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1 (The following was heard in open court at
2 1:03 p.m.)

3 JUDGE SMITH: Please be seated. And if the
4 witness could please retake the stand.

5 (Pause in proceedings.)

6 JUDGE SMITH: You may resume your cross-
7 examination.

8 MR. MORALES-DOYLE: Thank you, Your Honor.

9 (Pause in proceedings.)

10 CROSS-EXAMINATION

11 BY MR. MORALES:

12 Q Mr. McCarty, I think that we left off looking at
13 Table 1. You talked a little bit about your
14 aggregation of the expected probability of a Democrat
15 winning in each of the districts, and you came up
16 with an expected Democratic share of the map as a
17 whole, is that right?

18 A That's correct.

19 Q Now, a couple questions I have about this table.
20 First of all, we've talked a little bit about your
21 definition of "competitive." I think at one point
22 you sort of talked about between negative five and
23 five and another point you talked about between
24 negative nine and nine. So there are a few times in
25 this report I think where you talk about shifting

1 from a solidly Republican to a solidly Democratic
2 district or vice versa, right?

3 A Yes, I do an example of that.

4 Q And when you use those terms are you talking
5 about negative nine and plus nine?

6 A I believe so in that one example.

7 Q And you say it would take a lot of votes to shift
8 from negative nine to plus nine, right?

9 A That's correct, 18 percentage points.

10 Q And we didn't have shifts like that from 2002 to
11 2011 in Pennsylvania, is that right?

12 A I don't recall any districts that shifted that
13 much.

14 Q Okay. But looking at Table 1, we do have some
15 shifts here, like I want to look at Congressional
16 District Six as an example. Do you see where that is
17 on your Table 1 there?

18 A That's correct.

19 Q And according to your numbers, this shifted from
20 a PVI of negative four in 2002 to a PVI of plus 1 in
21 2011, is that right?

22 A The district numbered Six had that change. I
23 don't know the extent to which they match up because,
24 of course, districts were dropped, and, therefore,
25 the numbering has changed.

1 Q Sure. Although you said there was some
2 consistency from the 2002 map to the --

3 A Some consistency in that a district could be
4 matched to another district, but not necessarily with
5 the same number.

6 Q Okay. The Sixth District there in 2002, you have
7 as roughly an 86 percent probability that a Democrat
8 would win, right?

9 A That's correct, yeah.

10 Q And then in 2011, you have it as a 40 percent
11 chance roughly that a Democrat will win?

12 A Yeah, according to the table. Yes.

13 Q So, you know, we're not talking about negative
14 nine to plus nine, but that's a pretty significant
15 change in the probability of a Democrat winning that
16 district, right?

17 A Yeah, for that one district. Yes.

18 Q All right. And are there other examples of
19 changes of that magnitude in the map?

20 A Again, I don't -- I don't -- can't tell you from
21 the map which district should be aligned with which
22 district, to do those type of comparisons.

23 Q Okay.

24 A My point is you add them all up, which I think is
25 the proper thing to do. The difference is quite

1 small.

2 Q All right. So let's talk about you adding them
3 all up. And I want to turn your attention -- I think
4 we talked earlier about how when you added them all
5 up you found that in 2002 map, you have an expected
6 seat share for Democrats of .503, is that accurate?

7 A That's correct, yes.

8 Q And in the 2011 plan, you have an expected share
9 of .453, right?

10 A That's correct, yes.

11 Q And so then I think these numbers where you say,
12 "Based on my calculations, the number of expected
13 Democratic seats fell by about 1.4 from 9.55 to
14 8.15," is that accurate?

15 A The number of seats, yes.

16 Q So the way you came up with that was to use those
17 percentages that you talked about and to multiply
18 them by the number of seats, right?

19 A That's correct, yes.

20 Q So, for instance, in 2011, you expect a 45
21 percent Democratic share of 18 congressional seats,
22 right?

23 A Yes.

24 Q So if you multiple 18 by 45 percent, you get an
25 expected outcome of about 8.1 seats, right?

1 A Yeah, 8.15.

2 Q And in 2000 -- in the 2002 map, you had an
3 expected outcome of .503?

4 A That's correct, yes.

5 Q And you multiplied that by 19 because there were
6 19 districts, and you get an outcome expectation of
7 9.56, right?

8 A Yes.

9 Q But in -- if you were to look at the expected
10 outcome, the .503 number from 2002, and apply it to
11 the 2011 map, which only had 18 districts, you do 18
12 times .503 and you get about a 9.05 seat share, is
13 that right?

14 A That sounds right.

15 Q And I think that that splits you -- referring to
16 when you say that the number of expected Democratic
17 seats fell from 9.55 to 8.15, and then you say if the
18 2011 map performed similarly -- excuse me -- to the
19 old map in partisan terms, Democratic candidates
20 would have been expected to win about nine seats.
21 That's that 9.05 that I just talked about?

22 A Yeah, I think so.

23 Q So if this map were just as favorable to
24 Republicans as the 2002 map, we would expect
25 Democrats to win about nine seats?

1 A Yes, sounds right.

2 Q But with your calculation of the expectations for
3 the 2011 map, Democrats are only expected to win
4 about 8.15 seats?

5 A That's correct.

6 Q Now, you then say the rest of the decline in
7 expected Democratic seats, that, I assume, meaning
8 from nine to 8.15 -- because you quantify that as
9 .85 -- is, therefore, due to the state's loss of a
10 congressional district following the 2010 census,
11 right?

12 A Yes.

13 Q Now, I'm confused by that statement because, to
14 me, when you've multiplied .503 times the 18
15 congressional districts, as opposed to 19
16 congressional districts, you've already accounted for
17 the loss of one seat, have you not?

18 (Pause in proceedings.)

19 A I'm sorry, give me a second. I'm --

20 Q Sure.

21 (Pause in proceedings.)

22 A So, as I said, the expected number of Democratic
23 seats fell by 1.4 from 9.55 to 8.15.

24 Q Uh-huh.

25 A It could have been performed the same way as

1 before. Then it would have got approximately half
2 the seats, which is nine. The difference between
3 nine and 8.15 is .85, which is what I'm attributing
4 to the loss of a congressional district seat.

5 Q Right. But what I'm saying is when you multiple
6 the 18 congressional seats in 2011 by the .15
7 percentage from 2002, the likelihood of winning about
8 half the seats, because you're taking 18 districts
9 and multiplying it by 50 percent, as opposed to 19,
10 haven't you already accounted for the loss of a seat?

11 A No. No. I -- I'm taking the prob -- I'm taking
12 the expected number of seats -- expected number of
13 seats that they're going to win, and that's just the
14 flat percentage. And then the first -- let's see.

15 (Pause in proceedings.)

16 Q You're taking the expected percentage, which,
17 from 2002, is 50 percent, right?

18 A That's right, yes.

19 Q And you're no longer applying 50 percent to 19
20 congressional seats --

21 A Right.

22 Q -- because there aren't.

23 A Right.

24 Q You're applying it to 18.

25 A 18. So it's nine.

1 Q So that's taking into account the fact that we've
2 lost one congressional district, and applying the old
3 expectations to the map, we would expect nine seats,
4 yes?

5 A Yes.

6 Q But then you say the difference between nine
7 seats and 8.15, that .85 difference, is the result of
8 the loss of a congressional seat, right?

9 (Pause in proceedings.)

10 A So the point --

11 (Pause in proceedings.)

12 A Okay. Let me see if I can -- see if I can
13 explain my thinking. So the number of expected seats
14 fell from 1.4, so 9.15 to .815. They would have been
15 expected to win about .95 seats, so I believe I've
16 mistaken. I believe that .55 should be the amount
17 that's attributable to a loss of --

18 Q Right.

19 A -- congressional district.

20 Q So the decline from 9.55 to nine might be
21 attributable to the loss of a congressional seat,
22 right?

23 A That's correct, yes.

24 Q But then the decline from nine to 8.15 is not
25 attributable to the loss of a congressional seat?

1 A Yes, it would be some other factors.

2 Q And so in your model of how we calculate the
3 expected win share, the change from the 2002 plan to
4 the 2011 plan accounts for a loss of almost an entire
5 congressional seat for the Democrats, right?

6 A Yes. According to these calculations, yes.

7 Q Okay. But you think that these numbers show not
8 a significant impact of the 2011 map on the
9 Democrats' chances of winning an election?

10 A Again, there's one -- there's a one-seat change
11 and, you know, that could be attributable to lots of
12 different factors. It's not a large change like that
13 suggested in Mr. McGlone's analysis. So --

14 Q So it's a one-seat change in addition to the seat
15 change that was lost as the result of a loss of a
16 congressional district?

17 A Yes, with a permanent loss of about 1.4. Yes.

18 Q And --

19 A Some of which is according -- which is loss of a
20 congressional district seat, and the rest, you know,
21 it's hard to quantify where it came from.

22 Q And you're aware that two of the incumbent
23 Democrats in this 2011 map were mapped into the same
24 district in the -- in the 2011 map, right?

25 A Yes, I understand that. Yes.

1 Q Okay. Now, you offer -- what you offer here, as
2 I understand it, is an expected election outcome,
3 right?

4 A Yes.

5 Q Do you offer an opinion as to what the most
6 likely election outcome is?

7 A Given this analysis, the expectation would be
8 what would be the most likely would be the modal

9 Q Did you do an analysis as to the probability of
10 this outcome as opposed to other outcomes?

11 A No, not in this report.

12 Q So you haven't offered an opinion as to what the
13 most likely outcome is, right?

14 A Well, the expected -- the expected value given
15 the -- given the symmetry of the calculations of the
16 probabilities of winning seats would be -- would be
17 typically the modal outcome.

18 Q You think that the expected outcome, based on
19 sort of an average of the outcomes, is going to be
20 the same thing as the most likely outcome?

21 A Yes, I believe so.

22 Q Did you do a probabilistic analysis to determine
23 whether that was the case?

24 A No.

25 Q Okay. So do you offer an opinion today that this

1 was actually the most likely outcome of the -- of the
2 elections following the 2011 plan, that the Democrats
3 would win about eight seats?

4 A I'm going to offer that it's expect -- it's the
5 expected value and I don't see a reason why the modal
6 outcome would be different, but I have not checked.

7 Q Okay. So you don't offer an opinion that it's
8 the most likely outcome?

9 A No.

10 Q You offer, in your words, an opinion about a mean
11 rather than a mode?

12 A That's correct.

13 Q And the actual outcome of the last three
14 elections were 13 to five, right?

15 A Yes.

16 Q 13 Republicans, five Democrats?

17 A That's correct, yes.

18 Q Pretty far off from your expectations using your
19 model, right?

20 A That would be correct, yes.

21 Q Each of three separate elections were that far
22 off?

23 A Yes. Of course, you know, the underlying PVI's
24 could have changed within the state over time, so the
25 first one is clear -- you know, clearly the outlier.

1 The others I haven't analyzed to see whether they
2 could be explained.

3 Q Do you offer any opinion as to why it was so far
4 off from your expectations?

5 A Well, again, you know, these are probabilities,
6 and so there's always a chance that unlucky things
7 happen for particular parties. Part of the analysis
8 in which can really be seen in Figure 2 is that
9 partisanship is only one of many determinants of
10 election outcomes. Obviously, they're probabilistic.
11 They require good candidates, support from the
12 parties, et cetera. And so my guess is that
13 Democrats in Pennsylvania just simply underperformed
14 in those elections.

15 Q And your guess is that they underperformed
16 exactly the same amount in each of the last three
17 elections?

18 A Based on what I know, that's consistent with the
19 data.

20 Q Did you do any analysis of the probability that
21 the Democrats would underperform by exactly the same
22 amount in three elections in a row when compared to
23 your expected outcome?

24 A No.

25 Q Do you have any opinion as to how likely that is?

1 A No, I don't have -- I don't have an opinion on
2 that. I did do an analysis of how Democratic states
3 performed in the previous plan given a PVI, and I do
4 note that Democrats won these sorts of seats that
5 they lost in these three elections during the
6 previous decade.

7 Q In many other places around the country --

8 A Well, in Pennsylvania.

9 Q Okay. Did you offer that analysis of
10 Pennsylvania in this opinion?

11 A It's not in this -- it's not in this document.

12 Q And did you -- it's true that Mr. McGlone's
13 opinion, his assessment of this map, offers a much
14 more predictive analysis of the actual outcomes of
15 elections than yours, right?

16 A In predicting 13?

17 Q Yes.

18 A He gets the number right.

19 Q Okay. Now -- sorry, give me one second here.
20 You talked about the fact that there are a lot of
21 reasons why the Democratic party might have
22 underperformed by exactly the same number of seats
23 three times in a row, right?

24 A I gave lots of reasons why a party might
25 underperform historical norms.

1 Q Is an incumbent advantage perhaps one of those
2 reasons?

3 A Yes, sure.

4 Q Did you take into account the effect of incumbent
5 advantage when assessing your expected outcome of the
6 elections?

7 A No, I -- no, I didn't. I just simply took into
8 account partisanship. The issue at stake was whether
9 the map was too partisan, and so I didn't take into
10 account non-partisan features which could affect
11 congressional elections.

12 Q You say non-partisan features. When the 2010
13 elections happened do you know what the breakdown was
14 of Republicans versus Democrats in the congressional
15 delegation for Pennsylvania following the 2010
16 election?

17 A I don't know for certain. I believe it was
18 something like 12 to seven.

19 Q So the Republicans, at the time that they drew
20 this map, had 12 incumbents in Congress?

21 A That's my recollection.

22 Q Okay. Did you take into account the impact that
23 it would have that the Republicans had 12 incumbents
24 in Congress when they drew this new map when you
25 assessed the likelihood that they would maintain or

1 gain one seat during the following --

2 A No, I did not.

3 Q Okay. We talked earlier. You seem to think that
4 even under your analysis, after we sort of corrected
5 that mistake, that the difference between the 2002
6 map and the 2011 map actually accounts for the loss
7 of one Democratic seat apart from what we can presume
8 from the loss of a congressional district, right?

9 A Large part of one -- the large part of one seat
10 and then the rest --

11 Q Right.

12 A -- of it would be --

13 Q And that --

14 A Yeah.

15 Q That is, in fact, what we've seen, is that the
16 Republicans had 12 seats and then after they drew
17 this map in 2011, they now have 13 and they have
18 maintained that advantage since, correct?

19 A That's correct in terms of the numbers, yes.

20 Q Okay.

21 (Pause in proceedings.)

22 Q Do you believe, Mr. McCarty, that
23 gerrymandering -- that partisan gerrymandering is a
24 good thing?

25 A No, not in -- not intrinsically. I think it

1 sometimes has some good side benefits. I do believe
2 that on occasion, it leads parties to create more
3 competitive districts than they other --

4 Q Have you, in the past --

5 A -- than they otherwise would, yeah.

6 Q I'm sorry, can you repeat the end of that? I
7 over -- I interrupted you.

8 A I think sometimes attempts even to do partisan
9 gerrymandering sometimes lead parties to create more
10 competitive districts than would otherwise be created
11 under other things like incumbency protection and so
12 forth.

13 Q And you've offered and written the opinion in the
14 past that partisan gerrymandering is an invitation to
15 overt corruption, is that right?

16 A I don't believe I've written that.

17 Q Okay.

18 A Okay.

19 Q And are you -- you're a political scientist by
20 profession?

21 A Yes.

22 Q Do you read the literature in political science
23 journals about gerrymandering?

24 A Yes, I do.

25 Q Do you keep abreast of literature generally about

1 political gerrymandering?

2 A Yes, I do.

3 Q Are you aware of the work done by your colleagues
4 at Princeton in the Princeton gerrymandering Project?

5 A The Princeton Gerrymandering Project? Yes, I'm
6 aware of a neuroscientist at Princeton who claims to
7 do work on gerrymandering.

8 Q Dr. Sam Wang is --

9 A That's correct, yes.

10 Q You don't think that he does work on
11 gerrymandering?

12 MR. TORCHINSKY: Objection, Your Honor.
13 There's no foundation been laid for this and it's
14 not -- and it's beyond the scope of direct
15 examination and beyond the scope of Mr. McCarty's
16 report.

17 JUDGE SMITH: I think it's perfectly
18 appropriate cross-examination of an expert in this
19 field.

20 BY MR. MORALES-DOYLE:

21 Q You said that Mr. Wang claims to do analysis --

22 A No, I'm sorry.

23 Q -- on partisan gerrymandering?

24 A That's unfair. He does -- he does -- as part --
25 he's mostly a neuroscientist. He does do some work

1 on gerrymandering on the side.

2 Q And it's not just Mr. Wang. There are other
3 people that are part of this project at Princeton,
4 right?

5 A I'm not aware of who those other people might be.

6 Q Okay. Are you aware that they've come to the
7 conclusion that the Pennsylvania congressional map
8 is -- from 2011 is one of the worst examples of
9 partisan gerrymandering in the country?

10 A I haven't seen their specific conclusion about
11 Pennsylvania.

12 Q Okay. Would you disagree with them about the
13 fact that the Pennsylvania congressional map is a
14 partisan gerrymander?

15 A My analysis is focused on the claim that the 2011
16 map was considerably more favorable to the Republican
17 Party than the 2002 map, subject to the -- you know,
18 the caveats about how big a difference that is. I
19 think it's pretty small. I think that there are lots
20 of features of the Pennsylvania plan that might be
21 justifiable on other grounds, and I think that the
22 main reason why there have been 13 Republican seats
23 is an underperformance of the Democratic Party in
24 what would be considered in the rest of the country
25 to be competitive seats.

1 Q But you base that opinion without having -- I'm
2 sorry. You have formed that opinion without having
3 consulted any of the data that the legislators
4 actually used in creating the map, right?

5 A I have not used their data -- I have not used
6 their data. Data, typically, of this sort tends to
7 correlate very heavily with presidential voting, and,
8 therefore, I don't think there's a whole lot of
9 information in other voting data that doesn't exist
10 in the presidential voting data that I used for this.
11 If I had their data, I would simply do the same
12 analysis, which would be to compute something like
13 expected Democratic seat share. The difficulty is I
14 couldn't then leverage the national level data to
15 show what the historical patterns for districts of a
16 particular partisanship are.

17 Q You were hired by the legislative defendants to
18 provide your testimony in this case, right?

19 A Yes.

20 Q And they didn't provide you with any of the
21 information that they relied upon when they drew the
22 map?

23 A No, I didn't -- I didn't ask for it. I was asked
24 to respond to Mr. McGlone, so I was responding on
25 rather short notice to the things that he raised in

1 his report.

2 Q Give me just one minute, if you don't mind.

3 (Pause in proceedings.)

4 Q Sorry, a couple more things. I'll try to wrap
5 up. You talked a little bit on your direct about the
6 fact that all of the districts in the state are sort
7 of tied together with one another, right?

8 A That's correct, yes.

9 Q So you take votes out of one district, you're
10 necessarily putting them in another and vice versa?

11 A Absolutely, yes.

12 Q So there's really no way to draw a congressional
13 map in a state without sort of having an impact on
14 all of the districts?

15 A Yes, more or less. I mean you at least have to
16 have -- you can't change one district boundary
17 without changing other district boundaries,
18 obviously.

19 Q And you suggested that this is going to tend to
20 have a sort of balancing effect. Maybe that's not
21 the right word. You said it's going to offset. You
22 take Republicans out of one district and increase the
23 likelihood of this district performing better for
24 Republicans, and you necessarily decrease the
25 likelihood of another district performing better for

1 Democrat -- or Republicans, excuse me?

2 A That's correct. I mean they may not perfectly
3 offset one another, but there's going to be some
4 offset unless the districts are like extremely
5 partisan in one direction or another.

6 Q Right. So, in fact, there's some cases where
7 it's not going to offset at all, right?

8 A That's right. If you take voters out of a very
9 heavily -- out of an overwhelmingly Democratic
10 district and put them into another district you can
11 change the composition of that district without
12 influencing the probabilities in the overwhelmingly
13 Democratic district.

14 Q Like if you took a district that was, in your
15 calculation, a 94 percent chance of going for a
16 Democrat, you took voters out of that and made it 100
17 percent chance of going to Democrats in order to put
18 them in another district, that doesn't really impact
19 the outcome of the district where you're taking
20 Republicans out of, right?

21 A Well, it does. It takes it from 94 to 100 and
22 then --

23 Q But you would agree that both of those are
24 solidly Democratic outcomes, right?

25 A Yeah, solidly Democratic outcomes, but the

1 probabilities to change.

