

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 6th day
of April, 2022.

Volume I

APPEARANCES:

The Plaintiffs TOM ALONZO, et al, appeared
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The Plaintiffs SUSAN FRICK, et al,
appeared by Curtis Woods & Mark Johnson,
Attorneys at Law, 4520 Main Street, Suite 1100,
Kansas City, MO 64111.

The Defendants SCOTT SCHWAB and MICHAEL
ABBOTT appeared by Anthony Rupp & GARY AYERS,
Attorneys at Law, 1551 N. Waterfront Pkwy, Suite
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PROCEEDINGS

THE COURT: On the record in Rivera, Alonzo, and Frick V Schwab. The appearances are the same or substantially the same. We have lost one of our attorneys and hope to hear back that everything went well during the course of this trial. Tony, we'll leave you in charge of reporting that.

MR. RUPP: We'll report.

THE COURT: Thank you so much. Curtis, ready?

MR. WOODS: I am, Your Honor.

THE COURT: All right. Want to call your first witness?

MR. WOODS: Professor Michael Smith.

THE COURT: All right. Professor Smith, if you could get close here where you and I can see eye to eye and raise your right hand for me please, sir.

MICHAEL SMITH,

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

THE WITNESS: Yes, I do.

THE COURT: All right. Please climb in here the best you can. We make it a bit

1 inconvenient. How would you like to be referred.
2 To?

3 THE WITNESS: Professor Smith is mine.

4 THE COURT: Professor Smith. Let it be
5 that way.

6 MR. WOODS: He likes to call people by
7 their first name, so he may slip and call you
8 Michael.

9 THE WITNESS: Michael is fine too.

10 THE COURT: You like Professor Smith, you
11 earned the title, I'm sure. Professor Smith it
12 will be. Curtis, when you're ready.

13 MR. WOODS: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. WOODS:

16 Q. Could you state your name, please?

17 A. My name is Michael Smith.

18 MR. AYERS: Your Honor?

19 THE COURT: Renewed objection. Yes. Yes.
20 Yes.

21 MR. AYERS: If I could just renew the
22 objection, the Daubert motion, improper expert
23 testimony, it's nondescriptable. Deficiency gap
24 is not generally accepted. Relevance,
25 speculation, and the other reasons we gave you

1 during our Daubert motion and hearing.

2 THE COURT: All right. Thank you, Gary.
3 Response, Curtis if you wish?

4 MR. WOODS: Well, Your Honor, I think he's
5 an expert in various fields in the area of
6 political and social science, including Kansas
7 elections and the history of Congressional
8 District 2, as well as he's done some research of
9 the data, in terms of the population of various
10 locales and districts in Kansas over the years.
11 And I'll lay the foundation for all of that.

12 THE COURT: If you will. So my
13 preliminary ruling is as before. A review of his
14 testimony, as set forward in his expert report
15 would lead the Court to believe that he, in fact,
16 possesses all of the necessary standards under
17 60-456b, in that this is material, and it is
18 relevant, his testimony is based upon sufficient
19 facts or data, they are reliable principles, and
20 he has applied those principles to the method.
21 And then Curtis, once you've laid the foundation,
22 if you would renew that so we can actually do it
23 based upon testimony, the Court would appreciate
24 it.

25 MR. WOODS: Your Honor, certainly.

1 THE COURT: Thanks.

2 MR. WOODS: And as I mentioned yesterday,
3 Your Honor, in light of the testimony of the
4 experts you've already heard in the case, I have
5 significantly slimmed down my examination so not
6 to be cumulative or duplicative of testimony
7 that's already gone into evidence through other
8 experts, although there will be a tad overlap
9 here and there. But I've tried to minimize it.
10 And much of his testimony is going to be factual,
11 in any event.

12 THE COURT: All right.

13 MR. WOODS: So if I could proceed.

14 THE COURT: You can. And thank you,
15 Curtis. And so Tony, I assume that you and
16 Gary --

17 MR. RUPP: This is Gary's, so I guess I
18 can't say. And so no, I -- never mind. I will
19 consult with Gary briefly.

20 THE COURT: Perfect. Good idea. I was
21 going to suggest, gentleman, no need for
22 objections because Curtis told us he's taken care
23 of the problem.

24 MR. WOODS: To the extent I haven't, I
25 will hear about it, I'm sure.

1 THE COURT: I have a feeling. As it
2 should be.

3 MR. WOODS: Absolutely.

4 (Pause in the proceedings.)

5 MR. AYERS: I didn't hear that. Sorry.

6 MR. WOODS: Apology accepted.

7 THE COURT: Any response necessary from
8 the Defense, Gary?

9 MR. AYERS: Now that I've had Tony tell me
10 what happened, I think Professor Smith, when you
11 talk about fact testimony, is talking about the
12 history of Lawrence being in CD3 and CD2, which
13 is part of his political science, what he teaches
14 and what he knows as an expert, but he's not a
15 fact witness. Is that as I understand it?

16 MR. WOODS: Right. I mean, it's fact,
17 expert, you know. The line --

18 MR. AYERS: I think we know as long as
19 he's within his report, I don't --

20 MR. WOODS: Yeah.

21 MR. AYERS: I think we agree. So
22 testifying as an expert on the history of
23 Lawrence and Douglas County and CD2 and CD3, I
24 don't object.

25 MR. WOODS: Okay ,

1 MR. AYERS: On that basis. Still object
2 on all the other bases.

3 THE COURT: I understand completely.
4 Thank you, Gary. So ready to testify after all
5 that?

6 THE WITNESS: Yes, I am.

7 THE COURT: Okay, Professor. Thank you.
8 All right, Curtis.

9 BY MR. WOODS:

10 Q. Could you tell the court what your occupation is?

11 A. I am a Professor and a Department Chair.

12 Q. And where are you employed?

13 A. Emporia State University.

14 Q. And are you tenured there?

15 A. Yes, I am.

16 Q. And have you taught as a college professor in any
17 other college or university?

18 A. Yes, I have.

19 Q. And could you tell the court?

20 A. Kansas State University, the University of
21 Kansas, Iowa State University, and Millikin
22 University.

23 Q. What are the areas of your academic focus or
24 research?

25 A. My primary is state and local politics,

1 particularly the STATE and local politics of
2 Kansas and Missouri. And that includes campaigns
3 and elections, election laws, political history,
4 and of course, I also look at the United States
5 more generally, in terms of state and local
6 politics. I also teach and do research in
7 political philosophy, constitutional law,
8 campaigns and elections, and some other fields.

