Austin.

13 Q. Okay. Why didn't you -- aside from what you told him, why  
14 didn't you come to testify at that invitation?

15 A. It's -- August is just busy generally for me and my family  
16 and dropping three days to come down to Austin, you know, was,  
17 you know, not doable during that time period.

18 Q. Okay. Why would it be three days?

19 A. It takes a while to get down there, then a day to probably,  
20 you know, be there, and then a day to fly back.

21 Q. How long are you spending to be here today?

22 A. Several more -- four days. I flew in on Sunday, and I'm  
23 flying out tomorrow.

24 Q. Is October just an easier time for you?

25 A. Well, I knew this was coming for more time than I knew that

14:39 1 that invitation was coming, so I had more time to plan and  
2 clear my schedule.

3 Q. Okay. So Senator King called you to ask if you got the  
4 invitation, and you said he -- you had a separate conversation  
5 late July, early August as well, right? That's -- those are  
6 the two distinct conversations?

7 A. I don't recall if it was one conversation or two. That's  
8 the thing so...

9 Q. Okay.

10 A. It might have been all part of one conversation. I just  
11 don't remember.

12 Q. Did you have any additional conversations with Senator King  
13 beyond those?

14 A. No, I don't think so.

15 Q. Did you exchange any messages with Senator King over text  
16 or Signal or the like?

17 A. He had texted me in June to get the conversation going.  
18 And that was it.

19 Q. And what did he say in that text message?

20 A. "Hey, Adam, is this your cell phone number still? Wanting  
21 to connect sometime." And I said, Let's talk on Monday or  
22 something along those lines. And that was the only text  
23 message I think we've exchanged.

24 Q. Okay. Do you -- was that like an SMS text, you know --

25 A. Old school.

14:40 1 Q. -- the kind that come from the phone?

2 Do you have a practice of deleting those, or do you  
3 still have those?

4 A. I have a 60-day retention policy, generally. And I still  
5 have that text message.

6 Q. Okay. Well, let me just ask you on behalf of the  
7 plaintiffs to retain your text messages as they relate to Texas  
8 redistricting.

9 A. I have.

10 Q. Fair notice. Great.

11 Okay. So is that the universe of conversations that  
12 you have had with Senator King that you can think of?

13 A. That I recall, yes.

14 Q. What about with respect to anyone on Senator King's staff?

15 A. I don't think I talked to anyone on his staff.

16 Q. How about with respect to any other member of the Texas  
17 Senate related to Texas mid-decade redistricting?

18 A. I just talked to Phil King.

19 Q. I'm sorry. I didn't hear you?

20 A. I just talked to Senator King.

21 Q. Okay. Any staff members for another senator?

22 A. No, not that I recall.

23 Q. Have you had conversations with Governor Abbott about Texas  
24 redistricting?

25 MR. EZELL: Objection, Your Honor. Calls for

14:41 1 privileged communications.

2 MR. GABER: I asked if he had had a conversation.

3 JUDGE GUADERRAMA: If he ever had?

4 MR. GABER: Yes. I can raise it in a moment if you  
5 want.

6 JUDGE GUADERRAMA: I'm sorry?

7 MR. GABER: I can raise it in the next question if you  
8 like. But I was just getting it out there.

9 JUDGE GUADERRAMA: Okay. So let's ask the next  
10 question.

11 Q. (BY MR. GABER) Have you had conversations with  
12 Governor Abbott related to Texas redistricting?

13 A. Yes.

14 Q. And when were those conversations?

15 MR. EZELL: Objection, Your Honor. Calls for  
16 privilege.

17 I know you're probably wondering why you're not  
18 hearing from Ryan Kercher. I'm Trevor Ezell from the  
19 Governor's Office. My colleague would do a much better job,  
20 but we're here trying to comply with the Court's 2022 decision  
21 saying that the -- you need someone from OOG to assert the  
22 Governor's privilege. And I'm pretty confident that where my  
23 friend on the other side here is taking these questions is  
24 going to implicate the Governor's legislative privilege and the  
25 process privilege.

14:42 1 I'd be happy to explain why that is, maybe a little  
2 skeptical, but in 1932, Supreme Court of the United States said  
3 that in the redistricting context, the governor's participation  
4 in possible redistricting legislation was a legislative  
5 function. And the Supreme Court cited that in *Scott v.*  
6 *Bogan-Harris* [sic] to say that an executive officer, like the  
7 Governor, has legislative privilege even though he's an  
8 executive officer.

9 Multiple federal circuits have held that the Governor  
10 has legislative privilege; 1st, 11th. I'm aware of no circuit  
11 that hold the opposite.

12 (Sotto voce discussion off the record.)

13 JUDGE GUADERRAMA: We'll sustain the objection to the  
14 substance of the conversation.

15 MR. EZELL: Thank you, Your Honor.

16 MR. GABER: Hmm. I was unaware of the Governor's  
17 executive -- executive legislative privilege so...

18 Q. (BY MR. GABER) All right. When -- when did you have the  
19 conversations with Governor Abbott?

20 A. I spoke to him a couple of times in June.

21 Q. Okay. A couple times in June.

22 Anytime before that?

23 A. No.

24 Q. And what was the form of these communications?

25 A. Conference calls.

14:44 1 Q. Conference calls?

2 A. Conference calls.

3 Q. Who was present on those calls?

4 A. Different people on different calls.

5 Q. Which people on which calls?

6 A. So the first call would have been counsels for -- and I  
7 don't know all the names of everybody that was on that call.

8 Counsels for the Governor's office; Counsels for the Republican  
9 National Committee; Counsels for the White House; myself and  
10 James Blair and the Governor.

11 Q. To your knowledge, had Governor Abbott entered into any  
12 sort of contract or retention for legislative purposes with  
13 respect to the White House?

14 A. I don't have any idea.

15 Q. What about with respect to the Republican --

16 MR. EZELL: I'm gonna object again, Your Honor. I  
17 think he's getting to the substance of --

18 JUDGE GUADERRAMA: I'm not sure he's getting into  
19 the -- depending on who's there, I don't know if that privilege  
20 has been waived. I mean, how is someone from the White House  
21 part of the legislative group or something the legislators need  
22 to protect their privilege?

23 MR. EZELL: Yes, sir. And so the answer to that, I  
24 think, is Judge Smith's decision last year for the Fifth Circuit,  
25 talking about how legislative privilege includes not only aides

14:45 1 to legislative actors, but also the third party that informs the  
2 legislative process. So in that case, Judge Smith, for the Fifth  
3 Circuit, found that it included even, you know -- for lack of a  
4 better term, just policy advocacy groups.

5 So his conversation with someone outside of the  
6 Governor's Office doesn't -- you don't even need a  
7 common-interest privilege for a legislative privilege to cover  
8 a third party.

9 JUDGE GUADERRAMA: Okay.

10 (*Sotto voce* discussion off the record.)

11 JUDGE GUADERRAMA: All right. So apparently, the White  
12 House is an outside advocacy group. So we'll sustain the  
13 objection.

14 Q. (BY MR. GABER) So just so -- and I'm just trying to get  
15 the identity of the people right now, so I don't want to get --  
16 I'm not asking you for the content of the communication.

17 We have counsel for the Governor's Office and these  
18 are lawyers?

19 A. Yes.

20 Q. Counsel for the Governor's Office, counsel for the White  
21 House. Is that correct?

22 A. Yes.

23 Q. Counsel for the RNC?

24 A. Yes.

25 Q. Counsel for Mr. Blair. Is that right?

14:46 1 A. He would be covered by the White House, yes.

2 Q. And who did I miss from that list? The Governor was on the

3 list?

4 A. Governor, James, and myself.

5 Q. And was the -- was Governor Abbott on this call or just his

6 lawyer?

7 A. That's what I said. The Governor was on the call.

8 Q. The Governor was on the call.

9 And remind me when this call took place?

10 A. Early June.

11 Q. So before the special session on redistricting?

12 A. Yes.

13 Q. Before the Governor had issued a proclamation on

14 redistricting?

15 A. Yes.

16 Q. And so there was no legislation happening at this time. Is

17 that right?

18 A. I can't speak to that --

19 Q. The Texas Legislature was not in session?

20 A. They were not in session.

21 Q. There was no bill that had been filed with respect to

22 redistricting?

23 A. Not that I'm aware -- no.

24 Q. You had not been retained, at that point, to actually draw

25 a map for Texas. Is that right?

14:47 1 A. I was retained by the RNC starting in May as part of this  
2 project.

3 Q. But your project -- I thought I heard you say that it was  
4 not until the Governor's -- after the Governor's proclamation  
5 that it was entirely clear that you would be the map drawer.  
6 Is that right?

7 A. That's correct.

8 Q. And so your role with respect to potentially creating the  
9 legislation was not even set at that point?

10 A. No. It definitely was, you know, part of the conversation.  
11 I think you're confusing being retained to draw a map and  
12 knowing I was drawing a map. Those are two different things.

13 Q. Were there any other -- so this is one conversation in  
14 early June. Were there others?

15 A. There was another one a couple weeks later, yes.

16 Q. And can you -- do you know when about -- what month at  
17 least?

18 A. That was in June as well.

19 Q. Also in June. And what was the -- when did -- how did that  
20 conversation happen? Was it by teleconference again?

21 A. I believe it was a conference call again, yes.

22 Q. Okay. And who was present for that conversation?

23 A. That conversation is just not -- it was like a touch-gloves  
24 conversation. I don't really remember who all was on that  
25 call. It's kind of a blur, honestly. It was a quicker call,

14:49 1 and I just don't remember much about it. It's kind of on and  
2 off, sort of.

3 Q. And Governor Abbott was on that call?

4 A. That's correct.

5 Q. Okay. Might there have been others beyond the people that  
6 you listed for the last call?

7 A. I believe it was a smaller call.

8 Q. And did you have additional conversations with  
9 Governor Abbott after that call?

10 A. There was one final call, yes.

11 Q. And when was that?

12 A. I believe that was late June.

13 Q. In late June. So the same time period as the one we just  
14 talked about?

15 A. Yeah. I think maybe a week or so later, yeah.

16 Q. And did that also happen via teleconference?

17 A. No, somebody called him directly.

18 Q. Sorry, somebody --

19 A. He was called directly.

20 Q. Okay.

21 A. From somebody. It wasn't a conference call.

22 Q. The Governor was called directly?

23 A. I believe so.

24 Q. And who called the Governor?

25 A. I believe that was James Blair.

14:50 1 Q. Okay.

2 A. I think it was his phone.

3 Q. Were you physically present with Mr. Blair when that call

4 happened?

5 A. I was.

6 Q. Where were you?

7 A. I was in the West Wing.

8 Q. You were in the West Wing. Who else was present?

9 A. Me, James, and Matt Brasseaux.

10 Q. And how long did that conversation last?

11 A. No more than ten, 15 minutes.

12 Q. Did you discuss the -- you know -- did you discuss the

13 content of these conversations with anyone other than

14 Mr. Brasseaux or Mr. Blair?

15 A. The final conversation or the first conversation or --

16 Q. Let's start with the first?

17 A. Just with the counsels that were on that call.

18 Q. Okay. What about the second?

19 A. I don't think I talked to anyone about the second.

20 Q. And the third?

21 A. Only with my lawyers.

22 Q. Which lawyers?

23 A. Mr. Strach.

24 Q. And who else?

25 A. Mr. Kercher.

14:51 1 Q. Do you consider Mr. Kercher one of your lawyers?

2 MR. KERCHER: Object to the extent he's asking for a  
3 legal conclusion about to what extent common-interest privilege  
4 may apply.

5 MR. GABER: I was asking for his view of the legal  
6 relationship.

7 JUDGE GUADERRAMA: I guess he can tell us that answer.

8 A. I don't know the answer to that question.

9 Q. (BY MR. GABER) Okay. Anyone other than Mr. Kercher or  
10 Mr. Strach who you discussed that final call with  
11 Governor Abbott with?

12 A. Um, I mean, just my attorneys. No one other than people I  
13 have an attorney-client relationship with.

14 Q. Well, I guess, is -- that's a little different than the --

15 A. Sure.

16 Q. But the question was, anyone other than Mr. Kercher or  
17 Mr. Strach. So it kind of sounds like maybe there were others.

18 A. I think John Cycon as well.

19 Q. John Cycon. And he's an attorney at Holtzman Vogel. Is  
20 that right?

21 A. Yeah. He represented me in my depositions.

22 Q. When did you talk with Mr. Kercher about your conversation  
23 with Governor Abbott?

24 A. I think that was in August.

25 Q. Can you be a little bit more specific?

14:53 1 A. Late August.

2 Q. Had the legislation passed at that point, the new map?

3 A. I think so. I don't -- I think it had passed the Senate at

4 that point.

5 Q. And when did you talk with Mr. Strach about that

6 conversation with Governor Abbott?

7 A. Over the past week or two.

8 Q. And what about with respect to Mr. Cycon?

9 A. Um, that was back in August. John was on a call with me

10 and Ryan.

11 Q. Any other conversations with Governor Abbott?

12 A. No.

13 Q. What about with respect to anyone on Governor Abbott's

14 staff?

15 A. I met Trevor a couple days ago.

16 Q. That was the first time you met Mr. Ezell?

17 A. I believe so, yes.

18 MR. GABER: Did I say that correctly?

19 MR. EZELL: "Ezell."

20 Q. (BY MR. GABER) Anyone else from Governor Abbott's staff?

21 A. Not that I'm aware of.

22 Q. What about Lieutenant Governor Dan Patrick?

23 A. I've never talked to the Lieutenant Governor.

24 Q. Anyone from his staff?

25 A. I talked to Darrell Davila, his Chief of Staff.

14:54 1 MR. GABER: Your Honor, I'm just -- given the testimony  
2 that the conversations occurred before there was the Governor's  
3 proclamation with respect to the special session while the Texas  
4 Legislature was not in session and when no bill was pending  
5 before the Texas Legislature, it's my view that that falls  
6 outside of the legislative privilege as there was no contemplated  
7 legislation at that point.

8 JUDGE GUADERRAMA: Mr. Ezell?

9 MR. EZELL: Your Honor, so, obviously, I can't get into  
10 specifics of the conversations, but, at that time, there would  
11 have been deliberations on whether to issue a special session  
12 call. If so, how? What the scope of it might have been? So  
13 clearly germane to possible redistricting legislation.

14 JUDGE GUADERRAMA: Let me check with my two colleagues  
15 that produced that opinion.

16 (Sotto voce discussion off the record.)

17 JUDGE GUADERRAMA: Mr. Gaber, we're sustaining the  
18 privilege objection.

19 MR. GABER: Thank you.

20 Q. (BY MR. GABER) Have you talked to Representative Todd  
21 Hunter about Texas mid-decade redistricting?

22 A. I have not.

23 Q. What about anyone on Representative Hunter's staff?

24 A. I have not.

25 Q. What about Representative Cody Vasut?

14:56 1

A. I did not.

2

Q. Anyone on his staff?

3

A. No.

4

Q. Any other members of the Texas House with respect to the mid-decade redistricting?

5

A. No.

6

Q. Any staff for any House members?

7

A. You mean United States House or what --

8

Q. I mean the Texas House.

9

A. No.

10

Q. Okay. Did Mr. Gober play the same role in this round of Texas redistricting as he did in the 2021 round, to your knowledge?

11

A. No.

12

Q. How -- what was the difference?

13

A. The difference was -- I'm not sure how much this goes into his own privilege issue, so I'm not sure what I should or should not say.

14

Q. Okay. Do you -- do you understand him to be counsel for the Texas Republican Congressional Delegation?

15

A. Yes.

16

Q. For the 2025 redistricting?

17

A. Yes.

18

Q. And is that your understanding of his role with respect to the 2021 redistricting?

19

14:57 1 A. Yes, but the -- he had a much more central role in the  
2 process in 2021 than this time, which is what makes it  
3 different.

4 Q. What is the -- is there a difference between your role in  
5 this 2025 redistricting as compared to the 2021 redistricting?

6 A. I received much more direct direction in 2021 than I did  
7 this time.

8 Q. From whom did that direction come in 2021?

9 A. As I -- Chris Gober.

10 Q. So Mr. Gober gave you less -- fewer instructions this time?

11 A. That's correct.

12 Q. Was there anyone other than Mr. Gober from whom you'd  
13 received instructions from 2021?

14 A. I'm sorry. Say that one more time.

15 Q. Beyond Mr. Gober, did you receive instructions about the  
16 mapping process from anyone other than Mr. Gober?

17 A. In 2021?

18 Q. Correct.

19 A. I don't recall directions from anybody else other than  
20 Chris.

21 Q. Senator Huffman or any of her staff?

22 A. Um, I believe all the instructions I got from  
23 Senator Huffman and her staff came through Chris Gober.

24 Q. And did you receive instructions for the 2025 process from  
25 anyone other than Mr. Gober?

14:59 1 A. I've got to think through that one. Yeah, I guess I did,  
2 yes.

3 Q. Who is that?

4 A. I think it was James, but I'm not sure, so...

5           Somebody relayed to me the results of conversations  
6 that the President had had with members of the delegation, but  
7 I don't remember who that was.

8 Q. You said James. Was that Mr. Blair?

9 A. Yes. But I don't remember if that actually came from James  
10 or not.

11 Q. And what did he tell you?

12 A. Phil.

13           MR. STRACH: Your Honor, we're gonna -- pardon me.  
14 We're gonna object to that on the basis of the President's  
15 executive privilege. Happy to argue it if the Court wants to  
16 hear more from me.

17           *(Sotto voce discussion off the record.)*

18           JUDGE GUADERRAMA: Yes. Sustained.

19           MR. STRACH: Thank you, Your Honor.

20 Q. (BY MR. GABER) When did you have the conversation with  
21 Mr. Blair in which the instructions were given to you?

22 A. Again, I didn't say it was Mr. Blair. I said I did not  
23 remember who it was.

24 Q. I apologize.

25 A. And I -- that would probably be late May to early June,

15:00 1 somewhere in that time frame.

2 Q. Was there anyone -- so you don't remember who it was?

3 A. I really don't, no.

4 Q. But someone gave you instructions?

5 A. They relayed information I needed for drawing the map, yes.

6 Q. Was there anyone else involved in that conversation?

7 A. Not that I recall, no.

8 Q. What was the means of the communication?

9 A. I don't know why this is such a foggy memory. It was just  
10 relayed to me -- it was probably over the phone. I think it  
11 might have been James, but I just can't remember for sure. Had  
12 what they had agreed on on the incumbent districts, so, yeah.

13 Q. I'm sorry. Incumbent?

14 A. Yeah. So it was just -- I think it was a phone call.

15 Q. Anyone else who gave you instructions about the map besides  
16 the relayed conversation from the President and the  
17 Congressional Delegation and Mr. Gober?

18 A. Yeah. So Chris did not give me directions. He gave me  
19 requests.

20 Q. I see. And was the expectation that you would try to meet  
21 those requests?

22 A. The expectation was I would attempt to accommodate the  
23 requests that were relayed to me.

24 Q. Did you have any conversations with any attorneys at  
25 Butler Snow about Texas mid-decade redistricting?

15:02 1 A. Yes.

2 Q. Which attorneys?

3 A. Tommie Cardin.

4 Q. Anyone else?

5 A. I think I did a Zoom with a couple of the -- with Tommie

6 and a couple of associates.

