

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS  
CIVIL DEPARTMENT

FAITH RIVERA, et al,     )  
TOM ALONZO, et al,     )  
SUSAN FRICK, et al,     )  
          Plaintiffs,     ) Case No. 2022-CV-89  
          v.                 )  
SCOTT SCHWAB, et al,    )  
          Defendants.     )

TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS had before the HONORABLE BILL  
KLAPPER, Judge of Division 6 of the District  
Court of Wyandotte County, Kansas, on the 4th day  
of April, 2022.

Volume II

APPEARANCES:

The Plaintiffs FAITH RIVERA, et al,  
appeared by Lalitha Madduri and Spencer Klein,  
Attorneys at Law, 10G Street NE, Suite 600,  
Washington, DC 20002.

The Plaintiffs TOM ALONZO, et al, appeared  
by Elisabeth Theodore, Attorney at Law, 601  
Massachusetts Avenue NW, Washington, DC 20001.

The Defendants Scott Schwab and Michael  
Abbott appeared by Gary Ayers & Anthony Rupp,  
Attorneys at Law, 1551 N. Waterfront Pkwy, Suite  
100, Wichita, KS 67206.

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PROCEEDINGS

(On the record at 12:25.)

THE COURT: Back on the record in Rivera, Alonzo, and Frick V Schwab. The appearances of the parties are pretty much the same. There are so many, I'm not sure I'm keeping track of them, but the main players, I recognize, and they are here.

We have heard opening statements, a combined one from the Rivera and Alonzo Plaintiffs, Frick made their own, and the Defense had their opening as well. And I believe we are now ready for the presentation of evidence. Is the Plaintiff ready to proceed?

MS. MADDURI: Yes, Your Honor.

THE COURT: Call your first witness, please.

MS. MADDURI: Plaintiffs call Dr. Jonathan Rodden.

THE COURT: Dr. Rodden, if you'd get close enough where you and I are eyeballing each other and raise your right hand, sir. Thank you.

JOHNATHAN RODDEN,

having been first duly sworn,  
was examined and testified as follows:

1 THE WITNESS: I swear.

2 THE COURT: Thank you. And please be  
3 careful getting into this chair. It's a bit  
4 cramped. A procedural note I'll ask you, sir:  
5 So did most of your colleagues prefer Doctor?  
6 Professor, Mister?

7 THE WITNESS: I prefer my first name, but  
8 I assume that doesn't work here. So we can go  
9 with Dr. Rodden, I suppose. That's what all the  
10 lawyers call me. So --

11 THE COURT: Actually, in this courtroom,  
12 first names do work. So thank you, Jonathan.

13 THE WITNESS: All right. Jonathan would  
14 be wonderful. Thank you.

15 THE COURT: All right. Lali, when you're  
16 ready.

17 MS. MADDURI: Your Honor, if Defendants  
18 don't have any objection, I'd like to give  
19 Dr. Rodden a copy of his report.

20 MR. AYERS: Your Honor, I'm going to try  
21 not to interrupt, but as to the report, as to the  
22 testimony, as to the opinions, we would renew our  
23 Daubert motion on relevance and speculative.  
24 It's lack of foundation. Everything I said in  
25 the Daubert motion, I renew here. And I don't

1 know what your preference is. I can renew it  
2 after he lays out his credentials and all that  
3 before he gives an opinion, or I can just sit  
4 down and say you may assume I object to his  
5 opinion. It's totally up to you, Your Honor.

6 THE COURT: My preference, Gary, if you  
7 think it preserves the record adequately enough,  
8 is that you simply make your objection before  
9 each one of the experts testify, or if you wish,  
10 we can just take it all up right now with each  
11 one of the experts. Although your objections  
12 vary a bit depending on the expert, and so the  
13 Court believes it would probably be better to do  
14 it before each expert testifies or attempts to do  
15 so.

16 MR. AYERS: Right. Well --

17 THE COURT: If that works for you and  
18 Lali. Is there any problem with that?

19 MS. MADDURI: No, we don't have a problem  
20 with that.

21 THE COURT: All right.

22 MR. AYERS: Because normally I would not  
23 object to his laying the foundation or trying to  
24 lay the foundation. That sort of thing. So I'd  
25 just rather do it now and not interrupt, if I

1           may.

2                   THE COURT: All right. I think that's  
3 perfectly acceptable. And so I'm going to take  
4 it that you have made the objection. Lali, you  
5 still want to know whether or not you can hand  
6 that exhibit to him?

7                   MS. MADDURI: Yes, Your Honor.

8                   THE COURT: I'm going to tell you in just  
9 a minute. All right, counsel. So 60-456b  
10 requires that in considering whether or not  
11 expert testimony should be admitted, the first --  
12 and the foundational element for all testimony --  
13 is it relevant and material? And in this case,  
14 the Court finds that the testimony of at least  
15 this witness is reliable. It's based upon  
16 sufficient facts and data. The principles that  
17 Jonathan Rodden has used today appear to this  
18 Court to be principles that are reliable and have  
19 been used in many cases, and it appears, based  
20 upon a review of his written report, that he has  
21 applied those principles and the methods to the  
22 facts of this particular case.

23                   Now, having said that, at any time, Gary,  
24 if you feel he wanders from those standards, I'm  
25 sure you'll let the Court know. And the Court

1 notes that in Jonathan's report, as well as other  
2 expert reports that the Plaintiffs wish to have  
3 admitted in this case, they talk about other  
4 things besides what are truly the issues in this  
5 case. And so subject to the Court's ruling, we  
6 can discuss those when we come to them. Yes,  
7 give him the exhibits -- or his report so he can  
8 look at them.

9 One second before we start, Lali. First  
10 of all, appreciate the fact that you've taken  
11 your time away from your family to come and spend  
12 time with us. And hopefully we'll get you back  
13 there quickly as we can.

14 THE WITNESS: Thank you. I appreciate it.  
15 Happy to be here.

16 THE COURT: Yes. Thank you.

17 MR. AYERS: Your Honor, if I may?

18 THE COURT: Yes.

19 MR. AYERS: We're going to have to  
20 rearrange here because I can't hear either you or  
21 the witness back in this corner because there's  
22 like a buzz behind me. So if you don't mind,  
23 could I just move around?

24 THE COURT: Gary, as far as I'm concerned,  
25 you locate yourself any place in the courtroom

1           that facilitates you being able to hear, see,  
2           whatever you need. And if you need assistance in  
3           providing other accommodations, we'll make those.

4                   MR. AYERS: If this were an ADA case,  
5           you'd be in trouble.

6                   THE COURT: Certainly truth in that. For  
7           those of you who may not know, Gary works out on  
8           a daily basis and so is able to lift heavy chairs  
9           in a single bound.

10                                   (Laughter.)

11                   THE COURT: Thank you, Gary. Now --

12                   MR. AYERS: I'm better. Thank you.

13                   THE COURT: Let me make a suggestion,  
14           perhaps, and if you use if you want to or not.  
15           If my court reporter doesn't mind, if you want to  
16           pull that up to the table so you'll have  
17           something to sit on --

18                   MR. AYERS: I'm totally good.

19                   THE COURT: All right. Thank you.

20                   MR. AYERS: I've already made a big scene.  
21           This is enough.

22                   THE COURT: Lali?

23                   MS. MADDURI: Thank you, Your Honor.

24           Given the statements Your Honor has made, I'm not  
25           going to go extensively over Dr. Rodden's



1 background unless you would like me to do so.  
2 And I'd just like to confirm that Plaintiffs will  
3 move to qualify Dr. Rodden as an expert in the  
4 fields of redistricting, political and racial  
5 geography, applied statistics, and geographic  
6 information systems. I'm happy to review his  
7 credentials, Your Honor.

8 THE COURT: Thank you. Lali, I think  
9 that you can skip some of the formalities, at  
10 least as far as the trial Court is concerned.  
11 But as you are well aware, this is not going to  
12 be the end of this litigation. And so I think  
13 it's incredibly important that you make a good  
14 record. I'm assuming that Jonathan's report will  
15 go to the Supreme Court, and he'll have a chance  
16 to review it. And Gary, weigh in here one way or  
17 the other if you want. Certainly, the Court  
18 would not be presumptuous enough to tell you how  
19 to try your case. If you are seeking this  
20 Court's input on the professional qualifications  
21 of Jonathan Rodden, this Court finds him to be a  
22 professional. An expert qualified witness.

23 MS. MADDURI: We'll briefly review  
24 Dr. Rodden's background.

25

## 1 DIRECT EXAMINATION

2 BY MS. MADDURI:

3 Q. Dr. Rodden, please state your name for the  
4 record.

5 A. Jonathan Andrew Rodden.

6 Q. Where did you grow up?

7 A. I grew up in St. Louis, Missouri.

8 Q. And what is your current employment?

9 A. I'm a Professor of Political Science at Stanford  
10 University.

11 Q. Are you tenured?

12 A. Yes.

13 Q. Okay. What does your research focus on?

14 A. Focus on economic and political geography. I use  
15 a lot of different types of data to understand  
16 those things, but the real focus is on  
17 representation, and a big part of that has to do  
18 with redistricting. So I use data from  
19 precincts, voter files, from counties, from the  
20 census departments, anything I can get my hands  
21 to understand economic and political geography  
22 and how that translates into representation when  
23 we drawing electoral districts.24 Q. And have you authored any peer-reviewed  
25 publications?

1 A. Yes.

2 Q. Approximately how many?

3 A. I think somewhere north of 30 at this point.

4 Q. Are those publications listed on your CV, which  
5 is Exhibit 1?

6 A. Yes, they are.

7 Q. Broadly speaking, what would you say your recent  
8 publications focus on?

9 A. I recently have a number that do focus on  
10 redistricting and the use of political data of  
11 the kind I just described. So that research  
12 agenda that I just described is reflected in many  
13 of the publications.

14 Q. And can you briefly tell the Court about your  
15 experience serving as an expert in redistricting  
16 matters?

17 A. There have been a number of those. It starts in  
18 a case in Florida in the previous redistricting  
19 cycle. I have worked in -- that was in the state  
20 court in Florida. I've also worked in cases that  
21 were in Federal court in Virginia, and in --  
22 there was one that was in Federal court but  
23 related to school districts back in St. Lewis,  
24 where I'm from. And there was another Federal  
25 case in Virginia. One in -- very recently in

1 Pennsylvania, and state court -- state case in  
2 Pennsylvania. There probably is another one, but  
3 I think those are the ones I remember at the  
4 moment.

5 Q. Well, since you mentioned Pennsylvania, can you  
6 briefly tell us what the outcome of that case  
7 was?

8 A. That was an impasse case between the legislature  
9 and the Governor. Various parties submitted maps  
10 for consideration by the Supreme Court of  
11 Pennsylvania, and they ended up selecting a map.  
12 And the map they selected to use of  
13 Pennsylvania's congressional district was the one  
14 that I submitted.

15 Q. In your academic research, what methodology or  
16 expertise do you rely on to study questions  
17 relating to political geography and congressional  
18 redistricting?

19 A. Well, I've been studying political geography for  
20 a long time, both historical and contemporary,  
21 using data, in particular geographic information  
22 systems. So that means using data that we can  
23 map in space. That we have boundaries for  
24 some -- for some blocks or tracts or counties.  
25 Ultimately, electoral districts. And sometimes

1 use individual level data, but it's analysis of  
2 demographics and political data that's really at  
3 the core of the research using -- usually using  
4 statistics.

5 Q. And have you applied those same methodologies and  
6 expertise in this case?

7 A. Yes.

8 Q. And have you published peer-reviewed academic  
9 papers relying on the methodology and expertise  
10 that you applied in this case?

11 A. Yes.

12 Q. And have you presented expert reports and  
13 testimony in other cases in redistricting and  
14 political geography using methods similar to the  
15 ones you used here?

16 A. Yes, I have.

17 Q. Did the courts in those cases credit your  
18 analyses?

19 A. Yes, I believe so.

20 Q. Have you testified on behalf of both Plaintiffs  
21 and Defendants in redistricting matters?

22 A. Both. Yes.

23 Q. Have you ever been rejected as an expert?

24 A. No.

25 Q. Has the Court ever rejected your the analysis?

1 A. Not to my knowledge, no.

2 Q. So now shifting to the substance of your  
3 testimony in this case, can you briefly summarize  
4 what Plaintiffs asked you to do?

5 A. Yes. I was asked to examine the application of  
6 traditional redistricting principles in the case  
7 of Kansas. Specifically, in the case of the four  
8 congressional districts of Kansas. So to  
9 consider population changes in Kansas, and to  
10 consider the application of those traditional  
11 principles to understand what are the tradeoffs  
12 involved, what are the challenges involved in  
13 drawing a congressional map in Kansas?

14 Once then having understood the tradeoffs  
15 and challenges of drawing a congressional map  
16 using strictly traditional redistricting  
17 criteria, I was asked to examine the enacted plan  
18 -- the recent enacted congressional map in Kansas  
19 to then evaluate whether that plan could be  
20 explained by those same traditional redistricting  
21 criteria.

22 Q. And how did you go about answering the questions?

23 A. Well, in order to appreciate those tradeoffs I  
24 was discussing, I found it necessary to draw my  
25 own maps to take -- to start with some list of

1 traditional criteria. And I chose to use the  
2 criteria that were also the ones that were  
3 adopted by the committee, the legislature in  
4 Kansas and apply those criteria as -- in the most  
5 forthright way I could to the state of Kansas and  
6 draw a map. Upon doing that, I found a couple of  
7 spots in which there were tensions in the  
8 criteria and found it useful to draw a couple of  
9 different maps that were emphasizing different  
10 aspects of the traditional criteria. So I drew  
11 two maps and then went from there to analyze the  
12 enacted plan.

13 Q. And at a high level, what did you find?

14 A. Well, I was pleased to find that as is not the  
15 case in many other states, in Kansas, it's rather  
16 straightforward to abide by traditional  
17 redistricting criteria. It is possible to draw  
18 plans that achieve, really, all of the goals that  
19 are laid out in the legislature's -- the  
20 committee's list. So it's possible to minimize  
21 common -- to draw very compact plans that keep  
22 communities of interest together and also are  
23 relatively close to the previous redistricting  
24 plan. It's possible to do all those things, and  
25 rather easy to do those things. And the plan

1           enacted by the legislature seems to abide by a  
2           different logic. It doesn't -- it's not the kind  
3           of map that would emerge from the application of  
4           those principles.

5       Q.    Okay. So you've mentioned traditional  
6           redistricting criteria a few times, so let's  
7           discuss that now. What are the traditional  
8           redistricting criteria that you followed when  
9           drawing the plans that you mentioned?

10     A.    Yes. Any time one sits down to draw a  
11           congressional plan in a US state, population  
12           equality is the first thing that comes to mind.  
13           And we try to achieve strict population equality  
14           across districts. But also compactness,  
15           contiguity, and the minimization of splits of  
16           counties, and also minimizing the splits of  
17           cities, and I think it's also important to  
18           attempt to minimize splits of both tabulation  
19           districts.

20                    But then also in this application, the  
21           list of criteria adopted by the committee also  
22           included a couple of additional things. One of  
23           them was core retention, and there was also a  
24           discussion of -- beyond just the mention of  
25           communities of interest, there's also a



1 discussion of preventing the dilution of voting  
2 power of minorities. So that was also something  
3 to consider when drawing the plan.

4 Q. Can we pull up Plaintiff's Exhibit 137?

5 Dr. Rodden, what is this document?

6 A. This is the document I was referring to. This is  
7 the set of criteria that were adopted by the  
8 committee that drew the plans in the state  
9 legislature.

10 Q. And we don't need to talk through each one of the  
11 criteria in detail right now. But generally, how  
12 do the legislative committee's adoptive  
13 guidelines compare to redistricting criteria used  
14 in other states, more broadly?

15 A. That is very typical list of traditional  
16 redistricting criteria that -- the kind of thing  
17 we see in many other contexts. It goes into a  
18 little bit more detail about why we want to avoid  
19 splitting county boundaries, and that was  
20 something I considered, but it also discussed  
21 communities of interest, which is sometimes not  
22 the case in these kinds of lists. But other than  
23 that, I think it was a very standard list. Core  
24 retention. Something that obvious -- that also  
25 may or may not appear on a list like this. But

1           it does appear on this list.

2    Q.    And what is your understanding of the role of  
3           these guidelines in the redistricting process?

4    A.    My understanding is that this was a set of  
5           guidelines that the legislative committee adopted  
6           for itself as a set of rules of engagement.  And  
7           so when I considered what kinds of traditional  
8           redistricting criteria would I want to evaluate,  
9           which seems like an obvious place to start since  
10          they actually wrote these down and set them up as  
11          guidelines for drawing the plan.

12   Q.    Now, can traditional redistricting criteria such  
13          as the ones in the guidelines conflict at times?

14   A.    Yes.  There is often tension between different  
15          traditional redistricting criteria.  I think the  
16          most obvious example is if the boundary of a city  
17          has expanded over time through annexations and  
18          the kind of things that happen in city politics,  
19          some of our city boundaries in the United States  
20          have very strange configurations.  But if we have  
21          an idea that we want to minimize the split of  
22          cities, we want to keep cities together,  
23          sometimes we can't help but end up with very  
24          oddly shaped districts, and so there can be a  
25          tension between compactness and the preservation

1 of city boundaries. Just an example of the kind  
2 of tension you can run into.

3 Q. And what can you tell us about the tradeoffs or  
4 the tension between the criteria as applied in  
5 Kansas?

6 A. That was the purpose of drawing maps, was to gain  
7 an understanding of that. And sometimes  
8 something might look simple, but then when you  
9 really sit down and try to work with it, it's not  
10 at all. But in this case, the geography of  
11 Kansas is such that minimizing county splits is  
12 relatively straightforward. It's very easy to  
13 split only three counties, which is the -- the  
14 minimum number I think it's possible to split in  
15 drawing one of these plans. And there's really  
16 not much of a -- not much of a -- much tension  
17 between achieving that and achieving compactness.  
18 And in fact, compactness and the preservation of  
19 communities of interest seem to go together also  
20 very nicely in this instance. So it's possible  
21 to draw districts that are relatively compact,  
22 and also preserve communities of interest.

23 So I didn't find a lot of tensions or  
24 tradeoffs. The only one I found was that if we  
25 really want to put core preservation, really keep

1 the districts exactly the same as they were  
2 before, adjusting for the populations shifts, if  
3 that's the thing we value most, we end up with a  
4 plan that's not as compact as it could be, and  
5 not quite as good as preserving communities of  
6 interest as it could be. That was the main  
7 tension that I came across in grappling with the  
8 data.

9 Q. And now turning to your report here, I'm looking  
10 at Exhibit 1, page 6, figure 1, which is entitled  
11 Population Change from the 2010 to 2020 Decennial  
12 Census. At a high level, how did the population  
13 distribution change in Kansas between the 2010  
14 and the 2020 census?

15 A. I believe this was actually mentioned earlier  
16 today in the opening statements, but there's been  
17 a real process of ongoing urbanization in Kansas,  
18 such that what we're looking at here is  
19 population data from the census in those yellow  
20 -- those yellow colors indicate population loss.  
21 And so most of the counties -- the vast majority  
22 in the counties in the state actually experienced  
23 population loss, and some of them quite a large  
24 population loss. But those darker shades of  
25 orange and red indicate places that gained

1 population. And so we see that Wichita gained  
2 population, Johnson and Wyandotte, Kansas City  
3 area gained population, but also the cities of  
4 the Kaw River Valley and the counties around  
5 them. That whole northeast Kansas region gained  
6 significant population.

7 Q. And how did these population shifts affect the  
8 task of drawing a new congressional map?

9 A. Yes. To state the obvious, we can't stay with  
10 the boundaries we have depicted here, which are  
11 the old boundaries. And the most important thing  
12 that has to happen since District 1 is primarily  
13 a rural district, and rural areas are losing  
14 population, District 1 has to expand somehow.  
15 And so one of the things it can do is it can take  
16 some of the rural areas from around Wichita and  
17 District 4, and District 4 can become more  
18 compact. It can also move further east and  
19 take -- pick up more -- additional rural places.  
20 And the other option is it can dip into the  
21 metropolitan areas of northeast Kansas. But --  
22 so it's dealing with rural population loss, is  
23 the most important thing. And I would say the  
24 other challenge, of course, is on the other,  
25 dealing with population gain in the Kansas City

1 area and growing districts and such as to shrink  
2 in some respects the geographic scope of District  
3 3.

4 Q. And turning now to page 8 of Plaintiff's Exhibit  
5 1, figure 2, which is entitled County Level Map  
6 of Population Density 2020 Census and Boundaries  
7 of Previous Congressional Districting Plan, what  
8 does this map show?

9 A. This map, I think, is useful to look at in  
10 conjunction with the previous map. This is just  
11 a map of population density today in Kansas. So  
12 it, first of all, just communicates that it's --  
13 relatively dense places that are growing. The  
14 same place we saw before that are growing are the  
15 places that are darker shades of blue here that  
16 have greater levels of population density. So  
17 again, we see that there is a -- there is a  
18 string of cities that go back to their early 20th  
19 century along the Kansas River that are in close  
20 proximity to each other that are relatively  
21 dense, so that kind of leads to a corridor of  
22 greater population density in northeast Kansas  
23 and other relatively dense counties surrounding  
24 Wichita.

25 Q. Okay. Now shifting gears and talking about the

1 two maps that you prepared, first, you described  
2 some of the purpose behind this, but  
3 specifically, can you discuss what the purpose of  
4 drawing these maps and going through that  
5 exercise was, in terms of the enacted map?

6 A. Yes. Before I could understand the enacted map  
7 and understand the decisions that were made, it  
8 was important for me to gain an in-depth  
9 understanding of what it's like to draw a map in  
10 Kansas and to try to apply all these criteria.  
11 So it was in that spirit that I drew these maps.  
12 Not the census, the maps that should be  
13 necessarily considered for adoption, but they  
14 were illustrative and they helped me understand  
15 what -- how to evaluate the map adopted by the  
16 legislature.

17 Q. Okay. So let's look at one of those now. So  
18 let's pull up Plaintiff's Exhibit 1, page 15,  
19 which is figure 8 in your report. What is this  
20 plan?

21 A. So this is -- as I mentioned earlier, I  
22 discovered that the only real tension in abiding  
23 by the traditional redistricting criteria in  
24 Kansas is between the core retention and a couple  
25 of things: The compactness and preservation of

1 communities of interest, in particular keeping  
2 together northeast Kansas. So it's not possible  
3 to do both those things really effectively in the  
4 same plan. So I thought I would try first to  
5 elevate the importance of core retention and draw  
6 a plan that simply took the old plan and adopted  
7 a strategy of making a new plan that was similar  
8 as possible to the old plan, preserving as much  
9 of the population in each district as possible.  
10 So that's the logic of this plan.

11 Q. And overall, what percentage of Kansans were  
12 moved between the old districts and the new  
13 districts in the least-changed plan?

14 A. Around 3%. So 97% of the people are still in the  
15 same district in this plan. So in that sense, I  
16 think it achieved its goal.

17 Q. Okay. And so in other words, is it fair to say  
18 it's only necessary to move about 3% of people to  
19 achieve population equality based on how  
20 demographics and population grew in Kansas over  
21 the last decade?

22 A. That's right. In some states, it's necessary to  
23 really start over and reconfigure things,  
24 especially when states gain or lose congressional  
25 seats, but in this case, it was possible to



1           come -- to really not move very many people to  
2           achieve this.

3       Q.   And now turning to your second map that you drew  
4           on page 16 of Exhibit 1, and figure 9, what is  
5           this plan?

6       A.   Right.  So I described that the previous plan,  
7           while it was very good as preserving the core of  
8           the old districts, one of the things it did --  
9           that we could see just -- it took that already  
10          narrow rectangle of District 2, and it made it  
11          even narrower.  So it was relatively, by any  
12          measure of compactness, that rectangle is a  
13          relatively less compact district.  There is a  
14          string of cities in northeast Kansas that -- many  
15          approaches to thinking about communities of  
16          interest would involve keeping those communities  
17          together.  So this is a plan that, while reducing  
18          the -- well, increasing the number of people that  
19          have to be moved to produce it, it is much better  
20          on compactness.  So this is a plan that really  
21          scores very well on compactness.  And it is a  
22          plan that I believe does a good job of keeping  
23          communities of interest together.

24      Q.   And putting aside core retention, how does it do  
25          on the other traditional redistricting criteria

1           that you considered, including those that are in  
2           the guidelines?

3       A.    It does very well, in that it minimize --  
4           achieves absolute population equality, minimizes  
5           the splits of counties down to three, and it  
6           doesn't split any cities or incorporated  
7           communities.  It has a very good compactness  
8           score.

9       Q.    In drawing both of these plans, I believe  
10          wyandotte county is kept whole.  Is that right?

11      A.    Correct.

12      Q.    And why didn't you split wyandotte in drawing  
13          these plans?

14      A.    Well, when I first read the redistricting  
15          criteria adopted by the legislature, there is  
16          special attention given to counties and  
17          importance of not splitting counties, but it  
18          actually provides in -- 4D of the list provides  
19          reasons why not to split counties.  And there was  
20          discussion of the importance of counties as  
21          political and social and economic units.  And in  
22          particular, wyandotte is unique among the  
23          counties in Kansas and also relatively unique in  
24          the United States in its merged county, city  
25          governments form.  So when deciding to split

1           Wyandotte County, one is also deciding to split  
2           an important American city right down the middle.  
3           And so it's -- given the guidelines, criteria  
4           about communities of interest and the reasons for  
5           not splitting counties, it almost seemed like the  
6           starting point for a plan. That was the key.  
7           Kansas City -- keep Kansas City and Wyandotte  
8           County together, and it wouldn't have occurred to  
9           me to split that particular county.

10        Q.    Okay. Let's now discuss how the four plans  
11           compare. So the enacted plan, the prior plan,  
12           the least changed plan, and the communities of  
13           interest plan, and consider how they compare with  
14           each other. In terms of the configuration of  
15           the districts in the three plans, the -- sorry.  
16           The two plans that you drew. How do those -- how  
17           does that configuration compare to the enacted  
18           plan?

19        A.    My plans -- well, the enacted plan, in fact,  
20           started with District 4. The enacted plan in  
21           District 4 looks a lot like District 4 in the  
22           least changed plan. So that district is very  
23           similar to the previous district. And I should  
24           add that District 4, what's happened there is the  
25           population of Wichita has grown, and the

1 population of surrounding rural areas has  
2 declined, such that it's just right about at the  
3 old district, right about at the population  
4 target. So that district is left the same, as  
5 much as in my least changed plan. But otherwise,  
6 the configuration is very different in this  
7 structure.

8 So District 1, it kind of reaches over  
9 into northeast Kansas and comes along the river  
10 and extracts some communities and not others.  
11 And so it reaches over and reaches down and  
12 extracts Lawrence from its surroundings. It  
13 also, in its application in District 3, as has  
14 been already mentioned, it splits Wyandotte  
15 County and combines with Johnson County, extends  
16 further down to include some relatively rural  
17 counties to the south. And what is then left is  
18 a highly noncompact District 2 that circumvents  
19 some of these areas in Kansas City, reaching  
20 through a narrow corridor, around Lawrence and up  
21 through Leavenworth and up to the northeast part  
22 of the state.

23 Q. And we'll walk through each of the criteria that  
24 you mentioned earlier individually. But to  
25 start, based on your analysis, can the

1 configuration of the enacted plan be explained by  
2 the adopted criteria or other neutral  
3 redistricting principles?

4 A. No, I don't believe it can.

5 Q. Okay. So now let's walk through each of those  
6 criteria, starting with compactness. I think  
7 you've already mentioned the adopted -- the  
8 adopted criteria in part 4A states that districts  
9 should be as compact as possible. Is that right?

10 A. Yes.

11 Q. So turning to page 18 of Exhibit 1, table 1,  
12 which is entitled Average Compactness Scores of  
13 Enacted Plans, Illustrative Plans, and Prior  
14 Plan, looking at this table, how do the four  
15 plans compare, in terms of compactness?

16 A. What I've done in this table is produced several  
17 of the most commonly used measures of  
18 compactness. I think the ones that are most  
19 commonly used in the courts include the Reock and  
20 the Polsby-Popper score, so it might make sense  
21 to focus on those. Those are easily -- the  
22 higher numbers are more compact. Lesser numbers  
23 are less compact. When we look at those, we can  
24 see that the enacted plan we focussed first on,  
25 the Reock -- it is less compact than the previous

1 plan, which is, of course, very similar to the  
2 least changed plan. And substantially -- as I  
3 was describing, substantially less compact than  
4 the community of interest plan.

5 And when we look at the Polsby-Popper  
6 score, the differences are even a little bit more  
7 extreme. The Polsby-Popper score is .35. It's  
8 .41 for the previous plan, .42 for the least  
9 changed plan, and .47 for the community of  
10 interest plan.

11 Q. So can an effort to create compacted districts  
12 explain the configuration of the districts in the  
13 enacted plan?

14 A. No. I think not.

15 Q. Now, turning to page 19 and table 2, which lists  
16 various metrics about subdivisions that are  
17 split, is this -- I think you've already  
18 mentioned -- but the splitting of counties,  
19 voting tabulation districts, cities and towns, or  
20 rather the preservation of those things and not  
21 splitting them -- is that a traditional  
22 redistricting criteria?

23 A. Yes. It's one of the central ones.

24 Q. All right. And it's also discussed in the  
25 guidelines?

1 A. Yes.

2 Q. Okay. So how do the four plans compare, in terms  
3 of county splits?

4 A. The previous plan, in addition to the two plans  
5 that I submitted in this report split three  
6 counties. So the enacted plan splits an  
7 additional county.

8 Q. Next, looking at voting tabulation districts,  
9 first, what is a VTD?

10 A. A VTD is -- we can think of it as essentially a  
11 precinct, but it's the lowest level of election  
12 administration in the US. It's -- the ballots get  
13 distributed to voters. I think in running  
14 elections, a very important level of geography.  
15 But in a split of VTD, then what happens is when  
16 people come in to vote, the election  
17 administrators have understand which people are  
18 in which district and make sure they have to the  
19 right ballot. So sometimes given that task,  
20 things go awry. People end up with the wrong  
21 ballot. In a local election, this can end up in  
22 confusion, lawsuits, and the like. So that's the  
23 reason to keep VTDs and tabulation districts  
24 together.

25 Q. And how do the four plans compare, in terms of

1 VTD splits?

2 A. The least changed plan that I introduced has four  
3 VTD splits. The community of interest plan and  
4 the previous plan both have three, and the  
5 enacted plan has 18. And many of those are kind  
6 of around the Lawrence area and along that kind  
7 of Kansas River Valley 2nd District appendage.

8 Q. So based on your analysis and in your opinion,  
9 can an effort to reduce or minimize political  
10 subdivision splits explain the configuration of  
11 the districts in the enacted plan?

12 A. No, certainly not. And especially when comes to  
13 cities and towns where it's possible to not split  
14 any, but they're -- that plan does split five.

15 Q. Turning back to page 18 of Exhibit 1, what are  
16 some of the communities of interest that are  
17 split by the enacted plan?

18 A. Well, there is a -- as I explained earlier,  
19 there's a set of geographically proximal cities  
20 that run along the Kansas River Valley, and this  
21 is -- these places are also relatively dense, and  
22 many of them have higher minority populations  
23 than the rest of the state, except in Kansas  
24 City. These are some of the places -- and  
25 Wichita. These are places that have



1 concentrations of minorities. So those minority  
2 communities that are spread along the river is  
3 one, but it is also the case that the boundary  
4 between District 1 and 2 separates two Native  
5 American reservations and splits the Native  
6 American community in that part of the state.  
7 There's -- Fort Riley itself is split, and it's  
8 split from Junction City by the choice of that  
9 spot for the boundary between District 1 and 2.  
10 And as we already discussed, the split of  
11 Wyandotte County, splitting Kansas City is an  
12 obvious community of interest that has been  
13 split. Also, Lawrence has been -- and the way  
14 it's been extracted from its environment and from  
15 its suburbs and -- the city itself is actually  
16 split in this configuration. That's some of  
17 the first ones that come to mind, looking at  
18 this.

19 Q. And you mentioned the distribution of the  
20 minority population. Let's turn to page 21 and  
21 figure 11, which is entitled Enacted Plan  
22 Boundaries and African American Population,  
23 Northeast Kansas. What does this map show?

24 A. This is just using data from the US census. Most  
25 recent census. These are within census block

1 groups. This is a density map. And in this  
2 representation, there's one dot for 40  
3 individuals, and this is just showing us the  
4 structure in the African American population in  
5 northeast Kansas. We see, of course, the largest  
6 concentration is in Kansas City, but also further  
7 south down into Johnson County, and then up in  
8 Leavenworth, and then along those Kaw River  
9 valley cities that I mentioned.

10 Q. And turning to the next page, 22, figure 12, this  
11 is enacted plan boundaries and Hispanic  
12 population, northeast Kansas. How does the  
13 distribution of the Hispanic population across  
14 this part of the Kansas compare to the African  
15 American distribution?

16 A. It's really quite similar. I think when we look  
17 at the maps, we see a lot of similarities. And  
18 as in the previous map, we get an appreciation  
19 for how that kind of meandering boarder between  
20 Districts 1 and 2 keeps those communities apart  
21 in various ways.

22 Q. Okay. And now turning to page 23 of the same  
23 exhibit, Exhibit 1, and figure 13, enacted plan  
24 boundaries of Native American population,  
25 northeast Kansas, can you describe what this map

1 is showing?

2 A. This is similar to the other maps, except this is  
3 showing us the Native American population, in  
4 which some aspects of the distribution look  
5 similar to the other maps. The exception is  
6 indicated here with the tribal lands in both in  
7 Jackson County and to its north. And so there  
8 are Native American populations in those areas as  
9 well.

10 Q. Okay. Now turning to a final redistricting  
11 criteria, core preservation, which you've  
12 mentioned a few times, how do you measure core  
13 preservation in this analysis?

14 A. I just figure out which census blocks are in the  
15 same district as before and which ones have moved  
16 to a different district. And I can get the  
17 populations of those districts, so I ascertain  
18 how many people are in the same district as  
19 before, and how many people have moved to a new  
20 district. And I take percentages for each plans.

21 Q. And I think you mentioned -- but one of the  
22 guidelines, I believe, 4C, provides that the four  
23 existing congressional districts should be  
24 preserved when considering the community's  
25 interest to the extent possible. Is that right?

