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1 (The following was heard in open court at
2 9:03 a.m.)

3 JUDGE SMITH: Good morning.

4 ALL: Good morning, Your Honor.

5 JUDGE SMITH: As you all know, this is the
6 matter of Louis Agre, et al., versus Thomas W. Wolf,
7 et al., and this is the date and time scheduled for
8 commencement of trial in this matter before the
9 three-judge United States District Court panel. We
10 have endeavored to expedite this matter given its
11 public importance and the nature of the dispute. We
12 have also attempted through establishing some
13 specific time periods for each time to present their
14 respective cases, that is 15 hours to each side this
15 week, the opportunity to conduct the proceeding in
16 its entirety.

17 The panel has conferred numerous times over
18 the course of the last few weeks. We commend counsel
19 and the parties for their efforts to proceed
20 expeditiously, and we know the difficulties that that
21 has entailed because we've experienced them as well.

22 We have, of course, a few matters that
23 remain open, or to put it another way, have just
24 recently become open because of the late filing or
25 the recent filing of several motions, and we will

1 need to decide how we're going to proceed because it
2 was the intention of this Court to begin this morning
3 with opening statements and then to proceed to taking
4 evidence.

5 The panel, in conferring on Friday,
6 determined that with respect to the expert witnesses
7 and the motions filed pursuant to Daubert, that in
8 the interests of time and expedition, we would at
9 this time deny those motions and allow the testimony
10 to go forward, and we would then hear counsel on any
11 issues relative to that testimony, be it
12 qualifications of the other requisites of Daubert,
13 and then ultimately make our determinations with
14 respect to the issues that have been raised. In
15 short, there's simply not time to conduct traditional
16 Daubert hearings on any of those witnesses, so we
17 will proceed accordingly.

18 The question that I would have right now --
19 and I need to inquire first who will be proceeding
20 this morning for the plaintiff. Ms. Ballard, are you
21 lead? Who shall we be looking to? Mr. Geoghegan?

22 MS. BALLARD: Your Honor --

23 JUDGE SMITH: Yes?

24 MS. BALLARD: -- we're trying to use our
25 team in the most efficient way. This is Brian

1 Gordon.

2 MR. GORDON: Good morning, Your Honor.

3 JUDGE SMITH: Good morning.

4 MS. BALLARD: He will be handling the
5 expert witnesses, who are our first two witnesses
6 today, the heart of our case. They'll take a while.
7 Every other witness we have is quite short. This is
8 Thomas Geoghegan, who will be --

9 JUDGE SMITH: I've often cautioned counsel
10 that when you're talking to a Judge who is only 5'8",
11 referring to a "short witness" can have certain
12 implications.

13 MS. BALLARD: I do understand, Your Honor.

14 JUDGE SMITH: But for brevity, we
15 appreciate it.

16 MS. BALLARD: Yeah, it's like the one more
17 question, right?

18 JUDGE SMITH: Yes.

19 MS. BALLARD: We have Sean Morales-Doyle --

20 MR. MORALES-DOYLE: Good morning, Your
21 Honor.

22 MS. BALLARD: -- who will be handling some
23 of the lay witnesses, and we have Michael Persoon,
24 who is in the hallway, and he will be handling some
25 of the lay witnesses, as will I. Mr. Geoghegan will

1 be handling our opening.

2 JUDGE SMITH: All right, thank you. And
3 with that, let me --

4 MR. GORDON: Your Honor, one correction,
5 clarification. We have one witness that had to go
6 out of order because he's expected in Harrisburg for
7 voting, and that's Representative Greg Vitali, who is
8 here outside in the witness room.

9 JUDGE SMITH: All right.

10 MR. GORDON: So he would go first.

11 JUDGE SMITH: Well, that does raise a
12 question, but let me hear from the other parties as
13 to who will be doing what.

14 MR. TORCHINSKY: Thank you, Your Honor.
15 Jason Torchinsky from Holtzman, Vogel, Josefiak &
16 Torchinsky, representing Speaker Turzai and President
17 Pro Temp Scarnati. I will be handling the opening
18 and the expert witnesses. With me at counsel table
19 is Brian Gordon. He is representing --

20 MR. GORDON: No, not Brian Gordon.

21 MR. TORCHINSKY: Brian Paszamant, wrong
22 Brian. Brian Paszamant, he represents Senator
23 Scarnati. We will be sort of switching off with the
24 other witnesses. Also with me at counsel table is
25 Mark Brighton, also representing Speaker Turzai,

1 although I believe his pro hac vice motion is pending
2 with the Court. And lastly, Kathy Gallagher from
3 Cipriani & Werner, also representing Speaker Turzai.

4 JUDGE SMITH: All right, thank you. And --

5 MR. ARONCHICK: Mark Aronchick for the
6 executive defendants, and I would expect that there
7 might be occasions where Michelle Hangley, who is
8 with me, might have to address an issue.

9 JUDGE SMITH: Very well. Thank you. Thank
10 you very much. Let me just say very quickly and
11 preliminarily that while the three-judge panel
12 statute is -- the panel itself is a rather unusual
13 creature. There are on this panel three experienced
14 trial Judges, even though the composition is a
15 District Judge and two Court of Appeals Judges.
16 We'll try to move the matter along and try to rule as
17 quickly as possible where it's called upon that we do
18 so. Having to do that by majority is not something
19 that any of us are all very experienced with, but
20 we'll do it as best we can.

21 That said, the first issue that occurs to
22 me is that while the panel had anticipated prior to
23 first thing this morning and prior to the weekend
24 that we would move immediately into opening
25 statements, that we do have a motion relative to the

1 plaintiffs' request to add witnesses to their witness
2 list, and we can, as the panel sees it, proceed one
3 of two ways. If the plaintiff would like to make an
4 opening statement first and then proceed with the
5 case, we can do that and reserve our ruling on these
6 matters until perhaps midday or even the end of the
7 day, or we can deal with the motion immediately.

8 With the information that Senator Vitali
9 would be going first -- he is one of the recently-
10 included witnesses I believe and that poses a
11 problem. I think we are going to have to deal with
12 that -- with that question and the legislative
13 defendants' motion that we exclude. From the -- from
14 the plaintiffs' side, Ms. Ballard, do you want to
15 speak to that or one of your colleagues?

16 MR. GORDON: Your Honor, according to --
17 Your Honors, I guess, plural, according to your
18 procedural order regarding trial, paragraph eight,
19 it -- this was the first time we were directed in
20 this unusual and expedited matter as to when to
21 identify our witnesses, and it indicates, "The
22 parties shall file and serve by 3:00 p.m. on Friday,
23 December 1st, a list of witnesses they intend to
24 call." And then you go on, "may submit" -- "shall
25 specify in sequential order the witnesses to be

1 called on Monday, December 4th"

2 We have fully complied with that order,
3 and, in fact, preceding that, Ms. Ballard reached out
4 to plaintiffs' counsel and said do you want -- do you
5 all want to set a date where we exchange notification
6 of witnesses, to which there was -- there was not
7 reply.

8 So we have fully complied with the Court's
9 order. We have three legislative defendants -- I'm
10 sorry, three legislative witnesses. They are two
11 state senators and one state representative. The
12 offer of proof for these witnesses are important in
13 terms of being able to get in to evidence several
14 issues. The pacing -- the fact that the -- that
15 Senate Bill 1249 went through the Pennsylvania
16 legislature at great speed with procedural
17 regularities adds to the circumstantial evidence that
18 it was not a deliberative process. And
19 Representative Vitali -- and then we have one
20 additional witness, and this is just someone who, for
21 a variety of reasons, I did not decide to choose as a
22 plaintiff. We had actually over 60 -- we had 64
23 people who asked to become plaintiffs in this case.
24 And his name is Mike Wilcox and he's coming all the
25 way down from Erie to testify in this matter.

1 In addition to -- we're not going to call
2 all of the plaintiff witnesses. Some will be by
3 deposition, but we've identified 11 likely plaintiff
4 witnesses we intend to call to testify. We might not
5 call all of them.

6 I felt that you should have a picture of
7 the harms of the plaintiffs from each of the -- each
8 of the regions and types of districts.

9 JUDGE SMITH: Well, I don't think we need
10 to get into that, at least not at this juncture.

11 MR. GORDON: Okay.

12 JUDGE SMITH: But my concern is that the
13 issue has been squarely raised with regard to the
14 language of Rule 26(e)(1).

15 MR. GORDON: Yeah.

16 JUDGE SMITH: And I take it that your
17 position, as you began your presentation, is you were
18 timed.

19 MR. GORDON: Yes.

20 JUDGE SMITH: The Subsection (a) begins,
21 "In a timely manner...", so if you have indeed been
22 timely, then the defendants' position is not well-
23 taken, but I will need to hear from them as to their
24 response to that.

25 MR. GORDON: They were --

1 JUDGE SMITH: If it is not timely, then I
2 think we need to move otherwise to the language of
3 37(c) (1) and whether or not any delay was
4 substantially justified as harmless.

5 MR. GORDON: Just to add one small thing,
6 they were timely notified in our witness list before
7 the time of 3:00 p.m. Friday, December 1st. And
8 secondly, in addition to the rule that you've
9 identified, it's my understanding that all of the
10 Rules of Civil Procedure are always subject to a
11 court order which says otherwise. Thank you.

12 JUDGE SMITH: Yes, thank you. I'm assuming
13 that the executive defendants aren't going to weigh
14 in on this, Mr. Aronchick?

15 MR. ARONCHICK: We are not.

16 JUDGE SMITH: All right, thank you. And
17 who will be responding for the defendants?

18 MR. PASZAMANT: Excuse me, Your Honor. I
19 don't know if you can hear me without trying to inch
20 up alongside the microphone. Brian Paszamant from
21 Blank Rome for Senator Scarnati, but I'll be speaking
22 on behalf of all the legislative defendants. Your
23 Honor has hit the nail on the head. This
24 identification of witnesses was anything but timely.
25 And it's not an issue of being in compliance with the

1 Court's order of Friday at 3:00 p.m. and disclosing
2 Friday at 3:00 p.m. The timeliness really turns, in
3 the legislative defendants' eyes, as we set forth in
4 our motion, on the fact that we asked them, the
5 plaintiffs that is, by interrogatory on October 13th
6 to identify their witnesses or who they thought their
7 witnesses might be. On November 13th, which in this
8 case seems like an eternity ago, we got responses.

9 JUDGE SMITH: I think we'll all agree with
10 you on that.

11 MR. PASZAMANT: And we got responses.
12 Within those responses. There are six different
13 witnesses that we've identified in our motion that
14 were not identified. In fact, they didn't identify
15 who their witnesses would be at all. And as this
16 Court is well aware, we've had all kinds of issues
17 with getting the plaintiffs' depositions scheduled
18 and so on and so forth. Nowhere during that period
19 of time did we hear, for example, that Senator Greg
20 Vitali was going to be coming to trial today to offer
21 testimony on whatever it is that he intends to offer
22 testimony on. The same holds true with Senator
23 Andrew Dinniman, Rachel Strassheim, Senator Daylin
24 Leach, Mary Ellen Balchunis, and Mike Wilcox, who it
25 sounds like is coming from a long distance away, but

1 the facts remains is until Friday at 3:00 p.m. or
2 thereabouts, we didn't even know that this individual
3 existed, much less that he was planning on coming to
4 trial today or tomorrow to provide some sort of
5 testimony.

6 Your Honor, this is the quintessential
7 sandbag that's occurring to us here. We have gone to
8 extraordinary lengths to get all the plaintiffs'
9 depositions done as best we could, including dealing
10 with an individual in Egypt and another plaintiff in
11 Argentina, and yet we find ourselves standing here
12 today not knowing what these individuals plan on
13 saying. This -- while it's true that the plaintiffs
14 have complied with the order requiring identification
15 of witnesses, it's equally true that we have been
16 asking and we have heard crickets in terms of who
17 their witnesses would be. It is highly prejudicial
18 and completely unfair to allow them to stroll in with
19 new witnesses today that we know nothing about other
20 than the fact that two or three of them are senators,
21 somebody is a house representative, and some
22 individual came in from Erie. That, even given the
23 expedited time frames we've been dealing with and the
24 lengths that we've been going to to accommodate
25 everybody's schedule, telephone, Skype, foreign

1 countries, that's not what it's supposed to be about,
2 respectfully, Your Honor.

3 JUDGE SMITH: Let me confer with my
4 colleagues and see if we can determine how to
5 proceed.

6 MR. PASZAMANT: Thank you, Your Honor.

7 (Pause in proceedings.)

8 JUDGE SMITH: All right. First, the Court
9 has determined that the unexplained nature of the
10 addition at least of Senator Vitali at this point
11 would lead to unfairness were we to allow him to
12 participate as a first witness in the case. We are
13 not precluding his testimony, certainly not at this
14 point, but we do believe that given the inability of
15 the defendants to conduct a deposition, having
16 plaintiffs lead off with Senator Vitali as a witness
17 is potentially unfair. So that is our ruling with
18 respect to him.

19 With respect to all of the recently-
20 disclosed intended witnesses who are listed on pages
21 two through three of the memorandum of the
22 legislative defendants in support of the motion to
23 exclude, and assuming that that list is A through H,
24 a complete list of those who will call -- will be
25 called or may be called, we believe that plaintiffs

1 should make an offer of proof at this time, indicate
2 to the Court why any of these witnesses were not
3 previously revealed. I must indicate to you that
4 there is a concern on the part of the Court, in
5 particular, why witnesses who, in fact, are members
6 of the legislature were not previously named or
7 revealed. I would also mention at this time, because
8 the Court will have to make this determination,
9 again, we are under strict time requirements and we
10 have not yet resolved at this point whether or not we
11 will deduct time on these motions from one party or
12 the other or both. So I just ask that everyone keep
13 that in mind.

14 MR. GORDON: Your Honor, may I -- may I
15 borrow the page of the brief from opposing counsel if
16 someone has it open? Because I don't have the list
17 in front of us.

18 JUDGE SMITH: All right. That's -- yes,
19 it's the memorandum pages. You can -- you can use my
20 copy.

21 (Pause in proceedings.)

22 JUDGE SMITH: Yes. Excuse me.

23 (Pause in proceedings.)

24 JUDGE BAYLSON: And, please, tell us, if
25 you can, why they were not named in your answers to

1 interrogatories or any supplement to the answers. I
2 mean that's the defendants' main complaint.

3 MR. GORDON: I understand. The -- let me
4 begin with why they -- why they weren't identified.
5 This -- from the start, this has been a -- it's been
6 a sprint to trial and we have had -- been inundated
7 with motions --

8 JUDGE SMITH: But --

9 MR. GORDON: -- 20 depositions --

10 JUDGE SMITH: -- with all due respect,
11 plaintiffs wanted that. We've accommodated
12 plaintiffs' desire to move this forward given the
13 implications, so --

14 MR. GORDON: Absolutely true.

15 JUDGE SMITH: -- I'm not going to want to
16 hear, frankly, from either side about how difficult
17 the timing has been.

18 MR. GORDON: Sure.

19 JUDGE SMITH: We've all faced that.

20 MR. GORDON: So the answer was that at the
21 time the answers to interrogatories were initially
22 done, we had not selected or we had not chosen
23 witnesses yet. That was the -- that's the basic
24 answer. They could have been and perhaps should have
25 been disclosed in supplemental answers to

1 interrogatories. The --

2 JUDGE SMITH: Aren't members of the
3 legislature though people who are intimately familiar
4 with the process, and presumably the process used
5 with respect to the 2011 plan, exquisitely positioned
6 to shed light on the questions before the Court? I
7 mean they would seem to me to be some of the first
8 people you would be looking to.

9 (Pause in proceedings.)

10 MR. GORDON: Correct. They do have that --
11 they do have -- I'm not sure about exquisite because
12 it's -- in the sense that they really represent one
13 member of the legislature and can only talk about
14 their perception of the bill and the process from
15 their perception, or in one case of Mr. -- of
16 Senator --

17 JUDGE SMITH: Well, you're not minimizing
18 the importance of your own witnesses by stating that?

19 MR. GORDON: No, no, no, I'm not, Your
20 Honor. I just want -- if I can give an offer of
21 proof for each one and --

22 JUDGE SMITH: Please.

23 MR. GORDON: -- return to that? So Senator
24 Greg Vitali, the -- his testimony would be in a
25 couple of areas. First, he would testify as the only

1 member representative -- the only witness
2 representative of the proceedings in the House. The
3 goal there was really rather than simply submit the
4 legislative journal on the House proceedings and read
5 it to the Court, to have someone who was personally
6 present who moved to postpone consideration of Senate
7 Bill 1249 with respect to the 2011 map, is to have
8 someone to bring to life the paper record. That was
9 essentially our thinking in bringing him, not because
10 of exquisite inside knowledge.

11 Secondly, he would testify as a 20-plus
12 year state representative. It was his desire and
13 goal -- it was his desire to run for office in the
14 Seventh Congressional District and that he -- after
15 2011, he twice drove kind of the metes and bounds of
16 that district and threw his hands up and realized
17 there was no community of interest with his
18 suburban -- his community in Havertown, Pennsylvania.

19 Second, Rachel Strassheim is not needed in
20 this case. She was -- she had just prepared these --
21 the historical maps of districts, so she is simply
22 not needed in the matter.

23 JUDGE SMITH: You have withdrawn her then
24 as a witness?

25 MR. GORDON: We're withdrawing her.

1 Senator Dinniman, his testimony is important as well.
2 He's one of two senators who were going to narrate
3 what happened as his understanding in the
4 southeastern corner of the Commonwealth in terms of
5 the division of districts. He also was -- he also
6 was witness to or heard from members in leadership
7 who were handling the bill, who were moving it
8 through the committee, that the holdup was that
9 congressman in the southeastern corner around the
10 Seventh -- Sixth and Seventh Congressional Districts
11 and the Eleventh weren't able to decide who gets what
12 voters. So in terms of how the process worked, he
13 has a little insight to that, his understanding.

14 The third person, Senator Daylin Leach, is
15 also -- is currently running in the Seventh or making
16 an attempt at the Seventh, and he is going to talk
17 about his understanding of the rush through of the
18 bill through the Pennsylvania legislature, once
19 again, to bring to life what would be kind of a dry
20 transcript of the proceedings. And he would testify
21 about the challenges to be able to communicate with
22 voters in a district as contorted as the Seventh,
23 which is one of several rather contorted districts.

24 Mary Ellen Balchunis, she can raise her
25 hand there or stand up. She is someone -- she

1 actually ran twice in the Seventh and would testify
2 that she wasn't able to raise funds and, again, the
3 harm to candidates and to the process of democracy by
4 the challenges of communication.

5 Mike Wilcox is the farmer from Northwestern
6 Pennsylvania, from Crawford County, and I felt that
7 rather than have sort of a -- it would give insight
8 into the harm done to a Democrat in a Republican
9 district which -- in which he was also active and
10 owns property in the Third Congressional District but
11 was gerrymandered -- that was gerrymandered away from
12 him and he wasn't able to support a Democratic
13 congresswoman who is doing a fabulous job in that
14 area. And he was deterred from -- she was deterred
15 and he was deterred from continuing to campaign
16 because of the -- because of the line and run for
17 office again. She had been a member of Congress.

18 Eric Arneson, I'm going to have you speak
19 to these.

20 MS. BALLARD: Okay.

21 JUDGE SMITH: Ms. Ballard.

22 MS. BALLARD: Yes. The last two people are
23 Eric Arneson and William Schaller, Your Honors.
24 These are -- one of them is a staff member of the
25 House Legislative Committee, and Mr. Schaller is an

1 employee of the Republican Caucus. These two people
2 were really the experts, the people, the staffers,
3 who actually drew these maps. The legislators
4 themselves really don't know how the maps were drawn.
5 They just have the maps, they say we got some -- we
6 got a map that was -- that got bipartisan support.
7 But if you want to know how these maps were drawn,
8 how did they pick these lines, why did they pick
9 these lines instead of some other lines, these two
10 people are the ones who can talk about it.

11 Now, here's the reason they're not on the
12 list -- they weren't on the list until lately. I
13 think Your Honors will remember that a lot of the
14 discussion about motions for discovery concerned
15 communications with staff members. And there was a
16 motion for protective order about communications with
17 staff members and, ultimately, the order came out
18 that these legislative defendants had to testify
19 about their communications with staff members. This
20 came very, very late in the case, just a few days ago
21 when we did Speaker Turzai's deposition. And even
22 then, Your Honor, Speaker Turzai's counsel interposed
23 a legislative privilege objection to the questions
24 about communications with these two people, even
25 after the Court ordered the defendants to testify

1 about their communications with their staff. The
2 legislative privilege objection was still interposed,
3 and still there was an instruction not to answer, and
4 still there was a refusal not to keep the deposition
5 open until we got the discovery that had been
6 ordered, which we ultimately, you know, a day or so
7 ago after -- we got some of it on the day of Speaker
8 Turzai's deposition.

9 So we really got snuckered with regard to
10 communications with these two people who drew the
11 maps and that's why we filed last night our motion
12 for the Court to give us an inference that the maps
13 were drawn with the intent to favor the Republican
14 congressman over what would have been a fair map.

15 So these two people, putting them on is the
16 only way we can get to how do they draw the map,
17 because we couldn't get to it in discovery despite
18 two court orders saying produce this information.

19 JUDGE SMITH: All right. Thank you. Let
20 me hear then, Mr. Paszamant?

21 MR. PASZAMANT: Thank you, Your Honor. I
22 will be brief in might of knowing that we have a time
23 table here. So what I just heard is that with regard
24 to Senator Dinniman, he's going to narrate what
25 happened in the southeast corner of Pennsylvania.

1 Respectfully, the map that is the 2011 plan
2 identifies what happened in the southeast corner of
3 Pennsylvania, at least with regard to the map. What
4 I didn't hear is that he has any personal knowledge
5 as to how that came about, so I question the
6 relevance of that particular testimony.

7 In addition to that, he apparently wants to
8 come and testify about what he heard from some
9 leaders, who he didn't identify, as to what the
10 holdup was with regard to the Sixth and Seventh
11 Congressional Districts in terms of the formulation
12 which found its way into the 2011 map. That sounds
13 like classic hearsay to me, Your Honor. Him speaking
14 to what somebody else told him and we don't even know
15 who that somebody else is, I question why he should
16 be able to speak to that at all, setting aside what
17 the relevance of that may happen to be.

18 Senator Leach, he is going to talk about
19 how the bill passed through the legislature. Well,
20 Your Honor, respectfully, it's a public record how
21 the bill passed through the legislature, as well as
22 the timing. In fact, we would probably stipulate as
23 to how and when it passed through the legislature.
24 So I don't find that particularly probative.

25 In addition to that, he's going to talk

1 about difficulties associated with communicating with
2 voters because of the shape of the Seventh District.
3 He's a state senator. I don't know how it is that
4 he's going to come in and talk about any
5 communications problems that are had by virtue of the
6 way that that district is drawn versus any other
7 district for that matter. So I question the
8 relevance there.

9 Ms. Balchunis apparently is going to come
10 in as a failed candidate, as I understood it, twice
11 over and talk about how she couldn't raise funds.
12 Your Honor, respectfully, that is awfully far afield.
13 We're going to talk about how she couldn't raise
14 funds? There could be a myriad of reasons why she
15 couldn't raise funds. How did she go about trying to
16 raise funds? We could have an absolute side show of
17 a trial here as to her inability to raise funds and
18 why. And, frankly, Your Honor, particularly given
19 the time tables we're working under, I'd respectfully
20 suggest that that's a side show we should not
21 entertain.

22 Mr. Wilcox has come in from somewhere
23 around Erie or perhaps in Erie, which I understand is
24 where Your Honor hails from. He's a farmer who --

25 JUDGE SMITH: Good grief, no, I'm from

1 Altoona. We're --

2 MR. PASZAMANT: Oh, my mistake. I
3 overstepped. I apologize.

4 JUDGE SMITH: That's a culturally
5 privileged area, Mr. Paszamant.

6 MR. PASZAMANT: Good. Good. Well, I made
7 it as far as Latrobe, Your Honor, but I haven't made
8 it any further north and west from there.

9 JUDGE SMITH: You're welcome any time.

10 MR. PASZAMANT: Very good. I'll take you
11 up on that. So, Your Honor, he's apparently going to
12 come in and talk about the harm to Democrat --
13 Democratic candidates in a Republican district. Your
14 Honor, respectfully, he's a farmer and he's going to
15 talk about the harm to these candidates? How could
16 he possibly know what struggles they may have had?
17 What I didn't hear was that somehow he didn't get
18 constituent services he was looking for, he was
19 unable to vote, he was unable to voice his opinion.
20 Your Honor, respectfully, it's irrelevant.

21 With regard to Mr. Arneson and Mr.
22 Schaller, the fact of the matter is their names were
23 identified in the deposition that they took of
24 Speaker Turzai. They were also identified in a
25 deposition of President Pro Temp Scarnati. And in

1 addition to that, we know, Your Honor, that these
2 folks have been sharing information with the
3 petitioners in the League of Women Voters case for
4 weeks, if not months, at this point in time. And one
5 of the subpoenas -- actually, two of the subpoenas
6 that those folks out there, the petitioners, sought
7 to issue in that case and it was ultimately quashed
8 by Judge Brobson out there -- two of those subpoenas,
9 Eric Arneson as well as Bill Schaller. Eric Arneson
10 was Senator Dominic Pileggi's press director at the
11 time, he's quote in the newspaper. If they didn't
12 know about these people, it's because they didn't
13 try, Your Honor.