7 Q. Do you know the names of any of the associates?

8 A. I don't recall their names.

9 Q. How many different conversations did you have with --

10 Tommie -- what's his last name?

11 A. Cardin.

12 Q. Cardin.

13 With Mr. Cardin?

14 A. I don't know. Tommie and I stayed in pretty regularly --

15 regular communication.

16 Q. And what were the -- you said Zoom was one method. Were

17 there other methods of communication?

18 A. Phone.

19 Q. Phone?

20 A. Yeah.

21 Q. Any written communications back and forth?

22 A. There are some emails.

23 Q. Okay.

24 A. That I retained.

25 Q. And when did those conversations happen?

15:03 1 A. Um, they started in mid-July, about July 13th.

2 Q. And when did they go through?

3 A. The second special session.

4 Q. What about anyone at BakerHostetler?

5 A. I talked to Trevor Stanley at BakerHostetler.

6 Q. When was that conversation?

7 A. I think that was late July or early August, during one of  
8 the sessions.

9 Q. Anyone else at BakerHostetler?

10 A. I mean, I worked with the Baker folks a lot on a lot of  
11 stuff, so it's hard for me to say that --

12 Q. Okay.

13 A. -- about Texas specifically.

14 Q. Now, when you were drawing the map, I gather from the  
15 answers you've given me that there were no legislators present  
16 for that process?

17 A. When I was drawing the map? No.

18 Q. There were no -- the Governor wasn't there?

19 A. He was not looking over my shoulder, no.

20 Q. Did you have staff that was involved in helping you draw  
21 the map, or did you do it all yourself?

22 A. Myself.

23 Q. And because you didn't have conversations with anyone, the  
24 House -- for example, the Texas State House, they are -- you've  
25 not relayed to them any of your mental impressions or thoughts

15:05 1 or processes for how the map was drawn?

2 A. I had conversations with their counsel.

3 Q. Which counsel was that?

4 A. Tommie Cardin.

5 Q. Now, I think you said you don't have an attorney-client  
6 relationship with Mr. Cardin?

7 A. Mr. Cardin represents the Legislature.

8 Q. And what did you relay to Mr. Cardin?

9 MR. KERCHER: Your Honor, just to give Mr. Gaber a  
10 sense of where we are headed, I am authorized to waive  
11 Chair Vasut's legislative privilege for Mr. Cardin's  
12 conversations with Mr. Kincaid concerning the redistricting bills  
13 in the two special sessions. Not authorized to waive any other  
14 legislator's -- legislative privilege, but just to sort of give  
15 everybody a sense, because I think we're all waiting on when  
16 Kercher's gonna jump up and object to legislative privilege.  
17 That's where we come down on that.

18 JUDGE GUADERRAMA: So who's -- which legislator -- I  
19 mean, whose privilege are you waiving?

20 MR. KERCHER: Chairman Vasut, who was the chair of the  
21 House Redistricting Committee -- his legislative privilege  
22 concerning Mr. Cardin's communications with Mr. Kincaid regarding  
23 the redistricting bills during the two special sessions this  
24 summer.

25 JUDGE GUADERRAMA: Oh, thank you.

15:06 1 MR. GABER: I've been passed a note that I'm not going  
2 to not say. With respect to the invocation of the -- of the  
3 President's executive privilege, our understanding is that  
4 someone with the President would have to assert that privilege.  
5 And there is no representative of the President here, to my  
6 knowledge. Unless --

7 MR. STRACH: May I approach the mike?

8 MR. GABER: I think you have one right there.

9 MR. STRACH: It's just kind of hard to lean down.

10 JUDGE GUADERRAMA: You can pull it up. Just lift the  
11 whole thing up.

12 MR. STRACH: I'll try to do that.

13 So, um, my research tells me that these communications  
14 are confidential and can be exercised by anyone who is asked to  
15 talk about them, testify about them. And that's primarily the  
16 *Cheney v. U.S. District Court for DC* case, 524 U.S. 367, 2004.  
17 So we believe the -- that this privilege can be exercised by  
18 Mr. Kincaid through me as his personal counsel. And that's our  
19 position on that.

20 JUDGE GUADERRAMA: All right. Just -- okay. You're  
21 Mr. Strach?

22 MR. STRACH: Strach. Rhymes with back, even though  
23 it's got an H on the end of it. Yeah.

24 JUDGE GUADERRAMA: All right. So I don't know that  
25 case right off. So we'll have to read it, and the clerks are

15:08 1 already on it, and we'll get it.

2 MR. GABER: Thank you. I also don't normally deal with  
3 executive privilege. So I, too, do not know that case. I'm sure  
4 someone will research it for me.

5 JUDGE BROWN: It didn't come up in *Petteway*, did it?

6 MR. GABER: It did not. There were some other  
7 assertions of privilege, but not that one.

8 Q. (BY MR. GABER) Okay. So no legislators present for the  
9 map drawing. You did not speak directly to any member of the  
10 House. You did not speak to anyone directly in the Senate  
11 other than Senator King. Is that right?

12 A. That's correct, as far as I -- um -- during the map-drawing  
13 process.

14 Q. Did you, before testifying today, read any of the Court  
15 pleadings or the motions for Preliminary Injunction that were  
16 filed in this case?

17 A. I did.

18 Q. Which did you read?

19 A. I -- several of them -- as they came -- were filed.

20 Q. Okay. So would that include the complaint -- the  
21 supplemental complaints that were filed?

22 A. Yes.

23 Q. Did you read the motions for Preliminary Injunction as  
24 well?

25 A. I skimmed them. I didn't read them in detail.

15:09 1 Q. How did you obtain them?

2 A. CourtLink. I need to correct one thing I said a minute  
3 ago. So when I was at ALEC, I also spoke briefly with  
4 Senator Hinojosa.

5 Q. Senator Hinojosa. I think there's two Senator Hinojosas.  
6 I suspect I know which one was at ALEC. Do you know the first  
7 name of the senator?

8 A. Adam.

9 Q. And what did you talk about with him?

10 MR. KERCHER: Object to the extent that that gets into  
11 the legislative privilege.

12 MR. GABER: I guess I'm a bit confused, because I had  
13 thought that we had asked Counsel whether legislative privilege  
14 was extending to Mr. Kincaid for his work on the 2025  
15 redistricting, and my understanding is that it was relayed that  
16 he had a different type of relationship this time, and that the  
17 legislative privilege did not cover the work that Mr. Kincaid was  
18 doing.

19 MR. KERCHER: Based on preliminary information, we  
20 thought that might be true, but subsequently, we don't think that  
21 that will be true in all cases. If you want to -- if Counsel  
22 would like to ask more questions about what was discussed or  
23 whether what was discussed pertained to legislation when that  
24 happened, that -- that's fine.

25 What I can say is I'm -- which is why I said, I am

15:11 1 authorized to waive the legislative privilege on behalf of  
2 Chairman Vasut. I am not authorized to waive the legislative  
3 privilege on behalf of any other members of the Legislature who  
4 would have pulled Mr. Kincaid into the legislative process.  
5 I'm not -- I don't know the contents of what he's about to say  
6 or the -- or the -- all the circumstances around it, but I  
7 raise the issue so the Court can be aware that this may be  
8 legislative privilege.

9 JUDGE GUADERRAMA: Well, did you want to go there and  
10 find out what the answer is and see if you think it's privileged  
11 or not? Because there's no way for us to tell unless he tells  
12 us, and then the cat's out of the bag.

13 MR. KERCHER: I think the instruction to the witness  
14 is, to the extent that he is -- that the conversation  
15 concerned --

16 MR. GABER: Can I just interrupt -- I'm sorry. The  
17 only reason I'm interrupting is because my understanding on what  
18 the legislative privilege is that the legislator needs to assert.  
19 It's personal to the legislator. We did this in the last  
20 trial -- two trials now -- well, not the last trial.

21 Two trials before that related to Texas redistricting,  
22 and when counsel for the State endeavored to assert or instruct  
23 related to the legislative privilege, it's not like the  
24 attorney-client privilege. And so that's my understanding that  
25 counsel cannot give instructions about the invocation of

15:12 1 legislative privilege.

2 MR. KERCHER: I will say two things in that regard.  
3 One, Senator Hinojosa, is on our will-call list.

4 Two, there is a Texas statute that authorizes the  
5 Texas Attorney General's Office to object to the legislative  
6 privilege in the event that a -- that it may arise during a  
7 deposition or trial or other proceeding until such time as the  
8 Attorney General's Office may learn whether a given legislator  
9 wishes to waive the privilege.

10 At this time, I am unaware of Senator Hinojosa's  
11 desire to waive the privilege.

12 MR. GABER: Then I would -- it's possible this  
13 conversation is not privileged in its content, as you mentioned,  
14 Judge Guaderrama. And so, I guess, I would ask that Mr. Kercher  
15 confer with Mr. Kincaid to determine whether he has a good-faith  
16 basis to assert privilege.

17 JUDGE GUADERRAMA: He had indicated he didn't know what  
18 he was going to answer. That's why you were raising it.

19 MR. KERCHER: Yes, Your Honor.

20 JUDGE GUADERRAMA: So if you go find out what he was  
21 going to answer, then you would know.

22 MR. STRACH: Your Honor, may I approach with  
23 Mr. Kercher?

24 JUDGE GUADERRAMA: Yes.

25 *(Sotto voce discussion off the record.)*

15:14 1 MR. KERCHER: We object to the legislative privilege,  
2 Your Honor. It sounds like the substance of the conversation  
3 would have been Senator Hinojosa pulling Mr. Kincaid into the  
4 legislative process to discuss redistricting. I'm not authorized  
5 to waive Senator Hinojosa's legislative privilege, so we object.

6 JUDGE GUADERRAMA: So we'll sustain.

7 Q. (BY MR. GABER) Okay. I want to just ask a couple of  
8 questions about sort of logistics with the transfer of -- how  
9 did you get the map that you had drawn over to the Legislature?

10 A. I emailed it to Tommie Cardin.

11 Q. And what sort of -- was it a block assignment file or  
12 shapefile?

13 A. Block assignment file.

14 Q. And when did you do that?

15 A. Around July 23rd, I gave him an initial map.

16 Q. And how -- did you get revisions back from that?

17 A. No.

18 Q. Were there any subsequent versions of the map that you sent  
19 prior to the map being released as C2308?

20 A. Yes.

21 Q. How many?

22 A. I believe one.

23 Q. And --

24 A. There might have been two, but I think it was one.

25 Q. How did those changes come about?

15:16 1 A. I had to fix Chip Roy's house, which now was fruitless, but  
2 I had to do that.

3 Q. Anything else?

4 A. That's all I recall.

5 Q. And you said that was to Butler Snow?

6 A. Yep.

7 MR. GABER: Okay. If I could have Brooks Exhibit 253  
8 pulled up, please, Mr. Dunn.

9 Q. (BY MR. GABER) Mr. Kincaid, I'm showing you what's been  
10 admitted as Brooks Exhibit 253. Do you recognize this  
11 document?

12 A. I do.

13 Q. And what is it?

14 A. It's a letter from the Department of Justice to  
15 Governor Abbott.

16 Q. When did you first see this letter?

17 A. I don't recall that.

18 Q. Did you see a draft of the letter before it was released?

19 A. I did.

20 Q. When did you see that draft?

21 A. Probably the week before it was released.

22 Q. Who sent it to you?

23 A. It wasn't sent to me.

24 Q. How did you obtain it?

25 A. I didn't obtain it.

15:17 1 Q. How did you see it?

2 A. I was in the West Wing.

3 Q. Who showed it to you?

4 A. James Blair had it.

5 Q. And did you guys have a conversation about the contents of  
6 the letter?

7 MR. STRACH: Objection, Your Honor, the same privilege  
8 as to the DOJ that applies to the White House. It's executive  
9 privilege.

10 JUDGE GUADERRAMA: All right. In relation to that, I  
11 would say we looked at the case you cited. Didn't see that it  
12 was entirely on point, and my clerk sent me this case, *United*  
13 *States v. Reynolds*, saying the Supreme Court held, Executive  
14 privilege belongs to the Government and must be asserted by the  
15 head of the department involved, the White House. It can either  
16 be claimed or waived by a private party.

17 That's *Halperin v. Kissinger*. It's 401 F. Supp. 272,  
18 page 274. I think it's out of the DC, District Court, or  
19 something out of 1975. So we're gonna look at that, and we can  
20 continue the debate till we figure out what the law is.

21 MR. STRACH: Yeah. Our reading, Your Honor, of the  
22 *Cheney* case is that the -- the privilege holder, like, i.e, the  
23 President, DOJ, need not actually appear to invoke the  
24 privilege -- and that it's a very broad privilege, particularly  
25 in civil litigation. That's our view of it. We -- the Court may

15:19 1 disagree, but we -- that's our view of it.

2 JUDGE GUADERRAMA: So let's -- we're still working on  
3 it. I mean, till we figure it out, then... So what was your --  
4 is the question just having a conversation?

5 MR. GABER: I had asked that -- and the question, I  
6 believe, was what they discussed in the conversation about the  
7 draft letter.

8 JUDGE GUADERRAMA: So the discussion may be privileged.  
9 The question is, who invokes it? So we'll look at that.

10 Q. (BY MR. GABER) So this was about a week before July 7th.  
11 It was around 1st of July. Does that sound right?

12 A. Late June, early July.

13 Q. And you saw a draft of the letter. Is the letter that  
14 issued the same letter as the draft you saw?

15 A. I assume so. I'm not sure.

16 Q. Did you speak with anyone else about the DOJ letter before  
17 it was released publicly?

18 A. Yes.

19 Q. And who is that?

20 A. Phil.

21 (Reporter clarification.)

22 THE WITNESS: Phil. Same.

23 Q. (BY MR. GABER) Phil Strach?

24 A. Yeah. Same. Objection.

25 Q. And I'm sorry. Did -- did you speak to Phil Strach, or are

15:21 1 you asking him to lodge an objection for you?

2 A. I'm asking him to lodge a -- it's still the same objection,  
3 again.

4 MR. STRACH: Yeah. I'm good with him saying that he  
5 spoke with me about it, but I'll object going any further than  
6 that.

7 MR. GABER: Okay. So I just want to make sure I'm  
8 clear.

9 JUDGE BROWN: I think the question, "Did you speak with  
10 anyone else about the DOJ letter before it was released  
11 publicly?" is a fair question.

12 Q. (BY MR. GABER) And so that was my question. And I don't  
13 think you meant that you spoke with Mr. Strach, right?

14 A. No. I said "yes" to that, but then --

15 Q. Okay.

16 A. -- any follow-up questions, I was --

17 Q. Who did you speak to about the DOJ letter, aside from the  
18 meeting that you had at the White House?

19 A. I -- I mean, there's -- let's see here.

20 I spoke to the Department of Justice about it.

21 Q. Who at the Department of Justice?

22 A. Um, Michael Gates.

23 Q. And he's one of the signatories to the letter. Is that  
24 right?

25 A. He is.

15:22 1 Q. Did you speak to Ms. Harmeet Dhillon?  
2 A. No.  
3 Q. Anyone else at DOJ?  
4 A. Maureen Reardon.  
5 Q. And she's with the Voting Rights Section, right?  
6 A. The voting section, yeah.  
7 Q. Anyone else at DOJ that you spoke to about the letter?  
8 A. No.  
9 Q. Anyone other than people at DOJ did you speak to about the  
10 letter?  
11 A. Yes.  
12 Q. Who else?  
13 A. I'm not sure I can go into that.  
14 Q. The identity of the person, I think --  
15 A. So Governor Abbott.  
16 Q. Anyone else?  
17 A. Again, James Blair.  
18 Q. And these are all before the letter was released, correct?  
19 A. That's correct, yeah.  
20 Q. Anyone else that you can think of?  
21 A. Um, no, I think that's probably it. Might be others I'm  
22 not remembering right now.  
23 Q. What is your view of the DOJ letter?  
24 A. My -- very complicated question. My view of the DOJ letter  
25 is that it was not necessary.

15:23 1 Q. What is your view of the accuracy of the DOJ letter?

2 A. There are parts of it that I think are accurate and parts I  
3 think that are inaccurate.

4 Q. Which part do you believe to be accurate?

5 A. I'd have to read it again. This is pretty blurry, so...

6 THE WITNESS: Thanks, Chad. Can you go to the top?  
7 Maybe not that high up.

8 A. So first off, whether it's unconstitutional or not, that's  
9 a question of law I'm not going to get into.

10 But 9, 18, and 33, I do believe, are coalition  
11 districts. 29, I would not classify it as a coalition  
12 district.

13 Q. (BY MR. GABER) And that's because 29 is a majority  
14 Hispanic CVAP district?

15 A. That's correct.

16 Q. The 2021 version of District 29?

17 A. That's correct.

18 Q. And that's information that you knew when you read this  
19 letter?

20 A. Yes.

21 Q. And just so we understand definitionally, what do you  
22 understand a coalition district to be?

23 A. A coalition district is a district that combines two or  
24 more minority groups to combine and elect a candidate of  
25 choice.

15:25 1 Q. And the idea is that the -- the multiple minority groups  
2 add up to -- to be more than a majority of the eligible voters  
3 in the district?

4 A. That's correct.

5 Q. Anything else on page 1 on your screen, here, that you see  
6 that you disagree with?

7 A. I see here -- I completely agree with the first two  
8 sentences. Just -- let me read the third.

9 Yeah, I agree with that paragraph.

10 Q. Okay.

11 MR. GABER: And if we could go to the next page, or if  
12 there's more, to the bottom.

13 Q. (BY MR. GABER) Anything on page 2 that you see here that  
14 you disagree with?

15 A. I do believe that coalition districts run afoul of the  
16 Voting Rights Act. I don't believe the Voting Rights Act  
17 requires coalition districts.

18 Q. Anything else?

19 A. Give me a second.

20 Q. Yeah, I'm sorry.

21 A. I see here -- I do think that it made it abundantly clear  
22 that coalition districts are not required. I'm not sure I  
23 would have said protected, but required, yes.

24 I'd say *Campos*, which is accurate. I think the stuff  
25 about *Bartlett* is correct. Yes, I agree with that part. I

15:27 1 mean, the -- the last sentence of that second paragraph, "Thus  
2 the racial gerrymandering of congressional districts is  
3 unconstitutional." I do agree that racial gerrymandering of  
4 congressional districts is unconstitutional.

5 Q. But it might not be -- it doesn't follow necessarily that  
6 the existence of a district that happens to be a coalition  
7 district is, ergo, unconstitutional.

8 A. Well, that's an interesting question, but, I mean, no, as  
9 far as the existence of one in and of itself, drawn  
10 pre-Petteway, is not unconstitutional.

11 Q. And the existence of one drawn without regard to race can't  
12 be a racial gerrymander, correct?

13 A. Drawn pre-Petteway, yeah, sure, yeah. No -- yes,  
14 generally -- I agree.

15 Q. Generally, Petteway or not --

16 A. Politics, yes. Drawing for politics, totally fine.

17 MR. GABER: If we could scroll down further in the  
18 letter.

19 Q. (BY MR. GABER) So you drew the 2021 map that this letter  
20 is about, right?

21 A. No.

22 Q. You did not draw the 2021 Congressional Map?

23 A. I did, but I did not draw the four districts this letter  
24 talks about.

25 Q. Okay. Who, to your knowledge, did that?

15:28 1 A. I have no idea. I know that Texas 33, and then the other  
2 three in the Houston area were adopted from the floor of the  
3 Texas House as Amendments 16, 17, and 18.

