

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

LOUIS AGRE, et al,) 17-CV-04392
)
 Plaintiffs,)
 vs.)
)
 THOMAS W. WOLF, Governor of)
 Pennsylvania, et al,) Philadelphia, PA
) December 7, 2017
 Defendants.) 9:04 a.m.

TRANSCRIPT OF TRIAL DAY 4
BEFORE THE HONORABLE D. BROOKS SMITH, CHIEF JUDGE
THE HONORABLE MICHAEL M. BAYLSON
THE HONORABLE PATTY SHWARTZ
UNITED STATES JUDGES

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1 (The following was heard in open court at 9:04 a.m.)

2 JUDGE SMITH: Please be seated. It's 9:05, and we
3 reconvene. I would like at this point to reiterate what had
4 been stated yesterday about how plaintiffs will proceed, and
5 for us as a Panel to indicate some further information about
6 how we will proceed. It's our understanding that plaintiffs
7 will be presenting the remainder of their case and that there
8 will be various designations.

9 In doing so, let me ask once again if there will
10 also be some live testimony as part of the remainder of your
11 case?

12 MR. B. GORDON: Your Honor -- I'm sorry, Brian
13 Gordon, there is no more live testimony. And we were planning
14 to offer the plaintiffs' depositions, and have them admitted
15 into Court, giving a brief summary of what each one does.

16 THE COURT: Very well.

17 MR. B. GORDON: And we also have two legislator
18 depositions. And I believe we -- of course we're going to
19 proffer what the legislators say as well.

20 THE COURT: Could you pull the microphone closer?

21 MR. B. GORDON: Sure. Sorry. We have two
22 legislator depositions, and I was going to proffer what is in
23 those as well. And I think -- is that it?

24 (Pause - counsel conferring)

25 MR. B. GORDON: We want to let the Court know that

1 we are just finishing up the transcripts of Schaller and
2 Arneson. And per your request, to have them handed up as
3 well.

4 JUDGE SMITH: Very well.

5 MS. BALLARD: How do we actually get these things
6 into the record? I asked your Courtroom Deputy, and she said
7 to ask you. A deposition transcript with the plaintiffs, for
8 example, where there's been no live testimony, and we're just
9 offering the remaining plaintiff's in the form of a
10 transcript. How do we get that into the record?

11 JUDGE SMITH: Just offer it, and we'll -- we will
12 admit it. It just was always my practice as a trial Judge to
13 have everything that has been used and admitted made part of
14 the record. We will of course be considering only those
15 portions that have been submitted as designations.

16 MS. BALLARD: All right, Your Honor. And would that
17 also apply to the transcripts that we have had after witness
18 testimony, that would be Arneson and Schaller, do we need to
19 hand those up as well?

20 JUDGE SMITH: Anything that has been utilized by way
21 of designation, whether they have been the subject of Q and A
22 in open Court, to whether they have not been done by way of Q
23 and A.

24 MS. BALLARD: All right, Your Honor. Regarding the
25 plaintiffs' depositions that are designated, the extra

1 plaintiffs' designations that are -- depositions that are
2 designated, can we file them by ECF, or do we need to hand
3 them in physically?

4 JUDGE SMITH: I wanted them physically presented.

5 MS. BALLARD: All right.

6 JUDGE SMITH: I mean, all you need to do is mark
7 what we used yesterday, just mark a copy of what we used
8 yesterday.

9 MS. BALLARD: And should we use our numbers to mark
10 them?

11 JUDGE SMITH: Yes.

12 MS. BALLARD: Okay. Thank you, Your Honor. And
13 with what copy -- or copies?

14 JUDGE SMITH: Yes. Yes. Our intent then after the
15 plaintiff has rested, is to move to the anticipated Rule 50
16 motion from the defendants, or motions, for purposes of
17 determining, making a determination as to judgment or not as
18 to the plaintiffs' case of course.

19 And we felt that we should let all parties know at
20 this juncture that the schedule of matters, the nature of a
21 three-Judge Panel, the issues that have been presented under
22 the time constraints all of us have had, will not permit the
23 Court to make a ruling one way or another on the Rule 50
24 motions. Which is to say we will -- we will reserve ruling on
25 those motions for now.

1 And we'll then move forward to hear such evidence
2 as the defendants wish to present on their side of the case.
3 After which we anticipate there would again be a Rule 50
4 motion, upon which we will hear from the parties, and the same
5 thing of course applies, we will reserve ruling on that. We
6 can discuss at the end of the proceedings a schedule for any
7 supplemental memoranda that the parties wish to submit with
8 respect to those motions.

9 And then we will hear closing argument from the
10 parties. You wish to be heard?

11 MR. PASZAMANT: Your Honor, just for point of
12 clarity, Ms. Ballard's reference to Mr. Arneson's transcript,
13 and I assume the same would hold true with regard to Mr.
14 Schaller's transcript. What I believe she's referring to
15 would be the affirmative evidence that the defendants would
16 present as part of their case, because yesterday we had read
17 into evidence in open Court Mr. Arneson with regard to the
18 plaintiffs' case, as well as Mr. Schaller with regard to the
19 plaintiffs' case. And I just -- I wanted to make that clear
20 on the record, because of all the designations and whatnot.

21 JUDGE SMITH: I think the record will speak for
22 itself as to how and when evidence was put in and by whom. I
23 simply want the physical thing of the transcript in the
24 record. That's all.

25 MR. PASZAMANT: Understood, Your Honor. I just

1 wanted to convey that what she's speaking of is not additional
2 evidence from Mr. Arneson or Mr. Schaller with regard to the
3 plaintiffs' case. That's all I'm trying to say. Thank you.

4 JUDGE SMITH: All right. Plaintiffs will proceed.

5 MR. B. GORDON: May it please the Court, may in
6 insert the 2011 map in the Elmo?

7 JUDGE SMITH: Sure.

8 MR. B. GORDON: Just for reference purposes.

9 (Pause)

10 MR. B. GORDON: Your Honors, the 1st -- the first
11 plaintiff transcript is that of Marina Kats. She is a
12 Republican in the 13th Congressional District.

13 JUDGE SMITH: Spell both names, please?

14 MR. B. GORDON: M-A-R-I-N-A K-A-T-S. Unusual
15 spelling.

16 JUDGE SMITH: Again?

17 MR. B. GORDON: K-A-T-S. She is -- she is a
18 Republican in the 13th Congressional District, she ran for
19 Congress against Allyson, I think its Y-S-O-N.

20 JUDGE SMITH: Schwartz?

21 MR. B. GORDON: Allyson Schwartz, and lost. And
22 that was before the 2011 map and under the 2002 map. And she
23 testified she is an immigrant from the Ukraine, a mother with
24 two kids, an attorney who wanted to run for office. And
25 amongst her harms is that she feels that she cannot, because

1 she has been placed in an engineered District with a
2 Democratic advantage.

3 I proffer her testimony, this deposition.

4 JUDGE SMITH: Well will you mark the deposition
5 transcript now, or at the conclusion --

6 MR. B. GORDON: Sure. What number are we up to?

7 JUDGE SHWARTZ: It's 38.

8 JUDGE SMITH: Thirty-eight?

9 MR. B. GORDON: P-38. And do I hand it to the Clerk
10 or set it down?

11 JUDGE SMITH: Just hand it to the --

12 MR. B. GORDON: The next plaintiff witness is
13 Heather Turnage. She is a Democrat.

14 JUDGE BAYLSON: Excuse me. We're going to need
15 three copies of these.

16 MR. B. GORDON: Okay.

17 JUDGE BAYLSON: Not right now, but eventually.

18 MR. B. GORDON: All right. In that case, I'll just
19 hold onto them, and we'll make sure it happens today as soon
20 as possible.

21 Heather Turnage is a Democrat --

22 JUDGE SMITH: Spell the last name, please?

23 MR. B. GORDON: T-U-R-N-A-G-E.

24 JUDGE SMITH: Thank you.

25 MR. B. GORDON: She is a Democrat in the 4th

1 Congressional District. York and Adams County. And she will
2 testify that the 2011 map has interfered with -- has diluted
3 her vote, and anything else on a statewide basis. And she
4 feels that it's reduced her power to participate politically.

5 The next plaintiff --

6 JUDGE SHWARTZ: Is that going to be Exhibit 39?

7 MR. B. GORDON: Sorry. I'm -- I proffer the
8 testimony of Heather Turnage by plaintiffs in this matter.

9 JUDGE SMITH: As Plaintiff 39.

10 MR. B. GORDON: Thirty-nine.

11 The next deposition is that of Cindy Harmon. Cindy
12 Harmon is a Democrat in the 3rd Congressional District, and
13 this is the one which now includes half of Erie County, and
14 then reaches down into the State.

15 And she will testify -- she has testified that she
16 believes her -- her vote essentially was diluted. I proffer
17 the testimony of Cindy Harmon for plaintiffs in this matter.
18 The number will be P-40.

19 JUDGE SMITH: Very well.

20 MR. B. GORDON: The next plaintiff is James Davis.
21 James Davis is an attorney in Fayette County. He is a
22 Democrat in the 9th Congressional District. And he was -- he
23 will testify that -- he has testified that his vote has been
24 diluted. And the rearrangement of the Districts have affected
25 his ability to be an active -- to effectively participate in

1 the political system.

2 I proffer the deposition of James T. Davis in this
3 matter. We'll have this marked as P-41.

4 JUDGE SMITH: Very well.

5 MR. B. GORDON: The next plaintiff in the matter is
6 Virginia Mazzei, M-A-Z-Z-E-I. Virginia --

7 JUDGE SMITH: At least in Western Pennsylvania they
8 pronounce that Mazzay (sic).

9 MR. B. GORDON: Thank you. Virginia will testify
10 that -- or she has testified that she is a Democrat in the
11 11th Congressional District. That her District was extended
12 westward into areas where she has little connection, and has
13 effectively diluted her Democratic vote.

14 JUDGE SMITH: What counties?

15 MR. B. GORDON: The 11th is Wyoming, Luzerne, and
16 Carbon in the east, and then it reaches to Columbia, Montour,
17 Northumberland, Dauphin, Perry, and Cumberland.

18 JUDGE SMITH: Thank you.

19 MR. B. GORDON: Toward the middle of the
20 Commonwealth.

21 We will mark her deposition P-42. And I
22 respectfully proffer the testimony of Virginia Mazzei.

23 The next plaintiffs' deposition is that of Leigh
24 Anne Congdon. Leigh Anne Congdon is --

25 JUDGE SMITH: What's spelling of the last name?

1 MR. B. GORDON: Oh, I'm sorry. Leigh Anne Congdon,
2 C-O-N-G-D-O-N.

3 JUDGE SMITH: Thank you.

4 MR. B. GORDON: She is a -- she's a Democrat in the
5 5th Congressional District. The 5th District is the large
6 green area on the 2011 map, comprising numerous counties in
7 West Central and West Western, sort of the Northwestern
8 quadrant of Pennsylvania.

9 And she's sort of an interesting plaintiff. She's a
10 Democrat in a very Republican area. She will testify that she
11 has been harmed both in terms of dilution of her vote
12 regionally, and -- I'm sorry, she'll testify that she feels
13 her vote was diluted, and that on a statewide basis her vote
14 was the delegation -- I'll just leave it that her vote was
15 diluted.

16 I mark this as P-43 and ask that it be -- I proffer
17 this testimony into evidence.

18 The next plaintiff is Edwin Gragert, E-D-W-Y-N,
19 G-R-A-G-E-R-T. I'm pretty sure that the stenographer got the
20 name wrong, I think it's E-D-W-I-N. And it's GRAGERT. This
21 was the famous deposition taken by phone in Argentina. Thank
22 you for that. Mr. Gragert is a Democrat in the 10th
23 Congressional District. The 10th District is the one in the
24 north northeast, starting all the way at the Delaware River
25 with Pike and Wayne County, and extending in an arc toward the

1 center of the Commonwealth, to include Mifflin, Juniata and
2 Perry Counties.

3 And he will testify -- he has testified that his
4 vote was diluted and made less effective as a Democrat. I
5 move and proffer the testimony, and move to enter the
6 testimony of Edwin Gragert as P-43 --

7 JUDGE SHWARTZ: Forty-four.

8 JUDGE SMITH: Forty-four.

9 MR. TORCHINSKY: Your Honor. One issue with respect
10 to Mr. Gragert's testimony. I know the Court ordered us to
11 take the deposition by telephone. I want to note the Court
12 Reporter refused to swear in Mr. Gragert at the beginning of
13 his testimony, because she said that she was unable to
14 administer the oath by telephone, given that Mr. Gragert was
15 located in Argentina, and there was no consular officer there
16 to verify his identity and administer the oath to him.

17 So I just want to note that for the record. It was
18 -- I guess it's called a deposition, but without the witness
19 being legally sworn, we're not sure that that qualifies, Your
20 Honor.

21 JUDGE SMITH: We'll -- it is so noted. The Panel
22 will look at that. Thank you.

23 MR. B. GORDON: Your Honor, if I may respond. What
24 was omitted from the narration was that after the Court
25 Reporter refused to swear in Mr. Gragert, I as an Officer of

1 the Court of the Commonwealth of Pennsylvania and an Officer
2 of this Court administered the oath to Mr. Gragert. And Mr.
3 Gragert understood that he was subject to the laws or perjury
4 for both the Commonwealth of Pennsylvania and the United
5 States.

6 So I don't think there's really a question about Mr.
7 Gragert's being sworn.

8 MR. TORCHINSKY: Your Honor. One more point, and
9 then I will hold my peace on this. The Federal Rules of Civil
10 Procedure provide that a deposition is taken where the
11 deponent is located. Mr. Gragert was located in Argentina,
12 and Mr. Gordon was not in Argentina to administer the oath and
13 verify his identity. So we don't believe that the oath that
14 he -- I mean, for the same reason that the Court Reporter said
15 she couldn't validly administer the oath, we don't believe Mr.
16 Gordon was able to validly administer the oath.

17 JUDGE SMITH: We understand. It's an interesting
18 little evidentiary question. I appreciate it being brought to
19 our attention.

20 MR. B. GORDON: Mr. Gragert's my -- the response
21 which is also on the record, is that Mr. Gragert is my client.
22 I've spoken to him numerous times, and I verified that at the
23 time of the deposition that I recognized his voice, and could
24 verify his identity. He's also back from Argentina as of
25 yesterday. And if needed, he can come down and certify his

1 transcript.

2 JUDGE SMITH: Thank you.

3 MR. B. GORDON: This is marked as P-44.

4 JUDGE SMITH: Yes.

5 MR. B. GORDON: Turning next to the deposition of
6 Shawndra Holmberg. Ms. -- that's S-H-A-W-N-D-R-A
7 H-O-L-M-B-E-R-G. Ms. Holmberg is a -- let me double check
8 this. Ms. Holmberg is Republican in the 3rd Congressional
9 District. The 3rd Congressional District is the one that is
10 north of Allegheny County, and goes up to Erie on the left,
11 the western border of the Commonwealth.

12 Ms. Holmberg has testified that her -- that she
13 feels her vote was diluted, and the current representation
14 does not represent her views and values. I move to enter the
15 testimony of Ms. Shawndra Holmberg into evidence as
16 Plaintiffs' Exhibit 45.

17 Next deposition is that of Douglas Graham. Douglas
18 Graham is a Democrat in the 14th Congressional District. The
19 14th is the City of Pittsburgh, with -- it's in gray, with the
20 tendrils, as the evidence came in, reaching along the river
21 valleys.

22 Mr. Graham has testified that his vote was diluted
23 and that's -- that's all I have for him right now in terms
24 of --

25 (Pause)

1 Let's see -- and so he is a Democrat in a -- in a
2 packed Democratic District, and he testified that he feels his
3 vote was diluted. I mark Mr. Graham's deposition, Douglas
4 Graham as P-46.

5 The next deposition is plaintiff Joy Montgomery.
6 M-O-N-T-G-O-M-E-R-Y. Ms. Montgomery is a Democrat in the 16th
7 Congressional District, which includes Lancaster and portions
8 of Chester County. And she testified that -- she has
9 testified that she feels that her vote was diluted.

10 I mark her deposition as Plaintiffs' 47. And I
11 respectfully move to enter this deposition into evidence for
12 plaintiffs.

13 (Pause)

14 The next deponent is Barbara Shaw. Ms. Shaw is a
15 Democrat in the 18th Congressional District. Which is -- can
16 be found in purple in the southwestern corner of Pennsylvania.
17 And it includes Greene, Washington, part of Allegheny, and
18 part of Westmoreland County.

19 She's an attorney, active Democrat, and feels that
20 her vote was diluted. And I think that's enough of a summary
21 for that one. I ask that this be marked as P-42 --

22 JUDGE SMITH: No. Forty-eight.

23 MR. B. GORDON: P-48. And I move that this be
24 admitted into evidence.

25 And this is the last one. This is plaintiff Rayman

1 R-A-Y-M-A-N, Solomon S-O-L-O-M-O-N. And Mr. Solomon is a
2 Democrat in the 2nd Congressional District. He was formerly
3 the Dean of Rutgers Camden Law School. And he will testify
4 that the result of gerrymandering has reduced -- he lives in
5 Montgomery County, and he's in a District that was
6 gerrymandered into the 2nd Congressional District, which is --
7 nine-tenths of which in terms of population is in
8 Philadelphia.

9 I'm marking this as Plaintiffs' Exhibit 49. And
10 respectfully move this and the other depositions, plaintiff's
11 depositions be admitted into evidence.