2 Q So in a 94 percent outcome in favor of the
3 Democrats, that's a negative seven Republican
4 partisan voter index in that district, right?

5 A I believe -- that sounds right. I can --

6 Q Not a very --

7 A -- check the table.

8 Q -- competitive district?

9 A No.

10 Q So if you took Republicans out of that district
11 and put them in a neighboring district, you would
12 increase the likelihood of the Republicans in the
13 district where you placed those new voters of winning
14 perhaps significantly? We can't say for sure without
15 more information, right?

16 A That's correct, but most of the changes from
17 changing PVI by one are symmetric in that you change
18 it in one direction, it's offset in exactly the
19 opposite effect on the other side.

20 Q Did you do any analysis in this -- let me phrase
21 it differently. You didn't do any analysis about the
22 particular shifts in districts here as to whether or
23 not they offset one another, did you?

24 A No, I did not.

25 Q Okay.

1 A Just asserted the general principle.

2 Q And we talked about the Princeton Gerrymandering
3 Project. Are you aware of any other literature in
4 the field of political science or elsewhere regarding
5 an opinion about whether or not Pennsylvania's map is
6 a partisan gerrymander?

7 A There are people who use efficiency gap measures
8 who consider Pennsylvania to be a large partisan
9 gerrymander.

10 Q You're University of Chicago alum, I believe?

11 A Yes, that's correct.

12 Q I'm from Chicago, so I took note of that. The --
13 are you aware of Nick Stephanopolous and his work? I
14 believe he's at the University of Chicago.

15 A Yes, that's correct.

16 Q Is he one of the people that does the efficiency
17 gap research you were mentioning?

18 A Yes.

19 Q And do you know whether he opines that
20 Pennsylvania is a partisan -- an example of extreme
21 partisan gerrymandering or not?

22 A Certainly by the measures that he uses, which I
23 think have -- which I think have problems -- so I
24 know he opines that. I disagree with him.

25 Q You disagree with the measures?

1 A I disagree with the measures --

2 Q But you don't disagree that --

3 A -- more than --

4 Q -- Pennsylvania is a partisan gerrymander?

5 A No, I dis -- no, I disagree whether having a very
6 large efficiency gap necessarily implies a partisan
7 gerrymander.

8 Q Okay.

9 (Pause in proceedings.)

10 Q We talked a little bit about the impact of an
11 incumbency advantage. Can you assign a value to how
12 much incumbency advantage privileges the incumbent
13 over the challenger?

14 A In terms of probabilities, I'm not sure what
15 these data would show. It's calculable, but I
16 don't -- I don't have it calculated here.

17 Q Okay.

18 A It's typically measured in terms of vote shares,
19 but that was -- that's not very helpful in this
20 particular exercise.

21 Q I have nothing further.

22 JUDGE SMITH: Thank you. Redirect.

23 MR. TORCHINSKY: Yes.

24 REDIRECT EXAMINATION

25 BY MR. TORCHINSKY:

1 Q Just a couple of question questions, Professor
2 McCarty. The PVI in Pennsylvania, does it change
3 over time?

4 A Yes. Yes, I believe it does. It's gotten more
5 Republican. If you use the 2012, 2016 measures, the
6 PVIs, on average, across districts are more
7 Republican than the ones that were in place in 2011.

8 Q And would that be because the Democratic
9 candidate for president won in Pennsylvania in 2012
10 and the Republican candidate won in 2016?

11 A Yes, possibly.

12 Q And so is it possible that Republican performance
13 across Pennsylvania is just up and the Democratic
14 performance is just down from historical norms?

15 A It's entirely possible, yes.

16 Q All right. And in your view of Mr. McGlone's
17 report, there was a lot of questions from opposing
18 counsel about incumbency. Did you see any reference
19 or discussion of incumbency in Mr. McGlone's report?

20 A I don't recall one.

21 Q Okay. No further questions, Your Honor.

22 JUDGE SMITH: Any recross?

23 MR. MORALES-DOYLE: Nope, nothing further.

24 JUDGE SMITH: Judge Baylson would like to
25 inquire.

1 JUDGE BAYLSON: Did you -- was your
2 assignment to look at Mr. McGlone's report in its
3 entirety or only his focus on the quantification and
4 the numbers?

5 THE WITNESS: I was supposed to focus on
6 all of it, so I focused on the numbers he provided,
7 but I also provided some criticisms of his method of
8 walking through each of the maps and just showing the
9 boundary changes.

10 JUDGE BAYLSON: One of the things he -- and
11 you were present in court when he testified
12 yesterday?

13 THE WITNESS: I was not, no.

14 JUDGE BAYLSON: Oh, you were not at all?

15 THE WITNESS: I was not.

16 JUDGE BAYLSON: All right. Well, in his
17 report, do you recall he's had some mention of
18 contiguity as a factor?

19 THE WITNESS: Yes, contiguity. Yes.

20 JUDGE BAYLSON: All right. Do you have --
21 share any opinions -- do you have any opinions about
22 relevance of contiguity as a factor in creating
23 congressional districts?

24 THE WITNESS: Yeah, so contiguity is
25 important. I mean we want districts to be connected

1 to each other. We don't want them to have two
2 different parts. Now, how much -- how much the
3 connecting has to be I don't have a strong opinion
4 about.

5 JUDGE BAYLSON: Okay. But you agree it is
6 a factor to be taken into account?

7 THE WITNESS: I believe so. Yes, it is a
8 factor.

9 JUDGE BAYLSON: All right. Do you have any
10 opinions about specific contiguity in Pennsylvania as
11 shown on the map that's out on the easel there?

12 THE WITNESS: I --

13 JUDGE BAYLSON: I'm not asking for you to
14 make them now, but whether you did that as part of
15 your review in your report.

16 THE WITNESS: No, I did not --

17 JUDGE BAYLSON: You didn't see anything
18 (indiscernible)?

19 THE WITNESS: Yeah, I didn't -- I didn't
20 focus on points of contiguity or not contiguity --

21 JUDGE BAYLSON: Okay.

22 THE WITNESS: -- on the maps. Nothing
23 struck me as like --

24 JUDGE BAYLSON: All right.

25 THE WITNESS: -- totally implausible.

1 JUDGE BAYLSON: You're aware that Mr.
2 McGlone also talked about community as a factor that
3 should be relevant in creating districts, is that
4 correct?

5 THE WITNESS: That is correct, yes.

6 JUDGE BAYLSON: All right. Did you come to
7 any conclusions about that in Pennsylvania as part of
8 your work on this case?

9 THE WITNESS: No, I did not. I did not --
10 I did not focus on that. Again, the issue of
11 preserving communities is a -- is a comparative one.
12 We would want to know what the preservation of
13 communities would be in alternative maps, as opposed
14 to the one that was adopted. So he did present some
15 discussion about the splits of communities in the
16 current map but didn't go into any analysis as to
17 whether or not those splits were unjustified on other
18 grounds.

19 JUDGE BAYLSON: And as part of your
20 academic work and any consulting you've done, do you
21 have any experience in effects on voter turnout from
22 redistricting efforts either pro or con or --

23 THE WITNESS: No, I have not -- I have not
24 done anything on this specifically. It is presumably
25 true that voter turnout is depressed by lack of

1 competition in districts, so heavily partisan --
2 heavily partisan districts may have a decline in
3 turnout. More competitive districts, the ones that
4 are kind of closer to zero on the PVI scale, I would
5 expect based on the academic research that they would
6 have --

7 JUDGE BAYLSON: Okay.

8 THE WITNESS: -- probably higher turnout.
9 My measures of Democratic win rates as PVI would
10 incorporate both turnout effects and voting effects.
11 I just don't have any way of disaggregating them.

12 JUDGE BAYLSON: And I'm not asking you for
13 your sort of day to day opinion, but have you done
14 any studies about that topic in presidential
15 elections versus midterm elections?

16 THE WITNESS: On turnout in general?

17 JUDGE BAYLSON: Yes.

18 THE WITNESS: Yes, in some of my work on
19 political polarization, I look at patterns of
20 political voting comparing the presidential and
21 midterm elections. And, quite clearly, voting in
22 midterm elections is less frequent than in
23 presidential elections.

24 JUDGE BAYLSON: Right. Okay.

25 THE WITNESS: And the composition of the

1 electorates are different.

2 JUDGE BAYLSON: All right. Does that
3 affect the voting for congressional races in midterm
4 elections when there's no presidential election?

5 THE WITNESS: I believe it probably does.
6 What I've focused on in my research is whether or not
7 low income voters are more or less likely to
8 participate in general versus midterm elections, and
9 you find a big drop off in the participation of lower
10 income voters in midterm elections, and that might
11 have a partisan effect.

12 JUDGE BAYLSON: And you said before that in
13 less competitive districts, you see a more
14 significant drop in turnout?

15 THE WITNESS: That would be consistent with
16 my reading of the literature.

17 JUDGE BAYLSON: All right. Do you have --
18 do you -- in your studies and work, have you seen any
19 correlation between voter registration and actual
20 voting?

21 THE WITNESS: Voter registration and actual
22 voting?

23 JUDGE BAYLSON: Yeah.

24 THE WITNESS: I -- in what -- in what
25 sense? Whether people tend to --

1 JUDGE BAYLSON: Well, that you can make --

2 THE WITNESS: -- vote for the party they're
3 registered for.

4 JUDGE BAYLSON: I'm sorry, let me rephrase
5 the question. Do you make any predictions based on
6 registration, as opposed to actual voting results?

7 THE WITNESS: I'm not -- I'm not aware of
8 someone's who's compared the predictive power of
9 partisan registration versus presidential voting.

10 JUDGE BAYLSON: But the data you used are
11 actual election results, is that right?

12 THE WITNESS: Are actual elections results,
13 yes.

14 JUDGE BAYLSON: Okay. All right. All
15 right, thank you.

16 JUDGE SMITH: Are there any -- in view of
17 the Court's --

18 MR. TORCHINSKY: No, Your Honor.

19 MR. MORALES-DOYLE: I have one, if you
20 don't mind.

21 (Pause in proceedings.)

22 RE CROSS-EXAMINATION

23 BY MR. MORALES-DOYLE:

24 Q I'm sorry, we're going to have a harder time
25 seeing one another. Mr. -- Professor McCarty, you, I

1 think in response to Judge Baylson's question just
2 now, said that you did look at contiguity sort of
3 generally when you looked at the map and you didn't
4 really find anything that you thought was
5 implausible, is that right?

6 A I was aware that Mr. McGlone was discussing
7 issues of contiguity. I wasn't necessary looking for
8 things, and so I didn't discover -- in not looking at
9 them specifically, I did not discovery anything that
10 troubled me.

11 Q Okay. I'm going to show you what has been marked
12 for identification purposes as Defendants' Exhibit
13 25.

14 MR. MORALES-DOYLE: I will represent to the
15 Court that this is -- the colorization is different
16 than in the -- in the booklets.

17 BY MR. MORALES-DOYLE:

18 Q Is that image familiar to you based on your
19 analysis of the 2011 congressional plan?

20 A Yes, I remember -- I remember that district.

21 Q Is that the Seventh Congressional District?

22 A I believe so. I don't have the numbers
23 memorized.

24 Q In your view looking at that, is there anything
25 implausible about the contiguity of that district to

1 you?

2 A Again, I don't know the constraints that the
3 enactors were facing in various things and I don't
4 really know the geography of those connecting points
5 to know whether or not they make sense from other
6 perspectives, so I don't -- I can't offer an opinion
7 about whether or not the district was drawn that way
8 for any particular purpose.

9 Q Okay. Thank you. I have nothing further.

10 JUDGE SMITH: Thank you very much. You may
11 step down, sir.

12 THE WITNESS: Okay. Thank you.

13 JUDGE SMITH: Are you requesting that the
14 witness be excused at this point?

15 MR. TORCHINSKY: Yes, Your Honor. We have
16 nothing further of this witness.

17 JUDGE SMITH: Hearing no objection, the
18 witness is excused.

19 MR. MORALES-DOYLE: No objection, Your
20 Honor.

21 (Witness excused.)

22 JUDGE SMITH: I assume we're about to
23 return to the regular order of things and return to
24 the plaintiffs' presentation of evidence?

25 MR. GORDON: We are. What we have is a

1 series of plaintiff witnesses.

2 JUDGE SMITH: All right.

3 (Pause in proceedings.)

4 JEAN SHENK, Plaintiffs' Witness, Sworn.

5 COURTROOM DEPUTY: Please state your full
6 name and spell your last name for the record.

7 THE WITNESS: My name is Jean Shenk, J-E-A-
8 N S-H-E-N-K.

9 (Pause in proceedings.)

10 DIRECT EXAMINATION

11 BY MR. GORDON:

12 Q Ms. Shenk, what district are you from?

13 A I'm in District Fifteen.

14 Q And where is that on the map on the screen in
15 front of you (indiscernible)?

16 (Pause in proceedings.)

17 A It's blurry, but I think it's this there.

18 Q All right. And where do you reside?

19 A I reside in Bethlehem, Pennsylvania.

20 Q Bethlehem. Okay. Okay. Just some basic
21 background questions. Let's see, how long have you
22 lived in Bethlehem?

23 A Since 1996, a little over 20 years.

24 Q 20 years. And what is the party of registration?

25 A Democrat.

1 Q Okay. How long have you been a Democrat?

2 A Since I was 18. J

3 Q Okay. And are you politically active currently?

4 A To a degree, yes.

5 Q Please explain.

6 A I'm not politically active in anybody's

7 particular campaigns or any specific politicians.

8 I'm more politically active in just being aware of

9 votes, issues, and bipartisan efforts --

10 Q Okay.

11 A -- and gerrymandering.

12 Q Okay. Dropping back, where did you grow up?

13 A I grew up in Western Pennsylvania.

14 Q Where did you attend high school?

15 A Burgettstown Junior Senior High School.

16 Q Okay. Where -- did you attend college?

17 A I did. I attended college directly after high

18 school for two and a half years in Pittsburgh.

19 Q Okay.

20 A Chatham College. And I took some classes at

21 Cedar Crest College in Allentown and I finished my

22 degree at Muhlenberg College in 2011 in Allentown.

23 Q And what was your --

24 JUDGE SMITH: Burgettstown is Washington

25 County?

1 THE WITNESS: Yes, it is.

2 BY MR. GORDON:

3 Q And what was your degree in, please?

4 A The degree I ended up getting is a Bachelor's of
5 Business Administration.

6 Q Okay. And have you worked in -- what employment
7 have -- briefly, what's your employment history?

8 A The most recent employment history was I was
9 working for an engineering company in their project
10 management department and representing project
11 management in the business process designs.

12 Q Okay. And are you -- are you currently working?

13 A No, I'm not.

14 Q Why not?

15 A I -- a year ago, I had to leave my employment due
16 to some severe medical conditions that I have. They
17 flared up again. My aorta dissected again and I have
18 not been able to work since then.

19 Q Okay. And then, briefly, what does it mean that
20 your aorta dissected?

21 A Well, I have a connective tissue disorder that
22 affects the whole body, but it really affects the
23 strength, the elasticity, of the heart and the main
24 vessels, including the aorta. And when it dissects a
25 part of the aorta tears and can interfere with blood

1 flow, can be a terminal issue, et cetera.

2 Q Okay. Are you currently -- are you currently
3 insured, health -- do you have health insurance?

4 A I do currently have health insurance. My company
5 has a fairly decent long-term disability policy that
6 I took full advantage of. And so, currently, I'm
7 able to subsist off of that and I also am paying for
8 COBRA insurance --

9 Q Okay.

10 A -- and that will run out in September.

11 Q All right. Again, what is your congressional
12 district and who is the member who represents it?

13 A I'm in District Fifteen. Charlie Dent is the
14 congressman.

15 Q Uh-huh. And tell us, will you, please, starting
16 with -- tell us in what way, if at all, the 2011 map
17 has affected your civil rights, starting with your
18 right to vote?

19 A I feel that this map really makes my vote a
20 waste. When they drew the map -- the Lehigh Valley
21 is a community, it's a whole community, and when they
22 drew the map they cut out a chunk of that in
23 Northampton County called Easton, which is very much
24 part of the community of the Lehigh Valley, and they
25 actually stretched it clear into the outskirts of

1 Harrisburg, which is not the same consistency of the
2 community at all. And so my -- they have many more
3 Republicans now from the central part of Pennsylvania
4 with different values than our Lehigh Valley, and I
5 feel that my vote now really does not have any
6 effect.

7 Q Okay. And why don't you -- please go on. In
8 what other ways do you believe the 2011 map has
9 affected your civil rights?

10 A Well, I think the map really has loaded the
11 Pennsylvania Congress with more Republicans than is
12 representative of the citizenship of the state and I
13 think that that is affecting the votes that are
14 happening in Washington on different issues. I worry
15 daily about some of these votes because of how much
16 they will affect me personally due to my health
17 conditions. The summer --

18 Q Going back just --

19 A -- was a very stressful time.

20 Q I want to hold you up.

21 A Okay.

22 Q I probably shouldn't do this, but I'm going to
23 back you up just a step --

24 A Sure.

25 Q -- because I don't want to forget. Did -- does

1 the -- does the positions of Mr. Dent fairly -- do
2 you believe that they fairly represent your political
3 views and values?

4 A No, I don't.

5 Q Why is that?

6 A I don't -- I believe that he is very much subject
7 to the influences of the leadership of the Republican
8 Party and I don't believe that he is supporting a lot
9 of my values when it comes to what -- a social
10 support network, taxes, gun control. I very much
11 disagree with some of his stances on gun control.
12 Those are the examples I can come up with off the top
13 of my head.

14 Q And turning to social support, why is that
15 important to you personally?

16 A To me personally, it goes back to my health
17 issues. I am a person who likes to work, wants to
18 work, and I'm finding myself in a position where I
19 can't. And I'm applying for Social Security. It's
20 now been over a year and it will probably be another
21 year and a half to two years. I will be finding
22 myself in the fall having to find some way to have
23 health insurance because I cannot survive without it.
24 My doctors are not cheap, but they keep me alive so
25 they're worth it, but I need to have health insurance

1 and I am afraid for what's going to happen in this
2 administration with health insurance, Medicaid,
3 Medicare, if I don't get accepted in Social Security
4 because it's a next to impossible endeavor even with
5 my severe conditions. I applied and I have been
6 denied and I'm waiting for my hearing.

7 Q And by Social Security, you're referring to
8 Social Security disability insurance?

9 A Yes.

10 Q Okay. No further questions. Thank you.

11 CROSS-EXAMINATION

12 Q Ms. Shenk, you were asked by Mr. Gordon about
13 your civil rights, okay? What do you understand your
14 civil rights to be?

15 A I understand them to be what's held in our
16 government documents.

17 Q And what would that -- what are those?

18 A The Constitutions, Declaration of Independence,
19 all of those official government documents that are
20 the foundation of the country.

21 Q Okay. And I don't want to belabor the point, but
22 when someone says to you, as you were asked, did this
23 map impair your civil rights, exactly what rights?

24 A I believe that my ability to be represented has
25 been impaired. I don't believe that we're able to

1 have proper representation because of the way our
2 district has been spread out.

3 Q Okay. I understand. Now, I -- I'm sorry, were
4 you finished?

5 A Yeah.

6 Q Okay. I believe that you testified at your
7 deposition that Congressman Dent can't represent the
8 interest of his constituents because they -- those
9 interests vary too much. Do you recall that
10 testimony?

11 A I do.

12 Q Could you explain what you meant by that?

13 A What I meant was when you look at the Fifteenth
14 District you have the Lehigh Valley, which does have
15 not big cities, but they have the Cities of Allentown
16 and Bethlehem, Easton. And then when you get to the
17 west you have very rural farmlands. Those two groups
18 of people have very different needs and very
19 different desires and very different viewpoints, and
20 I think it can be very difficult, if not impossible,
21 to always represent and make sure that you're
22 representing your constituency when they have such
23 different needs and expectations.

24 Q Okay. Do you believe then that your
25 congressional -- the congressional districts should,

1 as a whole, reflect the viewpoints of the voters or
2 the constituents in that district?

3 A I'm sorry, could you --

4 Q Okay. Because I -- yeah, I think I confused
5 myself --

6 A -- rephrase that one?

7 Q -- with that one. I'm really sorry. I believe
8 you said that there are two very different interests
9 in --

10 A Yes.

11 Q Okay. In your view, should a congressional
12 district -- should all the people in that district
13 have similar interests or views?