14 So this notion that somehow they just
15 figured this out because of some sort of document
16 production or that we were otherwise hiding the ball
17 is frankly well outside the bounds of what's
18 reasonable and could possibly be expected.

19 JUDGE SMITH: Thank you.

20 MR. PASZAMANT: You're welcome, Your Honor.
21 And Ms. Gallagher was prepared, to argue to the
22 extent you were inclined to hear about it, an
23 opposition to the motion for sanctions that was filed
24 at 10:00 or so, but I'll sit down.

25 JUDGE SMITH: Let's defer that for now.

1 I'd like to discuss with my colleagues the other
2 motion. Thank you.

3 MR. PASZAMANT: Thank you, Your Honor.

4 (Pause in proceedings.)

5 JUDGE SMITH: We are, for now, deferring
6 hearing from the parties further on the motion for
7 sanctions. It's not that we regard it as separate.
8 We recognize that it is necessarily entangled in
9 certain evidentiary issues here. We also realize on
10 its face that it is a very important matter and one
11 of great concern to this panel. We will set it aside
12 for now and I will call upon my colleague, Judge
13 Shwartz, to announce the panel's ruling with respect
14 to the various witnesses who have been discussed.
15 And at some point I'll count on Mr. Gordon to return
16 my copy of my motion to me.

17 MR. GORDON: I was just about to do that.
18 I didn't want to approach without being asked.

19 JUDGE SMITH: Thank you very much.

20 JUDGE SHWARTZ: Thank you. Good morning,
21 everyone. Before the Court is a motion to strike
22 certain witnesses that the defendants have indicated
23 were not identified in responses to interrogatories.
24 Plaintiffs have represented that they were identified
25 on a witness list that was provided within the

1 timeline set by this Court. The Court is mindful of
2 the obligation to seasonably, as they say, update
3 interrogatory responses. And with that in mind and
4 the applicable standards set forth in the civil
5 rules, the Court is ruling as follows as to the
6 witnesses.

7 As it relates to -- and I'm going to do
8 them reverse order -- Mr. Arneson and Mr. Schaller,
9 the Court will permit those witnesses to testify. It
10 appears these individuals were not identified with
11 persons with knowledge until the Speaker and the
12 President's deposition, according to defendants'
13 representations to the Court. While they may have
14 been someone who could have been -- someones who
15 could have been identified in the public domain
16 somehow, it appears to our satisfaction that they
17 became known during that period as being relevant for
18 this case. And, therefore, we would deny the motion
19 to strike them from testify.

20 As it relates to Mr. Wilcox and Ms.
21 Balchunis, these are two individuals who appear to be
22 the kind that the plaintiffs would have had knowledge
23 about, and we have not heard good reason why they
24 were not previously identified, and for those
25 reasons, Mr. Wilcox and Ms. Balchunis will not be

1 permitted to testify.

2 With respect to the Representatives or
3 Senators Vitali, Dinniman, and Leach, the Court is
4 prepared to allow them to testify but only after the
5 defendants have had an opportunity to speak to each
6 of them prior to their testimony. Put simply, they
7 can't testify today to give defendants an opportunity
8 to speak to them. These are individuals within the
9 defendants' control that they could meet with, and
10 there's no prejudice to them by having them have an
11 opportunity to speak with them now, especially since
12 they have an offer of proof as to the metes and
13 bounds of the testimony that's going to be offered.
14 So those witnesses will be permitted to testify but
15 only after an opportunity to speak with them. And if
16 they're being called tomorrow, then the conversations
17 should happen later today or before they testify
18 today.

19 As it relates to Ms. Strassheim, for the
20 purposes of the record, the Court notes that her
21 offer to be a witness has been withdrawn, so the
22 motion will be granted in part and denied in part.

23 JUDGE SMITH: With respect to the
24 plaintiffs, do you have -- is the ruling on the
25 motion clear?

1 MR. GORDON: Just with respect to -- an
2 opportunity to speak would mean to speak by
3 telephone, not in a non-deposition setting, you know,
4 in a, as I would say, a normal case if have a witness
5 who might not have been identified?

6 JUDGE SMITH: At this -- I think before we
7 refine that or clarify that, we should hear from
8 counsel for the defendants. Did the plaintiffs have
9 any further question with respect to the ruling?

10 MR. GORDON: We do not, Your Honor.

11 MR. PASZAMANT: Your Honor, thank you.
12 First, in terms of clarification, we, the defendants,
13 the legislative defendants, do not control these
14 other senators or representatives. We simply don't.
15 They're not under our control the way that, for
16 example, an employee would be of a company.

17 JUDGE SHWARTZ: I'll clarify my rationale
18 to say the following. While it's true they're not
19 your employees in the classic sense, they're not
20 outside of your control, they're not exclusively in
21 the plaintiffs' control, you're certainly free to
22 speak to them like any other witness. And the Court
23 finds that that is -- that you are not prejudice from
24 your access to them, just like anyone else could try
25 to inquire of them, and it's their right to speak or

1 not speak as they choose.

2 MR. PASZAMANT: Sure, I understand that.

3 MR. GORDON: We'll make sure they're
4 available.

5 MR. PASZAMANT: And in terms of the method,
6 we would ask that they sit for deposition, and we
7 have enough bandwidth here, both at trial as well as
8 some of the folks sitting behind us, that they should
9 be obligated to sit for deposition today. And we
10 will make whatever resources available that are
11 necessary to get them to commit under oath what it is
12 that they plan on saying here tomorrow I suppose in
13 court on those various subjects. We think it only
14 right that they be committing that way.

15 (Pause in proceedings.)

16 JUDGE SMITH: The request of the defense
17 is, in the view of the panel, reasonable. We will
18 impose these limitations. Number one, with respect
19 to depositions being noticed and going forward, as
20 sought by the legislative defendants, those
21 depositions will each be limited to a period of one
22 hour. Secondly, those depositions may be, if the
23 legislative defendants wish to proceed in this
24 fashion, be conducted telephonically.

25 MR. PASZAMANT: It's our choice, Your

1 Honor?

2 JUDGE SMITH: That's what I'm indicating.

3 MR. PASZAMANT: Thank you, Your Honor.

4 MR. GORDON: I believe you just said that
5 it's the legislators' choice if they're -- not the
6 defendants' choice.

7 JUDGE SMITH: I --

8 MR. GORDON: You said if the -- if they
9 would prefer it be --

10 JUDGE SMITH: No, no, I thought I said the
11 legislative defendants' choice.

12 MR. GORDON: Oh.

13 JUDGE SMITH: I may have mumbled it, but
14 that was my intention.

15 MR. GORDON: Okay. I thought you said
16 legislators. Thank you, Your Honor.

17 MR. PASZAMANT: Thank you, Your Honor. We
18 understand.

19 MR. GORDON: If a witness is unavailable by
20 in person but can do this telephonically, may it be
21 done?

22 JUDGE SMITH: We'll leave that to counsel
23 to hopefully resolve, and in the absence of such
24 resolution, the panel will weigh in.

25 MR. GORDON: Thank you, Your Honor.

1 JUDGE SMITH: All right. I believe we have
2 now dealt in the past 45 minutes with the various
3 matters that the Court felt we needed to deal with
4 prior to going forward with trial itself. We are now
5 prepared to hear the opening statements of counsel.

6 MR. PASZAMANT: Excuse me, Your Honor.
7 Before we proceed to opening statements, I'd like to
8 renew our motion for 12(b)(1) or 12(b)(6) dismissal
9 and bring the Court's attention to the summary
10 judgment motion --

11 JUDGE SMITH: We --

12 MR. PASZAMANT: -- that we filed on Friday.

13 JUDGE SMITH: We are familiar with the
14 motion, we have reviewed it. The motions -- the
15 motions, plural, are denied. We will proceed.

16 MR. PASZAMANT: Thank you, Your Honor.

17 MS. BALLARD: Your Honor, may I just draw
18 the Court's attention to the fact that there is one
19 more pending motion and that is defendants' motion
20 for a protective order to extend the Court's prior
21 ruling that the plaintiffs may not share the
22 testimony of the legislative defendants' depositions
23 or the documents that they have produced following
24 the Court's denial of their motion for a protective
25 order, that we may not share them with the plaintiffs

1 in the League of Women Voters case, which is going to
2 trial in one week?

3 JUDGE SMITH: We're well-aware of that.

4 MS. BALLARD: Yeah. So we would request
5 that that motion be denied on the grounds that
6 there's absolutely no reason for it and it's a matter
7 of great public importance.

8 (Pause in proceedings.)

9 JUDGE SMITH: The Court will defer ruling
10 on that motion just as we are deferring motion on the
11 sanctions motion, there being, to the panel's belief,
12 some overlap at least between the two motions, at
13 least practically speaking. So we will -- we will
14 defer. We will rule at the app -- at a time we
15 believe appropriate on each or both. And we will
16 proceed to hear the opening statement of the
17 plaintiffs. It is now 8:50 -- or 9:50. I'm wishing
18 we were starting all over again I guess.

19 (Pause in proceedings.)

20 PLAINTIFFS' OPENING STATEMENT

21 MR. GEOGHEGAN: Good morning. May it
22 please the Court? On behalf of plaintiffs, I am Tom
23 Geoghegan and it is 8:50 Chicago time. The
24 plaintiffs will present evidence that covers the
25 following categories: first, the results, the

1 election results under these maps; second, the maps
2 themselves, how they were devised. We're going to do
3 a deep dive into the boundaries and how they were set
4 in a way that is consistent with certain election
5 data sets from local precinct elections, from census
6 block information. Then we're going to do a deep
7 dive into the data itself to show how these maps were
8 constructed to be voter-proof to keep in place a
9 certain entrenched ratio of Republicans over
10 Democrats no matter what kind of voter swings such
11 has occurred in the past might take place.

12 Third, we're going to go into how the
13 maps -- how the map was enacted, the way in which
14 outside of the normal legislative channels, the
15 Republican Caucus devised the map, excluded Democrats
16 from participation except possibly where necessary to
17 cut certain arrangements, but generally to cut
18 Democrats out of their process.

19 Then we're going to look at the effects of
20 the map on the political process, on the plane of
21 voters who are going to come and testify as to the
22 destructive effects upon them and the political
23 process. And I want to emphasize at the beginning
24 this is not a case like Gill or Davis versus Bandemer
25 where the plaintiffs are arguing dilution of the

1 votes of Democrats and only Democrats. We're arguing
2 that the rights of citizens have been diluted here of
3 all political parties and independents to effect this
4 particular kind of entrenchment, which was done with
5 a very sophisticated digital technology that did not
6 exist when the courts were considering the maps in
7 Davis, that did not exist when the courts were
8 considering the maps in Vieth. We're in a new
9 technical world here and these maps are different,
10 and they are much more weaponized to be voter-proof
11 and destructive of the democratic process.

12 Let's start with 2002, 2004, 2006, 2008,
13 2010 in the State of Pennsylvania. Pennsylvania is a
14 very politically volatile state and that was
15 reflected in the outcome of House elections during a
16 decade where many people thought that there was a
17 gerrymander in place. And, in fact, some of those
18 people sat on the Supreme Court of the United States.
19 Yet during that decade, during this whole litigation
20 over a gerrymandered map in this state, the control
21 of the state delegation between the parties was
22 constantly flipping back and forth. It was very
23 volatile. Sometimes the Democrats were up, sometimes
24 the Republicans were up.

25 At the end of the decade, the Republicans,

1 in the year 2010, happened to be up. They had 12
2 seats, the Democrats had seven. At that time the
3 Republicans were in control of redistricting and put
4 in place a map in 2011, the Democrats being cut out
5 of the process, a much higher, more sophisticated
6 technology being employed.

7 The results are as follows. 2012, the
8 majority of the citizens of this state voted for the
9 Democrats for Congress, the majority. That 12/7 map
10 from 2010, prior to the 2011 gerrymander, went to 13
11 Republicans and five Democrats. In other words, this
12 is one of the Democratic wave years in Pennsylvania,
13 not one of the Republican wave years. But the
14 Democrats, in a wave year where they took the state,
15 one of their good years, they lost two congressional
16 seats. The Republicans picked up one.

17 2014, 13 to five; 2016, 13 to five; 2018 --
18 we are here because 2018 is going to be 13 to five
19 even if it turns out to be a Democratic wave year.
20 That's what is different about this gerrymander. It
21 is voter-proof and it defines a degree of
22 entrenchment that is not demonstrable in maps that
23 have been challenged in the past. And we don't have
24 one election to talk about, we have three elections
25 now to talk about where we've seen 13/5, 13/5, 13/5,

1 and it's going to be 13/5 in 2018 and its going to be
2 13/5 in 2020.

3 When the voters have been put out of this
4 process to this degree it is time for the judiciary
5 to act. Now, we're going to go into the following
6 areas. First of all, we're going to start with the
7 maps themselves. It would be nice if this were truly
8 a constitutional tort case to begin with the Doctrine
9 of Res Ipsa Loquitur, but you can look at the maps
10 themselves. They're meandering, they're crazy, it's
11 Goofy kicking Donald Duck, it's weird masses that are
12 connected in strange ways.

13 The testimony of Daniel McGlone, which we
14 hope that the Court will accept as expert testimony,
15 is going to show how these maps visually -- visually
16 map out data sets. That is most of these districts,
17 and we're going to go through them one by one, have a
18 pattern where essentially 55 to 60 percent of the
19 vote share based on prior elections in 2004, 2006,
20 2008, Democratic years and Republican years, are
21 Republican vote shares in the Republican-leaning
22 districts. They all have that characteristics with a
23 couple of exceptions far north.

24 The Democratic-leaning districts, by
25 contrast, have vote shares that are 70/75, sometimes

1 maybe even a little more than that, and that's all
2 consistent too. So what explains the contours of
3 these meandering boundaries in the nooks and the
4 crannies is getting a data set inside a geographic
5 space. And that is what an expert in geographic
6 information systems can visually lay out for the
7 Court and explain. That's Mr. McGlone's expertise.

8 Then we're going to do a deep dive into the
9 data itself. This is not ordinary election data that
10 was being used. It was turned over to the plaintiffs
11 under court order, and that election data isn't the
12 precinct -- just the precinct voting data that people
13 can get from the Secretary of State's Office, it's
14 census block information, demographic information,
15 information about who we are as people, that is tied
16 up with the voting data in a way to create an
17 incredibly detailed picture of who these voters are
18 who are being moved around, what their
19 characteristics are like, what they're going to be
20 doing ten years from now, and perhaps not this time
21 but in the future, in the next go-round, it will be
22 what they buy on Amazon.

23 This is a very detailed, expensive election
24 record set that was created by these defendants and
25 unquestionably used. Our expert, Ms. Anne Hannah, is

1 going to show how they took data from Democratic wave
2 years -- and this is, again, a very important
3 point -- to make sure that even if there are voter
4 swings, this entrenchment in power is going to hold.
5 It's always going to be 13/5. It doesn't matter if
6 it's a Democratic wave year or not because now the
7 slicing and dicing with computers at the existing
8 level of sophistication now can prevent that.

9 We're in the age of artificial intelligence
10 where robots essentially programmed properly can
11 frustrate the majority will or really degrade the
12 democracy itself in a degree that wasn't true in
13 Davis, Vieth, and gerrymanderers of the past. We're
14 in a new world.

15 Then we're going to go into how this was
16 put together. The Republican Caucus, not the
17 state -- Senate State Government Committee, not the
18 official bodies and organs of the House -- of State
19 House, but the Republican Caucus drafted this map.
20 And what is especially disturbing and should attract
21 the Court's attention is that there was an elaborate
22 public show, you know, a dog and pony show around the
23 state, voters invited to participate in all this.
24 Meanwhile, all of this very sophisticated data is
25 being constructed behind closed doors, nobody is part

1 of it, and that's what's deciding it. And
2 Pennsylvania citizens are coming up and naively -- we
3 found a lot of the emails and so forth from voters --
4 thinking that they might have some role in this.
5 They had no role in this. And not only did they have
6 no role in this, the Democratic legislators had no
7 role in this except to the extent that possibly there
8 may have been deals cut with individuals outside of
9 the process, and we don't have direct testimony about
10 that. It's only a possibility.

11 JUDGE SMITH: Mr. Geoghegan, your time is
12 up. We've allotted ten minutes to both sides for
13 opening statements and, as I've indicated at the
14 outset, we intend to run this train on time.

15 MR. GEOGHEGAN: Your Honor, I was done.
16 So --

17 JUDGE SMITH: Okay. Thanks very much.
18 (Pause in proceedings.)

19 DEFENDANTS' OPENING STATEMENT

20 MR. TORCHINSKY: Thank you, Your Honor.
21 Jason Torchinsky for the legislative defendants. I
22 need to wipe up the podium because it's wet. Sorry.
23 May it please the Court? We are here today to begin
24 a trial in a case where plaintiffs cannot point to an
25 established set of elements for their claim.

1 As this Court noted in its Friday order,
2 Gaffney versus Cummings and numerous other Supreme
3 Court decisions have acknowledged and affirmed that
4 political considerations are valid and traditionally
5 used during the redistricting process. Plaintiffs
6 simply present no cognizable claims.

7 Plaintiffs now advance a standard for the
8 first time last night at about 9:00 or 10:00 that
9 involves something that the plaintiffs call the
10 expected number of winning seats, and they refer to
11 that about three times in their elements that they
12 proffered last night. This appears to be a plea for
13 the Court to fashion a test that perhaps requires
14 proportional representation for Congress, a
15 proposition that Justice O'Connor rejected in
16 Bandemer and that the Supreme Court rejected in City
17 of Mobile when the court said it has "sternly set its
18 face against proportional representation."

19 This concept of expected number of winning
20 seats introduced last night appears not in the
21 complaint, not in the amended complaint, nor in the
22 first elements brief. None of the plaintiffs'
23 proffered experts ever mention or refer to any
24 calculation of something called the expected number
25 of winning seats, not in any written report, not in

1 any deposition or supplemental report, and no
2 plaintiffs have mentioned this concept in any
3 deposition. Who's the expectation, who's setting
4 this number, how is it calculated, and above all,
5 what evidence can or will be offered at this trial on
6 this point since their experts never discuss the
7 expected number of winning seats and none of their
8 exhibits discuss it?

9 Second, the plaintiffs now say that they're
10 going to refer to or prove something called a
11 substantial motivating factor. This is apparently a
12 far cry from the none means none test that they
13 articulated to this Court on October 10th and at the
14 motion for -- and at the motion to dismiss hearing,
15 and it's now an impossible test to meet when they say
16 this factor overweighs everything else even if other
17 factors were considered since, apparently, no other
18 factors can outweigh the plain -- what the plaintiffs
19 define as discriminatory intent.

20 Precisely what is this discriminatory
21 intent? There's no definition offered of that, and
22 all of this in the context of numerous Supreme Court
23 decisions that permit political considerations to be
24 a valid defense to racial gerrymandering claims, such
25 as in the Supreme Court's recent decisions in Cooper

1 versus Harris and Bethune-Hill. This also flies in
2 the face of the Supreme Court's rejection of the
3 Bandemer predominant intent test in Vieth. And,
4 surely, if predominant intent is an unmanageable
5 standard, so too must substantial motivating factor
6 given the Court's repeated acceptance of partisan
7 considerations when redistricting.

8 Third, the notion that they advance here
9 that the map itself elects officials is simply
10 incomprehensible. Maps don't vote. Voters vote for
11 candidates in single-member district elections for
12 the United States Congress. This is a state where
13 voters on a state-wide basis have elected Donald
14 Trump and Barack Obama, Governors Corbett and then
15 Governor Wolf, Senators Toomey and Casey, and the
16 plurality of voters in several different
17 congressional districts in this state in the last two
18 presidential elections voted differently by party for
19 Congress than they did for President.

20 Elections for Congress are not conducted on
21 a state-wide basis. They point to what they say are
22 the state-wide proportions, but they add those up
23 based on a whole series of individualized elections
24 between two separate candidates running in different
25 places of voters.

1 Plaintiffs also suggest that this Court
2 adopt what is sort of a catch 22 approach when on the
3 one hand, legislators can't consider publicly-
4 available election data, but on the other hand, they
5 have to consider political information to make sure
6 that they expected number of winning seats ratio or
7 whatever this measure is that the plaintiffs are
8 saying has to be considered. And their filing from
9 last night fails to take into account the Supreme
10 Court's requirements for voting rights, act
11 compliance, and other traditional districting
12 criteria, such as avoiding pairings of incumbents.

13 So under their standard, plaintiffs can't
14 use publicly-available election data to draw maps but
15 still can't create a lawful map unless the expected
16 number of winning seats complies with some secret
17 sauce formula that the plaintiffs still have not
18 disclosed. Last night's filing once again
19 demonstrates that the plaintiffs just don't have a
20 claim and haven't since the beginning of their
21 lawsuit. They started out with none means none and
22 then they said -- but that -- but this Court made
23 clear that that standard would not fly in the face of
24 the framers' intent as well as copious Supreme Court
25 decisions acknowledging the role and condoning the

1 role of politics in redistricting.

2 In short, the plaintiffs' none means none
3 theory, if that's what they're going with now in the
4 face of more than 200 years recognition of this is --
5 it's hard to comprehend. I mean -- I mean in the
6 course of advancing their theory, what they have is
7 basically a theory and desired result in search of a
8 valid claim. And they've publicly asserted and
9 publicly filed documents that my clients have engaged
10 in ultra vires and corrupt and unconstitutional acts.
11 Well, they were, in fact, carrying out their federal
12 and state constitutional obligations to the best of
13 their ability and consistent with the United States
14 Supreme Court precedents.

15 In the end, plaintiffs want this Court to
16 overturn the votes of the citizens of Pennsylvania,
17 who, through their elected leaders, my clients,
18 enacted a statute based on nothing more than, as
19 plaintiffs' proffered experts concede, a visual test.
20 The Court should outright reject any such efforts.

21 It is axiomatic that concurrent with the
22 plaintiffs' right to seek redress from federal court
23 lies a defendant's right to know what the elements of
24 the claim against which it must defend as well as the
25 burdens associated with providing and defending

1 against such claim, yet as I stand before you, just
2 last night, the plaintiffs handed forth -- handed up
3 the latest iteration of their purported elements and
4 the requisite burden. How can any litigant be
5 expected to prepare a reasonable defense in such
6 circumstances? The prejudice, we submit, is palpable
7 particularly in that my clients have been asking to
8 be provided with this very information for weeks.

9 Your Honor, the intervenor defendants'
10 legal claims about lack of a claim here remain
11 unchanged. The Elections Clause simply does not
12 contain the sort of restrictions or limitations the
13 plaintiffs are asserting before this Court. The
14 history of the Elections Clause, the American
15 redistricting process, and the fact that the Supreme
16 Court permits political motivations to be an absolute
17 defense to racial gerrymandering all clearly
18 establish that political considerations are part and
19 parcel of the redistricting process.

20 Currently pending before the Supreme Court
21 is another political gerrymandering case, Gill versus
22 Whitford. In that case the Supreme Court is deciding
23 whether these plaintiffs or any plaintiffs would have
24 standing to bring a claim based on partisan
25 gerrymandering, and if so, whether there exists a

1 judicially manageable test for assessing whether
2 there's been too much political consideration
3 utilized in redistricting. But plaintiffs in this
4 case trumpet that they are not Gill. They have been
5 telling this Court from the beginning that there is
6 no balancing test or measure of degree of applicable
7 harm to their claim.

8 This Court's Friday order recognized that
9 the Supreme Court has never adopted such a no
10 political considerations standard in any First or
11 Fourteenth Amendment gerrymandering case. Indeed, if
12 plaintiffs' stark and clear none means none
13 prohibition exists, it would be nothing short of
14 stunning that not a single Supreme Court justice ever
15 to sit has ever pointed to the plaintiffs' relied on
16 language in the Elections Clause and hinted at or
17 much less recognized such prohibition.

18 Overall, when you hear from the plaintiffs'
19 experts you will be hearing from individuals with no
20 expertise in the legislative process or
21 redistricting. They will complain about
22 Pennsylvania's dually enacted congressional map, a
23 statute that was passed by a bipartisan vote of the
24 Commonwealth's legislature. What you will hear is
25 criticism upon criticism of where the map's lines are

1 drawn, but you will hear nothing from them about what
2 they believe the maps should have looked like since
3 they provide no exemplary maps.

4 In fact, none of the plaintiffs' proffered
5 experts have ever actually drawn a state-wide
6 legislative or congressional map that meets the legal
7 requirements of any state. You'll hear nothing from
8 them about compliance with the Voting Rights Act
9 since they have no comprehensive understanding of it.
10 You'll hear nothing from them about how Pennsylvania's
11 map avoided pairings of incumbents since they have
12 their personal beliefs, as they testified, that this
13 Court -- that the Supreme Court's recognized
14 traditional districting criteria is somehow unlawful.
15 And you will hear nothing from them about adherence
16 to the equal population standards established by the
17 United States Supreme Court since they believe that
18 those standards should yield to their personal
19 conceptions of how maps should be drawn.