9 Q. Okay. Today, we're going to focus on your work
10 in the area of Kansas politics and elections.

11 A. Sure.

12 Q. Do you understand that?

13 A. I do understand.

14 Q. We're not going to venture off into any
15 constitutional law.

16 A. No need.

17 Q. Okay. Are you -- have you published any articles
18 or books?

19 A. Both. Yes.

20 Q. On -- in the realm of politics and elections?

21 A. Yes, I have.

22 Q. And could you tell the Court?

23 A. Sure. I've published one solo authored book and
24 three coauthored books. My most recent was
25 published by State University of New York Press.

1 It is on election laws. It's called Much Sound
2 and Fury, or the New Jim Crow. It's an edited
3 book, which does include a chapter contributed by
4 other authors, specifically on the topic of
5 gerrymandering.

6 My book State Voting Laws in America was
7 published in 2015. We also have a book, Low
8 Taxes and Small Government, Sam Brown Backs Great
9 Experiment in Kansas, published in 2019. And my
10 first book was solo authored. I published that
11 in 2003, Bringing Representation Home, State
12 Legislators Among Their Constituencies.

13 Q. And are you editing any book now that you've
14 taken over from another professor?

15 A. Yes, I am. I have taken over as editor of a
16 project called The Arch of Politics, Kansas
17 Politics since 1960 from the late Odette Lumis,
18 who was a Professor at the University of Kansas
19 and an expert on Kansas politics. It's another
20 edited book to which I've contributed.

21 MR. WOODS: Your Honor, at this time, I'd
22 like to proffer Professor Smith as an expert in
23 Kansas politics and elections and the history
24 thereof.

25 MR. AYERS: Same objection, Your Honor.

1 THE COURT: All right. The Court, after
2 hearing the testimony of Professor Smith, does
3 find that he is an expert in the field of Kansas
4 politics and should be allowed to testify
5 concerning that today.

6 MR. WOODS: Although, Your Honor, I'm
7 going to put some things up on the screen, can I
8 hand you some things for your personal reference?

9 THE COURT: Absolutely.

10 MR. WOODS: Make it little easier for you.

11 THE COURT: Thank you.

12 BY MR. WOODS:

13 Q. Professor Smith, were you asked to do any work on
14 behalf of the Plaintiffs in the Frick case?

15 A. Yes, I was. I was asked to write an expert
16 witness report on the -- specifically emphasizing
17 the changes in the Adastra 2 map, compared to the
18 2012 congressional districts, most significantly
19 with regards to Lawrence.

20 Q. Okay. And in doing so, did you research the
21 history of the congressional districts that the
22 city of Lawrence has been in over the years?

23 A. Yes, I did.

24 Q. I'm going to have you turn to page -- do you have
25 a copy of your report in front of you?

1 A. I do.

2 Q. I'm going to have you turn to page five. Could
3 you blow up the top? And with respect to figure
4 1 on page five of your report, could you tell the
5 Court what that is?

6 A. This is a map of the four congressional districts
7 in the state of Kansas that were approved in
8 1992. And the reason that's significant is
9 because prior to 1992, Kansas had more than four
10 congressional districts. It had five in the
11 1980s. And so since the 1990 census, Kansas has
12 had four congressional districts. So this is the
13 first in a series of maps documenting visually
14 those four congressional districts. And the
15 reason I included these was in particular, it's
16 the district highlighted in yellow on the map.
17 That is the 3rd Congressional District, as well
18 as the one in orange. That's the 2nd
19 Congressional District.

20 Q. Back in 1992?

21 A. This is as of 1992. That's correct. And what I
22 wanted to emphasize about this is the location of
23 Lawrence and Douglas County. And you can see --
24 it's a bit faint, but you can -- it's a little
25 easier to see on the hard copy. But you can see

1 that Lawrence is labelled there. And in the 1992
2 districts, the city of Lawrence was contained in
3 the 3rd Congressional District, which is a Kansas
4 City area district that also includes Johnson and
5 Wyandotte Counties, and some of Douglas County
6 outside of Lawrence was included in that as well.
7 And generally, you can see kind of a little bit
8 above the middle of that map, you can make out
9 what's known as the K10 corridor. That's really
10 kind of a triangle formed by I-70 and K10 from
11 Kansas -- Kansas City through Lawrence, to
12 Topeka, which is where several of the state's
13 economic and population centers are located. And
14 of course, passes right past the University of
15 Kansas campus.

16 Q. Okay. So in the 1992 congressional map, that
17 controlled the elections of 1992, 94, 96, 98, and
18 2000?

19 A. 2000.

20 Q. Lawrence was in the same congressional district,
21 Congressional District 3, as the Kansas City
22 area, Wyandotte, Johnson Counties, as well as
23 Shawnee County and Topeka?

24 A. Shawnee County was in the 2nd District.

25 Q. Okay.

1 A. It's in orange on the map. So you had Lawrence
2 with -- along the K10 corridor. It passes, it
3 starts in Kansas City and Johnson County and
4 passes through Lawrence and goes to Topeka. So
5 it crosses the line from that yellow 3rd District
6 into the orange 2nd District. And Topeka would
7 be in the second.

8 Q. What community of interest did Lawrence have with
9 the rest of Congressional District 3 during that
10 time?

11 A. Well, there's a lot of traffic and a lot of
12 movement of people and economic activity along
13 I-70, and also along K10. The University of
14 Kansas draws a lot of students from the Kansas
15 City area. The -- several of the state's largest
16 population counties, urbanized counties lie in
17 that part of the state. And University of Kansas
18 is the largest university that is in this region
19 in either Missouri or Kansas. So it's the
20 flagship university, you might say.