12 JUDGE SMITH: I -- may I assume that subject to what
13 Mr. Torchinsky noted earlier with respect to Mr. Gragert's,
14 that would be Plaintiffs' Exhibit 44, that all of these
15 transcripts marked as Exhibits 38, 39, 40, 41, 42, 43, 44, 45,
16 46, 47, 48 and 49 may be admitted into the record.

17 MS. GALLAGHER: Yes, sir. And, Your Honor, we would
18 also ask that the Court, further to Mr. Torchinsky's comment
19 about Mr. Gragert, Ms. Kats. Ms. Kats' deposition was also
20 taken while she was in Egypt. And we would raise the same
21 objections under 30(b)(4) as to the administration of the
22 oath.

23 I would like to point out, Your Honor, not to
24 belabor the point, just very quickly, when the Court granted
25 plaintiffs leave to amend their complaint to allow the

1 inclusion of a plaintiff from every District, and then the
2 amended complaint was filed, we would ask that the Court take
3 note that Mr. Gragert is the only plaintiff from the 10th
4 District. To the extent that his testimony before this Court
5 is solely via his deposition, which we believe was
6 inappropriate, we would ask that the Court take note of that
7 for purposes of the issue of whether plaintiffs have presented
8 a plaintiff from every District. Other than that, we have
9 nothing further.

10 JUDGE SMITH: Are you -- I understand what you have
11 noted, and you have stated it as an objection. I'm not sure
12 that Mr. Torchinsky put it quite -- using that word. But
13 referred us to rules authority.

14 MR. B. GORDON: Your Honor, if I may, before you --
15 it's very briefly.

16 JUDGE SMITH: Please let me finish.

17 MR. B. GORDON: Ms. --

18 JUDGE SMITH: Please let me finish.

19 MR. B. GORDON: I'm so sorry

20 JUDGE SMITH: Are defendants asking that the witness
21 appear in person?

22 MS. GALLAGHER: No, Your Honor. We only ask it for
23 purposes --

24 JUDGE SMITH: You have that option.

25 MS. GALLAGHER: Well we -- are we asking for him to

1 appear in person?

2 JUDGE SMITH: Yes.

3 MS. GALLAGHER: We did ask originally that his
4 deposition not be permitted to be taken, or that it be taken
5 pursuant -- forced to appear pursuant to the order. We were
6 told that he was unavailable, and would not be available for
7 trial.

8 JUDGE SMITH: Let me take just one moment, please?

9 MS. GALLAGHER: Thank you.

10 (Pause - Judges conferring)

11 JUDGE BAYLSON: Okay. We've conferred briefly, and
12 without doing any research. It's my practice on occasion in
13 Court to swear -- have witnesses appear by telephone, and to
14 be sworn in over the telephone. And Ms. Lutz here administers
15 the oath and -- over the telephone, just like she does when
16 witnesses are here in open Court.

17 So if sometime today we can get Mr. Gragert on the
18 phone, we'll have -- on the speaker phone here, and Ms. Lutz
19 will administer the oath as to what his testimony was in his
20 deposition, and we can do the same for Ms. Kats. Do you want
21 that done, Ms. Gallagher?

22 MS. GALLAGHER: Yes, sir.

23 JUDGE BAYLSON: What?

24 MS. GALLAGHER: If possible, sir.

25 JUDGE BAYLSON: Possible or --

1 MS. GALLAGHER: If possible.

2 JUDGE BAYLSON: Well I'd like to know what your
3 position --

4 MS. GALLAGHER: Yes.

5 JUDGE BAYLSON: -- you can't have your cake and eat
6 it too. You either -- if you object -- if you think it was
7 improper -- I never heard of a Court Reporter refusing to
8 administer an oath over the phone, that's a novel concept to
9 me. If you're relying on that specific fact as invalidating
10 the use of his deposition in this trial, we want to know that.
11 And if so, we'll arrange for the plaintiffs to get Mr. Gragert
12 on the phone, and we'll administer the oath in open Court
13 right here.

14 MS. GALLAGHER: Yes, sir.

15 JUDGE BAYLSON: Do you want that done?

16 MS. GALLAGHER: Please, sir.

17 JUDGE BAYLSON: All right. Mr. Gordon, do you hear
18 that?

19 MR. B. GORDON: Yes.

20 JUDGE BAYLSON: So find -- have one of your
21 colleagues get -- find the time when he can be on the phone.
22 He'll identify who he is by whatever knowledge you have of
23 him, that you know that it's him. And then Ms. Lutz will
24 administer the oath as to his deposition.

25 MR. B. GORDON: Very good.

1 JUDGE BAYLSON: All right. Now what about Ms. Kats?

2 MR. B. GORDON: Ms. Kats was sworn by a Court
3 Reporter in Pennsylvania.

4 JUDGE BAYLSON: Okay.

5 MR. B. GORDON: She was from her hotel room in
6 Cairo.

7 JUDGE BAYLSON: Oh, so that reporter didn't have any
8 objection?

9 MR. B. GORDON: Did not have any objection.

10 THE COURT: Okay. So you'll get Mr. Gragert on the
11 phone whenever you can to maybe have it for like 12 noon, or
12 something like that.

13 MR. B. GORDON: I'll step out and see if I can get
14 him right away.

15 JUDGE BAYLSON: You don't have to step out. But --
16 you wait here and have somebody else step out. We'll do it
17 when we take a break. Thank you.

18 MR. B. GORDON: Very well.

19 (Pause)

20 MR. B. GORDON: We'll address the two legislative
21 defendants in terms of the proffer of their testimony.

22 MR. PERSON: Good morning, Your Honor. It's
23 Michael Person. Before that, yesterday when we were reading
24 into evidence the deposition testimony of Mr. Schaller,
25 there's on exhibit, that was the deposition Exhibit 2. I have

1 copies of it with me now I can distribute, and I move to mark
2 and introduce that as Plaintiffs' Exhibit 50.

3 JUDGE BAYLSON: Well his deposition was handed up
4 yesterday while you were reading it.

5 MR. PERSON: There was one exhibit that was
6 missing.

7 JUDGE BAYLSON: Oh, all right. Thank you. All
8 right, you can --

9 MR. PERSON: May I do that now?

10 JUDGE BAYLSON: Thank you.

11 MR. PERSON: To Judge Smith?

12 JUDGE SMITH: Yes, please. And the exhibit, again,
13 is what?

14 MR. PERSON: It as Deposition Exhibit 2 from the
15 Schaller transcript that I'm marking and entering into
16 evidence as Plaintiffs' Exhibit 50.

17 MR. TORCHINSKY: Your Honor, just to be clear, that
18 was the expense reports that were referenced in the
19 deposition, and we just didn't have copies available --

20 JUDGE SMITH: Yes.

21 MR. TORCHINSKY: -- during the reading.

22 JUDGE SMITH: All right. 50 will be admitted.

23 MR. PERSON: And then as to -- we have two other
24 transcripts. The deposition testimony that's been marked by
25 the parties as Senator Daylin Leach. Would you like me to

1 give any explanation or --

2 JUDGE SMITH: Yes, please. Briefly.

3 MR. PERSON: Mr. Leach testified generally as to
4 the legislative process, in similar manner to what Senator
5 Dinniman testified. If you'd like, I can go into more detail.
6 But I think it would kind of belabor the point.

7 Similarly Mr. Vitale, Greg Vitale is --

8 JUDGE SMITH: And are you marking the Leach
9 deposition transcript Plaintiffs' 51?

10 MR. PERSON: Yes, Your Honor.

11 JUDGE SMITH: All right. And then the Vitale --

12 MR. PERSON: Vitale 52, Your Honor.

13 JUDGE SMITH: Um-hum.

14 MR. PERSON: Mr. Vitale is in the Pennsylvania
15 House. And similar to Mr. Dinniman and Mr. Leach, he would
16 testify as to the legislative process. And in addition he'd
17 testify as to some of the harm that this gerrymandering causes
18 through the fracturing of communities of interest.

19 And we would move to admit into evidence Plaintiffs'
20 Exhibits 51, the deposition, testimony as designated by the
21 parties of Senator Daylin Leach, and Plaintiffs' Exhibit 52,
22 the deposition testimony as designated the parties of
23 Representative Greg Vitale, Your Honor.

24 JUDGE SMITH: Hearing no objection Plaintiffs' 51
25 and 52 are admitted.

1 MR. PERSON: And with that, I'll look to my
2 colleagues to see if there's any further evidence we need to
3 place in.

4 JUDGE SMITH: I had raised at the end of the day, I
5 believe, the questions -- the specific email exhibits that are
6 at -- what are they, 33 -- yes.

7 MR. PERSON: Is that the emails regarding Speaker
8 Turzai?

9 JUDGE SMITH: Yes.

10 MR. PERSON: I believe we're withdrawing those
11 exhibits, Your Honor.

12 JUDGE SMITH: Very well. Thirty-three then in toto
13 is withdrawn.

14 MR. PERSON: And, Your Honor, there were the two --
15 the Arneson reading yesterday and the Schaller reading
16 yesterday. I understand those were put into evidence by the
17 reading, but we still need to deliver you hard copies, not as
18 an evidentiary matter, but as a courtesy copy matter.

19 JUDGE SMITH: Well actually I -- I want them to be
20 part of the record, just lest there ever be any question as to
21 what was used.

22 MR. PERSON: So we'll proffer as Plaintiffs'
23 Exhibit 53 the designated deposition of Eric Arneson, and as
24 Plaintiffs' Exhibit --

25 JUDGE SMITH: Let's make it 54, since 53 has been

1 withdrawn.

2 MR. PERSON: That was 33 that was withdrawn, Your
3 Honor.

4 JUDGE SMITH: Oh, I'm sorry, 33 was withdrawn. I
5 beg your pardon. Fifty-three.

6 MR. PERSON: Fifty-three is the designated
7 deposition testimony of Eric Arneson. And 54 as the
8 designated deposition testimony of Mr. Schaller. And
9 plaintiffs move for the entry.

10 JUDGE SMITH: Very well. They'll be admitted.

11 MR. PERSON: And can I confirm that Your Honors
12 have those copies from yesterday, or if I still need to
13 provide them to you?

14 (Pause)

15 MR. PERSON: If Your Honors have one copy of each
16 I'll -- I would take them, and collect all of these and run to
17 Kinko's quickly.

18 JUDGE SHWARTZ: What I have, counsel, is -- I
19 actually have two copies of Schaller.

20 MR. PERSON: Okay.

21 JUDGE SMITH: I do, as well.

22 MR. PERSON: So zero copies of Arneson?

23 JUDGE SHWARTZ: Arneson, correct.

24 MR. PERSON: And I understand my instructions to
25 ensure that you all have -- that there's three copies of each

1 of these designated portions.

2 JUDGE SMITH: Please.

3 MR. PERSON: Thank you, Your Honor. May I have a
4 brief moment to confer with my counsel?

5 JUDGE SMITH: Certainly.

6 (Pause)

7 MR. TORCHINSKY: Your Honor, just one point of
8 clarification as we figure out what we're doing with respect
9 to designations and transcripts. When you're asking for
10 transcripts that are being submitted with designations, you're
11 asking for the entire transcript to be submitted? That way
12 when -- if we submit, we're only submitting the designations
13 from the full transcript that's being submitted by the
14 plaintiffs?

15 JUDGE SMITH: I'm not sure I understand your
16 question. I want the physical transcript that was used,
17 either for purposes of the Q and A here in open Court, or the
18 full transcript from which designations were made.

19 MR. TORCHINSKY: I guess, Your Honor, that's what
20 I'm asking. So let me give you an example. Mr. Schaller's
21 transcript was about 99 pages. We read through about 93 pages
22 of the designations. We will have designations from the last
23 six pages. If the plaintiffs are submitting the full
24 transcript -- three copies of the full transcript to you, all
25 we then need to submit is our additional designations, not

1 fresh copies of the 99 pages. Correct?

2 JUDGE SMITH: Yes. That will be satisfactory --

3 MR. TORCHINSKY: Thank you.

4 JUDGE SMITH: -- in that we will have otherwise the
5 entire transcript.

6 MR. TORCHINSKY: Thank you, Your Honor.

7 MR. PERSON: Your Honor, with that, and having
8 conferred with my colleagues, I believe that concludes the
9 plaintiffs' presentation of evidence.

10 JUDGE SHWARTZ: There was actually one exhibit
11 mentioned by your colleague yesterday that I know you marked
12 as 35, but I think we already used that number. House
13 deliberations, some kind of formal document that I think we
14 just ask that you identify and move in during this proceeding.

15 JUDGE SMITH: It's not in the binder.

16 JUDGE SHWARTZ: Correct. And you had referred to it
17 yesterday as 35, but we've already used 35 as an identifier.

18 MR. B. GORDON: Yes. We'll identify this as 36,
19 this is the -- they've already created a place for it at 36.

20 JUDGE SHWARTZ: We can call it anything you want. I
21 just want to -- I know 35 is problematic.

22 MR. B. GORDON: And --

23 JUDGE SMITH: Thank you. You can call it anything
24 you want within limits.

25 MR. B. GORDON: So, Your Honor, I have it here. And

1 these are the -- these are the debates on the floor of the
2 House of Representatives. And on SB, on Senate Bill 1249,
3 which became the 2011 map. There were two debates. One in
4 your binder and then this -- this was inserted later.

5 I have three copies -- four copies.

6 JUDGE SMITH: Hearing no objection, Plaintiffs'
7 Exhibit 36 is admitted.

8 MR. B. GORDON: And that concludes the evidence of
9 plaintiffs.

10 (Pause)

11 Do -- we have one more.

12 MS. BALLARD: Well this is just the transcript of
13 Arneson --

14 MR. B. GORDON: It was accepted. And the number for
15 the Arneson transcript will be 53. And it's in evidence.
16 Your Honors, thank you very much.

17 JUDGE SMITH: Do plaintiffs rest?

18 MR. B. GORDON: Plaintiffs rest.

19 MR. TORCHINSKY: Your Honor, basically the
20 defendants submitted the Rule 50, 52 motion yesterday. Since
21 the Court indicated it's already has decided it's going to
22 defer ruling on that motion, which I think can be ruled on on
23 the papers as the Court considers the whole thing, I'd like to
24 suggest perhaps we should just enter defendants' evidence and
25 move to closing arguments for the trial, rather than hear

1 separate oral arguments on the Rule 50, 52 motion that the
2 Court's already indicated it's deferring on, because obviously
3 if that motion were granted, then there would be no need to go
4 to the defendants' evidence.

5 But since that motion is going to be deferred, I'm
6 thinking it may just be more efficient use of the Court's time
7 to have us move our evidence, perhaps take a recess, and then
8 come back for closing arguments.

9 THE COURT: Let me confer with my colleagues,
10 because that procedural aspect has been kind of a moving
11 target the last two days.

12 MR. TORCHINSKY: Okay. Thank you, Your Honor.

13 (Pause - Judges confer)

14 JUDGE BAYLSON: Okay. Mr. Torchinsky, I don't know
15 Mr. Aronchick, Ms. Hangley if you want to say anything now
16 that the plaintiffs have finished, but --

17 MR. PERSON: Your Honor, I just wanted to make one
18 point. We just wanted to confirm, to check with other counsel
19 if there was a set of stipulated facts that were filed in this
20 case. I want to confirm that the stipulated facts are
21 included in the record.

22 JUDGE SMITH: Yes, they are.

23 JUDGE BAYLSON: All right. Well this is just
24 procedural. We have your written motion under Rule 50(a).
25 Now -- right, that you filed yesterday.

1 MR. TORCHINSKY: Yes, Your Honor.

2 JUDGE BAYLSON: Okay. Now the law is very clear
3 that on a 50(a) motion the Court has to consider the evidence
4 in the light most favorable to the plaintiff, okay? But the
5 cases in the Third Circuit in particular provide that if a
6 ground is not asserted in a Rule 50(a) motion, and the verdict
7 is then against the defendant, the defendant cannot raise on
8 post verdict motions anything that was not raised on the 50(a)
9 motion.

10 So if you -- if you're confident that you have
11 raised all the points you want to raise in your written
12 motion, that's fine. But the record should be clear that by
13 not asserting any additional reasons verbally, which we're now
14 giving you a chance to raise -- and I'm not talking about
15 argument, I'm talking about raising, you know, specific
16 motions of a lack of evidence in the plaintiffs' case that
17 could have legal consequences, if you're not raising anything
18 else, even though we're giving you the chance to do so, then
19 you're going to be limited on post verdict motions if the
20 verdict is in favor of the plaintiff to what was in your
21 written 50(a) motion.

22 Have I made my --

23 MR. TORCHINSKY: Your Honor --

24 JUDGE SMITH: Let me just add one thing. The Panel
25 does not wish to interrupt with questions while both sides

1 provide closing arguments --

2 MR. TORCHINSKY: Okay.

3 JUDGE SMITH: -- to the extent, however, that the
4 side that counsel wishes to argue the Rule 50 motion, which is
5 by its nature in this matter, at least in large part, legal,
6 then we want to afford you a opportunity to make legal
7 argument, as well as argue the record shown by the plaintiffs.
8 And we may have questions.

9 We very well may have questions.

10 MR. TORCHINSKY: Your Honor, I do have an inquiry
11 for the Court. I know the Court has -- has twice in, I guess
12 in -- on October 10th at the scheduling hearing, and in the
13 order on Friday, referred to Rule 50, and is again referring
14 to Rule 50 here, and we referred to Rule 50 in our motion.