14 A I think they should -- this goes to what we've
15 heard a lot about, the contiguousness, but also
16 the -- I think they should reflect the community
17 that's involved in this district. And when you have
18 a district like mine the community is split, and so
19 even the community itself is in conflict with two
20 different representatives who potentially aren't
21 looking at the community as a whole. And then you
22 have the farmland communities which aren't part of
23 the Lehigh Valley. They have their own communities.
24 And so no, I don't think that -- I think it needs to
25 cover the community --

1 Q Okay.

2 A -- of whatever is representative of that
3 community.

4 Q And do you under -- do you know how many people
5 were required to be in each congressional district
6 this year?

7 A I don't know the number. I believe it was
8 somewhere in the 700,000s.

9 Q 705,000, plus or minus one, as you'll hear in
10 this courtroom. So do you have a suggestion then as
11 to -- I mean the Lehigh Valley alone, is that 700,000
12 people?

13 A Actually, it's about 800,000.

14 Q Okay. So you think that should be one entire
15 district?

16 A I think it would make more sense.

17 Q Okay. So -- and just so I understand -- strike
18 that. Do you think that you have the right to have a
19 congressman who reflects your personal views?

20 A I think it -- by right, how do you mean?

21 Q That's my -- do you have a right to have a
22 congressman --

23 A I have a right to have a congressman, yes.

24 Q -- who reflects your personal views?

25 A It's my desire.

1 Q Okay.

2 A I know it's not part of the right. I have a --

3 Q Fair enough.

4 A -- right to a congressman and I have a right to
5 have my voice be able to count toward selecting that
6 congressman, and right now, my voice does not.

7 Q Okay. Did you vote for Congressman Dent?

8 A No, I did not.

9 Q Okay. Did you vote in that election?

10 A Yes.

11 Q Okay.

12 A Well, he ran many times. You're talking about
13 this most recent one?

14 Q The most recent one.

15 A Yes.

16 Q How about in 2014?

17 A In 2014, I believe that was the one that he ran
18 unopposed, so I didn't vote for anybody.

19 Q Okay. 2012?

20 A I don't remember. I'm sure I didn't vote for
21 him, but I don't recall.

22 Q So is it fair to say that your complaint is your
23 candidate of choice has not won?

24 A No, it's not fair to say that.

25 Q It's not?

1 A No.

2 Q Would you have the same complaints -- let's see,
3 who ran against Congressman Dent in 2016?

4 A I don't remember the gentleman's name, but he is
5 also the same man who ran against him in 2012, and so
6 my district is such that I believe that other voices
7 have given up hope in running against him, and so now
8 we do not have competitive elections in our district
9 as long as Charlie Dent was running for re-election.

10 Q If Charlie Dent was your candidate of choice, all
11 right, would you be then -- let's say he espoused all
12 of your views, assuming for the moment -- would you
13 have the same complaint with your district that you
14 do now?

15 A I would simply because I believe that all of this
16 gerrymandering is hurting -- just because I might
17 have been happy with a candidate in my district
18 doesn't mean that I don't feel that all of the
19 gerrymandering that's happening is also damaging all
20 the other citizens and it's damaging the entire
21 government.

22 Q And how is it damaging the government, ma'am?

23 A I don't -- I believe that we've now gotten
24 ourselves so extreme --

25 Q Polarized?

1 A -- on one side or the other --

2 MR. GORDON: If she may finish, Your Honor?

3 MS. GALLAGHER: Oh, I'm sorry. I thought
4 she was.

5 THE WITNESS: -- on one side or the other
6 that we can't actually come to any resolutions for
7 anything because all of the -- all the gerrymandering
8 has allowed politicians to simply focus on who is
9 going to re-elect them, not the rest of their
10 constituency and not the rest trying to come to
11 consensus and something that works for everyone.

12 MS. GALLAGHER: Fair enough. Thank you.

13 JUDGE SMITH: Thank you. I'd like to ask a
14 few questions, please, and it is solely because this
15 panel will be making certain findings of fact, and
16 one of the questions for me at this time is trying to
17 align what are the expressed interests and values of
18 the name plaintiffs in this case. And this is simply
19 my own comment, but what I've heard from you, Ms.
20 Shenk, is, in part, from what I've heard from a few
21 of the other plaintiffs who have testified. You've
22 indicated in your testimony that you are politically
23 active to the extent that you follow the issues, and
24 I would assume that in doing so, you pay attention to
25 certain news media.

1 THE WITNESS: Yeah, different sources.

2 JUDGE SMITH: Different sources of news
3 media. And so I imagine you are aware that
4 Congressman Dent has announced he is not going to run
5 for re-election?

6 THE WITNESS: I'm aware that he has said
7 that, yes.

8 JUDGE SMITH: Are you aware of some of the
9 reasons he's articulated for why he's not going to
10 run for re-election?

11 THE WITNESS: I believe I have heard some
12 of his reasonings, some of them just being his own
13 lifestyle choice, that he had not intended to run as
14 long as he has.

15 JUDGE SMITH: Have you been aware of any of
16 his public criticisms of the Trump Administration?

17 THE WITNESS: Yes, I have.

18 JUDGE SMITH: Thank you. Questions?

19 MR. GORDON: May I ask one question from
20 cross, Your Honor?

21 (Pause in proceedings.)

22 MR. GORDON: It's redirect on the cross,
23 not on your question. Is that permitted?

24 JUDGE SMITH: I'm sorry? You --

25 MR. GORDON: I wanted to ask --

1 JUDGE SMITH: You're fully -- you know,
2 you're permitted to redirect. You're permitted to
3 ask any questions in light of my questions.

4 MR. GORDON: Okay. This was in response --
5 it was a question that I thought of in response to
6 opposing counsel's cross. May I be permitted to ask
7 it?

8 JUDGE SMITH: Yes. Yes. You're -- I
9 simply wanted to ask the questions, quite candidly,
10 while I was still remembering them. Go ahead.

11 MR. GORDON: Yeah. Thank you, Your Honor.
12 Let me proceed.

13 REDIRECT EXAMINATION

14 BY MR. GORDON:

15 Q You were asked by Ms. Gallagher whether all the
16 people's views in a particular district should be
17 considered, and I believe your answer was yes, is
18 that correct?

19 MS. GALLAGHER: Objection, Your Honor.
20 Just for the record, I don't believe that's what my
21 question was.

22 MR. GORDON: I think it was should all of
23 the people in that district's views be considered?
24 That's what I wrote down.

25 THE WITNESS: I think all people's views

1 should be considered, yes.

2 BY MR. GORDON:

3 Q Okay. If a -- if a congressional district is --
4 if the shape of the congressional district is driven
5 in directions that include different communities, is
6 your testimony that it becomes difficult for the
7 representative to really represent all the views of a
8 community of interest?

9 A I believe so, yes.

10 Q Why?

11 A Well, for multiple reasons. One, you can't make
12 everybody happy all of the time, of course. Also, if
13 the views are very disparate, you're going to have a
14 very difficult time trying to make any of your
15 constituents happy, or you could be influenced to
16 focus on one set of constituents and not consider the
17 other set of constituents based on how you can secure
18 your own job.

19 Q And you -- and you had mentioned that you felt
20 that in the -- in light of gerrymandering, that
21 members of Congress are incentivized to please their
22 political masters? I'm putting this in not your same
23 words, but can you explain that?

24 A It -- well, I think that's basically it. Yes,
25 because of the inherent nature of wanting to be

1 re-elected, wanting to maintain their position, I
2 believe that all of this gerrymandering has allowed
3 them to focus only on the ones who they know will
4 help to re-elect them.

5 Q Thank you.

6 (Pause in proceedings.)

7 MR. GORDON: No further questions.

8 JUDGE SMITH: Anything further?

9 MS. GALLAGHER: No, sir.

10 JUDGE SMITH: Thank you. You may step
11 down.

12 (Witness excused.)

13 JUDGE SMITH: I have to apologize to all
14 the witnesses who have been assaulted by the
15 microphone.

16 (Pause in proceedings.)

17 JASON MAGIDSON, Plaintiffs' Witness, Sworn.

18 COURTROOM DEPUTY: Please state your full
19 name and spell your last name for the record.

20 THE WITNESS: Sure. Jason Magidson. Last
21 name is M-A-G-I-D-S-O-N.

22 DIRECT EXAMINATION

23 BY MR. GORDON:

24 Q Mr. Magidson, I've placed -- oh, sorry, can you
25 look at your computer screen? Can you first identify

1 for the Court what district you hail from? What
2 congressional district?

3 A I'm in the Seventh Congressional District.

4 Q Which part of the Seventh Congressional District?

5 A I live in Haverford Township.

6 Q And could you kind of put an X on the screen
7 where Haverford Township is so --

8 A Yeah.

9 Q You have to touch the screen.

10 A Yeah. Can you see it?

11 Q Oh, I was looking over here. Yes.

12 A Okay.

13 Q Okay. Great. Thanks very much. And -- okay. A
14 little bit about your background to give the panel a
15 sense of who you are as a person. How old are you?

16 A 53 years old.

17 Q Okay. Where did you grow up?

18 A I grew up in New York, Suffolk County, Long
19 Island.

20 Q What high school did you attend?

21 A I went to Ward Melville High School.

22 Q Public or private?

23 A Public.

24 Q Where did you attend -- did you attend college?

25 A Yes.

1 Q Where?

2 A I went to the University of Pennsylvania Wharton
3 School undergraduate, and then I also got a PhD from
4 (indiscernible) University.

5 Q And what is the -- what is your degree from
6 Wharton? Let's start there.

7 A That's in business administration and economics.

8 Q And what is your degree in from the -- what
9 college was that again? Your PhD, what's your PhD
10 in?

11 A That was in systems thinking and interactive
12 management. Essentially, it's involving stakeholding
13 in designing desirable futures.

14 Q And what sort of work do you do -- tell us
15 briefly about your work history.

16 A Yes, so I worked in management consulting for
17 about ten years, I worked at GlaxoSmithKline for
18 about ten years, and I've had my own business for
19 four years, and I currently working at AmeriHealth
20 Caritas. And, essentially, in all those, my jobs
21 have involved user-driven design involving the
22 stakeholders like employees, customers. I forgot to
23 mention also community development when I was just
24 out of college.

25 Q And what is community development?

1 A That, from my definition, is where you involve
2 the stakeholders in the community and get them
3 involved in creating their future and solving their
4 problems or having them solve their own problems.

5 Q Okay. And what is your party of registration?

6 A Currently, Democrat.

7 Q How long have you been a Democrat?

8 A I think it's been about 15 or 20 years.

9 Q Okay. Were you ever a member of another party?

10 A Yes, I was -- I think, briefly, I was part of the
11 Republican Party and I've also been unaffiliated as
12 well.

13 Q Okay. All right. Let's see. Are you active
14 politically now?

15 A Since November 8, 2016, yes, very.

16 Q What happened on November 8th of 2016?

17 JUDGE SMITH: I think we can take judicial
18 notice.

19 BY MR. GORDON:

20 Q Okay. What sort of activity -- what sort of
21 activism have you engaged since the presidential
22 election last November?

23 A It's pretty varied. I joined a group called
24 Haverford Area Community Action Network and it's a
25 fairly progressive organization. There's different

1 things like environment, racial justice, women's
2 rights, some of it's healthcare as well. There's
3 really -- also different aspects like things like
4 fair districts, there's things like, you know, voter
5 registration, trying to really essentially make sure
6 people have a chance to vote.

7 Q Okay. Who is your congressperson?

8 A That's Patrick Meehan.

9 Q And what party is Mr. Meehan?

10 A Republican.

11 Q Okay. And what is your opinion as to -- strike
12 that. Does Patrick Meehan -- does Mr. -- does
13 Congressman Meehan reflect your views and values
14 politically on major issues?

15 A I would say, primarily, he does not.

16 Q In what way?

17 A Can I use an example?

18 Q Sure.

19 A So the environment is very important to me,
20 things like making sure we have clean water, making
21 sure that my kids, my grandkids eventually, and then,
22 you know, everybody here, we're going to have clean
23 water, clean air, we're going to have an environment
24 that's -- you know, the climate is sustainable and,
25 you know, so those types of issues. That really

1 concerns me and I think I have a big difference with
2 him on that.

3 Q Okay. Could you explain?

4 A So I'll give you an example. So on July 18,
5 2017, he voted for House Resolution 806. And so,
6 basically, he's limiting -- or what happened was
7 there was an EPA regulation that was changed in 2015,
8 the ozone, ground level ozone that's created by
9 hydrocarbons. And so the EPA had done research.
10 It's on their website. And they have basically shown
11 that there's more of a connection between that ozone
12 and asthma, and one of my daughters has asthma.

13 Q But -- I was going to say but how does that
14 affect your personally --

15 A Well, one of my --

16 Q -- you or your family?

17 A -- daughters has asthma, so she has inhalers and
18 different things like that. And so on July 18th,
19 2017, he voted to weaken that legislation, basically
20 to delay that to 2025, those regulations that were
21 supposed to take effect sooner. And also, he took
22 out the teeth in that legislation because there's no
23 penalties now for states that are in compliance or
24 non-compliance. So it's essentially nothing that's
25 happening. And my wife and I identified 17 different

1 ways that he voted and, in our opinion -- my opinion,
2 there's 16 ways that he voted that are harmful to the
3 environment and one that was actually supportive.

4 Q Okay. And it's your understanding that ground
5 level ozone adversely affects your daughter's health?

6 A Yeah, because it affects the airway passages and
7 stuff, according to the EPA website, and that -- I
8 think that was one of my exhibits from my deposition.

9 Q All right. Thank you. In what way, if at all,
10 does the 2011 map affect your vote? Does the
11 configuration of the Seventh District affect your
12 vote?

13 A For the U.S. Congress?

14 Q For U.S. Congress.

15 A Yeah, I'm just going to look over at this again.
16 Well, it's very disturbing to me because I don't
17 think my vote really counts for much at all. I mean
18 I don't think I can influence that district. It's
19 all -- it's all sprawled out and it, you know,
20 extends out to Reading, Pennsylvania, actually wraps
21 around Reading, Pennsylvania. That's like -- I drove
22 that -- I drove out to Reading on Sunday and that was
23 like an hour and a half drive, and it's just so
24 different and stuff, and it's varied. It doesn't
25 feel like it's a -- you know, like there's a

1 community of interest or something that, you know,
2 could have some commonality. And it feels like -- I
3 guess I've learned a lot recently. It just feels
4 like, in my view, it's rigged, that I can't possibly
5 win, you know, the way that -- the way it's stretched
6 out. It's designed such --

7 Q Do you --

8 A -- that my vote doesn't count.

9 Q Okay. Do you have any opinion on whether the --
10 whether gerrymandering has affected the power of your
11 single vote?

12 A I believe strongly that it has.

13 Q What is your opinion?

14 A Yes, that's my opinion.

15 Q But what's your opinion? Has it affected the
16 power of your vote?

17 A Yes.

18 Q How? Sorry. Briefly, how? In a word.

19 A I mean I don't -- I don't think that the
20 congressman has to listen to my vote because he's
21 going to get elected whether I vote against him or
22 for him.

23 Q Okay. I withdraw the question. I withdraw that
24 last -- nevermind. I'm just saying I'm sorry I tried
25 to --

1 JUDGE SMITH: Well, he's answered the
2 question.

3 MR. GORDON: -- reduce it to a word. Thank
4 you, sir. It was a bad question, but thank you.

5 (Pause in proceedings.)

6 MR. GORDON: No further questions. Thank
7 you.

8 JUDGE SMITH: Thank you. Cross-examine.

9 (Pause in proceedings.)

10 CROSS-EXAMINATION

11 BY MS. GALLAGHER:

12 Q Do you know if Congressman Meehan votes -- if his
13 votes in Congress have been consistent with the views
14 of his district?

15 A I don't know that I can say that all of his votes
16 have been consistent with his district. I wouldn't
17 say that.

18 Q But it's fair to say they're not consistent with
19 your views, would that be correct?

20 A I wouldn't say that. I mean probably some of
21 them are, maybe some aren't. As I mentioned, one of
22 the ones he voted for the environment I thought was
23 favorable.

24 Q So as I try to understand, you know, your
25 objection, is it to Congressman Dent -- or, excuse

1 me -- the congressman's votes or the manner in which
2 he's elected?

3 A It's really about the design of that district,
4 the Seventh District. I don't think that that gives
5 me a vote in saying who should be the person
6 representing me. I think that it interferes with my
7 relationship with the federal government, you know,
8 that the state legislature is coming up with a design
9 that basically makes me not have a vote in our U.S.
10 Congress.

11 Q If your candidate had won for the last three
12 election cycles, all right, would you be here today?

13 A I would.

14 Q Then why didn't you take a challenge to this map
15 in -- when it was enacted in 2012?

16 A Well, as I said in my deposition, I voted every
17 time. Well, although one time I vote, but somehow
18 they lost an absentee ballot. I don't know what
19 happened there. But, you know, I was a consistent
20 voter. I voted in all the primaries and all the, you
21 know, regular elections. And then on November 8,
22 2016, as I mentioned in the deposition, I was very
23 upset with what was happening with our country.

24 Q So this was about Donald Trump's election, not
25 your congressional district, fair to say?

1 A No, those are not my words. I saw a bunch of
2 things happening. That was maybe one element, but I
3 wouldn't say it was just about Donald Trump.

4 Q Were you unhappy after the 2014 election?

5 A Yeah, I was not happy.

6 Q Did you file a challenge then to this map?

7 A As I said, I was, you know, kind of a citizen
8 voter. I was not active politically, so I was not as
9 knowledgeable as I am now, and even after these two
10 days, I'm even more knowledgeable. So I didn't even
11 know -- really realize that was an option, but at
12 that time, you know, Patrick Meehan voted -- you
13 know, he ran and he won. I believe it was Joe Sestak
14 that was running against him at that time. And I
15 actually -- I don't remember exactly, but -- you
16 know, but whatever the candidates were at that time
17 I, you know, did my best to understand it and then
18 vote.

19 Q But it was in Nov -- the November 2016 election
20 which gave you the impetus to get involved?

21 A Yes, it's interesting how that happens.

22 Q Nothing further. Thank you.

23 A Thank you.

24 JUDGE SMITH: Anything further of this
25 witness?

1 MR. GORDON: No, Your Honor. Thank you.

2 JUDGE SMITH: Thank you very much. You may
3 step down.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 (Pause in proceedings.)

7 BRIAN JAMES BURYCHKA, Plaintiffs' Witness,
8 Sworn.

9 COURTROOM DEPUTY: Please state your full
10 name and spell your last name for the record.

11 THE WITNESS: Brian James Burychka, B-U-R-
12 Y-C-H-K-A.

13 DIRECT EXAMINATION

14 BY MR. GORDON:

15 Q Mr. Burychka, where do you -- where do you
16 reside?

17 A I currently live in Conshohocken.

18 Q All right. Using the monitor to your right,
19 would you please -- well, can you tell us first what
20 district that is?

21 A I'm in the Thirteenth.

22 JUDGE SMITH: And that is Montgomery
23 County --

24 THE WITNESS: Yes.

25 JUDGE SMITH: -- where Conshohocken is?

1 THE WITNESS: Correct.

2 JUDGE SMITH: Thank you.

3 BY MR. GORDON:

4 Q And then using the monitor --

5 (Pause in proceedings.)

6 Q -- can you show the panel where the Thirteenth

7 (indiscernible)?

8 A It's somewhere down in here, right along the

9 river.

10 (Pause in proceedings.)

11 Q All right. Can you put an X on that map

12 (indiscernible)?

13 A On this map?

14 Q On the monitor --

15 A Oh.

16 Q -- just by touching it.

17 A Oh, okay. I have to zoom in a little bit, but --

18 I think I'm a little bit off.

19 Q Oh, which river?

20 A Schuylkill.

21 Q Great. Okay. Where did you -- where did you

22 grow up?

23 A Boyertown, Pennsylvania.

24 Q What high school did you attend?

25 A Boyertown.

1 Q Okay.

2 A And we're the Bears.

3 Q Okay. And what county is Boyertown in?

4 A Boyertown is just over the border into Berks
5 County, but the district is split between Berks and
6 Montgomery.

7 Q Okay. What -- did you attend college?

8 A Undergraduate was Bucknell University.

9 Q Okay. Did you attend any graduate school?

10 A Yes.

11 Q I keep jumping ahead then back again. I'm sorry.
12 Bucknell, what was your degree in? What was your --
13 what was your bachelor's in, if you have one?