1 A. Yes.

2 Q. Now, zooming in here on Exhibit 1, page 26,  
3 table 3, how do the three plans compare, in terms  
4 of core preservation of the prior plan?

5 A. Well, as we've already discussed, and as one  
6 would anticipate, the least changed plan does  
7 very well, and it preserves 97% of the -- each --  
8 97% of the individuals stay in the same district  
9 with this plan. In the enacted plan, the figure  
10 is 86%, and the community of interest plan, it's  
11 83%.

12 Q. And so how does the enacted plan sort of compare  
13 with the least changed plan?

14 A. It's -- yes. It's clear if one is trying to  
15 preserve the core population, then it's possible  
16 to do a lot better than 86% as illustrated by  
17 this plan.

18 Q. Kind of moving down this table, what does your  
19 core retention analysis reveal about the rate at  
20 which minority Kansans were moved across district  
21 lines?

22 A. So it's possible to do what I just described,  
23 figuring out the percentage of individuals who  
24 have moved and stayed in the same district and  
25 break it down by race, and that's what I've done

1 here. So we can see in the enacted plan, 75% of  
2 African Americans are in the same district, 83%  
3 of Hispanics, and 79% Native Americans. And so  
4 those percentages are lower than when we just  
5 look at the total population that's -- that  
6 remains in the same district. So it gives you  
7 the sense that a lot of the movement in district  
8 boundaries did actually involve minority  
9 communities. The changes in district boundaries  
10 were focussed on areas with large minority  
11 populations. And in the other plans, that there  
12 was -- that asymmetry between the total number,  
13 and that for the minority groups is not present.

14 Q. Okay. So Dr. Rodden, in your opinion, can the  
15 configuration of the enacted districts be  
16 explained by adherence to traditional  
17 redistricting criteria, including those that are  
18 in the adopted guidelines?

19 A. No, I don't believe they can.

20 Q. Shifting gears now to talk about a different part  
21 of your analysis, the dislocation analysis that  
22 you did, let's start -- can you tell us about  
23 what the concept of neighborhoods are and what  
24 that term means in this analysis?

25 A. Yes. I think many of us might think of a

1 neighborhood in the obvious way, myself and  
2 immediate community, but when they are thinking  
3 about drawing districts that are the size of  
4 congressional districts -- so 735,000 people or  
5 so -- that's really the relevant scale for  
6 thinking about neighborhoods here. So let's say  
7 for everyone in the state, for every spot in the  
8 state, what is the ratio and ethnic composition  
9 of my nearest 735,000 neighbors? Think about me  
10 as at the center of a district that's drawn right  
11 around me. That's the idea of the neighborhood  
12 here, is thinking about the scale of  
13 congressional districts and what are the closest  
14 people to me that would make up the size of  
15 the district?

16 Q. And what's the second part of this analysis? The  
17 dislocation part.

18 A. Right. So once I figure out for everyone in the  
19 state, what is the racial and ethnic composition  
20 of the immediate neighborhood as if a district  
21 was drawn around them for their neighborhood, I  
22 ask what is the racial compositions of the  
23 district to which that person has been assigned?  
24 And that's going to be a different number. And I  
25 take the difference between those two things. So

1           what is the difference between the racial  
2           composition of my neighborhood and the racial  
3           composition of the district to which I've been  
4           assigned? And if we see there's a gap there, if  
5           we see there's a relatively large difference in  
6           those compositions, then we get a sense that the  
7           districts have not been drawn in a way that  
8           corresponds to the racial geography of neighbors.  
9           It's been drawn in a way that are putting people  
10          together with folks from other areas that have  
11          different kinds of demographic compositions. To  
12          some extent, there will always be some gaps there  
13          for people, but with some redistricting plans,  
14          that gap will be larger than others. So some  
15          plans will make people live in neighborhoods that  
16          are really quite different -- or live in  
17          districts that are really quite different from  
18          their neighborhoods. So that's what's happening  
19          in this analysis, is they're getting a sense of  
20          the extent to which the plan draws districts that  
21          extracts people from neighborhoods that look like  
22          people in the neighborhoods in which they reside.

23        Q.   Turning to Plaintiff's Exhibit 20, which is part  
24              of figure 16 that's in your report and that  
25              appears on page 28 of Exhibit 1, what does the

1 figure show?

2 A. As I just described a difference. Just a simple  
3 subtraction problem. The difference between the  
4 racial composition of a district to which someone  
5 has been assigned, and the racial composition of  
6 their neighborhood. All I'm doing here is  
7 mapping those differences. So darker colors of  
8 red here mean that a person is living in a  
9 district that has a lower minority share than the  
10 districts to which they have been -- sorry.  
11 Correct myself. That the person has been  
12 assigned to a district that has a lower minority  
13 share than the neighborhood in which they find  
14 themselves. So there's a gap there. There's a  
15 gap in a particular direction. The district has  
16 a lower minority share than the neighborhood.  
17 That's what the red color means there that we  
18 see. And especially around the northern part of  
19 District 3, which corresponds to some part of --  
20 to the northern part of Johnson County and to the  
21 southern part of Wyandotte County. So this --  
22 and this is what one would expect. It's very  
23 intuitive. Because the minority community in  
24 that -- in the Kansas City area has had this line  
25 drawn through it in Wyandotte County, District 3



1 ends up having a lower minority share than one  
2 would anticipate if the district were just drawn  
3 to the natural demographics of the area.

4 And we also see that on the northern side  
5 of that line, we also see -- so in that -- that  
6 red color that I was referring to on the southern  
7 side of the line, that is -- that comes out to  
8 around 7% difference, which I think is pretty  
9 substantial in the Kansas context. And then on  
10 the other side of that of the line, we also see  
11 that those individuals also are living in a  
12 district that has a lower minority share than  
13 their immediate neighborhood.

14 Q. And you said that 7% is relatively substantial in  
15 the Kansas context. Can you explain why that  
16 would be substantial in this context?

17 A. Well, it's a context -- for instance, the African  
18 American population is around 6%. The Hispanic  
19 population is, I think, around twice that. But  
20 it's not an area -- not a state and not an area  
21 that has a very large minority population  
22 relative to many other US states. So the  
23 difference here in this context is being placed  
24 in a district that has -- is 7% lower, to me,  
25 seems like it's not a de minimis difference.

1           It's pretty substantial.

2       Q.    Okay.  And keeping this Exhibit up, let's pull  
3           alongside it Plaintiff's Exhibit 24, which is  
4           part of figure 17 in your report and appears on  
5           page 29 of that report, which is Exhibit 1.  What  
6           is this figure showing?

7       A.    So this is the same exercise.  We're just showing  
8           exactly the same statistic, which is that --  
9           which is the difference.  Again, to make sure we  
10          understand the difference between the  
11          neighborhood and the district in which people  
12          have been assigned.  But this time, we're looking  
13          at that community of interest plan that created a  
14          relatively compact northeast Kansas district.  
15          And what we see here is that the yellow color  
16          corresponds to zero.  So zero means the  
17          demographics of the neighborhood and demographics  
18          of the district are essentially the same.  And so  
19          the thing we see here is just a lot more yellow  
20          than in the other map.  The districts -- the  
21          neighborhoods are neither more -- you know, they  
22          don't have greater minority share, and they don't  
23          have lower minority share.  They're about the  
24          same throughout most of District 3 and most of  
25          District 2.  The only place for which that is not

1 true is Leavenworth. And I think that's pretty  
2 intuitive. This is a place that has a large  
3 African American population, relatively, that's  
4 very close to Kansas City. So the nearest  
5 neighbors of the Leavenworth that has a  
6 relatively large minority share. But the  
7 minority share is a bit lower relative to that in  
8 District 2. But -- so there always will be these  
9 pockets where there are some groups that are  
10 dislocated here. We can never draw a plan where  
11 everybody's district corresponds exactly to their  
12 neighborhood. There will also be someplace where  
13 that's not the case. But what we can do is kind  
14 of step back a little bit and look at this in the  
15 aggregate and start to do some simple statistics  
16 and say well, which plan moves them around more?  
17 which plan takes people away from their  
18 residential neighborhoods more? And I think it's  
19 pretty clear the plan on the left does a lot more  
20 of that than the plan on the right.

21 Q. The plan on the left being the enacted plan, and  
22 the plan on the right being the community of  
23 interest plan.

24 A. Correct. And you can kind of get a sense of why  
25 I call it the community of interest plan.

1           Because it's one -- by keeping these groups  
2           together, it makes the demographic composition of  
3           the districts look really similar to the  
4           demographic compositions of the neighborhood.

5   Q.   And so to sort of sum up, what's kind of  
6           the takeaway from these two figures?

7   A.   We start to see some of the consequences of a  
8           noncompact districting plan.  So we saw it  
9           earlier in those compactness figures that the  
10          enacted plan is relatively noncompact, and the  
11          way it scoops out Lawrence and the way it kind of  
12          splits Wyandotte County and moves through the  
13          state.  And what this does is just helps us  
14          visualize.  I think above all, this is a  
15          visualization tool that shows us what happens  
16          when we draw those kinds of lines through  
17          minority communities that are relatively close to  
18          one another in space.  It tells us what happens  
19          when we conduct that type of approach to  
20          districting when we're splitting communities and  
21          putting them together with other far away  
22          communities.  We might end up with something  
23          where the overall share of Hispanics in the  
24          district might be kind of similar, but what is  
25          happening is that people are being removed from

1 the demographics of their neighborhood and placed  
2 in different -- a district that looks quite  
3 different. And that is something that I think is  
4 hard to visualize without a tool like this.

5 Q. Okay. And turning to -- back to Exhibit 1, page  
6 30, table 4. And we can -- we'll focus on just a  
7 small part of this table. Got a lot of numbers.  
8 So focussing in on the bottom portion of these  
9 figure, and specifically -- so the combined  
10 minority share part of the figure. And  
11 specifically, the statewide median row. What do  
12 the numbers indicate in this row?

13 A. Yes. So before, I was -- you know, we were  
14 looking at the map and trying to draw some  
15 inferences by looking at the colors, but it's  
16 nice to be able to quantify this a little bit.  
17 Trying to get to the quantification of the extent  
18 to which people are removed from their  
19 communities of interest in these plans. And so  
20 by just taking the statewide median -- we can  
21 also look at the mean. I think the median is  
22 probably a little better, in that it's influenced  
23 less by outliers. But if we just look at the  
24 median, we end up with a two and-a-half  
25 percentage point median difference between the

1 neighborhood and the district. And just to put  
2 that in context, it's useful to look at these  
3 other plans that I've drawn that are comparisons.  
4 So if you look at the previous plan, the least  
5 changed plan, and the community of interest plan,  
6 we see that those are less than half. So they  
7 really keep the people much more -- much more  
8 closely tied to their neighborhoods. So they  
9 don't move people out of the neighborhood in  
10 quite the same way. I think a doubling or more  
11 of this is substantial. And the community of  
12 interest plan really, as we saw visualized a bit  
13 in that map -- that one really has the lowest  
14 level of dislocation. Has the lowest level of  
15 difference between the neighborhood and the  
16 district.

17 Q. And before I leave this figure, looking at  
18 District 3, what do the numbers in this row tell  
19 you?

20 Q. So when we were looking at District 3, I was  
21 mentioning that some of the places that were  
22 colored darker red in the northern part of that  
23 district, they said the difference was around 7%.  
24 We can see here if we take the district as a  
25 whole, we end up at about 5 and-a-half percent.

1           So that tells us that the difference between the  
2           expected, if you will, minority share and the  
3           observed minority share in the district as drawn  
4           is 5 and-a-half percentage points. And not  
5           surprisingly, that's really where the -- that's  
6           what's driving the difference in general, is  
7           District 3. District 2 also, to a lesser extent.  
8           But District 3 has a higher level of dislocation  
9           than the others.

10       Q. All right. And in looking at this row, you could  
11       interpret that because the numbers in the  
12       previous plan, the least changed plan, and the  
13       community interest plan -- so those are  
14       substantially lower than the 5.3 figure you just  
15       described.

16       A. Correct. And that corresponds to the visual  
17       interpretations you have before when we saw the  
18       yellow in the community of interest plan, for  
19       example. But we would have seen it also in the  
20       previous plan and the least changed plan, that  
21       they -- that in District 3, they are -- they  
22       correspond well to the demographics of the  
23       district.

24       Q. So now shifting to the partisan dislocation  
25       analysis that you did -- and we can look at

1 Exhibit 25. This is figure 18 from your report.  
2 And it's -- so can you tell us what this figure  
3 shows?

4 A. So what is happening here is exactly the same  
5 process as described before, but using  
6 partisanship instead of race. So what we're able  
7 to do is figure out, again, who would be your  
8 nearest 735,000 neighbors, and using  
9 precinct-level election results, what would be  
10 the partisanship of my neighborhood, and then  
11 what is the partisanship of the district to which  
12 I have been assigned? And again, we can take the  
13 difference between those two. So am I placed in  
14 a district that is pretty similar to my  
15 neighborhood? Or am I placed in a district that  
16 has a really different type of partisanship? And  
17 if so, in which direction is it? So the darker  
18 shade of red means that a person is placed in a  
19 district that is much more Republican than their  
20 neighborhood. That darker shade of gray means  
21 that person is placed in a neighborhood that is  
22 more Democratic than their neighborhood.

23 And we see a lot of shades of orange and  
24 red in that northeast Kansas area. And it kind  
25 of corresponds to some of the things we've been



1 learning from those maps that approach this  
2 question, looking at race.

3 And so in particular, I think it's  
4 probably useful, again, focussing on District 3,  
5 to note that just to be -- it's useful to look at  
6 the legend on the right and see that there's a  
7 kind of medium, kind of a peach color there in  
8 the northern part of District 3, which is, again  
9 is a bit of northern Johnson County and southern  
10 wyandotte County, and that is a place where the  
11 district -- the colors are not that impressive.  
12 But it's a district -- it's an area in which the  
13 district is about five or six percentage points,  
14 maybe a little bit more, more Republican than the  
15 neighborhood. So these are people in the  
16 northern part of Johnson and the southern part of  
17 wyandotte who have been -- because of this split  
18 of wyandotte County, they've been placed in a  
19 district that is more Republican than their  
20 neighborhood.

21 But then when we go across that line to  
22 the northern parts of wyandotte County, then we  
23 see that this is an area where people have been  
24 placed in a district that's far more Republican  
25 than their neighborhood. So more than 10, 12

1 percentage points. And then it really -- you see  
2 something similar as we look in the corridor of  
3 District 2 that runs around District 3. But then  
4 we see something also similar, especially when we  
5 get to Lawrence. When you take a college town  
6 from eastern Kansas and you reach all the way  
7 over from western Kansas and come down and grab  
8 it, you end up with a district that is like 20  
9 percentage points more Republican than the  
10 neighborhood. So we see a lot of red on this  
11 map. A lot of individuals who have been placed  
12 in a district that is more Republican than their  
13 neighborhood. That's kind of the outgrowth of  
14 the way these lines have been drawn and the way  
15 the racial communities have been split up, is to  
16 achieve something like this.

17 Q. And to close out this discussion, how does what  
18 we're seeing here with all this red that you've  
19 just described -- how does that connect to the  
20 enacted plan's deviations from traditional  
21 redistricting criteria that we discussed earlier?

22 A. Especially when we think about noncompactness and  
23 we think about splitting up communities of  
24 interest and coming around more and splitting  
25 vote tabulation districts along the way to do

1           that, this kind of gives you a sense of what's at  
2           stake. What emerges from that kind of process.  
3           If you have a process of drawing districts that  
4           responds more just to the communities in the  
5           area, you end up with people living in districts  
6           that are more similar to their neighborhoods.  
7           But when we draw these noncompact districts, they  
8           kind of have these appendages and so forth. We  
9           end up with people living in neighborhoods that  
10          are quite different than the district to which  
11          they've been assigned.

12        Q.    Okay. And I'm getting to my last few questions  
13          with you, Dr. Rodden. Let's pull up Exhibit 26.  
14          And this is part of figure 19 in Exhibit 1 in  
15          your report and appears on page 33 of that  
16          report. Now, can you tell us what this figure  
17          shows, describing X axis to Y axis, and dotted  
18          line, and telling us what it is we're looking at  
19          here?

20        A.    Yes. The horizontal axis is just the Districts 1  
21          through 4, and the vertical axis is the  
22          Democratic vote share. But there is a separate  
23          data marker for each of the statewide elections,  
24          each of the nine elections for which I had  
25          precinct level data. And this ends up being all

1 statewide elections since 2016. And so we are  
2 able to take the precinct-level data and  
3 aggregate those up to the level of the proposed,  
4 in this case enacted districts, and then  
5 understand what the vote share for these -- the  
6 Democratic candidates would have been within  
7 these various districts to give us a sense of  
8 the overall demographic of the district. And we  
9 can see these -- Kansas is an interesting state,  
10 in that these observations are not all tightly  
11 clustered together. There are some variations  
12 from one year to another. In particular, 2018,  
13 we can see was a very unusual -- unusually good  
14 year for the Democrats. We can see from that  
15 that's the blue diamonds and gubernatorial race,  
16 and we can see 2016, the Senate was an especially  
17 good year for the Republicans.

18 But I think the most useful thing here to  
19 look at is the red circle, which is simply the  
20 average of all these, which is the approach that  
21 political scientists use in this kind of analysis  
22 to get a sense of partisanship of the districts.

23 Q. And can you briefly describe sort of what the  
24 partisan distribution is in the districts in the  
25 enacted plan?

1 A. So in the enacted plan, there are -- the District  
2 1 ends up being very comfortably a Republican  
3 district, District 2 is a comfortable Republican  
4 district, and the same thing is true of District  
5 4. District 3 is more competitive, but it is  
6 about a 49% Democratic district, so it also is a  
7 district which on average has a Republican  
8 majority. So all four different districts have,  
9 in this approach, Republican majority.

10 Q. And keeping this exhibit up, let's also pull up  
11 Exhibit 29, which shows the same district  
12 partisanship information as compared in the  
13 previous plan.

14 A. Yes. See that in the previous plan, the District  
15 1 was more Republican, in fact, than the enacted  
16 plan, and District 2 was a bit more competitive  
17 than the enacted plan, but the real difference --  
18 remember I mentioned District 4 is very similar.  
19 But in the previous plan, District 3 was a  
20 Democratic-leaning district. I think somewhere  
21 north of 52%.

22 Q. And we can pull down exhibit -- sorry.

23 THE COURT: Sorry. Go ahead. I'm making  
24 more noise than I wanted to.

25 MS. MADDURI: No problem.

1 BY MS. MADDURI:

2 Q. Let's pull up Exhibit 28 alongside Exhibit 26,  
3 which is already up. And this figure is  
4 depicting the partisanship for the community of  
5 interest plan. What is it showing?

6 A. Again, District 4 looks a lot like the old plan,  
7 and as does District 3. District 2 in this plan  
8 is a bit -- still a Republican-leaning district,  
9 but it's a bit more competitive, but District 3  
10 is in this plan much more similar to the old  
11 plan. And as I think I described it, keeps a lot  
12 of the old plan district. So that's not too  
13 surprising. So it looks more like the previous  
14 plan in District 3.

15 Q. Okay. We can go ahead and take these down and  
16 finish up here. So I think you've already  
17 explained that you don't believe that the enacted  
18 plan can be explained to you by adhering to  
19 traditional redistricting criteria or the  
20 guidelines. What are the implications of that  
21 fact for partisanship under the enacted plan?

22 A. As we've seen here with these figures, that  
23 District 2 in the enacted plan is more Republican  
24 than one would anticipate. And then especially  
25 District 3, this is -- I think as many have

1 already mentioned today, the US is a very  
2 hotly-contested and polarized democracy. Going  
3 from 49% to 52 or 53% is a pretty substantial  
4 kind of difference. That's the difference we're  
5 looking at in District 3.

6 Q. What is the lack of adherence to the enacted  
7 plan to traditional redistricting criteria --  
8 what does that mean for minority voting power in  
9 the enacted plan?

10 A. That's, I think, much of what was communicated by  
11 those maps. But the minority groups, by having  
12 the lines drawn through Wyandotte County and  
13 around District 2 the way we discussed in  
14 northeast Kansas, by removing them from their  
15 geographic neighborhoods, it reduces the ability  
16 of minorities to elect candidates of choice,  
17 which we've seen in some of those partisanship  
18 maps.

19 MS. MADDURI: I don't have any further  
20 questions for Dr. Rodden right now.

21 THE COURT: Thank you. Doing okay?

22 THE WITNESS: Yes. Thanks.

23 THE COURT: Welcome. When you're ready,  
24 Gary.

25 (Discussion held off the record and

1 out of the hearing of the court reporter.)

2 THE COURT: Go ahead and proceed. Let's  
3 begin, and we'll see where it takes us.

4 CROSS EXAMINATION

5 BY MR. AYERS:

6 Q. Dr. Rodden, my name is Gary Ayers. We met on  
7 zoom a week ago, maybe?

8 A. Yes. Nice to see you.

9 Q. Nice to see you in person. I've already lost the  
10 exhibit number of your report, which --

11 MS. MADDURI: It's Exhibit 1.

12 THE COURT: Thank you, Lali.

13 MS. MADDURI: Plaintiff's Exhibit 1.

14 BY MR. AYERS:

15 Q. One. Got it. If you'd turn to page two of  
16 Exhibit 1, please, Dr. Rodden. And I -- page  
17 two, please. Oh. That's Jamie's doing that.

18 THE COURT: Gary, I think the echo was  
19 caused by our IT. And I'm assuming you have what  
20 you want on the screen?

21 MR. AYERS: That's fine. Sure.

22 THE COURT: All right.

23 BY MR. AYERS:

24 Q. Well, Dr. Rodden, if you have your report, just  
25 for reference, I counted the use of adopted



1 criteria, the legislative adoptive criteria  
2 report -- I found it on 13 different pages, where  
3 you were comparing the enacted plan with the,  
4 quote, legislative adopted criteria. And you --  
5 in fact, you defined that measure as, quote, the  
6 adopted criteria. Do you remember doing that in  
7 your report?

8 A. Yes.

9 Q. And so at the time you did your report, you  
10 thought there was a legislative adopted criteria,  
11 did you not?

12 A. Yeah. I believe we -- as we discussed in my  
13 deposition, I was under the impression that  
14 this -- these criteria had been considered and  
15 adopted by the House. Rather than just the --

16 Q. Well, at the time, you actually thought it was  
17 adopted by the legislature. Exactly. Isn't that  
18 right?

19 A. My recollection is that I thought it was -- I  
20 thought the House had adopted these to sort of  
21 provide structure to the committee. I was set  
22 straight that it was the committee that adopted  
23 these criteria.

24 Q. And that's because I explained that to you in  
25 light of your reports having said the legislature

1           adopted it. Do you remember that?

2    A.    Yes.

3    Q.    Okay. So when you did your report, you believed  
4           that the legislature had a set of adopted  
5           criteria, and you labelled them, quote, the  
6           capitalized adopted criteria, end quote. Isn't  
7           that correct?

8    A.    Yes.

9    Q.    Okay. And then you also said these are the  
10           traditional redistricting principles. Is that  
11           right?

12   A.    Yes.

13   Q.    And then as I said, through your report, you  
14           compare different plans to, quote, the adopted  
15           criteria. Is that correct?

16   A.    Correct.

17   Q.    Because we have your exhibit. We can count them  
18           ourselves.

19   A.    Sure.

20   Q.    Okay. We now know though, and I think we have  
21           all agreed the guidelines were not adopted by the  
22           legislature. You were under -- you're aware of  
23           that today.

24   A.    Yes.

25   Q.    Now, with regard to your prior testimony in

1 cases, you've testified in Florida. Is that  
2 correct?

3 A. Yes.

4 Q. And that was the Romo case, and Dr. Chen also  
5 testified there. Is that correct?

6 A. That's correct.

7 Q. And that was for the Plaintiff. Right?

8 A. Yes.

9 Q. And you testified in the Lee case in Virginia,  
10 and that was for the Plaintiff?

11 A. Yes.

12 Q. And the Arizona case, you were testifying -- it  
13 was for the Democrats. That was -- you were a  
14 Plaintiff -- testifying for the Plaintiff there.  
15 Correct?

16 A. I believe I've been involved in a -- more than  
17 one case in Arizona, and neither of them had to  
18 do with redistricting. And I believe those --  
19 that I was -- those were Plaintiffs who I was --  
20 for whom I was testifying.

21 Q. We have another Virginia case, the Bethune case,  
22 where you testified for the Plaintiff?

23 A. Yes.

24 Q. And another Florida case, Jacobson, where you  
25 testified for the Plaintiff. Correct?

1 A. Yes.

2 Q. We have the Gillis case, where you did an abacus  
3 for the Plaintiff. Correct?

4 A. I don't remember who was Plaintiff and Defense in  
5 that Supreme Court context, but it was the group  
6 that was challenging the redistricting plan.

7 Q. Challenging the plan. Right.

8 A. Yes.

9 Q. And then you and Dr. Chen also testified in -- or  
10 submitted reports in the Richo (phonetic) case.  
11 Correct?

12 A. I did not submit a report in the Richo case.

13 Q. How were you involved in the Richo case?

14 A. I was not involved in the Richo case.

15 Q. Okay. And then I think you were involved, as far  
16 as your report goes, with the Ferguson case in  
17 Missouri. Is that correct?

18 A. Yes.

19 Q. And did you obtain that case because of your  
20 connection with St. Louis?

21 A. Going back some time now. I don't really recall  
22 how I met the Plaintiffs for the Defense (sic).  
23 I believe it's through connections in Washington  
24 University. The academic equations.

25 Q. With regard to the guidelines we were just

1 discussing, which was Plaintiff's Exhibit 1,  
2 there are no -- you did not have the definitions  
3 provided to you by the legislature or the  
4 committees for the guidelines themselves. All  
5 you had were the guidelines. Correct?

6 A. Correct.

7 Q. And I think you indicated that the guidelines,  
8 that one-page document, was the only document you  
9 had that laid out the starting point on these  
10 issues. I think you called it the starting  
11 point. Correct?

12 A. From the perspective of the committee, that's all  
13 I had from them. Yes.

14 Q. And I think you indicated you did not detect any  
15 hierarchy in the guidelines.

16 A. Population equality always comes first, I would  
17 say. But beyond that, that's not clear here.  
18 That's clear in Federal law. But other than  
19 that, I did not believe though these two imply  
20 hierarchy.

21 MR. RUPP: Your Honor, if I can interrupt  
22 just a second, somebody's -- and I don't think  
23 it's Jamie. Somebody's computer is showing here.  
24 Their personal emails are showing up on the  
25 screen.

1 (Pause in the proceedings.)

2 THE COURT: Is he going to be using that  
3 to testify from, conceivably?

4 MR. AYERS: Through cross examination, we  
5 may be using it. This is Dr. Rodden's  
6 deposition.

7 THE COURT: Hand it to him and have him  
8 not open it until such time as we deem it  
9 necessary. Gary, when you're ready. I'm not  
10 trying to rush you.

11 MR. AYERS: No, I'm fine. We now have the  
12 deposition. I became concerned it was not in the  
13 courtroom.

14 BY MR. AYERS:

15 Q. So Dr. Rodden, we have the deposition here. We  
16 can refer to it if we need to. I have the page  
17 numbers here if you need them. I think you  
18 testified that in terms of the guidelines and  
19 tradeoffs, there are as many tradeoffs as there  
20 are states, and each state has a different  
21 approach. Is that still your testimony?

22 A. Yes. That's not an unreasonable summary of the  
23 state of affairs.

24 Q. And -- thank you. And you indicated that you can  
25 highlight one guideline and fail all the rest.

1 A. Say that again? I just didn't --

2 Q. You can highlight one guideline and fail all the  
3 rest if you're trying to apply the guidelines  
4 unevenly.

5 A. Yes.

6 Q. I asked you about the social part of the  
7 guidelines. And can you put up -- it's our  
8 Exhibit 1001, Jamie. Can you take it down to 4B?  
9 Is it on your screen?

10 MR. RUPP: I think it's on the next page.  
11 It's still not up on the screen there.

12 (Pause in the proceedings.)

13 MR. AYERS: Tony, we lost power.

14 MR. RUPP: We've got power here.

15 MR. AYERS: That doesn't help the witness.

16 THE COURT: I'm afraid Jonathan can't see  
17 the particular screen. Let's see if we can  
18 restore power here, or we will play musical  
19 chairs.

20 MR. AYERS: There we go. Thank you. Our  
21 hero.

22 THE COURT: Jonathan, to your right there.

23 BY MR. AYERS:

24 Q. 4B is the guideline that talks about the  
25 communities of interest, Dr. Rodden. Do you

1 recognize that?

2 A. Yes, I do.

3 Q. And I think we talked about in your deposition  
4 that you really can't measure the social  
5 community of interest quantitatively. Is that --  
6 do you remember that?

7 A. Yes.

8 Q. And I think you said, quote, we're stuck with  
9 things we can measure, end quote. Do you  
10 remember that?

11 MR. MADDURI: Your Honor, objection.  
12 This -- may I be heard?

13 THE COURT: Absolutely. So that we're  
14 clear, counsel, when you make an objection, I'm  
15 going to listen to what you have to say. Please  
16 state the legal basis for it, and then I'm going  
17 to give counsel, so that we get this straight  
18 every time, a chance to respond, and then I'll  
19 make a decision.

20 MS. MADDURI: Thank you, Your Honor.  
21 Counsel is reading from Dr. Rodden's deposition,  
22 but there hasn't been any showing of inconsistent  
23 testimony or otherwise a need to impeach him  
24 based on that prior testimony.

25 THE COURT: I'm not sure I understand your



1 objection. You're saying that Dr. Rodden should  
2 be able to see his deposition prior to the time  
3 that Gary attempts impeachment? Be more specific  
4 with me if you would, please, Lali.

5 MS. MADDURI: Certainly, Your Honor. As  
6 far as I can tell from the questions that counsel  
7 has asked, there hasn't been a need to impeach  
8 Dr. Rodden, so there's no need to quote from the  
9 deposition in his prior testimony. He hasn't  
10 actually been asked a question, aside from what  
11 he formerly testified to.

12 THE COURT: I'll call that form of the  
13 question. How does that sound?

14 MR. MADDURI: Thank you, Your Honor.

15 THE COURT: Gary?

16 MR. AYERS: I can change the form. Make  
17 it easier. I can ask him the question, and then  
18 if he says yes or no, I can say didn't you say.  
19 It's just a two question, versus a one question.

20 THE COURT: Okay. So a couple of things  
21 here: First, since we're only in front of the  
22 Court as a factfinder, I don't necessarily think  
23 that it matters, but to be candid with you, I  
24 think Lali's objection is correct, as far as  
25 proper procedure is concerned. And so does it

1 matter that much to the Plaintiff? And I'm not  
2 trying to put you on the spot. If it does, then  
3 let's do it right.

4 MS. MADDURI: I think counsel should ask  
5 Dr. Rodden a question prior to attempting to  
6 impeach him.

7 THE COURT: Objection sustained. Please  
8 do it in the appropriate manner for impeachment  
9 if you are attempting to impeach him. Thank you,  
10 Gary.

11 MR. AYERS: Thank you, Judge.

12 BY MR. AYERS:

13 Q. So can you measure social communities of interest  
14 quantitatively?

15 A. That depends on how we define social communities  
16 of interest. If we include ethnic groups and --  
17 of the kind of I presented maps on earlier, yes,  
18 we can. If we're putting that aside as a  
19 separate category, that becomes difficult. I  
20 believe in our deposition, you mentioned things  
21 like church groups and so forth. I don't have  
22 geocoded data on the membership of Missouri state  
23 Lutherans versus ELCA Lutherans. That is a hard  
24 thing to quantify, yes.

25 Q. And the -- if you look at the guideline itself,

1           it does separate out social, cultural, racial,  
2           and ethnic. Correct?

3    A.    Yes.

4    Q.    And we were only focussed on social when I asked  
5           my last question, which is can you quantify a  
6           social community of interest?

7    A.    One could try, but I've not been able to do that  
8           in my report.

9    Q.    Would the same be true of a cultural community of  
10           interest?

11   A.    I think that's fair. It's also something I don't  
12           attempt to do in my report.

13   Q.    Would you agree these can be defined in many  
14           ways? Many different ways.

15   A.    Yes.

16   Q.    Would you agree that they are somewhat squishy  
17           concepts?

18   A.    A cultural community of interest -- that can be a  
19           squishy concept, yes.

20                   MR. AYERS: Jamie, can you pull up 1054?

21   BY MR. AYERS:

22   Q.    Dr. Rodden, is it possible that the western  
23           Kansas manufacturers would put together a group  
24           and call themselves a community of interest?

25   A.    Yes.

1 Q. Would that surprise you?

2 A. No.

3 MR. AYERS: Could I have 1055?

4 BY MR. AYERS:

5 Q. Would it surprise you that the southeast Kansas  
6 people would do something similar, have an  
7 economic group called the Southeast Kansas, Inc?  
8 would that surprise you?

9 A. No.

10 Q. Would that be a community of interest that  
11 southeast Kansas could define?

12 A. Yes.

13 MR. AYERS: And could I have 1056?

14 BY MR. AYERS:

15 Q. What about the Northwest Kansas Economic  
16 Innovation Center? Would that be a community of  
17 interest that could be -- the people could come  
18 together and call a community of interest?

19 A. I would need to know more about what the --  
20 sounds like a labor market training or something.  
21 I'm not sure that's a community of interest, per  
22 say.

23 Q. It could be an economic community of interest.  
24 Is that correct?

25 A. A group of people providing entrepreneurial

1 assistance. Sounds a bit more like a commercial  
2 organization. I'm not sure if it's something I  
3 would think of comes directly to mind as a  
4 community of interest, but --

5 Q. Would you exclude commercial connections as  
6 communities of interest?

7 A. Would you tell me more what you mean by  
8 commercial connections?

9 Q. I'm just using your words, Dr. Rodden. You said  
10 it sounds more like commercial. I said could you  
11 have commercial communities of interest?

12 A. Certainly, yes.

13 MR. AYERS: You can take that down,  
14 please. Thanks.

15 BY MR. AYERS:

16 Q. Do you know of any peer-reviewed studies that  
17 guide you in dividing or not dividing social or  
18 cultural communities of interest?

