

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	:	
	:	
Plaintiff,	:	
vs.	:	Docket No. CA 11-1303
	:	
UNITED STATES OF AMERICA and	:	Washington, D.C.
ERIC H. HOLDER, in his official	:	Friday, January 20, 2012
capacity as Attorney General of	:	8:15 a.m.
the United States	:	Day Four
	:	
Defendants, and	:	
	:	
Wendy Davis, et al.,	:	
	:	
Intervenor-Defendants	:	
-----	:	x

A.M. SESSION  
TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE THOMAS B. GRIFFITH  
UNITED STATES CIRCUIT JUDGE and  
HONORABLES ROSEMARY M. COLLYER and BERYL A. HOWELL  
UNITED STATES DISTRICT JUDGES

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12 Proceedings recorded by machine shorthand, transcript produced  
13 by computer-aided transcription.

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1 JUDGE COLLYER: Good morning everyone.

2 Mr. Hodge -- oh, geese.

3 MR. HUGHES: Thank you, Your Honor.

4 JUDGE COLLYER: You're welcome.

5 MR. HUGHES: I just wanted to alert the Court that  
6 this afternoon I think we'll begin with a witness who has filed  
7 a written direct testimony so there will be cross examination  
8 of that witness. It's one of Texas' witnesses. It's Chairman  
9 Burt Solomons and his direct testimony was part of docket entry  
10 Number 137.

11 JUDGE COLLYER: Right.

12 MR. HUGHES: I wanted to alert the Court to that in  
13 case you would like to review that testimony before this  
14 afternoon.

15 JUDGE COLLYER: That's a declaration, correct, not a  
16 deposition testimony? It's a declaration.

17 MR. HUGHES: Right, a written direct testimony.  
18 Thank you.

19 JUDGE COLLYER: Thank you.

20 Okay. So who's coming up now? Good morning, sir.

21 MR. HEBERT: Good morning, Your Honor. Gerald Hebert  
22 for the Davis intervenors.

23 JUDGE COLLYER: Good morning. We were going to call  
24 a witness yesterday we got so distracted, didn't we?

25 Go ahead.

1 MR. HEBERT: So the Davis intervenors call at this  
2 time Senator Wendy Davis.

3 JUDGE COLLYER: Senator Wendy Davis.

4 Good morning.

5 THE WITNESS: Good morning.

6 DEFENDANT-INTERVENOR WITNESS WENDY R. DAVIS SWORN

7 DIRECT EXAMINATION

8 BY MR. HEBERT:

9 Q. Good morning, Senator Davis?

10 A. Good morning.

11 Q. I'd like to start by asking you to state your full name?

12 A. My name is Wendy Russell Davis.

13 Q. Where do you reside?

14 A. I reside in Fort Worth, Texas.

15 Q. If you would introduce yourself to the Court, tell them  
16 who you are?

17 A. I'm a State Senator representing a large portion of  
18 Tarrant County, Senate District 10. I was elected in 2008.  
19 I'm in the first term of the Texas Senate.

20 Q. It's a four year term?

21 A. Correct.

22 Q. So you are up for reelection this year?

23 A. Yes, I am.

24 Q. Where were you born?

25 A. I was born in Rhode Island, West Warwick, Rhode Island.

1 Q. When did you move to Texas?

2 A. When I was 11 years old. So I've lived there for 37  
3 years.

4 Q. Have you lived in Tarrant County for 37 years?

5 A. Yes, I have.

6 Q. Did you attend school in Tarrant County?

7 A. I did.

8 Q. What high school did you attend?

9 A. I went to Richland High School in Richland Hills. It's  
10 kind of a blue collar suburb of Fort Worth.

11 Q. Tell the Court after you graduated from high school did  
12 you go on to college immediately?

13 A. No, I did not.

14 Q. What did you do?

15 A. When I was only 18 I got married. I had a baby, I got  
16 divorced by the time I was 19 years old.

17 And I had started working, I actually started working when  
18 I was 14. I was raised by a single mother. My mother only had  
19 a 6th grade education. My parents divorced when I was 11 years  
20 old.

21 So my mother raised four children with no child support  
22 with a 6th grade education, having never worked in her life.  
23 She went to work at Braum's Ice Cream and Dairy Store, that's  
24 where she worked the entire time that I was growing up.

25 So we all started working very young. I started working

1 when I was 14 selling subscriptions to our local newspaper door  
2 to door and then at a fast food restaurant. And then when I  
3 was in high school in order to continue to be able to work and  
4 earn as much money as I could, I entered the Vocational  
5 Occupation Education Program there.

6 It was a program that allowed you to get actually school  
7 credit if you were working in an arena for a career that you  
8 hoped to have one day, and I hoped at that point in time to be  
9 a pediatrician, and so I would go to school half a day in the  
10 morning and then go to work in the afternoon. I worked for a  
11 pediatrician and I continued to do that after I graduated from  
12 high school.

13 Q. Did you continue to work for the pediatrician after high  
14 school when you were a single mom?

15 A. I did. After I got divorced, I lived in a mobile home  
16 park in Southeast Fort Worth. I think Representative Veasey  
17 referred to the fact that that was the community that I lived  
18 in for some time. I worked two jobs. My full-time job working  
19 for the pediatrician during the day and at night four nights a  
20 week I waited tables.

21 Q. What was the reason you kept working for the pediatrician?

22 A. Well, obviously, I needed a paycheck very badly. But it  
23 also was a very good job to have as a single mom because I was  
24 able to have free medical care for my daughter, I had no  
25 insurance.

1 I also got free medicine because the pharmaceutical reps,  
2 of course, would leave us samples of medicine. When she was an  
3 infant I got free formula and those things were very precious  
4 commodities as you can imagine.

5 Q. How long did you work these two jobs after high school,  
6 roughly?

7 A. Roughly about four years.

8 Q. At some point did you end up going on to post high school  
9 education?

10 A. I did. When I was working for the pediatrician I think  
11 when I was 20 or 21, one of the nurses came in one day. She  
12 was thinking about taking some business classes at Tarrant  
13 County Junior College. She had a brochure that she picked up  
14 on her way to work. She flopped it down on the desk, I picked  
15 it up and started looking at it, and I saw that they had a  
16 program where you could become a paralegal in two years and  
17 they had classes that they offered early in the morning and at  
18 night.

19 So I spoke to my pediatric employers and I asked them if I  
20 could come to work a little bit later and go to school in the  
21 morning. So I went to school in the morning and I went to  
22 school at night and I still waited tables four nights a week.  
23 So it was as you can imagine pretty challenging.

24 Q. And did you attend the paralegal program?

25 A. I did. I did it for a year. The wonderful thing about



1 community college is that it's a gateway for people who don't  
2 really think about higher education as being an opportunity for  
3 them.

4 My mother certainly didn't have any way of helping her  
5 children understand that higher education should be part of  
6 their world view.

7 My high school class, graduating class was over 700 people  
8 and we had one guidance counselor. So I certainly never had a  
9 counselor sit down with me and talk with me about opportunities  
10 to attend college.

11 But while I was at TCJC I understood that college wasn't  
12 just for other people, it could be for me too, and I  
13 transferred after a year of the paralegal program into just  
14 general studies there with the goal of hoping to go to law  
15 school one day.

16 Q. Did you eventually move on to another school of higher  
17 learning?

18 A. I did. I was accepted to TCU. I had a full scholarship  
19 that was in part need based and in part academically based  
20 because I had done well at the Junior College and I graduated  
21 from TCU.

22 Q. Where did you graduate in the class in TCU?

23 A. I graduated number one in my class.

24 Q. Did you pursue any education beyond Texas Christian  
25 University?

1 A. I did. I was accepted to Harvard Law School. I attended  
2 and graduated from Harvard Law School.

3 Q. Did you graduate with honors?

4 A. Yes.

5 Q. And you're an attorney?

6 A. Yes. Not a paralegal. Not a pediatrician.

7 Q. What did you do upon graduating law school and for  
8 employment?

9 A. I worked for initially a district, a Federal District  
10 Court Judge, Judge Jerry Buchmeyer, I was a law clerk for a  
11 year.

12 Q. Is that in Fort Worth?

13 A. In Dallas actually. He was the Chief Judge of the  
14 Northern District of Texas.

15 And then I went to work for a fairly large firm Haynes and  
16 Boone in their Fort Worth office doing civil litigation  
17 primarily securities, fraud and antitrust defense work.

18 Q. Now did there come a time after that that you decided to  
19 run for public office?

20 A. Yes.

21 Q. What year was that?

22 A. It was in, the first time I ran for public office was  
23 2006. A vacancy had opened up on our City Council unexpectedly  
24 because our mayor left her seat to run for Congress. She is  
25 now Congresswoman Kay Granger.

1 The City Council person for the District that I ran for  
2 left his City Council seat to run for mayor. I lost that first  
3 election, I wound up in a run off. I lost by 90 votes to my  
4 opponent and then I was subsequently elected to the City  
5 Council three years later when I ran again.

6 Q. In that same district?

7 A. Yes.

8 Q. Now you have lived in Fort Worth since that time?

9 A. Yes.

10 Q. So how many years have you been living in the Tarrant  
11 County after law school?

12 A. So I graduated from law school in 1993. I have been  
13 living there ever since.

14 Q. Now, you said you were elected to the Fort Worth City  
15 Council. Were you, did you run for reelection after that?

16 A. I did. We ran every two years and I was elected, I was  
17 serving in my fifth term on the Fort Worth City Council when I  
18 ran. I resigned my seat and ran for the State Senate.

19 Q. Could you describe the demographics of the district that  
20 you represented when you were on the City Council?

21 A. Yes. My district, I liked to refer to it as microcosmo of  
22 the city as a whole. It was reflective of a mix of  
23 socioeconomic and racial communities. It was majority  
24 minority, majority Latino, and it was an urban district in the  
25 core of the city.

1 It included downtown, but it also included some of the  
2 oldest most historic Latino neighborhoods in the city as well.

3 Q. We've brought up Defendant's Exhibit 657 which are some of  
4 the minority, key minority neighborhoods in Tarrant County and  
5 City of Fort Worth.

6 Could you identify some of the, some of the neighborhoods  
7 that were in your City Council district that are depicted on  
8 Defendant's Exhibit 657?

9 A. Yes. It's not coming up on the screen that I have. My  
10 screen is dark, I'm sorry.

11 Thank you, yes.

12 So this area is where downtown is.

13 If I press this, is it going to react to me? It doesn't  
14 appear as though it is.

15 Q. Could you name some of the neighborhoods first, let's try  
16 that?

17 A. Sure. Ryan Place, Fairmont, Rosemont, Mistletoe Heights,  
18 Worth Heights, and area I don't have drawn on the map is South  
19 Hills which was the North and South Greenbrier neighborhoods,  
20 and those were all predominately Latino.

21 Alamo Heights which you see right next to Lake Como as you  
22 go west along I-30 also was predominately Latino. It was in my  
23 district, but Lake Como was not. I lived in Mistletoe Heights  
24 which was a mixed income, mixed race neighborhood.

25 Q. All right.

1 And I believe you said you were re-elected was it nine  
2 years on the City Council?

3 A. Yes. I was elected to my fifth term when I resigned to  
4 run for the Senate.

5 Q. What year did you resign to run for the Senate?

6 A. In 2007.

7 Q. What made you decide to run for the Texas Senate?

8 A. When I was on the City Council I had worked very closely  
9 with the minority communities and not only did the district  
10 that I represented, but also throughout the city.

11 In my second term on the City Council the mayor appointed  
12 me as the chair of the City's Economic Development Committee.  
13 It was considered the most powerful committee in the city.

14 Prior to my chairmanship of that committee, it had  
15 primarily concentrated its efforts on economic incentives for  
16 the betterment of downtown. It was kind of considered the  
17 business communities committee.

18 I made it the people's committee. It was my goal to do  
19 that. And as a consequence of that, I began a plan to utilize  
20 economic incentives all over the city, not only in the minority  
21 communities that I represented, but elsewhere.

22 Our City Council is made up of a mix of people who reflect  
23 the face of our city. We had two African American City Council  
24 people at that time and one Latino and I worked very closely  
25 with each of them in bringing economic incentives to create

1 redevelopment in the communities that they represented.

2 I also had gained a name for myself, for lack of a better  
3 way of saying it, as a person who was really standing up for  
4 our minority community.

5 One of the most controversial things that happened, the  
6 most controversial thing that happened when I was on the City  
7 Council was that in our downtown community, a public housing  
8 project Ripley Arnold was bought by Radio Shack so that they  
9 could develop a new downtown corporate campus.

10 And that community housed about 400 primarily African  
11 American persons who were very upset about the fact that they  
12 were going to be relocated from what was their community, their  
13 home. As their City Council person I became a broker between  
14 them and the Housing Authority and Radio Shack in trying to  
15 make sure that they were treated fairly in the relocation.

16 Judge Buchmeyer when I clerked for him had overseen the  
17 closure and the concentration of a just pitiful housing complex  
18 in the City of Dallas and I learned a great deal from him in  
19 that experience.

20 And one of his goals in overseeing that relocation was that  
21 people would be dispersed in a way so that concentrations of  
22 poverty would not be generational experiences for their  
23 children. And that's what I worked with that community to do.

24 As a consequence of that, a plan was put together that a  
25 relocation would occur in areas of our city that were not low

1 income areas. We signed an agreement with the residents, with  
2 the Housing Authority and with Radio Shack that that would be  
3 the way the relocation would occur.

4 The first relocation of those residents was the Housing  
5 Authority purchased an apartment complex in the district that I  
6 represented, actually in a fairly affluent community in my  
7 district. And their intention was to put 50 of the public  
8 housing residents into that apartment community.

9 When the neighborhoods surrounding it discovered that this  
10 was the case, it was one of the, the most controversial and  
11 difficult experiences I think our city had ever faced. We had  
12 literally thousands of people in public meetings screaming at  
13 the top of their lungs very hateful things about the relocation  
14 of minority people to their communities.

15 And I had Judge Buchmeyer in my heart and in my mind, he  
16 had since passed, the entire time and stood very strongly for  
17 doing that up against many of my constituents who were very,  
18 very upset with me. My house was picketed. My house was  
19 egged. My children were harassed in school. I couldn't go to  
20 the grocery store or restaurants in my own community without  
21 receiving a great deal of harassment.

22 And I stood through that for what I knew was right and  
23 ultimately the relocation occurred. I'm happy to say it worked  
24 out well. But it was part of I think the community  
25 understanding that that's something that was important to me.

1           And so I was approached -- it's a long way of answering  
2 your question, I'm sorry. I was approached by leaders in our  
3 minority community in large part because of the work I'd done  
4 as a City Council person and asked if I would consider running  
5 for the Texas State Senate.

6 Q.   Now at that time there was an incumbent State Senator in  
7 the district that you were living in?

8 A.   That's correct.

9 Q.   Who was that?

10 A.   His name was Kim Brimer.

11 Q.   And B-R-I-M-E-R?

12 A.   Yes.

13 Q.   And Senator Brimer was an Anglo?

14 A.   Yes.

15 Q.   He was Republican Party affiliated?

16 A.   Yes.

17 Q.   Who came to you and asked you to consider running for that  
18 Senate seat?

19 A.   Initially it was Representative Marc Veasey who was on the  
20 stand here a couple of days ago. Sergio De Leon, who is the  
21 Latino constable in our community and Roy Brooks who is an  
22 African American Commissioner on our Commissioners' Court.

23 Q.   Is he African American?

24 A.   Yes.

25 Q.   Are those leaders in your community?



1 A. Yes, they are.

2 Q. And they're all elected officials?

3 A. Yes.

4 Q. And were there any, what did you do when they came to you  
5 and asked you to consider running for the Texas Senate?

6 A. I sought the advice and counsel of political persons who I  
7 trusted J.D. Angle and Lisa Turner who had helped me in prior  
8 campaigns for City Council.

9 I met with them along with these community leaders and  
10 other community leaders. At that point the group had started  
11 growing.

12 Alex Jiminez who was on the stand here a couple of days ago  
13 was one of those. Rosa Navejar who chaired the Hispanic  
14 Chamber. Anne Selavar, another City Council member and we  
15 began to talk about the opportunity.

16 What I hadn't fully understood and what was demonstrated to  
17 me was what happened in 2006 within the Senate District when  
18 Terry Moore, an Anglo woman who was a democrat, had run for  
19 district attorney, obviously a county wide campaign and within  
20 the precincts that makeup Senate District 10, she had received  
21 49 percent of the vote.

22 So what they explained to me and were able to demonstrate  
23 to me was that we really had an opportunity, that's the  
24 expression, of the minority communities' desires in that  
25 district had evidenced itself in that 2006 election and they

1 believed that we had a path to winning the Senate seat in 2008.

2 Q. Did you actually have discussions with Mr. Veasey, Mr. De  
3 Leon and Mr. Brooks and other community leaders about if you  
4 decided to run, what they would do and what you would do if you  
5 did?

6 A. I did.

7 Q. What was that?

8 A. We talked about the fact that obviously, in order to  
9 succeed in that campaign, we were going to have to work very  
10 closely together in turning out number one, activating and  
11 exciting our minority communities about this race, our African  
12 American and Latino communities.

13 And number two, that we were going to have to work very  
14 hard together to make sure that we turned out that vote.

15 Q. What did you, if anything, promise them in return?

16 A. I promised them that I would represent them in the Texas  
17 Senate as I had represented them in the City Council.

18 Q. Do you remember roughly when you announced your candidacy  
19 for the Texas Senate?

20 A. Yes. I began meeting with these community leaders in the  
21 spring of '07. And after several months of some real heart  
22 wrenching decision making, I made my decision in August to run  
23 and I stepped down from the City Council at that time.

24 Q. That was required to give up your City Council seat in  
25 order to run for the Senate?

1 A. It was.

2 Q. Once you resigned your position on the City Council, were  
3 there any efforts made by anyone to stop you from getting on  
4 the ballot?

5 A. Yes.

6 Q. What were those?

7 A. The first thing that happened was that the firefighters  
8 association who were friendly to the incumbent Senator filed a  
9 lawsuit to remove me from the ballot.

10 The allegation being that even though I had resigned from  
11 the City Council, I was technically still holding that office  
12 until an election took place to replace me on the City Council.

13 Q. Did you have, did you have legal counsel on your side to  
14 defend against those allegations?

15 A. I did.

16 Q. Did you prevail in that proceeding?

17 A. I did. That suit actually was dismissed by the Fort Worth  
18 Court of Appeals because they held that the firefighters  
19 actually didn't have standing and so, and their opinion was  
20 that the only person who has standing to make such a claim is  
21 the office, the current office holder. So subsequently --

22 Q. When you say current office holder, you don't mean  
23 yourself?

24 A. No.

25 Q. You mean the current office holder?

1 A. In the Senate.

2 Q. In the Senate, the position you had announced for?

3 A. Correct. So Senator Brimer then, I don't remember how  
4 much time lag there was between the two, but Senator Brimer  
5 eventually filed suit making the same allegations.

6 Q. Did you prevail in that litigation?

7 A. I did. We had a trial in the trial Court and then an  
8 appeal. The appeal was actually heard in Dallas because my  
9 opponent made improper contact with the Fort Worth Court of  
10 Appeals and they recused themselves from the case, and moved it  
11 to Dallas and the Appeals Court in Dallas decided the case in  
12 our favor.

13 Q. So they affirmed the decision below?

14 A. Yes.

15 Q. In that particular election litigation, my co-counsel  
16 here, Mr. Dunn, was on your side of the case, correct?

17 A. Yes. He was representing the State of Texas Democratic  
18 Party as an interested party.

19 Q. Now, I believe that you said early in your testimony that  
20 you announced in 2007 the election itself was not going to be  
21 held until 2008?

22 A. Correct.

23 Q. For Senate?

24 A. Yes, November of 2008.

25 Q. Did you go out and at that point once you announced, what

1 efforts did you undertake to get support from the district  
2 itself in the communities within it?