14 A My major was history, my undergrad -- or minor
15 was in education.

16 Q Okay. And you graduated with a bachelor's in?

17 A In history.

18 Q History. Okay. Thanks. Now, turning to your
19 graduate school, where -- did you attend graduate
20 school?

21 A Yes.

22 Q Where?

23 A I have two degrees. My first master's is from
24 Wilkes University. It's a Master's in Structural
25 Technology. And my second master's is from Western

1 International University. It's an MBA. And then
2 multiple other individual course work here and there.

3 Q Okay. How old are you?

4 A 44.

5 Q Okay. And where did -- where are you currently
6 employed?

7 A Boyertown High School.

8 Q What is your job title?

9 A Teacher.

10 Q And what subjects do you teach?

11 A Social studies, American history, and government
12 economics.

13 Q Okay. All right. In what party are you
14 registered?

15 A Democrat.

16 Q How long have you been a Democrat?

17 A Since I was 18.

18 Q Okay. When did you move to Conshohocken?

19 A May of 2015.

20 Q Okay. Who is your congressperson?

21 A Currently, Brendan Boyle.

22 Q And he is a Democrat?

23 A Yes.

24 Q So if you are living in a Democratic -- majority
25 Democratic district and your congressperson is a

1 Democrat, in what way, if at all, has partisan
2 gerrymandering affected your civil rights?

3 MS. GALLAGHER: I'm going to object to the
4 leading nature of the question.

5 JUDGE SMITH: There's nothing leading about
6 it at all. Overruled.

7 THE WITNESS: Okay. As a modern Democrat,
8 the district winds all the way down into
9 Philadelphia, and having grown up in a conservative
10 area like Boyertown, my views are definitely not of
11 the majority there, so I sometimes feel that my voice
12 is lost as a moderate. Sometimes my views on say gun
13 control, being an avid hunter and things like that,
14 sometimes that gets lost in a heavily Democratic
15 area. And so the culture that -- all the way down in
16 the Philadelphia part of the district is way
17 different than what I grew up in and -- you know, and
18 some of the other parts of it.

19 BY MR. GORDON:

20 Q Okay. How, if at all, has the 2011 map affected
21 your vote?

22 A I'd say it was -- it's a continuation of a long
23 trend that's been happening, but it kind of
24 accelerated the process of, you know, watering down
25 my vote. I think it kind of violates the Reynolds v.

1 Sims case where one man, one vote, where if my vote
2 doesn't really matter because it's so heavily one-
3 sided, then I'm not really getting the same one vote
4 that someone in a -- in a competitive district is.

5 Q Okay. All right. And what about -- are you
6 active politically -- do you -- are you active in any
7 party? Are you active politically?

8 A Yes.

9 Q Can you describe the nature of your political
10 activism at this time?

11 A Well, I founded a political activist group in my
12 town in Conshohocken called Indivisible Conshy. From
13 there, then I founded with some other members a group
14 called Pennsylvania Together, which basically works
15 together with other activist groups across the state
16 to try to coordinate our efforts to fight for the
17 issues that we feel strongly about.

18 Q Okay. And does Individual Conshohocken include
19 both Democratic and Republican members, if you know?

20 A It includes some, but it is definitely mainly
21 Democrats.

22 Q Okay. What are some of the issues that you
23 organize around?

24 A Some of the issues? Well, gerrymandering is one
25 of them. One of our first meetings, we had a

1 representative from Fair Districts PA come and speak
2 to us and explain to us all the issues surrounding
3 it, and it really opened up my eyes to the issue. I
4 didn't realize how bad it was. I was kind of living,
5 admittedly, kind of blindly, just doing my duty as a
6 citizen, not realizing how much my vote was being
7 diluted. So that was one of the issues. But things
8 surrounding me personally, I'm very adamant about
9 minority rights, and one of the reasons I got very
10 politically motivated is because I felt that those
11 were being threatened over the last year.

12 Q Okay. Turning to your work as a school teacher,
13 do you have any examples of the impact of the 2011
14 map upon participation by younger people?

15 A Well, I teach high school kids and the apathy has
16 been growing dramatically over the last half of my
17 teaching career, accelerated more so in the last five
18 years I would say. Just the lack of interest in
19 getting involved and comments such as well, why do I
20 care, it doesn't impact me, is the common response I
21 hear from students. And they just feel like those
22 people in Washington are going to do whatever they
23 want to, they don't have to listen to me, so why do I
24 care? And it's kind of saddening because it's my job
25 to try to motivate them and teach them about it.

1 Q Okay. In what ways, if at all, has -- I'll
2 withdraw it. I think that's enough. Thank you very
3 much. No further questions.

4 JUDGE SMITH: Cross-examine.

5 (Pause in proceedings.)

6 CROSS-EXAMINATION

7 BY MS. GALLAGHER:

8 Q I believe you stated that you were an avid
9 hunter?

10 A Yes, I --

11 Q Were you out on the first day of deer season this
12 year?

13 A Yes, I was. My --

14 Q How did you do?

15 A I didn't see anything. My district gives us off
16 the first day of hunting because most male students
17 would be out that day.

18 JUDGE SMITH: It's a religious holiday up
19 in Central Pennsylvania.

20 THE WITNESS: Oh, yes.

21 BY MS. GALLAGHER:

22 Q You stated that your students are saying they
23 don't care?

24 A Yes.

25 Q Okay.

1 A And while that's nothing new for a high school
2 kid to say, it's grown over the second half of my
3 career.

4 Q In your dep -- during your deposition, I believe
5 you stated that you have not contacted your
6 congressperson, senator, or government -- governor on
7 any constituent services, is that correct?

8 A Specifically, no.

9 Q Okay. And you've lived in the Thirteenth since
10 May of 2015?

11 A In the Thirteenth.

12 Q In the Thirteenth, I'm sorry.

13 A Correct.

14 Q Which district were you in before that?

15 A I was in the Seventh.

16 Q Were you happy with the representation in the
17 Seventh?

18 A Not exactly because he didn't share my values.
19 It was Representative Meehan. But on some issues,
20 yes, because he is more pro-Second Amendment, so I
21 was happy on some, but mostly no, because I'm -- I
22 view myself as a Democrat because of social issues
23 and I feel very strongly about them, and they
24 don't -- he doesn't share my values on social issues.

25 Q When you're teaching high school students -- God

1 bless you -- and -- when I was in high school there
2 was a civics course.

3 A Yeah.

4 Q Okay. That's -- do you talk about the right to
5 vote? I mean do you teach the right to vote and the
6 exercising the rights to vote and go out and --

7 A Absolutely.

8 Q Okay.

9 A I mean we go through the entire Constitution,
10 talking about the Fourteenth Amendment, the Equal
11 Protection Clause, the Fifteenth Amendment, go all
12 the way up to the -- you know, women's right to vote,
13 the Twenty-fourth Amendment, getting rid of the poll
14 tax, dropping the voting age to 21 with the Twenty-
15 fifth, you know -- or the Twenty-sixth I mean. So --
16 and the Civil Rights Act of '64 that bans
17 discrimination of voting rights.

18 Q All right. And do you also teach that there is
19 no constitutional right to win, to have your
20 candidate win?

21 A Yeah, because it's not in there.

22 Q Okay. You stated that you have -- in the last
23 year, you became involved because of you interest in
24 minority rights issues that you don't --

25 A Correct.

1 Q And I believe you stated that that started about
2 a year ago. Was there anything, in particular, that
3 brought that to your attention?

4 A How much time do we have? A lot of statements
5 that were made on the campaign trail by our current
6 President made me very worried about people who don't
7 look like me. His treatment of women and his excusal
8 of it, and now, as we heard yesterday, he is now
9 supporting an alleged sex-abuser, child-abuser, for
10 one. His support of the racists in Charlottesville
11 is another one of them. So I can go on and on.
12 There's lots of those, but you get my drift.

13 Q Fair to say the election of Donald Trump has
14 urged you to advocacy?

15 A But we're now seeing that other representatives
16 are falling in line and they have a very high voting
17 record with him, much -- you know, well above 90
18 percent, including Pat Meehan, who -- and Ryan
19 Costello, who I also lived in the Sixth a couple
20 years ago -- had a very close voting record with
21 Donald Trump. So it's not just about him, it's about
22 him getting things passed and it has to go through
23 the House and the Senate in order for him to make it
24 into law.

25 Q Okay. So let me ask the question again then, if

1 I may. What I'm talking about was the impetus for
2 you to become involved, okay? Was that the election
3 of Donald Trump?

4 A I guess so.

5 Q Thank you. Nothing further.

6 JUDGE SMITH: Anything further?

7 MR. GORDON: Yes, Your Honor, just one
8 line.

9 REDIRECT EXAMINATION

10 BY MR. GORDON:

11 Q Mr. Burychka, you were just asked about the
12 election of Donald Trump. Your understanding is that
13 the -- is that impeachment begins in the House of
14 Representatives, and then there has to be impeachment
15 there, and then there's a trial in the Senate under
16 the Constitution, is that correct?

17 A Correct.

18 Q How, if at all, would partisan gerrymandering in
19 Pennsylvania affect your civil right to impeachment
20 through your elected representatives?

21 MS. GALLAGHER: I'm going to object to
22 that.

23 JUDGE SMITH: I sustain the objection.

24 MR. GORDON: Okay. No further questions.

25 Thank you.

1 JUDGE SMITH: You may step down, sir.

2 (Pause in proceedings.)

3 JUDGE SMITH: And good luck next deer

4 season.

5 (Witness excused.)

6 JUDGE SHWARTZ: Go Bears.

7 MR. GORDON: I call to the stand Joseph

8 Landis.

9 (Pause in proceedings.)

10 JOSEPH G. LANDIS, Plaintiffs' Witness,

11 Sworn.

12 COURTROOM DEPUTY: Thank you. Please state

13 your full name and spell your last name for the

14 record.

15 THE WITNESS: Joseph, J-O-S-E-P-H, G.

16 Landis, L-A-N-D-I-S.

17 DIRECT EXAMINATION

18 BY MR. GORDON:

19 Q Mr. Landis, let's begin with the map. What
20 congressional district do you -- do you reside in?

21 A Number Eight, Congressional District Number
22 Eight.

23 Q Okay. And is that depicted -- turn to your
24 monitor on your right. Would you be so kind as to
25 draw an X in the Eight Congressional District in the

1 portion where you reside?

2 (Pause in proceedings.)

3 A Well, that's an arrow.

4 Q Good enough.

5 A Well, it should be over in Montgomery County.

6 (Pause in proceedings.)

7 Q Let me see what --

8 MS. BALLARD: Do you want me to clear it?

9 MR. GORDON: Yeah.

10 BY MR. GORDON:

11 Q All right. Why don't you start over again?

12 Familiarize yourself -- the Eight is that grey --

13 it's this grey district to the -- along the Delaware

14 River.

15 (Pause in proceedings.)

16 A Well, it's that third dot there.

17 Q Okay. All right, very good. Thank you.

18 A Yeah.

19 Q All right. Mr. Landis, I want to ask a little

20 bit about your background.

21 A Yes.

22 Q How old are you?

23 A 70.

24 Q Okay. Where do -- what's your address?

25 A 850 Salfordville Road, Harleysville.

1 Q Okay. In what county is Harleysville?

2 A Montgomery.

3 Q Okay. Where did you grow up?

4 A Harleysville.

5 Q What high school did you attend?

6 A Christopher Dock Mennonite High School.

7 Q Okay.

8 A Christopher Dock Mennonite High School.

9 Q Okay.

10 A Now it's Dock Academy.

11 Q Okay. Did you attend college?

12 A I did.

13 Q Where?

14 A Hesston College in Hesston, Kansas. It's a small
15 Mennonite community college. And then --

16 Q And then? Any additional education?

17 A And then I went to Goshen College in Goshen,
18 Indiana, which is near South Bend.

19 Q Okay. What degree, if any, did you -- did you
20 receive at Hesston?

21 A Associate's Degree.

22 Q In what area?

23 A Associates I guess. I don't know that I have a
24 major. I just have a --

25 Q Oh, okay.

1 A I did political science.

2 Q In Goshen College --

3 A Excuse me, what?

4 Q What degree did you earn at Goshen?

5 A Social work.

6 Q Okay. Do you have any additional advanced
7 degrees?

8 A I don't have a degree, but I went to seminary for
9 a year and a half --

10 Q And --

11 A -- and then I did go to Penn State and I have a
12 Master's in Public Administration from Penn State.

13 Q And turning -- are you married?

14 A Yes.

15 Q Any children?

16 A Two children.

17 Q Any grandchildren?

18 A Suzanne is 37 and Zach is 39.

19 Q Okay. Any grandkids?

20 A Four.

21 Q Okay. Let's see, and tell us briefly about your
22 employment history.

23 A Okay. For 24 years, I was executive director of
24 Indian Creek Foundation, which is in Harleysville,
25 which provides services for people with intellectual

1 disabilities and autism. I left there and did a
2 Steve Jobs thing, only they didn't call me back, and
3 started my own company called Peaceful Living because
4 I felt like the first company had lost its way.

5 Q And what --

6 A And I was there for 17 years --

7 Q And what service --

8 A -- and retired. Excuse me?

9 Q What services did Peaceful Living provide?

10 A Well, it's the same thing only I believe that I
11 had to be very clear that if you're caring for
12 humans, you need to have a faith basis and interfaith
13 basis. So I was very clear about that. We served
14 all religious communities.

15 Q Okay.

16 (Pause in proceedings.)

17 Q What party of you a member?

18 A Okay. That's complicated.

19 Q Go ahead. Currently.

20 A I'm an -- okay. I'm an independent at heart.
21 I'm bi-political, but I'm a member of the Democratic
22 Party, if that can work.

23 Q Please explain.

24 A Okay. So I try to be independent, but since I
25 couldn't vote in primaries, I joined the Democratic

1 Party. But in my life's work, I worked very closely
2 with whomever was elected and, being an advocate, I,
3 you know, work very closely with Democrats and
4 Republicans. We're a Republican area.

5 Q Okay. So who is the -- who is the current
6 congressperson from the Eight District?

7 A Brian Fitzpatrick.

8 Q And what party is he?

9 A Republican.

10 Q Okay. On major issues, does Representative
11 Fitzpatrick represent your views and values?

12 A No.

13 Q In what way?

14 A His record is 80 percent with President Donald
15 Trump. He did vote for the Affordable Care Act,
16 which is very critical, but he voted for the current
17 tax framework, which may guy services to people with
18 intellectual disabilities and autism.

19 Q Any other ways that you feel he doesn't represent
20 your values? Any other major issues?

21 A Climate change, immigration, affordable care, and
22 fair districts, gerrymandering.

23 Q How, if at all, do you feel the 2011 map has
24 affected the -- your vote?

25 A All right. Well, it's not clear on this -- can

1 I -- I can't explain that.

2 Q Yeah.

3 A It's not clear on this map, but my --

4 Q Can you --

5 A -- district --

6 MR. GORDON: Can I ask permission --

7 THE WITNESS: Excuse me.

8 MR. GORDON: -- to have the witness come
9 off the stand and use the large map?

10 JUDGE SMITH: If you'd like.

11 MR. GORDON: Well, I think he's --

12 BY MR. GORDON:

13 Q I think we have someone helping by zooming in on
14 your map.

15 (Pause in proceedings.)

16 JUDGE SMITH: Does that help, Mr. Landis?
17 Are you able to see that?

18 THE WITNESS: It does. That was good.

19 JUDGE SMITH: It was.

20 THE WITNESS: It was good.

21 JUDGE SMITH: Do that again.

22 THE WITNESS: All right. So here's --

23 (Pause in proceedings.)

24 THE WITNESS: All right. So here we go.

25 Okay. So until the 2012 gerrymandering, Bucks County

1 was going between Democrats and Republicans, and
2 Bucks County is pretty much, you know -- sometimes
3 they add a little appendage down here or sometimes a
4 little appendage out in the middle that reached out
5 to Lansdale, but they --

6 JUDGE SMITH: You have to touch the map to
7 show where the appendages were.

8 THE WITNESS: Oh, okay. So -- okay, yes.
9 So it's not there now, but for a while, they were
10 playing around with Lansdale. They were sort of
11 going -- but now they pulled that back in and
12 attached the Indian Valley. And since that, it has
13 been solid Republican. So understand I've worked
14 with Democrats and Republicans my whole life, and so
15 I'm not necessarily biased by a party. I'm biased by
16 what a person believes and does. So -- however, now,
17 with Brian Fitzpatrick, I feel like this district is
18 going to remain Republican regardless of my vote, and
19 my voice is squashed.

20 BY MR. GORDON:

21 Q Have any -- how about your right to be active
22 locally to support candidates? Do you feel that's
23 been affected in any way by the 2011 map?

24 A I've been inspired recently.

25 Q So you're bucking the trend. Okay. Go ahead.

1 Explain.

2 A Last year, a number of friends and I started
3 Indivisible Hope in Harleysville, and it was around
4 those four areas that I mentioned that we've been
5 meeting to try to have a more representative
6 government.

7 Q Okay. And what are the goals of Indivisible Hope
8 in terms of --

9 A The four primary areas --

10 Q -- a more representative government.

11 A -- are climate change, immigration, affordable
12 care, and the fair districting, gerrymandering
13 issues.

14 Q Thank you. No further questions.

15 A Thank you.

16 JUDGE SMITH: Cross-examine.

17 CROSS-EXAMINATION

18 BY MR. MORRIS:

19 Q Good afternoon, Mr. Landis.

20 A Good afternoon, Mr. Morris.

21 Q How are you?

22 A Fine.

23 Q You spent some time in your testimony just now
24 speaking about Congressman Brian Fitzpatrick, is that
25 right?

1 A Yes.

2 Q When was he elected to Congress?

3 A This last term. This last election.

4 Q That was 2016, right?

5 A Yeah.

6 Q Did you vote in the congressional elections prior
7 to that?

8 A Every one.

9 Q So in 2012?

10 A Every one.

11 Q In 2014?

12 A Right.

13 Q Okay. Who was your congressman or woman before
14 Brian Fitzpatrick?

15 A Mike Fitzpatrick.

16 Q Okay. Mike Fitzpatrick is someone who has a
17 connection with disability issues, is that right?

18 A Yes, he does.

19 Q And you were in fairly frequent contact with
20 Congressman Mike Fitzpatrick on those types of
21 issues, right?

22 A Yes, I was. He held an autism roundtable on one
23 of my facilities around autism. He was just
24 wonderful.

25 Q He was very responsive to you when you reached

1 out to him on those types of issues and others,
2 right?

3 A He was.

4 Q Okay. You voted for him in 2012, didn't you?

5 A I did.

6 Q Okay. You --

7 A No, wait. Hold it. Hold it. Hold it. Let me
8 back up. Probably not. I vote pretty much straight
9 Democrat, but --

10 Q Okay. Do you remember taking a deposition in my
11 office a few weeks ago?

12 A I remember sitting right there across the table
13 from you.

14 Q And we were speaking about the 2012 election and
15 you said you voted for the Democratic candidate,
16 right?

17 A Yeah.

18 Q And I reminded you that in that year, it was
19 Congressman Mike Fitzpatrick who was, in fact,
20 running. Do you remember that?

21 A Yes.

22 Q And do you remember then you said you weren't
23 sure who you voted for, that you may have, in fact,
24 voted for Mike Fitzpatrick?

25 A Yeah, I --

1 Q Do you remember that?

2 A I honestly can't tell you for sure, but --

3 Q Okay. You may have voted for him, right?

4 A Well, in hindsight, I don't know that I did, but
5 I'm just going to leave it there I guess.

6 Q Okay. How about in 2014? Do you have any
7 recollection?

8 A If you would pull up my record, I would say it's
9 straight Democratic, but maybe I voted otherwise. I
10 don't know.

11 (Pause in proceedings.)

12 MR. MORRIS: Can I approach, Your Honor?

13 JUDGE SMITH: Yes.

14 MR. MORRIS: I'm giving Mr. Landis a copy
15 of the deposition transcript.

16 JUDGE SMITH: For what purpose?

17 MR. MORRIS: I'd just like to try to
18 refresh his recollection about his voting patterns in
19 2012 and 2014.

20 JUDGE SMITH: Ask him first if he
21 remembers.

22 MR. MORRIS: Okay.

23 BY MR. MORRIS:

24 Q Do you remember who you voted for for Congress in
25 2012, Mr. Landis?

1 A No.

2 Q All right. Do you remember in 2014?

3 A No.

4 Q Do you remember speaking about that in your
5 deposition?

6 A Well, if you said I did, I'm sure I did and I
7 probably voted Democrat, but I'm going to -- I mean
8 if you have -- if I said something else, you know,
9 whatever.

