

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

LOUIS AGRE, et al,) 17-CV-04392 (MMB)
)
Plaintiffs,)
vs.) A.M Session
)
THOMAS W. WOLF, et al,) Philadelphia, PA
) December 6, 2017
Defendants.) 9:01 a.m.

TRANSCRIPT OF TRIAL DAY 3
BEFORE THE HONORABLE D. BROOKS SMITH, CHIEF JUDGE
THE HONORABLE MICHAEL M. BAYLSON
THE HONORABLE PATTY SHWARTZ
UNITED STATES JUDGES

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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For the Plaintiff

Andrew E. Dinniman	17(Geo)	45(Pas)		
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John Gallagher	79(B.Gor)	88(Gal)		
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Connie Diakatos	91(B.Gor)	95(Gal)		
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For the Defense

Voir Dire

James Gimpel	100(P.Gor)	105(Per)		
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Deposition testimony read into the record:

Eric Arneson	125(Per)			
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Reference: Designations and counter designations	6
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1 (The following was heard in open court at 9:01 a.m.)

2 JUDGE SMITH: Please be seated. I believe it's 9:01.
3 We're reconvening on Wednesday and I would ask plaintiff's
4 counsel at this time how they propose that we proceed for
5 purposes of hearing what we understood by the end of yesterday
6 would be the remainder of plaintiff's case.

7 MR. A. GORDON: Your Honors, may it please the Court,
8 we expect to have as our first witness Senator Andrew Dinniman
9 from Chester County. Our second witness is anticipated to be
10 John Gallagher, a plaintiff from the 1st Congressional District
11 -- Democrat from the 1st.

12 Our third witness is anticipated to be Ani Diakatos
13 -- D-I-A-K-A-T-O-S, and she is a Republican from the 1st
14 Congressional District, and our --

15 JUDGE SMITH: Will you repeat that name, please?

16 MR. A. GORDON: Sure. Ani -- A-N-I, Diakatos, D-I-A-
17 K-A-T-O-S.

18 JUDGE SMITH: Got it. Thank you.

19 MR. A. GORDON: And our third witness will be --

20 JUDGE SMITH: It will be the fourth witness, right?

21 MR. A. GORDON: Or fourth witness, will be Joseph
22 Zebrowitz, and Mr. Zebrowitz has a movable presentation. He's
23 anticipated to be here at 11:30 and I would ask as we
24 accommodated opposing side, if we finish up early, that perhaps
25 we -- if it's possible, that we could take a witness out of

1 order.

2 JUDGE SMITH: Certainly. And just four counsels'
3 information, we will be recessing for midday at 12:20. The
4 Judges have an event to attend at 12:30, but I would expect
5 that we would be reconvening no later than 1:30.

6 MR. A. GORDON: Thank you, Your Honor.

7 MS. BALLARD: Your Honors, so in addition to the --
8 these additional four live witnesses, we've been working hard
9 with the defendants to -- defendants' counsel to agree on
10 designations for the remaining witnesses, designations and
11 counter designations. We've agreed on a rolling production.

12 We should be able to produce five or six of them
13 tonight, we have a few more and the defendants have graciously
14 agreed to ask the Court jointly for permission to get the rest
15 of the plaintiff's designations into the defendants by midnight
16 on Friday night and if there are counter designations, they
17 will get them to us on Monday.

18 Then there are the four depositions that were taken
19 yesterday, the two guys who worked on the maps and two
20 legislators, and when we get the transcripts to those -- I
21 think none of us has -- yes, two legislators, two staffers.

22 None of us has the transcripts for those but as soon
23 as we get them, we'll be making our effort to do designations
24 and counter designations on them, and we hope to be able to get
25 all of the designations of all of the designations and counter

1 designations of all of the remaining witnesses who won't be
2 testifying to the Court early next week, if we can have the
3 Court's permission to do so.

4 JUDGE SMITH: Well --

5 MS. MCGEE: Your Honor --

6 JUDGE SMITH: -- obviously we're going to have to
7 keep the record open for both sides in this case and we all
8 understand the logistical problems that have been attended to
9 this matter. I regret that we won't be able to hear the
10 designations from the two legislative employees or legislative
11 officials.

12 It was the Panel's hope that we could have those
13 designations read into the record in open court because we
14 simply felt that that would facilitate our understanding as
15 well as the openness of the proceeding, but we'll have to deal
16 with things as they develop.

17 MS. BALLARD: We had --

18 MS. MCGEE: Your Honor --

19 MS. BALLARD: -- hoped we could but we don't have the
20 transcripts yet so --

21 JUDGE SMITH: Okay, thank you.

22 MS. MCGEE: Your Honor, if the legislative defendants
23 may be heard, good morning, my name is Carolyn McGee. I'm one
24 of the attorneys of record for Speaker Turzai. We had a meet
25 and confer conference last evening with Ms. Ballard and other

1 attorneys for the plaintiffs.

2 As the Court is aware, the deadline for deposition
3 designations was last Thursday at 3:00. The deadline for
4 objections to those designations was yesterday at 5:00. We
5 designated several portions of transcripts of the plaintiffs
6 last Thursday and as of yesterday at 5:00 we received no
7 objections.

8 And in our call with Ms. Ballard last night with my
9 colleague Mike Silberfarb from Blank Rome, there was a
10 discussion that plaintiffs did not have the transcripts so they
11 were not able to do their designations, and that they requested
12 to have or they were going to ask the Court to have until
13 Friday at midnight to do their designations.

14 And we are trying to be reasonable and work with them
15 on this. We proposed in the alternative to Ms. Ballard in an
16 email last night which we did not get a response to, that they
17 get us all of their designations by 11:00 on Thursday night to
18 give us time to counter-designate and state objections by the
19 end of the day Monday, and then we would have a meet and confer
20 on Tuesday on those objections and counter designations.

21 As the Court is aware, we are not only in trial here
22 today, but we're also gearing up for a trial next week in
23 Harrisburg and potentially a third trial in this Court, so
24 given all of that, we would just ask that they get us their
25 designations by the end of the day Thursday.

1 (Pause - Judges conferring)

2 MS. MCGEE: Your Honor --

3 JUDGE SMITH: Excuse me a moment.

4 (Pause - Judges conferring)

5 JUDGE SHWARTZ: Yes, I had a question about the
6 status of the deposition transcripts. One was provoked by a
7 comment by counsel and the other -- and we'll hear you in half
8 a sec -- did you order the deposition transcripts from the
9 depositions that were taken of the two staffers on an expedited
10 basis?

11 MS. BALLARD: Yes, we did, Your Honor.

12 JUDGE SHWARTZ: And --

13 MS. BALLARD: That was yesterday.

14 JUDGE SHWARTZ: I understand that but like did you
15 order it on a daily because we did have a schedule and we were
16 curious as to if you were not going to proceed with them live,
17 that we would expect that you would have introduced them during
18 your case in chief and so we're curious as to the status of the
19 depositions. Have you spoken to the reporter? When do you
20 expect to get those transcripts?

21 MS. BALLARD: We haven't spoken to them this morning.

22 Have you? I don't think you have them yet either.

23 Am I right?

24 MR. PASZAMANT: Your Honor, I believe I can speak to
25 that, at least for purposes of Mr. Arneson (phonetic). I was

1 involved in his deposition. My understanding is that we're
2 going to have that transcript this morning. We did in fact for
3 the legislative defendants anyway ask for it to be produced on
4 an expedited basis and were told that it was not possible to do
5 it last night so this morning is what we understand will be
6 delivery --

7 JUDGE BAYLSON: How about Shaller (phonetic)?

8 MS. HANGLEY: Actually --

9 JUDGE BAYLSON: Shaller?

10 MS. HANGLEY: Arneson came in about a half an hour
11 ago --

12 MR. PASZAMANT: Oh.

13 MS. HANGLEY: -- so we do have that electronically.

14 MR. PASZAMANT: I don't have my phone. I'm sorry.

15 JUDGE SHWARTZ: Okay.

16 JUDGE BAYLSON: Well, what about the Shaller
17 transcript?

18 MS. BALLARD: We ordered it expedited, Your Honor,
19 and the reporter said today --

20 JUDGE BAYLSON: Well that --

21 MS. BALLARD: -- that was the best she could do.

22 JUDGE BAYLSON: Well, are you going to get it today?

23 MS. BALLARD: I hope we can get -- I hope we will get
24 it today and we'll call --

25 JUDGE BAYLSON: Well, somebody ought to find out.

1 MS. BALLARD: I'm sorry? Call to find out?

2 JUDGE BAYLSON: Somebody should find out. I think
3 you need to have that today --

4 MS. BALLARD: Okay.

5 JUDGE BAYLSON: -- and we -- is there any chance that
6 they can appear in person?

7 MS. BALLARD: We don't plan to call them in person,
8 Your Honor --

9 JUDGE SMITH: All right, that's their --

10 MS. BALLARD: -- either of them.

11 JUDGE BAYLSON: Well --

12 JUDGE SHWARTZ: That's their call.

13 MR. PERSOON: Judge, I'll go call and inquire as to
14 the status of the Shaller deposition. Would you like me to
15 report back immediately or at the next break?

16 JUDGE SMITH: Immediately would be preferable, thank
17 you.

18 MR. PERSOON: I'll step out and make a call, Your
19 Honor.

20 JUDGE SMITH: This is not the way the Panel
21 anticipated we would be proceeding this morning.

22 JUDGE SHWARTZ: If I could just follow up on the
23 status of the --

24 JUDGE SMITH: Please.

25 JUDGE SHWARTZ: -- plaintiff's deposition. Counsel,

1 I'm sorry, is your last name Gallagher?

2 MS. MCGEE: No.

3 JUDGE SHWARTZ: No, sorry. I'm confusing you --

4 JUDGE SMITH: That's Ms. Gallagher.

5 MS. MCGEE: I'm Carolyn McGee, Your Honor.

6 JUDGE SHWARTZ: Okay. I know a Carolyn Gallagher, I
7 think that's why I put you together so forgive me. You had
8 said that you have the plaintiff's depositions and have done
9 the designations?

10 MS. MCGEE: Correct.

11 JUDGE SHWARTZ: And that's the ones that you expect
12 to be offered through read-in?

13 MS. MCGEE: It was our agreement with counsel as of
14 last night that the only designations of plaintiffs that would
15 be offered would be for those plaintiffs that have not or will
16 not testify live --

17 JUDGE SHWARTZ: Okay. And --

18 MS. MCGEE: -- so that's about 14 -- 14 transcripts
19 if I'm correct.

20 JUDGE SHWARTZ: And you've had them since last week
21 or early --

22 MS. MCGEE: All of the ones that were conducted after
23 Thanksgiving and into last week we do have. I believe we do
24 have all the transcripts for all the plaintiffs.

25 JUDGE SHWARTZ: Thank you. So if I could just

1 inquire of plaintiff's counsel, then what's the delay in being
2 able to do a designation until next week if your adversaries
3 have them? Do you not have copies?

4 MS. BALLARD: There are I think three that we're
5 looking for copies for, Your Honor. It had been our intention
6 to put them in toto, and then we got the counter designations
7 and so we're now agreeing to, you know, truncate them, go way
8 down so they're much shorter and we worked on quite a few of
9 them last night and we agreed to a rolling production and I
10 think we're going to be able to produce five or six this
11 afternoon.

12 I don't think we're going to have any counter
13 designations, but our initial -- you know, our initial
14 production we had said we were going to do the whole
15 depositions because we anticipated that the defendants were
16 going to counter with -- you know, were going to counter-
17 designate if we didn't do that --

18 JUDGE BAYLSON: All right, well --

19 MS. BALLARD: -- but their counter designations have
20 ended up being very short so ours are going to be very short.

21 JUDGE BAYLSON: Well, the procedural order we entered
22 I think made it very clear that we expect the factual record to
23 be closed as of tomorrow afternoon and I echo what Chief Judge
24 Smith said that, you know, this idea of extending the factual
25 record into next week is not what we had contemplated.

1 Now, I think it's fair to say that the plaintiffs are
2 in a slightly different situation than the depositions of
3 Shaller and Arsino?

4 MR. PASZAMANT: It's Arneson, sir.

5 JUDGE BAYLSON: Arneson, excuse me. And those two
6 we'll find out very shortly from your colleague who went
7 outside -- I think need to be made part of this record
8 hopefully today, but at the latest tomorrow morning, and we can
9 -- what I would suggest is that we urge you at the lunch recess
10 to reconfigure your schedule so that you can finish the
11 designations. Are there any other witnesses other than --
12 there are two senators, is that correct?

13 MS. BALLARD: Yes, Your Honor.

14 JUDGE BAYLSON: Do you have those transcripts?

15 MS. BALLARD: There's one we'll be calling today in
16 person -- yes, we have -- we have two legislative witnesses,
17 one senator and one representative. The senator -- or the
18 representative was done yesterday.

19 You can handle this, right?

20 MR. A. GORDON: There are two -- there are three
21 legislative witnesses we have. We have two senators and one
22 representative.

23 JUDGE BAYLSON: To appear live today?

24 MR. A. GORDON: Today there will be one appearing
25 live and one only and that is Senator Dinniman, who is right

1 here in the courtroom.

2 JUDGE BAYLSON: Right.

3 MR. A. GORDON: Two of the representatives, we
4 intended to put their testimony in --

5 JUDGE BAYLSON: All right --

6 MR. A. GORDON: -- through a transcript.

7 JUDGE BAYLSON: -- do you have the transcripts?

8 MR. A. GORDON: We do not the transcript. The
9 deposition -- the deposition of Representative Talley was
10 taken --

11 MS. BALLARD: Yes --

12 MR. A. GORDON: -- yesterday.

13 MS. BALLARD: -- yesterday and the deposition of
14 Senator Leach was taken yesterday.

15 MR. A. GORDON: Yesterday, yeah, so those two were
16 taken yesterday.

17 JUDGE BAYLSON: I understand that. When are you
18 going to have those transcripts?

19 MR. PERSOON: Judge, I can speak to that --

20 UNIDENTIFIED SPEAKER: Your Honor, we have the
21 transcripts.

22 JUDGE SMITH: Excuse me. One voice at a time,
23 please.

24 MR. PERSOON: I can speak to that, Judge Baylson. We
25 have ordered it -- my understanding is that the legislative

1 defendants already have it so I think it's just a matter of
2 transit time. I will go and call them immediately and ask them
3 to make sure that they send it to us immediately.

4 JUDGE BAYLSON: Well, it ought to be delivered to the
5 courthouse.

6 MR. PERSOON: Delivered to the courthouse?

7 JUDGE BAYLSON: To courtroom 3A, that's where we are.

8 MR. PERSOON: Yes, Judge. I can also report that I
9 called Precision Reporting with regard to the Shaller
10 deposition. The reporting service informed me that it's
11 currently in proofreading.

12 I asked if they could guarantee a delivery by noon
13 and they said they could not guarantee that but that it was in
14 proofreading and they were working expeditiously, Your Honor.

15 JUDGE BAYLSON: All right, so we should have that
16 today too.

17 MR. PERSOON: I expect so, Your Honor.

18 JUDGE BAYLSON: All right. All right, well I think
19 our feeling here is that those two depositions should be read
20 into the record, whatever portions the plaintiffs intend to
21 use. We don't have to do advanced designations, and that ought
22 to take place.

23 And if we have time this afternoon, it ought to be
24 done this afternoon, both of those gentlemen. And then if
25 there are any counter designations, the defendants could do

1 those if you're ready this afternoon or if not, tomorrow
2 morning.

3 That would be my suggestion. We can discuss -- and
4 you ought to get the transcripts for the other members of the
5 legislature -- we can have a discussion after lunch about the
6 plaintiff's deposition designations.

7 We don't consider those quite as crucial but I still
8 think we want to have them by close of business Thursday
9 tomorrow. I think that's the intent on which we planned to
10 approach this case but let's -- I would suggest we not discuss
11 this anymore until after lunch and hopefully all these problems
12 will have disappeared by then.

13 Is that all right, Chief?

14 MR. TORCHINSKY: Your Honor, I just have --

15 MS. BALLARD: If you could just --

16 JUDGE SMITH: I --

17 MS. BALLARD: -- clarify, Your Honor --

18 JUDGE SMITH: I'm --

19 MR. TORCHINSKY: -- one --

20 MS. BALLARD: -- the two --

21 JUDGE SMITH: Excuse me.

22 MS. BALLARD: I'm sorry, Judge.

23 JUDGE SMITH: I'm not that optimistic, Judge Baylson,
24 but I do hope that we can proceed quickly. We've already spent
25 16 minutes of valuable time here and I'm eager to hear the

1 plaintiffs proceed with their case. But, counsel?

2 MR. TORCHINSKY: Your Honor, just one quick question.
3 With respect to the two legislative staffer depositions, is it
4 the Court's intention to actually -- for all of us to sit here
5 while they're actually read in Court, or are we just submitting
6 designations of the portions that you want admitted?

7 JUDGE SMITH: The former. The Court would like to
8 hear those and the Court would like in the open court and the
9 public to hear those.

10 MR. TORCHINSKY: Thank you, Your Honor.

11 JUDGE SMITH: Will the plaintiff proceed, please?

12 MR. GEOGHEGAN: We would like to call Senator Andrew
13 Dinniman to the stand.

14 COURTROOM DEPUTY: Please rise and raise your right
15 hand.

16 ANDREW E. DINNIMAN, PLAINTIFF'S WITNESS, AFFIRMED

17 COURTROOM DEPUTY: Thank you. Please state your full
18 name and then spell last name for the record.

19 THE WITNESS: Andrew E. Dinniman, D-I-N-N-I-M-A-N.

20 DIRECT EXAMINATION

21 BY MR. GEOGHEGAN:

22 Q Good morning, Senator Dinniman.

23 A Good morning.

24 Q Can you tell us what elected position you hold?

25 A I am a member of the -- I represent Chester County in the

1 State Senate and have done so for the last 12 years.

2 Q And do you hold any committee assignments in the State
3 Senate?

4 A I hold a number of committee assignments but the relevant
5 one here is I'm a member of the State Government Committee.

6 Q And do you -- are you a tenured professor as well --

7 A I am --

8 Q -- as being a state senator?

9 A -- a tenured professor at West Chester University.

10 Q And what do you teach there? What's your responsibility
11 as a teacher?

12 A My responsibilities are in three areas over there. I've
13 been there over 40 years. My responsibility has been in
14 history, in globalization and its impact and more recently, in
15 public management.

16 Q Can you also tell us what congressional district Chester
17 is in?

18 A We have three congressional districts -- the 6th, 7th
19 and the 16th.

20 Q And I would like to direct your attention to what is
21 Plaintiff's Exhibit Number 5 in the briefing book. Do you have
22 the exhibit book?

23 A Hold on. I have -- I have that in front of me, sir.

24 Q Looking at Plaintiff's Exhibit Number 5, are you familiar
25 with that document?

1 A Very much so.

2 Q Describe that for the Court and what your -- how -- when
3 you first saw it.

4 A On September the 14th a bill was put in and referred to
5 the State Government Committee. This bill was actually a shell
6 bill, in other words, that it was simply a placeholder. It
7 listed the congressional districts but did not provide any
8 description of those districts.