4 Q. When did you look that information up?

5 A. After your letter.

6 Q. My letter?

7 A. Your letter, yeah.

8 Q. I don't recall that letter.

9 A. I do.

10 Q. Okay. Well, to the extent there's testimony in this case  
11 that the districts in question were drawn blind to race, it's  
12 your view, as we just discussed, that they could not possibly  
13 be racial gerrymanders?

14 A. I cannot testify to how 16, 17, and 18 were drawn, nor did  
15 I do that during my deposition, because I did not draw them.

16 Q. Did you read the letter that --

17 A. I'm sorry. Not 16, 17, and 18. Those are the amendments.  
18 Districts 33, 9, 18, and 29.

19 Q. Did you read the letter that Attorney General Paxton sent  
20 to Ms. Dhillon in response to her letter?

21 A. I did.

22 Q. And you saw his assertion that none of the districts in the  
23 map were drawn without -- with any regard to race?

24 A. I did.

25 Q. Did you have any reason to disagree with that assertion?

15:29 1 A. I have no -- I am not aware of any discovery into who drew  
2 those four districts or what data was used. So I don't have  
3 any reason to disagree with that.

4 Q. So you -- overall, you have some factual disputes with this  
5 letter, and you think it was unnecessary?

6 A. I do think it was unnecessary, and I have small factual  
7 disputes with the letter, yes.

8 Q. And did you share those views with anyone?

9 A. Openly and widely.

10 Q. And that includes people at the Department of Justice?

11 A. Yes.

12 Q. And, nevertheless, the letter was sent?

13 A. That is correct.

14 Q. Does that include disputing it with the Governor?

15 MR EZELL: Objection, Your Honor. He's talking about  
16 the substance of the conversation now.

17 JUDGE GUADERRAMA: Well, disputing it with the  
18 Governor. Sustained.

19 Q. (BY MR. GABER) Had you been drawing the map at the time  
20 this letter was sent publicly?

21 A. I think I've testified already that I was working on maps  
22 prior to this letter being issued, yes, and afterwards. So  
23 yes.

24 Q. And you continued working on it afterwards?

25 A. Yes.

15:31 1 Q. Did anyone involved in the creation or sending of this  
2 letter have any information about the nature of the maps that  
3 you were working on?

4 A. No.

5 Q. You agree, don't you, that Districts 9, 18, 29, and 33 are  
6 among the districts that were most affected by the map drawing?

7 A. I agree, yeah.

8 Q. And at least with respect to Districts 9 and 18, those  
9 districts were coalition districts before the 2025 map drawing  
10 they no longer are today?

11 A. They are not coalition districts. That's correct, under  
12 2333.

13 Q. How would you characterize them?

14 A. I mean, I drew them as Democrat vote sinks.

15 Q. You drew District 9 as a Democratic vote sink?

16 A. Not 9. I'm sorry. I was thinking about 18.

17 Q. How would you characterize its racial composition today?

18 A. Which one?

19 Q. District 18.

20 A. District 18 is a majority Black CVAP district.

21 Q. And District 9?

22 A. District 9 is a majority Hispanic CVAP district.

23 Q. And what was the nature of District 33 before? Do you  
24 agree it was a coalition district?

25 A. It was a coalition district.

15:32 1 Q. Are you aware that District 33 was imposed originally in  
2 its original form by a three-judge federal court to remedy  
3 intentional racial discrimination in the 2011  
4 Congressional Map?

5 A. I don't believe it's -- my understanding is a little bit  
6 different from that, but I'm -- yeah, I know it was adopted by  
7 the Texas Legislature as its own map the next cycle, but I  
8 think there is some disagreement about the nature of the  
9 imposition of the map. So I'm not going to get into that.

10 Q. Did you take this to be a real threat to sue Texas for  
11 racial gerrymandering between 2021 map?

12 A. I'm not -- no. I didn't take it as a full threat to sue.  
13 Mostly because I'm not sure DOJ can sue under the Fourteenth  
14 Amendment.

15 Q. You are correct.

16 A. That one semester of law school paid off.

17 Q. Okay.

18 MR. GABER: Mr. Dunn, if you could take the letter down  
19 and play Brooks Exhibit 335. This is from three minutes,  
20 22 seconds to five minutes, 40 seconds.

21 (Video played.)

22 MR. TAPICK: Would you have gone forward with  
23 redistricting if President Trump had not personally gotten  
24 involved?

25 MR. ABBOTT: To be clear, Jake, this is something that

15:34 1 I've been interested in for a long time. First of all, I've been  
2 involved in redistricting litigation for more than 20 years now.  
3 Second, one thing that spurred all of this, is a federal court  
4 decision that came out last year -- by the way, a case that was  
5 filed by Democrats, the federal court decision that came out last  
6 year said that Texas is no longer required to have coalition  
7 districts. And as a result, we had drawn maps with coalition  
8 districts in it.

9 Now, we wanted to remove those coalition districts and  
10 draw them in ways that, in fact, turn out to provide more seats  
11 for Hispanics. For example, four districts are predominantly  
12 Hispanic. It just coincides -- it's going to be Hispanic  
13 Republicans elected to those seats.

14 One thing that's happened in the State of Texas is the  
15 Hispanic community, a lot have decided they're no longer with  
16 the Democrats, who believe in open border policies, who believe  
17 in going against our law enforcement, who believe that men  
18 should play in women's sports. And they instead align with  
19 Republicans. What we want to do is to draw districts that give  
20 those Hispanics and African Americans in the State of Texas the  
21 ability to elect their candidate of choice.

22 MR. TAPICK: That's not really -- I mean, you're doing  
23 this to give Trump and Republicans in the House of  
24 Representatives five additional seats, right? And that's the  
25 motivation -- it's to stave off any midterm election losses.

15:35 1 MR. ABBOTT: Again, to be clear, Jake, the reason why  
2 we're doing this is because of that Court decision. Texas is now  
3 authorized under law that changed -- that was different than in  
4 2021 when we last did redistricting. Under new law, as well as  
5 new facts that surface in the aftermath of the Trump election,  
6 showing that many regions of the state that historically had  
7 voted Democrat that were highly Hispanic, now, chose to vote  
8 Republican and vote for Trump, as well as other Republican  
9 candidates -- districts where the electorate voted heavily for  
10 Trump. They were trapped in a Democrat congressional district.  
11 They have every right to vote for a member of Congress  
12 who's a Republican. We will give them that ability.

13 (Video concluded.)

14 Q. (BY MR. GABER) You have no basis to dispute  
15 Governor Abbott's veracity in his statement here?

16 A. I disagree with Governor Abbott's statement throughout this  
17 interview.

18 Q. But you don't have any basis to dispute why he believes he  
19 was calling the special session to do redistricting?

20 A. I can't speak to the Governor's mental state or what he was  
21 thinking or anything else.

22 Q. Right.

23 A. All I can say is I disagree with the framing of it.

24 Q. And you can only speak to your mental state?

25 A. My mental state was that the State of Texas could

15:37 1     redistrict if it wanted to.

2     Q.   You're not the Governor?

3     A.   I'm not the Governor.

4     Q.   Now, with respect to the maps that -- to the map that you  
5     drew, did you conduct any sort of Voting Rights Act analysis to  
6     determine compliance with Section 2 of the Voting Rights Act?

7     A.   I did not.

8     Q.   Did you consider that at all in the drawing?

9     A.   Um, I mean, I looked at the election results from 2024  
10    across the entire state, and it was remarkable how widespread  
11    the support for President Trump was but that was the extent of  
12    any VRA analysis I did personally.   Yeah.

13    Q.   Are you aware of any VRA analysis that was conducted?

14    A.   Yes.

15    Q.   And who did that?

16    A.   I'm not sure if this is a leg privilege thing or not, so  
17    I'm going to waive it.

18    Q.   I'm just asking for the identity.

19                 MR. STRACH:   It's okay.

20                 THE WITNESS:   Okay.

21    A.   Okay.   There were experts retained by the Texas House and  
22    the Texas Senate to separately do a VRA analysis on the map.

23    Q.   (BY MR. GABER)   And did you receive the results of that  
24    analysis?

25    A.   I did not receive any written analysis.   I received

15:38 1 feedback from both the Senate and the House that they had no  
2 problems with the maps -- with the map. They found no issues  
3 with it.

4 Q. Had you -- I think you'd said at your deposition that you  
5 had read the *Abbott v. Perez* decision from 2018?

6 A. I think I said I -- I read it. I didn't recall it too  
7 deeply then, and I definitely don't now, because I haven't read  
8 it in a while.

9 Q. Are you aware that in that decision Texas defended the  
10 configuration of CD35 that it had drawn in 2011, carried  
11 through in 2013, and then, you know, subsequently largely  
12 repeated in 2021, as -- for having good reasons to believe  
13 Section 2 of the Voters Rights Act required the configuration  
14 from Travis County down to Bexar County?

15 A. Okay. I'll take your word for it that they did that. I  
16 just don't recall.

17 Q. You don't recall that?

18 A. No.

19 Q. Before you embarked on the remapping endeavor for 2025, did  
20 you consult any of the case law from last decade regarding  
21 Texas' redistricting?

22 A. Um, no. I did not, personally, go make a deep dive into,  
23 you know, Texas case law, no. What I will say is that -- as I  
24 testified in 2023, during my deposition, is that the districts  
25 said that I did draw -- I drew blind to race and used politics.

15:39 1 So as far as I was concerned, Texas 35 was a necessary partisan  
2 gerrymander that absorbed Democrats in Austin to San Antonio.

3 Q. I want to talk a little bit about the Dallas-Fort Worth  
4 area, and I believe I heard you say that you drew one mega  
5 district by combining CD30 and the territory that comprises  
6 CD30 and CD33, and the -- now Enacted plan?

7 A. That's correct.

8 Q. And your process was to make CD30 as Democratic as  
9 possible. Is that right?

10 A. That's right.

11 Q. And with an eye towards maybe making the configuration more  
12 compact. Is that --

13 A. That was my primary goal, yeah.

14 Q. And you didn't have any concern about incumbents in those  
15 Democratic districts?

16 A. No, I did not.

17 Q. And you had no concern about core retention with respect to  
18 those Democratic districts?

19 A. I was creating five new Republican seats, which required  
20 the overhauling of the entire state, some areas more than  
21 others.

22 Q. Now, you -- before the 2021 Texas redistricting process,  
23 you worked on drawing maps for Texas in Dave's Redistricting  
24 App. Is that right?

25 A. Yes.

15:41 1 Q. And that was to kind of get a lay of the land of what was  
2 possible in terms of redistricting?

3 A. Leading up to 2021, yeah.

4 Q. And this is --

5 A. Before the data and the software are available, because the  
6 data delayed with the census, yeah.

7 Q. And are you aware that -- do you know Sean -- Dr. Sean  
8 Trende?

9 A. I do.

10 Q. And you know he's an expert for the State in this case?

11 A. I do know that.

12 Q. Are you aware that he relies on Dave's Redistricting App  
13 for his expert reports in this case?

14 A. I know that, yeah.

15 Q. And it's commonly relied on in redistricting?

16 A. Sean likes Dave's, yes. I know that.

17 Q. So I don't have access to your -- your map-drawing  
18 software, and I just learned about it today. So I'm going to  
19 take you through some questions using Dave's Redistricting App.

20 A. Okay.

21 Q. About your process.

22 MR. GABER: Mr. Dunn, could you remind me of the  
23 buttons I'll press?

24 MR. DUNN: Nobody knows what buttons is working.

25 Q. (BY MR. GABER) Okay. Do you recognize on your screen,

15:42 1 Dave's Redistricting App?

2 A. I do.

3 Q. And you see that it's a copy of the Texas 2026  
4 Congressional Map?

5 A. Yes.

6 Q. You have one more technical question for Mr. Dunn, which  
7 is, how do I --

8 MR. GABER: Okay, I got it. Thank you.

9 Q. (BY MR. GABER) And you recognize this -- I think you just  
10 said you recognize this as C2333, as represented by Dave's  
11 Redistricting App?

12 A. I'll take your word for it.

13 Q. And does it generally look like the configuration of Dallas  
14 County?

15 A. Yes.

16 Q. Now, I want to -- so we're on the same page, I have the  
17 President 2024 election selected here. Do you see that?

18 A. Yeah.

19 Q. And I think you said that you used the President 2024, the  
20 Governor 2022, the Senate 2024 as your three primary elections.  
21 Is that right?

22 A. The President 2024 was my primary one, and then the others  
23 were secondary.

24 Q. And then it was respect to the new -- newly created  
25 Republican districts, you also did sort of a durability check,

15:43 1 and we looked back in time to 2018 to 2022?

2 A. I went back all the way to 2012 for the durability check.

3 Q. Okay.

4 JUDGE SMITH: When you say "primary," you don't mean  
5 primaries as opposed to generals?

6 MR. GABER: Oh, no, sorry, Your Honor.

7 JUDGE SMITH: Main --

8 MR. GABER: The main election. Thank you, I appreciate  
9 that.

10 Q. (BY MR. GABER) So right now on the screen is the -- you  
11 know, each district is a different color.

12 A. Yeah.

13 Q. And I am going to turn that shading off so that we can see  
14 the partisan data that underlies it.

15 A. Yeah.

16 Q. And you're obviously the most familiar person in this room  
17 with the map, so keep your eyes on the borders, if you could.  
18 But we will endeavor to do that as well. And I believe what I  
19 heard you say is that you started by putting the most  
20 Democratic areas that we see here on the screen that are in the  
21 kind of center of CD30. Is that right?

22 A. That's correct.

23 Q. And then your goal was to create the most Democratic  
24 version of this district that was possible?

25 A. Well, what I said was that I took it south, and then moved

15:44 1 it west in order to adhere to the footprint of the existing 30  
2 and also make it the most Democrats seat.

3 Q. Now, my recollection was that you did not have any care for  
4 core retention with respect to Democratic districts. Do I have  
5 that right?

6 A. I said that -- well, if I said that, what I should have  
7 said is I had less concern for that than I did in the  
8 Republican seats. But, you know, 30 was a district that ran  
9 from South Dallas County over to Tarrant, so I continued to  
10 draw it south -- from South Dallas County over to Tarrant.

11 Q. Okay. Well, you would agree with me, right, that if your  
12 goal was, as you said, to create CD30 as the most Democratic  
13 district of the two, that there is -- where I have my mouse,  
14 there's territory to the northeast that is in CD33 --

15 A. Uh-huh.

16 Q. -- that is, you know, apparently more Democratic than the  
17 territory over in Tarrant County. Is that right?

18 A. It -- yes, it looks like it. But, again, I was using the  
19 footprint of 30 as it currently existed.

20 Q. That wasn't part of your testimony with Mr. Kercher, right?

21 A. It should have been. I thought I said something like that,  
22 that I took 30 along the southern border and into Tarrant  
23 County. If I was less precise, then I will be more precise  
24 now, that I kept 30 in its existing footprint and -- which I  
25 think I did say -- and then what I'm pretty sure I said earlier

15:46 1 today was that I took the heavily-Democrat areas south of  
2 downtown, put them all in the district, and then moved west  
3 along the footprint of the existing Texas 30 into Tarrant  
4 County.

5 Q. Well, let's do a little bit of experiment with the original  
6 goals, which were to make the district the most Democratic.  
7 And I'm going to delete -- I've unlocked CD30 and CD33. And so  
8 I'm going to take out the Tarrant County portion of CD30.

9 Do you see that on the screen?

10 A. Yeah.

11 Q. And then do you also see that in southwestern Dallas  
12 County, there are a number of VTD's that are significantly less  
13 blue in their intensity of shading than the areas to the --

14 A. Sure, yes.

15 Q. So if we just delete some of these, and I'm going to turn  
16 this on, so we can see the districts being deleted. And then  
17 if we were to add the more Democratic area -- and I've now got  
18 a substantially overpopulated district.

19 Do you agree with that?

20 A. I -- I assume so. I mean, I'm not accustomed to Dave's, so  
21 let me look.

22 MR. GABER: Well, I guess, first, I need to put the  
23 Tarrant County into 33. And continuing to give 30 the less --  
24 sorry, the more Democratic areas -- I am using my cell phone as  
25 the Internet source because I can't use the attorney Wi-Fi and

15:48 1 make it work. And it's going to retrieve a data file for a  
2 moment. Well, I am struggling with making this one work.

3 Q. (BY MR. GABER) Did you consider a configuration that would  
4 make CD30 more Democratic?

5 A. I did, but not this one.

6 Q. Can you say that again?

7 A. I did, but not that one.

8 Q. Okay. What did you consider?

9 A. Well, in the Central part of Dallas County, you have the  
10 same thing, right, where there's a lot of heavily Democrat  
11 areas just to the north there as well. And so, I think the  
12 most Democrat cluster you can draw is actually right there in  
13 the center of Dallas County.

14 But doing that creates a wall of a whole bunch of  
15 Democrats on the eastern side, and that doesn't work because I  
16 needed to be able to move those to the west somehow, so that's  
17 why I took the 30th District down and keep -- and put it in its  
18 current footprint. Because the most Democrat seat you can  
19 possibly draw in that Dallas County area is right in the center  
20 of Dallas County, which is why my testimony from this morning  
21 was what it was.

22 Q. Well, I have -- I had more notice of your views on CD35, so  
23 I want to move to that area now, since we first learned about  
24 this today. You recognize this as the configuration of CD35?

25 A. Yeah.

15:50 1 Q. And I'm sorry, I have that -- I can put the county names on  
2 for you too. So it's Guadalupe, Wilson, Karnes, and Bexar  
3 County, is that CD35?

4 A. Yes.

5 Q. And I think that I heard you testify -- I want to be  
6 precise -- you spoke in particular about the City of Kirby. Do  
7 you recall that?

8 A. Yeah, I do.

9 Q. And you said that you specifically looked to see whether  
10 you wanted to put the City of Kirby into CD35 instead of CD20,  
11 and possibly exchange the VTD's on the southern side of CD20,  
12 but that you were struggling to maximize Republican performance  
13 by doing that. Is that right?

14 A. I think I was more specific than that. I was trying to  
15 maximize the Trump and Cruz numbers, not just Republican  
16 performance overall. So I was looking at the Trump and Cruz  
17 numbers for that.

18 Q. Okay. So I'm going to -- should I use the Trump 2024  
19 shading? Is that what you have been looking at?

20 A. That's fine.

21 Q. Okay. And I'm going to add the map. Hopefully, the  
22 Internet will allow that to happen, so the Court knows where we  
23 are looking. And Kirby is right where my mouse is. Is that  
24 right?

25 A. That's right.

15:52 1 Q. And that is --

2 A. I think what I had said is the area to the east, including  
3 Kirby, of the Loop there.

4 Q. Okay.

5 A. Yeah.

6 Q. And looking at the partisan shading, we can see that -- I  
7 meant to take the map off. Let's make it a little bit easier.

8 A. Mm-hmm.

9 Q. We can see that the area that you included in CD35 -- just  
10 south of CD20's border, where I have my mouse right now.

11 A. Mm-hmm.

12 Q. It's shaded more heavily Democratic than the area near  
13 Kirby, where my mouse is now.

14 A. Well, there's deeper blue pockets if you look on the  
15 outline of the Kirby area, so they're not large, but they are  
16 there. So you can see that those actually are, you know, help  
17 define that edge of what I did draw into the 20th District.  
18 And there are parts of that Kirby area that are comparably as  
19 Democrat as the areas below San Antonio.

20 Q. And you -- this is something you did; you swapped out these  
21 VTD's and attempted to draw CD35 to maximize its Republican  
22 performance?