19 A. Peer-reviewed definitions of community of  
20 interest. There has been some recent work,  
21 trying to use survey research, trying to ask a  
22 lot of people how they view their neighborhood,  
23 how they view their communities of interest.  
24 There's been some work that attempts to kind of  
25 crowd source the notion of communities of

1 interest. This is an ongoing area of interest  
2 for political scientists. It's something  
3 that's under analysis. So there have been some  
4 studies that try to quantify this.

5 Q. Do you know of any of those studies that have  
6 reached any conclusions about what the magnitude  
7 has to be to be legally significant for splitting  
8 or combining a community of interest that is not  
9 racial or ethnic?

10 A. I don't know of literature on legal standards for  
11 communities of interest. To measure them and  
12 then apply a specific standard, that is something  
13 I'm unaware of.

14 Q. Even in the Voting Rights Act cases, do you know  
15 of a percentage or magnitude of cracking or  
16 packing that scholars such as yourself have  
17 thought to be legally significant? Is there a  
18 test?

19 A. This -- I am a quantitative social scientist.  
20 Not a lawyer. So I'm -- I believe you're asking  
21 me a little bit about what are the legal  
22 standards in racial gerrymandering cases. And  
23 there are legal standards. The Supreme Court has  
24 laid them out in some recent cases and has made  
25 decisions accordingly.

1 Q. But you're not the person to do that.

2 A. I have testified in racial gerrymandering cases.  
3 I've done some analysis of that kind.

4 Q. Well, I was asking about whether you know what  
5 the magnitude of the cracking or the magnitude of  
6 the packing needs to be as a percentage.

7 A. The Supreme Court says --

8 MS. MADDURI: Objection. Counsel is  
9 asking Dr. Rodden for a legal conclusion. I  
10 would object, to the extent that he's doing that.

11 THE COURT: Gary?

12 MR. AYERS: I didn't ask him for a legal  
13 conclusion. I asked him as the -- in his area,  
14 whether or not he knew of a percentage of  
15 cracking or packing that he's testified to that  
16 was found to be enough.

17 THE COURT: Objection is overruled. He  
18 can testify if he knows whether or not there is a  
19 percentage number without drawing a legal  
20 conclusion.

21 THE WITNESS: I need to know a bit more  
22 about what it is that you're asking. So the -- a  
23 percentage of -- I'm a little bit at a loss. The  
24 Supreme Court says that race has to be shown to  
25 be the predominant motive, and it's up to

1 Plaintiffs to try to demonstrate that in whatever  
2 way they can. So is there a percentage of what?  
3 A percentage of what? I'm just not sure I'm  
4 understanding what precisely you're asking for.

5 BY MR. AYERS:

6 Q. Just to be completely transparent, I saw you  
7 putting percentages up on the screen: 2% here,  
8 1% there, and I was wondering whether or not they  
9 were supposed to mean anything, other than they  
10 were percentages that you'd calculated. I was  
11 just trying to understand them, honestly.

12 A. Right. So the purpose of the report was to apply  
13 traditional redistricting criteria in some maps  
14 and then contrast that with the adopted map. And  
15 that was an effort to quantify this notion of  
16 racial communities of interest and to get an  
17 assessment of the extent to which these  
18 communities of interest were disrupted in some  
19 different maps. It was not -- the claim was not  
20 that I -- that I established a legal standard.  
21 Again, I'm not a -- I'm not trying to make a  
22 legal argument. I'm just trying to quantify in  
23 the way that I know how this concept, and then  
24 contrast the maps that were drawn according to  
25 traditional redistricting criteria with the



1 enacted map. That was the exercise.

2 MR. AYERS: Jamie, could I have Exhibit  
3 1066B, please?

4 BY MR. AYERS:

5 Q. Dr. Rodden, do you recognize -- except for the  
6 red lines, do you recognize figure 9, your  
7 proposed community of interest preservation plan?

8 A. Yes.

9 Q. And you recognize that counties in your community  
10 of interest plan are no longer -- a lot of  
11 counties are no longer where they were in the old  
12 plan, which is defined by the red lines.

13 A. Yes.

14 MR. AYERS: And if I could approach, Your  
15 Honor.

16 THE COURT: You may. Please come and go  
17 as you need to, Gary. Counsel, that --

18 MR. AYERS: Appreciate it.

19 THE COURT: -- applies to all of you.

20 BY MR. AYERS:

21 Q. Dr. Rodden, check me so I don't count the  
22 counties twice. Okay? But the counties that are  
23 no longer in the district where they were in, in  
24 part or in whole -- I'm going to count Pawnee as  
25 one of those. One, we have Pawnee, Edwards,

1 Iowa, Comanche. I'm just going to count them.  
2 We have 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, part of  
3 Reno, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,  
4 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32.  
5 We moved 32 counties. Isn't that correct?

6 A. It looks like it.

7 Q. Do you know how many counties there are in  
8 Kansas?

9 A. The number escapes me, but it's --

10 Q. 105?

11 A. I thought it was a little higher than that, but  
12 that sounds close.

13 MR. AYERS: Jamie, if you could put up  
14 1066C, please.

15 BY MR. AYERS:

16 Q. This is the blue stem (phonetic) plan with the  
17 old 2012 red line drawn in red on top of it. You  
18 recognize the blue stem plan that was suggested  
19 by the League of Women Voters. Correct?

20 A. I have seen it before, yes.

21 Q. And was that somewhat of an inspiration for your  
22 communities of interest plan?

23 A. I saw that map early in the process and did learn  
24 from it. So partially, yes.

25 Q. You're not going to be surprised, are you, that

1           it moved about 34 counties? Or should we count  
2           them?

3       A.    We don't need to go through the exercise. I  
4           think I'm going to trust you on that.

5       Q.    Okay. Do you remember that in the enacted plan,  
6           that the 4th District is left intact?

7       A.    Well, it's -- yes. It had to change a bit for  
8           population movement purposes. It's very similar  
9           to the 4th District in my least changed plan,  
10          yes.

11      Q.    Do you remember they moved the Pawnee line just a  
12          little bit?

13      A.    That's sounds -- I don't recall exactly how it  
14          was done, but that sounds right.

15      Q.    And in the enacted plan, Manhattan and Fort Riley  
16          are -- in the enacted plan, Manhattan and Fort  
17          Riley are still together as they were in the 2012  
18          plan. Correct?

19      A.    Well, Fort Riley is, in my recollection, is split  
20          in the enacted plan.

21      Q.    It reaches over into Geary County. There are  
22          some base housing that reaches over into Geary  
23          County. Correct?

24      A.    That's my understanding, yes.

25      Q.    But the base itself is in -- as it always has

1           been, in Riley County. Correct?

2    A.    Well, the boundaries of the base, you know --  
3           it's one of the things in figure 11 of my report  
4           as the boundaries of the base, and the base  
5           boundaries, and the actual population where  
6           people live in the base reaches right over the  
7           boundary. So the base itself is split by the  
8           county boundary and the district boundary.

9    Q.    By the county line. Correct?

10   A.    Correct.

11   Q.    In the 2012 plan, Fort Riley and Manhattan -- in  
12           other words, Riley County was in the first  
13           congressional district. Correct?

14   A.    This question is about the previous plan or the  
15           enacted plan?

16   Q.    The previous plan.

17   A.    The question is about --

18                   MR. AYERS: You can take that down.

19                   THE WITNESS: -- which two communities?

20                   MR. AYERS: Can you put up 1002?

21   BY MR. AYERS:

22   Q.    Yeah. 1002 is the enacted plan. And Fort Riley  
23           is here, above Geary County. This is I-70 coming  
24           across.

25   A.    Yes. I thought you were just talking about the

1 previous plan.

2 Q. I'm saying that in the enacted plan, Fort Riley  
3 and Manhattan are in Riley County, and Riley  
4 County is in the enacted plan, just as it was in  
5 the prior plan.

6 A. Riley County was in District 1 in the prior plan.  
7 And yes, it's still in District 1.

8 Q. Okay. So Fort Riley -- I'll just say Riley  
9 County so you and I can agree on that. Riley  
10 County was in the first congressional district  
11 that had most of Fort Riley and Manhattan in the  
12 prior plan, and they continue to be in the  
13 enacted plan together in the 1st District. Isn't  
14 that correct?

15 A. Yes.

16 MR. AYERS: Could I get the enacted plan  
17 up?

18 BY MR. AYERS:

19 Q. Dr. Rodden, do you know how many Native American  
20 reservations are in Kansas?

21 A. There are two that are wholly contained in  
22 northeast Kansas, and there is an additional that  
23 spills over the northern border.

24 Q. So we have -- if I may approach again, Your  
25 Honor. We have the Pottawatomie in Jackson

1 County. Correct?

2 A. Yes.

3 Q. We have the Kickapoo in part of Jackson. I think  
4 that's -- that's Brown County in Jackson, in  
5 Brown County. Is that correct?

6 A. Yes. In Atchison.

7 Q. Right. And so are you aware that Adastra 1  
8 (phonetic), that the entire Jackson County in the  
9 first congressional district, but someone asked  
10 that Jackson County be split so that the Kickapoo  
11 tribe boundaries could be kept together?

12 A. So you're asking if I knew that the Kickapoo  
13 reservation was entirely within District 1 and  
14 moved to District 2?

15 Q. No. I'm asking you whether or not in Adastra 1,  
16 whether or not you were aware that the Kickapoo  
17 reservation was split between two counties. That  
18 someone in the legislature asked that the  
19 Kickapoo boundaries be preserved, and so the  
20 legislature split Jackson County to preserve the  
21 Kickapoo tribe reservation boundaries.

22 A. I was not asked to analyze Adastra 1, so I don't  
23 have that information.

24 Q. All right. And there are two more reservation --  
25 two more Native American populations in Kansas.

1           Isn't that correct? There's the Iowa and there's  
2           the Sac and Fox, and they both go over into --  
3           from Kansas, over into the Nebraska line. Isn't  
4           that correct?

5           A. Correct.

6           Q. So they are actually split by state lines.  
7           Correct?

8           A. Correct.

9           Q. And there's nothing Kansas can do about that.  
10          Right?

11          A. Correct.

12          Q. In terms of congressional districts.

13          A. That's right.

14          Q. Okay. Can I have Exhibit 1010-2, Jamie? Were  
15          you aware, Dr. Rodden, that Senator Francisco's  
16          entire district, Senate District 2, was moved  
17          into the first congressional district from the  
18          second congressional district? It's the district  
19          that contains Lawrence.

20          A. I believe you made me aware of that at my  
21          deposition, so I am now aware of that.

22          Q. But you were not at your deposition.

23          A. Correct.

24          Q. And you did not take into account political  
25          boundaries like Senate political boundaries when

1           you did your maps, did you?

2    A.    I've never been in the habit of analyzing the  
3           overlap between state legislative districts and  
4           congressional districts when drawing a  
5           congressional map. That's typically not on the  
6           agenda in drawing congressional maps.

7    Q.    And you were at the time of your deposition  
8           unaware, were you not, that Lawrence, for the  
9           last 10 years, has been with Jefferson County and  
10          separated from Douglas County in Senate District  
11          2?

12   A.    Like I said, I did not analyze the state Senate  
13          maps.

14   Q.    And you're not aware then that taking the entire  
15          Senate District 2, which included both Jefferson  
16          County and Douglas as they existed at the time  
17          and moving them from the 2nd to the 1st, was the  
18          move of an entire political boundary. You were  
19          not aware of that.

20   A.    I did not analyze the state Senate districts, so  
21          no.

22   Q.    And it could be, could it not, Dr. Rodden, that  
23          rather than, quote, scooping down and getting  
24          Lawrence, end quote, it was actually an attempt  
25          to keep Lawrence and Jefferson County Senate



1 District 2 together and move them together from  
2 CD2 into CD1?

3 MS. MADDURI: Objection, Your Honor.  
4 calls for speculation. Dr. Rodden already  
5 testified that he is not familiar with Senate  
6 districts and did not analyze them as part of his  
7 work in this case.

8 THE COURT: Gary?

9 MR. AYERS: I asked him if he was aware.

10 THE COURT: Objection sustained. Calls  
11 for speculation on his part. He can answer the  
12 question about is he aware.

13 THE WITNESS: I did not study the Senate  
14 districts, as I said.

15 BY MR. AYERS:

16 Q. Could I have Exhibit 1010-4, please? Do you  
17 recognize Senator Haley's district in Wyandotte  
18 as part of two districts, four and five, that  
19 were moved from CD3 into CD2? As political  
20 districts, are you familiar with that? Are you  
21 aware of that?

22 A. Would you repeat the question? Am I aware  
23 that --

24 A. That Senator Haley's Senate District 4 and  
25 Senator Pitman's Senate District 5 were moved

1 together from -- excuse me. That Senate District  
2 4 was moved from CD3 into CD2. Were you aware of  
3 that?

4 MS. MADDURI: Your Honor, objection.  
5 Dr. Rodden has already testified that he has not  
6 analyzed Senate district maps and he's not aware  
7 of that, he hasn't done it in part of his report,  
8 and counsel's testifying as to these issues.

9 THE COURT: Gary?

10 MR. AYERS: I'm just asking if he's aware  
11 that the entire political district was moved.  
12 He's a political science map guy. I just want to  
13 know if he's aware that the entire Senate  
14 district was moved from CD3 into CD2. He's  
15 testified a lot about that area, and I want to  
16 know if he knows that there's an entire Senate  
17 district, Senator Haley's district, that was  
18 moved.

19 THE COURT: And he's repeatedly answered  
20 the questions that you've asked about considering  
21 state Senate districts as no, that he has not.  
22 And so I suppose that we can keep going through  
23 these one at a time if you wish.

24 MR. AYERS: This is my last one.

25 THE COURT: Let me finish, if I may,

1 please, Gary.

2 MR. AYERS: I'm sorry.

3 THE COURT: That's all right. Thank you  
4 for letting me know it's your last one. But I  
5 will continue to sustain these objections as it's  
6 not something he considered and he doesn't know.  
7 So -- and he's answered your questions. So your  
8 objection is sustained.

9 BY MR. AYERS:

10 Q. Is it true, Dr. Rodden, that any time you look at  
11 a redistricting plan and you focus on one  
12 decision, and you ask someone if that decision  
13 was appropriate, it's impossible to answer that  
14 question without knowing the broader set of  
15 circumstances?

16 A. I think that's fair, yes.

17 MR. AYERS: Jamie, could I have 1031,  
18 please? And specifically, can you give me the  
19 towns right there? Thanks.

20 BY MR. AYERS:

21 Q. Dr. Rodden, you're familiar with the census facts  
22 from the Census Bureau. Correct?

23 A. Yes.

24 Q. And it's reliable. Correct?

25 A. Yes, sir.

- 1 Q. And so what I've done for you here is put on  
2 Junction City, Emporia, Leavenworth, Topeka, and  
3 Kansas City, Kansas. Do you see that?
- 4 A. Yes.
- 5 Q. And in terms of cities that are now in the --  
6 that were and/or are now together, we now have in  
7 the enacted plan -- we have Junction City,  
8 Emporia, Leavenworth, we don't have Topeka, and  
9 we have Kansas City. Is that correct?
- 10 A. Is it correct that they are together?
- 11 A. In the enacted plan in CD1, are Junction City --  
12 excuse me. Strike that. Start over again. I  
13 think I have the wrong one. No, I'm right. So  
14 let me start again, Dr. Rodden, if you -- so we  
15 have Junction City, and it is in CD2. Is that  
16 correct?
- 17 A. Yes.
- 18 Q. And we have Emporia, and it is in CD2 in the  
19 enacted plan. Is that correct?
- 20 A. I believe so.
- 21 Q. We have Leavenworth. It's in the -- it's in CD2  
22 in the enacted plan. Correct?
- 23 A. Yes.
- 24 Q. And Topeka is in CD2 in enacted plan. Correct?
- 25 A. Yes.

1 Q. And Kansas City is in CD2 in the enacted plan.  
2 Correct?

3 A. A fragment of Kansas City is in District 2.

4 Q. With regard to the racial composition in Junction  
5 City, the census tells us that 28 -- 20.8% of  
6 Junction City is African American. Is that  
7 correct?

8 A. Yes.

9 Q. 2.9% in Emporia is African American. Correct?

10 A. Yes.

11 Q. But that 27.7% in Emporia is Hispanic.

12 A. Yes.

13 Q. In Leavenworth, the African American population  
14 is 13.4%. The Hispanic population is 9.2%.  
15 Correct?

16 A. Yes.

17 Q. In Topeka, the African American population is  
18 10.5%, and the Hispanic population is 15.3%. Is  
19 that correct?

20 A. Yes.

21 Q. Then we have your testimony on Kansas City, which  
22 is 22.4% African American and 30.7% Hispanic.  
23 Correct?

24 A. Yes.

25 Q. And these cities do not have dissimilar racial

1 composition, do they? In terms of -- if you can  
2 combine black and Hispanic, they are not  
3 dissimilar.

4 A. Well, the question is whether they are not  
5 dissimilar. Well, I would want to add them up  
6 and do a little bit more -- I think it's always  
7 bad to try to do math on the stand.

8 THE COURT: Have you seen this exhibit  
9 before?

10 THE WITNESS: It's possible that it was --  
11 that it was presented in my deposition. I don't  
12 recall.

13 THE COURT: Okay. I think that's a fair  
14 request, counsel. If you want him to figure out  
15 the statistics of this, I don't expect him to do  
16 it in the 30 seconds that you're going to take.  
17 So are we willing then to take a brief recess,  
18 let him look through this so he can answer your  
19 questions? Counsel, that would require a  
20 response from you. Do you want to take --  
21 Dr. Rodden, how long would it take for you to  
22 analyze that?

23 THE WITNESS: If the question is just to  
24 add African Americans and Hispanics -- I'm not  
25 sure what the enterprise is just yet, but adding

1           those two is not going to be too terrible.

2           THE COURT: Okay. Excuse me for  
3           interrupting. Gary, what is the question? Do  
4           you want him to testify about what the percentage  
5           of minority populations in each one of these  
6           cities are, according to Defendant's Exhibit  
7           1031?

8           MR. AYERS: Your Honor, that would be  
9           fine. It's a far simpler point than that, but --

10          THE COURT: Okay. Well, make your point.  
11          Because maybe he doesn't need time to analyze it.  
12          Just ask him the question again, if you would,  
13          please, sir.

14 BY MR. AYERS:

15 Q. Mr. Rodden, if you take Junction City, the  
16 African American population is 20.8%, and the  
17 Hispanic population is 16.7%. That's 36 -- 37.5%  
18 combined. Is that correct?

19 A. Right.

20 Q. Emporia is 37, plus 2.9, so you have --

21 A. 31%, looks like.

22 Q. About 31%? And in Leavenworth, you have 22.6%.

23 A. Yes.

24 Q. And in Topeka, you have about 25.8%? And in  
25 Kansas City --

1 THE COURT: Wait. Wait. I didn't hear  
2 him answer the question yet, please, Gary.

3 THE WITNESS: Yes. Around 25%.

4 THE COURT: All right. Then go ahead with  
5 your next question.

6 MR. AYERS: That's fine.

7 THE WITNESS: To finish up, in Kansas  
8 City, it's over 50%.

9 THE COURT: I'm not sure he asked you a  
10 question.

11 BY MR. AYERS: That's fine.

12 BY MR. AYERS:

13 Q. The city in this table that is most proximate to  
14 Kansas City is Leavenworth. Correct? In other  
15 words, you go Kansas City, Leavenworth, Topeka,  
16 and then on down to Junction City and Emporia,  
17 but the most proximate would be Leavenworth? Is  
18 that correct?

19 A. That's correct.

20 Q. Your dislocation analysis takes a spot in a  
21 particular place and then draws 734,000 people  
22 around that spot and measures that ethnicity.  
23 Correct?

24 A. It measures the share of people of a particular  
25 ethnicity in that particular neighborhood.



1 Q. The the 734,000 people around that dot that you  
2 have chosen.

3 A. Yes. We might get 7% or 4% or something like  
4 that.

5 Q. And it doesn't then take into account actual  
6 cities. You haven't done a voting dilution  
7 analysis on the actual cities that have been  
8 included into CD2.

9 A. We can get that from the map. We could abrogate  
10 these statistics by city a rather than district.  
11 In that big table, I abrogate them by district.  
12 But it certainly would be possible to abrogate  
13 them by city as well. I mentioned a figure for  
14 Lawrence. That would be very easy to do.

15 MR. AYERS: If you could give me 102  
16 again. And page 15.

17 THE COURT: Can we make that any bigger,  
18 Gary?

19 MR. AYERS: Yes, we're going to.

20 THE COURT: Okay.

21 MR. AYERS: There's a little delay from --  
22 I'm sure Jamie's already on it.

23 THE COURT: Thank you, Jamie.

24 BY MR. AYERS:

25 Q. I don't want to ask an improper question, but you

1 and I talked about this in your deposition. This  
2 is page 15, which is the racial composition  
3 voting age population on page 15 of the Adastra  
4 map packet. Do you remember -- you're familiar  
5 with that.

6 A. You showed it to me at my deposition. I had not  
7 previously seen it.

8 Q. You did not study the Adastra 2 map packet?

9 A. I studied the map. I did not look through all  
10 the materials in the packet. I was doing that  
11 kind of analysis for myself.

12 Q. So you did not do the racial analysis that the  
13 Kansas Legislative Research Department did in  
14 terms of the percentages of white, any part  
15 white, black, any part black, American Indian,  
16 any part American Indian, Asian, Hawaiian, other  
17 Pacific Islander, et cetera, all the way to  
18 Hispanic. You did not do that analysis the way  
19 that the Kansas Legislative Research Department  
20 did that analysis for the enacted plan, did you?

21 A. That's correct. That's what I -- in my  
22 deposition, I testified to that effect, and you  
23 showed me this table.

24 Q. Are you aware that under the 2012 plan, one of  
25 the congressional districts had about 19% black

1 and Hispanic, and in the enacted plan, one of  
2 the congressional districts has about 19% black  
3 and Hispanic?

4 A. I became aware of those statistics when you  
5 showed me this table.

6 Q. Okay. But it came from this table.

7 A. Yes.

8 Q. Okay. But you did not analyze voting strength  
9 based on the actual statistics presented by the  
10 Kansas Legislative Research Department in the  
11 Adastra 2 map packet. You did not do that.

12 A. You asked if I -- it's the same question. Did I  
13 conduct this analysis? No.

14 Q. Dr. Rodden, you indicated that you had seen  
15 something that indicated that the Kaw Valley was  
16 some kind of community of interest. Is that  
17 correct? The cities along the Kaw Valley. The  
18 Kaw River.

19 A. If I had seen something to that effect?

20 Q. I think there was a 1980 article by a KU  
21 professor that did a survey.

22 A. Oh, yes. That was something I cited in my  
23 report.

24 Q. Right. Did I cite that -- it was a 1980 survey  
25 by a KU professor that said students in his class

1 in 1980 identified with the Kansas River?

2 A. It's a little bit of a precursor to the type of  
3 analysis you asked about before. If there's any  
4 quantitative efforts to identify communities of  
5 interest. And obviously, something that occurred  
6 to me was to do a literature search to see if  
7 anyone tried to do that kind of analysis in  
8 Kansas. And this was something I found that I  
9 found interesting, so it was a survey in which  
10 people were asked to identify what region of  
11 Kansas they belonged to. In this analysis, there  
12 were several regions that emerged in response  
13 that identified that as their region. I was only  
14 pointing out that was identified. That came out  
15 of that type of analysis.

16 Q. That was 40 years ago. Correct?

17 A. I believe that's when the article was written,  
18 yes.

19 Q. We talked about the Kaw River, from its origin to  
20 Kansas City, being about 150 miles along. Do you  
21 remember it's about 150 miles long?

22 A. Yes.

23 Q. Do you believe, sitting here today, that you can  
24 connect all those cities in a redistricting plan  
25 just because they're all along the Kaw River?

1 A. Do I believe that I can? Technically, I  
2 believe --

3 Q. Well, that it's a proper exercise to do, in terms  
4 of community of interest, based on a 1980 survey.

5 A. Oh, the construction of that district was not  
6 based on the 1980 survey. It was based on an  
7 effort to combine communities of interest in a  
8 framework of compactness. I was trying to draw  
9 compact plans. This is the most compact plan I  
10 could draw, and it's one that had the advantage  
11 of keeping all these communities together,  
12 including all the Native American reservations  
13 and both military -- both Leavenworth and Fort  
14 Riley, and keeping all of the cities along the  
15 river -- of course not Kansas City, which was  
16 districted into District 3. But it was entirely  
17 possible to keep all those places together in a  
18 compact district. The effort was not to say this  
19 is what should be done and this is my opinion,  
20 the court shouldn't accept a plan that doesn't do  
21 that. That was not at all the exercise. It was  
22 to draw a plan that was compact. That respected  
23 communities of interest.

24 Q. And the follow-up question was whether or not  
25 Junction City, at the beginning of the river and

1 Shawnee at the end of the river, were a community  
2 of interest in your opinion. Are they?

3 A. I testified that in my study of political  
4 geography, there are often strings of cities  
5 along rivers that, from a districting  
6 perspective, does make sense to view as part of  
7 the community of interest. We discussed the  
8 Lehigh Valley in Pennsylvania, we discussed the  
9 Fox River Valley in Wisconsin, and the Kaw River  
10 Valley has the same kind of quality.

11 Q. I was only asking you about Junction City and  
12 Shawnee though. Do you have an opinion about  
13 those two towns?

14 A. They are on the -- they are on the Kaw River.  
15 Shawnee is a -- is in suburban Kansas City.  
16 Junction City is at the other end of the  
17 district. But Kansas is not such a densely  
18 populated compact state that all the districts  
19 will include cities that are right next to one  
20 another. It's necessary that some of the  
21 districts be somewhat large.

22 Q. Was that a yes or no to whether or not Shawnee  
23 and Junction City form a community of interest?  
24 I just really did not understand the --

25 A. Whether Shawnee and Junction City form -- the two

1 cities themselves form a community of interest.  
2 The only answer I can give to that is they are  
3 part of a geographic area that has many of the  
4 qualities of a community of interest.

5 Q. which are because they're on the river? would  
6 that be the quality you're thinking of?

7 A. well, I put up a map earlier of population  
8 density in Kansas. And in looking at that map,  
9 and testified that dense places -- in the  
10 legislative process, that many of the similar  
11 interests in the legislature, and that keeping a  
12 string of dense cities that are arranged in that  
13 fashion along the river together is the sensible  
14 thing. But again, by no means do I insist that  
15 they must be drawn that way.

16 Q. I think you talked about -- well, tell me. Do  
17 you believe that University of Kansas and Kansas  
18 State University and Washburn University form a  
19 knowledge corridor?

20 A. I don't know enough -- I don't know about  
21 Washburn University, to be able to comment on it.  
22 I do -- I'm very familiar with Kansas and Kansas  
23 State, and in connection with Topeka, it's part  
24 of a region of Kansas that, as described earlier,  
25 I think someone pointed out competes for Federal

1 grants, tries to attract educated young people to  
2 work in knowledge (unintelligible) professions,  
3 so that was part of my consideration of northeast  
4 Kansas as a place that had common interests.

5 Q. Keeping University of Kansas and Kansas State  
6 together would be appropriate. Correct?

7 A. I believe so.

8 Q. And it would also be appropriate to keep Forday  
9 (phonetic) State, another of the regent  
10 universities, with KU and K State. That would be  
11 three of the state regent universities. Correct?

12 A. I haven't had a chance to examine whether that  
13 would be possible geographically. All those  
14 things are constrained by how those districts can  
15 be drawn. So I'd have to take a closer look at  
16 that one.

17 Q. In your communities of interest plan, you tie  
18 Hutchinson and Wichita together. Right? Because  
19 of their Hispanic communities.

20 A. The main reason for doing that was actually  
21 compactness. I was trying to find a way to  
22 make -- once I allowed myself to change some of  
23 the districts, moving away from that least change  
24 plan and really go for a plan that, as the  
25 criteria called for it, are as compact as



1 possible, by doing that one simple thing, it was  
2 possible to draw a district that was much more  
3 compact, in part because of the population gain  
4 of the Wichita region.

5 Q. You're not aware of the western nature of  
6 Hutchinson and the state fair and all that. You  
7 don't know about all those other communities of  
8 interest with regard to Hutchinson itself.

9 A. I testified that I have heard of the Hutchinson  
10 State Fair, but I have not been there. So my  
11 on-the-ground experience with the state fair is  
12 lacking, but that's -- I believe that's what I  
13 testified in the deposition, and that is still,  
14 unfortunately, the case.

15 Q. Your dislocation analysis was introduced in 2021.  
16 Is that correct?

17 A. It was published in that year.

18 Q. It was published in the political analysis?

19 A. Yes.

20 Q. And tell me if I'm quoting this correct: We  
21 introduce a new measure of cracking and packing  
22 that is completely divorced from concerns about  
23 what is the fair share of seats that a party  
24 should receive when it obtains a specific share  
25 of the vote, end quote, called partisan

1 dislocation.

2 A. Yes.

3 Q. Is that correct?

4 A. Yes.

5 Q. And you applied your new theory of partisan  
6 dislocation to this case and called it racial  
7 dislocation. Correct?

8 A. Well, I also discussed partisan dislocation. I  
9 discussed both. It's just a change -- it's the  
10 same exact technique, but using racial data  
11 rather than partisan data.

12 Q. You pick a dot, draw a circle around it, and that  
13 becomes the neighborhood.

14 A. Not always circles because of boundaries of  
15 states. They're nearest neighbors, as you  
16 discussed.

17 Q. Right. Because you might run into the river in  
18 Missouri?

19 A. Exactly.

20 Q. But you get what I'm -- drawing a line around to  
21 get your 734,000 people. Right?

22 A. Yes.

23 Q. And you haven't produced -- presented this in  
24 court anywhere. Is that correct? Other than  
25 today.

1 A. I presented this analysis in an expert report in  
2 Ohio.

3 Q. But you didn't testify in Ohio?

4 A. I did. In a Federal -- in Federal court, yes.

5 Q. In Federal court.

6 A. Yes. Just a few days ago.

7 Q. Oh. Something new. That's great. Were you  
8 aware of the Constitutional provision that -- in  
9 Ohio that requires 68 of the counties to be in  
10 one district?

11 A. Yes.

12 MR. AYERS: Excuse me, Your Honor. I just  
13 love that. I think that's awesome.

14 THE WITNESS: Not that they should be in  
15 one -- they have to -- they don't have to be in  
16 the same district. They have to fall within --

17 BY MR. AYERS:

18 Q. Okay.

19 A. Yes. It is an interesting provision.

20 Q. Yes. And we don't have any majority minority  
21 districts in Kansas, do we?

22 A. No.

23 Q. And we cannot form any, can we?

24 A. Not to my knowledge.

25 Q. Do you know who Professor Nicholas Stephanopoulos

1 is?

2 A. I do, yes.

3 Q. Are you familiar with his measure of the metric?

4 The debate over quantifying partisan

5 gerrymandering? It's a 2018 piece.

6 A. I've seen it cited. I'm familiar with the  
7 existence of this article. I've not sure if I've  
8 read it.

9 Q. Would you turn to page 32, please?

10 THE COURT: Gary, I'd like to interrupt  
11 your cross examination for a moment. Give me  
12 some idea about how much longer you think you'll  
13 be going.

14 MR. AYERS: About 10 minutes.

15 THE COURT: About 10 minutes. And I'm not  
16 trying to rush you. You take all the time you  
17 need. Lali, will there be some follow-up?

18 MS. MADDURI: Briefly, Your Honor.

19 (Pause in the proceedings.)

20 THE COURT: Somebody educate me. The  
21 Court would like to take a recess at some point  
22 in time. I would hope that we could finish with  
23 Jonathan's testimony, but it seems like to the  
24 Court that's going to be another at least 20,  
25 perhaps 30 minutes, and that's 3 o'clock.

1 MS. MADDURI: Your Honor, if counsel only  
2 has 10 minutes, I won't be more than five.

3 THE COURT: Famous last words, Lali.

4 (Laughter.)

5 THE COURT: Jonathan, you doing okay?

6 THE WITNESS: Fine, yes. Thank you.

7 THE COURT: All right. Sorry that I  
8 interrupted. Go ahead, Gary.

9 BY MR. AYERS:

10 Q. On page 32, in the second paragraph -- and he  
11 says that to start, it is poor methodological  
12 form to analyze plans using endogenous election  
13 results. Voters may well behave differently in  
14 these elections than when casting their ballots  
15 for the office actually at issue. Do you agree  
16 with that?

17 A. I agree with the second sentence and not the  
18 first.

19 Q. The voters may well behave differently?

20 A. Yes. But it is the analysis of statewide  
21 elections to characterize the partisanship of  
22 redistricting plans when those plans are being  
23 changed and the districts are being managed.  
24 It's not even clear how we would go about using  
25 endogenous elections. Not even clear how I would

1 analyze partisanship of District 3 when it's been  
2 sliced in the middle and moved in and out. The  
3 only thing we've got are endogenous elections  
4 that are consistent.

5 Q. Let me suggest the next sentence and see if you  
6 agree with that: The better approach is to use  
7 election results for the relevant office whenever  
8 races are contested and to impute outcomes  
9 through the methods described above whenever  
10 races are uncontested. As Groffman (phonetic)  
11 and King wrote more than a decade ago, one  
12 cannot, quote, assume that votes in statewide  
13 elections for statewide candidates have any  
14 particular exente, which is future result  
15 relationship. I said the future result. Exente  
16 relationship with those with legislative  
17 candidates, end quote. Do you agree with that  
18 statement?

19 MS. MADDURI: Your Honor, may I ask a  
20 question? Is this an exhibit that we're looking  
21 at?

22 THE COURT: Gary?

23 MR. AYERS: I think it's just an article  
24 that was cited in one of our reports. It was in  
25 Alford's report.

1 MS. MADDURI: Does Dr. Rodden have a full  
2 copy of that?

3 MR. AYERS: I don't know. I'm just asking  
4 if he knows the person, if he agreed with the  
5 statement.

6 MS. MADDURI: I'm sorry. Did you say it's  
7 cited in Dr. Alford's report? Or is it attached  
8 to Dr. Alford's report?

9 MR. AYERS: We produced it. It was cited.  
10 Your Honor, is it okay for us to talk back and  
11 forth?

12 THE COURT: It certainly is. If you get  
13 it worked out, I don't have to be involved. But  
14 I'm listening in case it's necessary .