9 Q And this was in connection with your -- the committee's
10 role in providing a redistricting --

11 A Correct --

12 Q -- legislation --

13 A -- it was the responsibility of the State Government
14 Committee to do so.

15 Q And that's a statutory responsibility that you have or
16 constitutional?

17 A It is a statutory responsibility I have as a member of
18 that committee.

19 Q Now, your political party is Democrat, is that correct?

20 A Correct.

21 Q And what is the party composition of the State Senate at
22 that time and of your committee in particular?

23 A I believe it was 30-20 and --

24 Q Is that 30-20 Republican Democrat?

25 A Correct, and you know it's changed so much and this was

1 seven years ago, but I also believe that usually there are two
2 more of the majority than there are of the minority on most of
3 these committees.

4 Q Yes. And after a senate bill -- was it unusual for a
5 blank bill like this or a shell bill to be introduced to a
6 committee at the start of the legislative drafting process?

7 A I found it so. Usually what happens is a bill is -- it
8 has the information in it. Then after hearings and discussion,
9 we proceed to strip -- if we want to change it completely we
10 strip the bill of its contents with all the lines crossed out
11 and we put in new wording. Usually it's not of this particular
12 nature where there is not description.

13 Q After September 14th, 2011, were there hearings that were
14 conducted or any business that the committee did with respect
15 to --

16 A There were -- there were hearings, but until the morning
17 of the 14th of December, the minority members of the committee
18 did not see the bill as amended.

19 Q I would like you to take a look at Plaintiff's Exhibit
20 Number 6.

21 A Yes. Yes, sir.

22 Q Is that the bill that you're referring to that was
23 introduced on December 14th?

24 A Yes. And what you have to note is that these have
25 different printer numbers. Just as the Court has rules and

1 procedures, so does the legislature so the initial bill had the
2 printer number -- a number 5 of 1520, and the votes that had
3 taken place prior to the 14th were procedural votes to proceed
4 on 1520 so that we -- it was a blank bill but procedurally we
5 were proceeding as a matter of course. There was no substance
6 in essence to vote for so you'll see those bills being
7 unanimous.

8 But starting, 1520 came into our committee on the
9 morning of the 14th, and then as you note at the top as I see
10 here, the printer number changed to 1862 and that was a result
11 of the amendments that were passed by the majority so we now
12 have a new printer number.

13 Q So is it correct to say that there were no votes on 1862
14 in this period from September 14th to December 14th?

15 A It is absolutely correct.

16 Q But there were votes on 1520.

17 A Yes, and they were procedural votes to keep it moving
18 forward knowing that there was a deadline by the end of the
19 year.

20 Q And --

21 A And by the way, all those votes were unanimous from both
22 parties because we all understood they were procedural.

23 Q And looking at 1520 -- pardon me -- looking at Exhibit
24 Number 6, 1862 -- printer number 1862 --

25 A Yes, sir.

1 Q -- was there any map of the district such as we have up
2 here on the side of the courtroom attached to that bill or with
3 the bill or given to you at the time?

4 MR. PASZAMANT: Objection.

5 THE WITNESS: If there was I don't remember it.

6 MR. PASZAMANT: Objection. Best evidence.

7 THE WITNESS: Excuse me?

8 MR. PASZAMANT: Objection. Best evidence.

9 JUDGE SMITH: I'm sorry, I didn't hear -- I didn't
10 hear the question.

11 MR. PASZAMANT: I just -- oh.

12 MR. GEOGHEGAN: I asked whether there was a map that
13 went with the bill.

14 JUDGE SMITH: The objection is overruled.

15 THE WITNESS: I do not remember a map but there could
16 have been one.

17 BY MR. GEOGHEGAN:

18 Q And what happened to Bill 1862 when it was introduced the
19 morning of December 14th? Was there a vote on it?

20 A Yes, there was a vote on it and it passed out of committee
21 and then proceeded to appropriations for more amendment -- for
22 another amendment and thus we -- and as a result of that other
23 amendment, we now have an additional printer number.

24 Q And is that Exhibit Number 7?

25 A I'll tell you -- yes. We now are on 1869 so we were

1 dealing with 1520, the shell bill until the morning of the
2 14th, and then it changed as a result of the amendments and
3 then it's going to change once again in appropriations and that
4 was a party-line vote, and then it came to the floor.

5 Q And did you express any view or opposition or position to
6 the introduction of what is now Exhibit 6 and Exhibit 7 on the
7 morning of December 14th?

8 A I would have done -- there -- I believe I did so
9 appropriately and I certainly did so with my vote.

10 Q And what was the vote that you're referring to?

11 A That vote I would have to see in the record but the vote
12 was one in which the majority prevailed.

13 Q And did you speak about the vote -- did you speak about
14 this bill on the floor of the Senate?

15 A I did indeed. And I should note, sir, that when it came
16 out of appropriations, we have a rule that there's to be six
17 hours before anything amendment would be heard.

18 That rule was -- Rule 12 was suspended and we then
19 proceeded into discussion. On the floor I raised an objection
20 and my objection was clear.

21 My objection was that I felt that the partisan
22 manner, whether it comes from the Republicans or if we were in
23 control from the -- it would come from the Democrats was an
24 inappropriate way to do business, and that to do this at the
25 last minute when we had two months -- remember, December 14th

1 versus September 14th -- was not appropriate.

2 And I finally said that since I was powerless, that I
3 had to -- I have resorted to satire and I sponsored a contest
4 in my district to name the shape of the 7th District and we --
5 and in the end we named it -- the citizens who won -- was
6 Bullwinkle the Moose, and then there was some discussion about
7 mythology and the naming of bills.

8 Q Senator, was there any attempt by the Democrats to amend
9 Exhibit 7?

10 A Yes, there was. There was an amendment by the Democratic
11 Leader Senator Costa which we as a party supported and which
12 would have lessened the number -- significantly lessened the
13 number of split precincts.

14 Q And what was the outcome of that amendment?

15 A On a party-line vote it was defeated.

16 Q And what was the outcome of the vote -- when did -- when
17 was Exhibit 7 -- or was Exhibit 7 adopted by the Pennsylvania
18 House?

19 A That's Senate you're referring to.

20 Q Oh, Senate, I'm sorry. I misspoke.

21 A Yes, it was and I should note that the democratic amendment
22 had to be produced in about ten hours because the first
23 indications of the bill were on the evening of the 13th. Now
24 I, as a member of the committee since I don't live in
25 Harrisburg did not receive and see the bill until the morning

1 of the 14th. And so over a ten-and-a-half hour period, the
2 Democrats presented an amendment which was defeated.

3 Q And --

4 A And we proceeded to a vote and we did a second suspension
5 of the rules that day because we were to end our sessions at
6 11:00 and we suspended the rule so that we could proceed after
7 11:00.

8 Q And after 11:00 at night, what happened to the Exhibit 7
9 Senate --

10 A It was passed.

11 Q -- Bill 1249?

12 A It was passed in a very interesting manner. In the vote
13 it was passed 26-24 because several Republican senators
14 objected to -- and they stated that objection either in
15 committee or I believe on the record -- their objection was
16 that it had done harm to their districts. I remember
17 specifically talking with Senator Brubaker on that matter --

18 MR. TORCHINSKY: Objection. Hearsay.

19 JUDGE SMITH: That --

20 THE WITNESS: -- that I --

21 JUDGE SMITH: Excuse me, sir.

22 THE WITNESS: I'm sorry.

23 JUDGE SMITH: That's all right. When there's an
24 objection you have to give the Court the opportunity to rule.

25 I'll sustain the objection.

1 THE WITNESS: I will, Judge.

2 MR. GEOGHEGAN: He's just describing really an act,
3 the basis for his observation that there was Republican
4 opposition to it and he's reporting about --

5 JUDGE SMITH: Will you let me speak, please?

6 MR. GEOGHEGAN: Oh.

7 JUDGE SMITH: He's already said that, he's already
8 testified to that. He began to say he had a conversation with
9 another senator and the objection was interposed and I was
10 simply trying to make sure that he did not get into the
11 discussion and conversation. So if there's some non-hearsay
12 purpose that you wish to offer with respect to that
13 conversation, we'll certainly hear it.

14 MR. GEOGHEGAN: Just that there was opposition from
15 certain Republicans.

16 JUDGE SMITH: Well as I said, he's already testified
17 to that.

18 THE WITNESS: There was -- if -- may I proceed, sir?

19 JUDGE SMITH: Yes.

20 THE WITNESS: The opposition was based on the fact
21 that their counties now were divided sometimes into three, four
22 -- three or four different congressional districts.

23 BY MR. GEOGHEGAN:

24 Q And is it unusual for the rules to be suspended in this
25 way --

1 A The 11:00 rule --

2 Q -- as they were on December --

3 A -- is unusual. The suspension of the rules happens in
4 terms of their proceeding on amendments. I mean, it's not a
5 usual proceeding but it does happen, so but the 11:00 rule I
6 would say to the Court is more enforced because of the
7 controversy involving a pay raise that took place in the early
8 morning and it was put in as part of reform.

9 Q And you've described a period of time from the morning of
10 December 14th to after 11:00 on December 14th when this bill
11 was introduced, you saw it for the first time and it was
12 adopted. Is there anything unusual in that process?

13 A Yes. Usually we try to be deliberative. In fact, our
14 rules concerning three considerations of any bill is part of
15 that process. First consideration takes place -- you know,
16 with consideration by the committee, and any hearings that took
17 place you would have to understand were hearings without an
18 actual bill, they were simply based on a shell, so in that
19 sense it's unusual.

20 Second consideration which we voted on unanimously is
21 a procedural one and that's why the six hour rule is there, so
22 that before you do second consideration or third consideration
23 there's a period of time to be deliberative for the public to
24 know for there to be some consideration.

25 And traditionally second -- third consideration is

1 not done on the same day as second consideration, though there
2 are times when that is also not followed, but traditionally the
3 whole process is designed to be a deliberative one which is
4 exactly the way a legislative body should -- should proceed.

5 Q Is that particularly characteristic of the Senate?

6 A I would say that the Senate is a more deliberative body
7 sometimes than the house, yes, and that we greatly value
8 deliberations and in fact if you try to rush things, often the
9 criticism will come from both sides of the aisle saying well,
10 we haven't had a hearing, we haven't totally heard all sides.

11 So to take -- so it is unusual on a matter that
12 involves the suffrage of an individual in -- within the
13 commonwealth to proceed in such a rapid manner.

14 Q And did the citizens of Pennsylvania -- the non-legislate
15 areas of the state have any more time for the consideration of
16 SB 1249 than the senators themselves had?

17 A No, sir. And I think the analogy that I can give is that
18 when there was a bill on voter ID, it took place over a much
19 more extended period of time, which is another area that
20 involves suffrage just as this bill has an impact on citizens
21 and their rights to vote or the impact of their vote, so I
22 found it unusual that in a similar kind of voting bill
23 impacting voting, that it would be done that -- thus rapidly
24 and the citizens had no more time than I had.

25 Q I'd like to go back to your role and the role of the

1 Senate State Government Committee. Could you describe
2 generally the jurisdiction of that committee?

3 A The State Government Committee handles all matters
4 involving the operation of the commonwealth and since it has
5 overview of the Department of State, our overview is defined in
6 relationship to the -- what we call the IRRC which it's a
7 regulatory commission.

8 And if when they make a ruling they report back to a
9 particular committee and we vote specifically as to what --
10 which committee has what regulations. So we had the oversight
11 of the Department of State and thus, oversight on anything
12 dealing with elections.

13 Q And is this --

14 A And redistricting.

15 Q And does this jurisdiction have some official status?

16 A Well, of course. It has the official status in two ways.
17 It has official status of considering bills that impact on
18 voting and redistricting, it has also the status of being the
19 agency that -- or being the committee that has the -- that has
20 the responsibility to report back to the body as a whole.

21 In other words, when a question comes on this area, I
22 chair educations for example -- when a question comes on
23 education, they go to the majority and minority chair. For
24 questions on -- that deals with this, they go to us.

25 Also the reason we operate more deliberately is to

1 give every -- education as an analogy -- is to give all of the
2 advocacy groups an opportunity to respond to any bill. In this
3 case there was no opportunity for any advocacy group to
4 respond.

5 Q And what was your understanding as the committee's
6 responsibility for providing a redistricting bill?

7 A Well, I presumed that when we got it on September the 14th
8 that there would be a proposal that would come, not on the last
9 day -- last day of the last hour so that the hearings would
10 have been meaningful, so that the advocacy groups would have
11 had an opportunity to respond, and so that I could go about
12 this in a thoughtful way hearing from my own constituents who
13 elected me for the purpose of being thoughtful and deliberative
14 and for the purpose of hearing out how they felt, but I was
15 denied that opportunity to hear out how my citizens felt.

16 Q To your knowledge do your colleagues -- did your
17 colleagues on the committee or the staff of the Senate
18 Government -- State Government Committee work on possible maps
19 or district plans?

20 A Yes absolutely, on both sides of the aisle and I mean,
21 that's -- that's just a fact, they do it every time and there
22 were maps and -- and we all are privy to certain information
23 that's -- that's public information, information as to voter --
24 the voter's name, their voting history, their age.

25 And so the question that is going to -- that it comes

1 down to in my judgment and the reason I opposed the bill was
2 not that both parties couldn't get the information, and yes
3 there was partisanship but we would have had the same
4 partisanship if we were in control and I spoke against the
5 partisanship of both sides.

6 The objection is that today we have sophisticated
7 ways of manipulating that data and with that sophistication
8 there we have the ability to deprive voters of their influence
9 in the voting process. If I may go on with your permission?

10 Q Well, let me ask this question.

11 A Yes, sir.

12 Q Before we get to that -- and I'd like to turn to that in
13 a second, I'd like to --

14 A No, I'm happy to wait.

15 Q -- I'd like to ask you one more question about the
16 process.

17 A Yes, sir.

18 Q Did you express any concern to the chairman of the
19 committee during this period from the introduction of Exhibit 5
20 to the introduction on December 14th of Exhibit 7?

21 A Yes, I did express concern about two weeks before --

22 Q Can I ask where this conversation took place with the
23 chairman?

24 A Either in the chamber or room that was adjacent to the
25 chamber.

1 Q And what period of time?

2 A It would have probably been a couple of weeks -- late
3 November, early December.

4 Q And this is after the placeholder bill was introduced on
5 September 14th and there hadn't been any bill produced?

6 A Precisely, and my question, I wanted to know what's up,
7 why -- what are we waiting for because my citizens were asking
8 me when and my constituents want to know -- listen, you know,
9 you're almost two months, you're six weeks into this, when is
10 something going to happen.

11 Q And you were asking this question as a member of the
12 committee with responsibility for developing a bill?

13 A I certainly was asking that as a member of the committee.

14 Q And you were asking it to the chairman who is running the
15 committee and has official responsibility for running the
16 committee?

17 A I was asking him in that capacity, absolutely.

18 Q And when you asked him about the delay, what did he say?

19 MR. TORCHINSKY: Objection. Hearsay.

20 JUDGE SMITH: Sustained.

21 MR. GEOGHEGAN: Well, Your Honor, may I be heard for
22 just a minute on this? Chairman McIlhinney is an official of
23 the Pennsylvania State government. He has an official
24 responsibility as chairman for developing a redistricting bill.
25 He's an agent of the defendants.

1 JUDGE SMITH: Will you please explain where official
2 responsibility is set forth in the rule -- Federal Rules of
3 Evidence as an exception to the hearsay rule?

4 MR. GEOGHEGAN: Well, it's a party admission. We are
5 suing the defendants, the executive and legislative defendants
6 and effectively we are suing them in their official capacity,
7 and this was their agent, the chairman who was developing --

8 JUDGE SMITH: Excuse me.

9 (Pause -- Judges conferring)

10 MR. PASZAMANT: Your Honor, may I be heard?

11 JUDGE SMITH: Yes.

12 MR. PASZAMANT: Your Honor, there is no -- first off,
13 the Commonwealth of Pennsylvania has not been sued. The
14 executive defendants to my recollection are the governor, the
15 elections commissioner, as well as the secretary of state. I
16 stand before you representing President Pro Tempore Scarnatti
17 and to my side are individuals representing Speaker Turzai.

18 Those are the individuals to the extent there is
19 someone who's been sued that have been sued, albeit in their
20 individual -- or excuse me, in their official capacity and I'll
21 give you that.

22 But at the end of the day, these are not party
23 admissions that he wants to speak to with regard to Senator
24 McIlhinney regardless of whether Senator McIlhinney was the
25 Chairman of the Senate State Government Committee, and at the

1 end of the day, what I'm hearing here is official capacity.

2 Well, there's no doubt he was the Chairman of the
3 Senate State Government Committee at that point in time, but he
4 what he wants to speak to right now as I understand it is not
5 anything that transpired while the committee was convened and
6 there were meetings or on the Senate floor, things that you
7 could look at and take judicial notice of.

8 JUDGE SMITH: Given the fact that we are non-jury,
9 we're not going to make a final ruling, we'll allow a witness
10 to testify subject to determining whether or not it should be
11 considered at a later time. We've got to move along, folks.

12 BY MR. GEOGHEGAN:

13 Q Senator McIlhinney, you're --

14 JUDGE BAYLSON: Senator Dinniman.

15 JUDGE SMITH: Dinniman.

16 MR. GEOGHEGAN: I'm sorry.

17 JUDGE BAYLSON: Go ahead.

18 MR. GEOGHEGAN: I should have had a second cup of
19 coffee this morning.

20 JUDGE BAYLSON: Go ahead.

21 JUDGE SMITH: No, just move along, please.

22 BY MR. GEOGHEGAN:

23 Q Senator Dinniman, your conversation with the chairman
24 as to why there had not been a bill presented to the
25 committee --

1 A And this conversation took place either I believe on the
2 Senate floor, or at least in a room that would be -- that
3 senators utilize adjacent to the floor that we go back and
4 forth.

5 Q You've testified --

6 MR. PASZAMANT: May I please have a continuing
7 objection --

8 THE WITNESS: Now --

9 MR. PASZAMANT: -- to this entire --

10 THE WITNESS: -- my --

11 MR. PASZAMANT: -- line of testimony?

12 JUDGE SMITH: You have that continuing objection --

13 MR. PASZAMANT: Thank you, Your Honor.

14 JUDGE SMITH: -- and at some point, this may go too
15 far.

16 BY MR. GEOGHEGAN:

17 Q What did he say?

18 A I asked him a specific question. I said what is the
19 holdup. He said, Senator, it's your county and your area
20 that's the holdup and I said please be more -- please explain
21 to me what -- what's going on. He said that the three
22 Republican congressmen at that time were Congressmen Pitts,
23 Gerlach and Meehan --

24 MR. PASZAMANT: Objection. Double hearsay.

25 JUDGE SMITH: Excuse me.

1 (Pause -- Judges conferring)

2 MR. GEOGHEGAN: Your Honor, if I -- I -- he's not
3 going to make any statement as to what those congressmen said
4 for the purpose of the truth of any statement.

5 JUDGE SMITH: You mean what the senator said or
6 what --

7 MR. GEOGHEGAN: The congressman said. That he's --
8 they're objecting to the fact that Senator McIlhinney might
9 quote statements by these three congressmen for purposes of
10 demonstrating the truth of matters stated by those congressmen.

11 JUDGE SMITH: Yes, so what is --

12 MR. GEOGHEGAN: He's not going to testify --

13 JUDGE SMITH: So what is your purpose --

14 MR. GEOGHEGAN: He's --

15 JUDGE SMITH: -- for --

16 MR. GEOGHEGAN: He's going to testify to the fact
17 that what Chairman McIlhinney is saying, that he's getting
18 protests from these various congressmen about the districts.