23 A. I looked at putting the Kirby area in 35, and I looked at  
24 adding the southern area below -- down the south of there. I  
25 looked at both -- and the Trump and Cruz numbers in my software

15:53 1 was higher in the -- you know, by adding the area south of  
 2 San Antonio versus the area to the east.

3 Q. Did you have any other goals with respect to CD35 here in  
 4 terms of -- there was no incumbent, right --

5 A. No incumbent.

6 Q. -- that you care about? There was an incumbent, but the  
 7 person lived in a different county, right?

8 A. He was -- he was in the 37th District.

9 Q. And my understanding is that the incumbent for CD20 was  
 10 actually moved out of his district into CD21. Is that your  
 11 understanding too?

12 A. I found that out later, but yes.

13 Q. So as we look at CD20 on this map and CD35, there's no  
 14 incumbent that we need to concern ourselves with?

15 A. No.

16 Q. And I want to just test out your theory that the Kirby area  
 17 causes the district to become less -- less Republican on the  
 18 Cruz, and the Trump vote shares.

19 A. It does in my software. It may not in Dave's.

20 Q. Okay.

21 A. I didn't use Dave's.

22 Q. Do you use different election results?

23 A. I used the same election results.

24 Q. Do you get the election results from TLC?

25 A. I did.

15:55 1 Q. So if we were to look at the election results from TLC and  
2 compare them to the election results at Dave's shows we could  
3 know that you have the same election results?

4 A. Um, sure, we could do that.

5 Q. So the first thing I'm going to do -- and I'm going to  
6 put -- just so it's easier for us to see what's changing, I'm  
7 going to add the southern -- the districts -- just south of the  
8 CD20 border and place them into CD20, and we'll exchange the --  
9 some of the precincts that are over in the Kirby area.

10 Does that sound --

11 A. That's a good start. We're going to the further south, but  
12 yes.

13 Q. And you can watch as I do it.

14 A. Okay.

15 Q. First, I need to unlock CD35 for this to work.

16 And then I noticed as well that there's two rather  
17 heavily Democratic VTD's here too. Do you see those that I've  
18 just selected?

19 A. Okay.

20 Q. That would make CD20 more Democratic, correct?

21 A. Yeah, it should.

22 Q. Now, by doing that, do you see that CD20 has become  
23 overpopulated by 61,088 people?

24 A. I do.

25 Q. So if we're just swapping people between CD20 and CD35, we

15:57 1 now need to take some people out of the CD20 in the Kirby area  
2 and give those voters to CD35. Is that right?

3 A. That's right.

4 Q. And I need to undo what I just did in this. Okay.

5 And we're going to take from the lighter blue because  
6 the goal here, of course, is to make CD35 as Republican as it  
7 can be.

8 A. No. You need to take away everything to the east of the  
9 Loop.

10 Q. Well --

11 A. That's what I said.

12 Q. 61 -- so I'm just trying to get rid of 61,000 people?

13 A. You need to get rid of more. That's what I said, is that,  
14 if you take it to the Loop, take out everything to the east and  
15 north of the Loop.

16 Q. Well, with all due respect, I'm going to do my approach for  
17 my examination, and if your counsel has a different approach on  
18 redirect, he can do that.

19 A. I know that you're trying to undermine what I said earlier,  
20 and what I'm trying to tell you is you're not drawing this the  
21 same way I drew it when I was doing my own analysis of that  
22 area.

23 Q. Did you only do one attempt? How much time did you spend  
24 on CD35?

25 A. A bit of time -- I couldn't tell you.

15:58 1 Q. Do you have a rough estimate of how much time?  
2 A. From start to finish of 35, with everything else, probably  
3 a couple of hours.  
4 Q. A couple of hours?  
5 A. Uh-huh.  
6 Q. And I think you said this was towards the end of the --  
7 Harris County was the end, right?  
8 A. Yeah.  
9 Q. And where did this fall?  
10 A. Kind of in the middle.  
11 Q. Do you remember what day in the process --  
12 A. No.  
13 Q. -- or like early June, July, that kind of thing?  
14 A. Like I said, I was working on the map throughout June, and  
15 July.  
16 Q. Okay. Do you see in -- what I've done here, we're down to  
17 a 57-person deviation between the two districts?  
18 A. I see that, yeah.  
19 Q. And we can do -- we can fix that by going to the block  
20 level and finding a block that has 57 people, or one that adds  
21 up to 57. Is that right?  
22 A. You could do that, yeah.  
23 Q. And I'm putting on the screen the populations of the VTDs,  
24 and then if we click on the VTD, we can see the blocks, and the  
25 populations of those blocks?

16:00 1

A. Yeah.

2

Q. And do you see on the border here, there's one that has 57 people?

3

4

A. I see that.

5

Q. Okay. So I'll assign that to CD35, and now we have a zero deviation between CD35 and CD20. Is that right?

6

7

A. We have your version, yeah.

8

Q. Now, I'm going to go -- I'm going to go for a moment to the enacted version of CD35, and I want to look at the partisan results. And we can take a look at the TLC page as well to make sure that those line up.

10

11

12

JUDGE GUADERRAMA: Mr. Gaber, before we get there, can we take our afternoon break till 4:15, come back and resume?

13

14

MR. GABER: Sure. Thank you.

15

(Recess.)

16

JUDGE GUADERRAMA: Mr. Gaber, before we get going --

17

MR. DUNN: Gaber, sorry.

18

MR. GABER: I'll answer to anything.

19

JUDGE BROWN: The Gerber baby.

20

JUDGE GUADERRAMA: Thank you, Mr. Gaber.

21

So we've reached a decision on the issue of the privilege regarding the White House conversation. So after researching the issue and conferring, we've concluded that neither Mr. Kincaid nor his attorney may invoke the executive privilege in this proceeding because neither is an agent of the

22

23

24

25

16:17 1 federal Executive Branch.

2 The Supreme Court held in *United States v. Reynolds*,  
3 3:45 U.S. at page 7 through 8, the privilege belongs to the  
4 Government and must be asserted by it. It can either be  
5 claimed nor waived by a private party. It is not to be lightly  
6 invoked. There must be formal claim of privilege lodged by the  
7 head of the department which has control over the matter after  
8 actual personal consideration by that officer.

9 No one from the federal executive branch has lodged  
10 any such claim in this proceeding, although *Reynolds*  
11 specifically dealt with the claim of privilege for military and  
12 state secrets, the courts have consistently applied these  
13 requirements to all claims of executive privilege, and which  
14 cites you to *Coastal Corporation v. Duncan*, 8 -- 86 FRD 415,  
15 page 517. That's out of the District of Delaware, 1980.

16 Although we haven't had time to review the decision  
17 exhaustively, we've reviewed the *Chaney* case, which was cited  
18 by Mr. Strach and concluded it doesn't deal with the same issue  
19 before us now. Presumably, for the reasons -- for that reason,  
20 and cases decided after *Chaney* continue to cite *Reynolds* for  
21 the proposition that executive privilege belongs to the  
22 Government, must be asserted by it, can neither be claimed nor  
23 waived by a private repair. And for that, I would direct you  
24 to *Trump v. Thompson* at 573 F.Supp.3d 1, page 14 out of the  
25 District DC.

Leticia D. Perez  
525 Magoffin Avenue  
El Paso, Texas 79901

16:19 1                   Because no one from the federal Executive Branch has  
2 appeared in this proceeding to assert the executive privilege.  
3 We will permit the Plaintiffs to question Mr. Kincaid about his  
4 discussions with the federal Executive Branch, the White House.

5                   MR. GABER: Thank you, Your Honor.

6 Q. (BY MR. GABER) Moving, Mr. Kincaid, to that topic, you --  
7 the conversations that you had with federal officers included  
8 the calls with Governor Abbott. Is that right?

9 A. It did.

10 Q. You had several meetings with Mr. Blair and Mr. -- with a  
11 B?

12 A. Brasseaux.

13 Q. Brasseaux?

14 A. Mm-hmm.

15 Q. There's a Mr. Barreto here, and that's too close.

16                   And then you separately met with Mr. Gates at the  
17 Department of Justice. Is that right?

18 A. I didn't meet with Michael, no.

19 Q. Okay. You had -- did you have a call with him?

20 A. Call, yeah.

21 Q. So I want to focus on the -- on the meeting that you had  
22 about the DOJ letter with -- and who was that meeting with  
23 before it was released?

24 A. The one I mentioned like a week beforehand, is that what  
25 you're talking --

16:20 1

Q. That's right?

2

A. That was in the West Wing, and it wasn't about the DOJ

3

letter. I just said the DOJ letter was there, so, yeah. And

4

that was with me. And as I said before, it was me, James, and

5

the Governor was on the phone.

6

Q. Okay. And what did you say about the DOJ letter?

7

MR. EZELL: Objection, Your Honor. This is a meeting I think the witness said with Governor Abbott.

9

JUDGE GUADERRAMA: Governor Abbott is there is what I understood.

10

11

THE WITNESS: It was with Governor Abbott. Yes, sir.

12

JUDGE GUADERRAMA: So ask your question again. Let's see.

13

14

Q. (BY MR. GABER) I just want to be sure we're on the same -- so this is a meeting in person in the West Wing. Is that right?

15

16

17

A. I was with James in the West Wing, and he called Governor Abbott on the phone is what I said before.

18

19

Q. Okay. And just to -- so that I fully understand the scene here, at what point was Governor Abbott called? Was it before or after you were handed the draft DOJ letter?

20

21

22

A. During the conversation.

23

24

Q. Okay. And then did you read the letter while that conversation was ongoing?

25

A. I did not read the letter while that was ongoing.

16:21 1 Q. When did you read the letter?

2 A. Okay. Let me clarify that. I skimmed the letter while I  
3 was sitting there, but I did not read it out loud. So --

4 Q. And who handed it to you?

5 A. James.

6 Q. James. So you're just on the phone with Governor Abbott,  
7 and James just hands you this letter?

8 A. Yeah.

9 Q. Was it -- was it prompted by something Governor Abbott had  
10 said?

11 MR. EZELL: Objection, Your Honor. We're getting  
12 really close to the substance of the conversation with the  
13 Governor.

14 JUDGE GUADERRAMA: I'll sustain that objection.

15 MR. GABER: And just so I understand the Court's  
16 ruling, is it that -- that the presence of the White House  
17 official does not waive, and Mr. Kincaid does not waive, whatever  
18 privilege that Governor Abbott has?

19 JUDGE GUADERRAMA: Right. I think Governor Abbott's  
20 privilege is separate from the Executive Branch's privilege. And  
21 so he's raising Governor Abbott's legislative privilege.

22 MR. STRACH: Your Honor, just to be clear, I understand  
23 your ruling and respect that and appreciate that. May I just  
24 simply lodge ongoing objection to conversations with the White  
25 House and the DOJ so I don't have to stand up --

16:23 1 JUDGE GUADERRAMA: Sure, we'll give you a running  
2 objection on that. Yes, sir.

3 MR. STRACH: Thank you.

4 Q. (BY MR. GABER) Once you were off the phone with  
5 Governor Abbott, did you talk with Mr. Blair about the  
6 letter -- the DOJ letter that you had just been handed?

7 A. Not in depth, no.

8 Q. To what extent did you talk to him about it?

9 A. I told him it was unnecessary.

10 Q. You told him it was unnecessary?

11 A. Yes.

12 Q. At that point, did you tell him of the errors in the  
13 letter?

14 A. No.

15 Q. Okay.

16 A. Like I said, I didn't go into depth with the letter. I  
17 just said, "This is unnecessary."

18 Q. And what did he say in response?

19 A. I don't recall a response.

20 Q. Okay. And then when was the next interaction you had with  
21 someone from the Federal Government about the DOJ letter?

22 A. I didn't have any more interactions with anyone after that.

23 Q. At what point did you have a phone call with Mr. Gates at  
24 the Department of Justice?

25 A. Prior to that.

16:24 1 Q. Prior to that.

2 And did he discuss the potential of DOJ sending a  
3 letter to Governor Abbott?

4 A. He did.

5 Q. And what did he say about it?

6 A. He said that they were looking to send a letter and wanted  
7 to get my thoughts.

8 Q. And did he tell you the topic that they proposed to send  
9 the letter about?

10 A. Broadly.

11 Q. What did he say?

12 A. "We were looking to send the letter."

13 Q. But did he discuss how it would be about *Petteway* and  
14 coalition districts and the map, the 2021 map?

15 A. Um, so I think you have to remember in June of this year, I  
16 think, the DOJ had four people in the Civil Rights Division,  
17 maybe three in the voting rights -- voting section. I don't  
18 think anyone there has signed a redistricting case at all --  
19 has been on one.

20 And so I -- yeah. So I just said, "Look, the map was  
21 drawn race-blind, so I don't know what sort of objection we  
22 would be able to lodge to a map that I drew race-blind."

23 Q. And you told that to Mr. Gates?

24 A. I did, and I also said that there's four districts I did  
25 not draw.

16:25 1 Q. And what did Mr. Gates say in response to that?

2 A. I think he acknowledged that. Yeah. I said, "Look, this  
3 map was drawn race-blind." I've testified to that repeatedly.  
4 Other people have as well. That is the reality, that the 2021  
5 was drawn race-blind. I said, "There are four districts I did  
6 not draw." Three of them happened to be coalition districts.  
7 And so, I mean, that's -- yeah.

8 Q. You drew CD33. Is that right?

9 A. I didn't. The version of 33 that I drew in the unified map  
10 is different than the one that was adopted by the State of  
11 Texas.

12 Q. Okay. But it was your understanding that the consistent  
13 testimony and evidence, all throughout the case, was that the  
14 entire map was drawn blind to race, without any racial  
15 consideration?

16 A. I haven't read everything, and I haven't read trial  
17 testimony. All I can tell you is that I know I testified, and  
18 rightfully, that the entire 2021 map was drawn race-blind as  
19 far as I drew it.

20 Q. Mm-hmm.

21 A. And I'm not aware of any discovery into who drew the other  
22 four districts or what they did or did not use in drawing.  
23 That's what I can tell you.

24 Q. And your -- was it your impression that Mr. Gates was  
25 unfazed by learning that that was the position of Texas, and

16:26 1 your testimony that the map was drawn race-blind, and so it  
2 couldn't have been a racial gerrymander.

3 A. I didn't relay to him the stuff about the map at large,  
4 because I didn't know that. So I told him that -- what I did.  
5 I told him what I drew.

6 Q. Mm-hmm.

7 A. And I told him what I did not draw.

8 Q. Okay. What else did you discuss with Mr. Gates in regards  
9 to the letter?

10 A. Um, let's see here. I mentioned that I did not draw those  
11 four seats. I mentioned that the other three of them were  
12 coalition districts. I mentioned Petteway at that point in  
13 time. I said, "The law has changed since that map was drawn."  
14 Yeah. So I told him that as well. But he already knew some of  
15 that before I told him.

16 But what I told him was that I didn't draw those  
17 districts.

18 Q. But you did confirm that they were coalition districts.  
19 You knew that?

20 A. I knew they were coalition districts, yeah.

21 Q. Were there changes that you recall to the letter from when  
22 you saw the draft to when it was issued?

23 A. I think I already said that I didn't -- don't recall any  
24 changes.

25 Q. Were you surprised to see the letter issued?

16:28 1 A. I wasn't surprised.

2 Q. And I guess nor were you surprised that it was cited in the  
3 Governor's proclamation as the basis for calling the special  
4 session for redistricting?

5 A. I don't know if I had any expectation as to whether he'd  
6 cite it in the declaration or not.

7 Q. Did you -- well, strike that.

8 Any other discussions with federal officials about the  
9 DOJ letter?

10 A. Not that I recall, no.

11 Q. And I think -- did you -- have you ever met Ms. Dhillon?

12 A. I met her recently, yeah.

13 Q. When was that?

14 A. That was in August.

15 Q. And did you -- where did you meet her?

16 A. At the RNLA conference.

17 Q. Say that again.

18 A. RNLA. Republican National Lawyers Association.

19 Q. And did you discuss Texas redistricting with her?

20 A. Only that, you know, she had sent the letter. We didn't go  
21 into any depth about what that meant or anything else.

22 JUDGE SMITH: At the White House, didn't you also  
23 mention Maureen Reardon?

24 THE WITNESS: I did, yes. Yes, sir.

25 Q. (BY MR. GABER) And Ms. Reardon is at the Department of

16:29 1 Justice, right?

2 A. Yeah.

3 Q. Did you discuss the letter with her?

4 A. Yes, I did.

5 Q. Okay. And what was the content of that conversation?

6 A. I told her it was dumb and unnecessary, and I didn't think  
7 we needed to send the letter -- that a letter needed to be sent  
8 to the State.

9 Q. And so Department of Justice was on notice that map drawer  
10 says, "Bad idea," and Department of Justice sends the letter?

11 A. I'm not a lawyer, and most lawyers don't listen to me when  
12 I tell them things, so...

13 (LAUGHTER.)

14 Q. And you -- when was that conversation with Mrs. Reardon?

15 A. Around the same time, sometime in June.

16 Q. But it was separate from your conversation with Mr. Gates?

17 A. It was, yeah.

18 Q. And where did it occur?

19 A. Phone.

20 Q. Did you call her or did she call you?

21 A. I don't recall that. I think I called her.

22 Q. Did you call her to ask her not to send the letter?

23 A. No. That wasn't -- no. It's above my pay grade.

24 Q. Who brought the letter up?

25 A. I don't remember that, either.

16:30 1 Q. Did you relay that you thought, to Ms. Reardon, it was a  
2 bad idea as well?

3 A. I told everyone it was a bad idea.

4 Q. And part of the reason you were saying that was because it  
5 was raising issues related to the racial composition of the  
6 districts, right?

7 A. My issue with it was that I thought it was unnecessary. I  
8 thought that it wasn't needed for Texas to redraw the map.  
9 That was my view of it.

10 Q. But, in addition, the letter was objecting to the racial  
11 composition of the districts in the 2021 map. That's -- right?

12 A. It was objecting to those, yes. Yeah.

13 Q. On the basis of their racial composition?

14 A. It was, yeah.

15 Q. And is that part of the reason you thought it was a bad  
16 idea to send that out?

17 A. Well, it was part of the reason I thought the letter was a  
18 bad idea in general, right, is because, one, like I said before  
19 the districts -- I drew the race-blind, I didn't know of any  
20 discovery into the other four seats, but I let them know those  
21 seats were the ones I didn't draw.

22 And I -- yeah, I mean, when the issue first came up,  
23 my response was, "Well, you don't have any partisan  
24 gerrymandering claims. You don't have any compactness issues.  
25 All you could really send a letter on is race, and that's

16:32 1 completely unnecessary. Because this is a completely political  
2 draw from start to finish."

3 Q. And nevertheless, the letter was sent. It was cited in the  
4 proclamation as the reason for the special session, and then  
5 you saw Governor Abbott say on that CNN interview that that was  
6 the reason, from his perspective, the map was being redrawn,  
7 correct?

8 A. I acknowledge that that was his perspective.

9 Q. If we could -- first, I want to ask, did you -- I think I  
10 asked a little bit earlier if you had watched any of the floor  
11 proceedings in the Senate and the House of Texas, and you said  
12 you'd seen some, right?

13 A. Yeah.

14 Q. Did you watch any of the public hearings where members of  
15 the public came and testified about whether they thought there  
16 should be redistricting or once there was a map, what they  
17 thought of the proposed map?

