

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|                 |   |                            |
|-----------------|---|----------------------------|
| LOUIS AGRE,     | : | CIVIL NO. 17-4392          |
| et al.,         | : |                            |
| Plaintiff       | : |                            |
|                 | : |                            |
|                 | : |                            |
|                 | : |                            |
|                 | : |                            |
| v.              | : |                            |
|                 | : |                            |
|                 | : |                            |
|                 | : |                            |
| THOMAS W. WOLF, | : | Philadelphia, Pennsylvania |
| et al.,         | : | December 4, 2017           |
| Defendant       | : | 1:54 p.m.                  |

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TRANSCRIPT AFTERNOON SESSION OF TRIAL DAY 1  
BEFORE THE HONORABLE MICHAEL M. BAYLSON,  
D. BROOKS SMITH, AND PATTY SHWARTZ  
UNITED STATES JUDGES

- - -

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23 Proceedings recorded by electronic sound  
24 recording; transcript produced by computer-aided  
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1           (The following was heard in open court at  
2 1:54 p.m.)

3           JUDGE SMITH: Can we please have the  
4 witness retake the stand?

5           (Pause in proceedings.)

6           MR. GORDON: Your Honor, may we proceed?

7           JUDGE SMITH: Yes.

8           MR. GORDON: Your Honor, in the break, I  
9 was able to locate the email that came from defense  
10 counsel to plaintiffs' counsel attaching the data  
11 set, which has been the subject of Mr. McGlone's  
12 testimony. In the ordinary trial, I would say this  
13 is the email, and I will say this is the email that  
14 accompanied the data set and it describes the data  
15 set as the facts and data considered in creating the  
16 2011 plan.

17           JUDGE SMITH: This is an email from whom to  
18 whom?

19           MR. GORDON: It is an email from Jason R.  
20 McLean, attorney at Cipriani & Werner. That's the  
21 same firm as Ms. Gallagher at the end. And the email  
22 is from Jason McLean to all of plaintiffs' counsel.  
23 Subject is regarding Agre versus Wolf with the court  
24 term and number, regarding Speaker Turzai production  
25 and attachments "Turzai Privilege Log," although this

1 isn't the privilege log. And in the attachment, Mr.  
2 McGlone says, "Please accept the following pursuant  
3 to the Court's order on plaintiffs' motion to compel  
4 ECF number 76. Documents responsive to paragraph one  
5 of the order have already been provided. Pursuant to  
6 paragraph two of the order, the following is a link  
7 to download the facts and data in creating the 2011  
8 plan." And then it has the link and it says the  
9 password will be sent in a separate email. And it's  
10 con -- there's two more points concerning paragraph  
11 three of the order. "Speaker" -- "The Speaker has no  
12 responsive documents. Pursuant to paragraph four of  
13 the order, attached is the Speaker's privilege log."  
14 I would think that it wouldn't -- shouldn't be an  
15 issue to -- I'm certifying as counsel that this was  
16 the email that was sent to me accompanying the data,  
17 and this is what I forwarded to each of the expert  
18 witnesses.

19 JUDGE SMITH: Okay. I'm sorry, I'm a bit  
20 confused at this point.

21 MR. GORDON: Oh, the purpose of this is it  
22 authenticates the data and it authenticates --

23 JUDGE SMITH: And --

24 MR. GORDON: -- description of the data.

25 JUDGE SMITH: -- which data?

1 MR. GORDON: The Turzai data showing the  
2 con -- showing the facts and data considered in  
3 creating the 2011 plan in response to this Court's  
4 order that all of that data be turned over.

5 MS. GALLAGHER: Your Honor, if I may?  
6 Kathleen Gallagher on behalf of Cipriani & Werner.  
7 This is a transmittal document. It's done everyday  
8 in discovery. I mean I would understand it might be  
9 relevant to the extent that we're talking about the  
10 date on something that -- which something was  
11 produced.

12 JUDGE SMITH: Well, I don't understand as  
13 to be at the point where we're discussing -- or  
14 should be discussing relevancy of -- first of all,  
15 we've taken a recess in the midst of this witness'  
16 testimony. The Court does not have before it a  
17 proffered exhibit of any kind. So I -- my colleagues  
18 are probably far ahead of me right now, but I'm not  
19 sure what is in dispute. Are -- do you wish to have  
20 the witness testify to something, do you wish to  
21 admit some -- move the admission of something? I  
22 don't know where we are.

23 MR. GORDON: The -- I did not know until  
24 one of the objections asserted by Mr. Torchinsky that  
25 they were going to conceivably contest that the data

1 set that they forwarded to us -- oh, Mr. McGlone did  
2 also receive this email, but the point -- the  
3 relevance is that I didn't know they were going to in  
4 any way contest that the data they sent us is the  
5 data --

6 JUDGE BAYLSON: Why don't you -- can I  
7 suggest you finish with the witness first?

8 MR. GORDON: I will.

9 JUDGE SMITH: Did you get --

10 MR. GORDON: Thank you, Your Honor.

11 JUDGE SMITH: Did you need this for the  
12 witness?

13 MR. GORDON: It -- it's the authentication  
14 of the test -- of the data of which he is testifying.  
15 So it's not needed, but it's highly related.

16 JUDGE SMITH: Well, I -- we should finish  
17 with the witness --

18 MR. GORDON: Very well.

19 JUDGE SMITH: -- and then let's return to  
20 this dispute.

21 MR. GORDON: Okay. I've just discovered  
22 the use of this machine, and let's go right now.

23 DIRECT EXAMINATION

24 BY MR. GORDON:

25 Q Mr. McGlone, just to be clear because the lines

1 are a little hazy, can you with your finger trace the  
2 outlines in 0859 of the boundaries of the Seventh  
3 Congressional District?

4 A Yes.

5 JUDGE SMITH: This is 0859?

6 MR. GORDON: 0859.

7 BY MR. GORDON:

8 Q I think you touch the map in order to create a  
9 line. Just trace the boundaries. Is your machine  
10 on? Sorry.

11 JUDGE SHWARTZ: We can see.

12 THE WITNESS: Yeah, it's tracing. Yeah.

13 BY MR. GORDON:

14 Q Oh, it's not -- oh, it's showing up here. Sorry,  
15 I was looking at -- I was looking at the wrong  
16 screen. Thank you. Keep going.

17 (Pause in proceedings.)

18 Q I think you -- nevermind, keep going.

19 (Pause in proceedings.)

20 A That's a rough approximation of --

21 Q And you had testified in detail the -- okay,  
22 that's fine. I withdraw that question. Thank you  
23 very much. Is there any way to save this and mark it  
24 as an exhibit or is it sufficient to simply -- no.  
25 Okay. I think that gives the Court an honor of the

1 two -- the Court a sense of the districts. Mr.  
2 McGlone -- let me go back to the mike. Have you  
3 observed similar patterns of detailed divisions as  
4 you just described between Democratic districts on --  
5 Democratic-performing territory on one side and  
6 Republican territory performing districts -- gargling  
7 the question -- territory on the other side in the  
8 boundaries on the 2011 map other than the Seventh  
9 Congressional District?

10 A Yeah, and I think it's present in other locations  
11 as well.

12 Q And then can you give us -- the Court a summary  
13 of which districts -- in which it's present?

14 A I mean I think all the districts are related,  
15 that they're all on the same plan. I think it's  
16 present in all the districts that I outlined in my  
17 report and in my supplemental, which also affects, of  
18 course, the Tenth and the Fifth.

19 Q Is it present in each of the districts you  
20 testified to in your -- from your first report, that  
21 sort of teasing out of Republican-performing  
22 districts and Democratic-performing districts?

23 A It does appear to be that -- to be so, yes.

24 Q Okay, thank you. And is there -- is there a  
25 pattern of other than packed Democrat -- I'm sorry,



1 other than districts which have high concentrations  
2 of Democrats, is there a pattern of where towns and  
3 boroughs and townships are split where the blue, or  
4 Democratic, vote is split in the map?

5 A Yes, there are.

6 Q And what is that pattern?

7 A That pattern resides in areas outside of  
8 Philadelphia. So in Central Pennsylvania,  
9 Harrisburg, for example, in Bethlehem, and in Erie.

10 Q And what is the result of that pattern of  
11 splitting the blue, or Democratic, votes?

12 A The result of splitting and diluting the  
13 Democratic vote in this areas means that those  
14 districts that surround the Democratic areas  
15 perform -- are more likely to elect Republicans.

16 Q Okay, thank you. And overall, does the 2011  
17 congressional map -- what effect does it have with  
18 respect to electing Republicans versus Democrats?

19 A It seems to consistently elect 13 Republicans and  
20 five Democrats.

21 Q Okay. I asked you what was the effect of the  
22 drawing of boundaries from the 2011 map.

23 A The effect of drawing the boundaries creates 13  
24 districts which are -- perform very well for  
25 Republicans, which tend to elect Republicans, and

1 pack Democrats in the remaining five districts.

2 Q Okay. No further questions. Thank you.

3 (Pause in proceedings.)

4 JUDGE SMITH: Thank you. You may cross-  
5 examine.

6 CROSS-EXAMINATION

7 BY MR. TORCHINSKY:

8 Q Mr. McGlone, I'm going to start out with this  
9 methodology that you used when you sort of I guess  
10 apply what you have referred to in your supplemental  
11 report as a visual test. What is that visual test?

12 A So the visual test is an examination of the  
13 district boundaries in relation to partisan data at  
14 the voting precinct level.

15 Q Have you ever obs -- has this visual test every  
16 been applied by any other expert in any court case  
17 about redistricting that you are aware of?

18 A Not that I'm aware of.

19 Q Has your visual test every been reviewed by any  
20 academic or any other specialist in this area?

21 A I mean I believe visual tests like this are  
22 pretty common in any sort of redistricting analysis.

23 Q Wait a minute. I just asked you if it had ever  
24 been used before and you said no, and now you just  
25 said it's very common, so I'm confused. Is it common

1 or has it ever been used before?

2 A I think the election return data with respect to  
3 congressional districts is a -- it's a very common  
4 type of analysis that's done. You know, the news  
5 media and reports report on this all the time, about  
6 how districts perform based on election return data.

7 Q That wasn't what I asked you. I was asking about  
8 your visual examination of the borders of districts.  
9 Has that ever been used before?

10 A Not that I'm aware of, no.

11 Q Can you -- can -- is there any way to quantify  
12 your visual test? Is there any measure that you can  
13 apply that's repeatable?

14 A Well, the measure that I've applied would be  
15 aggregating the voting precinct partisan vote share  
16 data to the congressional district boundaries.

17 Q I'm sorry, you applied what?

18 A I aggregated the partisan vote share for each of  
19 the voting precincts within each congressional  
20 district to get a partisan vote share for the  
21 districts overall. That's in my original report.

22 Q All right, let's talk about that for a moment.  
23 Are you talking about the chart that is labeled --  
24 are you talking about charts A and B from your  
25 report?

1 A Yes.

2 Q So in your familiarity with political -- with  
3 politics, where is a district competitive? What is  
4 the line between a competitive district and a  
5 non-competitive district?

6 A I'm not here to do an analysis and try to  
7 understand which districts are competitive. I'm  
8 looking at the partisan vote share for each of the  
9 districts and observing that.

10 Q Okay. Wait, wait, wait. So are partisan vote  
11 share and competitiveness related?

12 A They are, yeah.

13 Q How?

14 A I mean I believe that districts that have a high  
15 partisan vote share for one particular party are  
16 probably less competitive.

17 Q And how about districts that have a partisan vote  
18 share that is very close?

19 A Districts that have a partisan vote -- it depends  
20 on what sort of partisan vote share you're looking  
21 at, but they can be more competitive, yeah.

22 Q Okay. And so looking at your chart A, which is  
23 the chart that you -- where you apply the 2004 to  
24 2008 averages to the 2011 congressional districts,  
25 looking at your chart I see one, two, three, four,

1 five, six districts where Democrat -- I guess what  
2 you -- what do you refer to this number as?

3 A This is the partisan vote share for Democrats.

4 Q What you refer to as the partisan vote share for  
5 Democrats where the blue exceeds the red?

6 A That's correct.

7 Q So why don't Democrats have six districts?

8 A I believe the Eighth District has been  
9 represented by a Republican for several cycles now.

10 Q So partisan vote share and election performance  
11 are not exactly correlated?

12 A I believe they're highly correlated, yeah.

13 Q Highly correlated, but not perfectly correlated?

14 A Certainly not perfectly correlated, no.

15 Q So in other words, the district here that is  
16 slightly blue is actually rep -- at least slightly  
17 more blue than red is represented by a Republican?

18 A In this case that is true.

19 Q Okay. And is it true -- is it true or not true  
20 that when a district is in your -- in the 51-52  
21 percent range that that is a competitive district?  
22 Is that true or not true?

23 A Again, it's not my call to decide whether a  
24 district is competitive or not. I --

25 Q Oh, it's not? Well, then what are -- what are

1 you -- what exactly is this chart telling us?

2 A This chart is telling us that if you're using  
3 partisan data to draw districts, which we found  
4 through the Turzai production that partisan data was  
5 present in that data that was used to draw districts,  
6 if you're averaging party registration election  
7 returns over a period of time, you can come up with a  
8 number that tells you how the voting precinct will  
9 perform. It's not solid, it's not always going to  
10 perform that way, but it's going to give you an  
11 average for multiple elections.

12 Q And why is it --

13 A I think that's what was used. And when we saw  
14 the Turzai production data it's clear that that was a  
15 very similar type of field in that data --

16 Q That's not what I'm asking you. I'm asking you  
17 whether this average vote share and the actual  
18 election returns are always correlated. Are they  
19 always correlated?

20 A They are not always correlated.

21 Q And if a district is in the 51 or 52 percent  
22 range, is that a competitive district or not a  
23 competitive district?

24 A It's not my determination as to whether it's a  
25 competitive district. I think it could --

1 Q Well, wait, wait, wait.

2 A -- potentially be a --

3 Q Hold on, wait.

4 A -- competitive district.

5 Q Multiple times.

6 MR. GORDON: Objection, Your Honor.

7 JUDGE SMITH: Yes, the objection is  
8 sustained. Let him answer his question, please,  
9 before --

10 MR. TORCHINSKY: Okay.

11 JUDGE SMITH: -- you step on his answer.

12 THE WITNESS: It's not my determination as  
13 to whether it's a competitive district or not. I  
14 think that if a district is performing at a 51  
15 percent Republican level over -- smoothed out over  
16 multiple elections, averaged out over multiple  
17 elections, I think it's going to continue to elect  
18 Republicans.

19 BY MR. TORCHINSKY:

20 Q So given your -- given your theory, why do we  
21 have elections?

22 A We have elections to vote for -- to elect people  
23 to Congress and various offices or -- I mean we have  
24 elections so people can vote for their  
25 representatives.

1 Q Okay. And when we vote for Congress who are we  
2 voting for? Are we voting for Republican or Democrat  
3 or are we voting for an individual candidate?

4 A You're voting for a candidate with a D or R next  
5 to their name.

6 Q In an individual district?

7 A In an individual district.

8 Q So it's not a state-wide vote like it is for  
9 president or governor or United States -- or senator,  
10 is that correct?

11 A It's you're electing your congressperson for your  
12 district, yeah.

13 Q For your district?

14 A Yes.

15 Q And so what you've done is your -- particularly,  
16 look at your chart C. Your chart C you say -- which  
17 you refer to as the normal Democratic and Republican  
18 vote share, and your chart suggests that the blue is  
19 higher than the red. That's based on '04 to '08  
20 election data, correct?

21 A That's correct.

22 Q So those include Democratic wave years?

23 A Those include 2006 and 2008 as well as 2004. In  
24 2006 and 2008, Democrats did perform well.

25 Q And in 2004 and 2008, did Republicans or



1 Democrats win the presidential race in Pennsylvania?

2 A Democrats did.

3 Q So is it true that Chart C overstates Democratic  
4 performance in Pennsylvania?

5 A I think it accurately states Democratic  
6 performance between 2004 and 2008.

7 Q And so what is the point of Chart C then?

8 A The point of Chart C is to compare that to the  
9 charts of individual districts. So we could say that  
10 the average Democratic vote in the state from 2004 to  
11 2008 is quite heavily favored towards Democrats. But  
12 if you look at the individual districts, you see that  
13 Democrats only have a majority in five of them as  
14 opposed to the other 13, which are Republican.

15 Q So let's go back to your chart on page three,  
16 your chart where you list competitive packing and  
17 cracking. So in your chart, you even distribute the  
18 red and the blue dots, is that correct?

19 A That's the -- how they are in the chart, yes.

20 Q Right. In the State of Pennsylvania, are  
21 Republican and Democratic voters evenly distributed  
22 across the state?

23 A They are not.

24 Q Where are they? Let me rephrase that. Where are  
25 Democratic voters located in Pennsylvania?

1 A That -- can you be more specific? That's a very  
2 broad question.

3 Q Sure. Where do the -- where do Democrats have  
4 their largest concentration of votes in the State of  
5 Pennsylvania?

6 A Democrats have a lot of votes in Philadelphia,  
7 Pittsburgh, and then scattered throughout the smaller  
8 cities throughout the state.

9 Q And so when you present your chart of competitive  
10 packing and cracking is it true that that chart  
11 doesn't accurately reflect the distribution of votes  
12 in Pennsylvania?

13 A The chart is meant to be a graphic and  
14 illustration to help people understand what packing  
15 and cracking are.

16 Q But when voters are not evenly distributed  
17 it's -- when voters are not evenly distributed is it  
18 not more difficult to draw districts that are  
19 competitive? So let's say, for example -- you just  
20 said Democrats are concentrated in Philadelphia. How  
21 do you -- how do you quantify that concentration?

22 A You could look at party registration, you could  
23 look at election returns.

24 Q Okay. And what is the party reg -- what are the  
25 party registration numbers in Philadelphia County?

1 A I don't know the exact numbers. I think it's in  
2 the 80 to 90 percent range.

3 Q Oh. So you're telling me that 80 to 90 percent  
4 of voters in Philadelphia are registered Democrats?

5 A I don't know the exact number.

6 Q So when you draw a district that includes the  
7 City of Philadelphia is the district not going to be  
8 significantly Democrat?

9 A It depends on how you draw the district.

10 Q So if you pancake the city and stretch from the  
11 city out to the suburbs in sort of a pizza pie  
12 fashion, you would draw competitive districts because  
13 you would be cracking the Democratic voters that are  
14 otherwise naturally concentrated in the City of  
15 Philadelphia, isn't that correct?

16 A In the exact scenario you described?  
17 Potentially.

18 Q And you agree that Democratic voters are  
19 naturally concentrated in the City of Philadelphia?

20 A Democratic voters are sorry?

21 Q Naturally concentrated in the City of  
22 Philadelphia.

23 A Naturally concentrated?

24 Q Are they highly concentrated in the City of  
25 Philadelphia?

1 A Compared to the state -- I'm not sure --  
2 Democratic voters are concentrated in Philadelphia.  
3 There is a concentration of Democratic voters in  
4 Philadelphia, yes.

5 Q Is it highly concentrated or just a little  
6 concentrated?

7 A I would say it's fairly highly -- fairly high --  
8 there's a fairly high concentration of Democratic  
9 voters in Philadelphia, yes.

10 Q Okay. And let's talk about Allegheny County.  
11 What's the concentration of Democratic voters in  
12 Allegheny County?

13 A I don't know the exact numbers.

14 Q When you were preparing your reports did you  
15 consider the concentration -- these large  
16 concentrations of Democratic voters in Allegheny and  
17 Philadelphia when you were preparing your report?

18 A I mean I considered them in the report there.  
19 You can read about them in the report as well.

20 Q So if voters are not evenly distributed across  
21 the state, how is it that you expect or you seem to  
22 suggest that the state-wide vote percentage and the  
23 seat distribution in Congress should be correlated?  
24 Because that seems to be what you -- what you're  
25 suggesting.

1 A I'm not making an argument about the -- I'm  
2 pointing out the seat distribution in relation to how  
3 the districts have performed since the lines were  
4 redrawn in 2012.

5 Q But you're providing -- so what you're telling me  
6 is you're not providing any opinion about what any  
7 kind of expected seat share should be in the state?

8 A I'm not making an argument about any sort of  
9 other test around seat share.

10 Q So you have no -- you draw no conclusions from  
11 your report that say -- so, for example, with chart C  
12 shows that, you know, Democrats are slightly larger  
13 than the number of Republicans based on the elections  
14 you put in here. You're not suggesting that  
15 Democrats should win more seats than Republicans  
16 based on that?

17 A I think it's -- I think the Democrats are packed  
18 into five super majority districts and Republicans  
19 have control over 13 districts.

20 Q Do voters decide where to live?

21 A Yes, they do.

22 Q Are Democratic voters highly -- do Democratic  
23 voters live close together in Philadelphia and in  
24 Allegheny?

25 A Sure, some Democratic voters do.

1 Q And they're not evenly distributed throughout the  
2 state, is that correct?

3 A I mean no population is evenly distributed.

4 Q So when you draw this -- so when you draw  
5 districts is it not natural that you would have  
6 dis -- when you draw districts is it not natural that  
7 you would have -- when you have voters that are  
8 highly concentrated like that, that you would have  
9 districts that are overwhelmingly Democratic?

10 A You could potentially have some, but that doesn't  
11 really explain any of the suburban districts outside  
12 of Philadelphia.

13 Q And if you were to -- what would a map look like  
14 if you were to -- take Allegheny County, for example.  
15 What would a map look like if you were to -- how do  
16 you think the area around Allegheny County should be  
17 drawn to be fair or to not pack and crack? Should  
18 the City of Pittsburgh be divided?

19 A I believe that we should strive not to divide  
20 jurisdictions like counties and municipalities.

21 Q So the City of Pittsburgh should be kept whole?

22 A I believe so.

23 Q Why?

24 A The City of Pittsburgh is one of the largest  
25 cities in the state. It's a community of interest.

1 Q So the Fourteenth District actually does keep the  
2 City of Pittsburgh whole, correct?

3 A That is correct.

4 Q But you're critical of the Fourteenth District?

5 A I'm critical of the Fourteenth District because  
6 it reaches out along the Ohio and Allegheny River to  
7 grab other Democratic constituencies out of  
8 neighboring districts, in essence, packing Democrats  
9 into a super majority district in the Twelfth -- or  
10 the Fourteenth, sorry.