15 My concern about Rule 50 and the standards under
16 Rule 50 is, that's judgment as a matter of law in a jury
17 trial.

18 JUDGE SMITH: Jury trial.

19 MR. TORCHINSKY: And this is obviously not a jury
20 trial.

21 JUDGE BAYLSON: Right.

22 MR. TORCHINSKY: Which is why we also filed our
23 motion under 52[©], which doesn't have the same requirements for
24 the Court to take evidence in the light most favorable to
25 plaintiffs and allows --

1 JUDGE BAYLSON: Right.

2 MR. TORCHINSKY: -- the Court to make a reasonable
3 judgment. We believe that the 52[©] is also to be considered.
4 We added Rule 50 in, even though it's only -- by its title,
5 only applicable in a jury trial, which is why we cited to Rule
6 52 in our motion yesterday. We really included Rule 50
7 because that's what the Court has told us several times,
8 although I'm not 100 percent sure that under the Rules that's
9 actually applicable here.

10 So given the standard difference in Rule 52, I'm not
11 sure that the same right to sort of post judgment sort of
12 motions would be applicable under Rule 52, as would be
13 applicable if we were in a jury trial and Rule 50(a) applied.

14 JUDGE BAYLSON: All right. Well I stand corrected.
15 I probably should of clarified that. But I -- I don't, as I
16 sit here, I don't know if what I indicated the Rule was on
17 50(a) would necessarily apply in a non-jury trial. But I just
18 wanted to tell you that, if you have other grounds for 50(a),
19 other than were in your written motion, it might be a good
20 idea to state them.

21 But if you don't have anymore, then we'll move on.

22 MR. TORCHINSKY: Your Honor, I think the only thing
23 that is not in our written motion from yesterday where we
24 moved for judgment under Rule 50(a) and Rule 52[©], is the fact
25 -- is this issue with Mr. Gragert. It was not specifically

1 raised in our motion, but we think it is a significant issue
2 to have where the Court clearly required the plaintiffs to
3 have, you know, in order to establish standing, have a
4 plaintiff from every District who can demonstrate harm, we
5 have a plaintiff who apparently is well-known to counsel for
6 plaintiffs and was unavailable to appear in person at trial or
7 for deposition.

8 And, you know, we have this issue that we've already
9 raised with the inability to properly swear in the witness
10 from Argentina.

11 THE COURT: All right. You understand we're going
12 to allow the plaintiffs to re-open their case to provide for
13 his -- for the administration of the oath when he can get on
14 the phone.

15 MR. TORCHINSKY: Correct. But I wanted to make sure
16 I got that on the record.

17 JUDGE BAYLSON: Okay. Fine.

18 MR. TORCHINSKY: That's the only --

19 JUDGE BAYLSON: Okay.

20 MR. TORCHINSKY: -- thing that would be covered
21 under Rule 50 or 52 that won't be addressed at the close of
22 evidence. Your Honor, I just have one quick question. The
23 closing arguments, and I've done some three-Judge Panel cases
24 before, because there's no jury I've often had those
25 interrupted by questions from the Panel.

1 Is it not the intention of the Panel to ask any
2 legal questions during closing? It will just help me as I
3 prepare to deliver the closing.

4 JUDGE SMITH: I -- if we are indeed talking about
5 closing argument, speaking for myself, I have no intention of
6 asking for -- asking questions during the course of that
7 argument.

8 Because it, you know, will be presumably be both on
9 legal issues and on the factual content of what plaintiffs
10 have offered. I have indicated to my colleagues, however,
11 that I do want to afford -- I would like us to require
12 supplemental memoranda post trial. If you don't think you
13 have anything to add, you can say that.

14 But there are some very significant legal issues
15 that have been raised, necessarily by the nature of the
16 claims. And they are going to require our time and very
17 careful consideration, given the schedule that we have had
18 here, which has caused all of us to move quickly.

19 I can say, at least I for one have not had a
20 opportunity to think about and consider, in particular the way
21 constitutional issues that have been raised. So I want to at
22 least afford counsel the opportunity, in addition to your
23 final arguments here, to provide us with additional memoranda.

24 MR. TORCHINSKY: Your Honor I appreciate that, and
25 we would like to take advantage of that opportunity. I would

1 like to ask for some additional time to do that. As this
2 Court is well-aware, we are rolling right from this trial into
3 trial in State Court starting Monday with an expedited
4 schedule. The Court in Harrisburg has indicated that trial is
5 going to start early and they're well beyond the close of
6 business every day next week, through 5 p.m. next Friday.

7 And then we have 48 hours to submit post trial
8 briefs in that case --

9 JUDGE SHWARTZ: Understood.

10 MR. TORCHINSKY: -- due December 18th. So if the
11 Court's going to allow time for post trial briefing, I would
12 ask this Court's leave to give us a little bit of reprieve to
13 give some time to get through the next trial that we have to
14 get through before we submit post trial briefing in this case.

15 I know it doesn't really fit well with the Court's
16 -- with the schedule that the Court set forth in this matter,
17 but, Your Honor, honestly we're drowning balancing these two
18 cases.

19 JUDGE SMITH: Okay. I understand, and my colleagues
20 understand, and we will -- we will discuss that at the end of
21 the day when we take up some other matters. And I'm
22 sympathetic. I go into a sitting next week that I'm ill
23 prepared for at this point. So --

24 MR. TORCHINSKY: So, Your Honor, I guess at this
25 point, we'd like to move, and perhaps we can do our

1 evidentiary submissions, which I think are -- should hopefully
2 go fairly smoothly. And then perhaps take a recess and hear
3 oral argument at 11 -- or closing argument at 11?

4 JUDGE SMITH: We'll determine the time after you've
5 -- after you finish. But you are -- you wish now to proceed
6 with your evidentiary production?

7 MR. TORCHINSKY: Yes, Your Honor. And our
8 designations. One quick final question on the closing
9 arguments. Does the Court intend to set time limits on
10 closing arguments, or how long is the Court anticipating each
11 side having for a presentation?

12 (Pause - Judges conferring)

13 JUDGE SMITH: With respect to closing argument
14 whenever it is that we do commence them, we will proceed with
15 an order of the defense going first, followed by the closing
16 argument of plaintiff. The one thing we don't know at this
17 point is whether or not the plaintiff will have any rebuttal
18 evidence to present prior to the closing of the record.

19 And we will afford each side half an hour. We're
20 not going to put the hook out, if that's necessary. And I do
21 know that you want to make a presentation as well. So, you
22 know, if -- we'll afford you the same amount of time, but, you
23 know, I leave that to you.

24 MR. TORCHINSKY: Your Honor, that --

25 (Transcriber change)

1 MS. HANGLEY: And, Your Honor, we have one
2 evidentiary matter to put, one exhibit to put in --

3 JUDGE SMITH: I'm sorry that we didn't --

4 MS. HANGLEY: -- if we can just --

5 THE COURT: -- that I didn't inquire in that regard.

6 MS. HANGLEY: We know to stand up and make ourselves
7 heard so there -- the joint statement is stipulated in
8 undisputed facts. The first three pages of that has been
9 admitted into evidence as Plaintiff's Exhibit 16. We'd like
10 to admit the whole thing with exhibits, if there's no
11 objection, and this is Document 150 on ECF. It was filed on
12 November 29th.

13 MR. TORCHINSKY: No objection from the legislative
14 defendants, Your Honor.

15 MR. GEOGHEGAN: No objection, Your Honor.

16 JUDGE SMITH: All right, may we make Executive
17 Defendant's 1 --

18 UNIDENTIFIED SPEAKER: Sure.

19 JUDGE SMITH: -- for purposes of the record?

20 MR. TORCHINSKY: Your Honor, one final
21 clarification, for closing arguments, will the order be
22 executive defendants since they were originally named
23 legislative defendants and then plaintiffs?

24 JUDGE SMITH: Yes, I regret that I -- yes, we will
25 proceed in that fashion.

1 MR. TORCHINSKY: Thank you, Your Honor. Moving on
2 to exhibits for the defendants --

3 MR. B. GORDON: Before we move on, Your Honor, there
4 are just two administrative things. The first is on the issue
5 of scheduling and deadlines, do we have a deadline for
6 proposed findings of fact?

7 JUDGE SMITH: I -- we're not in a position to
8 indicate that to you right now.

9 MR. B. GORDON: And secondly, just a very small
10 clarification came up in our -- in the course of our dealings.
11 Though Mr. Gragert is a delightful man, I do not have a close
12 relationship with him, I recognize his voice very clearly and
13 I'm positive about that from multiple conversations.

14 I did not know him before this case or was aware
15 that he was planning to go to Argentina when I selected him
16 out of a pool of approximately 64 plaintiffs to be --
17 additional plaintiffs to participate in this matter.

18 JUDGE SMITH: We will. We certainly accept your
19 assertion as an officer of the court, Mr. Gordon.

20 MR. B. GORDON: Thank you, Your Honor.

21 MR. TORCHINSKY: Your Honor, with respect to
22 exhibits -- no, I'm sorry, I think there's another motion from
23 the plaintiffs.

24 MR. PERSON: Your Honor, with respect to Executive
25 Defendant's Exhibit 1, just before I had requested the

1 clarification from Judge Baylson that -- or Judge Baylson
2 answered, I asked the Court -- that because it had been filed,
3 it was part of the record. We would have moved similarly, I
4 just wanted to make clear that plaintiffs --

5 JUDGE SMITH: The mere filing does not make it part
6 of the trial record and you -- that requires a formal motion
7 subject to objections and ruling.

8 MR. PERSON: Maybe I misunderstood what Judge
9 Baylson said. We would have moved to enter that as part of
10 our record so that we can rely on it in -- in our case.

11 JUDGE SMITH: The joint statement.

12 MR. PERSON: The joint statement of stipulated
13 facts that was entered into evidence as exhibit --

14 JUDGE SMITH: All right, well it's now part of the
15 record, we've admitted it.

16 MR. PERSON: And we can rely on that in our case in
17 chief, Your Honor.

18 JUDGE SMITH: Yes, sir.

19 MR. PERSON: Thank you, Your Honor. And the other
20 thing, I'm unclear where things stand on the Rule 50 motion
21 because we have not filed a written objection to that. I'm
22 not sure if Mr. Torchinsky is saying he's going to present
23 that and argue it or withdraw it or have it dealt with in
24 closing, and I just want to make sure the Court's aware that
25 we are reserving our right to defend -- to oppose that motion,

1 whether orally today or if the Court would prefer, in a
2 written motion.

3 JUDGE SMITH: To repeat, I'm going to -- we are
4 going to hear closing arguments from both sides, not separate
5 argument on a Rule 50 motion. The Rule 50 motion to the
6 extent we can characterize it as such or however it has been
7 characterized as a heading on the motion filed by the
8 legislative defendants has been interposed.

9 It says what it says. Apparently Mr. Torchinsky is
10 satisfied with the filing of his papers and not a separate
11 argument on that as a motion. I don't know what more there is
12 to say.

13 MR. PERSON: Thank you, Judge.

14 MR. TORCHINSKY: Your Honor, I'd first like to ask
15 you -- or I'd like to ask the Court, would you like proffers
16 on the designations that we intend to submit from Mr. Arneson
17 and Mr. Schaller's depositions, or are you okay with the
18 designations?

19 JUDGE SMITH: Yes. I think we ought to proceed
20 consistent with the format that we used when the plaintiffs
21 were presenting their case.

22 MR. TORCHINSKY: I will let Mr. Paszamant do the
23 proffer for Mr. Arneson and Ms. Gallagher will do the proffer
24 for Mr. Schaller and then I will move our exhibits.

25 JUDGE BAYLSON: Well, who's going to be the witness?

1 We're going to have a -- we're going to read them.

2 MR. TORCHINSKY: Oh, Your Honor, I was just thinking
3 we would do a proffer like we did for the plaintiffs, not --
4 not do the -- the reading again.

5 JUDGE BAYLSON: I think what we just said, we want
6 to do it the same way we did Schaller and Arneson yesterday.
7 It was read --

8 JUDGE SMITH: Yes.

9 JUDGE BAYLSON: -- those two we read into the
10 record --

11 JUDGE SMITH: Indeed.

12 JUDGE BAYLSON: -- question and answer.

13 JUDGE SMITH: Indeed. And that was the Panel's
14 desire.

15 MR. TORCHINSKY: Oh, okay.

16 JUDGE SMITH: I think it is frankly --

17 MR. TORCHINSKY: Well, we can --

18 JUDGE SMITH: -- to your advantage --

19 MR. TORCHINSKY: We can do that, Your Honor.

20 JUDGE SMITH: -- as it was to plaintiffs to have us
21 actually hear and contextualize what you're submitting.

22 (Pause in proceedings)

23 MR. TORCHINSKY: All right, Your Honor, I think
24 we're -- we're ready to proceed. I don't know who's going to
25 play who from the plaintiff's side. Apparently it's Mr.

1 Person.

2 MR. PERSON: Pardon me for turning my back on the
3 Court.

4 JUDGE SMITH: That's all right. Few lawyers are shy
5 about taking the podium so, I mean, I shouldn't --

6 MR. PASZAMANT: It's a question about sharing space,
7 Your Honor.

8 JUDGE SMITH: Well, try it with three Judges on a
9 District Court bench.

10 MR. PASZAMANT: Yes, I understand. Shall I proceed?

11 JUDGE SMITH: Please.

12 MR. PASZAMANT: Okay.

13 "Q My name is Brian Paszamant. As you know I represent
14 President Pro Tempore Joseph Scarnatti in connection with the
15 lawsuit Agre vs." --

16 MR. PASZAMANT: -- I'm sorry, Madam Court Reporter.
17 I thought I could --

18 JUDGE SHWARTZ: Excuse me, counsel, could you also
19 give us a page and line?

20 MR. PASZAMANT: Oh, of course. We are on page 92,
21 line 19.

22 JUDGE SHWARTZ: Thank you.

23 "Q I represent President Pro Tempore Joseph Scarnatti in
24 connection with this lawsuit, Agre vs. Governor Wolf, et al.
25 You were asked during your examination by Mr. Person several

1 questions which involved or included" --

2 MR. PASZAMANT: -- oh, I'm -- I apologize, this is
3 the part that we picked up at the tail end of the plaintiff's
4 case and we did this yesterday so my mistake. But I'd
5 actually like to start with -- let's see, okay, it's actually
6 page 93, line 12.

7 "Q I'll try to move along here as quickly as I can. I know
8 Mr. Persoon covered a lot of this stuff, but since we may be
9 packaging up your transcript for purposes of trial testimony
10 as well, there's going to be unavoidable redundancy and I
11 apologize for that."

12 "So, sir, fair to say that you had involvement in
13 the creation of Senate Bill 1249?"

14 "A Some, yes. I did not have -- you know, I didn't draw
15 the map that led to Senate Bill 1249, but I did have some
16 involvement in the process."

17 "Q Okay. And what was that involvement, sir?"

18 "A I was Senator Dominic Pileggi's Communication and Policy
19 Director. As part of that role, I was very involved in the
20 State Senate redistricting process."

21 "There is unavoidably overlap in the State Senate
22 process and the congressional process in that you're using the
23 same software, you're using the same census data -- that kind
24 of thing."

25 "And so I had discussions with Senator Pileggi, John

1 Memmi and other people who wanted to provide input into a
2 potential congressional plan and help coordinate those efforts
3 with the ultimate goal of being able to produce a plan that
4 was equal in population, complied with the Voting Rights Act
5 and again, all the things I've listed before, with the final
6 goal of course being something, a plan that did all of those
7 things while also being able to obtain 26 votes in the Senate,
8 102 votes or more in the house and the signature of then-
9 Governor Tom Corbett."

10 "Q Did Senate Bill 1249 ultimately become the 2011
11 Congressional District Plan?"

12 "A Yes, sir."

13 MR. PASZAMANT: Moving along to page 98, line 12.

14 "Q You were asked some questions during your deposition
15 relating to the data that was available to you in connection
16 with the drawing of the 2011 congressional plan map. Do you
17 recall that?"

18 "A Yes, sir."

19 "Q Can you give me again -- identify for me again what that
20 specific data was that you were referring to?"

21 "A There were two main sets of data available. One was the
22 census data which is voluminous in nature and it includes any
23 number of dozens of fields of data probably, and the other was
24 publically available historic election data."

25 "Q Okay. And where did the census data come from?"

1 "A The Census Bureau from the Federal Government" --

2 "Q Okay."

3 "A -- via the Legislative Reapportionment Commission and
4 that process they described earlier."

5 "Q This was the process involving Fred Hejazi?"

6 "A Yes, sir."

7 "Q And the historical voting data, where did that come
8 from?"

9 "A It originated with the Department of State. The
10 Legislative Data Processing Committee has always been involved
11 in the redistricting process, is my understanding. I know
12 that they were involved in the 2011 cycle and the 2000 cycle,
13 and they simply compile it and make it available in a way that
14 all four legislative caucuses can easily access it."

15 "Q Okay. So this so called voting data was made available
16 to all four caucuses in the Pennsylvania General Assembly?"

17 "A From Legislative Data Processing Committee, yes, sir, and
18 it was available to anybody who -- it might have required a
19 little more work to take it from the Department of State and
20 turn it into something useful but yes, it was available to all
21 four caucuses and it was public data that was really available
22 to anybody."

23 "Q And was the census data that you were referring to to
24 your knowledge available to all four caucuses of the
25 Pennsylvania General Assembly?"

1 "A Yes, sir."