3 A. Well again, as I said earlier, what we understood was that  
4 in order to gain the seat we were going to have to make sure  
5 and motivate and activate the African American and Latino  
6 neighborhoods in the Senate District.

7 So the community leaders that had urged me to run became my  
8 partners in that endeavor. I received the endorsement of every  
9 minority elected official in the Senate District, and they were  
10 very active in making sure that they were introducing me to  
11 their church communities, to their neighborhood communities.

12 Of course, because I had been on the City Council for so  
13 long, many members of the Latino and African American  
14 communities in the Senate District knew who I was. But they  
15 didn't know me personally in the way we felt like they needed  
16 to, and I spent a great deal of time going into neighborhood  
17 meetings, knocking doors in those communities and attending  
18 churches and speaking to church congregations in those  
19 communities.

20 And then we also created an active approach to a  
21 coordinated campaign. There were several House races taking  
22 place at the same time. The House members run every two years  
23 so they're always running when a Senate seat is open for  
24 election.

25 And those, one of those was also in an area where a

1 republican incumbent held a seat and a democrat Chris Turner  
2 was running against him. It was almost entirely contained  
3 within my Senate District. We ran a very coordinated campaign  
4 with him.

5 Q. When you say a coordinated campaign, describe the  
6 coordination just briefly?

7 A. Yes. We met with our Tarrant County Democratic Party and  
8 other leaders in the democratic community and minority  
9 community. And we coordinated an effort. Obviously, none of  
10 us had an enormous amount of money to spend, and we knew that  
11 with our scarce resources we could each play a role in making  
12 sure that we turned out, activated and turned out the Latino  
13 and African American vote. And we took responsibilities for  
14 certain areas of the Senate District.

15 So Marc Veasey though he didn't have an opponent was very  
16 active in his community knocking on doors and getting on the  
17 radio. He had me on African American radio on several  
18 occasions which is the predominant communication resource to  
19 that community in Fort Worth.

20 And the same in our Latino community and I did the same on  
21 Latino radio. And we just spread out our efforts and our  
22 resources throughout the district and kind of each took a piece  
23 of the responsibility for that.

24 Q. The volunteers that you had working for you on your Senate  
25 campaign, were they majority of them Anglo or majority of them

1 minorities?

2 A. No. I had a very active campaign volunteer group,  
3 thankfully. We set up our office in the south side. The  
4 Latino community of the City Council district that I  
5 represented and primarily the people that came and showed up to  
6 make phone calls and knock on doors and send mailers out were  
7 people from our minority communities.

8 Q. When you were running for office, did you seek the support  
9 at all of what I would call for lack of a better term, a  
10 minority Chambers of Commerce?

11 A. I did.

12 Q. Who did you seek that from?

13 A. Dee Jennings was the chair or actually the president, the  
14 chief staff person for the black chamber and he and members of  
15 his chamber were very active in their support and endorsement  
16 of me.

17 Rosa Navejar as I said was the chair of the Hispanic  
18 chamber and she and members of her chamber were very active in  
19 their help.

20 Q. Did you receive the endorsement of the mayors, all of the  
21 mayors of cities within your Senate District?

22 A. I did not. Every mayor, every single mayor in the Senate  
23 District endorsed the incumbent in the race.

24 Q. What about the firefighters and policemen, did they  
25 endorse you?

1 A. The firefighters and the police unions also endorsed the  
2 incumbent in the race and they were very, very active wearing  
3 their firefighter and POA, Police Officer's Association  
4 T-shirts, knocking doors primarily in the Anglo communities to  
5 turn out the vote for the incumbent.

6 Q. You mentioned a coordinated campaign and I think you  
7 identified three House Districts.

8 Mr. Veasey's District, is that, is that a predominantly  
9 minority district?

10 A. Yes, it's predominantly African American.

11 Q. You said Mr. Chris Turner was running against a republican  
12 Anglo incumbent in that House District?

13 A. That's correct.

14 Q. And Mr. Turner is white, correct?

15 A. Correct.

16 Q. Does that district have a sizable minority population?

17 A. Yes and growing. It had dramatically changed over the  
18 decade and was primarily growing in the African American  
19 community.

20 Q. And then you mentioned a Mr. Burnam, Lon Burnam, State  
21 Representative, that district was within your Senate District?

22 A. I forgot to mention that, but yes, Representative Lon  
23 Burnam represented a predominately Latino House District. And  
24 a great deal of that was in my former City Council district.

25 MR. HEBERT: Your Honor, if I may for a moment, I



1 neglected to say this at the very beginning, but I mentioned to  
2 counsel for the State defendants yesterday that according to  
3 our calculation we had about an hour and forty minutes left of  
4 time, and that we with our two witnesses this morning might go  
5 a little bit over that, and they have graciously agreed to let  
6 us go and take the time we need.

7           It's not going to be that much longer than that for the  
8 two witnesses, but I should have done that at the outset. I  
9 want to extend my appreciation to the counsel for the State.

10           MR. HUGHES: Thank you.

11           I think we agreed to 20 minutes of extra time.  
12 Hopefully, that will be sufficient for Senator Davis to  
13 complete her testimony.

14           JUDGE COLLYER: All right, go right ahead, sir.

15 BY MR. HEBERT:

16 Q. I wanted to ask you in 2008 campaign that you were running  
17 for the Texas Senate there was the presidential election  
18 obviously was in 2008.

19           Did you get a lot of financial assistance or other campaign  
20 assistance from the Presidential Obama campaign?

21 A. I did not. The State of Texas, as you know, elects and  
22 has for a long time republican presidential candidates or  
23 expresses their choice for the republican presidential  
24 candidate, and as a consequence of that, we don't receive  
25 active campaigning in our state from presidential candidates

1 who are running under the democratic ticket or on the  
2 democratic ticket.

3 President Obama did not spend money, did not set up a  
4 campaign office in the district and the Senate District.

5 Q. And did you get support from the State party?

6 A. I did. The State party actually had to make a decision.  
7 Was it going to get involved in spending its scarce resources  
8 in that presidential race or some other ballot races, statewide  
9 races where we had democratic candidates on the ballot.

10 And they too understood that we had a real opportunity in  
11 this district because of the growth in the minority community  
12 over the decade, and the activity in voting in the minority  
13 community in '06, they understood that we had a real  
14 opportunity here and they invested their resources primarily in  
15 my Senate race.

16 Q. Now I've put up what we've marked as Defendant's Exhibit  
17 137. And it's a, it's been referred to previously in  
18 Representative Veasey's testimony as your current district in  
19 Tarrant County shaded for black and Hispanic population.

20 Do you see that?

21 A. Yes, I do.

22 Q. If you could describe for us how in running your campaign,  
23 and knowing your previous testimony was you knew about these  
24 areas because you had represented them, how you went about  
25 campaigning within your district in that 2008 race?

1 A. Yes, absolutely. Because the neighborhoods here -- I'm  
2 not able to make this work for some reason.

3 (Pause.)

4 I'm sorry. I'm sorry.

5 Q. Thank you.

6 A. I'm going to draw kind of a rough area of what was my old  
7 City Council district.

8 Q. Okay?

9 JUDGE COLLYER: If I could interrupt, I'm sorry,  
10 ma'am, just one second.

11 By my calculation, the defendants have before the three  
12 Judge panel, they have 59 minutes left.

13 MR. HEBERT: As of right now?

14 JUDGE COLLYER: No. As of the time you started.

15 You were going to get an extra twenty, so that gives you  
16 an hour and twenty minutes as of the time we started which was  
17 at 8:17.

18 MR. HUGHES: Your Honor, can you remind us how much  
19 time we have left?

20 JUDGE COLLYER: Texas before the three Judges has  
21 used up eight hours and thirteen minutes. We end 11:45, that's  
22 the important time to think in mind. However much time you  
23 have left, it's over before three Judges at 11:45.

24 MR. HUGHES: We'll up our offer by 50 percent to half  
25 an hour but that's all you have got to.

1 JUDGE COLLYER: Half an hour, that's all you can get,  
2 okay. Because other than Senator Davis, you have another  
3 witness.

4 MR. HEBERT: We have one, yes.

5 JUDGE COLLYER: I just want to warn you that you're  
6 getting close.

7 THE WITNESS: Thank you, Judge.

8 BY MR. HEBERT:

9 Q. You have circled on Exhibit 137 your City Council  
10 district?

11 A. Yes.

12 Q. Now the question on the table is how did you go about  
13 running in the larger district which is depicted on the  
14 exhibit?

15 A. Because I was very well known in my City Council district.  
16 Minorities of our Latino neighborhoods actively worked those  
17 neighborhoods on my behalf.

18 Marc Veasey's district here he actively worked that again  
19 taking me into the community and I knocked many, many doors  
20 there.

21 The area down here was really more the area that Chris  
22 Turner was running in, and we coordinated door knocking efforts  
23 there through our campaigns, and I spent most of my personal  
24 time knocking doors in that area.

25 This area, the near north side of Fort Worth primarily

1 Latino community, also a place where I was very well known was  
2 a place that I relied on many of those leaders to help me in  
3 reaching out to that community and I knocked doors in that  
4 community as well.

5 I knocked doors every single day starting in probably about  
6 January with the exception of the days that I was traveling to  
7 try to do campaign fundraising.

8 MR. HEBERT: Your Honors, we will mark this screen  
9 shot Defendant's Exhibit 698 for the record.

10 (Defendant's Exhibit Number 698 marked for  
11 identification.)

12 JUDGE COLLYER: I don't know that that will be  
13 terribly helpful as it is.

14 Let me just add for the record that the, there are four  
15 spaces surrounded by black mark on this screen. The one to the  
16 lower left is the original city district, City Council district  
17 of the witness. The one to the lower right is where  
18 Representative, that wasn't Veasey, that was --

19 THE WITNESS: That was representative Turner.

20 JUDGE COLLYER: Turner assisted.

21 The one to the upper right which is really about the  
22 middle is where Representative or city --

23 THE WITNESS: Veasey.

24 JUDGE COLLYER: Representative Veasey was of  
25 assistance, and the one on the upper left was already known,

1 already knew the witness but there was a lot of door knocking  
2 there too.

3 THE WITNESS: And that was Representative Burnam's  
4 district as well who was helping me.

5 I'm sorry, Judge.

6 JUDGE COLLYER: I mean, I'm just trying.

7 MR. HEBERT: That's very helpful. Actually, it saves  
8 me from doing it.

9 BY MR. HEBERT:

10 Q. You were elected in that election over the incumbent,  
11 correct?

12 A. I was.

13 Q. Was the, what did you do upon getting elected? How did  
14 you go about starting to serve? You were sworn in January of  
15 2009?

16 A. Correct.

17 And so when I was elected in November I immediately set, I  
18 turned my campaign office into a listening office. We began  
19 inviting neighborhood leaders, church leaders and others in our  
20 community to come in and talk about what they wanted our  
21 legislative agenda to be, and it's how we created our agenda  
22 for the first and my second session, and it really in large  
23 part mostly dictated the bills that we wrote and filed.

24 Q. And generally just took off a few legislative agenda items  
25 that you developed in these listening sessions?

1 A. The things that I worked hardest on are public education.  
2 As you can imagine, that is terribly important to me and I was  
3 appointed to the public education committee of the Senate.

4 I also worked very actively on payday lending reform.

5 In the State of Texas we have absolutely no regulation of  
6 that industry and as a consequence of that, the proliferation  
7 of payday lending store fronts in Texas is greater than  
8 McDonald's, Burger King and Wanna Burger combined.

9 I also worked on consumer reforms not only in that  
10 financial arena but in the insurance and electricity arena. At  
11 the time we had one of the highest electricity rates in the  
12 country and for the last two years running Texas has had the  
13 highest insurance rates in the country and the highest profits.

14 Q. Now when you, those are big issues in the Texas  
15 legislature, correct?

16 A. Yes, they are very powerful lobbies on their behalf I can  
17 assure you.

18 Q. Did you form any racial or ethnic coalitions in dealing  
19 with those?

20 A. In each of those and most particularly on the public  
21 education and the payday lending arena was Catholic Charities  
22 which is an organization that represents and helps the Latino  
23 community particularly the lower socioeconomic Latino community  
24 was very, very actively engaged in that as were the African  
25 American ministers throughout North Texas and we met repeatedly

1 about those reforms and they were very active in coming and  
2 testifying before Senate committees and lobbying other members  
3 to try to get their support.

4 Q. You obviously due to time you can't go into all what you  
5 have been doing as an elected Senator. But I want to bring in  
6 one bill in particular, and I would like you to describe your  
7 work on that bill or against that bill. It's called the  
8 Sanctuary City's Bill.

9 Are you familiar with that?

10 A. Yes, I am.

11 Q. Tell the Court very briefly and as quickly as you can what  
12 that bill did and what you did in connection with it?

13 A. When our session started Governor Perry declared that one  
14 of five emergency items that he put on the table. Ironically  
15 our 27 billion dollar short fall was not one of those emergency  
16 items.

17 The sanctuary cities, what the sanctuary cities would have  
18 done would have allowed every Government official whether they  
19 worked for a school district or a constable's office to stop  
20 and ask people their citizenship status as part of an otherwise  
21 investigation that they were conducting.

22 Q. Did this particular bill eventually, do you know who  
23 sponsored that bill in the Senate?

24 A. The bill was sponsored by Senator Tommie Williams.

25 Q. Was it supported by other --



1 A. It was supported by --

2 Q. -- Senators?

3 A. -- all of the Republican Senators.

4 Q. Would that include Senator Birdwell?

5 A. Yes.

6 Q. Senator Birdwell we heard testimony earlier from  
7 Mr. Veasey and I think Mr. Davis that as a result of the  
8 proposed redistricting map Senator Birdwell's Senate District  
9 has been redrawn into Tarrant County, correct?

10 A. Correct.

11 Q. What part of Tarrant County does he take out of your  
12 district.

13 A. If I can -- how do I erase the lines that are here?

14 THE DEPUTY CLERK: Just hit clear.

15 THE WITNESS: Okay, thank you.

16 He takes all of this area essentially.

17 A piece of this I may have drawn this line a little bit  
18 misleading, a piece of this part of it actually went over into  
19 Senate District 9 and Senator Birdwell's came up like a finger  
20 into the African American and Latino community here just on the  
21 east side of I-35.

22 BY MR. HEBERT:

23 Q. Did Senator Birdwell support your payday lending reform  
24 efforts?

25 A. No, he did not.

1 Q. Did he also sponsor a bill that would take away instate  
2 tuition for children of non-citizens?

3 A. Yes, he did.

4 Q. I want to get to the process of redistricting and I'm  
5 going to leave the legislative agenda for another time,  
6 hopefully.

7 In, there were some field hearings held in I believe  
8 September of 2010 in Arlington, Texas. Representative Veasey  
9 testified about that?

10 A. Correct.

11 Q. Were you able to attend that hearing?

12 A. I was not, I was out of the state.

13 Q. All right, but did you send a representative?

14 A. I sent my District Director to read a letter into the  
15 record that I had written.

16 Q. What was the message you wanted to convey to the  
17 Redistricting Interim Committee?

18 A. As succinctly as I can say it to protect the members of  
19 the Latino and African American communities of District 10 and  
20 to respect their rights to continue to have the opportunity to  
21 elect a candidate of their choice.

22 Q. After that hearing, the legislature convened in January of  
23 2011, correct?

24 A. Correct.

25 Q. You adjourned at the end of May, 2011?

1 A. Correct.

2 Q. When the session started, give us a time capsule if you  
3 can of when you first started to try to get involved in the  
4 redistricting process that you knew was coming?

5 A. In, the census numbers didn't come out until February. I  
6 had my first meeting with Senator Seliger, the chair of the  
7 Redistricting Committee and his staffer Doug Davis which is  
8 actually the only meeting that I had with them that was a  
9 formal meeting. Where they brought my benchmark district map  
10 to my office and asked me what I would like to see happen in  
11 the district.

12 I told them several things. I told them that I believed  
13 that the district was a district where a coalition of the  
14 minority community was effectively and had demonstrated that  
15 they had effectively elected the candidate of their choice in  
16 2008. And that I expected that it would be protected as would  
17 be required under the Voting Rights Act.

18 I also told them that I thought maintaining the urban core  
19 of Fort Worth and Arlington was a very important piece of the  
20 Senate District.

21 And number three, I told them that I felt it was important  
22 to keep the district wholly contained within Tarrant County.

23 Q. Did you also mention anything about the Lake Como African  
24 American community?

25 A. I did, I'm sorry.

1 Lake Como is over here. Lake Como in 2001, I think you  
2 heard Representative Veasey talk about the fact that it's a  
3 predominately African American neighborhood.

4 That district had been removed from Senate District 10 in  
5 '01 and at the time the State in submitting it's defense of  
6 that to the Justice Department stated that though they were  
7 removing this African American community and putting it up here  
8 into Senate District 12 which is, which is represented by  
9 Senator Jane Nelson, an Anglo Republican, they defended it by  
10 saying that they were leaving a sufficient minority community  
11 intact in Senate District 10 and that their expectation was  
12 that that community would have an opportunity to grow over the  
13 decade and coalesce to elect a candidate of their choice.

14 Q. That was in 2001 they made that prediction, the State did?

15 A. Yes. So I asked when I met with Senator Seliger the Como  
16 community had indicated to me that in the ten years that they  
17 had been represented by Senator Nelson they had never ever seen  
18 her or been contacted by her, and they wanted to be put back  
19 into the community where they were once represented.

20 Q. Now --

21 A. And I asked that that happen.

22 Q. Now this reference that you mentioned about the State  
23 actually saying that in 2001 for the record, that's Defendant's  
24 Exhibit 126, Your Honor, that's the 2001 submission of the  
25 State of Texas to the Justice Department defending the creation

1 of District 10.

2 You reviewed that submission?

3 A. Yes.

4 Q. That's where you got the information where you saw that  
5 they had predicted that your district?

6 A. Yes.

7 MR. HUGHES: Your Honor, I'm going to object to the  
8 leading. I know we're pressed for time.

9 JUDGE COLLYER: No, it's just prefatory to get in the  
10 exhibit quickly.

11 BY MR. HEBERT:

12 Q. Now this meeting that you had with Mr. Davis and Senator  
13 Seliger, you said I think that that was the only formal meeting  
14 you had?

15 A. That's correct.

16 Q. Now Mr. Davis testified that you had several meetings,  
17 pre-scheduled meetings in the testimony and in this Court just  
18 a couple of days ago; is that correct?

19 A. It's absolutely not true.

20 Q. How many formal pre-scheduled meetings with Mr. Davis did  
21 you have?

22 A. I had that one meeting that was a pre-scheduled meeting,  
23 and as the weeks ensued I continued to ask Mr. Davis and  
24 Chairman Seliger when I was going to have an opportunity to see  
25 what they were doing in drafting what the district that I

1 represented was going to look like.

2 I asked Doug Davis on the Senate floor, he's on the Senate  
3 floor every day because he staffs the Lieutenant Governor, and  
4 at least once every couple of weeks starting from that point  
5 and then as we were getting closer and closer to the maps  
6 coming out in May, I started on a daily basis asking when are  
7 you going to show me what you are intending to do for the  
8 Senate District that I represent.

9 Q. Now I want to stop you there just to chronology-wise.

10 The meeting you had, the only pre-scheduled meeting that  
11 you had was in what month roughly?

12 A. It was in March, it was late in March.

13 Q. Did subsequent to that you're testifying that you  
14 constantly saw Mr. Davis on the floor?

15 A. Yes.

16 Q. In the session?

17 A. Yes.

18 Q. And you asked him about when you would see your district?

19 A. Yes.

20 Q. Did you ask Senator Seliger?

21 A. Yes, I did.

22 Q. What did they say in response to your repeated requests?

23 A. Senator Seliger I clearly remember saying in, it was  
24 probably about the third week of April, in response to me in  
25 the Senate lounge when I asked him Kel, tell me what you're

1 going to do to my district?