18 A. I don't really remember. I mean, most of what I saw were  
19 things people tagged me on social media.

20 Q. Yeah?

21 A. So I wasn't sitting there watching the live-streaming  
22 testimony.

23 Q. Did you ever get sort of a briefing about what the members  
24 of the public had said about whether redistricting should occur  
25 at any of those public hearings across the state?

16:33 1 A. I didn't ask specifically about that issue.

2 Q. No? You didn't see that?

3 And that's true with respect to both the House and the  
4 Senate hearings?

5 A. Yeah. I mean, I didn't spend a lot of time watching the  
6 public hearings so...

7 Q. So as far as the public is concerned, folks who took off  
8 work, came and testified, spoke to their representatives about  
9 the map, that's completely untethered to your drawing of the  
10 map?

11 A. I drew my map using politics from start to finish and  
12 provided that to the Legislature.

13 Q. Mm-hmm. But you didn't speak to the Legislature, other  
14 than to Senator King?

15 A. I spoke to Senator King, that's right.

16 Q. Okay.

17 MR. GABER: If we could play, please, Brooks  
18 Exhibit 309, page 98, 21 through 101, 7. And that's the page and  
19 line of the transcript.

20 (Video played.)

21 REPRESENTATIVE PIERSON: I really want to focus on the  
22 public testimony during the field hearings, which I believe were  
23 helpful. And it looks like you've taken a lot of those concerns  
24 in consideration with this map. In all of those hearings, there  
25 were several Black voters who were concerned that their voices

16:35 1 were somehow going to be silenced in the process, if the lines  
2 were redrawn. You recall that testimony, correct?

3 REPRESENTATIVE HUNTER: Yes.

4 REPRESENTATIVE PIERSON: Well, several people had also  
5 expressed concerns that there was a fear that if the lines were  
6 redrawn, that the new map would put in jeopardy the historic  
7 Barbara --

8 (Video concluded.)

9 Q. (BY MR. GABER) Dave's Redistricting broke the technology.

10 A. That's why I don't use Dave's.

11 (Video played.)

12 REPRESENTATIVE PIERSON: There were also stakeholders  
13 who testified during those hearings that felt like the population  
14 of Black voters in the state did not have appropriate  
15 representation. Do you recall that testimony?

16 REPRESENTATIVE HUNTER: Could you repeat that? I  
17 couldn't hear.

18 REPRESENTATIVE PIERSON: Sure. The stakeholders who  
19 testified during the field hearings testified that the population  
20 of Black voters in the state did not have proportionate  
21 representation.

22 REPRESENTATIVE HUNTER: Oh, throughout the State, yes.

23 REPRESENTATIVE PIERSON: Yes. Well, this current map  
24 that you have submitted actually shows where there's not just  
25 one, but two majority Black CVAP districts drawn on this map. Is

16:36 1 that true?

2 REPRESENTATIVE HUNTER: That is correct. And let me  
3 give everybody details. CD18 was now 50.8 Percent Black CVAP.  
4 In 2021, it was only 38.8 Percent.

5 CD30 is now 50.2 percent Black CVAP. In 2021, it was  
6 46 percent.

7 REPRESENTATIVE PIERSON: So that's two Black CVAP  
8 districts. How many Black districts are there on the current  
9 map?

10 REPRESENTATIVE HUNTER: I don't have all the count on  
11 that.

12 REPRESENTATIVE PIERSON: The answer is zero. So  
13 overall, Black voters in the State of Texas go from zero to two  
14 majority Black CVAP seats out of the 38 seats in Texas. Is that  
15 accurate?

16 REPRESENTATIVE HUNTER: It's accurate, but I want to  
17 add whether you're a Republican or a Democrat, under this plan,  
18 you can win. And whether you're Asian, African American, Anglo,  
19 Latino, Latina, Hispanic, anybody can run and win. But you're  
20 correct on --

21 (Video concluded.)

22 Q. (BY MR. GABER) And so you didn't listen to the public  
23 hearings, and so to the extent -- and that's Representative  
24 Katrina Pierson, who was speaking at the beginning.

25 Do you know her?

16:38 1 A. I know of her. I don't know her personally.

2 Q. To the extent she's derived some view from the hearings and  
3 is talking about why she's voting or why she supports the map,  
4 that's -- that's her mental process and has nothing to do with  
5 what you did, right?

6 A. Did not motivate how I drew the lines.

7 Q. Mm-hmm. But you can't speak to how it motivated, how  
8 anyone in the Texas Legislature -- why they voted for the map?

9 A. I did not -- I didn't talk to any of the Legislature  
10 about -- sorry.

11 MR. KERCHER: We're going to object, Your Honor, and  
12 ask that under -- and I apologize it's taken me a moment to  
13 collect the information.

14 Under the rule of optional completeness, Mr. Dunn, can  
15 we play that clip through 101-21, please?

16 MR. DUNN: We may be working off different numbers  
17 here. If that's the case, then we'll find it, and play it later.

18 MR. GABER: Thank you very much. If we could please  
19 play Brooks Exhibit 316, page 220, line 1 through 220, line 11.

20 (Video played.)

21 REPRESENTATIVE HUNTER: All right. I'm going to go  
22 ahead and answer your question even though you're not staying on  
23 the amendment.

24 First of all, CD18 now becomes a 50.8 Percent Black  
25 CVAP. In 2021, you're advocating for a 38.8 Percent CVAP. I

16:40 1 think my map is much more improving.

2 CD30 is now a 50.2 percent Black CVAP. In 2021, which  
3 you've been defending, it's only 46 percent.

4 So you have two that are majority Black CVAP districts  
5 in Texas.

6 (Video concluded.)

7 Q. (BY MR. GABER) Did you hear Representative Hunter talk  
8 about it as his map, right?

9 A. Yeah.

10 Q. And that's your understanding of the legislative process,  
11 that whatever you do behind the computer screen, it's the  
12 Legislature that owns the map that they're voting on?

13 A. Only if they like it.

14 Q. If they don't like it, they blame you?

15 A. If they don't like it, it's my fault. Yeah. So they  
16 obviously liked the map that I sent down. They had no legal  
17 problems with it, as they did their own analyses of the map.  
18 As I mentioned, they did their VRA checks and so --

19 Q. Let me ask you a question about the VRA check. You said  
20 earlier that you sent it to experts to do a VRA check?

21 A. That's not what I said.

22 Q. Okay. Then I must have misheard. Who did you send it to?

23 A. I said I sent it to Tommie Cardin.

24 Q. Okay. No one else?

25 A. I did not send it to anyone else.

16:41 1

Q. Okay.

2

MR. GABER: Mr. Dunn, if you could please play Brooks Exhibit 316?

3

4

(Video played.)

5

REPRESENTATIVE HUNTER: There's been some discussion recently about --

6

7

(Video concluded.)

8

MR. GABER: That's not it. Sorry.

9

MR. DUNN: Beginning at five seconds and going to two minutes and five seconds.

10

11

(Video played.)

12

REPRESENTATIVE HUNTER: The big brouhaha in Texas at the State House, where the Democrats have basically absconded, won't do their job, actually is triggered by a letter you sent Texas telling them that some of their districts were illegal. Tell us about that.

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SPEAKER: Yes. So I mentioned that the courts are beginning to percolate these decisions that are striking down portions of the precedents that some would say require, but certainly neighborhood race-based districting. And so one of the flavors of race based districting that states have tried to do over the years -- and tried to do because they've been forced to do by Plaintiffs, minority groups Plaintiffs, is that you can combine multiple minority groups or count on a certain White crossover group to a minority group to make what's called "a

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16:43 1 coalition minority district" under Section 2 of the Voting Rights  
2 Act.

3 And in the Fifth Circuit, which Texas is a part of,  
4 there was a recent decision in 2023 that struck down this  
5 concept of coalition districts.

6 But left alive, what is now being considered by the  
7 Supreme Court, a sort of majority-minority district. But you  
8 have to have a single minority that composes a majority of that  
9 district. I know that's a lot, but this is a very convoluted  
10 area of the law.

11 So we took a look at Texas, and we found that four of  
12 their districts in Texas are comprised of these so-called  
13 coalition districts. In other words, to get to a special  
14 minority district, you have to add together multiple minorities  
15 or count on a certain personal of crossover White vote.

16 And this is too complex, too weird, and too  
17 inconsistent with equal protection. And so we wrote to Texas  
18 telling them that even though that law had been struck down a  
19 couple of years ago, their districts are now -- not in  
20 compliance with the federal voting rights laws, and so they  
21 needed to take action to fix them.

22 That is what triggered the Texas Legislature and the  
23 Texas Governor to call the Legislature into session to put new  
24 maps together.

25 (Video concluded.)

16:45 1 Q. (BY MR. GABER) You said that you had spoken to  
2 Ms. Dhillon -- this is Harmeet Dhillon, correct?

3 A. That's Harmeet, yeah.

4 Q. You spoke with her recently?

5 A. A couple -- a month ago, yeah.

6 Q. And who brought up the letter? You said you mentioned the  
7 letter.

8 A. Harmeet mentioned that they had sent the letter down.  
9 That's all. Yeah.

10 Q. And what did you say about that?

11 A. I acknowledged that that had happened. I didn't really  
12 want to get into it.

13 Q. Okay. Now, just a couple more questions for you.

14 MR. GABER: Mr. Dunn, if you could please pull up what  
15 will be marked as Brooks Exhibit 518.

16 Q. (BY MR. GABER) I'm showing you what is marked as Brooks  
17 Exhibit 518. And this is an email that you sent to  
18 Dale Oldham?

19 A. That's right.

20 Q. Do you recognize this email?

21 A. I don't recognize the email. I recognize the email  
22 signature, yeah.

23 Q. And you see the second line, Galveston report?

24 A. I do.

25 Q. And this is dated September 14, 2021. Is that right?

16:46 1 A. Yes.

2 Q. And then if we could go to the second page, please,  
3 Mr. Dunn, or the third page.

4 A. That's our logo.

5 Q. Do you recall sending Dale Oldham a tabulation of racial  
6 data about the Galveston County commissioner precincts in  
7 September of 2021?

8 A. I don't recall sending the email, like, the moment I sent  
9 the email. It was, what, four years ago now. But yes, I know  
10 that I sent him the email.

11 Q. And Mr. Oldham requested from you racial data about the  
12 Galveston County commissioner precincts?

13 A. He did.

14 Q. And did he say why he wanted that racial data?

15 A. I knew he was working with the Galveston County  
16 Commissioners Court, and so he wanted -- yeah, he needed the  
17 data to do whatever analysis he was doing.

18 JUDGE SMITH: The question was, did he say why he  
19 wanted that racial data?

20 THE WITNESS: I'm sorry. I don't recall him saying  
21 anything other than, "Can you send me the racial breakdown of the  
22 four Commissioners Court precincts in Galveston County?"

23 Q. (BY MR. GABER) Mm-hmm. And how did you have this racial  
24 data on your database?

25 A. This is something that we gathered from the Census Bureau

16:47 1 and processed.

2 Q. Did you send out racial data like this to any other lawyers  
3 or local jurisdictions that requested it of you?

4 A. I mean, we create reports for all -- you know, for all 50  
5 states. We have election results that we do, and there's  
6 demographic information about those as well, yes. This isn't a  
7 one-off. But I don't provide them in this kind of report  
8 anymore.

9 Q. You don't provide them with this kind of report anymore?

10 A. We don't -- no. I wouldn't do it that way.

11 Q. When did you stop doing that?

12 A. It just became kind of a hassle to do it that way.

13 Q. And how do you do it now?

14 A. Usually, I just put it in a spreadsheet.

15 Q. And so you'd have a spreadsheet of the data requests in  
16 this case, whether it's racial data or population data?

17 A. Sure. I mean, there's a lot of different reasons why  
18 people request these things. And we provide data because we  
19 deal with census results and census -- well, census  
20 demographics and partisan results and all sorts of stuff.

21 Q. Earlier on your direct examination, you were asked about  
22 the use of race and redistricting, and you said that you  
23 thought using race was unconstitutional. Do you recall that?

24 A. I think I said using race for redistricting -- like actual  
25 redistricting is unconstitutional, yes.

16:49 1 Q. Did you give any warning to Mr. Oldham to that effect when  
2 you sent him this racial data?

3 A. I sent him this. I don't need to tell Dale the law.

4 Q. Okay.

5 MR. GABER: If we could please play what will be marked  
6 as Brooks Exhibit 340 from 13, 24 to 16, 23.

7 (Video played.)

8 SPEAKER: For me, so Texas was one of the first states  
9 that you started to hear rumbling about re -- re-redistricting  
10 and so talk to us about what's going on and what's happening,  
11 what's coming up in Texas, even this morning, as we speak.

12 MR. KINCAID: Yeah. So I think the President went out  
13 on the White House lawn, and we continue to go, and we mentioned  
14 Texas redistricting, and how Republicans were looking to pick up  
15 three to five seat -- you know, seats in the state. And, you  
16 know, that's what Texas is set to reveal later today, I think, is  
17 a map that's going to create five new seats that the President  
18 won by more than 10 points in 2024.

19 You know, these are seats that, you know, Ted Cruz  
20 carried in 2024 as well. Governor Abbott carried four out of  
21 five of them in 2022. These are, you know -- seats for them  
22 are majority Hispanic districts, which reflects the realignment  
23 that we've seen nationally among Hispanics and other minority  
24 groups toward, you know, President Trump and the Republican  
25 Party over the last two or three election cycles now.

16:50 1 (Video concluded.)

2 Q. (BY MR. GABER) Now --

3 JUDGE GUADERRAMA: Mr. Gaber, if I can just stop you.  
4 Did you say that was Exhibit 340?

5 MR. GABER: It's being marked for that purpose. Now it  
6 will be -- I'll move to admit it here at the end of the  
7 commission.

8 Q. (BY MR. GABER) Do you recognize this as a podcast you did  
9 with the American Enterprise Institute?

10 A. I do.

11 Q. And that was released on August 5th, 2025, but from the  
12 context of the conversation, it sounds to me like it  
13 occurred -- it was recorded the morning that the map -- or the  
14 day that the map was released.

15 A. That's correct, yeah.

16 Q. And so this was recorded before the map was made public?

17 A. That morning, yes.

18 Q. Why did you find it necessary to comment on the racial  
19 composition of the districts?

20 A. I'm just kind of giving it a top-line view of what the map  
21 did, right, so what the political results were, some of the  
22 demographic aspects of it. That's all.

23 Q. Did you -- I mean, is that a feature of the map from your  
24 perspective, that four of the five districts are majority  
25 Hispanic?

16:51 1 A. It's a reality of the map, yeah.

2 Q. Is it something you want to highlight?

3 A. I think it was interesting, yeah -- that from an academic  
4 perspective, I thought it was pretty interesting. But -- but  
5 yeah, so I just -- it was part of what I was sharing about the  
6 map.

7 Q. And is that -- that's something that you've shared with  
8 other people as well, that four out of the five new districts  
9 are Hispanic majority CVAP?

10 A. Yeah.

11 Q. I -- and in that podcast, you specify that it's by CVAP,  
12 correct?

13 A. That's right, yeah.

14 Q. And what's the significance of that from your perspective?

15 A. Because they were majority by CVAP.

16 Q. As opposed to by VAP?

17 A. Right, yeah.

18 Q. So they wouldn't be majority by VAP. Is that right?

19 A. No, that's not what I said.

20 Q. So you wouldn't be able to call them majority district by  
21 VAP?

22 A. Okay. I'm not sure what you're...

23 Q. You've heard other people highlight the fact that four out  
24 of the five new districts are majority Hispanic CVAP?

25 A. I've heard them say that, yes.

16:52 1 Q. Now, you made this statement before the map was released,  
2 that's Plan C2308, correct?

3 A. That's correct, yeah.

4 Q. And you were in charge of making the changes to Plan C2333  
5 in CD9. Is that correct?

6 A. I made some of the changes, not all of the changes.

7 Q. Who made other changes to CD9 in Plan C2333?

8 A. Like I said earlier, I'm not sure who did the changes to 16  
9 out in El Paso. Yeah. So I'm not sure who did everything that  
10 became 2333.

11 Q. My question is specifically about Congressional District 9?

12 A. Yeah, I did 9.

13 Q. You did all of those changes?

14 A. Yeah, for 9. Yes.

15 Q. And that was after you had announced that CD9 was one of  
16 the majority Hispanic districts in the map, correct?

17 A. Yeah.

18 Q. And so if you --

19 JUDGE GUADERRAMA: Could you just answer "yes" or "no"?

20 THE WITNESS: I think I did. Yes.

21 MR. GABER: And let's play, please, the same exhibit,  
22 minute 8, 31 seconds, through 9, 14 seconds.

23 (Video played.)

24 MR. KINCAID: For me, if I go into a state and I say,  
25 "I need you to pass this map," or, you know, "Republicans need

16:53 1 you to pass this map," we would get laughed out of the state.  
2 It's something that the states -- states controlled by  
3 Republicans typically want to handle themselves -- if a  
4 delegation gives them a map, they'll take it. They might pass  
5 it, they might not. But it's a very, very different process.  
6 It's much more state-driven, bottom-up versus top-down.

7 So where you are now -- and, you know, I've said this  
8 since '21 and '22 -- is that there were districts that were  
9 politically impossible for us to go get in '21 and '22. They  
10 just weren't there for lots of different reasons, that maybe  
11 now we can go get.

12 And so when you start going through those states one  
13 by one, you say, "Okay, well, these are states where there's no  
14 ban on the decade redistricting. These are some where there  
15 are bans, so we can't do anything there. These are" --

16 (Video concluded.)

17 Q. (BY MR. GABER) So it turned out that in Texas, in order to  
18 go get it, we first needed to have the DOJ letter and the DOJ  
19 letter cited in the Governor's proclamation. You'd agree with  
20 that?

21 A. I don't think I'd agree with that.

22 Q. Well, that's what happened, right?

23 A. The Governor issued the proclamation, yes, but I don't  
24 think the DOJ letter was necessary to do that.

25 Q. But it was cited in the proclamation?

16:55 1 A. Again, I don't think it was necessary for Texas to do that.

2 Q. In fact, you think it was a bad idea?

3 A. I've said that repeatedly.

4 Q. Yeah. Just two more clips to play for you, and then I'll  
5 be finished.

6 MR. GABER: Mr. Dunn, if you could please play Clip 1  
7 from the University of Chicago.

8 And this will be marked as Brooks Exhibit 341.

9 (Video played.)

10 SPEAKER: As Callie alluded to earlier, even though  
11 non-Whites accounted for 95 percent of the net population growth  
12 in Texas over the last ten years, it does not draw a new Hispanic  
13 majority district. So, Adam, how would you say this map complies  
14 with the Voting Rights Act, given that it doesn't seem to create  
15 a new Opportunity District?

16 MR. KINCAID: Well, I think that's really the question.  
17 You used the word "Opportunity District," right? So one of the  
18 big disagreements between conservative and liberal academics --  
19 legal academics right now, is whether Opportunity Districts are  
20 required versus majority-minority districts are required, right?

21 And so that's something that people should get on this  
22 call and talk about because I'm not, you know, adequately  
23 qualified to go through all the different dynamics of how many  
24 of that's changed over the last decade. But when you look at  
25 the Texas map overall, you're going to see that there are more

16:56 1 majority Hispanic seats than there were [inaudible].

2           You're going to see that the three African American  
3 seats Kelly mentioned before there weren't any majority African  
4 American seats. There weren't majority African American seats,  
5 you know, last decade. So those three seats were preserved.  
6 They were, you know, cut up and, you know, spread out. Those  
7 three seats will still likely elect African American members of  
8 Congress.