19 MR. PASZAMANT: And how are they conveying the
20 protests, Your Honor? This is classic hearsay. In fact, it's
21 two levels deep at this point.

22 MR. GEOGHEGAN: I don't think it is classic hearsay.

23 JUDGE SMITH: I'm not sure of that. Please restate
24 your question.

25 MR. GEOGHEGAN: Sure.

1 BY MR. GEOGHEGAN:

2 Q You asked Chairman McIlhinney what was the reason for the
3 delay in producing a bill. He made a statement to you. It
4 didn't get out because counsel objected before you finished.
5 Could you finish your statement --

6 A Yes.

7 Q -- as to the sentence --

8 A See, he --

9 Q -- that Senator McIlhinney -- Chairman McIlhinney --

10 A He -- he not only made the statement to me, but I
11 proceeded two weeks ago to get confirmation of the statement,
12 okay, but what he said was that the Republican congressmen --

13 JUDGE SMITH: So now just a moment. If we're looking
14 for confirmation of the statement, then we're looking for the
15 truth of it, correct?

16 MR. GEOGHEGAN: We can exclude that. We're --

17 JUDGE SMITH: We'd better.

18 MR. GEOGHEGAN: Yes.

19 THE WITNESS: Thank you, sir. What he simply said
20 was that the Republican congressmen were each at each trying to
21 get the maximum number of Republican votes in their district.

22 BY MR. GEOGHEGAN:

23 Q And what else did he say?

24 MR. PASZAMANT: Objection.

25 JUDGE SMITH: Sustained.

1 THE WITNESS: That he really said --

2 JUDGE SMITH: Excuse me, the objection has been
3 sustained.

4 THE WITNESS: I see. That's what he said.

5 MR. GEOGHEGAN: Okay.

6 BY MR. GEOGHEGAN:

7 Q And I'd like to turn your attention -- when -- so after
8 -- this was in late November, early December of --

9 A Correct.

10 Q And at some point after that Exhibit Number 6 was
11 introduced.

12 A Correct.

13 Q I interrupted you when you were talking about your concern
14 about the sophistication of the software that's now used for
15 redistricting. I'd like to ask you to put yourself -- you're a
16 member of the Redistricting Committee and I think you also
17 testified that you teach American history and other subjects --
18 could you state for the Court your concern as a legislature
19 about the use -- the increasing sophistication of software for
20 purposes of redistricting congressional districts in your
21 state.

22 A Yes, sir.

23 MR. PASZAMANT: Objection. Objection, facts not in
24 evidence. He didn't testify that he's a member of the
25 Redistricting Committee.

1 JUDGE SMITH: I don't know that I --

2 MR. GEOGHEGAN: State government.

3 JUDGE SMITH: -- I would certainly disagree with the
4 basis of your objection, that these are facts not in evidence.
5 I do wonder however what the relevancy of his concern is --

6 MR. GEOGHEGAN: Well, I'd like to --

7 JUDGE SMITH: -- and the fact finding that this Court
8 must do is not going to be influenced by the individual concern
9 of a member of the state legislature.

10 MR. GEOGHEGAN: I just wanted --

11 JUDGE SMITH: The facts underlying that concern on
12 the other hand are critical to this case.

13 THE WITNESS: The concern --

14 JUDGE SMITH: Excuse me.

15 THE WITNESS: I'm sorry.

16 JUDGE SMITH: Allow counsel to proceed.

17 MR. GEOGHEGAN: I'd like to ask him about his
18 understanding of the facts that underlie the concern in this
19 case which is the -- his observation about the increasing
20 sophistication of districting with artificial intelligence
21 and --

22 JUDGE SMITH: All right.

23 MR. GEOGHEGAN: -- computers. That's what we're
24 asking and I think it's relevant to this whole case.

25 JUDGE SMITH: I just told you it was.

1 MR. GEOGHEGAN: Yeah --

2 JUDGE SMITH: I'm just not --

3 MR. GEOGHEGAN: -- oh, sorry.

4 JUDGE SMITH: -- interested in his concern, I'm
5 interested in the facts underlying the concern.

6 MR. GEOGHEGAN: Yeah.

7 MR. PASZAMANT: And, sir, may I have an objection to
8 the extent that he's now going to try to elicit expert
9 testimony from an individual with regard to the sophistication
10 of computer systems and how they --

11 JUDGE SMITH: I haven't heard a question asking an
12 opinion at this point --

13 MR. PASZAMANT: Fair enough.

14 JUDGE SMITH: -- so that is overruled.

15 THE WITNESS: May I proceed?

16 BY MR. GEOGHEGAN:

17 Q Have you -- have you observed an increase in the
18 sophistication of the software and the plans that are being
19 considered by your committee?

20 A Yes, I have observed a totally different sophistication.
21 Previously, we all would get the same data -- registration,
22 age, voting history. Anyone could go into any voter
23 registration office, any candidate in fact could get that data.
24 But we now have the capacity to utilize that data in a very
25 different way.

1 My concern comes out of my academic background of
2 which I do have some expertise. In teaching American history
3 I'm certainly familiar with the Federalist Paper 52 since as
4 part of American history, I taught the Federalist 52 -- you
5 can't teach American history without that debate and that
6 discussion.

7 And when Madison speaks of the threat to suffrage by
8 state involvement, state -- potential state interference, that
9 he could only speak of it in terms of his own time, a time
10 which could have never imagined what is today.

11 MR. PASZAMANT: Objection, Your Honor. Now he's
12 talking as an expert in American history --

13 THE WITNESS: I am.

14 MR. GEOGHEGAN: Your Honor --

15 MR. PASZAMANT: Well, he hasn't been qualified --

16 JUDGE SMITH: Would perhaps the participants here
17 allow the Court to act as the Court and respond to objections
18 and not be interrupted?

19 MR. PASZAMANT: I apologize, Your Honor.

20 JUDGE SMITH: There has been no expert opinion
21 offered. Beyond that, what he's testifying to right now are
22 certainly considerations that will be very much wrapped up in
23 this Court's ultimate determinations. We'll let the testimony
24 proceed to some extent --

25 MR. GEOGHEGAN: Understood.

1 JUDGE SMITH: -- but we certainly didn't understand
2 this member of the Senate to be offered as a witness to testify
3 to American history and constitutional history.

4 MR. GEOGHEGAN: He's not testifying as an expert,
5 Your Honor, he's testifying --

6 JUDGE SMITH: Well yes, he just said he was.

7 MR. GEOGHEGAN: Well --

8 JUDGE SMITH: But please direct the question.

9 MR. GEOGHEGAN: All right.

10 BY MR. GEOGHEGAN:

11 Q If you can finish your statement, I just wanted the record
12 to be clear about what your concern is as a legislator about
13 the --

14 A As a legislator, one does not go about one's life as a
15 legislator without knowledge, however it's gotten, all right?
16 But the point here is that having taught American history I was
17 familiar with the Federalist papers.

18 And in the other courses that I have taught, I have
19 taught about the -- that we are living today in an
20 unprecedented era of rapid change and that what the greatest
21 threat is what we call in the university -- that the professors
22 would call cultural lag, our inability to keep up --

23 MR. PASZAMANT: Objection.

24 THE WITNESS: -- with that change. And thus --

25 JUDGE SMITH: Excuse me. There's an objection. It

1 does really now sound like the witness is entering into this
2 discussion that at least borders on expert testimony based upon
3 his knowledge and his work of a professorial nature. Now, if
4 he's talking about the influence on him as a legislator --

5 THE WITNESS: That is --

6 JUDGE SMITH: -- we're prepared to allow that.

7 THE WITNESS: My -- the influence of the -- as myself
8 as a legislature -- legislator comes out of my study, both my
9 master's degree and my doctoral degree, and comes out of my
10 teaching and my writing. Obviously it influences me as a
11 legislator -- just as if someone was a lawyer, they understand
12 certain legislative things that I might not.

13 And one of my concerns about the sophisticated
14 technology is that it prevents a new threat in my judgment to
15 the -- to the very statement that Madison had made because
16 previously we all got the data.

17 But we -- but both parties were not capable of the
18 mathematical formulations to -- to produce districts in a way
19 that would be an interest of one party or another. That's why
20 I spoke out against both parties in my remarks on the floor.

21 It's no better if the Democrats were doing it and
22 therefore, we -- if we are to be -- if I am concerned -- if I
23 believe, and I do, that Madison's statement that the most
24 important part of a Republican form of Government is suffrage,
25 then I have to be concerned with any kind of challenge to

1 suffrage.

2 And when this was being done -- and I'm given
3 information and I have only less than about ten hours to look
4 at it, I know that often districts are created using the new
5 mathematical formulations.

6 I did not have the time or the -- or the ability to
7 ask experts in ten hours as to what constitutes the formulation
8 of this district, and I was asking that question out of concern
9 as a citizen who believes in the Constitution of the United
10 States and wanting to know whether there is a new threat that
11 -- to the -- to the suffrage which is absolutely vital to this
12 republic.

13 So I -- so I opposed this bill in committee in part
14 because I thought it was unfairly done to have me vote in eight
15 -- in a brief period of time -- a total of eight, ten hours
16 because I had a concern about suffrage in the same way I had a
17 concern about the voter ID bill.

18 But we had time then and we -- we went through
19 extended hearings and conversations and I believe that any bill
20 that deals with suffrage, deals with voting, should be
21 considered in a deliberative, timely manner and I believe that
22 what Madison said in Federalist Paper 52 is a legitimate
23 question in terms of the threat to suffrage and I simply at
24 that moment in time was concerned that there was another threat
25 coming from this mathematical formulation and I was given --

1 and I had -- was given no time or ability in that period of
2 time or no opportunity to go to do research or to ask expertise
3 as to whether my concern was valid.

4 Q All right.

5 A Thank you.

6 Q Thank you.

7 MR. GEOGHEGAN: No further questions.

8 JUDGE SMITH: You may cross-examine.

9 THE WITNESS: May I ask who's cross-examining me and
10 what, Judge -- who he is representing, or is that
11 inappropriate?

12 JUDGE SMITH: Would you like to introduce yourself,
13 counsel?

14 MR. PASZAMANT: Of course I would, Your Honor. I was
15 just trying to set up this mic.

16 CROSS-EXAMINATION

17 BY MR. PASZAMANT:

18 Q Good morning, Senator Dinniman. My name is Brian
19 Paszamant and I represent President Pro Tempore of the
20 Pennsylvania Senate Joseph Scarnatti in connection with this
21 lawsuit.

22 A Thank you.

23 Q You're welcome. I think we met yesterday morning in my
24 office, right?

25 A I was not in your office in -- oh, yes I was, excuse me.

1 It wasn't in your office but it was your conference room.

2 Q Right. Okay. Sir --

3 A You weren't wearing glasses at the time.

4 Q Well, I dressed up for today.

5 A Thank you. I dressed up as also with glasses.

6 Q Okay, Senator Dinniman, I'm going to try to be brief here
7 because I know we're trying to move things along. First off,
8 have you ever worked with GIS software?

9 A Yes, I have.

10 Q When's the last time?

11 A Probably when I was county commissioner a number of years
12 ago when we were doing land use studies.

13 Q When were you county commissioner?

14 A I was county commissioner from the year I left -- for 14
15 years and I would have ended in 2006.

16 Q Okay. So since 2006 you haven't used any GIS software,
17 right?

18 A No.

19 Q And you haven't been involved in drawing maps for the
20 Democrats in the Senate, correct?

21 A I've only been involved in the discussion of the drawing
22 of those maps and the criteria that go into the drawing of
23 those maps and how they determined their verbal descriptions of
24 the formulations of how they determined the maps --

25 Q Okay.

1 A -- and I understood them.

2 Q Very good. But you never actually sat down and tried to
3 draw any districts, correct?

4 A I never pretend to be an expert on -- on that.

5 Q I see. And so with regard to the 2011 map that the
6 Democrats attempted to introduce that was voted down, you had
7 no involvement in the draw of that map, did you?

8 A No, I did not.

9 Q Okay. So, sir, let me back up for just a second. What
10 became the congressional districting map of 2011, that was
11 Senate Bill 1249, right?

12 A It was 1249, correct.

13 Q And you weren't involved in the drafting of that
14 legislation, were you?

15 A I was -- no -- you're talking about -- which printer
16 number are you referring to, sir?

17 Q I'm talking about the one that was passed as the final map
18 that was signed by the governor. Were you involved in the
19 drafting of that particular map, sir?

20 A You are referring then to printer number 1869, am I
21 correct? Because I can only answer questions based on the
22 printer numbers.

23 JUDGE SMITH: That is Plaintiff's Exhibit 7.

24 MR. PASZAMANT: Yes, that's correct.

25 THE WITNESS: Thank you, sir.

1 BY MR. PASZAMANT:

2 Q That's correct, sir.

3 A Then I was not involved in the drawing of the map that was
4 brought to the committee that morning, correct, sir.

5 Q Okay. And you were likewise not involved in the drawing
6 of the map that was ultimately passed by the Senate that same
7 day, correct?

8 A Correct, and it was the failure to have any involvement is
9 the reason I voted against it.

10 Q Okay. Sir, in fact your testimony is you didn't see
11 Senate Bill 1249 until that very day, correct?

12 A That is correct, sir.

13 Q And sitting here today you have no personal knowledge as
14 to how a single line of the map which is Senate Bill 1249 was
15 constructed, correct?

16 A I was not given the opportunity, sir, to understand that.
17 I was purposely denied that opportunity when I was presented it
18 at that time and that is my concern.

19 Q Right. So you had no idea how any of those lines were
20 drawn, correct?

21 A No, I had no idea how they're drawn. I only had the
22 knowledge that in other states that they were being drawn in
23 such a way to benefit certain candidates, that with public
24 knowledge the red -- so called REDMAP Project of the Republican
25 party was public knowledge.

1 This is no secret so therefore I felt an obligation
2 to question it and I would question it if it was a Democratic
3 map as well. And so, sir, from my point of view what you are
4 confirming is that I was not given an opportunity until that
5 morning to look, to ascertain, to ask questions related to what
6 became the final map of this commonwealth.

7 MR. PASZAMANT: I move to strike the nonresponsive
8 part of his answer.

9 JUDGE SMITH: I'm not sure which portion of the
10 answer that was but we'll look at it later.

11 MR. PASZAMANT: Thank you, Your Honor.

12 BY MR. PASZAMANT:

13 Q So I want to touch upon some of the other things you
14 talked about, Senator. First off, with regard to this data
15 that you've been talking about, would you agree with me that
16 the -- some of this data is the census data with regard to the
17 drawing of the 2011 map, correct?

18 A Some is census data, some is data that is -- that is done
19 through the Department of State over which we have jurisdiction
20 in terms of voter registration history and information.

21 Q And with regard to the data -- let's start with the census
22 data -- all four caucuses in the Pennsylvania General Assembly
23 had the same data, correct?

24 A That is correct.

25 Q And with regard to the voting data, all of the four

1 caucuses of the Pennsylvania General Assembly had that same
2 data, right?

3 A That is correct and that's why you had different maps.

4 Q Okay. Now let's talk about the Senate Democratic caucus
5 for a moment. You folks had a map room with regard to the
6 drawing of maps in advance of the 2011 congressional plan,
7 right?

8 A Yes, we did.

9 Q And you had map drawers at your disposal, right?

10 A Same as you, same as Senator Scarnatti did.

11 Q Exactly. And tell me, during the period of time leading
12 up to the passage of what became the congressional districting
13 map for 2011, the Senate Democratic Caucus was in fact drawing
14 its own maps, correct?

15 A That I believe to be the case.

16 Q And who was heading up that effort?

17 A There were two people. I think that our equivalent of the
18 Republican Aaronson -- Erik would have been -- would have been
19 Mark McKillip.

20 Q Okay. So let's talk about your time --

21 JUDGE BAYLSON: How do you spell -- spelling?

22 THE WITNESS: I don't -- I'm sorry, sir, I don't --
23 he's no longer with us so I don't know the spelling of that
24 name.

25 JUDGE SMITH: Did you say Mark McCullough?

1 THE WITNESS: McKillips (sic) --

2 JUDGE SMITH: McKillips -- thank you.

3 THE WITNESS: -- and the assistant was a lady named
4 Laura Schaumburg (phonetic).

5 JUDGE SMITH: Thank you.

6 THE WITNESS: Thank you, sir.

7 MR. PASZAMANT: Judge Baylson, if I may, I think it's
8 M-C-K-I-L-L-U-P --

9 JUDGE BAYLSON: Thank you.

10 MR. PASZAMANT: -- but I may be mistaken, and it's
11 Shoemberg (phonetic) -- S-H-O-E-M-B-E-R-G I believe.

12 BY MR. PASZAMANT:

13 Q The Senate State Government Committee, sir, you sit on
14 that committee, right?

15 A I do, sir.

16 Q And you were sitting on that committee in 2011 during
17 December, correct?

18 A Absolutely.

19 Q Okay. And you've been a member of the Pennsylvania Senate
20 for quite some time --

21 A Since 2006.

22 Q Very good. So Senate Bill 1249 was voted out of the
23 Senate State Government Committee twice, correct?

24 A Sir, you have to -- in order for me to answer that
25 question, you need to tell me the printer number because what

1 was voted out twice was not the final bill, but was the
2 original printer number that you will find in Exhibit 5 which
3 was the shell bill.

4 What we voted out was printer number 1520 and all of
5 us unanimously voted for 1520 as a procedural matter. What was
6 finally voted out of committee was printer number 18 -- it came
7 into committee as 1520.

8 When it went out to committee as amended that
9 morning, it went out of committee as Exhibit 6 which is printer
10 number 1862, and it then went out of appropriations further
11 amended at committee as printer number 1869 which was the bill
12 that was voted.

13 So the two times that I voted out of committee were
14 procedural and it was based on printer number 1520. I
15 appreciate your smile but I don't understand it, but it was
16 1520 if that --

17 Q I'm just waiting for you to complete your answer.

18 A -- I'm sorry.

19 JUDGE SMITH: Excuse me. I don't want to have all
20 this back and forth, please.

21 THE WITNESS: No, I won't. I'm sorry, sir.

22 BY MR. PASZAMANT:

23 Q So to put it succinctly, you voted twice for Senate Bill
24 1249 to out of the Senate State Government Committee, correct?

25 A I voted once for it to come out of the State Government

1 Committee on May the 7th, and the second vote was on second
2 consideration on the Senate floor but at that time we were
3 voting on the printer number 1520 and that distinction is
4 vital. That was the shell bill.

5 Q Sir, I got you --

6 A That was a procedural matter and -- and the fact is --
7 check the record and you will see it was unanimous because we
8 follow procedures just as the Court would do.

9 Q So you voted it out of committee the first time in May, is
10 that what you just said?

11 A No, excuse me. It was on -- it was in -- it was voted out
12 of committee -- it was voted out of committee on December the
13 7th. I mistakenly said May and thank you for helping me make
14 that correction.

15 Q Okay.

16 A It was on -- it was on the 7th and at that point it was a
17 procedural matter and second consideration vote on the floor
18 was a procedural matter and all votes were unanimous.

19 Q Got it. So the first time this bill came out -- this is
20 Senate Bill -- or excuse me, with the printer number 1520,
21 Plaintiff's Exhibit Number 5, you voted in favor of it coming
22 out of committee even though it was a shell bill as you've
23 described it, correct?

24 A I voted procedurally the way that we always do in the
25 Senate.

1 Q In other words, you voted for it to come out of committee,
2 correct?

3 A I voted for it to come out of committee as a form of
4 procedure as did the whole committee vote, sir.

5 Q Right. Were you prevented from speaking during this
6 committee prior to your voting it out of the committee for the
7 first time?