11 Q So using your visual test, where should the  
12 Fourteenth District have gone?

13 A The Fourteenth District could be more compact for  
14 sure. It doesn't really need to extend along rivers  
15 and snake along rivers to grab other Democratic  
16 territory --

17 Q Can --

18 A -- that was previously in other districts, but  
19 I'm not here to propose another map.

20 Q So you have no exemplar map about what the state  
21 should look like?

22 A I think that there are traditional redistricting  
23 principles and I think that there are -- partisan  
24 data should not be considered when drawing a map and  
25 I think it clearly was.

1 Q Let's go back for a moment. You just said  
2 partisan data should not be -- should not be  
3 considered when drawing the map. Why do you think  
4 that?

5 A Because we end up with a map like we have in  
6 Pennsylvania.

7 Q Is there any -- do you have any basis other than  
8 your own personal thoughts about why partisan data  
9 shouldn't be used when drawing a map?

10 A I mean there's a lot of reasons you can look at.  
11 I think that people have -- there's been a lot of  
12 discussion around the idea of a very polarized  
13 society. Politics has become very polarized. And I  
14 think that gerrymandering disrespects communities. I  
15 think to have municipalities and jurisdictions and  
16 concentrations of different types of voters split, it  
17 seems very unnecessary to me, and I think using  
18 partisan data to achieve a map that is really just  
19 trying to exemplify your own advantages and splitting  
20 everyone else and cracking everyone else is wrong.

21 Q Is protection of incumbents a lawful criteria?

22 A I think that sometimes incumbency can be  
23 considered.

24 Q Did you mention that in your report?

25 A I had mentioned it in my supplemental report.



1 Q Did you mention it in your original report?

2 A I didn't mention it in my original report.

3 Q Why not?

4 JUDGE SMITH: Excuse me, you did not?

5 THE WITNESS: I did not mention it in my  
6 original report.

7 BY MR. TORCHINSKY:

8 Q Why not?

9 A Because my -- the goal of this matt -- the goal  
10 of my original report was to look at the partisan  
11 vote share of voting precincts overlaid with district  
12 lines to show how the district lines interact with  
13 the partisan data.

14 Q So did you look at any other possible  
15 explanations for the map other than the partisan data  
16 that you looked at?

17 A The goal of the report was to show how packing  
18 and cracking have affected the map of Pennsylvania.

19 Q You -- so you didn't look at incumbency, correct?

20 A I didn't look at incumbency, but I did in the  
21 supplemental report where we had incumbent data in  
22 the Turzai production.

23 Q Did you look at racial data to make any Voting  
24 Rights Act assessment?

25 A It's commonly known that the Second District is a

1 majority-minority district to satisfy the Voting  
2 Rights Act. Can -- I also believe that it can be a  
3 gerrymander at the --

4 Q Did you --

5 A -- same time.

6 Q Did you look at racial data when you were making  
7 your assessment of the Second District?

8 A Like I said, I mentioned -- I mentioned in my  
9 supplemental report that it's a -- it's a district  
10 that's meant to comply with the Voting Rights Act.

11 Q Did you look at anything about preserving cores  
12 in existing districts?

13 A I didn't look at that, but I would note in my  
14 supplemental report that if continuity was a factor,  
15 then the districts would not look anything like they  
16 look now.

17 Q Did you look -- did you consider in your report  
18 the fact that almost every district in the state  
19 needed to grow because of the population loss  
20 patterns?

21 A I think that that's true, yeah.

22 Q And where was the population loss in the state?

23 A Population loss was centered in Western  
24 Pennsylvania.

25 Q So -- and the state went from 19 to 18 districts,

1 right?

2 A That's correct.

3 Q And you didn't mention any consideration of the  
4 fact that most of these districts had to get larger  
5 in your report, correct?

6 A I didn't specifically mention that, no.

7 Q Why didn't you mention it?

8 A Again, the goal of the report was to show how the  
9 existing map packs and cracks constituencies across  
10 the state using partisan data.

11 Q So when you were doing your report did you  
12 compare or -- so just to be clear, you didn't compare  
13 or consider any other possible criteria or  
14 explanations for the map? You just looked at this  
15 one possible aspect as an explanation?

16 A That was the goal of the report, yeah.

17 Q And you looked at no other possible criteria?

18 A I -- in this report, I did not. In the  
19 supplemental, I considered some other criteria.

20 Q Let's go through some of the maps that you --  
21 that you put forward and had some comments about.  
22 The First Congressional District, when you look at  
23 your map Exhibit 1A and your map Exhibit 1B, map  
24 Exhibit 1B is the 2001 -- or 2002 district. Do you  
25 agree that that district needed to add population?

1 A It did, yes.

2 Q Okay. And in the -- in Exhibit 1A, you see that  
3 the area surrounded in red, which was the First  
4 District, got larger, right?

5 A It -- sorry, say that again.

6 Q The area surrounded in red between map 1B and  
7 then -- and in map 1A got larger, is that correct?

8 A The district had to grow, yes.

9 Q Right. Why did the district have to grow?

10 A It didn't have enough population.

11 Q Okay. So it needed to add population. And your  
12 criticism of the district appears to be that in the  
13 southern part of the district, it went north from  
14 Chester and up toward Swarthmore. Why was that  
15 choice impermissible, as opposed to going somewhere  
16 else in your view?

17 A Well, first of all, it split the City of Chester.  
18 I don't understand why the district couldn't just  
19 gain voting precincts around the existing boundaries.  
20 It doesn't seem to make sense to me that the district  
21 would grow outward and split a city, split a  
22 jurisdiction, a municipality, to be at one point  
23 almost one -- only one precinct wide to go out all  
24 the way into Central Delaware County to grab  
25 Swarthmore.

1 Q But you --

2 A If the district needs to grow, it can grow out  
3 one precinct at a time.

4 Q But is there any legal requirement that it did  
5 that?

6 A There's a -- I mean it splits the City of  
7 Chester, which now occurs that didn't occur before.

8 Q Are you familiar with or are you aware that the  
9 number of counties from -- split between the 2002 and  
10 2011 plan was reduced?

11 A I am aware that the splits were reduced, but what  
12 matters is where the splits are occurring.

13 Q Why does that matter?

14 A Because it's very notable that certain  
15 communities of interest and certain jurisdictions  
16 were split. They happen to be Democratic  
17 constituencies.

18 Q So some splits are more important than other  
19 splits?

20 A I think that if you're splitting communities of  
21 interest and cities that have, for example,  
22 Democratic concentrations, that goes a long way to  
23 proving that there was a partisan gerrymander here.

24 Q And what is -- what is your -- what is your basis  
25 for saying that some splits are more important than

1 other splits?

2 A What I'm saying is the City of Chester was split  
3 in this map and wasn't split before, and it was split  
4 clearly to go out and grab Swarthmore and include  
5 that in the First Districts.

6 Q And you just think -- you don't like how that map  
7 looked?

8 A A lot of people don't like how it looks, but I  
9 think it's wrong that it split the City of Chester  
10 and went out to get Swarthmore to pack Swarthmore in  
11 the First District.

12 Q But you have no other basis other than you just  
13 don't like how it looked?

14 A My basis is that it splits --

15 MR. GORDON: Objection, mischaracterizes  
16 the testimony of the witness --

17 JUDGE SMITH: No, I'll --

18 MR. GORDON: -- and it's repetitive.

19 JUDGE SMITH: -- allow it.

20 MR. GORDON: Okay.

21 THE WITNESS: My basis is that it splits  
22 the City of Chester unnecessarily and it packs a  
23 Democratic constituency in Swarthmore into the First  
24 District unnecessarily.

25 BY MR. TORCHINSKY:

1 Q When you say "unnecessarily," what was necessary?

2 A So as you can -- as you say, the district needed  
3 to grow, it needed to gain population. So it can  
4 grow a lot of different ways. It can move outward by  
5 one voting precinct at a time until it gets more  
6 population, until it reaches the equal population  
7 that it should be at. But to divide through a narrow  
8 arm the City of Chester to go out into Central  
9 Delaware County to grab Swarthmore seems pretty  
10 unnecessary.

11 Q Unnecessary, but not illegal, correct?

12 A That is --

13 MR. GORDON: Objection, asked and answered.

14 THE WITNESS: That is --

15 JUDGE SMITH: Just a moment. There's an  
16 objection. I don't think asking this witness  
17 questions about what's lawful or not lawful really is  
18 helpful.

19 MR. TORCHINSKY: Okay. Thank you, Your  
20 Honor.

21 BY MR. TORCHINSKY:

22 Q Moving on to the second issue. At deposition,  
23 you said that the Second District didn't -- or,  
24 actually, let me go back to the First District for a  
25 moment. The First District couldn't grow to the

1 east, correct?

2 A The western wing of the First District could grow  
3 to the east, yeah. So the piece of the First  
4 District that runs up along Eastern Delaware  
5 County -- or sorry, Eastern Delaware County and  
6 Western Philadelphia County could grow east.

7 Q But the First District is along the southeastern  
8 edge of the state, correct? So it can't go further  
9 east on the southeast corner of the district,  
10 correct?

11 A It could also grow through Northeast  
12 Philadelphia. It could go east there along to the  
13 river.

14 Q So what -- so what you're saying is the people  
15 that made the map or if you were making a map, you  
16 would have a lot of options as to where to go, right?

17 A I think there are other options that don't  
18 involve dividing the City of Chester and having an  
19 arm that goes out to include Swarthmore.

20 Q But it could have gone lots of other ways?

21 A There are other ways it could have gone, yes.

22 Q You just don't like the way it went?

23 A You've already asked that question. I think it's  
24 wrong to split the City of Chester and it's wrong to  
25 go out in the middle of Delaware County and grab a



1 municipality that wasn't part of the original  
2 district or near the original district.

3 Q But it had to grow, right?

4 A You asked me that question before and I said yes.

5 Q Okay. Moving on to the Second District. The  
6 Second District is -- I think as you acknowledged, is  
7 a Voting Rights Act district, correct?

8 A That district complies with the Voting Rights  
9 Act, yes.

10 Q How do you reach that conclusion?

11 A It is a majority-minority district.

12 Q Is that the only requirement for compliance with  
13 the Voting Rights Act?

14 A It can't -- the map overall can't discriminate  
15 against any race and the map has to provide an  
16 opportunity for members of the minority to elect a  
17 representative of their choice. The Second District  
18 attempts to fulfill that.

19 Q At deposition, you indicated that the district  
20 didn't "need" to go into Lower Merion. Where should  
21 the Second District have gone? And, again, I guess  
22 what I'm asking you to compare is the map 2B with the  
23 2003 Second Congressional District and map -- Exhibit  
24 map -- map Exhibit 2, which shows the current  
25 boundaries of the Second Congressional District.

1 Again, growing to the east would have invaded the  
2 First Congressional District, correct?

3 A Potentially, yeah.

4 Q So where should the -- well, let me ask you this.  
5 Did the Second District need to grow?

6 A I believe the Second District did need to grow,  
7 yes.

8 Q So where should it have gone?

9 A Again, I'm not here to propose another map. I  
10 think that the Second District, while it fulfills the  
11 VRA, I think it also is a -- can be a gerrymander at  
12 the same time by including Lower Merion in that  
13 district.

14 Q Now, using your definitions or your view of  
15 packing and cracking, are the Republicans on the  
16 north side of Lower Merion Township packed into the  
17 Second District?

18 A I think that Democrats are packed into that  
19 district. It's meant to be a super majority  
20 Democratic district. So in a sense, the Republicans  
21 there have had their vote diluted.

22 Q So I guess what I don't understand is it didn't  
23 need to go into Lower Merion, but when you look at  
24 the boundaries of the Second District, the old Second  
25 District, Exhibit map 2B, it is completely surrounded

1 by blue on your maps, right?

2 A For the most part, yeah.

3 Q So if it needed to grow, it had to add more  
4 Democratic population using your formulation grabbing  
5 neighboring districts, right -- or neighboring  
6 precincts, right?

7 A Okay. So you're saying it needs -- it needs to  
8 grow.

9 Q Is there -- is there a border on 2B, on map  
10 Exhibit 2B, of the Second District where it could  
11 have grown without adding anything other than  
12 Democratic districts?

13 A I think it could have gone to the north, it could  
14 have gone more to the west.

15 Q And so let's look at map 2B. Map 2B on the north  
16 end of the Second District, aren't those all blue  
17 precincts that border the Second District?

18 A Those are, yes.

19 Q And to the -- to the east side of that district,  
20 aren't those all blue precincts that border that  
21 district?

22 A Those are mostly blue precincts, yes.

23 Q Do you see any red on the east side of the Second  
24 District?

25 A No, aside from the southeast corner.

1 Q How about the southwest corner of -- the  
2 southwest side of the old Second District? Did that  
3 have any red near it?

4 A It did not.

5 Q How about the little point that comes in to  
6 the -- back to the east, the little triangle? Is  
7 there -- is there any red other than up in the  
8 northwest bordering that district?

9 A There are areas of lighter blue and certainly  
10 there are areas red -- light red to the northwest of  
11 the district.

12 Q So the district had to grow, and based on its  
13 shape, it had to become more Democratic, correct?

14 A I don't know that for a fact, no.

15 Q But you don't have any alternative?

16 A I'm not here to propose another plan.

17 Q I understand. Okay. Moving on to the Third  
18 Congressional District. Your own analysis using the  
19 Harvard data set shows that this district is about 53  
20 percent Republican. Is that a competitive district  
21 or a safe district?

22 A I've already answered questions about  
23 competitiveness.

24 Q So you make no assessment of competitiveness?

25 A I think a -- I think a district that performs at

1 a 53 percent vote share for Republicans over three  
2 elections is probably a district that's going to  
3 continue to elect Republicans.

4 Q Okay. And looking at maps 3B and 3A, map 3B  
5 split five counties, isn't that correct?

6 (Pause in proceedings.)

7 Q In particular, it looks like Warren was split,  
8 Crawford was split, Mercer was split, Butler was  
9 split, and Armstrong was split in map 3B, is that  
10 correct?

11 A It looks to be so, yes.

12 Q Okay. And in map 3A, which is the current  
13 district, Crawford was made whole, correct?

14 A Crawford is not split.

15 Q And Butler was not split, right?

16 A Correct.

17 Q And Armstrong was not split, right?

18 A Correct.

19 Q But Erie was split?

20 A Erie County was split, yes.

21 Q What makes Erie sacrosanct in your view?

22 A Erie County is the largest county in the district  
23 and it seems clear to me that it was split right down  
24 the middle along partisan lines to dilute the  
25 Democratic vote in Erie and its suburbs. And also,

1 the relationship there with Kathy Dahlkemper, who was  
2 once elected in that district as the county  
3 executive, I think it was clear that the county was  
4 divided so that Democrats would not win in the Third.

5 Q By putting Lawrence County completely in the  
6 district and the blue area on the side of 3A, didn't  
7 it put more blue voter -- or more blue precincts  
8 there into the district?

9 A So Lawrence County is not entirely in the  
10 district, actually.

11 Q Didn't the new configuration down into Lawrence  
12 County add those blue precincts along the western  
13 border of the state into the -- into the district?

14 A It did add some blue precincts -- blue precincts  
15 to the district as well, just like it moved down and  
16 got more red precincts in Butler and moved up and got  
17 more red precincts in Clarion.

18 Q So you're just not happy with the fact that it  
19 split Erie, but you do acknowledge that it made other  
20 counties whole, correct?

21 A It made some other counties whole, but it made  
22 the largest county, the traditional center of the  
23 district, Erie, it split Erie County.

24 Q Wait, wait, traditional center? So looking at  
25 map 3B, you can identify Erie as the traditional

1 center of the Third Congressional District?

2 A Erie is certainly the largest population center  
3 in the district.

4 Q Was the City of Erie split?

5 A The City of Erie was not split. The line went  
6 very neatly around the borders of Erie to split Erie  
7 City from its suburbs.

8 Q So they kept the City of Erie whole, correct?

9 A The -- I believe the, actually, originally  
10 proposed map didn't, but then the map that ended up  
11 passing did keep Erie whole.

12 Q Moving on to the Fourth Congressional District.  
13 Adams and -- Adams County and York County were kept  
14 whole, correct?

15 A That is correct.

16 Q And the district needed to add population?

17 A I believe this district may have been  
18 overpopulated.

19 Q But do you know?

20 A I don't know the exact population numbers for the  
21 districts offhand, no.

22 Q Yet you criticized the fact that it picked up  
23 almost all of Harrisburg?

24 A I criticized the fact that it splits Harrisburg  
25 City and it also splits neighboring Susquehanna

1 Township twice.

2 Q If Harrisburg and Susquehanna had been included  
3 in the Fourth, what would have needed to have come  
4 out of the Fourth?

5 A I'm not here to propose any alternative map. I'm  
6 simply pointing out that Harrisburg City was split  
7 and Susquehanna Township was split twice. These are  
8 Democratic areas and I think it was done to dilute  
9 the vote there.

10 Q So, once again, you have criticisms but no  
11 suggestions, is that correct?

12 A My suggestions would be to comply with  
13 traditional districting principles, not to use  
14 partisan data, and to keep communities of interest  
15 whole, municipalities, counties, all that kind of  
16 stuff.

17 Q So you keep separating traditional districting  
18 criteria from partisan data. What's your source of  
19 that separation?

20 A The source of it would be when you -- when you  
21 use partisan data to draw a map it's clear that you  
22 end up violating other districting principles. So,  
23 clearly, we've violated, you know, the idea that we  
24 shouldn't split communities of interest. We're  
25 splitting municipalities, we're splitting counties.



1 And by using partisan data, we're not going to end up  
2 complying with everything else because the motive  
3 here is clearly partisan.

4 Q Have you drawn a map that -- a state-wide map  
5 that produces less splits?

6 A I haven't, no.

7 Q So you keep saying that things didn't need to be  
8 split, but yet you haven't come up with any  
9 alternative that shows how to have done it otherwise,  
10 is that correct?

11 A I would point back to Holt versus LRC where the  
12 state came up with the redistricting plan, she  
13 proposed an alternative plan with fewer splits, and  
14 the state ended up overturning the original plan. So  
15 I would say that the original plan that the state  
16 produces is probably not the plan with the fewest  
17 splits necessary.

18 Q But, again, you're presuming that there is some  
19 legal requirement there. Holt goes under a different  
20 provision of the state constitution. There's -- are  
21 you aware of any requirement to reduce splits when  
22 drawing congressional districts?

23 A Some states have requirements. Pennsylvania does  
24 not. But, again, traditional districting principles  
25 would imply that you should keep communities whole.

1 Q And -- but you -- and you agree again, just to  
2 clarify, the number of counties split between the  
3 2002 plan and the 2011 plan decreased, right?

4 A The 2002 plan was also heavily gerrymandered.

5 Q And you agree that the number of minor civil  
6 divisions between the 2002 plan and the 2011 plan  
7 were also reduced, correct?

8 A They were reduced, but, again, the 2002 plan was  
9 also gerrymandered, and as I pointed out --

10 Q I'm sorry, is there anything in your report about  
11 the 2002 plan?

12 A I include district -- yeah, the district outlines  
13 from the 2002 plan as well.

14 Q But you make no comments or observations as to  
15 the status of the 2002 plan?

16 A I mean that wasn't the purpose of the report.

17 Q And are you familiar with the fact that the 2002  
18 plan was upheld by both the United States Supreme  
19 Court and the Pennsylvania Supreme Court?

20 A I am aware of that.

21 Q Yet you just don't like it?

22 A I think it was also a gerrymander, but the type  
23 of data that we had available back then wasn't as  
24 sophisticated as it is now.

25 Q Let's move on to the Sixth Congressional

1 District. 52 percent Republican, based on your math,  
2 is that a competitive district?

3 A A district that votes 52 percent Republican over  
4 three elections is probably a district that's going  
5 to continue to elect Republicans.

6 Q Okay. Going to map -- maps -- well, I guess  
7 you've got two things labeled map 6B, the one labeled  
8 "Sixth Congressional District Surrounding Reading"  
9 and the "2003 Sixth Congressional District." The one  
10 that's labeled "2003 Sixth Congressional District,"  
11 the City of Reading was split a couple times in that  
12 map, right?

13 A I believe the City of Reading was split.

14 Q And in the 2011 map, the City of Reading was kept  
15 whole?

16 A The City of Reading was kept whole. However, the  
17 district boundaries outline the City of Reading and  
18 split it from its suburbs.

19 Q So you're critical of the 2003 district -- the  
20 2002 map for splitting the city and you're critical  
21 of the 2011 map for keeping the city whole, right?

22 A I think that the way that the -- Reading is  
23 included with the Sixteenth District is also wrong.

24 Q But you have no alternative map to offer, again,  
25 correct?

1 A I'm not offering an alternative map, but I'm  
2 saying that packing Reading in with the rest of the  
3 Sixteenth District, which is based in Lancaster, is  
4 probably -- is very unnecessary.

5 Q So it was wrong to crack it and it was wrong to  
6 pack it?

7 A In --

8 Q Is that what you're saying?

9 A In this case I'm saying it's wrong to include the  
10 City of Reading in a district that is centered in  
11 Lancaster County with a lot of Republicans. The  
12 basis of the district is in Lancaster County. And so  
13 there's this thin, little line that stretches through  
14 which connects it to the City of Reading. That  
15 doesn't seem necessary to me.

16 Q There's a lot of things that don't seem necessary  
17 to you, but, again, you don't have any alternatives,  
18 right? You don't have any alternative process, you  
19 don't have any alternative methodology, right?

20 A I mean, again, traditional districting  
21 principles, keep things compact, keep them whole,  
22 minimize splits, keep together communities of  
23 interest, all of those things would apply.