2 He said, you know, we're still trying to work some things  
3 out with Senator Nelson. She has a huge population to shed.  
4 She had over 200,000 extra in population.

5 He said the problem is she doesn't want to get rid of any  
6 of it, and so we're still working with her on what that's going  
7 to, what her district is going to look like and we won't be  
8 able to show you anything about yours until we get that worked  
9 out.

10 Q. Now at some point during the session did you have  
11 conversations with any Senators on the opposite side of the  
12 aisle, Republicans --

13 A. I did.

14 Q. -- about redistricting?

15 A. I did. Senator Cornyn on a couple of occasions. Senator  
16 Cornyn is a very forthright member. Senator Cornyn one day I  
17 noticed it was in late to mid April that Doug Davis and  
18 Chairman Seliger were leaving the Senate floor with Anglo  
19 republican members one by one and being they were gone for  
20 awhile and coming back.

21 And Senator Cornyn was one of those members, and I asked  
22 Senator Cornyn what are you all doing? He said we're in the  
23 anteroom which is an anteroom to the Lieutenant Governor's  
24 office, we're back in the anteroom and they're showing us draft  
25 plans about our maps for our input.

1 That very day of course I went to Senator Seliger on the  
2 floor and said I understand you are showing draft maps to  
3 members. When are you going to show me my draft map? He said  
4 oh, we will, we will, we will.

5 For the next couple of weeks he went through the exercise  
6 of pretending to try to calendar me for that purpose, but never  
7 did calendar me, and I wasn't the only member who represented a  
8 minority district who was seeking that input and asking him  
9 actively for meetings and who was being denied that.

10 Senator Cornyn also I met with him in his office one day,  
11 actually on payday lending along with Senator West. Senator  
12 Cornyn indicated to me that they were shredding my district and  
13 this was in again mid to late April and so already he had seen  
14 what they were doing to my district.

15 So there was no question that a plan had been created, a  
16 draft plan had been created, and I was being denied the  
17 opportunity to see it.

18 Q. There was testimony in this trial that a public notice  
19 went out about a, the Redistricting Committee hearing in the  
20 Senate that would take place on May the 12th which was a  
21 Thursday of 2011 and that the notice went out on May the 10th,  
22 Tuesday 2011.

23 At what point, Senator, did you for the first time see your  
24 district?

25 A. Well, first I want to say that the Friday before that



1 because we were getting so late in the process and I knew the  
2 maps were on their way to be coming out. I demanded on Friday  
3 very sternly Doug Davis and Senator Seliger that they meet with  
4 me and show me my map.

5 That afternoon Doug Davis finally came to my office. It  
6 was only the second time that he had made a visit to my office,  
7 the first being that perfunctory visit in March.

8 I specifically asked him, I sent him text messages asking  
9 him to bring something with him so that I could see what my  
10 district was going to look like. He showed up empty handed and  
11 I asked him why, and he said I can't, I can't show it to you  
12 yet. We're still in the process of making sure that every one  
13 is happy.

14 I indicated to him in a very angry tone that what he was  
15 doing by denying me the opportunity to see the intentions for  
16 the Senate District that I represented was that he was denying  
17 my citizens, the people that elected me to represent them an  
18 opportunity to have a voice in the process and I resented it  
19 very strongly.

20 When I left that afternoon to fly home to my district for  
21 the weekend, Senator Seliger made a courtesy visit into my  
22 office, and I texted Doug Davis and I said that I understand  
23 Senator Seliger dropped by. Do I need to get off the plane? I  
24 was literally on the plane, do I need to get back off the plane  
25 and come back and meet with him? He said no, no, it was just a

1 courtesy visit to stop in and say hello.

2 Senator Seliger also did not bring anything with him that  
3 would have demonstrated the maps. The first time I saw my maps  
4 was on the afternoon about 5, 5:30 P.M. of March the 10th.

5 The notice for the hearing on March the 12th had actually  
6 already been published. The maps had not yet been made public.  
7 I was called into a room where they had set up the map drawing  
8 process and they projected a picture of my Senate District in  
9 isolation on the wall. It took about five seconds for me to  
10 understand exactly what they had done.

11 They had absolutely dissonated and dissected the Latino  
12 and African American communities in Senate District 10. They  
13 moved the mere north side Latino community in its entirety up  
14 into Senate District 12.

15 Ironically they did put Como back into Senate District 10,  
16 but meanwhile they carved out all of the other minority  
17 neighborhoods so that once again, it's stranded in an Anglo  
18 dominated district.

19 They put into Senate District 9 a republican Anglo  
20 represented district. The far east Southeast portion of the  
21 Senate District which was primarily African American and, of  
22 course, they moved it down to the Waco Grandbury Senate  
23 District of Senator Birdwell in Senate District 22. The  
24 African American community of Southeast Fort Worth, the core  
25 urban community of Fort Worth.

1 And I expressed great displeasure. I actually cried, I  
2 didn't have much to say. They gave me no response whatsoever.  
3 But I said to them you didn't listen to a word that I said and  
4 you have dissonated the minority community in the district that  
5 I represent.

6 Q. And you sent, did you send any correspondence about your  
7 displeasure?

8 A. I did.

9 MR. HEBERT: In Defendant's Exhibit 128, Your Honors,  
10 is a letter. The letter sent on May the 10th, the day that --

11 JUDGE COLLYER: We've already had this.

12 MR. HEBERT: Okay.

13 BY MR. HEBERT:

14 Q. And Senator, the --

15 JUDGE COLLYER: Sir, you have now 31 minutes left.  
16 If you have a second witness, you should keep going fast.

17 MR. HEBERT: Yes, okay.

18 I'm almost finished actually. Thank you for that  
19 reminder.

20 BY MR. HEBERT:

21 Q. So Senator, we've put on here and unfortunately, the  
22 screen is not letting us erase these black marks. But your  
23 district here in Tarrant County, we've blown it up and for the  
24 record, Your Honors, that would be Defendant's Exhibit 140. We  
25 won't go through that right now. We did it with Mr. Veasey.

1 JUDGE GRIFFITH: So none of the black marks should be  
2 on there?

3 MR. HEBERT: That's correct. And Defendant's Exhibit  
4 140 doesn't have those obviously on there.

5 BY MR. HEBERT:

6 Q. Now so, just so we are crystal clear on the record here,  
7 when have you actually done an inquiry of your own as a Texas  
8 State Senator to find out when the Texas State Senate map was  
9 released to the public and put up on the Red Viewer?

10 A. I have, it was just a tiny bit over 24 hours prior to the  
11 public hearing on March the 12th. It was put up at 12:36 P.M.  
12 on March the 11th.

13 So the community had literally a 24 hour period to see the  
14 map, react to the map and arrange to leave their jobs during  
15 the day and travel to Austin the following day in order to  
16 express their objection.

17 Q. Some of your constituents did they make the trip down --

18 A. They did.

19 Q. -- from Fort Worth?

20 A. They did, but I can assure you had they had the  
21 opportunity for greater understanding and information farther  
22 in advance, we would have seen a thousand people in that room.  
23 Instead, I think we had about 30 who were able to come.

24 Q. And at that Redistricting Committee hearing on Thursday,  
25 May 12th, did Senator Zaffirini offer alternative maps on your

1 behalf?

2 A. She did. Two amendments I offered.

3 Q. You laid out that those maps?

4 A. I did.

5 Q. Very briefly, 152 is plan S 120 and Defendant's Exhibit  
6 154 is plan 121.

7 Could you describe for the Court very quickly --

8 A. Yes.

9 Q. -- what the two plans did?

10 A. Yes. Each of them strengthened the African American and  
11 Latino makeup of the district. The first was one that kept it  
12 entirely intact within Tarrant County.

13 The second was really what we considered a demonstration  
14 map to demonstrate that a Section 2 map could have been drawn  
15 an opportunity district from the urban core of Fort Worth into  
16 the urban core of Dallas that would have satisfied the Section  
17 2 requirements.

18 Q. Did those amendments get voted down?

19 A. They did.

20 Q. Did every minority member on the committee vote in favor  
21 of them?

22 A. Yes.

23 Q. Then the Senate proposed plan was adopted the next day?

24 A. Correct.

25 Q. On May 13th?

1 A. Correct.

2 Q. Was that a public hearing on May 13th?

3 A. It was open to the public, but no public testimony was  
4 taken.

5 Q. We have had testimony about that.

6 Then the map goes to the Senate floor. Did you seek to  
7 amend it on the Senate floor?

8 A. I did. On the 17th we made refinements to what we were  
9 demonstrating as an opportunity under Section 2 after having  
10 worked with the minority leaders in Dallas and we submitted a  
11 slightly different variation of that plan.

12 Q. All right?

13 A. As well as the Tarrant County contained plan.

14 Q. And those amendments were voted down on the floor?

15 A. Yes, they were.

16 MR. HEBERT: Your Honors, for the record, Defendant's  
17 Exhibit 132 is a letter from all of the Latino members who are  
18 on the Senate Redistricting Committee to Senator Seliger  
19 opposing and alleging that the process used to develop the  
20 Senate plan was intentionally discriminatory in intent.

21 BY MR. HEBERT:

22 Q. And then finally, I want to go to the last question that I  
23 really have for you, a second to the last question which is  
24 you've heard testimony from Mr. Davis that the goal was to make  
25 your district more republican, correct?

1 A. Yes.

2 Q. Would it have been possible do you think in your view for  
3 the map drawers to make it more republican and yet keep the  
4 minority communities together at the same time?

5 A. I know it would have, and I know that Senator Seliger knew  
6 it would have because he testified to that under oath  
7 previously in this case.

8 He was presented with the plan of taking the Senate  
9 District that is, that I represent up into the northern area up  
10 to the line of Tarrant County and grabbing all of that Anglo  
11 community. They could have made it what they called a 60  
12 percent McCain district had they done that and left the  
13 minority community intact.

14 But in 2001 when they did that it grew into what they  
15 predicted it would, it grew into a district that had the  
16 opportunity to elect a candidate of their choice, and I believe  
17 that that option was not selected because keeping that minority  
18 community intact meant that once again, they were threatened  
19 with the growth and the ability of that community to again  
20 regain the ability to elect someone in the future, and they  
21 were not going to let that happen again as it happened in the  
22 prior decade.

23 So they split it into four different Senate districts.

24 Q. And with regard to Senator Nelson who was to your north,  
25 an Anglo Republican who said her district was 200,000 people

1 over, and she had to shed population, but they actually gave  
2 her population from your district?

3 A. That's right. And that map that Senator Seliger said had  
4 been introduced and considered would have given her the  
5 opportunity to shed that into my district.

6 She was over 200,000 people extra in population and  
7 remarkably they gave her people from my district even though  
8 she needed to shed 200,000 people. They made sure she shed  
9 extra, far extra so that she could take the Latino community  
10 out of North Fort Worth.

11 Q. Senator Davis, one final question. Is this about you  
12 trying to protect your political career, your efforts in  
13 redistricting?

14 A. No, it's absolutely not. It's about the people that I  
15 represent.

16 MR. HEBERT: No further questions.

17 Thank you, Your Honor. And I believe I have maybe 23  
18 minutes left? Twenty-five?

19 JUDGE COLLYER: I have the wrong glasses on, I can't  
20 see.

21 Yes, 25.

22 MR. HEBERT: Twenty-five, thank you.

23 MR. HUGHES: Senator Davis, bear with me a moment  
24 while I hook up my computer.

25 THE WITNESS: Certainly.



1 MR. HUGHES: How do we clear the black marks?

2 JUDGE COLLYER: Mr. Hughes, we'll just stumble on  
3 despite the marks. We all know that the marks shouldn't be  
4 there.

5 So if you need somebody to look at a part of the exhibit  
6 that is covered by a mark, move the exhibit around, okay.

7 MR. HUGHES: I'll do my best, Your Honor.

8 JUDGE COLLYER: Thank you.

9 CROSS EXAMINATION

10 BY MR. HUGHES:

11 Q. Good morning, Senator Davis?

12 A. Good morning, Mr. Hughes.

13 Q. We met yesterday. It's nice to see again?

14 A. You as well. Thank you.

15 Q. During your direct examination you talked some about the  
16 different communities that were in the, that are in the  
17 district that you represent now Senate District 10, right?

18 A. Yes.

19 Q. And for the sake of convenience, I'll refer to that as  
20 benchmark Senate District 10, is that okay?

21 A. Yes.

22 Q. I'd like to explore with you very briefly what the  
23 demographic makeup is of Senate District 10.

24 You are aware that the State of Texas puts out demographics  
25 information about various districts including your own, right?

1 A. Yes.

2 Q. You're familiar with the basic demographic makeup of your  
3 district, right?

4 A. Yes, sir.

5 Q. And I'd like to look with you at Plaintiff's Exhibit 15  
6 and I'll cull out an area of this and try to blow it up that  
7 shows some information about your Senate District.

8 You see at the top there it says Senate District Plan 100.  
9 You understand Plan 100 refers to the existing Senate map,  
10 right?

11 A. Yes, the benchmark map.

12 Q. Can you see through the squiggly lines here that down on  
13 the bottom of this we've got your Senate District, Senate  
14 District 10.

15 Do you see that?

16 A. Yes, I do.

17 Q. Do you see that there are two different measures of  
18 population reported there. There's total and something called  
19 VAP.

20 Do you see that?

21 A. Yes, I do.

22 Q. You understand that VAP refers to voting age population?

23 A. Yes, I do.

24 Q. So this document Exhibit 15 reports the voting age  
25 population by ethnicity in your Senate District, correct?

1 A. Yes, it does.

2 Q. If we look going over to the right where I've got  
3 additional information highlighted, you can see the first  
4 column has the letter A and that stands for Anglo, correct?

5 A. Correct.

6 Q. And the voting age population of Anglos in your existing  
7 benchmark 10 Senate District is 52.7 percent, correct?

8 A. Correct.

9 Q. And the next column stands is B, stands for black voters,  
10 correct?

11 A. Correct.

12 Q. And that number is 17.9 percent, right?

13 A. Yes.

14 Q. And then the next column is H for Hispanic voters and that  
15 number is 24.8, correct?

16 A. Yes.

17 Q. But you understand that not all of the voting age  
18 population numbers here are actually citizens and that there  
19 are separate numbers reported that take into account  
20 citizenship? You are familiar with that concept, right?

21 A. I'm familiar with that concept.

22 Q. I would like to go just a few pages further in the same  
23 document and show you those numbers for your district.

24 You can see at the top here of this page of the same  
25 exhibit this is based on 2010 census data. You see that?

1 A. Yes.

2 Q. You see at the top it says special tabulation of citizen  
3 voting age population, do you see that?

4 A. Yes.

5 Q. And down there at the bottom you can also see the part  
6 that I don't have blown up, but at the top it says Senate  
7 District's Plan 100 so we are talking about the benchmark  
8 Senate map, right?

9 A. Yes.

10 Q. I have got your district highlighted Senate District 10,  
11 and then we move over to the first column there's a column I  
12 have highlighted entitled Hispanic CVAP. You understand that  
13 stands for Hispanic citizen voting age population, right?

14 A. Yes.

15 Q. The number there is 15.1 percent, correct?

16 A. Yes.

17 Q. Smaller than the voting age population number we looked at  
18 a minute ago, correct?

19 A. Yes.

20 Q. And then if we move over to black voters, it's 18.3  
21 percent, correct?

22 A. I can't tell because of the black line but I will trust  
23 you.

24 Q. I'm sorry, Senator. Let me see if I can -- how's that?

25 A. Yes.

1 Q. Then if we go over to Anglo or white voters, the citizen  
2 voting age population and benchmark Senate District 10 for that  
3 category is 62.7 percent, correct?

4 A. Yes.

5 Q. So based on looking at the -- and only citizens can vote  
6 in elections, right?

7 A. Correct.

8 Q. So based on the data that we are looking at here, no  
9 candidate can win Senate District 10 based solely on the votes  
10 of Hispanic and black voters, right?

11 A. I don't know that that's necessarily a fair statement.

12 Elections are about turn out. And yes, of course, the  
13 makeup, the numbers, the raw numbers themselves attribute to  
14 the ability to elect.

15 But the name of the game is turn out and in our Senate  
16 District we, of course, are putting on evidence, I think it's  
17 before the Court already through our expert testimony, that we  
18 had a great turn out in our African American and Latino  
19 communities, and that I received over 90 percent of the votes  
20 from each of those communities, and that a very small portion  
21 of my vote came from the Anglo community.

22 Q. You haven't done any of these?

23 A. And yet they elected me.

24 Q. Let me make sure I understand. You have not done any  
25 statistical analysis to determine whether you were elected on

1 the basis only Hispanic and black votes whether that would have  
2 been sufficient to elect you, have you?

3 A. Our expert has done statistical analysis, but what I know  
4 in my heart and what I know from looking at the numbers as they  
5 came in for the election results, that the precincts that put  
6 me into that office were the precincts where our Latino and  
7 African Americans live.

8 Q. What we see here is that as you mentioned if turn out were  
9 equal or if every one turned out you would have to have in  
10 addition to Hispanic and black voting support, you would also  
11 have to have Anglos in order to win Senate District 10, right?

12 A. Yes, if turn out were equal.

13 JUDGE COLLYER: This is 2010 census data, however,  
14 right?

15 MR. HUGHES: Yes, yes.

16 JUDGE COLLYER: Okay.

17 BY MR. HUGHES:

18 Q. Now Senator Davis, I would like to move on.

19 You talked about in your direct testimony some  
20 communications that the State of Texas had with the Department  
21 of Justice about Senate District 10 in 2001.

22 Do you recall that aspect of your testimony?

23 A. Yes.

24 Q. Your counsel I think moved that exhibit into the record.

25 But I would like to look at that and see what the State of

1 Texas actually said?

2 A. Okay.

3 Q. We have actually put this on our exhibit list, it's  
4 Plaintiff's Exhibit 129. And if you look at the cover page it  
5 was actually the communication by the Legislative Redistricting  
6 Board to the Department of Justice, right?

7 A. Yes.

8 Q. And the Legislative Redistricting Board was involved with  
9 the maps in 2001, right?

10 A. Yes. It's considered dirty words around the Capitol.  
11 Nobody likes the Legislative Redistricting Board drawing their  
12 maps.

13 Q. And you didn't want the Legislative Redistricting Board  
14 drawing your maps?

15 A. Neither did my republican members.

16 Q. People on both sides of the aisle didn't want that, right?

17 A. Correct.

18 Q. If the maps hadn't passed in the regular session of the  
19 Senate, the Senate map or House map then automatically the  
20 Legislative Redistricting Board would have had to draw those  
21 maps?

22 A. Right.

23 Q. So there was an incentive to get the maps passed on both  
24 sides of the aisle during that compressed legislative session  
25 that you had earlier or last year, right?

1 A. There was. And as you saw from information that we have  
2 introduced into the record, the minority members of the  
3 democratic caucus in the Senate have indicated that they voted  
4 for in favor of the Senate map because they feared greatly what  
5 would happen to their districts if it went to the Legislative  
6 Redistricting Board though they entered a record into the  
7 formal Senate Journal of their expression that they were very  
8 much in opposition to what happened to Senate District 10, and  
9 they wanted to make sure and indicate when they voted in favor  
10 to protect their own District that they were not voting as an  
11 indication that they agreed with what happened in Senate  
12 District 10.

13 Q. You're talking about the idea that the Senate map passed  
14 29 to 2, right?

15 A. Correct.

16 Q. I'm glad you brought that up, I would like to talk with  
17 you about that in a minute.

18 Right now let's look at what the Texas Legislative  
19 Redistricting Board actually said to the Department of Justice.  
20 Let me put that up on the screen.