8 A We do not -- when we deal with procedural matters, we do
9 not speak in that -- we almost never speak in committee if it's
10 a procedural matter in order to move the process forward.

11 And on second consideration on the floor which I
12 voted for, I would like to see you find one time on second
13 consideration, sir, where there was anything other than a
14 unanimous vote.

15 These are simply procedural votes that have nothing
16 to do with the issue. The procedural votes involved a shell
17 bill which was not given any meat on its bone until the --
18 until the morning of the 14th of December. And when it was
19 given that meat, I voted against that bill.

20 Q So is it your testimony that it's anything but infrequent
21 that a shell bill is voted out of a committee?

22 A It is my testimony that -- that procedurally, okay, in
23 order to move the process along, we will vote bills out of
24 committee on first consideration because we operate on three
25 considerations, sir.

1 The first consideration is the committee itself. If
2 the bill had substance, we would have debated it and had
3 discussed it, but we did this simply to move the process
4 forward. It was unanimous. And on the floor we again voted --

5 MR. PASZAMANT: Your Honor --

6 THE WITNESS: -- second consideration --

7 MR. PASZAMANT: -- may the witness be instructed to
8 -- to constrain his answer to the questions that I've posed?

9 JUDGE SMITH: Well, I will simply say this, as I have
10 said ad nauseam. Time is short and the witness needs to be
11 permitted to make the points that are responsive to the
12 questions, but to the extent we get into areas are redundant,
13 the plaintiff's time is being wasted.

14 THE WITNESS: I appreciate that and -- and but if the
15 questions aren't asked to me, sir, in a redundant manner I
16 could respond.

17 JUDGE SMITH: The Court has --

18 THE WITNESS: I believe I've answered that question
19 to you, sir.

20 JUDGE SMITH: Senator, the Court has ruled.

21 THE WITNESS: Thank you, sir.

22 JUDGE SMITH: Just listen to the next question.

23 THE WITNESS: I will, sir. Thank you.

24 BY MR. PASZAMANT:

25 Q My question, sir, is a simple question, and that is is it

1 uncommon for you as a member of the Senate State Government
2 Committee to vote for a shell bill to come out of that
3 committee?

4 A It would be uncommon, sir, unless it was a procedural
5 matter.

6 Q So if it's a procedural matter it wouldn't be uncommon
7 that you would vote for a shell bill to come out of your
8 committee, correct?

9 A Would you repeat your question? I did not understand it
10 clearly.

11 Q Certainly. You're drawing a distinction between a
12 procedural matter versus some other sort of matter --

13 A Correct.

14 Q -- and you have said to me that you voted for this bill to
15 come out of your committee in the first instance because it was
16 procedural and you've characterized it as a shell bill. I'm
17 asking you simply as to whether it's uncommon for a so called
18 procedural vote to be had on a shell bill by your committee in
19 your experience in the Senate.

20 A We never -- to the best of my knowledge I cannot remember
21 any shell bill of this nature ever coming to the committee to
22 be voted on, sir.

23 Q When you say "this nature," what are you referring to,
24 sir?

25 A A bill that -- I am referring to a bill that only lists

1 congressional districts and has no description of those
2 districts. I'm referring to printer number 1520, sir.

3 Q So when you're speaking of "a bill of this nature," you're
4 speaking exclusively of a congressional redistricting bill,
5 that's what we're talking about?

6 A I am speaking of a -- yes, I am speaking of a
7 congressional redistricting bill --

8 Q And I'm asking you, sir, about any bill -- any shell bill.
9 Does the committee typically vote shell bills whether they have
10 to do with agriculture, gaming, whatever the case may happen to
11 be, do they vote those out of committee, sir?

12 A I answered your question by saying that I do not remember
13 any other shell bill coming before the committee. I do
14 remember bills that had substance to them that we debated and
15 that we stripped the bill and we replaced it with wording.

16 And I do remember this being done over a longer
17 period of time and we -- so clearly we have moved bills forward
18 that we disagree with as a whole, but we do not usually have a
19 complete shell bill.

20 A shell bill that is usual would be a bill that is
21 filled with information that is only -- it's not a shell bill,
22 it's simply a bill that others wouldn't agree with. And
23 therefore what I am saying to you is yes, this was an unusual
24 occurrence to receive this kind of bill.

25 And the vote was a procedural one and I did vote it

1 out of committee based on its number which was 15-whatever it
2 was and I objected once the amendments came in and I objected
3 to the other printer numbers in which the bill was filled with
4 some -- with substance.

5 Q And had this bill -- this printer number 1520 not been
6 voted out of the Senate State Government Committee, that would
7 have been the end of it, correct?

8 A It would not have been the end of it because it was
9 essential that for us to complete the task by the end of
10 December we were going out of session. Congressional
11 redistricting had to take place and we -- and therefore this
12 was our final opportunity to do so before that session would
13 have ended.

14 And, we had the legal responsibility to do such or we
15 could have potentially been sued for failure -- the legislature
16 could have legally been challenged for failure to produce a
17 congressional redistricting plan.

18 Q I understand, but my question is a little simpler than
19 that, sir, which is with regard to Senate Bill 1249. When you
20 voted along with all your colleagues unanimously for that bill
21 with printer number 1520 to come out of committee in the first
22 instance, had that not been a favorable vote by a majority of
23 that committee, that's the end of that bill at that point in
24 time, correct?

25 A It would have been the end of the bill. But we had the

1 responsibility to because of the delay since September, it had
2 to proceed in an immediate sense because we were soon going out
3 of session and as you know, once you go out of session it goes
4 over two years and I believe that a bill would had to have been
5 totally reintroduced.

6 Q Okay. Sir, I'm going to move forward so now let's talk
7 about Plaintiff's Exhibit Number 6 --

8 A Yes, sir.

9 Q -- which has the printer number 1862 on it.

10 A Thank you for helping me by stating the printer number.

11 Q I'm doing what I can, sir, thank you. So this is the
12 second time that Senate Bill 1249 appears in front of the
13 Senate State Government Committee, correct?

14 A Yes, sir.

15 Q And were you present at the committee meeting on this
16 particular --

17 A I was, sir.

18 Q Excuse me, may I finish before you respond?

19 A Yes, sir.

20 Q You were present at the committee meeting when this bill
21 was considered this time?

22 A Yes --

23 Q Okay, very good.

24 A -- that's what I just said.

25 Q Sir, I couldn't hear you because I was speaking.

1 JUDGE SMITH: Please, let's --

2 THE WITNESS: Thank you, sir.

3 JUDGE SMITH: Let's both of you take your time. Ask
4 a question, allow enough time to respond, don't step on his
5 questions, don't step on his answers.

6 THE WITNESS: I will, sir. Thank you, sir.

7 MR. PASZAMANT: Thank you, Your Honor.

8 BY MR. PASZAMANT:

9 Q So, sir, during this second time Senate Bill 1249 was in
10 front of the Senate State Government Committee, do you recall
11 any senators being prevented from speaking, yourself included?

12 A I recall no senators being prevented from speaking and I'm
13 sure I said things.

14 Q And do you recall any members of that committee being
15 prevented from casting a vote either for or against Senate Bill
16 1249 at that time?

17 A You are referring to the printer number N6 which was
18 on the morning of December the 14th, is that correct?

19 Q I'm talking about printer number 1862 if that's helpful to
20 you, sir.

21 A That -- you are talking about the bill as amended on
22 December the 14th, 2011, correct?

23 Q Yes, that's correct, Your Honor (sic) --

24 A Yes, then there was --

25 Q -- I'm sorry, Senator.

1 A Your question is no one was prevented the morning of the
2 14th from speaking.

3 Q And how about from voting?

4 A Nor from voting.

5 Q Okay. And you had an opportunity to vote on the bill at
6 that time, right?

7 A I did, sir.

8 Q Okay. Did any of your Democratic colleagues on the
9 committee that day vote in favor of the bill being reported out
10 of the committee?

11 A One colleague from Philadelphia voted in favor of it being
12 reported out --

13 Q And who's that?

14 A -- Senator Tartaglione.

15 Q My mistake, I'm sorry -- Tina Tartaglione?

16 A Yes, sir.

17 Q Very good. Do you know why it is that she voted it out of
18 committee?

19 A It is my understanding from -- again, I only can say
20 hearsay -- it is my understanding --

21 JUDGE SMITH: You can't --

22 THE WITNESS: -- what she told --

23 JUDGE SMITH: I was surprised there was not an
24 objection. That is hearsay.

25 MR. PASZAMANT: I simply asked if he had an

1 understanding, sir, not what anybody told him.

2 JUDGE SMITH: No, I think --

3 THE WITNESS: My --

4 JUDGE SMITH: -- I think what you asked was do you
5 know, but let's start over.

6 MR. PASZAMANT: If I did, Your Honor, I apologize and
7 I'll rephrase it.

8 BY MR. PASZAMANT:

9 Q Do you have an understanding as to why Senator Tartaglione
10 voted in favor of the bill coming out of committee?

11 A Yes, I do.

12 Q Can you tell me what that understanding is?

13 A It was help -- it was to help the delegation in
14 Philadelphia --

15 Q And when you say --

16 A -- the congressional delegation in Philadelphia.

17 Q And when you say the congressional delegation, to whom are
18 you referring?

19 A I'm referring to the -- I'm referring to the -- it would
20 be the 1st and 2nd Congressional Districts.

21 Q Okay. And did you have an understanding as to what type
22 of help it was that it was thought that her vote would bring
23 about?

24 A Because in those two congressional districts there was a
25 -- there was a packing of Democrats into those districts and

1 therefore it would help those particular candidates.

2 Q And who were the candidates you're referring to?

3 A Congressman Brady and Congressman -- at that time Fattah
4 who is -- unfortunately in prison at this point.

5 Q Right. And absent Senator Tartaglione's favorable vote,
6 that bill doesn't come out of committee that day, does it?

7 A No, it does not. May I --

8 JUDGE SMITH: Excuse me. Could I have that
9 clarification too as to why that is? And maybe you were going
10 to ask that question but --

11 THE WITNESS: Because the vote was --

12 JUDGE SMITH: Excuse me --

13 THE WITNESS: -- the vote --

14 JUDGE SMITH: Excuse me, sir. Why was her vote
15 necessary?

16 THE WITNESS: Because two Republicans voted with the
17 Democrats to prevent the bill from coming out of committee
18 because of the impact on their counties.

19 JUDGE SMITH: Thank you.

20 MR. PASZAMANT: Thank you, Your Honor.

21 BY MR. PASZAMANT:

22 Q Sir, I'm going to move along. The bill on that same day
23 is presented to the Senate floor -- I believe it's printer
24 number 1869, correct?

25 A Yes, sir.

1 Q Okay. Now, on that day was any member of the Senate
2 prevented from speaking his or her mind with regard to Senate
3 Bill 1249

4 A No.

5 Q Okay. And all the members of the Senate that were present
6 that day, they had the opportunity to cast a vote up or down,
7 correct?

8 A That is correct.

9 Q Okay. And you had that opportunity as well, right?

10 A Correct.

11 Q And you cast a vote, right?

12 A It's my responsibility to do so.

13 Q How many Republicans voted against Senate Bill 1249 that
14 day on the Senate floor?

15 A I do not know the number but we do know that there were a
16 number who did because the bill was passed 26 to 24 and their
17 votes were for the same reason that they -- that some voted for
18 in committee, they felt it had a negative impact on their
19 particular counties to split those counties into two or three
20 or four congressional districts and they so stated that.

21 Q Thank you. Sir, I'm not entirely sure what all binders
22 you have in front of you but do you have one that's labeled
23 Legislative Defendants Exhibits?

24 A You have to tell me what the number is.

25 MR. PASZAMANT: May I approach?

1 JUDGE SMITH: Sure.

2 MR. PASZAMANT: Thank you.

3 BY MR. PASZAMANT:

4 Q It doesn't appear that you do.

5 UNIDENTIFIED SPEAKER: Yeah, I know which one --

6 MR. PASZAMANT: No, that's okay. I have extra
7 copies. I don't -- does the Court have copies of Legislative
8 Defendants binder?

9 JUDGE SMITH: Yes.

10 MR. PASZAMANT: Okay, very good. May I post an
11 exhibit to the ELMO? Thank you.

12 UNIDENTIFIED SPEAKER: Your Honor, we do not have a
13 copy of the Legislative Defendants binder.

14 MR. PASZAMANT: Well, I'll tell you what, I have a
15 copy of what I want to use.

16 UNIDENTIFIED SPEAKER: That's okay.

17 (Pause)

18 BY MR. PASZAMANT:

19 Q Now, sir, if the technology is working right you ought to
20 be able to see Legislative Defendant's Exhibit Number 13 in
21 front of you. Do you have that on your screen?

22 A What I see in front of me is a prior breakdown of
23 congressional districts.

24 Q Okay --

25 A Not the new one.

1 Q Do you see in the bottom left corner it says LD 13?

2 A No, I -- oh, yes I do on the bottom left hand corner,
3 thank you, sir.

4 Q I just want to make sure we're on the same page, sir,
5 that's all.

6 A Yes, sir.

7 Q Do you recognize this document, sir?

8 A I -- it is hard for me to see it on this screen, sir, so
9 let me take off my glasses and see if I see it then.

10 MR. PASZAMANT: May I give the witness another
11 copy --

12 JUDGE SMITH: Sure.

13 MR. PASZAMANT: -- that may be a little easier --

14 JUDGE SMITH: Let's see if it's any more readily sort
15 of --

16 THE WITNESS: Oh, this is a much better copy. Thank
17 you.

18 MR. PASZAMANT: You're welcome.

19 JUDGE SMITH: So much for technology.

20 THE WITNESS: Yeah.

21 MR. PASZAMANT: Surprise, Your Honor.

22 BY MR. PASZAMANT:

23 Q So my question, sir, is do you recognize this document?

24 A I recognize this document as prior congressional
25 districts. I see 16, I -- which has a significant part of

1 Chester County. I see 7 and I do not see -- yes, I do see 6,
2 correct.

3 Q Okay. Sir, on the day that the Senate voted with regard
4 to Senate Bill 1249, was there any amendment proposed by
5 Senator Costa?

6 A Yes, there was.

7 Q Okay. Do you know whether this document that I placed in
8 front of you is in fact the map that was the amendment proposed
9 by Senator Costa?

10 A Yes, it was.

11 Q It was?

12 A To the best of my knowledge, sir.

13 Q Okay. And so this was the map he presented on the Senate
14 floor that was voted on?

15 A I do not know if he presented a map. All our --
16 everything is put into -- is into wording so I cannot say I saw
17 the map but there was a verbal description.

18 Q Okay. And do you know whether this map depicts that
19 verbal description?

20 A I have to assume it does. I don't know that as fact.

21 MR. PASZAMANT: Your Honor, I seek to introduce this
22 into evidence as Legislative Defendant's 13.

23 MR. GEOGHEGAN: Well, objection. There's no evidence
24 that this was actually introduced to the Senate or that this
25 witness saw it in connection with the bill. I don't know the

1 providence of this document --

2 JUDGE SMITH: Well, that's more --

3 MR. GEOGHEGAN: -- or whether it was before the
4 Senate.

5 JUDGE SMITH: That's more to the point regardless of
6 whether -- what is the providence of this document and what
7 kind of foundation has been laid --

8 MR. PASZAMANT: Well --

9 JUDGE SMITH: -- for it?

10 MR. PASZAMANT: -- he acknowledged, Your Honor, that
11 there was an amendment presented that day and he just testified
12 that he assumes that this is the map that was part of that
13 amendment. So with that I think that he has the requisite
14 knowledge and I've established a foundation for his
15 introduction into evidence.

16 JUDGE SMITH: We'll defer ruling. You can continue
17 to examine him with respect to this exhibit of course as you
18 could any other demonstrative exhibit.

19 MR. PASZAMANT: Thank you, Your Honor.

20 BY MR. PASZAMANT:

21 Q Senator Dinniman, Jay Costa, who introduced the amendment,
22 what was his position in the Senate at that time?

23 A He was Democratic Leader of the Senate.

24 Q And was there a vote held on the amendment presented by
25 Senator Costa that day on the Senate floor?

1 A There was.

2 Q And what was the result of that vote?

3 A The result of the vote -- it was defeated and the -- and I
4 as a Democrat voted for this because it -- it was far better in
5 removing the split precincts that were in the Republican bill
6 and those split precincts -- sometimes two or three in the same
7 town, sometimes a district being connected simply by no larger
8 than this room was eliminated by a spot no larger than this
9 room was eliminated in this map.

10 There were only two choices to be made at this stage
11 of the game. It was either the Republican bill which had the
12 split precincts, which had these very small connections which
13 went in a circle around the -- in the 7th District, or a
14 Democratic bill which I believed was an improvement because it
15 ended the splits.

16 Q Sir, is it your testimony that the Democratic proposed
17 amendment that day on the Senate floor had less split precincts
18 than the Senate Bill 1249 that was being --

19 A It was my understanding at that moment in time, but
20 because of the fact that we were shown nothing until the
21 morning of the -- until the morning of the 14th and because the
22 Democratic plan was as Senator Costa stated on the floor -- I
23 reread the legislative record -- was done in ten hours.

24 I had -- I had no time because of the nature of this
25 to go through each of the districts and my complaint was as I

1 stated earlier, was that we were not given that opportunity to
2 do so.

3 JUDGE SMITH: Now I -- let me just interject here.
4 The question was more narrow than the answer that was given and
5 I just for the benefit of all, the question went to what your
6 understanding of this particular proposed map was and I'm
7 deeply concerned about the use of time here but I don't think
8 anybody's listening to me so that's the last I'll say anything
9 about it.

10 MR. PASZAMANT: Your Honor, I don't have a whole lot
11 more and I do apologize for the delay. I'm doing my best.

12 BY MR. PASZAMANT:

13 Q Sir, sitting here today do you know whether the Democratic
14 amendment proposed on the Senate floor that day in fact had
15 less split precincts than Senate Bill 1249?

16 A Based on what Senator Costa told us -- I do believe him to
17 be an honest man -- and so I accept what he said.

18 Q That the Senate amendment had less split precincts than --
19 or excuse me -- Senate Bill 1249?

20 A That is my understanding. This would have been Bill 1249
21 and it would have been amended --

22 Q Thank you.

23 A -- that the amendment had less.

24 Q All right. Sir, have you ever had any training in the use
25 of GIS software?

1 A No, I have not.

2 Q Do you know how the concept of one person, one vote was
3 factored in, if at all, into Senate Bill 1249?

4 A Yes, I do, through a verbal description of the deviation
5 which had to be almost zero.

6 Q So you know how the notion of one person, one vote
7 factored into Senate Bill 1249?

8 A I know how split precincts had to happen on certain
9 occasions.

10 Q Okay. And do you believe that Senate Bill 1249 in fact
11 adheres to the one person, one vote criteria?

12 A It adheres to it but I -- I believe it does adhere to it,
13 yes, but it does not have to adhere to it by connecting
14 districts that are only the width of this room.

15 Q Sir, you told me earlier that you have no personal
16 knowledge as to how any of the lines in Senate Bill 1249 were
17 drawn, correct?

18 A Because that was not shared, correct.

19 Q Right. And therefore you have no idea sitting here today
20 as to how the loss of the congressional district factored into
21 the drawing of the lines in Senate Bill 1249, right?