24 Q The Seventh Congressional District, at 52 percent  
25 Republican, is that competitive?

1 A I've already answered a question about 52  
2 percent.

3 Q And did the Seventh District have to grow as  
4 well?

5 A I don't know the exact population of the Seventh  
6 at the time the map was made.

7 Q So you don't know if it had to grow or get -- or  
8 shrink or what?

9 A It probably had to shrink a little bit. It was  
10 in the Philadelphia suburbs, which have grown.

11 Q But you don't know?

12 A I don't know for a fact, no.

13 Q But you criticize the changes?

14 A I -- a lot of people have criticized the changes,  
15 yeah. I'm also --

16 Q I'm not asking what --

17 A -- criticizing them.

18 Q -- a lot of people have done, I'm asking what  
19 you've done.

20 A I have criticized the changes. I've criticized  
21 the way the map looks, yes.

22 Q Okay. And I want to, in particular, point to  
23 Exhibit map B where you criticize the I think what  
24 you say is a 170 meter -- where you -- what you  
25 criticize and say is kind of a 170 meter gap. When

1 you look very carefully at that area on your map in  
2 map 7B, isn't that the way the precincts write down  
3 their shape? They didn't split precincts down there,  
4 right? They didn't go to census block level,  
5 correct?

6 A I don't believe they went to census block level  
7 here. However, that was done in other instances.

8 Q But right here, this is the split that you  
9 criticized the -- this is the area of the map where  
10 you seem to have the most criticism and your  
11 supplemental report included the little satellite  
12 image. The shape of the district there actually  
13 conforms to the existing precincts, right?

14 A It conforms to the existing precincts, but I  
15 think it was only done so to connect those two major  
16 centers of gravity in Montgomery County and down in  
17 Delaware County. And so they found -- the map makers  
18 found the path of least resistance, the smallest,  
19 little appendage they could -- they could connect  
20 those --

21 Q I'm not --

22 A -- those two pieces with.

23 Q I'm not asking you what to -- I'm not asking you  
24 to put yourself in other people's heads or suggest  
25 what was in other people's heads. I'm asking you if

1 that area follows precinct boundaries.

2 A That area does follow precinct boundaries.

3 Q Okay. The Eighth Congressional District, this  
4 one actually shows 51 percent Democratic, but a  
5 Republican wins it, right?

6 A That is correct.

7 Q You just told me a little bit ago that if it  
8 performs under your average theory that way over  
9 time, it clearly is a Democrat seat, right?

10 A I was referring to 52 percent, but 51 percent, I  
11 mean they're very close. This is a district that has  
12 voted for Democrats at the presidential level and  
13 that's why that vote share is more favorable to  
14 Democrats. You have a Republican who is very  
15 moderate who has been in office there for some time,  
16 and I think that's reflected there.

17 Q So a district that's 51 percent one way or 51  
18 percent the other way could be won by either  
19 political party, right?

20 A Under certain circumstances, possibly. I think  
21 this is a special circumstance. You have an  
22 incumbent who's been there for a while who is very  
23 well-liked, who is very moderate.

24 Q And how about when you get to 52 percent one way  
25 or the other?

1 A Your decreasing the likelihood that someone of  
2 the other party would be elected there.

3 Q But at 52 percent, is it still competitive?

4 A I don't think 52 percent is competitive. If  
5 you're looking at a district that has voted 52  
6 percent -- at least 52 percent Republican over three  
7 elections, it's probably not competitive.

8 Q Now, going to the Eighth District, which you  
9 admit keeps Bucks County whole, comparing map 8D to I  
10 guess what is labeled map 8A, you know, in the old  
11 map it had a little sort of shape that goes down into  
12 Montgomery County, and this time it sort of keeps to  
13 more normal geography as it -- as it goes to the --  
14 as it goes to the west into Montgomery County, and  
15 yet you're still critical of it. What should the map  
16 makers have done with Bucks County, in your opinion?

17 A So Bucks County is kept whole, but the district  
18 is made more Republican by adding Upper Montgomery  
19 County, as opposed to Northeast Philadelphia and  
20 Southeastern Montgomery County --

21 Q But, again --

22 A -- in the previous map.

23 Q -- you're saying they shouldn't or they didn't  
24 need to go there, but they could have gone there.

25 But why? Why should -- why should Northeast Philly



1 or Eastern Montgomery have been considered a more  
2 reasonable place to go than Western Montgomery?

3 A It just seems to me that there's a pattern with  
4 all these districts where they seem to make the  
5 decision based on partisan reasons using partisan  
6 data, which we see is actually in the Turzai  
7 production data, so we know they used it. They seem  
8 to make those decisions based on partisan data, not  
9 any other reason.

10 Q But you don't know what their actual reasons  
11 were?

12 A I mean you said before I can't get into someone  
13 else's head, so I don't know what exactly they did,  
14 but it's very clear they used partisan data. We saw  
15 it in the Turzai production data set.

16 Q And just to be clear, there's nothing in your  
17 report here about the Fifth District or the Tenth  
18 District, right?

19 A There is not.

20 Q Moving on to the Twelfth District. The Twelfth  
21 District you have marked as 51 percent Republican.  
22 Is that a competitive district?

23 A That is a district that votes 51 percent  
24 Republican averaged out over three elections.

25 Q Going to District Fourteen and looking at 14A and

1 14B, you acknowledge that the City of Pittsburgh was  
2 kept whole, correct?

3 A That is correct.

4 Q In your view, if the Republican areas around  
5 there had been, I guess to use your phrase, cracked  
6 into a district that included the City of Pittsburgh,  
7 wouldn't that have been problematic in your view?

8 A I think if you're following traditional  
9 districting principles, you're keeping communities of  
10 interest together, you're not splitting  
11 jurisdictions, then -- I don't know the exact  
12 scenario that you're proposing, but, again,  
13 minimizing splits, keeping communities of interest  
14 whole, and not diluting a vote purposely using  
15 partisan data, and it's probably fine.

16 Q What does that mean? You keep saying that, but  
17 you have no explanation for what that is. You have  
18 no exemplar map, you have no suggestion as to where a  
19 district should have grown population or lost  
20 population.

21 JUDGE SMITH: Is there a question there?

22 BY MR. TORCHINSKY:

23 Q What is your solution?

24 A Traditional districting principles and not using  
25 partisan data.

1 Q Have you ever applied your traditional  
2 districting principles and drawn a map?

3 A They've been applied in several states where --

4 Q That wasn't the question.

5 JUDGE SMITH: That wasn't the question.

6 THE WITNESS: I have not personally made  
7 maps not using partisan data.

8 BY MR. TORCHINSKY:

9 Q But yet you assert it can be done?

10 A I absolutely believe it can be done.

11 Q But you've never done it?

12 A I have not done it personally.

13 Q Moving on to the Fifteenth District. At 51  
14 percent Republican, is that a competitive district?

15 A I'm not here to judge the competitiveness of  
16 districts. I'm only pointing out that it's voted 51  
17 percent Republican averaged out between 2004 and 2008  
18 over all those elections.

19 Q So you say you're not here to assess  
20 competitiveness, yet in a lot of these charts you  
21 assess who you think is likely to win, right?

22 A I don't think I'm doing that. Can you clarify  
23 the question?

24 Q Yeah. My question is what's the point of  
25 including what you say is the average vote share if

1 you're not assessing the competitiveness or what you  
2 expect to be the results in the district?

3 A The point is I think it's clear that if you use  
4 partisan data and you take partisan data averaged out  
5 over several elections so you're getting not just the  
6 messiness or the noise from one election, you're  
7 smoothing out the results from multiple elections,  
8 you're looking at that data aggregated to  
9 congressional districts, you're getting a lot of  
10 districts that are 51-52 percent Republican, which is  
11 just enough to continually elect Republicans.

12 Q So earlier in the day, you mentioned something  
13 about a "meaningless vote," you used the phrase.  
14 What is a meaningless vote in your view?

15 A I don't recall saying -- can you clarify when I  
16 said that? I don't --

17 Q You said -- I believe in your direct examination  
18 when Mr. Gordon asked you about the votes of  
19 Democrats in one of these Republican districts you  
20 said their vote was meaningless. What did you mean  
21 by that?

22 A I think my -- well, what I was saying was that if  
23 you're -- if you're Democrat and you're voting in a  
24 district that's been constructed, it's been purposely  
25 made to elect Republicans, your vote it going to have

1 less meaning that if you're a Republican.

2 Q Do people always vote the same way in elections  
3 from year to year?

4 A People do not.

5 Q So how could any vote ever be meaningless?

6 A I mean you're taking this out of context a little  
7 bit. I'm not here to comment on any of that. I'm  
8 here to comment on the maps that I made.

9 Q So your comments about the meaningless vote were  
10 not based on anything, or what were your comments  
11 about a meaningless vote based on?

12 A I think the idea here -- what I'm saying is that  
13 the districts were specifically constructed to elect  
14 Republicans, and if you're a Democrat and you're  
15 voting in that district, it's just less likely that  
16 you've ever going to elect a Democrat because the  
17 districts have been purposely drawn to elect  
18 Republicans.

19 Q So the voters in those districts -- the Democrats  
20 who vote in those districts cast votes that are  
21 meaningless in your view?

22 A Again, taking it out of context. I don't mean --  
23 no, not necessarily. They -- the votes still count.

24 Q You also mentioned wasted votes earlier. I  
25 believe that you said when -- in the districts that

1 are more overwhelmingly Democrat that the voters who  
2 vote in those districts waste their votes. What do  
3 you mean by they're wasting their votes?

4 A I'm referring to something known as the  
5 efficiency gap, which I'm not here to argue in favor  
6 of. I'm just merely pointing out that those votes in  
7 super majority Democratic districts are in a sense,  
8 you know, not -- since they're not evenly spread  
9 across multiple districts, they're just being used  
10 to -- you know, the districts are packed together in  
11 such a way that you're electing a super majority --  
12 or you have a super majority of Democrats. Those are  
13 also districts that can't elect Republicans. And  
14 you've set the playing field at 13/5 Repub -- with a  
15 Republican advantage.

16 Q But you agree that voters are not evenly  
17 distributed, correct, across the state?

18 A No population is evenly distributed.

19 Q And, in particular, Democratic voters in Phila --  
20 or in Pennsylvania are highly concentrated in both  
21 Pittsburgh and in the City of Philadelphia?

22 A I would say that Democrats are concentrated in a  
23 lot of different places across Pennsylvania, in  
24 particular, Pittsburgh and Philadelphia, yes.

25 Q Did you include any consideration of those

1 concentrations in your comments and your criticisms  
2 of the 2011 map?

3 A You already asked me that question and the point  
4 of my map was -- the point of my report was to look  
5 at partisan data at the precinct level, aggregate  
6 that to congressional districts, and show that  
7 Republicans -- the map makers have made the  
8 districts -- have rigged the districts to elect 13  
9 Republicans and five Democrats.

10 Q You described yourself as an expert on  
11 redistricting and election data. Where is the  
12 Pennsylvania election data available at the census  
13 block level?

14 A It's not available at the census block level.

15 Q Yet you claim it was there in the -- in the  
16 Turzai data. How do you think that -- how do you  
17 think that data showed up there?

18 A I think the data was disaggregated from voting  
19 precincts to census blocks. Census blocks generally  
20 nest --

21 Q And --

22 A -- within voting precincts, so you can allocate  
23 data at a higher level and disaggregate it into  
24 smaller geographical units within that.

25 Q And when it was disaggregated did you notice that

1 the Republican versus Democrat percentages were  
2 always the same in every precinct of every -- every  
3 census block and every VTD?

4 A I didn't use census blocks in my maps, I only  
5 used voting precincts.

6 Q I mean in your -- in your analysis of the Turzai  
7 data, which you claim was so significant to your  
8 findings, did you look at the fact that when the --  
9 when the census block data is examined that the  
10 percentages of the votes from those census blocks  
11 also happen to match the VTDs?

12 A I only note that it takes a special level of  
13 precision to want to aggregate votes down to a census  
14 block level.

15 Q But you acknowledge that -- well, let me rephrase  
16 that. You didn't even look at the data in a level of  
17 detail to notice that the D versus R percentages were  
18 the same throughout a VTD --

19 A I --

20 Q -- when disaggregated out?

21 A I looked at the block data --

22 MR. GORDON: Objection, Your Honor. I  
23 don't think the witness has defined what a VTD is.

24 JUDGE SMITH: Yes, I -- I'm not sure  
25 anybody has.



1 BY MR. TORCHINSKY:

2 Q I'm sorry, is a VTD a voter tabulation district?

3 A A VTD is a voter tabulation district, yes.

4 Q And is a voter tabulation district the same as a  
5 precinct?

6 A Generally the same, yes.

7 (Pause in proceedings.)

8 A A VTD would be the census definition.

9 Q And so when you disaggregate data down to a  
10 census block level using those percentages it's  
11 basically just a guess, right?

12 A It's not a guess. I mean you're applying some  
13 kind of formula to disaggregate that. I don't know  
14 what the formula was. I only just -- I just find it  
15 very telling that that data was disaggregated down to  
16 the block level.

17 Q But you're not suggesting that the legislature  
18 violated anyone's secret balance to get their actual  
19 vote and reflect it in their data, right?

20 A I don't think so. I think it was just  
21 interesting that, you know, if population equity was  
22 really the only consideration to split voting  
23 precincts, for example, as you acknowledge voting  
24 precincts were split in this plan -- if population  
25 equity was really the only reason, you wouldn't need

1 that partisan data at the block level. So I just --  
2 I find it interesting that it's available at the  
3 block level.

4 (Pause in proceedings.)

5 Q One more quest -- one more question for you about  
6 the block level data. How many VTDs are there in  
7 this state?

8 A I believe there are 9,256 or maybe 53, somewhere  
9 in there.

10 Q And how many VTDs were split in this state?

11 A I don't have the number in front of me. I  
12 believe Anne will speak to that in her supplemental.

13 Q If it was a small fraction, is there sig -- is  
14 there any significance to that? I mean you're not  
15 suggesting that any large number of VTDs was split,  
16 are you?

17 A I don't know the exact number of VTDs that was  
18 split. I'm -- I know that some VTDs were split  
19 though.

20 Q So the fact that it was available at the block  
21 level, if it wasn't ever really used in a wide scale  
22 at the block level, what's the relevance of it?

23 A I mean you're asserting that it wasn't ever  
24 widely used at the block level. I don't know that,  
25 but my assumption is that if they made it available

1 at the block level, they probably wanted to use it at  
2 the block level.

3 Q But you don't know that, do you?

4 A I find it very interesting that it was available  
5 at the block level.

6 (Pause in proceedings.)

7 MR. TORCHINSKY: I don't have any further  
8 questions for this witness, Your Honor.

9 JUDGE SMITH: Mr. Aronchick, do you have  
10 any questions you would like to --

11 MR. ARONCHICK: I do not, Your Honor.

12 JUDGE SMITH: Thank you. Redirect.

13 (Pause in proceedings.)

14 REDIRECT EXAMINATION

15 BY MR. GORDON:

16 Q Mr. McGlone, at the beginning of Mr. Torchinsky's  
17 cross of your testimony you had -- you were asked do  
18 voters decide where to live? Do voters decide where  
19 to live, where they want to live?

20 A People, residents, decide where they want to  
21 live.

22 Q Okay. Who decides -- once people decide where to  
23 live, who decides in what district they vote, what  
24 congressional district they vote?

25 A That is determined -- in this case that was

1 determined by the legislature.

2 Q And how does that relate to your discussion of  
3 communities of interest?

4 A So people may choose where they live, but it's  
5 the legislature that's allocating those people into  
6 districts.

7 Q Okay. Secondly, you were asked about certain  
8 districts and you said the incumbency can be  
9 considered. What's the interrelationship between  
10 incumbency and districts which have either a slight  
11 majority Democrat or a slight majority Republican  
12 if --

13 MR. TORCHINSKY: Objection, Your Honor.  
14 There's been no foundation laid for that question.

15 MR. GORDON: It was -- he opened the door  
16 on cross and he was asked three times about  
17 incumbency in certain -- in certain districts.

18 JUDGE SMITH: Ask the question again,  
19 please.

20 MR. GORDON: Okay.

21 BY MR. GORDON:

22 Q What's the relationship between incumbency and  
23 partisan district results that you have observed?

24 A It seems to me that incumbency was a factor in  
25 drawing the districts. It also seems to me that in

1 relation to -- and I have it in my supplemental here  
2 if I can have a second to pull it up. I think it was  
3 the Twelfth District. So the Turzai production data  
4 did contain addresses for all of the incumbents.

5 A The Twelfth District. So the new Twelfth  
6 District was combined -- combined the districts of  
7 former Mark Critz and Jason Altmire, and they  
8 combined the two locations -- the two home locations  
9 of both of those people, those incumbent  
10 congressmen --

11 Q I'm going to hold you up there because --

12 A -- in the same district.

13 Q -- we're going to --

14 A I'm sorry.

15 Q I don't want to overlap testimony of our experts  
16 and I don't want to get into that twice --

17 A Oh, okay.

18 Q -- in the interest of time. I was -- I was  
19 really asking about the district that encompasses  
20 the -- I think you were being asked about the  
21 district that encompasses Lehigh Valley as having a  
22 slight -- even having a Democratic edge but  
23 consistently electing a Republican member of  
24 Congress.

25 A Oh, it was the Eighth District, Bucks County.

1 Q The Eighth District. But -- so I believe it was  
2 actually the Fifteenth District?

3 A Oh, yes.

4 Q Do you -- do you know the member of Congress in  
5 the Fifteenth?

6 A The member -- he just retired. I can't recall  
7 his name. He's a Repub -- moderate Republican.

8 Q Dent.

9 A Dent. Charlie Dent, yeah.

10 Q Charlie Dent.

11 A That's right.

12 Q Okay. Looking -- explaining to the panel --  
13 looking at the Eighth District and considering an  
14 incumbent such as Charlie Dent, you had said there's  
15 a -- so you had testified that where you had a  
16 moderate Republican you can still have a fairly well-  
17 assured, consistent Republican result even with a  
18 slightly Democratic district. Explain.

19 A Well, it seems to me that a lot of these  
20 districts in Philadelphia suburbs have been sort of  
21 swinging towards Democrats right before the decennial  
22 census.

23 Q Referring to the Charlie Dent district.

24 A So --

25 Q Stay with that district, which is the --

1 A The Fifteenth.

2 Q -- Fifteenth. Go ahead.

3 A Yeah. So it seems that his district was made --  
4 although he's a moderate Republican, his district was  
5 made to be more Republican by splitting Bethlehem and  
6 moving that into the Seventeenth and by extending the  
7 district to the west throughout Lebanon and Dauphin  
8 County.

9 Q Okay. But where you have slightly Republican  
10 districts and incumbency, is the -- does the  
11 combination create an advantage for Republicans?

12 A This is true, yeah. There's definitely an  
13 incumbent advantage. It's been noted. I note it in  
14 my supplemental report. There's definitely a causal  
15 link between incumbency and being re-elected.

16 Q And is there -- when incumbency is combined with  
17 a small partisan edge what's the result?

18 A The result is you're going to continue to elect  
19 that incumbent.

20 Q Okay, thank you. All right. The next question  
21 is you had a number of questions about Pittsburgh.  
22 Can you -- I've asked Mr. Morales-Doyle to bring it  
23 up on the map. Can you (indiscernible) the screen?  
24 Yeah. Is it possible to have -- to have a district  
25 which -- the question about the Fourteenth is you had

1 testified that your -- on cross that your criticism  
2 of the Fourteenth is it went out of its way to go  
3 outside the boundaries of Pittsburgh in order to  
4 bring in other Democratic votes. Can you explain  
5 that in detail and use -- you can draw it on the map  
6 to show it -- to show what you're talking about to  
7 the panel.

8 A Sure. So this area here is the Twelfth District  
9 and it was formerly in the Twelfth District in the  
10 previous decade, but the Fourteenth District was  
11 redrawn to have this extension to crawl all the way  
12 up the Allegheny River to capture these Democratic  
13 areas and keep them out of I believe the Twelfth  
14 District.

15 Q Okay. And by adding them to the Fourth District  
16 and keeping them out of the Twelfth District what  
17 were the -- what two goals were accomplished, if any?

18 A The goal was to -- the two goals that were  
19 accomplished was the Fourteenth's Democratic super  
20 majority was even -- was strengthened and the Twelfth  
21 District was made more safely Republican.

22 Q Okay, thank you.

23 (Pause in proceedings.)

24 Q Okay. Turning to the -- turning to Lower Merion,  
25 which is my home district, near and dear to my heart.



1 Let me bring up an image of it. It's the Second  
2 Congressional District.

3 (Pause in proceedings.)

4 Q By adding -- I guess the question is that I had  
5 was can a district be -- can you respect the  
6 boundaries of a city -- strike that. I've lost my  
7 train of thought on that. We'll move on.

8 (Pause in proceedings.)

9 Q Oh, it's in my notes. So my question about Lower  
10 Merion is what was the impact of breaking away Lower  
11 Merion from the rest of Montgomery County in terms of  
12 the number of splits maintained, I should say, in  
13 Montgomery County? So how many splits were there in  
14 Montgomery County in the 2011 map?

15 A I don't have it in front of me. I think it's a  
16 lot. I don't have an exact number.

17 Q Okay.

18 MR. TORCHINSKY: Objection, Your Honor.  
19 The number of splits is not in any original report or  
20 supplemental report and I didn't ask about the number  
21 of splits on cross-examination.

22 JUDGE SMITH: I don't recall whether it was  
23 in a report or not. I have to assume that it's  
24 information that has been available to all and it is  
25 something that I think would be of interest to this

1 panel. So to the extent the witness can answer the  
2 question, and I'm not sure he's indicated that he  
3 can, I'll allow the question.

4 (Pause in proceedings.)

5 THE WITNESS: I think it's split five times  
6 between the Eighth, Thirteenth, Seventh, Second, and  
7 Sixth.

8 BY MR. GORDON:

9 Q And by splitting -- obvious question, but by  
10 splitting Montgomery County into five separate  
11 congressional districts, what impact did that have on  
12 the traditional goal of protecting communities --  
13 counties and communities of interest?