9           So I think that's as far as the Texas map, I think it  
10 complies with the law, I think it's in the report, and the  
11 record will be pretty clear.

12           (Video concluded.)

13 Q. (BY MR. GABER) Do you recognize this as an October 2021,  
14 maybe symposium you did at the University of Chicago on the  
15 topic of Texas and other redistricting?

16 A. I unfortunately didn't get to go. I did it virtually from  
17 my office, but yes.

18 Q. Okay. And this is shortly after you had worked on in the  
19 map from the 2021 congressional redistricting had been passed.  
20 Is that right?

21 A. That's correct, yeah.

22 Q. And your commentary there was that there were more Hispanic  
23 majority districts in the 2021 map than there were in the  
24 previous decade. Is that right?

25 A. That's what I said, yeah.

16:57 1 Q. And also that there were -- you identified three Black  
2 Opportunity Districts. Is that right?

3 A. That's what I said, yeah.

4 Q. Which three do -- were you referring to?

5 A. My guess would be I'd say 30, 9, and 18.

6 Q. 30, 9, and 18?

7 A. Yeah.

8 Q. And you noted that you didn't splice up those districts in  
9 the 2021 map, right?

10 JUDGE SMITH: I think that the transcript is saying 39  
11 and 18, and what I think he was trying to say is 30, comma, 9,  
12 comma, and 18. I just want to be sure that the record reflects  
13 those accurately.

14 Q. (BY MR. GABER) And that's correct, 30, 9, and 18?

15 A. That's correct, yeah.

16 Q. And it was your understanding that it was not necessary for  
17 those districts to be over 50 percent Black CVAP in order for  
18 Black voters in the districts to elect their preferred  
19 candidate?

20 A. I just left them the way that they were, yeah.

21 Q. In fact --

22 A. I think I said there that I didn't have the -- I wasn't  
23 expert enough to dig into it, but yeah.

24 Q. But do you know that Black members of Congress had been  
25 selected from CDs 30, 9, and 18 for decades?

16:59 1 A. That's what I was acknowledging in the video.

2 Q. The 2025 map does the thing that you said didn't happen in  
3 the 2021 map, right, which is to draw them as Black majority  
4 CVAP districts and reduce the number?

5 A. It was -- well, it was drawn as a Democratic votes that  
6 happened to be majority Black CVAP, yes.

7 Q. The results of that is that we have reduced the number of  
8 districts in which a Black member of Congress -- those  
9 districts, will be elected.

10 A. It dropped -- yeah, I mean, it changed the nature of the  
11 four seats in Houston down to three Democrat seats, yes.

12 Q. And Mr. Dunn, if you could please play the second clip from  
13 Brooks Exhibit 341.

14 (Video played.)

15 UNIDENTIFIED SPEAKER: You know, false pretext to think  
16 that these legislators don't know the racial makeup of their  
17 state, I just think [indiscernible] all of a sudden are blind to  
18 that. So I just -- I think that's been an interesting trend of  
19 this cycle, is this notion of Republican legislators just turning  
20 off race and thinking that's totally going to protect them in  
21 court. I just -- I think it's more complicated than that.

22 MR. KINCAID: I'll note that we're not advocating here,  
23 for the record.

24 (Video concluded.)

25 Q. (BY MR. GABER) Your statement was, "I'll note that we're

17:00 1 not advocating now" with respect to turning off racial data,  
2 correct?

3 A. Yeah, that's what I said.

4 Q. Thank you.

5 MR. GABER: I pass the witness to my co-counsel, who  
6 may have more questions.

7 JUDGE GUADERRAMA: All right.

8 MR. GABER: Your Honor, if I could move to admit  
9 Brooks Exhibit 518, which is the Galveston report from the  
10 National Republican Redistricting Trust, Brooks Exhibit 340,  
11 which is the American Enterprise Institute video, and Brooks  
12 Exhibit 341, which is the University of Chicago video.

13 JUDGE GUADERRAMA: Mr. Kercher, 518 was what?  
14 Mr. Kincaid's email?

15 MR. GABER: The mail with Galveston County.

16 MR. KERCHER: Your Honor, I'm told reliably that we --  
17 we do not yet have them. So we will -- we would like the  
18 opportunity just to be able to review the whole thing, and if we  
19 can check back with the Court tomorrow, and I'll let the Court  
20 know if we have any objections.

21 MR. GABER: We'll send it right now.

22 MR. KERCHER: Sure.

23 MR. GABER: Thanks.

24 Q. (BY MR. GABER) Thank you, Mr. Kincaid.

25 A. Thank you.

17:01 1 JUDGE GUADERRAMA: Mr. McCaffity, you're up next.

2 MR. McCAFFITY: Get my technology set up here. Give  
3 Mr. Dunn a break, hopefully. We'll see.

4 All right. Okay. I don't know what's going on. All  
5 right.

6 **CROSS-EXAMINATION**

7 **BY MR. McCAFFITY:**

8 Q. Mr. Kincaid, my name's Sean McCaffity. I represent the  
9 Mexican American Legislative Caucus. How are you doing?

10 A. Fine. How are you?

11 Q. Great. I believe you said, during the -- sort of the close  
12 or the end of Mr. Gaber's cross-examination, you commented that  
13 it was a political draw start to finish?

14 A. That's correct.

15 Q. Does that include using race as a political pretext to draw  
16 the districts for partisan purpose?

17 A. Did not use race as a pretext.

18 MR. McCAFFITY: Objection, nonresponsive.

19 Q. (BY MR. McCAFFITY) Does your statement about political  
20 cover or political process, include using race as a pretext for  
21 political draw?

22 MR. KERCHER: Objection, asked and answered.

23 JUDGE GUADERRAMA: Yeah, I think he answered it. He  
24 said he didn't use race as a pretext.

25 MR. McCAFFITY: Okay. Fair enough.

17:03 1 Q. (BY MR. McCAFFITY) Does it include -- does your -- when  
2 you drew the map, you did not use race, according to your  
3 testimony, on direct, right?

4 A. That's correct.

5 Q. But you acknowledge that the map was drawn as a political  
6 process, start to finish, right?

7 A. That's correct.

8 Q. And you heard the chair of the Redistricting Committee on  
9 the floor, Mr. Representative Hunter, talking about touting the  
10 racial characteristics of four new districts that were  
11 minority/majority?

12 A. I heard that, yes.

13 Q. Does that -- is it possible for your -- the use of race as  
14 a political pretext to inform your decisions when you were  
15 drawing partisanship to hit certain racial targets so they  
16 could have that political talking point?

17 A. I wasn't using race to hit racial targets.

18 Q. How do we know you weren't using race?

19 A. Because I've said so multiple times.

20 Q. Who retained you again? The Republican National Committee?

21 A. That's correct.

22 Q. And you were paid for your map drawing services?

23 A. I -- it's a general retainer. It's not specific --

24 Q. How much?

25 A. I'm sorry?

17:05 1

Q. How much?

2

A. \$2500 a month.

3

Q. And the general retainer, that includes your map drawing services. Does it include any type of specific map drawing product?

4

5

A. No.

6

Q. Does it require -- does it give them -- the Republican National Committee the discretion to tell you exactly what kind of map to draw?

7

8

A. No.

9

Q. Do you consider yourself a third-party consultant that was hired for their map drawing services that you then provided to the Republican National Committee?

10

11

A. I -- I was retained as a consultant. I don't know if I would say a third party or whatever else. I mean, I was retained as a consultant for the RNC.

12

13

Q. And you were paid for that work as part of the retainer agreement?

14

15

A. That's correct.

16

Q. In other words, you weren't doing the redistricting work on behalf of the National Republican Committee for free?

17

18

JUDGE SMITH: You've asked that three times now.

19

Q. (BY MR. McCAFFITY) The maps you generated during the legislative session of 2025, those maps contain -- or are drawn based on projections and formulas that informed your

20

17:06 1 understanding of the partisan nature of the Texas electorate?

2 A. I don't think I've testified using any projections.

3 Q. Well, I think you didn't really testify a lot about the

4 detail other than you said there was some Python code and a

5 database, right?

6 A. That's a Python script, yes.

7 Q. Well, a Python is -- it's a computer language, right?

8 A. You said projections. I'm...

9 Q. Does the Python code include any projections?

10 A. No.

11 Q. Does it include any modeling?

12 A. No.

13 Q. Does it include any third-party data whatsoever?

14 A. No. It's just Government-issued data.

15 Q. And the Government-issued data that you include is the TLC

16 data for election results?

17 A. We use the census geography. We use the election results

18 from the State or municipality if we have to gather it at a

19 lower level. And we use the voter file and the precinct lines.

20 All of those are produced from the States or from the

21 localities. We don't use any third-party data in our work.

22 Q. Okay. And in the Python code, the script runs. And what

23 does it create for you?

24 A. Block-level political data.

25 Q. And the -- do you believe that the average person, without

17:07 1 technical training, would be able to verify or reproduce your  
2 results at the block level?

3 A. The average person would not be able to.

4 Q. And you -- in fact, to generate those R codes, you used  
5 specialized software and script that you created, right?

6 A. I didn't create it, no.

7 Q. Did you create the Python script?

8 A. I didn't create it.

9 Q. Oh. Who created the Python script?

10 A. A former data consultant of ours, yeah. A couple of them  
11 worked together on it.

12 Q. Okay. But it's owned by the NRRT?

13 A. It's proprietary to our 501(c)(4).

14 Q. And you haven't disclosed that to us in this litigation,  
15 right?

16 A. The script?

17 Q. Correct.

18 A. I have not disclosed the script.

19 Q. And based on your experience and specialized knowledge with  
20 redistricting, you're able to interpret the data, and the  
21 results received as a result of running that script for  
22 purposes of redistricting?

23 MR. KERCHER: Object to the extent the question calls  
24 for a legal conclusion. My friend, Mr. McCaffity, is cleverly  
25 inserting language from the Rules of Evidence into his question.

17:08 1 I don't object to him asking the question, but I do object to him  
2 asking the question that is designed to elicit a legal conclusion  
3 about whether the witness is an expert.

4 JUDGE GUADERRAMA: Well, you can -- he can answer the  
5 second half. You're able to interpret the data and the results  
6 received as a result of running that script for purposes of  
7 redistricting? You can answer that.

8 THE WITNESS: I'm able to interpret the data, yes.

9 Q. (BY MR. McCAFFITY) And does your experience allow you to  
10 do that?

11 A. Yes.

12 Q. Based on drawing the testimony on your direct examination,  
13 where you explained how you made decisions with respect to  
14 district lines or boundaries, those are based on your opinions  
15 and interpretations of that data related to how partisan a  
16 particular area is or isn't in Texas, right?

17 A. It would only be in the block level, not at the VTD level.  
18 The VTD data is straight from the State of Texas.

19 Q. You use the block level?

20 A. We -- what I said is we disaggregate the data down to the  
21 block level, and then we aggregate it back up to the VTDs. And  
22 so the VTD-level data is identical to the VTD-level data  
23 produced by the State of Texas.

24 Q. If the VTD data is identical to the State of Texas --

25 A. Let me rephrase that. The precinct-level data is identical

17:10 1 to the data released from the State of Texas. The difference  
2 is that we take that data from the precinct level and bring it  
3 down to the block level. So the precinct-level data is the  
4 same.

5 Q. And then you make another finding or level of granular  
6 detail to the block level?

7 A. Below that, yes.

8 Q. Okay. And none of the information that you relied on in  
9 that -- in drawing that map that shows exactly how you arrived  
10 at your partisanship figures at the block level has been  
11 supplied in this litigation to date, to your knowledge?

12 A. I gave a pretty thorough outline of how we did this during  
13 my 2023 deposition. I walked through the inputs. I walked  
14 through the process and methodology. It wouldn't be hard for  
15 somebody to go in and write their own Python script who had  
16 some knowledge of Python and do something similar. Because I  
17 pretty much give it all the roadmap on how to do it.

18 Q. I think during your deposition, you were talking about  
19 doing that in the context of Fair Lines. Is that not -- is  
20 that a different organization?

21 A. It's 501(c)(4).

22 Q. That's the other organization owned by NRRT?

23 A. It's not owned by, but it's affiliated with.

24 Q. Affiliated with?

25 A. Sure, yeah.

17:11 1 Q. All right. But you never supplied any of the underlying  
2 data, right? Yeah, you described that you broke things down to  
3 a more granular level, but you didn't supply any of the data --

4 JUDGE SMITH: He's also answered that three times. You  
5 don't need to ask it again.

6 Q. (BY MR. McCAFFITY) Did you supply the data to the State's  
7 lawyers in this litigation?

8 A. Not to the lawyers, no.

9 Q. Did you supply the data to -- related to the use -- that  
10 you used the drawing -- the 2025 Redistricting map to anyone  
11 else?

12 A. The experts for the Senate and the House.

13 Q. All right. And that would be Tommie Cardin?

14 A. Tommie's the lawyer.

15 Q. Okay. Who are the experts?

16 THE WITNESS: Um, is that covered, or should I just  
17 answer the question?

18 Q. (BY MR. McCAFFITY) I mean, you told Mr. Gaber that you  
19 only talked to Butler Snow's Tommie Cardin, and then he asked  
20 you about the experts, and you said, I only talked to Tommie  
21 Snow. So now, you've said "experts" three times, so I need to  
22 know who the experts are.

23 MR. KERCHER: To respond to the question, if I say  
24 "object," stop, but otherwise...

25 THE WITNESS: Okay, great.

17:12 1 A. I did not talk to the experts, so I answered the question  
2 honestly before when I was asked. The experts reached out to  
3 our data team for disaggregated results, and we provided those  
4 results to them.

5 Q. (BY MR. McCAFFITY) Who are the experts?

6 A. Um, Jeff Lewis on the Senate side, and Trey Hood on the  
7 House side.

8 Q. Jeff Lewis, the same expert that's been retained to testify  
9 in this litigation?

10 A. Yes.

11 Q. He had that information before the -- the Motion for  
12 Preliminary Injunction was filed?

13 A. That's my understanding.

14 Q. And he's issued a report in this case, right?

15 A. That's my understanding.

16 Q. Do you know if that report includes any of your  
17 information, data, methodology, et cetera?

18 A. I don't know. I haven't seen his report or what he did  
19 with it.

20 Q. Was there anything that would have precluded Mr. Lewis --  
21 or Dr. Lewis, I'm sorry, I don't know his -- doctor --  
22 Dr. Lewis, from disclosing that information, to your knowledge?

23 A. I have no idea. I haven't talked to -- to Dr. Lewis, so  
24 I'm not sure.

25 Q. Did you sign any non-disclosure agreements with anyone

17:13 1 during the 2025 redistricting legislation regarding the use of  
2 your data?

3 A. Not to my knowledge, no. I didn't sign anything. I'll say  
4 it more specifically.

5 Q. Do you know who Dr. Lewis gave the data that you supplied  
6 to him during the redistricting process to anyone else?

7 A. I just said I haven't talked to him, so I have no idea what  
8 he did with it after we sent it to him.

9 Q. Well, I mean, you could have talked to lawyers for the  
10 State that would have told you he's given it to XYZ, right?

11 A. They haven't given me any answers.

12 Q. Okay. It was Dr. Lewis -- I'm sorry, who was the other  
13 one?

14 A. Trey Hood.

15 Q. And who does Trey Hood work for?

16 A. He's a professor at the University of Georgia, and he was  
17 an expert for the House.

18 Q. For the House.

19 And I want to be a little bit more precise. I know  
20 I've -- I've said you supplied your data to them. Did you give  
21 them also your Python code and the script to run your data?

22 A. No.

23 Q. Did you describe that for them?

24 A. No.

25 Q. You looked at some Demonstrative Exhibits with Mr. Kercher

17:15 1 during your direct examination. You remember the red and blue  
2 partisan shading maps?

3 A. Yes.

4 Q. And then there was also the compactness score maps?

5 A. We didn't go through those.

6 Q. Oh, that's right, you didn't actually show those. I'm  
7 going to ask you about them anyway. You know what I'm talking  
8 about, though, right?

9 A. Yeah.

10 Q. All right. For the red and blue partisan shading maps,  
11 when were those created? Do you know?

12 A. Over the last month.

13 Q. Do you know when you first started working on those red and  
14 blue partisan shading maps?

15 A. Over the last month.

16 Q. You don't have a specific recollection of when you started  
17 them? Because it's October, so I just want to make sure -- was  
18 it in September?

19 A. It might have been as early as August, but definitely in  
20 September.

21 Q. And what about for the compactness score demonstratives  
22 that you have supplied, that were supplied in this litigation  
23 as exhibits? Do you know what I'm talking about?

24 A. Yeah, I did not produce those.

25 Q. Okay. My understanding from the State's lawyers is that

17:16 1 the OAG's office created those. Is that your understanding?

2 A. That's my understanding.

3 Q. And it was done at your direction or instruction?

4 A. I had requested that they put a side-by-side of the  
5 districts with the compactness scores, yeah.

6 Q. And when did that occur?

7 A. Last week, I guess.

8 Q. Could the Attorney General -- office of the Attorney  
9 General have requested the data that you -- underlying data  
10 that you used for the 2025 map and have you give it to them  
11 without a need for subpoena?

12 A. Has the Texas Attorney General's Office asked me for the --

13 Q. Not yet. I haven't gotten there yet. I'm just asking,  
14 could they have?

15 A. I suppose they could have.

16 Q. And did they?

17 A. They did not.

18 Q. If they had just requested it as opposed to subpoena, would  
19 you have turned it over?

20 A. Um --

21 MR. KERCHER: Object to the hypothetical, Your Honor,  
22 and object to relevance.

23 MR. McCAFFITY: It just goes to the control over this  
24 particular witness for purposes of disclosure.

25 JUDGE GUADERRAMA: I'll sustain hypothetical.

17:17 1

MR. McCAFFITY: All right. Fair enough.

2 Q. (BY MR. McCAFFITY) One of the pieces of information that  
3 you said you used for creating your partisanship data at the  
4 block level is the voter file, right?

5 A. That's correct.

6 Q. And the voter file includes pieces of information related  
7 to individual voters, right?

8 A. That's correct.

9 Q. In Texas, we don't register by party, but it will show on  
10 the voter file election voting history, right?

11 A. That's correct.

12 Q. So if someone is voting in every single Democratic primary,  
13 that's going to be shown?

14 A. Yes.

15 Q. For whatever the date range is for that particular file,  
16 right?

17 A. Yeah.

18 Q. It also shows things like Spanish Surname Voter  
19 Registration?

20 A. I'm not sure of that.

21 Q. Does it include any identifying racial information?

22 A. I don't believe there is race on the Texas voter file.

23 Q. How many voters in Texas, as a general rule, don't vote in  
24 the primaries?

25 A. I don't know that.

17:18 1 Q. Could it be as much as 70 percent?

2 A. Potentially.

3 Q. Did you pay for the voter file?

4 A. I -- I did not pay for the voter file.

5 Q. How did you get the voter file?

6 A. I can't give you an answer to that question.

7 Q. Why not?

8 A. I have a non-disclosure agreement on where I get the voter  
9 files from.

10 Q. Did you ever have to sign an affidavit to give to the  
11 Secretary of State of Texas for access to the voter file?

12 A. Not that I recall.

13 Q. So you never signed an affidavit -- just to be clear, to  
14 your knowledge, you have not signed an affidavit that has been  
15 submitted to the Texas Secretary of State for access to the  
16 voter file?