21 Also, KU Medical Center's main campus is
22 here in Wyandotte County. So this district put
23 KU Medical Center main campus together with the
24 main campus of the University of Kansas.

25 Q. Okay. Any other aspect that Lawrence had as a

1 community of interest with Wyandotte and Johnson
2 County connected by the K10 corridor? Social,
3 economic, cultural?

4 A. Undoubtedly. Because of the presence of those
5 freeways -- there's even a K10 connector bus that
6 connects Lawrence to Johnson County. A lot of
7 people commute back and forth. There's obviously
8 University of the Kansas sports, and a lot of the
9 fans come from Kansas City. Lawrence and the
10 Kansas City area are pretty connected.

11 Q. We don't need to go into KU sports.

12 (Laughter.)

13 A. I didn't.

14 Q. I'll leave that to others. And is it fair to say
15 that from 1992 to 2002, with Lawrence in the 3rd
16 District, there was a contiguous, continuous
17 connection by the K10 corridor, I-70 between
18 Lawrence and Kansas City, Kansas?

19 A. Absolutely. Yes.

20 Q. Wyandotte County and Johnson County.

21 A. Exactly.

22 Q. Okay. Go down to figure 2. Now I'm going to
23 have you look at -- focus on figure 2 in your
24 report. Could you tell the Court what that is?

25 A. This is a map of the districts that were approved

1 in 2002 for the state of Kansas. And again, what
2 I want to draw your attention to is the -- are
3 the yellow and orange districts here. And as you
4 can see, the 3rd District, which is in yellow on
5 your map, shrank considerably in its size. And
6 of course, that's because the 3rd District in the
7 late 19 -- or late 20th, early 21st century is
8 the only district in Kansas that has had
9 consistent population growth, primarily in
10 Johnson County. And of course, as we know, when
11 you're redistricting, the districts have to have
12 verily close to equal populations. So unlike any
13 other district in Kansas in modern times, in each
14 round of redistricting, the 3rd District,
15 compared to the last 3rd District, has to have
16 fewer people because of all the growth it
17 experienced in those 10 years. And you can see
18 on the map how it shrinks, physically, to a
19 smaller size.

20 With regards to the Lawrence which is, of
21 course, at the western edge at that district,
22 first of all, you see more of Douglas County
23 outside of Lawrence there moving into the 2nd
24 District, which is orange, but you also see that
25 Lawrence itself is split. Parts of that map have

1 Lawrence split between the 3rd and the 2nd
2 Districts along Iowa Street, which, as you
3 probably know, is a main north, south artery in
4 Lawrence that goes through the campus of
5 University of Kansas.

6 Q. We'll assume that I know Lawrence geography. So
7 what? The eastern half, approximately, of
8 Lawrence was still contained within Congressional
9 District 3 during that time?

10 A. That's right.

11 Q. With the connection with -- the direct
12 continuance, contiguous connection to Wyandotte
13 and Johnson Counties.

14 A. That's exactly right. And west Lawrence was in
15 the 2nd District with Topeka.

16 Q. Okay. Turn the next page.

17 THE COURT: Curtis, just so that the
18 record is clear about these, are these
19 Plaintiff's exhibits? Or are we just testifying
20 from his report, and these maps are included in
21 the report? Which obviously, they are.

22 MR. WOODS: Exactly. And the report is
23 135, I believe.

24 THE COURT: All right.

25 MR. WOODS: Which is in evidence by

1 stipulation at the beginning of the case.

2 THE COURT: Yes.

3 MR. WOODS: Subject to their objections.

4 THE COURT: Sure. Just want to make sure
5 the record is clear for further appellate review,
6 what we are talking about today. And this is
7 Exhibit 135 and the maps contained therein.

8 MR. WOODS: Correct, Your Honor.

9 THE COURT: Thank you.

10 MR. WOODS: Thank you.

11 BY MR. WOODS:

12 Q. So now we're turning to page 5 of your expert
13 report, Exhibit 135, and the figure 3 on that
14 page. Could you tell the Court what that is?

15 A. Well, this is a map of Kansas' congressional
16 districts that have been in effect since 2012.
17 Since they were approved by the Courts in 2012.
18 And as you can see, in the line between the
19 yellow 3rd District and the orange 2nd District,
20 in that map, all of Lawrence, in fact, all of
21 Douglas County, including Lawrence, was moved
22 into that orange 2nd District. In fact, you can
23 see on the -- faintly, but you can see Lawrence
24 written out in the orange there. And the current
25 3rd District now consists of all of Wyandotte,

1 all of Johnson County, and a small portion of
2 Miami County that includes the city of Louisburg.
3 So you see this movement of Lawrence -- as the
4 3rd District grows in population, it needs to
5 have fewer people than it has because of its
6 growth every 10 years. And it shrinks. You can
7 see the shrinking on the map. And a lot of that
8 shrinkage has occurred in Lawrence. So it's just
9 gradually shifted from the 3rd District to the
10 2nd District.

11 Q. Okay. So for the election starting in 2012,
12 2014, 16, 18, and 20, Lawrence has been in the
13 2nd Congressional District.

14 A. Entirely contained in the 2nd District. That's
15 right.

16 Q. It is Topeka and Shawnee County also in the 2nd
17 District?

18 A. Yes. Yes, it is.

19 Q. And is there any community of interest between --
20 well, first, Lawrence is -- for the last 10
21 years, is no longer in the same congressional
22 district as Wyandotte and Johnson Counties,
23 Kansas City, Kansas metropolitan area. Is that
24 correct?

25 A. That's right.

1 Q. Throughout that time, has Lawrence still
2 maintained a community of interest with the
3 Kansas City, Kansas metro area, including
4 Wyandotte and Johnson Counties?

5 A. Oh, absolutely. The University of Kansas Medical
6 Center has expanded during that time. There have
7 been improvements to the roadways. There's been
8 major improvement to K10 that makes commuting
9 between Kansas City and Lawrence faster than it
10 used to be. It opened a few years ago. The
11 traffic on K10 has increased. And so if
12 anything, Lawrence has grown closer to the Kansas
13 City area.