10 MR. MORRIS: I'd just like to try to
11 refresh his recollection if --

12 JUDGE SMITH: Please.

13 MR. MORRIS: -- I could, Your Honor? I
14 believe I have a copy for the panel if that's
15 helpful.

16 (Pause in proceedings.)

17 BY MR. MORRIS:

18 Q Mr. Landis, if you could, could you flip to page
19 62 of the transcript, please? And there's a series
20 of numbers on the left-hand side. Those are line
21 numbers. I'm going to start down at line seven.
22 Please let me know when you're there.

23 A I'm there.

24 Q Okay. And my question was,

25 Question: "So let's talk about the 2012

1 congressional election in your district. Do you
2 remember who the candidates were in 2012 U.S.
3 congressional?" Do you see that?

4 A Right.

5 Q And you said,

6 Answer: "I'm sure it was Mike Fitzpatrick,
7 but I don't know who was running against him. But
8 he's been there for years, as far as I can remember.
9 I don't know who ran against him." Do you see that?

10 A Yes.

11 Q I asked you who you voted --

12 Question: "Did you vote?" And you said,

13 Answer: "Yes," right?

14 A Yes.

15 Q And then at line 15, I said,

16 Question: "Do you know who you voted for?"
17 Do you see that?

18 A Yes.

19 Q And you followed up with,

20 Answer: "Well, I voted Democratic, I know
21 that," is that right?

22 A Yes.

23 Q Okay. And then I ask,

24 Question: "Was Congressman Fitzpatrick --
25 was that the office you mentioned about an hour ago

1 corresponding with frequently about issue?"

2 A Right.

3 Q And you said,

4 Answer: "Yes. Yes."

5 A Right.

6 Q And I asked you -- I said,

7 Question: "You didn't vote for him?"

8 A I said no.

9 Q And then look down at line 24. You said,

10 Answer: "You know what, that is a good
11 question. I wonder if I did or not. I honestly
12 can't remember," right?

13 A Yes, and that's what I'm saying today.

14 Q And then I said,

15 Question: "Same question for 2014," at
16 line four there, right?

17 A Right.

18 Q And just let's skip some of this. We go down to
19 line 14 here. I said,

20 Question: "I want to be clear, I'm talking
21 about 2014." And you answer down on line 16,

22 Answer: "Okay. All right. No, '14
23 would've have been Mike. Yeah, I don't know. I know
24 he was doing well, so I can't. I don't know. I
25 might have voted for him. I honestly do not know. I

1 don't know. Because of his connection to people with
2 autism, I think I might have voted for him, but I
3 don't know." Do you see that?

4 A I do.

5 Q Do you remember saying that?

6 A Yeah.

7 Q You still don't recall who you voted for in the
8 2014 congressional election?

9 A No.

10 Q Fair enough. But you did reach out to
11 Congressman Mike Fitzpatrick frequently on those
12 types of issues that you explained were important to
13 you?

14 A I did.

15 Q Okay. And he was always very responsive? I
16 think you said in your deposition that corresponding
17 with his office, it was always, "Boom, boom, you got
18 a response," right?

19 A Well said. That's exactly what I said.

20 Q I was trying to use your words. Thank you.

21 A All right.

22 Q Now, a moment ago, when you testified to the harm
23 that you believe to have suffered as a result of the
24 2011 map, counsel asked you how did that affect your
25 vote. Do you remember that?

1 A Yes.

2 Q And you said well, since then it's been solidly
3 Republican?

4 A Yes.

5 Q Mike Fitzpatrick was a Republican?

6 A Right.

7 Q You identified with him?

8 A Right.

9 Q He was responsive to your issues?

10 A Right.

11 Q He reflected your values on issues that were
12 important to you, isn't that right?

13 A Right.

14 Q Okay. And you also said, with respect to Brian
15 Fitzpatrick, that you believe your voice is being, to
16 use your term, squashed, is that right?

17 A Right.

18 Q Okay. Squashed, have you ever been kept from
19 voting in any way?

20 A No.

21 Q Has any law ever kept you from doing that?

22 A No.

23 Q Any person ever stood in the way from you voting?

24 A Well, I did tell you during my deposition nobody
25 stood in the way, but I felt threatened because I had

1 a Hillary sign on my lawn and somebody drove up with
2 at truck and pulled it out at night. But I voted
3 anyway.

4 Q No more questions. Thank you.

5 A Thank you.

6 JUDGE SMITH: Any redirect?

7 (Pause in proceedings.)

8 REDIRECT EXAMINATION

9 BY MR. GORDON:

10 Q Mr. Landis, is it possible to have positive
11 feelings and a constructive dialogue with a helpful
12 Republican congressperson and still have strong
13 feelings against gerrymandering?

14 (Pause in proceedings.)

15 A What? Can you please clarify?

16 JUDGE SMITH: I think you better rephrase
17 the question.

18 BY MR. GORDON:

19 Q Is it possible to like a Republican congressman
20 and still have strong feelings against
21 gerrymandering, yes or no?

22 A Is it possible for me --

23 Q Yeah.

24 A -- to like a Republican --

25 Q Yeah.

1 JUDGE SMITH: That's not what he asked, but
2 I assume that's what he was implying.

3 BY MR. GORDON:

4 Q Well, not any Republican. To feel supportive of
5 a Republican congressperson but still have feelings,
6 strong feelings against gerrymandering?

7 A I'm still unclear. I'm sorry.

8 Q Okay.

9 A I --

10 Q All right. I'll just -- let me just break it
11 down one more time.

12 A Break it down for me. Thank you.

13 Q Okay. Is it true that you had a constructive
14 dialogue with the predecessor to Brian Fitzpatrick,
15 who --

16 A I --

17 Q -- was his brother, Mike Fitzpatrick?

18 A I did. I did.

19 Q Okay. And are you also opposed to
20 gerrymandering?

21 A I am.

22 Q Okay. And how are those two -- why are you
23 opposed to gerrymandering? Why?

24 A Well, I explained before on my little map that
25 the Indian Valley does not belong to Bucks County.

1 We're a different community. And I feel like since
2 the Indian Valley has been added, regardless of how I
3 vote, it's not going to make a difference, and
4 that -- it hasn't made a difference since the
5 gerrymandering. But before that, it could go either
6 way. Did I answer your question?

7 Q You did indeed.

8 A Okay.

9 Q Thank you. No further questions.

10 JUDGE SMITH: Anything further of this
11 witness?

12 MR. MORRIS: Nothing further, Your Honor.

13 JUDGE SMITH: Thank you. You may step
14 down, sir.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 MR. GORDON: We call to the stand Bill
18 Ewing.

19 (Pause in proceedings.)

20 WILLIAM H. EWING, Plaintiffs' Witness,
21 Sworn.

22 COURTROOM DEPUTY: Thank you. Please state
23 your full name and spell your last name for the
24 record.

25 THE WITNESS: William H. Ewing, E-W-I-N-G.

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DIRECT EXAMINATION

BY MR. GORDON:

Q Good afternoon, Mr. Ewing.

A Good afternoon, Mr. Gordon.

Q Where do you reside?

A In the Mt. Airy section of Philadelphia.

Q And you'll notice I only ask males this. What is your age?

A 78.

Q Okay. And just to give us a little about your background, where did you grow up? What area?

A I grew up in Valley Forge.

Q Okay. Where did you attend high school?

A Haverford School.

Q Where did you attend college?

A Princeton University.

Q Where did --

A The same place as the witness this morning, the Woodrow Wilson School of Public and International Affairs.

Q Oh, okay. What was your degree at -- let's say what was your degree at --

A Bachelor of Arts.

Q Bachelor of Arts at Haverford?

A Oh, at Haverford.

1 Q I'm sorry. I'm sorry, what was your degree at
2 Princeton?

3 A Princeton, yes. Bachelor of Arts.

4 Q BA. A BA in?

5 A Actually, they called it AB in those days. It
6 was -- they used the Latin.

7 Q Okay. An AB in?

8 A In public and international affairs.

9 Q Very good. Did you attend -- are you an
10 attorney?

11 A Yeah. I used to be an attorney.

12 Q Are you a lawyer?

13 A I gave up --

14 Q You're still a lawyer?

15 A -- my life a few years ago.

16 Q Where did you attend law school?

17 A Penn.

18 Q When did you graduate?

19 A 1965.

20 Q Okay. And give us -- give the panel a brief
21 history of your employment?

22 A After I graduate from law school, I was -- spent
23 a year as a law clerk to Warren E. Berger when he was
24 a Judge on the Court of Appeals. I then spent three
25 and a half years teaching law at the -- what was then

1 called the (indiscernible) University in Addis Ababa,
2 Ethiopia. I came back and I joined some of my
3 friends from law school in practicing law at a firm
4 that was known by various names over the years, most
5 recently Connolly, Epstein, Chicco, Foxman, Oxholm &
6 Ewing.

7 Q Thank you. And you're the Ewing of that Ewing?

8 A And then I went into -- then we were taken over
9 by Eckert, Seamens, Cherin & Mellot.

10 Q Okay. Okay. What is your party of registration?

11 A Democrat.

12 Q How long have you been a Democrat?

13 A Since 1970.

14 Q And before 1970?

15 A I was a Republican.

16 Q Okay. Have you consistently been a Democrat
17 since 1970?

18 A Yes.

19 Q Okay. Are you -- are you -- have you been active
20 politically since 1970?

21 A Yes.

22 Q Can you describe?

23 A Well, I've campaigned for many candidates, I've
24 contributed to many candidates. In 1978, I ran for
25 the State Senate and lost in the Democratic primary.

1 Q Okay. Are you currently active politically?

2 A Yeah, I'm -- I do -- you know, attend various
3 political events, and I can't remember -- certainly a
4 year ago, I was knocking on doors. I don't remember
5 whether I did any of that in the primary or the
6 general election this year.

7 Q Okay. Mr. Ewing, you are a Democrat -- I'm
8 sorry, you are a Democrat in a predominantly
9 Democratic Second Congressional District, is that
10 correct?

11 A That's correct.

12 Q Okay. And Dwight Evans is your congressman, is
13 that correct?

14 A Correct.

15 Q How, if at all, has the shape of your district
16 affected your civil right to vote? If you are a
17 Democrat living in a district represented by a
18 Democrat which is predominantly Democratic?

19 A Well, basically, in the general election, for
20 Congress and for local offices, it really doesn't
21 matter whether I vote or not. There's no contest.
22 The district -- the city -- my state rep and State
23 Senate districts are all very heavily Democrat. And
24 I can tell -- I know -- I recognize the difference
25 because back in 1978, when I ran for the State Senate

1 and I lost in the primary, we actually support a
2 Republican, Phil Price, Jr., who was elected in the
3 general election. So there was an opportunity at
4 that point to have a meaningful voice in a general
5 election that I no longer have for any position.

6 Q It's your understanding that the Second
7 Congressional is overwhelmingly Democratic, is that
8 correct?

9 A Yes, it's somewhere around 90 percent probably.

10 Q Okay.

11 A There are other districts that are represented by
12 Republicans not far away. The district that Pat
13 Meehan represents is -- it's a couple miles away.

14 Q Okay. Let me broaden the question then. How, if
15 at all -- well, actually, I'm going to break it down
16 into two questions. How has -- how has being a
17 Democrat in -- under the 2011 map affected the power
18 of your vote?

19 A Well, as I say, it's basically -- under the 2011
20 map -- under the 2002 map, for that matter -- 2001,
21 whatever it was -- based on -- the map based on the
22 2000 census, it was basically in the general
23 election, I have no meaningful role to play.

24 Q Okay. And then looking at the whole of the
25 Pennsylvania map, how has the 2011 congressional map

1 of Pennsylvania affected your ability to support
2 other candidates?

3 A Well, I mean actually, I've supported other
4 candidates, but the ability to effectively do so has
5 diminished. For instance, I was a good friend and
6 support Bob Edgar when he was a member of Congress in
7 Delaware County, and Admiral Sestak the same, but the
8 ability to elect a Democrat from that district has
9 diminished substantially as a result of the 2011
10 remapping.

11 Q Has it affected your participation in those
12 districts in terms of supporting candidates, the
13 Seventh, for example?

14 A My participation? Probably not. I keep hoping.

15 Q Hope (indiscernible). All right. No further
16 questions. Thank you.

17 JUDGE SMITH: Cross-examine, please.

18 MS. GALLAGHER: We have no questions, Your
19 Honor.

20 JUDGE SMITH: Thank you very much, Mr.
21 Ewing.

22 THE WITNESS: Thank you, Your Honor.

23 JUDGE SMITH: You may step down, sir.

24 (Pause in proceedings.)

25 JUDGE SMITH: I think we're going to take

1 our mid-afternoon recess at this time, five minutes.
2 We'll be back.

3 MR. GORDON: Your Honor, I think I've --
4 just to let the Court know, I think I've run out of
5 witnesses for today.

6 JUDGE SMITH: Oh. We'll -- yes, Judge
7 Baylson says that's a no-no. I was going to use
8 another term. But we'll be back after a brief
9 recess.

10 (Recess taken from 2:53 p.m. to 3:04 p.m.)

11 JUDGE SMITH: Mr. Gordon, are you really,
12 really, really sure that you're not prepared to go
13 forward in any way at this time?

14 MR. GORDON: Just a slight revision. So in
15 terms of making of immediate time productive, what we
16 intended to do was to introduce exhibits through Ms.
17 Ballard, and that should take some time. But that --
18 we have our last witness of the day. And I
19 apologize, I didn't anticipate the plaintiffs'
20 testimony on direct and cross would go so quickly.
21 And that is the reason for the gap, as well as the
22 shortness of the expert.

23 JUDGE SMITH: Well, after the witness that
24 you have present as your last witness for the day,
25 what do you anticipate then for tomorrow?

1 MR. GORDON: Your Honor, anticipate at 9:00
2 a.m., State Senator -- I'm sorry, State Senator
3 Andrew Dinniman from Chester County will come
4 testify, and anticipate perhaps two -- I'll say two
5 or three more plaintiff witnesses. We intended to
6 put a bulk of plaintiff witness testimony -- we have
7 26 plaintiffs I believe. We intended to put many of
8 their testimonies in by transcript, by deposition
9 transcript, if that's permissible.

10 JUDGE SMITH: Well, we'll -- we will
11 address anything that you wish to come forward at
12 this time, including transcript testimony of
13 plaintiffs if we can address that at this time.

14 MR. GORDON: All right. I'll turn that
15 over to Ms. Ballard.

16 JUDGE SMITH: All right. Ms. Ballard?
17 (Pause in proceedings.)

18 MS. BALLARD: If I could start --

19 MR. GORDON: Exhibits and depositions.

20 MS. BALLARD: If I could start with our
21 exhibits and move them in? Exhibit 1, Your Honors,
22 is our response to interrogatory -- to defendants'
23 interrogatory seven, in which we summarize on a
24 composite basis the harm to the plaintiffs.

25 JUDGE SHWARTZ: Excuse me, can you --

1 JUDGE SMITH: Yes, let's --

2 JUDGE SHWARTZ: -- just give us one second?

3 JUDGE SMITH: -- start again. Yes.

4 MS. BALLARD: Oh, sure. I'm sorry.

5 JUDGE SMITH: Yes. We have two bulky
6 binders and not a lot of room here.

7 MS. BALLARD: That's right.

8 MR. TORCHINSKY: Your Honor, we object to
9 that on the basis of hearsay.

10 JUDGE SMITH: I -- we don't even know what
11 you're talking about yet, so please give us a minute.

12 (Pause in proceedings.)

13 JUDGE SMITH: All right. I believe we're
14 ready now. Ms. Ballard?

15 MS. BALLARD: Thank you.

16 (Pause in proceedings.)

17 MS. BALLARD: Our Exhibit 1, Your Honors,
18 is our response to defendants' interrogatory seven.
19 This is a composite response that we filed on behalf
20 of the original five plaintiffs and it summarizes the
21 harm that they have experienced as a result of
22 gerrymandering.

23 MR. TORCHINSKY: Objection, Your Honor.
24 We're having a hard time understanding what document
25 Ms. Ballard is referring to right now.

1 MS. BALLARD: Exhibit 1.

2 MR. TORCHINSKY: The list that we have says
3 the official state website maps are your Exhibit 1.

4 MS. BALLARD: Yes, it does. But I think if
5 you look behind -- to the back of Exhibit 1.

6 MR. TORCHINSKY: That looks like maps.

7 MS. BALLARD: For 1?

8 MR. TORCHINSKY: Yeah.

9 JUDGE BAYLSON: Exhibit 1 is response to
10 interrogatory.

11 MR. TORCHINSKY: Is that this?

12 JUDGE SMITH: In the materials provided to
13 the Court, there is a list. The list indicates the
14 trial exhibit is plaintiffs' response to legistents'
15 interrogatory seven. And the document itself appears
16 at tab one as Plaintiffs' Exhibit 1.

17 MR. TORCHINSKY: Your Honor, if I could
18 just ask that we move slowly through these?

19 JUDGE SMITH: I --

20 MR. TORCHINSKY: The original --

21 JUDGE SMITH: I have a feeling that even
22 without having to indulge you in that request, that's
23 the way we'll be moving.

24 MR. TORCHINSKY: Thank you, Your Honor.

25 The original exhibit list has a different numbering

1 system.

2 (Pause in proceedings.)

3 JUDGE SHWARTZ: Excuse me, Ms. Ballard.
4 I'm sorry. The exhibit list that the Court received
5 that was filed on ECF listed Exhibit 1 as the
6 official state website. We note that in the binder,
7 there's a different exhibit list.

8 MS. BALLARD: Yes.

9 JUDGE SHWARTZ: So is it fair to say the
10 exhibit list you are using is the one that was in the
11 binder, not on ECF?

12 MS. BALLARD: Yes, Your Honor, and this is
13 the only --

14 JUDGE SMITH: That's what is obviously
15 causing the confusion with counsel.

16 MS. BALLARD: It is. And this is the only
17 discrepancy.

18 JUDGE SHWARTZ: Thank you.

19 MR. TORCHINSKY: Excuse me. Just to
20 clarify, is that going to throw every document in
21 this binder off by one number from the original
22 filing --

23 MS. BALLARD: Oh, no.

24 MR. TORCHINSKY: -- on ECF?

25 MS. BALLARD: I know better than that. No.

1 JUDGE SMITH: All right, guess not.

2 (Pause in proceedings.)

3 JUDGE SMITH: And you're moving only
4 interrogatory -- the response to interrogatory number
5 seven?

6 MS. BALLARD: That's right, Your Honor.

7 MR. TORCHINSKY: Your Honor, we object to
8 that on the grounds of hearsay.

9 JUDGE SMITH: It is technical hearsay. Why
10 is this not something that is coming in or has not
11 already come in through individual plaintiffs as
12 they've testified here subject to cross-examination?

13 MS. BALLARD: We think that we have -- we
14 have submitted it through the testimony of the
15 individual plaintiffs, Your Honor, but this was a
16 summary that they had agreed to, and we would like to
17 put it in.

18 JUDGE SMITH: You say they agreed to?

19 MS. BALLARD: The first five plaintiffs.
20 It's a composite response back --

21 JUDGE SMITH: Well, that doesn't make it
22 any less technical hearsay. Why is it not an out-of-
23 court statement offered to prove the truth of the
24 matter asserted?

25 MS. BALLARD: It is an out-of-court

1 statement offered to prove the truth of the matter
2 asserted, Your Honor. I would say that it's
3 analogous to a deposition of a party that could be
4 used for any purpose.

5 JUDGE SMITH: Party admission, is that --

6 MS. BALLARD: Yes.

7 MR. TORCHINSKY: Your Honor, we object to
8 that. All of these plaintiffs were deposed in their
9 depositions that are subjects of designations. And
10 it's -- and it's their admission, it's not our --

11 MS. BALLARD: It's not an admission of a --

12 MR. TORCHINSKY: It's not an --

13 MS. BALLARD: -- party opponent --

14 MR. TORCHINSKY: -- admission of a party
15 opponent.

16 MS. BALLARD: -- Your Honor, just to be
17 clear.

18 (Pause in proceedings.)