2 "Q Sir, do you know whether you also had available to you
3 back then the home addresses or the locations of incumbents?"

4 "A We did, yes, sir."

5 "Q What was -- was that information available to all four
6 caucuses, to your knowledge?"

7 "A Yes, sir."

8 "Q Is that information publically available?"

9 "A I believe it is. I know it is for State Senate members
10 because the State Constitution requires a member to actually
11 live in their district. With the congressional home
12 addresses, I believe that it is."

13 "Q Okay. So this voting data that you had available to you
14 in connection with the 2011 Congressional Districting Plan,
15 why was it that you had that data?"

16 "A Because in compiling a plan where we're trying to get 26
17 members of the State Senate to vote for something for a
18 congressional map that divides that state into 18 districts,
19 they're going to ask us questions."

20 "And among those questions are is it equal in
21 population, does it comply with the Voting Rights Act, et
22 cetera, and some members would -- we were confident would be
23 interested in historic election data when determining how
24 their -- as one of probably many factors when determining how
25 they would vote."

1 "Q Did you anticipate that you would get questions with
2 regard to this information from other senators in connection
3 with your work on the 2011 Congressional Districting Plan?"

4 "A Yes, sir."

5 MR. PASZAMANT: Moving down to page 103, line 18.

6 "Q Okay, let's talk about Senate Bill 1249. In connection
7 with the creation of Senate Bill 1249 was there any division
8 of effort as between the Pennsylvania Senate and the
9 Pennsylvania House?"

10 "A Yes. In the end we knew both the house and the Senate
11 had to agree to it, so we were -- we did work together."

12 "Q Okay. And why was a division of effort put in place, if
13 you know?"

14 "A Economies of time. You know, as I said, the
15 Reapportionment Commission was finishing its work on the
16 General Assembly redistricting at roughly the same time that
17 the congressional map had to be done."

18 "We wanted it all to get done in 2011 because of the
19 election calendar in 2012 started pretty early, so we were
20 pushing hard to get everything done that December. And so,
21 you -- you know, just a matter of making the time lines work
22 was the primary reason as I recall it."

23 "Q Was there any geographic focus with regard to the
24 division of work between the Senate and the house in
25 connection with the 2011 Congressional Districting Plan?"

1 "A There was. In the end of course you'd have to have one
2 plan, one map and so everything has to fit together. But
3 Representative Turzai was the member of the Reapportionment
4 Commission for the House Republican caucus. Senator Pileggi
5 was for the Senate Republican caucus. Senator Pileggi is from
6 Chester City in Delaware County. Representative Turzai is
7 from Allegheny County."

8 "And so it was more natural that the Senate would
9 have a bit more focus on the southeast than the eastern half
10 of the state in general, and the western half the House had
11 more focus on. Again, not that either of us -- you know, we
12 didn't ignore the other half and at some point they have to
13 meet anyway, but that was generally where people's interests
14 lied the most."

15 "Q Okay. So in terms of the Senate and in connection with
16 this 2011 congressional districting effort, did you tell me
17 who from the Senate was involved in the preparation of the
18 draft maps and the like?"

19 "A At a technical level, really primarily John Memmi. In
20 terms of providing input it's, you know, basically any member
21 of -- well, anybody who wanted to provide input we welcomes
22 input from. But in terms of the technical drafting, if that's
23 what you're focused on, John Memmi was the main guy."

24 MR. PASZAMANT: Your Honors, may I approach the
25 witness for just a moment? I'm unclear as to the color coding

1 on my draft.

2 JUDGE SMITH: Very well.

3 (Pause)

4 MR. PASZAMANT: I apologize, I ask the Court's
5 indulgence to now approach plaintiff's counsel.

6 (Pause)

7 MR. PASZAMANT: Thank you. Starting again on page
8 106, line 4.

9 "Q Okay. And in terms of those who were giving Memmi
10 instruction at that time in terms of his technical drafting,
11 could you identify them for me?"

12 "A Sure. Myself, Eric Arneson, Dave Woods and Dominic
13 Pileggi -- Senator Pileggi."

14 MR. PASZAMANT: Moving down to page 106, line 18.

15 "Q So in terms of drafting the districts conceptually for
16 Senate Bill 1249, were there any things in particular that you
17 had in mind that you are considering?"

18 "A Primarily wanting to make sure that the population was
19 equal in ever district and that we complied with the Voting
20 Rights Act were probably the top two criteria."

21 After that we wanted to respect incumbency, make
22 sure obviously there were no other provisions of State and
23 Federal Constitutions that we violated, no law we violated,
24 anything like that. And anytime you are drafting a district
25 you are necessarily going to have dramatic changes to every

1 district in the state."

2 "There are only 19 districts so you take one of them
3 out, the other 18 are going to change dramatically. We also
4 hope to have fewer split counties, split municipalities, that
5 sort of thing and the 2011 plan that had been in the -- I
6 think it was actually the 2002 plan. I don't think that one
7 got enacted until January of that year or something, but the
8 previous plan."

9 "Q Okay. I want to break that down just a little bit. In
10 terms of these various things that you just mentioned to me,
11 did you understand that certain of these things were mandatory
12 in that they needed to be complied with for purposes of the
13 2011 congressional plan?"

14 "A Yes."

15 "Q Which things?"

16 "A Compliance with the State and Federal Constitutions,
17 compliance with the Voting Rights Act, compliance with equal
18 population, absolutely mandatory."

19 "Q That's where I am right now."

20 "A Removing obviously from 19 districts to 18 districts was
21 mandatory and those -- I think I'd stop my list there."

22 "Q Okay. Did Senate Bill 1249 to your understanding comply
23 with each of these things?"

24 "A Yes, sir."

25 "Q Okay. Now did compliance with each of these items impact

1 the way Senate Bill 1249 was drawn?"

2 "A Well, the Voting Rights Act primarily affected
3 Congressional District -- I believe it's 2, it's the one that
4 Congressman Fattah previously represented and now Congressman
5 Evans represents. But of course then once you kind of set
6 congressional district 2, everything around it is impacted by
7 that. The equal population is tough."

8 "Population is obviously not evenly divided across
9 the state. It's not even divided among municipalities within
10 counties or within voting precincts within municipalities.
11 And so getting to a point where the map has a zero deviation,
12 a zero population deviation is extremely difficult,
13 particularly when although not mandatory in a legal sense, we
14 had to respect incumbency, respect where incumbents lived, et
15 cetera, because if we didn't, there would be no chance of
16 members of the Senate to vote for a plan that didn't do that."

17 "Q Okay. How if at all did Pennsylvania's loss of a
18 congressional seat in connection with the 2010 census impact
19 the drawing of Senate Bill 1249?"

20 "A That's in -- in some ways there's not a starting point
21 but in many ways that's the starting point because you can
22 only have 18 districts. We had to look at where a district
23 would be removed which required us to look at population
24 shifts within Pennsylvania over the previous decade."

25 "The west had lost population, the east had gained

1 population so fairly early on in the process we focused on
2 removing the district from the west and when I say removing a
3 district, what that winds up meaning in practices is that two
4 congressional district essentially get merged. You will have
5 in the end a congressional district with two incumbent members
6 of Congress living in it so we focused on doing that in the
7 west."

8 "And when you take a district out like that
9 everything around it has to come in and fill it because, you
10 know, in the end all that land mass gets put into a
11 congressional district, all those voters get put into a
12 congressional district."

13 "And as a general trend, you're not necessarily
14 going to see this in every district but that would mean that
15 districts in the east would sort of stretch to the west
16 depending on where population growth was in the east."

17 "If you had a fast growing district in the east that
18 had grown fast enough to make up the difference, that's a
19 different story. But as a very broad general thought, you're
20 going to have to have some districts from the east kind of
21 stretch to the west to make up for that."

22 "Q was there a focus on the west for purposes of eliminating
23 the one congressional district that needed to be eliminated?

24 "A Yes, absolutely."

25 "Q And why is that or why was that?"

1 "A Because the population in the western half of the state
2 had declined. I believe that's true in absolute terms. It's
3 definitely true when compared to the eastern half of the
4 state. Pennsylvania actually grew in population slightly over
5 that decade but we didn't grow fast enough compared to other
6 states to avoid losing a district. But the focus on the west
7 was because that's where the population loss had been the most
8 prominent, most pronounced."

9 "Q I see. Now, moving along from those things that you
10 understood were mandatory for purposes of consideration in
11 connection with the drawing of Senate Bill 1249, were there
12 other things that you understood to be optional or something
13 less than mandatory that were taken into account for purposes
14 of the draw?"

15 "A Sure, the resident. The residences of incumbent members
16 of Congress I think fits into that category. The reduction in
17 the number of split counties, split municipalities, et cetera,
18 fits into that category."

19 "You know, it's -- I probably should have included
20 the internal migration of population in the mandatory things.
21 Even though it's not legally mandatory, you have no choice but
22 to deal with it obviously, so yes, those are some of those
23 factors."

24 "Q And did Senate Bill 1249 take these factors into
25 account?"

1 "A Yes, sir."

2 "Q Was it important in your mind that Senate Bill 1249 take
3 these factors into account meaning these non-mandatory
4 factors?"

5 "A Yes, sir. My role in this process again was not the
6 hands-on drawing of it but kind of helping to manage it
7 through the Senate, to receive input from senators, talk to
8 senators, see what they were thinking about in terms of
9 supporting a plan or not supporting a plan, making sure that
10 we were able to get to 26 votes and those things were
11 important to members of the senate and thus, they were
12 important to me."

13 "Q Why was the taking of residences of incumbent members
14 important to you?"

15 "A Because it was important to members of the Senate."

16 "Q And did you get an understanding at that time as to why
17 it was important to members of the Senate?"

18 "A Respecting incumbency is a long established I would call
19 it a traditional redistricting principle. The voters have
20 already elected these people and displacing them absent a need
21 to do so for example because you're going from 19 districts to
22 18 was unnecessarily disruptive and not something that, you
23 know, we didn't ever really consider it because we had enough
24 of the sense of the caucus to know that it was not something
25 that was worth particularly exploring in any way."

1 "Q Okay. Why was it important to you to take the eastward
2 population shift into account for purposes of drawing Senate
3 Bill 1249?"

4 "A You just can't draw a map without taking into account the
5 population shifts and map drawing is all about where the
6 population is and making sure that each district in the
7 congressional map -- that each district has essentially an
8 identical number of residents in it. So it's actually
9 impossible to draw a map without taking into account
10 population shifts."

11 MR. PASZAMANT: Your Honors, may I approach the
12 witness one more time just to ensure I --

13 JUDGE SMITH: Yes.

14 MR. PASZAMANT: -- understand what I'm doing here?
15 Apparently the orange highlighter ran out somewhere along the
16 way so we economized and ran it down the margins. Continuing
17 on page 115, line 12.

18 "Q Now, I think you also mentioned in the splits a moment
19 ago as another factor that was taken into account for purposes
20 of the 2011 map."

21 "A Right."

22 "Q Can you tell me why it was important to take splits into
23 account in your mind?"

24 "A The fewer political subdivisions that are split, by which
25 I mean counties, municipalities and election districts at the

1 sub-municipal level, the easier it is to administer elections,
2 the easier it is for people to be able to know who their
3 Congress people are. Some division is absolutely unavoidable
4 and that's unfortunate. If Pennsylvania was a bunch of
5 rectangles with equal populations, it would make drawing a map
6 a lot easier. But those are some of the reasons. And another
7 reason and a much more direct reason is because it was
8 important to at least some of the members of our caucus who we
9 hoped would vote for the plan."

10 "Q Okay. Do you know, sir, now Senate Bill 1249 compares to
11 its predecessor in terms of the splits that you mentioned?"

12 "A Not in terms of the specific numbers but I do generally,
13 yes."

14 "Q Can you tell us what it is that you know generally?"

15 "A The Senate bill -- the plan in Senate Bill 1249 has fewer
16 splits of counties of municipalities and of sum-municipal
17 election districts than the preceding map did."

18 "Q The preceding map, what year was it enacted?"

19 "A I believe it was 2002. It could have been the end of
20 2001."

21 "Q Was that the map that went up in the beef case that you
22 mentioned earlier?"

23 "A Yes, sir."

24 "Q Thank you. Okay, sir, how long did you work in the
25 Pennsylvania Senate?"

1 "A From November of 1996 until the first half of 2015."

2 "Q Have you ever heard the term 'shell bill' used in
3 connection with your work at the Pennsylvania Senate?"

4 "A Yes, sir."

5 "Q And what do you understand that term to mean?"

6 "A A bill which may not have the full contents of
7 legislative language that it will eventually have but which is
8 moving through the process a little bit -- at least sometimes
9 further -- sometimes less far before that language gets put
10 into it."

11 "Q In your time in the Pennsylvania Senate did you hear the
12 term shell bill used in normal parlance?"

13 "A Yes, yes I did."

14 "Q Okay. So when Senate Bill 1249 was first introduced in
15 September of 2011 would it be properly characterized as a
16 shell bill?"

17 "A Yes."

18 "Q And why if you know was Senate Bill 1249 first introduced
19 as a shell bill?"

20 "A One of the goals that we had going into the cycle and by
21 we in that sentence I specifically mean Senator Pileggi -- I
22 shared the goal but he was my boss -- was to make it more
23 transparent than the previous redistricting had been. One was
24 we did that was to create the first ever website for the
25 Legislative Reapportionment Commission."

1 "It wound up including information about
2 congressional district redistricting as well and in this
3 particular case the introduction of Senate Bill 1249 was
4 intended to notify everybody that here's the bill, look at
5 this bill, here's a spotlight -- this bill will be used for
6 congressional redistricting. In previous cycles my
7 recollection and understanding is that different election code
8 bills, for example -- I might have that particular wrong but
9 some kind of bill would get amended in the process to include
10 the congressional redistricting."

11 "But it didn't necessarily start as a congressional
12 redistricting bill. In this case even though it didn't have
13 the full contents when it was introduced, it at least told
14 everybody look here, and this is the bill that's going to get
15 done. And then at the end it was the bill that got done."

16 "Q Did you perceive value in introducing Senate Bill 1249 as
17 a shell bill in September of 2011 even if it lacked content?"

18 "A Yes, sir."

19 "Q And why is that?"

20 "A Putting my communication hat on for a second, it was very
21 easy to tell people interested in the process outside of the
22 Senate -- meaning the media primarily, that this was the bill
23 to watch. Plug this into your bill notification system, do
24 whatever you want to make sure you are following that bill."

25 "But we are -- nothing is ever 100 percent

1 guaranteed in a process like that but we're going to make
2 every effort to make sure that that is the bill that gets
3 done, so watch it and we'll get back to you when we have more
4 details to fill in. Same goes true beyond the media as well.
5 As you can imagine there are any number of people interested
6 in following the congressional redistricting process."

7 "Q Did you perceive anything unusual about introducing
8 Senate Bill 1249 as a shell bill in September of 2011?"

9 "A Only the fact that we put such a bright spotlight on it
10 so early in the process which had not been done previously."

11 "Q Okay. In your experience in the Pennsylvania Senate are
12 so called shell bills common?"

13 "A Relatively. They're not uncommon."

14 "Q Do you know how it was that the 2002 congressional plan
15 made its way through the Pennsylvania General Assembly, and in
16 particular do you know whether that too was a shell bill?"

17 "A As I sit here today, I don't remember that. It's
18 obviously a matter of public record but I just can't recall it
19 off the top of my head."

20 "Q Okay. In your experience in the Pennsylvania Senate, are
21 shell bills used only in connection with reapportionment or
22 redistricting efforts?"

23 "A No, sir."

24 "Q Do you know when it is that Senate Bill 1249 shell was
25 filled?"

1 "A In early to mid December of 2011 is my recollection.
2 Again, it's a matter of public record but that's my
3 recollection."

4 "Q Do you know at what stage of the process the shell was
5 filled?"

6 "A My recollection is that we introduced the bill. It was
7 referred to the Senate State Government Committee, it came out
8 of committee as the shell bill with a unanimous bipartisan
9 vote and got two readings on the Senate calendar which is part
10 of the State Constitution's requirement for how legislative is
11 to be considered in Pennsylvania."

12 "Then I believe it was referred back -- re-referred
13 to the State Government Committee in the Senate where it was
14 amended and reported out as amended, again with the bipartisan
15 vote, although not unanimous at that time."

16 "And then it was amended again and then I believe
17 that would have been after it was re-referred to the
18 Appropriations Committee. I think the second amendment went
19 in in the Appropriations Committee, although there was a
20 chance it could have been done on the Senate floor."

21 "Q Okay. When speaking of a Senate bill is the term
22 'introduction' a term of art?"

23 "A Yes, sir."

24 "Q What does it mean?"

25 "A It means that a bill with, you know, specific legislative

1 language is given to the secretary with the Senate and as a
2 prime sponsor identified, it may have co-sponsors identified.
3 It is assigned a number of the Senate secretary's office and
4 then it is sent to the President Pro Tempore's office."

5 "The physical bill is where he makes a decision as
6 to what committee it will be referred to and then the physical
7 bill is given to the staff of that committee. And I'm not
8 quite sure where in there -- I think after it gets referred to
9 committee but I'm not quite sure. At some point it shows up
10 on the computer system and is available to the general public
11 at some point during that process. I'm not quite sure exactly
12 when that happens."

13 "Q Is the seniority or leadership position of a sponsor of
14 any particular bill of significance?"

15 "A It can be. It's not always, but it can be."