14 Q. Okay. So in the Congressional District 2 that
15 was adopted in 2012, the entirety of Lawrence
16 city limits, as well as Douglas County, has been
17 in Congressional District No. 2. Correct?

18 A. That is correct.

19 Q. Is any other major metropolitan area in Kansas
20 also in Congressional District 2 during this --
21 the last 10 years?

22 A. Yes. Topeka is in there, and all of Shawnee
23 County is contained in the current CD2. You can
24 see that on the western edge of the map.

25 Q. And I know the Court knows and the Supreme Court

1 knows, but Topeka and Lawrence are connected by
2 Interstate 70. Is that correct?

3 A. That's right.

4 Q. Is there a community of interest between Lawrence
5 and Topeka and Shawnee County?

6 A. There is. There is. There's a lot of cross
7 traffic. There are a lot of people working in
8 Topeka that commute from Lawrence, and there's a
9 lot of activity that goes on back and forth
10 between Lawrence and Topeka. Lawrence, of
11 course, has a political science department, it
12 has the largest law school in the state at KU,
13 and Topeka is the capital of Kansas. So there's
14 lots of cross traffic between Topeka and
15 Lawrence.

16 Q. Is there also a major university in Topeka?

17 A. Yes, there is. Washburn University.

18 Q. And does Washburn University have a law school?

19 A. Yes, it does. Those are Kansas' two law schools.

20 Q. The only two law schools in Kansas.

21 A. In the state. That's correct.

22 Q. Any other thing you want to -- anything else you
23 want to add about the community of interest
24 between Lawrence and Topeka over the last 10
25 years?

1 A. Well, one thing to keep in mind is that Kansas is
2 a more urbanized state than the reputation, and
3 in fact, most Kansans live in six counties. Five
4 of those six counties are all in this corridor.
5 The only one that's not is Sedgwick County, which
6 is Wichita.

7 Q. The corridor you're talking about is the K10 I-70
8 corridor?

9 A. Right. So you have Johnson, Shawnee, Wyandotte,
10 Douglas, and Leavenworth Counties are five of
11 the six most urbanized counties in the state.
12 And they share, I would argue, an interest as
13 part of northeast Kansas that is a different
14 political culture than other parts of the state.
15 More urban.

16 Q. Now I want you to focus -- well, let's talk about
17 Adastra 2. Where is Lawrence located in Adastra
18 2?

19 A. Well, the city of Lawrence is located in the 1st
20 District, which locals call the Big First. Now,
21 the rest of Wyandotte County, however, on that
22 map is still located in the 2nd Congressional
23 District. So the city of Lawrence has moved.

24 Q. The rest of Douglas County.

25 A. Pardon me. Douglas County. The rest of Douglas

1 County stays in Congressional District 2, but the
2 city of Lawrence moves to Congressional District
3 1.

4 Q. And where is Topeka and Shawnee County? Where is
5 it located under Adastr 2?

6 A. That stays in Congressional District 2.

7 Q. So Topeka and Lawrence have been severed.

8 A. Correct. And Lawrence and the rest of Douglas
9 County have as well.

10 Q. Okay. But there still remains a community of
11 interest between Lawrence and Topeka. Is that
12 fair to say?

13 A. Absolutely.

14 Q. For all the reasons you've testified that one has
15 existed during the term of the 2002 map.

16 A. That's right.

17 Q. Does Lawrence have any community of interest, in
18 your opinion, with the Big First?

19 A. Not beyond just being located in the state of
20 Kansas. Lawrence is a very different economy and
21 a very different political culture from the Big
22 First.

23 Q. What's the political culture of Lawrence?

24 A. Political culture of Lawrence is -- obviously,
25 it's a college town. It's the largest university

1 in the state that's located there. Lawrence is
2 -- certainly, the voting patterns are far more
3 supportive of the Democratic Party, whereas the
4 Big First is one of the most Republican districts
5 in the United States. Lawrence, as we've already
6 talked about, is very closely connected both to
7 Topeka, to the west, and the Kansas City area on
8 the east through interstates and turnpikes. So
9 there's a lot of cross traffic there, which makes
10 Lawrence more of an urbanized area not only
11 because of its size and the presence of the
12 university, but because it's so closely connected
13 to the state capital and to the largest metro
14 area in the state. So it's much more urbanized
15 than the Big First, which is well known and even
16 celebrated for being very agricultural districts.

17 Q. Does Lawrence have any significant community of
18 interest with the city of Manhattan or -- well,
19 with the city of Manhattan?

20 A. Well, there's an obvious parallel, which is the
21 largest two state universities, the University of
22 the Kansas and Kansas State University. However,
23 Kansas has several universities. As we just
24 discussed, Washburn University is the location of
25 the state's other law school. And with regards

1 to K State, where I had the opportunity to teach
2 for three years, you can really appreciate that K
3 State is one of the premier agricultural and
4 veterinary science universities in the world.
5 They bring in millions of dollars in research
6 grants, both from the Federal government and the
7 private sector to do agricultural and veterinary
8 science, research. K State anchors the west edge
9 of an animal science corridor along the
10 university. Nebraska, Iowa State University, the
11 University of the Missouri known for their
12 research in animals. Research -- also, I'd point
13 out the constructs of the NBAF center. National
14 Biological Agricultural Facility, I believe,
15 which is a huge Federal project that is located
16 in Manhattan, in no small part because it's so
17 close to Kansas State University. It's right
18 across the street from the campus, as I recall.
19 So K State is a celebrated land grant university.
20 And of course, they have many undergraduate
21 programs, like most universities do, but in terms
22 of research, the research the professors do and
23 the grants they win, that is an agricultural and
24 veterinary science university, first and
25 foremost.

1 The University of Kansas has a very, very
2 different mission. It has a law school, it has a
3 medical school -- for humans -- and it's -- it
4 has a liberal arts focus.