14 A So it definitely did not follow that principle at  
15 all.

16 Q Thank you.

17 (Pause in proceedings.)

18 Q Where -- before we leave Montgomery County, by  
19 concentrating -- by putting Lower Merion into the  
20 Second Congressional District, you made the statement  
21 that Republicans in Lower Merion had their vote  
22 diluted. What did you mean by that?

23 A Their vote -- being part of a super majority  
24 Democratic district would mean that their vote  
25 obviously has less effect. It's a district that was

1 constructed by the map makers to elect Democrats, to  
2 pack Democrats into that district. So Republicans --  
3 it would be very unlikely that a Republican would  
4 ever win there.

5 Q And does it -- thank you. You had mentioned,  
6 turning to the other corner of the Commonwealth,  
7 that -- in Erie, that was a case where a suburb was  
8 actually split from a city. So is it possible in  
9 some instances to respect a city boundary but still  
10 increase the partisan vote share of a map?

11 A Yeah, absolutely. The Democratic constituency  
12 there is Erie and its immediate suburbs. And so the  
13 city itself wasn't split, but it was split -- it was  
14 cut off from the rest of its suburbs into separate  
15 congressional districts. So that way the Democratic  
16 vote in both districts, the Third and the Fifth, is  
17 decrease.

18 Q Does it matter that a city and suburb was split  
19 or the purpose or the effect or the impact of the  
20 split on partisan vote share? Which matters?

21 A I think they're both important. The effect there  
22 though is that it decreases the partisan vote share  
23 in both districts.

24 Q And is Ms. Dahlkemper still a representative from  
25 either of those areas?

1 A She is not.

2 Q Okay. You had used the term "disaggregated  
3 data." I don't think that's been defined. Briefly,  
4 what's disaggregated data?

5 A Sure. So the census block level data that we saw  
6 in the Turzai production -- I described census blocks  
7 before. They're the smallest geographic unit that's  
8 available from the U.S. census. Voting Precincts are  
9 larger than that, so you might have ten, 20, 30  
10 census blocks that nest within a voting precinct. So  
11 if you have voting precinct data and you say you have  
12 100 votes and you have ten blocks in that district --  
13 that voting precinct, you can take the 100 votes from  
14 the voting precinct level and then distribute them  
15 within the census blocks below that. So you could  
16 distribute them so that you have ten votes in each of  
17 the census block in my 110 example, and so that's the  
18 idea of disaggregating, so taking data from a higher  
19 level and then disaggregating it, splitting it up,  
20 and distributing it amongst the smaller geographic  
21 units that are within the larger geographic unit.

22 Q Based on your experience with election data, is  
23 that time consuming and expensive to do?

24 A It certainly can be.

25 MR. TORCHINSKY: Objection, Your Honor.

1 There's no foundation for this question.

2 JUDGE SMITH: I'll sustain the objection.

3 MR. GORDON: Okay.

4 BY MR. GORDON:

5 Q How did it aid the map makers for Speaker Turzai  
6 to have things --

7 MR. TORCHINSKY: Objection, Your Honor,  
8 calls for speculation.

9 BY MR. GORDON:

10 Q -- broken down to that disaggregated level?

11 JUDGE SMITH: I'll sustain the objection at  
12 least as to the form of the question.

13 MR. GORDON: Okay. I think he testified it  
14 on direct, so I'll move on. Thank you, Your Honor.

15 JUDGE SMITH: The question suggested that  
16 he effectively speculate on what the aides to Turzai  
17 did with the data. It's, therefore, improper.

18 MR. GORDON: I understand.

19 (Pause in proceedings.)

20 BY MR. GORDON:

21 Q And, finally, can you -- is it possible to have a  
22 smaller number of splits in vote tabulation districts  
23 and still have a highly partisan map?

24 A Yeah, absolutely. I think it depends on where  
25 those splits are taking place based on the -- an

1 analysis of where packing and cracking exists in the  
2 map.

3 Q So that measure in and of itself does not  
4 establish that a map was fair or followed traditional  
5 voting prin -- traditional districting principles?

6 A Not necessarily, no.

7 Q Okay. And to briefly summarize, what are the  
8 traditional districting principles that you've  
9 identified?

10 A Compactness, keeping communities of interest  
11 whole, and contiguity between districts -- or within  
12 districts, sorry.

13 Q Any others?

14 A I think continuity between district plans.

15 Q Okay.

16 A And respecting the Voting Rights Act as well.

17 Q Is it possible to have a map which -- like the  
18 Second Congressional District which both respects the  
19 Voting Rights Act but it nevertheless the result of  
20 partisan redistricting and partisan redistricting  
21 goals?

22 A Yes, I believe so.

23 Q How does that happen --

24 A So it's --

25 Q -- in the Second?

1 A Sure. So it's very clear that if you're using  
2 partisan data in nearby districts, it's going to  
3 affect the boundaries of every other district that  
4 they touch. So the Second District, while it does  
5 fulfill the needs of the Voting Rights Act, it also  
6 packs Democrats in neighboring Lower Merion, which  
7 are of a completely different, you know,  
8 socioeconomic class than the people that live within  
9 the City of Philadelphia. However, they both vote  
10 the same way, they're both Democratic, and that seems  
11 to be the clear reason that that district was  
12 constructed that way.

13 Q Okay. No further questions. Thank you.

14 (Pause in proceedings.)

15 JUDGE SMITH: Recross?

16 MR. TORCHINSKY: No, Your Honor.

17 JUDGE SMITH: Thank you. You may step  
18 down.

19 (Witness excused.)

20 MR. GORDON: Okay. I call my next  
21 witness --

22 JUDGE SMITH: Just a moment, please.

23 (Pause in proceedings.)

24 JUDGE SMITH: We're going to take a five  
25 minute recess.

1 (Recess taken from 3:09 p.m. to 3:14 p.m.)

2 JUDGE SMITH: Before we get to the next  
3 witness, I would like to repeat for the benefit of  
4 all of counsel a request, an admonition, that the  
5 three-judge panel made when last we were all together  
6 in another courtroom, and that is in an effort to  
7 streamline matters as much as possible, in the  
8 interest of effecting as much judicial economy as we  
9 can, the panel request that counsel enter into any  
10 kind of stipulations along the way that are possible.  
11 That is our very hopeful expectation. All right,  
12 with that, Mr. Gordon, will you call your next  
13 witness?

14 MR. GORDON: Thank you, Your Honor. I just  
15 need ten more seconds.

16 (Pause in proceedings.)

17 MR. GORDON: Okay. I call to the witness  
18 stand Anne Katherine Hanna.

19 ANNE KATHERINE HANNA, Plaintiffs' Witness,  
20 Sworn.

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

24 THE WITNESS: My name is Anne Katherine,  
25 Hanna, last name, H-A-N-N-A.



1 VOIR DIRE

2 BY MR. GORDON:

3 Q Ms. Hanna, let's begin with your educational  
4 background. Where did you attend college?

5 A I was an undergraduate at the California  
6 Institute of Technology. I got a Bachelor's in  
7 Physics there.

8 Q Okay.

9 A And then I have a Master's in Physics also from  
10 the University of Illinois at Urbana-Champaign, and  
11 I'm currently a PhD candidate at the Georgia  
12 Institute of Technology.

13 Q Okay. And Cal Tech, is that the abbreviation for  
14 Cali --

15 A California Institute of Technology.

16 Q Okay.

17 A Cal Tech.

18 Q Very good. And how does it relate to -- in terms  
19 of its stature to any engineering or technical school  
20 on the east coast?

21 A I would say it is one of the maybe two top  
22 engineering science schools anywhere in the country.  
23 MIT would be the other one I would say.

24 Q Thank you. And what did you study at Cal Tech?

25 A Physics, so a whole, you know, variety of

1 mathematical and computational techniques for solving  
2 physics problems, which involves, you know --  
3 basically, every science problem often has aspects of  
4 physics in it.

5 Q Okay. And did you have -- did you have course  
6 work -- I'm sorry, let's -- let me strike that. And  
7 then you're currently doing your PhD?

8 A Yes, I'm pursuing a PhD in Mechanical Engineering  
9 at the Georgia Institute of Technology. My  
10 dissertation research is on the mathematical  
11 techniques for making the analysis of complex  
12 materials more efficient. In the course of that I  
13 have learned a lot of different data analytical  
14 techniques and used them extensively in my work.

15 Q Okay. Let's turn to that just --

16 A Yeah.

17 Q -- right now. What sort of work have you done in  
18 connection with your -- with either your master's or  
19 your PhD that has helped you understand the data in  
20 the -- in this redistricting matter?

21 A So the most directly relevant work is actually  
22 the work that is related to my PhD, including some of  
23 the publications that are cited in my CV. That was  
24 where I sort of first learned how to do all the -- a  
25 lot of different data analytical and statistical

1 techniques and computational techniques for that.  
2 The sort of very first project I did was actually  
3 image analysis. It was image processing of images of  
4 complex materials that were taking at very, very fine  
5 scales, and the goal was to convert a series of  
6 static images into a three-dimensional model of the  
7 structure of the -- of porous material.

8 Q Okay.

9 A And a lot of the image analysis techniques that  
10 you use in studying these systems I was very  
11 surprised to learn when I started studying  
12 gerrymandering that they're exactly the same  
13 techniques that are used in developing sort of  
14 different academic models of the different kinds of  
15 districting plans that might be --

16 Q Okay.

17 A -- you know, fair.

18 Q What sort of modeling and simulation work have  
19 you done academically, before we get to the --

20 A Sure.

21 Q -- issue of redistricting? Go ahead.

22 A So in that particular case it was specifically  
23 image analysis. It was -- it was, you know, taking  
24 the sequential stack of images and deciding which of  
25 them were -- which images -- it was images of porous

1 materials, so deciding which of the -- parts of the  
2 image were the pore and which parts were the  
3 material. And one of the techniques that's used --  
4 that's often used in doing that kind of analysis is  
5 Markov Chain Monte Carlo analysis and --

6 JUDGE SMITH: I'm sorry? Repeat.

7 THE WITNESS: Sorry. Markov Chain Monte  
8 Carlo analysis and simulated annealing are some of  
9 the techniques. They have analogies in physics, but  
10 they're all statistical techniques for if you  
11 begin --

12 BY MR. GORDON:

13 Q And how do you spell -- sorry, kneeling is --

14 A Sorry.

15 Q Kneeling is --

16 A Annealing, A-N-N-E-A-L-I-N-G.

17 Q Go ahead.

18 A And so these are techniques where you are trying  
19 to either get a sampling of ran -- possible random  
20 outcomes under a set of constraints for how a system  
21 might develop, or you're trying to optimize a system  
22 for certain -- you know, under certain constraints.  
23 And these are relevant to the study of redistricting  
24 because a lot of the academic studies that are used  
25 to, for example, say is a particular district one

1 that would sort of result from people trying to draw  
2 districts with traditional neutral criteria, is a  
3 district, you know, more like the ones that tend to  
4 result from drawing traditional inference criteria or  
5 is it more likely that somebody has specifically  
6 optimized it for some partisan purpose or some other  
7 illegitimate purpose.

8 Q Okay. What is -- have you utilized regression  
9 methods?

10 A Absolutely. I mean these are -- these are  
11 actually -- that is sort of more central to my  
12 dissertation work, actually.

13 Q Okay. Was regression methodology --

14 A So --

15 Q Is it useful in understanding, for example, the  
16 Turzai data? I'll just go right to that.

17 A It is. One of the important parts of the Turzai  
18 data was some columns in the data set. So, as has  
19 been discussed before, you know, this data contained  
20 a number of partisan vote outcomes, you know, for the  
21 33 different state-wide and state legislative  
22 elections and also congressional elections and then  
23 also the voter registration data for years from I  
24 want to say 2004 to 2010, if I remember correctly.

25 Q Uh-huh.

1 A And then there were also, in addition to those,  
2 clearly identifiable data that came clearly from  
3 public data sources. There were some additional  
4 index columns that were computed and that no  
5 information was given about what the source of those  
6 index columns was. Upon sort of comparing those  
7 index columns, just, you know, looking at the numbers  
8 and the magnitudes and the size of numbers, it was  
9 clear that they were related to the sort of partisan  
10 vote difference indices that were calculated in the  
11 data set. There was things like pres 08, which was  
12 the Republican minus Democratic presidential votes --

13 Q Let me hold you up there.

14 A -- in 2000. Sorry, what?

15 Q I was going to hold you up because I think you're  
16 getting into the data.

17 A Okay.

18 Q I just want to go over your skill sets --

19 A Sorry.

20 Q -- and we'll turn to that --

21 A Yeah.

22 Q -- in just a moment.

23 A Sorry. But just to finish what -- how that  
24 relates to regression, so there were some that were  
25 clearly identifiable differences and there were some

1 that were not clearly identifiable, but a regression  
2 analysis is one way that you could see -- you could  
3 try to determine how the unidentifiable ones might  
4 have been computed from the identifiable ones.

5 Q What courses --

6 MR. TORCHINSKY: Your Honor, is this direct  
7 examination or are we --

8 JUDGE SMITH: Yes, I --

9 MR. TORCHINSKY: -- still on the  
10 qualification?

11 JUDGE SMITH: I think --

12 THE WITNESS: Sorry.

13 JUDGE SMITH: I think counsel actually  
14 attempted to keep this witness --

15 THE WITNESS: My apologies.

16 JUDGE SMITH: -- back on the issue of  
17 qualifications, but we didn't stay there. So if you  
18 would -- you're welcome to direct some or --

19 MR. GORDON: Great. Thank you, Your Honor.

20 BY MR. GORDON:

21 Q Ms. Hanna, you also -- let's see. What courses  
22 have you had in statistics in both college and  
23 master's and PhD level? Go ahead.

24 A All series. There's, you know, sort of a  
25 standard undergraduate statistics series at Cal Tech

1 that I took and I actually took the more advanced  
2 version of that.

3 Q Just the names of the courses.

4 A Yeah, they were just called statistics, you know,  
5 math 112 A B. It was just statistics class. And  
6 I've taken other classes that are specifically  
7 statistics classes. For example, so I should mention  
8 that I am in the -- I'm a PhD candidate at Georgia  
9 Tech, but I was originally at Drexel and my research  
10 group transferred there. And so I took, you know, a  
11 fairly heavy Bayesian statistics class at Drexel. It  
12 was math 920 I think -- or stat 920, sorry, I think  
13 was the course number. And, in addition, statistics  
14 has figured heavily in a large number of --

15 Q You're jumping ahead.

16 A -- the --

17 Q I just want you to --

18 A Yeah.

19 Q -- just list the courses if you recall. If you  
20 don't recall --

21 A Yeah. Well --

22 Q -- the courses you've had in statistics  
23 (indiscernible).

24 A Well, those were the two formal statistics  
25 classes, but it was also a key part of many other



1 courses that I took.

2 Q Okay. How about -- you've explained you took  
3 course work in and you've used Markov Chain and Monte  
4 Carlo simulations, is that correct?

5 A Yes, that's correct.

6 Q All right. And have -- was -- you've also, under  
7 data analytics, you have 3D image processing?

8 A Yes.

9 Q Is that in any way related to your work on  
10 redistricting and your study of -- the studies you --

11 A Well, so this is -- as I mentioned before, the  
12 project that I did, it was -- you know, a precursor  
13 to my dissertation research was that image  
14 recognition project, and the techniques that I  
15 learned in working on that project included these  
16 kind of Markov Chain Monte Carlo and other ones which  
17 are used in a lot of the random district drawing  
18 research.

19 Q So the random district drawing research --

20 A Yeah.

21 Q -- would that be, for example, starting at one  
22 corner of the state, putting parameters into a  
23 computer, and then having the parameters migrate  
24 across a --

25 A That's not quite how they do it. Usually, what

1 you do is you start with a sort of initial guess map,  
2 the --

3 MR. TORCHINSKY: Excuse me, Your Honor

4 MR. GORDON: Okay. Well --

5 MR. TORCHINSKY: I think we're getting into  
6 direct examination again.

7 MR. GORDON: I'll pull back. I withdraw  
8 the question. I'll move on. Thank you.

9 BY MR. GORDON:

10 Q You also -- could you give -- referring to your  
11 CV, if you could.

12 A Yes.

13 Q Do you have it with you? Did you bring it up on  
14 the stand?

15 A I do. It's probably -- it's in this exhibit book  
16 too, isn't it?

17 Q Yeah, but --

18 A All right, no worries.

19 Q Yeah, referring to your CV, I'm going to ask you  
20 to list the computer software languages of which you  
21 are familiar.

22 A Right. Find my CV.

23 (Pause in proceedings.)

24 A All right. So -- yeah.

25 Q List --

1 A The one that's most relevant to this context  
2 is --

3 Q Just, Ms. Hanna --

4 A Yeah?

5 Q -- list them all quickly.

6 A Yes, sir. R, MATLAB Octave, CC++, Python,  
7 Fortan, Java, Lisp Scheme, Abacus, Maple, Unix shell  
8 scripting, and the other ones are software, Gitla  
9 (ph) Tech, which is a document -- or document  
10 generation software, Gnuplot, and I've done a lot of  
11 just home Linux administration.

12 Q Okay. And I'll get this to the court reporter  
13 for spellings of these. You -- did you -- to what  
14 extent did those programming languages assist you in  
15 the projects which I've -- which I've asked you to do  
16 involving analysis of congressional districts?

17 A So, of course, the primary one that I used in  
18 this context was R because that's, you know, used in  
19 a lot of statistical analysis and it has a lot of  
20 good GIS packages that are involved in it. And so I  
21 used those --

22 Q Okay.

23 A -- in many of my analyses.

24 Q And then -- and then turning to -- turning to  
25 your experience, to what extent have you acquired

1 experience in the study of congressional districting?

2 A So that's been primarily over the course of the  
3 last year. In February, I got involved in a sort of  
4 volunteer group that was working on understanding the  
5 problem of gerrymandering in Pennsylvania, to what  
6 extent it's occurred, you know, where it's occurred,  
7 how it's occurred, how it can be prevented. And so  
8 over the course of the past year, you know, I've been  
9 working on this project and both doing, you know,  
10 sort of literature searches and literature analysis  
11 type study and also developing data sets, which, you  
12 know, combine census and electoral data to -- and  
13 these, you know, GIS data sets with the full shape  
14 files and all those things, to study the problem with  
15 gerrymandering here in Pennsylvania.

16 Q Okay. And I think I skipped forward. I also  
17 want to ask you in general or quickly --

18 A Yes.

19 Q -- your course work in engineering.

20 A Oh, yes. So my course work in engineering is  
21 primarily as a graduate student, you know, first at  
22 Drexel and then at Georgia tech. I've studied a wide  
23 variety of engineering disciplines, sort of fluid  
24 dynamics and material science have been sort of major  
25 areas. I've done a lot of sort of just mathematical

1 modeling and statistical analysis in those courses.

2 And I've also T.A.-ed or actually, you know, done  
3 classroom lectures for undergraduates on those  
4 subjects.

5 Q Okay. Have you taught in the field of  
6 engineering? Have you taught courses or lectures?

7 A I've been a T.A. So that involved classroom  
8 lectures and, you know, preparing homework  
9 assignments and grading them and, you know, grading  
10 student projects and all those kinds of things.

11 Q Have you taught math to -- have you taught math  
12 and computational --

13 A Oh, yeah, absolutely.

14 Q -- to others?

15 A Those have been sort of some of my favorite  
16 things to teach, actually, both here -- or sorry,  
17 both at Drexel I mean, at Georgia Tech, and then also  
18 previously when I was at UIC for my master's I taught  
19 a number of years of undergraduate physics, you know,  
20 as a T.A., a number of years of undergraduate physics  
21 lecture-type sections.

22 Q And to what extent do you have experience in  
23 computational science?

24 A That's basically all I do with my time --

25 Q Okay.

1 A -- and all I've done with my time for years now.

2 Q Okay. And data analytics, how would you define  
3 that?

4 A I would define it as taking a plausible novel  
5 data set and figuring out what's interesting about it  
6 and figuring out how to, you know, display that,  
7 understand it, and derive new information from it.  
8 And so that's --

9 Q And to what extent do you have experience in your  
10 either working in or teaching data analytics?

11 A I haven't taught very much of that, but I have  
12 done a lot of work. I mean, of course, over the  
13 course of this past year I've been focusing on the  
14 Pennsylvania GIS data specifically, but before that,  
15 I worked with a lot of material science data sets,  
16 I -- you know, particularly in that image analysis  
17 project that I was doing and subsequent work for my  
18 PhD.

19 Q In general, to what extent do engineering  
20 principles translate to redistricting, partisan --

21 A Right.

22 Q -- partisan districting?

23 A So I see redistricting in general as an  
24 engineering problem. You've got a lot of different  
25 stakeholders with conflicting needs. You've got to

1 figure out, you know, what does everybody want, how  
2 to prioritize it, and how to --

3 MR. TORCHINSKY: Your Honor, we're trending  
4 into -- we're trending beyond the qualifications now.

5 MR. GORDON: What is --

6 JUDGE SMITH: Just one --

7 MR. GORDON: I'll withdraw it.

8 JUDGE SMITH: One voice at a time, please.  
9 I'll allow it because I do think this is central to  
10 just how the witness' area of expertise is relevant  
11 to the questions before us and I have yet to hear  
12 testimony that resolves that question for me anyway.

13 MR. GORDON: Okay.

14 JUDGE SMITH: So I think it's appropriate.

15 BY MR. GORDON:

16 Q Ms. Hanna, how is your knowledge of -- we'll  
17 start there -- relevant to the data supplied by  
18 Speaker Turzai in this matter?

19 A Oh, yes. Well, so once upon a time my knowledge  
20 of computers probably would not have been relevant  
21 because I don't think maps really used to be used to  
22 draw the districts. But today, of course, we have  
23 this extensive GIS data set that was provided by  
24 Speaker Turzai that very clearly shows that this was  
25 very much a computational data analysis problem that

1 was being solved with this data. And so I think that  
2 makes me perfect for this.