16 "Q Okay. Now, you also mentioned the terminology if I wrote
17 this down -- sometimes my writing isn't particularly good even
18 for myself -- the term 'a reading at the Senate.' Did you say
19 that?"

20 "A I did."

21 "Q And is a reading as you used that terminology a term of
22 art within the Senate?"

23 "A Yes, sir."

24 "Q And what does it mean?"

25 "A It simply means that the presiding officer of the Senate,

1 often the lieutenant governor, sometimes the pro tempore and
2 sometimes the designee calls the bill up by which it simply
3 means that they say the next bill on the calendar is Senate
4 Bill 1249, does the Senate agree to the bill? There is -- in
5 all the years I worked in the Senate I don't think we ever had
6 a roll call vote on that because all that 'agree to the bill'
7 means in that context is does everybody agree that there is a
8 bill called Senate Bill 1249 and that there are -- that these
9 are the words that are currently in the bill."

10 "You're not quoting to pass the bill, you're just
11 procedurally moving it up on the calendar is what it's called
12 because the State Constitution requires that each bill gets
13 three readings in the Senate."

14 "If a member wanted to -- again, in all my years
15 this never happened but if a member wanted to they could
16 request that the bill be read at length. My recollection of
17 Senate rules is that that's -- once a member makes that
18 motion, it has to happen. I don't think there's a vote on
19 that motion or anything but regardless, I'm straying again.
20 Again, that's what a reading is."

21 "Q Was Senate Bill 1249 read three times?"

22 "A Yes, sir."

23 "Q If I understood your answer a while back correctly,
24 Senate Bill 1249 was in and out of the Senate State Government
25 Committee on two occasions?"

1 "A Yes, sir, I believe that's true."

2 "Q And on the first occasion do you recall when that
3 occurred?"

4 "A Early -- early to mid December. I think closer to early
5 December in that case but" --

6 "Q And was the bill reported out of that committee?"

7 "A Yes, sir, unanimously."

8 "Q When you say unanimously, are you referring to a vote?"

9 "A I am, yes, sir."

10 "Q Unanimously meaning every member in the committee voted
11 in favor of reporting it out?"

12 "A Yes, sir."

13 "Q Were there Democrats on that committee?"

14 "A Yes, sir."

15 "Q How many?"

16 "A Different committees have different numbers. I don't
17 recall the State Government -- and those numbers sometimes
18 change through the years. I don't recall."

19 "Q That's fair. My instruction about not speculating is
20 equally well placed when it's me questioning you. So was
21 Senator Andy Dinniman on the Senate State Government Committee
22 at the time that Senate Bill 1249 was voted out in the first
23 instance?"

24 "A Yes, sir. My friend Senator Dinniman was on that
25 committee."

1 "Q So did he vote in favor of the bill coming out?"

2 "A Yes, sir."

3 "Q Okay. So at some point in time thereafter the bill goes
4 back into the Senate State Government Committee, correct?"

5 "A That's right. And I believe that to be -- well, I won't
6 speculate. Yes, sometime relatively soon after it came out
7 the first time it went back into that committee."

8 "Q And was it then reported out of that committee
9 thereafter?"

10 "A Yes, sir."

11 "Q Okay. And was there a vote required in order to report
12 that bill out of that committee?"

13 "A Yes, sir."

14 "Q And was a vote taken?"

15 "A Yes, sir."

16 "Q And can you tell me what that vote was?"

17 "A It was by a margin of two. I don't remember the specific
18 number but I very clearly remember the margin because if we
19 had not had every single vote that we had it would have wound
20 up being a tie vote and on a tie vote, at least in the Senate
21 of Pennsylvania, the bill fails."

22 "Q Did any Democrats vote in favor of the bill coming out of
23 the Senate State Government Committee when it came out the
24 second time?"

25 "A Yes, sir."

1 "Q Which Democrats?"

2 "A One, Senator Tina Tartaglione of Philadelphia."

3 "Q And was her vote significant in connection with that bill
4 coming out of the Senate State Government Committee?"

5 "A Without her vote that bill would have failed."

6 "Q And when you say it would have failed does that mean it
7 would have never made it to the Senate floor?"

8 "UNIDENTIFIED SPEAKER: I'll object to the leading."

9 "THE COURT: Overruled."

10 "Q You may respond."

11 "A Not necessarily, no. A vote -- again, I don't remember
12 the specifics of the Senate rules but a vote in committee and
13 a vote on the floor for that matter can be reconsidered within
14 a certain number of days so the committee could have
15 reconsidered its vote and had the bill put on an agenda at a
16 subsequent meeting where there could have been another vote."

17 "Q Were there Republican members of the Senate State
18 Government Committee at the time the bill was reported out the
19 second time?"

20 "A Yes, sir."

21 "Q Did any of those Republican members that were on the
22 committee vote nay with regard to reporting the bill out of
23 the committee?"

24 "A Yes, sir."

25 "Q Do you know how many?"

1 "A I believe it was two. Again, a matter of public record
2 if I'm wrong but that's my recollection."

3 "Q Were you present when the Senate State Government
4 Committee voted Senate Bill 1249 out of that committee?"

5 "A Yes, sir."

6 "Q Were you present for the entirety of that committee
7 meeting?"

8 "A I was present for at least the entirety of the discussion
9 debate and vote on Senate Bill 1249. I don't recall if there
10 were bills that were debated and voted prior to or subsequent
11 to that bill that I wasn't there for."

12 "Q Sitting there during these Senate State Government
13 Committee meetings that we've been talking about, did you have
14 any impression that any member of the committee was prevented
15 from voicing his or her opinions concerning Senate Bill 1249?"

16 "A No, sir."

17 "Q Was it a lively discussion?"

18 "A Yes, sir. I don't remember it being particularly
19 lengthy, but there was a certain liveliness to it."

20 "Q Was there anything unusual about President Pro Tempore
21 Scarnatti voting in favor of Senate Bill 1249 coming out of
22 that committee?"

23 "A No, sir."

24 "Q Same question with Senator McIlhinney?"

25 "A No, sir."

1 "Q And at that time did Senator McIlhinney have any
2 particular leadership position with regard to the Senate State
3 Government Committee?"

4 "A He was Chairman of Senate State Government Committee."

5 "Q Okay. Was Senate Bill 1249 ultimately voted on by the
6 entire Senate?"

7 "A Yes, sir."

8 "Q Do you know when that occurred in relation to when the
9 bill came out of committee?"

10 "A After the bill came out of committee."

11 "Q Other than that are you able to quantify for me days,
12 hours, minutes, seconds?"

13 "A I believe the bill also went through the Senate
14 Appropriations Committee before the vote of the full Senate.
15 It would have been mid December, and again, it would have been
16 relatively soon after it came out of committee, but I can't
17 recall whether it was the same day, a subsequent day, early
18 the following week -- I'm not sure at that level of detail,
19 but it would have -- it would have been relatively soon."

20 "Q Based on your experience in the Senate, was there
21 anything unusual about the process of having this legislation
22 enacted?"

23 "A No, sir. Every bill has a different path from
24 introduction to enactment so obviously not every bill is going
25 to follow the same path this one did, but there's nothing

1 particularly unusual in any way about this one."

2 "Q Were you in attendance when the entire Senate voted on
3 Senate Bill 1249?"

4 "A Yes, sir."

5 "Q Was there a debate before the bill was voted on?"

6 "A Yes, sir."

7 "Q Were you there for the entirety of that debate?"

8 "A Yes, sir."

9 MR. PASZAMANT: Your Honors, moving along to page
10 135, line 20.

11 "Q Did any senators offer any amendments to Senate Bill 1249
12 before it was voted on by the entire Senate?"

13 "A Yes, sir. I believe Senator Jay Costa of Allegheny
14 County offered an amendment to the bill."

15 "Q Okay. This is Legislative Defendant's Exhibit Number 13.
16 It's a trial exhibit number. We'll go with that for present
17 purposes as well."

18 UNIDENTIFIED SPEAKER: 13?

19 MR. PASZAMANT: Legislative Defendant's 13, that's
20 correct.

21 UNIDENTIFIED SPEAKER: But he's reading from the
22 transcript.

23 MR. PASZAMANT: Oh, I'm sorry, Your Honors, but in
24 fact that exhibit is in the legislative defendant's trial
25 binder at Exhibit Number 13. Picking up on page 136, line 7.

1 "Q Yes, it's LD-13 if I'm reading it correctly. This should
2 be straight out of what we put in your binders and circulated
3 to you folks. Sir, please take a moment to familiarize
4 yourself with what's marked as LD-13."

5 "A Okay."

6 "Q Do you recognize this document, sir?"

7 "A I believe this to be a map which reflects the amendment
8 that was offered by Senator Jay Costa on the Senate floor."

9 "Q So when you talked about an amendment a moment ago, did
10 that amendment contemplate this map?"

11 "A Yes, sir."

12 "Q Was Senator Costa's amendment ultimately successful?"

13 "A No, sir."

14 "Q When did you first see this map??"

15 "A I don't recall."

16 "Q Do you know whether you saw it before it was presented on
17 the Senate floor that day in December of 2011?"

18 "A If we did, it was hours before."

19 "Q When you first saw this map did you find anything to be
20 particularly interesting about it or unusual?"

21 "A It is. Yes, I did. It is a map which does not appear on
22 its fact to do anything particularly different than any other
23 congressional map would. It was a map that we didn't expect
24 to look like this. We thought it might be something that
25 tried to -- I don't recall how many splits are in this map but

1 we expected that there would probably be fewer splits than
2 there are in this map."

3 "Q Did you at the time form any impression with regard to
4 the shapes of any of the particular congressional districts
5 depicted on this LD-13 exhibit?"

6 "A There's some very interesting -- odd, if you will, shapes
7 on this map in various locations across the state."

8 "Q Are you able to tell me -- are you able to tell us which
9 locations by virtue of the congressional districts you're
10 referring to?"

11 "A Yeah, sure. I'll just pick the ones that jump out the
12 most. I don't know how much detail we want to get into. But
13 the ones that jump out the most include District 12 which
14 stretches from the southwest -- the far southwest corner of
15 the state. You can't get any further southwest and it almost
16 touches the New York border."

17 "District 4 it looks like in the western part of the
18 state was just basically U-shaped with a tail down to the
19 southwest. District 18 which goes basically between the two
20 districts I just described."

21 "District -- it's tough down in the southeast
22 because some of the colors run together and I'm not sure where
23 District 6, District 17 and District 8 -- how they all
24 interact but my recollection is that there were some unusual
25 shapes there. My eyes just really aren't seeing the colors

1 very well in this particular printout."

2 "Q Did you have any understanding as to how these various
3 congressional districts depicted on LD-13 were created or
4 drawn in the way they were?"

5 "UNIDENTIFIED SPEAKER: Objection. Foundation."

6 "A No, sir. Beyond the fact that I knew the staff people
7 who -- whether it was at the time the amendment was offered on
8 the floor or in the hours preceding that, again, I can't
9 recall but I know who handed it to us and I know that they
10 were the staff people involved in drawing it, but beyond that,
11 I don't."

12 JUDGE SMITH: For the record, I would have overruled
13 the previous objection.

14 MR. PASZAMANT: Picking up page 40, line 2.

15 "Q Was Senate Bill 1249 ultimately passed as law?"

16 "A Yes, it was."

17 "Q Do you recall the vote that enabled that passage?"

18 "A I believe it was 26 to 24."

19 "Q How many Republicans were in the Senate at that time?"

20 "A 29 I believe."

21 "Q So if my math is right three Republicans didn't vote in
22 favor of passage of this legislation?"

23 "A That's my recollection. It was -- I believe all 26 who
24 voted for it were Republicans and that three Republicans voted
25 against it."

1 "Q Mr. Arneson, did Senator Scarnatti have access to the
2 server that you testified about containing the draft of the
3 2011 map?"

4 "A Not direct access, no, sir. As the highest ranking
5 senator he could have had access had he so desired, but no, he
6 didn't have direct access."

7 "Q So if he wanted to though he could have gone down and
8 accessed the maps on the server, correct?"

9 "A Yes, sir."

10 "MR. PASZAMANT: Objection. Speculation."

11 "A Yes, sir."

12 "THE COURT: Overruled."

13 MR. PERSON: I think we picked up at page 148, line
14 3 and this is in my cross-examination for the record.

15 "Q Do you believe that it was legal to engage in partisan
16 gerrymandering in 2011?"

17 "MR. PASZAMANT: Objection. Calls for legal
18 conclusion. Vague."

19 "THE COURT: Sustained."

20 MR. PERSON: Picking up at page 154, line 11.

21 MR. PASZAMANT: May I catch up? Just a second.
22 Thank you.

23 "Q And I want to direct your attention to the 12th
24 Congressional District" --

25 "A To the 12 Congressional District, okay, yes."

1 "Q That part you testified about, how it stretched north
2 almost to the New York border" --

3 "A Yes, sir."

4 "Q That part that stretches north almost to the New York
5 border, are those some of the counties in the west of
6 Pennsylvania that experienced a population loss?"

7 "A Yes, sir."

8 MR. PERSON: And for the record, this is an
9 examination on Legislative Defendant's Exhibit 13.

10 "Q So instead of pulling them east to the population center
11 of Philadelphia, couldn't you pull them southwest to the
12 population center of Pittsburgh?"

13 "A No, sir. Whatever growth there as in Northern Allegheny
14 and Butler Counties, it didn't compare at all to what there
15 was in the east. And when there's population growth, it
16 pushes the districts out further."

17 "Q Can you testify with any specificity what counties
18 enjoyed population growth in the east?"

19 "A Lancaster County, Chester County, York County, Bucks
20 County, Monroe County. I'm sure there are others."

21 "Q What was the gross population growth in those counties
22 you just mentioned?"

23 "A I don't know, sir."

24 "Q Do you know how it compared to the population growth that
25 you testified occurred in Butler County and the counties in

1 the west?"

2 "A It was significantly greater but I can't put a number to
3 that, sir."

4 "Q Can you put -- if I asked for an order of magnitude,
5 could you state within an order of magnitude?"

6 "A Not with confidence. You know, it's significantly more."

7 "Q I want to back up to those mandatory requirements for a
8 second just so the record is clear. You don't know how Mr.
9 Memmi drew the lines to comply with those mandatory
10 requirements, do you?"

11 "A No, I don't know how he drew the lines to comply with
12 those."

13 "Q Now I will talk about the optional factors you testified
14 about. You mentioned residences of incumbents, correct?"

15 "A Yes, sir."

16 "Q How do you know that that's -- who pointed out to you
17 that that's an optional factor?"

18 "A I don't recall anybody pointing out that to me."

19 "Q You also mentioned a reduction in splits. True?"

20 "A Yes, sir."

21 "Q You also talked about internal population migration?"

22 "A Yes, sir."

23 "Q You didn't mention partisan gerrymandering, correct?"

24 "A I don't believe I did."

25 "Q Do you believe that partisan gerrymandering was an

1 optional factor?"

2 "MR. PASZAMANT: Objection. Vague. Calls for legal
3 conclusion."

4 "THE COURT: Overruled."

5 "A It certainly not a mandatory factor."

6 "Q Do you believe it's an optional factor?"

7 "A I believe what I stated previously about Vieth v.
8 Jubelirere, which is that the US Supreme Court said that as
9 long as certain parameters are in place such as equal
10 population and compliance with the Voting Rights Act, not
11 necessarily an exhaustive list, that partisan factors to the
12 extent that they are part of every congressional map that's
13 ever been drawn are not something that the Court is
14 particularly concerned with."

15 MR. PERSON: Continuing to page 161, line 21.

16 "Q And is it your testimony today that by posting that shell
17 bill with that type of general language you engaged in a
18 transparent process?"

19 "A More transparent than had previously been done, yes, sir.
20 I think that's what I previously said and I stand by that."

21 "Q Do you believe it was objectively transparent?"

22 "MR. PASZAMANT: Objection. Vague."

23 "THE COURT: Sustained."

24 MR. PERSON: If we advance to page 170, line 123.

25 "Q You said that two Republicans voted nay -- was that

1 coming out of committee?"

2 "A It was. The second time it came out of committee."

3 "Q And who were those Republicans?"

4 "A Yeah, one of them was Senator Mike Folmer of Lebanon
5 County. It's a matter of public record who the other one was
6 but I don't recall off the top of my head."

7 "Q Did you talk with Senator Pileggi or Senator Scarnatti
8 about why their two caucus members voted nay?"

9 "A Yes, sir."

10 "Q And what was the substance of those conversations?"

11 "A Prior to the committee meeting where there were two
12 Republicans who voted no, the other one, and I should remember
13 who it was and I might -- but at any rate the other one who
14 was not Senator Folmer gave us a heads up in advance that he
15 was not going to be able to support the map. If he gave a
16 reason, I don't recall what it was."

17 "We did not know until Senator Folmer voted against
18 the map that he was going to vote against the map, at least I
19 didn't know and I don't believe Senator Pileggi knew. And so
20 after the meeting knowing that I would get that question from
21 my boss, I asked Senator Folmer why he voted against the map."

22 "Q And what did Senator Folmer tell you?"

23 "A Senator Folmer indicated that he did not -- boy, one of
24 his concerns -- it may have been his only concern but I don't
25 recall that for sure -- was that Lebanon County, which was is

1 his home county, was being divided among two congressional
2 districts where as previously it had only been in one
3 congressional district and that was something that was a
4 concern to him."

5 "Q So he complained about too many splits, true?"

6 "A He complained about one very specific split. He didn't
7 complain about too many splits across the map."