5 Q. And to -- for people in Lawrence and Manhattan to
6 drive to each other, the best route is the I-70,
7 would you say?

8 A. That's the fastest route, yes.

9 Q. And to do that, they have to drive through
10 Topeka.

11 A. Of course.

12 Q. So basically, Lawrence has been put into the 1st
13 District and skipped over Topeka to do it. Is
14 that correct?

15 A. Well, the 1st District isn't continuous, but it
16 does have sort of a peninsula on the Adastra 2
17 map that reaches over to Lawrence. And --

18 Q. To scoop up Lawrence.

19 A. Right. So you're absolutely right. If you were
20 to leave Lawrence on I-70, headed for Manhattan,
21 you would leave the 1st District, go into the 2nd
22 District, pass through Topeka, and then west of
23 Topeka, you'd reenter the 1st District.

24 Q. Go to page 9, please. To follow up on that,
25 Professor, could you explain to the Court what

1 figure 3 on page 9 of your report, Exhibit 135 --
2 what it depicts?

3 A. This is detail from the Adastra 2 map. In the
4 middle there, that roughly ovoid shape, that's
5 the city of Lawrence, and the 1st District, which
6 is -- obviously, this is just detail. But the
7 portion of the 1st District you see on this map
8 is in that burgundy color, and then the 2nd
9 District, the portion that is in that blue color.
10 And so you can see how the city of Lawrence is
11 sort of scooped out of the 2nd District by this
12 map. And then of course, it has to be
13 continuous, so there are some counties to the
14 north that are also moved into the Big First.
15 But again, I included this to draw attention to
16 that sort of scooping out dynamic that you see on
17 the map.

18 Q. In other words, in order to get Lawrence's
19 population into the Big First, other counties and
20 areas north of Lawrence and west of Lawrence had
21 to be put into the first in order to reach down
22 and grab Lawrence. Is that fair to say?

23 A. That is correct. The districts have to be
24 continuous.

25 Q. Now, you may want to refer to your report for

1 these figures, but in the 2020 census, what was
2 the population of Douglas County?

3 A. Douglas County -- it was -- here it is. It's
4 118,785.

5 Q. And what was the population of Lawrence?

6 A. Give me just a minute here. It's in the 90s.
7 It's 90 thousand something.

8 Q. Refer to page 11 of your report.

9 A. Thank you.

10 Q. I think that's where you set it out.

11 A. Pardon me. I'm not seeing it. It's definitely
12 in the --

13 Q. Under table 2.

14 A. I have it. It's 94,934.

15 Q. And in order to equalize the populations among
16 the four Kansas districts, how many people had to
17 be moved into District 1?

18 A. Into District 1. That would be 33,855.

19 Q. And with respect to the peninsula and hook that
20 scoops up Lawrence, how many people were moved
21 into the 1st District through that action of
22 taking the counties north and down into Lawrence
23 to scoop up Lawrence? How many people were moved
24 into District 1 by that move?

25 A. Well, the total number of people moved in, which

1 is primarily Lawrence -- well, it's primarily
2 Lawrence, period, but also including those
3 adjoining areas -- the total was 131,949.

4 Q. So in order to -- District 1 needed 33,855 more
5 people.

6 A. Right.

7 Q. And so to do that, the redistricting -- Adastra,
8 the redistricting committee enlarged District 1
9 in order to do that. But by doing that, they
10 added 131,000.

11 A. That is correct.

12 Q. Some 98,000 more than they had to.

13 A. That is correct. So the number of people
14 actually added to the Big First is almost four
15 times as many as needed to be moved.

16 Q. And so how was it balanced out then?

17 A. Well, it's balanced out by the removal of six
18 counties in a different part of the district.
19 Those counties are Geary, Wabaunsee, Chase,
20 Morris, Lyon, and Marion Counties. They are
21 currently in the eastern part of the Big First
22 District. They were moved under Adastra 2 into
23 the 2nd District. Their total population is
24 95,576.

25 Q. Okay. So to summarize, District 1 needed 33,000

1 more in population.

2 A. Right.

3 Q. So the committee moved 131,000 into the district,
4 which necessitated then moving out 95,000.

5 A. Yeah. That's correct.

6 Q. Were there 33,000 people in Kansas in counties or
7 portions of counties contiguous to the current
8 District 1 that could have been moved, instead of
9 reaching over and scooping up Lawrence?

10 A. Yes. There are a number of different ways the
11 Big First could have been redrawn to add an
12 additional 33,000 votes.

13 Q. And still stay compact and contiguous?

14 A. Yes. Correct.

15 Q. So by reaching around Shawnee County and Topeka,
16 the natural community of interest with Lawrence,
17 to grab Lawrence, scoop it up, and put it into
18 the first, what -- is there any effect or impact
19 that had on the voters of Douglas County?

20 A. Oh, absolutely.

21 Q. The voters of the city of Lawrence?

22 A. Absolutely. So Lawrence is -- the voters in the
23 city of Lawrence heavily prefer Democratic party
24 candidates. It's one of the Democratic Party's
25 bases in the state of Kansas. They are currently

1 located in the 2nd Congressional District, which
2 is represented by Jake LaTurner, who is a
3 Republican. According to the Cook Political
4 Report, that district is called leaning
5 Republican, which means it's between 10 and 15
6 percentage points advantage Republican, which is
7 a district that theoretically, under the right
8 circumstances, could be highly competitive.

9 Q. You're talking about current District 2.

10 A. That's the current District 2. Not the new one,
11 but 2012 District 2. And we've seen in 2018 and
12 2020, the Democratic Party has invested heavily
13 in voter registration and turnout in Lawrence on
14 behalf of the candidates Paul Davis and Michelle
15 De La Isla, who were the Democratic Party
16 candidates.