20 In addition to the criticism from the two
21 witnesses with no backgrounds in legislation or
22 redistricting, you're going to hear from the
23 plaintiffs. Each plaintiff is going to complain
24 about the political system in general and what they
25 view is lack of progress on certain issues about

1 which they believe the United States government
2 should be moving towards their preferred policy
3 positions. While plaintiffs are certainly entitled
4 to their beliefs about the political system and
5 should be free to speak without restriction from the
6 government about such beliefs, their frustration that
7 the political system is not producing their desired
8 results is simply not the kind of concrete and
9 particularized harm the Supreme Court requires to
10 invoke the power of the federal courts and maintain
11 standing under Article 3 of the Constitution.

12 Moreover, in this case the power and
13 authority of this federal Court has been invoked to
14 drag the Speaker of the State House and the President
15 Pro Temp of the State Senate or the release of
16 thousands of pages of documents that, under state
17 law, are absolutely privileged, and now appears
18 poised to have legislators and legislative aids
19 paraded before this Court to be subject to public
20 testimony and examination when plaintiffs are unable
21 to articulate what they're trying to prove. We hope
22 that this Court could end this now, but with that, I
23 will reserve the balance of my time while the Court
24 proceeds.

25 JUDGE SMITH: Thank you very much, Mr.

1 Torchinsky. Before proceeding with the first
2 witness, were going to declare a five minute recess.

3 (Recess taken from 10:10 a.m. to 10:15
4 a.m.)

5 JUDGE SMITH: If at any point the law
6 clerks want to move about the courtroom so they're
7 able to see the exhibits which are positioned, of
8 course, so that the Court can see them, please feel
9 free.

10 MR. GORDON: All right. Your Honor, I
11 apologize. I didn't understand your -- hear your
12 comment.

13 JUDGE SMITH: Oh, I was just talking to the
14 law clerks, not counsel. They're not able to see the
15 charts as they are positioned, so I wanted them to
16 feel free to move about. But one thing I wanted to
17 first inquire of Mr. Aronchick is if, on behalf of
18 the executive defendants, he wanted to make a
19 statement at this time.

20 EXECUTIVE DEFENDANTS' OPENING STATEMENT

21 MR. ARONCHICK: Very brief. Mark
22 Aronchick, executive defendants. We think this is a
23 very important case. We don't anticipate that we
24 have anything that we will be adding to the question
25 of how the maps were drawn, what -- if it was the

1 Republican Caucus, what the Republican Caucus did
2 when they put it together. But we think, very
3 fundamentally, that all sides should be able to air
4 out what happened as fully as possible, in as most
5 transparent a way as possible, and that all of the
6 information that this Court has ordered to be
7 produced, if it hasn't yet been produced, be
8 produced. It's an incredibly important public matter
9 and the public has a right to know as much as they
10 can in this proceeding as to what happened.

11 We have said -- transparency has been
12 something that we have said we are advocating
13 throughout. Number two, should this Court rule that
14 this map is unconstitutional, we have said and I want
15 to say again that we will work diligently toward the
16 creation of a new map honoring expeditiously any
17 court orders along those lines, including -- and
18 we've said this recently -- including working with
19 all parties and the Court in adjusting primary
20 election dates and schedules if that is necessary to
21 do.

22 JUDGE SMITH: Thank you very much, Mr.
23 Aronchick. With that, I would ask the plaintiffs to
24 call their first witness.

25 MR. GORDON: We call to the stand Daniel

1 McGlone.

2 (Pause in proceedings.)

3 MR. GORDON: Hi, Mr. McGlone, can you
4 please state your full name for the record?

5 MR. McGLONE: Daniel Foster McGlone.

6 COURTROOM DEPUTY: I need to swear him
7 first.

8 JUDGE SMITH: Could we please have him
9 sworn?

10 DANIEL FOSTER McGLONE, Plaintiffs' Witness,
11 Sworn.

12 COURTROOM DEPUTY: Please state your full
13 name and spell your last name for the record.

14 THE WITNESS: Daniel Foster McGlone, last
15 name M-C-G-L-O-N-E.

16 VOIR DIRE

17 BY MR. GORDON:

18 Q Okay. Mr. McGlone, you can be seated. Where do
19 you currently reside?

20 A I reside in the City of Philadelphia.

21 Q Okay. And first, where are you employed?

22 A I'm employed at Azavea. That's a geospatial
23 software company here in Philadelphia.

24 Q Okay. What is a geospatial software company?
25 What does that do?

1 A Sure. So we're a company that builds software
2 applications and does data analysis for our clients
3 using mapping and spatial data.

4 Q Okay. I want to go back to you -- we'll go back
5 to that, but I want to go to your undergraduate
6 training. Where were you -- what did you -- did
7 you -- where did you attend college?

8 A Sure, Harrisburg University of Science and
9 Technology in Harrisburg, Pennsylvania.

10 Q Okay. And what was your degree in?

11 A It's in geography and geospatial imaging.

12 Q Okay. Now we're going to slow down. Explain in
13 detail so the Court understands --

14 A Sure.

15 Q -- what is geospatial imaging?

16 A Sure. So the undergraduate degree is in
17 geography and geospatial imaging. So, essentially,
18 it's the study of geography and spatial data and
19 mapping spatial data and doing analysis with it, so
20 taking different layers of geographic data, mapping
21 them on top of each other, and doing analysis to see
22 how those layers interact with each other.

23 Q Okay. And do -- did you go on for additional
24 study?

25 A I did.

1 Q Okay. And where?

2 A University of Pennsylvania.

3 Q And what degree did you earn there?

4 A Urban spatial analytics. It's a master's degree.

5 Q Okay. Can you explain to the panel what urban
6 spatial analytics is?

7 A Sure. So it's basically a more advanced degree.
8 So it's taking those same principles of geography and
9 applying those to -- within an urban context, so
10 studying with census data, with demographic,
11 socioeconomic data, land use data, political data,
12 and taking that -- taking those data sets, mapping
13 them, and applying them in some sort of urban context
14 that has a real world effect on people, so mapping
15 data, producing applications, and showing that data
16 in such a way that helps people understand it and
17 makes it easier to digest for the general public.

18 Q Okay. Let's turn to your work at Azavea.

19 A Sure.

20 Q How long have you been employed there?

21 A I've been at Azavea for about six and a half
22 years, almost seven years now.

23 Q Okay. What kind of projects have you done?

24 A I've done dozens of projects. So I work half as
25 a data manager for a legislative product that we

1 have, and half of my time is also working on
2 projects, so working on spatial analysis projects,
3 mapping projects for clients, and then the other half
4 on the political and legislative work.

5 Q Okay. Let's turn to the half involving
6 political -- what was it called? Political --

7 A Political and legislative work.

8 Q -- and legislative work. Tell the panel please
9 what your -- what your experience activities was in
10 your political work.

11 JUDGE SMITH: Could you please keep your
12 voice up?

13 MR. GORDON: Sure. I'm so sorry, Your
14 Honor.

15 JUDGE SMITH: Thank you.

16 BY MR. GORDON:

17 Q Could you please tell the panel what your
18 experiences in -- or what projects you've worked on
19 in the political arena at Azavea?

20 A Sure. So I came on to Azavea in 2011 and I help
21 manage a database called Cicero. It's a product that
22 we sell to non-profit political advocacy
23 organizations. It essentially -- it's a large
24 database of legislative districts and the elected
25 officials that correspond with those districts. So I

1 am in charge of maintaining those district plans for
2 all of the congressional districts in the United
3 States, all of the state legislative districts for
4 all 50 states in the U.S., as well as 300 local city
5 council district plans in the U.S. as well as eight
6 other countries.

7 So my job is to maintain that data, make
8 sure it's up-to-date. When redistricting plans are
9 put into effect I have to acquire that data, process
10 it, put it into our system, and make sure that it's
11 available for clients so they can use that data for
12 their advocacy or whatever purposes they have.

13 Q In which states do you monitor redistricting
14 plans?

15 A In all 50 states as well as about 300 local
16 cities as well as eight other countries.

17 Q And how many years have you been working on that
18 project where you maintain that database of
19 redistricting plans across the country?

20 A I took over about six years ago, so since the
21 congressional redistricting all across the United
22 States.

23 Q To what extent has Pennsylvania been a focus of
24 your -- of your work or study of redistricting plans?

25 A Sure. Pennsylvania has been a pretty large

1 focus. So I'm originally from Pennsylvania and
2 Pennsylvania is of great interest to me personally.
3 So as soon as the districts were released through --
4 from the legislature in 2011, I acquired the plan and
5 ran an analysis on it. I processed it and mapped it
6 and wrote a blog post about that. And the same thing
7 with the legislative district, so as soon as the
8 legislative plan was released, I did an analysis on
9 that, ran a compactness metric analysis on it.
10 Pennsylvania has been a very large focus of mine
11 since I'm from this state and very interested in the
12 politics of this state.

13 Q Have you participated in any other litigation
14 matter involving redistricting in Pennsylvania?

15 A Sure. So in the Holt v. Legislative Redistrict
16 Commission or Legislative Reapportionment Commission
17 in 2011, I helped Amanda Holt calculation compactness
18 metrics for the legislative districts.

19 Q Okay, slow down.

20 A Sure.

21 Q They might not know who Amanda Holt was. In what
22 matter was that?

23 A Oh, yes. Amanda Holt was the woman from
24 Allentown who basically created another map in 2011
25 to show that the Legislative Reapportionment

1 Commission map was splitting too many municipalities.
2 So she created an alternative map that split
3 (indiscernible) municipalities, (indiscernible)
4 counties, and she -- that case made it all the way to
5 the Supreme Court of Pennsylvania.

6 The Supreme Court agreed that the
7 Legislative Reapportionment Commission map split too
8 many municipalities, too many jurisdictions, and that
9 map was actually remanded and had to be redrawn. She
10 didn't end up using compactness metrics in her
11 analysis, but compactness overall was one of the --
12 was one of the things you can look at, you know, if
13 you're trying to assess gerrymandering. So the main
14 point of her analysis was looking at splits,
15 jurisdictional splits, and I helped her with some
16 compactness reports comparing her districts to the
17 LRC's districts. As it turns out, her districts,
18 with fewer jurisdictional splits than the LRC map,
19 was also more compact.

20 Q To what extent do you have experience working
21 with census data in terms of mapping?

22 A Sure. It's a -- census data is a large part of
23 my job. It's very important. Census data is one of
24 the main data sets that I've used in pretty much all
25 of the projects. So census is the largest source of

1 demographic and socioeconomic information that we
2 have available and it's the most reliable set of
3 information. So any project where I'm mapping and
4 I'm trying to show a non-profit client, for example,
5 where a certain socioeconomic class lives or where
6 certain demographics reside, really census data is
7 the best way to do that and that's provided all the
8 way down to a very fine geographic level. And so
9 census data, I use it all the time in my projects.

10 Q Okay. And could you please tell the Court of any
11 publications you have done in the area of
12 redistricting or gerrymandering?

13 A Sure. So in 2012, I published on my company
14 website an addendum to a report that we did a couple
15 years before looking at compactness of all the
16 congressional districts in the United States, and
17 that was a report using four pretty well, commonly
18 cited compactness metrics to do -- to measure those
19 for all of the congressional districts and compare
20 those to the previous set of congressional districts
21 that were in effect before this decade. And I also,
22 in that report, did an analysis comparing the
23 compactness scores of plans in states that had
24 independent commissions or non-partisan process, as
25 opposed to partisan processes.

1 Q You did a -- have any of your work been cited in
2 scholarly -- has any of your work been cited in
3 scholarly journals?

4 A It hasn't necessarily been cited in scholarly
5 journals, but I have been interviewed by -- and I
6 have this in my supplemental report, a list of all
7 the different places that I've been cited, including
8 the "Washington Post" and "Nature."

9 Q Okay. All right. To what extent do you have
10 experience in data analytics or analyzing election
11 data as it relates to congressional districts?

12 A Sure. So my experience with that is publishing
13 blog posts and -- on the website and also this
14 report. So I -- starting in 2011, when the districts
15 were first release I published a blog post on my
16 company website because I was very excited to see
17 that an app was finally produced. And so I used this
18 Harvard election data to do a partisan analysis of
19 the districts. And, of course, this report,
20 "Partisan gerrymandering of Pennsylvania," is kind of
21 a -- sort of a summary of that from one I originally
22 did on a -- in a blog post. So this is something
23 that I've been doing for years. Taking census data,
24 taking other data sets, and aggregating them to
25 congressional district level is a very pretty simple

1 process in spatial analysis and one that I've done
2 before on many different levels.

3 Q Did you, at my request, engage in further study
4 of the -- of the 2016 map? Let me just ask a couple
5 more questions about -- so what did you do, what
6 process did you take to answer the questions that I
7 asked you regarding the 2016 -- I'm sorry, the 2011
8 map regarding partisan intent --

9 JUDGE SMITH: You are now moving beyond
10 qualifications to -- could we take this --

11 MR. GORDON: Sure.

12 JUDGE SMITH: -- as a point --

13 MR. GORDON: Let's take a break.

14 JUDGE SMITH: -- where you --

15 MR. GORDON: Yeah.

16 JUDGE SMITH: -- proffer the witness as an
17 expert in what?

18 MR. GORDON: I proffer the witness as an
19 expert in data analytics, GIS software, statistics,
20 and redistricting, both nationally and in
21 Pennsylvania.

22 JUDGE SMITH: Does the defense wish to voir
23 dire on qualifications?

24 MR. TORCHINSKY: Yes, we do, Your Honor.

25 JUDGE SMITH: All right, thank you. You

1 may process.

2 (Pause in proceedings.)

3 BY MR. TORCHINSKY:

4 Q Mr. McGlone, how many years have you worked at
5 Azavea?

6 A It would be going on seven years, about six and a
7 half.

8 Q And what does Azavea do as a company?

9 A So we are a private company and we are a software
10 company, so we build software applications involving
11 maps and analysis, and then we also produce reports,
12 produce static maps for clients, we have a services
13 side, a products side, so basically all about maps
14 and geospatial data and producing applications.

15 Q Now, your website says you are a B corp. What is
16 a B corp?

17 A Sure. So a B corporation stands for "benefit."
18 So it's a special class of corporations. So we
19 believe in doing good by doing good business, so we
20 select projects based on our social mission, which is
21 essentially to do good.

22 Q And are you an advocate for independent
23 commissions in redistricting?

24 A I believe that independent commissions are a
25 pretty good way to go for redistricting. I have

1 never personally advocated for that, but that's
2 something that I do believe, yeah.

3 Q In your 2012 addendum to your company's report,
4 didn't you say that independent -- you were
5 encouraged by the growth of independent commissions?

6 A That is correct, yes.

7 Q And what does that mean to say you're encouraged
8 by the growth of independent commissions?

9 A Well, in my compactness analysis report, it seems
10 that independent commissions do produce more compact
11 districts, so I think it's -- I think independent
12 commissions are a good way to go in the redistricting
13 process.

14 Q So let's talk a little bit about your experience
15 with data. So Cicero is taking shape files with the
16 lines of districts and placing them on a map?

17 A Cicero is acquiring those district plans, putting
18 them into a database, and then we have clients that
19 use that data. So they might have a list of all
20 their constituents. So maybe they're a non-profit
21 organization, an advocacy organization that has those
22 constituents, and those are addresses for those
23 constituents. And then we take that address data and
24 then we tell them which districts those constituents
25 reside in and who their elected officials are.

1 Q Does Cicero include any election return data?

2 A Cicero does not include election return data.

3 Q So you've been with the company for six years. I
4 believe the other day it was represented to the Court
5 that you've had ten years of working with election
6 return data. When was the first time you downloaded
7 or looked at Pennsylvania's election return data?

8 A In terms of election return data, I would say in
9 2010.

10 Q In 2010?

11 A Yeah.

12 Q When did you start working for Azavea?

13 A I started working for Azavea in 2011.

14 Q So what were you doing with the political data in
15 2010?

16 A So in 2010, I had a class in grad school where I
17 was using political data to make maps.

18 Q What -- make what kind of maps?

19 A To make maps of legislative districts.

20 Q I asked you about drawing districts in your
21 deposition, and you told me that the only time you
22 had ever drawn maps was for the Fixed Philly
23 Districts project where you didn't use any political
24 data.

25 A Yeah.

1 Q Can I ask why you're now recalling your graduate
2 school course work in legislative districting?

3 A Well, you asked me specifically the instance that
4 I drew a map and that was the instance that I drew a
5 map. So that was in the Fixed Philly Districts
6 project in 2011 where I did draw a districting plan
7 for Philadelphia City Council. That's the specific
8 question and that's the answer to it.

9 Q And in that exercise, you did not use political
10 data at all?

11 A That one I didn't use political data, no.

12 Q But in your grad school one, you did?

13 A By political data, I mean legislative districts,
14 yes.

15 Q Did you use election return data in your 2010
16 graduate school course work?

17 A I aggregated congressional district results to
18 districts and made a map of it, yes.

19 Q Since after 2010, what other years did you use
20 election return data and in what specific instances?

21 A Sure. So in 2011, when I was helping Amanda Holt
22 with her report that she was going to use in her case
23 I aggregated, again, election return data to her
24 legislative districts. And then in 2012, when I
25 wrote the blog post about the election, the new

1 districts in Pennsylvania, I also aggregated election
2 returns to Pennsylvania congressional districts and
3 legislative districts.

4 Q I also asked you during your -- during your
5 deposition whether you had ever been involved in any
6 other litigation. You told me no. Can you tell
7 me -- I want to go through in detail what you did in
8 this Holt litigation. How did you become involved in
9 the Holt litigation?

10 A I don't recall whether Amanda reached out to us
11 or we reached out to Amanda, but we were
12 interested -- and by we, I mean Azavea. We were
13 interested in her case and so I reached out -- or she
14 may have reached out, I don't recall who it was -- to
15 help her with her report and offer anything that she
16 needed. So I had just produced the report of the
17 compactness statistics, so I did a compactness
18 analysis for her on -- and when I say I wasn't
19 involved in the litigation, this wasn't -- this
20 didn't end up being part of her case. Her case was
21 about jurisdictional splits. So none of my reports
22 were used in her actual official litigation as far as
23 I know. I just merely helped her do a compactness
24 analysis of her districts, compare those to the
25 state's districts, and then also use election return

1 data to compare the partisan balance of her district
2 map versus the state's district map.

3 Q So I want to understand. So you played no role
4 in her -- in her analysis of splits?

5 A As far -- she did her own analysis of splits,
6 yeah.

7 Q So you --

8 A I did not.

9 Q -- played no role in her analysis of splits?

10 A I don't believe so, no.

11 Q Okay. And let's talk about -- when you say you
12 did an analysis of compactness --

13 A Uh-huh.

14 Q At deposition, you told me that essentially your
15 software runs compactness scores, right?

16 A The one piece of software that we have called
17 District Builder, does run compactness analyses, yes.

18 Q And when it runs the compactness analyses which
19 compactness measures does it run?

20 A It runs Polsby-Popper and Schwartzberg.

21 Q And do you -- can you explain what each of those
22 are?

23 A So Polsby-Popper and Schwartzberg are both
24 measures of line distortion. So they're looking at
25 the lines of the district and they're comparing them

1 to the shape. And so you're getting an idea of
2 whether a district is distorted or whether it's
3 compact.

4 Q Specifically, can you tell me what Polsby-Popper
5 is measuring?

6 A I don't have the formula in front of me so I
7 can't tell you specifically, but I can tell you it's
8 a measure of compactness, so how a different shape
9 looks, it gives you a calculation, a score, a result,
10 and you can compare that to other compactness metrics
11 that measure different aspects of a district's shape.

12 Q And Schwartzberg, what is that measuring?

13 A It's very similar, so it's also measuring
14 dispersion, so the line -- the length of the lines
15 compared to the shape of the districts.

16 Q But you don't know specifically what it's
17 measuring?

18 A I don't have the formula in front of me, no.

19 Q And so when you say you ran a compactness score
20 you basically loaded the data in and clicked run on a
21 script?

22 A No. So I created a script, actually, which does
23 that. So it takes the mathematical formula, it takes
24 the area of the district and the perimeter of the
25 district and it uses this mathematical formula that

1 makes up Polsby-Popper and Schwartzberg and then
2 gives you the score.

3 Q So you wrote a script to calculate compactness
4 based on somebody else's formula, the Polsby-Popper
5 and the Schwartzberg formulas?

6 A That's correct, yes.

7 Q You didn't actually create those yourself?

8 A I mean I didn't create the mathematical formulas,
9 no.

10 Q And so your analysis of compactness essentially
11 consisted of running the script on the map. What
12 else did your analysis of compactness consist of in
13 that case?

14 A So it also consisted of comparing the scores for
15 districts based on the origin of the plan, so whether
16 it was an independent commission, a partisan
17 commission, a non-partisan process, that kind of
18 stuff.

19 Q And so you worked on that in the Holt litigation,
20 but it was never actually produced in court?

21 A Well, I worked on that for the redistricting
22 white paper that I produced. I don't believe that
23 she ended up using it in court, no. Her argument was
24 about jurisdictional splits.

25 Q So I want to be clear. So in 2011 and 2012, did

1 you download and analyze any election return data?

2 A Yes.

3 Q Where does that appear in your report? Your
4 report focused primarily on compactness. Your
5 report, I don't believe, mentions anything about
6 election return data?

7 A In the redistricting addendum?

8 Q Yes.

9 A It does not.

10 Q What does it mention?

11 A It does not, no.

12 Q So you downloaded the data, you analyzed it, but
13 you never wrote about it or published on it?

14 A I did, I published blog posts on it and I gave
15 that information to Amanda Holt. Like I said, her
16 argument wasn't about that, so it was about
17 jurisdictional splits and it wasn't used in the
18 actual case.

19 Q Okay. I'm asking more broadly about your white
20 paper addendum where you an -- where you looked at
21 compactness scores of congressional districts. Did
22 you analyze or download or work with any election
23 return data in formulating that report?

24 A For that report, I did not, no.

25 Q Okay. So you didn't use election return data for

1 Amanda Holt, you didn't use election return data for
2 your white paper. Did you use -- prior to Mr. Gordon
3 asking you to become involved in this case, did you
4 use election return data any time in the last --
5 since you've been at Azavea for any project?

6 A Yeah. As I mentioned, I used it for Amanda Holt
7 in her -- for her Supreme Court case and I also wrote
8 blog posts about it on my company website.

9 Q What did your blog posts say about election return
10 data?

11 A I used the Harvard election data and I aggregated
12 election return data to congressional districts and
13 legislative districts.

14 Q So your report added up a bunch of numbers and
15 you posted these somewhere?

16 A Yes.

17 Q Excuse me for one moment.

18 MR. GORDON: Objection to characterization
19 "just added up." He engaged in a study.

20 JUDGE SMITH: I'll overrule the objection.

21 (Pause in proceedings.)

22 BY MR. TORCHINSKY:

23 Q I asked you about this during your deposition. I
24 never -- I didn't see anything in your deposition
25 about using this Harvard election return data any

1 time prior to this -- to the reports that you
2 prepared for this case. Did you, in fact, use
3 election -- use the Harvard data set for some prior
4 publication?

5 A It wasn't a publication, no. It was just a blog
6 post online and I -- it wasn't actually published
7 anywhere like a formal publication.

8 Q And what year was that?

9 A I believe it was 2011 when the districts were
10 released.

11 Q Have you looked at any election return data in
12 the course of your professional work at all between
13 2011 and 2016? Excuse me, between 2012 and 2016,
14 since you said you used the Harvard data in '11.

15 A In my professional work, I don't believe so, no.

16 Q In your -- in any academic work, have you used
17 any election return data between 2011 -- between 2012
18 and 2016?

19 A In academic work, I have not.

20 (Pause in proceedings.)

21 Q Let's talk about your knowledge of redistricting
22 concepts. And I want to be clear. Have you ever
23 drawn a state-wide map for any state for
24 congressional or state legislative districts?

25 A I have not drawn a state-wide map, no.

1 Q Ever?

2 A No.

3 Q Okay. I'm a little confused now because -- well,
4 let me ask this. Did you ever prepare census data or
5 election return data for any clients for drawing
6 state-wide maps in any state ever?

7 A I have prepared census data and redistricting
8 data for clients for our District Builder software,
9 which was run in several midwestern states back in
10 2011.

11 Q What states were those used in?

12 A I believe Illinois, Indiana, and we also ran
13 something in California, Contra Costa County.

14 Q And what clients were -- well, Contra Costa
15 County it would be clear would not be a state-wide
16 map?

17 A That would be a county map, correct.

18 Q And Indiana and what was the other state you
19 mentioned?

20 A I believe it was Illinois.

21 Q Okay. And this was not disclosed previously in
22 your initial resume, in your current resume, or at
23 your deposition, is that correct?

24 A Well, that's not exactly true because I have said
25 that I've prepared census and redistricting data for

1 our District Builder software package. That is
2 something I said in my deposition.

3 Q So you used census data. Did you do any
4 election -- is there any election return data in your
5 District Builder software?