15 MS. MADDURI: We just need a copy, Your  
16 Honor. We don't have a copy.

17 MR. AYERS: It was cited and produced with  
18 Alford's materials.

19 MS. MADDURI: It's not on your exhibit  
20 list, so I don't have --

21 MR. AYERS: It's not on the exhibit list.  
22 It's cited and produced in Alford's materials.

23 MS. MADDURI: Can you provide me with a  
24 copy?

25 MR. AYERS: Yes. I'm done, with that last

1 statement.

2 MS. MADDURI: Is there a question pending?

3 BY MR. AYERS:

4 Q. Right. Do you agree with that statement?

5 A. Which statement is that?

6 THE COURT: Let's start the question all  
7 over again. I take it, Lali, that you just want  
8 a copy of the report. There's no objection here.

9 MS. MADDURI: Not yet, Your Honor. I  
10 haven't seen a copy of this article, so I don't  
11 know exactly --

12 (Pause in the proceedings.)

13 THE COURT: All right. Everyone take a  
14 deep breath. One, two, three. Oh, I know you  
15 can exhale better than that. So Lali, you're  
16 standing on your feet but not lodging an  
17 objection. You've had some conversation with  
18 Gary. The Court has no problem with that, but I  
19 need to know where we're headed. Do you just  
20 want a copy of that report, or do you have an  
21 objection to make, or shall I have Jonathan  
22 answer the question after Gary asks it again?  
23 Because I think Jonathan forgot what it was.

24 MS. MADDURI: I would like a copy of  
25 the article, Your Honor.



1 THE COURT: Done. All right. Is that all  
2 that you want?

3 MS. MADDURI: At this time, yes. Thank  
4 you.

5 THE COURT: All right then. Make sure  
6 that you provide a copy of the report when you  
7 finish with it please, Gary. And Jonathan, do  
8 you remember what the last question was?

9 THE WITNESS: I'd love to hear it again.  
10 I'd rather know what I'm answering.

11 THE COURT: Please ask the question again,  
12 Gary.

13 BY MR. AYERS:

14 Q. I said as Groffman and King wrote more than a  
15 decade ago, one cannot, quote, assume that votes  
16 in statewide elections for statewide candidates  
17 have any particular exente relationship with  
18 votes for legislative candidates, end quote.

19 A. My answer is that we have to have some data. We  
20 have to have something we can work with. I  
21 believe if what this is -- I haven't read this  
22 article, but if what they're referring to is a  
23 decade and later, I'm looking back over some  
24 redistricting plan. I have a lot of endogenous  
25 -- contested in the districts in question, then

1           sure, it would be very useful to analyze those  
2           elections. But when thinking about a brand new  
3           redistricting plan that slices communities and  
4           has appendages and arms, it's very different. I  
5           don't know how to use any endogenous -- I don't  
6           know how to use past elections to analyze  
7           anything about that plan. Because these are new  
8           districts. The only thing I can use is what I've  
9           been referring to here as endogenous elections.  
10          The statewide elections that we can examine in  
11          all of the new potential districts. I don't know  
12          of any other way to go about this.

13 BY MR. AYERS:

14 Q.       Almost finished. Dr. Rodden, it's possible to  
15       take the census data and assign it, to segregate  
16       it, I think Dr. Chen said, into the new enacted  
17       plan from endogenous elections. Quote, it can be  
18       done, end quote. You can take endogenous  
19       elections for the 3rd District and you can assign  
20       how people voted over a period of time and put  
21       them in the new enacted plan and do some  
22       regression analysis, which is what Stephanopoulos  
23       is suggesting. You could do that. Correct?

24 A.       You said some things that I just -- that I would  
25       use census data, so I could -- sounds like you're

1 recommending a course of inference that just  
2 doesn't sound right to me. That I would use  
3 census data on something or other to kind of  
4 conjure up some data on elections.

5 Q. I meant to say voting data. I'm sorry. I meant  
6 to say voting data.

7 A. Okay. So if -- in my professional opinion, would  
8 I use election results from a congressional race  
9 in the past with someone who ran in a different  
10 district and then apply those in a new district?  
11 I don't -- I just don't see that as a very  
12 fruitful exercise.

13 Q. And when you read the report, Dr. Rodden, I think  
14 that's exactly what Professor Stephanopoulos is  
15 suggesting. So there is an analysis that can be  
16 done that makes it more accurate. But I'll leave  
17 that to your expertise. I'll give you that copy,  
18 and you all can -- I'll leave that alone for now  
19 since we're having an unproductive argument about  
20 it. Because I'm not half as smart as you are.

21 A. I understand.

22 Q. That's fine.

23 THE COURT: Do I take that as an  
24 agreement?

25 (Laughter.)

1           THE WITNESS: I'll do my homework and read  
2           the article.

3           MR. AYERS: I think we would all stipulate  
4           to that.

5           THE COURT: Just kidding, counsel. But  
6           let's ask another question if you have it.

7           MR. AYERS: That's -- I think I've run  
8           that one into the ground. I'll leave that alone.  
9           I have no more questions.

10          THE COURT: Thank you, Gary. Still okay,  
11          Doctor?

12          THE WITNESS: Fine. Thanks.

13          MR. AYERS: What I should have done is --  
14          let me ask my partner something.

15          THE COURT: Yes. Please do.

16          MR. AYERS: Okay. He agrees with me that  
17          I've run it into the ground.

18          THE COURT: Glad to have --

19          MR. RUPP: I usually do, by the way.

20          THE COURT: I'm glad you two work so well  
21          together. Lali, when you're ready.

22          MS. MADDURI: I promised five minutes.  
23          I'm checking my time.

24          THE COURT: Lali, by no means is this  
25          Court going to hold you to five minutes. In

1           doing this in 40 years, no attorney has ever done  
2           it in the time they said they could. So you take  
3           the time that you need. Perhaps today will be a  
4           first though. Shall I have my hall monitor start  
5           watching the clock and tell me?

6                       MS. MADDURI: I will accept your  
7           challenge, Your Honor.

8                               REDIRECT EXAMINATION

9   BY MS. MADDURI:

10 Q.   Okay. Dr. Rodden, briefly, does the fact that  
11       the guidelines -- do you recall discussing the  
12       guidelines with Mr. Ayers?

13 A.   Yes.

14 Q.   Does the fact that those guidelines were adopted  
15       by a committee of the legislature, as opposed to  
16       the entire legislature, effect your analysis or  
17       conclusions in any way?

18 A.   No, not at all.

19 Q.   Okay. You also discussed with Mr. Ayers  
20       quantification of communities of interest. Do  
21       you recall that discussion?

22 A.   Yes.

23 Q.   Can counties be communities of interest?

24 A.   Yes. They are referred to that way in the -- by  
25       the list of adoptive criteria.

1 Q. And can cities be communities of interest?

2 A. Yes.

3 Q. Can geographically proximate groups be  
4 communities of interest?

5 A. Yes.

6 Q. So can measures of how often counties or cities  
7 are split be a measure of communities of interest  
8 and preservation of those interests?

9 A. Yes, I believe so.

10 Q. Can measures of compactness help understand  
11 whether communities of interest are split?

12 A. Yes.

13 Q. Is that the case in Kansas?

14 A. Yes. It's not always the case, but I -- that's  
15 something I came to understand in my analysis, is  
16 that there's a pretty nice correspondence between  
17 compactness here and preservation of communities  
18 of interest.

19 Q. And I think you alluded to these, but these are  
20 all metrics that can be measured and analyzed.  
21 Correct?

22 A. Yes.

23 Q. And you did that in your analysis. Is that  
24 right?

25 A. Yes.

1 MS. MADDURI: I don't have any further  
2 questions, Your Honor.

3 THE COURT: And congratulations. I'll  
4 never be able to make that statement again. Hold  
5 on a minute. Gary, any recross?

6 MR. AYERS: No more questions, Your Honor.

7 THE COURT: All right. So that we can  
8 perhaps resolve this issue, I don't know whether  
9 or not Jonathan is here under subpoena, but if he  
10 is, is he released?

11 MS. MADDURI: Yes, Your Honor.

12 MR. AYERS: Yes, Your Honor.

13 THE COURT: Thank you so much for your  
14 testimony, sir. You are free to go. And please  
15 give our apologies to your family. Enjoy the  
16 rest of your vacation. All right. Let's --  
17 we're off the record unless someone else wishes  
18 to be on the record.

19 (Court in recess from 2:48 to 3:11 p.m.)

20 THE COURT: All right. Back on the record  
21 in the Rivera, Alonzo, and Frick case. The  
22 appearances of the parties are relatively the  
23 same, but everybody has representation today.  
24 And we're ready for the Plaintiff's next witness,  
25 who is sitting in the witness stand. And I take

1 it is Dr. Chen.

2 MS. THEODORE: That's correct, Your Honor.  
3 I'm Elisabeth Theodore on behalf of Plaintiffs,  
4 and our next witness is Jowei Chen.

5 THE COURT: And he's told me I can call  
6 him Jowei, and so I will. Do you have  
7 something --

8 MR. AYERS: Just going to lodge the same  
9 objection.

10 THE COURT: Let's get started here.

11 JOWEI CHEN,

12 having been first duly sworn,  
13 was examined and testified as follows:

14 THE WITNESS: I do, Your Honor.

15 THE COURT: All right. Thank you, Jowei.  
16 Gary?

17 MR. AYERS: Thank you, Your Honor. As we  
18 discussed earlier with Dr. Rodden, we have the  
19 same objection to Dr. Chen. Our Daubert motion,  
20 our motion that we filed and argued this morning,  
21 the 60-456b motion as to relevance, foundation,  
22 speculation, improper testimony, improper  
23 opinion. And with that, Your Honor, I will not  
24 interrupt this witness. I will stand on that  
25 objection throughout his testimony unless he says



1 something completely that was not in his report  
2 or something like that. So thank you, Your  
3 Honor.

4 THE COURT: Thank you, Gary. Feel the  
5 need to respond to the objection, as far as the  
6 expert's qualifications?

7 MS. THEODORE: I think I'll rest on  
8 Mr. Jones' presentation this morning.

9 THE COURT: All right. The Court makes  
10 the same finding as it did with Dr. Rodden. The  
11 Court wishes to make sure that the Court's ruling  
12 is clarified. The Court found that based upon  
13 Dr. Rodden's report, which the Court had  
14 reviewed, that the Court found that his testimony  
15 met the necessary requirements of 60-456b. That  
16 probably confused the Plaintiffs in that after  
17 they asked preliminary questions, they didn't ask  
18 if the Court found him to be an expert witness.  
19 Going back and recreating, the Court finds him to  
20 be an expert witness after that. So that we are  
21 clear, counsel, I'm simply making this based upon  
22 this report. So probably in the interest of good  
23 procedural practice, after you lay some  
24 foundation for Jowei's qualifications, ask the  
25 Court to declare him a witness. If I have

1 misstepped, counsel, punish me later, but the  
2 Court finds that Rodden -- Dr. Rodden was indeed  
3 qualified to testify as an expert per 456.

4 MS. THEODORE: Thank you, Your Honor. And  
5 may I hand the witness a binder that contains his  
6 expert report, and it also contains a copy of  
7 the guidelines and criteria for redistricting.

8 THE COURT: Any objection?

9 MR. AYERS: No objection.

10 THE COURT: You certainly may. Please  
11 come and go as you need.

12 MS. THEODORE: Thank you.

13 DIRECT EXAMINATION

14 BY MS. THEODORE:

15 Q. Good afternoon. Could you please state your full  
16 name?

17 A. Dr. Jowei Chen.

18 Q. And how are you currently employed?

19 A. I am an Associate Professor in the Department of  
20 Political Science at the University of Michigan  
21 in Ann Arbor.

22 Q. Are you tenured?

23 A. Yes.

24 Q. And your CV was included in your expert report,  
25 which is Plaintiff's Exhibit 31. Does it include

1 your experience and qualifications?

2 A. It does.

3 Q. What are your general fields of academic  
4 expertise?

5 A. My fields of academic expertise are political  
6 geography, geographic information systems, the  
7 use of simulated districting plans to analyze  
8 questions relating to districting and elections.

9 Q. And in your academic research, what methodology  
10 do you use to study questions relating to the  
11 partisan or racial characteristics of  
12 congressional districts?

13 A. I use computer simulations of the districting  
14 process. I have a computer draw districting  
15 plans in a partisan lined map. I then am able to  
16 analyze a real enacted plan, compare it to the  
17 simulated plans, and determine whether that real  
18 enacted plan could have resulted plausibly from a  
19 districting process that was blinded of  
20 partisanship or that was partisan blind.

21 Q. And is that the same methodology you applied in  
22 this case?

23 A. It is.

24 Q. And why does this approach of generating a sample  
25 of nonpartisan maps and evaluating their partisan

1 characteristics make sense as a tool to examine  
2 partisan gerrymandering of an enacted map?

3 A. By generating a random representative sample of  
4 maps that are just complying with traditional  
5 districting criteria, that gives us a baseline,  
6 and then we can look at or I can look at a real  
7 enacted plan and determine whether or not that  
8 enacted plan was the product of intentional  
9 partisan bias. I'm able to isolate the effect of  
10 intentional partisan bias from other  
11 considerations that may have driven the  
12 districting process, including traditional  
13 districting principles like geographic  
14 compactness, following county boundaries, and so  
15 on.

16 Q. And have you published peer-reviewed academic  
17 papers on the simulation methodology that you  
18 applied in this case?

19 A. Yes, I have.

20 Q. And have you presented expert reports and  
21 testimony in other cases, using the simulation  
22 method you applied in this case?

23 A. Yes. Many times.

24 Q. And did the Courts in those cases credit your  
25 analysis?

1 A. Yes. They credited that analysis as the evidence  
2 of partisan intent or lack of partisan intent for  
3 the plans that I was analyzing.

4 MS. THEODORE: Thank you. At this time,  
5 the Plaintiffs offer Dr. Chen as an expert in the  
6 fields of redistricting, political geography, and  
7 redistricting simulation analysis.

8 THE COURT: Thank you.

9 MR. AYERS: Same objection.

10 THE COURT: The Court finds that he is an  
11 expert in these fields and should be allowed to  
12 testify as an expert for the reasons that the  
13 Court previously set forward. He meets the  
14 requirements of 456.

15 MS. THEODORE: Thank you.

16 BY MS. THEODORE:

17 Q. We'll start with just a sort of a summary of your  
18 conclusions. Did the Plaintiffs ask you to use  
19 your methodology of simulating nonpartisan  
20 congressional districts to evaluate whether  
21 Kansas's 2022 congressional plan was a partisan  
22 outlier?

23 A. Yes.

24 Q. And can you tell us broadly what you concluded  
25 with respect to the partisanship of Kansas' 2022

1 plan?

2 A. Broadly, I found that the 2022 congressional plan  
3 for Kansas exhibits an extreme partisan pro  
4 Republican bias. I found that that partisan bias  
5 in favor of the Republican Party was the product  
6 of an intentional partisan bias in the  
7 map-drawing process -- in the legislature's  
8 map-drawing process. I found that in that  
9 map-drawing process that produced the 2022  
10 enacted congressional plan, partisan bias  
11 predominated in the drawing of the map and the  
12 pursuit of that partisan goal subordinated  
13 traditional districting principles, including  
14 districting principles that are mandated by the  
15 Kansas legislature's guidelines and criteria for  
16 redistricting.

17 So I found that those principles -- those  
18 traditional districting principles were  
19 subordinated. And finally, I found that  
20 political geography or political geography of  
21 Kansas -- Kansas' unique political geography does  
22 not explain or account for this extreme pro  
23 Republican bias in the enacted plan.

24 Q. Did the Plaintiffs also ask you to evaluate  
25 whether the racial makeup of Congressional

1 District 3 is in line with what you would expect  
2 from a neutral redistricting process that does  
3 not consider race?

4 A. Yes.

5 Q. And what did you conclude?

6 A. I found that Congressional District 3, compared  
7 to computer-simulated districts in the simulated  
8 plans that are the similar to the district in  
9 those plans, by comparison to those simulations,  
10 Congressional District 3 has a lower minority  
11 voting age population than 94.9% of those  
12 simulated plans created in that district. So it  
13 has a lower minority voting age population. And  
14 so I concluded that CD3, Congressional District 3  
15 was drawn in a way that dilutes the minority  
16 voters in CD3 relative to a map-drawing process  
17 that just follows traditional districting  
18 principles in a partisan blind and race blind  
19 manner.

20 Q. All right. Let's turn to methodology. Can you  
21 give us an overview of the methodology that you  
22 use to generate your computer-simulated plans?

23 A. Yeah. I programmed a computer algorithm. And  
24 this is a computer algorithm that instructs the  
25 computer to draw random representative

1           districting plans. And it produced a large  
2           number, 1,000 computer-simulated plans. So I  
3           generate the plans or the computer generates  
4           these plans by just following traditional  
5           districting principles, including principles that  
6           are mandated by the guidelines and criteria on  
7           redistricting, and the computer generates these  
8           plans, and then I'm able to compare the enacted  
9           plan's partisan characteristics and partisan  
10          performance to the 1,000 plans that are generated  
11          using this process that obviously has no partisan  
12          intent.

13        Q.    Can we pull up Plaintiff's Exhibit 137? Thanks.  
14            And you looked to these guidelines and criteria  
15            that were adopted by the joint redistricting  
16            advisory committee. Is that right?

17        A.    Yes.

18        Q.    Okay. And so did the criteria you programmed  
19            into your algorithm include population equality,  
20            contiguity, minimizing county and VTD splits,  
21            drawing compact districts, and preserving  
22            municipal boundaries?

23        A.    Yes.

24        Q.    And are these traditional district and criteria  
25            used by legislatures across the United States?



1 A. Yes, they are.

2 Q. why did you include preserving municipal  
3 boundaries when that's not expressly cited in the  
4 criteria?

5 A. Preserving municipal boundaries is still a  
6 traditional districting principle, and so it is a  
7 principle that we find in a very large number of  
8 states' criteria, even though it's not expressly  
9 stated here. And municipalities are also  
10 considered communities of interest, which is  
11 expressed.

12 Q. And did you also look at the enacted plan and how  
13 it treated municipalities?

14 A. Yes, I looked at the enacted plan and I found  
15 that it was pretty clear the enacted plan was  
16 drawn in a way that minimized, that tried to  
17 avoid splitting municipalities. So it was pretty  
18 clear the enacted plan was drawn in a way that  
19 tried to avoid municipal splits. And so taking  
20 all that into consideration, I built that  
21 consideration into the computer algorithm.

22 Q. Okay. I think you said you created 1,000  
23 simulated plans?

24 A. Correct.

25 Q. All right. So after your algorithm generated the

1           1,000 nonpartisan plans, what metric did you use  
2           to measure the partisanship of the simulated  
3           districts and the actual enacted districts?

4       A.    To measure the partisanship of every district,  
5           both in the enacted plan as well as in all these  
6           computer-simulated plans, I looked district by  
7           district and I measured the partisanship of every  
8           district using the statewide election composite.  
9           So let me explain what that means. Over the last  
10          six years, 2016, November 2018, and November 2020  
11          -- so over these past six years, Kansas has had a  
12          total of nine statewide elections for political  
13          office. So nine statewide elections have been  
14          held in Kansas, where every voter in Kansas has  
15          been eligible to participate. So we have these  
16          nine statewide elections. And we have the  
17          results of these nine statewide elections at the  
18          level of the precincts. At the precinct level  
19          for Kansas for all the state. So I take these  
20          precinct level election results and I desegregate  
21          them down to the census block level. Then for  
22          any district, whether the enacted plan districts  
23          or any of these computer-simulated plans  
24          districts, I aggregate together the results of  
25          these nine elections for the entire district as a

1 whole. So what that means is I go for each  
2 district, I count up the number of votes cast in  
3 favor of the nine Republican candidates in the  
4 nine statewide elections, and then I separately  
5 count up the total number of votes for the nine  
6 Democratic candidates across these nine elections  
7 and add up those two things together. Add those  
8 two numbers. Now we have for congressional  
9 District No. 4, we have a total number of votes  
10 for Republican candidates, and a total number of  
11 votes for Democratic candidates.

12 So to calculate the partisanship, I should  
13 calculate the Republican vote share using those  
14 numbers. The Republican share of the votes cast  
15 in those nine elections. The share of the  
16 two-party vote. So we're just considering votes  
17 for Democratic and Republican candidates. Again,  
18 these are statewide elections. So US President,  
19 US Senate, Governor, gubernatorial election, and  
20 so on.

21 Q. So let's pull up Plaintiff's Exhibit 54, which is  
22 an example of one of the simulated plans from  
23 page 8 of your expert report. Can you use this  
24 as an example to walk us through what you  
25 explained about about how you use the census

1 block level election average or composite to  
2 assess partisan performance?

3 A. Yeah. This map is an example of the 1,000  
4 computer simulations that my computer algorithm  
5 produced. Any time you draw a congressional plan  
6 in Kansas, it's built on -- it's built using  
7 census geography, census blocks. So every  
8 district is just a collection of census blocks.  
9 So if we're calculating the partisanship of CD2,  
10 for example, we're going to take all of the  
11 census blocks that comprise CD2, that comprise  
12 District 2 here, and for that entire district,  
13 we're going to use that block level election data  
14 that I just talked about, and we're going to add  
15 up all the vote cast across these nine statewide  
16 elections that were cast for Democratic  
17 candidates versus Republican candidates, add them  
18 up for the entire district, and then we're going  
19 to -- just like I said before, we're going to  
20 calculate the Republican vote share of District  
21 2. So that Republican vote share is always going  
22 to be zero to 100%, and that's a measure of the  
23 partisanship of the district. And if that  
24 Republican vote share is above 50%, then you can  
25 classify that district as a Republican-favoring

1 district. If it's under 50, you can classify it  
2 as a Democrat-favoring district.

3 Q. Why do you use statewide elections like for  
4 President or Governor, Secretary of State, rather  
5 than prior congressional elections to figure out  
6 how the districts are likely to perform?

7 A. It's the established practice, normal practice  
8 among redistricting practitioners, map drawers in  
9 states across the country, and of all academic  
10 political scientists who study redistricting to  
11 use statewide elections to measure the  
12 partisanship of districting plans that are being  
13 drawn or drafted.

14 And so the reason that we use statewide  
15 elections rather than congressional elections is  
16 first of all, as a general matter, people's  
17 voting behavior in statewide elections correlates  
18 really strongly with their underlying partisan  
19 tendencies anyway, including correlating very  
20 strongly with how they would be voting in  
21 congressional elections. But the reason we don't  
22 use congressional elections to measure the  
23 partisanship of districts is because voting and  
24 turnout behavior in congressional elections can  
25 really be driven by the particular ways that

1           those voters' respective districts are drawn.  
2           And people across Kansas will, of course, live in  
3           different congressional districts. So what that  
4           means is, for example, if a Democratic voter  
5           lives in a very safe Republican district,  
6           obviously, Democratic voters might just not turn  
7           out and vote or exhibit lower turnout rates  
8           simply because they live in an already safe  
9           Republican district where the election's not  
10          going to be competitive for the congressional  
11          race. That's just an example. And what that  
12          shows us is that these are not comparable races  
13          across the entire state. Meanwhile, with  
14          statewide elections, it's the same contest across  
15          the entire state. Everybody who goes to vote in  
16          Kansas and vote in the statewide contest is  
17          choosing from the same ballot, the same  
18          candidates. So you don't have that issue that I  
19          was just talking about with congressional rates.

20        Q.    Let's turn to your results. Can we pull up  
21            Plaintiff's Exhibit 36, which is figure 5 of  
22            the Chen report? And it's on page 25 of his  
23            report. It's entitled Comparisons of 2022  
24            Enacted Plan Districts to 1,000 Computer  
25            Simulated Plan Districts. So tell us what this

1 figure is showing.

2 A. This figure is going to tell us about the  
3 Republican vote share of every single district,  
4 both in the enacted plan, as well as the 1,000  
5 computer-simulated plans that I've been talking  
6 about. And this figure has four rows. That's  
7 because Kansas has four congressional districts  
8 in any congressional plan. The top row is going  
9 to tell us about the most Republican district in  
10 every plan. The second row is going to tell us  
11 about the second most Republican district in  
12 every plan, and so on. So of course, the bottom  
13 row is going to tell us about the fourth most  
14 Republican district in each plan.

15 So back to the top row. It tells us about  
16 the most Republican district in each plan. And  
17 specifically, along the horizontal axis, we're  
18 going to see the Republican vote share of that  
19 district. Now, on the first row, you're going to  
20 see a red star. That red star tells us about the  
21 enacted plan's district. So the most Republican  
22 district in the enacted plan is CD1, and in any  
23 plan, it's always going to be whichever district  
24 contains western Kansas. The western Kansas  
25 district will always be the most Republican

1 district in each plan. So in the enacted plan,  
2 that's CD1. And then we -- you see 1,000 gray  
3 circles. And so those 1,000 gray circles tell  
4 about the most Republican district within each of  
5 the 1,000 computer-simulated plans. Like I said,  
6 on the bottom row, that bottom row tells us about  
7 the fourth most Democratic district. In other  
8 words, fourth most Republican district. In other  
9 words, it's the most Democratic-leaning district  
10 in any plan.

11 So let's look at those specific numbers  
12 down there. The fourth most Democratic district,  
13 in other words, the most -- the fourth most  
14 Republican district, in other words, the most  
15 Democratic district in the enacted plan -- that's  
16 obviously CD3. Now, using the statewide election  
17 composite, CD3 has a Republican vote share of  
18 about 50.5%. So it's a slightly -- barely  
19 slightly Republican-leaning district, as measured  
20 using statewide election composites. That's what  
21 the red star for CD3 down there tells us.

22 Now let's look at the 1,000 gray circles  
23 here. So those 1,000 gray circles for the most  
24 Democratic districts in each of the 1,000  
25 simulated plans -- well, we can see here that



1 those 1,000 gray circles are almost entirely  
2 Democratic-favoring districts. They're almost  
3 entirely to the left of that dotted 50% line.  
4 They're almost entirely under 50% Republican vote  
5 share. And in fact, many of them are actually  
6 very safely Republican, but they're always at  
7 least slightly -- I'm sorry. Many of them are  
8 actually very safely Democratic-leaning districts  
9 or safe Democratic districts. So what does this  
10 show us here? It tells us that if you are  
11 drawing a districting plan for Kansas  
12 congressional districts, just following  
13 traditional districting principles in a partisan  
14 blind manner, almost all the time, you would end  
15 up drawing almost 100% of the time, you would end  
16 up drawing a Democratic-leaning district, and  
17 actually often a very safe Democratic district.  
18 But not the enacted plan. What does the enacted  
19 plan do with CD3? It draws a slightly  
20 Republican-leaning district. That's an extreme  
21 partisan outline. CD3 is more Republican  
22 favorable than 99.6% of the computer-simulated  
23 districts in that bottom row. And that's what  
24 that parentheses in the right -- in the right  
25 margin of the figure tells us. That 99.6% of

1 the simulated districts on this row are to the  
2 left of CD3, are to the left of that red star,  
3 and only 0.4% are to the right. It's an extreme  
4 partisan outlier.

5 Q. Did you find -- were there other anomalous  
6 districts in the enacted plan, compared to what  
7 you get from your nonpartisan simulations?

8 A. Yes. If we zoom out on this figure and look at  
9 the entire figure, we can see that there are a  
10 couple of others. We just talked about the  
11 bottom row, the fourth most Republican district.  
12 Now let's look at the third row from the top, the  
13 third most Republican district. And we actually  
14 see exactly the same pattern here with CD2, which  
15 is the third most Republican district in the  
16 enacted plan. And that district has a Republican  
17 vote share of somewhere between 57 and 58%  
18 Republican vote share. How does that compare to  
19 the simulations? Each of the simulated plans  
20 third most Republican district. Well, what this  
21 row is showing us is it too is a very similar  
22 extreme partisan outlier. 93.3% of the  
23 simulations have a district on this row that is  
24 actually more competitive, has a higher  
25 Democratic vote share that's closer to being a

1 50/50 district compared to CD2. In other words,  
2 CD2 is more safely Republican than 96.3% of the  
3 simulated districts on this row. It's an extreme  
4 partisan outlier. Only 3.7% of the simulations  
5 are on the other side, to the right of that red  
6 star. So we see exactly the same pattern here on  
7 the third row.

8 Now let's zoom out and look at the top  
9 row. We're going to see this opposite pattern  
10 here. We looked at CD3 and CD2, which are drawn  
11 to be more Republican-favorable than the  
12 simulated districts. So where do these extra  
13 Republican voters come from? Well, where they  
14 came from -- we'll find out on the top row here.  
15 CD1, the most Republican district in each plan.  
16 Of course, I said, that's always going to be the  
17 western Kansas district. So CD1, compared to the  
18 simulated plans districts on the top row, is  
19 actually more Democratic than all -- almost all  
20 the computer simulations, but it's still  
21 importantly -- CD1, of course, is still a very,  
22 very safe Republican district. It's just less  
23 extremely Republican. Approximately a 65%  
24 Republican vote share. And 65% is obviously a  
25 safe Republican seat, but that 65% is lower, is a

1 lower Republican vote share, than 99.9% of the  
2 simulated districts on that top row. So that  
3 answer is the flip side of what we were just  
4 looking at before, where did those extra  
5 Republican voters come from? Here's where they  
6 came from.

7 So this is a classic packing and cracking  
8 kind of story here. What we saw lower down at  
9 the bottom of this figure was the cracking of  
10 Democrats, was the cracking of Democrats with the  
11 drawing of CD3. And of course, there was extra  
12 Republican voters that it took in order to  
13 increase CD3's -- Republican vote share had to  
14 come from somewhere, and here's where they came  
15 from, the drawing of CD1.

16 Q. How many of the districts in this plan did you  
17 conclude were extreme statistical outliers in the  
18 pro Republican drafting?

19 A. Well, in the pro Republican direction, it's CD2  
20 and CD3.

21 Q. Let's turn to how that turns translates into  
22 seats overall. How many total  
23 Republican-favoring districts are there in the  
24 enacted plan?

25 A. Using the statewide election composites, we see

1 here on the figure that all four districts have  
2 above a 50% Republican vote share. So the  
3 Republican-favoring districts of the four to zero  
4 plan using statewide composite.

5 Q. So let's pull figure 6 of your report, which is  
6 Plaintiff's Exhibit 37 on page 30 of the report.  
7 How often in your simulations does a plan contain  
8 four out of four Republican-favoring districts in  
9 your nonpartisan simulations?

10 A. A four to zero plan is an extremely rare event.  
11 It only happens in 1.2% of the 1,000 computer  
12 simulations.

13 Q. And would you conclude that that analysis too  
14 reflects that the enacted plan is an extreme  
15 outlier?

16 A. Yes. So at a planwide level, it's clearly an  
17 extreme partisan outlier. It creates an overall  
18 distribution of districts that very, very rarely  
19 occurs in the computer simulation process that's  
20 just following traditional districting principles  
21 in a partisan blind manner.

22 Q. All right. So all of this analysis so far has  
23 been using this statewide composite of nine  
24 different statewide elections. And that has a  
25 58.1% Republican vote share. Did you also

1 analyze how many Republican and Democratic  
2 districts there would be in the enacted plan in  
3 your simulations in different electoral  
4 environments?

5 A. Yes.

6 Q. Okay. That's in Appendix A1 through A9 of your  
7 report?

8 A. That's correct.

9 Q. All right. So let's look at one of those  
10 elections where the Democrats do a little bit  
11 better than in your composite. So let's pull  
12 up Plaintiff's Exhibit 50, which is Chen report  
13 figure A6. Is this comparing how the enacted  
14 plan and your simulations would have performed  
15 using the results of the 2018 Secretary of State  
16 election?

17 A. Yes.

18 Q. And what was the Republican vote share in the  
19 2018 Secretary of State election?

20 A. The Republican vote share was 54.5%, which means  
21 the Democratic candidate's vote share was 45%.

22 Q. And based on this election, how many  
23 Democratic-favoring districts are there in the  
24 enacted plan?

25 A. So we just looked at red stars here. And again,

1           this is the same figure, except instead of using  
2           a statewide election composite, we're measuring  
3           partisanship just using the 2018 Secretary of  
4           State election. So you see that all four red  
5           stars are to the right, over 50%. So all four  
6           districts are Republican-favoring districts using  
7           the Secretary of State election.

8    Q.    Okay. So Democrats get nearly half the vote but  
9           zero of four seats?

10   A.    Right. This is a durable sort of plan, where  
11           despite where in a slightly different electoral  
12           environment, all four districts are still  
13           Republican-favoring districts.

14   Q.    Is that the same result in your simulated  
15           nonpartisan plan?

16   A.    No. I mean, we see something completely  
17           different when we look at the gray circles on  
18           this figure. And so the bottom two rows are  
19           really telling here. And again, partisanship on  
20           this figure is just measured using the 2018  
21           Secretary of State election.

22                    So let's look at the most Democratic  
23           district in every one of the computer-simulated  
24           plans. That's the 1,000 gray circles on the  
25           bottom row of the figure. So what this bottom

1 row is showing us here is that in all 1,000 of  
2 the computer simulations of the computer  
3 simulated plans, that fourth most Republican  
4 district, it's a Democratic-favoring district.  
5 And actually very often, it's a safely  
6 Democratic-favoring district, often going down to  
7 around 41, 42% Republican vote share. It's  
8 always a Democratic-leaning district. It's often  
9 a safe Democratic district in 100% of the  
10 simulations. Meanwhile, look at the red star,  
11 CD3. It's way out there at close to somewhere  
12 between 50 to 51%, slightly Republican-leaning  
13 district. What that shows us is that CD3 in this  
14 electoral environment is still an extreme  
15 partisan outlier. It is creating a more  
16 Republican-favorable district than 100% of the  
17 simulations are.

18 Q. All right. So let's look at another one of the  
19 individual elections you analyzed. Let's look at  
20 Plaintiff's Exhibit 53, which is figure A9 from  
21 your appendix. All right. Is this comparing how  
22 the enacted plans in your simulations would have  
23 performed using the results of the 2020 Senate  
24 election?

25 A. Yes.



1 Q. So this is a Republican vote share of 56  
2 statewide. And how many Republican-favoring  
3 districts are there in the enacted plan?

4 A. Under the 2020 US Senate election, there are  
5 three Republican-leaning districts, and CD3 turns  
6 out to be a slightly Democratic district.