17 Q. In the last two congressional elections.

18 A. Yes. Last two. They raised several million
19 dollars in order to run. They didn't win, but
20 they had the money to mobilize and engage voters.
21 Putting Lawrence in the Big First puts it in one
22 of the most heavily Republican-voting districts
23 in the United States. It also, geographically --
24 except for that little peninsula, it
25 geographically separates Lawrence from the rest

1 of the Big First District. And so it really
2 creates a disincentive, no matter what your party
3 affiliation, because even a Republican would know
4 that their candidate's probably going to win the
5 election easily. It creates a disincentive to
6 voter mobilization, voter registration, voter
7 turnout, fundraising, all of the activities that
8 build a political base because the election would
9 not be competitive.

10 MR. WOODS: Thank you, Professor Smith.
11 That's all I have at the moment, Your Honor.

12 THE COURT: Thank you, Curtis.

13 MR. AYERS: May it please the Court.

14 CROSS EXAMINATION

15 BY MR. AYERS:

16 Q. Professor Smith, you've never testified on
17 compactness scores, have you?

18 A. No, I haven't.

19 Q. And you have never testified on core retention
20 analysis, have you?

21 A. No, I haven't.

22 Q. And you've never quantified the concept of
23 communities of interest.

24 A. No, I have never quantified it.

25 Q. And you understand that the elections in the 3rd

1 Congressional District in the last four years
2 have had some special considerations. Isn't that
3 right?

4 MR. WOODS: Your Honor, I object on the
5 grounds it's beyond the scope of direct
6 examination.

7 MR. AYERS: It's within the --

8 THE COURT: Gary?

9 MR. AYERS: Your Honor, it's within the
10 scope of his report, which is in evidence. And
11 just because counsel did not ask him a question
12 about his report, which is in evidence, I don't
13 think prohibits me from asking him about his
14 report and cross examining him on his report,
15 which is in evidence and part of his testimony.

16 THE COURT: The Court agrees. Objection
17 is overruled.

18 MR. WOODS: Thought I'd give it a shot.

19 THE COURT: Do you remember the question?

20 THE WITNESS: I do. I don't disagree that
21 there have been special considerations. I don't
22 know which specific considerations you're
23 referring to, but undoubtedly there have been
24 some special considerations.

25

1 BY MR. AYERS:

2 Q. You indicated to counsel that the 3rd
3 Congressional District has moved from being a
4 Republican stronghold to a battleground and even
5 to a pronounced Democratic lean. Is that right?

6 A. That is true.

7 Q. And even under the Adastral 2 plan, it's your
8 opinion, isn't it, that we really don't know how
9 the next election is going to turn out even under
10 the Adastral 2 plan if Trump is no longer in
11 office. Is that right?

12 A. With regards to the 3rd Congressional District?

13 A. Yes, sir.

14 A. No. That would be an unknown.

15 Q. That would be a what?

16 A. That would be an unknown.

17 Q. Right. And I think it's your opinion at this
18 point in time we can only speculate as to how the
19 CD -- how the 3rd Congressional District in going
20 to vote in the next election under the Adastral 2
21 plan. Is that correct?

22 A. I think that's a fair statement.

23 Q. Several of the circumstances from 2016 to 2020,
24 which we've seen other experts use for statewide
25 election data -- some of those issues in the 3rd

1 District were the school finance backlash, the
2 Kobach candidacy, and the Trump election. Is
3 that correct?

4 MR. WOOD: Your Honor, object. I mean, to
5 the extent that he wants to be talking about the
6 report, the report doesn't address Wyandotte
7 County in any way, shape, or form. So he's going
8 beyond the report. So I object on the grounds
9 it's beyond the scope of direct examination and
10 beyond the scope of Professor Smith's report.

11 THE COURT: Gary?

12 MR. AYERS: Two things: First of all, he
13 spent about two-thirds of his time talking about
14 the 3rd Congressional District, and the other
15 thing is what we're going to find out from his
16 report is that he recognizes this is a jigsaw
17 puzzle, you move one district, you have to move
18 other districts. It's all relevant to what you
19 do in Lawrence, what you do in the 3rd
20 Congressional District.

21 THE COURT: Well, the Court agrees that he
22 gave some historical analysis to the movement of
23 Lawrence from the '90s until the present time,
24 but he did not testify about any of the political
25 ramifications in the third that you're asking him

1 about now. So as far as that part of your
2 questioning is concerned, Gary, I'll sustain the
3 objection.

4 BY MR. AYERS:

5 Q. You would agree, would you not, Professor Smith,
6 that we do not have an objective standard to
7 measure gerrymandering. Isn't that correct?

8 A. There's no single objective standard to measure
9 that.

10 Q. And we -- and the Supreme Court recognized that
11 in Rucho, I think, was your opinion. Is that
12 correct?

13 A. I think that's a fair statement.

14 Q. And it's your opinion that there's no definition
15 that's possible. Right?

16 A. I don't think there's any single final definition
17 that's possible. There are a number of different
18 definitions, which are quite insightful.

19 Q. You have written, have you not, that a definition
20 is not possible?

21 A. I have, meaning one single final definition.

22 Q. Now, with regard to your testimony today as to
23 communities of interest, the University of Kansas
24 has a medical school in Wichita, Kansas. Is that
25 correct?

1 A. That is correct.

2 Q. And it has a medical school in Kansas City,
3 Kansas. Correct?

4 A. Also correct.

5 Q. Wichita State, KU, and Kansas State all have
6 engineering schools. Correct?

7 A. I believe that's correct.

8 Q. And K State and KU have the only two
9 architectural schools in Kansas. Is that
10 correct?

11 A. I believe so.

12 Q. Salina has a KU campus. Isn't that correct?

13 A. I know they have a K State campus. They may have
14 a KU campus as well.

15 Q. And I-70 connects KU and Manhattan. Right?

16 A. It comes very close to Manhattan, within 10
17 miles.

18 Q. And the turnpike connects -- the turnpike and
19 I-70 connects Wichita and Lawrence. Is that
20 correct?

21 A. Yes, it does.

22 Q. And some of us serve on the Board of Governors
23 for the law school at the University of Kansas,
24 but we live in Wichita. Correct?

25 A. I -- that doesn't surprise me.

1 Q. I serve on the Board of Governors of the KU law
2 school. I live in Wichita. Does that not --
3 does that surprise you?