19 JUDGE SMITH: Yes. This remains technical
20 hearsay. So if -- whether regardless of the grounds
21 for the objection, it will not come in. It doesn't
22 meet an exception that's been articulated by the
23 plaintiffs.

24 MS. BALLARD: All right, Your Honor. I
25 would just say that the Court --

1 JUDGE SMITH: And --

2 MS. BALLARD: -- has the authority to --

3 JUDGE SMITH: And, again, I -- you know, I
4 think you had evidence to this effect from live
5 witnesses and may continue to be doing so.

6 MS. BALLARD: All right. Our Exhibit 2,
7 Your Honor, is the five congressional district maps,
8 including 1943, 1951, 1962, 1972, 1982, 2002, and
9 2011. Eight maps.

10 (Pause in proceedings.)

11 JUDGE SMITH: All right. There's no
12 objection to these?

13 MR. TORCHINSKY: No objection, Your Honor.

14 JUDGE SMITH: Very well. The composite
15 Exhibit 2 with bates numbers 0576, 0577, 0578, 0579,
16 0589, 0581, 0582, and 0583 are all admitted.

17 (Plaintiffs' Exhibit 2, maps, are admitted
18 into evidence.)

19 MS. BALLARD: Thank you. Our Exhibit
20 Number 3 is one -- two pages out of the McGlone
21 report, which I believe have been stipulated to by
22 the defendants. The first page shows the Republican
23 seat performance during the years indicated and
24 the -- and the Democratic. And then the second page
25 shows the same information in different graphic form.

1 JUDGE SMITH: The two-page exhibit marked
2 as Plaintiffs' 3?

3 MS. BALLARD: Yes.

4 MR. TORCHINSKY: Your Honor, this is the
5 chart that was put together by Ms. Needham (ph). We
6 don't have objections to the underlying information
7 if it were proven to be accurate, but there's nothing
8 in the record to show that the data that she got from
9 Github actually reflects public record. If they
10 wanted to produce an exhibit that was like this that
11 actually was sourced to public record, we would have
12 no problem with it. Our concern is there has been no
13 evidence or testimony as to the reliability of the
14 Github site from which this data was drawn.

15 MS. BALLARD: Your Honors, this -- the
16 defendants stipulated to this exhibit, so we didn't
17 think we had to prove --

18 JUDGE SMITH: Stipulated when and how?
19 They haven't done so in open court. Perhaps they've
20 done some -- done so elsewhere.

21 MS. BALLARD: In the submission that was
22 filed, I believe the legislative defendants were the
23 ones who actually filed it. But the parties, you
24 know, according to the Court's order, entered into a
25 joint stipulation, and I believe this exhibit was --

1 JUDGE SMITH: Well, point us to -- point us
2 to the specific item in the joint stipulation.

3 MR. TORCHINSKY: Your Honor, I think what
4 we said was no objection at this time, but now that
5 they're moving to move it into evidence, you know, I
6 mean Github is sort of like --

7 JUDGE SMITH: Oh, please. Please.

8 MR. TORCHINSKY: Okay.

9 JUDGE SMITH: I've been a Judge 33 years
10 and I've never heard anybody say something like that.

11 (Pause in proceedings.)

12 MR. TORCHINSKY: Your Honor, we'll withdraw
13 our objection.

14 JUDGE SMITH: Noted. Go ahead, Ms.
15 Ballard.

16 MS. BALLARD: All right. So could we have
17 a ruling on Exhibit 3, Your Honor?

18 JUDGE SMITH: It's admitted.

19 (Plaintiffs' Exhibit 3, McGlone report
20 excerpt, is admitted into evidence.)

21 MS. BALLARD: Thank you. Exhibit 4 is a
22 list of the actual names of the people who were the
23 congressman for Pennsylvania in each of the
24 Congresses between 2005 and 2009. Oh, I'm sorry,
25 also '11.

1 JUDGE SMITH: As I said at various other
2 junctures, this is actually matter that could
3 probably be the subject -- I'm confident could be the
4 subject of judicial notice. But any objection to 4?

5 MR. TORCHINSKY: No, Your Honor.

6 JUDGE SMITH: Admitted.

7 (Plaintiffs' Exhibit 4, list of names, is
8 admitted into evidence.)

9 MS. BALLARD: Number 5, Your Honors, is
10 the -- all right, we have three, Exhibits 5, 6, and
11 7, and, again, probably could be the subject of
12 judicial notice. They have been agreed to, I
13 believe, by the defendants. These are the three
14 versions, the three iterations of Senate Bill 1249,
15 which is what ultimately became the 2011 map. The
16 one in Exhibit 5 is the initial version that was
17 considered by the Senate, September 14th, 2011. And
18 you'll see if you look at it that it's what is called
19 a blank bill. It doesn't have any description of
20 what the map is. It doesn't say where the lines were
21 drawn. It's what's called blank bill.

22 MR. TORCHINSKY: Your Honor, we do object
23 to that. It was introduced in the -- we don't object
24 to the admissibility of the bill, but we do object to
25 Ms. Ballard's characterizations of it as she's

1 introducing it.

2 JUDGE SMITH: All right. Well, there's no
3 need for the characterizations so long as there's no
4 objection. These are also public documents whether
5 or not they were the ultimate legislative product or
6 not. So we will be admitting 5, 6, and 7.

7 (Plaintiffs' Exhibits 5, 6, and 7, bill
8 versions, are admitted into evidence.)

9 MS. BALLARD: Thank you, Your Honor.

10 (Pause in proceedings.)

11 MS. BALLARD: Exhibit 8 is a -- at this
12 point, Your Honor, I think it's the entire McGlone
13 report. The original Exhibit 8 that was in the books
14 was just the charts from the McGlone report in case
15 there was a concern that the text of the McGlone
16 report would be hearsay. So Exhibit 8 now contains
17 the entire McGlone report, but we would be happy to
18 limit the exhibit to the charts, which start on page
19 0543.

20 JUDGE SMITH: Yes, the text of the entire
21 report would be technical hearsay, but you are
22 offering what, pages five, six --

23 MS. BALLARD: Yes, five through 37.

24 MR. TORCHINSKY: Your Honor, if they want
25 to submit the charts separately, I guess we don't

1 have any objection to that, but the report itself, as
2 you indicated, is hearsay and we have an objection to
3 that.

4 JUDGE SMITH: Yes, I --

5 MR. TORCHINSKY: And Mr. McGlone testified.

6 JUDGE SMITH: As I -- as we go through
7 this -- let's simply go through it page by page. The
8 first page, page six, are charts. Page seven is,
9 likewise, a chart of the First Congressional District
10 vote share. It does character -- the written matter
11 appearing below does characterize both the district
12 and what the exhibit demonstrates, but that's been
13 testified to previously. We'll -- so long as we --
14 as has been obvious from the start, this is a
15 non-jury proceeding. The Court will certainly ignore
16 any written matter that constitutes hearsay. We'll
17 give what weight we believe is appropriate to the
18 charts that are contained on pages six through 38.
19 They are, therefore, admitted with that limitation.

20 (Plaintiffs' Exhibit 8, McGlone report, is
21 admitted into evidence.)

22 MS. BALLARD: Okay. We have no Exhibit 9,
23 Your Honor. It has been withdrawn.

24 JUDGE SMITH: Very well. 9 is withdrawn.

25 MS. BALLARD: Okay. Exhibit 10 is Anne

1 Hanna's first report, as a matter of fact, yes,
2 original report.

3 MR. TORCHINSKY: Your Honor, we have the
4 same objections to that. It's all hearsay and
5 there's no charts.

6 JUDGE SMITH: Ms. Hanna testified and she
7 testified I think -- she testified to that which has,
8 most importantly, or in the view of counsel, been
9 most importantly highlighted, those five items
10 appearing on page four of her report. We'll -- we
11 will admit Exhibit 10, again, subject to the Court's
12 not giving any evidentiary weight to matter which she
13 has not testified to, and also subject to our
14 consideration of page four beginning at -- however,
15 given the tendency down to the bottom of the page
16 listing items one, two, three, four, and five.

17 MS. BALLARD: All right, Your Honor, if I
18 understand the ruling, it's admitted in whole subject
19 to the Court considering the weight of portions of
20 it?

21 JUDGE SMITH: Well, it's subject to the
22 Courts also considering the hearsay nature of
23 possible matter in the first three pages of the
24 report.

25 MS. BALLARD: Okay.

1 JUDGE SMITH: That is to say matter that
2 has not been testified to by Ms. Hanna.

3 (Plaintiffs' Exhibit 10, Hanna report, is
4 admitted into evidence.)

5 MS. BALLARD: All right. 11, Your Honor,
6 is Ms. Hanna's supplemental report in which she
7 discusses what she found in the Turzai data set and
8 also includes maps. Now, her testimony on this --
9 the reason I think it's a good idea to have the Court
10 admit this supplemental report is that her testimony
11 about what she found in the Turzai data was very
12 technical, you know, an analysis of the GIS data, and
13 what this supplemental report does is it reiterates
14 what she found, how she found it, how she decoded
15 what was in it and what parts of it were difficult to
16 decode. And we just think that, you know, we could
17 have taken three days with her and we decided not to,
18 and I think that this supplemental report would be
19 very helpful. And it does also contain maps, which
20 would not be hearsay.

21 MR. TORCHINSKY: Your Honor, we have the
22 same objections to this as we do to the others.

23 JUDGE SMITH: Yes, I understand. And the
24 document itself as a whole is technical hearsay, but
25 we will admit it subject to the same conditions that

1 we admitted a previous exhibit it two.

2 (Plaintiffs' Exhibit 11, Hanna supplemental
3 report, is admitted into evidence.)

4 MS. BALLARD: All right. Exhibit 12, Your
5 Honors, is the --

6 JUDGE SMITH: To make plain, the Court will
7 not consider matter in any document that has
8 admitted -- been admitted that contains matter that
9 has not been subject to cross-examination from the
10 witness stand.

11 MS. BALLARD: Thank you, Your Honor. Okay.
12 We're on Exhibit 12, which is the legislative journal
13 for the December 20th, 2011, session of the House.

14 JUDGE SMITH: Is there -- just for ease of
15 our reference, is there a portion of this? It's a
16 lengthy document. And so, you know, most of it, I
17 presume, is not going to be relevant, but there is
18 some that is relevant. So --

19 MS. BALLARD: That is true, Your Honor, and
20 we could --

21 JUDGE SMITH: And it's a public document.
22 I'm sure it should come in. Just for our ease, it
23 would be nice to know what portion you're interested
24 in drawing our attention to.

25 MS. BALLARD: Yes, Your Honor. And I can

1 take a minute to --

2 MR. GORDON: Your Honor, the -- if I may?

3 MS. BALLARD: Yes.

4 MR. GORDON: The pages beginning bates
5 stamp 0121, Legislative Journal House, number 2728 in
6 the upper, left-hand corner, discussion of Senate
7 Bill 1249 begins on the right-hand column just about
8 an inch down from the top of the page. Here is
9 the --

10 JUDGE SMITH: All right. So this is
11 beginning on bates number 0121?

12 MR. GORDON: Correct. And it appears to
13 end on bates number 0129.

14 JUDGE SMITH: Appearing to end on bates
15 number 0129.

16 MR. GORDON: Let me double-check. I
17 believe that to be the case. Thanks.

18 JUDGE SMITH: That would seem to be the
19 case. There is a roll call vote on 0129.

20 MS. BALLARD: And they appear to turn their
21 attention to HB1399.

22 JUDGE SMITH: Which has to do with vehicles
23 and moved by my own then representative, so I don't
24 think it's of interest to this proceeding. Very
25 well, we admit that portion of exhibit --

1 MS. BALLARD: Okay.

2 JUDGE SMITH: We admit Exhibit 12. We'll
3 admit the entire document subject to the Court's
4 review only of those pages, which we're -- which have
5 been offered.

6 (Plaintiffs' Exhibit 12, Legislative
7 Journal, is admitted into evidence.)

8 MS. BALLARD: All right. Your Honors,
9 Exhibit 13 is an excerpt from the transcript of a
10 public hearing that the joint Senate and House State
11 Government Committee held in May of 2011, at which
12 time they invited presentations, testimony, whatever,
13 from the public about the redistricting project, and
14 the excerpt that we're interested in presenting to
15 the Court is essentially an admission by Senator
16 McIlhenny, who was running the meeting, who said on a
17 page that I had marked that they had already started
18 the process of redistricting as of this date in May.

19 MR. TORCHINSKY: Your Honor, is this
20 admissions of exhibits or is this testimony from Ms.
21 Ballard at this point?

22 JUDGE SMITH: Well, I don't regard it as
23 testimony, I regard it as an explanation from her as
24 to what this exhibit is. Has the legislative
25 defendants' side seen this proffered exhibit

1 previously?

2 MR. TORCHINSKY: Your Honor, our exhibit
3 list includes the entire transcript from the hearing,
4 not just the out-of-context excerpts that Ms. Ballard
5 is interested in.

6 MS. BALLARD: This exhibit was produced by
7 Senator Scarnati and you can see Senator Scarnati's
8 bates stamps numbers at the bottom.

9 MR. TORCHINSKY: Your Honor, we would just
10 like to make sure the complete transcript is in, not
11 just Ms. Ballard's selected excerpts.

12 JUDGE SMITH: Well, I'll tell you what,
13 you -- when we get to your exhibits you can move that
14 or such portions thereof as you wish.

15 MR. TORCHINSKY: Thank you, Your Honor.

16 JUDGE SMITH: We will admit Plaintiffs' 13.
17 (Plaintiffs' Exhibit 13, transcript
18 excerpt, is admitted into evidence.)

19 MS. BALLARD: 14 we have withdrawn.

20 JUDGE SMITH: 14 is withdrawn.

21 MS. BALLARD: Exhibit 15 consists of
22 documents that were produced by Senator Scarnati that
23 you might think they were redacted, but they're not.
24 They just -- they are Outlook calendar -- copies of
25 Outlook calendar entries, all of which demonstrate

1 the -- that Senator Scarnati was invited to a meeting
2 with various people, often including a
3 congressperson, concerning redistricting. So
4 these -- you know, these are essentially a record of
5 Senator Scarnati's participation and discussions with
6 congressman about the 2011 map.

7 MR. TORCHINSKY: Your Honor --

8 JUDGE SMITH: These have been produced by
9 Senator Scarnati to --

10 MS. BALLARD: Yes, Your Honor. You can see
11 Senator Scarnati's bates stamp numbers in the bottom
12 of the pages and then our numbers right under that
13 because we turned around and produced them as --

14 JUDGE SMITH: Well, yes.

15 MS. BALLARD: -- part of our production.

16 JUDGE SMITH: Counsel?

17 MR. TORCHINSKY: Your Honor, we don't
18 object to the introduction, we just object to Ms.
19 Ballard's characterizations of what they reflect.

20 JUDGE SMITH: Understood. And perhaps in
21 closing argument, whether it's -- whether we are able
22 to conduct it this week or whether it's at a later
23 time, these documents can be put in appropriate
24 context by counsel. But there being no objection,
25 Plaintiffs' Exhibit 15 is admitted.

1 (Plaintiffs' Exhibit 15, Outlook calendar
2 entries, is admitted into evidence.)

3 MS. BALLARD: All right. Plaintiffs' 16,
4 Your Honor, is -- Your Honors, is the first 23 items
5 in the -- in the parties' joint statement of
6 stipulated and undisputed facts, and it consists of
7 the schedule of dates that this bill went through.
8 It just makes it easier to understand when it was
9 introduced to the Senate, when it came out to the --
10 you know, who were the primary sponsors? I mean
11 certainly Your Honors can read it, but we thought
12 this would just be helpful.

13 JUDGE SMITH: All right.

14 MS. BALLARD: It's stipulated facts.

15 JUDGE SMITH: But -- and by joint, you mean
16 this has been signed onto by counsel for the
17 legislative defendants?

18 MR. TORCHINSKY: Yes, Your Honor.

19 MS. BALLARD: Yes.

20 MR. TORCHINSKY: It's been filed with the
21 Court, but the complete document has been filed with
22 the Court, not just the selective paragraphs that Ms.
23 Ballard is attempting to introduce into evidence
24 here.

25 JUDGE SMITH: Are there more pages than the

1 three, Ms. Ballard?

2 MS. BALLARD: Well, there are, Your Honor.
3 These are the only pages that have to do with the
4 legislative history.

5 JUDGE SMITH: All right.

6 MS. BALLARD: And we just put these in
7 because they --

8 JUDGE SMITH: Okay. Again, they'll --

9 MS. BALLARD: -- give you the legislative
10 history.

11 JUDGE SMITH: -- be admitted to the extent
12 that pages one through three are relevant, and if --
13 I mean you have a right to adduce evidence in support
14 of your case, and if the defendants wish to move the
15 admission of anything that is from that document that
16 is supportive of their case, they're certainly free
17 to make such motion.

18 (Plaintiffs' Exhibit 16, stipulated facts,
19 is admitted into evidence.)

20 MS. BALLARD: All right.

21 (Pause in proceedings.)

22 MS. BALLARD: All right, Your Honor, 17
23 through 20 we are going to withdraw. They were going
24 to be part of Anne Hanna's testimony, but we didn't
25 get there. So we're withdrawing 17 through 20.

1 JUDGE SMITH: Very well. Exhibits 17, 18,
2 19, and 20 are withdrawn --

3 MS. BALLARD: All right.

4 JUDGE SMITH: -- by the plaintiff.

5 MS. BALLARD: Exhibit 21 is of the map that
6 Ms. Hanna testified to that she created by taking the
7 Republican and Democrat data out of the Turzai
8 production and created this map.

9 JUDGE SMITH: 21 will be admitted.

10 (Plaintiffs' Exhibit 21, map, is admitted
11 into evidence.)

12 MS. BALLARD: And I believe she testified
13 about 21, 22, 23, 24 --

14 MR. TORCHINSKY: Excuse me, Your Honor. We
15 can't verify what she testified to. There was one
16 demonstrative state-wide map held up during Ms.
17 Hanna's testimony that had the red and blue and white
18 splotches on it, but I don't think there were three
19 different large maps presented to the Court during
20 her testimony. I think there was just one, I think
21 just the one that's behind tab -- I think just the
22 one that's behind tab 21 was the only one that was
23 held up by Mr. Gordon during her testimony.

24 JUDGE SMITH: Mr. Gordon, can you be of
25 assistance here, please?

1 MR. GORDON: I can, Your Honor. Mr.
2 Torchinsky is correct as to 21. That was the data
3 without the congressional lines. He is incorrect --

4 JUDGE SMITH: I believe --

5 MR. GORDON: -- in my memory --

6 JUDGE SMITH: And I believe I just admitted
7 21, did I not?

8 MS. BALLARD: You did.

9 JUDGE SMITH: Yes. Otherwise --

10 MR. GORDON: The -- and the I believe -- I
11 believe she had in her -- I'm sorry, I can be wrong.
12 I think --

13 JUDGE SHWARTZ: Maybe I can help you, if
14 that's all right?

15 JUDGE SMITH: Yes.

16 MR. GORDON: She had in her supplemental --

17 JUDGE SHWARTZ: I have --

18 MR. GORDON: -- in her supplemental
19 report --

20 JUDGE SHWARTZ: I have --

21 MR. GORDON: Yes?

22 JUDGE SHWARTZ: As you were -- as you were
23 showing things to the witness yesterday, bates number
24 761, 762, 763 seem to have been ident -- presented to
25 her during her testimony. And I'm looking at counsel

1 collectively to see if that's consistent with you
2 notes, which is listed as Exhibits 23, 24, 25, but
3 I'd ask you to double-check me.

4 MR. GORDON: Your Honor, I don't doubt your
5 notes.

6 JUDGE SHWARTZ: Okay.

7 MR. GORDON: Sure. So --

8 JUDGE SMITH: All right. So --

9 MR. GORDON: -- I agree that bates stamp
10 060 was -- sorry, Your Honor.

11 JUDGE SMITH: We'll admit Plaintiffs' 23,
12 24, and 25.

13 (Plaintiffs' Exhibits 23, 24, and 25, maps,
14 are admitted into evidence.)

15 (Pause in proceedings.)

16 MR. GORDON: I have a recollection that Ms.
17 Hanna also testified about 22, and that was in her
18 supplemental report. The images were in her
19 supplemental report. What it shows is the red, blue
20 data applied to the 2000 map.

21 JUDGE SMITH: We'll reserve ruling and make
22 a determination from the record as to whether or not
23 there's sufficient testimony to support the admission
24 of 22.