8 "Q Was there any effort to reduce that split?"

9 "A At that point we were into mid December I think at that
10 point. I don't recall for certain if we looked at trying to
11 change it, but that kind of a change that late in a process
12 that you're hoping to end by the end of December which of
13 course in a legislative calendar would mean pre-Christmas, you
14 know, again, you make a change like that in one place and it
15 ripples all over the state."

16 "So I don't recall for certain that we looked at it.
17 I believe that we would have looked at it, but it would have
18 been -- it would have quickly too cumbersome to be able to
19 accomplish in the time frame that we needed to."

20 "Q Now, you testified that you were present during that
21 vote, true?"

22 "A That State Senate Committee vote?"

23 "Q Yes."

24 "A Yes. I was in the committee room."

25 "Q And you described it as a lively conversation, correct?"

1 "A Yes, sir."

2 "Q Were there charges of partisan gerrymandering levied in
3 that meeting?"

4 "A My recollection is that there were."

5 "Q And what was your response to that charge?"

6 "A I sat quietly on the side as another member of -- I was
7 just in there as the public, I had no response."

8 "Q Did you have any problem with the map being described as
9 partisan gerrymandering?"

10 "A My focus was on getting a map together that could pass the
11 Senate with 26 votes. How people choose to describe it is up
12 to them. I've yet to see a congressional map anywhere in the
13 country that I've seen that doesn't have somebody saying there
14 are problems with it."

15 MR. PERSOON: I think we pick up at page 177, line 1.

16 "Q And it's also true, isn't it, that Senator Scarnatti has
17 never denied that this is a partisan gerrymandering?"

18 "A To my recollection, that's correct."

19 "Q And when it was debated on the floor of the Senate, once
20 again there were charges of partisan gerrymandering, true?"

21 "A I believe that's true, yes, sir."

22 "Q And your answers from before that not a single member of
23 the Senate Republican caucus ever denied that it was a partisan
24 gerrymandering or true, and after that debate and during that
25 debate no Republican caucus member denied that it was a

1 partisan gerrymander, true?"

2 "A Can we take a break for me to read through that debate?"

3 "Q No. If you don't remember, that's okay. If you need to
4 refresh your recollection, that's fine."

5 "A I don't recall it happening but I also can't -- cannot
6 warrant to you that it did not happen."

7 MR. PERSON: Advancing to page 180, line 12.

8 "Q So is it your testimony today, sir, that when the
9 Democrats caucus and create one congressional map and the
10 Republican caucus to create a competing congressional map, that
11 those maps are not done on a partisan basis?"

12 "A Well, those maps were done by each individual caucus.
13 There's always a change that at the end a compromise gets
14 reached and that sometimes is part of the process, as working
15 separately at first and then trying to come together."

16 "Q Looking at LD-13 you mentioned that Congressional
17 Districts 12, 4, 18, 6, 17 and 8 struck you as odd, true?"

18 "A Yeah, I should have included 5 but yes, I did."

19 "Q We can add 5. Looking at Congressional District 12, do
20 you believe that the contours of that proposed map were the
21 result of a partisan gerrymander?"

22 "A Boy, you know, I don't know. Without a lot more
23 information I wouldn't even be able hazard a guess, and even
24 then I'm not holding myself out as an expert on what is or is
25 not a partisan gerrymander. It's a district that stretches a

1 heck of a long way."

2 "Q And just by eyeballing it, it strikes you as an odd way to
3 comply with those mandatory requirements you testified about,
4 true?"

5 "A I wouldn't say that. I'd say it's an odd shape, but it's
6 not necessarily an odd way to comply with those mandatory
7 requirements. That no population deviation is a tough thing to
8 get to."

9 "Q Tell me what strikes you odd about the 12th Congressional
10 District on this exhibit."

11 "A The distance primarily from the -- from basically -- not
12 basically -- from the far southwest corner where you border
13 West Virginia to halfway up or more in Tioga County where
14 you're a very short drive from New York State."

15 "Q So you would agree that distance is one factor that makes
16 a district look odd to you, true?"

17 "A To me, yes, sir."

18 "Q Let's look at the 4th Congressional District. What
19 strikes you odd about that?"

20 "A The U shape. It's an interesting U shape with that tail.
21 It's primarily the U shape."

22 "Q So you'd agree that if you see a district with a U shape,
23 that strikes you as odd, true?"

24 "A It depends on the totality of the factors but typically I
25 would say it does to me. In this case it's hard to tell for

1 sure with the map at this resolution, but it also looks like
2 some of those townships in the northern part -- the northern-
3 most township in the -- in the Lawrence County and the
4 southern-most county in Mercer County which I believe they are
5 townships."

6 "I should say municipalities because I don't know for
7 sure, but it looks like they are split and those are signs that
8 that's probably something that was done to get down to the one
9 person kind of deviation level. But despite the fact that --
10 that it may have been for a very good mutual objective, it
11 looks odd."

12 "Q So a split township is something else that raises your
13 suspicion about a district, true?"

14 "A No, I didn't say there's anything suspicious about it, I
15 just said it looks odd."

16 "Q Looking at the 18th district what strikes you odd about
17 the 18th?"

18 "A Again, it's just the -- it's between those two districts
19 that we just talked about so it's necessarily going to have
20 some interesting elements to it, but, you know, it's got a
21 miniature U shape in it and it doesn't stretch as close to New
22 York as the 12th District does but it stretches far up into
23 Jefferson county."

24 MR. PERSON: And, Your Honors, would you like me to
25 put this exhibit on the ELMO? Would that help it as we're

1 going through the testimony?

2 JUDGE SMITH: I think so. Thank you.

3 (Pause)

4 MR. PERSOON: I'll start at page 184, line 7.

5 "Q Looking at the 18th District, what strikes you as odd
6 about the 18th?"

7 "A Again, it's just the -- it's between those two districts
8 that we just talked about so it's necessarily going to have
9 some interesting elements to it, but, you know, it's got a
10 miniature U shape in it and it doesn't stretch as close to New
11 York as the 12th District does but it stretches far up into
12 Jefferson county."

13 "Q So again, those factors of irregular geometry, would you
14 agree when you describe it as a U shape?"

15 "A I would. I would also add that irregular geometry can be
16 seen all over the state. If you were able to draw a district
17 that was simply center county, it's looks odd, but it's center
18 county. That's how it looks."

19 "Q Now looking at -- you mentioned Congressional District 6,
20 true?"

21 "A I believe so, but now you're into that area where the
22 colors -- and I'm very sorry, the colors just bleed together to
23 my eyes."

24 "Q So what's odd about District 6?"

25 "A What caught my eye when I mentioned it was -- and also

1 based a little bit on my distant memory of Congressional
2 District 6 was the path that it takes traveling through
3 Lancaster County between District 16 and 10."

4 "Q So if a congressional district threads between two other
5 districts, that might strike you as odd, true?"

6 "A True. It's inevitable. But again, we're just talking
7 about shapes and it's an odd shape, you know?"

8 "Q I want to challenge you on that. You said it's
9 inevitable. What's the basis of that belief?"

10 "A Just Pennsylvania's geography and having gone through this
11 process. Trying to get districts that are exactly equal in
12 population without having any odd something in Pennsylvania,
13 I've never seen it done. And I don't -- based on my
14 experience, I don't believe it could be done."

15 "Q Well, I am talking specifically about threading through
16 two other districts. Do you think that that's inevitable?"

17 "A Well, let's see. I suppose that specific characteristic
18 is not necessarily inevitable, but it's also not at all
19 surprising. But I suppose it's not inevitable."

20 "Q All right. I direct your attention to Congressional
21 District 17. You also testified that that district was odd,
22 true?"

23 "A True."

24 "Q What strikes you odd about the 17th?"

25 "A There again, I can't see much of it where it hits the 6th.

1 I assume in Berks County. But what caught my eye, there was
2 the piece that comes over between -- not really between -- it's
3 all in Dauphin County but it's the northern border of Lebanon
4 County down over to and including what appears to be the City
5 of Harrisburg if I'm reading the map properly."

6 "Q So can you summarize what's odd about it?"

7 "A The fact that essentially a piece of the 17th District is
8 sort of surrounded by the 10th District."

9 "Q So if you use a land bridge to get to another part of a
10 district that's surrounded by another district, that strikes
11 you as odd?"

12 "A Not always, but it certainly can and it did in this case,
13 just as again an odd shape, not an odd result."

14 "Q You also testified that the 8th Congressional District was
15 odd, true?"

16 "A I mentioned the 8th Congressional District but I believe I
17 mentioned that only in conjunction with -- I couldn't really
18 tell where it intersected with 6 and 17. The 8th appears to be
19 most but not all of Bucks County."

20 "Bucks County was kept whole in the plan that was
21 eventually adopted so I don't know that 8 by itself as an odd
22 shape, I just can't really tell for sure because I can't see
23 where it hits 6 and 17."

24 "Q And you just added the 5th Congressional District to that
25 list, true?"

1 "A I did."

2 "Q What strikes you as odd about the 5th?"

3 "A The same kind of thing that struck me as odd about the
4 17th in that the 5th -- the 12th would be the analogy to the
5 17th -- the 5th happens to be the district that goes around
6 both sides of the 12th."

7 "Q So it's the combination of how it intersects with the
8 12th?"

9 "A Yes, that -- that's primarily what jumped out at me."

10 "Q You have no knowledge of how this map came about, do you?"

11 "A No, I don't, other than again the people who the -- the
12 staff people who almost certainly worked on it."

13 MR. PERSON: Advance to page 190, line 21.

14 "Q And I also direct your attention to Plaintiff's Exhibit
15 25."

16 "MR. PASZAMANT: Did we use that earlier? Is that
17 one of these from earlier today?"

18 "MR. PERSON: Yes."

19 "MR. PASZAMANT: Okay, thank you."

20 MR. PERSON: I'll just state for the record that the
21 exhibit that was used was the version of Plaintiff's Exhibit 5
22 that has been later on entered in as a later numbered exhibit.
23 It's the colored in version of the 7th Congressional District.

24 JUDGE SMITH: Thank you. So noted.

25 JUDGE BAYLSON: What's the exhibit number? What's

1 the trial exhibit number?

2 JUDGE SMITH: 5.

3 JUDGE BAYLSON: 5, okay.

4 JUDGE SMITH: 5? Did you say it's 5?

5 MR. PERSOON: No, it was originally 25 but then we
6 produced a different version of that where the 7th
7 Congressional District was colored in for visibility.

8 JUDGE SHWARTZ: Is that 35 possibly? 35?

9 UNIDENTIFIED SPEAKER: Is 25 in?

10 MR. PERSOON: 25 is in but the one that we actually
11 used at the time it was 25 but it was the colored in version,
12 so the one that was actually used is 35.

13 JUDGE SMITH: All right, thank you.

14 MR. PASZAMANT: I don't think it's an issue, Your
15 Honors.

16 JUDGE SHWARTZ: It's helpful for us for the record
17 though just so we know which -- what we're talking about.

18 MR. PASZAMANT: Oh no, I understand. I thought it
19 was 25 as well.

20 "Q Do you agree that the congressional -- the contours of the
21 congressional district in Plaintiff's Exhibit 25 are odd?"

22 "A Some of them are, sure, on first blush."

23 "Q And you have no knowledge to testify that the
24 irregularities in these contours are necessary to comply with
25 any mandatory or permissible factor in redistricting, do you?"

1 "A As I said before, the need to get to that zero deviation
2 population is going to result in strange things happening
3 across the map. You know, there are however many million
4 people are in Pennsylvania. You can draw a map in any number
5 of ways. This is the way it was. It was drawn to comply with
6 that and the other factors that we've talked about several
7 times before."

8 "Q You didn't draw the map, sir, did you?"

9 "A No, I did not."

10 "Q What's the basis of your testimony that this map was drawn
11 to comply with those mandatory factors?"

12 "A Based on the direction that I and Senator Pileggi and Dave
13 Woods gave to John Memmi, based on conversations with the House
14 Republicans, based on conversations with people in the
15 governor's office."

16 "Q But it's Mr. Memmi who made the decision as to each nook
17 and cranny of these lines, true?"

18 "A No. I said a number of times that it's a collaborative
19 effort with the House Republican caucus. I apologize if I was
20 unclear on that. The governor's office had input, we took
21 input from Congressman Brady, took input from a lot of other
22 people."

23 "Q Did those people you just named come into the
24 redistricting room?"

25 MR. PASZAMANT: I think that was misread. It --

1 there was no "those people" in my version of the transcript.

2 MR. PERSON: Page 193, line 15?

3 MR. PASZAMANT: Oh, we just bypassed the colloquy
4 between the two of us?

5 MR. PERSON: I didn't see that designated so I -- I
6 did bypass it. If you'd like, I can read it in.

7 MR. PASZAMANT: Please do.

8 MR. PERSON: Backing up to page 193, line 7.

9 "Q Did they come into the redistricting room?"

10 "UNIDENTIFIED SPEAKER: Again, were you through?"

11 "THE WITNESS: I was that time."

12 "Q Fair enough. Did those people you just named come into
13 the redistricting room?"

14 "A Some of the House Republican staff did. Luke Bernstein
15 did for that meeting we discussed before. I don't remember
16 with Luke if we had a map that we were looking at or if we just
17 had a discussion at a table but" --

18 "Q So -- I'm sorry" --

19 "A That's all right. Congressman Shuster did. Congressman
20 Brady, to the best of my knowledge did not, unless Mr. Memmi
21 was -- Dr. Memmi was going behind my back."

22 "Q And when the House Republican staff you mentioned and
23 Congressman Shuster came into the redistricting room, were you
24 in there with them?"

25 "A Yes."

1 "Q So do you know if they had the map up on the screen with
2 Mr. Memmi?"

3 "A Yes. You know, it wasn't one meeting where particularly
4 with -- let me separate those. With Congressman Shuster there
5 was no map, that was a general discussion. We may have looked
6 at what his current district looked like back then so the 2001,
7 '02 map, so that may have been up on a computer screen."

8 "But with the House Republican caucus, sometimes they
9 would come to the Senate Republican office and work with Dr.
10 Memmi on drawing maps. Sometimes they would do it themselves
11 over in their office. Sometimes John would go over there.
12 Sometimes I would go over there. Again, not drawing anything,
13 but just kind of helping to manage everything, mostly getting
14 the 26 votes."

15 JUDGE SMITH: Pardon me, if you would please just
16 mark where you are at this point, this Q and A has lasted
17 longer than I think some of us anticipated and we've not yet
18 taken a recess. How many more pages do we have?

19 MR. PASZAMANT: About two.

20 JUDGE SMITH: Okay. If that's all we might as well
21 finish this one and then take a recess. Thank you.

22 MR. PASZAMANT: You're welcome.

23 "Q Sitting here today you can't point to any contour in
24 Plaintiff's Exhibit 25 and say that that contour was necessary
25 to comply with one of the mandatory factors you testified

1 about, true?"

2 "A The Voting Rights Act in Congressional District 2, you
3 could have drawn -- let me put it this way, you could have
4 drawn any of these 18 congressional districts in at least a
5 slightly different way and still have complied with those
6 mandatory factors."

7 "Q And perhaps in a more regular way?"

8 "MR. PASZAMANT: Objection. Vague."

9 "THE COURT: Sustained."

10 "Q Well, you've been testifying at length about" --

11 "A A less odd way?"

12 "Q Yes."

13 "A Yes, yes. Potentially you could, maybe, maybe not. I
14 don't know but" --

15 MR. PERSON: That ends the designated portion of the
16 transcript, Your Honor.

17 JUDGE SMITH: Very well.

18 MR. PERSON: Thank you.

19 JUDGE SMITH: Thank you. We're going to take a brief
20 recess at this time.

21 (Recess taken)

22 (Transcriber change)

23 JUDGE SMITH: For the record, for the benefit of
24 counsel, we understand that we have received a call-in from Mr.
25 Gragert. He was calling from his cellphone. What we would

1 like to do, what we're attempting to do, is have him call into
2 here, into chambers of Judge Baylson. We have -- who has a
3 speaker phone here on the bench. And, what we propose to do is
4 simply have him identify himself, have him sworn and then
5 simply inquire into whether his deposition was previously
6 taken, I don't recall the date, but cover that.

7 And, far as the panel is concerned his verification
8 of that under oath should be sufficient.

9 MR. B. GORDON: Thank you, Your Honor. Mr. Gragert is
10 coming off the jet-way of the plane from Argentina. He is in
11 Newark Airport. He will be probably in quiet area in about one
12 or two -- about a minute. I have him on the line.

13 Mr. Gragert, are you able to take down the Court's
14 number?

15 JUDGE SMITH: Welcome back to the United States Mr.
16 Gragert.

17 MR. B. GORDON: Can you call in to a special number of
18 the Court so that everybody can hear you on speaker? Can you
19 write down this number?

20 MR. GRAGERT: Yep.

21 JUDGE BAYLSON: He can call right here.

22 MR. B. GORDON: 267-299-7520.

23 JUDGE BAYLSON: That's my chambers.

24 MR. B. GORDON: Yes, 267. That's correct. He's
25 calling right now.

1 MR. TORCHINSKY: Your Honor, would you like to redact
2 the Court's telephone number from the public transcript?

3 JUDGE BAYLSON: No.

4 MR. TORCHINSKY: Very good.

5 (Pause)

6 JUDGE BAYLSON: Hello, Mr. Gragert?

7 MR. GRAGERT: Yes, this is Edwin Gragert.

8 JUDGE SMITH: Hello, Mr. Gragert. We appreciate you
9 being in contact realizing that you just stepped off an
10 airplane and jet-way. We are speaking to you from an open
11 courtroom in Philadelphia. And, this should take a very short
12 period of time.