21 For the record, this is page 18 of the document, and I'll  
22 cull out and can you, let me move that, Senator Davis.

23 How's that?

24 A. Yes.

25 Q. So I'll read what the Legislative Redistricting Board



1 said. They said as a result, I'm starting a little above the  
2 highlighting: At least Districts 14, 15, 9 and 10 contain  
3 significant minority communities that essentially are kept  
4 intact within these districts. The voting strengths of these  
5 minority communities in the future will depend upon the  
6 cohesion within and between black and Hispanic voters and the  
7 ability of such voters to form coalitions with other racial or  
8 ethnic groups in support of their preferred candidates.

9 Do you see that?

10 A. Yes.

11 Q. That's what you were referring to in your direct  
12 testimony, right?

13 A. It is. But I also want to point out another piece of  
14 this.

15 Q. Sure.

16 A. The LRB Senate plan avoids unnecessarily fragmenting  
17 significant black or Hispanic insular communities.

18 They were defending and making sure to make a statement to  
19 the Justice Department that they had not fragmented significant  
20 minority communities and in defense of leaving those  
21 communities in place, they were pointing out that they would  
22 have the opportunity, that it certainly provided those  
23 communities in the future the ability to coalesce and to  
24 ultimately elect a candidate of their choice. That's how they  
25 defended that map.

1 Q. And the Senate you are referring to is in the box, that  
2 sentence that you are referring to is in the box I put up on  
3 the screen?

4 A. Yes.

5 Q. I want to move on and still talk about this concept of  
6 cohesion that's used here?

7 A. Yes.

8 Q. Cohesion is just a way of expressing the concept of  
9 different groups voting together for the same candidate,  
10 correct, right?

11 A. Correct.

12 Q. I want to talk about cohesion in the context of primary  
13 elections. You were here for a discussion about that  
14 yesterday, right?

15 A. Yes.

16 Q. Because you ran unopposed in the primary, right?

17 A. That's right.

18 Q. So we don't have any information about whether Hispanics  
19 and African Americans would have voted together for you in a  
20 primary say if you had been opposed by a Hispanic democrat  
21 opponent or a black opponent in the primary, we don't have any  
22 information about that?

23 A. Well, the information that I have is that the leaders of  
24 those communities came together and asked me to run for that  
25 seat, and indicated to me that they were behind me 100 percent

1 and that their communities were with me 100 percent.

2 Q. What I mean is we don't have any information about what  
3 voters would do, would have done in that election had you been  
4 opposed, right?

5 A. Right.

6 Q. Now would you agree with me just hypothetically speaking  
7 let's say there's a democrat primary election, and there is,  
8 there are two candidates, one is the Hispanic candidate of  
9 choice, and one is the black voters candidate of choice, you  
10 have that in mind?

11 A. Yes.

12 Q. And the population of the relevant district is, let's say  
13 it's 25 percent black voters, 25 percent Hispanic voters, 50  
14 percent Anglo voters, all right?

15 A. Okay.

16 Q. If in that democratic primary election all of the Hispanic  
17 voters vote for the Hispanic candidate of choice and all of the  
18 black voters vote for the black candidate of choice, but all of  
19 the Anglo voters say, form a coalition with the Hispanic voters  
20 to elect the Hispanic candidate of choice and defeat the black  
21 candidate of choice in that example, the black candidate of  
22 choice has not been elected. Right?

23 A. That's right.

24 Q. And if you flipped it around and the Anglos joined up with  
25 the black voters, the same thing would be true for the Hispanic

1 candidate of choice, right?

2 A. That is a correct hypothetical but it's not at all an  
3 indication or a reflection of Tarrant County or North Texas and  
4 as you heard testimony earlier this week, the communities of  
5 North Texas, the Latino and African American communities who  
6 have historically been unrepresented, understood that only by  
7 working together were they going to have representation of the  
8 things that they and their families care about, and they have  
9 uniformly worked together to make that happen historically.

10 Q. I want to look at primary election results from Tarrant  
11 County with you, okay?

12 A. Okay.

13 Q. Let's look at Plaintiff's Exhibit P 135. You see this as  
14 the Secretary of State's data about 2008 Democrat Party primary  
15 elections, right?

16 A. Right.

17 Q. If you flip over to the last page of that, let me see if I  
18 can cull it out and get it out from amongst the squiggly lines.

19 You see the, what happened in your district in the  
20 democratic primary for president, right?

21 A. Yes.

22 Q. You see that, see that then Senator Clinton got 49 percent  
23 of the votes, and now then Senator, now President Obama -- I'm  
24 sorry, 41 percent -- thank you, Mr. Hebert. And now President  
25 Obama got 57 percent of the vote?

1 A. Yes.

2 Q. Do you know which of those candidates was the black  
3 voters' candidate of choice?

4 A. I don't know.

5 Q. And you don't know which one of those was the Hispanic  
6 candidate of choice?

7 A. I do not know that for a fact.

8 Q. But if for example, they were different, if let's say the  
9 Hispanic candidate of choice was Senator Clinton, and the black  
10 voter's candidate of choice was then Senator Obama in your  
11 district the Hispanic candidate of choice would have lost in  
12 that, in those results, right?

13 A. That's a hypothetical.

14 Q. But true, those assumptions are true?

15 A. If that were true, that's correct.

16 Q. You're a party in this case obviously and therefore, you  
17 have access to the documents that have been produced in this  
18 case, right?

19 A. Yes.

20 Q. And have you looked at before you came to testify today  
21 the racially polarized voting analysis produced by the Texas  
22 Attorney General's Office that shows the results of the  
23 statistical analysis of whether Hispanics, blacks and Anglos  
24 voted cohesively in contested democratic primaries in Senate  
25 District 10, have you look at that?

1 A. No.

2 Q. I would like to talk away from this, and talk about your  
3 district and the political nature of your district.

4 When you first decided to run for Senate District 10, the  
5 political character of Senate District 10 was that it was a  
6 majority republican performing district, right?

7 A. Yes.

8 Q. And prior to 2008, as you've already testified, Senator  
9 Brimer, he was the representative and he was a republican,  
10 right?

11 A. Correct.

12 Q. I would like to look at with you some election data for  
13 Senate District 10 including the results of your own election  
14 in which I know you're familiar with, right?

15 A. Yes.

16 Q. Okay. I'd like to look at Plaintiff's Exhibit 21. Can  
17 you see at the top of this, Senator Davis, where we have  
18 another report where it says Senate District's Plan 100 2008  
19 general election.

20 Do you see that?

21 A. Yes.

22 Q. Still working through the squiggly lines.

23 You can see your race right here, correct?

24 A. Yes.

25 Q. Over here we have the results of your race reported,

1 correct?

2 A. Yes.

3 Q. So you received 147,832 votes, correct?

4 A. Yes.

5 Q. And Senator Brimer received and that, so you didn't even  
6 receive 50 percent of the vote, right?

7 A. 49.9.

8 Q. And Senator Brimer received 140,737 votes, right?

9 A. Correct.

10 Q. So you got about 7,100 votes more than Senator Brimer,  
11 right?

12 A. Correct.

13 Q. And I guess in Texas libertarians are somewhat popular,  
14 that's this other candidate Cross, right?

15 A. Right.

16 Q. And Cross actually got more votes than your margin of  
17 victory over Senator Brimer?

18 A. That's correct.

19 Q. I would like to look at some other election results within  
20 your district during the same election cycle, so we can kind of  
21 go up the page here.

22 In this same election cycle in your district, Senator  
23 McCain received more votes than Senator Obama received in the  
24 presidential election, right?

25 A. Correct.

1 Q. And for U.S. Senate, Senator Cornyn, received more votes  
2 than his democrat opponent, correct?

3 A. Correct.

4 Q. I know there are congressional races reported here, but  
5 that wouldn't necessarily reflect the votes of, some of those  
6 votes would go out of District 10, right?

7 A. Yes.

8 Q. So I'm going to look at other statewide elections in your  
9 district, the Railroad Commissioner is a statewide election,  
10 right?

11 A. Yep.

12 Q. And the republican prevailed in the Railroad Commissioner  
13 election, in the 2008 election cycle, right?

14 A. Yes.

15 Q. So did the Supreme Court Chief Justice, right?

16 A. Yes.

17 Q. And all of these other statewide elections that we're  
18 seeing here, the different Supreme Court races, the Criminal  
19 Court of Appeals races, and every one of those the republican  
20 won, right?

21 A. Yes.

22 Q. So in every, so the data that we have for the voters in  
23 Senate District 10 they picked and in the 2008 election cycle  
24 they picked the republican candidate over the democrat in every  
25 single race where all of the voters of Senate District 10 are



1 tabulated except for yours?

2 A. Yes, and there's a very good reason for that.

3 Q. I'd like to get to that reason?

4 A. May I give you my belief about what that reason is?

5 Q. Sure, yes?

6 A. Those candidates, those democratic candidates in each of  
7 the races that you just mentioned had no presence, no field  
8 operations and spent very, very little, if any, money in  
9 Tarrant County.

10 Their strategies either were to completely disregard Texas  
11 as President Obama did because he knew it was a complete lost  
12 cause and waste of precious resources in his presidential  
13 election or to only concentrate on areas where there was a much  
14 stronger bet that they would be able to achieve their goals and  
15 Tarrant County was completely ignored by those democratic  
16 candidates.

17 Q. I just want to make sure is your testimony that all of the  
18 statewide elected republican officials that we're looking at  
19 the railroad commissioner and so forth just ignored Tarrant  
20 County?

21 A. My testimony is that the democratic candidates wrote it  
22 off and didn't spend time or resources there.

23 And I did, and if as Representative Veasey explained to  
24 you, if you look at what happened in the minority House  
25 Districts that are within the Senate district that I represent,

1 the turn out there was greater for me in that election than it  
2 was for even President Obama.

3 Q. Senator Davis, I'd like to now talk about the race that  
4 you ran against Senator Brimer, okay?

5 A. And you know what, that race, that's the race that  
6 matters. That's the race that truly indicates how this  
7 district performs as a Senate District, and what the minority  
8 community is capable of achieving when it coalesces to elect a  
9 candidate of their choice.

10 Q. Right, let's talk about that now.

11 So you ran against Senator Brimer, and I think you  
12 testified you made the decision to run some time in 2007, is  
13 that right?

14 A. Yes.

15 Q. And you are familiar with the blog called The Lone Star  
16 Project, right?

17 A. Yes.

18 Q. And you followed the postings on The Lone Star Project off  
19 and on during your race against Senator Brimer, right?

20 A. Yes.

21 Q. I would like to look and see what The Lone Star Project  
22 reported about the strength of Senator Brimer in 2007. I'll  
23 turn to Plaintiff's Exhibit 106. This is a posting on The Lone  
24 Star Project, right?

25 A. Yes.

1 Q. And there's a little squiggly, but if we look at the top  
2 it's an August 8, 2007 blog entry, right?

3 A. Yes.

4 Q. You see where The Lone Star Project reports a recent Lone  
5 Star Project poll reveals that a republican State Senator Ken  
6 Brimer has squandered almost 20 years in public office to  
7 remain largely unknown in his own backyard. With little to  
8 show for time in Austin other than negative press accounts  
9 detailing questionable ethics, Brimer is clearly vulnerable to  
10 an adequately funded main stream challenger. Without question,  
11 Tarrant County activist currently is considering a challenge to  
12 Brimer are on solid ground.

13 The Lone Star Project commissioned the respected polling  
14 firm Opinion Analysis to conduct a survey of the Texas Senate  
15 District 10 to help determine the viability of a challenge to  
16 incumbent State Senator Kim Brimer, the poll confirms earlier  
17 Lone Star Project voting analysis indicating underlying  
18 strength for a democrat challenger and surprising weakness by  
19 the incumbent Brimer.

20 Do you see that?

21 A. Yes.

22 Q. And that's what The Lone Star Project is reporting about  
23 the quality of the candidate that you ran against in that 2008  
24 election, correct?

25 A. Yes. And this was a candidate again who was incredibly

1 well funded. He spent almost three million dollars in that  
2 campaign. He ran an unprecedented amount of television adds.  
3 He had the endorsement of every mayor and the endorsement of  
4 police and fire unions, and had mayors appearing in television  
5 commercials with him endorsing him.

6 So he certainly took the opportunity if this poll was  
7 correct that people didn't really know who he was to make sure  
8 that they knew who he was and that he had the endorsement of  
9 every single mayor of the cities that they lived in during the  
10 campaign.

11 JUDGE HOWELL: Is The Lone Star Project an on line  
12 news organization or what exactly is The Lone Star Project?

13 THE WITNESS: My understanding of The Lone Star  
14 Project is that this is part of what was formally the  
15 Democratic Trust. It was an offshoot of that.

16 And it is a blog that posts information obviously  
17 partisan information in an attempt to achieve goals for the  
18 Democratic Party.

19 BY MR. HUGHES:

20 Q. Now the entry shown here, Senator Davis, talked about some  
21 questionable ethics of Senator Brimer. During the election  
22 cycle between you, yourself and Senator Brimer there were  
23 allegations that he had misused campaign money in connection  
24 with a condominium in Austin that was allegedly owned by his  
25 wife, right?

1 A. That's right. And that information about him actually had  
2 been revealed when he was elected in '04. It was part of a  
3 House campaign in Arlington where that information was exposed  
4 about a House member that lived in Arlington, and what was made  
5 known very publicly was that the bill that allowed them the  
6 opportunity to do that to use campaign funds to purchase real  
7 estate by putting the real estate in the name of their spouses  
8 rather than their own names could be legal.

9 Senator Brimer created that loophole and it was known as  
10 the Brimer Bill and the Brimer law. Previously the ethics  
11 commission had said that it was unethical for members to use  
12 their campaign funds to purchase real estate in their name and  
13 so he created a bill that was a loophole, okay, I'll put it in  
14 my wife's name, but that information was known about him and  
15 made public about him in 2004 and yet he won.

16 Q. And it was made public in Plaintiff's Exhibit 108 Fort  
17 Worth Star Telegram on April 8th, 2008, correct?

18 A. Yes.

19 Q. So it was an issue in the election cycle between you and  
20 Senator Brimer, correct?

21 A. Correct.

22 Q. And you agreed the fact that the story about Senator  
23 Brimer's misuse of campaign money came out would help you  
24 politically, right?

25 A. I absolutely did.

1 And one of the things that I believed was that the minority  
2 community that I was working hard to activate would be very  
3 upset to know that the person who was representing them was  
4 doing things like this.

5 Q. Now --

6 A. And they were.

7 Q. -- Senator Davis, I want to transition briefly and just  
8 ask you one quick question about Fort Worth, so a little  
9 geography lesson.

10 I'm going to cull out Plaintiff's Exhibit 118. This is an  
11 image of the District Viewer of the map that was enacted by the  
12 legislature including your Senate District 10.

13 Do you see that?

14 A. Yes.

15 JUDGE COLLYER: So this is S, what is the number for  
16 the one that was adopted?

17 MR. HUGHES: It's 148, Your Honor.

18 JUDGE COLLYER: Thank you.

19 BY MR. HUGHES:

20 Q. Just to be clear, the district, Senate District 10 in the  
21 enacted plan is entirely contained within Tarrant County,  
22 correct?

23 A. Correct.

24 Q. And we've heard some testimony before that the City of  
25 Fort Worth is kind of largely contained within this highway,

1 kind of beltway here is that -- would you --

2 A. Well, not really. I-35 which is the line that goes down  
3 the center there's some black lines on it already. I'm drawing  
4 it again.

5 To the west of that is primarily the City of Fort Worth.  
6 To the east of that is primarily other cities as you can see  
7 here Haltcom City, Richland Hills right here up, Hurst,  
8 Bedford, Colleyville.

9 Q. I just want to make clear parts of Fort Worth are in the  
10 enacted plan in your district?

11 A. That's right.

12 Q. I want to talk about the process of redistricting. Before  
13 I do, I want to make sure that you agree with me that there are  
14 issues that come up in the Texas Senate where there is deeply  
15 partisan issues where people on different sides of the aisle  
16 can't get together and agree, right?

17 A. Correct.

18 Q. I think you mentioned one of those was Sanctuary Cities.  
19 There were others during the recent term of the Stock Graham  
20 Bill --

21 A. There were.

22 Q. -- school finance, the budget and so forth, correct?

23 A. Correct.

24 Q. So redistricting doesn't have a special monopoly on  
25 partisanship, right?

1 A. It doesn't, but unfortunately on all of those issues it  
2 brings out the worst of the members.

3 Q. Everybody is trying to protect their district, right?

4 A. Yes.

5 They are trying to protect -- some are trying to protect  
6 their unpolitical interests, some of trying to protect the  
7 people that they represent.

8 Q. Senator Davis, you agree that we've already talked about  
9 the idea, no one wanted this to go to the LRB which meant that  
10 a plan had to pass during the regular session, and in order for  
11 a plan to pass that plan had to have a sufficient number of  
12 votes to pass?

13 A. That's correct.

14 Q. And in the Senate, Texas Senate I guess somewhat akin to  
15 the U.S. Senate there's a rule that unless there are two-thirds  
16 of the Senators that support a bill, you need two-thirds to get  
17 a bill through. Is that a simple shorthand way of describing  
18 it?

19 A. You need two-thirds to put a bill up on the floor for  
20 consideration, although there are ways to get around that, and  
21 those procedural gimmicks, for lack of a better word, were used  
22 to move forward some of the more controversial bills in  
23 session.

24 Q. But not redistricting, right?

25 A. Correct.



1 Q. So redistricting had or at least it got two-thirds of  
2 support and was able to move forward in a normal fashion where  
3 some of these other more controversial items your testimony is  
4 that the procedural gimmicks had to be employed to move those  
5 forward?

6 A. It was impossible to employ one of those procedures to do  
7 this on this particular one because of where it came up in the  
8 calendar. So yes, this one did require two-thirds.

9 Q. So that in all likelihood meant that Senator Seliger he  
10 was the chair of the Redistricting Committee and he would be  
11 the one kind of responsible to make sure he had the vote to  
12 both get the map through this procedural process so that it  
13 could go to the floor for a debate and then to pass once the  
14 vote was up, right?

15 A. Yes.

16 Q. And so in order to do that in all likelihood, he would  
17 need all of the republican members of the Texas Senate to  
18 support the map, correct?

19 A. Yes. All 19 republican members.

20 Q. And without those, without republican support for his map  
21 he couldn't get it out of committee or to the floor for a vote,  
22 correct?

23 A. Correct.

24 Q. But he also needed because the republicans didn't have  
25 two-thirds of the Senate. They had 19 of 31 and 21 of 31 by my

1 math is two-thirds, right?

2 A. Correct.

3 Q. So he also had to get some democrats to support the plan  
4 in order for it to pass, correct?

5 A. Correct.

6 Q. And you talked about how the process worked when some,  
7 when some members were shown their maps and kind of the  
8 sequence that that occurred in, right?

9 A. Yes.

10 Q. And your testimony was that members that represent I think  
11 you said Anglo districts, they got to see their maps earlier in  
12 that process?

13 A. Most of them did, yes.

14 Q. And all of those I think you testified are republicans,  
15 correct?

16 A. Yes.

17 Q. Then after that you testified that, that member or  
18 Senators that represented the districts that had more minority  
19 voters, they got to see their maps later in the process, right?

20 A. Yes.

21 Q. And those, all of those Senators were democrats, right?

22 A. Yes.

23 Q. And in the Senate seniority matters, right, that's  
24 relevant to whether you could be a chairman and other things,  
25 correct?

1 A. It depends on who is in the Lieutenant Governor's chair  
2 whether that matters, but we respect the senior members of our  
3 Senate body, of course.

4 Q. And you are one of the more junior members of the  
5 democrat, of the democrats in the Senate, correct?

6 A. Yes, I am.

7 Q. And your testimony is that you got to see your map at the  
8 very end?

9 A. Are you suggesting that minority community deserves to be  
10 ignored because I'm a junior member of the Senate?

11 Q. Senator, with respect, if you could focus on my questions.  
12 If your counsel wants to redirect you.

13 I'm just asking you, you are one of the more junior members  
14 of the delegation, and you got to see your map at the end?