22 A I -- I do have an idea, that I was told --

23 Q I'm asking if you have any personal knowledge.

24 A Personal knowledge was that we lost a district and it had
25 to be redistricted and that district was to come from -- both

1 parties stated that district would come from the west because
2 that's where the loss of population was. In fact, your client
3 stated that.

4 Q And how -- how exactly was it, sir, that the loss of a
5 congressional district impacted the drawing of any single line
6 on that which is Senate Bill 1249

7 A Well, you would have had to redraw the districts, of
8 course.

9 Q Okay. But any particular line that it went through this
10 driveway, this field, across that stream, how did the loss of a
11 congressional district factor into any single one of those
12 lines on Senate Bill 1249?

13 A It would factor into it but it depends on -- on what
14 model you're using to create the factoring in. If you
15 remember, sir, that a map was created by a citizen which took
16 into account one vote, one person at no expense and was -- was
17 sent to the legislature -- the citizen -- the woman who was in
18 Allentown and one presumes from my understanding that that
19 citizen map did take this into consideration.

20 Q I see. What's the name of this citizen?

21 A I -- I would have to -- it was -- I do not remember her
22 name but it was published in every newspaper in this
23 commonwealth as you well know and so I'm not saying that is any
24 secret that she published a map.

25 She lived in the Borough of Allentown and she

1 published the map that was given wide publicity and that it was
2 our understanding took into consideration the one person, one
3 vote and you can find that map as easily as I by simply
4 Googling.

5 Q Sir, are you familiar with the Voting Rights Act?

6 A I am quite familiar with the Voting Rights Act.

7 Q How did the Voting Rights Act get factored into the
8 drawing of any single line within Senate Bill 1249?

9 A One presumes that in terms of minority and majority
10 populations that that would be respected.

11 Q Okay. But you don't know how that specifically -- that
12 concept of the Voting Rights Act impacted the drawing of any
13 single line in Senate Bill 1249, correct?

14 A No, I do not because no one shared with me the
15 mathematical formulas upon which Act 1249 -- excuse me -- upon
16 which the bill in the final printer number was an act.

17 Q How about incumbency protection. How did incumbency
18 protection factor into --

19 MR. GEOGHEGAN: Objection, Your Honor. I think this
20 is getting way outside the scope of the direct.

21 JUDGE SMITH: I don't think so. I'll allow the
22 question.

23 BY MR. PASZAMANT:

24 Q How does -- how did incumbency protection factor into the
25 drawing of any single line within Senate Bill 1249?

1 A Since most of the incumbents were well aware of the
2 process and since I testified earlier that it was my
3 understanding that the Republican incumbents in my county were
4 involved in the process, that I would have to say that it did
5 factor into it.

6 Q Okay. How, sir? What line in Senate Bill 1249 was
7 affected by trying to factor in incumbency protection?

8 A I would tell you that the -- that where you have Creed's
9 Steak House in the 7th Congressional District where you've
10 created a connection in the 7th District which goes through
11 four or five counties and you've connected it through one
12 building and that is no wider than -- than the length -- excuse
13 me -- no bigger than the length of this courthouse was
14 connected into incumbency -- incumbency protection.

15 And the fact that the person who was considered to be
16 a prime opponent way back at that time and who now is running
17 in the primary against him, Senator Daylin Leach, lived two
18 blocks away, that that was factored into incumbency protection.

19 Q Okay. So that district in your mind was drawn for
20 purposes of incumbency protection?

21 A Absolutely in my judgment that was drawn. And if I may
22 add, it was the map that we were presented was a map that was
23 under the direction of Senator Pileggi who came from the same
24 political machine, the same political Delaware County operation
25 as is Representative Meehan.

1 Q Thank you, sir. Are you familiar with the concept of
2 traditional redistricting principles?

3 A You would have to describe that for me, sir. I am not
4 familiar with that term.

5 Q Very good. So, sir, you spoke a bit earlier about
6 software and software in connection with map drawing, right?

7 A Yes, I done -- I've read extensively about it, though I do
8 not pretend to be an expert.

9 Q Can you please tell me what's changed with regard to
10 computers or computer software with regard to redistricting
11 between 2000 and 2010?

12 A Absolutely. We are now able to -- to identify individual
13 voters. We not only do this in construction of maps, we do
14 this in electioneering as well. We're able to give a
15 particular message to a particular household because not only
16 do we know voting history, but we know socioeconomic census
17 tracks that could be put into the formula.

18 And this is the given in political electioneering
19 today and it was also the basis of -- of the way in my judgment
20 the map was -- the planning of this particular map that we were
21 given was done.

22 Q Is it your testimony that these things that you just
23 testified to were not available by way of the computers and
24 software in 2000?

25 A I would testify that I was not aware of their

1 availability, but I would testify to you that there is no
2 question that in ten years tremendous growth occurred
3 technologically in the computer and information science
4 industry, that it was the largest growth that we have seen;
5 that, sir -- that the rapid speed of change and growth is
6 increasing, not decreasing in informational technology and you
7 know that as well as I.

8 Q So you don't know whether in 2000 the computers and the
9 software were able to do any of those things you just
10 identified?

11 A But -- no, but I do know that they could it better in 2010
12 and they could do it -- and they will be able to do it better
13 if we continue this process in --

14 Q Were you involved in the congressional redistricting
15 process in connection with the 2000 census?

16 A No, I was not. I was -- I was a county commissioner at
17 the time.

18 Q Okay. Now, during your direct testimony there was some
19 discussion about the suspension of the 11:00 rule --

20 A Yes, sir.

21 Q -- in connection with Senate Bill 1249, correct?

22 A Yes, there was.

23 Q Is it your testimony that that's happened on one occasion
24 and one occasion alone and that's --

25 A No. That's happened on -- that has happened on several

1 occasions but it's not frequent, sir, because of what had
2 occurred -- why we had to reform because of the late night pay
3 raise that had occurred several years before that --

4 Q I see.

5 A -- that we -- it was an infrequent occurrence because it
6 was part of our reform rules.

7 Q How do you characterize infrequent?

8 A I characterize infrequent as happening on very few
9 occasions and those occasions would be when we -- something --
10 when it was felt that -- that we were against a deadline that
11 had to be accomplished and that deadline was created by us not
12 seeing the bill until the morning of 2014 and us going out of
13 session.

14 Q I see. And as part of your direct testimony you spoke
15 about the citizens of Pennsylvania inability to understand what
16 was in Senate Bill 1249 until this day in December of 2011,
17 right?

18 A That is correct --

19 Q And that was --

20 A -- because I never saw it.

21 Q And that was of concern to you, correct?

22 A It was indeed.

23 Q How much time did the citizens of Pennsylvania have to
24 consider this recently passed tax -- or budget legislation that
25 went through?

1 A In Washington?

2 Q No, in Pennsylvania.

3 A Oh, they had a -- they unfortunately had more time than
4 they should have because of the delay that had occurred.

5 Q When did the citizens of Pennsylvania first come to
6 understand what was contained in the recently enacted budget
7 bill?

8 A I do not know that, sir. I voted against the bill --

9 Q I see.

10 A -- because I thought it was not constitutional to do
11 revenue and expenses separately.

12 MR. GEOGHEGAN: Objection. This is getting far
13 afield of the direct.

14 JUDGE SMITH: Yes, I will sustain the objection.

15 MR. PASZAMANT: Your Honor, may I have just a moment?

16 JUDGE SMITH: Yes.

17 (Pause)

18 MR. PASZAMANT: Your Honors, having consulted with my
19 co-counsel, I have no further questions.

20 JUDGE SMITH: Very well.

21 MR. GEOGHEGAN: No direct -- redirect.

22 JUDGE SMITH: No redirect?

23 MR. GEOGHEGAN: None.

24 (Pause -- Judges conferring)

25 JUDGE SMITH: Mr. Aronchick, do you want to weigh in

1 at all with this witness?

2 MR. ARONCHICK: No, we do not.

3 JUDGE SMITH: Thank you very much. All right, we'll
4 take a brief recess at this time. It's 10:40.

5 THE WITNESS: Thank you, sir.

6 JUDGE SMITH: The witness may step down.

7 THE WITNESS: Thank you.

8 (Court in recess 10:41 a.m. to 10:48 a.m.)

9 (Transcriber change)

10 JUDGE SMITH: Please be seated. And I guess we need
11 to have plaintiff's counsel return.

12 (Pause)

13 JUDGE SMITH: Are the plaintiffs ready to proceed?

14 MR. B. GORDON: Yes, Your Honor. We call to the
15 stand John Gallagher from the First Congressional District.

16 THE CLERK: Please rise and raise your right hand.

17 JOHN GALLAGHER, PLAINTIFF'S WITNESS, SWORN

18 THE CLERK: Thank you. Please state your full name
19 and spell your last name for the record.

20 THE WITNESS: John M. Gallagher, G-A-L-L-A-G-H-E-R.

21 JUDGE SMITH: Please be seated. Thank you.

22 DIRECT EXAMINATION

23 BY MR. B. GORDON:

24 Q Good morning, Mr. Gallagher.

25 A Good morning.

1 Q Where do you reside?

2 A 1002 Twyckenham Road, Media, PA 19063.

3 Q In what county is Media?

4 A Delaware.

5 Q What is your Congressional District?

6 A I'm in the First right now.

7 Q Where did you grow up?

8 A I grew up the first six years in Chester, and thereafter
9 in Drexel Hill, Pennsylvania, and then in Upper Darby,
10 Pennsylvania, and then in Media.

11 Q So you lived your whole life in Delaware County -- in
12 Delaware County, is that right?

13 A Yes.

14 Q Do you have children? Are you married?

15 A I'm married. And, yes, I do have children. My daughter
16 is assistant managing editor of Fortune Magazine in New York.
17 And my son is a producer for ESPN in Connecticut, in charge of
18 college football and basketball.

19 Q So they're out of the house?

20 A They are.

21 Q Okay. Did you -- where did you -- you attended college at
22 St. Joe's University?

23 A St. Joe's College, St. Joe's Prep, Temple Law.

24 Q Okay. High school is St. Joe's Prep?

25 A Yes.

1 Q Thank you. And what was your degree in at St. Joe's?

2 A AB English.

3 Q And you have a -- and when did you graduate law school
4 from Temple?

5 A Sixty-nine.

6 Q Are you still a practicing lawyer?

7 A I am.

8 Q What is your area of emphasis, or specialization?

9 A I guess I specialize in suing people under circumstances
10 where I can get the defendant to pay the attorney's fees.
11 Other than that, personal injury, and medical malpractice.

12 JUDGE SMITH: We appreciate your candor, Mr.
13 Gallagher.

14 BY MR. B. GORDON:

15 Q Can you give us a brief history of your employment?

16 A I started out after Temple Law School with an Upper Darby
17 law firm, Richard, Disanti and -- Richard, Bryan & Disanti
18 (phonetic), and that changed names variously until it ended up
19 being Gallagher Schoenfeld Surkin Chupein & Demis, and I stayed
20 with them from 1969 until 2014. And at that point Gallagher
21 Schoenfeld Surkin Chupein & Demis, the majority of the partners
22 decided I had become too old, and so they suggested I should
23 leave.

24 Which I did. And I've been in practice by myself
25 ever since.

1 Q What year was that?

2 A 2014.

3 Q Okay.

4 A The first time they suggested I was too old was about
5 2008.

6 Q We'll save that for a different Federal -- day in Federal
7 Court.

8 Could you please tell us, what is your party
9 registration?

10 A Right now I'm a Democrat.

11 Q How long have you been a Democrat right now?

12 A About -- about 10 weeks.

13 Q Okay. Why did you become a demo -- why did -- what were
14 you registered before?

15 A Before, I was registered a Republican. I had tried
16 unsuccessfully two times before this last time to change
17 registration to Democrat. I had been a Republican to -- I
18 forget --

19 Q We'll take it sequentially.

20 A Okay.

21 Q When you first started voting when you became of age, did
22 you register as a Democrat or a Republican?

23 A I started out as a Republican.

24 Q For how many years were you a Republican?

25 A I stayed Republican until I moved out of Philadelphia,

1 where I lived very briefly, I forgot about that, after law
2 school. Until I -- until I moved into Delaware County, which
3 would have been 1971. And then I became a Democrat. And then
4 I changed -- go ahead.

5 Q Actually, you go ahead. And then I'll go back.

6 A I changed back to Republican when it looked like Arlen
7 Specter was going to lose to Senator Toomey. I wanted to help
8 out Senator Specter. So I changed to Republican then, and then
9 I changed back to Democrat to help out Senator Sestack -- or
10 Congressman Sestack, who wanted to be a senator. And I think
11 there might have been another change in there somewhere, but
12 I'm not sure.

13 My friends call me a serial registration changer.

14 Q Thank you. But -- so why did you become a Democrat in
15 1971 until Senator Specter's run as a Democrat?

16 A Well I just felt, at that time Governor Shapp was the
17 candidate, I believe, and I just felt he was superior, and I
18 wanted to support --

19 Q What core values caused you to remain a Democrat for so
20 many years?

21 A Oh. Well I just think the Democratic Party is the party
22 that looks out for the common man, and looks out for the middle
23 class people. And I guess that's the short version.

24 Q Okay. Thank you.

25 A I can give you about ten pages on it, but I know you don't

1 want that.

2 Q Thank you. All right. Your -- let's see -- you are a
3 resident -- or you testified you are a resident of the First
4 Congressional District?

5 A I am now, yes.

6 Q You're a Democrat.

7 A Yes.

8 Q You were -- you're a member of congress as a Democrat.
9 How, if at all, did the 1911 (sic) map infringe upon your civil
10 rights?

11 A Well the 19 -- what year?

12 Q I'm sorry, 2011 --

13 A Yes. The 2011 map put me into the First Congressional
14 District with, you know, 95 percent people with whom I have
15 absolutely nothing in common with. I mean, I have nothing
16 against the fine people in the First Congressional District,
17 but I -- I've never -- I've never had anything to do with them
18 until we were redistricted.

19 When I -- on that election, 2012, the primary, I
20 walked into the voting booth, and at first I thought that I was
21 in -- that there'd been a mistake made with the ballot label,
22 because it had Congressman Brady on there and I -- that wasn't
23 me, I wasn't in that District -- at least I thought, as it
24 turns out I was.

25 Q Okay. Has Congressman Brady ever visited your section of

1 the District?

2 A Never.

3 Q Can you -- before we go on, I'm going to go to an
4 overhead, which is the monitor to your right, and I'm going to
5 ask you to identify where in the District you live, and how it
6 relates to the rest of the District.

7 A Okay. This is kind of hard to see but --

8 JUDGE SMITH: Well, wait, he's going to blow it
9 up --

10 THE WITNESS: Oh, yeah. It's a little bit clearer.
11 What do you want me to do, point on it?

12 BY MR. B. GORDON:

13 Q Yeah. I want you to actually put an X on the screen, and
14 it will show up to the Panel --

15 A Okay.

16 Q -- where you reside.

17 (Pause)

18 A I mean, this is a little bit difficult. But it seems to
19 me, I'm about there.

20 Q You have to touch the screen.

21 A Nothing's showing.

22 JUDGE SMITH: Touch it with your finger.

23 THE WITNESS: Oh. Yeah, right around there. Maybe a
24 little bit to the left of there.

25 BY MR. B. GORDON:

1 Q Okay. And the left of there would be -- are you in the
2 Borough of Swarthmore?

3 A I'm in actually Nether Providence Township. It's Media
4 post office.

5 Q Okay. All right. And -- okay. Has Congressman Brady
6 ever come to your part of the District, to your knowledge?

7 A Never.

8 Q What is your -- what has been your relationship, if any,
9 with Congressman Brady?

10 A None whatever.

11 Q And you were mentioning that you were previously part of a
12 District that included Delaware County, please describe it.

13 A Well previously I was in the Seventh Congressional
14 District, which is Pat Meehan's District, he's the congressman
15 now. And I think I still regard him as my congressman.
16 Although I'm very much against his reelection, but we were just
17 over to his office the night before last picketing, about 100
18 of us, picketing the tax so-called reform act.

19 Q I was just going to ask you what were you picketing.

20 A The tax so-called reform act.

21 Q And I missed one of my usual questions is, can you
22 describe your current level of political activism?

23 A I'm active in a neighborhood group that my neighbors
24 formed after President Trump was elected. And we call
25 ourselves the Bowling Green Patriots. Bowling Green is the

1 name of the little section of our neighborhood where I live,
2 and we -- we named ourselves after that, and after the Bowling
3 Green Massacre.

4 Q Okay. And I've not been informed of the Bowling Green
5 Massacre. I know this may take a second of time. Can you
6 briefly describe --

7 A It's a fictitious massacre that Kelly Ann Conway talked
8 about.

9 Q Sorry. All right. I thought -- all right. Thank you
10 very much.

11 MR. B. GORDON: And can we take judicial notice that
12 even though he put his arrow to the right of the line, that he
13 is to the left of it, or should I inquire further?

14 JUDGE SMITH: Well I don't know if I can change it on
15 here but --

16 MR. B. GORDON: I think I might be able to clear it
17 up with a few more questions.

18 JUDGE SMITH: Okay.

19 MR. B. GORDON: Okay?

20 BY MR. B. GORDON:

21 Q Okay. Are you inside or outside of the First
22 Congressional District?

23 A Inside.

24 Q Are you sure?

25 A Positive.

1 Q How do you know, other than the fact that you saw Mr.
2 Brady, which is also pretty good, you saw his name on your
3 voting machine, right?

4 A Yes. And I saw a map that shows a tiny finger of the
5 First Congressional District sticking right up into my
6 neighborhood, and covering my -- my lot. I have members of our
7 group, the Bowling Green Patriots, most of them are still in
8 the Seventh Congressional District. And I'm one of the few
9 that's in the First.

10 Q And has -- has being gerrymandered, or redistricted into
11 the First District has it -- has it affected your -- any other
12 -- has it affected your vote in any way? In what way has it
13 affected your vote?

14 A Well it's affected my vote in that I can't vote against
15 Congressman Pat Meehan anymore. I've been working on defeating
16 him, along with a lot of other people in our District, for some
17 time, because we want to get at least his congressional seat to
18 be more representative and be held by a Democrat.

19 And now that -- this map makes that almost
20 impossible.

21 MR. B. GORDON: No further questions. Thank you.

22 JUDGE SMITH: Cross-examine.

23 CROSS-EXAMINATION

24 BY MS. GALLAGHER:

25 Q Mr. Gallagher, my name's Kathleen Gallagher, and for

1 purposes of the record I don't believe we're related, sir.

2 A We are related?

3 Q No, I don't believe we are.

4 A I don't think so. Yes.

5 Q Just a couple of very quick questions, sir. Have you
6 always had the ability to cast your vote for any candidate of
7 your choice?

8 A No. No, I -- actually, I wanted to cast my vote since
9 2012 for Congressman Meehan's opponent, and I haven't been able
10 to.

11 Q Because you are in a different District?

12 A That's right.

13 Q Because you weren't -- okay.

14 A Because I was always in the First District.

15 Q And I apologize if I wasn't clear enough. Were you ever
16 prevented from voting in your Congressional District?

17 A No.

18 Q Okay. You just want to be in the other District so that
19 you could vote against Congressman Meehan, correct?

20 A Well I want to be -- that's the current reason. That
21 other District is the District that I live in, is the way I
22 view things.