6 A Our District Builder software does not use
7 election return data.

8 Q Okay. So you have done -- drawn maps using
9 census data, but you've never drawn maps that
10 included any election return data?

11 A That's correct.

12 Q Okay. Let's talk about your knowledge of
13 redistricting concepts. Have you ever taken any
14 academic courses on redistricting?

15 A I have not.

16 Q Have you ever done any -- other than the census
17 data in the District Builder software, have you ever
18 done any professional -- and the Amanda Holt matter,
19 have you ever -- and this case, have you ever done
20 any other professional work on redistricting?

21 A Well, the white paper that I produced in 2012.

22 Q Was that for a client?

23 A It wasn't for a client.

24 Q Were you compensated in any way by anyone for
25 that project?

1 A Other than through my company getting paid.

2 Q Do you have any experience -- do you have any
3 academic course work in political science?

4 A I do not.

5 Q Do you have any graduate course work in political
6 science?

7 A I do not.

8 Q Do you have any understanding of the Voting
9 Rights Act?

10 A I have an understanding of the Voting Rights Act
11 as it pertains to this partisan gerrymandering
12 report.

13 Q And what is that understanding?

14 A So Section 2 of the Voting Rights Act requires
15 that district plans do not discriminate against any
16 racial class. And so I understand that majority-
17 minority districts are an important concept and
18 redistricting and the Second District is a majority-
19 minority district in Pennsylvania.

20 Q Is the Second District required to be a majority-
21 minority district by the Voting Rights Act?

22 A It's required that if there are -- if there's a
23 substantial enough minority population in a state,
24 that a combination is made so that they can elect a
25 representative of their choice. It doesn't have to

1 necessarily be the Second District, but there should
2 be a district based on the proportion of minority
3 population in Pennsylvania.

4 Q And your criteria for determining that is what
5 precisely?

6 A That is, as I understand it, the existing sort of
7 law, so the Voting Rights Act, since it's been
8 passed, has required states that -- to accommodate
9 minorities and allow them to elect a representative
10 of their choice, and that's accommodated through this
11 plan it appears in the Second District.

12 Q So when you -- when you created your District
13 Builder software, does your District Builder software
14 allow any -- does it contain any data that would
15 allow your clients to assess requirements under the
16 Voting Rights Act?

17 A It does, yes.

18 Q Can you assess the Voting Rights Act requirements
19 without election return data?

20 A I believe so, yes. Yeah. You're primarily using
21 racial and demographic data.

22 Q Are you familiar with the Jingles reconditions of
23 Section 2 of the Voting Rights Act?

24 A I am somewhat familiar with those as I understand
25 that racial and political data can be tied together,

1 and so it should be -- it should be used in the
2 respect that you shouldn't be using racial data by
3 itself if it's not tied to some sort of political
4 data.

5 Q So how could you have developed software for
6 redistricting that doesn't allow your clients to
7 check for compliance with the Voting Rights Act by
8 including political data?

9 A So the software isn't meant to draw official
10 plans that would be accepted by a legislature.

11 Q Oh.

12 A The software is meant to draw plans that uses
13 real census data and real compactness metric scores
14 to draw plans that could be proposed to a legislature
15 or to a commission if citizens were allowed to
16 participate in the process.

17 Q Are census data and compactness scores the only
18 redistricting criteria?

19 A No, they are not.

20 Q What are the other redistricting criteria?

21 A So other redistricting criteria involve
22 contiguity, so that's important too and that's also
23 measure in our software. But the Voting Rights Act,
24 as important as it is, it's hard to actually draw a
25 district and know whether it complies. So you can

1 draw a majority-minority district and you can do that
2 in the software because it's giving you that real-
3 time feedback about the percentage of minority
4 population in the district, but that's still
5 something that has to go through a process to
6 determine whether that's, you know, official
7 representative of a majority-minority district.

8 Q Can you explain what that process is?

9 A I -- not necessarily. I know that Section 5
10 requires pre-clearance for some states, but that
11 doesn't apply in Pennsylvania.

12 Q Are you familiar with the fact that the coverage
13 formula under Section 5 has been struck down by the
14 United States Supreme Court?

15 A I do understand that, yes.

16 Q So does Section 5 apply at all in Pennsylvania?

17 A I don't believe it does, not.

18 Q So I want to be clear. Your experience with
19 election return data was a graduate course in 2010
20 and adding up the district by district election
21 performance data for Amanda Holt, which was not
22 actually used in the case?

23 A I provided this for her. It was not actually
24 used in the case, no. Her case was about
25 jurisdictional splits. That was the basis of her

1 case.

2 Q Okay. And then you used that data in 2012 to
3 see -- what conclusions did you draw using that data
4 in your blog post in 2011?

5 A I concluded that the districts favor Republicans,
6 the district plan as a whole.

7 Q And you mentioned that you were quote in two --
8 in the "Washington Post" and In "Nature." Isn't it
9 true that both of those quotes involved your run of
10 compactness scores?

11 A That is correct, yes.

12 Q And none of those quotes involved any analysis
13 of -- none of those -- neither of those publications
14 relied on you for any political information, is that
15 correct?

16 A Neither of those publications, no.

17 Q Has any other publication ever relied on you for
18 analysis of political information?

19 A Not as far as I know, no.

20 Q Did you consider where the incumbents resided --
21 or have you ever considered where incumbents lived?
22 When you were doing your work for Amanda Holt did you
23 consider the residences of incumbents?

24 A I believe she did. I did not take that into
25 consideration, no.

1 Q When you were drawing your Fixed Philly Districts
2 system did you consider the residences of incumbents?

3 A That can be a consideration in the software. I
4 did not consider that, no.

5 Q Was that information in that software in Fixed
6 Philly Districts?

7 A Yes, it was.

8 Q Was that information in the software that you
9 created in Indiana and Illinois and in Contra Costa
10 County in California?

11 A I don't recall.

12 Q So you don't know or it wasn't?

13 A I honestly don't know. It's an optional layer
14 that clients can add on. I don't remember. The
15 software hasn't been running for years. I don't
16 remember whether incumbents were included in them.

17 Q Oh, when was that software discontinued?

18 A The software still exists, but the actual
19 instance of the software being online doesn't exist
20 anymore.

21 Q So if someone wanted to go find your District
22 Builder software now on the web, they could not do
23 that?

24 A They could. It's on -- it's on GitHub. It's
25 available for download and anyone can set it up. It

1 just has been in a stage of dormancy because
2 redistricting obviously, you know, has quieted down
3 since decennial census.

4 Q The --

5 MR. TORCHINSKY: Your Honors, we submit
6 that Mr. McGlone does not have the qualifications to
7 opine on the political analysis of any political
8 district. He has -- his experience in using
9 legislative data consists of one instance in graduate
10 school and one instance of adding up election returns
11 in 2011, and he used that same data for a blog post
12 in 2011. He has not studied or utilized election
13 return data in the last five years for any
14 professional or academic subject, and he used this
15 Harvard election return set to plot data on a map for
16 his 2017 report. We submit that that does not make
17 someone an expert to opine on the boundaries of
18 political districts, and particularly the
19 relationship between political data and districts.
20 All he did was plot data on a map. He has no
21 experience analyzing these districts, he has no
22 experience putting together districts in any state,
23 he only once put together districts for local
24 jurisdictions and that included no political
25 information at all. We submit he is not qualified to

1 testify as an expert before this Court.

2 JUDGE SMITH: Thank you. Mr. Gordon, would
3 you like to respond, first of all, by repeating the
4 area of expertise for which you are making this
5 proffer?

6 (Pause in proceedings.)

7 MR. GORDON: The areas of expertise which
8 are data analytics and that's -- and data -- I'm
9 sorry, data analytics, GIS software, and
10 redistricting from Mr. McGlone's study of
11 redistricting across the country and maintenance of
12 a -- of a database for six years in that area.

13 JUDGE SMITH: All right. And response
14 to --

15 MR. GORDON: The response is --

16 JUDGE SMITH: -- Mr. Gordon.

17 MR. GORDON: -- very brief. It is that --
18 it is that opposing counsel seems to characterize
19 this notion that if you didn't actually work for a
20 state government to design redistricting, then you're
21 not -- you're not an expert in redistricting. First,
22 this is a brand new field. The emergence of software
23 and redistricting to the grid, it's -- now it's a new
24 field. It's gaining an interest. It's now -- it's
25 now being taught in universities and colleges. To

1 have six years of experience is relatively a lifetime
2 of experience in this field.

3 What Mr. McGlone did testify to is that he
4 helped to design and maintain something called a
5 District Builder software to enable citizens --
6 citizens are no less importance and it reflects the
7 bias of -- quite frankly, of the legislator
8 defendants to sort of kick away or spurn the notion
9 that citizen software is any less important than
10 designing and maintaining something that could build
11 districts for a representative.

12 Mr. McGlone has also testified that he
13 participated in building districts on three different
14 occasions, two on a state-wide basis and one for a
15 county. This isn't an area where there are a lot of
16 experts that have sort of a deep breadth or
17 experience in doing this unless you are perhaps with
18 Project Red Map or unless you're one of the few
19 companies that assisted the Democrats in
20 redistricting in Illinois or Maryland. I mean this
21 is not -- you know, there aren't a lot of clients out
22 there, and Mr. McGlone has demonstrated -- has
23 testified and demonstrated that he has the technical
24 skill and ability to aid the trier of fact to
25 understand the designer districts based on the

1 combination of political data and the geography of
2 the districts down to the census level.

3 He is particularly gifted in this area and
4 I believe his testimony will tremendously aid the
5 triers of fact to understand what happened in the
6 partisan redistricting of Pennsylvania.

7 JUDGE SMITH: All right.

8 MR. GORDON: So those are the areas.

9 JUDGE SMITH: All right, thank you. Mr.
10 Aronchick, I'm going to proceed on the basis that
11 you're not going to step in unless you -- unless you
12 stand up and wave your hand or whatever you want to
13 do to get our attention.

14 MR. ARONCHICK: Yes, Your Honor.

15 JUDGE SMITH: Thank you. The panel will
16 confer.

17 (Pause in proceedings.)

18 JUDGE SMITH: The Court will allow the
19 witness to testify as proffered and of course allow
20 leave for specific objections to specific questions
21 and questions that in any way -- questions and
22 answers that in any way depart from the area of
23 expertise for which he has been accepted as a
24 witness. Mr. Gordon?

25

1 MR. TORCHINSKY: Excuse me, Your Honor.
2 Could we just clarify which area of expertise Mr.
3 McGlone is being qualified for?

4 JUDGE SMITH: Well, I've asked that
5 question twice and both times gotten the same answer,
6 and it was an expert on data analytics, GIS software,
7 and redistricting. Have I -- have I stated it
8 correct, Mr. Gordon?

9 MR. GORDON: You've stated it correctly,
10 Your Honor.

11 MR. TORCHINSKY: So, Your Honor, would
12 questions about political return -- about election
13 return data be permissible or not permissible --

14 JUDGE SMITH: Yes.

15 MR. TORCHINSKY: -- for Mr. McGlone?

16 JUDGE SMITH: Yes, I think where we are now
17 are questions that -- testimony and questions that go
18 to the weight of the evidence. So I --

19 MR. TORCHINSKY: Thank you, Your Honor.

20 JUDGE SMITH: -- think they would be
21 perfectly appropriate.

22 DIRECT EXAMINATION

23 BY MR. GORDON:

24 Q Mr. McGlone, at my request, did you conduct a
25 study of whether there was partisan gerrymandering in

1 Pennsylvania as a result of the 2011 map?

2 A I did, yes.

3 Q Okay. Tell the panel, please, the process by
4 which you engaged in that study. What did you do?

5 A Sure. So I acquired the data set of Pennsylvania
6 congressional districts as they went into effect in
7 2011 and I also acquired a data set from several
8 researchers at Harvard that had essentially
9 aggregated election return data and demographic data
10 to voting precincts in Pennsylvania. Voting
11 precincts are the smallest unit of which districts
12 are generally drawn, so they are the districts at
13 which you vote. Your polling place is based on your
14 voting precinct.

15 So I took that data, which has election
16 return data from 2000 to 2010, so election results
17 for Democrats for Republicans, for all state-wide and
18 national elections for all of those years, and it
19 also has an interesting feature where it averages out
20 the Democratic vote and the Republican vote for each
21 of those voting precincts. So it takes an average of
22 all of the elections between 2004 and 2008 and it
23 gives you an average democratic vote for all the
24 elections in that period. And then the inverse of
25 that would be an average Republican vote.

1 So then you can map each of the voting
2 precincts, you can color them from red to blue based
3 on the traditional colors of Democrats and
4 Republicans, and you can look at the precincts and
5 see whether they are Democratic-performing or
6 Republican-performing based on election returns from
7 that period of 2004 to 2008.

8 MR. TORCHINSKY: Excuse me, Your Honor.
9 We're going to lay a foundational objection to this
10 report. In the initial report, Mr. McGlone said that
11 his average used the average between 2000 and 2010
12 and included the 2002 and 2010 what he described as
13 Republican wave years. He just testified that the
14 data set, in fact, used only 2004 to 2008, including
15 what he referred to as the 2006 --

16 JUDGE SMITH: That purports to be an
17 inconsistency, which is certainly a basis for cross-
18 examination of the witness.

19 MR. TORCHINSKY: Thank you, Your Honor.

20 MR. GORDON: All right, thank you, Your
21 Honor.

22 BY MR. GORDON:

23 Q Mr. McGlone, let's talk for a moment about the
24 Harvard data set. What is it derived from and how
25 reliable is it?

1 A So the Harvard data set is derived from official
2 election results from the Pennsylvania Secretary of
3 State's Office --

4 Q I'm going to ask you something.

5 A Oh, sure.

6 Q You're speaking in young person, you know, sort
7 of (indiscernible).

8 A Sorry.

9 Q Slow down.

10 A Okay.

11 Q Thanks.

12 A So it's official election returns from the
13 Pennsylvania Secretary of State, and so those results
14 are taken from the Pennsylvania Secretary of State's
15 Office for each voting precinct in Pennsylvania and
16 those results are allocated to each precinct. So if
17 a certain precinct had 600 votes for Barack Obama and
18 500 votes for Mitt Romney, you'll see that in the
19 data. So it will be the 2008 election, Democrat,
20 Republic, and it's like that for every single
21 election from 2000 to 2010, and this average vote
22 share which is calculated from 2004 to 2008.

23 Q Okay. Is there -- is there -- in general, what
24 is the Harvard part -- what is it called, the Harvard
25 partisan data set?

1 A The Harvard election data archive.

2 Q The Harvard election data archive. Is there a
3 better set of archives that are publicly available in
4 the country, to your knowledge?

5 A There is not -- this is a great resource in the
6 sense that it aggregates election results for every
7 state in the country. So researchers work to get
8 this data set for actually every voting precinct in
9 every state in the country. And, again, the great
10 aspect of it is it takes all the election results and
11 then it produces an average vote share for 2004 to
12 2008, which, intuitively, you would think if -- you
13 know, if you're gerrymandering a map, if you're a map
14 maker, you're probably going to take the average of
15 several elections and you're going to see how
16 districts and voting precincts perform over several
17 elections. You're not just going to take one
18 election result. And this data set does that for
19 you. It gives you that average vote share over the
20 span of several elections rather than just one
21 election. So that was a unique aspect of the data
22 set that I didn't find in any other publicly-
23 available data set that was out there.

24 Q And is -- can we consider your testimony today
25 about the years of the Harvard data set a correction

1 from your earlier testimony in your deposition?

2 A That is correct. So the data set provides
3 election returns from 2000 to 2010, but the actual
4 average vote share is only calculated on the election
5 returns from 2004 to 2008. So that was a correction
6 that I had to make. That being said, 2004 to 2008
7 does actually model an average vote that is favorable
8 to Democrats. So you would think if you're a map
9 maker and you're gerrymandering these districts for
10 Republicans --

11 MR. TORCHINSKY: Objection, Your Honor, to
12 the foundation for this. He's putting his -- he's
13 attempting to say what map makers would be thinking
14 when he's never made a map and wasn't the map maker
15 in this case.

16 JUDGE SMITH: I'll sustain the objection.
17 You may wish to ask the question in another manner.

18 MR. GORDON: Okay.

19 (Pause in proceedings.)

20 BY MR. GORDON:

21 Q Without using the term "map maker," can you
22 please go back and explain the concept you were
23 trying to impart? Then we'll turn to -- go ahead.

24 A Sure. So if you're trying to develop a map and
25 make it a map that is favorable to Republicans, you

1 might want to use data over the course of several
2 years where Democrats did pretty well. So that way,
3 you're sort of seeing the maximum Democratic
4 potential in all these voting precincts, and if you
5 draw the lines based on that and they're still
6 favorable to Republicans, you have a map that is
7 overall a district plan that is going to elect mostly
8 Republicans.

9 MR. TORCHINSKY: Objection, Your Honor.
10 There's no foundation for Mr. McGlone to testify as
11 to what election returns map makers might use in
12 assessing the political performance of a district.

13 JUDGE SMITH: Overruled.

14 MR. TORCHINSKY: Okay.

15 BY MR. GORDON:

16 Q Mr. McGlone, let's see, at my request --
17 actually, you were explaining how you went about your
18 study. So you have this Harvard data set --

19 A Uh-huh.

20 Q -- and then did you -- and did you look district
21 by district as to evidence of partisan
22 gerrymandering?

23 A Sure. So with the district lines on the map with
24 the voting precincts shaded for red to blue, I then
25 took all the voting precincts that resided in each

1 district, aggregated the vote shares for each of
2 those districts or for all the voting precincts that
3 reside in the districts --

4 Q May I --

5 A -- up to the district level --

6 Q What's the word "aggregated" mean?

7 A Sure. So taking the sum of all of the voting
8 precincts in the district. So if the -- if the
9 voting precinct falls within the district, it is
10 aggregated, they're all summed together --

11 Q They're added up?

12 A They're added up so you would get a sum
13 Democratic vote and a sum of all the Republican vote
14 in each of the districts.

15 Q Okay. And then you were able to colorize that in
16 some manner?

17 A Yes, I produced these charts that show the vote
18 share of all the voting precincts in each of the
19 congressional districts and then also map the voting
20 precincts with the district lines overlaid so you can
21 really see how the lines tend to weave and interact
22 with voting precincts in such a way that obviously
23 favor Republicans.

24 Q Did you study all 18 districts in Pennsylvania?

25 A I did not. I left out two districts, the Fifth

1 and the Tenth in North Central Pennsylvania.
2 However, it's pretty clear that those districts do
3 border districts that I did cover in my report and
4 those -- the whole district plan has to be -- all of
5 the districts have to be taken as a whole. So you
6 can -- you know, you look at each of the districts --

7 MR. TORCHINSKY: Objection, Your Honor.

8 There was no discussion of the Fifth, Tenth, or
9 Eighteenth District in any of Mr. McGlone's reports
10 and we object to introduction of his testimony on any
11 of those districts.

12 JUDGE SMITH: I think --

13 MR. GORDON: Your Honor --

14 JUDGE SMITH: -- that --

15 MR. GORDON: Oh, sorry.

16 JUDGE SMITH: Go ahead.

17 MR. GORDON: Oh. What he's trying to
18 explain is that the --

19 JUDGE SMITH: Well, no, no --

20 MR. GORDON: When you explain --

21 JUDGE SMITH: -- no, no, no. You don't --

22 MR. GORDON: Oh, Your Honor --

23 JUDGE SMITH: You don't tell us what your
24 witness is trying to tell us.

25 MR. GORDON: Right. I meant to say that

1 the --

2 JUDGE SMITH: I think the -- I think the
3 response, the answer of the witness, as going beyond
4 the question that was asked.

5 MR. GORDON: Okay. All right, thank you,
6 Your Honor.

7 BY MR. GORDON:

8 Q All right. I want to go to some -- to the -- to
9 your -- I want to go to your conclusions, your
10 initial -- actually, let me -- I'm going to hold off
11 on that. Okay. I want to go to some key terms and
12 make sure they're clearly defined by the Court. One
13 of the -- what do the terms "packing" and "cracking"
14 mean in terms of district design?

15 MR. TORCHINSKY: Objection, Your Honor.
16 There is no foundation for Mr. McGlone to opine on
17 the terms "packing" and "cracking." He testified to
18 no prior experience with map making.

19 JUDGE SMITH: Please. Overruled.

20 BY MR. GORDON:

21 Q Go ahead.

22 A Sure. So "packing" and "cracking" are two very
23 common terms that are used in redistricting and come
24 up all the time in gerrymandering. So they're often
25 used in conjunction with each other. So "packing" is

1 the idea of concentrating members of a certain
2 constituency into a small number of districts so that
3 they make up a majority of that district, but then
4 "cracking" would be taking a certain constituency,
5 splitting them, cracking them, among multiple
6 constituencies so their vote is diluted in those
7 other -- in those other districts.

8 So in this case packing was used to pack
9 Democrats in only a few districts and crack Democrats
10 in the rest of those districts so that their vote was
11 essentially diluted and meaningless.

12 Q So what is the purpose of packing from the
13 standpoint of district design?

14 A The purpose of packing would be to minimize your
15 opponent. So if you are drawing a map to favor a
16 certain constituency or party, you would pack members
17 of the one that you're not favoring into a small
18 number of districts so they would have, in effect, a
19 super majority of that district and all their votes
20 would be wasted there, and their votes in the rest of
21 the districts, the remaining districts, would just be
22 diluted.

23 Q Okay. And let's talk about cracking, and that
24 would be the remaining districts. How is cracking
25 used in terms of gerrymandering?

1 A So cracking is used to split constituencies or
2 split certain groups so that their vote is diluted.
3 So in the case of Pennsylvania, Democrats were packed
4 into Southeastern Pennsylvania districts. The rest
5 of the state they were cracked so that their vote was
6 diluted amongst the remaining districts.

7 Q Okay. Were Democrats also packed in Pittsburgh?

8 A I believe Democrats were packed in Pittsburgh as
9 well, yes.

10 Q All right. You had prepared an illustration.
11 We're going to go into this very briefly. This is on
12 page three of your report. The report is at Exhibit
13 8. And I ask the -- kindly ask the panel to turn to
14 this and --

15 JUDGE SMITH: Number --

16 MR. GORDON: It's Exhibit 8.

17 JUDGE SMITH: Exhibit 8?

18 MR. GORDON: It looks like this, "Partisan
19 Gerrymandering in Pennsylvania," by Daniel McGlone.

20 (Pause in proceedings.)

21 JUDGE SMITH: Did you say 8?

22 JUDGE SMITH: That's not my Exhibit 8.

23 (Pause in proceedings.)

24 MR. GORDON: Oh, it's a few pages in 8, as
25 I recall.

1 (Pause in proceedings.)

2 JUDGE SMITH: All right. So this does not
3 appear to be the report, but it does appear to be
4 maps that were appendices to the report. Would that
5 be right?

6 MR. GORDON: That is partially correct.
7 The -- it looks like -- it looks like we have a
8 photocopy here. This was fully disclosed to opposing
9 counsel and it looks --

10 JUDGE SMITH: Well, your witness list
11 indicates that these are maps at 005420575.

12 MR. GORDON: Okay.

13 JUDGE SMITH: It describes them as maps.
14 It lists the exhibit as "McGlone Report," but the
15 description doesn't suggest a report.

16 MR. GORDON: Yes.

17 MR. TORCHINSKY: And, Your Honor, if I
18 could ask for clarification? Are we looking at the
19 original report or the revised report that was
20 attached?

21 JUDGE SMITH: Well, I -- we're not looking
22 at a report right now, so I'm curious as to what our
23 attention is being directed to.

24 MR. TORCHINSKY: Me too, Your Honor.

25 MR. GORDON: Thanks, Your Honor. It

1 appears that the copying of the -- there was just a
2 copying error and I believe that what you have as
3 McGlone Exhibit 8 is actually from later in his
4 report. It looks like it starts at page five.

5 JUDGE SMITH: It begins as page six of 38.

6 MR. GORDON: Oh, it starts on page five of
7 the report, which is covered up. Thanks.

8 (Pause in proceedings.)

9 MR. GORDON: I have -- opposing counsel has
10 this and I have for the Court three complete copies
11 of the McGlone report. Can I hand these up, Your
12 Honor?

13 JUDGE SMITH: Please.

14 (Pause in proceedings.)

15 JUDGE SMITH: Will you please be sure that
16 your adversaries have copies of the same or know what
17 we're referring to, a document that is titled
18 "Partisan Gerrymandering in Pennsylvania, Testimony
19 from Daniel McGlone?"

20 MR. GORDON: They -- this was -- the entire
21 report was attached to Mr. McGlone's deposition in
22 full, the one that's in front of you. So I'm sure
23 they have it.