3 Q To what extent is your experience in engineering  
4 helpful in understanding both neutral and partisan  
5 criteria --

6 A Right.

7 Q -- or redistricting?

8 A Right. So, as I said, I think this is an  
9 engineering problem. I think you're trying to, you  
10 know, resolve conflicting stakeholder needs, trying  
11 to figure out how to optimize different things. And  
12 so I see my experience as an engineer as preparing me  
13 to address complicated issues like that, you know, to  
14 understand that the -- not to let the perfect be the  
15 enemy of the good, to try to make things better even  
16 if you can't make them optimal, and to try to deal  
17 with everybody fairly.

18 Q Would it be fair to -- and would it be fair to  
19 say the engineering problem, as you began to say, is  
20 taking to mind a multitude of factors --

21 A Right.

22 Q -- among competing stakeholders to achieve a  
23 certain result?

24 A Right. And it's also a real world problem. I  
25 want to emphasize this. It is not just a purely



1 academic problem. This is not just something that  
2 you do in a lab. This is something that has real  
3 world impacts and real world people and you have to  
4 understand those in order to solve it.

5 Q And how has your -- has your education and  
6 experience in data analytics helped you -- or I'm  
7 sorry, how is that relevant to redistricting and  
8 partisan districting?

9 A As I note, I've learned a lot of specific, you  
10 know, mathematical and computational techniques that  
11 have helped me both understand the literature on this  
12 subject, and, of course, also I know, you know, the  
13 programming languages and I'm skilled with programs  
14 and, you know, just analysis of these large amounts  
15 of data, you know, sort of automated manipulation of  
16 it in ways to bring out the most important features  
17 of the data set.

18 Q Okay. And have you -- can you describe your work  
19 in -- can you describe the nature or purpose of your  
20 work in redistricting over the past nine months?

21 A Is it only nine? It feels like longer. So the  
22 primary focus -- I mean there's kind of I guess two  
23 threads really to what I've been doing. One is  
24 trying to understand what the sort of traditional  
25 neutral criteria for drawing districts are and how

1 those criteria relate to the way districts have been  
2 drawn in Pennsylvania, and two is trying to develop  
3 quantitative data sets for analysis of Pennsylvania,  
4 you know, how it is and how it could be if it was  
5 drawn, you know, according to traditional neutral  
6 districting criteria.

7 Q Okay. And what was the goal of your work on --  
8 what problem were you trying to solve with respect to  
9 districting?

10 A The specific problem that I was trying to solve  
11 was what good neutral districting criteria would be  
12 for a state like Pennsylvania in order to draw maps  
13 that are fair, as fair as possible to all  
14 stakeholders, and that, you know, are -- serve the  
15 interests of the people of Pennsylvania, as opposed  
16 to the interest of legislators or other sort of  
17 elites.

18 Q Okay. And did you study -- in that nine months,  
19 did you study traditional redistricting principles  
20 and what were they?

21 A Absolutely. So the traditional principles that I  
22 think we found most important were things like a  
23 contiguous course, compactness, population  
24 equality, preservation of communities of interest, of  
25 course the Voting Rights Act. Those are kind of the

1 main ones that we -- that I and others that I was  
2 working with found most interesting.

3 Q On average, about how many hours -- how many  
4 hours a week in the past nine months have you worked  
5 on this problem as it -- applying your engineering,  
6 computational analysis, and data analytics?

7 A So prior to getting involved in this trial, it  
8 was about an average of ten hours a week. Some  
9 weeks, of course, were much higher, some weeks I was  
10 not able to give time to the project and it was on a  
11 volunteer basis, but at least ten weeks, on average,  
12 every week.

13 Q Ten hours --

14 A Ten hours, on average, a week. I'm sorry.

15 Q Ten hours per week for nine months?

16 A Yeah.

17 Q Okay.

18 MR. GORDON: I offer Ms. Hanna as an expert  
19 witness based upon here skill, her knowledge,  
20 experience, and training in the fields of  
21 engineering, mathematical computational science, and  
22 data analytics as applied to redistricting. And my  
23 contention is that based on Rule 702, her knowledge  
24 in these areas, which she has gained through  
25 education, her technical and specialized knowledge

1 will indeed help the trier of fact to understand the  
2 data that's in front of us.

3 JUDGE SMITH: Voir dire.

4 MR. TORCHINSKY: Thank you, Your Honor.

5 BY MR. TORCHINSKY:

6 Q Ms. Hanna, you mentioned a minute ago that  
7 computers are somehow new to GIS systems. Do you  
8 know whether Cal Tech's computers were used in the  
9 1980s to draw the California congressional plans?

10 A I'm not familiar with what's been done in  
11 California. I've only been studying Pennsylvania.

12 Q And you've only worked on GIS systems for nine  
13 months?

14 A That is correct.

15 Q Prior to February of this year, have you ever  
16 worked with a geographic information system?

17 A Not specifically, no.

18 Q Have you ever taken a political science course?

19 A I took one as an undergrad.

20 Q At Cal Tech?

21 A Yes.

22 Q What was the subject of that course?

23 A It was just a general political science course.

24 Q And what year was that?

25 A 1996.

1 Q Have you ever done any political science work in  
2 the last -- until February of this year over the last  
3 12 years?

4 A No.

5 Q Have you ever been a witness in any other case?

6 A No.

7 Q Have you ever published anything on  
8 redistricting?

9 A Not yet.

10 Q Have you ever published anything about politics  
11 anywhere?

12 A I've argued on the internet a bit.

13 Q Do you have blog postings?

14 A I've had some, yes. I mostly don't use those  
15 blogs anymore though.

16 Q Where did you argue on the internet?

17 A All over the place. Just a bunch of different  
18 blogs.

19 Q Those --

20 A Facebook.

21 Q Those were never provided to counsel before?

22 A I -- there's nothing of interest there, honestly.  
23 It's not formal publications. I mean do you really  
24 want me to go trolling through every single comment  
25 thread I've ever been involved in?

1 Q I mean I guess I'm interested in whether you've  
2 spoken out publicly on redistricting before, yes.

3 A Oh, not redistricting specifically, no.

4 Q In your study of political science, you -- did  
5 you study how politics resolves conflicting  
6 stakeholder needs?

7 A I don't really understand what you're asking, I'm  
8 sorry.

9 Q You said earlier that your engineering background  
10 give you experience in "dealing with conflicting  
11 stakeholder needs" was your phrase. Have you ever --  
12 have you ever applied that in political science  
13 before?

14 A I still don't really understand what you're  
15 asking.

16 Q Okay.

17 A I just --

18 Q I'll move on.

19 A Sorry.

20 Q Have you ever worked in a legislature?

21 A No.

22 Q Have you ever worked on a political campaign?

23 A I did volunteer in 2016, yes, and a couple, you  
24 know, canvassing days in prior years.

25 Q You mentioned the phrase "neutral" -- or

1 "traditional neutral districting criteria." Who  
2 taught you what that is?

3 A Who taught me?

4 Q I mean you used the phrase. What is it?

5 A Yes.

6 Q And who taught it to you?

7 A I learned the phrase during the course of my  
8 studies over the past nine months. No one specific  
9 person taught me. I've read a lot of different  
10 sources and talked to a lot of different people.

11 Q Can you identify any of those sources or any of  
12 those people?

13 A Not off the top of my head. I've read a lot. I  
14 don't carry a library bit in my head.

15 Q Has your traditional neutral districting criteria  
16 ever been published anywhere?

17 A My specific comments on it or the subject in  
18 general?

19 Q Your understanding of traditional neutral  
20 districting criteria.

21 A Meaning did I publish it or did somebody else  
22 publish something similar to what I'm -- because if  
23 you're asking if I published it, the answer is no.

24 Q If there any --

25 A If you're asking if other people have published

1 on the subject, then the answer is of course.

2 Q So what are -- what is your source for  
3 traditional neutral districting criteria?

4 A There are a wide variety of sources. A couple of  
5 the sort of most interesting ones are, of course,  
6 historical legislation both in Pennsylvania and  
7 federal level legislation. You have -- the  
8 federal -- for example, up until 1911, the Federal  
9 Reapportionment Act used to include these kinds of  
10 traditional neutral districting criteria. And second  
11 of all, Pennsylvania also has these criteria for its  
12 state legislative districts, and many other states  
13 have them for state -- most other states actually  
14 have them for their state legislative districts.  
15 Some also have them for their federal districts --  
16 for the congressional districts.

17 Q And remind me again, when did you first review or  
18 study these?

19 A I'm sorry, when did I first review or study --

20 Q When did you --

21 A -- the traditional --

22 Q Any of these --

23 A -- neutral district measure?

24 Q -- traditional neutral districting criteria.

25 A It was over the course of the past year. I



1 couldn't give you a particular day.

2 Q Okay. You mentioned your -- you mentioned  
3 that -- at least at deposition, you said that over  
4 the last nine months, this has been a hobby of yours?

5 A Yes, you did use that term in order to try to  
6 denigrate my engagement with the project. I do  
7 remember that.

8 JUDGE SMITH: No, just -- excuse me, just  
9 answer the question, please.

10 THE WITNESS: Sorry.

11 JUDGE SMITH: And we will not tolerate  
12 laughter in the courtroom either. This is a serious  
13 proceeding, please.

14 BY MR. TORCHINSKY:

15 Q Have you ever done --

16 A I consider "hobby" to be a non-pejorative term.  
17 Let me put it that way.

18 Q Okay. Is a hobby a profession?

19 A No, this has not yet been my profession, although  
20 it may become that.

21 Q But it's not currently?

22 A No.

23 Q Have you ever done any professional GIS work?

24 A No.

25 Q Have you ever published anything in GIS?

1 A No.

2 Q Have you used GIS software other than -- I think  
3 you had mentioned at deposition QGIS. Have you used  
4 any other GIS software?

5 A I've used QGIS and I've also used the RGIS  
6 packages. I don't -- I can't afford the commercial  
7 software.

8 Q So you've been working at this as a hobby for  
9 less than a year. Do you know how equal population  
10 requirements impact the drawing of districts?

11 A That's a pretty general question, but I know some  
12 things about it. I know that the court cases to date  
13 have indicated that pretty much plus or minus one is  
14 the requirement at this point. I also know that  
15 these plus or minus one requirements have often been  
16 used by gerrymanderers as an excuse to draw strange  
17 districts.

18 Q Based on what?

19 A I'm sorry, based on what --

20 Q You said --

21 A -- do I know the second part of that?

22 Q -- has been used as an I think you said excuse.  
23 What is your theory of excuse based on?

24 A Well, I've read at least some about the history  
25 of various court cases on this and looked at the

1 districts that people have drawn and the  
2 justifications that have been given for them.

3 Q Are you familiar with the Voting Rights Act?

4 A I don't -- I couldn't cite to you chapter and  
5 verse, but I know the rough outlines.

6 Q Does the Voting Rights Act impact redistricting?

7 A Of course.

8 Q How does the Voting Rights Act impact  
9 redistricting in Pennsylvania?

10 A In general, you need, you know, some number of  
11 majority-minority districts relative to how many --  
12 what portion of minorities there are in the state.  
13 Pennsylvania has --

14 Q Wait, I'm sorry. I just want to go back. It's a  
15 state-wide calculation?

16 A Let me -- let me please finish what I was saying  
17 and I think I'll answer your question. Pennsylvania  
18 is about 11 percent, 11, 12, 13 percent depending on  
19 which groups you count minority, and the vast  
20 majority of those groups are concentrated in the  
21 Philadelphia area. Philadelphia is really the only  
22 region that has a high enough concentration of those  
23 groups to make it feasible or, you know, warranted to  
24 produce minority -- majority-minority districts. And  
25 so, in general, you would expect to get one or two

1 majority-minority districts in Philadelphia area, and  
2 most of the rest of the state would not be strongly  
3 affected by it.

4 Q How many do you believe are required in the  
5 Philadelphia area?

6 A That is a judgment that would I think be, you  
7 know, best brought by the minority communities  
8 themselves. I'm not here to offer a specific answer  
9 on that, but I would say approximately one or two  
10 would fit what I've seen with, you know, used in  
11 other states and accepted as reasonable.

12 Q Would drawing one or two majority-minority  
13 districts have a significant impact on how the  
14 districts in Southeastern Pennsylvania are shaped?

15 A Honestly, I don't really think so. I mean  
16 Philadelphia, as a whole, is a, you know, majority  
17 not -- so the white, non-Hispanic population in  
18 Philadelphia is less than majority and Philadelphia  
19 is larger than two congressional districts. And so  
20 it wouldn't really take that much work in the  
21 Philadelphia area to draw two majority-minority  
22 districts or close to it.

23 Q Would that be required by the Voting Rights Act?

24 A I would expect that you would have to have  
25 something like that, according to the Voting Rights

1 Act. I would not present myself as an expert in the  
2 law of that.

3 (Pause in proceedings.)

4 Q You mentioned in your -- in your questioning for  
5 Mr. Gordon something called Markov Chain Monte Carlo.  
6 Is there any reference in any of the -- either your  
7 first supplemental or your second supplemental or  
8 your initial report in this case that even mentions  
9 or refers to Markov Chain -- or Markov Chain Monte  
10 Carlo analysis?

11 A I didn't reference it by name, but it's relevant  
12 to some of the papers that I've been referring to in  
13 constructing those reports.

14 Q But you didn't --

15 A It's actually a key component of some of those  
16 papers, and we also discussed it in my deposition, if  
17 you remember.

18 Q But you didn't mention it your reports?

19 A I did not mention it by name in my reports. I  
20 did refer to some of the outcomes of some of the  
21 research that used it --

22 Q And you've mentioned --

23 A -- in my reports.

24 Q You've mentioned that you know how to do  
25 regression analysis. That's a basic stats --

1 A Yeah, it's pretty basic.

2 Q Did you run or mention any regressions in your  
3 first report, second report, or -- first or second  
4 reports?

5 A I don't have any regressions mentioned in my  
6 reports, no.

7 Q So regression -- any regression analysis you did  
8 wasn't relevant to this case?

9 A No regression analysis that I personally did was  
10 relevant to this case. However, I have, you know --

11 Q That was --

12 A A number of papers that I've referred to have  
13 used that and it's been relevant to some other  
14 things, so --

15 Q In your third -- in your second supplemental  
16 report that we received at 11:00 last night, you  
17 proceed to -- you mention and refer to a lot of  
18 questions about -- or draw some conclusions about  
19 what happened inside based on the Turzai documents  
20 that you reviewed, is that correct?

21 A That's not perfectly accurate. So this second  
22 supplemental report was based on the data that was  
23 released by Speaker Turzai on the 30<sup>th</sup>, basically,  
24 and so over this weekend, I went through that data  
25 and I attempted to understand what the contents of

1 that data were. I don't know what went on in the  
2 legislature, but I do know what the data shows about  
3 what kinds of conversations and interactions people  
4 had and what kinds of map data they used.

5 Q Have you ever, before this weekend, reviewed  
6 internal legislative communications in anything that  
7 you've ever done?

8 A No.

9 Q With respect to your second supplemental report,  
10 you took a lot of data and created a lot of maps  
11 based on this GIS software. Just to be clear, you  
12 had never published anything like this before  
13 anywhere, is that correct?

14 A I have no published anything like this, but I've  
15 done a great deal of work on it.

16 Q Have you ever drawn a state or local  
17 legislative -- or legislative districting map at all?

18 A I have not drawn a detailed map. As part of my  
19 work with the volunteer group I've been with, we have  
20 done some sort of crude or hand-drawn maps just to  
21 get a general idea of what counties would need to be  
22 split and things like that.

23 Q So you've done hand -- tell me about this  
24 volunteer group.

25 A Yes.

1 Q What is this volunteer group?

2 A So it's called Concerned Citizens for Democracy  
3 and we are interested in understanding the history of  
4 gerrymandering in Pennsylvania and what can be done  
5 to prevent it.

6 Q Who created Concerned Citizens for Democracy?

7 A I don't actually know who founded it. I joined  
8 early on, but I wasn't there right at the beginning.

9 Q What is your -- what is your knowledge of what  
10 the group does and who organizes the group?

11 A There are a number of us who are involved in the  
12 group. I'm one of them. Brian is also involved, Mr.  
13 Gordon over here, and there are a number of other  
14 local citizens from the area who are -- you know, has  
15 various levels of expertise, legal and technical and  
16 just fundraising and all these different kinds of  
17 things. And these people who live in Pennsylvania  
18 and are interested in understanding how  
19 gerrymandering is happening in our state and what can  
20 be done about it.

21 Q Are there political scientists involved in this  
22 group?

23 A I believe some -- yeah, some people in the group  
24 are political scientists. That's not been my main  
25 focus area, so I haven't spent as much time with them



1 as with some of the technical people, but --

2 MR. TORCHINSKY: Excuse me for just one  
3 moment, Your Honor.

4 (Pause in proceedings.)

5 MR. TORCHINSKY: One last question and then  
6 I'll submit to the panel that I don't believe this  
7 expert is -- or this witness is qualified to provide  
8 any expertise here.

9 BY MR. TORCHINSKY:

10 Q You've never had anything related to politics or  
11 redistricting published or peer-reviewed anywhere, is  
12 that correct?

13 A I have not yet.

14 Q Okay.

15 MR. TORCHINSKY: Your Honor, I submit that  
16 the witness is not qualified to offer expert opinions  
17 under Rule 702 and under the Daubert case.

18 JUDGE SMITH: Let me confer with the  
19 members of the panel, please.

20 (Pause in proceedings.)

21 JUDGE SMITH: The panel is of the unanimous  
22 view that certainly the witness is qualified, but the  
23 area in which she is qualified will necessarily be  
24 circumscribed by the disciplines in which she has  
25 expertise, and it will be incumbent upon counsel to

1 ask questions which are relevant to how her  
2 background in mathematics, statistics, or knowledge  
3 of GIS can inform the panel about how this map was  
4 devised. Beyond that, as counsel for the legislative  
5 defendants have pointed out and as was apparent for  
6 the testimony on qualification in voir dire, she does  
7 not have any experience in the political arena that  
8 would allow her to opine in areas beyond her area of  
9 expertise. So -- and certainly this testimony will  
10 be subject, as we said at the outset, to counsel's  
11 arguments post-trial as to not only weight, but what  
12 we may permissible consider.

13 MR. GORDON: Thank you, Your Honor. So she  
14 is admitted within circumscribed areas of questioning  
15 and testimony --

16 JUDGE SMITH: Well, you --

17 MR. GORDON: -- in the areas of --

18 JUDGE SMITH: -- you've sought to have her  
19 qualified --

20 MR. GORDON: Yeah.

21 JUDGE SMITH: -- as an expert in  
22 engineering, mathematics, and computer science, and  
23 data analytics. Now, we're of the view that those  
24 disciplines must have been invoked and utilized to  
25 whatever extent the evidence takes us in the plan

1 that was ultimately adopted here. And that is the  
2 area wherein she has expertise and where relevant  
3 questions can be permitted.

4 MR. GORDON: Understood. Understood, Your  
5 Honor.

6 DIRECT EXAMINATION

7 BY MR. GORDON:

8 Q With that, Ms. Hanna, I want to draw your  
9 attention to your -- to your supplemental report.  
10 What's the date of that report?

11 A I assume you're referring to the first one?

12 Q The -- no, the supplemental report.

13 A Yeah, the first supplemental.

14 Q Yes.

15 A I don't know. Do you know what exhibit number  
16 we're at here or should I just pull out my copy?

17 Q I would ask you to pull out your copy.

18 (Pause in proceedings.)

19 JUDGE SMITH: Is it Exhibit 10?

20 THE WITNESS: It might be.

21 MS. BALLARD: It's 11, Your Honor.

22 THE WITNESS: There it is. November 27<sup>th</sup>.

23 (Pause in proceedings.)

24 JUDGE SMITH: Supplemental, November 27 of  
25 this year. It's Exhibit 11.

1 MR. GORDON: Right.

2 JUDGE SMITH: Is that it, Mr. Gordon?

3 MR. GORDON: Yes.

4 JUDGE SMITH: All right.

5 BY MR. GORDON:

6 Q All right. This report -- this report was  
7 prepared -- I'm sorry. I'll get to the point of  
8 this. Okay. And were you asked questions at your  
9 deposition that went beyond the scope of your  
10 original report?

11 A Yes.

12 Q Okay. And was one of the purposes of this report  
13 to put into writing the nature of that testimony?

14 A Absolutely.

15 Q Okay. And did this report also encompass the  
16 release of a GIS data set provided in *Agre v. Wolf*,  
17 number 2:17-4392, this case, identified as the  
18 Speaker Turzai production?

19 A That is the primary content of this report, yes.

20 Q Okay. May I approach the witness, Your Honor,  
21 with that document?

22 JUDGE SMITH: Yes.

23 BY MR. GORDON:

24 Q I'm going to ask you to identify this. And just  
25 mark, for purposes of identification as

1 Plaintiffs' --

2 MR. TORCHINSKY: Objection, Your Honor. We  
3 don't -- it's not -- whatever was just handed up is  
4 not in evidence. Your Honor, this is the email from  
5 counsel that we were discussing before and I don't  
6 see the relevance of it, nor do I see anywhere that  
7 it was marked as an exhibit.

8 MR. GORDON: Your Honor, I --

9 JUDGE SMITH: It has not -- it has not been  
10 marked here in the courtroom. It has been  
11 preliminarily marked for our use here. I'm not sure  
12 what use counsel intends to make of it at this time.  
13 It is not necessary that an exhibit be admitted for  
14 counsel to be able to -- or a witness to be able to  
15 testify from it, but that depends on the use that is  
16 intended to be made. Is she going to use it to  
17 refresh recollection? Is she going to testify to it  
18 for purposes of having it admitted? On its face it's  
19 technical hearsay as all reports are. So I mean what  
20 in -- what is your intended use of the document at  
21 this time, counsel?

22 MR. GORDON: The intended use -- I was  
23 going to ask her if she had received a copy of it.  
24 That's more foundation. And did that come with the  
25 data set that was given, represented to be the Turzai

1 data set used to create that 2011 map?