23 Q Okay. And that was my next question, I hope it will be my
24 last one. I believe that you testified, and I'm sure you can
25 correct me, that you didn't realize you had been moved to the

1 First District until you walked in, and you had nothing in
2 common with those people. Is that, you have nothing in common
3 with people in the First District?

4 A I -- that's an overstatement. I have a lot more in common
5 with the people in the Seventh District than I do with the
6 people in the First District. And when I walked into the
7 voting booth that day, when I discovered I was -- had to vote
8 for Congressman Brady, I was just completely shocked by it, and
9 I had no idea what I would be voting for, or what the issues
10 effecting the people in the First Congressional District were.

11 Q Okay.

12 MS. GALLAGHER: Nothing further. Thank you.

13 JUDGE SMITH: Any redirect?

14 MR. B. GORDON: None, Your Honor.

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

16 MR. B. GORDON: Your Honor, we call to the --

17 (Pause)

18 MR. B. GORDON: Your Honor, I call to the witness
19 stand Connie Marie Diakatos.

20 THE CLERK: Raise your right hand.

21 CONNIE MARIE DIAKATOS, PLAINTIFF'S WITNESS, SWORN

22 THE CLERK: Please state your full name and spell
23 your last name for the record.

24 THE WITNESS: Connie Marie Diakatos,

25 D-I-A-K-A-T-O-S.

1 JUDGE SMITH: Spell that again, please?

2 THE WITNESS: D, as in David, I-A-K-A-T-O-S.

3 DIRECT EXAMINATION

4 BY MR. B. GORDON:

5 Q Ms. Diakatos, where do you reside, and what is your
6 address?

7 A 202 Dogwood Lane, Wallingford, PA.

8 JUDGE SMITH: Please talk right into the microphone.

9 THE WITNESS: Oh, sorry.

10 JUDGE SMITH: Keep your voice up. Point it directly
11 toward your mouth.

12 THE WITNESS: Okay.

13 JUDGE SMITH: Where do you reside, please?

14 THE WITNESS: 202 Dogwood Lane, Wallingford, PA.

15 JUDGE SMITH: Thank you.

16 BY MR. B. GORDON:

17 Q All right. In what congressional district do you reside?

18 A First.

19 Q All right. I want to ask you a few questions about your
20 background. Where did you attend high school?

21 A Upper Darby High School.

22 Q Where did you attend college?

23 A Temple University.

24 Q All right. What was your degree at Temple?

25 A Bachelor in business administration.

1 Q Okay. Do you have any graduate education?

2 A No.

3 Q Where are you now employed?

4 A O'Dell Studner Group in King of Prussia.

5 Q Okay. And can you give the Panel a brief work -- history
6 of your employment since graduating from college?

7 A I've worked in the insurance industry my entire career.
8 Always for insurance brokers. I started in Philadelphia at
9 Bailey Martin and Fay, and have worked for various brokers
10 until today.

11 Q Okay. And what is your party registration?

12 A Republican.

13 Q How long have you been a Republican?

14 A My entire life, voting life. Since 18.

15 Q Okay. What inspired you to become a Republican?

16 A Two things. So, you know, you always listen to what your
17 parents tell you when you're that age, and my dad was a
18 Republican, because he immigrated to this country in 1957 and
19 Eisenhower was president and he admired President Eisenhower.

20 I was in high school, and Ronald Reagan was running
21 for President, and he came and spoke at Upper Darby High
22 School, and I'll never forget that speech. You know, I sat
23 there on the floor listening to him, and he would speak, and,
24 you know, you got goose bumps listening to him talk. He was so
25 inspirational.

1 Q Where were you sitting in relation to the future President
2 Regan?

3 A I don't know, maybe from the distance here to those
4 tables.

5 Q Okay. And as soon as you were able to, you registered to
6 become a Republican?

7 A Yes.

8 Q And have you remained a Republican since that time?

9 A Yes.

10 Q Are you -- and what core values could you identify that
11 caused you to continue to be a Republican -- member of the
12 Republican party?

13 A That caused me to continue?

14 Q Well let's say --

15 A These days, that's a loaded question. I guess, you know,
16 when I registered, you know, back then, it was -- the party was
17 fiscally conservative, but it was also inclusive. It was --
18 you don't -- but I don't know that I feel that anymore.

19 Q Okay. Can you tell the Court, please, starting with your
20 right to vote, in what way you feel the location of your home
21 in the First Congressional District violates your civil rights?

22 MS. GALLAGHER: Objection, Your Honor. To violation
23 of civil rights.

24 JUDGE SMITH: I'll overrule the objection for the
25 same reason I have before. I believe she can say it doesn't,

1 or testify to the quantity with which it does.

2 THE WITNESS: Well I just feel like my voice isn't
3 heard anymore. You know, I have a congressional representative
4 who I've never -- has never come to Delaware County, certainly
5 not to Wallingford, since he's represented, you know, my area.

6 So, you know, again, I think to kind of reiterate
7 what the other witness just said. I look at -- I live
8 immediately next door to Delaware County's County Seat, Media.
9 The town next to that is Springfield, Pennsylvania. And
10 literally, maybe a mile away from my house, direct -- you know,
11 people are represented by Pat Meehan, a Republican, and I'm
12 represented by some guy in Philly, who, you know, wouldn't know
13 me if he fell over me.

14 Q Does Congressman Meehan represent any of your core values
15 on important issues? I'm sorry, I meant to say -- I withdraw
16 that. Does Congressman Brady represent -- do you feel he
17 represents your core values?

18 A Maybe some of them, yes. But I don't know, you know, I
19 wouldn't -- like I said, I've never spoken to him, so I
20 wouldn't know.

21 Q Okay. Do you feel comfortable contacting Congressman
22 Brady's office for constituent services?

23 A No.

24 Q Why not?

25 A I really don't feel a connection with him. To me he's a

1 Philly guy, and he's always going to represent Philly first.
2 He's going to have nothing to do with Delaware County, we're
3 competition for Philadelphia, actually.

4 MR. B. GORDON: Thank you. No further questions.

5 JUDGE SMITH: Cross-examine.

6 CROSS-EXAMINATION

7 BY MS. GALLAGHER:

8 Q Ms. Diakatos, I'm sorry if I pronounce that incorrectly.
9 Have you ever attempted to contact Congressman Brady?

10 A No, I have not.

11 Q So then as you sit here today, you don't know whether he
12 would respond or not, correct?

13 A No, I don't.

14 Q I believe you said that you talked about very close to
15 where you live is the line where people are in Congressman
16 Meehan's District. Is it fair to say that the line, no matter
17 where they're drawn or how they're drawn, there's going to have
18 to be a line for every District?

19 Strike that. Is it fair to say that every
20 Congressional District will have boundary lines?

21 A Yes.

22 Q And for every person who lives next to one of those
23 boundary lines, another District will be very close by?

24 A Yes.

25 Q Okay. Does Pat Meehan better represent your values?

1 A I would say right now neither one of the gentlemen
2 represent my values 100 percent. Certainly not Pat Meehan,
3 considering his votes recently. But I --

4 JUDGE SMITH: Excuse me. Do you mean when you say
5 the gentlemen, you mean neither Pat Meehan or Mr. Brady?

6 THE WITNESS: Or Brady. Yes.

7 JUDGE SMITH: Thank you.

8 THE WITNESS: I live in Delaware County, Pat Meehan
9 lives in Delaware County. Delaware County has some pretty
10 clear boundaries. It makes no sense to me that, you know,
11 we're literally next door to one another. Springfield and
12 Wallingford, and Media, and yet I'm represented by some guy
13 who's in Philadelphia, who's never going to come visit my -- my
14 neighborhood.

15 You know. Within reason, absolutely, there has to be
16 boundaries. But it makes no sense to split my county up like
17 that. It makes no sense. It doesn't represent me. If -- you
18 know, I think like a good example of that would be, you know,
19 Amazon's looking for another headquarters. And Pennsylvania's
20 in contention. And if it comes down to Delaware County, let's
21 say the City of Chester versus Philadelphia and Southwest
22 Philly, and South Philly where Bob Brady is, if Pennsylvania's
23 representatives go to him and look for help from the Federal
24 Government, who's he gonna help? He's not gonna help Delaware
25 County. He's not gonna help Chester. He's gonna help

1 Philadelphia.

2 So I'm not represented at all.

3 BY MS. GALLAGHER:

4 Q Have you ever been prohibited from voting, ma'am?

5 A Physically?

6 Q Yes.

7 A No.

8 Q Have you ever been prohibited from making political
9 contributions?

10 A No.

11 Q Have you ever been prohibited from speaking publicly for,
12 or in opposition to any political candidate?

13 A Well I would say that a qualified no.

14 Q Nothing further. Thank you.

15 MR. B. GORDON: No redirect, Your Honor.

16 JUDGE SMITH: Thank you very much. You may step
17 down.

18 MR. B. GORDON: Your Honor, our next -- our next
19 witness, I don't see him in the courtroom, may I have
20 permission to briefly step outside?

21 THE COURT: Certainly.

22 MR. B. GORDON: Okay.

23 MR. PERSOON: Judge, in the meantime, I update you
24 that the transcript request -- you requested be delivered in
25 the courtroom is here. And the rest of our team is currently

1 reviewing the transcripts so we can have them read into the
2 record.

3 THE COURT: Thank you very much. And we do
4 appreciate your efforts.

5 (Pause)

6 MR. B. GORDON: Your Honor, just to report, I've been
7 unable to reach Joseph Zebrowitz. His -- his deposition has
8 been taken. If he's not able to appear as a witness, we can
9 always use that. He had a rather long deposition, about two
10 and a half hours. I know it's been printed already and it's
11 ready to go.

12 He told me he would be here at 11:30. So and I -- if
13 there is a -- the defense has their expert available. But
14 they've indicated that they don't want to necessarily put on
15 their witness until after discussion and a motion for a
16 directed verdict. So I leave it to the Panel to decide how to
17 proceed.

18 JUDGE SMITH: And you have nothing else that you can
19 place into evidence, no other witness who can testify at this
20 point until your other witness arrives?

21 MR. B. GORDON: We do not. And we did all of our
22 exhibits yesterday.

23 MR. TORCHINSKY: Your Honor, we have a Rule 50, 52
24 motion prepared to file. We could file it now, and perhaps
25 take a recess while the Court considers it. It won't be

1 effected by the final witness's testimony.

2 JUDGE SMITH: Let me confer with the Panel.

3 (Pause - Judges conferring)

4 JUDGE SMITH: Mr. Torchinsky, this is simply a
5 proposal, and I don't want you or your colleagues to feel in
6 any way pressured by it. The one alternative we might have is
7 for you to put your expert on out of order, solely for purposes
8 of qualifying and permitting the voir dire of that witness.

9 But, again, if for tactical or other reasons you
10 would prefer not to do so, believe me, we're not pressuring you
11 to.

12 MR. TORCHINSKY: Your Honor, as long as that doesn't
13 -- as long as it's not construed by the Court or the plaintiffs
14 as any waiver of our Rule 50, 52 filing.

15 JUDGE SMITH: It will not in any way be so construed.
16 We'll be setting it aside, both procedurally and mentally, as
17 part of the defense case.

18 MR. TORCHINSKY: Yes, Your Honor, we'll proceed with
19 voir dire of Professor Gimpel.

20 THE COURT: All right. Thank you.

21 MR. TORCHINSKY: My colleague Phil Gordon is going to
22 conduct the voir dire of Professor Gimpel.

23 MR. P. GORDON: Hello, Your Honor. It's Phil Gordon
24 for the legislative defendants. No relation to my esteemed
25 colleague over --

1 JUDGE SMITH: I was about to say, you're confusing
2 me.

3 MR. P. GORDON: Sorry about that. I was given the
4 last name.

5 THE CLERK: Please rise and raise your right hand.

6 JAMES P. GIMPEL, DEFENSE WITNESS, SWORN

7 THE CLERK: Thank you. Please state your full name
8 and spell your last name for the record?

9 THE WITNESS: James G. Gimpel, last name is
10 G-I-M-P-E-L.

11 VOIR DIRE EXAMINATION

12 BY MR. P. GORDON:

13 Q So, Professor, according to some things that just
14 transpired, we're just going to go ahead and start with
15 discussion of your qualifications and expertise. And then at
16 some other point we'll get into your formal testimony.

17 So for right now, let's just start with some basic
18 questions about your expertise. With your education
19 background, where did you go to college?

20 A Drake University in Des Moines, Iowa.

21 Q And when did you graduate?

22 A In 1984.

23 Q All right. Where did you go to graduate school?

24 A The University of Toronto, and then on to the University
25 of Chicago for my PhD.

1 Q Okay. And when did you receive your PhD?

2 A 1990.

3 Q And what did you study in graduate school? What's your
4 PhD in?

5 A Political Science.

6 Q And did you write a dissertation for that PhD?

7 A Yes.

8 Q And what was that dissertation on?

9 A It was on political behavior in the states.

10 Q And what is your current academic position?

11 A I'm a full professor at the University of Maryland in
12 College Park.

13 Q By full professor, what does that mean? Can you explain
14 that to us?

15 A Full professor just means that you've gotten over the
16 tenure hurdle. And in a place like Maryland, you published
17 enough to get the approval of your colleagues that they want to
18 keep you around.

19 Q Fair enough. And how long have you been a professor in
20 political science?

21 A I've been on the faculty at the University of Maryland for
22 26 years.

23 Q Twenty-six years. Okay. And what is your primary
24 specialization in your professional research?

25 A Political behavior, and particularly the political

1 geography of political behavior.

2 Q Can you briefly describe what you mean by political
3 behavior?

4 A Well, sure. It's forms of participation and as well as
5 public opinion attitudes. So, you know, we might for instance
6 take up a study of turn out, we might take up a study of party
7 identification, split ticket voting. Also the distribution of
8 party identifiers across space, or across geographic terrain.
9 That's the geographic part. So topics in the general arena of
10 how we observe political actors thinking and behaving at the
11 electoral level.

12 Q And would that include voters as well?

13 A Sure. Voters. Donors, as well. And activists, party
14 elite sometimes.

15 Q And you just a minute ago mentioned political geography.
16 What does that mean?

17 A Well, it's specifically, for instance the spatial
18 distribution of voters and non-voters across the terrain of the
19 United States, within and across states. And also the
20 distribution of partisans, independents, Republicans,
21 Democrats, where they tend to settle. Their movement patterns.
22 So it's really about studying voters and other political actors
23 as their situated in space, and/or on the geographic terrain in
24 the nation.

25 Q And in that study of them on the geographic terrain, would

1 that include geographical information systems, or GIS?

2 A Sure. And I've taught GIS courses for social scientists
3 for about seven years now, and I'm currently teaching a course
4 on GIS for redistricting.

5 Q Okay. And so let's turn a minute to your publications.
6 Do you have any peer review publications?

7 A Probably about 50 peer review publications at this point.
8 Give or take a couple.

9 Q And about how many of those 50 would be on the topics of
10 political geography, political behavior involving GIS?

11 A I'm guessing 60 percent are probably focused on those
12 topics pretty directly.

13 Q Twenty-five to 30, somewhere in there?

14 A About 60 percent, yes. So, yeah, probably about 30 of the
15 50, I'm guessing.

16 Q All right. And have you published any other publications
17 on --

18 A Several books, both for academic audiences and broader
19 audiences. The most recent book cast for a broader audience of
20 non-experts would be Our Patchwork Nation co-authored with a
21 journalist. That came out in 2010.

22 Q All right. And have you taught any courses relevant to
23 this proceeding?

24 A Yes. I now, presently and in the future, and I've been,
25 you know, teaching courses on elections, political behavior,

1 political geography for most of my career.

2 Q Can you list some specific courses that you've taught on
3 topics covered in this case?

4 A Sure. Well, I mean, elections and electoral behavior, you
5 know, American voting. You know, GIS courses. GIS -- in
6 further GIS, I've also taught statistics, which would be
7 focused on social science statistics, including statistics used
8 in studying political behavior, voting elections. Also survey
9 research type statistics.

10 Q Okay. And have you testified in any other cases, aside
11 from this one right now?

12 A I have testified in only one other case prior to this one.

13 Q And what was that case?

14 A It was a California State level case. The name of the
15 case was Juan Hardage, et al. v. City of Palmdale, and it was
16 about moving from a at-large plan of council elections in the
17 City of Palmdale to a district based plan.

18 Q Thank you.

19 MR. P. GORDON: Your Honors, we'd like to offer this
20 expert as an expert in election analysis, election probability,
21 voting behavior, redistricting --

22 JUDGE SMITH: A little slower please.

23 MR. P. GORDON: I'm sorry. I'm sorry Your Honors.
24 Election analysis, election probability, voting behavior,
25 redistricting, election performance, GIS and statistics.

1 MR. PERSON: Voir dire the witness, Your Honor?

2 THE COURT: You may voir dire.

3 VOIR DIRE EXAMINATION

4 BY MR. PERSON:

5 Q Dr. Gimpel, do you have any specialized knowledge with
6 regards to the districting process?

7 A Well, yes. I -- as I said, I'm teaching a course
8 presently on redistricting and GIS. So I do know quite a bit
9 about the district drawing process.

10 Q What is the basis of this specialized knowledge in
11 redistricting?

12 A Well my training, and, you know, my teaching. Research
13 that I've conducted. So, yeah, all of those things.

14 Q Can you offer any more detail with respect to your
15 education, training or teaching with regards to redistricting?

16 A Well sure. You know, as a professor in a research
17 institution, you have considerable latitude to develop
18 interests and research capacities well beyond where you were
19 when you finished graduate school.

20 So -- and over the last 26 years I've spent a great
21 deal of time in mastering GIS technology, developing courses on
22 GIS technology. And, of course, a lot of of what people think
23 about when they think about GIS and social science research is
24 the redistricting process and some context. It's not always
25 congressional redistricting.

1 It could be something that, you know, local
2 government's might care about. For example, redistricting for
3 police beats, or for school catchment areas. But these are all
4 very standard applications of GIS software when we think about
5 social science research.

6 Q So I want to be clear what I'm asking about. I'm not
7 asking about how this relates to a field of study, or how this
8 can possibly be done. I want to know with particularity what
9 specialized knowledge you personally possess, or have applied
10 with regards to redistricting?

11 A Well I -- I guess I don't quite understand the question.
12 I mean, I'm teaching classes on the subject. I'm writing and
13 commenting on redistricting in my work.

14 JUDGE SMITH: I'm not entirely sure what you mean
15 either. Certainly you're permitted to become more granular in
16 the questioning, if you wish, but --

17 BY MR. PERSON:

18 Q What classes on redistricting have you taught?

19 A Well like I said, I have a two-part sequence underway now
20 on GIS for redistricting. Okay? So -- and in the past,
21 whenever you take up GIS in the social sciences one of the
22 first things that people think of is redistricting.

23 So, you know, even in the course of teaching other
24 applications, you focus on redistricting. Again, it's not
25 necessarily congressional lines you're drawing. But it is

1 redistricting in some context.

2 Q And what's the title of that class, sir?

3 A Well it's Intro to GIS for Social Science and
4 Redistricting for GIS.

5 Q And that's two different courses?

6 A It's a sequence.

7 Q So when that sequence was developed, was that developed in
8 a curriculum meeting within your department?

9 A I'm trying to think. Yes. In association with the dean
10 and department chair and --

11 Q So does it go through a departmental curriculum committee,
12 and that then is approved by the chair, which is submitted to
13 the Dean for final approval before being made part of the
14 curriculum?