24 JUDGE SMITH: All right. We seem to have
25 all but the first four pages I believe. What you've

1 given us supplements that so that we have pages one,
2 two --

3 MR. GORDON: Great.

4 JUDGE SMITH: -- three, and four.

5 MR. TORCHINSKY: Your Honor, they -- is
6 this introducing the report into evidence?

7 MR. GORDON: Well, we're --

8 JUDGE SMITH: Well, I --

9 MR. GORDON: Your Honor --

10 JUDGE SMITH: We haven't -- again, we have
11 not heard that yet. We haven't even had an
12 opportunity to be sure what our attention is being
13 called to, so I've had no motion to admit or know as
14 of now an idea of how plaintiffs' counsel intends to
15 use this, but I'm sure it will --

16 MR. GORDON: Your Honor, I wanted to --

17 JUDGE SMITH: -- very apparent.

18 MR. GORDON: I'm sorry, I'm cutting you off
19 and --

20 JUDGE SMITH: Go ahead.

21 MR. GORDON: -- that's not a good thing.

22 JUDGE SMITH: Go ahead.

23 MR. GORDON: Thank you, Chief Judge. What
24 I was trying to -- I would like to draw your
25 attention to the top of page three. There's a

1 diagram that illustrates the terms visually.

2 JUDGE SMITH: Top of page three?

3 MR. GORDON: -- top of page three that
4 describe the terms that Mr. McGlone just discussed of
5 packing and cracking. Okay?

6 JUDGE SMITH: Okay.

7 MR. GORDON: Are you on the same page?

8 JUDGE SMITH: Yes.

9 MR. GORDON: It looks like this.

10 JUDGE SMITH: Top of the page.

11 MR. GORDON: It's a geometric form.

12 JUDGE SMITH: Right.

13 MR. GORDON: There are three forms.

14 BY MR. GORDON:

15 Q Mr. McGlone, can you turn to that diagram? Can
16 you describe to the panel what is -- what is in those
17 three boxes?

18 A Sure. So these are illustrations. So if you
19 imagine that each of the squares is a voting precinct
20 and blue dots might indicate one part is preferred in
21 that voting precinct, that voting precinct votes for
22 that party. Let's call them blue party and red
23 party. And then the district lines are the thicker,
24 black outlines around those voting precincts. So in
25 the illustration of where you might have a

1 competitive district you have --

2 Q Let me slow you up. In the -- and this is the
3 most important thing.

4 A Uh-huh.

5 Q Are there the same number of blue and red dots in
6 each of the three diagrams?

7 A That is correct, yes.

8 Q Okay.

9 A So the blue dots and the red dots are in the same
10 place in each of the three diagrams.

11 Q Okay. Let's suppose the blue dots represent
12 Democrats and red dots represent Republicans.

13 Describe what happened in -- the First District is
14 called competitive. What do you mean by
15 "competitive?" Why is that described that way?

16 A So if you notice that the district lines there
17 are drawn in a compact way and they're competitive
18 because they contain an equal number of red and blue
19 dots as compared to the packing and cracking where in
20 the same voting precincts with the same number of red
21 and blue dots you could draw a map with packing where
22 you're packing districts where Republicans only have
23 a majority -- if Republicans are these red dots, only
24 have a majority in one district where Democrats have
25 a majority in the other districts.

1 Q And the cracking, what is -- what is happening
2 there?

3 A So and cracking is sort of the inverse of that.
4 So in cracking, you're cracking the votes so that you
5 end up with three Republican districts and one
6 Democratic district.

7 Q Okay. All right. I think this will become
8 clearer as we actually get into the -- get into the
9 testimony. You described packing and cracking. Did
10 you -- what is meant by the most efficient -- by
11 efficient use of the Republican vote share? I'm
12 sorry, actually, just hang on just a moment.

13 A Uh-huh.

14 Q Can we --

15 JUDGE SMITH: Excuse me. May I just
16 request that tomorrow or before the week is out that
17 you supplement your Plaintiffs' Exhibit 8 as it is
18 set forth in the binder with the additional pages
19 that you've given us here?

20 MR. GORDON: I will, Your Honor.

21 JUDGE SMITH: Thank you.

22 MR. GORDON: Thank you. Okay.

23 BY MR. GORDON:

24 Q All right. Let's turn, please, to page four of
25 your report. And you have diagrams. What is the

1 source of data for these diagrams?

2 A Sure. These are the "Pennsylvania Congressional
3 Districts" and "Pennsylvania Congressional Districts
4 2003" diagrams.

5 Q Okay. And for what year were they -- was the
6 upper diagram drawn?

7 A So the upper diagram is for the districts as of
8 2011 and the lower diagram is the districts for the
9 previous decade.

10 Q Okay.

11 A And the data set used was the Harvard election
12 data set. Again, the voting precinct data aggregated
13 to each of the districts.

14 Q And you have here 18 districts. Why are they --
15 why are they in this certain order in the upper
16 diagram?

17 JUDGE BAYLSON: What page?

18 MR. GORDON: This is --

19 JUDGE BAYLSON: Page six?

20 MR. GORDON: -- top of page four.

21 JUDGE BAYLSON: Four?

22 MR. GORDON: Top of page four, Judge
23 Baylson.

24 JUDGE BAYLSON: Page four is --

25 MR. GORDON: It looks like this.

1 JUDGE BAYLSON: Okay. Page four at the
2 bottom. Okay, go ahead. Thank you. Sorry.

3 THE WITNESS: So there, in order from left
4 to right, from highest Democratic vote share to
5 lowest Democratic vote share.

6 BY MR. GORDON:

7 Q Oh, okay. And what does the -- so when -- what
8 is this an illustration of in terms of packing or
9 cracking? What do you have here?

10 A So this is an example of packing. So if you look
11 at the four to five districts on the left, the
12 Second, First, Fourteenth, and Thirteenth, even,
13 arguably, the Seventeenth, these are districts that
14 are packed full of Democrats where Democrats have an
15 overwhelming majority of the partisan vote share in
16 each of those districts, whereas the Democratic vote
17 share is diluted amongst the remaining districts. So
18 you can see how the distribution is unevenly spread
19 here. And Democrats have a very high majority in
20 only a few districts, whereas Republicans are just
21 barely maintaining the edge in the rest of the
22 districts throughout the state but just enough to
23 maintain a majority of partisan vote share in those
24 districts.

25 Q Okay. Let me ask you this. Why are you --

1 referring to vote share, and this is based on the
2 Harvard data analysis, why is this illustration not
3 done using voter registration figures, Republican
4 versus Democrat versus independent?

5 A Yeah, so people tend to -- people can vote
6 differently than their party, and so it would make
7 sense that you would want to use actually -- actual
8 election return data to see how people are actually
9 voting, as opposed to just party registration.

10 Q Okay. And when was this -- when would this data
11 have been available to -- oh, this is -- I'm sorry,
12 this is resulting data. So what years did chart A
13 encompass?

14 A It's the districts in 2011, and the data would be
15 the election return data from 2004 to 2008.

16 Q Okay. So you used the actual districts here from
17 the 2011 map, okay, and then you inserted there and
18 you applied the Harvard election data to show how
19 each of these districts performed in terms of
20 Republicans and Democrats?

21 A That's correct, yes.

22 Q So --

23 JUDGE SMITH: Excuse me. Could you, for
24 purposes of the record, identify the Pennsylvania map
25 that is colored with different shades by number,

1 please?

2 MR. GORDON: Yes. Your Honors, this is the
3 "Pennsylvania Congressional Districts" map from the
4 (indiscernible) Pennsylvania State --

5 JUDGE SMITH: Have you marked --

6 MR. GORDON: Oh, exhibit number?

7 JUDGE SMITH: Yes. Have you marked it?
8 Have you listed it anywhere?

9 MR. GORDON: Yeah.

10 (Pause in proceedings.)

11 MR. GORDON: Oh, sorry. This is P-2. It's
12 bates stamped 058.

13 JUDGE SMITH: All right, Plaintiffs'
14 Exhibit 2.

15 MR. GORDON: So referring to Plaintiff's
16 Exhibit -- and it's from the Pennsylvania department
17 of Statement website on elections.

18 JUDGE SMITH: Just so you know, it does not
19 appear that you're marking of Plaintiffs' 2
20 corresponds with your Trial Exhibit Number 2 on
21 plaintiffs' exhibit list. What's the bates number
22 again, please?

23 MR. GORDON: The bates number is 058.

24 JUDGE SMITH: All right, then it would --
25 then it is correct.

1 MR. GORDON: Yes.

2 JUDGE SMITH: My -- I beg your pardon.

3 MR. GORDON: And this Exhibit 2 is put
4 right up front because it's going to come up again
5 and again in your data set. What these are, these
6 are congressional -- Pennsylvania congressional
7 district maps in Plaintiff's Exhibit 2 from 1943 to
8 2011. So the current map, the 2011 map, is the
9 one -- the last one in your set. And we'll go into
10 this later. It shows the historical evolution of the
11 districts. Thanks.

12 BY MR. GORDON:

13 Q Okay. So we were turning to -- so, Dan, was is
14 the -- or, Mr. McGlone, what's the relevance of
15 having certain districts as performing in which you
16 have a very large share of Democratic vote? What's
17 the -- why does that matter in terms of
18 redistricting?

19 A It matters because if you can take a state that's
20 pretty even -- a state that's pretty evenly split
21 between Democrats and Republicans and you can manage
22 to get all the Democrats in only four or five
23 districts, you've done a very good job a, I would
24 argue, gerrymandering the state. So the districts --
25 the district plan, as it exists now, has 13 districts

1 with a majority Republican vote and five districts
2 with a majority Democratic vote, and that appears to
3 be engineered that way with the super majority
4 Democratic districts, with Democrats packed in some
5 sort of way that would basically waste their vote in
6 those five districts and make the remaining districts
7 Republican pretty much all the time.

8 Q And, in general, when you concentrate Democrats
9 in, for example, the First, Second, or Thirteenth
10 District, what impact does it have on the abutting or
11 surrounding districts?

12 A So all the districts are obviously connected.
13 They're all related to each other. And so when
14 you've managed to pack Democrats in the First,
15 Second, and Thirteenth, you've actually managed to
16 keep the other districts that surround them safer for
17 Republicans. So if I packed all the Democrats in the
18 First, Second, and Thirteenth, the Sixth is more open
19 for Republicans, so is the Seventh, and so is the
20 Eighth.

21 Q Okay. And let's turn to the chart on the bottom
22 of -- at least in my set it's on page four of the
23 partisan gerrymandering in Pennsylvania, McGlone
24 Exhibit 8. Tell us about how does that differ from
25 the chart above it? What's the -- what are you

1 showing there?

2 A So that is using the districts from the previous
3 decade. So you can kind of see how they've evolved.
4 So, you know, if we're starting with this map with
5 the districts from the 2000s and we're taking that
6 same election return data, we're seeing that
7 Democrats have now started to make gains in some of
8 these districts. So the Eleventh, the Twelfth, the
9 Fifteenth, the Sixth, the Seventh, the Eighth, those
10 all now have Democratic majorities. And so,
11 basically, if you think of this map -- if you think
12 of this chart as the starting point, the map was
13 re-engineered so that Democrats were packed into five
14 districts, so the Fifteenth, Twelfth, and the Sixth,
15 along with the Seventh and the Eighteenth, could all
16 be slightly Republican enough that they would
17 continue to elect Republicans.

18 Q Is it your opinion that the -- that the 2003 map
19 was a gerrymandered map?

20 A I also think that map was gerrymandered.

21 Q Okay.

22 MR. TORCHINSKY: Objection, Your Honor.
23 There is no discussion of the 2003 map in the report
24 and that's beyond the scope of the expert report.

25 JUDGE SMITH: Your response?

1 MR. GORDON: This diagram itself shows
2 that --

3 JUDGE SMITH: Yes, I -- but that's not --

4 MR. GORDON: Oh, I'm sorry.

5 -- the objection. The objection is it's
6 beyond the scope of what was in the report.

7 (Pause in proceedings.)

8 MR. GORDON: It is not. The --

9 JUDGE SMITH: I'll sustain the objection.

10 MR. GORDON: -- report goes through -- goes
11 through --

12 JUDGE SMITH: I'll sustain the objection.

13 MR. GORDON: -- 16 -- thanks.

14 BY MR. GORDON:

15 Q All right. Mr. McGlone, I'm going to -- so the
16 diagram on the bottom of page four, would that --
17 would those numbers have been available to the folks
18 designing the 2011 map?

19 MR. TORCHINSKY: Objection, Your Honor.
20 That's hearsay.

21 JUDGE SMITH: Overruled.

22 THE WITNESS: They certainly would be.

23 This is public election return data that was
24 aggregated from 2004 to 2008, so it's certainly data
25 that they would have had access to.

1 BY MR. GORDON:

2 Q Okay.

3 MR. TORCHINSKY: Objection, Your Honor.

4 He's speculating as to what data people have access
5 to.

6 MR. GORDON: Response, Your Honor. He
7 didn't testify what they had access to. He testified
8 clearly to what they would have had access to.

9 JUDGE SMITH: He testified to what would be
10 available. I will again overrule the objection.

11 MR. GORDON: Okay.

12 BY MR. GORDON:

13 Q Turning to -- turning to page five, there's a
14 diagram at the top, "Pennsylvania State-wide Vote."
15 For what -- first of all, what is the source of data
16 for this chart?

17 A This is also, again, the Harvard election data
18 archive.

19 Q Okay. And what does it show in terms of what
20 were the results of Democratic versus Republican
21 state-wide vote? Actually, let me back up. What
22 period of time, again, was this chart derived?

23 A This is using all the same data from 2004 to
24 2008, but instead of aggregated to each districts,
25 it's just summed up to the entire state level. So

1 you can see that Democrats in that period have a
2 majority vote share slightly over 50 percent, while
3 Democrats have closer to 46 percent.

4 Q And, specifically --

5 A Or sorry --

6 Q -- what offices are aggregated in that? What
7 elections?

8 A This is all national and state elections.

9 Q So this would have been -- would be all state-
10 wide elections, all senatorial elections in that time
11 period, and all congressional elections in that time
12 period, is that correct?

13 A Along with presidential elections.

14 Q And presidential elections, thank you. And what
15 is the -- what is the result in terms of the
16 percentage of Democratic vote versus the percentage
17 of Republican vote?

18 A Democrats have an edge there. They're over 50
19 percent, where Republicans are closer to 46 percent.

20 Q Okay, thank you. Turning to the Cook PVI.
21 What's the Cook PVI?

22 A So the Cook Partisan Voter Index is a measure of
23 performance of congressional districts as compared to
24 the national average. So it takes the previous two
25 presidential elections and looks at whether the --

1 those congressional districts have performed more
2 favorable for Republicans or less favorable for
3 Republicans compared to the national average.

4 Q The Cook Partisan Voter Index, is it something
5 that is -- that is routinely used by those -- I'll
6 just say is it -- to what extent is it used by those
7 in the industry or in politics, in general? I mean
8 where have you seen the Cook PVI?

9 MR. TORCHINSKY: Objection, Your Honor.

10 There's --

11 JUDGE SMITH: I'll sustain -

12 MR. TORCHINSKY: -- a lack of foundation
13 for this question.

14 JUDGE SMITH: I'll sustain --

15 MR. GORDON: Okay, sorry, Your Honor.

16 JUDGE SMITH: -- the objection. The
17 inquiry may be inappropriate, but the question is
18 entirely too broad.

19 MR. GORDON: Thank you, Your Honor.

20 BY MR. GORDON:

21 Q Okay, What is -- what is the source of the Cook
22 Partisan Voter Index, please?

23 A It's produced by academics at I believe the
24 University of Virginia. It's used all the time in
25 media and reports about whether a district is --

1 MR. TORCHINSKY: Objection, Your Honor.
2 The Cook political report is a private commercial
3 service. It is not a university thing. Even his
4 website -- even his citation here is to a .com
5 address.

6 JUDGE SMITH: Counsel, if he's wrong, you
7 may cross-examine on that.

8 MR. TORCHINSKY: Thank you, Your Honor.

9 JUDGE SMITH: That's a factual matter.
10 Question of my own. Do you know is this the Charles
11 Cook Organization?

12 THE WITNESS: It is, yeah.

13 JUDGE SMITH: All right.

14 BY MR. GORDON:

15 Q Is it routinely used by academics in the field of
16 redistricting?

17 A It is used by academics. It's used in the media
18 all the time to cite the partisan index of a
19 district.

20 Q Okay. And can you briefly describe what a --
21 what a Cook number is? What is the Cook data index?
22 What does it indicate?

23 A Sure. It's indicating whether a congressional
24 district has performed more Republican than the
25 national average or less Republican than the national

1 average compared to the previous two presidential
2 elections.

3 Q Okay.

4 A So in this example, the -- in the chart,
5 Districts Seven through Nine are performing more
6 Republican than the national average, and the
7 Districts Two through Thirteen are performing less --
8 more Democratic compared to the national average.

9 Q Okay. And it's the national average of the --

10 A Of the -- of the national presidential election
11 in the previous two election cycles.

12 Q I understand. So when you have a -- when you
13 have a Cook partisan index of, for example, R+1, what
14 does that mean?

15 A That means that it performs more favorable to
16 Republicans by one point compared to the national
17 average.

18 Q And is one point one percent above 50?

19 A I believe it is one percent, yeah.

20 Q Okay. And what does -- so suppose you have a
21 Cook average of D-40. What does that mean?

22 A That means it performs 40 points more Democratic
23 than the national average.

24 Q Okay. So the bars on the left-hand side indicate
25 higher performance for Democrats and the bars above

1 the line are higher performing for Republicans?

2 A Correct.

3 Q Okay. And you have -- again, you have 18
4 categories in that chart on page five. And what do
5 the 18 categories refer to?

6 A Pennsylvania's congressional districts.

7 Q Okay. Thank you. And what is the significance
8 that the -- that the Republican bars are shorter than
9 the Democratic bars in most instances?

10 A This, again, shows packing and cracking. So,
11 essentially the Democrats are packed into those four
12 districts. The remaining districts are Republican
13 but only slightly so in many cases, again,
14 maintaining the point where Republicans are spread
15 efficiently throughout the state in this map. And so
16 the Democrats, if they're packed in only a few
17 districts, the rest of the districts are going to be
18 Republican, albeit by smaller margin.

19 Q Okay. Let's turn to the first district and your
20 findings there. When your -- first, what was the --
21 what was the Cook partisan vote share of the First
22 Congressional District?

23 A The First District is a little over 20 points in
24 favor of Democrats.

25 Q And 20 points would mean that elections come out

1 about 70 percent Democratic and -- is that what it
2 means?

3 A That would seem to be about the case if the
4 previous two national elections resulted in a 50
5 percent split.

6 JUDGE SMITH: Are you now on page six of
7 Exhibit 8?

8 MR. GORDON: I am.

9 JUDGE SMITH: Thank you.

10 BY MR. GORDON:

11 Q Okay. And where is -- where is -- let's turn to
12 page seven for this -- if I can direct the Court to
13 page seven. Where is the First Congressional
14 District?

15 A So the First District resides in Eastern
16 Philadelphia as well as along the border of
17 Philadelphia and Delaware County, stretching along
18 the Delaware River down to the City of Chester, and
19 then also extending outward to the Borough of
20 Swarthmore and Central Delaware County.

21 Q Okay. Turning to those two figures. You have
22 colors of blue, dark blue, a lighter medium blue, a
23 lighter blue, and you have a couple of pink
24 districts. What do those correspond to?

25 A So this corresponds to that partisan vote share

1 for each of the precincts. So the grey lines are
2 outlining all the voting precincts and the red line
3 outlines the district boundary. So the precincts are
4 shaded based on their Democratic and Republican
5 performance. So the more dark blue it is, the more
6 Democratic-performing it is. The more dark red or
7 orange it is, the more Republican-performing.
8 Districts that are shaded light blue or light red are
9 either more slightly advantaging Democrats or
10 slightly advantaging Republicans.

11 Q Okay. And in using that data -- pardon me --
12 what were your observations about the -- in terms of
13 the packing or cracking the First Congressional
14 District?

15 A Sure. So it seems fairly obvious to me that the
16 First District extends outward from Chester to pack
17 Swarthmore in with the rest of the First District.
18 That appendage at times is only one precinct wide and
19 also splits the City of Chester, which you'll see in
20 my supplemental report, all in an effort to reach out
21 into the middle of Delaware County and grab
22 Swarthmore Borough and incorporate that into the
23 First District.

24 MR. TORCHINSKY: Objection as to
25 speculation.

1 JUDGE SMITH: I'll sustain the objection.

2 BY MR. GORDON:

3 Q Can you -- can you please describe your
4 understanding of how the -- of how the boundaries
5 were formed in the 20 -- I'm sorry, in the First
6 Congressional District?

7 MR. TORCHINSKY: Objection as to
8 speculation again, Your Honor.

9 JUDGE SMITH: Again, I'll sustain the
10 objection. Will you please restate the question?
11 I'm --

12 MR. GORDON: Could you please --

13 JUDGE SMITH: -- personally not sure what
14 you're asking, but "how" and "were" does seem to
15 suggest speculation as to what others did. You can
16 certainly inquire into the effect of whatever it is
17 that occurred here.

18 MR. GORDON: Okay.

19 BY MR. GORDON:

20 Q What was the effect of the -- of the contours of
21 the First Congressional District in terms of -- in
22 terms of the overall vote share?

23 A The effect of drawing the district lines in such
24 a way would include Swarthmore, which is a
25 Democratic-performing area with thousands of

1 Democratic voters. The result there would be that
2 they are packed into the First District, which would
3 make the First District more Democratic. It would
4 also make the Seventh District less Democratic.
5 Swarthmore is located near the center of Delaware
6 County and it -- by packing it in with the First
7 District, you've eliminated those Democratic voters
8 from voting with the rest of Delaware County in the
9 Seventh District.

10 Q Okay. When you compare the 2003 map with the
11 2011 map what -- first, describe what changes were
12 made between those two maps.

13 A So yeah, perhaps most notably would be that
14 the -- that arm that sticks out from the City of
15 Chester and encompasses Swarthmore and the area to
16 the west of Swarthmore. So that arm wasn't there
17 before that --

18 Q So --

19 A -- purposely sort of --

20 Q -- just so we know what you're talking about --

21 A Sorry.

22 Q -- you're talking about the area on the left-hand
23 side of the upper drawing that --

24 A Yeah. So in the map on the top, that's the
25 current map. You can see that the piece of the

1 district sticks out to the right of where the word
2 "Delaware" is, indicating Delaware County.

3 Q Uh-huh.

4 A In the map below that, there's no appendage
5 there. There's no arm that sticks out to encompass
6 Swarthmore. So previously, the lines just included
7 the City of Chester, did not reach out into Delaware
8 County, and the map that's currently in effect, that
9 district now reaches out into the middle of Delaware
10 County to encompass the Borough of Swarthmore.

11 Q So the Borough of Swarthmore, was it your
12 observation that it tended to vote Democratic?

13 A Yeah, I think I note in my supplemental report
14 how Democratic it is.

15 Q And is it your understanding it was intentionally
16 included in the First Congressional District in
17 the --

18 MR. TORCHINSKY: Objection, Your Honor. He
19 can't speculate as to the intent of the map drawers.

20 JUDGE SMITH: I will sustain the objection.

21 BY MR. GORDON:

22 Q And what was the effect of reaching up and
23 including the Borough of Swarthmore in the First
24 Congressional?

25 A The effect ended up packing more Democrats into

1 the First but then also diluting their -- the
2 Democratic effect in the Seventh District because
3 Swarthmore is now included in the First, as opposed
4 to the Seventh, where it could potentially more
5 naturally reside in the middle of Delaware County.

6 Q Okay, thank you.

7 (Pause in proceedings.)

8 Q Okay. Let's turn to the Second Congressional
9 District. Can you first explain where is the Second
10 Congressional District?

11 A Sure, the Second District --

12 Q Page eight.

13 A Sorry?

14 Q Sorry, page eight for the Court.

15 A The Second District resides in Western and
16 Northwestern Philadelphia, as well as extending into
17 Montgomery County and Lower Merion Township.

18 Q Okay. What is the partisan vote share of the
19 Second Congressional District?

20 A It is overwhelmingly Democratic.

21 Q Okay. Can you give a figure on that or --

22 A I believe it is 89 percent Democratic and 11
23 percent Republican.

24 Q Thank you.

25 JUDGE SMITH: For precision here, when

1 you're describing whether a district or area is
2 Republican or Democrat I would prefer that you
3 indicate whether you're referring to registration or
4 some of the other statistical information that you've
5 mustered relative to voting patterns.

6 THE WITNESS: It is the information
7 relevant to voting patterns, not registration.

8 BY MR. GORDON:

9 Q Thank you. And is it based on the Cook partisan
10 index or the Harvard data set?

11 A It's based on the Harvard data set for elections
12 from 2004 to 2008.

13 Q Okay. Thank you. And did you develop each of
14 these diagrams for each of the districts you did
15 review?

16 A I did, yes.

17 Q Okay, based on the Harvard data set. And in your
18 opinion, is the Harvard data set reliable?

19 A It is, yes.

20 Q And is the Harvard data set widely used by
21 academics and people commenting on redistricting?

22 A It has been cited in many articles. I have that
23 noted in my supplemental report. It also was
24 compiled by researchers and academics at Harvard --

25 Q Okay.

1 A -- and other universities.

2 Q Very good. Could you -- could you please give
3 the panel -- describe the effect of the boundaries of
4 the Second Congressional District?