13 We simply want to conduct a verification under oath
14 of the fact of your previously taken deposition because it was
15 apparently not taken under oath by the court reporter at that
16 time.

17 So, could you first state your name and then we'll
18 have the oath administered.

19 MR. GRAGERT: Yes, by name is Edwin H. Gragert.

20 JUDGE SMITH: Thank you. And, would you please
21 administer the oath over the telephone.

22 MS. LUTZ: Please raise your right hand.

23 JUDGE BAYLSON: It's raised.

24 EDWIN GRAGERT, WITNESS, SWORN

25 MS. LUTZ: Thank you. Please state your full name and

1 spell your last name or the record.

2 MR. GRAGERT: Yes. It is Edwin Harold Gragert,
3 spelled G-R-A-G-E-R-T.

4 JUDGE SMITH: Thank you. Counsel, what was the date
5 of the deposition?

6 MR. B. GORDON: December 1st, 2017.

7 EXAMINATION

8 BY JUDGE SMITH:

9 Q Mr. Gragert, were you previously deposed in the matter
10 currently in trial, specifically Agre versus Governor Wolf, et
11 al?

12 A Yes, I was.

13 Q And, are you a plaintiff in that case?

14 A Yes, I am.

15 Q Do you recall the deposition as having been taken on
16 December 1 of this year?

17 A I do. I was in Buenos Aries, Argentina at the time.

18 Q Very well.

19 JUDGE SMITH: Do you wish to pursue any questions, Mr.
20 Gordon?

21 MR. B. GORDON: No, I just wanted to hand the Court
22 the transcript if you wanted to get involved with this.

23 JUDGE SMITH: Counsel for the various defendants, are
24 there any questions you wish to ask of the plaintiff witness?

25 MS. GALLAGHER: No, sir.

1 JUDGE SMITH: If not, I'm satisfied --

2 JUDGE BAYLSON: Well, just ask him were all his --
3 just ask him were all his answers true and correct to the best
4 of his --

5 MR. B. GORDON: He doesn't have a transcript available
6 to him, but --

7 BY JUDGE SMITH:

8 Q You understand, Mr. Gragert, that a transcript has been
9 prepared of the testimony you provided during a deposition.

10 A I was told one would be prepared. I haven't seen it.

11 Q I understand.

12 A I've been in -- yes.

13 Q Yes, we understand. Let me simply, with respect to your
14 testimony and irrespective of the transcript to which others
15 have access, were you asked certain questions during the course
16 of that deposition?

17 A Yes, I was.

18 Q And, were the answers that you gave in response to those
19 questions correct to the best of your knowledge and
20 information?

21 A Yes, they were very correct according to my recollection.
22 Yes.

23 JUDGE SMITH: Anything further, Counsel?

24 MS. GALLAGHER: No, sir.

25 MR. B. GORDON: One thing.

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EXAMINATION

BY MR. B. GORDON:

Q Mr. Gragert, at the time that your deposition was taken, you were aware that you were -- a court stenographer was in Philadelphia, is that correct?

A I think I heard you say was I aware that there was a court stenographer?

JUDGE SMITH: That is correct.

A Yes, I was told there was. In fact, I heard her voice and she repeated several questions during the course of the deposition.

Q Okay. And, were you aware at the time of making your deposition that you were subject to the laws of perjury under the laws of the Commonwealth of Pennsylvania and the United States?

A Yes. I think I heard you say am I aware that I was subject to the laws of perjury under the laws of the State of -- Commonwealth of Pennsylvania.

Q That is correct.

A If that's what you said, yes.

Q Were you aware at the time that you had your deposition that you were subject to laws of perjury of Pennsylvania and the United States at the time of your deposition?

A Yes, I was aware at that time.

JUDGE SMITH: That satisfies the panel. Mr. Gragert,

1 thank you very much. We apologize for any inconvenience.

2 Welcome back to the states.

3 MR. GRAGERT: Thank you. I just wish I could be there
4 in person. I am sorry I cannot be at this time.

5 JUDGE SMITH: We understand. Have a good day.

6 MR. GRAGERT: Thank you. Good-bye.

7 JUDGE BAYLSON: All right.

8 MR. TORCHINSKY: Your Honor, we have one more very
9 short deposition reading to occur. And, then I will have a
10 very brief handful of exhibits to move to admit into evidence.

11 MR. ARONCHICK: Your Honor?

12 JUDGE SMITH: Yes.

13 MR. ARONCHICK: Can I just clarify one thing? I think
14 you said the def -- you want the defendants, obviously, to
15 close first.

16 JUDGE SMITH: Yes.

17 MR. ARONCHICK: And, I think you said you prefer that
18 the executive defendants close first because that's how we are
19 on the couch.

20 JUDGE SMITH: Well, actually, I said that only in
21 response to the suggestion from legislative defendants, that
22 the executive defendants had been named, the executive
23 defendants intervened and, therefore, it seemed appropriate the
24 named defendants go first.

25 MR. ARONCHICK: Can I suggest that you reverse the

1 order because what I have to say might be very responsible
2 one way or another from what I hear the legislative defendants
3 say, much the way that this trial has been proceeding.

4 MR. TORCHINSKY: Your Honor, I guess I'm -- the order
5 of closing, I mean normally it's usually the moving party that
6 goes first and normally the defending party that moves second.

7 JUDGE SMITH: Counsel, you don't have to explain to
8 this panel what the normal --

9 MR. TORCHINSKY: Oh, all right, thank you, Your Honor.

10 JUDGE SMITH: We'll consult on that.

11 MR. TORCHINSKY: Okay.

12 JUDGE SMITH: Everyone should be prepared to move
13 forward, but when we take a recess we'll consult.

14 MR. TORCHINSKY: Okay. So, I guess, can we move on
15 with the reading of the --

16 JUDGE SMITH: Yes, please.

17 MR. TORCHINSKY: -- last couple pages from Mr.
18 Schaller's deposition?

19 MS. MCGEE: And, Your Honors, I trust that you have
20 the deposition transcript of Mr. Schaller already.

21 JUDGE SMITH: We do, thank you.

22 MS. MCGEE: And, we are starting with page 78, line 1.

23 BY MS. MCGEE:

24 Q "What is your current job title?

25 A It is Director of District Operations Department."

1 Q "Okay. And, how long have you been in that role?

2 A Since January 2013."

3 Q "Okay. And prior to January of 2013, what was your role?

4 A My role was Director of Reapportionment Services."

5 Q "How long did you hold that role?

6 A Since 2009."

7 MS. MCGEE: And, we are jumping to page 79, line 2.

8 Q "Okay. I want to come back to some of the -- some of your
9 testimony this morning. So when you were assisting with the
10 preparation of the map, were there any constraints on how you
11 could draw districts that could not be violated?

12 A No, there were no constraints."

13 Q "Okay. Let me ask this a different way. Is one -- the
14 one person one vote requirement a constraint on how you could
15 draw a map?

16 A Yes. You have to -- well, exact population for the
17 district --"

18 Q "Okay.

19 A -- you have to follow. And, then the factors of the
20 voting rights act."

21 Q "Okay. Is it fair to say that one person one vote was a
22 constraint on how you could draw a congressional district map?

23 A Yes."

24 Q "Okay. And, is it fair to say that you -- that that was a
25 constraint that you had to follow in creating a map?

1 A Yes."

2 Q "Was compliance with the Federal Voting Right Act of 1965,
3 as amended, a constraint you understood in how you could draw a
4 congressional district map?

5 A Yes."

6 MS. MCGEE: We are going down to line 15.

7 Q "And, the number of districts on the map, is that also a
8 constraint?

9 A Yes. The number of districts is determined by the Federal
10 Census."

11 Q "Okay. How much of role did those three factors, one
12 person one vote, voting rights act compliance and the number of
13 districts, play in the creation of the 2011 Congressional
14 District Map?

15 A Well, they were key factors in that the Voting Rights Act
16 essentially determines District Two. The seat loss factor
17 determines that there is going to be a significant change in
18 the map with the loss of a district. And, population equality
19 determines the ultimate boundaries of the map, the final map."

20 Q "Can you describe the process by which you, turning to the
21 one person one vote principle that you talked about today, can
22 you describe the process that you and your staff followed to
23 generate districts that complied with the one person one vote
24 principle?

25 A Once the general map is agreed to we have to -- it's a

1 term we call zero out the population. Each district has to get
2 to a zero deviation or a plus one or minus one depending on how
3 the math would work out. And, it's a manual process that you
4 have to look for combinations of population that get you to
5 zero. And, it take dozens of man hours to do."

6 Q "Okay. Does the AutoBond Software that you talked about
7 balance the population of the map for you?

8 A No."

9 Q "So what is the process that you would follow or did you
10 follow in 2011 to quote unquote 'zero out the balance or zero
11 out the population of the 2011 Congressional Map'?

12 A There is a manual process of just looking for combinations
13 of population that would get you to the ideal number and that's
14 doing it by hand using calculators. There is a little tool on
15 the software that you can add things together, but it won't
16 balance districts, just get you to add the population. But you
17 still have to add the math in your head for the net gain or net
18 loss, so it is a manual process."

19 Q "And, what specifically would you be adding or deleting
20 from? Let's just say one of the congressional districts to
21 quote 'balance or zero out the population'?

22 A It could be a municipality, a precinct or a census block
23 would be the levels of geography we would look at. There might
24 be any number of combinations to try to reach the ideal
25 district."

1 Q "What factors did you consider when you were adding or
2 deleting municipalities, precincts, et cetera, from one
3 district to another to get to zero population?

4 A Population."

5 Q "Did you consider any other factors?

6 A No."

7 Q "Were you working under any time constraints when you were
8 getting to zero population as you described?

9 A We were to pass the legislation. There is a time frame to
10 get it through the two chambers. And, the 2012 election would
11 be a presidential election with an April primary so that moved
12 the election calendar ahead to where it was going to start
13 January, February, I can't remember. I'd have to go back and
14 look. And, at the same time we were also putting the final
15 touches on a state redistricting plan."

16 Q "Were you during the process of drawing the map, did you
17 or your staff members ever create multiple versions or
18 iterations of the map and compare election results or other
19 partisan data between the two or multiple potential versions of
20 a map?

21 A No."

22 Q "Did you ever run any simulations in an effort to create a
23 district that would be quote 'more likely to vote Republican'?

24 A No."

25 Q "Did anyone ever ask you during the 2011 congressional

1 redistricting process to create districts more likely to vote
2 Republican?

3 A Not that I recall."

4 Q "Do you recall how many draft maps, whether in electronic
5 form or otherwise, your office generated during 2011?

6 A I don't recall."

7 Q "Can you recall if it was at least a large number, perhaps
8 a few?

9 A It wasn't a large number. I don't recall an exact
10 number."

11 Q "Regarding the question of splitting counties or
12 municipalities, did you view splitting a county or municipality
13 as being a constraint on how the 2011 Congressional Map would
14 have to be drawn?

15 A I did not view it as a constraint though we tried to keep
16 the splits issue under consideration. The districts are just
17 so large and zeroing out population splits were going to
18 occur."

19 Q "Did you or your staff attempt or feasible to consider
20 communities of interest in connection with how the math was
21 drawn?

22 A That was a factor in considering putting the map
23 together."

24 Q "And, what -- how would you describe the term communities
25 of interest?

1 A I don't have an exact definition but it could be
2 communities along the river, it could be communities based on
3 ethnicity. It is a loose definition."

4 Q "Okay. It is a definition in your view that may vary from
5 one community to the next?

6 A Yes. There are different communities of interest, yes."

7 Q "So as an example, maybe in one community there may be an
8 entire town may be a community of interest and the other may be
9 a neighborhood, is that fair?

10 A That's fair."

11 MS. MCGEE: Your Honor, we are jumping ahead to page
12 90 where the question by an opposing counsel picks up at line
13 6.

14 JUDGE SMITH: Thank you.

15 MR. TORCHINSKY: Carolyn, I think you should put on
16 top (inaudible).

17 MS. MCGEE: I apologize. Oh, you're correct. It's
18 still my turn, I suppose.

19 Q "Page 86. Mr. Schaller, are you generally familiar with
20 the Cook PDI -- what the Cook PDI is?

21 A I have a basic understanding of it."

22 Q "And, did you consider the Cook PDI in congressional
23 districts when drawing the map?

24 A No."

25 MS. MCGEE: Okay. Now we go to page 90, line 6.

1 BY MR. PERSON:

2 Q "You don't know. Okay. You said that the process for
3 determining the right number of people in a district, called
4 one person one vote, started once you received the general map
5 that had been agreed to, right?"

6 MS. MCGEE: There's an objection, "I believe it was
7 mischaracterizing the questions and testimony previously."

8 Q "Isn't that what you testified to?"

9 A I didn't say I received a map."

10 Q "Okay. Once the general map is agreed to.

11 A Agreed to."

12 Q "And, that is agreed to by the Republican caucus, am I
13 right?"

14 A With the stakeholders involved. I don't know what -- who
15 all is involved in those discussions."

16 Q "Did they include the Republican congressman?"

17 A I don't know if it included Republican congressman."

18 Q "But it included no democrats. Can you agree with me
19 there?"

20 A I don't know that?"

21 Q "All right. You mentioned that given the size of the
22 population and the number of people and the reduction from 19
23 to 18, that that was something that you had to consider, right?
24 Or had to be considered?"

25 A Yes."

1 Q "Okay. And, that means that some -- two candidates were
2 going to have to go head-to-head, yes?

3 A Incumbent congressman?

4 Q "Let's say everybody was an incumbent.

5 A All right."

6 Q "Two of them are going to have to go head-to-head?

7 A Yes."

8 Q "Okay. Did you have anything to do with deciding who
9 those two would be?

10 A No."

11 MR. TORCHINSKY: I think that's it, Your Honor.

12 MS. MCGEE: That's it, Your Honor.

13 JUDGE SMITH: Very well. Thank you. Of course,
14 already -- do we already have this in the record as an admitted
15 exhibit, the Schaller deposition transcript?

16 MR. TORCHINSKY: Yes. Yes, you do, Your Honor. It's
17 from Plaintiff's Exhibit 54.

18 JUDGE SMITH: Okay. Thank you.

19 MR. TORCHINSKY: Your Honor, with respect to -- Your
20 Honor, we will give you the copy that is marked all the way
21 through so you can have designated which portions were read
22 into the record.

23 MS. BALLARD: We would agree to substitute the copy
24 the defendants are offering now that is marked all the way
25 through, designated all the way through, including the

1 defendants' portion of the testimony.

2 JUDGE SMITH: All right. So what we are going to do
3 is substitute this document for the original plaintiffs' 54?

4 MS. BALLARD: That's right, Your Honor. I think
5 that's much more convenient.

6 UNIDENTIFIED SPEAKER: Just as a point of
7 clarification, this one is not marked all the way through.
8 This was just marked for our direct, so --

9 MS. BALLARD: Okay. I take it back.

10 UNIDENTIFIED SPEAKER: -- unfortunately, Your Honor.

11 JUDGE SMITH: All right.

12 MR. TORCHINSKY: We can just add that to Plaintiffs'
13 54 rather than substitute?

14 UNIDENTIFIED SPEAKER: If you want to do that, Your
15 Honor, that would, I think, be the most efficient way to
16 address this.

17 JUDGE SMITH: I don't know what would be the most
18 efficient, I just want it in.

19 MR. PERSON: Your Honor, if we could mark it 54A and
20 54B or I am sure the parties --

21 JUDGE SMITH: That sounds good.

22 MR. PERSON: -- can make it into one.

23 JUDGE SMITH: I like 54A and 54B very much. Thank
24 you.

25 MR. TORCHINSKY: Thank you, Your Honor. Your Honor,

1 with respect to our designations of the plaintiffs'
2 transcripts, can we just submit those for the record rather
3 than read them.

4 JUDGE SMITH: Yes. Consistent with the practice we
5 utilized --

6 MS. BALLARD: They are marked.

7 MR. TORCHINSKY: They are marked in the plaintiffs'
8 submissions, Your Honor.

9 I have a number of exhibits I would like to move into
10 evidence.

11 JUDGE SHWARTZ: Counsel, could you just give me one
12 minute to confer?

13 MR. TORCHINSKY: Oh, sure.

14 JUDGE SMITH: All right. What the panel would like is
15 to have you make an offer with respect to those transcripts
16 consistent with the manner in which we requested plaintiffs'
17 counsel to so.

18 MR. TORCHINSKY: In other words, a proffer with --

19 JUDGE SMITH: Yes.

20 MR. TORCHINSKY: -- respect to what we believe --

21 JUDGE SMITH: Yes, just a very brief description of
22 what they say, why they are being offered.

23 MR. TORCHINSKY: Your Honor, I will let Ms. Gallagher
24 make those proffers.

25 JUDGE SMITH: All right.

1 MS. GALLAGHER: Your Honor, I would just attempt to
2 proceed very quickly in seriatim as to each one --

3 JUDGE SMITH: Yes.

4 MS. GALLAGHER: -- of the ones that we're doing.

5 With respect to -- in fact, Your Honors, I would just
6 group the plaintiffs with respect as each of the plaintiffs
7 were deposed and the ones that were addressed by counsel. That
8 would be Ms. Kat, Mr. Harmon --

9 JUDGE SMITH: Is it Kat or Kats, K-A-T-S.

10 MS. GALLAGHER: James Davis, Virginia Mazzei.

11 JUDGE SMITH: Slower, please. Mazzei?

12 MS. GALLAGHER: Mazzei, M-A-Z-Z-E-I. Leigh Ann
13 Cogdin (phonetic), Mr. Gragert, Shawndra Holmberg, Douglas
14 Graham, Joy Montgomery, Barbara Shaw, Rayman Solomon.