15 A Yes. That's roughly the process. Whenever you have a new
16 course, you have to have the syllabus approved.

17 Q And when you approve the syllabus within the departmental
18 curriculum committee, you generally identify what the pedagogy
19 will be, and what the core concepts to be taught to the
20 students is?

21 A Sure.

22 Q What is the core concepts are to be taught that you
23 developed in the curriculum committee for that course sequence?

24 A Well you're -- for instance, one core concept is study of
25 a location, another core concept is spatial distribution, the

1 use of distance and its importance. The role of context, why
2 space would matter to studying something like human behavior,
3 public opinion or voting. Okay? These are all, you know, core
4 notions.

5 There's quite a large body of social science research
6 going back decades on contextual effects in political behavior
7 and opinion. The notion of contextual effects is simply the
8 idea that, you know, people are not controlled simply by their
9 own psychology, but they're embedded or nested around others.

10 And, you know, the fact that they live in a social
11 environment makes a difference.

12 (Transcriber change)

13 Q And what redistrictings do you teach the students in that
14 class?

15 A We're looking at Pennsylvania. We're looking at Maryland.
16 We're looking at North Carolina. And next semester we may put
17 another -- a couple of additional cases on the table.

18 We choose cases that present interesting problems.
19 But, of course, we also choose cases that the students will be
20 somewhat familiar with. So, you know, Maryland is a -- is a
21 good candidate, but also, of course, Pennsylvania because I do
22 have quite a few students at the University of Maryland who are
23 from the State of Pennsylvania.

24 Q When you say Pennsylvania, which redistricting do you
25 teach to your students?

1 A Well, we are looking right now at the 2011 map, and we are
2 studying the 2011 map presently and the move from the 2001 map
3 to the 2011 map. So, you know, the Pennsylvania case is a very
4 important and interesting case, as I said to them as well,
5 because I have quite a few students from Pennsylvania.

6 Q Were -- your course notes here, teaching syllabi, related
7 to the 2011 Pennsylvania map. Did you rely on those as part of
8 your opinion that you were retained to offer?

9 A I certainly have learned a lot from classroom instruction
10 and preparing lessons and discussions of the Pennsylvania map,
11 so I -- I think absolutely that it informed my -- my paper that
12 I wrote, my report that I wrote.

13 Q Do you believe you're qualified to testify -- I'm sorry,
14 do you have any legal training?

15 A Legal training, I never went to law school.

16 Q Is that a no?

17 A Yes.

18 JUDGE SMITH: I think the Court will construe it as a
19 no.

20 BY MR. PERSON:

21 Q Do you have any training or specialized knowledge in the
22 political history of Pennsylvania?

23 A I have two book chapters that I've written on the history
24 of Pennsylvania -- well, recent history of Pennsylvania
25 politics.

1 Q What is the subject of those two chapters?

2 A Mainly the settlement patterns and partisan -- what you
3 might call the partisan distribution of the State of
4 Pennsylvania as it developed from the 1930s forward.

5 Q Did either of those two chapters or your work in preparing
6 them, were those relied on in preparing your report for this
7 case?

8 A Not directly, but -- but surely I'd have to admit that in
9 studying Pennsylvania and writing those chapters, I gained a
10 great deal of insight and information about the state's
11 political geography.

12 Q Do you have any specialized knowledge as to what the
13 traditional redistricting factors are?

14 A Yes, I know what the traditional redistricting criteria
15 are.

16 Q What is the basis of your specialized knowledge in
17 traditional redistricting factors?

18 A The basis of my specialized knowledge would be my teaching
19 and training students on redistricting, and what the
20 traditional redistricting criteria are that need to be
21 balanced, you know, by any map maker.

22 Q Of your more than 50 peer-reviewed publications, how many
23 address the topic of traditional redistricting factors?

24 A I don't have a publication on that subject. There's one
25 in preparation, but I don't have a publication specifically on

1 that subject.

2 MR. PERSON: Your Honor, based on this examination,
3 I state that I do not believe that some of the bases for his
4 opinion, including the materials related to the course on
5 redistricting that he cited as the basis of his specialized
6 knowledge for redistricting, wasn't provided to us in advance,
7 I'll let counsel explain if it was, nor was any book chapters
8 that are the basis of his specialized knowledge of Pennsylvania
9 politics.

10 And I believe that he's testified he's not published
11 anything related to specialized knowledge with regard to
12 traditional redistricting factors, and I'd ask that those items
13 be taken in consideration with regard to any specific opinion
14 that he offers in the five or six areas that he's being offered
15 as a witness in.

16 JUDGE BAYLSON: Sir -- Doctor -- Professor, I'm just
17 curious. There is another case similar to this one pending in
18 the District of Maryland, as you probably know. The entire
19 State of Maryland is one federal district, and there was a
20 trial there similar to the one we're having here in terms of
21 procedure, et cetera.

22 But the allegation there was that there was a
23 gerrymandering in favor of democrats. I'm just wondering if
24 you're aware of that case or if you were in any way involved in
25 it. And if -- unless you're under some confidentiality order,

1 if you can tell us if you have any involvement in it.

2 THE WITNESS: I -- I am aware of that case and I have
3 not been asked or consulted about being involved.

4 JUDGE BAYLSON: All right. Thank you.

5 JUDGE SMITH: Doctor, you testified to your previous
6 involvement in the Palmdale case in California. Do you recall
7 what California court that matter was filed in?

8 THE WITNESS: I -- I don't know if I'm exactly clear
9 on the details, but it was a California State District Court.
10 The trial was held in Los Angeles County.

11 JUDGE SMITH: Right. And you indicated that you had
12 testified in that proceeding, so the matter went to trial, is
13 that correct?

14 THE WITNESS: Yes. Yes, it did go to trial.

15 JUDGE SMITH: And it may seem obvious, but presumably
16 if you testified in that case, you testified as an expert and
17 were qualified to so testify in that court, is that correct?

18 THE WITNESS: Yes, sir.

19 JUDGE SMITH: Do you recall what the scope of your
20 expert testimony was that was accepted by the California court?

21 THE WITNESS: Well, the focus of my -- my testimony
22 was on whether at-large or district elections discriminated
23 against minority populations.

24 JUDGE SMITH: That was -- that was the question, but
25 I mean as to your actual areas of expertise, --

1 THE WITNESS: Oh, okay.

2 JUDGE SMITH: -- that the -- that the court relied
3 upon in permitting you to testify, --

4 THE WITNESS: Sure.

5 JUDGE SMITH: -- do you recall what the --

6 THE WITNESS: Sure. Voting, elections, descriptive
7 representation, you know, state and local politics,
8 administration of election law. These were the areas in which
9 I was qualified.

10 JUDGE SMITH: Thank you. I'm not sure I understand
11 the plaintiff's position. Are you objecting to his
12 qualifications as an expert, or are you simply reserving the
13 right to challenge his response to certain specific questions?

14 MR. PERSON: I'll try to make my motion more clear,
15 Your Honor. We would object to his being qualified as an
16 expert in the area of redistricting on the basis that his
17 teaching and materials related to that on the very map in
18 question were not disclosed to us as part of the Rule 26
19 process. So we would seek to limit his testimony on that as an
20 evidentiary sanction.

21 We would also state that in answering any questions
22 in the areas that he would be qualified in, that he not be
23 recognized as qualified or having the type of specialized
24 knowledge that would assist the Court to discuss the political
25 history of Pennsylvania, or the traditional redistricting

1 factors, or anything that abutted on a legal conclusion.

2 Does that make it clear, Judge?

3 JUDGE SMITH: All right. Thank you.

4 MR. P. GORDON: Your Honor, as to any information
5 that he feels was not provided, Professor Gimpel was offered up
6 for a deposition and plaintiffs decided not to take that
7 deposition at the time it was offered up, so they have not
8 deposed Mr. Gimpel -- Professor Gimpel. And as to his reliance
9 on traditional redistricting factors, I think you'll find on
10 our substantive testimony that those factors are intimately
11 related into any map drawing scheme, which he has testified as
12 an expert to before and certainly is capable of doing so now.

13 JUDGE SMITH: Thank you.

14 MR. P. GORDON: And also the CV contains most of this
15 -- I think certainly all of this information, including
16 publications, books, and all the rest, his teaching grants.

17 (Pause - Judges conferring)

18 JUDGE SHWARTZ: If I could just ask defense counsel
19 who's handling the voir dire, if you could just describe how
20 your adversary would have been on notice that a subject matter
21 that this witness teaches about and has studied about,
22 specifically this map, would have been available to them such
23 as they would have known, they should have inquired, because I
24 think what you're trying to say is had they deposed him, they
25 would have known. So obviously Rule 26 disclosures are

1 independent of the deposition process. So can you make a
2 representation for us, please?

3 MR. P. GORDON: Yes, Your Honor. Exhibit --
4 Legislative Defendant's Exhibit 9 is Professor Gimpel's resume
5 or curriculum vitae, and I think that properly lists all the
6 information that he has published and has available to him.

7 JUDGE BAYLSON: What was your --

8 MR. P. GORDON: And it was given to --

9 JUDGE BAYLSON: What was your Rule 26 disclosure as
10 to the scope of his testimony?

11 MR. P. GORDON: Excuse me, Your Honor? I didn't
12 catch that.

13 JUDGE BAYLSON: What was your Rule 26 disclosure as
14 to the scope of his expert testimony?

15 MR. TORCHINSKY: Your Honor, if I could speak to
16 that, because I actually handled the disclosure. We provided
17 -- in accordance with the Court's order, we provided a copy of
18 the report Dr. Gimpel prepared, and we disclosed the 11-page
19 curriculum vitae listing all of his papers, all of his
20 publications, and his academic course work. That was all
21 provided to them on November 22nd.

22 If you look on -- this is in your binders at
23 Legislative Defendant's Exhibit 9. If you look on page 8 of
24 that resume, courses, campaigns and elections, American voting
25 behavior, immigration, immigration policy, state politics, U.S.

1 Congress, public opinions, statistics, linear models, GIS for
2 social science research, intermediate GIS for social science
3 research, spacial statistics. Those are all under his teaching
4 categories. They were certainly well aware that he had taught
5 on every single one of these subjects.

6 With respect to book chapters, there's a whole
7 section in here on page 4 titled chapters edited in books. I'm
8 not sure specifically which book chapters -- I mean there's --
9 there's -- I mean there's dozens of these book chapters. And a
10 list of all of Dr. Gimpel's publications in this area over the
11 last 26 years were provided to counsel.

12 If they wanted copies of them, we would have -- we
13 would have gladly provided copies, but they didn't ask. His
14 full CV was presented to them in a timely disclosure on the
15 order of this Court.

16 JUDGE BAYLSON: I appreciate that. The question was,
17 was there a specific Rule 26(1) -- Rule 26 disclosure of the
18 topics of his testimony?

19 MR. P. GORDON: Subject to the order of the Court, we
20 disclosed his entire report on the day it was due.

21 JUDGE BAYLSON: No, that's not my question. Was
22 there a specific written disclosure as required by Rule 26 --

23 MR. P. GORDON: Your Honor, --

24 JUDGE BAYLSON: -- of what the topics were?

25 MR. TORCHINSKY: -- neither party in this case did

1 Rule 26 disclosures because of the Court's expedited schedule.

2 JUDGE BAYLSON: Okay. All right. That's the answer.
3 Thank you.

4 JUDGE SHWARTZ: I have just one follow-up. How from
5 this list of courses would your adversaries been on notice that
6 among the subject matters he taught was on this very map?

7 MR. P. GORDON: I mean his report details his
8 knowledge of this map and his explanation of it, and that
9 should put them on notice that he has knowledge of this map in
10 general. And he, of course, can speak to it. But the -- the
11 crux of the matter is that he has numerous years of teaching
12 experience and teaching curriculum, and to look at every
13 syllabi he's ever taught and see whether or not Pennsylvania
14 showed up and how that relates to this case, then digging
15 through that to try to produce it, I wouldn't expect was --

16 MR. TORCHINSKY: I mean, Your Honors, I guess our
17 concession --

18 JUDGE SMITH: We understand your position. Let me
19 talk to my colleagues, please.

20 (Pause - Judges conferring)

21 JUDGE SMITH: Very well. We -- we will certainly
22 regard the witness as being qualified as an expert in the areas
23 for which he has been proffered, and we will ask for him to
24 step down at this time in accordance with the understanding of
25 his being called out of order.

1 Thank you very much, Doctor.

2 THE WITNESS: Thank you.

3 MR. B. GORDON: Your Honor, Mr. Zebrowitz is unable
4 to attend the trial and we'd be happy to have his testimony by
5 -- by a deposition -- I should say his deposition.

6 JUDGE SMITH: All right. And how do you wish to --
7 to proceed with that?

8 MR. B. GORDON: It was -- it was taken several weeks
9 ago. It could be transmitted and reviewed. Designations can
10 occur. It's amongst the other 22 or so plaintiffs' depositions
11 that was done in the same process.

12 JUDGE SMITH: So we -- we should then anticipate
13 designations --

14 MR. B. GORDON: For Mr. Zebrowitz, yeah.

15 JUDGE BAYLSON: Well, did you make designations
16 already to the defendants or not?

17 MR. B. GORDON: We did not because we were
18 anticipating his testimony -- I was anticipating his testimony
19 and --

20 JUDGE BAYLSON: How do you spell his last name?

21 MR. B. GORDON: His last name is Z-E-B-R-O-W-I-T-Z.

22 MR. PERSON: Your Honor, if you'd like, I can step
23 out into the hallway and immediately call the remainder of our
24 legal team back at Ms. Ballard's offices and ask them to add
25 that deposition to the list that they're currently working on.

1 JUDGE SMITH: Very well.

2 MR. PASZAMANT: Your Honor, may I be heard for just a
3 moment?

4 JUDGE SMITH: Yes.

5 MR. PASZAMANT: To the extent that there's any
6 confusion, and maybe I'm the only one who's confused, we don't
7 have, as I stand here before you today, a single designation
8 for any plaintiff from the plaintiffs. This was what we were
9 talking about last night in the meet and confer, and this is
10 the agreement that I think we achieved with them whereby, if
11 it's okay with the Court, I understood they were going to give
12 us their designations by Thursday at some point in time, and we
13 were going to provide our objections at some point perhaps on
14 Monday.

15 Conversely, the legislative defendants provided, in
16 full accordance with the Court's scheduling orders, our
17 designations with regard to those various transcripts and
18 provided them to the plaintiffs on time and in their entirety,
19 and we haven't yet heard back with regard to whether they have
20 any objection with respect to any of the testimony that we've
21 designated.

22 So certainly while the legislative defendants are
23 amendable to entering into some sort of an agreement so that
24 the Court can have a full record, I just wanted it to be clear
25 that as I stand here today, I don't have a single designation

1 from them for any witness, whether that witness was intended to
2 be called ever, or it only fell away today like Mr. Zebrowitz.
3 That's all. Thank you.

4 JUDGE SMITH: Mr. Gordon.

5 MR. B. GORDON: If I may, opposing counsel is trying
6 to paint us as not observing your rules. There was -- it
7 was --

8 JUDGE SMITH: Please, --

9 MR. B. GORDON: Yeah. I'm sorry. What --

10 JUDGE SMITH: -- we don't want to get into that kind
11 of back and forth. We want to know who has what --

12 MR. B. GORDON: It was -- we do not have any --

13 JUDGE SMITH: -- because we've got to -- let me be
14 -- excuse me. I hope -- I think I speak for my two colleagues
15 when I say this, we had more than hoped, we had assumed, but at
16 least hoped that when we reach tomorrow and simply assuming we
17 reached the final argument stage, we wanted to hear final
18 argument from everyone.

19 It's pretty obvious right now that if we got to that
20 point, we're not going to be able to hear oral argument because
21 this record is going to remain open at least into next week. I
22 mean isn't that what we're hearing?

23 MR. B. GORDON: Your Honor, I was prepared to do
24 final argument today.

25 JUDGE SMITH: How can we do final argument when we

1 don't have a record that's been completed?

2 MR. B. GORDON: What I wanted to say is that it was
3 pursuant to the plaintiff's prerogative to designate, it was
4 our expectation to designate the entire transcript until
5 yesterday when the Court made very clear that you didn't want
6 us to do that. That has caused us to -- that's caused us to be
7 in the position we are now.

8 To answer the question, how can we hear argument
9 today --

10 JUDGE SMITH: Can we hear argument tomorrow?

11 MR. B. GORDON: Yes, yes, on the -- yes, yes, you
12 can, Your Honor.

13 JUDGE SMITH: Let me speak with my colleagues.

14 MR. PERSOON: Judge, I think that you're correct that
15 we need to have a complete record before you hear final
16 argument.

17 JUDGE SMITH: Yeah, I mean I --

18 MR. PERSOON: I think certainly --

19 JUDGE SMITH: -- I think it may be that you're
20 prejudiced if we -- if we reach oral argument -- if we reach
21 closing argument, that you don't have the full record to argue
22 from.

23 MR. PERSOON: Yes, Your Honor.

24 (Pause - Judges conferring)

25 JUDGE SMITH: The panel is trying to figure out how

1 best and most efficiently we can proceed using the time that's
2 available. We'd like to know if the transcripts of both
3 depositions of the two legislative people, legislative
4 employees are now available.

5 MR. PERSOON: My colleagues have both copies at Ms.
6 Ballard's office. We have hard copies of the Arneson
7 deposition here in court, as you ordered. We do not have hard
8 copies of the Shaller deposition here in court, but I can text
9 them and make that arrangement for after lunch, Your Honor.

10 MR. PASZAMANT: Your Honor, we are in receipt of both
11 the Arneson deposition transcript/trial testimony transcript,
12 as well as the Shaller transcript. We are in the process of
13 performing designations for both of those transcripts for
14 purposes of -- of the reading that Your Honor was contemplating
15 and we hope to get that done by early this afternoon.

16 MR. B. GORDON: Your Honor, can I inform you on one
17 other --

18 JUDGE BAYLSON: Just a minute.

19 (Pause - Judges conferring)

20 JUDGE SMITH: Yeah, why can't we simply have the
21 deposition transcript read?

22 JUDGE BAYLSON: Right now. Start right now, til
23 12:20.

24 MR. B. GORDON: If that's what the Court ordered, I'd
25 ask for a 15-minute recess to highlight the relevant portions.

1 JUDGE SMITH: I order a 15-minute recess so we can go
2 until 12:20. Thank you very much.

3 JUDGE BAYLSON: No, just start reading it, as it was
4 taken.

5 MR. B. GORDON: We have a copy here and if the --

6 JUDGE BAYLSON: Well, let's get going. Who's going
7 to play the witness? Well, one of -- three of you don't have
8 to sit there. One of you can come up here and be the witness
9 and one of the lawyers read the question and the witness will
10 read the answer. That's -- that's how we do it.

11 MR. B. GORDON: Yes, Your Honor.

12 JUDGE SMITH: We can even volunteer one of our law
13 clerks, draft one of our law clerks.

14 JUDGE BAYLSON: Where's the -- where's the transcript
15 physically?

16 MR. B. GORDON: I believe it's in our witness room.
17 I'll walk out, Judge.

18 JUDGE BAYLSON: Well, get it in here and start
19 reading it, please.

20 (Pause - Judges conferring)

21 MR. PASZAMANT: I -- as a point of order, Mr. Arneson
22 was in the chair for somewhere around three hours yesterday,
23 so, you know, I'm happy to, of course, proceed the way the
24 Court would like, but it was lengthy, and that's just as a
25 point of order.