5 A The effect of the boundaries of the Second
6 Congressional District essentially pack Democrats
7 into a relatively compact district, but one that
8 includes two very different communities of interest,
9 one being African-Americans in Philadelphia, but also
10 Democratic voting, but on a very different
11 socioeconomic and racial class, people in Lower
12 Merion Township.

13 Q Okay. Are you -- I notice that the Second
14 Congressional District borders the Seventh
15 Congressional District where Congressman Pat Meehan
16 is located, is that correct?

17 A That's correct.

18 Q All right. Are you able to infer -- based upon
19 the election results and looking at both the Second
20 and Seventh District, are you able to infer why Lower
21 Merion was included in the Second Congressional
22 District?

23 MR. TORCHINSKY: Objection, Your Honor,
24 calls for speculation.

25 JUDGE SMITH: Sustained.

1 BY MR. GORDON:

2 Q Can you -- can you -- would you please testify
3 the effect on the Seventh Congressional District of
4 including Lower Merion in the Second Congressional
5 District?

6 A Sure. By including the -- by including Lower
7 Merion Township in the Second District, it eliminated
8 and diluted Democratic performance or influence on
9 the Seventh District. So Lower Merion Township is an
10 area that's been trending Democratic and voting more
11 and more Democratic over the past decade or so, and
12 by keeping it out of the Seventh, it keeps the
13 Seventh more Republican but packs Democrats into the
14 Second, which was already a Democrat-performing
15 district in years before and just added more
16 Democrats to an already majority-Democratic district.

17 Q And Lower Merion was not part of the Second
18 Congressional District in the prior redistricting?

19 A It was not, no.

20 Q Okay.

21 (Pause in proceedings.)

22 Q Let's turn to the Third Congressional District.
23 Third Congressional District. Okay. Where is the
24 Third Congressional District, please?

25 A The Third Congressional District snakes from the

1 City of Erie along the western border of Pennsylvania
2 into the Northern Pittsburgh suburbs of Butler and
3 Armstrong County.

4 Q And this would be in the light blue in the 2011
5 map?

6 A That's correct, yes.

7 Q Okay. And the light blue -- sorry, the 2011 map,
8 just in case you want to flip or refer to it -- and
9 I'm sorry we don't have projections and overheads,
10 but we -- you have it in Exhibit 2. It would be the
11 last -- the last map in Exhibit 2.

12 (Pause in proceedings.)

13 Q Okay. Can you -- can you briefly describe the
14 Third Congressional District as it was created in the
15 2011 map?

16 A So the effect here would be to what --

17 Q Wait. No, I'm sorry.

18 A Sorry.

19 Q Two separate questions.

20 A Yeah.

21 Q Give us a tour, a political tour, of the Third
22 Congressional District.

23 A Sure. So the district stretches from the City of
24 Erie in its northern part all the way through --
25 well, splitting down the middle of Erie County,

1 encompassing Crawford, Mercer, parts of Lawrence, and
2 then Butler and Armstrong Counties. But I think the
3 most notable thing here is how it splits Erie County
4 down the middle. It splits Erie from its suburbs by
5 putting the City of Erie in the Third District but
6 the suburbs and the rest of the county in the Fifth
7 District.

8 Q Okay. Thank you.

9 (Pause in proceedings.)

10 Q What was the effect of splitting Erie from its
11 suburbs in the Third Congressional and Fifth
12 Districts?

13 A The effect was cracking a Democratic constituency
14 in Erie County. Erie County is the largest county in
15 that district and it would make more sense to keep it
16 whole. It was kept whole in the previous version of
17 the district boundaries. I would also note that --

18 MR. TORCHINSKY: Objection, Your Honor. He
19 said "make more sense" and it's unclear as to what
20 that's based on.

21 JUDGE SMITH: I -- beyond that, I think
22 it's unclear what he means by it. There may be
23 acceptable ways to use those words and there may be
24 objectionable ways of using those words. Could you
25 restate the question and allow your witness to

1 answer?

2 MR. GORDON: Yeah.

3 BY MR. GORDON:

4 Q What was the impact on the ability of the -- of
5 the Third and the Fifth Congressional Districts to
6 potentially elect a Democratic Congressman as a
7 result of splitting Erie?

8 A The impact was that it made it less likely to
9 elect a Democratic congressperson from either of
10 those districts, but especially the Third. I would
11 note that Kathy Dahlkemper was elected in that
12 district in 2008. She was the Erie County
13 executive --

14 MR. TORCHINSKY: Objection, Your Honor.
15 This goes beyond the scope of the report. It's not
16 mentioned in his initial report or his supplemental
17 report.

18 MR. GORDON: Your Honor, it's actually what
19 we covered in Ms. Hannah's report, so we can -- we
20 can actually move on.

21 JUDGE SMITH: If it is, I'll allow it.

22 MR. TORCHINSKY: But I'm sorry, Your Honor,
23 just for clarification. Things in Ms. Hannah's
24 report are allowed to be testified to by Mr. McGlone?

25 JUDGE SMITH: I'm not making that ruling.

1 I'm saying in this instance I will allow --

2 MR. TORCHINSKY: Okay.

3 JUDGE SMITH: -- the testimony.

4 MR. TORCHINSKY: Thank you, Your Honor.

5 BY MR. GORDON:

6 Q Ms. Dahlkemper was of what party?

7 A She was a Democrat. She was elected in the Third
8 District in 2008. She was an Erie County executive,
9 so she was elected previously, before in Congress,
10 she was elected at the executive level in Erie
11 County. So she was an Erie County executive. And so
12 by splitting the Third District in 2011, that would
13 make it less likely that you would ever have an Erie
14 County executive or someone from Erie County elected
15 to this district, Erie County being the most
16 Democratic part of the district.

17 Q Okay. Would it lessen the opportunity in the
18 Third Congressional District to elect a Democrat?

19 A It would, yes.

20 Q Okay. Thank you. I'm going to move now to the
21 Fourth Congressional District. And I just -- just
22 for the panel -- I'm sorry. Before we move to the
23 Fourth, we have -- Mr. McGlone has a second -- has a
24 supplemental report that was prepared after the
25 release of the -- of the Turzai data which they

1 actually used to create the maps. So we're going to
2 come back to each of these districts, but I need to
3 sort of walk through this in a stepwise manner. So
4 that's --

5 JUDGE SMITH: You know the time
6 restrictions.

7 MR. GORDON: I do.

8 JUDGE SMITH: You can use it as you wish.

9 MR. GORDON: I'm aware. We're going to --
10 we're going to pick up the pace, and I appreciate
11 your mentioning that. Thank you.

12 BY MR. GORDON:

13 Q So moving to the -- moving to the --

14 (Pause in proceedings.)

15 Q Sorry. Turning to the top of -- actually, let's
16 turn to the Fourth Congressional. Three questions,
17 where is the Fourth and what was its partisan -- I'm
18 sorry, I shouldn't combine questions. Where is the
19 Fourth District --

20 A The Fourth --

21 Q -- so the Court can orient themselves?

22 A The Fourth District is located in South Central
23 Pennsylvania encompassing Adams and York County as
24 well as Eastern Cumberland and the City of
25 Harrisburg, which is splits.

1 Q What is the partisan vote share of the Fourth
2 Congressional District?

3 A I believe it's 59 percent Republican, 41 percent
4 Democratic.

5 Q Okay. And what was the effect of splitting --
6 why don't we turn to the diagrams on page 12 of your
7 report. What was the effect of splitting the
8 Democrats in the City of Harrisburg?

9 A The effect was, again, cracking Democratic
10 constituency, so the Harrisburg area -- the City of
11 Harrisburg and neighboring Susquehanna Township were
12 split three times, Harrisburg City once, Susquehanna
13 Township actually split twice, which I note in my
14 supplemental report. This is a crack of a core
15 Democratic constituency and that -- and the effect
16 there was to split those -- that core Democratic area
17 amongst multiple districts to dilute its influence.

18 Q Was Harrisburg split in the preceding decennial
19 map?

20 A It was not.

21 Q Do you have any -- do you have any understanding
22 one way or the other of why it was or was not in the
23 prior map?

24 A I do not.

25 Q Okay. Okay. Turning your attention to page 13,

1 the bottom diagram, is that a more detailed map of
2 the split of Harrisburg?

3 A It is and there's actually a more detailed map in
4 my supplemental that has municipal boundaries, so
5 that can actually be seen.

6 Q Okay. We'll turn to that then.

7 A The split is more --

8 Q All right.

9 A -- easily --

10 Q Let's turn -- let's turn briefly to the Sixth
11 Congressional District. Where is the Sixth
12 Congressional?

13 A The Sixth Congressional District is kind of all
14 over. So it's anchored in Northern Chester County,
15 in winds through Montgomery County, enters Berks
16 County weaving around the City of Reading, and then
17 all the way out to Lebanon County and Lebanon -- and
18 part of Lebanon City. It also splits Lebanon City.

19 Q Could you describe for the panel the effect of
20 the design of that interestingly-shaped congressional
21 district?

22 A Yeah, I think the effect here -- the effect,
23 clearly to me, is that it went out and reached out
24 into Central Pennsylvania to grab more Republican-
25 voting areas. So it was previously anchored in

1 Chester County, and by extending that arm all the way
2 through Central Berks County and into Southeastern
3 Lebanon County, it picked up a lot more Republican-
4 performing areas to maintain that slight Republican
5 edge in that -- in that district, so we continue to
6 elect Republicans.

7 Q Okay. And what were some of the differences
8 between the 2003 map or 2002 map and the 2011 map
9 with respect to the Third District?

10 A I'm sorry, the Sixth District?

11 Q I'm sorry, the Sixth District.

12 A Yeah. So previously, the Sixth District had --
13 it was also gerrymandered and also had a very wild
14 shape, but went down and encompassed parts of the
15 Main Line. So it did include Lower Merion Township,
16 it included Norristown Borough, and also extended up
17 into Southern Berks County. This incarnation of the
18 district actually eliminates Southern Berks County
19 from the District, but instead goes around Reading,
20 the City of Reading, and all the way into Lebanon
21 County. So it extends further into Central
22 Pennsylvania into more Republican-performing areas.

23 Q Okay. And the 2003 map, for the panel's -- so
24 the panel can see it, is depicted at the top of page
25 15. And what was the impact of moving Lower Merion

1 out of the -- out of the Sixth and into the Second?

2 A The impact there was packing more Democrats into
3 the Second District to create even more of a super
4 majority Democratic district, and by allowing the
5 Sixth District to continue to elect Republicans by
6 making it more Republican-performing.

7 Q Okay. And was there any unusual -- was there
8 unusual lines that were drawn involving the City of
9 Reading?

10 MR. TORCHINSKY: Objection, Your Honor.
11 There's no definition as to what "unusual" means.

12 JUDGE SMITH: I will sustain the objection.

13 BY MR. GORDON:

14 Q Can you describe the drawing of boundaries of the
15 Sixth Congressional District with respect to the City
16 of Reading in the 2011 map?

17 A Yeah. The Sixth District almost completely
18 surrounds Reading with the exception of one narrow,
19 little piece, which is the Sixteenth District, which
20 actually cuts into the Sixth District, at times only
21 one precinct wide, in an effort to encompass the City
22 of Reading in the Sixteenth.

23 MR. TORCHINSKY: Objection, Your Honor.
24 He's speculating as to what the intent was.

25 JUDGE SMITH: "In an effort" does suggest

1 intent, yes. Again, we're dealing sometimes with
2 fine lines and the use of language, but he can
3 describe the effect, he can describe it
4 statistically, based on his methodology, what the
5 result is here.

6 BY MR. GORDON:

7 Q Statistically, based on your -- based on your
8 data analytics, what is the result of -- of the
9 boundary surrounding the City of Reading and putting
10 that in the Sixteenth and taking it out of the Sixth?

11 A The effect was to make the Sixth District more
12 Republican and to dilute the Democratic vote by
13 putting it into the Sixteenth District, which was --
14 which also includes very heavily Republican areas.

15 Q Okay, thank you. All right. Turn to the Seventh
16 Congressional District. Where is the Seventh
17 Congressional District?

18 A The Seventh District is also in multiple counties
19 stretching from Southern Berks County through Eastern
20 Lancaster County, Western Chester County, with a thin
21 line extending through Central Chester County to
22 Southeastern Chester County along the border of
23 Delaware, into Delaware County, wrapping around
24 Swarthmore but not including it, with another thin
25 line extending north in Delaware County, crossing the

1 county boundary along the Schuylkill River and the
2 Pennsylvania Turnpike to encompass parts of Central
3 Montgomery County outside of -- next to the
4 Thirteenth and the Eighth District.

5 (Pause in proceedings.)

6 Q And what was the -- what was the effect -- just
7 for purposes of -- well, for purposes of this trial,
8 what figures or cartoon characters does the Seventh
9 depict --

10 MR. TORCHINSKY: Objection, Your Honor, as
11 to relevance --

12 BY MR. GORDON:

13 Q -- so we can use common language?

14 MR. TORCHINSKY: -- of cartoon characters.

15 MR. GORDON: It will aid in terms of our
16 understanding of --

17 JUDGE SMITH: Why don't --

18 MR. GORDON: -- identifying --

19 JUDGE SMITH: you argue it later rather
20 than ask your witness that question?

21 MR. GORDON: It was -- it was to speed up
22 identifying certain portions of the district. It
23 wasn't really for --

24 JUDGE SMITH: I think you're wasting time.

25 MR. GORDON: Very good. Okay, we'll move

1 on. Thank you.

2 BY MR. GORDON:

3 Q All right. What was the -- let's turn to -- I
4 want to turn these narrow neck. Let's look at page
5 18. There's a figure 7b. And I ask you to take the
6 panel through the narrow neck of that portion of the
7 Seventh District.

8 A Sure. I have some more breakdowns in the
9 supplemental. They're a little more clear, but --

10 Q We'll turn to it later.

11 A Okay.

12 Q We'll turn to it later.

13 A Essentially, the -- yeah, the Seventh District
14 winds through Northern Delaware County, goes just
15 into Montgomery County, and then goes along the
16 Schuylkill Expressway up through King of Prussia, at
17 one point only 170 meters wide, crosses the
18 Pennsylvania Turnpike. And then, again, only one
19 precinct wide, it winds its way around to the west of
20 Norristown and then into Central Montgomery County
21 where it picks up more Republican territory.

22 Q Okay. These multiple twists and turns, did they,
23 in your view -- let me restate this. Did the
24 multiple twists and turns -- did they make sense in
25 terms of keeping municipalities intact?

1 A They do not.

2 Q Okay. All right, and --

3 JUDGE SMITH: Which map are you talking
4 about, counsel? On page 18?

5 MR. GORDON: Page 18, the top of page 18.

6 JUDGE SMITH: Okay. Is the Seventh
7 District near Norristown?

8 MR. GORDON: Yes, it's the Seventh
9 District.

10 JUDGE BAYLSON: Well, are you talking about
11 page --

12 MR. GORDON: Sure, it's page 18 in the
13 document.

14 JUDGE BAYLSON: -- 17 or 18?

15 MR. GORDON: 18.

16 JUDGE SMITH: 18.

17 MR. GORDON: The diagram on the top.

18 JUDGE BAYLSON: 18 is all blue -- is blue
19 shade.

20 MR. GORDON: Yeah, 17 -- sorry, page 17 has
21 the 2011 district on top. It's always the 2011
22 districts above and the previous design of the
23 district, where available, below.

24 JUDGE BAYLSON: Right. Okay.

25 MR. GORDON: Okay.

1 BY MR. GORDON:

2 Q So turning to -- turning back to page 17, was
3 there any -- was there any logical reason in terms of
4 keeping counties intact or keeping a team of counties
5 intact to the design of the Seventh District in 2011?

6 A I don't see how that's so. It doesn't keep any
7 county intact. It stretches through multiple
8 counties. It even splits municipalities. So it
9 doesn't seem like it's really keeping anything intact
10 there.

11 Q Was there any logical reason in the design of the
12 Seventh District in terms of compactness, of having
13 districts be relatively compact?

14 A It was made much less compact compared to the
15 previous map.

16 MR. TORCHINSKY: Objection, Your Honor,
17 lack of foundation. There's no reference to
18 compactness in the original report.

19 MR. GORDON: There's a reference to
20 compactness in the supplemental report that was given
21 to opposing counsel.

22 JUDGE SMITH: We will avoid objections of
23 that kind if we were having the testimony proceed
24 along the lines of both the original report and the
25 supplemental report as we go district by district,

1 but you've elected to do otherwise. So I will allow
2 him to testify when you take him through the
3 supplemental report.

4 MR. GORDON: Okay. In the interest of --
5 in the interest of speed, I'm going to -- I'm going
6 to -- I didn't want to flip through too many maps,
7 but so -- actually, let me -- let me continue as I'm
8 going and I'll try to move quick and --

9 JUDGE SMITH: That's certainly your call.

10 MR. GORDON: Thank you, Your Honor.

11 BY MR. GORDON:

12 Q So we're -- let's turn -- I want to turn briefly
13 to the Eight Congressional District and orient the
14 Court as to where it is.

15 (Pause in proceedings.)

16 A Oh, yes, the Eight District is anchored in Bucks
17 County with a piece extending into Upper Montgomery
18 County.

19 Q And referring to page 20, the lower diagram, can
20 you describe the to Court the contour of the Eighth
21 Congressional District?

22 A Sure, the Eight District follows Bucks County but
23 then extends into Northern Montgomery County in an
24 effort to gain more Republican territory. The
25 previous version of the map included parts of

1 Northeast Philadelphia and Lower Montgomery County,
2 which were more Democratic-performing.

3 Q And I notice there are a couple of very small
4 areas of the Eighth District which are red indicating
5 they're part of the Sixth. Based on your
6 observations and analysis, what was the effect of
7 those two small gaps?

8 A It looks like those are Democratic areas that
9 were left out of the Eighth.

10 MR. TORCHINSKY: Excuse me, Your Honor. I
11 can't hear Mr. Gordon when he's standing over by the
12 map and mumbling.

13 JUDGE SMITH: Well, I --

14 MR. GORDON: Objection, I was not mumbling.

15 JUDGE SMITH: Yes, I -- let me stop right
16 here. Number one, that was an unfair
17 characterization using the word "mumbling."

18 MR. TORCHINSKY: I'm sorry, Your Honor.

19 JUDGE SMITH: Number two, when you state an
20 objection you look to the Court, not to your
21 adversary. Let's proceed.

22 MR. GORDON: Thank you.

23 BY MR. GORDON:

24 Q Okay. You were describing those contours. I'm
25 going -- I'm going to move on. Turning to -- what's

1 the partisan vote share of the -- of the Eighth
2 Congressional District, which is most in Bucks
3 County?

4 A It is 51 percent Democratic, 49 percent
5 Republican.

6 Q Okay. And then turning to the Ninth
7 Congressional District, where is that located in the
8 state?

9 A The Ninth Congressional District is located in
10 South Central Pennsylvania, encompassing much of the
11 southern border, also extending out westward to the
12 Monongahela Valley and parts of Fayette, Washington
13 and Greene Counties, and then to the north of that in
14 Indiana County and parts of Cambria County.

15 Q What's the partisan vote share of the Ninth?

16 A It is mostly Republican. It looks like it is 56
17 percent Republican.

18 Q Okay. Can you describe the contours of that
19 district in terms of partisan vote share?

20 A Yeah. It appears that the district is meant to
21 elect Republicans, and the effect there would be that
22 by adding the Monongahela Valley, which is a
23 Democratic area, to the district it dilutes the
24 Democratic vote in that constituency in the
25 Monongahela Valley by including it in a Republican

1 district that is actually anchored in South Central
2 Pennsylvania. Previously, the Monongahela Valley was
3 anchored in Southwestern Pennsylvania in a different
4 district, which was more in tune with the Pittsburgh
5 area and Southwestern Pennsylvania.

6 Q Okay. Briefly, let's turn to the Eleventh
7 Congressional District. Where is that?

8 A The Eleventh District extends from Wyoming
9 Counties along through Missouri Counties, west of
10 Wilkes-Barre, and then down along the Susquehanna
11 River through Dauphin County and into Cumberland
12 County.

13 Q What's the partisan -- Harvard partisan index for
14 that county --

15 A It's 54 --

16 Q -- I'm sorry, for that district?

17 A Sure. It's 54 percent Republican and 46 percent
18 Democratic.

19 Q Okay. And are you able -- and what is the -- can
20 you describe some of the contours in terms of leading
21 to that result in terms of the partisan vote share?

22 A I would say that it's probably -- it's very
23 closely in line with the Seventeenth District, so
24 they're kind of tied together in the sense that the
25 Eleventh District -- the previous version of the

1 district included Scranton and Wilkes-Barre --

2 Q (Indiscernible). Which is the Seventh? The
3 Eleventh is here and the --

4 MR. TORCHINSKY: Excuse me, Your Honor. I
5 can't hear Mr. Gordon when he's over at the map
6 asking questions.

7 JUDGE SMITH: Yes. My suggestion, Mr.
8 Gordon, would be perhaps to stand on the other side
9 and speak out this way --

10 MR. GORDON: Sure.

11 JUDGE SMITH: -- generally as you point to
12 the map. That way the witness will hear you and all
13 the rest of us will as well.

14 MR. GORDON: Thank you.

15 BY MR. GORDON:

16 Q Okay. I will -- you started to talk about the
17 Seventeenth and the Eleventh. We were on the
18 Eleventh. And I just wanted to make sure the panel
19 understood where they -- where the Seventeenth is.

20 A Sure.

21 Q So this is the Eleventh here in I guess that
22 would be a tan color, and the Seventeenth is this
23 grey district here on the 2011 map, correct?

24 A That's correct.

25 Q Okay. So you were saying?

1 A Sure. The previous version of the Eleventh
2 District was anchored in the Southern Poconos and
3 included Scranton and Wilkes-Barre. The district was
4 moved westward, and to gain more population, the
5 district extended all the way down into South Central
6 Pennsylvania in Dauphin, Perry, and Cumberland
7 County. The effect would be to move Democrats over
8 and pack them into the Seventeenth District, which
9 was created as a Democratic majority district, and
10 eliminate them from the Eleventh District.

11 Q Okay. Which was created -- between the Eleventh
12 and the Seventeenth, which was created as a
13 Democratic majority district?

14 MR. TORCHINSKY: Objection, Your Honor. He
15 can't testify as to how that they were -- how the
16 districts were created. He can only testify as to
17 the effect.

18 JUDGE SMITH: I didn't understand that to
19 be the question. Will you restate the question,
20 please?

21 MR. GORDON: Sure, Your Honor.

22 BY MR. GORDON:

23 Q The question was as between the Seventeenth and
24 the Eleventh Congressional District, which became
25 a -- became a more Democratic district?

1 JUDGE SMITH: "Which became" is an effect.
2 That's permissible.

3 THE WITNESS: The Seventeenth District did.

4 BY MR. GORDON:

5 Q So while we're on the subject, can we go right to
6 the Seventeenth and talk about the boundary of the
7 two districts and the interplay between the two?

8 A Sure.

9 Q And if you want to come off -- can they come off
10 the stand and point?

11 JUDGE SMITH: Certainly, as long as he --

12 MR. GORDON: (Indiscernible).

13 JUDGE SMITH: -- projects his voice
14 sufficient for all to hear.

15 BY MR. GORDON:

16 Q Mr. McGlone, could you bring your -- bring your
17 report with you?

18 (Pause in proceedings.)

19 A So the Seventeenth District is located -- is
20 anchored in Schuylkill County. It extends into
21 Carbon and Monroe County and then all the way down
22 here along the Delaware River to include part of the
23 City of Bethlehem, which is splits, as well as
24 portions of Upper Northampton County.

25 Q Okay. And what I had asked you was to trace the

1 boundary between the Seventeenth District and
2 Eleventh District, could you -- could you -- in terms
3 of the resultant vote share between Republicans and
4 Democrats. What happened?

5 A So the Seventeenth became much more -- the effect
6 would be to make the Seventeenth much more Democratic
7 by excluding Scranton and Wilkes-Barre, which are
8 located here in Central Lackawanna and Northeastern
9 Luzerne County out of the Eleventh District and pack
10 them in with the Seventeenth District, which is
11 anchored here. It also includes parts of the City of
12 Bethlehem, but Bethlehem is split.

13 Q While you're there, what was the impact of
14 extending the Eleventh District, as you said,
15 westward or really Southwestern Pennsylvania?

16 A The effect would be to include more Republicans
17 in the Eleventh District.

18 Q Okay.

19 A The previous version was anchored here in Carbon
20 and Monroe County and was -- and also included
21 Scranton and Wilkes-Barre. It was moved westward all
22 the way out here, extending all the way down to
23 Cumberland to pick up Republican areas.

24 Q So extending the Eleventh southwestward, did that
25 increase or decrease the chances to elect a

1 Republican congressman during the next decade?

2 A It increased.

3 Q And by concentrating Democrats, as you just
4 testified to, in the Seventeenth District is that --
5 what did that do in terms of each of the surrounding
6 districts in terms of the electability of Democrats
7 versus Republicans?

8 A So it packs Democrats in the Seventeenth and it
9 made the Tenth, Eleventh, and the Fifteenth more
10 Republican.

11 Q Thank you.

12 (Pause in proceedings.)