15 MR. TORCHINSKY: Your Honor, and Cindy Harmon.

16 MS. GALLAGHER: Oh, I thought that was the third one.
17 Ms. Harmon was the third one. We would state that with respect
18 to each of those plaintiffs during the course of their examina
19 -- their depositions, each of them testified that they had
20 never been prevented from voting, that they have never been
21 excluded from the political process, that they were free to
22 become involved in campaignings, make political contributions.

23 Specifically with respect to Ms. Montgomery, that was
24 Joy Montgomery, she stated that she had voted repeatedly, never
25 had a problem, she lived in a very republican district,

1 recognized she lived in a very republican district, and wanted
2 to stay there because of the school district.

3 With resp -- there were numerous plaintiffs who while
4 expressing political discontent, for lack of a better word,
5 none of them ever were able to establish or claim that they
6 were any way disenfranchised from the political process itself.
7 Thank you.

8 MR. B. GORDON: And now, as they say, the rest of the
9 story. Without going through them one at a time I just want to
10 use one of these as an illustration and why it's needed to
11 really look at the testimony of each one in terms of harms to
12 their civil rights.

13 JUDGE SMITH: I'm not sure where we are right now,
14 Mr. Gordon.

15 MR. B. GORDON: I think -- I'm not sure either. I
16 didn't think we were in closing or argument, but I just want to
17 say, for example, --

18 JUDGE SMITH: Well, sir, it's not your time to speak.

19 MR. B. GORDON: I'm so sorry.

20 JUDGE SMITH: We haven't even heard -- I haven't even
21 heard the defendant say they rest.

22 MR. B. GORDON: Oh, I heard their -- I thought I
23 interpreted it as an objection to admitting those depositions
24 into evidence.

25 JUDGE SMITH: Well, I --

1 MR. TORCHINSKY: We were just presenting a proffer of
2 our portion of the designations.

3 JUDGE SMITH: Yeah, yeah.

4 MR. B. GORDON: I'm so sorry.

5 MR. TORCHINSKY: Thank you, Your Honors. I'd like to
6 go through what the legislative defendant's exhibit binder and
7 move the exhibits that we would like into evidence. I will do
8 my best to keep these in order. Do you want to make sure that
9 I check off everything that I'm supposed to be moving in?

10 I'm going to do my best to go through in the tab
11 orders here. The first exhibit is Legislative Defendant's
12 Exhibit 1, that is the senate roll call vote on the Costa
13 (phonetic) match which was discussed during Mr. Arneson's
14 testimony and during Senator Dinniman's testimony. It's a
15 public record printed from the state legislative web site.
16 We'd ask that that be admitted into evidence.

17 MR. PERSON: No objection, Your Honor.

18 JUDGE SMITH: No objection. It will be admitted.

19 MR. TORCHINSKY: Second, Your Honor, is -- appears at
20 tab 3, it's marked Legislative Defendant's Exhibit 3. That is
21 the Hanna Map that was introduced in the house. We ask that
22 that be admitted into evidence. It's a public record.

23 MR. PERSON: No objection, Your Honor.

24 JUDGE SMITH: Admitted.

25 MR. TORCHINSKY: Your Honor, we also point out that

1 the vote on that map is 85 -- was defeated on a vote of 85 to
2 108 and that's at page 2697 of what is Legislative Defendant's
3 Exhibit 21 which we'll move into evidence when I get to that in
4 order, but I just wanted to note for the Court where that vote
5 on that amendment was found.

6 Next is Legislative Defendant's Exhibit 5. This is a
7 news report that talks about Congressman Al Myers (phonetic)
8 support for the map itself.

9 MR. PERSON: Objection. Hearsay.

10 JUDGE SMITH: Why is a newspaper report or the
11 contents therein not hearsay?

12 MR. TORCHINSKY: Your Honor, we believe that it shows
13 the -- it reflects and reports on what was publicly reported to
14 be the reasons that some members of the state house voted for
15 or against the map.

16 JUDGE SMITH: I'm not going to let it in. It's
17 technical hearsay.

18 MR. TORCHINSKY: Thank you, Your Honor. Moving next
19 to Legislative Defendant's Exhibit Number 13, that is the Costa
20 map that was discussed during Mr. Arneson and Senator --
21 Senator Dinniman's testimony. We ask that that be moved into
22 evidence.

23 MR. PERSON: No objection.

24 JUDGE SMITH: LD-13 is admitted.

25 MR. TORCHINSKY: Next in Legislative Defendant's

1 Exhibits 10 and 12, those are the two expert reports from Dr.
2 Gimpel and from Professor McCarty. We ask that the charts from
3 those expert reports be moved in in the same way that the
4 charts and graphics in the plaintiff's exhibits were moved in.
5 We understand that the text of the reports is not being moved
6 in in the same way that the text of the plaintiff's reports
7 were moved in.

8 JUDGE SMITH: What number's this?

9 MR. TORCHINSKY: Those are Legislative Defendant's
10 Exhibits 10 and 12. Would you like me to go through the
11 reports?

12 JUDGE SMITH: 10 and 12?

13 MR. TORCHINSKY: Yeah. Would you like me to go
14 through the reports because of the pages that have the charts
15 and graphs?

16 JUDGE SMITH: I think we can identify them. I assume
17 that seeing as we did this for the plaintiffs that there's no
18 objection?

19 MR. PERSON: No objection.

20 JUDGE SMITH: This is 10 and 12, the charts set forth
21 within the Gimpel LD-10 Exhibit and the McCarty LD-12 exhibit
22 are admitted.

23 MR. TORCHINSKY: Your Honor, I do want to point out
24 in Dr. Gimpel's chart Table 5 was not discussed during the
25 testimony. So I think Table 5 probably should not be admitted.

1 JUDGE SMITH: You say that's in the Gimpel report?

2 MR. TORCHINSKY: In the Gimpel report it appears on
3 page 19.

4 JUDGE SMITH: Thank you.

5 MR. TORCHINSKY: Table 5 was not discussed during
6 direct or cross-examination.

7 JUDGE SMITH: Thank you very much.

8 MR. TORCHINSKY: Next are at Exhibit 14 are some
9 state by state congressional maps that are drawn from -- that
10 are taken from the census.gov web site and I apologize to the
11 Court, I've already distributed these to all counsel but there
12 was one state that was omitted from this exhibit. May I hand
13 these to the clerk?

14 JUDGE SMITH: Yes, please. What number again?

15 MR. TORCHINSKY: This is Legislative Defendant's
16 Exhibit 14.

17 JUDGE SMITH: Thank you.

18 MR. TORCHINSKY: These are state by state maps of
19 congressional districts from a number of other states. These
20 are being introduced into evidence because the Court can take
21 judicial notice of these. They come from a government web
22 site. I'll be discussing these a little during closing
23 argument because Judge Baylson has asked about them -- has
24 asked about district boundaries, other places on at least two
25 occasions. So we wanted to have these into evidence so the

1 Court had them to review as part of the official record.

2 MR. PERSON: Your Honor, to the extent we need to be
3 able to formulate whether we need rebuttal evidence, we'd make
4 a relevancy objection.

5 JUDGE SMITH: I certainly think they're relevant but
6 there may be a different question. I'd like to consult.

7 (Brief Pause)

8 JUDGE SMITH: This is marked Exhibit what?

9 MR. TORCHINSKY: Legislative Defendant's Exhibit
10 Number 14.

11 JUDGE SMITH: 14, oh, this is the additional map, 14.

12 MR. TORCHINSKY: Yes.

13 JUDGE SMITH: Yes.

14 MR. TORCHINSKY: There are six maps in 14 in your
15 binder. This would be the seventh.

16 JUDGE SMITH: Yes.

17 MR. TORCHINSKY: And these are all from government
18 web sites.

19 JUDGE SMITH: All seven are admitted.

20 MR. TORCHINSKY: Thank you. Next going to the floor
21 debates in the house -- state house of representatives, these
22 are Legislative Defendant's Exhibits Number 19, 20, 21, and 22.
23 They are the official printouts of the Legislative Journals
24 from December 14th, 15th, 19th and 20th. We ask that those be
25 admitted into evidence.

1 MR. PERSON: No objection.

2 JUDGE SMITH: Repeat those numbers again, please.

3 MR. TORCHINSKY: 19, 20, 21 and 22.

4 JUDGE SHWARTZ: Will you do what your adversaries had
5 done which is identify the pages that we should consider?

6 MR. TORCHINSKY: Yes, Your Honor, give me just a
7 moment to pull the pages that you want. I think I already
8 pointed the Court to the vote on the Hanna map which was at
9 page 2697 at Exhibit 21 and in just a moment I'll have the rest
10 of the sections of those -- that we would like the Court to
11 take note of.

12 MR. PERSON: Was that 26 through 97 or 26 and 97?

13 MR. TORCHINSKY: 2697 is the page where the vote on
14 the Hanna map --

15 MR. PERSON: Okay.

16 MR. TORCHINSKY: Your Honor, I'm going to -- if we
17 could we'd like to identify those perhaps before we begin
18 closings just to give us a little time to go through these.

19 JUDGE SMITH: That would be fine. We will admit 19,
20 20, 21 and 22 subject to counsel's indications as to what page
21 -- what pages are relevant to our inquiry.

22 MR. TORCHINSKY: Just let me make sure, Your Honor,
23 that there's nothing else before we close our evidence. Your
24 Honor, one other exhibit, Legislative Defendant's Exhibit 2 is
25 the house roll call vote on final passage of the map. Again,

1 that's from the state government web site and we would like to
2 move Exhibit 2 into evidence.

3 MR. PERSON: No objection.

4 JUDGE SMITH: Hearing no objection, Legislative
5 Defendant's Exhibit 2 is admitted.

6 MR. TORCHINSKY: Your Honor, let me just make sure
7 there's nothing else.

8 JUDGE SMITH: Yes.

9 MR. PERSON: Your Honor, before -- while he's
10 conferring but before they close, if I can have some
11 clarification. You admitted over our objection Legislative
12 Defendant's Exhibit 14. The objection was relevance.

13 JUDGE SMITH: Yes.

14 MR. PERSON: You know, I'm just not sure what it's
15 going to be relevant to and I can't make a determination as to
16 whether I need to introduce any --

17 JUDGE SMITH: Well, let me make it very clear then.
18 You -- your objection was limited relevancy. It seemed to the
19 panel that it is highly relevant given what it is in part is
20 the position of the plaintiff, that we can infer something from
21 the mere shape of districts. The fact that a government
22 related exhibit or an exhibit from the government web site
23 which depicts districts in a geographical manner as does 14 in
24 a state that is contiguous, borders the State of Pennsy --
25 Commonwealth of Pennsylvania has considerable relevancy.

1 That has nothing to do with weight, just considerable
2 relevancy.

3 MR. PERSON: Part of the reason I made a relevancy
4 objection was hoping for a little explanation was I don't know
5 if there's -- the other problem of if they're saying that these
6 states are also gerrymandered or that they're not gerrymandered
7 in a way. Because if they're saying that they would be a trial
8 within a trial.

9 JUDGE SMITH: Well, I -- the record says what it says
10 and the other side is not going to be able to argue any such
11 thing.

12 MR. PERSON: Thank you, Your Honor.

13 JUDGE SMITH: They're only going to be able to argue
14 what is shown on the face of this document.

15 MR. PERSON: Thank you, Your Honor.

16 MR. TORCHINSKY: Your Honor, I think with that,
17 unless the Court has anything else for us that -- Your Honor, I
18 believe with that, that closes the defendant's evidence in this
19 case and I guess we would be ready to perhaps take a lunch
20 recess if the panel is okay with that and then perhaps
21 reconvene for oral argument after lunch?

22 JUDGE SMITH: The legislative defendants rest?

23 MR. TORCHINSKY: Yes, Your Honor.

24 JUDGE SMITH: Mr. Gordon?

25 MR. B. GORDON: Your Honor, if I may, we have -- we

1 have one rebuttal witness.

2 JUDGE SMITH: Well, let me first ask if the Executive
3 Defendants have any evidentiary production?

4 MS. HANGLEY: No, Your Honor, other than the
5 stipulations that have been in.

6 JUDGE SMITH: Very well. Thank you. All right, Mr.
7 Gordon?

8 MR. B. GORDON: Thank you. We have one rebuttal
9 witness, that being expert witness Anne Hanna to testify from
10 an engineering and mathematical standpoint. The plus or minus
11 one person requirement does not require the creation of odd
12 shapes, long tendrils, or going around towns with different --
13 with the same or different votes. It's a single line of
14 inquiry and it should not be long. I'm afraid to estimate ever
15 again, but it shouldn't be a very long direct.

16 MR. TORCHINSKY: Your Honor, Ms. Hanna spoke during
17 her direct examination about how districts could be shaped and
18 drawn. We believe that that -- we've already covered within
19 the scope of her direct examination and there's no need for
20 this kind of rebuttal particularly with no notice to opposing
21 counsel.

22 JUDGE SMITH: I'm going to consult with my
23 colleagues, but I think the question is not so much whether she
24 covered it, although that can be considered, but whether it is
25 in fact true rebuttal, what it rebuts from what someone

1 actually testified to.

2 MR. B. GORDON: If I may be heard briefly before you
3 confer? And that it rebuts Mr. Arneson's testimony that was
4 just read into the record that the process of creating this
5 plus or minus one vote created such long tendrils and she is
6 going to say this does a requirement and it doesn't affect
7 those three principal rules we keep hearing about for the
8 drafting of districts. It simply doesn't affect that design or
9 compactness.

10 JUDGE SMITH: All right, let the panel consider it.

11 (Brief pause)

12 JUDGE SMITH: We'll allow it, but you need not make
13 any projection as to the duration because you're on a
14 tightrope. I'm not sure we'll allow you more than one
15 question, but so you know the narrowness of the rebuttal that
16 we're permitting.

17 MR. B. GORDON: Thank you, Your Honor. May I call
18 her to the stand at this time?

19 JUDGE SMITH: Ms. Hanna, you have returned to the
20 witness stand as a rebuttal, but you are simply recalled and
21 remain under oath.

22 THE WITNESS: Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. B. GORDON:

25 Q Ms. Hanna, does the requirement of zeroing out a

1 congressional district in the course of its creation which is
2 having one -- plus or minus one person per district require the
3 creation of any odd shapes, long tendrils, or circumscribing
4 towns or other territory or in any way alter your view based on
5 what you had previously showed us of the 1972 --

6 MR. TORCHINSKY: Your Honor, this is a compound
7 question.

8 MR. B. GORDON: I was given only one.

9 JUDGE SMITH: Well, no, I didn't tell you only one.
10 I said it might be only one, but I don't see a compound nature
11 to this question, at least not so far.

12 MR. B. GORDON: Thank you.

13 BY MR. B. GORDON:

14 Q Given your previous testimony regarding the 1972 map as
15 illustrating your principles, does it in any way alter your
16 opinion about the capacity to follow those four principles and
17 create compact congressional districts?

18 A Absolutely not.

19 MR. B. GORDON: Thank you.

20 JUDGE SMITH: Cross-examine?

21 MR. TORCHINSKY: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. TORCHINSKY:

24 Q Ms. Hanna, have you ever actually drawn a state-wide or
25 local districting map of any sort down to the population

1 requirements applicable for that level of districting?

2 A Not going to the precinct level or no.

3 Q That wasn't my question. My question was have you ever
4 drawn a congressional map anywhere, on any example, or ever
5 prepared a congressional map that specifically met the one
6 person, one vote requirement down to plus or minus one?

7 A I have not personally done so but I've reviewed research
8 on the subject.

9 Q That wasn't my question.

10 JUDGE SMITH: Please answer the question.

11 BY MR. TORCHINSKY:

12 Q Have you ever personally drawn a map down to the plus or
13 minus one person?

14 A I have not personally done so.

15 MR. TORCHINSKY: No further questions, Your Honor.

16 JUDGE SMITH: Thank you. You may step down.

17 Is there any sur-rebuttal?

18 MR. TORCHINSKY: Nothing from the Legislative
19 Defendants, Your Honor.

20 JUDGE SMITH: Very well.

21 MS. HANGLEY: And nothing from the Executive
22 Defendants, Your Honor.

23 JUDGE SMITH: So may we at this point mark the record
24 closed subject to those several items and further descriptions
25 or page designations that have been referred to?

1 MR. TORCHINSKY: Yes from the Legislative Defendants
2 perspective, Your Honor.

3 MR. B. GORDON: Yes from Plaintiffs, Your Honor.

4 MS. HANGLEY: And yes from the Executive Defendants,
5 Your Honor.

6 JUDGE SMITH: Thank you very much. All right, we
7 will at this time recess until 1:00 at which point we will do
8 the closing arguments. The panel will discuss who should go
9 first and we will let you know the answer to that question upon
10 our return and each side will be limited to no more than 30
11 minutes.

12 All right, we're in recess.

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We, Josette Jones, Diane Gallagher, Diana Doman, Patricia Hallman, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

JOSETTE JONES

DIANE GALLAGHER

DIANA DOMAN

PATRICIA HALLMAN

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DATE