15 A. Yes, two days before the hearing.

16 Q. The map passed 29 to 2?

17 A. Yes.

18 Q. And the map would have passed at 28 to 3, correct?

19 A. Yes.

20 Q. 27 to 4, right?

21 A. Yes.

22 Q. We can keep doing this math?

23 A. All the way down to 21.

24 Q. All the way down to just a bare majority?

25 A. That's absolutely right.

1 Q. You testified that it needed two-thirds to get to the  
2 floor, but once it got to the floor every single democrat could  
3 have voted against the Senate map and it still would have  
4 passed and it still would have avoided the LRB, right?

5 A. Yes.

6 Let me explain to you how things work in the Texas Senate  
7 with, Mr. Hughes.

8 Q. Senator, that's not my question and you can be redirected.  
9 I'd like to move on.

10 Now the, you've talked about the hearings that started in  
11 2010 and moving forward, correct?

12 A. Yes.

13 Q. And in 2010 you had some input or at least you had a staff  
14 member come and talk to one of these, one of these public  
15 hearings about your concerns about your district, right?

16 A. I did and of course, it was prior to the census, so no  
17 maps had yet been drawn and there was nothing really concrete  
18 to communicate about.

19 We had to communicate in the abstract in terms of what we  
20 hoped would happen in, to respect the communities that I  
21 represent. But there was never after that, and it was very  
22 unique from my understanding talking to more senior respected  
23 members of the Senate body, it was very unique in redistricting  
24 that there wasn't then a subsequent process after the census  
25 numbers came out to once again go out into the communities with

1 proposed draft maps for the communities to give their input on.

2       Instead once again, as I testified on direct, the map did  
3 not, the map was not shared with the community of the State of  
4 Texas until about 24 and a half hours prior to it being heard  
5 in committee. There was no input by the community on the draft  
6 plans.

7 Q.   Now Senator, you're talking about the May 12, 2011  
8 committee hearing. That's a hearing where public input and  
9 testimony was taken about the proposed Senate map, correct?

10 A.   Correct.

11 Q.   And you testified that there was short notice for that  
12 hearing, but nevertheless, a number of witnesses were able to  
13 attend that public hearing and testify during that hearing  
14 about the proposed map including about Senate District 10,  
15 correct?

16 A.   Yes, they were.

17 Q.   I'd like to show you Plaintiff's Exhibit 124. And this is  
18 a list of -- you were shown this during your deposition, right?

19 A.   Yes.

20 Q.   And this is a list of witnesses at that hearing, correct?

21 A.   Yes.

22 Q.   And every one with a check mark on it or next to it is a  
23 witness that testified during that hearing concerning Senate  
24 District 10, correct?

25 A.   Correct.

1 Q. I'd like to turn to, you talked about I think a committee  
2 hearing the next day, Senator, where you --

3 JUDGE COLLYER: Could you just leave that up a  
4 minute?

5 MR. HUGHES: Oh, sure.

6 JUDGE COLLYER: Thank you.

7 THE WITNESS: May I make a correction to this? I  
8 should have also put a check mark next to Rene Lara's name.

9 BY MR. HUGHES:

10 Q. Okay, right?

11 A. He testified against Senate District 10 map although he  
12 lives in Austin.

13 Q. Right there?

14 A. Yes.

15 MR. HUGHES: Your Honor, do you want me to move it so  
16 you can see it better?

17 JUDGE COLLYER: If you could just move it up a  
18 little.

19 You can go on with your questioning. I just wanted to  
20 take a minute to take a look at it.

21 MR. HUGHES: How's that?

22 JUDGE COLLYER: That's the best you can do.

23 Thank you.

24 MR. HUGHES: Sure.

25 BY MR. HUGHES:

1 Q. Senator, the next day on the 13th of May, there was  
2 another Senate Redistricting Committee hearing and during that  
3 hearing you offered, you through Senator Zaffirini offered two  
4 proposed amendments to the Senate plan, right?

5 A. Yes, I did.

6 Q. The rule was that you had to be a member of the committee  
7 to actually offer the amendment, but were you were allowed to,  
8 of course, come to that?

9 A. And explain it.

10 Q. Come and explain and you did so?

11 A. Yes.

12 Q. Neither of those amendments proposed keeping Senate  
13 District 10 the same way that it is now in benchmark, correct?

14 A. That's correct.

15 Q. Now let's look at just for context Plaintiff's Exhibit  
16 113. And this is the current plan the Senate District 10 down  
17 here. This is the --

18 A. The benchmark plan.

19 Q. This is the district that you represent now, right?

20 A. Correct.

21 Q. I want to just explore how the shape of what --

22 JUDGE COLLYER: So this is Senate 100?

23 MR. HUGHES: This is Senate 100, Your Honor.

24 BY MR. HUGHES:

25 Q. I would like to explore how the shape of this and the

1 demographic information of this Senate District which we've  
2 already explored compares to what you proposed.

3 So back to the committee hearing I would like to first look  
4 at the transcript of that hearing that concerns the first  
5 amendment that you offered, okay?

6 A. Okay.

7 Q. There are transcripts of all of these hearings, right?

8 A. Of course.

9 Q. Let's look at Plaintiff's Exhibit 41. This is statements  
10 by Senator Zaffirini concerning Plan 120 which was the plan  
11 concerning the first amendment that you offered in this May 13  
12 Redistricting Committee hearing, correct?

13 A. Yes.

14 Q. And then if we look down below to the area I have  
15 highlighted in yellow Senator Zaffirini describes what some  
16 demographic information about this proposed Senate District,  
17 correct?

18 A. Yes.

19 Q. And geographic information as well, right?

20 A. Uh-hmm.

21 Q. I'll just read that.

22 The proposed Senate District 10 unites the minority  
23 population in Fort Worth, Arlington and Grand Prairie in  
24 Tarrant County and includes a small portion of Southwest Dallas  
25 County to create a district that is only 19.9 percent Anglo,



1 and 24.5 percent Anglo voting age population?

2 A. Yes.

3 Q. The district has a combined black and Hispanic voting age  
4 population of 71.2 with 46.1 percent Hispanic and 25.7 percent  
5 black.

6 Do you see that?

7 A. Yes.

8 Q. And that's an accurate description of the demographic  
9 makeup of that proposed Senate district, correct?

10 A. It is and it was our, it was our work to try to  
11 demonstrate that an opportunity district could have been  
12 created under Section 2. We wanted to demonstrate to the  
13 Senate that that was possible and had not been chosen as an  
14 alternative.

15 Q. And this Senate district of course has very different  
16 demographics with respect to voting age population than the  
17 Senate district that you represent now, right?

18 A. Yes.

19 Q. And as we saw before when citizen voting age population is  
20 taken into account your current district is over 60 percent  
21 Anglo and here we have a district that's 24.35 percent,  
22 correct?

23 A. Yes.

24 Q. I'd like to look at what Plan 120 looked like so I'll show  
25 Plaintiff's Exhibit 113. So this is, Your Honor, this is Plan

1 120, Plaintiff's Exhibit 113. I'll blow up.

2 Can you see that through the squiggly lines, Senator?

3 A. Yes, I do.

4 Q. What we have, you see where the 10 is here next to the  
5 interstate symbol?

6 A. Yes.

7 Q. So the proposed Senate District 10, the first amendment  
8 you proposed in committee, the shape of it is this green shape  
9 that starts in Tarrant County, and kind of goes north into a  
10 thin bottle neck and then splits out into two branches into  
11 Dallas, correct?

12 A. Yes.

13 JUDGE COLLYER: I need an exhibit number.

14 MR. HUGHES: Plaintiff's Exhibit 13, second page,  
15 Your Honor.

16 JUDGE COLLYER: Oh, second page. Sorry.

17 MR. HUGHES: Yes, I put them together for the Court's  
18 convenience.

19 JUDGE COLLYER: Thank you.

20 BY MR. HUGHES:

21 Q. Now let's talk about your second amendment, and your  
22 second amendment was Plan 121, right?

23 A. I'm sorry, I don't remember the plans by number but if you  
24 say that I will respect that that's correct.

25 Q. We can look at the committee hearing transcript quickly.

1 And Senator Zaffirini --

2 A. Yes, I see that.

3 Q. -- testified about the next amendment is 121, correct?

4 A. Yes.

5 Q. And then if we look further in the transcript I think you  
6 actually were able to testify about or speak about this during  
7 the hearing, this particular amendment?

8 A. Yes.

9 Q. And I want to turn to that now.

10 MR. HUGHES: This is all within Plaintiff's Exhibit  
11 41, Your Honor.

12 JUDGE COLLYER: I see that, thank you.

13 BY MR. HUGHES:

14 Q. This is where you testify about, about Plan 121, correct?

15 A. Correct.

16 Q. And included in your testimony is a description of the  
17 demographic break down of what would be in proposed Plan 121,  
18 correct?

19 A. Yes.

20 Q. And you say in the highlighted portion, I'll just read  
21 from: The proposed District 10 unites the minority population  
22 in Fort Worth, Arlington and Grand Prairie in Tarrant County to  
23 create a District 10 that is only 30.6 Anglo and 36.2 percent  
24 Anglo voting age population. The district has a combined black  
25 and Hispanic voting age population of 57.8 percent with a 34.4

1 percent voting age population and 24 percent black voting age  
2 population.

3 That's an accurate description of the demographics in the  
4 other proposed District 10 that you proposed, correct?

5 A. That's right. We proposed one, this one that accomplished  
6 two of the goals that we had originally expressed to Senator  
7 Seliger.

8 One, that the district remain entirely intact within  
9 Tarrant County and of course, much more importantly, that the  
10 minority makeup of the district be respected and this of course  
11 was an opportunity to even strengthen that.

12 The other was one that demonstrated that there was an  
13 opportunity to create a CVAP minority majority district under  
14 Section 2 so that the Senate could see that that opportunity  
15 had not been taken advantage of.

16 Q. And again, you didn't sponsor an amendment just to take  
17 Senate District 10 and keep it just like it is now, right?

18 A. I did not, but as you know, the San Antonio Court ruled  
19 out for the interim and I'm very happy that they did. If that  
20 goes forward because the entire minority community of Senate  
21 District 10 remains intact and will have the opportunity and I  
22 believe they will once again, elect the candidate of their  
23 choice.

24 Q. And that's a race that is drawing considerable attention  
25 from both sides money pouring in I think it's been reported in

1 the political media for both you and potential republican  
2 challenger?

3 A. Yes.

4 Q. I think the New York times has described that as the Court  
5 drawn Senate District 10 as moderately republican, right?

6 A. Yes. The district in between 2000 and 2010 grew by about  
7 a 170,000 people. That growth was entirely within the minority  
8 population primarily the black and Latino population. The  
9 Anglo population actually diminished in the district fairly  
10 significantly.

11 We're two years past that data now and so for that election  
12 we believe that there is once again going to be the absolute  
13 ability and opportunity for the African American and Latino  
14 communities combined with other minority in Senate District 10  
15 to elect their candidate of choice.

16 Q. My question was you agree with me that the New York Times  
17 after the San Antonio Court redrew Senate District 10 described  
18 it as moderately republican? That's correct?

19 A. Looking at the 2010 census numbers, yes, that's what they  
20 said.

21 Q. Last subject. Both of the amendments that you sponsored  
22 for Senate District 10 were specifically drawn to include more  
23 black and Hispanic voters in those respective districts,  
24 correct?

25 A. Correct.

1 Q. And that you had that in mind looking for black and  
2 Hispanic voters when those districts were drawn, correct?

3 A. What I was doing was looking to create opportunities for  
4 communities of interest to be coalesced into a district that  
5 would be reflective of the things that they uniformly care  
6 about.

7 And I knew from working in the past two Legislative  
8 sessions both in the first map that I demonstrated and in the  
9 second map that was introduced, the section we'll call the  
10 first one the Section 2 demonstration map, we'll call the  
11 second one the Tarrant County only map.

12 I knew from working with those communities that their  
13 interests were absolutely consistent in terms of the important  
14 issues that were coming before the Texas legislature because  
15 they were working together and they were coming to the  
16 legislature. They were working with me and they were working  
17 with Senator West in Dallas on issues of importance to them.  
18 Whether it was voter ID, whether it was payday lending, whether  
19 it was sanctuary cities, whether it was making sure that the  
20 public schools were properly funded, and all of these were  
21 areas in urban communities.

22 Keep in mind that the map that the legislature passed was  
23 not a map that reflects communities of interests joined  
24 together. It's the suburban areas of Fort Worth joined now  
25 with what's known as the mid cities. So you've got an urban

1 school district now of Fort Worth. We have two different kinds  
2 of school districts in Texas. We have those that receive extra  
3 support from what are considered the rich property wealthy  
4 school districts, those are the urban Districts and we have  
5 those that do not because they have to actually share their  
6 resources because their property tax is able to garner more  
7 revenues for their school districts.

8 The District that was drawn by the republican legislature  
9 has now combined two communities who have adverse interests in  
10 public school funding. And in fact, there are Court battles  
11 going on right now about whether that equitable sharing of  
12 wealth is something that should be continued. So they have  
13 joined adverse communities.

14 What I was trying to do was join urban communities together  
15 where they had absolutely and consistently demonstrated that  
16 the things that they care about were uniform.

17 Q. And as we can see from the testimony given in the Senate  
18 Redistricting Committee, the two amendments that you sponsored  
19 those maps were drawn specifically and purposely to include  
20 more Hispanic and black voters than the district that you  
21 represent now, correct?

22 A. That's absolutely correct because this session there was  
23 an on slot against African Americans and Latinos in the Texas  
24 legislature. And I think to the extent that we have the  
25 opportunity to join groups together so that they have a unified

1 voice in the Texas Senate, it's our obligation to do so.

2 Q. Thank you, Senator Davis.

3 MR. HUGHES: I have no further questions.

4 JUDGE COLLYER: Thank you, sir.

5 We have two minutes before the break. Would you have  
6 any redirect?

7 MR. HEBERT: Yes, Your Honor, and it's less than two  
8 minutes.

9 JUDGE COLLYER: Oh, good.

10 REDIRECT EXAMINATION

11 BY MR. HEBERT:

12 Q. I wanted to give Senator Davis the opportunity to complete  
13 an answer she started in cross examination when you were asked  
14 by Mr. Hughes about the bill, the plan could have passed with  
15 a, with no democrat voting in favor of it.

16 Do you remember that testimony?

17 A. Yes, I do.

18 Q. And you started to say let me tell you how things work in  
19 the Texas Senate.

20 Do you remember that?

21 A. Yes.

22 Q. What were you going to complete?

23 A. The Texas Senate operates under a system of reward and  
24 punishment. It doesn't necessarily have to be simply reward  
25 and punishment contained within the context of that particular



1 bill.

2       Instead, reward and punishment is carried out not only  
3 throughout that Legislative session in terms of the ability for  
4 Senators to pass legislation that's important to them, but it  
5 carries into future sessions as well.

6       Committee chairmanships are a system of that reward.  
7 Committee appointments are a system of that reward and I  
8 certainly understood from what my colleagues were dealing with  
9 that they were being pressured in terms of what the outcome  
10 would be if they weren't supportive of this map.

11       Again, they were all more than anything concerned about  
12 making sure that the LRB didn't have its hands in redrawing  
13 their districts.

14 Q.    The vote to take the bill and get it to floor required 21  
15 votes, correct?

16 A.    Correct.

17 Q.    And the people who voted in favor of bringing it to the  
18 floor, were you testifying that those people supported the plan  
19 as drawn by the Republicans Anglos?

20 A.    Absolutely not. In fact, they entered a journal entry not  
21 only describing their displeasure with the plan, but the  
22 displeasure with the process that incurred throughout the  
23 session excluding the opportunity for members who represented  
24 minority majority districts to be a part the process.

25 Q.    In response to the Court yesterday a witness was asked

1 this question. I want to ask you it to you since you're on the  
2 stand.

3 How many districts in the benchmark Senate map are ability  
4 to elect districts for minorities?

5 A. Twelve.

6 Q. How many under the enacted map by the Texas Legislature?

7 A. Eleven.

8 Q. The one that's been taken away?

9 A. District 10.

10 MR. HEBERT: Thank you. No further questions.

11 JUDGE COLLYER: Thank you.

12 THE WITNESS: Thank you, Your Honors.

13 JUDGE COLLYER: All right, the Court will take a  
14 break right now for 15 minutes.

15 (Witness excused.)

16 (Morning recess @ 10:15 am.)

17 (Proceedings resumed at 10:30 a.m.)

18 JUDGE COLLYER: Yes, sir.

19 MR. MORTARA: Your Honor, Adam Mortara for the State  
20 of Texas. As the Court may be aware, we recently received the  
21 opinion from the Supreme Court in the other matter.

22 JUDGE COLLYER: Yes, we did hear that.

23 MR. MORTARA: We are all currently digesting it.

24 JUDGE COLLYER: Yes.

25 MR. MORTARA: But we have received no order yet from

1 the San Antonio Court, but since the next witness is unlikely  
2 to take very long; correct?

3 MR. DUNN: That's true.

4 MR. MORTARA: And we have very limited cross, we'll  
5 probably spend the rest of the morning collecting our thoughts,  
6 and then come back to you in the afternoon with thoughts on  
7 how, if in any way, it affects this proceeding.

8 JUDGE COLLYER: All right, that sounds fine to me.  
9 Does that sound fine to you?

10 JUDGE HOWELL: Sure.

11 JUDGE COLLYER: From this squib that I saw, read, I'm  
12 not sure that it will have an impact, but we'll see.

13 JUDGE HOWELL: We may not have much to say.

14 JUDGE COLLYER: Right.

15 MR. DUNN: In my brief review, it seemed to me it  
16 didn't change much in terms of what needed to happen in these  
17 two weeks, but I suppose digestion's appropriate.

18 JUDGE COLLYER: But maybe it means that we don't have  
19 to -- we're not in a race with the Supreme Court to get our  
20 decision out first or second.

21 MR. MORTARA: It almost certainly means that, Your  
22 Honor.

23 MR. DUNN: For the record, my name is Chad Dunn on  
24 behalf of the Davis defendant intervenors. And we now call  
25 Senator Rodney Ellis.

1 THE DEPUTY CLERK: Please remain standing and raise  
2 your right hand.

3 **RODNEY ELLIS, DEFENDANT INTERVENOR WITNESS, SWORN**

4 THE DEPUTY CLERK: You may be seated.

5 THE WITNESS: Thank you.

6 DIRECT EXAMINATION

7 BY MR. DUNN:

8 Q. Please state your name, sir.

9 A. I'm Rodney Ellis.

10 Q. Would you introduce yourself to the Court, please?

11 A. I'm a lawyer, a member of the Texas State Senate for 22  
12 years. I served on the Houston City Council for six years.

13 Q. Can you give us the benefit of your educational  
14 background?

15 A. I have attended Xavier of New Orleans, Texas Southern  
16 University of Houston to get a bachelor's and master's degree  
17 from the LBJ School of Public Affairs, a law degree from the  
18 University of Texas.

19 Q. And for our record, sir, could you identify your race?

20 A. I'm African-American.

21 Q. Walk us through, if you wouldn't mind, your political  
22 experience from when you were a young man until now.

23 A. It's all I've done, from being student body president to  
24 sophomore class president to working for the Lieutenant  
25 Governor of Texas while I was in grad school and law school,

1 probably more than I was in school. Working for the late  
2 Congressman Mickey Leland, traveling all around the country and  
3 around the state. It's pretty much all I have done throughout  
4 my life.

5 Q. You've been elected to the Texas Senate since when?

6 A. 1990.

7 Q. Your district's in the Houston area; is that true?

8 A. It is in Houston.

9 Q. Over these 30 or so years of experience you have with the  
10 Texas Senate, have you been involved in redistricting?

11 A. I've been involved in each redistricting process.

12 Q. How would you describe redistricting, create the outcomes  
13 for members, what does it turn the membership of the  
14 legislature into?