25 MR. GORDON: Thank you, Your Honor.

1 MR. TORCHINSKY: Your Honor, the only thing
2 I object to, I think the character -- I think what
3 Mr. Gordon was referring to is the 2002 map, not the
4 2000 map, when he was describing that exhibit.

5 MR. GORDON: Correct.

6 JUDGE SMITH: All right.

7 MR. GORDON: So just for clarify, Your
8 Honor, we're -- so we're admitting 23, 24, and 25?

9 JUDGE BAYLSON: My notes show she was shown
10 those, 23, 24, and 25.

11 MS. BALLARD: Okay.

12 MR. GORDON: All right, I just want to 100
13 percent sure on Judge Baylson's comments, which
14 exhibits are you -- are we allowing?

15 JUDGE BAYLSON: 23, 24, and 25. I have
16 notes that she testified about those but not 22.

17 MR. GORDON: Thank you, Your Honor.

18 JUDGE SMITH: They have been admitted.

19 (Pause in proceedings.)

20 MS. BALLARD: We'll withdraw 26, Your
21 Honor.

22 JUDGE SMITH: 26 is withdrawn.

23 MS. BALLARD: All right. 27 we'll
24 withdraw.

25 JUDGE SMITH: 27 is withdrawn.

1 (Pause in proceedings.)

2 MS. BALLARD: 28 we would withdraw.

3 JUDGE SMITH: 28 is withdrawn.

4 MR. TORCHINSKY: I'm sorry, what happens
5 with 26?

6 MR. GORDON: 26 was withdrawn.

7 MR. TORCHINSKY: Is that withdrawn?

8 MS. BALLARD: Withdrawn.

9 MR. TORCHINSKY: Okay. I'm sorry.

10 MS. BALLARD: Okay. 29 is another
11 transcript of the Legislative Journal. This is of
12 the general assembly, December 14th, 2011. And,
13 again, we would -- we'll draw the Court's attention
14 to particular parts of it that deal with this bill.
15 It's long. I'm not in a position to fight it right
16 nw.

17 JUDGE SMITH: All right. Well, we will --
18 we will admit Plaintiffs' Exhibit Number 29 and
19 request that counsel supply us with reference to the
20 specific pages which are relevant to this proceeding.

21 (Plaintiffs' Exhibit 29, transcript
22 excerpt, is admitted into evidence.)

23 MS. BALLARD: Okay. All right.

24 (Pause in proceedings.)

25 MS. BALLARD: Exhibit 30, Your Honor, is

1 various documents taken off the website of the REDMAP
2 organization. Some of them are covered by
3 declarations of Michael Persoon to just to confirm
4 that he actually did get them off of the REDMAP
5 website. And we would like to put them in as
6 evidence of the REDMAP program and what it said about
7 the Pennsylvania project.

8 JUDGE SMITH: Well, there is more to Number
9 30 in an aggregate sense than just Mr. Persoon's
10 affidavit and the REDMAP documents. I think there
11 are then other documents from other sites.

12 MR. TORCHINSKY: Your Honor, we have
13 objections to this based on the hearsay and even
14 relevance. There's not a single witness who
15 testified to any relationship or even anything about
16 the existence of REDMAP. The only place it appears
17 in this case is actually in the complaint, and there
18 has been no evidence that backs up anything about
19 REDMAP from anybody anywhere.

20 MS. BALLARD: We'll withdraw Exhibit 30.

21 JUDGE SMITH: All right. He is correct in
22 terms of the condition of the record. Let me make
23 this admission, however, that I did look at the
24 REDMAP site because it was referenced in the
25 complaint. I didn't look at any of the other matter

1 that is set forth here in Exhibit 30.

2 MS. BALLARD: Your Honors, my co-counsel
3 has just handed me the excerpt from Exhibit 29 that
4 has the pages that we would refer to the Court to,
5 discussion of Exhibit -- of Senate Bill 1249. Shall
6 I recite those page numbers now?

7 JUDGE SMITH: Yes, please.

8 MS. BALLARD: Okay. Would it be better to
9 use our bates numbers or the journal numbers at the
10 top?

11 JUDGE SMITH: Why not use both?

12 MS. BALLARD: All right. Yes. I'm going
13 to ask -- right.

14 MR. MORALES-DOYLE: We have the first page
15 here for reference purposes, but there's actually
16 nothing on there. The first reference to Senate Bill
17 1249 is on bates stamp 766.

18 JUDGE SMITH: Which is page --

19 MR. MORALES-DOYLE: 1363.

20 JUDGE SMITH: -- 1363 of the journal.

21 MR. MORALES-DOYLE: I'm sorry, I missed
22 which pages you liked better. Yes, 1363 of the
23 journal.

24 JUDGE SMITH: Use both.

25 MR. MORALES-DOYLE: Okay. And then the

1 next reference is not until bates stamp 800, page
2 1397 of the journal. But that runs all the way
3 through page 814 -- bates stamp 814, journal page
4 1411. I will say a large percentage of that is
5 descriptions of actual districts and proposed
6 amendment, but that is all 1249.

7 JUDGE SMITH: Very well. Thank you.

8 MS. BALLARD: Exhibit 31 is Mr. McGlone's
9 supplemental report in which he describes the review
10 of the Turzai data that was produced after his
11 deposition. And it does contain map -- district maps
12 that he testified to. And we do have an Exhibit 32,
13 images only, but I think that is from his first
14 report. So yes, Exhibit 31 is his supplemental
15 report. It contains new district maps. And I
16 believe here he was using the Turzai data instead of
17 the Harvard data.

18 MR. GORDON: Correct.

19 MR. TORCHINSKY: Your Honor, he testified
20 to that during trial, so as long as it's -- the
21 report is submitted to the -- subject to the same
22 restrictions as before, which is basically for the
23 graphics, we don't have any objection to that.

24 JUDGE SMITH: Correct. We will admit it
25 for purposes of the graphics. The written matter

1 that is descriptive and if not otherwise testified to
2 will not be considered. So 31 is admitted subject to
3 those limitations.

4 (Plaintiffs' Exhibit 31, McGlone
5 supplemental report, is admitted into evidence.)

6 MS. BALLARD: All right, thank you.
7 Exhibit 32 is just the graphics from Exhibit 8, so we
8 can withdraw it because it's already in in the
9 McGlone report.

10 JUDGE SMITH: Very well. Thank you. 32 is
11 withdrawn.

12 MS. BALLARD: Exhibit 33 is a series of
13 emails.

14 MR. GORDON: Ms. Ballard, may I interrupt?

15 MS. BALLARD: Yes.

16 MR. GORDON: 33 may be useful because there
17 was --

18 MS. BALLARD: 32?

19 MR. GORDON: 32 may be useful --

20 JUDGE SMITH: Are you speaking to us or are
21 you speaking to co-counsel?

22 MR. GORDON: I'm speaking to you, Your
23 Honors.

24 JUDGE SMITH: All right.

25 MR. GORDON: If we could revisit the issue

1 of 32 rather than withdraw it? It has blowups of the
2 same images that are in the McGlone report, Exhibit
3 31, and they're larger and I think they may be easier
4 to see. So I ask that both be admitted so that the
5 Court, you know, can take its -- take its choice of
6 which one.

7 JUDGE SMITH: Okay. If that's the case,
8 the most that could be said is that they're
9 duplicative, and I -- my eyes these days prefer large
10 to small, so 32 will be admitted.

11 (Plaintiffs' Exhibit 32, Exhibit 8 images,
12 are admitted into evidence.)

13 MS. BALLARD: All right. 33 is a series of
14 emails that were produced by Speaker Turzai and they
15 relate to the redistricting process. They show
16 meetings with congressman, et cetera, and I think
17 they're relevant to try to fill in the gaps that
18 are -- that exist in his deposition to some degree
19 of -- some meetings or conversations he had with
20 various staffers and, to some degree, the outsiders.

21 MR. TORCHINSKY: Your Honor, I think our
22 objection here is that there's a lot of documents in
23 here that did not originate with Mr. Turzai and were
24 just sent to him. So they're hearsay and they're
25 basically statements of people that aren't even

1 witnesses in this case.

2 JUDGE SMITH: I'd like to reserve ruling on
3 these. I've not read them and I'd like to read them
4 first.

5 MS. BALLARD: All right.

6 (Pause in proceedings.)

7 MS. BALLARD: And that I believe -- even
8 though there are more tabs, I think that is our last
9 exhibit.

10 JUDGE SMITH: Are you -- are you planning
11 on calling Speaker --

12 MS. BALLARD: Oh, no, the grey scale.

13 MR. GORDON: The grey scale map was 34.

14 MS. BALLARD: Exhibit 34 is not on the
15 list.

16 JUDGE SMITH: Excuse me, I was starting to
17 ask a question.

18 MS. BALLARD: Oh, I'm sorry, Your Honor.

19 JUDGE SMITH: Will Speaker Turzai be
20 testifying?

21 MS. BALLARD: No, Your Honor.

22 JUDGE SMITH: All right.

23 MS. BALLARD: Not in our case.

24 JUDGE SMITH: Understood. From the
25 defendants' case, do you --

1 MS. GALLAGHER: No, sir.

2 MR. TORCHINSKY: Your Honor, we have one
3 witness left and that's Professor Gimple (ph).

4 JUDGE SMITH: All right. I ask simply
5 because that might have abbreviated discussion on
6 Exhibit 33, which are the emails. Again, I would
7 like to reserve ruling on those pending my being able
8 to read them in their entirety, and if my colleagues
9 have not yet read them, give them an opportunity as
10 well.

11 MS. BALLARD: All right, Your Honor, so we
12 have recently added Exhibit P-34 --

13 JUDGE SMITH: That -- all right.

14 MS. BALLARD: -- which is one of the --

15 JUDGE SMITH: Yes, and that was testified
16 to at length earlier today.

17 MS. BALLARD: Okay. Yes, P-34 then, Your
18 Honor, we would move for admission.

19 JUDGE SMITH: Any --

20 MR. TORCHINSKY: No objections, Your Honor.

21 JUDGE SMITH: No objection. 34 is
22 admitted.

23 (Plaintiffs' Exhibit 34, grey scale map, is
24 admitted into evidence.)

25 (Pause in proceedings.)

1 MS. BALLARD: Oh, okay.

2 JUDGE SMITH: Question, the demonstrative
3 exhibits over to our right and your left which have
4 been used in the course of testimony so far, are they
5 going to be exhibit -- admitted as separate exhibits?

6 MS. BALLARD: They are all marked, Your
7 Honor, down in the corner as to which of the
8 plaintiffs exhibits -- they're all blowups of what's
9 in the book that Your Honors --

10 JUDGE SMITH: All right. So --

11 MS. BALLARD: -- have already admitted.

12 JUDGE SMITH: All right. So they've been
13 really used for demonstrative purposes only in open
14 court, and we have the actual evidence in exhibits
15 that have now been admitted?

16 MR. GORDON: Correct.

17 JUDGE SMITH: Very well. I mean we
18 appreciate that because I wasn't looking forward to
19 carrying them back into chambers, so good enough.

20 MR. GORDON: If you have bad eyes, let me
21 tell you --

22 JUDGE SMITH: It's your job.

23 MR. GORDON: -- they're really good. You
24 might want to keep them for reference. They're just
25 simply books.

1 JUDGE SMITH: Yes, what --

2 MR. GORDON: But there's one other --

3 JUDGE SMITH: We'll keep them --

4 MR. GORDON: -- exhibit that's important.

5 JUDGE SMITH: We'll keep them here.

6 MR. GORDON: Yes. The one other exhibit is
7 Exhibit 35, which is the grey scale -- the grey scale
8 map of P-34 with Ms. Hanna's markings on it. It's
9 there and I'd like to mark it now formally.

10 MR. TORCHINSKY: Excuse me.

11 MR. GORDON: It's still at the witness
12 table.

13 MR. TORCHINSKY: Your Honor, I'm not sure
14 what Mr. Gordon is referring to.

15 JUDGE SMITH: Yes, I'm not either. If you
16 would retrieve it, please --

17 MR. GORDON: Sure.

18 JUDGE SMITH: -- so we can all know what
19 you're referring to?

20 MR. GORDON: It is -- it is the grey scale
21 map that is P-34.

22 JUDGE SMITH: We've just admitted that.

23 MR. GORDON: I understand that. Where Ms.
24 Hanna had filled in the identity of members of
25 Congress, the incumbent members of Congress.

1 MR. TORCHINSKY: Your Honor, I think he can
2 take judicial notices of those home addresses.
3 They're part of the production record and where those
4 congressman --

5 JUDGE SMITH: If --

6 MR. TORCHINSKY: -- at the time lived.

7 JUDGE SMITH: You know, we -- if this is
8 marked 34, has that been marked?

9 MR. GORDON: It's not and I'd like it to be
10 marked as 35.

11 JUDGE SMITH: All right. Let's make it
12 34A. We will admit it as 34A.

13 (Plaintiffs' Exhibit 34A, marked up map, is
14 admitted into evidence.)

15 MR. GORDON: Thank you, Your Honor.

16 MS. BALLARD: Finally, Your Honor, we have
17 this colored-in version of one page of Plaintiffs'
18 Exhibit 25, which is already admitted. It's our
19 bates stamp 0763. We just colored in the Seventh
20 District for the convenience of the witnesses and we
21 would like to mark it --

22 JUDGE SMITH: 35?

23 MS. BALLARD: -- 35 and have it be
24 admitted.

25 JUDGE SMITH: Very well. 35 is admitted.

1 (Plaintiffs' Exhibit 35, colored map, is
2 admitted into evidence.)

3 MS. BALLARD: And that's it for our --

4 JUDGE SHWARTZ: Counsel, can you just
5 repeat again what the exhibit number that comes
6 from -- what -- it's the colorized version --

7 MS. BALLARD: Exhibit -- it's from P-25.

8 JUDGE SHWARTZ: P-25. Thank you.

9 MS. BALLARD: That's got the sticker.
10 Yeah. So that's it for our exhibits, Your Honors.

11 JUDGE SMITH: Very well. We've made
12 rulings on all but the various emails, et cetera, at
13 Exhibit 33. We'll rule at the appropriate time on
14 their admissibility.

15 MR. TORCHINSKY: Your Honor, I'm not
16 certain what the Court has in mind for the rest of
17 the day. Although the plaintiffs haven't rested yet
18 and we haven't had our opportunity to make the Rule
19 50 motion the Court afforded us, Professor Gimple is
20 here and we could start his direct examination if the
21 Court wanted to do that.

22 JUDGE SMITH: Well, I think plaintiffs have
23 another witness at least.

24 MR. TORCHINSKY: Oh, they do?

25 (Pause in proceedings.)

1 MR. TORCHINSKY: That's -- I'm sorry, Your
2 Honor. I thought they were out of witnesses for the
3 day.

4 JUDGE SMITH: No, I think there was a
5 reference to one exhibit we haven't -- or one
6 witness. We have not heard about the use intended to
7 be made of any intended deposition transcripts. And
8 speaking right now only for myself -- and my
9 colleagues can certainly decide to do otherwise -- we
10 did take out of courtesy and convenience one
11 important witness out of order. I would prefer to
12 continue plaintiffs' case in the order unless you
13 have some difficulty with --

14 MR. TORCHINSKY: No.

15 JUDGE SMITH: -- the attendance of your
16 witness.

17 MR. TORCHINSKY: Professor Gimple will be
18 here overnight tonight --

19 JUDGE SMITH: Very good.

20 MR. TORCHINSKY: -- and is prepared to
21 testify as soon as -- assuming the Court doesn't
22 grant our Rule 50 --

23 JUDGE SMITH: All right.

24 MR. TORCHINSKY: -- motion at the close of
25 plaintiffs' --

1 JUDGE SMITH: All right, very well.

2 MR. TORCHINSKY: -- case tomorrow.

3 JUDGE SMITH: Well, then let's proceed with
4 the plaintiffs' case.

5 MS. BALLARD: All right, Your Honor. The
6 remainder of our case is going to be offered in the
7 form of deposition testimony, which we've been trying
8 to do expeditiously.

9 JUDGE SMITH: Everyone has made herculean
10 efforts in that regard, and I know my colleagues are
11 very appreciative of that, as I am.

12 MS. BALLARD: All right, we have the
13 deposition transcripts of the remaining plaintiffs,
14 all of the plaintiffs who have not testified, and we
15 can give you a list, which I'm not in a position to
16 do right now. And then we have the deposition
17 transcripts of the witnesses whose testimony was
18 taken this morning, Senator Greg Vitali, Senator
19 Daylin Leach, and then two staffers, two of the staff
20 members who worked on that maps that Your Honors
21 ordered that we be permitted to take -- ordered
22 yesterday that we be permitted to take. One is named
23 William Schaller, and we will be offering --

24 JUDGE SMITH: What's the spelling of the
25 last name, S-H-A --

1 MS. BALLARD: It's S-C-H-A-L-L-E-R.

2 JUDGE SMITH: S-C-H-A-L-L-E-R.

3 MS. BALLARD: We'll be offering --

4 JUDGE SMITH: And the other?

5 MS. BALLARD: The other one is Greg -- I'm
6 sorry, Erik, with a K, Arneson, A-R-N-E-S-O-N.

7 JUDGE SMITH: Thank you.

8 (Pause in proceedings.)

9 MS. BALLARD: It's Representative Vitali.
10 I'm sorry, I called him a senator. And then if we
11 could, if we could --

12 JUDGE SMITH: Sometimes they mind and
13 sometimes they don't.

14 MS. BALLARD: And then if we could have the
15 Court's indulgence and permission, our last witness
16 would be a live witness, Senator Andrew Dinniman, and
17 he's ready to -- he's prepared to testify at 9:00
18 tomorrow morning.

19 JUDGE SMITH: So how are you proposing that
20 we proceed with deposition transcripts then?

21 MS. BALLARD: We would propose to submit
22 them in writing to the Court probably -- well, it's a
23 big pile and we're still waiting for some of the
24 transcripts to come in, but to submit them in writing
25 to the Court before the close of the -- all of the

1 testimony. Now, I gather that there's going to be a
2 motion to dismiss shortly, and I don't know whether
3 the Court would entertain that before we close with
4 Senator Dinniman, but I think we could get these
5 transcripts in to the Court by the end of the day
6 tomorrow.

7 MR. TORCHINSKY: Your Honor, if I could?
8 We're also under a court order to meet and confer
9 tonight about deposition designations and I believe
10 we have a call scheduled for 6:45. So we will
11 have -- I believe by tomorrow, we should have agreed
12 deposition designations for everybody that we have
13 depositions back from.

14 MR. PASZAMANT: May I, Your Honor? I'm
15 sorry, I -- you saw me depart yesterday and I just
16 came back this afternoon, the reason of course --

17 JUDGE SMITH: You're the only one in here
18 who has been getting any exercise the last two days.

19 MR. PASZAMANT: That's fair, Your Honor,
20 and I can use every minute of it. But, in fact, I
21 wasn't getting exercise, I was sitting in a
22 conference room conducting depositions and trial
23 testimony in this trial but somewhere else. The
24 concern I have, Your Honor, is that I conducted
25 Representative Vitali's deposition yesterday and we

1 have that transcript and we're working on it. Erik
2 Arneson's deposition was conducted this morning, as
3 was Senator Daylin Leach's. Part of this is just a
4 function of how quickly we can actually get the
5 transcripts for purposes of designating them. We're
6 moving as fast --

7 JUDGE SMITH: And that applies to both
8 sides.

9 MR. PASZAMANT: No, fair enough. But I
10 guess what concerns me a little bit is what I may be
11 hearing is they intend to just give you the entire
12 transcript, and I'm not --

13 JUDGE SMITH: No.

14 MR. PASZAMANT: I don't want to put words
15 in their mouth, but that's not what we had envisioned
16 and we're beholden to some --

17 JUDGE SMITH: It's not what we want, I can
18 assure you.

19 MR. PASZAMANT: Exactly. So we're beholden
20 to the court reporters in just how quickly they can
21 type and polish, so I'm (indiscernible) to commit to
22 close of business for tomorrow because I don't even
23 have the transcripts for today, that's all.

24 JUDGE SMITH: I trust you're hearing this,
25 that the court reporters are the most powerful people

1 in the system.