7 Q. And how did the Democrats do in the simulated  
8 plans under this election?

9 A. Well, let's look again at the bottom row. And  
10 it's showing us exactly the same outlier pattern.  
11 It's still a partisan outlier. Even though this  
12 time, CD3 is going to be little bit under 50%,  
13 obviously this is a very -- a relatively more  
14 favorable Republican election. Relatively more  
15 favorable for the Republicans. And so that means  
16 here that in this -- in this bottom row here, we  
17 look at these gray circles, which are measuring  
18 the Republican vote share using the senator  
19 election. What we see in the bottom row is that  
20 CD3 is still a partisan outlier. It is more  
21 favorable to the Republicans than 98.5% of  
22 the simulated districts in this bottom row. In  
23 other words, it's still an extreme partisan  
24 outlier.

25 Q. Okay. And what about -- what pattern do you see

1 in the top row of this figure?

2 A. We see the same pattern that we've been seeing in  
3 all these figures for that top row. CD1, the  
4 western Kansas district, that one is drawn to be  
5 a little less packed with Republicans compared to  
6 almost all the simulations. So CD1 is an extreme  
7 partisan outlier. It is less Republican than  
8 99.9% of the computer-simulated districts in that  
9 top row.

10 Q. All right. And how do the Democrats do in the  
11 simulated plans, in terms of seat count using  
12 this election?

13 A. I'm going to zoom back out to the larger figure  
14 here. And what we can focus on is the bottom two  
15 rows here. So in terms of the simulations, the  
16 Democrats are almost always going to win that  
17 fourth most Democratic district. So that is --  
18 that's what we see on the bottom row. You see  
19 that almost all these gray circles are under a  
20 50% Republican vote share. We're almost always  
21 going to win that one. Now let's look at the  
22 third most Republican district. That third row  
23 here. And you can actually see that some of  
24 the time -- not most, but some of the time,  
25 Democrats will actually about win the 2nd

1 District as well, albeit by a smaller margin.  
2 what that tells us is under the simulated plans  
3 drawn according to traditional districting  
4 principles without any partisan intent, Democrats  
5 would normally win at least one and sometimes the  
6 second district.

7 Q. But Dr. Chen, overall, how can you say that CD3  
8 is a pro Republican partisan outlier when under  
9 this election, the Democrat's winning in the  
10 enacted plan?

11 A. Yeah. The Democrats do win CD3 using this  
12 particular election, which is just one electoral  
13 environment among many. And you see that CD3 is  
14 slightly below Republican vote share in the  
15 senator election. I'll just zoom out to the  
16 broader figure here. And we see exactly the same  
17 individual district level patterns that we've  
18 been seeing in every other election that we've  
19 been looking at today. Exactly the same district  
20 level partisan outliers. The first row, the  
21 third row, and the fourth row are all partisan  
22 outliers in the same direction. So what does  
23 that tell us about the enacted plan? The enacted  
24 plan cannot somehow magically guarantee that  
25 Republicans will always win all four districts in

1 every single election and every single electoral  
2 environment. That's not possible, and that's not  
3 what the enacted plan does. That's not the  
4 meaning. Instead, what the enacted plan does in  
5 this fourth row with CD3, what the enacted plan  
6 is doing in CD3 is it is making it a partisan  
7 outlier, obviously. But it is making it as  
8 invulnerable as possible. As invulnerable as  
9 possible for the Republicans. In making sure the  
10 Republican vote share is as favorable as is  
11 possible. You can see that it is relatively  
12 quite favorable, more favorable than 98.5% of  
13 the simulated districts here. So it's making CD3  
14 as invulnerable as possible for the Republicans.  
15 I can't guarantee that the Republicans will  
16 always win CD3, but again, it creates a partisan  
17 outlier at the district level.

18 Q. All right. So let's look at one more, which is  
19 the 2018 Treasurer election, and that's  
20 Plaintiff's Exhibit 51, which is figure A7 from  
21 your report. Are we seeing the same story here?

22 A. We see exactly the same pattern here that we've  
23 been seeing that -- we've been talking about in  
24 all these rows. First row, third row, and fourth  
25 row are exhibiting exactly the same district

1 level partisan outlier characteristics.

2 Q. So you did this for all nine individual statewide  
3 elections between 2016 and 2020, and they're in  
4 your report. Do you see the same pattern of  
5 Democrats cracked out of CD3 and CD1 where they  
6 can't affect the outcome in all nine elections?

7 A. The yes. We see the same outcome, the same  
8 pattern across those nine elections.

9 Q. And what does that tell you about the durability  
10 of the partisan gerrymandering here?

11 A. Well, it shows us that this is, at the individual  
12 district level, a durable gerrymandering. Even  
13 if not all the time, CD3 will result in  
14 Republican victory in every electoral  
15 environment. But when you look across the nine  
16 elections, it actually does in most of the nine  
17 elections. Most of the time, it resulted in  
18 Republican victory in CD3, as well as all the  
19 other three districts. But more importantly,  
20 regardless of the electoral environment,  
21 regardless of whether this electoral environment  
22 is relatively more favorable for Republicans or  
23 more favorable for Democrats, what CD3 does the  
24 way CD3 is drawn, is it gives Republicans as much  
25 of an advantage as it was possible -- it makes it

1 as invulnerable as possible for the Republicans  
2 to have the best chance to win it, even if they  
3 won't necessarily win it in every single  
4 election.

5 Q. All right. So let's turn to your municipal  
6 analysis, and let's pull up Plaintiff's Exhibit  
7 39, which is figure 8 of your report on page 37.  
8 So can you tell us, generally speaking, what you  
9 did to analyze how the enacted plan treats voters  
10 in Kansas' major cities? Maybe taking Kansas  
11 City as an example?

12 A. This figure has 10 rows here. And we're just  
13 going to look at the top row right now, which is  
14 focussing on Kansas City. But what this figure  
15 does is it analyzes how the enacted plans, as  
16 well as the computer-simulated plans, treat  
17 Kansas's 10 largest cities. So let's just focus  
18 on the top row, which is focussing on Kansas  
19 City. So what does this figure do? For every  
20 one of these cities -- and we're just going to  
21 look at Kansas City right now -- this figure is  
22 going to tell us what district in the enacted  
23 plan contains the most of Kansas City's  
24 population. And the answer is CD2. Now, this  
25 figure -- let's zoom back out again. This figure

1 is going to tell us what is the Republican vote  
2 share of that Kansas City district CD2. You look  
3 at the Republican vote share using the statewide  
4 election composite, measured along the horizontal  
5 axis, it's somewhere between 57 to 58%. So it's  
6 a safe Republican district. That's the enacted  
7 district that contains Kansas City.

8 Now what we want to ask is what are the  
9 partisan characteristics of the simulated plan  
10 districts that contain most of Kansas City? And  
11 that's what the gray circles, the 1,000 gray  
12 circles in that top row is going to tell us.  
13 They're going to tell us about the partisanship,  
14 the Republican vote share of the simulated  
15 districts in each of the 1,000 computer-simulated  
16 plans that contain the most of Kansas City's  
17 population. So what are those 1,000 gray circles  
18 tell us? well, they tell us that most of the  
19 time, Kansas City in the computer simulations,  
20 is actually being placed into a pretty  
21 competitive district, not a safe Republican  
22 district. It's a competitive district, and  
23 actually often even a Democratic favoring  
24 district. Actually, more than half of the  
25 simulations place Kansas City into a

1 Democratic-favoring district. So by that  
2 comparison, CD2 is an extreme partisan outlier in  
3 the way that it treats Kansas City. It places  
4 Kansas City into a safely Republican district,  
5 whereas all of the computer -- almost all the  
6 computer simulations would usually place Kansas  
7 City into a more competitive or even  
8 Democratic-favoring district.

9 Q. That's 99.1% of the simulations would do that?

10 A. Yes. That's what the percentages in the right  
11 margin tell us. That 99.1% of the Kansas  
12 City-based districts in the simulations place  
13 Kansas City into a district that is more  
14 Democratic-favorable than CD2.

15 Q. And can you --

16 A. Sorry.

17 Q. I'm sorry. Can you draw a conclusion about  
18 whether you would expect Kansas City to be in a  
19 safe Republican district absent partisan intent?

20 A. Well, it's pretty clear here under a map-drawing  
21 process that has no partisan intent, just  
22 following traditional districting principles,  
23 Kansas City ordinarily would not be placed into a  
24 safe Republican district. CD2 is an extreme  
25 partisan outlier in how it treats Kansas City.



1 Q. Does the enacted plan treat voters in Shawnee,  
2 Lawrence, and Topeka in the same way?

3 A. Yeah. We see largely the same pattern for a  
4 couple of these other cities here. On the second  
5 row, that focuses on Topeka and it shows us a  
6 very similar sort of pattern. Topeka's placed  
7 into CD2. And when you look at the simulated  
8 districts that contain the most of Topeka, you'll  
9 see that almost all of them are more competitive,  
10 closer to 50% Republican vote share. And that  
11 actually, even the minority of them are actually  
12 Democratic-leaning. So again, CD2 is more  
13 Republican favorable than 96.7% of the simulated  
14 districts containing most of Topeka's population.

15 Let's zoom back out, and we're going to  
16 see the same pattern here on the sixth row with  
17 Shawnee. So it's the same pattern here, where  
18 Shawnee is placed into CD3, a slightly  
19 Republican-leaning district, but in the simulated  
20 plans, Shawnee is almost always placed into a  
21 Democratic-leaning district, rather than a  
22 Republican-leaning district, and CD3 is more  
23 Republican favorable than 96.5% of the simulated  
24 districts containing Shawnee. So we see that  
25 same pattern with Shawnee.

1           And finally, let's zoom back out and see  
2           the same pattern on the bottom row of this figure  
3           with Lawrence. Lawrence is placed into CD1.  
4           That's obviously a very safe Republican district,  
5           about 65% Republican vote share, and that's just  
6           a really, really extreme partisan outlier in how  
7           it treats Lawrence. In the computer-simulated  
8           plans, Lawrence is almost always placed into a  
9           more competitive district. In fact, it's often a  
10          Democratic-leaning district. So CD1 is more  
11          Republican favorable than 99.7% of the simulated  
12          districts that contain Lawrence. That's an  
13          extreme partisan outlier.

14        Q. All right. So let's turn to the guidelines --  
15          the legislature's guidelines on the criteria  
16          which we talked about before. Did you analyze  
17          whether the enacted plan adhered to the guideline  
18          and criteria?

19        A. I did.

20        Q. And what did you find?

21        A. I found that the enacted congressional plan,  
22          Kansas' enacted congressional plan subordinates  
23          some of the traditional districting criteria that  
24          are specified in the guidelines and criteria.  
25          And so specifically splitting counties, splitting

1 VTDs, and geographic compactness.

2 Q. So the guidelines and criteria say that sole  
3 counties should be in the same district to the  
4 extent possible, given population equality.

5 Correct?

6 A. Correct.

7 Q. How many counties does the enacted plan split?

8 A. The enacted plan splits four counties.

9 Q. And was splitting four counties necessary?

10 A. No, it wasn't necessary. It's only necessary to  
11 split three counties in drawing a complete  
12 congressional plan while equalizing the  
13 populations. So the enacted plan split more  
14 counties than was necessary.

15 Q. And how many counties did your simulation split?

16 A. Every one contained no more than three county  
17 splits.

18 Q. So four county splits seems pretty close to three  
19 county splits. Why does that difference matter?

20 A. When you draw a congressional plan, it's not  
21 really possible to split a lot -- a huge number  
22 of counties. I mean, obviously, Kansas has 105  
23 counties, but you're not going to split anywhere  
24 close to 105 counties when you're just drawing  
25 four districts. So drawing a plan that splits

1 four counties is actually significant. That is  
2 when you only need to split three counties, and  
3 you have an enacted plan that splits --  
4 unnecessary splits four counties, you're  
5 splitting 33% more counties than is necessary,  
6 given the mandate in the guidelines and criteria  
7 to only split counties when necessary for drawing  
8 equally populated districts. Clearly, that's not  
9 happening, and splitting a fourth county is  
10 pretty significant in that light.

11 Q. So the guidelines and criteria say that voting  
12 tabulation districts should be the building  
13 blocks for drawing congressional districts.  
14 Right?

15 A. Correct.

16 Q. How many VTDS does the enacted plan split?

17 A. Enacted plan splits a total of 19 VTDS. If  
18 you're only looking at split VTDS that involve  
19 population -- populated areas, then the enacted  
20 plan splits 13 of those.

21 Q. And was splitting 13 VTDS necessary?

22 A. No. It's only necessary to split three VTDS to  
23 draw a complete congressional districting plan.

24 Q. How many do your simulations split?

25 A. Exactly three.

1 Q. All right. The guidelines and criteria say that  
2 districts should be as compact as possible.  
3 Right?

4 A. Correct.

5 Q. Were the districts in the enacted plan as compact  
6 as possible?

7 A. No. The districts in the enacted plan were far  
8 less compact as possible. So the way that we  
9 measure geographic compactness is using  
10 quantitative measures. And the two of the most  
11 common measures that are used by redistricting  
12 practitioners, by map drawers, by scholars are  
13 the Reock score and the Polsby-Popper score,  
14 which you heard about earlier today. So using  
15 either the Reock score or the Polsby-Popper  
16 score, I looked at the compactness scores of the  
17 1,000 computer-simulated plans that are drawn in  
18 a partisan blind planner, just adhering to the  
19 traditional districting principles, and I found  
20 that the enacted plans Reock and Polsby-Popper  
21 scores are far less compact, are far lower than  
22 what is reasonably possible under the computer  
23 simulations. In other words, they're clearly not  
24 being drawn -- the enacted plans districts are  
25 clearly not being drawn to be as compact as

1 possible. Not even close. They're just far  
2 lower, in terms of geographic compactness.

3 Q. Let's pull up Plaintiff's Exhibit 34, which is  
4 figure 3 from your report. All right. And  
5 there's a typo in the title here. VTD split  
6 should say compactness. Right?

7 A. Yeah. That's a typo. It should be comparison of  
8 geographic compactness enacted plan and  
9 Polsby-Popper and VTD.

10 Q. All right. And I don't want to spend a lot of  
11 time on this, but does this figure visually  
12 illustrate how much more compact Kansas'  
13 congressional plans could be?

14 A. Yes. This is exactly what I was talking about.  
15 So there's 1,000 gray circles, those are the  
16 Reock and Polsby-Popper scores of the 1,000  
17 computer-simulated plans. And remember, again,  
18 with Reock and Polsby-Popper, higher scores mean  
19 greeter geographic compactness. So those are the  
20 scores that are reasonably possible if you're  
21 just drawing a plan adhering to traditional  
22 districting principles.

23 Now look at the red star in the lower  
24 left, way out in the lower left. That's the 2022  
25 enacted plans Reock score and Polsby-Popper

1 score. It's obviously far lower than what's  
2 reasonably possible. It's just not even close to  
3 what's reasonably possible in terms of any --  
4 either of these quantitative measures of  
5 geographic compactness.

6 Q. All right. So to sum up, we talked earlier about  
7 your finding that the enacted map creates an  
8 extreme level of pro Republican bias. Now you've  
9 just opined that the enacted map is worse in  
10 terms of the guidelines and criteria than the  
11 simulated maps. So does this allow you to draw  
12 conclusions about the likelihood that the  
13 partisan bias you found in the map is  
14 intentional?

15 A. Yes. So we talked about two different themes  
16 here today. We've talked about how I concluded  
17 that the enacted plan exhibits an extreme pro  
18 Republican bias, and that that cannot be  
19 explained by Kansas' own political geography, by  
20 traditional districting principles. So we talked  
21 about how it has this Republican bias, and we've  
22 also just now talked about how the enacted plan  
23 clearly subordinated traditional districting  
24 principles. It clearly does not do as well on  
25 compactness as was reasonably possible. It was

1 splitting more counties than necessary, splitting  
2 way more VTDS than necessary. So put these  
3 things together, and what that allows me to  
4 conclude is that the enacted plan was obviously  
5 -- number one, was drawn with a partisan intent  
6 to favor the Republican Party. That's by virtue  
7 of the fact that it was such an extreme partisan  
8 outlier at the district level and the plan-wide  
9 level. But in the pursuit of that partisan goal,  
10 the legislature, number one, in drawing this  
11 enacted plan exhibited a predominant partisan  
12 intent in the drawing of that plan. And in  
13 pursuing that predominant partisan goal, the map  
14 drawing process subordinated traditional  
15 districting principles in the pursuit of that  
16 partisan goal. So that's what makes clear there  
17 was partisan intent that was predominantly  
18 driving this process.

19 Q. All right. Let's move to your racial analysis.  
20 Did your algorithm for drawing simulated  
21 congressional plans consider race on the front  
22 end?

23 A. No. It was race blind.

24 Q. After you created the simulated plans, did you  
25 conduct an analysis of the racial composition of



1 CD3 in the enacted plan, which is the most  
2 Democratic district in the enacted plan?

3 A. I did.

4 Q. Let's pull up figure 13 from your report, which  
5 is Plaintiff's Exhibit 44 on page 53 of the  
6 report. Can you walk us through what this chart  
7 is showing us?

8 A. This chart is going to focus on one district in  
9 every plan, in the enacted plan, as well as the  
10 simulated plans. And it's specifically going to  
11 focus on whatever district is the most Democratic  
12 district in each plan, as measured using  
13 statewide election districts. Obviously that's  
14 district is going to be the Kansas City metro  
15 area district. And so what we're going to show  
16 here on this figure is the minority voting age  
17 population of that district. Whatever that most  
18 Democratic district is, the minority voting age  
19 population will be shown on the vertical axis  
20 here. So that's what that vertical axis is. And  
21 the horizontal axis is just telling us about the  
22 Republican vote share of that most Democratic  
23 district. So we have 1,000 gray circles here,  
24 again, for the most Democratic district, and then  
25 we have the red star in the lower right, which is

1 for the 2022 enacted plan. So what is this  
2 showing here? First of all, let's look at the  
3 gray circles. You can see that a lot of the gray  
4 circles are actually way up around .29 and .3, 29  
5 and 30% minority voting age population, and then  
6 there's a huge cluster of them a little bit  
7 lower, around 24, 25, 26 percent minority voting  
8 age population. That's where most of the  
9 simulated districts are.

10 Now let's look at the red star, the  
11 enacted plan. The most Democratic district,  
12 obviously CD3 -- the most Democratic district in  
13 the enacted plan has a minority voting age  
14 population only all the way down to 22%. That is  
15 lower. That red star at 22% -- that is lower  
16 than 94.9% of the computer simulations that you  
17 see up on the screen here. So it's almost 95% of  
18 the simulations have a higher minority voting age  
19 population. And again, keep in mind that the  
20 simulations are drawing these districts in a race  
21 blind manner, in a partisan blind manner, and so  
22 the enacted plan in having that most Democratic  
23 district have such a low minority voting age  
24 population has the affect of diluting the  
25 minority population and diluting minority voters

1 in that most Democratic district here, relative  
2 to the computer simulations which are being drawn  
3 in a race blind manner.

4 Q. So put another way, you're concluding that the  
5 enacted plan had the effect of diluting the  
6 minority votes in CD3, in comparison to what you  
7 would expect from a plan that just followed  
8 Kansas' political geography in the neutral  
9 redistricting criteria we've been talking about?

10 A. Right. If you just follow the traditional  
11 criteria based on Kansas' political census  
12 geography, racial geography, the minority voting  
13 population would not ordinarily have been that  
14 low in that district.

15 MS. THEODORE: Thank you, Dr. Chen.

16 THE COURT: Thank you. Gary, ready when  
17 you are.

18 MR. AYERS: Did figure 13 have an Exhibit  
19 number?

20 MS. THEODORE: 44.

21 MR. AYERS: Jamie, could you put Exhibit  
22 44 back up, please?

23 CROSS EXAMINATION

24 BY MR. AYERS:

25 Q. Good afternoon, Dr. Chen.

1 A. Good afternoon, Mr. Ayers.

2 Q. We met a week ago at a deposition, I think. Is  
3 that correct?

4 A. I believe it was a little bit longer than that,  
5 but yes, sir.

6 Q. A week or so. I was just curious, and this isn't  
7 where I was going to start, but it's where you  
8 finished, so I thought I would start with your  
9 figure 13. This is the most Democratic district  
10 in your simulations?

11 A. The most Democratic district in each simulated  
12 plan.

13 Q. And in each simulated plan, would CD2,  
14 Congressional District 2, be the second most  
15 Democratic district in each of your simulated  
16 plans?

17 A. If you're talking about CD2 from the enacted  
18 plan, no. There are no enacted plan districts in  
19 the simulated plan.

20 Q. But you know from your statewide composite that  
21 CD2 is the -- has been the most -- second most  
22 Democratic plan?

23 A. You're talking about, I think, the enacted plan.

24 Q. No. I'm talking about -- yes. The enacted plan.  
25 CD2, the enacted plan. Do you know whether or

1 not the -- when you compare the CD2 and the  
2 enacted plan, whether or not that's the second  
3 most Democratic district in your simulations?

4 A. I'm not sure your question makes sense. CD2 in  
5 the enacted plan is obviously the second most  
6 Democratic district in the enacted plan. That  
7 statement only applies to the enacted plan.

8 Q. But we don't have a figure comparing the racial  
9 composition of that district. All we have is the  
10 racial composition of CD3. Correct?

11 A. We have an analysis here of the most Democratic  
12 district in each plan. That's all we got here.

13 Q. What you said was in the enacted plan is CD3.

14 A. Yeah. I mean, obviously, the enacted plan CD3 is  
15 the most Democratic district in the enacted plan.

16 Q. The most Democratic district. But it may not be  
17 the most racially diverse district in the enacted  
18 plan. Correct?

19 A. I don't have an opinion on that.

20 Q. And you don't have a figure for that either, do  
21 you?

22 A. No. This is the only figure that I've done  
23 calculations along these lines here.

24 Q. There will be testimony and evidence, and there  
25 has been, and there will be testimony and

1 evidence in this case that the minority  
2 population of CD3 was about 19% in the 2012 plan,  
3 and the minority population of black, Hispanic  
4 minority population in CD2 in the enacted plan is  
5 about 19%. In other words, the black and  
6 Hispanic population in CD3 in the 2012 plan is  
7 about the same as the black and Hispanic 19%  
8 population in the CD2 enacted plan. That would  
9 move, would it not, your red star completely to  
10 the left if we were looking at the enacted plan,  
11 CD2, as the most racially diverse?

12 A. No. Everything that you just told me --

13 MS. THEODORE: Can I object, Your Honor?

14 THE COURT: Absolutely, ma'am.

15 MS. THEODORE: You know, counsel just sort  
16 of testified to a lot of facts. I think that if  
17 he's going to testify to these sort of  
18 statistics, he should show the witness a  
19 document. So that's my objection.

20 THE COURT: I thought maybe you just  
21 wanted me to swear him in. What do you say to  
22 that, Gary?

23 MR. AYERS: Huh?

24 THE COURT: The objection is that you keep  
25 telling him a whole lot of facts that he doesn't

1           have the documentation in front of him to  
2           actually be able to verify or deny.

3                       MR. AYERS: He knows that because of his  
4           figure 5. He shows us that earlier in his  
5           testimony. He knows which are the most  
6           Republican and most Democratic districts. He  
7           knows that CD1 is the most Republican district.  
8           He's testified all afternoon about that. And  
9           figure 5 shows the most Democratic and the most  
10          Democratic -- and the most Republican districts  
11          in Kansas. He knows that, Your Honor. He just  
12          hasn't shown us a figure that shows us where the  
13          diverse district is. He's only showing us -- the  
14          enacted plan, CD3, is not showing us the enacted  
15          plan of CD2, trying to draw racial conclusions  
16          from something that is a little misleading.  
17          That's what I'm trying to prove.

18                      THE COURT: Well, I think you asked that  
19          question earlier, and he said he didn't do the  
20          racial analysis, so he wouldn't know. And then  
21          you put forward a bunch of other facts and  
22          figures to him, and counsel's objection -- and  
23          this is really just what I need for you to  
24          respond to -- is that you keep telling him, hey,  
25          this is the truth, so to speak. These are the

1 accurate figures, without showing him any  
2 documentation that he can rely upon to answer  
3 your question. So respond to that. Are you  
4 giving him a bunch of facts and figures that he  
5 doesn't know?

6 MR. AYERS: He knows, Your Honor, in  
7 figure 5 --

8 THE COURT: Uh-huh.

9 MR. AYERS: -- that CD2 is the second most  
10 Democratic district in the enacted plan.

11 THE COURT: Okay.

12 MR. AYERS: He's only showing us CD3. I'm  
13 asking him why.

14 THE COURT: That is a much more specific  
15 question than what you asked just a moment ago.

16 MS. THEODORE: Yes. And Your Honor, I'd  
17 like to point out all the figures about racial  
18 composition -- and I think I heard about the 2012  
19 plan. None of that is in figure 5. This is his.

20 THE COURT: Your objection is sustained.  
21 I'm not trying to keep you from getting to where  
22 you want to be, Gary. I'm trying to say get  
23 there in a different way. Simplify your  
24 questions. You are doing an admirable job of  
25 presenting your side of the case in the



1           questioning you're doing of the witness. And I  
2           would much prefer you simply ask him a question,  
3           let him answer it. You may disagree with his  
4           conclusions, but I have a feeling that your  
5           experts are going to tell me what you're telling  
6           me in cross examination. You follow the issue  
7           the court's having here?

8                       MR. AYERS: I understand what you're  
9           saying, sir.

10                      THE COURT: All right then. So the  
11           objection is sustained. Not saying you can't  
12           continue down this path. Just do it in a much  
13           more simplified manner, if you would. A simple  
14           example, an answer to that. Because let me be as  
15           candid as I can with you. Even if Jowei is able  
16           to follow it, you've got my head spinning at  
17           times, trying to keep all these things straight.  
18           So be easy on the court if you can.

19                      MR. AYERS: Can I have Exhibit 102 and  
20           page 15?

21           BY MR. AYERS:

22           Q. Dr. Chen, this is page 15 of the enacted plan  
23           packet. Is it true you did not do a racial  
24           analysis, such as is set forth in -- on page 15  
25           of the Adastra 2 packet?

1 A. Okay. Your question to me is is it not true that  
2 you did not do a racial analysis such as was set  
3 forth on the document that you just put on the  
4 screen here?

5 Q. That's right.

6 A. Is the question. I don't know what you mean by  
7 racial analysis. You just put this exhibit up  
8 here. I don't know what you're talking about  
9 with racial analysis. So if you want to ask a  
10 more specific question, I can try to give a more  
11 specific answer.

12 Q. Dr. Cho (sic), we went through this in your  
13 deposition in some detail, looking at the current  
14 racial composition of the districts in the 2012  
15 plan, racial composition of the districts. Do  
16 you remember going through this exhibit in your  
17 deposition, the racial composition of the 2012,  
18 versus the enacted plan?

19 A. I really don't remember it, but I'll take your  
20 word for it that you asked me about this at  
21 deposition.

22 Q. But you did not do actual racial analysis from  
23 the 2012 plan to the enacted plan, in terms of  
24 the four districts.

25 A. And Mr. Ayers, I want to answer your question,

1 but I'm still at the same place here. You're  
2 going to have to tell me what you mean by racial  
3 analysis. And I'm trying to answer your  
4 question, but I've got to understand the  
5 question.

6 Q. Did you calculate the racial composition of CD1  
7 in the 2012 plan?

8 A. So I -- no, I did not.

9 Q. Did you calculate the racial composition of CD2  
10 in the 2012 plan?

11 A. I did not.

12 Q. Did you calculate the racial composition in CD1  
13 in the enacted plan?

14 A. And now you're specifically talking about the  
15 2022 enacted plan. Is that right?

16 Q. Yes, sir?

17 A. So your question is did I calculate the racial  
18 compositions of CD1, you said?

19 A. Yes, sir.

20 Q. In the 2022 enacted plan. And my answer is that  
21 I certainly, in -- at some point in the creation  
22 of the figure -- I forget the figure number, but  
23 the previous figure that came from my report that  
24 we were just talking about. In creating that  
25 figure, my computer code certainly had to

1 calculate the minority share of all four  
2 districts. I can't tell you what that number is  
3 off the top of my head.

4 Q. You could have then created four figures that  
5 looked like figure 13, the last exhibit. You  
6 could have done that for all four districts.  
7 Correct?

8 A. Figures that looked like Exhibit 13, is what you  
9 just asked me about?

10 Q. In the same format. I don't mean the same -- the  
11 dots aren't going to be in the same place, but  
12 the same format.

13 A. I'm not sure what you're totally proposing. What  
14 I did in that exhibit, the exhibit we were just  
15 talking about is to look at racial composition of  
16 the most Democratic district. It doesn't make  
17 sense to produce that figure with other districts  
18 because I'm just looking at the most Democratic  
19 district in the plan. It sounds to me like  
20 you're proposing a different line of analysis  
21 that I'm not totally following.

22 Q. But you didn't do my suggestion. My different  
23 line of analysis.

24 A. Your different line of analysis sounds like it  
25 was going in a different direction, and it

1 doesn't sound like what I actually did in the  
2 figure that obviously was in my report.

3 Q. All I'm asking is in Exhibit 44, which was figure  
4 13, you compared the most Democratic district in  
5 the 2022 enacted plan with your 1,000 computer  
6 simulations. And my only question is since you  
7 had the numbers, you could have created figures  
8 14, 15, whatever figures you wanted to call them,  
9 with the second most Democratic district, the  
10 third most Democratic district, and the fourth  
11 most Democratic district, and compared those to  
12 your 1,000 computer-simulated plans. You could  
13 have done that.

14 A. Okay. It sounds like you're -- again, I'm at the  
15 same place. You're proposing a different sort of  
16 analysis here, and I'm obviously affirming that I  
17 didn't do this sort of alternative analysis that  
18 you're proposing.

19 Q. You only did the most Democratic district, versus  
20 your 1,000 plans, in terms of its racial  
21 composition. Isn't that correct?

22 A. Like I said, I only did figure 13 here.

23 Q. Let me start over at the beginning, which would  
24 be where you have testified. You testified for  
25 the League of Women Voters Florida. Is that

1 correct?

2 A. I'll take your word for it. I'm not -- if you  
3 want to -- you know, if you want to point me to,  
4 or if you want to just read from the page in my  
5 report where I've listed all these cases. I'm  
6 not sure I can remember every one off the top of  
7 my head.

8 Q. I think we went through them before. And you  
9 tend to -- I think except for Ferguson, you were  
10 always on the Plaintiff's side, challenging the  
11 redistricting plan. Would that be a fair summary  
12 of your report?

13 A. No.

14 Q. Can you think of one time when you were defending  
15 the plan, other than Ferguson?

16 A. I mean, your question is can you think of a time  
17 when you were defending the plan. I have never  
18 been defending a plan. I -- that's not -- I  
19 don't advocate. That's just not what I do.

20 Q. I think the question was you have represented  
21 Plaintiffs, but not Defendants. Is that correct?  
22 Except for Ferguson.

23 A. I mean, my answer is the same. I don't represent  
24 anybody.

25 Q. You testified on behalf of Plaintiffs, versus

1 Defendants in all your cases except for Ferguson.  
2 Isn't that correct?

3 A. Okay. I'm going to try and give you an accurate  
4 answer to your question, and so I'm going to turn  
5 to the page of my report where I've listed past  
6 expert reports. Okay. So paragraph four is  
7 where I'm looking at, and I can see, for example,  
8 that I've listed there an expert report in Brown  
9 V. Datsner (phonetic), and it's my understanding  
10 that in that case, I was hired by counsel for  
11 Defendant interveners in that case. Not  
12 Plaintiffs. So that's my understanding. I'm not  
13 sure I can think of another one off the top of my  
14 head, but that's the name that jumps out to me.

15 Q. Okay. And you and Professor Rodden have -- Dr.  
16 Rodden have also testified in the same cases on  
17 the same side, have you not?

18 A. I'm pretty sure that that has happened at least a  
19 few times. Well, obviously, that's happening  
20 right now.

21 Q. Well, we had Romo in Florida, NAACP in Ferguson,  
22 you were together on Rucho and in Adamson, the  
23 Ohio case. Do you remember any of those?

24 MS. THEODORE: Objection, Your Honor. I  
25 think Dr. Rodden testified earlier that he didn't

1 participate in (unintelligible).

2 THE COURT: That was my recollection as  
3 well here. I think he said he may have submitted  
4 a report, but that he did not testify in that  
5 case. I'll take it that that misstates evidence.

6 MS. THEODORE: Yes, Your Honor.

7 THE COURT: Is your objection?

8 MR. AYERS: With that correction --

9 THE COURT: So your objection is  
10 sustained.

11 MR. AYERS: With that correction, Dr. Cho,  
12 you and Dr. Rodden have been together three or  
13 four times, in terms of representing --

14 A. I'm not sure I can affirm the number you're  
15 proposing, three or four. You know, if you're  
16 asking me to count up, I'm happy to do that, but  
17 I'm not sure I can just off the top of my head  
18 affirm your proposed number of three to four.

19 MR. AYERS: Jamie, could I have 1066A,  
20 please?

21 BY MR. AYERS:

22 Q. Dr. Chen, what I've done is draw the 2012  
23 existing plan over your simulated plan. You  
24 recognize your map one, simulated plan?

25 A. I recognize the general kind of coloring,



1           labeling scheme from my report. I can see that  
2           there have been -- there are -- somebody's taken  
3           a red marker and drawn some district lines across  
4           the state.

5       Q. I'm going to represent to you that those are the  
6           2012 existing boundaries. And I can show you  
7           those existing boundaries on Exhibit 1002, which  
8           is the Adastra 2. I'm just representing to you  
9           that those are the existing boundaries in red to  
10          compare the existing boundaries to your simulated  
11          plan.

12       A. Okay. I take your word for it.

13       Q. And I know that you've talked about county  
14          splits. I want to ask you about county movement,  
15          which is a little bit different concept. I  
16          counted that there were about 19 counties that  
17          would be moved into different districts under  
18          your -- one of your sample simulated  
19          congressional plans. Have you counted up the  
20          number of counties that would be moved?

21       A. You just put this exhibit up in front of me here,  
22          so I'm just seeing this for the first time. I  
23          think you gave a number of 19 to me. I don't --  
24          I have no opinion about that.

25       Q. And you haven't counted how many counties are

1 required to be moved under your example of your  
2 computer-simulated plan. Is that right?