17 A. I get a -- no, I have not signed an affidavit with the  
18 Secretary of State's office.

19 Q. Were you aware that Texas election code, Section 18.066  
20 requires someone that is getting access to the voter file to  
21 submit an affidavit that they're not using it for advertising  
22 or commercial purposes?

23 A. I was not aware of that.

24 Q. Are you aware that voter list obtained under that provision  
25 without a sworn affidavit, that they're not using it for

17:19 1 advertising or commercial purposes, is a criminal offense?

2 A. I was not aware of that.

3 Q. And you signed a non-disclosure agreement to get the voter  
4 file from who?

5 A. We have a list exchange agreement.

6 Q. A what? I'm sorry.

7 A. A list exchange agreement.

8 Q. I don't -- what is that? I don't know what that is.

9 A. It's -- so a list exchange agreement is an agreement  
10 between two parties where, you know, things of value are shared  
11 between it to an equal value.

12 Q. Okay. So who do you have a list exchange agreement with?

13 A. Um, with the Republican National Committee.

14 Q. Does the list exchange agreement define or describe the  
15 value associated with the voter list in order for them to  
16 properly report it under the federal election campaign  
17 contribution rules?

18 A. I'd have --

19 MR. KERCHER: Objection, Your Honor, relevance. We're  
20 having a fishing expedition.

21 MR. McCAFFITY: I think it goes to credibility. If  
22 he's using data that he shouldn't be having access to...

23 MR. KERCHER: Ask him what the --

24 JUDGE GUADERRAMA: Yeah. I'm gonna sustain that  
25 objection to that question.

17:20 1                   You can ask him -- I'm not preventing you from  
2 cross-examining him on this issue.

3                   MR. McCAFFITY: Okay.

4 Q. (BY MR. McCAFFITY) You understand that the Texas  
5 Legislative Council has a redistricting guide that they put out  
6 during the decennial redistrictings?

7 A. Okay. Yep.

8 Q. Have you reviewed the Texas legislating council -- the  
9 Texas Legislative Council's Redistricting guide for 2021?

10 A. I don't recall reviewing it.

11 Q. Do you recall -- okay. Fair enough. Do you think you've  
12 ever seen it?

13 A. I think I've seen it, yeah, I just don't recall reviewing  
14 it.

15 Q. And the Texas Legislative Council's Redistricting Guide --  
16 and this is probably consistent with your experience -- it  
17 describes census blocks as the smallest unit of geography  
18 which -- for which population data is collected?

19 A. That's right.

20 Q. Do you agree with that?

21 A. Yeah.

22 Q. And, in fact, census blocks, they can be pretty small  
23 sometimes, like sometimes just a single city block or even just  
24 a single building, right?

25 A. That's right.

17:22 1 Q. When you -- I believe you used the term "geocoded," right?

2 A. Yes.

3 Q. When you geocoded the voter file, you were essentially  
4 creating a dataset that linked individual voter addresses with  
5 partisan behavior to specific geographic units in the block  
6 level of the data?

7 A. It's in the VTDs, yes.

8 Q. Within the VTDs?

9 A. The blocks -- I mean the blocks under the VTDs.

10 Q. You said you -- you start big, work small. So you go all  
11 the way down to the granular level of the census block?

12 A. But that's where we allocate the election results to a  
13 census block, yes.

14 Q. Are you familiar with the concept of a linkage attack in  
15 data privacy?

16 A. I'm not, no.

17 Q. Were you aware that the Texas Legislative Council's Guide  
18 specifically discusses linkage attacks in the context of  
19 differential privacy in the census?

20 A. I'm not, no.

21 Q. Do you know what differential privacy is?

22 A. I do.

23 Q. And do you know that the census has a policy that they've  
24 included algorithms to ensure that personal identifiable  
25 information of individuals is kept as private as possible?

17:23 1 A. That's -- yes, I know that.

2 Q. And that Texas Legislative Council has also, essentially,  
3 adopted that policy, of trying to keep individual voters'  
4 personal information as private as possible by only releasing  
5 the VTD data, right?

6 A. Okay. Yep.

7 Q. You agree?

8 A. I assume so.

9 JUDGE GUADERRAMA: Well, it would be helpful if you  
10 answer "yes" or "no," instead of "yep" or "yeah."

11 A. Okay. Can you ask -- ask the question one more time?

12 Q. (BY MR. McCAFFITY) Probably not. Let me think about it.

13 Do you agree that the Texas Legislative Council has  
14 also essentially adopted the same type of privacy protection  
15 policy as the census by only releasing the VTD data that has  
16 undergone the differential privacy protections of the census?

17 A. I don't know that. I have to take your word for it. You  
18 asked me if I agree. I don't know if I know that or not.

19 Q. Well, you do know that the Texas Legislative Council's data  
20 on its own does not go down to the block level for you to be  
21 able to do the kind of granular precision targeting that you've  
22 been doing?

23 A. I know the Texas Legislative Council produces election  
24 results at the VTD level -- at the precinct level, yes.

25 Q. Is that -- the precinct level the same as the census level?

17:24 1 A. Roughly, yeah.

2 Q. Census blocks can be smaller than a precinct, right?

3 A. Yes.

4 Q. Are you aware that a linkage attack related to data privacy  
5 typically can occur when someone connects auxiliary data with  
6 personally identifiable features to reconstruct the database?

7 A. I'm not -- I already said I'm not familiar with linkage  
8 attacks.

9 Q. Are you familiar with Title 13 of the U.S. Code related to  
10 privacy for the census?

11 A. Roughly, yes.

12 Q. And do you understand that there's an obligation to keep  
13 the census data as private as possible?

14 A. The census data, yeah. The -- yeah, yes.

15 Q. Is it possible for a dataset to also include information  
16 beyond just the information in the voter file to be even more  
17 particular or granular with respect to an individual that is  
18 being geocoded?

19 A. I'm sorry. Can you say that one more time?

20 Q. Yeah. So your -- your process, you took the -- the voting  
21 file and geocoded individual voter addresses to their partisan  
22 history so that you could say -- I'll use my address, 28.01  
23 Jessica, you have X voter, and they are likely to vote X -- Y  
24 party because of this election history.

25 A. Our numbers are not -- when we disaggregate the results,

17:26 1 we're not disaggregating down to specific individuals.  
2 We're -- it's down to the census block. And so it's a  
3 collection of all of the individuals within that -- that reside  
4 within that census block.

5 So it's not individualized to you, personally. It's  
6 an aggregate of all of the individuals who live within the  
7 block. So it's anonymized in that way.

8 Q. So -- but you have to -- in order to create that, you have  
9 to get the individual voter's address to put them in the block.

10 A. Yes. The -- the voter file is geocoded using the address,  
11 and then it is assigned to the centroid within the census  
12 block.

13 Q. Okay. And so my question is, would it be possible to also  
14 include other information about the individual at that address  
15 in order to make determinations about their partisan leanings?

16 A. The only datasets that we -- the only inputs we use are,  
17 like I said, the primary vote history, voter registration,  
18 where that's relevant. Those are the sets we used to identify  
19 voter propensity.

20 Q. Before you aggregated back up to the census block, when  
21 you've geocoded individuals' addresses within a particular  
22 block, you know where individual voters are within that block,  
23 and you also know their partisan leaning. I just want to make  
24 sure I understand.

25 A. The geocoded address -- I'll try to say this again.

17:28 1           The geocoded addresses that we have are assigned to  
2 the centroid within that block. The centroid is the geographic  
3 center of the block. So it's not assigned to their house top  
4 address. We have the Latin log for that, but it's aggregated  
5 at the census block centroid.

6 Q. Okay. So in other words, you don't create a map with a  
7 bunch of thumb tacks on it for each address with red address --  
8 red dots or blue dots based on where the specific voter is and  
9 their address, all of that goes, this many X red, this many Y  
10 blue into the center of the block?

11 A. That's correct.

12 Q. All right. But you do have the ability, based on the data  
13 that you've linked and geocoded, to be able to determine which  
14 one of those voters lives where?

15 A. I guess if we built that script, that might be possible.  
16 But it's not something that we -- we do. Like I said, we  
17 assign the disaggregated results to the centroid within the  
18 block.

19 Q. And based on that, first level, I know you said you -- but  
20 we haven't seen your codes. All right. I know you said you  
21 haven't -- you haven't done this, but you would have the  
22 ability to -- in instances where there's a really small census  
23 block to be able to tell exactly how someone voted, right?

24 A. No. We can have an assumption of how someone voted, but we  
25 don't know how they voted.

17:29 1 Q. So if census block one, two, three, four in Harris County  
2 contained like four residents and some -- and I don't know if  
3 there's one in Harris County, because it's Harris County. Is  
4 that small, but there are census blocks that have small numbers  
5 in it, right?

6 A. Right.

7 Q. If you had a census block in a county, let's just use  
8 Harris County that has four total residents, and there's only  
9 three registered voters, so you're gonna know three out of the  
10 four, right?

11 A. I lost you there. Sorry. Let's try that one more time.

12 Q. You know there's a census block with four total residents.

13 A. Okay.

14 Q. All right?

15 A. Yep.

16 Q. And, you know, based on the information that you're able to  
17 glean from the voter file, that there's three registered voters  
18 in that census block. So you know three out of the four  
19 residents?

20 A. I would -- well, I would know that there's three registered  
21 voters, yes.

22 Q. Okay. Why did you -- what am I saying that's incorrect  
23 that you --

24 A. It seems like you're suggesting I know their exact names  
25 and everything else, and I don't know. Like, that's not

17:30 1 something we're looking at. We're just looking at the  
2 addresses and the vote history. We're not using it for voter  
3 targeting or anything like that. We're not doing any  
4 advertising or anything. We're just taking the results and the  
5 geography and matching them together.

6 Q. Okay. So you agree with me that, based on what I just  
7 said, you would know that there are three registered voters out  
8 of the four voters in that census block in this hypothetical?

9 A. I would know that there are three registered voters.

10 Q. And if you had the partisan election results for the  
11 precinct that those voters are in, you would know, potentially,  
12 how they voted?

13 A. I would know if they voted in a primary, like in aggregate,  
14 though, again, not individualized. It would be aggregated to  
15 that census block, which is the hypothetical you're asking.

16 So --

17 Q. Well, I -- yeah, I understand.

18 A. Okay.

19 Q. I understand that you're aggregating it back up, but I know  
20 you always work small, so I want to know --

21 A. No.

22 Q. -- very fine, precision granular level. You would have the  
23 ability, based on the address, to know, potentially, how those  
24 people voted?

25 A. Again --

17:31 1 MR. KERCHER: Objection. This is asked and answered.  
2 It's also a hypothetical. He has already stated repeatedly that  
3 that's not what he looks at, that's not how he uses the data, and  
4 whether he might use it that other way is hardly relevant.

5 MR. McCAFFITY: It is relevant, Your Honor, because the  
6 particular targeting --

7 JUDGE GUADERRAMA: I'm gonna overrule the objection.  
8 He can answer it again. I think he's already answered it but...

9 MR. McCAFFITY: Okay.

10 JUDGE SMITH: When you asked the question -- I'm just  
11 confused; I'm trying to clarify. When you asked the question,  
12 how they voted? Are you asking which primary they voted in, or  
13 you are asking, did they vote for Trump or Harris or whatever?

14 MR. McCAFFITY: Well, that's sort of where I'm trying  
15 to get to.

16 JUDGE SMITH: Okay. It would be helpful if you would  
17 clarify that.

18 MR. McCAFFITY: Yeah. I appreciate the clarification.

19 Q. (BY MR. McCAFFITY) So your -- your partisan data is based  
20 on primary election history, correct?

21 A. Our partisan data is based off of more than that. It's  
22 also based off of vote method, right, and also primary vote  
23 history is one thing we use to try to figure out how someone's  
24 political leanings might be, yeah.

25 Q. What else goes under the partisan -- your formula for

17:32 1 determining partisanship?

2 A. There would be nothing else in Texas other than that,  
3 because there's no party registration.

4 Q. Okay. So it's just election history and vote by mail?

5 A. It would be election history, vote method, and then primary  
6 vote history would be how we would disaggregate the results  
7 down the block.

8 Q. And that would give you an idea of about, potentially,  
9 30 percent of the electorate?

10 A. What it would do is it would give us the ability to  
11 understand where specific voters might be, and then the ones  
12 that are not -- so you're -- I get where you're going. So let  
13 me clarify this a little bit more.

14 So --

15 MR. McCAFFITY: Objection, nonresponsive.

16 Q. (BY MR. McCAFFITY) My question was simply, your partisan  
17 data is based on the election results, which would only be --  
18 primary election history, which would only be 30 percent of the  
19 electorate?

20 A. So let me go a little bit further, then, if you don't mind  
21 to explain that next step that I seem to need to communicate,  
22 if that's all right.

23 Q. Well, so, okay. Can you start with a "yes" or a "no," and  
24 then say whatever you need to say?

25 A. We would use the primary vote history to assign the -- the

17:33 1 likely partisan leaning of voters, and then after the -- after  
2 the primary votes are exhausted in a particular block, the rest  
3 of the results are washed across the -- the block or the VTD --  
4 uniformly across the VTD.

5 Q. What do you mean when they're washed across the VTD  
6 uniformly? What does that mean?

7 A. What that means is -- okay, you're talking about  
8 30 percent. So let's talk about that for a second.

9 So say there's a thousand people in a VTD, right? And  
10 600 of them are -- and we'll just use one election for the sake  
11 of simplicity here. And so 600 of them voted, right, and of  
12 that 600, I have primary vote history for only 200 of those,  
13 right? So a little bit more than your 30 percent.

14 So the other 400 votes from that VTD, we don't have  
15 any way to assign the partisanship on those individuals,  
16 because we don't have the primary vote history. And so what we  
17 would do in that case is take those 400 voters, vote history,  
18 and -- well, those 400 votes, not vote history -- let me be  
19 more clear.

20 The 400 votes cast in that precinct, then wash them  
21 uniformly across the census blocks in that VTD.

22 Q. Okay. That's what I don't understand. What does "wash  
23 them uniformly across the census blocks" mean?

24 A. It means assign them across the census blocks within that  
25 VTD.

17:35 1 Q. How does that tell you anything about partisanship?

2 A. It's not a perfect -- you're assuming this is perfect. I  
3 wish it was, but I mean, it's not a perfect method. It just  
4 gives us a more granular level of data than we otherwise would  
5 have at the block level.

6 Q. I agree it's more granular and it's more precise,  
7 surgically so, based on some of the maps we've seen, right?

8 A. Okay. Yes.

9 Q. You agree with that?

10 A. Yeah, it's good data.

11 Q. So it's good data, but it's only like a 30-percent guess?

12 A. Um, where we have primary vote history, we use that to  
13 assign, but you have to remember primary vote history isn't  
14 just for one election; you might have primary vote history for  
15 a large number of people across the precinct over the course of  
16 several cycles. So you're not just looking at the primary vote  
17 history in one year. You might have the primary vote history  
18 over several years.

19 Q. Right.

20 A. So you have some level of primary vote history for probably  
21 more than 30 percent of the electorate in the state.

22 JUDGE SMITH: Getting back to the previous distinction  
23 that I was asking about -- I just want to make sure. As I  
24 understand it, the voting results in a given election, let's say  
25 Trump versus Harris, is only available at the precinct or VTD

17:36 1 level.

2 You don't have any way of knowing in a particular  
3 block, how many voted for Trump and how many for Harris?

4 THE WITNESS: Um, we have a general idea, but it's  
5 not -- it's not perfect, right? It's a general --

6 JUDGE SMITH: But for the precinct, you know for sure,  
7 right?

8 THE WITNESS: Yes, sir, that's right. Right. But down  
9 to the block level, it's based -- it's honestly -- it's decibels.  
10 So, you know, you're getting, you know -- we think it is, you  
11 know, .555 Trump votes, .444 Harris votes, that sort of thing,  
12 and then it's aggregated back up from there.

13 Q. (BY MR. McCAFFITY) And then when you assign and wash it  
14 across the -- the non-primary history --

15 A. Mm-hmm.

16 Q. -- voters across, how do you determine the percentage  
17 across the district as to who voted for who?

18 A. It's -- so after the primary vote history is exhausted, if  
19 we don't have anything else to assign the partisanship, like I  
20 said, it's just uniformly applied throughout the VTD -- across  
21 the blocks within the VTD.

22 Q. Did you do any -- any race -- racially polarized voting  
23 analysis in Texas?

24 A. I think I've already said I didn't do any VRA analysis  
25 myself.

17:38 1 Q. Have you looked at any -- before you drew the maps, did you  
2 look at any racially polarized voting analyses for Texas in the  
3 2025 redrawing?

4 A. You mean like expert reports and that sort of thing, or  
5 what are you, like --

6 Q. Did you look at -- did you see anybody's analysis of how --  
7 or if Texas is racially polarized in its voting patterns during  
8 the redistricting draw for 2025?

9 A. No.

10 Q. Is it possible to further refine and clean the partisan  
11 data by looking at the race of the individuals that's in the  
12 census demographic data?

13 A. We don't use census data in our disaggregation. So number  
14 one, that's just not something we do. We don't use any race  
15 data whatsoever in our disaggregation of political results.

16 I think that, to answer your question more  
17 specifically, I don't think that using race to disaggregate  
18 election results would be a good idea because you've got --  
19 it's -- it's not a very good predictor of vote history.

20 Q. Is it a better or worse predictor than only 30 percent of  
21 the electorate's election history?

22 A. Well, again, you're basing the 30 percent off of the number  
23 of people in a primary that would vote. I'm telling you we use  
24 multiple years of primary history, so I don't think it's  
25 30 percent. So I think it's probably a much higher percentage

17:39 1 than that.

2 Q. Do you know what it is?

3 A. I don't know.

4 Q. So you -- sitting here today, you don't know whether or not  
5 the partisan guess based on election history is a better or  
6 worse predictor of partisanship than racial identity in Texas?

7 A. So I'm -- I'm sorry. Let me try to understand your  
8 question. You're asking that, would it be more precise to use  
9 race and ethnicity data to disaggregate election results than  
10 using election results to disaggregate election results?  
11 That's what you're asking? I just want to make sure I'm clear  
12 that's what you're saying.

13 Q. I think that's what I'm saying, but if it's not, I'll try  
14 to clarify it again.

15 A. Okay. I would disagree because the demographics of -- of  
16 VTD are going to be a hundred percent of the -- of the census  
17 population of that VTD, correct? So you're going to have a  
18 smaller number of voters for that VTD. So you're gonna be  
19 using a larger population to disaggregate a smaller number of  
20 votes, number one.

21 Number two, like I've said, what we do is we use the  
22 election results for a specific cycle, so we're able to know  
23 with much granular ability, not only, um, you know, how many  
24 votes were cast, but also which -- and again, this is  
25 anonymized in the sense that it's aggregated to the centroid,

17:40 1 so it's not individual voters that way, but we are able to know  
2 that way how many votes were cast per block.

3 So, no. I think that the way we do it is a much  
4 better way to do it than using race data.

5 Q. Would using and incorporating race data be a way to  
6 fine-tune and make it even more precise?

7 A. I don't think it would help, because I don't think race is  
8 a very good predictor of political performance.

9 Q. Do the census blocks contain racial demographic data?

10 A. The census blocks do contain -- well, no, actually, the  
11 census blocks are a layer of geography that the census  
12 produces. The -- I think what you're asking is, does the  
13 census provide demographic data at the block level? And yes,  
14 it does. But the blocks themselves are not necessarily -- are  
15 just empty geography.