4 A. No, it doesn't.

5 Q. Okay. Would it surprise you that a lot of people
6 in Wichita go to school at KU?

7 A. Not at all. No.

8 Q. And a lot of them go to K State.

9 A. Of course.

10 Q. A lot of people from Chicago go to KU.

11 A. Also true.

12 Q. Lot of people from Johnson County go to KU.

13 A. That's right.

14 Q. Others go to K State. Right?

15 A. Sure.

16 Q. Three of the regent universities are KU, K State,
17 and Fort Hays State. Is that correct?

18 A. That's three of six, yes.

19 Q. Excuse me?

20 A. Three of six.

21 Q. Yes. And under Adastr 2, those three regent
22 universities are in the same district. Is that
23 correct?

24 A. Which were the three you mentioned?

25 Q. KU, K State, and Fort Hays State.

1 A. Fort Hays State. Yes.

2 Q. Now, you recognize that most of the growth in
3 Kansas has occurred in Johnson County. Correct?

4 A. Yes, I believe that is correct. Certainly much
5 of it.

6 Q. And you recognize that you can no longer, in a
7 new redistricting plan keep Johnson County and
8 Wyandotte County together. Is that correct?

9 MR. WOODS: Same -- never mind. He
10 answered it.

11 THE WITNESS: Not in -- not whole. All of
12 both counties together can't be in the new
13 congressional district.

14 BY MR. AYERS:

15 Q. So you have written that when you're drawing a
16 redistricting map, it's like an interlocking
17 puzzle piece. Correct?

18 A. I did write that, yes.

19 Q. So if you shift one, you affect the others. You
20 have written that. Correct?

21 A. I have written that.

22 Q. And you've written that, quote, messy maps don't
23 always tell the story, end quote. You've written
24 that too, haven't you?

25 A. Yes, I did.

1 Q. And you would say that culturally, or cultured --
2 cultural community of interests is a rather vague
3 term. Isn't that correct?

4 A. Yes, I would say that.

5 Q. And the same is true of a social community of
6 interest. That's also a vague term, in your
7 opinion.

8 A. I think so, yes.

9 Q. And being a professor, you can make an argument
10 that Douglas County and Lawrence form a community
11 of interest, and you can make the argument that
12 they do not form a community of interest, can't
13 you?

14 A. You could. I think one argument would be
15 stronger than the other, but of course, you could
16 argue for both sides.

17 Q. Because we know that as far as the African
18 American population, most of the African American
19 population that lives in Douglas County lives in
20 Lawrence. Correct?

21 A. That is correct.

22 Q. And outside of Lawrence, you go south, you're
23 entering into lot of rural America, aren't you?

24 A. Yes. It's pretty rural south of Lawrence.

25 Q. If the legislature makes the decision to -- that

1 they can't -- well, if the law says you can't
2 keep Johnson County and Wyandotte County
3 together, and if the legislature makes the
4 decision to take part of Wyandotte and move it
5 into the 2nd Congressional District, then you
6 have to move population out of the 2nd
7 Congressional District to keep the population
8 equal, do you not?

9 A. Yes.

10 MR. WOODS: Same objections, Your Honor.
11 Beyond the scope of direct examination. Beyond
12 the scope of his report.

13 THE COURT: Want to respond to that, Gary?

14 MR. AYERS: It's not beyond the scope of
15 his report because he has said in his report, and
16 he -- that these are all connected. And he's
17 spent quite a bit of time talking about the
18 communities of interest in Johnson County and
19 Wyandotte County and Douglas County. I think
20 I'm -- I think it's fair to ask him about what
21 he's already testified to as various communities
22 of interest.

23 THE COURT: The Court will note that you
24 already asked, and he's already answered the
25 question, and this is a ground that we have

1 covered, so I don't find it prejudicial. So
2 object sooner, Curtis, before he answers the
3 question.

4 MR. WOODS: Thank you, Your Honor. It's a
5 constant learning experience, even when you reach
6 my age.

7 THE COURT: Go ahead, Gary.

8 THE WITNESS: Would you mind repeating the
9 question?

10 THE COURT: You already answered it,
11 Professor. Now, if we're going to go back and do
12 it again, then I'm going to reconsider my --

13 MR. AYERS: No, don't.

14 THE COURT: -- ruling. Move on. You
15 answered the question he asked, Professor. I'm
16 sorry. In the back and forth between the lawyers
17 and the Court, you may have forgotten that. So
18 next question.

19 BY MR. AYERS:

20 Q. Just to remind you where we were, if you move
21 population from Wyandotte into the 2nd
22 Congressional District, then you're going to have
23 to move population from the 2nd Congressional
24 District, probably, to the 1st Congressional
25 District. Isn't that correct?

1 A. Well, a couple of things to keep in mind: First
2 of all, if you're moving a population, whether it
3 be in Wyandotte County or anyplace else, then all
4 of the things being equal, you need to move the
5 same number of with people into that
6 congressional district that was moved out of it.

7 Now, all things aren't entirely equal
8 though because you've also got your census
9 numbers. So it would be a combination of
10 compensating for that loss of population, and
11 also keeping in mind that that congressional
12 district may need to grow or shrink a little bit
13 due to the census.

14 Q. So one of the ways to solve that would be to
15 either move, for example, Lawrence and Jefferson
16 County into the 1st Congressional District, as
17 was done, or you could have moved Shawnee County
18 into the 1st Congressional District. That's
19 another solution at that point in time, isn't it?

20 A. There are an infinite number of possible
21 solutions, some better than others.

22 Q. Would you, sitting here today, suggest -- if you
23 only had the choice of Lawrence or Topeka, do you
24 have an opinion about which one would be better
25 to move to the first?

1 MR. WOODS: Objection. Beyond the scope.

2 MR AYERS: It's a hypothetical within the
3 scope, Your Honor.

4 THE COURT: It's a hypothetical within the
5 scope. To be honest with you, Gary, I'm not
6 exactly sure that I follow the concept of your
7 response to the objection. But I will note that
8 Professor Smith is an expert in the politics of
9 Kansas, and although it may be beyond the scope
10 of the direct examination, Curtis, I think he's
11 qualified to answer the question. So overruled.