2 MS. BALLARD: Aren't they, Your Honor?

3 JUDGE SMITH: We understand the
4 constraints. Yes, but we're going to need specific
5 designations. With that in mind, the question is is
6 there -- is there any testimony that plaintiffs still
7 have to present other than Representative Vitali
8 first thing tomorrow? Otherwise --

9 MR. GORDON: I believe that was Dinniman,
10 Your Honor.

11 MS. BALLARD: It's Senator Dinniman, Your
12 Honor.

13 JUDGE SMITH: Or Dinniman, I'm sorry.
14 Representative Vitali will be what, by deposition?

15 MS. BALLARD: By deposition, Your Honor.

16 JUDGE SMITH: Okay. Yes, Dinniman is
17 tomorrow.

18 MS. BALLARD: Yeah. Then there's also the
19 issue, Your Honor -- okay, three plaintiffs -- okay,
20 and up to three plaintiffs tomorrow we hope to put
21 on -- we expect to put on. Then there's also the
22 outstanding issue, Your Honors, of the supplemental
23 production that the Court --

24 JUDGE SMITH: Well, just --

25 MS. BALLARD: -- ordered.

1 JUDGE SMITH: -- wait. Let me just --

2 MS. BALLARD: All right.

3 JUDGE SMITH: I mean what we're trying to
4 get a handle on right now is trial scheduling, and --

5 MS. BALLARD: Yes.

6 JUDGE SMITH: -- once that is set we'll
7 move to the next stage, which we had intended to do
8 in any event at 4:30. Let me just confer with my
9 colleagues.

10 (Pause in proceedings.)

11 JUDGE BAYLSON: All right, what --

12 MS. BALLARD: Your Honor, we do have one
13 other issue about --

14 JUDGE BAYLSON: Yes?

15 MS. BALLARD: -- the documents that the
16 Court ordered the defendants to produce in connection
17 with the motion for sanctions yesterday, to do an
18 additional search of documents from the Republican
19 caucus, and we're expecting those documents. And we
20 may have to ask the Court's indulgence to see whether
21 there's any additional brief discovery we would feel
22 entitled to as a result of what gets produced.

23 JUDGE BAYLSON: Well, that's what I was
24 just about to ask, the status --

25 MS. BALLARD: Okay.

1 JUDGE BAYLSON: -- of the motion for
2 sanctions. So when do you expect to get these
3 additional documents?

4 MS. BALLARD: Well --

5 MS. GALLAGHER: I don't know how -- I mean
6 that was part of the issue we had hoped
7 (indiscernible) conduct. We do not represent the
8 caucus.

9 JUDGE BAYLSON: No, I understand.

10 MS. GALLAGHER: You know, I mean and that
11 was part -- the memo --

12 JUDGE BAYLSON: Well, who is producing
13 them, Ms. Ballard? Who is producing these -- who is
14 producing these additional documents?

15 MS. BALLARD: I thought, Your Honor, based
16 on the colloquy yesterday, that Ms. Gallagher would
17 be producing them. At the deposition of Mr. Schaller
18 this morning, I understood him to say that the
19 Republican caucus was essentially the same set of
20 people as the Republican leadership in the House. So
21 I --

22 JUDGE BAYLSON: But -- no, the caucus
23 consists of all the leadership and all the rank --

24 MS. BALLARD: And all the ranking --

25 JUDGE BAYLSON: -- and file members.

1 MS. BALLARD: Yeah, all the ranking
2 members, yes, Your Honor. Thank you.

3 JUDGE BAYLSON: I think we're talking about
4 what, 203 members of the general -- of the House of
5 Representatives?

6 MS. BALLARD: All right. Yes, I think --

7 JUDGE BAYLSON: Well, did you have any of
8 these documents when you deposed Schaller or Aronson?

9 MS. BALLARD: No, Your Honor.

10 JUDGE BAYLSON: Well, did you talk -- did
11 you ask them questions about the documents?

12 MS. BALLARD: I think you may have asked
13 Erik Aronson about the documents, Mr. Persoon.

14 MR. PERSOON: Good morning, Your Honors.
15 Michael Persoon on behalf of the plaintiffs. I
16 deposed Erik Arneson, Aronson, this morning. He was
17 identified by Defendant Scarnati as a person who was
18 involved with the maps. Mr. Arneson, in turn,
19 identified a third person, but, you know, to the
20 point that we're talking about, I asked him
21 specifically about documents, including the question
22 I think Your Honors would be interested in, which is
23 were there draft maps, what was going on in the
24 drafting of the maps? He revealed to me first, that
25 he destroyed his files in 2015, and second, that

1 there was a separate computer server that was stored
2 in the -- I'm checking my notes to see if it was the
3 general Republican caucus or the Republican Senate
4 caucus that Senator Scarnati had access to. And
5 those are some of the types of documents we would be
6 looking for.

7 JUDGE BAYLSON: Well, what's the status of
8 those being produced?

9 MR. PERSOON: I just discovery their
10 existence in the deposition this morning, Your Honor.
11 I don't know if there's any intent or willingness to
12 produce them.

13 MR. PASZAMANT: Your Honor, I'll --

14 JUDGE BAYLSON: Yes?

15 MR. PASZAMANT: -- speak to that. I'm
16 sorry, I --

17 JUDGE BAYLSON: Mr. Paszamant. Yes, sure.

18 MR. PASZAMANT: Yeah, very good, Your
19 Honor.

20 JUDGE BAYLSON: Please.

21 MR. PASZAMANT: So Mr. Arneson is the Chief
22 Information Officer for the Commonwealth of
23 Pennsylvania. He's part of the Executive Branch and
24 he has been for a couple years now. These documents
25 he left with the Senate and assumed that they would

1 be destroyed because he was no longer going to be
2 part of the legislative staff, as he had been for 20
3 years or however long he may have been.

4 JUDGE SMITH: Does he work for the
5 Secretary of the Commonwealth?

6 MR. PASZAMANT: I know --

7 JUDGE SMITH: You indicate he's with the
8 Executive Branch. I'm curious as to --

9 MR. PASZAMANT: He's an independent, Your
10 Honor. This -- there was a large lawsuit as to
11 whether Governor Wolf could take him --

12 JUDGE SMITH: Fired.

13 MR. PASZAMANT: -- out of office because he
14 had --

15 JUDGE SMITH: Yes. Yes.

16 MR. PASZAMANT: -- been appointed and so
17 on.

18 JUDGE SMITH: Right.

19 MR. PASZAMANT: I believe he's in the
20 Executive Branch, but he's sort of an island unto
21 himself. And I say that because I'm not fully versed
22 in terms of how that court ruling went. But the
23 point being that when he left the Senate he didn't
24 take any Senate documents. He certainly didn't take
25 any documents relating to redistricting and he has no

1 documents relating to redistricting right now.
2 There's no documents for him to produce. So these
3 documents that he left behind in 2015, I don't know
4 where they are. I don't know that they continue to
5 exist. He assumed that they would be destroyed. And
6 that's the story with those documents anyway.

7 MR. PERSON: May I respond, Your Honors?

8 JUDGE SMITH: Yes, sure.

9 MR. PERSON: The point wasn't that Mr.
10 Arneson should have been producing them, the point is
11 that Senator Scarnati, as a defendant, should have
12 produced them, should have used the diligence to look
13 at the documents.

14 JUDGE SMITH: Well, I'm not so sure because
15 I don't know what "them" is.

16 MR. PERSON: The doc -

17 JUDGE SMITH: What is the universe of
18 documents that you seek? Because, as we have just
19 heard and explained, there are two caucuses here.
20 They're not all subject, their members are not all
21 subject, to the absolute control or less than that of
22 their leaders. So I'm curious as to what it is
23 you're looking for because there's a question in my
24 mind, anyway, as to what responsibility the President
25 Pro Temp of the Senate and the Speaker of the House

1 has for documents other than those personalized to
2 them in their official capacities call President Pro
3 Temp and Speaker.

4 MR. PERSON: The documents that I
5 specifically investigated in discovery this
6 morning -- deposition, Chief Judge Smith, related to
7 this -- what was testified to as a separate computer
8 server stored by the -- it was -- and I can't recall
9 if it was the Republican caucus or the Republican
10 Senate caucus. There's a separate server that was
11 used in what was called the redistricting room that
12 stored the different draft maps that were the
13 predecessor to the map that was introduced in the
14 Senate bill that resulted in the 2011 map. And I
15 asked Mr. Arneson specifically. He was a long-time
16 Republican Senate staffer who worked closely with
17 Senator Pileggi and Senator Scarnati. He testified
18 at length to that. I asked him specifically if
19 Senator Scarnati had the right to go in and access
20 the documents on that server, and he said yes. So if
21 they're saying that the documents on the server are
22 gone -- I can stop if you have a question, Judge
23 Baylson.

24 JUDGE BAYLSON: Well, you took -- the
25 plaintiffs -- I forget exactly. You took the

1 depositions of Speaker Turzai and Senator Scarnati.
2 Were questions asked about these -- whether they knew
3 anything about these documents and whether they were
4 on a server or otherwise or in the possession -- was
5 there any questions asked about documents in the
6 possession of the caucus other than in the offices of
7 the Speaker or the Senate -- or the President Pro
8 Temp?

9 MR. PERSON: I would defer to Ms. Ballard,
10 who deposed --

11 JUDGE BAYLSON: Yes.

12 MR. PERSON: -- conducted those
13 depositions, Your Honor.

14 JUDGE BAYLSON: Sure. Thank you.

15 MS. BALLARD: With regard to the deposition
16 of Senator Scarnati, Your Honor, this was one of the
17 two depositions that were the subject of our motion
18 for sanctions.

19 JUDGE BAYLSON: Right.

20 MS. BALLARD: Senator Scarnati's counsel
21 instructed him not to answer any questions about the
22 deliberative process or communications with his
23 staff, and, therefore, we did not go that far into
24 those deposition -- into those documents.

25 JUDGE BAYLSON: What about Speaker Turzai?

1 I mean I read his. He answered a lot of questions
2 about these things.

3 MS. BALLARD: He did, Your Honor. Let's
4 see, I don't --

5 JUDGE BAYLSON: Well, he's the thing. I
6 mean we're in the middle of the trial and we're
7 learning now that there's a computer server that
8 nobody seems to know where it is or what it's status
9 is or who has access to it, and I don't, you know,
10 personally think that we should hold the record open
11 to find out all about this, to be honest with you,
12 since it really -- I'm not -- I'm not sure this would
13 have been covered. Well, the question is whether if
14 you had gotten more information from Senator
15 Scarnati, you would have learned about this.

16 MS. BALLARD: Well, I think it would have
17 been covered --

18 JUDGE BAYLSON: It doesn't seem -- from
19 what I looked at, the Turzai deposition, it doesn't
20 look like there were questions addressed to the
21 caucus or what might be in the possession of the
22 caucus and whether Speaker Turzai had control over
23 that. And that's the point Ms. Gallagher made in her
24 brief filed this morning.

25 MS. BALLARD: Oh, I'm sorry, I hadn't had a

1 chance to read that yet, Your Honor.

2 JUDGE BAYLSON: Well, maybe you should, and
3 maybe we should, once again, postpone this until
4 tomorrow morning and --

5 MS. BALLARD: Yeah. I think we would also
6 check with our -- check against our requests for
7 production and our interrogatories to see --

8 JUDGE BAYLSON: Yes.

9 MS. BALLARD: -- what might ought to --

10 JUDGE BAYLSON: Well --

11 MS. BALLARD: -- have been produced in the
12 privilege log.

13 JUDGE BAYLSON: And I don't now if Mr.
14 Aronchick think -- and his team think they represent
15 Mr. Arneson now or not and whether you could have any
16 discussion with him by telephone or through Mr.
17 Aronchick to find out what he knows about the current
18 situation of this server, whether it exists.

19 MR. PASZAMANT: Well, a couple of things --

20 MS. HANGLEY: Excuse me, can I --

21 MS. BALLARD: We have done that. We've
22 completed that --

23 JUDGE BAYLSON: Well, where is the --

24 MS. BALLARD: -- investigation with Mr.
25 Arneson for --

1 JUDGE BAYLSON: Where is this server? I
2 mean we know a server is a virtual animal but can --
3 I presume it's on magnetic tapes or things like that.
4 I don't know.

5 MS. BALLARD: It could be in the cloud.

6 MS. HANGLEY: Your Honors --

7 JUDGE BAYLSON: The cloud, exactly.

8 JUDGE SMITH: I know the executive
9 defendants would like to be heard.

10 JUDGE BAYLSON: Yes. Ms. Hanglely?

11 MS. HANGLEY: Yes. I can shed a little
12 light on two of those questions. Mr. Arneson is the
13 head of an independent agency. He is not a part of
14 the Executive Branch. We don't control him.

15 As for the server, the testimony this
16 morning was that it was controlled by the Senate
17 Republican caucus, for what help that is.

18 JUDGE BAYLSON: Well, who is in charge of
19 the Senate Republican caucus? There has to be an
20 individual who has responsibility for that.

21 MR. PASZAMANT: No, it's all the members of
22 the caucus, Your Honor.

23 JUDGE BAYLSON: Yes, but the President Pro
24 Temp is the nominal head of the caucus, I would
25 assume.

1 JUDGE SMITH: Or the -- or is the Majority
2 Leader?

3 MR. PASZAMANT: It's the Majority Leader,
4 Your Honors, that's the head of the caucus.

5 JUDGE BAYLSON: And who is that?

6 MR. PASZAMANT: It's Senator Corman. Yes,
7 Corman.

8 JUDGE BAYLSON: And who was it back in the
9 time that this all happened?

10 MR. PASZAMANT: Senator Pileggi, who is now
11 a Judge in Chester County. So -- and getting back to
12 an earlier question, my recollection perhaps is a
13 little bit clearer than Ms. Ballard's. There was not
14 a single question asked of Senator Scarnati during
15 his deposition with regard to where other documents
16 may be located, computer servers, what the Republican
17 caucus may happen to have, or anything akin to that.
18 And with regard to objections and instructions --

19 JUDGE SMITH: Well, and I presume that both
20 of you can show us where the other is incorrect by
21 pointing us to the deposition transcript tomorrow?

22 MR. PASZAMANT: Of course, Your Honor.

23 MS. BALLARD: Yeah. We would be referring
24 primarily, Your Honor, to our requests for production
25 and our interrogatories where we think these things

1 should have turned up on their privilege log and they
2 did not.

3 JUDGE BAYLSON: All right. Well, let's
4 defer that until tomorrow. We'll give you a chance
5 to make a showing, or if you want to file something
6 short, you can do so.

7 JUDGE SMITH: It sounds like, again, you
8 all have some work to do this evening. We will -- we
9 have two basic matters to deal with, the one arising
10 out of the request for sanctions and the discussion
11 we just had, the other relative to the discussion we
12 had just a short while ago regarding the remaining
13 evidentiary production here by the plaintiffs.

14 The panel has not decided at this point how
15 best we wish to have the deposition transcripts
16 presented to us. We'll be considering that and we'll
17 let you know tomorrow morning first thing how we want
18 to proceed with that. It may be, in part, dependent
19 upon just how lengthy those designated portions are
20 of -- and of how many witnesses. But we will --

21 MR. TORCHINSKY: Your Honor --

22 JUDGE SMITH: -- again, kick the can down
23 the road at least until tomorrow morning on that.

24 MR. TORCHINSKY: Your Honor, may I just --

25 JUDGE SMITH: Yes?

1 MR. TORCHINSKY: -- clarify one thing? The
2 sanctions motion that was filed Sunday night involved
3 the question of the documents that were on the
4 privilege logs from the Speaker and the Majority
5 Leader and -- sorry, the President Pro Temp and the
6 Speaker. This whole discussion of whether there are
7 other documents remaining from the House and Senate
8 caucuses was not raised in that sanctions motion, and
9 the one -- I think -- and at lunchtime, Ms. Gallagher
10 and plaintiffs' counsel reviewed the other remaining
11 documents that have been withheld on attorney-client
12 privilege. So I think everything that was actually
13 in the text of the sanctions motion has been
14 addressed by the Court and by --

15 JUDGE BAYLSON: Well, I'm not sure I agree
16 with that.

17 MR. TORCHINSKY: -- Ms. Gallagher now.

18 JUDGE BAYLSON: Part of the --

19 JUDGE SMITH: No, Judge Baylson is exactly
20 right. I mean that's what we don't know. And
21 speaking for myself, going back to the question I
22 asked a little bit ago, it seems to me that this may
23 turn on or turn entirely on the relationship, if any,
24 between the Speaker and the Republican caucus and
25 between the President Pro Temp and the Republican

1 caucus in the Senate, if there is any such
2 relationship other than the fact that they're all
3 members of it. So that's something that I'm pretty
4 certain is not at all clear on the record as it
5 currently stands, nor has anyone attempted to define
6 those relationships for us such that we can determine
7 who has a responsibility to disclose what.

8 MS. GALLAGHER: And to that point, Your
9 Honor, we did try to attempt to set that out in the
10 memorandum for guidance that we filed with the Court
11 this morning.

12 JUDGE SMITH: I -- and we have not had an
13 opportunity to give it considerable attention given
14 the pace of trial, but --

15 MS. GALLAGHER: Understood.

16 JUDGE SMITH: -- we will.

17 MS. GALLAGHER: We --

18 JUDGE SMITH: Is there anything else that
19 the plaintiffs would like to bring up at this time
20 before we recess for the day?

21 MS. BALLARD: Can I huddle with my team,
22 Your Honor?

23 JUDGE SMITH: Absolutely.

24 MR. TORCHINSKY: Your Honor, while they're
25 huddling I just have one other matter. We appear to

1 be approaching the end of the plaintiffs case in
2 chief tomorrow, and the Court's order from Friday
3 indicated we would have an opportunity to make a Rule
4 50 motion. Are you expecting an oral motion, a
5 written submission? What is it that the Court is --
6 how is the Court anticipating handling --

7 JUDGE SMITH: We'll leave that to you as
8 to -- you know, we'll certainly give you an
9 opportunity to make the motion and to present a
10 reasonable argument in a reasonable amount of time.
11 If you want to file some paper too, that's up to you.

12 MR. TORCHINSKY: Okay. And does the Court
13 anticipate ruling on that motion from the bench?
14 Should I have Mr. -- or Dr. Gimple prepared to
15 testify tomorrow? I --

16 JUDGE SMITH: Yes. Yes. Certainly you
17 should always have your witness prepared to testify
18 because we can't -- we can't tell you -- certainly we
19 can't tell you how we're going to rule and we can't
20 even tell you if we'll be able to rule.

21 MR. TORCHINSKY: Okay. Thank you, Your
22 Honor.

23 JUDGE SMITH: Ms. Ballard?

24 MS. BALLARD: I think that's all I have,
25 Your Honor. Thank you.

1 JUDGE SMITH: All right. Well, again, I --
2 we -- the panel thanks all of counsel and thanks the
3 witnesses who are still present for your
4 participation today. We're not objecting one bit to
5 finishing up before 4:15 as opposed to 5:00. We'll
6 see you here tomorrow at 9:00.

7 MR. TORCHINSKY: Thank you, Your Honors.

8 (Proceedings adjourned, 4:13 p.m.)

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10 * * *

I N D E X

| | <u>PLAINTIFFS' WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
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| 1 | | | | | |
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| 3 | | | | | |
| 4 | Jean Shenk | | | | |
| 5 | By Mr. Gordon | 36 | | 50 | |
| 6 | By Ms. Gallagher | | 42 | | |
| 7 | | | | | |
| 8 | Jason Magidson | | | | |
| 9 | By Mr. Gordon | 52 | | | |
| 10 | By Ms. Gallagher | | 60 | | |
| 11 | | | | | |
| 12 | Brian Burychka | | | | |
| 13 | By Mr. Gordon | 63 | | 74 | |
| 14 | By Ms. Gallagher | | 70 | | |
| 15 | | | | | |
| 16 | Joseph Landis | | | | |
| 17 | By Mr. Gordon | 75 | | 92 | |
| 18 | By Mr. Morris | | 83 | | |
| 19 | | | | | |
| 20 | William Ewing | | | | |
| 21 | By Mr. Gordon | 95 | | | |
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|----|------------------------------|---------------|--------------|-----------------|----------------|
| 1 | <u>DEFENDANTS' WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
| 2 | Nolan McCarty | | | | |
| 3 | By Mr. Torchinsky | | | 26 | |
| 4 | By Mr. Morales-Doyle | | 3 | | 33 |
| 5 | | | | | |
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CERTIFICATION

I, Michael Keating, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

12/6/17

Date



Michael Keating