3 A. That question did not make sense to me. I  
4 believe you asked me -- well, I'm just going to  
5 say that question didn't make sense to me.

6 Q. All right. So there are a number of counties  
7 that were -- used to be in 2012 that are no  
8 longer in their same congressional district. Is  
9 that -- under your simulated plan. Is that  
10 correct?

11 A. Your question to me is there were counties in the  
12 2012 plan that are not in the same district under  
13 this computer-simulated plan.

14 Q. Yes, sir. In other words, for example --

15 A. Okay. Okay. I'm sorry. Didn't want to cut you  
16 off there.

17 Q. I didn't want to cut you off. For example, if  
18 you look at Comanche County used to be in 2012,  
19 CD4. Now it's in what you call CD2. Is that  
20 correct? That's a -- I would call that a county  
21 move. You don't have to call it that, but that  
22 county is no longer in the same district, is it,  
23 under your simulated plan?

24 A. If the basis of you saying that Comanche County  
25 has moved is simply noting that in the 2012

1           enacted plan, it was assigned to CD4, and then as  
2           you're rightfully pointing out in the computer  
3           -simulated map, which by the way just has random  
4           district numbers or completely random district  
5           numbers assigned, and here it's randomly assigned  
6           to Congressional District 2 under the simulated  
7           map, then obviously, four is different than two,  
8           and certainly that -- we could go through and  
9           find all kinds of counties that are assigned to  
10          district numbers. In the simulations, the  
11          district numbers don't mean anything. It's just  
12          a random number with a random -- it's just a  
13          random number assigned to these districts. So  
14          you could certainly do that exercise and identify  
15          any number of counties that are not assigned to  
16          the same numbered district, but that doesn't  
17          really seem like much a meaningful analysis to  
18          me.

19        Q.    Unless you live in that county. Correct?

20        A.    Again, same answer as before. I just don't think  
21              it's very meaningful whether or not the western  
22              Kansas district is numbered --

23        Q.    I don't care about the -- Dr. Chen, I don't care  
24              about the number. I'm talking about the county  
25              being no longer in the same district. I don't

1 care that the simulation numbered it two or one.  
2 I just care about the county no longer being in  
3 the same congressional district that it was in in  
4 2012, as compared to 2022.

5 A. Well, Mr. Ayers, I was just trying to answer your  
6 previous question, and your previous question  
7 told me that the reason you are identifying that  
8 particular county as having changed, having  
9 moved, was that you looked at the district  
10 numbers and that they're clearly assigned to  
11 different numbers. So I was just giving you my  
12 response to that sort of -- that sort of counting  
13 exercise. If you are trying to ask something  
14 different, I'm happy to answer the different  
15 question.

16 Q. In terms of creating your algorithm, it's a set  
17 of instructions. Is that correct?

18 A. Well, an algorithm is just computer code. You  
19 can say it's instructing the computer, but it's  
20 computer code. It's fundamentally what an  
21 algorithm is.

22 Q. My understanding from your testimony today, in  
23 terms of the inputs into the algorithm, is that  
24 you inputted into your algorithm that it would  
25 draw basically blindly on a map of Kansas equal

1 district of 734,470 each. That's an input into  
2 your algorithm. Correct?

3 A. The specific input is to equalize the population  
4 of all four congressional districts of Kansas.

5 Q. And a second input would be that they be  
6 contiguous. Correct?

7 A. Certainly, an algorithm requires districts to be  
8 contiguous.

9 Q. All right. And you're the one who designed the  
10 algorithm. Correct?

11 A. Yeah. I wrote the algorithm.

12 Q. Okay. Sometimes we talk about it like it's a  
13 person or something. You're the person who  
14 designed and inputted the algorithm. Correct?

15 A. I'm sorry for not using the first person, but I'm  
16 not the actual algorithm. The algorithm is just  
17 something that I wrote.

18 Q. Okay.

19 A. So that's why I'm referring to it in the third  
20 person.

21 Q. Right. We have equal and contiguous, and then  
22 number three, I think you said you tried to  
23 minimize county and voter tabulation district  
24 splits. Is that correct?

25 A. Well, I'll just generally point you to a section

1 of my report that lays all this out. It's  
2 paragraph 11 here. And so certainly, I explain  
3 how the algorithm is minimizing county splits.

4 Q. And then you tried to make it as compact as  
5 possible. Is that correct?

6 A. The districts are drawn to prioritize the drawing  
7 of geographic -- sorry. The simulation algorithm  
8 is prioritizing the drawing of geographically  
9 compact districts whenever doing so does not  
10 violate any of the aforementioned criteria, and  
11 those aforementioned criteria that are the ones  
12 listed in that same paragraph from section A to  
13 B. So all I did there was I was just reading  
14 straight from paragraph 11 of my report.

15 Q. I'm not going through -- I'm not reading your  
16 report right now, Dr. Chen. I'm just asking you  
17 to tell me whether or not you had inputs for  
18 equal, contiguous, minimum county, and VTD splits  
19 and compactness, and you said yes. Correct?  
20 Those are four inputs. Right?

21 A. Correct.

22 Q. Okay. And then the last one, I think you said  
23 you minimized -- you tried to minimize  
24 municipality splits. Is that right?

25 A. It's not really minimizing. So there are still

1 going to be municipalities that are split, but  
2 the algorithm favors, so tries to avoid splitting  
3 municipalities when it doesn't -- when it's  
4 possible to do so.

5 Q. And you don't know why the Kansas legislature has  
6 four county splits. You just know they have  
7 four. Is that correct?

8 A. That's not correct.

9 Q. Okay. Do you know why Pawnee is split? Just yes  
10 or no. Do you know why?

11 A. I reached -- I have an opinion about generally  
12 why counties are split in the enacted plan. So  
13 that opinion applies to all of the county splits.

14 Q. I understand that you -- we've heard your  
15 opinion. I'm now asking you specifically, do you  
16 know why Pawnee County was split?

17 A. So I have an opinion about why counties are  
18 split. That applies to all the counties that are  
19 split. That includes Pawnee County.

20 Q. You think Pawnee County was split because of  
21 extreme partisan bias.

22 A. I opined earlier today that in general, counties  
23 are one -- splitting of counties is one of the  
24 criteria that clearly, the enacted plan  
25 subordinated as part of this pattern of

1 subordinating traditional districting principles.  
2 so that, of course, includes the specific  
3 counties -- all the counties -- all four counties  
4 that are split.

5 Q. And you did not take the 2012 plan into account  
6 at all, did you?

7 A. I'm not sure I understand your question.

8 Q. well, I think you testified in your deposition  
9 that you did not -- you start with a blank piece  
10 of paper. You did not take into account the 2012  
11 plan when you created your algorithm and made  
12 your 1,000 simulations.

13 A. Like what do you mean by take the 2012 plan into  
14 account?

15 Q. was there an input into your algorithm for the  
16 2012 plan districts?

17 A. So was there an input to just draw the 2012 plan?  
18 No.

19 Q. Or any other -- anything else from the 2012 plan.  
20 was there another input from the 2012 plan?

21 A. Was there an input to copy the boundaries from  
22 2012 plan? No. That wouldn't have made sense.

23 Q. And you can't think of anything from the 2012  
24 plan that you inputted into your algorithm. Is  
25 that correct?



1 A. Same answer as before.

2 Q. Okay. So you don't know specifically -- other  
3 than your general conclusion, you don't know  
4 specifically why Pawnee was split in the 2012  
5 plan. Correct?

6 A. I think I've already answered that question.  
7 I've told you that I do -- I have reached an  
8 opinion about why counties, including Pawnee, are  
9 split.

10 Q. All the counties, but not specifically Pawnee.  
11 You're just saying generally speaking, they were  
12 split, and the splitting was subordinated to some  
13 other motive, but you don't know specifically why  
14 Pawnee was split either in the 2012 plan  
15 specifically, or in the 2022 plan. Correct?

16 A. I mean, I think I've given you the extent of my  
17 opinion.

18 Q. Okay. That's fine. The same question I think --  
19 and I know you -- well, I won't go there.  
20 Jackson County is split. And AA1 did not have it  
21 split, AA2 did have it split to preserve the  
22 Kickapoo boundaries. I'm representing that to  
23 you. But you don't know that one way or the  
24 other, do you?

25 A. Okay. There was a lot there. You start saying

1 AA1 --

2 Q. I'll make it real -- Excuse me, Your Honor. I'll  
3 make it real simple. Do you know why Jackson  
4 County was split in the 2022 plan, other than  
5 your general opinion you've already given us?

6 A. Same answer as before. I won't waste your time.

7 Q. Okay. I think your counsel already asked you  
8 this, but there's no input into the algorithm  
9 itself regarding racial or minority voting  
10 strength. Is that correct?

11 A. The simulation algorithm is race blind.

12 Q. Right. And your algorithm does not have  
13 programmed into it any inputs for communities of  
14 interest. Isn't that correct?

15 A. That's not correct. I think that I've explained  
16 all of the different criteria that go into the  
17 simulation algorithm. I talked about how  
18 counties are preserved to the extent possible,  
19 minimize the splitting of counties, try to keep  
20 counties together, same, obviously, for VTDS and  
21 for geographic compactness, generally. I've also  
22 explained how the algorithm is trying to avoid  
23 municipal boundary splits. So to the extent that  
24 all those things are protecting communities of  
25 interest, those are obviously the inputs that I

1 put into the algorithm. And to be clear, the  
2 legislature -- the guidelines and criteria,  
3 redistricting guidelines and criteria actually  
4 make pretty clear that counties in Kansas are a  
5 very important community interest. And that's  
6 why it's so notable -- that's why it's just so  
7 notable that even though it's only necessary to  
8 split three counties, the enacted plan splits  
9 more than necessary the number of counties that  
10 had to be split to draw a congressional plan.

11 MR. AYERS: Move to strike as  
12 nonresponsive and narrative answer.

13 THE COURT: Care to weigh in, Elisabeth?

14 MS. THEODORE: I think it was responsive,  
15 and he's allowed to provide an explanation.

16 THE COURT: Well, it certainly went far  
17 beyond what the question was, but it certainly  
18 did answer the -- what the question about how he  
19 set this up. So I'll let it stand, noting your  
20 objection and request for striking, Gary.

21 MR. AYERS: Does the witness have the  
22 deposition?

23 THE COURT: Jowei, do you have your  
24 deposition in front of you?

25 MR. AYERS: It's right here.

1           THE COURT: I take it then no. Now, that  
2           may have been Rodden's deposition, unless you've  
3           changed them. Okay. Great. So he does not  
4           have -- you can hand it to him unless you don't  
5           want to. It's sealed. Open it.

6           MR. AYERS: Okay. Thank you, Your Honor.

7           THE COURT: You bet.

8           MR. AYERS: Dr. Chen, lawyers aren't  
9           supposed to play with the seals, so -- Your  
10          Honor, I'm handing Dr. Chen his deposition.

11 BY MR. AYERS:

12 Q. Dr. Chen, if you would please turn to page 31,  
13          line 24. And when you get there, let me know.

14 A. Okay. I am at page 31.

15 Q. The bottom, line 24, am I reading this correctly?  
16          Did you or did you not program in social,  
17          cultural, racial, ethnic, and economic interests  
18          common to the population of the various areas?

19          Answer: The answer to your question is there are  
20          no inputs into the algorithm that are explicitly  
21          social, culture, racial, ethnic, or economic data  
22          or factors or anything along those lines. Did I  
23          read that directly?

24 A. Yeah. I think I made pretty clear I didn't put  
25          cultural --

1 Q. I didn't have a question. I just said did I read  
2 it correctly?

3 A. All right.

4 MS. THEODORE: Your Honor, I think if the  
5 implication is that that was somehow inconsistent  
6 with his prior answer, he's allowed to explain.

7 THE COURT: Respond if you wish, Gary.

8 MR. AYERS: I didn't even hear her. I  
9 can't hear her up here. I'm sorry, Counsel. I  
10 can't hear you up here.

11 THE COURT: Repeat your objection.

12 MS. THEODORE: You know what? I'll let it  
13 go.

14 THE COURT: You know, counsel, perhaps to  
15 deal with that, that's probably what the Court's  
16 here to decide, whether his answer was  
17 inconsistent. So --

18 MS. THEODORE: Okay.

19 BY MR. AYERS:

20 Q. Dr. Chen, did you have any input into your  
21 algorithm with regard to core retention?

22 A. Can you explain to what you mean by -- when you  
23 say core retention?

24 Q. Let's go to your deposition. Page 32, lines 13  
25 and 14. Answer: There is no input into the

1 algorithm with, say, core retention as an  
2 explicit criterion. Is that still your answer  
3 today?

4 A. Sure. I was just trying to ask you if you could  
5 tell me what you meant by core retention.  
6 Obviously, I stand by the answer I gave in  
7 deposition.

8 Q. I've asked you this, and I'll ask you again.  
9 Indeed, you did not start with the existing 2012  
10 plan in any way. Is that correct?

11 A. Yes. Same answer as before. Certainly, I was  
12 not, say, starting with the district lines drawn  
13 in the 2012 plan, and then just copying those  
14 over into the simulation algorithm and telling  
15 the algorithm to just use the same lines or a  
16 subset of those same lines.

17 Q. It's also true, is it not, that the algorithm  
18 does not consider preserving existing state  
19 Senate and House political boundaries?

20 A. Your question is does the algorithm consider  
21 existing state Senate or House boundaries. Did I  
22 hear that right?

23 Q. Yes.

24 A. Okay. Yeah. That was just making no sense to  
25 me. Why would you --

1 Q. Yes or no?

2 A. -- state legislate -- I'm going to answer your  
3 question. So no, I didn't do that. That just  
4 would make no sense to me. Why would you take  
5 state legislative boundaries and then use them to  
6 draw congressional districts, which is a  
7 completely different district? That just makes  
8 no sense. No, I didn't do that.

9 Q. Are you finished? Just a yes or no. Did you or  
10 did you not? You said no. Right? The answer's  
11 no. Did you or did you not consider where the  
12 Kickapoo reservation boundaries were? Again, did  
13 you or did you not when you did your 1,000  
14 simulations?

15 A. No.

16 Q. And you don't have an opinion, do you, on whether  
17 or not the redistricting committee guidelines  
18 have a hierarchy?

19 A. To some extent, it is actually a pretty clear  
20 hierarchy. There are clearly some principles  
21 that are just inviable, like the equal  
22 population.

23 Q. Well, we can always say equal population. Right?  
24 Because that's always the necessary criterion for  
25 a congressional plan. Correct?

1 A. If your question to me was to affirm that equal  
2 population is necessary for a congressional plan,  
3 I obviously agree that districting plans have to  
4 be equally populated.

5 Q. And AA2 -- Adastra 2 is equally populated.  
6 Correct?

7 A. Yeah. It doesn't violate equal population.

8 Q. And it's contiguous. Correct?

9 A. The districts are contiguous.

10 Q. And it doesn't split unnecessarily  
11 municipalities. Correct?

12 A. It's correct with municipalities. I certainly  
13 found that --

14 MR. AYERS: I know -- seriously, Your  
15 Honor. I have very simple questions. If you  
16 don't mind, Your Honor.

17 THE COURT: I don't mind, certainly,  
18 counsel. And if you don't think that Jowei's  
19 being responsive to your questions, just bring it  
20 to my attention.

21 MR. AYERS: Okay. I just brought it to  
22 your attention.

23 THE COURT: Please try and answer the  
24 questions that are asked if you would, Jowei.  
25 And I understand some of your answers need



1 explanations, but some of them might be a little  
2 closer to yes or no if you think that is  
3 appropriate, sir.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Thank you.

6 BY MR. AYERS:

7 Q. So it's fair to say that for your figures and  
8 your diagrams that you've presented here today,  
9 if your inputs were correct vis-à-vis the  
10 guidelines, then you believe your simulations  
11 were correct. Is that right?

12 A. I'm just not sure I understand that question.  
13 You said if your inputs were correct --

14 Q. You believe you did the simulations correctly.  
15 Right?

16 A. I don't know what you mean by correct. I've  
17 explained how I programmed the simulation  
18 algorithm, and certainly I believe that I  
19 described it accurately, but obviously, I also  
20 turned over all of the data containing all the  
21 simulations too if you want to check that. So I  
22 don't know what you mean by "correct."

23 Q. And the comparisons are dependant upon your 2016  
24 to 2020 state composite election score. Is that  
25 correct?

1 A. Actually, I do comparisons based on a statewide  
2 election composite, and but I also do comparisons  
3 based on the nine individual elections. So it's  
4 actually a pretty broad range of electoral  
5 environments I've done.

6 Q. Figure 5 is based upon the statewide composite  
7 election. Is that correct?

8 A. Figure 5 indeed measures partisanship, using the  
9 statewide election composites. We also looked at  
10 several other figures that looked at individual  
11 nine elections. Nine separate electoral  
12 environments.

13 Q. You know, I understand that, Dr. Cho. Your  
14 Honor, please. I completely understand what you  
15 want to say. I just -- very simple question,  
16 very simple answers, if you don't mind, Your  
17 Honor.

18 THE COURT: I'm not sure what wasn't  
19 responsive about, Gary. Did he tell you more  
20 information than you wanted?

21 MR. AYERS: That's fine, Your Honor.

22 THE COURT: Okay.

23 MR. AYERS: I'm trying to get through this  
24 as quickly as I can, and I'm having a tough time  
25 with this witness.

1 THE COURT: I understand. I know you are.

2 BY MR. AYERS:

3 Q. Dr. Chen, it is true, is it not, with regard to  
4 figure 5 that where you place the stars depends  
5 upon your 2016 to 2020 statewide composite score.  
6 Isn't that correct?

7 A. No. Where I placed the stars depends on what the  
8 data says. The stars are just reporting the  
9 statewide election composite Republican vote  
10 share.

11 Q. I think we said the same thing. So the stars  
12 depend upon the statewide composite vote share.  
13 Correct?

14 A. They don't depend on it. They're just reporting  
15 the Republican vote share.

16 Q. All right. Lawyers and scientists talk  
17 differently. But they are reporting where the  
18 state's composite score would put them. Right?

19 A. They are reporting the Republican vote share in  
20 each district.

21 Q. Right. And on the bottom of figure 5, where CD3  
22 is, slightly -- you say slightly Republican, if  
23 someone had a different composite, and it had  
24 that CD (sic) vote share at 49%, that star would  
25 move. In other words, it's the composite that

1 puts the star to the right of the 50% line, as  
2 opposed to the left of the 50% line on figure 5.  
3 Right?

4 A. If what happened, the star would be to the left?

5 Q. We'll we're talking about figure 5. All I'm  
6 saying is that the composite score -- I can use  
7 yours. The composite score, the data from the  
8 composite score is the reason you put the CD3  
9 star right next to the 50% line. Is that  
10 correct?

11 A. Same answer as before.

12 Q. Okay.

13 A. The stars are reporting the Republican vote  
14 share.

15 Q. Right. And so if the composite score is not the  
16 best measure of the Republicanness of CD3 and a  
17 different score put it at, let's say, 48%, the  
18 star would then be moved to the left. Is that  
19 correct?

20 A. We would have to look at that different measure  
21 and that different set of elections. And in  
22 fact, earlier this afternoon, we did just that.  
23 We looked at a number of elections in which the  
24 overall partisan performance of Kansas was a bit  
25 to the left. And we saw what happened to that

1 star sometimes. That last star, CD3, actually  
2 moved to the left of that dot line. And we  
3 talked quite a bit earlier this afternoon -- or I  
4 spoke with Ms. Theodore about why it is that even  
5 in those alternative electoral environments where  
6 everything is shifted to the left, you still see  
7 the same extreme partisan outlier patterns.

8 Q. If you could put up Exhibit 48, please, Jamie.  
9 This is an example of one of your figures where  
10 the Democrats did a lot better in 2018 in the  
11 Governor's race. Is that correct?

12 A. The 2018 Governor -- yes. Obviously, this is a  
13 relatively more Democratic -- actually a pretty  
14 extreme Democratic election.

15 Q. Which, of course, because of the vote share,  
16 pushes the little star in the CD3 to the left  
17 down to the 40 whatever percent line it is.  
18 Correct? The data moves it to the left.

19 A. Yeah. Like you just said, that is a more  
20 Democratic favorable election. The red star in  
21 the bottom row moves to the left, and so too do  
22 all 1,000 of the gray circles. You see that red  
23 star -- still an extreme partisan outlier.

24 Q. And you don't use Secretary of State registration  
25 data in your simulation or in your comparisons.

1 Is that correct?

2 A. Secretary -- I'm not sure what you mean --

3 Q. Registration data. You don't use registration  
4 data, do you? Voter registration data.

5 A. Okay. Voter registration data. I gotcha.

6 Q. You don't use that, do you?

7 A. And the answer is no. I use statewide elections.

8 Q. And you don't use endogenous congressional  
9 district -- pretty good. You don't use  
10 endogenous congressional elections to do your  
11 analysis, do you? You use exogenous statewide  
12 elections to do your analysis. Is that correct?

13 A. Use statewide elections, not congressional  
14 elections.

15 Q. The statewide elections are the exogenous  
16 elections. The congressional district elections  
17 would believe the endogenous elections that we  
18 were talking about?

19 A. Yes. Some people use that terminology, but I  
20 think we both know what we're talking about.

21 Q. Jamie, could I have Exhibit 42, please? So  
22 Dr. Cho, what is Exhibit 42?

23 MS. THEODORE: Your Honor, I'd just like  
24 to point out -- this has come up a number of  
25 times. His name is Dr. Chen. Not Dr. Cho.

1 MR. AYERS: I'm sorry. We had another --  
2 one of our witnesses was referring to an expert  
3 name of Dr. Cho. I sincerely apologize. You can  
4 call me whatever you want. So -- I'm so sorry.

5 THE WITNESS: Totally fine, Mr. Ayers.

6 MR. AYERS: It's not fine at all.

7 THE COURT: Thank you for pointing it out,  
8 thank you for straightening it out, and thank you  
9 for being so gracious about it. Let's see if we  
10 can ask and answer some questions.

11 Mr. Ayers: May the record show that I'm  
12 an idiot. Okay?

13 (Laughter.)

14 THE COURT: Thank you for that, but no  
15 need, Gary. Everyone makes mistakes.  
16 Understandable.

17 BY MR. AYERS:

18 Q. Dr. Chen, I'm really sorry about that. I'm glad  
19 we don't have a jury. How about that? So --  
20 figure 11. What is figure 11 in Exhibit 42?

21 A. Figure 11 is the same format as figure 5. We're  
22 looking at the district level Republican vote  
23 share of every district in every simulated plan  
24 in the enacted plan as measured using statewide  
25 election composites. Except this time, we're

1 just looking at the 485 computer-simulated plans  
2 where a single district contains all of both  
3 wyandotte and northern Johnson County.

4 Q. So you created your algorithm, created your 1,000  
5 plans, and then am I correct that your counsel  
6 asked you to look at those plans that had  
7 wyandotte and part of Johnson County in one  
8 congressional district?

9 A. Have all of wyandotte and part of Johnson County.  
10 Northern Johnson County.

11 Q. Your counsel asked you to pull out those 485  
12 simulations that had that combination.

13 A. Okay. Yes. And you got the right idea. I'm  
14 just going to clarify that I don't regard them as  
15 my counsel, but obviously that's exactly what I  
16 did.

17 Q. And there were 515 of your simulations that did  
18 not put wyandotte and northeast Johnson County in  
19 the same district. Correct?

20 A. So right. The remaining 515 would not have had  
21 all those characteristics in common in a single  
22 district.

23 Q. If you'd look at Exhibit 41 -- I was actually  
24 wanting to look at Exhibit 40. I'm sorry. What  
25 is Exhibit 40 and figure 9?



1 A. Figure 9 is similar to the last figure that we  
2 just looked at. It's, again, looking at the  
3 district level Republican vote share as measured  
4 using statewide election composites for all the  
5 districts in the enacted plan and the simulated  
6 plans, except this time, figure 9 is only going  
7 to look at the 530 simulated districts in which a  
8 single district contains all of Wyandotte.

9 Q. And that means that 470 of your simulations did  
10 not have Wyandotte, the entire county, in a  
11 single congressional district. Is that correct?

12 A. That's correct.

13 MR. AYERS: That's all I have.

14 THE COURT: Thank you, Gary.

15 MR. AYERS: Excuse me. Let me ask Tony  
16 real quick. Are we done? You're just tired of  
17 me.

18 MR. RUPP: I'd never say it out loud.

19 THE COURT: Redirect examination?

20 MS. THEODORE: Pardon?

21 THE COURT: Redirect?

22 MS. THEODORE: Yes. Can you give me one  
23 minute, please?

24 THE COURT: Take as much time as you need.

25 MS. THEODORE: Thank you, Your Honor.

## 1 REDIRECT EXAMINATION

2 BY MS. THEODORE:

3 Q. Dr. Chen, you were asked some questions about the  
4 extent to which the 2022 enacted plan preserved  
5 the 2012 district or the cores of those  
6 districts. Do you recall that?

7 A. Yes.

8 Q. All right. And did you program your algorithm to  
9 intentionally preserve the cores of the 2012  
10 districts in the simulated plans?

11 A. No. It ignored those boundaries from the 2012  
12 plan.

13 Q. Do you know how the 2022 enacted plan compares to  
14 your simulated plans with respect to how the  
15 enacted plan and the simulated plans preserved  
16 the cores of the 2012 district?

17 A. Yes. So I do know that. So just to give an  
18 example, when I look at how well the core of CD3,  
19 just as an example, from the 2012 plan was  
20 preserved in the 2022 enacted plan, as well as in  
21 the 1,000 computer simulations, what I actually  
22 find was that 61% of the simulated plans do a  
23 better job of preserving the core of CD3 in the  
24 same district, compared to the 2022 enacted plan  
25 new version of CD3. In other words, it would

1 have been pretty straightforward for the 2022  
2 enacted plan to do a better job of core  
3 preservation for CD3 than the plan actually did.  
4 And 61% of the simulations do a better job, in  
5 terms of preserving the core of CD3.

6 Q. In your opinion, can the partisan Republican bias  
7 that you observe in the 2022 enacted plan be  
8 explained by an attempt to preserve the 2012  
9 districts?

10 A. No, it can't be. And I know that because I  
11 looked at the simulated plans that actually do a  
12 better job of core preservation than the 2022  
13 enacted plan does in terms of preserving the  
14 cores of the 2012 enacted plan districts. And  
15 when I look at those plans, compared to those  
16 plans, the 2022 enacted plan is still an extreme  
17 partisan outlier at a district level and at a  
18 plan-wide level. So even if the goal was to try  
19 to somehow do a really good job of core  
20 preservation, well, first of all, the enacted  
21 plan didn't do as well as possible, but even if  
22 that were your goal and you just looked at the  
23 simulations, you just look at the simulated plans  
24 that do a better job of core preservation than  
25 the enacted plan does, even compared to that

1 baseline of simulated plans, the 2022 enacted  
2 congressional plan is still an extreme partisan  
3 outlier, both at the plan-wide level, as well as  
4 with respect to individual districts.

5 Q. Mr. Ayers asked you some questions about why  
6 particular counties were split in the 2022  
7 enacted plan, like Pawnee or Jackson. Do you  
8 recall that?

9 A. Yes.

10 Q. So if the Defendants establish that there were  
11 some nonpartisan reason to split one particular  
12 county, even if you were to accept that as  
13 accurate, would it change your conclusion that  
14 the map drawing process subordinated the criteria  
15 of avoiding county splits in pursuit of partisan  
16 gain?

17 A. No. The conclusion is still the same. The plan  
18 created an extreme partisan outlier, and it's an  
19 extreme partisan outlier compared to the  
20 simulated plans that are splitting three  
21 counties. So it doesn't change that fact if you  
22 just have a really good-sounding excuse about why  
23 you have to split one particular county. And  
24 more to the point, it's perfectly fine if you  
25 want to split, say, Pawnee County just to take a

1 random example. That doesn't change the fact  
2 that it's still very much possible to draw an  
3 entire plan that only splits a total of three  
4 counties. The fact that you felt you had a  
5 really good reason to split Pawnee doesn't  
6 somehow hinder you from drawing a statewide plan  
7 that only splits three counties.

8 Q. All right. Let's pull up Exhibit 48, figure A4,  
9 which Mr. Ayers talked with you about. And this  
10 is the one example in these nine statewide  
11 elections that you included were the Democrats  
12 got a majority of the statewide vote. Is that  
13 right?

14 A. Yes. The 2018 gubernatorial election. That very  
15 unusual Democratic election.

16 Q. All right. And to what extent is Congressional  
17 District 3 a partisan outlier -- a pro Republican  
18 partisan outlier, using this particular election?

19 A. Using the 2018 gubernatorial election, just look  
20 at the bottom row here. It's a complete  
21 statistical outlier in terms of partisanship.  
22 Look at that bottom row. The CD3 -- obviously,  
23 this is a very Democratic election. It was  
24 very -- the election was very unusual. But CD3  
25 is still more Republican favorable than 100% of

1 the computer-simulated districts on this row. So  
2 the point is sure, we can obviously find an  
3 extreme Democratic election like this, the  
4 gubernatorial election, where CD3 turns out to  
5 actually favor the Democratic candidate, but even  
6 with the election, the evidence here is showing  
7 that CD3 is drawn in a way to be as invulnerable  
8 as possible to be more Republican favorable than  
9 100% of the computer-simulated districts on this  
10 row.

11 Q. Did you see the same pattern with every single  
12 one of the individual elections you looked at?

13 A. Yes. We saw exactly the same pattern here, and  
14 you and I looked at a couple of those elections.  
15 If you looked up and down all nine of those  
16 elections, you see the same pattern at every one  
17 of these elections.

18 MS. THEODORE: Thank you, Dr. Chen.

19 THE COURT: Thank you. Gary?

20 RE CROSS EXAMINATION

21 BY MR. AYERS:

22 Q. Dr. Chen, how did you measure core retention?

23 A. Okay. I looked at the population -- the current  
24 census population of Kansas census blocks. I  
25 identified which block is -- was assigned to each

1 district under the 2012 enacted plan, and then I  
2 counted up how much of that population is kept  
3 together in the same district in a new plan,  
4 whether the 2022 enacted plan, or any of the  
5 computer-simulated plans. And so what I  
6 calculated was what percentage of each district's  
7 population has -- from the 2012 district has been  
8 kept together in the same district in this new  
9 2022 plan, or in this new computer-simulated  
10 plan.

11 Q. And then each of your simulated plans had a  
12 different percentage. Is that correct?

13 A. Yeah. Every simulated plan is slightly  
14 different, so the percentages would have been a  
15 little bit different.

16 Q. Did you put a figure or a chart in your report to  
17 reflect core retention?

18 A. No. You and I -- you actually asked me quite  
19 extensively about core retention when you deposed  
20 me about two weeks ago. And that honestly led me  
21 to go and look at the simulated plans and then  
22 calculate the core retention of each of these  
23 plans. Of course, I had already turned over all  
24 of the files containing the block assignment  
25 files, maps of all the simulated plans. I just

1           took those plans -- and it was because you had  
2           asked me about core retention pretty extensively  
3           at deposition. So I went back, I looked at all  
4           those simulated plans that I already turned over,  
5           calculated the core retention, looked at the core  
6           retention of the 2022 enacted plan.

7    Q.    So I live in the 4th District in Kansas. And the  
8           enacted plan didn't change, except for a few  
9           hundred votes here or there, in Pawnee County.  
10          The enacted plan didn't change the 4th District.  
11          It's basically the same outline. Do your  
12          simulated plans show you where the 4th District  
13          is and whether or not it was maintained in any of  
14          your simulations?

15    A.    Not sure I accept the premise of your question.  
16          The new 2022 enacted plan does redraw the 4th  
17          District. It's not exactly the same district.  
18          So I mean, that's -- when I look at the 4th  
19          District, it has changed a bit.

20    Q.    Not much. Right?

21    A.    I mean, it obviously had to expand in order to be  
22          an equally populated district. I'm not sure what  
23          you mean by "not much", but I think you and I are  
24          on the same page here, that it did change a bit.

25    Q.    And your simulated plans didn't show you that the



1 4th District -- they didn't show you those lines  
2 on your plans, did they? They didn't show you  
3 where the 4th District was supposed to be drawn?  
4 Or did they?

5 A. The simulation algorithm, like I said in response  
6 to your earlier question, the simulation algorithm  
7 was not trying to copy the 2012 enacted plans,  
8 4th District, or any other district. In fact, it  
9 was totally blind. It was blind to the specific  
10 lines that were drawn back in 2012.

11 What I did was I just went back after  
12 those blind simulations had been conducted, and I  
13 calculated the core retention percentage for each  
14 district after the simulations had been  
15 conducted.

16 Q. And I tried this question earlier. I'm going  
17 to -- it relates to what you're talking about  
18 now. You don't think of core retention in terms  
19 of keeping counties in the same district. Is  
20 that correct? When you went back and looked in  
21 answer to my questions in your deposition, you  
22 looked at population. You didn't look to see  
23 whether or not counties were kept together,  
24 example in the 4th District, as they were in the  
25 2012 plan.

1 A. No. That's wrong. Okay? When I'm considering  
2 core retention of each of the districts from the  
3 2012 enacted plan, I'm considering all of the  
4 population of that 4th District. All of  
5 the population of the 3rd District. That  
6 includes the population of every county in the  
7 4th District. So yes, I am actually considering  
8 all of those counties in the 4th District. I'm  
9 not just selectively throwing out counties in the  
10 4th District and picking and choosing what I  
11 consider core retention to involve. I'm  
12 considering every county, every person in that  
13 4th District and all the other districts.

14 Q. It's by population though, and not by county? In  
15 other words, if Barber County is in a particular  
16 district in 2012, you don't know, in terms of  
17 core retention, whether or not Barber County  
18 ended up in the same congressional district  
19 because your simulation doesn't care, does it?

20 A. When I'm calculating the core reception -- so  
21 you're certainly right that the simulation  
22 algorithm is blind to the specific lines from the  
23 2012 plan. When I'm coming back in the end and  
24 I'm calculating core retention, I am looking at  
25 all the people in Barber County, all the people

1 in every county, and I'm calculating all of that  
2 population from all these counties. So I'm not  
3 picking and choosing and deciding that core  
4 retention just means preserving this county, but  
5 not that county. I'm considering all those  
6 counties.