15 A. Well, it tends to bring out the worst in us. But, I mean,  
16 it's probably the single most important thing we do once a  
17 decade, because it determines what the balance of power will be  
18 in the legislature.

19 Q. We're going to get to the details here on some of these  
20 districts in a minute. But in your experience over these last  
21 many decades, when a district would start to perform for the  
22 minority community later in the decade, what would the  
23 legislature in Texas typically do to that district?

24 A. They would either crack it or pack it, depending on  
25 generally what it would do to have a negative impact on that

1 minority community, regardless of which party was in power.

2 Q. And did you see those same techniques used this  
3 legislative session?

4 A. I saw those techniques used this legislative session to a  
5 higher degree than I have ever seen it used.

6 Q. Now, there's been some testimony here about hearings held  
7 by redistricting committees around the state. Are you familiar  
8 with those?

9 A. I am.

10 Q. Did you attend any of those?

11 A. I did.

12 Q. Tell us about that?

13 A. I attended one in Houston. This was before the numbers  
14 came from the census. So it was before anybody was paying  
15 attention to it. And the hearing that I went to, because it  
16 was in Houston, I felt a need to go and give greetings and talk  
17 about how the process should work.

18 Very limited attendance because back then we only had  
19 guesses that there was tremendous growth, but nobody knew how  
20 many seats we had or what it would mean. So it was a  
21 perfunctory hearing. And others around the state that I talked  
22 to people about were fairly perfunctory.

23 Q. And when you say "perfunctory," these hearings, did they  
24 involve actual proposals or maps?

25 A. No, just an opening in saying this is what we're going to

1 do, you know it's important. Just general, sort of like the  
2 obligatory meeting to say that you went out and you gave people  
3 a chance to express their interests.

4 Q. Now, I assume with your legislative experience you've  
5 spent hundreds, if not thousands of hours sitting on  
6 committees?

7 A. That's correct.

8 Q. And your experience sitting on a committee, was there --  
9 not having actual maps available, would it allow the committee  
10 to really get a sense of what the community interests were?

11 A. It would not.

12 Q. Actually having drawn maps and proposals from all  
13 different sides, what does that do in terms of facilitating the  
14 information given to the committee doing its work?

15 A. Well, when you're actually drawing lines, I mean, that's  
16 where the action, that's where the real meat of the process is.  
17 The rest of it is pretty much poetry.

18 Q. Now, in this latest cycle, once the lines were starting to  
19 get drawn, did you experience or learn about substantive  
20 redistricting hearings?

21 A. I was left out of the process and most of the members who  
22 represented minority districts, all of us were left out of the  
23 process.

24 Q. Tell me when you first got to see your district?

25 A. I got to see my district about, you know, maybe 30 minutes

1 before it was released on line to go to public, and I know that  
2 because the chairman of the committee told me that I was the  
3 last person that would look at it, and he would say let's get  
4 this done right now so we can put it on line.

5 Q. Up to that point, had you been asking to look at your  
6 district or have some input?

7 A. I had been asking from day one.

8 Q. What sort of responses were you getting?

9 A. "We'll get around to it."

10 Q. Now, it's been suggested here that maps were shown to  
11 members of the Senate based upon their seniority. Was that  
12 your experience?

13 A. No, there was a point late in the session in which a  
14 number of my colleagues were going off the floor into a back  
15 room, and they were being shown maps.

16 Q. Did those include the senators that represented minority  
17 areas?

18 A. No.

19 Q. And just to be clear, where are you in the 31 senators in  
20 terms of seniority there at the senate?

21 A. I'm third in seniority.

22 Q. All right. And you got to look at your map when again in  
23 relation to the other senators?

24 A. Thirty minutes before it was released.

25 Q. You were the last one?



1 A. Yeah.

2 Q. All right. After you'd a chance to glance at your  
3 district, I assume you had some comments or thoughts about it?

4 A. I did.

5 Q. Can you describe those to us?

6 A. I was concerned about the district being over-packed in  
7 attempt to, you know, I haven't had an appointment in my  
8 primary since I had been in the senate. So I was concerned  
9 about losing certain communities and the areas going in that  
10 would pack it with far more minority voters than I thought were  
11 needed, in my opinion, and I stated this. I thought it was an  
12 attempt to dilute the minority voting strength in an adjourning  
13 district.

14 Q. And did you have some proposals on how to remediate those  
15 concerns?

16 A. I did. I worked with several of the senators in the  
17 Harris County area to draw up some maps that at least I felt we  
18 could agree to. And I had submitted those to the chairman of  
19 the committee.

20 Q. Were any of your proposals accepted?

21 A. No.

22 Q. Was there another part of the senate map that you had  
23 taken an interest?

24 A. I took an interest in the broader view. I mean, after  
25 being here for 22 years, I kind of think that I'd have a pretty

1 good shot at being re-elected. So my real issue was whether or  
2 not minority voting strength would be protected in the north  
3 Texas area in particular, and also in the Missouri City area,  
4 Fort Bend County area, which is near Houston.

5 Q. Now, I'd like to call your attention to Senate District  
6 10, that's in Tarrant County; is that right?

7 A. Yes.

8 Q. Was that one of the districts you had an interest in  
9 trying to protect?

10 A. It is.

11 Q. Is it your opinion that at least in the latter part of the  
12 last decade that Senate District 10 was an ability to elect  
13 district for minority population?

14 A. I knew that with the explosive growth of minorities in  
15 Texas, there was room for an additional minority senate  
16 district. And the options would have been east Texas or north  
17 Texas. East Texas would have been much more difficult because  
18 it's more rural, smaller communities. But clearly in the north  
19 Texas area, population is about the same, three and a half  
20 million people, same minority population. So I clearly knew  
21 that there was the potential for another district long before  
22 we ended up with someone who represented the minority community  
23 winning one of those seats.

24 Q. Would it be fair to describe the population in Harris  
25 County in terms of gross numbers more or less equal to the

1 population of Tarrant and Dallas County combined?

2 A. Precisely the same.

3 Q. All right. Is that also true in terms of proportion of  
4 minority population within those areas?

5 A. It's about 3.5 million people. I think about two million  
6 African-Americans and Hispanics in Harris County region and  
7 also in north Texas, Dallas/Fort Worth region.

8 Q. Well, focusing, then, on Houston, Harris County for a  
9 minute, how many minority opportunity districts in the senate  
10 were there in Harris County under the benchmark map?

11 A. Three.

12 Q. And focusing now on Dallas and Tarrant County, how many  
13 minority opportunity districts were there in the benchmark map?

14 A. When you say "benchmark," are you talking about the one  
15 they passed or --

16 Q. The one you're serving in now, sir.

17 A. Two.

18 Q. Two, all right. One in Dallas, and which one, what's the  
19 second one?

20 A. Tarrant County. Fort Worth district.

21 Q. Senator Davis?

22 A. Senator Davis.

23 Q. After the senate district map was adopted this cycle, what  
24 was the total amount of ability to elect districts in Dallas  
25 and Tarrant County?

1 A. One.

2 Q. That, it left remaining the Dallas district; is that true?

3 A. Yes. They eliminated the district that Senator Davis  
4 represents now.

5 Q. Now, going back to Senate District 10, had you had some  
6 experience on the ground up there with the politics?

7 A. Quite a bit. In grad school, when I worked for the  
8 lieutenant governor during the campaign season, generally I was  
9 one of the young people asked to go and get a sense of the  
10 minority voting strength and work in the Black and Hispanic  
11 communities all around the state, particularly Dallas and Fort  
12 Worth.

13 Q. And did you get an opportunity to meet with a variety  
14 African-American and Latino leaders?

15 A. Yes, I did.

16 Q. What is your opinion as to the cohesiveness or the  
17 tension, if any, between African-Americans and Latinos in  
18 Tarrant County?

19 A. You know, obviously, there are always differences, when  
20 you have the tensions in the Black community, in my own,  
21 although I've represented it for most of my adult life. But I  
22 was very impressed with the level of unity in the coalition  
23 building that occurred in the Fort Worth area and the Dallas  
24 area, to be honest with you.

25 Q. When you were up there shortly in advance of Senator

1 Davis's campaign, were you hearing anything in terms of  
2 organization in the senate race?

3 A. They asked -- for my business I go, I've worked most of  
4 the minority leaders around the state. I'm an investment  
5 banker as well. And so I've gone to Fort Worth way back, long  
6 before any of the people who are political players now were  
7 political players. Some of them who are players now, I grew up  
8 with them in politics.

9 But I knew that they wanted to coalesce around a candidate  
10 to run for that state senate seat. And I was asked if I would  
11 come up and go do a political tour of some of the churches and  
12 other events long before I knew who the candidate was.

13 We have a general person who you don't campaign against an  
14 incumbent senator, at least you don't do it overtly. You  
15 wouldn't go into that district and campaign against them.

16 And so they asked me if I'd come up before the campaign  
17 started just to give people a sense of my track record on  
18 legislative issues relating to civil rights, and maybe what it  
19 would mean in that community, coalesce and pick the person of  
20 their choice to run for the senate.

21 Q. Had you heard about a particular candidate being  
22 identified, whether they were an office holder or citizen or  
23 who it was?

24 A. When I went, I had not. I didn't know who they were  
25 looking at, you know, there were a couple of names, but I

1 wasn't -- I just -- because I didn't know --

2 Q. Sure.

3 A. -- the names of people that emerge later. I didn't know  
4 who, but I knew they were having discussions.

5 Q. I want to transition now back to the process, back at the  
6 legislature when you were working on the redistricting the  
7 cycle.

8 If I understand it, you made some proposals on your  
9 district and they were not accepted; is that right?

10 A. That's correct.

11 Q. And then the senate district map, after a committee  
12 hearing, went to the floor for debate; is that true?

13 A. That's correct.

14 Q. It's the testimony in the record in this case that the  
15 vote on that bill was 29 to 2; is that your recollection?

16 A. That's correct.

17 Q. And just to speed through this a little bit faster,  
18 there's two votes really, one to bring the bill up on the floor  
19 and one to final passage; is that true?

20 A. That's correct.

21 Q. How did you vote on bringing the bill up?

22 A. I voted to bring the bill up, it's called suspending the  
23 rules, takes a simple majority to do that. And then a simple  
24 majority to pass the bill. So I voted to suspend the rules to  
25 bring the bill up.

1 Q. And how did you vote on the merits of the bill?

2 A. I voted against the bill.

3 Q. Why is it that you would have voted to bring up a bill you  
4 opposed?

5 A. Well, first we were told by the lawyers that the Justice  
6 Department and the court would understand, as long as we made a  
7 record, why we voted against it. Politics is not the cleanest  
8 business in the world. And I voted to bring it up for fear of  
9 retribution.

10 Q. Had you heard some comments or were you given some  
11 messages that made you believe the retribution fear was real?

12 A. I was given a very clear message. One of my colleagues  
13 wanted to take a convention center, basketball, a couple sports  
14 venues out of the edge of my district, near downtown. He  
15 probably knew that I'm not that good at sports.

16 And, you know, it's just an insider thing, but you sort of  
17 like to, didn't mean you get free tickets, you'd go to jail for  
18 that, but you like to have certain landmarks in your district.  
19 And so in committee there was a vote to change the maps, the  
20 base map, and take these, take a portion of downtown out, very  
21 few people.

22 And so then when I found out about it, went to the  
23 committee, I got them to reverse it. When it was coming up on  
24 the floor, the bill coming up on the floor, it was going to be  
25 offered again. I needed the chairman of the redistricting

1 committee to vote with me in case some of my colleagues forgot  
2 they committed to vote with me.

3 And so he asked, are you going to vote for the bill? And  
4 you kind of give that eye action, like, you vote with me, I'll  
5 vote, I'll help you. And so for that reason, I voted to  
6 suspend.

7 Q. In your discussions with other senators and your  
8 experience there in the body, was it your impression that other  
9 senators that represented minority areas were being pressured  
10 to vote for the bill?

11 A. I'm positive of it.

12 Q. All right. Because other minority senators voted for the  
13 bill, is it your conclusion that they actually did support the  
14 bill?

15 A. No, we submitted a statement to the record that we all  
16 worked on and agreed to, and it was very clear we -- that none  
17 of them were for the bill, and it was my suggestion that we  
18 call the lawyers and ask in previous battles in court or at the  
19 Justice Department on redistricting did this matter. So I'm  
20 sure that they were all against the bill.

21 Q. You'll see, Senator, on your screen Defendant's Exhibit  
22 129. Is this the letter that you sent? I mean, excuse me, the  
23 statement into the record you and the other senators made?

24 A. It is.

25 Q. Is it signed by all of the senators that represent



1 minority areas in Texas?

2 A. Yes, it is.

3 Q. All right.

4 Now, I want to focus in on your district for a second. And  
5 I want to call your attention to Defendant's Exhibit 133. And  
6 I'll tell you, this is a table of comparing the benchmark plan,  
7 which was 100, to the new adopted plan, 148, and it shows the  
8 quantity and percentage and type, for lack of a better word,  
9 population taken from each district to make the new district.

10 Does that make sense to you?

11 A. Yes.

12 Q. And before I scroll down to your district, which is 13; is  
13 that true?

14 A. That's correct.

15 Q. Before I scroll down to that, I just want to note that the  
16 next to the last column before the vertical dark line, is the  
17 percentage of black and Hispanic population. Do you see that?

18 A. Yeah, the one that says TOVR?

19 Q. On the total population? Let's see.

20 A. Okay. No, that's turnout.

21 Q. Right there.

22 A. Okay.

23 Q. The Black and Hispanic population?

24 A. Yeah.

25 Q. And then, of course, this is the total population, and

1 this is the percentage that came out of the benchmark map. Do  
2 you see that now?

3 A. Uh-huh, I see it.

4 Q. All right. So I'll scroll down here to Senate District  
5 13. And to speed things along, Senate District 6 is Senator  
6 Whitmire who represents a minority area in Houston; is that  
7 true?

8 A. That's correct.

9 Q. Senate District 7 is Senator Gallegos who represents a  
10 primarily Latino area; is that true?

11 A. That's correct.

12 Q. Thirteen is your district?

13 A. That is correct.

14 Q. And 17 is Senator Huffman's district and Anglo?

15 A. That's correct.

16 Q. Now, leading up to 2010, what was your impression of  
17 Senator Huffman's district by population in terms of it  
18 performing for minority candidates?

19 A. I felt that it was a district that was trending minority  
20 in not this cycle, but at some cycle. I was pretty sure that  
21 that would be a district that minorities would clearly control,  
22 it was getting very close.

23 Q. Was that district, had it recently had a competitive  
24 election?

25 A. It did have a very competitive race.

1 Q. What did the legislature do in the new map in terms of  
2 shoring up or protecting Senate District 17, if they did?

3 A. It diluted the minority voting strength by packing the  
4 minorities in my district.

5 Q. And we can see that because when we go to Senate District  
6 17, 147,000 persons came out of that district into yours; is  
7 that right?

8 A. I think so, I can't see it on here, you stop at 16.

9 Q. Oh, I beg your pardon.

10 JUDGE COLLYER: Can you remove all of the little  
11 arrows and things?

12 THE WITNESS: I think that may have been me, Judge.

13 JUDGE COLLYER: Thank you.

14 MR. DUNN: I thought that had broken. All right.

15 JUDGE COLLYER: You need to keep going up.

16 THE WITNESS: Go up a little more.

17 JUDGE COLLYER: All we can see is 16.

18 BY MR. DUNN:

19 Q. You don't see 13 here?

20 A. You see 13 --

21 JUDGE COLLYER: You see 13, but you don't see 17.

22 MR. DUNN: Oh, well, excuse me, the 17, it shows it  
23 right here --

24 THE WITNESS: Oh, okay.

25 MR. DUNN: -- under the table for 13.

1 BY MR. DUNN:

2 Q. But what I was trying to show is that 18 percent of the  
3 new District 13 came out of 17. Do you see that there?

4 A. That is correct.

5 Q. All right. And of that population, 74.5 percent of it was  
6 Black and Hispanic; is that true?

7 A. That's correct.

8 Q. Now, let's do the same thing now for going to the top of  
9 that column, Senate District 6. You only got about 15,000  
10 voters from it, but 97 percent of those voters were Black and  
11 Hispanic; is that true?

12 A. That's correct.

13 Q. And then again also on Senate District 7, 18, almost  
14 19,000 voters and 86 percent of those were Black and Hispanic?

15 A. That's correct.

16 Q. And all of those voters, all these African-American and  
17 Latino voters were then put into 13; is that true?

18 A. That's correct.

19 Q. All right.

20 Now, in looking at the -- was that consistent in terms of  
21 shoring up Senate District 17 by taking out minority voters and  
22 putting them in your district, was that consistent with what  
23 you'd seen each legislative cycle in Texas?

24 A. Most of the legislative cycles. You know, the issue here  
25 is, you know, 22 year incumbent. You know, I don't think that

1 the person that represents this district would be a minority  
2 district, needs a 90 percent minority district. Some of my  
3 white constituents may seem a little flamboyant, but I think  
4 they probably think I'm an okay guy after all these years.

5 Q. Now, I'm going to jump around, and I see I just have about  
6 two minutes left, and hit a few topics. But it's been  
7 suggested here that part of Senator Davis's success in Tarrant  
8 County was a robust presidential campaign.

9 And having participated in the Texas presidential election  
10 in 2008, is it your experience that then Senator Obama, now  
11 President Obama, had an aggressive campaign in the general  
12 election in Texas?

13 A. I know that he did not have an aggressive campaign in the  
14 general election of Texas, and he wouldn't be in the White  
15 House if he wasted his money campaigning in Texas, and I  
16 wouldn't advise him to do it this time.

17 Q. Would you attribute Senator Davis's success in gaining  
18 election to Senate District 10 as a result of her connection  
19 with the minority community and her own personal campaign  
20 organization in development?

21 A. Absolutely. The fact that African-Americans and Hispanics  
22 in the district coalesced was the paramount reason that she won  
23 that seat.

24 Q. And there's also been some testimony here that you were  
25 given a great amount of involvement in the redistricting

1 process through your representative, Robert Harrah [phonetic].

2 Did you work with a gentleman named Robert Harrah?

3 A. I did.

4 Q. Was it your experience that Mr. Harrah had significant  
5 input or that his views on redistricting were actually  
6 incorporated in the maps?

7 A. No, they were not. And I must say that Mr. Harrah is a  
8 great person, he's one of my closest friends and political  
9 advisors. As it relates to redistricting, none of us are naïve  
10 enough to leave that to anybody, not even our staffs.

11 Q. And just so that the Court can find some exhibits if  
12 they'd like, I'd like to show you Defendants Exhibit 159, which  
13 is the senate journal statement for the reason for your vote;  
14 is that true?

15 A. It is, that's correct.

16 Q. And if you'll go with me to the second paragraph of the  
17 statement, it begins with, "According to the 2010 census"?

18 A. Yes.

19 Q. Would you read that to us for the --

20 A. "According to the 2010 census, Hispanics now  
21 represent 37.6 percent of the state's population and  
22 African-Americans represent 11.84 percent. There are  
23 31 senators in this body, and if the ethnic makeup of  
24 the body reflected that of the state, we would have 11  
25 or 12 Hispanic senators and three, even four

1 African-American senators."

2 Q. Now, Senator, I'm sure over your extensive experience in  
3 Texas you've seen firsthand the effects of racial  
4 discrimination; is that true?

5 A. That is correct.

6 Q. Is it fair to say that there's been some progress in Texas  
7 on that point?

8 A. There's been tremendous progress in Texas, but there's  
9 still a lot to do.

10 Q. In your opinion, sir, the senate district map that was  
11 drawn insofar as it affected your district and Wendy Davis's  
12 district, did it construct the map in such a way to harm the  
13 voting rights of African-Americans and Latinos?