16 Q. When you say "empty geography," what does that mean?

17 A. They're just a geographic file. The -- the blocks  
18 themselves, right, and so what the census does is it will take  
19 the enumerated census data and assign the enumeration to the  
20 census blocks.

21 Q. And you have the ability to see the data -- the demographic  
22 data that's assigned to the census blocks when you're creating  
23 your partisan determinations?

24 A. Our script does not use the racial data in its  
25 disaggregation process, so no. They're two different things.

17:42 1 Q. Well, I mean, I appreciate that your script doesn't maybe  
2 incorporate it. We don't know; we haven't seen your script.  
3 But the data -- the demographic rational data is at the census  
4 level so it's possible to look at that, right?

5 A. Okay. Those are two different questions.

6 So as far as the demographic data produced by the  
7 Census Bureau -- the Census Bureau produces demographic data at  
8 multiple geographies, including the census block.

9 As far as our political data is concerned, our  
10 political data that is disaggregated to the census block is  
11 disaggregated to empty census blocks without any other data in  
12 it. We are filling those census blocks with partisan data.

13 Q. Okay. Give me one second, Mr. Kincaid.

14 Oh, a quick -- a quick follow-up about your -- the  
15 first meeting I think you talked about with Governor Abbott and  
16 the White House counsel, all of the gaggle of counsel from all  
17 the different organizations that was there.

18 A. Okay.

19 Q. In early June, I believe, right?

20 A. Yes.

21 Q. Can you describe for me how long that meeting was?

22 A. Maybe 30 minutes.

23 Q. Do you know -- did you take any notes at that meeting?

24 A. No.

25 Q. Do you know if any notes were taken?

17:44 1

A. I have no idea.

2

To your question before, since I have a second, if you don't mind, about the, you know, contracts that we signed and everything else. So the contracts that we signed with the RNC for the list exchange agreement requires us to maintain confidentiality, et cetera, et cetera, of the data.

7

So, yeah -- so that -- that's what our contract looks like. It's a standard list exchange agreement.

9

MR. McCAFFITY: Object, nonresponsive.

10

JUDGE GUADERRAMA: Sustained.

11

Q. (BY MR. McCAFFITY) All right.

12

MR. McCAFFITY: I pass the witness.

13

Thank you, Mr. Kincaid.

14

JUDGE GUADERRAMA: Ms. Perales?

15

MS. PERALES: I'm eternally grateful to Mr. McCaffity for passing the witness 15 minutes before the day ends. Thank you, Mr. McCaffity.

18

MR. McCAFFITY: You're welcome.

19

**CROSS-EXAMINATION**

20

**BY MS. PERALES:**

21

Q. Good afternoon, Mr. Kincaid.

22

A. Hi, Ms. Perales. How are you?

23

Q. I'm well, thank you. My name -- for the purpose of the record, my name is Nina Perales, and I represent the LULAC Plaintiffs, as I did the last time we met.

25

17:45 1 A. Yes.

2 Q. I'm going to start with some questions that I have based on  
3 what I was listening to before.

4 You mentioned that you met with people who gave you  
5 the instructions that you needed to draw the map. Can you tell  
6 me who those people were?

7 A. I think I -- I talked about that a little bit already. So  
8 as far as the instructions for the map, I mentioned that it was  
9 probably James Blair, but I wasn't quite sure who relayed  
10 information about the conversation that the President had with  
11 some members.

12 And then I also mentioned that Chris Gober had  
13 provided me with some feedback as well.

14 Q. And when you say "feedback," you've anticipated my next  
15 question. When we spoke a couple of years ago, in your very  
16 long deposition, you described for the 2021 map-drawing process  
17 something of an iterative process, where you were getting  
18 feedback on drafts. I know that you said you got less feedback  
19 this time, but I'm still curious whether it was an iterative  
20 process.

21 A. No, it was an ongoing process. It was not iterative.

22 Q. So constant feedback, constant sharing on the draft, is  
23 that what you're saying?

24 A. There -- no. There was not constant feedback or  
25 constant -- no.

17:46 1 Q. Okay. Tell me what "ongoing" means to you.

2 A. It means I was just working on it at my computer.

3 Q. And what -- but you did get feedback?

4 A. No, I got direction. As far as -- you know, some of the  
5 agreements, as far as the partisanship of the districts as I  
6 mentioned before. And, yeah, that's -- that's the direction I  
7 got. And then the requests from the delegation via Chris Gober  
8 that I mentioned before. Yeah.

9 Q. You were talking about experts who were retained by the  
10 Texas House and Texas Senate to conduct a Voting Rights Act  
11 compliance analysis. Do you remember that?

12 A. Yes, I remember saying that.

13 Q. Okay. You mentioned that you gave data to the experts, and  
14 I heard disaggregated data, but I -- I didn't fully understand  
15 what you meant by that. Can you tell me specifically the data  
16 that you gave to Dr. Lewis and Dr. or Mr. Hood?

17 A. Dr. Hood.

18 Q. Dr. Hood.

19 THE WITNESS: And -- I'm sorry, Ryan, were you about  
20 to -- I thought you were about to get up.

21 A. So as far as the data, it was a -- I don't remember off the  
22 top of my head. It was a -- a group of election results that  
23 they had requested, and we'd provide the disaggregated data to  
24 them for that.

25 Q. (BY MS. PERALES) Disaggregated to what level?

17:48 1 A. The census block.

2 Q. And -- okay. Do you recall the elections?

3 A. Not off the top of my head. I know that two of them  
4 were -- I know that the presidential race in 2024 was included,  
5 but I don't remember what else.

6 Q. Do you recall whether you narrowed that set of elections  
7 based on whether they were racially contested?

8 A. I -- no. We provided whatever the list was that they asked  
9 for.

10 Q. My question is whether that list was narrowed or defined --  
11 for example, limited to racially contested elections?

12 A. I -- I don't know that.

13 Q. Do you remember what level of elections?

14 A. Statewide.

15 Q. Okay. What other data did you get besides election data?

16 A. Just election data as far as I can -- as far as I recall.

17 Q. Did you share your partisanship data that you were just  
18 talking about a moment ago with Mr. McCaffity?

19 A. Yeah. The disaggregated election results is what -- yeah.  
20 Yes.

21 Q. Okay. There's a difference between disaggregated election  
22 results and block-level estimates of partisan preference.  
23 You'll agree with me?

24 A. No. We provided the disaggregated election results to  
25 the -- the experts. It is what they had asked for.

17:49 1 Q. Thank you. I'm asking if you provided block-level  
2 estimates of partisanship preference, the type of data that you  
3 were discussing with Mr. McCaffity?

4 A. I think we're saying the same thing.

5 Q. Mm. Did you provide your Python script?

6 A. No.

7 Q. Okay. You talked earlier with Mr. McCaffity about creating  
8 estimates at the block level of partisan inclination, for lack  
9 of a better word. Is that right?

10 A. Um, our estimated partisan -- yes, sure. Let's go with  
11 that.

12 Q. That's different than raw election results pushed down to  
13 the block level. Wouldn't you agree?

14 A. It would be down to the block, but aggregated back up, it  
15 would be accurate to the VTD.

16 Q. Mm. I'm asking you a slightly different question. We have  
17 election results, votes cast for Mr. Trump and Ms. Harris at  
18 the VTD level. Yes? And that would be in that particular  
19 election, right?

20 A. Okay. Sure.

21 Q. The 2024 presidential. Yes?

22 A. Right.

23 Q. You collect that at the VTD level, you push that down to  
24 the block level, correct?

25 A. Correct.

17:50 1 Q. Okay. Now, you've also discussed something different, and  
2 that is an estimate at the block level of partisan  
3 inclination --

4 A. Right.

5 Q. -- of the voters --

6 A. Mm-hmm.

7 Q. -- and that is based on more than just a raw vote tally  
8 pushed down to the vote level, correct? The block level?

9 A. That's correct.

10 Q. Okay. So now that we've agreed those are two different  
11 things, what did you provide to the experts for the House and  
12 the Senate?

13 A. Our data team handled that, so I didn't send it to them  
14 directly. So the request would have gone to them, and they  
15 would have sent it back.

16 Q. So is the answer, "I don't know what we provided to the  
17 experts"?

18 A. That would be my answer is I'm not sure if we provided all  
19 levels of geography or just the VTD or just the blocks or both.  
20 I don't have those emails, and I don't think, so -- and I don't  
21 recall.

22 Q. And so it's possible that you also provided the experts  
23 your partisan inclination estimates, as well as raw votes is  
24 that correct?

25 A. It's entirely possible.

17:51 1 Q. Okay. Now, I understand that vote returns are different  
2 from demographic data, and I believe your testimony shows you  
3 know that too.

4 You have demographic data in your system. Isn't that  
5 right?

6 A. Let's be clear on what system you're asking about first.

7 Q. When you finish a map, you're able to produce a report, for  
8 example, that says what is the Hispanic Citizen Voting-Age  
9 Population of a particular district, correct?

10 A. That's correct, yeah.

11 Q. And that's because, somewhere in your system, you have ACS,  
12 American Community Survey, Citizen Voting-Age Population  
13 estimates by race and ethnicity pushed down to the block level.  
14 Is that correct?

15 A. That's correct.

16 Q. And because you have the Texas voter file in your database,  
17 you also have the Spanish surname flags on the individual  
18 voters. Isn't that correct?

19 A. We don't use the SSVR data.

20 Q. No. I understand that you don't use it. I'm asking you  
21 whether, because you have the voter file, you have the Spanish  
22 surname flags that come with the voter file?

23 A. I would have to look. We get the voter file, like I said,  
24 via list exchange agreement. That voter file is -- so I would  
25 have to look. I've never used it. I've never looked at it.

17:53 1 We've never incorporated it into our systems, so I -- I  
2 couldn't tell you if we actually have that or not.

3 Q. I understand. You know that, with the Texas voter file,  
4 for example, if you were to look me up, you would see my name.  
5 Yes?

6 A. Sure, yeah.

7 Q. My age?

8 A. I assume so, yes.

9 Q. My address?

10 A. Yes.

11 Q. My recent vote history, for whatever years are covered by  
12 the voter file. Yes?

13 A. That's correct, yeah.

14 Q. Both my primary election participation and my general  
15 election participation. Correct?

16 A. Yes. Your vote history, yes.

17 Q. And then you would also see whether I have a flag in the  
18 column for Spanish Surname. Isn't that right?

19 A. Again, I don't know because I'm not sure what -- if we get  
20 the full voter file or not, so I've never looked for the SSVR  
21 within it, so I couldn't tell you.

22 Q. You also mentioned vote method earlier in your testimony.  
23 It's also true that it would contain my method of voting,  
24 correct?

25 A. It would, yes. The voter file contains whether you voted

17:54 1 by mail or absentee, et cetera.

2 Q. Explain to me how vote method figures into your estimation  
3 of partisan inclination at the block level.

4 A. It doesn't fit into the estimation of partisan inclination.  
5 It fits into how we assign your vote. So -- I assume you're  
6 just going to go back, build all of this stuff somewhere else.  
7 But I mean, as far as how we do it, the absentee -- if the --  
8 if you -- okay.

9 So say you voted in 2024 absentee, and it's absentee  
10 by mail, right? There are some jurisdictions that report out  
11 absentee by mail separately from absentee in person, or however  
12 else they describe it.

13 So, you know, yeah, these 800 votes were absentee by  
14 mail, right, and so we're able to assign those 800 votes to the  
15 specific spots where there are -- where we know people voted by  
16 mail, right? So it gives you that level of specificity.

17 Q. And does that information bear any relationship to your  
18 estimate of partisan inclination?

19 A. It's part of the same algorithm, I guess, in that it's --  
20 so every census block has a -- for lack of a better term, a --  
21 a -- for each election, it would give you like the Trump/Harris  
22 percentage expectation or whatever it might be. And I'm  
23 speaking this in very, very broad terms, right?

24 So -- and then from there, we know -- okay,  
25 President Trump got 800 votes by absentee in this VTD, right?

17:55 1 So we're able to assign those out based off of that vote share,  
2 if that makes sense.

3 So we're able to take the different levels of -- of  
4 voter behavior and the partisan breaks of each of those levels  
5 of voter -- voting behavior, and assign them to specific  
6 geographies that way.

7 Q. Thank you.

8 How about age? Would my age in the voter file, which  
9 is available to you, be used in some way to estimate the  
10 partisan inclination?

11 A. No.

12 Q. How about how often I vote, whether I'm a persistent voter  
13 or a lackadaisical voter? Does that go into it?

14 A. We don't do GOTV, so that's not relevant to us. GOTV is  
15 Get Out the Vote efforts.

16 Q. I'm going to shift now to a few questions about what we are  
17 calling the DOJ letter.

18 A. Okay.

19 Q. In the video clip that you saw with Mr. Gaber,  
20 Ms. Harmeet Dhillon said the DOJ letter triggered the Texas  
21 Legislature to take up redistricting.

22 Do you recall that?

23 A. I remember her saying that, yes.

24 Q. Do you agree with that statement?

25 A. I don't -- I mean, I -- I don't know if I would call it a

17:57 1 trigger, but, I mean, Harmeet says what she says, so I'm not  
2 gonna...

3 Q. I'll ask it in a slightly different way. Do you agree that  
4 the sending of the letter was intended to be close in time with  
5 the Governor putting redistricting on the call for the special  
6 session?

7 MR. KERCHER: Object to the extent it calls for  
8 speculation.

9 JUDGE GUADERRAMA: I'm going to sustain the objection  
10 unless he knows the answer.

11 Q. (BY MS. PERALES) Mr. Kincaid, do you understand the  
12 relationship between the sending of the letter and the calling  
13 of the special session with redistricting on it, because the  
14 session had already been called?

15 MR. KERCHER: I'll re-lodge the objection, Your Honor.  
16 Relationship to whom and whose mind?

17 JUDGE GUADERRAMA: She's just asking if he understands  
18 the relationship, so that's his understanding.

19 I'll overrule that objection.

20 You can answer what your understanding is.

21 A. Maybe you want -- do you mind asking the question one more  
22 time? I'm sorry.

23 Q. (BY MS. PERALES) If I can.

24 JUDGE GUADERRAMA: I can read it for you.

25 Q. (BY MS. PERALES) Do you have an understanding of the

17:58 1 relationship between the sending of the letter and the adding  
2 of redistricting to the special session?

3 A. I have a general understanding of it, yes.

4 Q. Can you tell me what that understanding is?

5 A. I'm not sure I can.

6 Q. And why are you not sure?

7 THE WITNESS: Someone's standing, Your Honor.

8 MR. EZELL: Objection to the extent counsel is asking  
9 the witness to speak to an understanding that's based on  
10 privileged conversations that we've already discussed before.

11 JUDGE GUADERRAMA: So --

12 MR. EZELL: So I'm okay with the witness answering what  
13 he understands, maybe outside of the context of any of those  
14 conversations we already talked about.

15 JUDGE GUADERRAMA: All right.

16 MS. PERALES: Well, that wouldn't be his understanding,  
17 then. I'm not being argumentative, only to say that I would want  
18 an answer based on what he understands.

19 JUDGE GUADERRAMA: Well, if he got the understanding  
20 from speaking to the Governor, then I think it's a good  
21 objection. So we'll sustain it. If it's his own understanding  
22 from speaking to White House, I guess he could tell us that.

23 Q. (BY MS. PERALES) Mr. Kincaid, do you have an understanding  
24 based on your conversations with either White House officials  
25 or DOJ officials? What was the relationship between the

17:59 1 sending of the letter and the adding of redistricting to the  
2 call?

3 A. I think my understanding originated separately from those  
4 two.

5 Q. Share with me what that understanding is.

6 A. I mean, I think my understanding originated from  
7 conversations with the Governor.

8 Q. I understand.

9 MS. PERALES: I'm about to shift, and it's 6:00. This  
10 would be a good time -- if it's a good time for the Court.

11 JUDGE GUADERRAMA: Yes, ma'am.

12 And before we break, can you all give us a little bit  
13 of an idea of how you think the rest of the week is going to  
14 go? I think Mr. Kincaid may be here, I don't know, maybe  
15 another day?

16 MR. KERCHER: Oh, I certainly hope not. I've not yet  
17 gotten -- I've not gotten the opportunity to confer with all of  
18 the lawyers on the Plaintiffs' side, so I don't know how many  
19 more cross-examinations there are to go.

20 We have two witnesses. Ms. Adkins has been standing  
21 by since Monday. We hope to get her on the stand as soon as  
22 possible. Senator Hinojosa is also in town, and he had -- and  
23 both he and Dr. Lewis have hard stops tomorrow.

24 So our hope had been to get to and through those three  
25 tomorrow by mid-afternoon, if possible.

18:01 1 Dr. Trende, I can't remember if he's in town now or  
2 will be in tomorrow morning, and so he should be available to  
3 fill -- if there's any time left tomorrow, he will go at the  
4 end of Wednesday or on Thursday, and by Thursday at some point,  
5 if I don't get a new travel schedule, Senator King should be  
6 available to complete his cross-examination and any redirect.

7 So all that to say, I can give you a list of names and  
8 things, but I'm not quite sure.

9 (Sotto voce discussion off the record.)

10 MR. KERCHER: Oh -- and Chair Vasut is also in town. I  
11 have so many witnesses in town right now. They are backed up,  
12 which is nobody's fault, except maybe mine. So I think that  
13 based on where we are, we can go another half day tomorrow, we  
14 may have to reconnoiter. But it's going to be another hour or  
15 two of cross-examination for Mr. Kincaid tomorrow. I think we  
16 should still be able to finish by Friday. Because I -- my guess  
17 is, that's really what you're asking. Is that right?

18 JUDGE GUADERRAMA: All right. And so is the Plaintiff  
19 gonna put on any evidence after they close their case?

20 MS. PERALES: We may, Your Honor, depending on what we  
21 hear.

22 JUDGE SMITH: So what we're trying to figure out -- the  
23 judges have conferred and, as always, we're giving both sides as  
24 much time as you need because both sides are reasonable about not  
25 wasting our time or anyone else's, so I just want to be sure that

18:02 1 everyone's reassured of that.

2 The judges are available; we're gonna need to change  
3 some travel schedules, but that's fine. That's what we get  
4 paid for, to be here all the day Friday and, if necessary, half  
5 or all of Saturday. I know no one wants to come back next  
6 week, and Monday is Columbus Day, anyway. So we're just trying  
7 to get some general idea and want everyone to understand that,  
8 at least a little bit of notice, that we're willing to do all  
9 of that.

10 It also would be very helpful if you could confer and  
11 maybe let us know by sometime tomorrow if there's an agreement  
12 on how much time for closing argument you think each side would  
13 need so that we can kind of factor that into what we do,  
14 because I assume we want to do that before everybody leaves  
15 town.

16 I'm just throwing out some general ideas here so that  
17 you can give us some feedback as soon as you're able to, about  
18 what we should be able to expect.

19 MR. KERCHER: Understood, Your Honor. We'll confer  
20 before we eat dinner.

21 JUDGE GUADERRAMA: All right. Recess till tomorrow at  
22 9:00.

23 (Evening recess.)

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**I N D E X**  
**DAY 6**  
**(INJUNCTION HEARING)**

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\* \* \* \* \*

**C E R T I F I C A T E**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature:  /s/Leticia Perez  Date: October 17, 2025  
Leticia Perez

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