7 Q. I think everyone in the room knows that we're  
8 talking past each other right now, and I don't  
9 know how to get us on the same page. Let me try  
10 this. Yes, you considered all the county's  
11 population, but you did not consider them in  
12 terms of core retention as keeping counties --  
13 the boundaries of a county in a particular  
14 congressional district. Isn't that correct?

15 A. No. I'm answering the question the same way.  
16 The -- when I'm calculating core retention, I'm  
17 calculating how much of the total population of  
18 the old congressional District 1 or whatever  
19 district is being kept together in the same  
20 district. So that's looking at all of CD1's  
21 population. I'm not sure how else to answer your  
22 question. It really is considering all those  
23 counties.

24 MR. AYERS: Okay. That's fine. Thank  
25 you, Dr. Chen.

1 THE COURT: Thank you, Gary. Redirect?

2 MS. THEODORE: No, Your Honor.

3 THE COURT: Okay. So I don't know if  
4 Jowei is here based upon a subpoena, but if he is  
5 or not, I am assuming he is free to go. I don't  
6 know why he'd want to, but he is free to go.  
7 Gary, anything else?

8 MR. AYERS: Free to go.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Thank you for your testimony  
11 today, sir. I appreciate it. You can leave that  
12 laying there if you like. Okay. Let's --

13 (Discussion held off the record and  
14 out of the hearing of the court reporter.)

15 THE COURT: Back on the record in Rivera,  
16 Alonzo, Frick, and the Schwab Defense team is  
17 also present, so all of the parties or a  
18 reasonably facsimile are here. We are ready to  
19 start with our next witness, I believe. Looks  
20 like a new guy at table. Should I --

21 MS. BRETT: Your Honor, I'd like to  
22 introduce my colleague Spencer Klein, who was not  
23 here this morning.

24 THE COURT: I assume you'll be conducting  
25 the examination?

1 MR. KLEIN: That is correct, Your Honor.

2 THE COURT: Come on up.

3 ETHAN CORSON,

4 having been first duly sworn,

5 was examined and testified as follows:

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. Thank you.

8 Spencer, when you're ready.

9 MR. KLEIN: Thank you. May it please the  
10 Court.

11 DIRECT EXAMINATION

12 BY MR. KLEIN:

13 Q. Can you please first state your name for the  
14 record?

15 A. My name is Ethan Corson.

16 Q. And what do you do for a living?

17 A. I'm a Kansas State Senator. I represent Senate  
18 District 7, located in northeast Johnson County.

19 Q. Where do you live?

20 A. I live in Fairway, Kansas.

21 Q. And are you a member of the Senate committee on  
22 redistricting?

23 A. Yes, I am.

24 Q. And senator, can you tell us about the basis for  
25 your knowledge of Kansas' geography and

1 communities?

2 A. Well, I grew up in Overland Park, so I got to  
3 learn northeast Kansas growing up in Overland  
4 Park, and then for college, I went and I played  
5 baseball and also got my Associates Degree. My  
6 mom would want me to say I got my Associates and  
7 played baseball. But at Garden City Community  
8 College in southwest Kansas, so traveled  
9 extensively throughout western Kansas throughout  
10 that period. And then from August 2017 to August  
11 2019, I was the Executive Director of the Kansas  
12 Democratic Party, during which time I had the  
13 privilege of traveling the state extensively.

14 Q. I want to start off by talking a little bit about  
15 the -- by talking about the early portions of the  
16 redistricting process this year. So can you tell  
17 us a little bit about the how the 2021, 2022  
18 redistricting process in Kansas got started?

19 A. So I was named a member of the redistricting  
20 committee in June. And then nothing really  
21 happened for a while. I remember when I first  
22 heard about the August listening tour because I  
23 was out for a run and I actually got a text  
24 message news alert from the Sunflower State  
25 Journal. And when I was done with my run, I

1 checked my phone, and then I saw that it had been  
2 publicly announced by the redistricting committee  
3 that there was, in about a week, starting August  
4 9th, going to be this five-day, 14-stop listening  
5 tour around the state. And that was the first I  
6 had heard about it, even though I was a member of  
7 the committee.

8 Q. So just so we're clear, you found out about these  
9 listening tour sessions at the same time as the  
10 public?

11 A. Exactly at the same time. I found out when it  
12 was publicly announced. Correct.

13 Q. And who scheduled these listening tour dates?

14 A. It would have been the Republican members of  
15 the redistricting committee.

16 Q. Just for the record, which party do you caucus  
17 with?

18 A. I caucus for the Democrat Party.

19 Q. So again, let's just walk through. How many days  
20 prior to the first listening tour session did you  
21 find out about these sessions?

22 A. It was just over a week.

23 Q. And do you think that was adequate notice for the  
24 minority members of the committee?

25 A. I don't. As I mentioned, this was during -- we

1           were on recess as a legislature. So I wasn't  
2           consulted. I was doing some work during that  
3           time. I wasn't consulted by any members of  
4           the Republican Party about whether I would be  
5           available, whether I would be able to get off  
6           work, secure childcare, make those other  
7           arrangements. And I know that many members of  
8           the public also understandably had many of  
9           the similar challenges that I did. Thankfully, I  
10          was able to participate in the listening tour.  
11          But I would have thought that if it was a real  
12          priority for Republicans to have a meaningful  
13          listening tour, if this wasn't going to be a  
14          box-checking exercise, that they would have  
15          wanted to at least check with the members of  
16          the minority party and make sure that we would at  
17          least be able to participate. Again, thankfully,  
18          I was.

19        Q.    So you mentioned members of the public. Aside  
20            from the lack of notice, were these listening  
21            tour dates scheduled in a manner that allowed for  
22            the public to participate in a way that was  
23            convenient?

24        A.    No, they were not. They actually made it quite  
25            difficult for the public to participate in



1 several different ways. So in 2012, the  
2 listening tour was conducted over a period of  
3 four months. This was 14 stops conducted over a  
4 period of five days. The listening tour, as I  
5 mentioned, was only announced with a little bit  
6 of more than a week notice for the public to get  
7 up to speed on redistricting, get childcare, get  
8 time off work. It was also -- 10 of the 14  
9 listening tour stops were held during the work  
10 week. During the day, during the work week.

11 Q. You mentioned the 2012 listening tour. How long  
12 were the listening sessions back in 2011 and  
13 2012?

14 A. So in 2012, they were held over two and-a-half  
15 hours. Each listening tour stop was two  
16 and-a-half hours.

17 Q. And how long were the listening tour sessions  
18 this cycle?

19 A. They were only 75 minutes.

20 Q. And did you feel that many of the meetings that  
21 members of the public had sufficient time to  
22 testify at these hearings under this time  
23 constraint?

24 A. I did not. Especially in our more densely  
25 populated areas. And I'll use Johnson County and

1           Wyandotte County as prime examples of that. When  
2           we had our listening tour session at the Matt  
3           Ross Community Center in Overland Park, we had  
4           over 300 people show up. We had so many people  
5           wanting to provide testimony that because of  
6           the 75-minute limit, folks were only given two  
7           minutes to testify. So that's two minutes to  
8           explain your community of interest and what  
9           you're hoping to see in the redistricting  
10          process, which was not nearly enough time for  
11          folks to adequately explain that. And the  
12          similar situation in Wyandotte County at our  
13          listening tour stop here in Wyandotte County.

14        Q.    Going back to 2012 again, so it's my  
15            understanding that census data plays a pretty  
16            important role in redistricting. Is that right?

17        A.    That's correct.

18        Q.    And at the time of the 2012 listening tours -- so  
19            at the time that they started off, had the census  
20            data already been released?

21        A.    Yes, it had.

22        Q.    And what about in the more recent redistricting  
23            listening tours?

24        A.    It had not. And that was a frustration that many  
25            of the members of the minority party had because

1 we were asking folks to provide input on a  
2 process that later, when we would ask Republicans  
3 why they made certain decisions, they would say  
4 well, it's all math. It's all these census  
5 numbers. But we put the public in a position of  
6 trying to provide testimony on a redistricting  
7 process that is all about numbers, and it is all  
8 about math to some degree, and they didn't have  
9 the math. They didn't have the numbers. But we  
10 were still asking them to provide meaningful  
11 testimony. And it has still never been explained  
12 to me why we didn't just wait a couple weeks  
13 until the census data came out and have the  
14 listening tour then.

15 Q. On this issue of census data, the mathematical  
16 components of redistricting, are there any  
17 specific issues that come to mind that the public  
18 might not have been in a great position to  
19 discuss because of the lack of census data at  
20 this time?

21 A. Well, one of the things that comes to mind is  
22 there was -- after the math was introduced in the  
23 redistricting committee on the Senate side, there  
24 was this sort of invented post hoc rationale that  
25 what people said in the redistricting tour was

1           they wanted all of Johnson and all of Wyandotte  
2           to stay together. I can tell you that is not  
3           what the vast, vast majority of the testimony  
4           was. What the testimony was was that they wanted  
5           the core of the Kansas side of the Kansas City  
6           metro to stay together. The urban suburban part  
7           of Wyandotte County, and the urban suburban part  
8           of Johnson County. That's what the testimony  
9           was. But it was later stated that oh, some  
10          people said that they wanted to keep all of  
11          Wyandotte together and all of Johnson together,  
12          and we just can't do that. Well, to the extent  
13          that was ever said, that would only have been  
14          said because folks did not yet have the census  
15          data to understand that that was not possible.  
16          That's why that would have been said, because we  
17          deprived them of the ability to provide  
18          meaningful testimony by giving them time to  
19          understand how their community had been affected  
20          by the census.

21        Q.    Changing gears a little in 2012, another  
22              component I understand was these redistricting  
23              guidelines that were used by the committees to  
24              guide redistricting decisions. At the time the  
25              listening tours got started in 2011, 2012, had the

1 guidelines already been adopted?

2 A. Yes, they had.

3 Q. And same question, but for 2021, 2022. At the  
4 time the redistricting tour started off, had  
5 guidelines been adopted at that point?

6 A. No, they had not. They were not adopted until  
7 the end of the December, which was well after our  
8 August in-person listening tour and then our  
9 November virtual listening tour.

10 Q. And in your view, was it important to have  
11 redistricting guidelines in place prior to  
12 kicking off the redistricting cycle?

13 A. I do. Because those guidelines, when they're  
14 adopted by a legislative committee, they're  
15 really a public promise from the committee to the  
16 people of Kansas that this is the criteria that  
17 we're going to be using when making decisions  
18 about how your community is going to be affected  
19 by redistricting. And it would have helped  
20 people craft and deliver much more meaningful  
21 testimony if they could have understood what  
22 criteria the committee had agreed to prioritize  
23 as being meaningful. So it would have been  
24 another way. That combined with the lack of the  
25 census data really deprived folks of being able

1 to meaningfully comment on the redistricting  
2 tour. I mean, folks did an amazing job of  
3 getting up to speed, but I think they were really  
4 poorly served by us in the legislature by not  
5 having the census data and not having adopted  
6 guidelines.

7 Q. In your view, was there any reason the listening  
8 tour needed to take place prior to the release of  
9 census data prior to the release of the  
10 redistricting guidelines?

11 A. No, there wasn't. And to this day, that's never  
12 been explained to me.

13 Q. How many of the listening sessions did you  
14 attend?

15 A. I attended 13 out of the 14. I attended every  
16 one except the one in Emporia.

17 Q. And based on what you observed in the listening  
18 sessions, would you say that the -- would you say  
19 that all of the legislature -- rather, all the  
20 legislators were attentive to members of the  
21 public?

22 A. No. In fact, I would say quite the opposite. I  
23 would say in many cases, it was frankly one of  
24 the more disrespectful acts I've ever seen from  
25 elected officials towards members of the public.

1           we had members of the committee, Republican  
2           members who would sit there for large parts of  
3           the listening tour stops as Kansans were in  
4           really genuine, authentic, heartfelt expressing  
5           to the legislators what they hoped to see for  
6           their own communities in this redistricting, that  
7           they would then have to live under these maps for  
8           a decade, and we had many Republican members who  
9           would sit there almost the entire time, just  
10          playing on their phones right in front of all  
11          these Kansans.

12        Q.    So on that note of the legislative -- so on that  
13          note of members of the committee playing on their  
14          phones, I'd like to pull up a demonstrative  
15          Plaintiff's D3. Mitch, if you could. Thanks. I  
16          guess -- can you see that over there? So does  
17          this reflect what you saw at these hearings?

18        A.    Yes. This is from our legislative listening tour  
19          at the Matt Ross Community Center in Overland  
20          Park. And you can see right in the center of  
21          the picture in the gray suit, as members of  
22          the public are testifying about their hopes for  
23          redistricting, you've got Senate President Ty  
24          Masterson sitting there, just looking at his  
25          phone for almost the entire hearing.

1 Q. And who was it who ultimately introduced the map  
2 that was adopted by the legislature as the  
3 congressional map?

4 A. It was Senate President Masterson.

5 Q. Okay. We can take that down. Thank you, Mitch.  
6 What about the legislators themselves who weren't  
7 on the committees? Were they given the  
8 opportunity to give feedback at the listening  
9 tour sessions?

10 A. So one of our first stops was in Colby, and it  
11 was pretty sparsely attended, and there was a  
12 legislator there who showed up. And he was  
13 allowed to provide testimony. But after that,  
14 the Republican leadership of the committee  
15 decided that they would no longer let elected  
16 legislators provide testimony. And the reason  
17 that they gave was that this is really just for  
18 members of the public, but that when we come back  
19 into session in January, there was going to be  
20 ample opportunity for legislators to talk to the  
21 community -- to the committee about their  
22 communities and about what they hope to see in  
23 the redistricting process. And I remember one of  
24 my colleagues very vividly, Senator Marci  
25 Francisco, who represents Douglas County, showed



1 up at our Lawrence listening tour stop, and she  
2 made graphics, and she had some displays that she  
3 wanted to show to the redistricting committee and  
4 to provide testimony, and she was told no for the  
5 reason that I just explained. You don't get to  
6 testify today, but don't worry. You're going to  
7 have more than ample time when we reconvene as a  
8 legislature in January. And that time, that  
9 opportunity just never materialized. And Senator  
10 Francisco mentioned that when we were debating  
11 the Adastra 2 map on the senate floor.

12 Q. I want to turn to that legislative process that  
13 took place at the start of 2022. So focussing on  
14 the committee process, to the best of your  
15 understanding, did any member of the Republican  
16 caucus ever reach out to members of the  
17 Democratic caucus to work on congressional  
18 redistricting?

19 A. Not to my knowledge.

20 Q. And to the extent any existed, what did  
21 negotiations look like between the two parties on  
22 a congressional map?

23 A. There were never any negotiations that I'm aware  
24 of. It was very clear to me from the very, very  
25 early days of the redistricting listening tour

1           that the tour was really just a box-checking  
2           exercise, and that the super majority Republicans  
3           were really -- already decided they were going to  
4           draw maps that would produce four Republican  
5           congressional districts.

6    Q.   Thinking back to even before these legislative  
7           hearings, what was the first indication, Senator,  
8           that you received that Republicans would not be  
9           negotiating with Democrats on the congressional  
10          map?

11   A.   Well, I remember this vividly because I was a  
12          candidate for the Senate at the time. So this  
13          was in the fall of 2020 as the November election  
14          was really heating up. I was running for the  
15          State Senate, and there was a video of then  
16          Senate President Susan Wagle talking to a bunch  
17          of Republican activists and donors in Wichita,  
18          and she said very clearly, I promise you that if  
19          you deliver a super majority Republican  
20          legislature, I promise that we will draw four  
21          Republican congressional maps and that we will  
22          draw Representative Davis out of her seat. So I  
23          remember seeing that very clearly.

24   Q.   I'd like to call up Exhibit PX 150, Mitch. Can  
25          you tell us if this is the video that you saw? I

1 think we may want to click the link. Is it  
2 possible that we have the sound off? All right.  
3 Could you give it another shot? Thanks, Mitch.  
4 I know it seems like we were -- do we know what  
5 speakers it might be hooked up to?

6 (Audio playing.)

7 So redistricting is right around the  
8 corner. And if Governor Kelly can veto a  
9 Republican bill that gives us four that takes out  
10 Sharice Davids in the third, we can do that. I  
11 guarantee you we can draw four Republican  
12 congressional maps. But we can't do it unless we  
13 have a two-thirds majority in the Senate and  
14 House.

15 BY MR. KLEIN:

16 Q. So was that the video that you saw, Senator?

17 A. Yes, it was.

18 MR. KLEIN: All right. I'd like to move  
19 this exhibit into evidence.

20 MR. RUPP: Well, they've played it twice  
21 now without being admitted into evidence. I'm  
22 not real excited about that. But in any case,  
23 given that it's been played twice, I'll agree to  
24 it.

25 THE COURT: Thank you, Tony. And if we

1 run into a similar issue, alert the Court ahead  
2 of time. But Plaintiff's Exhibit 150 is admitted  
3 without objection.

4 BY MR. KLEIN:

5 Q. Senator, are you familiar with Adastra and  
6 Adastra 2?

7 A. Yes, I am.

8 Q. When did you find out that the Republican caucus  
9 would be introducing Adastra?

10 A. I found out at the same time that they were  
11 introduced. It was our Tuesday, January 18th  
12 Senate redistricting committee meeting when the  
13 maps were introduced.

14 Q. And can you describe from that point the timeline  
15 from when Adastra was introduced to when Adastra  
16 2 was adopted by the full Senate?

17 A. So the map was introduced at the Senate  
18 redistricting committee meeting, which was on the  
19 afternoon of Tuesday, January 18th. The public  
20 -- even though none of the underlying data was  
21 yet available, so it was really hard for the  
22 public to provide meaningful input, the public  
23 was given until 10 a.m. on Wednesday, January  
24 19th to either sign up to testify in person on  
25 Thursday or to submit written testimony.

- 1 Difficult to do without any of the underlying  
2 data being available. On that Thursday then, we  
3 had a committee hearing on the bill. We had all  
4 of the folks except for one who testified in  
5 person testified in opposition to the Adastra  
6 map. I raised serious concerns about it.  
7 Senator Sykes raised serious concerns about the  
8 map. Despite all that, the map was voted out of  
9 committee that night, which is not common, and  
10 then the map was then put on the Senate floor and  
11 voted out of the Senate on Friday, January 21st.
- 12 Q. So we're talking about an introduction of a map  
13 on Tuesday, and passage of an amended map on  
14 Friday. Is that right?
- 15 A. Yes, that's correct.
- 16 Q. So that's about 72 hours in between introduction  
17 and passage?
- 18 A. That's correct.
- 19 Q. Is that what the timeline for passing legislation  
20 usually looks like in your experience in the  
21 Kansas legislature?
- 22 A. No. That's not at all typical of the timeline.  
23 For legislation to move that fast is something  
24 that I've rarely seen in my experience in Topeka.
- 25 Q. Can you think of any examples of when legislation

1 was passed on such a timeline?

2 A. The only example that comes to mind is during the  
3 February cold snap of 2021. We passed  
4 legislation to try to help municipalities pay for  
5 the utility bills that they had incurred that  
6 were in incredible excess of their normal utility  
7 bill. And we had to provide a funding mechanism  
8 for them really quickly. That's the only time  
9 I've seen legislature act with such velocity.  
10 And I raised in committee and on the Senate floor  
11 that this was a really flawed rushed process that  
12 was not taking into consideration the public  
13 input. We got -- despite the data not being  
14 available, we got 86 people who submitted written  
15 testimony, 86 Kansans who took the time to submit  
16 written testimony for our committee hearing on  
17 Thursday. And then we were being asked to vote  
18 on the map. And I remember distinctly Senator  
19 Sykes saying can't we take the time? These are  
20 constituents who've taken time to submit the  
21 testimony. Can't we at least take time to read  
22 all their testimony before we're asked to vote on  
23 this? And the decision was made no, we're voting  
24 on this now. We don't really care about taking  
25 time to read citizen testimony.

1 Q. I think you went into this a little bit, but just  
2 so we're clear, you mentioned that the only  
3 instance where you can recall legislation being  
4 passed this quickly was in the case of a serious  
5 weather emergency that was putting municipalities  
6 in jeopardy. Was there any sort of exigency that  
7 justified passage of Adastra 2 on this condensed  
8 timeline?

9 A. No. It was never explained to me then. Still  
10 not explained to me why there was a need to move  
11 with kind of such speed despite all these  
12 reservations that were expressed by me, expressed  
13 by Kansans all across the state.

14 Q. Can we call PX 139? I had hard copies. I think  
15 they are in another room. But can you see what's  
16 on the screen okay, Senator?

17 A. Yes, I can.

18 Q. So this is a representation of the population in  
19 each county in the previous 2012 map that was  
20 moved in Adastra 2. Can you take a moment to  
21 look at it and tell me if this looks accurate to  
22 you?

23 A. Yes, it does.

24 Q. All right. I would like to move this into  
25 evidence.

1 THE COURT: I think 139 --

2 MR. KLEIN: Sorry. You're right.

3 THE COURT: -- was in agreement.

4 MR. KLEIN: Noticed it right after I said  
5 it.

6 THE COURT: So 139 has been previously  
7 admitted.

8 MR. KLEIN: Yes. Thank you, Your Honor.

9 THE COURT: That's all right.

10 BY MR. KLEIN:

11 Q. So finally, I'd like to discuss -- you touched on  
12 this a little bit already. Some of the  
13 substantive feedback you received during the  
14 listening tour. We can also take that down,  
15 Mitch. Thanks. So you mentioned you went to all  
16 but one of these redistricting listening tour  
17 sessions. During these, did members of  
18 the public ever weigh in on how the 3rd District  
19 should be drawn?

20 A. Yes, they did. Extensively, both in our Johnson  
21 County and Wyandotte County listening tour stops,  
22 but also in stops all across the state, folks  
23 weighed in on that.

24 Q. And what do you recall about the feedback from  
25 the public on this point?



1 A. The feedback was overwhelming. Folks wanted to  
2 see what has been the case for the past 40 years  
3 throughout the modern redistricting process as  
4 long as -- longer, in fact, than I've been alive,  
5 which is keeping the core of Wyandotte County,  
6 the urban suburban part of Wyandotte County in  
7 the same congressional district as the urban  
8 suburban part of Johnson County.

9 Q. So would you characterize that area as the Kansas  
10 side of the greater Kansas City area?

11 A. Yes, I would.

12 Q. Okay. And does your district fall within this  
13 area, Senator?

14 A. Yes, it does. I represent northeast Johnson  
15 County.

16 Q. And do you share the view of your constituents  
17 that this Kansas City metro area should be kept  
18 whole within a congressional district?

19 A. Yes, I do.

20 Q. Why is that?

21 A. I think this is really by any conceivable  
22 definition a classic community of interests.  
23 When you think about the amount of work that's  
24 going on in the business sector, the healthcare  
25 facilities, healthcare sector, transportation,

1 water, social services, local governments working  
2 together, when you think about the number of  
3 people who live in Johnson County and work in  
4 Wyandotte County and vice versa, by any stretch  
5 of any definition, this is a classic community of  
6 interest.

7 Q. And this feedback that -- oh. Rather, isn't it  
8 one of the redistricting guidelines that  
9 communities of interest should be preserved?

10 A. It is one of the redistricting guidelines, yes.

11 Q. And you mentioned that there was a lot of  
12 feedback that this greater Kansas City area  
13 should be preserved. Was that taken into account  
14 ultimately in Adastr 2?

15 A. No. Over the objection of myself and others, it  
16 was completely and utterly ignored by the  
17 Republican super majority.

18 Q. What does Adastr 2 ultimately do with the Kansas  
19 side of the greater Kansas City area?

20 A. What it does is it cracks it. It cracks it along  
21 I -70. So north of I-70, northern Wyandotte  
22 County, that would move into the 2nd  
23 Congressional District despite the fact that that  
24 includes things like The Legends, the Kansas  
25 Speedway, KC Park, Hollywood Casino, all things

1           that are really core to the greater Kansas City  
2           area. That would then move into the 2nd  
3           Congressional District, which is now a much more  
4           rural district because Lawrence would not even be  
5           in that district anymore. So that would be the  
6           northern part of Wyandotte County, into the 2nd,  
7           and then you have southern Wyandotte County with  
8           Johnson County in a new district, with then all  
9           Miami County, all of Anderson County, all of  
10          Franklin County.

11        Q.    Those last three counties you mentioned, Miami,  
12           Franklin, Anderson -- would you consider them to  
13           be part of the greater Kansas City area?

14        A.    I would not, and there have been articles with --  
15           quoting their local government officials saying  
16           they also don't consider themselves to be any  
17           part of the core --

18                        MR. RUPP: Your Honor, if he's going to go  
19           into hearsay from unnamed articles and some --  
20           that's -- I'd respectfully ask to limit his  
21           answer to things that are not hearsay.

22                        THE COURT: I'll take that as a hearsay  
23           objection, Tony?

24                        MR. RUPP: That is a hearsay -- wasn't a  
25           hearsay question. It was a hearsay answer.

1 THE COURT: Comment, Spencer?

2 MR. KLEIN: I can rephrase.

3 THE COURT: Thank you. So your objection  
4 is sustained.

5 THE WITNESS: I can give you a non-hearsay  
6 answer.

7 MR. KLEIN: Right. So --

8 THE COURT: Let him ask a non-hearsay  
9 question first.

10 BY MR. KLEIN:

11 Q. Right. Do you think that most people in Miami,  
12 Franklin, and Anderson would consider themselves  
13 part of the greater Kansas City area?

14 A. No, I don't. And those are very rural counties,  
15 by and large, and I think most folks who decided  
16 to live in Miami, Franklin, Anderson -- they're  
17 there because they really want to have a much of  
18 more rural way of life, and don't really  
19 prioritize being part of the Kansas City metro  
20 and don't see themselves that way.

21 Q. We talked about the redistricting guidelines. Is  
22 it another redistricting guidelines that the core  
23 of districts under the previous maps should be  
24 preserved?

25 A. Yes, that is one of our guidelines.

1 Q. What do you consider to be the core of the former  
2 3rd District?

3 A. The core of the former 3rd District is Johnson,  
4 Wyandotte, the core of the urban suburban part of  
5 Wyandotte, urban suburban part of Johnson.

6 Q. And why not just consider Johnson County to be  
7 the core of the prior 3rd District?

8 A. That was, again, one of the post hoc rationales  
9 invented by the Republicans after the map. They  
10 said the core of the 3rd is Johnson County.  
11 Johnson County, if you look at southern Johnson  
12 County, it's still to this day a fairly -- in a  
13 lot of places, rural place. And if you think  
14 about why I live in Fairway, we have much more in  
15 common with Wyandotte County. We're visiting  
16 Wyandotte County much more, we have much more  
17 commerce, we have much more healthcare  
18 relationships, transportation, shared community,  
19 services, much more with most of Wyandotte County  
20 than we did with far southern Johnson County.

21 Q. Senator, shifting to a different part of  
22 the state, what was your reaction when you saw  
23 where Lawrence was placed?

24 A. I was really shocked to see Lawrence pulled out  
25 not just out of Douglas County, but out of the

1           2nd District and put in the big first -- what we  
2           call the big first, which has always been our  
3           sort of large agricultural congressional  
4           district. And Lawrence is really anchored around  
5           the University of Kansas. It's really a classic  
6           college town. So it made absolutely no sense to  
7           me to put that in what has always been our agg.  
8           district.

9           Q. You mentioned the University of Kansas. During  
10          the visiting tour sessions, during the  
11          legislative committee hearings, did you ever  
12          receive testimony that supported the decision to  
13          split Lawrence from Douglas like this on the  
14          basis that it would pair KU and K State?

15          A. No. The very first stop that we did on the  
16          listening tour was in Manhattan. The last stop  
17          we did on the listening tour was in Lawrence. At  
18          both of those stops and every stop in between, we  
19          never heard a single piece of testimony from  
20          anybody in the community from anybody affiliated  
21          with either one of those universities that there  
22          was a desire for them to be in the same  
23          congressional district because they were our  
24          state's two largest public universities. This is  
25          something that the Board of Regents has clarified

1           that they don't have a position on redistricting.  
2           They've never asked that any rated school be in a  
3           certain congressional district. So it was  
4           another one of -- once I think there was a public  
5           concern about the maps, it was another post hoc  
6           completely invented rationale offered by the  
7           Republicans.

8       Q.   And overall, Senator, how would you characterize  
9           the process of considering and adopting Adastr  
10          2?

11     A.   I think that this process was -- really brought a  
12          lot of shame and discredit to the legislature. I  
13          think that Kansans were very poorly served by the  
14          process, starting from the way that the listening  
15          tower was announced, the way it was conducted  
16          vastly different than in 2012 in a way that  
17          limited participation, that did not serve  
18          Kansans, all the way through the way that the  
19          submitting process was run, the way the map was  
20          rushed through. So frankly, I think the kind of  
21          thuggish way that the map was pushed through  
22          after the Governor's veto, I think the process  
23          from beginning to end really brought discredit on  
24          the legislature and resulted in a map that would,  
25          if enacted, really poorly serve Kansans for the

1 next decade.

2 MR. KLEIN: Thank you, Senator. I have no  
3 further questions at this time.

4 THE COURT: Thank you, Spencer. Tony,  
5 when you're ready.

6 MR. RUPP: I am ready.

7 CROSS EXAMINATION

8 BY MR. RUPP:

9 Q. Thank you, Senator, for being here this  
10 afternoon. One of the great benefits of a  
11 democracy is that if people are angry with thugs  
12 in the Republican legislature, they can vote them  
13 out of office, can't they?

14 A. People can vote elected officials out of office  
15 the next time they're up for election, yes.

16 Q. In fact, Kansas voters have not voted Republicans  
17 out of office. They've voted majorities in both  
18 houses of the Kansas legislature. Isn't that  
19 true?

20 A. They've certainly voted some Republicans out of  
21 office. So -- I'm not trying to be difficult.  
22 I'll answer by saying there is currently a super  
23 majority of Republican legislature in the House  
24 and Senate, that those folks were elected by the  
25 people of Kansas.



1 Q. And this is -- so these are the people's  
2 representatives who voted on this map. Correct?

3 A. The State legislature voted on the map. Correct.

4 Q. Right. And the United States Constitution, in  
5 its wisdom, gives that decision to the state  
6 legislature. Correct?

7 MR. JOHNSON: Your Honor, objection.  
8 Legal conclusion.

9 THE COURT: Let's be sure that we  
10 understand what our ground rules are. So at this  
11 point, Mark, you're going to object, although  
12 Spencer did the direct examination?

13 MR. JOHNSON: I'll withdraw my objection.

14 THE COURT: I would note that some things  
15 draw someone out of their seat even when they  
16 should not, perhaps. So we agreed to these  
17 ground rules, did we not?

18 MR. JOHNSON: I apologize, Your Honor.

19 THE COURT: No apology necessary. I just  
20 want to make sure we're all on the same page  
21 here.

22 MR. JOHNSON: I just thought the question  
23 was so improper, I lost control.

24 THE COURT: I am hopeful you have regained  
25 control.

1 MR. JOHNSON: Absolutely.

2 THE COURT: And the Court will refrain  
3 from making a ruling on that objection because it  
4 was made in violation of what we agreed our  
5 procedure would be today.

6 MR. KLEIN: I'd like to object on the  
7 grounds that the question calls for a legal  
8 exclusion.

9 (Laughter.)

10 MR. RUPP: Good job. You're going to be a  
11 good lawyer. All right.

12 THE COURT: Tony?

13 MR. RUPP: I'll rephrase.

14 THE COURT: Fine. Objection sustained.

15 BY MR. RUPP:

16 Q. The United States Constitution does place or  
17 entrust to state legislators the job of passing  
18 United States congressional maps. Correct?

19 MR. KLEIN: I'd like to object again on  
20 the basis that that calls for a legal conclusion.

21 THE COURT: Tony?

22 MR. RUPP: Are we going to argue about  
23 what the United States Constitution says?

24 THE COURT: Well, I don't know that we  
25 actually need to. And I am guessing that the

1           Senator has sufficient knowledge to answer that  
2           question, even if it calls for a legal  
3           conclusion. So I'll overrule your objection  
4           unless he tells me he does not know. You  
5           remember what the question was, Senator?

6                       THE WITNESS: Can you repeat it again?

7   BY MR. RUPP:

8   Q.   Does the United States Constitution entrust to  
9       state legislatures the job of enacting  
10      congressional maps?

11   A.   I guess I would say that all states -- each  
12       state -- states handle redistricting differently.  
13       In some states, that's been delegated to a  
14       commission, and in some states -- so it's handled  
15       differently. But in general, states decide how  
16       to handle redistricting process.

17   Q.   What does the United States -- you're a lawyer.  
18       Correct?

19   A.   Yes.

20   Q.   And more than that, you're a lawyer who worked as  
21       a voting rights activist for Arnold & Porter --  
22       or voting rights lawyer for Arnold & Porter, the  
23       lawyers who are bringing this lawsuit. Correct?

24   A.   I was a -- overwhelmingly, I was a commercial  
25       litigator 99% of the time. I did do some pro

1           bono voting rights litigation.

2       Q.    Your former colleagues are the Plaintiff's  
3           lawyers in this lawsuit.  Correct?

4       A.    I did work -- I was colleagues with Mr. Jones and  
5           Mr. Freedman, yes.

6       Q.    All right.  And in this case, you're a former  
7           colleague of the Plaintiff's lawyers.  You are a  
8           former Executive Director of the Democratic Party  
9           in Kansas.  Both of those things are true.

10      A.    Can you repeat the first thing I am again?

11      Q.    I don't remember.  You are a former Executive  
12           Director of the Democratic Party in Kansas.

13      A.    Yes, sir.

14      Q.    You worked hard to get Representative Sharice  
15           Davids elected to Congress.  Correct?

16      A.    Yes, sir.

17      Q.    You worked hard to get Governor Laura Kelly  
18           elected to the Governorship.  Correct?

19      A.    Yes, sir.

20      Q.    You are a proud member of the Democratic Party.  
21           Correct?

22      A.    You know, I was -- I ran for office as a  
23           Democrat, I was elected as a Democrat, I  
24           currently serve as a member of the Democratic  
25           caucus.

1 Q. It's not a big surprise that you're not real  
2 happy with the way Republicans do things in the  
3 legislature. Correct?

4 A. Sort of a broad statement. There are certainly a  
5 lot of issues that we do agree on. A lot of our  
6 legislation is bipartisan.