2 JUDGE SMITH: This is her report, so,  
3 presumably, it's based upon her knowledge and she can  
4 testify to --

5 MR. GORDON: Very good.

6 JUDGE SMITH: -- what her knowledge is,  
7 right? If she's --

8 MR. GORDON: Yes.

9 JUDGE SMITH: If at any time she needs to  
10 refresh her recollection, you may take appropriate  
11 steps in that direction.

12 MR. GORDON: Okay.

13 BY MR. GORDON:

14 Q All right. Ms. Hanna, did you receive -- did you  
15 receive something identified as a Turzai data set on  
16 Friday, November 17<sup>th</sup>, 2017?

17 A Yes, sir.

18 Q Okay. And I'm going to turn to really page five  
19 of your -- of your report and ask you to tell us  
20 about the data that you provided for -- what was your  
21 understanding as from who it was from?

22 A Okay. So on that evening, Friday, November 17<sup>th</sup>,  
23 you forwarded me an email that was from Jason R.  
24 McLean, who I understand is Mr. Turzai's attorney.

25 MR. TORCHINSKY: Objection, Your Honor.

1 This is hearsay.

2 MR. GORDON: It's all in the -- it's --

3 JUDGE SMITH: You know, I began after the  
4 recess with a request that counsel cooperate with  
5 respect to stipulations. Now, (indiscernible) that  
6 on its face, an email, piece of paper, is technically  
7 hearsay. But unless you have a pretty darn good  
8 reason to explain why this is not ultimately going to  
9 come in, I suggest we allow the testimony to go  
10 forward. If you don't, we'll certainly hear that  
11 objection right now. I would like to know, under the  
12 rules of evidence, why this information underlying  
13 email should not be admitted.

14 MR. TORCHINSKY: Your Honor, no one on the  
15 document is identified -- no one on the document is  
16 testifying and I don't quite understand what the  
17 relevance of this document is.

18 JUDGE SMITH: Are you suggesting that the  
19 underlying information that purportedly was provided  
20 by counsel for Mr. Turzai may not be used in this  
21 proceeding?

22 MR. TORCHINSKY: No, Your Honor. What I'm  
23 saying is the statements of counsel in transmitting  
24 the email are not admissible in court. The  
25 statements of counsel in transmitting the underlying

1 data --

2 JUDGE SMITH: I can --

3 MR. TORCHINSKY: We'll stipulate she got  
4 the underlying data.

5 JUDGE SMITH: I could --

6 MR. TORCHINSKY: What I don't want is some  
7 attorney's words in transmitting the data to be used  
8 as some kind of admission or as some kind of -- as  
9 some sort of -- to ask the Court to take some sort of  
10 inference from a lawyer who got involved in this six  
11 years after the data was actually -- six years after  
12 the data to be used for the -- you know, to be urged  
13 where the -- I think they're urging the Court to make  
14 some inference from what counsel said in the  
15 transmitted --

16 JUDGE SHWARTZ: If I can --

17 MR. TORCHINSKY: -- email.

18 JUDGE SHWARTZ: If I can -- if I recall,  
19 with permission of the chief, there was an objection  
20 to whether or not certain of the Turzai data was  
21 considered and the answer from defense counsel was it  
22 was produced. My impression is the reason why this  
23 is even coming up is because plaintiffs are now  
24 taking the view -- is the defendant saying the data  
25 that was produced in response to discovery was not



1 considered?

2 MR. TORCHINSKY: We're saying it was in  
3 their possession, but how it was considered is not --

4 JUDGE SHWARTZ: It's not a how, it's  
5 whether or not there's been a representation that the  
6 data presented was considered.

7 MR. TORCHINSKY: The data --

8 JUDGE SHWARTZ: The how is a different  
9 question.

10 MR. TORCHINSKY: The data that was  
11 presented was in the possession of the legislature at  
12 the time.

13 JUDGE SHWARTZ: That is not what I'm a  
14 asking though. I think the reason why we're even  
15 going through this is the question about whether  
16 it -- whether it was -- not just that it was  
17 possessed or produced, but whether it was considered.  
18 And it's my understanding that I think the plaintiffs  
19 were under the impression that this was the data that  
20 was considered.

21 MR. TORCHINSKY: Yes, Your Honor.

22 JUDGE SHWARTZ: Was --

23 MR. TORCHINSKY: Yes.

24 JUDGE SHWARTZ: Are you stipulating that  
25 this was the data that was considered?

1 MR. TORCHINSKY: I mean, Your Honor, I  
2 don't -- I am not in a position to stipulate to what  
3 every member of the legislature and every member of  
4 the staff looked at in this data set.

5 JUDGE SMITH: What did you respond to?  
6 What specific inquiry did you respond to when you  
7 may -- or when your side or when the Speaker made  
8 this information available to the plaintiff?

9 MR. TORCHINSKY: The Court ordered us to  
10 produce the facts and data underlying the map. The  
11 facts and data underlying the map are the census  
12 data, the election return data for the state, and the  
13 home addresses of the incumbents. That's what we  
14 produced. Exactly who used it and how it was used by  
15 anybody that had access to it is not something that  
16 we're prepared to stipulate to, but it was what was  
17 available to the legislature.

18 JUDGE SMITH: I --

19 MR. TORCHINSKY: I mean both -- all four  
20 Republican and Democratic offices, you know, in the  
21 House and the Senate and the governor's office had  
22 the same underlying census data, home address data,  
23 and election return data for the state, which is  
24 publicly available data.

25 JUDGE SMITH: Nor can this witness, as I'm

1 sure you would agree, testify to how the legislature  
2 used this information.

3 MR. TORCHINSKY: As long as it's with the  
4 understanding that she can't testify to how the  
5 legislature used the data, we have no objections,  
6 Your Honor.

7 MR. ARONCHICK: Just to try to cut the  
8 Gordian knot, Judge Shwartz's order on November -- I  
9 don't know what the date is -- November -- filed  
10 November 9<sup>th</sup> in paragraph two, said, "To produce no  
11 later than November 17<sup>th</sup>, intervenor defendants shall  
12 produce requested facts and data considered in  
13 creating the 2011 plan." I'm not exactly sure what  
14 we're arguing about here now.

15 JUDGE SMITH: Well, I --

16 MR. ARONCHICK: If that --

17 JUDGE SMITH: It has been -- that, frankly,  
18 has been a mystery to me for a little while now. But  
19 if the panel could confer for a moment, please?

20 (Pause in proceedings.)

21 JUDGE SMITH: The objection as interposed  
22 is overruled. We'll ask that you proceed with your  
23 next question, please.

24 MR. GORDON: Thank you.

25 BY MR. GORDON:

1 Q Ms. Hanna, did you analyze the data, the Turzai  
2 data, that was produced?

3 A Yes.

4 Q Okay. And it was your understanding that this  
5 was the data that was utilized, not saying how, to  
6 create the 2011 map?

7 A Yes.

8 Q Okay. Was there anything about the form of the  
9 data as produced by counsel that made it challenging  
10 to look at?

11 A Yes. So there were a couple things. One was all  
12 the file names were kind of gargled. They -- it  
13 looks like somebody renamed all the files just in  
14 order based on some kind of bates numbering scheme or  
15 something, which actually screws up the file format  
16 because these are GIS shape files and a GIS shape  
17 file is actually a data structure. It consists of  
18 three computer files and all three of those computer  
19 files are supposed to have the same base name, but if  
20 you renumber them sequentially based on their  
21 individual bates numbers, then, of course, they're  
22 not part of the same GIS file.

23 Q Okay.

24 A So that was one thing that was an issue. The  
25 other issue was that, you know, these -- the data in

1 these individual files was not very clearly labeled,  
2 you know, so when I opened up the files these were  
3 map data, the outlines of districts and so forth, and  
4 then also what they call attribute tables, which are  
5 just basically a database of information about each  
6 of the shapes shown on the map. And, you know, we  
7 looked at part of these, of course, and looked in the  
8 attribute table. Many of them were very clear. You  
9 know, many of them were like the rivers and the roads  
10 in the state and counties, municipalities, all those  
11 kinds of things.

12 Q I'm going to hold you up. Did this --

13 A Yeah.

14 Q Did this -- essentially, did the Turzai data  
15 initially come to you for the most part as columns of  
16 numbers on a -- on a very wide chart --

17 A Right.

18 Q -- with very limited identifying names at the  
19 top?

20 A Right. They had these very like short like  
21 eight-character or nine, ten-character names that  
22 were, you know, often very abbreviated and  
23 telegraphic.

24 Q Okay.

25 A Some of them I recognized and some of them I

1 figured out, but there are still a couple that I  
2 don't know what they were.

3 Q Were you able to understand -- to unscramble the  
4 data in order to understand what was produced?

5 A For the most part, yes. There were a couple  
6 columns that I still do not know what they were, and  
7 when we asked for identifying -- an identifying key  
8 for the data we were not given one.

9 Q Okay. And let me turn to the data set contents.  
10 What did you observe were the contents of this data  
11 set?

12 A All right. So there were -- let me actually turn  
13 to my page so I make sure I go through this  
14 completely. There were 13 different shape file  
15 layers. And, again, each shape file layer is a set  
16 of sort of geographic shapes and then also data  
17 tables of information about each of those geographic  
18 shapes. And some of them were fairly trivial. The  
19 ones -- those were -- there were six of them that  
20 were, let's see, rivers and, you know, lakes and  
21 stuff like that, and roads of various sizes, and then  
22 also railway routes in Pennsylvania. Those weren't  
23 very exciting. But then the other ones were -- so  
24 there are kind of maybe three categories of other  
25 ones that were interesting. One was the --

1 Q Let's turn --

2 A Yeah.

3 Q Let's turn to -- I'm going to focus your  
4 attention to keep this moving forward -- to shape --

5 A Yeah.

6 Q -- file Turzai 01652.

7 A Right.

8 Q What was there?

9 A So beginning here -- this is on page nine, by the  
10 way, for those of you looking. So Turzai 01652, this  
11 is actually three files from the data set. It's  
12 01652, 01653, and 01654, but I just (indiscernible)  
13 so that they go together. And the -- in this one,  
14 the shapes for the Penn -- counties in Pennsylvania,  
15 and then the attached data tables had just, you know,  
16 17 columns that were just miscellaneous geographic  
17 identifiers, which looked like they were from census-  
18 type data based on what I've seen as census data  
19 before. And then there was 24 columns that was  
20 population data, including racial breakdowns, another  
21 24 columns that were voting age population data with  
22 some more racial breakdowns, and then there were 99  
23 columns that were partisan voting results and voter  
24 registration data, and these were all 33 even-year  
25 state-wide, legislative, and congressional elections

1 from 2004 to 2010 and also the fall and spring voter  
2 registration numbers for each parties. And these  
3 were organized into -- so this was, you know, 33  
4 different elections and voter partisan data --

5 Q So you're saying --

6 A -- and --

7 Q You're saying that --

8 A Yeah.

9 Q -- in the Turzai data set, there were 33 state-  
10 wide elections the partisan results were contained?

11 A 33 groups of elections and then voter  
12 registration data. So for each election year, there  
13 were two voter registration data columns also. And  
14 these were broken down into Democrat, Republican, and  
15 other.

16 Q Okay. And the state-wide elections were state-  
17 wide, legislative, and congressional elections from  
18 2004 to 2010?

19 A Right, and then also the presidential and  
20 attorney general and governor and all those other  
21 state-wide -- all state-wide elections of that kind  
22 and then also the state House and Senate and the  
23 federal Congress.

24 Q Were there any party identifiers in the Turzai  
25 data?



1 A Yeah, there was specifically -- each of these  
2 elections and voter registration time points had  
3 three columns, which was the Republican data, the  
4 Democratic data, and then the count of other voters  
5 or registrants.

6 Q And that was for -- and that was for each sort of  
7 block of sort of voting, like a --

8 A Yes, each of those.

9 Q -- voting precinct, for example?

10 A So there's, you know, 33 different time -- voter  
11 registration time points in elections, times three  
12 columns for each, 99 columns.

13 Q So we're at 30 -- so how many total columns were  
14 there?

15 A 99 total columns of that, of just the raw  
16 partisan voting and voter registration data.

17 Q Okay. Thank you.

18 A And then there were additional columns beyond  
19 that.

20 Q Okay. What about the additional columns beyond  
21 that?

22 A So the additional columns beyond that were what  
23 looked like partisan voting indices, and these  
24 indices, eight of them I was able to identify pretty  
25 clearly what they were both by the column headers and

1 then by doing some computations of my own for  
2 comparison. And those eight were four each of eight  
3 different types of elections. It was the Republican  
4 votes minus the Democratic votes --

5 Q And what --

6 A -- for that county.

7 Q And what will that give you? What's the  
8 relevance of that?

9 A Well, I mean the important thing is that tells  
10 you basically who wins that county. So if I'm  
11 looking to draw a district that is, you know, more  
12 Republican or more Democratic, I can use those  
13 numbers to select which counties I want in my  
14 district and which ones I don't.

15 Q So it --

16 MR. TORCHINSKY: Objection, Your Honor.  
17 She wasn't qualified to testify about GIS systems.  
18 She was testified -- I mean, at best, she's  
19 testifying as to what this data set is, and she seems  
20 to have strayed into talking about how it's used by  
21 people who draw districts when she admitted she's  
22 never actually drawn a district.

23 JUDGE SMITH: The last part of her answer  
24 did just that.

25 MR. GORDON: If I may respond, Your Honor?

1 She was able to really crack and understand, in  
2 violation of Court order, a scrambled data set, and  
3 she is -- and GIS is within the ambit of engineering  
4 and it's absolutely within the ambit of her  
5 expertise. Even though she hasn't published in the  
6 area, it is still within her ambit of expertise in  
7 terms of her experience. Her testimony does contain  
8 significant references to GIS data, which is what --

9 JUDGE SMITH: You didn't hear me.

10 MR. GORDON: I'm sorry, Your Honor.

11 JUDGE SMITH: I said the latter part of her  
12 answer did indeed intrude into her suggestion or even  
13 speculation as to what people did with this data,  
14 those people being within the legislature. I said  
15 nothing else.

16 BY MR. GORDON:

17 Q Please don't --

18 A Right.

19 Q Don't comment on what they did with the data.

20 A Sure.

21 Q I will try not to ask questions about what --

22 A Okay.

23 Q -- the legislator did with the data. Okay. You  
24 were -- you were explaining what was in the data set.

25 A Right.

1 Q And you were --

2 A So there were these eight --

3 Q Hang on.

4 A Go on. I'm sorry.

5 Q Wait until a question. You got to the point  
6 where you're saying that, mathematically, you had a  
7 series of numbers which indicated within a certain  
8 voting area, territory, Republican minus Democratic  
9 votes, which you were then able -- and what could you  
10 do with that data?

11 MR. TORCHINSKY: Objection, Your Honor,  
12 calls for speculation.

13 THE WITNESS: No, I can tell him what I did  
14 with the data.

15 JUDGE SMITH: Excuse me.

16 MR. GORDON: Sorry, you have to wait until  
17 the Judge answers.

18 THE WITNESS: Sorry.

19 JUDGE SMITH: You do not answer when  
20 there's an objection on the floor. I have to be able  
21 to rule first, okay?

22 THE WITNESS: Sorry.

23 JUDGE SMITH: The -- what was your  
24 objection?

25 MR. TORCHINSKY: The objection was calls

1 for speculation. The question was what could you --  
2 what could you do with the data?

3 JUDGE SMITH: I think that calls for  
4 speculation, but I think she can, within the area on  
5 which she has been qualified, suggest not what was  
6 done here, not what the Pennsylvania legislature did,  
7 but what alternatives might be available  
8 statistically.

9 BY MR. GORDON:

10 Q So what I was trying to ask her was what did you  
11 do with the data to more fully understand what you  
12 have in front of you?

13 A Okay. So, in fact, I mostly did not do this with  
14 the county level data set. There are three further  
15 refinements of this data --

16 Q Go ahead.

17 A -- which are at the municipality level, at the  
18 vote tabulation district level, and then there's  
19 also, as Mr. McGlone discussed, a breakdown -- an  
20 extrapolation down to the census block level of much  
21 of this data. And so I took this data and I, you  
22 know, color-coded the data. I took one particular  
23 election that was a -- in a relatively strong  
24 Democratic year, which was 2008, and I simply color-  
25 coded the map at -- well, I did it at both the vote

1 tabulation district level and at the census block  
2 level, color-coded it red for the districts that  
3 would have been -- that had more Republican votes,  
4 blue for the locations that had more Democratic  
5 votes, and white for locations where there were  
6 either no votes or the two votes were balanced. And  
7 I plotted it on a map and I compared it to the 2011  
8 congressional district lines.

9 Q Okay. And in your report, where does that --  
10 where does that document appear?

11 A Sorry, the document of my --

12 Q Your initial --

13 A -- comparisons or --

14 Q Your initial -- your initial comparison if  
15 it's -- unless it's not in the report.

16 A No, I mean there's the whole like --

17 Q Yeah, I'm sorry.

18 A -- bulk of the report starting on page like 18.

19 Q I withdraw the question. Let me rephrase.

20 A Yeah.

21 Q Is this exhibit -- is this exhibit, which is  
22 marked as Plaintiffs' Exhibit 23 0761, the product of  
23 your initial sampling of the data in the Turzai data  
24 set?

25 A Right. That is the -- basically the first map I

1 drew with this data.

2 Q So when you plotted this map with partisan data  
3 from the Turzai data set from the '08 election --

4 MR. TORCHINSKY: Your Honor, I have an  
5 objection. The map that's presented there on the  
6 chart is not in this second supplemental report, so  
7 I'm not quite sure where this map was ever presented  
8 to counsel.

9 JUDGE SMITH: Page 18.

10 THE WITNESS: This map isn't exactly the  
11 one on page 18, actually. This is one that was  
12 presented as an exhibit during my deposition.

13 BY MR. GORDON:

14 Q Oh, okay. So it was -- so, actually, Mr.  
15 Torchinsky had this during your deposition? He has  
16 seen this, is that correct?

17 A Yes, that's correct.

18 Q All right, thank you. Go ahead. What does it  
19 show?

20 A Okay. So this map is one where I broke the data  
21 down to the census block level. This is, again, the  
22 2008 presidential election, and the red blocks on  
23 this map are census blocks that were extrapolated to  
24 have more Republican votes than Democratic votes.  
25 The blue blocks were the ones with more Democratic

1 votes, the Republican votes. The white blocks were  
2 blocks -- were census blocks where either nobody wins  
3 or the Republican and Democratic votes were  
4 extrapolated to have been balanced. And then the  
5 black lines, the heavy black lines, are the outlines  
6 of the 2011 districts, and the sort of lighter black  
7 lines are the county outlines, and the very fine,  
8 black outlines are the municipality outlines. And  
9 then the big, green dots are the -- from another map  
10 there that we haven't discussed yet that was in this  
11 data set, which was the -- I determined to be the  
12 locations of the then 19 incumbent congressional  
13 representatives' homes.

14 Q Okay. Thank you. And did you -- you have a map  
15 on page 18 of your report. Could you turn to the map  
16 on page 18 of your report?

17 A Certainly. All right.

18 (Pause in proceedings.)

19 A Okay, I'm there.

20 Q Okay. And what is the map on page 18?

21 A Okay. So page 18 is a very similar map. It --  
22 in this one, I did not break everything down all the  
23 way to the census block level. These are just the  
24 vote tabulation districts, which is why you see a  
25 little bit more pink in it. The white areas are



1 empty census blocks up there, but they're not empty  
2 VTDs. This one does not have the representatives'  
3 homes on it yet and it also does not have the  
4 district lines.

5 Q Okay. Thank you. And what year -- what  
6 presidential was this?

7 A This is -- this is, again, from 2008.

8 Q All right.

9 A And this is the presidential election from that  
10 year and the same color scheme, a little bit paler.

11 Q Okay. Can you -- all right. Turning to figure  
12 2A, what is that a map of, please, on page 20?

13 A Oh, yes. Figure 2A is just a map that I  
14 basically downloaded and I just chose the basic  
15 outlines and numbers of the congressional districts  
16 with also some of the locations of the major cities  
17 marked on it.

18 MR. TORCHINSKY: Objection, Your Honor, as  
19 to foundation for this map. I'm not quite sure where  
20 it came from.

21 BY MR. GORDON:

22 Q Where did the --

23 JUDGE SMITH: I will allow counsel to  
24 inquire and lay the requisite foundation.

25 BY MR. GORDON:

1 Q Ms. Hanna, where -- what was the source of this  
2 map?

3 A Downloaded from Wikipedia, but it's originally  
4 from nationalatlas.gov.

5 Q Okay. What is nationalatlas.gov?

6 A It's just a government website that shows various  
7 maps of parts of the U.S.

8 Q And in your study of the 2011 -- did you ever  
9 study the 2011 map from the Pennsylvania -- I'm  
10 sorry, the Pennsylvania --

11 A Yeah, (indiscernible) for the Reapportionment  
12 Commission? Yeah. I also used that one.

13 Q Okay. Does the map in fig -- on page 20  
14 correspond to the districts that were set forth in  
15 Act 131 of 2011, the Pennsylvania congressional  
16 district map of 2011?

17 A Yes, these are the same congressional district  
18 lines.

19 Q Thank you. And what -- and then the map on page  
20 21, can you please identify what that is?

21 A Right. So this is essentially the same as the  
22 map on page 18. This is -- except with some  
23 additional information added. So this is, again, the  
24 2008 presidential election. Red are more Republican,  
25 blue are more Democratic, and I've added the 2011

1 district lines, and the green stars are the locations  
2 of the incumbent representatives' homes, as also  
3 drawn from the Turzai data set.

4 Q And all of the data from this map on page 21,  
5 figure 2B, was from the data contained in the Turzai  
6 data set, is that correct?

7 A No, there's one piece that wasn't. The 2011  
8 district lines were not present in the Turzai data  
9 set. I downloaded them from the website of the  
10 Pennsylvania Legislative Reapportionment Commission  
11 and brought them in to display them.