14 A. It did. The map was drawn to dilute the minority voting  
15 strength. They intended to do it, and that is exactly what the  
16 map does.

17 MR. DUNN: All right. I thank you, sir. No further  
18 questions.

19 THE WITNESS: Thank you.

20 JUDGE COLLYER: All right. Any redirect?

21 MR. MORTARA: He's not my witness, Your Honor, I'm  
22 going to cross-examine him.

23 JUDGE COLLYER: That's what I meant.

24 MR. MORTARA: Sorry, Your Honor.

25 JUDGE COLLYER: No, no, no, no, I misspoke. Sorry.

1 I meant cross-examination. That's really what I did mean.

2 MR. MORTARA: I have only a very few questions.

3 **CROSS-EXAMINATION**

4 BY MR. MORTARA:

5 Q. Hello, Senator Ellis.

6 A. How are you?

7 Q. I'm Adam Mortara, I represent the State of Texas.

8 You talked about a lot of your concerns with the senate map  
9 in your direct testimony; right?

10 A. That's correct.

11 Q. And you sent a letter to the Justice Department outlining  
12 your concerns with the senate map; right?

13 A. That's correct.

14 Q. And, in fact, after that letter you spoke on the phone  
15 with people from the Justice Department about some of your  
16 concerns; right?

17 A. That is correct.

18 MR. MORTARA: Thank you. No questions.

19 JUDGE COLLYER: All right. Yes, yes.

20 MR. DUNN: I have one redirect.

21 JUDGE COLLYER: All right.

22 **REDIRECT EXAMINATION**

23 BY MR. DUNN:

24 Q. Senator, over the years you've sent a number of letters, I  
25 assume, to the Justice Department on various issues as they



1 came up?

2 A. On a regular basis.

3 Q. Do you feel that the -- why do you think or do you have an  
4 opinion as to why we might be here today still litigating over  
5 the senate map?

6 A. In part because the numbers don't reflect a minority  
7 voting strength in terms of the number of districts that  
8 minorities could represent in Texas.

9 MR. DUNN: All right. Thank you, Senator.

10 JUDGE GRIFFITH: Could I ask you a question?

11 THE WITNESS: Yes, sir.

12 JUDGE GRIFFITH: I could have asked this question of  
13 anyone, any of the legislators that have been before us. So I  
14 hope you won't think me naïve to ask this, but other than the  
15 obvious reason for not wanting the LRB to draw the lines here,  
16 being seating, the power of the legislature over this, as you  
17 said, this most important task. Were there any other concerns  
18 involved in having the LRB do it? I mean, how many times in  
19 the past have the LRB done this and what were the results, were  
20 the concerns about that?

21 THE WITNESS: The last time that the LRB did it, the  
22 LRB has done it one time since I have been --

23 JUDGE GRIFFITH: Okay.

24 THE WITNESS: -- in the senate, and, you know, both  
25 sides' members were very concerned whether or not you'd angered

1 someone on the LRB.

2 JUDGE GRIFFITH: I'm sorry, with --

3 THE WITNESS: Whether or not a member had angered  
4 someone on the Legislative Redistricting Board.

5 JUDGE GRIFFITH: What do you mean by that, had  
6 anchored [sic] someone?

7 JUDGE COLLYER: Angered.

8 THE WITNESS: Angered.

9 JUDGE GRIFFITH: Oh, angered.

10 THE WITNESS: Angered, I'm sorry.

11 JUDGE GRIFFITH: I'm sorry, I thought you said  
12 anchored.

13 THE WITNESS: No, angered someone on the Legislative  
14 Redistricting Board would be a concern for any member.

15 JUDGE GRIFFITH: Right.

16 THE WITNESS: But for me, the concern would be the  
17 board is comprised of the lieutenant governor, who obviously  
18 would be very concerned about his primary race, very far right,  
19 with all due respect to voters in Texas, the speaker of the  
20 house, who would be beholding to making sure that he or she, in  
21 this case he had enough votes to hold onto the speaker of the  
22 house, the attorney general.

23 JUDGE GRIFFITH: Uh-huh.

24 THE WITNESS: The land commissioner and the  
25 comptroller. So from no minorities on that board --

1 JUDGE GRIFFITH: I see.

2 THE WITNESS: -- there were people on that board  
3 really have to care much about what minority voters think in  
4 order to get there. It's an uphill climb to be able to  
5 convince them to be concerned about the Voting Rights Act.

6 JUDGE GRIFFITH: Thank you.

7 JUDGE COLLYER: All right. Now, is there any  
8 redirect?

9 MR. DUNN: No, Your Honor.

10 JUDGE COLLYER: All right. Thank you very much,  
11 you're excused, sir.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 MR. MORTARA: Your Honor, I believe we are done for  
15 the morning session.

16 MR. MELLETT: Your Honor, I believe that my -- our  
17 colleague, Mr. Bledsoe, is checking that Congressman Green  
18 might be available.

19 MR. MORTARA: Right.

20 MR. BLEDSOE: Congressman Green, he was scheduled, I  
21 guess, he was scheduled at 11:30. We're trying to get him here  
22 early now. But I could say, if I might.

23 JUDGE COLLYER: Why don't you come forward if you're  
24 going to say.

25 MR. BLEDSOE: Yes, Your Honor. Thank you.

1 JUDGE COLLYER: This is Mr. Bledsoe speaking.

2 MR. BLEDSOE: Thank you. Gary Bledsoe for the NAACP.  
3 We do have, I think, Dr. Richard Murray is here, and I know one  
4 of the things that we had agreed upon would be that we'd  
5 summarize the pretrial testimony, reports of those witnesses.

6 I don't think the state wants to cross him. But the  
7 Court could have some questions I'd like to possibly go over,  
8 since he's here, he just came in from Houston last night. We  
9 could actually have him here now, and then by the time we would  
10 finish with him, it would be, I think Congressman Green would  
11 clearly be here.

12 JUDGE COLLYER: Well, I want to say that I am a  
13 little anxious. This is Congressman Green from up on the Hill;  
14 correct?

15 MR. BLEDSOE: That's correct.

16 JUDGE COLLYER: We absolutely, positively have to  
17 stop at 11:45. I am very anxious about walking out on a  
18 sitting congressman. That strikes me as being disrespectful.  
19 And as some of these people have testified, one doesn't want to  
20 be disrespectful to people with the purse strings.

21 JUDGE GRIFFITH: As well as general principles of  
22 comity.

23 JUDGE COLLYER: As well as general principles of  
24 comity between equal branches of government, of course.

25 And so I don't know how long your testimony about

1 Congressman Green might be, but if he were to come at, let's  
2 say 11:25, we would not get him finished.

3 MR. BLEDSOE: Your Honor, he has a proffer, and so  
4 the way I understood we were going to work those would be he's  
5 already -- he has pre-filed testimony.

6 JUDGE COLLYER: Yes.

7 MR. BLEDSOE: And because of that, I thought the  
8 procedure would be for the lawyer to give a short five-minute  
9 summation of that, and then it turns over to cross and we come  
10 back. So 20 minutes could be adequate.

11 JUDGE COLLYER: All right. You understand my  
12 concern, though, because --

13 MR. BLEDSOE: Yes, Your Honor.

14 JUDGE COLLYER: -- I mean, you have to make the  
15 congressman understand that with respect to everybody, we set  
16 this out 11:45, for other reasons, we turn into pumpkins.  
17 We're not here anymore.

18 MR. BLEDSOE: Thank you.

19 JUDGE COLLYER: Is that the proper terminology,  
20 pumpkins?

21 So, Mr. Mortara, what is your reaction?

22 MR. MORTARA: Your Honor, in principle, we have no  
23 objection to Congressman Green coming and doing a very short  
24 summary of his direct. We had understood that the summaries  
25 were not for the fact witnesses, they were just for the

1 experts.

2 And then as it pertains to Dr. Murray, Mr. Bledsoe's  
3 correct, we think his reports speak for themselves and we don't  
4 need to cross-examine him. We told Mr. Bledsoe that last  
5 night. But some guidance from the Court on these summaries and  
6 the nature of them might be helpful to us as we roll into the  
7 pre-filed direct testimony.

8 In terms of timing, if Mr. Bledsoe can get Mr. Green  
9 here, I think my colleague, Mr. Frederick, has about a  
10 five-minute cross. Am I right, Mr. Frederick?

11 MR. FREDERICK: Yes.

12 MR. MELLETT: Your Honor, just in terms of the  
13 agreement, I wanted to be clear of what we had had for the  
14 State of Texas is that we had all agreed in terms of experts  
15 that the experts starting out would be entitled to a ten-minute  
16 summary before there would be starting with cross-examination.

17 I certainly, and with Texas don't have an objection to a  
18 brief summary for the congressman, but we didn't provide  
19 explicitly for a summary of the fact witnesses that were going  
20 in by pre-filed direct.

21 MR. MORTARA: We'd prefer that there not be one,  
22 frankly, Your Honor, because it's sort of an odd thing for a  
23 fact witness to sit up there and give a narrative on his own  
24 whereas an expert is more used to doing that kind of thing.

25 JUDGE COLLYER: Well, I thought that it was counsel,

1 according to Mr. Bledsoe, who was going to give a summary of  
2 the pre-filed direct. It's only a declaration, isn't it?

3 MR. BLEDSOE: That's correct, Your Honor. And I  
4 guess part of that went to Dr. Murray, and I'm perfectly okay  
5 if the Court thinks it's preferable to have Dr. Murray to give  
6 a summary of his report instead of me, and so I'm perfectly  
7 acceptable with that. And I do have great news for the Court,  
8 Congressman Green is outside.

9 JUDGE COLLYER: All right. Well, then why don't we  
10 have Congressman Green come in.

11 One of the things I need to tell you is that the  
12 pre-filed testimony of Congressman Green is neither signed nor  
13 sworn. I mean, it's just a piece of paper.

14 It doesn't indicate that it's his statement except  
15 what's typed on the paper. So he needs to adopt that pre-filed  
16 statement if you want it to be considered as anything other  
17 than a piece of paper.

18 MR. BLEDSOE: Okay, we'll do that to begin with if  
19 that's acceptable, Your Honor.

20 JUDGE COLLYER: Okay. Why don't we bring in  
21 Congressman Green now.

22 MR. BLEDSOE: Okay, thank you.

23 MR. MELLETT: Your Honor, just to clarify in terms of  
24 the experts, the way that we had understood the summary and  
25 that we had discussed it with the State of Texas is that this

1 was going to be a question and answer where the expert was  
2 going to summarize the testimony. I didn't want you to think  
3 that the attorneys were going to get up here and summarize the  
4 testimony. But we were going to say what are the basic  
5 findings of your report, and they were going to explain that.

6 JUDGE COLLYER: That would be fine, but make sure  
7 that you tell your experts not to go on and on. You know how  
8 experts are. I'm going to have to cut them off, which is not a  
9 polite thing to do. But I really don't need to hear from --  
10 we, sorry, forgive me, don't need to hear from experts who go  
11 on and on the way experts do. We do that all the time. I know  
12 the expert thing, schtick, they just go on and on.

13 So to the extent you can say don't do that, expect the  
14 Judge to cut you off, then they'll be forewarned.

15 MR. MELLETT: Your Honor, the congressman is here,  
16 and so I will --

17 JUDGE COLLYER: We can talk about this another time.

18 MR. MELLETT: Yes.

19 MR. MORTARA: We have a little bit more when he's  
20 done, maybe before the 11:45 break now that Congressman Green  
21 has arrived.

22 JUDGE COLLYER: Maybe. Yeah.

23 Congressman, if you can come forward, sir.

24 MR. BLEDSOE: I asked him to get a copy of the  
25 statement and bring it forward since he does need to be sworn.



1 JUDGE COLLYER: Yes. Good morning, sir, if you can  
2 come over here, please.

3 THE DEPUTY CLERK: Please remain standing and raise  
4 your right hand.

5 **ALEXANDER GREEN, DEFENDANT INTERVENOR WITNESS, SWORN**

6 THE DEPUTY CLERK: You may be seated.

7 THE WITNESS: Thank you.

8 JUDGE COLLYER: Go ahead, sir.

9 MR. BLEDSOE: Thank you, Your Honor.

10 **DIRECT EXAMINATION**

11 BY MR. BLEDSOE:

12 Q. Congressman, would you state your full name and occupation  
13 for the Court, please?

14 A. Alexander Green, member of the Congress of the United  
15 States of America.

16 Q. And Congressman Green, could you tell the Court how long  
17 you have been a member of the United States Congress?

18 A. I am now into my eighth year.

19 Q. And in this matter, Congressman, did you actually tender a  
20 declaration of your statement about what you believed to be the  
21 relevant issues for this Court to consider?

22 A. I did.

23 Q. Okay. And do you have a copy of that statement there with  
24 you?

25 A. I do. It's in the courtroom. I retrieved what you asked

1 me to get you, which was a copy of the transcript. But I have  
2 it in the courtroom. If I can get my file brought to me,  
3 please.

4 JUDGE COLLYER: Yeah, if you could bring that up,  
5 please, sir, that would be very helpful.

6 We just have fonts of knowledge coming out everywhere.

7 Thank you, sir.

8 (Pause.)

9 THE WITNESS: I have it.

10 BY MR. BLEDSOE:

11 Q. Okay, thank you.

12 And that is a -- a copy that we provided to the Court and  
13 to the -- and to the other -- and to the State of Texas; is  
14 that correct?

15 A. I provided the copy to my lawyers, and I assume they did  
16 such.

17 Q. Now, is that statement true and correct according to your  
18 own personal knowledge and would you swear to that under the  
19 penalty of perjury?

20 A. It is true and correct, and I would.

21 Q. Okay.

22 JUDGE COLLYER: Thank you, sir. We just needed you  
23 to adopt it because it didn't have your signature on it.

24 THE WITNESS: Yes, ma'am.

25 JUDGE COLLYER: It wasn't sworn. Okay, thank you.

1 Now, was there cross-examination?

2 MR. FREDERICK: Very brief, Your Honor.

3 JUDGE COLLYER: All right, why don't you introduce  
4 yourself to the Congressman and go ahead.

5 CROSS EXAMINATION

6 BY MR. FREDERICK:

7 Q. Good morning, Congressman Green.

8 A. Good morning, sir.

9 Q. My name is Matt Frederick, I represent the State of Texas,  
10 and you and I actually had a chance to visit a few months ago  
11 in San Antonio. It's nice to see you again, sir.

12 A. Good to see you as well.

13 Q. Thank you.

14 Congressman, I just have a few questions this morning.  
15 First, the enacted congressional plan, which is Plan C185,  
16 that's made some changes to your own district; is that correct?

17 A. Yes, sir.

18 Q. And under the benchmark plan, the population of the  
19 district you represent, Congressional District 9, was less than  
20 50 percent African-American; is that correct?

21 A. This is correct.

22 Q. But that district still provided African-American voters  
23 with the ability to elect the candidates of their choice;  
24 correct?

25 A. Yes, sir.

1 Q. And in the legislature's plan, Plan C185, the character of  
2 your district has changed somewhat; has it not?

3 A. I would characterize it as more than somewhat.

4 Q. And as I understand it, it's changed so that it could  
5 become a Latino opportunity district; is that accurate, sir?

6 A. I would characterize the district as having had  
7 substantial surgery done on it. We have had communities of  
8 interest extricated from it, the Highland Clark area, the  
9 Astrodome area, the medical center, and all of these  
10 populations in these areas are communities of interest. With  
11 other areas in the district, they've been removed.

12 The district has had some of the economic engines removed  
13 from it, the rail line that we worked on for many years with  
14 mayors, it has had the university, Houston Baptist University  
15 removed from it. It has had the medical center removed as well  
16 as the Astrodome. And my district office, I might add.

17 So with all of these properties removed, and these are  
18 properties that give a district economic powers as well as  
19 political powers, with them removed, it has diminished, C185  
20 diminishes the powers of the district.

21 And in my opinion of this having been done, it does create  
22 a concern for any person representing the district. I believe  
23 that I can get re-elected, but it's not about my being  
24 re-elected, it really is about the people having an opportunity  
25 to elect a person of their choice.

1 Q. Well, I have to admit, Congressman, I'm not as familiar  
2 with the significant portions of the district. I, you know,  
3 I've mostly focused on the population, and so my understanding,  
4 and please correct me if I'm wrong, is it accurate to say that  
5 as a result of the changes in population in the district, it's  
6 your opinion that there's a possibility that it might become a  
7 Latino opportunity district in the future; is that right?

8 A. Well, the district performs well now, and at some point in  
9 the future I'm quite honestly not prepared to tell you what it  
10 will become, but I would hope that it would continue to perform  
11 as it was initially constructed, given that there are three  
12 African-American districts in the State of Texas.

13 This Plan C185, candidly speaking, tends to organize. It  
14 seems to divide, and it is our desire to maintain a district  
15 that is functioning, that is about 35,000 over, that can be  
16 easily removed without the kind of surgery that was performed  
17 on it.

18 There was not a need to remove communities of interest in  
19 the district so as to bring in other areas of growth, Sienna  
20 Plantation, Shadow Creek, these are areas where there would be  
21 significant growth. And while I can't prognosticate what the  
22 growth will be, there's a good likelihood that the persons who  
23 will buy homes that cost more than \$300,000 will be persons who  
24 can afford them. A good many of the people in the Ninth  
25 Congressional District of African ancestry can't afford these

1 homes.

2 Q. Well, Congressman, I'm going to let you look at some of  
3 your testimony from the previous time we got to speak, this is  
4 from the San Antonio Court.

5 MR. FREDERICK: May I approach the witness, Your  
6 Honor?

7 JUDGE COLLYER: Yes.

8 MR. FREDERICK: Thank you.

9 MR. BLEDSOE: Your Honor, if I might, I would  
10 preliminarily express concern, I might object. I'm not sure  
11 what he's showing him, but it needs to be within the scope of  
12 the declaration of the congress person, and I have concerns  
13 that it would be beyond the scope of that. And so I wouldn't  
14 want him to inquire about that.

15 MR. FREDERICK: Your Honor, what I have handed the  
16 congressman is the transcript from the section two trial in San  
17 Antonio, and the portions that I would like to speak with him  
18 about relate to the effect of Plan C185 on the district that he  
19 represents in the benchmark plan. And I believe that that  
20 is --

21 JUDGE COLLYER: Well, that's consistent with the  
22 testimony he's given so far, so I think he can proceed.

23 MR. FREDERICK: Thank you, Your Honor.

24 BY MR. FREDERICK:

25 Q. Congressman, if I could get you to turn, please, sir,

1 to -- it's page 1,337. And I will be looking at lines 15  
2 through 20.

3 JUDGE COLLYER: Now, you're going to refresh his  
4 recollection?

5 MR. FREDERICK: No, Your Honor, I'm actually going to  
6 read his prior testimony into the record.

7 JUDGE COLLYER: Well, let's see. There are ways to  
8 do things. I mean, there are just sort of neat little legal  
9 ways to do things.

10 Why don't you say, why don't you read that, and then you  
11 put it down, and then you say, now, what was -- wasn't your  
12 prior testimony X, and then he says, well, now that my  
13 recollection is refreshed, yes, that was my prior testimony.

14 MR. FREDERICK: So --

15 JUDGE COLLYER: Since you've given it to him.  
16 Otherwise you hold it there, and you say, now, isn't it true  
17 that you testified earlier and your earlier testimony was page  
18 such-and-such, counsel, question, da, da, da. Answer, da, da,  
19 da. Then the witness says, oh, gee, well, if you have it  
20 there, I guess that's right, or the witness says, yes, that is  
21 what I said, or the witness says, I don't remember, at which  
22 point you hand it to him. There are just little ways. Sorry.

23 MR. FREDERICK: And I apologize.

24 JUDGE COLLYER: As a trial judge, this is the sort of  
25 thing that just makes my --

1 MR. FREDERICK: Well, I have to apologize. My  
2 intention, Your Honor, was to -- was to read it as you  
3 described, but I got the order of presenting it to the witness  
4 wrong, and I apologize.