13 Q Actually, why don't you stay? I'm going to -- I
14 think it's much more helpful to do that. Let's turn
15 now to the Twelfth Congressional District. Can you
16 show the panel where the Twelfth is? Page 24.

17 A So the Twelfth District is anchored here, almost
18 like a barbell shape in Beaver County, stretching
19 through Northern Allegheny County along -- crossing
20 the Allegheny River through Northern Westmoreland
21 County into Southern Cambria County, including
22 Johnstown, and then into Somerset County, including
23 Somerset.

24 Q What is the partisan vote share for the Twelfth?

25 A 51 percent Republican vote share, 49 percent

1 Democrat.

2 Q And in your -- and in terms of -- let's move on
3 to the next one. We'll return to that one. Onto the
4 Thirteenth Congressional District, which is closer to
5 Philadelphia. Can you please identify the Thirteenth
6 and describe its boundaries? Just identify first --

7 A Sure.

8 Q -- where is the Thirteenth?

9 A Oh, sorry, here.

10 Q Right. So that's in dark blue on the 2011 map?

11 A I think it's in purple.

12 Q Sorry, it's in purple on the 2011 map. And would
13 you be kind enough to -- and then turning the panel's
14 attention to page 27, the Thirteenth. The current
15 Thirteenth that was defined by the 2011 map is on the
16 top of the page and the bottom of the page was the
17 previous Thirteenth for the prior decade.

18 MR. GORDON: And I guess the panel wouldn't
19 like a cartoon description of this one either, right?

20 JUDGE SMITH: Save it for argument.

21 MR. GORDON: Thank you, sir.

22 BY MR. GORDON:

23 Q Can you please walk the panel through the
24 Thirteenth and explain who was put on which side of
25 the circuitous boundaries?

1 A Sure. So the Thirteenth is very much an example
2 of Democratic packing. So it is perhaps best
3 explained through looking at the map of partisan vote
4 share that I have on the -- in the report. There are
5 three appendages which stick out from the bulk of the
6 district in Lower Montgomery and Upper Philadelphia.
7 One of them is along the Montgomery County border
8 which moves north along the border to pick up the
9 Borough of Lansdale in Upper Montgomery County.
10 There's also a middle appendage which sticks out and
11 grabs the Borough of Ambler, which is also
12 Democratic. And then the third appendage, which is
13 the lower one here, sticks out from the bulk of the
14 district, and this is the one that grabs Norristown
15 and includes Norristown and packs that in with the
16 Thirteenth over here. So there's an interplay
17 between the Seventh and the Thirteenth here obviously
18 where the Seventh -- the effect would be that the
19 Seventh is made more Republican by packing these
20 Democratic areas with these odd lines into the
21 Thirteenth.

22 Q As a result of this design, is it more likely
23 that the -- that the Seventh will elect a Republican?

24 A Yes.

25 Q As a result of this design, is it more likely

1 that the Thirteenth would elect a Democratic
2 Congressman?

3 A Yes.

4 Q All right.

5 JUDGE SMITH: Mr. Gordon, I'm not trying to
6 rush you, but how much longer do you anticipate your
7 direct examination is going to be, just for our own
8 planning purposes of the panel?

9 MR. GORDON: It's -- it will be probably 45
10 minutes.

11 JUDGE SMITH: Okay.

12 (Pause in proceedings.)

13 JUDGE SMITH: All right. We're just --
14 we'll allow you to proceed before we take a midday
15 recess.

16 MR. GORDON: Thank you, Your Honor.

17 BY MR. GORDON:

18 Q Now turning -- just stay there. Turning to the
19 Fourteenth Congressional District, please explain to
20 the panel where it is.

21 A The Fourteenth Congressional District is anchored
22 in Pittsburgh and Central Allegheny Counties
23 extending along the Allegheny River to the northeast,
24 and then also west along the Ohio River.

25 Q Okay. And what was the effect of the design of

1 the boundaries of the Fourteenth, the way they
2 were -- the way they were laid out?

3 A The Fourteenth packs Democratic constituencies to
4 create a super majority Democratic district centered
5 on the City of Pittsburgh, but also extends up the
6 Allegheny and Ohio River to pick up other Democratic
7 areas along those -- along the borders of those
8 rivers.

9 Q And as a result of concentrating Democrats as
10 you've just described in the Fourteenth, what is the
11 impact of the electability of Democrats in the
12 surrounding districts?

13 A In the surrounding districts it makes them much
14 less likely to elect a Democrat in the Twelfth and
15 Eighteenth.

16 Q Thank you. Then turning to the -- I think we've
17 covered the -- no, we have to cover the Fifteenth
18 District, which is in blue on the state map.

19 A Yep.

20 Q Would you please -- what's the -- can you please
21 describe the boundaries of the Fifteenth in terms
22 of -- in terms of partisan vote share?

23 A So the partisan vote share in the Fifteenth is 51
24 percent Republican. It extends from the City of
25 Bethlehem, which is splits through Lehigh County and

1 then extends westward through Northern Berks County
2 all the way into Lebanon County, all the way over to
3 the border of the Susquehanna River here in Dauphin
4 County.

5 Q Okay. Now, in your chart on page 31, it's the
6 lower chart, we reviewed the various shades of blue.
7 And this is probably a good illustration of the
8 shades of dark pink and light pink and there's even a
9 pale pink. What does the dark pink, light pink, and
10 pale pink mean?

11 A Those are various levels of Demo -- or, I'm
12 sorry, Republican performance, so darker colors being
13 more Republicans by election returns, and then the
14 lighter shades being less Republican vote share based
15 on election returns.

16 Q I see there's actually a fourth shade of -- in
17 Lancaster County, there's a dark red area.

18 A Yes.

19 Q That's more Republican votes -- voting
20 performance as well?

21 A Correct.

22 Q Okay. Thank you. And then turning to the
23 Sixteenth District.

24 A So the Sixteenth District is here in Lancaster
25 County extending -- and this interacts with the

1 Seventh District and the Sixth as well -- extending
2 through the middle of Chester County, picking up the
3 Borough of Coatesville. The other side of the
4 Sixteenth is very thing, very meandering, through
5 Central Berks County to pick up the City of Reading
6 and include that in the Sixteenth.

7 Q Okay. And what was the effect of the design of
8 the Sixteenth?

9 A The effect was to take the Democratic-performing
10 areas of Reading and Coatesville and place them in
11 the Sixteenth, which is otherwise a very heavily
12 Republican district, therefore, diluting the
13 Democratic vote and minimizing the influence of the
14 City of Reading and Coatesville.

15 Q Okay. And we've already talked about the
16 Seventeenth, so we'll turn to Eighteenth. And what
17 is -- where is the Eighteenth and what is -- I'm
18 sorry, what is the Harvard partisan index of it?

19 A It is 52 percent Republican and 48 percent
20 Democrat.

21 Q Okay. Can you -- where -- can you show the --

22 A Yeah.

23 Q -- panel where it is on the map?

24 A The Eighteenth District is here in Southwestern
25 Pennsylvania running through Washington and Greene

1 Counties, then extending into Southern Allegheny and
2 then Southern Westmoreland County.

3 Q And in terms of -- what was the effect of that
4 shape in terms of partisan voting?

5 A The effect of that shape was to exclude the
6 Monongahela Valley, which is a Democratic area, out
7 of the Eighteenth and include that in the Ninth here,
8 which is a more Republican district.

9 Q Okay. And would that make it more or less likely
10 to elect a Republican -- sorry, in terms of electing
11 a Republican versus Democratic congressional
12 candidates, how did that boundary affect that?

13 A It made it more likely to elect a Republican in
14 the Eighteenth.

15 Q All right. All right. At my request, at some
16 point were you given access to the Turzai data from
17 the -- was represented to be the data that was
18 actually used in the creation of the 2011 map?

19 A I was, yes.

20 Q Okay. And can you briefly -- and this is turning
21 to -- this is turning to your supplemental report,
22 and hopefully it was copied properly. It is at -- it
23 is at tab 32 in the plaintiffs' group of exhibits.

24 MR. TORCHINSKY: Your Honor, we object to
25 the supplement report. Supplemental reports were not

1 anticipated in any of the Court's pretrial schedules
2 and this was submitted only in response for a motion
3 in limine to exclude Mr. McGlone's testimony based on
4 his qualifications.

5 MR. GORDON: If I may respond?

6 JUDGE SMITH: Okay.

7 MR. GORDON: The -- in violation of the
8 Court's order, the defense, the legislative
9 defendants, held back the data that was used in
10 creating the 2011 map until the last possible time.

11 MR. TORCHINSKY: Objection, Your Honor.

12 MR. GORDON: I'm not finished.

13 JUDGE SMITH: He --

14 MR. GORDON: The -- I'm sorry, Your Honor.

15 JUDGE SMITH: Counsel is not testifying.

16 You don't object to your adversaries making a
17 statement.

18 MR. TORCHINSKY: Thank you, Your Honor.

19 JUDGE SMITH: Proceed. You were saying in
20 response?

21 MR. GORDON: Yes. The data was only
22 recently made available to us in response to the
23 motion to compel. Mr. McGlone, and this will be the
24 same case with Ms. Hannah, they were both able to in
25 a very short period of time take the data and turn it

1 into a narrative report, which was immediately
2 forwarded to defense counsel when it was available.
3 It could not have been prepared before that. It
4 also -- it's extremely important that this be allowed
5 to come in because it's the analysis of the actual
6 data that was used as opposed to a voting index of a
7 kind.

8 JUDGE SMITH: Mr. Torchinsky, you may
9 briefly respond.

10 MR. TORCHINSKY: Yes, Your Honor. We
11 turned over the data that was required to be made
12 available by the Court in accordance with its order
13 of November 9th. We turned that data over on
14 November 17th, which was the Court-ordered production
15 date. We did not unreasonably at all delay
16 production of that, of the underlying facts and data.
17 The fact of the matter is it took them another -- I
18 guess this was turned in actually on the 29th. It
19 took them 12 days apparently to make some use of that
20 data, and, in fact, this was provided to us after Mr.
21 McGlone's deposition, rather than in advance of Mr.
22 McGlone's deposition.

23 MR. GORDON: Your Honor, Mr. McGlone's
24 deposition was only --

25 JUDGE SMITH: Let me confer --

1 MR. GORDON: -- one, two, three days after
2 the release --

3 JUDGE SMITH: -- with my colleagues.

4 MR. GORDON: -- of the data.

5 (Pause in proceedings.)

6 JUDGE SMITH: Candidly, the panel was
7 surprised that we did not hear from the legislative
8 defendants in opposition when we received the
9 supplemental reports. The Court has proceeded
10 accordingly and we will permit the witness to testify
11 and counsel for the plaintiffs to inquire with
12 respect to those reports.

13 MR. GORDON: Thank you, Your Honor.

14 BY MR. GORDON:

15 Q Mr. McGlone, can you describe the contents of the
16 data that was --

17 MR. TORCHINSKY: Your Honor, can I -- just
18 for one clarification? Is he only being permitted to
19 testify to what's in the supplement that was based on
20 the data provided on the Seventeenth or the other new
21 information that is provided in the supplemental
22 report that could -- that wasn't available to him
23 prior to the 17th? For example, he's got the
24 compactness scores in here that were available prior
25 to the release of his first report. He's got

1 biographic information in here that he had available
2 to him obviously before he filed his first report.
3 Is this report only admitted to the extent that it
4 makes use of the November 17th production data, or is
5 the other information that's in here that wasn't
6 available to him prior to November 17th also being
7 admitted -- or being permitted to be discussed here?

8 JUDGE SMITH: Big distinction. To be
9 clear, we're not admitting the report, so we're not
10 allowing the wholesale admission of everything
11 contained therein. We're permitting counsel to
12 proceed on the basis of the information that was made
13 available through discovery from the legislative
14 defendants, and the legislative defendants will have
15 the opportunity to interpose an appropriate objection
16 to anything they believe goes beyond that.

17 MR. TORCHINSKY: Thank you, Your Honor.

18 BY MR. GORDON:

19 Q In preparing the supplemental report, were you
20 responding to inquiries -- did your deposition happen
21 between your first report and the supplemental
22 report?

23 A It did happen for --

24 Q Okay.

25 A -- between the two, yeah.

1 Q And did you endeavor to address questions that
2 were raised at your deposition that you testified to
3 to clarify those?

4 A Sorry, can you clarify that question?

5 Q Did -- were you endeavoring your supplemental
6 report to clarify answers to questions that were
7 raised in your -- in your deposition?

8 A Oh, yes.

9 MR. TORCHINSKY: Objection. He's leading
10 the witness.

11 JUDGE SMITH: Overruled.

12 BY MR. GORDON:

13 Q And did your supplemental report also contain the
14 review of opposing counsel's experts that were
15 released I believe on the same day as the Turzai
16 data?

17 A It did, yes.

18 Q Okay. Thank you.

19 MR. GORDON: And did opposing counsel's --
20 so I would suggest, Your Honor, that whenever
21 opposing counsel can -- I'm sorry, opposing experts
22 contain in their reports be fair game for
23 questioning.

24 JUDGE SMITH: We're not there yet. Please,
25 let's just move along.

1 MR. GORDON: I will. Okay.

2 BY MR. GORDON:

3 Q All right. Let's turn to -- so could you -- can
4 you briefly summarize the contents of the -- of the
5 data represented by Defendant Turzai as being used in
6 the creation of the 2011 map?

7 A Yes. So the data that was obtained was the
8 Turzai production data. It contained GIS shape
9 files, which are essentially the building blocks of
10 making a map in GIS software. These shape file
11 contained election return data as well as demographic
12 information and partisan indices related to partisan
13 vote share. So in other words, Democratic and
14 Republican votes aggregated at a voting precinct
15 level indicating whether a precinct is more
16 Democratic-performing based on election returns and
17 more -- or more Republican-performing.

18 There was also -- it also contained data on
19 party registration numbers for spring and fall for
20 every year in the data set, which I believe was from
21 2004 to 2010 in even-numbered years, and that
22 partisan indice was calculated at the county level,
23 the municipal level, the voting precinct level, and
24 the election return and party registration
25 information was available all the way down to the

1 census block level, which is the smallest unit of
2 geography that's even available that we use in GIS
3 and is essentially a city block.

4 Q Are you telling the panel that the data that was
5 represented to be that which is the data used to
6 create the 2011 map contained any partisan election
7 data?

8 A It did. It contained dozens of fields of
9 partisan election data, election return data and
10 voter registration data.

11 Q Okay. And these would not be -- these are not
12 border -- this is not registration information alone,
13 such as where Republicans or Democrats registered to
14 vote, is that correct?

15 A That's correct, yeah. So it's total number of
16 votes for Democrats and Republicans for every single
17 election state-wide and national from 2004 to 2010,
18 even-numbered years, not included special elections.

19 Q So how fine-grained was the data that was -- that
20 was contained in the Turzai data release is
21 represented to be in terms of, you know, Republican
22 versus Democratic-performing districts or sections of
23 Pennsylvania?

24 MR. TORCHINSKY: Objection to the use of
25 the word "fine-grained" in the question. I don't

1 understand what that is.

2 JUDGE SMITH: I'm not sure I understand
3 what it is either. Also, I think it was a compound
4 question. Please restate it.

5 MR. GORDON: Okay. Thank you. I'm sorry,
6 I --

7 BY MR. GORDON:

8 Q In what level of geographic detail was the data,
9 the partisan data, found in the Turzai 2011 map data
10 release that you observed?

11 A It was in very -- very heavily detailed down to
12 the smallest geographic unit that we even use when
13 we're making maps, which is the census block. It's
14 essentially a city block or in the suburbs -- a
15 block, you know, in the suburban area. It's the
16 smallest unit of geography -- of geography that we
17 have available when we're making maps. And so total
18 number of votes for Democrats and Republicans in
19 every election as well as party registration numbers
20 were available at that block level.

21 Q So you're saying in terms of this block level
22 that it's actually smaller than a voting precinct?

23 A It is smaller than a voting precinct. There
24 could be dozens of census blocks within a voting
25 precinct. And in a city -- let's first start with a

1 city. So you're saying they have the results of whom
2 voted for whom over a series of elections and what --
3 how small a geographic area for a city --

4 MR. TORCHINSKY: Objection, Your Honor.
5 That's not what he testified to, and the question
6 doesn't make a lot of sense.

7 JUDGE SMITH: Well, I've been around a lot
8 of years and I never heard a speaking objection the
9 question doesn't make a lot of sense as being valid
10 in any of the Federal Rules of Evidence. So I'm
11 going to overrule that objection and I'm also going
12 to ask counsel to restate his question because at
13 this point I've forgotten what the hell it was.

14 BY MR. GORDON:

15 Q In the -- in the Turzai data you said there was
16 something called an election block. I want to make
17 sure the panel understands exactly what an election
18 block would look like in the city. You briefly went
19 over it. I just want to make sure they understand
20 what you have here.

21 A Sure. So a census block is the smallest
22 statistical geographic unit that we have available.
23 It's essentially a city block, so it's bounded by
24 city streets, it's bounded by property lines, and
25 they're defined by the U.S. Census Bureau. The U.S.

1 Census Bureau every ten years defines the map of the
2 census blocks for the entire country. They're very
3 small units. They encompass literally just a city
4 block. The election --

5 Q In the suburb -- now turning to the suburbs, can
6 you describe it in as much -- in the same level of
7 detail?

8 A So it would be -- so suburbs don't tend to have
9 gridded blocks, but you would be looking at -- it
10 might be divided by a property line, a river, very
11 small, precise areas. It's the smallest geographic
12 unit that the Census Bureau releases.

13 Q And were those persons who were working at the --
14 at the behest of Speaker Turzai able to look at the
15 Republican and Democratic performance at that level
16 of detail?

17 MR. TORCHINSKY: Objection, Your Honor.
18 That calls for speculation on the part of the
19 witness.

20 JUDGE SMITH: I'll sustain the objection.
21 You may be able to --

22 MR. GORDON: What --

23 JUDGE SMITH: -- pursue the inquiry --

24 MR. GORDON: Yeah.

25 JUDGE SMITH: -- with another question.

1 BY MR. GORDON:

2 Q Based on the data that you found in the -- in the
3 Turzai data release, would it enable anyone to
4 observe how a census block performed in terms of
5 individual elections -- I'm sorry, I'm about to make
6 it a compound question -- in terms of Republican and
7 Democratic performance in the time of each -- in the
8 time --

9 MR. GORDON: I'm gargling my own question,
10 Your Honor. If I -- with permission, I'd like to try
11 it one more time.

12 JUDGE SMITH: It's your question. You may
13 ask --

14 MR. GORDON: Okay.

15 JUDGE SMITH: -- it any way you'd like as
16 long as it's appropriate.

17 MR. GORDON: Coherent? All right.

18 BY MR. GORDON:

19 Q All right. So I just want to make sure the panel
20 understands that you're able to combine the partisan
21 election information and the Turzai data with these
22 tiny district described as census blocks, correct?

23 A The data was actually already combined. So they
24 had already taken the number of people who voted for
25 Democrats and Republicans and it was available at the

1 block level. So I could see any block in the state,
2 including the one we are in right now, I could see
3 how many people on this block voted for Barack Obama
4 for President, Mitt Romney, any election between 2004
5 and 2010, as well as who's registered for each part
6 on each block.

7 Q Okay. I don't think anybody lives in this block
8 except --

9 A Well, yeah.

10 Q -- for law clerks.

11 A Okay.

12 Q Anyway, I'll move on. So I put -- so were you
13 able to produce more detailed maps as a result of
14 this data?

15 A So I reproduced the maps I had made in the
16 previous report and instead of using the Harvard
17 election data at the precinct level, I used the data
18 from the Turzai production at the precinct level.

19 Q Did it change -- so did it change any of your
20 conclusions you had made in the -- in your first
21 report?

22 A It doesn't change my conclusions. The precincts
23 are still red and blue. The Harvard election data
24 was using very similar election data. The precincts
25 are still shaded from red to blue based on Republican

1 and Democratic performance. There is a field in the
2 Turzai production data which is called an index.
3 It's available for 2008 and 2004. And this appears
4 to be a partisan vote share of each of the voting
5 precincts.

6 Q Okay.

7 A Similar to what's available in the Harvard data.

8 Q All right. In the interest of time, I'm, of
9 course, not going to review every district again, but
10 I do -- so I will turn to -- I will turn to a number
11 of districts to highlight certain issues. I'd like
12 you to first turn your attention to the Fourth -- I'm
13 sorry, the Fourth Congressional District.

14 JUDGE SMITH: Are you using an exhibit --
15 are you using Exhibit 32?

16 (Pause in proceedings.)

17 MR. GORDON: Yes, I am.

18 JUDGE SMITH: Thank you.

19 (Pause in proceedings.)

20 BY MR. GORDON:

21 Q So turning to the Fourth Congressional. I
22 confuse myself. Turning to the Third Congressional
23 District, which was Erie, did you prepare a map of
24 the district that included the City of Erie?

25 A I did, yes. Yes.

1 Q Okay. On what page is that in your report?

2 A Page 13.

3 Q Okay.

4 JUDGE BAYLSON: What's the bates? We only
5 have bates numbers here.

6 MR. GORDON: It's page 13.

7 JUDGE SMITH: No. No.

8 JUDGE SHWARTZ: No. The bates number.

9 JUDGE SMITH: We have bates numbers and
10 I'm --

11 JUDGE SHWARTZ: The number there.

12 JUDGE SMITH: There are 0854 --

13 MR. GORDON: 0855.

14 JUDGE SMITH: -- 0855, both depict Erie.
15 (Pause in proceedings.)

16 JUDGE SMITH: 54 is more granular.

17 JUDGE SHWARTZ: He has the binder.

18 JUDGE SMITH: Yes.

19 JUDGE SHWARTZ: Yes, if he uses the
20 binder --

21 JUDGE SMITH: All right.

22 MR. GORDON: I'll use the binder. Thank
23 you.

24 BY MR. GORDON:

25 Q All right. Turning to bates number 0826, which

1 is page nine of the supplemental.

2 JUDGE BAYLSON: 0826?

3 JUDGE SHWARTZ: In the binder.

4 MR. GORDON: It's on page 30 -- no it's
5 actually --

6 JUDGE SHWARTZ: It's Exhibit --

7 MR. GORDON: -- tab 31.

8 JUDGE SHWARTZ: -- Exhibit 32.

9 MR. GORDON: 31. Oh, the -- just the image
10 is on 32.

11 JUDGE SHWARTZ: Yes.

12 MR. GORDON: But the image and the context
13 of the report is on 31.

14 JUDGE SHWARTZ: Okay.

15 MR. GORDON: So I would draw your
16 attention -- let me see -- to -- let's use the image
17 on bates stamp 0855.

18 (Pause in proceedings.)

19 BY MR. GORDON:

20 Q Okay. Do you have it?

21 A 0855?

22 Q Yeah, I don't think you -- do you have that in
23 front of you? It's under tab --

24 JUDGE SMITH: 32.

25 BY MR. GORDON:

1 Q -- 32.

2 A Yeah.

3 Q Okay, great.

4 A Yes.

5 Q All right. Turning to this exhibit, can you
6 please identify the exhibit for the panel?

7 A So this is the City of Erie and its suburbs, and
8 this is shaded using the index field from the Turzai
9 production data set, again, at the voting precinct
10 level similar to my previous maps.

11 Q Okay. And what is -- what is the green line
12 referred to?

13 A The green line is the district boundary --

14 Q Okay.

15 A -- between the Third and the Fifth.

16 Q And I notice here that the -- there's a -- the
17 shading goes down to very small blocks. Can you
18 explain what that is?

19 A These are voting precincts, so these are still
20 the precinct data in the previous maps, but instead
21 mapped with the Turzai production data set of
22 Democratic and Republican performance.

23 Q Okay. And can you tell us in terms of -- in
24 terms of partisan vote share, what was the result of
25 striking the line through Erie and its suburbs as was

1 done?

2 A As my previous report outlined, the effect here
3 was to dilute the vote in Erie County. And so here
4 we are using the data -- exact same data set that
5 they used at the voting precinct level.

6 MR. TORCHINSKY: Objection, Your Honor. He
7 doesn't know what data was used. He only knows that
8 it was produced.

9 MR. GORDON: Your Honor, the --

10 JUDGE SMITH: I'll sustain the objection to
11 the form of the question.

12 BY MR. GORDON:

13 Q Based on the data that was produced is
14 represented to be the data used in the creation of
15 the 2011 map, what are your observations as to the
16 partisan result of striking the line through the --
17 around the City of Erie, as is depicted as the green
18 line?

19 A My observations are the same, that it diluted the
20 vote in Erie County and made the Third and Fifth
21 District more likely to elect Republicans.

22 Q Okay, thank you. And then in the same district,
23 I want to turn to the next page. And you had -- this
24 is actually the --

25 (Pause in proceedings.)

1 Q Turn to the next page. What district is -- what
2 district is that, please?

3 A On 0856, this is the Fourth District.

4 Q Okay. So on page 0856, we're now turning to the
5 Fourth District. And can you describe the contours
6 of the green line indicating the boundary between the
7 Fourth District and the -- let's see, what would be
8 to the right of that? Indicating -- this is the
9 boundary between the Fourth District here in green
10 and the Eleventh District in beige.