12 Q How were you able to superimpose it on this -- on  
13 the Turzai data map?

14 A It's very simple. I was actually using QGIS for  
15 a lot of this analysis and you can just import it as  
16 another map layer and display them together.

17 Q Thank you. Okay. And let's turn to figure 2C.  
18 Can you explain to the panel what is figure 2C? Can  
19 you identify that on page 22?

20 A Right. Figure 2C is a similar map, but it shows  
21 the 2002 congressional districts instead. So it's  
22 the same 2008 presidential election data set with  
23 red, Republican, blue, Democratic, and the green  
24 stars are still the incumbent -- 19 incumbent  
25 representatives' home addresses from the Turzai data

1 set, the ones who were incumbent at the time of the  
2 2011 redistricting. But the dark black lines are  
3 showing the 2002 district lines.

4 Q Would this information have been available to  
5 those redrawing the map in 2011?

6 MR. TORCHINSKY: Objection, Your Honor,  
7 lack of foundation. She can't know what was  
8 available to people in the legislature.

9 JUDGE SMITH: That's correct. I'll sustain  
10 the objection. She can certainly indicate if she  
11 knows what distribution or currency it had.

12 MR. GORDON: Okay.

13 BY MR. GORDON:

14 Q What distribution or currency did the -- first,  
15 was the 2002 congressional map --

16 MR. GORDON: And I apologize, Your Honor.  
17 One of the experts referred to it as the 2003 map.  
18 It's referring to the same thing.

19 BY MR. GORDON:

20 Q Was the boundaries of the 2002 district publicly  
21 available?

22 A So they were actually available in two places.  
23 If I wanted to, I could have downloaded them again  
24 from the same Pennsylvania Legislative  
25 Reapportionment Commission, but they were actually

1 also already present in this data -- the Turzai data  
2 set that I received.

3 Q So the 2002 boundaries were already present in  
4 the Turzai data set?

5 A Yes, they were.

6 Q Along with this partisan results from the -- I  
7 believe this was the 2008 presidential election?

8 A Well, in the 2008 and then also all of the other  
9 ones from 2004 to 2010, yes.

10 Q Okay. That was all available?

11 A Yes.

12 Q But with respect to this map, this is really a  
13 reflection of the 2008 presidential brought all the  
14 way down to those blocks that you see on the map?

15 A Yes.

16 Q Okay. And just to refresh my and the panel's  
17 recollection, what are those little blocks referred  
18 to with the light lines?

19 A In -- you're talking about the -- so, again, on  
20 this map the darkest lines are the --

21 Q Just the light.

22 A Yeah.

23 Q I just want to focus you on the light.

24 A Okay. The very lightest ones in this case are  
25 the vote tabulation district. I'm sorry, no. Sorry,

1 I take that back. The light grey ones on this map  
2 are the -- are the municipalities. On this map, the  
3 vote tabulation districts are mostly too small to see  
4 clearly, but they have faint, white outlines.

5 Q Okay.

6 A And some of the later maps will show those blown  
7 up in a little more detail.

8 (Pause in proceedings.)

9 Q All right. I'm going to -- I'm going to ask you  
10 to turn to a couple of more maps. I'm going to ask  
11 you to turn to figure -- actually, let me hold you up  
12 there.

13 MR. GORDON: I just want to get guidance  
14 from the Court. May I ask Ms. Hanna the effect of --  
15 the relationship between the, for example, the  
16 boundaries, as drawn in the 2011 map, and the Turzai  
17 data?

18 JUDGE SMITH: I'm not sure what you are  
19 suggesting. You are -- are you asking if there is  
20 some consistency or congruence between the map that  
21 was drawn and certain data that she has received and  
22 analyzed?

23 MR. GORDON: Yes. Yes. I'm asking --  
24 actually, I'm going to withdraw the question and I'm  
25 going to try another one. With permission, I'm going

1 to also get the larger version of this so that I  
2 can -- so we can all follow along, okay?

3 (Pause in proceedings.)

4 BY MR. GORDON:

5 Q Ms. Hanna, can you -- would you be able to  
6 identify this map, previously marked as P-24,  
7 exchanged with opposing counsels? 0762 is the bates  
8 number.

9 (Pause in proceedings.)

10 A Okay. So that was in actually 2004 presidential  
11 election data instead of 2008, so that would be a  
12 little stronger year for the Republicans. And the  
13 lines drawn on that, again, on the 2011 congressional  
14 district lines, the dark lines, and the colorization  
15 is, you know, blue vote tabulation districts are the  
16 ones that were -- that went more strongly for the  
17 Democratic candidate, red are the ones that went more  
18 strongly for the Republican candidate.

19 Q And you prepared this exhibit based on that which  
20 you've already testified, but I don't want to go over  
21 that. And, specifically, can you identify what this  
22 (indiscernible) is? I'm sorry, this detailed map,  
23 it's P-25 0763. Can you identify this, please?

24 A Right. So this is a blowup of the region around  
25 Philadelphia, specifically the -- focusing on the

1 Seventh District, also known as Goofy kicking Donald  
2 Duck.

3 Q We're not using --

4 MR. TORCHINSKY: Objection, Your Honor.

5 BY MR. GORDON:

6 Q We're not using those terms this morning.

7 A Sorry. My apologies.

8 JUDGE SMITH: Sustained.

9 BY MR. GORDON:

10 Q Okay. And what -- this is based off what year's  
11 presidential election?

12 A This is also the 2004 presidential election data.

13 Q And what is the -- so before I stumble into an  
14 inadmissible question, what correlates to the areas  
15 in the Seventh District and the areas that are in the  
16 Thirteenth District? This is somewhat repetitive.  
17 I'll just do one of these and then we'll go on.

18 A Right. So in many of the most convoluted areas  
19 of the outline of the Seventh District, the outlines  
20 track very closely the border between the red regions  
21 and the blue regions of this map, the red regions  
22 being the ones that voted more strongly for  
23 Republicans.

24 Q Okay. All right.

25 (Pause in proceedings.)



1 Q And a couple more maps and then we'll move on.  
2 Map -- figure 3, page 26, in your supplemental  
3 report, can you identify for the panel what this is a  
4 map of?

5 A Okay. So this is a detailed map of the  
6 Pittsburgh region, and we're going back to the 2008  
7 results. Most of what's actually in my report is the  
8 2008 results --

9 Q Okay.

10 A -- by the way, in the presidential election. So,  
11 specifically, this is focusing on the Fourteenth  
12 District, which encompasses most of Pittsburgh and  
13 has a couple little tendrils going off along some of  
14 the river valleys. And the thing that's highlighted  
15 on this map is in green and yellow outlines the minor  
16 civil divisions of the municipalities that are split  
17 between two or three congressional districts. Green  
18 is split between two congressional districts, yellow  
19 means it's split between three congressional  
20 districts.

21 Q The green is a little bit hard to see on this map  
22 so --

23 A Yeah.

24 Q -- I'm going to go over here and have you outline  
25 it using --

1 A All right.

2 (Pause in proceedings.)

3 A Okay. So what I do is I touch the screen?

4 Q You touch the screen and indicate --

5 A Okay.

6 Q -- where you have the green line. And repeat  
7 again what the green line indicates.

8 A Okay. So the first two things I'm going to  
9 outline are a couple municipalities that were split  
10 between two congressional districts, and those are  
11 outlined in green. So here's the first one.

12 Q Can you trace it with your finger, please?

13 (Pause in proceedings.)

14 A So there's one, and then here's the second one.

15 (Pause in proceedings.)

16 Q Again, can you trace the yellow outline?

17 A All right.

18 (Pause in proceedings.)

19 Q And what -- as you're doing that, what does the  
20 yellow signify? What's its relevance?

21 A The yellow is a municipality that is split  
22 between three congressional districts.

23 Q Finish outlining. And is there another -- did  
24 the Fourteenth also --

25 A Oh, I missed a green one. You're right. Thank

1 you. So there's one more green one in which I'll  
2 trace now.

3 (Pause in proceedings.)

4 Q So did the Fourteenth -- as it consistent with  
5 traditional districting principles that you testified  
6 to in response -- on cross-examination by Mr.  
7 Torchinsky?

8 MR. TORCHINSKY: Objection, Your Honor.

9 JUDGE SMITH: On what grounds.

10 MR. TORCHINSKY: The qualifications of the  
11 witness.

12 JUDGE SMITH: She's testified to what her  
13 understanding is of traditional characteristics, so  
14 I'll allow her to testify to whether or not this  
15 comports with her understanding of those.

16 THE WITNESS: All right. So there are a  
17 couple ways that I believe that this district  
18 violates my understanding of traditional neutral  
19 districting principles. The first one, of course, is  
20 that this district is highly non-compact. If you  
21 examine that sort of tendril that extends northward  
22 from Pittsburgh that follows along the Allegheny  
23 River I believe, and you'll see that it very sort of  
24 nicely outlines the blue areas in many places along  
25 that tendril. And in order to outline those blue

1 areas perfectly, it splits this little township  
2 that's at the top edge here. And let me just check  
3 the name of that township real quick from my other --  
4 from my previous page.

5 (Pause in proceedings.)

6 A Let's se --

7 MR. TORCHINSKY: Your Honor, we have an  
8 objection to this line of questioning. There's no  
9 testimony about compactness scores in this report  
10 anywhere.

11 THE WITNESS: That's not true, actually.

12 JUDGE SMITH: Would you please --

13 THE WITNESS: Sorry.

14 JUDGE SMITH: -- allow the Court to rule  
15 when there has been an objection interposed?

16 MR. TORCHINSKY: I mean, Your Honor, she's  
17 now testifying as to compactness of District  
18 Fourteen, and yet her writeup and narrative on  
19 District Fourteen contains no analysis or description  
20 of compactness.

21 MR. GORDON: If I may respond? She was  
22 asked whether the design of Fourteen is consistent  
23 with not breaking municipalities.

24 JUDGE SMITH: And I allowed that question.  
25 I will allow her to speak to the issue of

1 compactness.

2 JUDGE SHWARTZ: Counsel, are you using the  
3 map that's being displayed right now, which was --

4 MR. GORDON: I --

5 JUDGE SHWARTZ: -- figure 3, page 26? Is  
6 that what the witness is being asked to talk about?  
7 It's the one that's being displayed on the monitor.

8 MR. GORDON: Yes, page 26.

9 JUDGE SHWARTZ: If -- would you mind asking  
10 the witness when she's describing things like along  
11 the Allegheny, et cetera, if we can use the map?

12 MR. GORDON: Oh, okay.

13 BY MR. GORDON:

14 Q You had previously described a tendril extending  
15 from the City of Pittsburgh. Can you draw it as best  
16 you can on the map to show where that tendril  
17 extends? Where is the boundary of Pittsburgh, if you  
18 see it on the map, and then to where does it extend  
19 (indiscernible)?

20 JUDGE SHWARTZ: Or if she -- or if she  
21 could just point --

22 MR. GORDON: Or point.

23 JUDGE SHWARTZ: -- would be helpful. Thank  
24 you.

25 MR. GORDON: Yes.

1 THE WITNESS: Sure. So one second here.  
2 So this sort of big blob right here is Pittsburgh,  
3 and then the tendril that I'm referring to is this  
4 tendril up here.

5 JUDGE SHWARTZ: You know what, I think she  
6 does have to write on it because --

7 JUDGE SMITH: Yes.

8 THE WITNESS: Okay.

9 JUDGE SHWARTZ: Yes, sorry about that.

10 THE WITNESS: All right. So Pittsburgh  
11 first.

12 BY MR. GORDON:

13 Q Let's put a big P where Pittsburgh is. Oh, I  
14 see. You're doing it better. Thank you.

15 JUDGE SMITH: You see, but the red markings  
16 are not going to appear on the record or on the  
17 exhibit.

18 THE WITNESS: So that's Pittsburgh.

19 BY MR. GORDON:

20 Q Okay.

21 A And the tendril I'm referring to I'll draw next.

22 (Pause in proceedings.)

23 JUDGE SHWARTZ: Thank you.

24 THE WITNESS: That's the tendril.

25 JUDGE SHWARTZ: Thank you, counsel.

1 THE WITNESS: All right.

2 BY MR. GORDON:

3 Q And to the area to the right of Pittsburgh, in  
4 what -- where are they?

5 A Sorry, you're referring to --

6 Q The blue area --

7 A -- to the --

8 Q This blue area to the right of Pittsburgh.

9 A That's a number of Pittsburgh suburbs. Is that  
10 what you mean?

11 Q Yes.

12 A Okay, yeah.

13 Q I'm asking you what they are.

14 A Yeah, they're Pittsburgh suburbs.

15 Q Okay. Thank you. Okay. Did you -- did -- would  
16 it be correct to say that you actually did a  
17 compactness analysis of the map using the Polsby-  
18 Popper, the Schwartzberg, and the Rock measures?

19 MR. TORCHINSKY: Objection, Your Honor.  
20 She has testified to no information about established  
21 qualifications of understanding compactness scores.

22 JUDGE SMITH: Well, first of all, the  
23 question was whether or not she used that, and she  
24 can answer that yes or not. To the extent that your  
25 objection goes to whether or not she's qualified to

1 use those tests, that's another matter.

2 BY MR. GORDON:

3 Q Ms. Hanna, what is your understanding --

4 MR. GORDON: I'm sorry.

5 JUDGE SMITH: The question on the floor is  
6 did she use them or did she not.

7 BY MR. GORDON:

8 Q Did you --

9 JUDGE SMITH: If the question is she did  
10 use them, then I assume the objection will continue.

11 BY MR. GORDON:

12 Q Did you use those three compactness measures in  
13 your analysis?

14 A So I used those specific compact -- I didn't use  
15 the Rock so much, but the Polsby-Popper and  
16 Schwartzberg I computer mean compactness for the  
17 entire state across all the districts.

18 Q Okay. And I -- and I -- so let me ask you this.  
19 And the foundation, to what extent do you have any  
20 experience using those measures? And to what extent  
21 does your mathematical and engineering skill set  
22 allow you to use those measures reliably?

23 A Okay. So compactness measures are a basic  
24 mathematical concept that I have used in a number of  
25 contexts throughout my education and experience.



1 They are not just specific to GIS context. These are  
2 just mathematical equations that you can apply to any  
3 shape in any context that you're interested in. The  
4 formulas for the Polsby-Popper and the Schwartzberg,  
5 in particular, are actually very easy to compute.  
6 They're -- it's simply, you know, sort of middle  
7 school math basically to do them, and it was also  
8 very easy to write code to apply that math to these  
9 districts.

10 JUDGE SMITH: I'd ask if counsel would wait  
11 for just a moment while the panel consults.

12 (Pause in proceedings.)

13 JUDGE SMITH: Well, it's clear from the  
14 pace of things that we're not even going to come  
15 close to wrapping up even the direct testimony today  
16 of Ms. Hanna given the Court's need to take up a  
17 matter which has been left open since this morning.  
18 So we will, the time now being 4:35, we'll resume the  
19 direct testimony of her tomorrow morning at 9:00 and  
20 she may step down.

21 What the Court would like to turn to at  
22 this time is the outstanding sanctions motion. I'm  
23 going to ask Judge Baylson if he will pursue that  
24 matter with counsel.

25 JUDGE BAYLSON: Okay. Good afternoon. We

1 received this motion this morning. It was apparently  
2 filed sometime last night. And I have -- we received  
3 at the lunch recess two volumes of the deposition  
4 testimony from Senator Scarnati and Speaker Turzai.  
5 It looked like the Turzai deposition took place this  
6 past Tuesday, November 28<sup>th</sup>, and the Scarnati was on  
7 Wednesday, the 29<sup>th</sup>.

8           Turning briefly -- and I have not read it  
9 in entirety by a long shot. But turning to the  
10 brief, the suggestion has been made -- and, Ms.  
11 Ballard, I guess you were at the deposition and might  
12 know the most about this, but the suggestion has been  
13 made -- and I'm looking now at page 142 -- and Ms.  
14 Hanglely was there as well -- that the deposition of  
15 Speaker Turzai had started before you were aware of  
16 our order that was signed that same day where we made  
17 clear our ruling that we were not going to recognize  
18 any legislative privilege or deliberative privilege.  
19 And then when the order was apparently brought into  
20 the -- into the room or there was some discussion  
21 about it there was then some colloquy with Ms.  
22 Gallagher, who was there representing the legislative  
23 defendants and who, as far as I could tell, declined  
24 to agree to any extension of the deposition and also  
25 declined to produce any more documents. Is that the

1 plaintiffs' contention, that that -- that that's what  
2 happened?

3 MS. BALLARD: The documents, Your Honor,  
4 had been very, very recently produced.

5 JUDGE BAYLSON: Right.

6 MS. BALLARD: And we asked to keep the  
7 deposition open until -- I'm not sure whether there  
8 were more documents. We would have liked to ask the  
9 Speaker Turzai exactly what they searched, what we've  
10 gotten. And we wanted to keep the deposition open  
11 until we could actually look at that. And we also  
12 wanted to be able to ask -- there were questions  
13 about the communications they had with their staff  
14 about what they did, and those were the questions  
15 that counsel for Mr. Turzai interposed the continuing  
16 legislative privilege objection to, and I said well,  
17 gee, we just have this order, and I believe she said  
18 they were going to take an appeal.

19 JUDGE BAYLSON: Yes, I read that. She did  
20 say that. Now, is it your -- so if I understand,  
21 your basic complaint you had was -- it's two-fold.  
22 There's, first of all, you don't know if there are  
23 more documents or not, and you attached the privilege  
24 log. Now, I can't -- we need some representations I  
25 think from counsel for the legislative defendants

1 whether there are still documents that are being  
2 withheld on some allegation of privilege or not. Ms.  
3 Gallagher, hi.

4 MS. GALLAGHER: Yeah.

5 JUDGE BAYLSON: Yes, keep your voice up or  
6 speak into the microphone, please.

7 MS. GALLAGHER: Or maybe if I go over here.  
8 Just to address, if I may, a couple of the points  
9 that were raised. We originally had filed, Judge, as  
10 you recall, a motion to protect order --

11 JUDGE BAYLSON: Yes.

12 MS. GALLAGHER: -- as to the deposition  
13 itself, all right?

14 JUDGE BAYLSON: Right.

15 MS. GALLAGHER: You entered that order, at  
16 some point denying it, on November 22<sup>nd</sup> --

17 JUDGE BAYLSON: Right.

18 MS. GALLAGHER: -- the day before  
19 Thanksgiving.

20 JUDGE BAYLSON: Right.

21 MS. GALLAGHER: I immediately reached out  
22 to Ms. Ballard when that order came to attempt to  
23 schedule the deposition, all right? The privilege  
24 log, the joint privilege log, pursuant to Judge  
25 Shwartz's order, was not due on the documents until

1 November 24<sup>th</sup>, the day after Thanksgiving, all right?  
2 When I spoke with Ms. Ballard about the Speaker's  
3 deposition -- and it was -- if you recall, at that  
4 time it also came out, the order, about deposing all  
5 of the plaintiffs, all right? So we were juggling a  
6 lot of schedules.

7           We had originally tried for Monday, the  
8 first day that, you know, he was originally there.  
9 That didn't work. We went for Tuesday. We were  
10 going to be in the afternoon. It ended up in the  
11 morning, all right? We agreed in advance, because I  
12 called Mr. Gordon who was with Ms. Ballard in  
13 deposition, agreed in advance that how long would it  
14 be -- he had -- because he had said he thought it  
15 would be four to five hours. And I said are we okay  
16 with 9:00 to 1:15-1:30 so he can get his flight back?  
17 There was an agreement yes, all right? And at that  
18 time Mr. Gordon said we don't have your -- Judge  
19 Shwartz's order yet on the documents. And at that  
20 time we discussed look, if you want to reschedule the  
21 deposition until that order comes in, okay, we are a  
22 week from trial, we're all very busy, I didn't want  
23 to risk doing the deposition twice.

24           During the course of the deposition there  
25 was approximately -- and we just filed a response,

1 Your Honor. I don't know if the Court has seen that  
2 yet.

3 JUDGE BAYLSON: No, I have not.

4 MS. GALLAGHER: All right. This was filed  
5 at 10:45 last night. We had just gotten in. We just  
6 filed our response to the motion. We appeared for  
7 deposition on the 9<sup>th</sup>. Your order did not come --

8 JUDGE BAYLSON: On the 29<sup>th</sup>?

9 MS. GALLAGHER: On the --

10 JUDGE BAYLSON: The 28<sup>th</sup>.

11 MS. GALLAGHER: On the 28<sup>th</sup> at 9:00 a.m.

12 JUDGE BAYLSON: Yes, I see that.

13 MS. GALLAGHER: All right? We began. Your  
14 order did not come in until there was about 40  
15 minutes left in the deposition, okay? With respect  
16 to the assertion of the privilege, we detailed that  
17 in our objection. As I stand here today, the way I  
18 read the one line in your order -- now, this was not  
19 as to documents. This was only the order as to  
20 testimony, all right? I read that order to mean that  
21 he could talk about anything other than discussions  
22 with other legislators or his staff. That's how I  
23 read the order. And I made that objection. And we  
24 outline in our response that's my -- why I believe  
25 that's what it is.

1 JUDGE BAYLSON: Well --

2 MS. GALLAGHER: Ms. Ballard said she would  
3 go to the Court. Okay, go -- Your Honor, I can't  
4 control what counsel does. And we were more than  
5 willing to go to the Court. When your order came in  
6 then about the documents that was the order to  
7 produce the documents. I could not produce documents  
8 sitting in Philadelphia, all right?

9 JUDGE BAYLSON: All right. Well, then the  
10 question is then there are still documents on your  
11 privilege log that you have not yet produced to the  
12 plaintiff.