5 JUDGE COLLYER: That's okay, I'm just trying to  
6 figure out whether you're just trying to refresh his  
7 recollection, you do that one way. Or you're trying to  
8 challenge his prior testimony, which is a different way,  
9 impeach him.

10 You can do whatever you want. Go ahead. Now that we've  
11 had this little lecture that you don't actually need, go right  
12 ahead.

13 MR. FREDERICK: Thank you, Your Honor.

14 BY MR. FREDERICK:

15 Q. Congressman, I'm on page 1337, beginning at line 15.

16 JUDGE COLLYER: Why don't you read that to yourself.

17 THE WITNESS: Yes, Your Honor. I have.

18 JUDGE COLLYER: Okay. Now you say, isn't it true  
19 that your prior testimony was.

20 BY MR. FREDERICK:

21 Q. Congressman, isn't it true that your prior testimony was,  
22 and I'm quoting:

23 "I can tell you that the character of the  
24 district has changed because it was an  
25 African-American opportunity seat with



1 African-Americans as a clear plurality. And now it  
2 could become a Latino opportunity seat or it could  
3 become, as the area develops, a seat that might be  
4 held by some other ethnicity."

5 Is that an accurate reading of your prior testimony?

6 A. I believe it is.

7 Q. Thank you, sir.

8 Now, is it accurate to say in your knowledge, sir, that at  
9 least in Texas, African-American and Latino voters generally  
10 tend to prefer democratic candidates in general elections?

11 A. Most times I'd say yes, yes. But not always.

12 Q. Sure. But even though African-American and Latino voters  
13 might generally prefer democratic candidates in general  
14 elections, there might be what we could call tension in a  
15 district in which African-Americans and Latinos combined  
16 together to form a majority of voters; is that correct?

17 A. There can be tension, but not insurmountable. It can  
18 occur. African-Americans and Latinos have been working  
19 together in my district for many, many years.

20 I and another judge, Judge Armando Rodriguez, formed  
21 something called the Black and Brown Coalition. There is not  
22 this type of tension in the district as it is presently  
23 constructed. And the tension that you're talking about is  
24 something that could happen in the future.

25 And by the way, if I may add this, upon refreshing my

1 memory in looking at this, I indicated that it could be Latino  
2 or some other ethnicity.

3 Q. If I understand correctly, the potential tension that  
4 we've been discussing, that could occur when a district  
5 contains both Latino and African-Americans in a majority, but  
6 neither one is a clear plurality; is that accurate?

7 A. That is accurate to the extent that we're talking about  
8 persons possibly running for office. That doesn't mean that  
9 you don't have people cooperating, collaborating and working  
10 together. You can still have political cohesion  
11 notwithstanding the fact that you have ethnic groups that are  
12 the same in their numbers in a given district.

13 Q. And I should have been clear, Congressman, I'm focusing my  
14 questions just on voting behavior, so, you know, again, I defer  
15 to your knowledge of the local conditions.

16 A. Yes, sir. I would add that in my district we have elected  
17 persons of different ethnicities. Sheriff Adrian Garcia was  
18 elected, and he had the support of African-Americans, Latinos,  
19 Asians. He has served us well.

20 Hubert Vo has been elected. His state house seat is within  
21 the Ninth Congressional District for the most part. And that  
22 seat has a lot of -- a majority probably of African-American  
23 and Latinos, and it elected a person of Vietnamese ancestry.

24 Q. Is it accurate to say, Congressman, that if there is a  
25 district where there is a combined majority of African-American

1 and Latino voters, if the African-American voters constitute a  
2 pretty clear plurality, that gives those voters the ability to  
3 elect candidates of their choice; is that correct?

4 A. I think it's fair to say that if you have a plurality of  
5 any ethnic group, the plurality gives the opportunity, but I  
6 would also add that there are times when the person elected  
7 does not come from the plurality. The person elected, the  
8 person of choice may not be African-American, we have many  
9 instances of this in the State of Texas.

10 Q. And so the point you're making, which I think is my  
11 understanding as well is that just because we call somebody a  
12 candidate of choice, that doesn't necessarily mean that an  
13 African-American candidate of choice has to be himself or  
14 herself an African-American; right?

15 A. Exactly, the choice of the constituents.

16 Q. Now, talking about a plurality, a clear plurality, as we  
17 were, if there were a clear plurality, that would provide  
18 African-American voters with the ability to elect a preferred  
19 candidate in a primary election; is that right?

20 A. I tend to think of primary elections, and this is  
21 something that, quite frankly, I have discussed with colleagues  
22 and congress. Primary elections has the opportunity to  
23 nominate a candidate from a given party. And I tend to think  
24 of what we call a general election as the election.

25 And I tend to believe that any primary election, if a given

1 ethnic group has a plurality, it certainly can. With a  
2 coalition produce a nominee for its -- its given party.

3 Q. Congressman, if I could have you look at page 1346 of the  
4 transcript in front of you. I want to ask you about your prior  
5 testimony. I'm starting on page 4. I apologize, line 4.

6 "Question: Okay. And currently the district  
7 under C100 and then both of the other plans are less  
8 than 50 percent African-American voting age  
9 population; is that correct?

10 "Answer: Less than 50 percent, but a plurality  
11 in 100 and a plurality in 193 of African Americans.

12 "Question: Okay.

13 "Answer: And I think that's important to note  
14 that when you have a clear plurality, you don't  
15 have -- you don't create the tension that we've been  
16 talking about.

17 "Question: Okay. And in terms of the clear  
18 plurality, does that function to permit  
19 African-Americans to elect the candidate of their  
20 choice in the primary?

21 "Answer: It would. And it doesn't do it to the  
22 exclusion of Latinos with a map properly drawn having  
23 similar opportunities in nearby districts."

24 Is that your prior testimony, Congressman?

25 A. That is my prior testimony, and when taken in totality

1 with the rest of my testimony, because it's an excerpt, the  
2 indication is that in the future you could produce the outcome  
3 that we're talking about. This was not something that is  
4 occurring, but by carving the district up the way that they  
5 have, it can produce outcomes that are not in harmony with the  
6 present way the district functions.

7 It has been labeled by the state as an African-American  
8 opportunity district. And it is my belief that in the future,  
9 unfortunately, the way it's been carved in C185, it might not  
10 continue to function as such.

11 Q. And one final question, Congressman. If I understand  
12 correctly, the way to relieve or maybe in our case avoid what  
13 we've been calling tension in District 9 would be to -- or in  
14 any district, for that matter, would be to provide a separate  
15 Latino opportunity district; is that accurate?

16 A. Well, I spoke of District 9 in this testimony that you're  
17 calling to my attention. And I spoke of District 9 because of  
18 the fact that there was no necessity to take out about 75,000  
19 or more people who were a part of a community of interest,  
20 bring in other persons, and in so doing, I spoke of the notion  
21 that in the future that could create the tension that you  
22 talked about, and that we've talked about previously. But it  
23 was for District 9 because there was no necessity to do what  
24 was done to District 9.

25 District 9 was about 35,000 over. And we could have

1 removed from the east side of the district into another  
2 district about 20-plus-thousand people, and others could have  
3 been moved without that kind of surgery. And it seems that  
4 there was some sort of design to create what I have called to  
5 your attention as tension, unnecessary tension, I might add.

6 MR. FREDERICK: Thank you very much for your time,  
7 Congressman.

8 No further questions, Your Honor.

9 JUDGE COLLYER: Thank you very much. Is there any  
10 redirect?

11 MR. BLEDSOE: Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 BY MR. BLEDSOE:

14 Q. Congressman, you just mentioned the term, "the design to  
15 create tension." And would you tell the Court, is that your  
16 primary concern in using this term "tension" that it was  
17 designed to dislodge the coalition between the groups?

18 A. This is correct. It appears as though all of these things  
19 combined, the removal of the economic engines, the removal of  
20 the people who are part of community of interests, couldn't  
21 happen by accident, and it appears -- I have tried to  
22 rationalize what appears to be invidious discrimination.

23 It is difficult to rationalize this kind of behavior, but I  
24 tried to. And in trying to rationalize it, I have tried to  
25 give the state what I perceive as a reason for doing this, and

1 it seems to be the case to me to divide and conquer, organize a  
2 community, extract communities of interests, and create a  
3 circumstance wherein the district can have its entire character  
4 changed.

5 Q. And I want to make it clear about what you're saying. I  
6 think you've answered this clearly before, but are you saying  
7 that C185 automatically creates a problem with tension or is  
8 that something that's possible?

9 A. Well, I talked about the possibility because I talked  
10 about areas that were brought into the district that are going  
11 to be growth areas, and I think it's a possibility that it can  
12 occur.

13 Q. Okay. But it doesn't automatically mean that it will  
14 occur?

15 A. It doesn't automatically mean that it will occur, and  
16 whenever we talk about using this term "tension," it doesn't  
17 always occur. The possibility is there, but it doesn't always  
18 occur.

19 Q. Now, you mentioned the growth areas that you complained  
20 about. And one I think you said it was Sienna Plantation; is  
21 that correct?

22 A. Yes, I did, yes, sir.

23 Q. Okay. And is Sienna Plantation, is that -- do you expect  
24 the growth in that area to be of what ethnicity?

25 A. Persons who can afford homes at the three hundred and

1 above level. And my suspicion is that initially these will be  
2 persons of Anglo ancestry. Over the years this pattern could  
3 change, but we have large tracks of land that are being  
4 developed in the area.

5 Q. Okay. And does that create concern for you for the future  
6 composition of CD9?

7 A. It does. As I indicated, by extracting communities of  
8 interest in one part of the district and then bringing in these  
9 large tracks of land in another part, it could cause some  
10 concerns in the out years.

11 Q. Now, today as we sit, could you be very clear on this. Is  
12 there an existing coalition between African-Americans and  
13 Latinos in Harris county?

14 A. Absolutely. I have said it repeatedly, there is. I have  
15 said that we have helped to engender this coalition. I've gone  
16 back as far as Mickey Leland, who was a dear friend. I worked  
17 with him, and we worked across lines. Worked with Judge  
18 Armando Rodriguez.

19 Just recently I had Mr. Johnny Moffett to come to my  
20 office, and he was there representing some persons who were  
21 fired from the police department, all of whom were  
22 African-American, and he's Latino. And he was there to try to  
23 get them some help. So it works quite well. There is a  
24 cohesiveness between the ethnic groups in District 9.

25 Q. Have you even had Latino opponents to run against you in



1 CD9?

2 A. When I first ran, one of my opponents was a Ms. Molina,  
3 and she was a Latino.

4 Q. And did you win the Latino vote?

5 A. I did. Yes, sir. I had more than, I think about 70  
6 percent of the vote at that time.

7 Q. Okay. And do you think that election illustrated to you  
8 Latino, Black cohesiveness in voting in Harris County?

9 A. I think that is one indication, I cited others, but  
10 clearly, I think that's one. And the fact that  
11 African-Americans overwhelmingly supported Sheriff Adrian  
12 Garcia when he ran, the fact that we have supported Mr. Hubert  
13 Vo for state representative, and there are others, but yes.

14 Q. So there are examples, you said throughout Texas, like  
15 Ruth Jones McClendon and Dawna Dukes and other individuals who  
16 may have Latino pluralities, but the Latino community allows  
17 these African-Americans to continue and serve in those seats?

18 A. Correct. A plurality does not automatically mean that a  
19 person from the plurality would be elected.

20 Q. And, in fact, when your district was first constructed,  
21 the numbers of Latinos and African-Americans was somewhat  
22 comparable, if I recall, like 36 and 31 percent?

23 MR. FREDERICK: Objection, Your Honor, leading.

24 JUDGE COLLYER: It's a fact. I will let a question  
25 of fact be asked.

1 MR. BLEDSOE: Thank you. That's actually a statement  
2 in his declaration.

3 THE WITNESS: It was -- may I answer, Your Honor?

4 JUDGE COLLYER: Yes, please do, sir.

5 THE WITNESS: Thank you. It was 36 percent  
6 African-American, about 41 percent Latino, 21 percent Anglo,  
7 and about 12 percent Asian.

8 BY MR. BLEDSOE:

9 Q. Okay. The -- now, the -- the -- you talked about the  
10 issue of intentional discrimination, and one of the -- but you  
11 also talked about the issue of primary versus the general  
12 election with Mr. Frederick.

13 And you were a member of congress when the Voting Rights  
14 Act was extended in 2006; is that correct?

15 A. I was assigned by the Honorable George Bush, President of  
16 the United States of America at the time.

17 Q. Okay.

18 A. From Texas, I might add.

19 Q. And Congressman, you've been involved in civil rights for  
20 quite some time; have you not?

21 A. Well, yes, sir, you're sort of born into it, and I have  
22 been, yes, sir, President of the Houston NAACP for  
23 approximately ten years.

24 Q. Did you take an active role in seeking to ensure that the  
25 Voting Rights Act would be extended in 2006?

1 A. As a member of Congress, I worked with my colleagues, it  
2 was something of grave concern to us to have it extended. And  
3 we were honored to have it extended and to have it signed by a  
4 president from -- pardon me, yes, a president from Texas.

5 Q. Okay. And so, and you're a lawyer, too; is that correct?

6 A. I'm a member of the Bar of the State of Texas.

7 Q. Okay. And in that dynamic and with that backdrop and your  
8 familiarity with that process, did you -- do you have an  
9 opinion about whether it's more important to look at the  
10 general or the primary election in determining a candidate of  
11 choice?

12 A. Well, I can tell you that it was my intent that the  
13 general election be the election and that the primary is, in  
14 essence, what it said it is, it's the primary and you select a  
15 nominee from a given party. But the general election is the  
16 election, that was my intent.

17 Q. Okay. And when you -- when you run in a primary, are you  
18 elected to anything?

19 A. You are nominated, I suppose, as the leader of your party,  
20 and you're selected to serve as the leader of your party, and  
21 you're placed on the ballot for the general election.

22 Q. Okay. So do you believe that the, well, even  
23 notwithstanding your belief, do you believe that in primary  
24 elections that by and large Latinos and African-Americans act  
25 in coalition or cohesively with each other, even if there are

1 exceptions?

2 A. Of course. There are exceptions and exceptions prove the  
3 rule, they absolutely do. They do quite well, I might add.

4 They have common interests, and they've been working  
5 together on social issues, and it's only natural that we  
6 coalesce and work together on political issues.

7 Q. And you're familiar as a former NAACP president and a  
8 member of Congress with the NAACP report card; is that correct?

9 A. I am.

10 Q. Okay. And does that NAACP report card illustrate  
11 cohesiveness between Latinos in Congress or Hispanics in  
12 Congress and African-Americans?

13 A. The NAACP report card shows issues of interests and how  
14 members have voted on issues of interest to the  
15 African-American community. And Latino members of Congress  
16 have scored very high, usually very high, more than 90 percent  
17 on the report card.

18 Q. Okay.

19 Now, Mr. Frederick asked you about the -- your support for  
20 another district in the area in reference to Latino  
21 representation.

22 Is that the concept that you support and does that have an  
23 impact on your interpretation of what might happen with CD9 in  
24 the future?

25 A. I've always supported greater representation for

1 minorities in the State of Texas and Harris County. It is  
2 unfortunate that we have a state that is a majority minority,  
3 but it's not reflected in representation.

4 Harris County has become a majority minority, and the City  
5 of Houston, a majority minority. And it's unfortunate that the  
6 representation is not -- the numbers don't reflect the  
7 representation. So yes, I support more representation.

8 By the way, I support representation for all people. I  
9 focus on minorities today simply because we are talking about  
10 how minorities have been discriminated against and left out of  
11 the political order going back to Mr. All Right [phonetic] and  
12 Mr. Ronnie Smith where we had the white primaries in the State  
13 of Texas.

14 Q. Now, you mentioned that your district was vulcanized --

15 JUDGE COLLYER: I just want to remind you, you have  
16 five minutes and then the curtain comes down.

17 MR. BLEDSOE: Thank you, Your Honor.

18 JUDGE COLLYER: Congressman, with no disrespect, the  
19 Court has a deadline of 11:45 because the parties are on very  
20 limited time frame as is the Court. So at 11:45, with no  
21 disrespect, we need to leave.

22 THE WITNESS: Yes, ma'am.

23 JUDGE COLLYER: I hope you will not be insulted, sir.

24 THE WITNESS: Absolutely not, Your Honor.

25 JUDGE COLLYER: You don't mind going back to work

1 anyway.

2 THE WITNESS: Well, Your Honor, I'll be honored to go  
3 back to work. As you know, we're right now not actually  
4 working in Congress.

5 JUDGE COLLYER: Oh, don't tell, no, no, never, never  
6 tell anybody that.

7 THE WITNESS: I was going to say I'm going to work in  
8 my district.

9 JUDGE COLLYER: All right. Oh, yes, a little  
10 constituent services.

11 THE WITNESS: Yes, ma'am, yes, ma'am.

12 JUDGE COLLYER: I'm sorry, I interrupted you,  
13 Mr. Bledsoe.

14 MR. BLEDSOE: No problem at all, Your Honor.

15 JUDGE COLLYER: I just wanted to let you know your  
16 time was running.

17 MR. BLEDSOE: Thank you very much.

18 BY MR. BLEDSOE:

19 Q. In reference to the voting rights, I'm going to move back  
20 to that. Was it your intention that when you're trying to  
21 protect minorities that you want to protect not just a group of  
22 African-Americans or a group of Latinos, but those groups and  
23 Asians in combination?

24 A. Yes, because they work in combination with each other.

25 And it's our desire to see the coalitions that are built,

1 coalitions that can produce, competent persons to hold public  
2 trust.

3 Q. Now, when you talk about the things that occurred in your  
4 district that you have concern about, what happened to your  
5 office?

6 A. My office was removed from the district, and that office  
7 is something that the constituents identify with. It is  
8 located in an area that is easily accessible. And I regret  
9 that this happened, and was hoping that that wouldn't happen.  
10 In fact, I even lobbied to try to keep this from happening.

11 Q. And did, in fact, you and Congresswoman Lee try to work  
12 something out where that wouldn't have to happen after the map  
13 was originally tendered to you?

14 A. We did. And I went so far as to submit my  
15 recommendations, which were not -- not adhered to.

16 Q. Okay. And also in reference to what had occurred with you  
17 in reference to the map, did you try to trade some areas with  
18 Congresswoman Lee to lessen the impact of the harm to your  
19 district?

20 A. We did try. And as I indicated, I submitted some proposed  
21 changes that would have restored to the Ninth Congressional  
22 District what it had, and to the 18th what it had prior to C185  
23 with the base plan. And it was not adhered to, my request was  
24 not honored.

25 Q. Did you feel that based on the things that occurred to you

1 in your district that there was an intent to discriminate  
2 against African-American voters?

3 A. I don't know how you can look at all that was done to the  
4 Ninth Congressional District and conclude that it was done by  
5 accident. There clearly had to be intent. And in my opinion,  
6 that intent carried with it an invidious connotation. It  
7 appears that this is the type of abhorrent invidious  
8 discrimination that we've been fighting against.

9 MR. BLEDSOE: Okay. Thank you.

10 Pass the witness, Your Honor.

11 JUDGE COLLYER: Thank you. Thank you, everybody.

12 We will now take a break. It's a minute or two early,  
13 and be back at, what time, one --

14 THE DEPUTY CLERK: One-thirty, Your Honor.

15 JUDGE COLLYER: One-thirty.

16 Now, 1:30, do we need 1:30? Is everybody in favor of  
17 1:30? Everybody is in favor. See you at 1:30.

18 THE DEPUTY CLERK: All rise. This Honorable Court  
19 stands in recess.

20 (Luncheon recess at 11:45 a.m.)

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CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by the United States District Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

\_\_\_\_\_  
/s/Crystal M. Pilgrim, RPR

\_\_\_\_\_  
Date: January 21, 2012

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