1 JUDGE SMITH: I understand. In the limited amount of
2 time we have, maybe we can get through the preliminaries.

3 MR. PERSON: Your Honor, --

4 JUDGE SMITH: Yes.

5 MR. PERSON: -- if the defendants or the legislative
6 defendants would be gracious enough to hand us a copy of one of
7 the -- of the plaintiffs' depositions, it would expedite this
8 process.

9 JUDGE SMITH: If they have enough copies.

10 DEFENSE ATTORNEY: Your Honor, I don't --

11 MR. PASZAMANT: We're now speaking of a plaintiff's
12 deposition or --

13 JUDGE BAYLSON: No, no. We're talking about Mr.
14 Arsee -- Arseno --

15 MR. PASZAMANT: Arneson?

16 JUDGE SMITH: Arneson.

17 JUDGE BAYLSON: Arneson.

18 MR. PASZAMANT: That's what I understood Your Honor
19 to be asking, but I think he just mentioned a plaintiff's --

20 JUDGE BAYLSON: Well, he made a mistake.

21 MR. PASZAMANT: Fair enough.

22 JUDGE BAYLSON: Let's start reading it, and then over
23 the recess you can make -- if you want to eliminate some
24 points, you can do that.

25 JUDGE SMITH: And to be clear, though it may be

1 obvious, with the format we are adhering to at least so far,
2 the defendants have leave to interpose objections in the course
3 of reading the Q and A.

4 MR. PASZAMANT: Thank you, Your Honor.

5 MR. PERSON: Judge, would you like a third actor to
6 play the part of Mr. PASZAMANT in making objections in taking
7 his examination?

8 JUDGE SMITH: I would -- if we had the time and the
9 wherewithal, I would prefer someone from Hollywood, given, you
10 know, how things have gone, but we'll take what we can get.

11 JUDGE BAYLSON: But he's not limited to the
12 objections he made there.

13 JUDGE SMITH: That's right.

14 MR. PERSON: I just want to know if you want me to
15 read his objections into the record.

16 JUDGE BAYLSON: No, he's here. He'll object if he
17 wants to object.

18 MR. PERSON: Okay. Thank you, Judge.

19 JUDGE BAYLSON: Go ahead.

20 MR. PERSON: May I proceed?

21 JUDGE BAYLSON: Yes.

22 JUDGE SMITH: Please.

23 "MR. PERSON: This is the deposition of Erik Arneson
24 in Action 17-CV-4392 in the Eastern District of Pennsylvania.
25 The deposition is being taken pursuant to a court directive

1 yesterday that Mr. Arneson be deposed before he be offered for
2 testimony in court.

3 To accommodate the trial schedule, we've agreed that
4 I'm going to proceed with the deposition and Mr. PASZAMANT will
5 then proceed with a combined rehabilitation and direct
6 examination so that if the parties desire, they can substitute
7 Mr. Arneson's deposition testimony at trial testimony. Is that
8 accurate?"

9 MR. PASZAMANT: Yeah, Your Honor, may I -- may I
10 remain seated while I play myself?

11 JUDGE BAYLSON: Yes.

12 MR. PASZAMANT: Thank you.

13 JUDGE SMITH: Yes, and I --

14 MR. PASZAMANT: "Yes, that's fair."

15 JUDGE SMITH: -- and I think you are probably playing
16 to type, too, so --

17 (Laughter)

18 MR. PASZAMANT: I'm not quite sure what to say to
19 that, Your Honor.

20 (Laughter)

21 JUDGE SMITH: It's just a neutral observation.

22 MR. PASZAMANT: Fair enough.

23 MR. B. GORDON: Mr. PASZAMANT, page 7, line 9 seems
24 to be the substantive part where it begins.

25 MR. PASZAMANT: All right. "Yes, that's fair. And

1 in terms of the usual stipulation, let's just put them on. As
2 I understand it, just so we're on the same page, that will be
3 that all objections, except as to form, will be resolved until
4 the time of trial. Is that fair?"

5 MR. B. GORDON: We can start at page 7, line 9 to
6 keep this moving.

7 MR. PASZAMANT: But I thought we were -- I thought we
8 were reading from the top, which is --

9 MR. PERSOON: "Yes, that's fair. And in terms of the
10 usual" -- "Yes. Ms. Hangle, are you okay with that?"

11 MR. PASZAMANT: That's me. "Ms. Hangle, are you
12 okay with that?"

13 "MS. HANGLEY: No objection.

14 BY MR. PERSOON:

15 Q Mr. Arneson, what do you understand" --

16 JUDGE SMITH: You didn't realize you had a bit part,
17 did you?

18 (Laughter)

19 "BY MR. PERSOON:

20 Q Mr. Arneson, what do you understand this lawsuit to be
21 about?"

22 MR. B. GORDON: Page and line, please?

23 MR. PERSOON: Page 5, line 24. "The congressional
24 plan enacted."

25 "A The congressional plan enacted in 2011, I think it was in

1 the end of 2011, in Pennsylvania.

2 Q And throughout your deposition, if I say the 2001 map, is
3 that an okay way to talk about the map that was put in place as
4 part of the redistricting process following the 2010 decennial
5 census?

6 A Yes, sir. I assume we're focused entirely on the
7 congressional maps?

8 Q Yes. So when I say 2011 map, we'll be meaning the
9 congressional map that was put in place by the 2011
10 redistricting process.

11 A Yes, sir.

12 Q Do you intend to deny today, sir, under oath, the same as
13 if you were in court, that the congressional redistricting you
14 worked on in 2011 had some partisan intent?"

15 MR. PASZAMANT: And I objected as vague.

16 "A Does that mean I answer?"

17 JUDGE SMITH: Are you continuing that objection?

18 MR. PASZAMANT: Yes, sir.

19 JUDGE SMITH: It will be overruled.

20 "A I've never been through this before.

21 MR. PASZAMANT: Maybe give him some standard
22 instructions for depositions.

23 A I'm sorry?

24 Q What did you do to prepare for your testimony today?

25 A Not much. I run for -- I run an office and I'm busy. I

1 received a subpoena. I asked Brian PASZAMANT what I should be
2 prepared to talk about. He said the 2011 congressional plan.
3 I reviewed the general assembly's public website to remember
4 what the bill number was, what the general timeline was, that
5 kind of thing. That's about it.

6 Q Did you review any other documents?

7 A I did go to the redistricting website as well and also a
8 public website and looked at the map that was the PDF image or
9 document of the map that was finalized. But that's -- but
10 that's it.

11 Q Within the last 45 days, has anyone asked you to help find
12 documents in connection with this lawsuit?

13 A I assume it was in the last 45 days, yeah.

14 Q Who contacted you?

15 A I think it was Brian. Yeah, it was Brian. Brian
16 PASZAMANT.

17 Q Did you understand that he was your attorney offering you
18 legal advice when he contacted you?

19 A No. My understanding, he was representing the Senate
20 Republican Caucus.

21 Q And what was the basis of that understanding?

22 A Fair question. He may have told me, that the original
23 basis of my understanding was that there was a redistricting
24 lawsuit that had been filed. The Senate Republican Caucus was
25 involved in it in some way. Brian and Blank Rome had

1 represented the Senate Republican Caucus back when I worked for
2 the Senate Republican Caucus in 2011, 2012, maybe 2010 with the
3 redistricting. So it was a natural guess on my part. And then
4 at some point I'm sure he told me that, yes, in fact, he had
5 been retained by the Senate Republican Caucus.

6 Q And what documents did he ask you to get?

7 A He asked me what I might have from the redistricting cycle
8 from 2010, 2011, 2012.

9 Q Did you give him any documents?

10 A No, sir.

11 Q How did you look for those documents?

12 A Well, I knew that I had disposed of all of my senate
13 documents, and that did not relate to the Right to Know law
14 when I left senate employment and started as executive director
15 of the Office of Open Records.

16 Q When was that?

17 A It's a good story. Originally, I was appointed by
18 Governor Corbett in 2015.

19 Q I just want to know when you destroyed the documents.

20 MR. PASZAMANT: Objection to form." I thought it
21 mischaracterized what he was saying.

22 JUDGE SMITH: Overruled.

23 "A I did not destroy documents. I put them in boxes, which I
24 asked the senate republicans to dispose of because I was no
25 longer going to be there January 2015. I did go back to the

1 senate for a while due to some complications with my
2 appointment. But my -- so it may not have happened until June
3 of 2015, I think is when I financial -- I finally full-time
4 without question at the Office of Open Records. So at that
5 point, you know, they were all Senate Republican Caucus stuff.
6 So I did not personally destroy any of those documents, I don't
7 believe.

8 Q You put them out of your control, gave them to someone
9 else, right?

10 A Right.

11 Q And you did so, as you just testified, with the
12 expectation that they would destroy them?

13 A Yeah, yeah. I expected that's what they would do.

14 Q I'm going to give you a small instruction because I think
15 that's what Mr. PASZAMANT asked me to do a little while ago.
16 I'm going to ask you questions; I'm going to ask you to answer
17 them honestly to the best of your ability. I'm sure that's
18 what you were told to do. If Mr. PASZAMANT objects, you should
19 just keep answering my question with one exception, that's if
20 he instructs you not to answer. So if he says something like
21 objection to form, you and I can just keep talking and you can
22 answer my questions.

23 A Very good. Yes, sir.

24 Q What was in those documents that you gave over to the
25 Senate Republican Caucus?"

1 MR. B. GORDON: There's an objection to form by Mr.
2 PASZAMANT.

3 MR. PASZAMANT: Yeah. I'm not making that objection.

4 JUDGE SMITH: Thank you, and I was going to clarify
5 that of course if there are objections that were made during
6 the deposition that you don't persist in, I'm going to assume
7 you're not simply going to read from the deposition. Thank
8 you.

9 MR. PASZAMANT: Very good, Your Honor. You're
10 welcome.

11 JUDGE SMITH: Thank you.

12 "A Primarily information related to my -- everything. I had
13 worked for the Senate Republican Caucus for -- since November
14 of 1996. So it's easy to do the math, I guess, on how many
15 years that is. 18, give or take.

16 So through the years, obviously I got rid of some
17 stuff, just as time goes on. But there was everything from
18 press releases I had written for Senator Pileggi to policy
19 issues I worked on. I was communications and policy director
20 for Senator Pileggi. So I wore two sometimes pretty distinct
21 hats, one was communications, and one was policy. And, you
22 know, with both of my hard copy and electronic material, that
23 was just a boatload of mixed stuff of everything I had worked
24 on through the years.

25 Q Were there materials related to redistricting in those

1 boxes?

2 A In those boxes, probably.

3 Q So I'll ask my --

4 MR. PASZAMANT: So he didn't give you this
5 instruction, so I will. Sir, we're here today to learn what it
6 is that you know, what you remember, and maybe he can refresh
7 your recollection with some documents or otherwise. What we're
8 not here today for is for you to speculate or to guess. So if
9 you know, he's entitled to an answer. If to respond would
10 require a guess, please just tell him that. Thank you.

11 THE WITNESS: Yes, sir.

12 BY MR. PERSON:

13 Q So I'll ask my earlier question again. Do you intend to
14 deny that the congressional redistricting process you worked on
15 in 2011 had some partisan intent?

16 MR. PASZAMANT: Objection, vague. Partisan intent
17 not defined."

18 JUDGE SMITH: Overruled.

19 "A My working on it, on the congressional plan, was actually
20 fairly limited. I won't -- actually, I can only speak to me.
21 I don't remember drawing lines for Congress. I was much more
22 focused on the state senate. But I do know that for Congress,
23 you know, we had to have equal population.

24 We had to comply with the federal constitution and
25 state constitution, the Voting Rights Act, and all of that. We

1 had to account for the fact that a district was being removed
2 from Pennsylvania due to the census count. We had to account
3 for the population shift from the west to the east within
4 Pennsylvania, and we had to come up with a plan that would have
5 26 votes in the senate. With what the motivations were for
6 people who in the end had to vote for that plan, I don't know.

7 Q So I'll ask my question again because it sounds like you
8 couldn't say yes or no.

9 A I'm sorry?

10 Q Do you intend to deny that the 2011 map had some partisan
11 intent?

12 MR. PASZAMANT: Objection. Asked and answered."

13 JUDGE SMITH: Overruled.

14 "A I apologize. Sometimes questions for fullness sake
15 require more than a yes or no. Do I intend to deny that?
16 Speaking globally from the entire -- everybody involved in the
17 process, I have to say no, I don't intend to deny that.

18 Q Do you intend to deny today that the 2011 congressional
19 map was intended to favor republicans?

20 A It's a pretty standard cross-examination question."

21 MR. PERSOON: That's -- that's my line.

22 MR. B. GORDON: Oh, sorry. Go ahead.

23 "BY MR. PERSOON:

24 Q It's a pretty standard cross-examination question. Do you
25 intend to deny that the 2011 congressional map was intended to

1 favor republicans?

2 A I think I understand it. Again, speaking globally, I
3 think there are certainly people who felt that it was going to
4 have that effect. We were tasked with a job of compiling a
5 plan that at last 26 senators would vote for. Again, what they
6 took into account in that vote, I don't know, but
7 their --

8 Q So you can't say yes or no whether you intend to deny that
9 the 2011 congressional map was intended to favor republicans
10 with whatever amount of explanation following that yes or no?

11 MR. PASZAMANT: Objection. Argumentative. Asked and
12 answered."

13 JUDGE SMITH: Sustained.

14 "A If we read back my testimony, I think I did say" --

15 JUDGE SMITH: You don't have to answer.

16 MR. PERSOON: Do you want me to move to the next
17 question, Your Honor?

18 JUDGE SMITH: Yes.

19 MR. PASZAMANT: Could you just give me a page and
20 line number so I can keep up with you?

21 MR. B. GORDON: It would be Mr. Persoon, page 17,
22 line 20.

23 MR. PERSOON: Mr. Geoghegan has just informed me we
24 have -- if you want the designations instead of the testimony,
25 we have that. Otherwise, we can proceed with the reading, Your

1 Honor.

2 JUDGE SMITH: You have the designations as to this
3 deposition?

4 MR. GEOGHEGAN: As to what we would like to have read
5 in. That might expedite this.

6 JUDGE SMITH: I have no doubt that it will. Thank
7 you. I think then what we'll do is recess at this time. We'll
8 allow counsel to figure out what they're going to be doing with
9 those designations and we'll -- we'll reconvene at 1:20.

10 MR. PERSOON: Your Honor, if I may have 90 seconds to
11 make a brief report out. The last time the three judges were
12 conferencing, I took the opportunity to confer with Mr.
13 Torchinsky about an issue relating to the plaintiffs'
14 depositions. The issue is, we've put on I think 10 plaintiffs
15 by direct testimony and would like to put in the remainder
16 through stipulated depositions.

17 I asked Mr. Torchinsky if it was his position that
18 consistent with their defense, that we have the affirmative
19 obligation to put on a showing of an individualized harm to a
20 plaintiff from each congressional district, or if he would view
21 further testimony as cumulative of the 10 that we put on. And
22 my understanding was, and I'll let him speak for himself, my
23 understanding was he believes we still have that burden of
24 putting on testimony for each one, and he would not agree that
25 further testimony from additional plaintiffs would be

1 cumulative in an evidentiary sense. And I'm highlighting that
2 for Your Honors for whatever it's --

3 JUDGE SMITH: Sure.

4 MR. PERSON: -- worth in determining how to proceed.

5 JUDGE SMITH: All right. Mr. Torchinsky?

6 MR. TORCHINSKY: Your Honor, we would be fine with
7 the testimony from the additional plaintiffs being submitted by
8 designation. I thought we had indicated that already. So I
9 don't think that what I said was anything new.

10 JUDGE SMITH: Well, no, I think the panel had been
11 anticipating designations with respect to those. But, again,
12 to the extent over the noon hour that counsel can make any
13 further progress for purposes of expediting these proceedings
14 by way of designations, it will be appreciated.

15 JUDGE BAYLSON: Can I ask two questions?

16 JUDGE SMITH: Please.

17 JUDGE BAYLSON: Did you -- you're going to do the
18 designations of Mr. Shaller over the lunch hour as well, is
19 that right?

20 MS. BALLARD: Yes, Your Honor, we are.

21 JUDGE BAYLSON: All right. And what I would suggest
22 and what I've done in other cases, is that while you're doing
23 that or once you do it, that you sit down with one of the
24 defense counsel and as you go through it they can at that time
25 pick out anything that you have skipped that they want added.

1 And if they say they want it added, then it will be added. So
2 we'll --

3 MS. BALLARD: We'll just mark it with -- yeah.

4 JUDGE BAYLSON: So as we get something --

5 MS. BALLARD: Mark it and they can add --

6 JUDGE BAYLSON: So they'll be able to read it through
7 what either -- from beginning to end what either side wants, or
8 both sides. But either side would have the option of adding
9 what they want, and then we would just read it through. We'll
10 finish with Mr. Arneson and then we'll do Mr. Shaller.

11 Now, my next question is, do I also understand that
12 there are two other members of the legislature who you want to
13 have deposition testimony introduced?

14 MS. BALLARD: By designation, Your Honor, and we're
15 working on them right now.

16 JUDGE BAYLSON: So you should try and have those
17 tomorrow morning at the latest, I think.

18 MS. BALLARD: Yes. I think we'll have them sooner
19 than that.

20 JUDGE BAYLSON: All right. Thank you.

21 MR. PASZAMANT: Your Honor, may I follow up on
22 something Your Honor just said? So just so I'm clear, we
23 assume that if Mr. Arneson was called to the stand, that the
24 panel's preference would be that any testimony that he was
25 going to afford would be given not only in response to the

1 plaintiff's questioning, but in response to legislative
2 defendant's questioning, so that we wouldn't have to call him
3 back a second time in the defense.

4 So for purposes of where we've now moved to and the
5 designation of the transcript, should we -- I think I
6 understand Your Honor to be saying designate everything you
7 want.

8 JUDGE BAYLSON: Right.

9 MR. PASZAMANT: Is that where we are?

10 JUDGE BAYLSON: Yes.

11 MR. PASZAMANT: Okay. Thank you. Fair enough.

12 JUDGE BAYLSON: That's what's usually done.

13 MR. PASZAMANT: As long as the understanding is that
14 that wouldn't be part of plaintiff's case in chief for purposes
15 of the assessment of the motion.

16 JUDGE SMITH: For purposes of assessment of the
17 motion --

18 JUDGE BAYLSON: Well, if he was here testifying on
19 direct, then you would want to cross-examine him. So the
20 cross-examination is going to be part of the testimony. Yes,
21 it's part of their case in chief.

22 MR. PASZAMANT: Well, I would -- I would actually --
23 I suppose he would be direct, so I would want to take a direct
24 examination of him the way that I did at the back end of the
25 so-called deposition that transpired yesterday.

1 JUDGE BAYLSON: Well, if it's at the end, then you
2 can reserve it to your case, if that's -- if it's at the very
3 end.

4 MR. PASZAMANT: That's --

5 JUDGE BAYLSON: But if it's in the middle, it's got
6 to be included.

7 MR. PASZAMANT: Fair enough, Your Honor.

8 JUDGE BAYLSON: Okay?

9 MR. PASZAMANT: I understand. Thank you for the
10 guidance.

11 JUDGE BAYLSON: Okay. Thank you.

12 JUDGE SMITH: All right. We'll be in recess until
13 1:20.

14 (Luncheon recess)

15 (This concludes the morning session)

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We, the court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

DIANE GALLAGHER

December 7, 2017

JOSETTE JONES

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