11 A Yeah. So on 0857, which is the next page, this
12 is broken down, and you can see the splits of
13 Susquehanna Township, which is split twice in the
14 map, and Harrisburg City, which is split once, again
15 overlaid with the Turzai production partisan index
16 data.

17 Q Okay. And what was the effect of splitting -- to
18 splitting the City of Harrisburg in that matter?

19 A It diluted the vote in that Democratic area.

20 Q It dilute which vote, Republican vote or
21 Democratic?

22 A The Democratic vote.

23 Q Okay. And did it make it more or less likely to
24 elect a Democratic member in the -- in the Fourth
25 District?

1 A It would make it less likely to elect a Democrat
2 in the Fourth, the Eleventh, or the Fifteenth, which
3 all are in that area.

4 Q Okay. Thank you. And is the -- I'm going to
5 turn the panel's attention to the next page, which
6 is -- and yours as well. And is that a blow up of
7 the same -- the same area, the City of Harrisburg?

8 A Yes, in 0857.

9 Q Is there -- is there any conceivable traditional
10 criteria in drawing districts that is advanced by the
11 choice of the boundaries of that line between the
12 districts?

13 MR. TORCHINSKY: Objection, Your Honor.
14 There's no clear foundation as to what "traditional
15 districting criteria" he's referring to.

16 JUDGE SMITH: Sustained.

17 MR. GORDON: Yeah.

18 BY MR. GORDON:

19 Q Mr. McGlone, do you understand what -- can you
20 describe to the panel what traditional criteria for
21 drawing electoral districts would be with respect to
22 congressional districts?

23 A Sure. So you would need to keep districts
24 contiguous, compact, respect communities of interest,
25 and you want continuity between districts in previous

1 years -- from previous years.

2 Q Okay. When you say contiguous that means
3 touching, is that correct?

4 A All parts of the district touch each other, yeah.

5 Q Okay. But there's no requirement that the
6 touching be wide or narrow, is that correct?

7 A There is not.

8 Q Okay. And then in terms of compactness, when I
9 said traditional, is this -- for the Congressional,
10 is this legally required or something that may be a
11 custom?

12 A Some states require it. Not all states do
13 require it though.

14 Q Okay.

15 A But it's considered a traditional districting
16 criteria to have a compact district. It hasn't
17 exactly been defined by the courts yet.

18 Q Okay. And the Third -- and what does compactness
19 achieve in terms of -- in terms of allowing the
20 manipulation or non-manipulation of districts for
21 partisan purposes? What does compactness do?

22 A Well, generally, if you have a compact district,
23 you're probably preserving communities of interest.
24 You're preserving municipalities, jurisdictions, that
25 are close to each other if it -- if it's a compact

1 district. If it's not a compact district, if it's
2 going with appendages and arms that stick out all
3 over the place --

4 MR. TORCHINSKY: Objection, Your Honor.
5 He's testifying to compactness now, which was not in
6 his original report, and compactness information was
7 available to him prior to the release of his
8 supplemental report. So we object to introduction of
9 any information about compactness scores.

10 JUDGE SMITH: Overruled.

11 MR. GORDON: Briefly, it was in his
12 supplemental report and it was also in the opposing
13 expert's --

14 JUDGE SMITH: Overruled.

15 MR. GORDON: Thank you.

16 JUDGE SMITH: Please proceed.

17 MR. GORDON: Okay.

18 BY MR. GORDON:

19 Q So let's talk about compactness briefly. You
20 said that one of the -- one of the aims of
21 compactness is to create -- to keep together
22 communities of interest.

23 A That's correct.

24 Q How does -- how does compactness affect ones
25 ability to do gerrymandering?

1 A Can -- I guess can you clarify that?

2 Q How does compactness affect the ability of a
3 district drawer, those draw -- any person drawing a
4 district, to select out Republicans and Democrats for
5 a particular congressional district?

6 MR. TORCHINSKY: Objection, Your Honor.
7 He's asking for speculation about what others would
8 do.

9 JUDGE SMITH: Please restate the question.

10 BY MR. GORDON:

11 Q In what way would compactness affect the capacity
12 of someone drawing a congressional district to pick
13 and choose their voters?

14 A If a -- if a district is meant to be compact, if
15 map makers are drawing compact districts, it's --
16 compact districts, it's less likely that they're
17 going to pick and choose voters. They're going to
18 want to preserve -- they're going to preserve
19 communities of interest, they're going to preserve
20 jurisdictions and municipalities together. And if
21 they're not drawing compact districts and there's no
22 requirement to draw compact districts, it's much more
23 likely that they'll pick and choose voters and have
24 crazy shapes.

25 Q And what is the impact of preserving political

1 subdivisions, such as the City of Harrisburg, on the
2 ability of a district map maker to pick and choose
3 voters?

4 A So by not preserving the City of Harrisburg
5 whole, it makes it less likely that someone, an
6 elected official from the City of Harrisburg, would
7 be able to run in that district and gain office.

8 MR. TORCHINSKY: Objection, Your Honor.

9 MR. GORDON: I was asking --

10 MR. TORCHINSKY: Mr. McGlone has testified
11 to no campaign experience whatsoever, and so
12 questions related to how someone campaigns in a
13 district are outside the scope of his report.

14 MR. GORDON: He --

15 JUDGE SMITH: I'll overrule the objection.

16 MR. GORDON: Okay.

17 BY MR. GORDON:

18 Q What I actually asked was in general, how does --
19 how does not splitting political subdivisions like
20 the City of Harrisburg impact the ability of
21 someone -- of anyone drawing a congressional map to
22 pick and choose voters, that is respecting county
23 boundaries and respecting municipal boundaries? How
24 does that impact their ability to pick and choose
25 voters?

1 MR. TORCHINSKY: Objection, Your Honor.
2 He's asking for speculation on what others might do.
3 JUDGE SMITH: I'll overrule the objection.
4 THE WITNESS: It's less likely that someone
5 would be able to pick and choose voters if they had
6 to respect communities of interest and existing
7 municipal or county boundaries.
8 BY MR. GORDON:
9 Q Thank you. Okay.
10 MR. GORDON: How much -- Your Honor, I'm
11 going to go for about ten more minutes through these
12 districts with your permission.
13 JUDGE SMITH: All right. We'll continue,
14 and if you go much beyond that ten minutes, I'll
15 become a real pain.
16 MR. GORDON: Thank you.
17 BY MR. GORDON:
18 Q All right. Turning to the next image, and this
19 is 0858, I'm going to ask my colleagues to keep track
20 of what you're testifying to, okay, which maps we
21 call to your attention. In looking at 0858, that
22 looks like we're returning to the Sixth District.
23 In -- and I'm -- I was cautioned about this, but
24 returning to the boundaries, can you -- can you
25 narrate the lower -- can you narrate the lower -- I'm

1 sorry, can you explain or your obser -- start over
2 again. What are you observations of the splitting of
3 it appears to be in Berks County the City of Reading,
4 what was done there in terms of that circuitous
5 boundary through the City of Reading?

6 A So the Sixth District, which is anchored in
7 Chester County winds around Reading, but doesn't
8 actually include the City of Reading, to extend all
9 the way through Berks and then to Lebanon County to
10 pick up lots of Republican voters in that area.

11 Q Okay. Thank you.

12 A But it does split Reading from its suburbs as
13 well.

14 Q All right. And then -- and then turning to
15 the -- turning to the western part of the Sixth
16 District, it appears that a number of districts in
17 Pennsylvania -- well, let's just ask about the Sixth.
18 What was the effect or impact in terms of partisan
19 vote share of the Sixth District instead of simply
20 being concentrated where the bulbous area is,
21 extending west? What was the impact there?

22 A The impact was that the district became much more
23 Republican-friendly and more likely to elect
24 Republicans. It had a higher Republican vote share.

25 Q And looking at this pattern of the Sixth

1 District, I just want you to follow along the western
2 portion of that. There are dark, deep red areas of
3 the Sixth District, and what would those be?

4 A Those are areas in this Turzai production data
5 set that are -- that have a high amount of Republican
6 vote. So it's an indice from most Republican to
7 least Republican or most Republican to most
8 Democratic, darker red being most Republican.

9 Q Okay. And I'm going to ask you to turn to 0859,
10 the next page. And these are the -- a blowup of
11 the -- and this is your -- you created all of these
12 images I'm asking you about?

13 A Yes.

14 Q Is that correct? And they're based on the
15 Turzai -- all of these images are based on the Turzai
16 data that you found?

17 A Yes, this is using the Turzai production data
18 set.

19 Q Okay. And it's -- you're combining this precinct
20 level data with the voting performance data in the
21 Turzai set?

22 A That's correct.

23 Q Thank you. Okay. Looking at the Seventh -- a
24 much better image of the Seventh Congressional
25 District, I want you to first address this -- the

1 nature of this district to collect a number of
2 votes -- I'm sorry, to -- what is happening here in
3 terms of this district reaching westward into
4 Pennsylvania?

5 A I think in a similar manner to the Sixth
6 District, the Seventh District, which was previously
7 anchored in Delaware County, now extends with an arm
8 through the middle of Chester County to Western
9 Chester County and Eastern Lancaster County and
10 Southern Berks County to pick a highly perform -- a
11 highly Republican-performing voting precincts and add
12 that to the district.

13 Q Thank you. And then let's turn to -- turn to
14 0860, and I ask you to give us a description of what
15 is happening here with the Seventh and the Sixteenth
16 District. I'm sorry, we're still in -- actually,
17 we're still in the Seventh District. Explain to us
18 what's happening here in this map.

19 A Here, in the Seventh District, it conveniently --
20 so the Sixteenth District, you know, they kind of
21 interplay with each other. The Sixteenth District,
22 which is anchored in Lancaster County, extends into
23 the middle of Chester County to pick up the highly
24 Democratic-performing areas of Coatesville and its
25 immediate suburbs. Meanwhile, the Seventh District

1 conveniently does not include those areas, which
2 maintains and more Republican edge in that district.
3 So the Seventh District runs along Southeastern
4 Chester County, but it does not pick up Kennett
5 Square. It goes around Avondale and --

6 Q I just want to hold you up.

7 A Yep.

8 Q If I can interrupt for a second, just turning to
9 the City of Coatesville, which you said was a highly
10 performing Democratic district. By encompassing them
11 in the I believe you said --

12 A The Sixteenth.

13 Q -- the Sixteenth District, what does it do to
14 the -- to the power of those votes to elect a
15 Democratic member of Congress?

16 A It dilutes those votes in Coatesville. It makes
17 the Sixteenth District -- it dilutes the Democratic
18 votes in Coatesville and in Reading by putting them
19 in with a more heavily Republican District, as
20 opposed to including them in the Seventh District,
21 which would swing that district towards Democrats and
22 make it more likely to vote Democrats -- Democratic
23 there.

24 Q Okay. In -- I'm going to turn now to 0861 and
25 I'm going to ask you to take a look at -- look at

1 the -- look at the two appendages -- I want you to
2 look -- just to show the panel the interplay between
3 the Seventh and the Thirteenth District which -- as
4 depicted in 0861 for the Turzai data, the election
5 results data.

6 A Sure. So it's a bit difficult to see because
7 these districts are so intertwined, but the Seventh
8 District comes out of Delaware County, moves north --

9 Q Slowly. So the green line represents what? The
10 boundaries between --

11 A Those are the boundaries between the districts.

12 Q So it's the boundary of the Seventh, and to the
13 right is the -- is the Thirteenth, is that right?

14 A To the right is the Thirteenth, and then to the
15 left I believe is the Sixth.

16 Q Okay. I want you to take the panel of a tour of
17 the boundary between the Seventh and the Thirteenth
18 only and explain the impact of that circuitous
19 boundary on the vote share of each district.

20 A So the Seventh moves north, crosses over the
21 border into Montgomery County, picks up a voting
22 precinct there. It then moves left, it moves west,
23 picks up another voting precinct, and it winds its
24 way through one, two, three, four five more voting
25 precincts to get to this bigger mess to the north in

1 Central Montgomery County where the big number seven
2 is. So it sort of winds its way through there but
3 not including Norristown, and it's only one voting
4 precinct wide, so they created a little, tiny arm to
5 connect the Seventh District, the Republican mass in
6 the Seventh District in Montgomery County with the
7 Republican part of the Seventh District in Delaware
8 County, but avoided Norristown, avoided more
9 democratic areas, with this thin, little arm that
10 extends and wraps around those Democratic areas.

11 Q Okay. And the thin portion of that arm, you're
12 referring to the white, triangular area, that's in
13 the --

14 A Yeah, there's a --

15 JUDGE SMITH: Excuse me, for clarification,
16 my colleague and I are having a little bit of
17 difficulty following the description of the line
18 drawing, and it would be helpful I think if it were
19 described consistent with the municipalities and
20 township names that appear here. Also, in
21 particular, we would like to have pointed out what
22 this arm is and where it is depicted on 0861.

23 BY MR. GORDON:

24 Q So I'm just going to -- with permission of the
25 Court, I just want to point out here that this is

1 the -- and the Seventh has an eastward side here
2 that's been described, and it looks a little bit like
3 a dog, and we'll refer to cartoon characters. And
4 the dog has two ears on the eastward end, okay? The
5 nose of the dog is here, the head of the dog is here,
6 the body of the dog is here, the foot of the -- foot
7 of the dog is here, and then you have the western
8 part of this, which is very red, deep red, previously
9 described. It is still the western part of this same
10 district connected here. So he was talking about --

11 JUDGE SHWARTZ: I'm sorry, counsel, I --

12 MR. GORDON: Oh, with --

13 JUDGE SMITH: We're using 0861. Beyond
14 that is a confirmed dog lover. I've never seen any
15 dog that looked anything like that, so I would
16 suggest perhaps just being descriptive rather than --

17 MR. GORDON: All right.

18 JUDGE SMITH: -- editorial.

19 BY MR. GORDON:

20 Q Following the Judge's -- following what the Judge
21 asked of you --

22 A Yeah.

23 Q -- could you please describe the boundaries of
24 the Seventh and the Thirteenth in terms of the
25 township identifiers which are on your -- on the

1 back?

2 A Sure. So where the big number seven is, that's
3 the Seventh District. That's in Radnor Township in
4 Delaware County. Moving north, north -- and
5 northeast from there, to the upper right, it crosses
6 over the boundary of Montgomery County into
7 Montgomery County in that light blue shaded precinct.
8 It then moves left, crosses into a light --

9 Q Which pre -- which township or --

10 A That is just to the left of West Conshohocken.

11 Q Okay. And where is that on the map, so they
12 can --

13 A That is between the number seven and West
14 Conshohocken.

15 JUDGE SMITH: Well, there are three number
16 sevens on the map.

17 BY MR. GORDON:

18 Q Which number seven?

19 A Oh, sorry, the one on the bottom.

20 Q Okay.

21 A And so from there -- and so it's just to the left
22 of West Conshohocken in that small, light blue voting
23 precinct. It then moves left. If you follow the
24 green lines to the left, it moves into that white
25 voting precinct, which is just very lightly

1 Democratic. It then, as it comes to a very narrow
2 pinch point, it's only 170 meters wide there. That's
3 where the Pennsylvania Turnpike meets the Schuylkill
4 Expressway, crosses over there, then it gets into
5 this darker blue precinct to the north of that. It
6 then moves right --

7 JUDGE BAYLSON: Well, wait just a minute.
8 The arm, the 170 meters, is that just to the left of
9 where it says Upper Merion?

10 THE WITNESS: That is correct, yes.

11 JUDGE BAYLSON: Well, what we want you to
12 do is to use the phrases on the map, such as Upper
13 Merion, West Norriton.

14 THE WITNESS: Okay.

15 JUDGE BAYLSON: Do you understand? Use the
16 words on the map.

17 THE WITNESS: Okay. So just to the left of
18 Upper Merion, the district crosses over the
19 Pennsylvania Turnpike where it's 170 meters wide.

20 BY MR. GORDON:

21 Q They can't see the Pennsylvania Turnpike. It
22 crosses over --

23 A Right.

24 Q What cities does it cross over to or borough?

25 A That is -- that's right through King of Prussia.

1 I -- it's to the left of Upper Merion. I believe it
2 might be Upper Merion Township. It's not labeled
3 exactly on here, but it --

4 Q Oh, okay. So that --

5 A -- is to the left of where it says Upper Merion.

6 Q So just to the left of that, you're still --

7 A Yeah.

8 Q -- describing the lower part of the boundary
9 between the Thirteenth and the Seventh. All right,
10 go ahead. So taking it from the words Upper Merion
11 for the -- so the Court understands where you are.

12 A Sure. So it's not in Upper Merion though.

13 Q Okay.

14 A So it's not in Upper Merion though. It's to the
15 left of that label --

16 Q Okay.

17 A -- is where the Seventh District is.

18 Q Okay.

19 A So it comes to that narrow pinch point just to
20 the left of that word. And then it goes north of
21 Upper Merion, so above the label "Upper Merion."

22 Q Right.

23 A It moves north, it crosses that black line.
24 That's the line between West Norriton and Upper
25 Merion Township. So if you follow it north, it comes

1 to another pinch point. This is below the label
2 "West Norriton" in West Norriton Township.

3 Q And the pinch point between the two green lines,
4 which are the boundaries of the Seventh, correct?

5 A Correct, yes.

6 Q Okay.

7 A It moves north and it moves -- it's between West
8 Norriton and Norristown right there. That is the
9 Seventh, just that narrow piece between West Norriton
10 and Norristown.

11 Q Okay.

12 A It then moves north to where it says "East
13 Norriton" to the left of that, and then you have this
14 larger mass up there encompassing --

15 Q Okay.

16 A -- very heavily --

17 Q Now --

18 A -- Republican areas.

19 Q Now I'm going to -- I just want to take you for
20 illustration between where it says "East Norriton"
21 and the word "Montgomery" on that -- in the center of
22 this map. What is the effect of striking the line at
23 that point?

24 A Yeah.

25 Q What's to the right, what's to the left, how does

1 it affect the likelihood of a Republican or Democrat
2 winning?

3 A So where it says "East Norriton" that is all East
4 Norriton Township to the left of that label and to
5 the right of that label. The district line actually
6 goes right through the middle of East Norriton
7 Township, so it splits it right down the middle, but
8 if you notice to the left of that line, it's a
9 Republican area, to the right of that line, it's
10 blue, it's Democratic. That blue area was put into
11 the Thirteenth, but the red area to the left was left
12 in the Seventh.

13 Q Okay.

14 A And if you actually follow that continuing north
15 towards the word "Montgomery," which is labeled for
16 Montgomery County, you can see how that green line,
17 which is the border between the Seventh and the
18 Thirteenth, neatly follows those blue areas.

19 Q Okay.

20 A So it's making sure that those blue areas are
21 included in the Thirteenth but they're kept out of
22 the Seventh.

23 Q And then the -- then the line continuing then
24 shoots southwest, is that correct, toward the word
25 "Plymouth?"

1 A It goes directly south towards Plymouth. You can
2 see it then goes north of Plymouth. So it goes
3 around Plymouth to keep -- to keep Plymouth in the
4 Thirteenth. And it then goes to the southeast
5 right --

6 Q And Plymouth --

7 A -- by the "Whitemarsh" label.

8 Q And the relevance of Plymouth being blue and
9 the -- and the areas in the Seventh being red or pink
10 are what?

11 A The red or pink areas are Republican and the blue
12 areas are Democratic.

13 Q Okay.

14 A And so --

15 Q And --

16 A -- it -- go ahead.

17 Q And then trace -- and then tracing -- above the
18 word "Plymouth" there is a zigzag line. Does that
19 follow, if you know, along any municipal boundary?

20 A No. As a matter of fact, it splits Plymouth
21 right in -- you know, into a third here. So the
22 northern part of Plymouth and western part of
23 Plymouth are separate from the rest of Plymouth
24 Township.

25 Q Okay. And then continue with bringing us along

1 the -- this boundary between the Seventh and
2 Thirteenth --

3 A Uh-huh.

4 Q -- toward Whitemarsh. What's happening around
5 Whitemarsh?

6 A So the boundary is moving right through the
7 middle of Whitemarsh Township and, again, Whitemarsh
8 Township is split right down the middle with the
9 Democratic part to the left of the Whitemarsh label
10 in blue added to the Thirteenth, but the Republican
11 part above the Whitemarsh label in red is in the
12 Seventh.

13 Q Now, I noticed that the very tiny, little lobe
14 below the word "Whitemarsh" was actually -- I'm
15 sorry, it split that little pentagon area of
16 territory that's in pink below the word "Whitemarsh."
17 Can you -- can you account for why that Republican --
18 I'm sorry, that that line would be struck there, why
19 they would divide a Republican-performing area?

20 MR. TORCHINSKY: Objection, Your Honor,
21 calls for speculation.

22 JUDGE SMITH: I'll sustain the objection.

23 BY MR. GORDON:

24 Q Okay. Let's keep going. So continue with the
25 boundary of the Seventh as it extends above

1 Springfield, please.

2 A Sure. So the line continues to go around
3 Springfield. Again, you can see how the line just
4 follows Democratic and Republican areas, so it keeps
5 the Democratic areas in blue where it says
6 "Springfield" in the Thirteenth, but the Seventh
7 maintains the republican areas. That line follows
8 around by Upper Dublin to the north.

9 You can see again to the right of that
10 line, that's the Thirteenth. That's blue, that's
11 Democratic. To the left of that line is Republican,
12 that's in the Seventh. And that follows neatly
13 around Ambler as well. You can see the level of
14 precision here where it includes the Borough of
15 Ambler but even the neighboring voting precincts
16 right outside of Ambler that are in different
17 townships and splits those townships based on
18 partisan data, so very clearly following the
19 Democratic -- the boundary between Democratic and
20 Republican areas between the Seventh and Thirteenth.
21 So the same effect in Lower Gwynedd where, again, to
22 the north of Lower Gwynedd, where the label is,
23 that's a Republican -- those are Republican-voting
24 precincts. South of the "Lower Gwynedd" label are
25 Democratic-voting precincts in the same township, and

1 it splits right down the middle there to keep the
2 Republican parts in the Seventh but the Democratic
3 parts in the Thirteenth.

4 Q Okay. Then moving the line from west to east on
5 the serrated edge there, can you explain that in
6 terms of partisan performance?

7 A So, again, you can see that as we move down
8 towards Upper Dublin again, we have the Republican
9 areas in the Seventh and the line is drawn very
10 neatly to keep vote -- Democratic-voting precincts in
11 the Thirteenth but Republican-voting precincts in the
12 Seventh. That continues to follow all the way down
13 towards this boot at the far right where it then
14 begins to wind back around towards Horsham, again,
15 keeping the Democratic areas in the Thirteenth and
16 the Republican areas in the Seventh.

17 Q Okay. Then turning to Upper Gwynedd and
18 Lansdale.

19 A So as you move towards Upper Gwynedd you can see
20 the same effect where the Seventh wraps around Upper
21 Gwynedd, splits the township by keeping the
22 Republican dark red areas in the Seventh but putting
23 the blue areas, Democratic areas in the Thirteenth.
24 That follows right through Upper Gwynedd Township
25 along the border of Lansdale Borough to the left of

1 the "Lansdale" label.

2 Q Okay. And then continuing around Tinicum -- I
3 think you've already described Tinicum, and then --
4 so I think we'll -- I think that's the point. So in
5 summary, the circuitous nature of -- nature of that
6 line as just described achieves what in terms of vote
7 share?

8 A It maintains the Seventh's Republican vote share
9 edge. So by drawing the lines this way, clearly
10 around -- using partisan data at the voting precinct
11 level, it has maintained the Republican edge in the
12 Seventh while packing Democrats into the Thirteenth.

13 Q Is --

14 JUDGE SMITH: Mr. Gordon, I have applied
15 the most elastic form of ten minutes that I could
16 conceive of. I've now defied traditional norms of
17 time and space, you know, I need to know just how
18 long this is going to take.

19 MR. GORDON: Your Honor, if we may continue
20 with Mr. McGlone after lunch, I will not speak to him
21 during the lunch period. I see you're sagging your
22 head. He's kind of -- I have a -- I could -- I mean
23 I think seven minutes, but I was wrong the last time.

24 JUDGE SMITH: Yes, I'm not betting on your
25 accuracy at this point. All right. We're going to

1 take our midday break. The time is now 12:53. We'll
2 take an hour for lunch and give you ten minutes tops.

3 MR. GORDON: Thank you.

4 JUDGE SMITH: Now exceptions, no
5 expansions, no resetting my watch in any way. Ten
6 minutes, all right?

7 MR. GORDON: Thank you, Your Honor.

8 JUDGE SMITH: All right. We'll be in
9 recess until 1:55.

10 (Luncheon recess taken from 12:53 p.m. to
11 1:53 p.m.)

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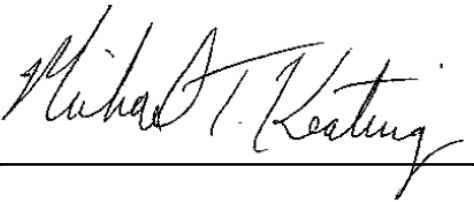
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CERTIFICATION

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.

12/4/17

Date



Michael Keating