13 MS. GALLAGHER: Okay. And I will address  
14 that?

15 JUDGE BAYLSON: Is that correct?

16 MS. GALLAGHER: Only -- the only thing we  
17 have not produced are documents subject to the  
18 attorney-client privilege, all right, and blank  
19 pages. There are --

20 JUDGE BAYLSON: And what else?

21 MS. GALLAGHER: Blank pages. The way that  
22 the Speaker's calendar runs it could be several  
23 pages, so they ask for calendars. In an interest of  
24 time, we've produced the calendar entry, but not the  
25 blank pages behind it, which we had left in -- and I

1 had mentioned that to Ms. Ballard when I called her  
2 because we were having a problem with relativity that  
3 day to get them out. We have not withheld anything.

4 The first series of documents which  
5 plaintiffs reference are withheld are PDF files where  
6 let's say they say that it -- they ref -- the numbers  
7 are 226 to 227. Well, they don't open up the PDF  
8 file to see that the entire document is there. So we  
9 have not withheld anything, Judge, other than  
10 attorney-client privilege documents subject -- which  
11 we believe subject to the privilege, which was not  
12 overruled by your order.

13 JUDGE BAYLSON: Okay. But -- okay. Well,  
14 on the question -- well, Ms. Ballard, let me turn to  
15 you. What -- are there still questions that you had  
16 asked that Speaker Turzai refused to answer that you  
17 think were improper instructions?

18 MS. BALLARD: Yes, Your Honor, it was the  
19 questions about what -- it was Speaker Turzai and I  
20 believe Senator Scarnati. What communications did  
21 they have with their staff? Because it's the staff  
22 that did the maps.

23 JUDGE BAYLSON: All right. Well, Ms.  
24 Gallagher, I did see some instructions not to answer  
25 those questions.



1 MS. GALLAGHER: As to Mr. -- but Mr.  
2 Schaller is going to be testifying here, Your Honor,  
3 on Thurs -- on whatever day. He's a witness. That's  
4 the staff member at question.

5 JUDGE BAYLSON: Yes, but the idea is that  
6 they would take the deposition so they would be in a  
7 better position to cross-examine him.

8 MS. GALLAGHER: And it was a good faith  
9 objection based upon my reading of the order.

10 JUDGE BAYLSON: All right, I'm not  
11 questioning your good faith at the moment. What  
12 about documents, Ms. Ballard? Are you -- do you  
13 agree that the only documents that are still not  
14 produced are on the attorney-client privilege log?

15 MS. BALLARD: I'm really not certain, Your  
16 Honor. One of the things that I -- that we would  
17 pursue I think, should pursue, is what was the search  
18 that they did for these documents? Because there's  
19 also the Republican caucus.

20 MR. GORDON: May I address the issue?

21 MS. BALLARD: Sure. Mr. Gordon is probably  
22 more qualified --

23 JUDGE BAYLSON: Wait, one at a time.

24 MS. BALLARD: -- to address the issue of  
25 documents, if you don't mind, Your Honor.

1 MR. GORDON: May I, Your Honor?

2 JUDGE BAYLSON: Yes, sir. Mr. Gordon?

3 MR. GORDON: Yes. So on the issue of  
4 documents, there were -- there were a significant  
5 number of documents in which -- in which we had one  
6 line that said that it pertained to, for example, an  
7 agenda on the 2011 map and covered what was -- what  
8 appeared to be a conference amongst Republican  
9 legislators. And the entire agenda was blacked out.  
10 There were -- there were -- right, there were --  
11 there were also calendar entries. I can understand  
12 calendar entries being blacked out, but this is, of  
13 course, a public official. But there were also  
14 notes --

15 (Pause in proceedings.)

16 MR. GORDON: But the most important thing  
17 is there were -- there were meetings that were held  
18 about the 2011 map and it was clear that the contents  
19 of the map and what it achieved had been discussed in  
20 seriatim and it was all black. It was all blacked  
21 out.

22 JUDGE BAYLSON: You mean it was redacted?

23 MR. GORDON: Redacted, yes.

24 JUDGE BAYLSON: Well, is that because of  
25 attorney-client privilege or something else?

1 MS. GALLAGHER: It may have been, Your  
2 Honor -- and I don't know to which -- exactly which  
3 document --

4 JUDGE BAYLSON: How --

5 MS. GALLAGHER: Now, if it was privileged,  
6 it was not produced.

7 JUDGE BAYLSON: How voluminous are the  
8 documents withheld for attorney-client privilege?

9 MS. GALLAGHER: Off the top of my head,  
10 Your Honor, I don't know. We can pull them up. We  
11 had kept them in form because we anticipated a  
12 request for an in-camera review. You know, we  
13 thought the Court might request --

14 JUDGE BAYLSON: Well, that's what I'm  
15 asking about.

16 MS. GALLAGHER: Yeah, that we had thought  
17 would have -- I'm sorry.

18 MR. GORDON: Your Honor, may I be heard?

19 JUDGE BAYLSON: Yes, just one second.

20 MR. GORDON: Your Honor, if we could just  
21 take a moment before we drift from this?

22 MS. BALLARD: Your Honor, if I --

23 MR. GORDON: The -- it's in the exhibit  
24 set. I just have to turn our attention to it, the  
25 ones that are blacked out. In fact, it's Exhibit 1 I

1 believe.

2 (Pause in proceedings.)

3 JUDGE BAYLSON: Well, give us a chance to  
4 confer here for one second.

5 (Pause in proceedings.)

6 JUDGE BAYLSON: Well, Ms. Ballard, do you  
7 challenge --

8 MS. BALLARD: We can bring samples down,  
9 Your Honor.

10 JUDGE BAYLSON: Do you challenge the  
11 assertion of attorney-client privilege?

12 MS. BALLARD: It's our understanding --  
13 Virginia Hardwick did this motion for us last night  
14 and we have a note from her that says the privilege  
15 log -- the items that -- where the attorney-client  
16 privilege is asserted, there's no attorney's name  
17 included.

18 MS. HARDWICK: So, Your Honors, on the --  
19 on this --

20 JUDGE BAYLSON: This is Ms. Hardwick.

21 MS. BALLARD: Yes.

22 MS. HARDWICK: This is. I'm sorry, Your  
23 Honor.

24 JUDGE BAYLSON: Come up to the microphone,  
25 please.

1 MS. HARDWICK: On the --

2 JUDGE BAYLSON: She -- enter your  
3 appearance, yes.

4 MS. HARDWICK: This is Virginia Hardwick  
5 for the plaintiffs. The items that are challenged in  
6 this motion in the chart that we attached as an  
7 exhibit, some of them indicate that attorney-client  
8 privilege was asserted as well as legislative  
9 privilege, and we only in that chart included  
10 documents in which on the -- on Speaker Turzai's  
11 privilege log, there was no indication of any  
12 attorney having been to, from, or CC-ed on the  
13 document. Some of them had no to or from at all.  
14 They said a description such as "notes." And there  
15 was a work product privilege asserted, but it's hard  
16 for me to imagine that in 2011, there was  
17 (indiscernible) of litigation. So that's another  
18 issue. So it seems to me that an in-camera review  
19 may be appropriate.

20 MS. GALLAGHER: There were 14 documents  
21 withheld on privilege. And may I just address the  
22 Court on the matter?

23 JUDGE BAYLSON: Sure.

24 MS. GALLAGHER: You know, Judge, we have  
25 tried to -- Judge Smith's --

1 JUDGE BAYLSON: We understand everybody has  
2 been --

3 MS. GALLAGHER: No, if I just may, Your  
4 Honor?

5 JUDGE BAYLSON: -- working hard.

6 MS. GALLAGHER: Please, just briefly.

7 9:00 --

8 JUDGE SMITH: Please don't interrupt Judge  
9 Baylson.

10 MS. GALLAGHER: Oh, I didn't mean to.

11 JUDGE BAYLSON: It doesn't --

12 MS. GALLAGHER: I cannot hear very well.

13 JUDGE BAYLSON: We don't -- we understand  
14 everybody has been working very hard, okay? But we  
15 want to get to the facts.

16 MS. GALLAGHER: I under -- and some of  
17 these, Judge, if we would have just been asked, okay,  
18 if when the documents were up like the ones on the  
19 PDF file where you have to open them, all right, we  
20 could have just said, as we did with the GIS, all  
21 right, there was a comment made that we gave -- I  
22 don't want to misstate -- gargled or whatever and  
23 by -- but make a phone call and ask us, and we could  
24 have addressed the issue with respect to all of those  
25 PDF files.

1           JUDGE BAYLSON: Okay. All right. Well,  
2 just a minute. One second. When do you -- when do  
3 the plaintiffs intend to call the two staff members,  
4 Mr. Schaller and who is the other one?

5           MS. BALLARD: Arneson, Your Honor.  
6 Arneson. Well, I think they would be very near the  
7 end of our case. We would like to wait for a ruling  
8 on the motion for sanctions, which might solve our  
9 problem. If we get a ruling that, you know, they're  
10 foreclosed from defending on the ground of intent,  
11 which, actually, we think their summary judgment  
12 motion sort of concedes that they did have intent, at  
13 least partially, to gerrymander because it's their  
14 view that there's nothing unlawful about doing that.  
15 So we would really appreciate it if the Court could  
16 give us a ruling on this. However, we still don't  
17 feel that what the staffers say is the same, is a  
18 legitimate substitute --

19           JUDGE BAYLSON: Well, but wait a minute.

20           MS. BALLARD: -- for what the legislators  
21 say.

22           JUDGE BAYLSON: Before we get to -- what  
23 I'm asking is we -- if there's a way to cure the  
24 prejudice that you've alleged. And one way might be  
25 that you get to depose the two staff members this

1 evening in person or by telephone or you do it  
2 tomorrow, but, you know, your time is up sometime  
3 tomorrow. So if you want to call them, they probably  
4 need to be here tomorrow.

5 JUDGE SMITH: Your time is up sometime  
6 tomorrow unless what you're willing to do is  
7 sacrifice cross-examination during the -- during the  
8 defendant's case.

9 JUDGE BAYLSON: Now, but -- you know, so I  
10 think what we're talking about is you're deposing the  
11 two staff members this evening. If they're in  
12 Philadelphia, it ought to be in person, if not, it  
13 ought to be by telephone. And then we would require  
14 you to meet and confer right here in the courtroom  
15 after we adjourn about the privilege issues. There's  
16 obviously some more communication that's needed, and  
17 that we would want to have a set of any redacted or  
18 continued to withhold documents here in the courtroom  
19 at 9:00 tomorrow morning, and we'll review them as  
20 quickly as we can maybe over the lunch hour tomorrow,  
21 something like that if that's agreeable. That's --  
22 so we're not going to grant sanctions right now. We  
23 would like to move ahead with your getting the  
24 depositions you're entitled to. How long do you  
25 think would be fair for each of those two staff



1 members? An hour will be enough?

2 MS. BALLARD: I really don't know, Your  
3 Honor. It's a very complicated process they went  
4 through and --

5 JUDGE BAYLSON: Well, would you rather do  
6 it tomorrow morning? You've got a lot of lawyers  
7 here. While we have court maybe somebody could  
8 depose them.

9 MS. BALLARD: That -- one tonight and one  
10 tomorrow perhaps, Your Honor.

11 JUDGE BAYLSON: That's all right with --  
12 that's all right. Mr. Paszamant, yes?

13 MS. BALLARD: Mr. Schaller is here.

14 MR. PASZAMANT: May I be heard, Your Honor?

15 JUDGE BAYLSON: Yes.

16 MR. PASZAMANT: So there was a lot of  
17 discussion about Speaker Turzai and it almost seems  
18 as if Senator Scarnati is an afterthought. In case  
19 and point, just to clean a couple things up, Senator  
20 Scarnati's privilege log was a grand total of like  
21 five entries or six entries or something like that.  
22 There is --

23 JUDGE BAYLSON: Right. Speaker Turzai is a  
24 more key person here.

25 MR. PASZAMANT: No doubt about it, Your

1 Honor. The fact of the matter is there's not a  
2 single document that Senator Scarnati has withheld  
3 that isn't attorney-client privilege and or work  
4 product, just to dispel --

5 JUDGE BAYLSON: Okay. Well, you're going  
6 to show -- you'll have those available for us to look  
7 at.

8 MR. PASZAMANT: I will have the documents  
9 we withheld. That's fine, absolutely fine, Your  
10 Honor.

11 JUDGE BAYLSON: Okay.

12 MR. PASZAMANT: In terms of Eric Arneson,  
13 who is the Senate staffer that we're hearing about,  
14 my understanding is he's been subpoenaed for tomorrow  
15 morning here, 9:00. I will endeavor to make him  
16 available this evening for deposition. He's located  
17 somewhere outside of Harrisburg. I don't know  
18 exactly where he lives. So it sounds like maybe a  
19 telephone deposition is the right way to play that.  
20 Tomorrow morning, he was planning on being in  
21 Philadelphia because he's been served with a  
22 subpoena.

23 JUDGE BAYLSON: Right.

24 MR. PASZAMANT: We are handling -- I've  
25 conducted the deposition of Representative Vitali

1 while I stepped out of the courtroom. I apologize  
2 for having had to do that, but I did. I think we  
3 have an agreement that we will be able to use his  
4 transcript for purposes of this proceeding, as  
5 opposed to calling him live now. Tomorrow morning at  
6 8:00, we have the deposition of Senator Leach, 9:00,  
7 Senator Dinniman, so we're moving right along and  
8 maybe we can -- we can reach a similar accommodation  
9 in terms of being able to simply allow the plaintiffs  
10 to do their direct during those depositions, and then  
11 we can submit them as part of designations and so on.

12           It's a long way of coming around to saying  
13 that I would be happy to present Eric Arneson  
14 tomorrow morning for a deposition and do whatever  
15 rehabilitation or direct examination I would  
16 otherwise have planned to do with him in front of the  
17 Court. While you folks are proceeding forward I will  
18 do that back at Blank Rome and we will staff it. We  
19 have plenty of lawyers to do it.

20           MS. GALLAGHER: And, Your Honor, we had --  
21 we accepted a subpoena for Mr. Schaller for trial, so  
22 I get an off -- he was never requested to depose him.

23           JUDGE BAYLSON: Well, we've been through  
24 that already.

25           MS. GALLAGHER: Yeah. I mean he's going to

1 be here tomorrow afternoon is my understanding.

2 JUDGE BAYLSON: He needs to be deposed  
3 before he testifies, so you have to work out when  
4 that's going to happen. Mr. Aronchick?

5 MR. ARONCHICK: Solely in the interest that  
6 I understand what's going on and in transparency,  
7 that is all my principle (indiscernible). I heard  
8 some byplay and I can't be sure and I want to see if  
9 we're going to obviate another problem tomorrow, that  
10 in terms of the production that Scarnati and Turzai  
11 made, their productions were limited to what they had  
12 in their office files, not the Republican caucus  
13 which listened to the -- you know, devised a map --  
14 that's what I heard them say -- not the redistricting  
15 (indiscernible) that Mr. Arneson was part of that  
16 worked on this for a while. That's what I think  
17 they're saying because I don't think they've produced  
18 any Arneson or Schaller documents, not Mr.  
19 McIlhinney, who you're -- this Court said should be  
20 available for deposition. The plaintiffs didn't take  
21 his deposition. I'm not sure if McIlhinney documents  
22 were searched or looked at. I just can't be clear  
23 what field of documents we're talking about here and  
24 what was --

25 JUDGE BAYLSON: Well, you're right. We

1 don't --

2 MR. ARONCHICK: -- and what was put on --

3 JUDGE BAYLSON: We don't know either. So  
4 we have to --

5 MR. ARONCHICK: Yeah.

6 JUDGE BAYLSON: -- rely on counsel to some  
7 extent, but the opposing parties are entitled to  
8 depose Schaller and Arneson because they -- there  
9 may, in fact, be more documents that Senator Turzai  
10 did not have in his possession and did not produce.  
11 And this is an important issue in our view.

12 MS. GALLAGHER: And, Your Honor, if I --

13 JUDGE BAYLSON: So look, I think we are of  
14 a mind to adjourn at this point and that Schaller and  
15 Arneson have to be deposed before they testify. The  
16 plaintiffs have that right. I would say at least an  
17 hour, but it could go to an hour and a half if you  
18 feel the need. And if they have documents that have  
19 not yet been produced, they need to be produced. And  
20 the privilege log you will work through and tomorrow  
21 morning, you will give us -- we have one set of  
22 documents that have been withheld either for  
23 privilege, work product, in the entirety, or redacted  
24 for any reason, okay?

25 JUDGE SMITH: Are there any questions as to

1 how we proceed, the lines having been --

2 MS. GALLAGHER: I do have -- I just have  
3 one question before we go into the deposition in  
4 light of counsel's question. So as to I think the  
5 statement about the documents from the caucus,  
6 Speaker Turzai produced documents in accordance with  
7 the request for production that was directed by  
8 counsel for plaintiffs, and the definition of "you"  
9 in that request for production, which was only you,  
10 meaning the Speaker, okay? That's the only party to  
11 whom a request for production was directed, that is  
12 the only party from whom documents were produced.

13 So to the extent when counsel has raised  
14 whether anything was produced from the caucus, our  
15 request was made in -- our production was in response  
16 to the specific request and the definition of "you"  
17 in that request.

18 JUDGE BAYLSON: Well, that is an important  
19 statement. You know, it's my view -- and I don't  
20 have great expertise about the Pennsylvania  
21 legislature, but it's my view that the Speaker of the  
22 House has control over the majority party, the staff,  
23 the caucus, the committees, and things like that, and  
24 I'm -- my reaction on -- and I appreciate your  
25 representation, Ms. Gallagher, but my reaction is

1 that Speaker Turzai has not made a full production  
2 because he has more documents in his control. They  
3 may not be in his possession, but they're clearly  
4 under his control. He -- the Speaker of the House  
5 runs the majority party of the House. That's my --

6 MS. GALLAGHER: But that --

7 JUDGE BAYLSON: -- understanding of how the  
8 government works.

9 MS. GALLAGHER: Okay.

10 JUDGE BAYLSON: Mr. Aronchick, do you have  
11 any views on that?

12 MR. ARONCHICK: I don't know how the  
13 Republican caucus works, but --

14 JUDGE BAYLSON: All right. Well, then --

15 MR. ARONCHICK: -- that's my understanding.

16 JUDGE BAYLSON: -- I'll withdraw the  
17 question.

18 MS. GALLAGHER: Judge Baylson, my  
19 understanding is it's the majority leader who runs --  
20 for each of the houses runs the majority party for  
21 the House, so that would be --

22 JUDGE BAYLSON: Well, Ms. Gallagher, I  
23 think this is a topic to explore with Schaller and  
24 Arneson about what documents they have, who they  
25 report to, and things like that. But I think it was

1 our intention that the documents that are relevant to  
2 this case shall be produced, and there's no  
3 recognition of legislative privilege or deliberative  
4 privilege, and that order of production applies to  
5 people under the command of the Speaker and the  
6 Senator Pro Temp. Okay. I think you ought to  
7 consult with each other and your clients, and we can  
8 hear more about this tomorrow.

9 JUDGE SMITH: Tomorrow, when we begin the  
10 Court will inform both sides how much time they have  
11 used up today so that they know how much time  
12 remains. We'll compute that between now and then.  
13 Again, it's up to each side, it's up to the plaintiff  
14 tomorrow, as to how to proceed with each witness, but  
15 I would suggest that we need to make better progress  
16 with Ms. Hanna tomorrow than what was the case with  
17 respect to the earlier expert or time will run out.

18 MR. TORCHINSKY: Excuse me, Your Honor.  
19 One more request for the Court. In the order the  
20 week before Thanksgiving saying that the Court would  
21 establish the elements prior to trial, is it still  
22 the Court's intention to tell us what the elements of  
23 this claim are? I mean we have your order from  
24 Friday saying the elements brief Thursday was not  
25 sufficiently concise and specific, and we have their



1 additional one and a half pager filed last night and,  
2 Your Honor, we still don't know what the elements of  
3 the claim we're trying at this trial are. Is the  
4 court intending to clarify that for us?

5 JUDGE SMITH: The Court, quite clearly,  
6 asked plaintiffs to clarify that and I think they  
7 made very patent some of the questions we had as to  
8 the position or positions, plural, plaintiff had  
9 taken up until our receipt of their submissions  
10 setting forth elements. As I'm sure everyone is  
11 aware, we've pretty much spent our time in the  
12 courtroom since receipt of those elements and there  
13 has not exactly been time for deliberative process,  
14 nor has there been time to hear argument from any of  
15 you. It would seem to me that at this point, while  
16 this is not the traditional way in which litigation  
17 works, but then this is a case wherein we have not  
18 had until you filed something I think it was Friday,  
19 that is a summary judgment motion, we've not had an  
20 opportunity to deal with this legal issues on a  
21 dispositive motion, as would be the ordinary course,  
22 or we had some time to consider in a deliberative  
23 process, in a deliberative way. And we all know the  
24 uniqueness of this particular, it being on the  
25 Election Clause.

1           So this panel is going to have to do some  
2 thinking and some discussion and some work between  
3 now and when we are ultimately able to determine just  
4 what the elements of such a claim are or even if it  
5 is just issue. So no, I'm sorry, the answer is --  
6 that was a long no. We can't give you an answer or  
7 even clarification right now, but we'll do our utmost  
8 to do so. It seems to me that the effect of our  
9 order of late last week was essentially to put the  
10 onus on plaintiffs to give us a constitutional theory  
11 upon which they would proceed at their own risk based  
12 upon the evidence put forward and what we determine  
13 the elements ought to be of a claim on the Elections  
14 Clause.

15           MR. TORCHINSKY: Thank you, Your Honor.

16           JUDGE SMITH: I wish I could be more  
17 definitive, but we've all been subject to time  
18 constraints and there's some moving targets. With  
19 that said, we'll see you all timely at 9:00 tomorrow  
20 morning.

21           (Proceedings adjourned, 5:04 p.m.)

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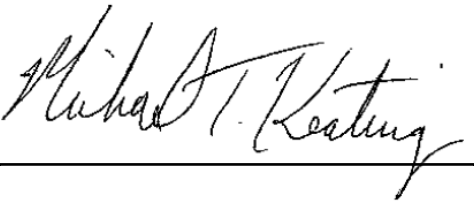
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CERTIFICATION

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.

12/5/17

Date



Michael Keating