7 Q. I've now heard twice today a tape from Susan  
8 wagle. What was her vote on the Adastral 2 plan?

9 A. You know, Susan wagle is not in the legislature  
10 to vote the Adastral map.

11 Q. So how many times did she come and talk to your  
12 redistricting committee?

13 A. None. And none of our public meetings, did I see  
14 her.

15 Q. How many times have you met Susan wagle? You're  
16 a Senator.

17 A. I have not personally met former President wagle.

18 Q. Now, when you're -- as a legislator, do you speak  
19 for anybody other than yourself in the  
20 legislature?

21 A. Well, we talked about this a little bit in my  
22 deposition. I mean, there are certainly members  
23 of the legislature who say things in public  
24 meetings or hearings or things like that that --  
25 I think it is then at that point fair to

1 extrapolate what their views might be, but I  
2 don't -- I get the thrust of your question. I  
3 don't generally purport to speak for other folks.

4 Q. You speak for yourself. Correct?

5 A. That's correct.

6 Q. You make decisions for yourself. Correct?

7 A. That's correct.

8 Q. The decision that you make on an individual vote  
9 in the Kansas legislature is your decision.

10 A. That's correct.

11 Q. And every other legislator in the state of Kansas  
12 is in exactly the same boat. Correct?

13 A. That's correct.

14 Q. It is the job of legislators in the Kansas  
15 legislature to exercise legislative judgment.  
16 True?

17 A. It's one of the roles, yes. Correct.

18 Q. We don't delegate that job of -- under Kansas law  
19 of designing a congressional map to political  
20 scientists. Correct?

21 A. No, we do not. You're correct.

22 Q. We don't use -- we don't delegate it to 1,000  
23 computer simulations. Correct?

24 A. I think all those things would be helpful in  
25 helping us find a good map, but ultimately, it is

1 -- I think what you're getting at is legislators  
2 vote yes or no on maps.

3 Q. And if those legislators vote in a way that the  
4 people of the state of Kansas are upset with  
5 them, then the people can vote them out of  
6 office. True?

7 A. That can be harder to do, depending on what the  
8 districts in those maps look like, but people do  
9 get to vote when there's another election.

10 Q. And let's talk about that. Because the districts  
11 in that map for the 2021, 22 legislative session  
12 were set by the United States District Court for  
13 the district of Kansas. Correct?

14 A. The district in place for the November 2020  
15 election.

16 Q. Right. Right.

17 A. Right.

18 Q. That elected this group. So there isn't any  
19 partisan gerrymandering associated with that map  
20 that got these people elected to the House and  
21 Senate in Kansas. It was set by a Federal Judge.

22 A. Judges.

23 Q. Three of them. A panel of three Judges. Not one  
24 Federal Judge. Three Federal Judges. True?

25 A. Correct.

1 Q. All right. Now, we've talked a lot today -- in  
2 fact, we had a bunch of -- or two very impressive  
3 expert witnesses. But the one thing I didn't  
4 hear them talk about was the difficult choice  
5 that legislators had to make with regard to  
6 Johnson County, Wyandotte County, and the  
7 decision of how to -- how to divide those, given  
8 that the math didn't work. Correct?

9 A. There was -- I think what you're getting at is it  
10 was not possible to keep all of wyandotte  
11 together with all of Johnson County, given the  
12 results of the 2020 census. Correct.

13 Q. And the results of the 2020 census were that  
14 Johnson County increased by 78,000 folks.

15 A. By 70 --

16 Q. 78,000 people. The population grew by 78,000  
17 people.

18 A. I haven't looked at those specific numbers for  
19 some time, so I can't confirm that.

20 Q. And I haven't got the numbers in front of me, but  
21 wyandotte County also grew. Correct?

22 A. Yes, it did.

23 Q. So collectively, that district needed to be -- or  
24 the 3rd District needed to be divided. True?

25 A. Well, I think what we should have done was keep



1 the core of the Kansas metro area together.

2 Q. Well, my question was district --

3 A. -- smaller district. What we did was grow it.  
4 What we did was we added two and-a-half entirely  
5 new counties. A district that's too big should  
6 be getting geographically smaller. If you're  
7 following redistricting guidelines and generally  
8 accepted principles, you wouldn't normally add  
9 entirely new counties to a district that's  
10 already too big.

11 MR. RUPP: Your Honor, I'd ask that that  
12 question be stricken and he be instructed to  
13 answer the question that I asked.

14 THE COURT: Spencer, want to weigh in on  
15 this?

16 MR. KLEIN: I believe that was responsive  
17 to the question, Your Honor.

18 MR. RUPP: The question was --

19 THE COURT: Thank you, Tony. I remember  
20 the question, and it was not responsive to the  
21 question. It will be stricken.

22 MR. RUPP: Thank you, Your Honor.

23 BY MR. RUPP:

24 Q. Did Johnson -- or did the 3rd District need to be  
25 divided if it was going to stay together?

1 A. The 3rd District needed to change from the 2012  
2 boundaries.

3 Q. Okay. So the choices that were left to the  
4 legislature in this situation were four:  
5 Correct? They could divide both counties, so  
6 you'd have two counties. Dr. Chen wouldn't like  
7 that. But that would be one of the option. You  
8 could cut off part of Wyandotte and part of  
9 Johnson and send them separate ways and keep  
10 something together. Correct? That would be one  
11 option?

12 A. That would be an option.

13 Q. Wouldn't be a very good option, probably, but  
14 that would be one option. You could keep both of  
15 them together and send them their separate ways.  
16 True?

17 A. That would be an option.

18 Q. So you'd probably have to move -- I mean, you  
19 couldn't move -- I mean, probably couldn't  
20 move -- you certainly couldn't move Johnson --  
21 either of them to the 4th. Correct? They  
22 wouldn't be contiguous.

23 A. I would think that would be impossible to keep  
24 contiguous, yes.

25 Q. And nobody from Wyandotte County wanted to be in

1 the 1st. I can assure you of that. True?

2 A. The testimony that we heard at the listening tour  
3 was that folks in Wyandotte did not want to be in  
4 the 1st District. Correct.

5 Q. Right. And actually, because of the comments of  
6 Susan Wagle, that there were a lot of Democrats  
7 who came out to these listening tours, and there  
8 were rumors around that Wyandotte would be moved  
9 in the 1st. True?

10 A. I know that --

11 MR. KLEIN: Objection. I think that calls  
12 for hearsay.

13 MR. RUPP: He was at the listening tours,  
14 and I think he was starting to answer that that  
15 was correct.

16 THE COURT: Well, he may well have been,  
17 Tony, but it's either hearsay or it's not.

18 MR. RUPP: It's not hearsay to ask whether  
19 people at those listening tours worried about  
20 Wyandotte County being moved to the 1st.

21 THE COURT: You can rephrase your  
22 question, and your objection is sustained.

23 BY MR. RUPP:

24 Q. Okay. Were folks at the listening tours from  
25 Wyandotte County concerned about being moved to

1 the 1st?

2 A. Yes, they were.

3 Q. And they didn't want that to happen.

4 A. Yes, they -- you are correct. They did not want  
5 that to happen.

6 Q. That was the worst option, from their  
7 perspective, of things that could happen in  
8 Wyandotte County.

9 A. Worst is hard to say. They expressed that they  
10 did not want that to be the result of  
11 redistricting.

12 Q. So if you were to -- if you were to keep both  
13 Johnson and Wyandotte County together, in whole,  
14 the only way to do that was to move them to  
15 separate congressional districts. Correct?

16 A. Correct.

17 Q. Okay. If you keep them otherwise -- and these  
18 are two big and important counties in the state  
19 of Kansas. We'd agree with that. Correct?

20 A. Correct.

21 Q. If you want to keep them together, the  
22 legislature had to make a call. Do we divide  
23 Wyandotte County, or do we divide Johnson County?  
24 Correct?

25 A. You're saying if we wanted to keep some part of

1           Wyandotte and Johnson together?

2   Q.   Right.

3   A.   Yes.  Correct.

4   Q.   All right.  And that call is a call that is a  
5       legislative judgment.  True?

6   A.   To an extent.  I mean, it is a legislative  
7       judgment that has to be consistent with -- I  
8       believe that we should try to do that in a way  
9       that comports with the guidelines that we  
10      publicly issued.

11  Q.   The question is is that a legislative call?

12  A.   Again, it's a legislative call but it's not  
13      unfettered.  There are guidelines that are meant  
14      to sort of cabin legislative discretion in  
15      redistricting so that we're doing it in a way  
16      that we've said to the public, these are the  
17      criteria we're going to use, and that's -- this  
18      is what we prioritize in redistricting.  So I  
19      think the legislature is bound to be faithful to  
20      those guidelines because issuing those public  
21      guidelines is sort of a promise to the people of  
22      Kansas that there are many things that in theory,  
23      we could prioritize in redistricting, but by  
24      writing down these guidelines and having them  
25      passed by the redistricting advisor group, what

1 we said is these are the things that we think are  
2 important in redistricting, and these are the  
3 things we're going to prioritize. So it's not  
4 unfettered.

5 Q. Okay. I'm going to talk to you about the  
6 guidelines in a second, but one of the guidelines  
7 is whole counties should be in the same  
8 congressional district to the extent possible.  
9 Correct?

10 A. That is one of the guidelines.

11 Q. County lines are meaningful in Kansas, and Kansas  
12 counties historically have been significant  
13 political units. Correct?

14 A. That is part of the guidelines. Correct.

15 Q. That's true about Johnson County too. Right?

16 A. It's true about all 105 counties.

17 Q. Absolutely. Johnson County is one of 105  
18 counties. True?

19 A. True.

20 Q. It is the largest by population. Correct?

21 A. Right.

22 Q. It is the county that has grown by -- in a state  
23 with 80 counties that lost population, Johnson  
24 County grew by 78,000 people. Correct? You  
25 don't know the exact number, but it grew

1 substantially.

2 A. I agree it grew roughly at the number that you  
3 stated.

4 Q. Right. Now, you mentioned that it was kind of  
5 post hoc that people started talking about  
6 Johnson County being a community of interest.  
7 And I know you weren't there when Stephanie -- or  
8 when Representative Stephanie Clayton said these  
9 things because you were in a different -- a  
10 different house, but she described Johnson County  
11 as the economic engine of Kansas. Do you agree  
12 with that?

13 A. You know, I think that all -- I think all parts  
14 of our state make a huge impact on our economy.

15 Q. Okay. And she said I know many of my Johnson  
16 County delegation friends on both sides of  
17 the aisle support keeping Johnson County  
18 together. She's a Democrat. Right?

19 A. Stephanie -- Representative Clayton is a  
20 Democrat. Correct.

21 Q. And she said I'll add that our Chambers of  
22 Commerce have emphatically spoken in favor of  
23 Johnson County being together. Is that your --  
24 consistent with your understanding?

25 A. I think that I would have to look at when some of

1 the statements were issued because many of them  
2 were issued, I'm guessing, around the time of  
3 the virtual listening tour, which was before we  
4 had the census data. So that might have been  
5 said based off them being together in 2012 and  
6 not yet having the advantage of the 2020 census.  
7 But I'm aware that at least some of the chambers  
8 made statements that sound similar to what you're  
9 saying Representative Clayton said, which, again,  
10 I didn't hear her make that statement, but I  
11 believe that you're accurately stating what she  
12 said.

13 Q. You now, in terms of the -- in terms of those  
14 guidelines -- you're a lawyer. Guidelines are  
15 suggestions, aren't they?

16 A. I think when a legislative committee takes the  
17 time and it's made up of the leadership of both  
18 chambers, if you look at who's on the legislative  
19 advisor group, you have the President of  
20 the Senate, the Speaker of the House --

21 Q. That's not my question. Could you answer the  
22 question?

23 A. Well, I think when a legislative committee issues  
24 guidelines, I think that they are much more than  
25 just suggestions.



1 Q. All right. So let's take it this -- differently.  
2 You're a lawyer. Are guidelines part of the  
3 Constitution?

4 A. Guidelines are not part of the Federal or State  
5 Constitution.

6 Q. Are guidelines state law?

7 A. Guidelines are not part of the Kansas statutes.

8 Q. Are guidelines documents that have to be  
9 identical in the last congressional redistricting  
10 map and the next congressional redistricting map?

11 A. No. There were small stylistic tweaks between  
12 the 2012 guidelines and the 2022 guidelines. So  
13 no, they don't have to be identical.

14 Q. So let's assume that -- and we've heard there are  
15 tensions in the guidelines. And one of those, I  
16 suspect, is communities of interest. Correct?

17 A. Communities of interest is listed as a guideline.  
18 I think it's an important one.

19 Q. But there is no one defined community of  
20 interest. True?

21 A. Kansas is a big state. There are different  
22 communities of interest across the state.  
23 Correct.

24 Q. Right. As a Johnson Countyan, I might have a  
25 Johnson County community of interest, an Overland

1 Park community of interest, a Kansas City metro  
2 area community of interest. All of those things  
3 might be applicable to me. Correct?

4 A. Kind of a hard question for me to answer, but  
5 there are multiple communities of interest across  
6 any state, across any large geographic area.

7 Q. And sometimes -- I mean, saying consider --  
8 consider there should be recognition -- okay. So  
9 let's look at this term. There should be  
10 recognition of communities of interest.

11 That there should be recognition of communities  
12 of interest doesn't say anything about how any  
13 one legislator has to vote. Correct?

14 A. Doesn't compel a certain yes or no vote on any  
15 specific map or legislation. Correct.

16 Q. And in the scheme of the world, there's no  
17 guideline that compels any legislator to have to  
18 vote a certain way on anything. Correct?

19 A. No, I don't think a guideline compels a yes or no  
20 vote, just by the fact that there is a guideline  
21 in existence, but again, I think they're very  
22 important criteria for legislative bodies to  
23 follow when they're promulgated in a public  
24 manner, especially.

25 Q. The nature of a democracy is that the elected

1           legislators get to exercise their own legislative  
2           judgment. True?

3       A.   Legislators get to vote the way they see fit.

4       Q.   And no -- strike that. We've heard today,  
5           and -- have you been in the courtroom for the  
6           testimony at all?

7                   THE COURT: Please answer out loud.

8                   THE WITNESS: No. Sorry. I have not,  
9           Mr. Rupp. Sorry.

10   BY MR. RUPP:

11   Q.   We have heard today Professor Rodden say this is  
12       a very -- the 3rd District is a very competitive  
13       district. We have heard Professor Chen say it's  
14       a 50 -- 50 point something. I don't remember the  
15       number. I apologize. The judge will remember  
16       the number -- Republican lean, and we've seen a  
17       document from the campaign legal center that says  
18       the 3rd District is a -- is a Democratic lean.

19                   The question that I have is the new 3rd  
20       District is not a district in which it is  
21       impossible for a Democrat to win. Correct?

22   A.   Impossible is sort of a subjective term. It's  
23       hard for me to really answer that question the  
24       way that you phrased it.

25   Q.   It is not the typical gerrymander, where somebody

1 has blocked one party from any chance of winning.

2 A. Again, I don't know if there's -- we have agreed  
3 upon a definition of what a typical gerrymanderer  
4 is or isn't, so I'm just having trouble with the  
5 way you're trying to explain it to me.

6 Q. Let me look through my notes here, because I kind  
7 of got away from them. I guess I do want to talk  
8 for a moment about checks and balances. The  
9 nature of the passage of this congressional --  
10 well, I want to go back to a couple of things.  
11 You talked about the listening tour starting  
12 before there was census data. Between the  
13 pandemic and various legal issues, the census  
14 data was really late coming out this time.  
15 Correct?

16 A. It was later than it was for the previous cycle.  
17 Correct.

18 Q. Yay. And there was a strong desire by this  
19 legislature to get a congressional map passed.  
20 Correct?

21 A. I mean, obviously, the Republican super majority  
22 wanted to ram through this map very quickly. I  
23 think that's how they acted, so you're -- based  
24 off their actions, they wanted to ram through  
25 Adastr 2 very quickly.

1 Q. Now, I mean -- because we're here in this  
2 expedited process of doing things, not following  
3 the rules, and doing all sorts of things in this  
4 really expedited process because we've heard that  
5 this is really important to get done really fast.  
6 Is that not correct?

7 A. It's not a statement that I've made. I don't  
8 know what you've heard from other people. I  
9 don't believe I've said that to you.

10 Q. All right. Oh. I was going -- I was talking  
11 checks and balances. And I apologize. I went in  
12 a different direction. In a democracy, there are  
13 checks and balances. Correct?

14 A. Correct.

15 Q. The legislature gets to pass a map, a bill,  
16 whatever the case may be. Correct? And it can  
17 do that most of the time on a majority vote.  
18 Correct?

19 A. Right.

20 Q. And then in this case, there's a check and a  
21 balance, in that the Governor gets the  
22 opportunity to veto. Correct?

23 A. Correct.

24 Q. And Governor Kelly chose to veto. Correct?

25 A. She vetoed the Adastra 2 map. Correct.

1 Q. Which is her right. Correct?

2 A. She has that ability to make that decision.  
3 Correct.

4 Q. And then an operation of democracy. If the  
5 majority party can put together a super majority  
6 to override the veto, that's part of the system.  
7 Correct?

8 A. I think you and I talked about at our deposition  
9 that I didn't think that was our finest hour in  
10 democracy, but I agree that the way it works in  
11 the Kansas legislature at least is if a  
12 two-thirds vote in both the House and Senate vote  
13 to override a Governor's veto, then they can  
14 override that veto.

15 Q. So the first -- when it comes to a congressional  
16 map is not to have the dysfunction that the  
17 Kansas legislature had in 2012 when it couldn't  
18 get to a map. Passage of a map is important.  
19 Correct?

20 A. I think we want to pass a legal Constitutional  
21 map.

22 Q. And this map passed overwhelmingly. Correct?

23 A. It passed with a two-thirds vote in both  
24 chambers.

25 Q. The elected representatives of the people of

1 state of Kansas passed this map with a two-thirds  
2 majority of both houses. True?

3 A. That's correct.

4 Q. And majorities in each of the new congressional  
5 districts. Correct?

6 A. Like I said at the deposition, I'd have to look  
7 at the role call vote. I'm not necessarily  
8 arguing with you about that. I just -- having  
9 not looked at that for several months, I'd have  
10 to look at that again.

11 Q. All right. And to the extent that you have  
12 qualms about something that you think the  
13 Republicans did wrong in the process, or didn't  
14 give adequate time for hearings at some listening  
15 tour event, or that it was too rushed, or that it  
16 was in the daytime or whatever, that's not a  
17 reason to say a map's unconstitutional under the  
18 Kansas Constitution, is it?

19 MR. KLEIN: I'm going to object. That  
20 calls for a legal opinion.

21 MR. RUPP: I'll withdraw it.

22 THE COURT: Thank you. Objection is  
23 sustained.

24 MR. RUPP: Your Honor, I have no further  
25 questions of this witness at this time.

1 THE COURT: Thank you, Tony. Follow-up,  
2 Spencer?

3 MR. KLEIN: We would like to redirect, but  
4 if we could get just a five-minute break if that  
5 would be possible.

6 THE COURT: Certainly would be. Five  
7 enough?

8 MR. KLEIN: Yes. Thank you, Your Honor.

9 THE COURT: Okay. See you all back at  
10 6:30.

11 (Pause in the proceedings.)

12 THE COURT: Back on the record in the  
13 Rivera, Alonzo, Frick v Schwab lawsuit. Again,  
14 the appearances of the parties are reasonably  
15 similar to what they were, and nobody's missing  
16 anybody they need, I take it. So Spencer, ready  
17 for redirect examination?

18 MR. KLEIN: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. KLEIN:

21 Q. Senator, during cross, we heard counsel opposite  
22 ask you about the redistricting guidelines. In  
23 that vein, I want to ask -- during the listening  
24 tour sessions, during the legislative committee  
25 meetings on the Senate floor, was it your



1           understanding that both parties justified the  
2           maps they were introducing under the guidelines?

3       A.    Yes, it was.   Yes.

4       Q.    Did any of your colleagues say to you that the  
5           guidelines were irrelevant to map-making?

6       A.    No.   That was -- that statement was never made.

7       Q.    Is the today the first day you're getting any  
8           suggestion that the guidelines might be  
9           irrelevant?

10                   MR. RUPP:   Your Honor --

11                   THE WITNESS:   Yes.

12                   MR. RUPP:   -- nobody's ever suggested that  
13           they're irrelevant.   I think that misstates all  
14           the testimony.

15                   THE COURT:   What do you say to that,  
16           Spencer?

17                   MR. KLEIN:   I'll withdraw the question.

18                   THE COURT:   All right.   So objection  
19           sustained.   You can ask those questions, perhaps,  
20           just without that commentary.

21                   MR. KLEIN:   Right.

22       BY MR. KLEIN:

23       Q.    Did any of your colleagues ever suggest to you  
24           that it was not necessary to follow the  
25           guidelines?

1 A. No, they did not. When we debated the map,  
2 especially in committee on that Thursday when we  
3 passed it out, we had a lengthy discussion about  
4 my view that Adastra 2 map violated, I think, the  
5 plain reading of most of the guidelines, and they  
6 responded that they disagreed, and they believed  
7 that it was. At one point, President Masterson  
8 said that he followed the guidelines as he  
9 perceived them.

10 Q. And Senator, you were asked some questions about  
11 the fact that it's impossible to keep 100% of  
12 both Wyandotte and Johnson Counties in the same  
13 district. Do you recall that?

14 A. Yes, I do.

15 Q. Now, in redistricting in your experience, when  
16 you have an existing district that's  
17 overpopulated like the former District 3 was, how  
18 would you expect legislators to address that?  
19 would it be by adding new counties, or would it  
20 be through some other map drawing  
21 (unintelligible)?

22 A. I think we have a district that's overpopulated,  
23 you have a guideline that tells you two things:  
24 One, respect the core of existing congressional  
25 districts, and two, that districts should be as

1 compact and contiguous as possible -- as  
2 possible. That you would expect that  
3 overpopulated district to get geographically  
4 smaller. You would not expect that if you were  
5 adhering to those two guidelines, core existing  
6 district, compact and contiguous, that you would  
7 end the redistricting process with a map that's  
8 gotten much, much geographically bigger, adds two  
9 whole new counties and the better part of a third  
10 county.

11 Q. Changing gears a bit, we heard a little bit about  
12 Senate Presidents, both recent and present. What  
13 is the role of the Senate President?

14 A. Well, the Senate President presides over the  
15 Senate. He is certainly the leader of the caucus  
16 that is in the majority at that given time who  
17 elected that person to be President.

18 Q. Now, who was the previous Senate President?

19 A. Previous to President Masterson, it was former  
20 President Susan Wagle.

21 Q. And did many of your Republican colleagues work  
22 with Senate President Wagle?

23 A. Yes, they did.

24 Q. So presumably, they've met Senate President  
25 Wagle. Correct?

1 A. Presumably correct, yes.

2 Q. They presumably talked to the senator, at least a  
3 few times?

4 A. I think that's a very safe -- very safe  
5 statement, yes. Correct.

6 Q. Now, if Senate President Wagle had a plan to  
7 gerrymander Representative Davids out of her  
8 district, do you think she would have told you?

9 A. I don't believe she would have told me that, no.

10 Q. Who do you think she might have told that to?

11 A. I think she --

12 MR. RUPP: I object, Your Honor. That  
13 would call for speculation as to who -- as to  
14 who. Somebody who's not here to speak in the  
15 courtroom, not a member of the Senate. That --  
16 that's pure speculation.

17 THE COURT: Spencer?

18 MR. KLEIN: I think I'll rephrase the  
19 question there.

20 THE COURT: Objection's sustained.

21 BY MR. KLEIN:

22 Q. If she had these designs, might she have  
23 discussed it with members of her caucus?

24 A. I would --

25 MR. RUPP: Again, calls for speculation.

1           MR. KLEIN: And I'm going to respond to  
2           that. I don't think it is speculative to ask  
3           someone whether policies are discussed with --  
4           with the caucus of which one is a leader.

5           THE COURT: I think it certainly can be  
6           speculative, but I think it's well within the  
7           sphere of knowledge of the witness, so I'll  
8           overrule your objection.

9           THE WITNESS: I would say as the leader of  
10          the caucus, it is overwhelmingly likely as leader  
11          of the caucus, she would have clearly  
12          communicated her policy preferences, including  
13          her policy preferences with regard to future  
14          redistricting to the members of her caucus.

15       BY MR. KLEIN:

16       Q. Uh-huh. You've been asked several questions on  
17       cross by counsel about on the subject of  
18       legislators exercising legislative judgment. Is  
19       that right?

20       A. I was asked those questions. Correct.

21       Q. And that they can exercise legislative judgment  
22       to support whichever map they'd like to pass. Is  
23       that correct?

24       A. That was how the -- that was the question that I  
25       received. Correct.

1 Q. Now, if a member of the Kansas legislator wanted  
2 to vote for a racially gerrymandered map, would  
3 that be an exercise of legislative judgment that  
4 a legislator is free to make?

5 MR. RUPP: Your Honor, I believe that  
6 calls for a legal conclusion. That's within the  
7 Judge's province.

8 THE COURT: Spencer?

9 MR. KLEIN: I think we're in a sword and  
10 shields here in which previously, legal  
11 conclusions have been asked for and they've been  
12 given here.

13 THE COURT: Certainly no disagreement from  
14 the Court, but that's because there was not  
15 objections. So would the Court now ignore valid  
16 objections?

17 MR. KLEIN: I think this is a -- this is a  
18 question about the ability to exercise one's  
19 legislative judgment, and it's in the sphere of  
20 one's knowledge what they are or are not  
21 permitted to do as legislator.

22 THE COURT: I think you can ask this  
23 specific senator what he would do. Your  
24 objection is sustained.

25

1 BY MR. KLEIN:

2 Q. Okay. Senator, if -- would you personally  
3 consider it a valid exercise of legislative  
4 judgment to vote for a racially gerrymandered  
5 map?

6 A. No. I would not vote for a map that I believe to  
7 be racially gerrymandered, but I believe that a  
8 member of the legislature could make a yes or no  
9 vote and a vote could be made in the affirmative  
10 for a racially gerrymandered map as an exercise  
11 of legislative judgment. Correct.

12 Q. Does legislative judgment yield to Constitutional  
13 restrictions in some instances in redistricting?

14 A. Yes.

15 Q. All right. And so just another example. If a  
16 legislator wanted to vote for a malportioned  
17 district, would they be free under the  
18 Constitution to do so?

19 A. They would be free to do so, yes. Correct.

20 Q. Right. But are there limitations on the ability  
21 of that law to stand?

22 A. Yes, there are. That would be a legally flawed  
23 map that couldn't stand legal scrutiny. Correct.

24 Q. And it is not shielded from that legal scrutiny  
25 from the mere fact that it is an exercise in,

1 quote, legislative judgment. Correct?

2 A. Correct.

3 MR. RUPP: Your Honor, we're getting way  
4 into legal conclusions that are for the Court to  
5 conclude.

6 THE COURT: I take it, Tony, that you  
7 restrained yourself, but you couldn't any longer.

8 MR. RUPP: That is correct.

9 THE COURT: Spencer?

10 MR. KLEIN: This is simply a response to a  
11 line of questioning that counsel opposite had  
12 been advancing about the exercise of legislative  
13 judgment under the Constitution. The context in  
14 which it is permitted is a question of does the  
15 Constitution contain any backstops to it when  
16 it's an exercise of legislative judgment.

17 THE COURT: It calls for a legal  
18 conclusion. Gets a bit more interesting since  
19 the Senator is an attorney. But the objection is  
20 sustained.

21 BY MR. KLEIN:

22 Q. Okay. I want to come back to something we talked  
23 about a little earlier. You mentioned the -- you  
24 mentioned the listening tour sessions that  
25 happened throughout the state, and I think you



1 mentioned that they weren't scheduled in a manner  
2 that was convenient for folks. Do you recall the  
3 listening tour session in Johnson County?

4 A. Yes, I do.

5 Q. And was that scheduled in a manner that was  
6 convenient for the citizens of Johnson County?

7 A. No. That was scheduled at really a horribly  
8 inconvenient time for a couple reasons. One, it  
9 was one of the 10 stops that was during the  
10 middle of the day during the work week, but that  
11 day was especially problematic because it's the  
12 first day of school in the Shawnee Mission School  
13 District, so we had a number of folks who wanted  
14 to participate, but the town hall was going on  
15 literally at the same time school was letting out  
16 for that first day. So many folks who wanted to  
17 participate were not able to do so because they  
18 had to go pick up their children. That was to be  
19 honest, just as a member that represents the  
20 Shawnee Mission School District that I represent,  
21 that was frustrating that again, I wasn't  
22 consulted before this was announced because had I  
23 been consulted, that is something that I could  
24 have told the Republicans was happening and that  
25 we should have sought a different date, and so

1           that was a frustration that I harbored about the  
2           process.

3       Q.   How much time were the citizens of Johnson County  
4           given each to testify at this listening session?

5       Q.   Because there were so many folks who signed up to  
6           provide testimony, because we had cut it from two  
7           and-a-half hours in 2012 to 75 minutes in 2021,  
8           they were only given two minutes.

9       Q.   And given that restrained time frame to ask  
10          questions given that this was taking place on the  
11          first day of school in Shawnee Mission School  
12          District, does that, in your view, reflect an  
13          abundance of concern for the views of the people  
14          of Johnson County?

15      A.   No, it doesn't. It really further just clarifies  
16          that this really was a box-checking exercise for  
17          the Republicans. They had to do some sort of  
18          listening tour because one had been done  
19          previously. They wanted to do this, really just  
20          checking the box to be able to say they did it.  
21          They already knew the kind of gerrymandered map  
22          they wanted to pursue.

23                   MR. KLEIN: Thank you, Senator. I have no  
24                   further questions, Your Honor.

25                   THE COURT: Thank you, Spencer.

## 1 RE CROSS EXAMINATION

2 BY MR. RUPP:

3 Q. One small point. There are quite a few  
4 legislative hearings that restrict speakers to  
5 two minutes. Isn't that correct?

6 A. I mean, I've probably see that on occasion. Two  
7 minutes would be at the far, far short end of  
8 what I've ever seen, and that would be only very  
9 few circumstances that I can recall in my  
10 experience.

11 Q. But it's not unheard of. It does happen.

12 A. Again, I can't remember that I've seen it  
13 elsewhere. And if I have, it would be in a very  
14 rare instance that I can't recall at this time.

15 MR. RUPP: No further questions.

16 THE COURT: Thank you. Spencer, anything  
17 else?

18 MR. KLEIN: Nothing further for me. Thank  
19 you.

20 THE COURT: All right. Again, counsel, I  
21 don't know if the Senator is here pursuant to  
22 subpoena, but is he released and free to go?

23 MR. KLEIN: Yes.

24 MR. RUPP: I recommend he get home by  
25 8:20.

1 (Laughter.)

2 THE COURT: Senator, first of all, thank  
3 you for your testimony, sir.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Anything else that we need to  
6 put on the record? Because we need to have some  
7 conversations about logistics, starting with the  
8 Plaintiffs.

9 MS. BRETT: Nothing, Your Honor.

10 THE COURT: I'll take either kind of  
11 subdued excellence, or the mmm as a no. Defense?

12 MR. JOHNSON: Nothing, Your Honor.

13 THE COURT: Thank you, Mark. All right.  
14 Tamara? Oh, yes. Thank you. So you all have  
15 stipulated to a number of exhibits, and we have  
16 fought over just a few, but nobody has given the  
17 Court any exhibits. You all keeping your  
18 originals?

19 MS. BRETT: Sorry, Your Honor. There is a  
20 courtesy copy for you in the big box down there  
21 which we should have told you about at the start  
22 of the day.

23 THE COURT: That's okay. My court  
24 reporter just needs to know whether or not you  
25 would like for her to take custody of those

1 exhibits, and she would like not to take custody  
2 of those exhibits, I can guarantee. So is that  
3 okay if they stay on the big box, on the floor,  
4 or I'll put them back in my office?

5 MS. BRETT: I think it's fine if they stay  
6 here, Your Honor.

7 THE COURT: Parties agree? I don't know  
8 if you have any or not. Doubt so. No issue  
9 there. Tony?

10 MR. RUPP: I have no problem with that. I  
11 have written in the copy I have here. I know  
12 we've sent them to you electronically, but we  
13 will make sure that you have -- or that the Court  
14 is left with a complete list.

15 THE COURT: Thank you very much. Assuming  
16 you all have filed your exhibits with the Court  
17 so that they make it to their next stop.

18 MR. RUPP: I think we -- because of  
19 the size, I don't think we used Efile, but we'll  
20 talk logistically about whatever would be best to  
21 make sure they get their way. I'll leave that to  
22 Jamie.

23 THE COURT: Okay. Good. I'm not sure  
24 that I really know the answer to that, Tony, but  
25 we need to figure out how we're going to get

1           those transmitted to the Appellate Courts. That  
2           can be a discussion for another day though.

3                     Let's talk about tomorrow. I can almost  
4           guarantee you that Tony is staying up late  
5           tonight. So everybody good at 9 o'clock  
6           tomorrow? Start with you, Tony.

7                     MR. RUPP: I'm good at 9:00.

8                     THE COURT: Everybody else?

9                     MS. BRETT: Good at 9:00.

10                    (Court adjourned at 6:50 p.m.)

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## C E R T I F I C A T E

STATE OF KANSAS            )  
   )  
 COUNTY OF WYANDOTTE    ) ss:

I, Tamara Diane Ross, a Certified Court Reporter for the State of Kansas and the regularly appointed, qualified and acting official reporter for the 29th Judicial District of the State of Kansas, do hereby certify that, as such official reporter, I was present at and reported the above and foregoing proceedings in Case No. 2022-CV-89, Faith Rivera, et al, Tom Alonzo, et al, Susan Frick, et al, Plaintiffs, v. Scott Schwab, et al, Defendants, heard on March 4th, 2022 before the Honorable Bill Klapper, Judge of Division 6 of said Court.

I further certify that a transcript of my shorthand notes was prepared and that the foregoing transcript, consisting of 271 pages, is a true transcript of my notes, all to the best of my knowledge and ability.

SIGNED AND ELECTRONICALLY FILED WITH THE  
 CLERK OF THE DISTRICT COURT OF WYANDOTTE COUNTY,  
 KANSAS, this 5th day of April, 2022.

/s/ Tamara Diane Ross  
 Tamara Diane Ross, RMR, RPR, CSR No. 1736