12 THE WITNESS: All right. Well, first of
13 all, you don't have that choice. There are a
14 number of other ways to balance the population in
15 these districts. And if, for some reason, I were
16 forced to choose between those two counties, I
17 would want to run some analyses and reflect on
18 that, because that would be a big decision.
19 Neither of those solutions is ideal.

20 BY MR. AYERS:

21 Q. With regard to the history that you testified to
22 today, I think you indicated that Lawrence and
23 Douglas County were only completely together in
24 the last 2012 redistricting. Is that correct?

25 A. That is -- yes. All of Lawrence and all of

1 Douglas County to -- yes. The city of Lawrence
2 was whole within the 1992 district, but parts of
3 Douglas County were in the second.

4 Q. Either Douglas or Lawrence or both have been
5 moved in the -- in each of the last three
6 redistricting cycles. Isn't that correct?

7 A. All or in part, yes.

8 Q. And we know that the 2012, you know, do you not,
9 that the 2012 redistricting was done by a
10 three-Judge panel of KU grads.

11 A. It was. It did use maps that had been drafted by
12 the Kansas Legislative Research Department, but
13 it was the Courts that approved the maps.

14 Q. Jamie, can I have Exhibit -- the report, Exhibit
15 135? Is that right? Yes. And page nine. I
16 think we were there earlier in his testimony.

17 Professor Smith, you have, in your table
18 one, recorded some compactness scores. Is that
19 correct?

20 A. Yes, I have.

21 Q. What's that?

22 A. Yes, I have. Pardon me.

23 Q. Right. And so if you'll look at the 2nd
24 Congressional District --

25 A. Uh-huh.

1 Q. -- and you see that in the 2012 redistricting,
2 the Reock compactness score was .3826. Do you
3 see that?

4 A. I do.

5 Q. And you see that that compactness score increased
6 to .4402 in the Adastra plan. Is that correct?

7 A. Yes, it did.

8 Q. In other words, under table 1, the 2nd
9 Congressional District became more compact. Is
10 that correct?

11 A. By one measure.

12 Q. Okay. And if you'll turn to 3rd Congressional
13 District, which is under the Polsby-Popper score,
14 in the 3rd Congressional District in the 2012
15 plan, it was .4584 under Polsby-Popper, and the
16 compactness score increased to .4728 in the
17 Adastra plan under the Polsby-Popper score. So
18 it became more compact in the Polsby-Popper
19 score. Isn't that correct?

20 A. By that measure, it did. Yes.

21 Q. And in your report, you did an afterward (sic)
22 with the efficiency gap. You put it in afterward
23 because you acknowledged that you have to use the
24 efficiency gap -- in a state with only four
25 seats, you have to use it with great caution.

1 Isn't that correct?

2 A. I do agree it should be used with caution.

3 MR. AYERS: No more questions, Professor
4 Smith.

5 THE COURT: Thank you, Gary.

6 MR. WOODS: No redirect, Your Honor.

7 THE COURT: I assume that Professor Smith
8 is free to go, whether he is here by subpoena or
9 not, and no one is going to call him again, and
10 if he wishes to stay, he may.

11 MR. WOODS: He may.

12 THE COURT: Gary?

13 MR. AYERS: He's free to go.

14 THE COURT: Professor, thank you so much
15 for your testimony.

16 MR. WOODS: Or stay.

17 THE COURT: If you'd like to stay, you
18 can, but you are certainly free to go.

19 THE WITNESS: Thank you.

20 THE COURT: Yes.

21 MR. WOODS: Mr. Johnson just went out to
22 get our next witness, Your Honor.

23 THE COURT: You said that to me like you
24 wanted --

25 MR. JOHNSON: I'm getting the witness.

1 THE COURT: I thought maybe they wanted me
2 to chase you down. I wasn't going to.

3 (Pause in the proceedings.)

4 THE COURT: Good morning, ma'am. If you
5 would walk towards me close enough that you and I
6 can see each other's eyes.

7 THE WITNESS: Here?

8 THE COURT: That would be great. Don't
9 sit down. Keep standing for a moment and raise
10 your right hand for me. Lots of rules here
11 today.

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

15 THE WITNESS: Yes.

16 THE COURT: May I encourage you to sit up
17 here in the witness stand, please?

18 THE WITNESS: I can do that.

19 THE COURT: All right. Thank you so much.
20 Please be careful getting up there.

21 MR. JOHNSON: May it please the Court.
22 Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. JOHNSON:

25 Q. Could you state your name, please?

1 A. Lauren Sullivan.

2 Q. And Lauren, where do you live?

3 A. I live in north Lawrence, northern Douglas
4 County, 1731 East 1500 Road.

5 Q. Is that near the airport in Lawrence?

6 A. It is. It's -- yeah. North of the turnpike.
7 And we're south.

8 Q. Now, are you testifying here voluntarily today?

9 A. Indeed I am.

10 Q. Did you drive in from Lawrence for this?

11 A. I did.

12 Q. And you've been waiting outside for an hour.

13 A. Yeah.

14 Q. How long have you lived at the address you just
15 gave us?

16 A. 2011. Summer of 2011.

17 Q. Do you intend to move any time in the foreseeable
18 future from there?

19 A. No.

20 Q. What do you do for a living?

21 A. I am a self-employed career (sic). I work for an
22 specially licensed pharmacy that delivers
23 medicine to people who can't get their medicine
24 by themselves.

25 Q. Okay. Thank you. Are you a registered voter?

1 A. Yes.

2 Q. For how long have you been voting?

3 A. Since I was 18.

4 Q. And for how long have you been voting in
5 Lawrence?

6 A. Well, I've voted in Lawrence for quite a while.
7 I did leave the state for the '90s, came back for
8 grad school, then I left again. So -- I think I
9 was registered in California before I went the
10 back to Lawrence in 2011.

11 Q. But you've been voting in Lawrence since then.

12 A. Uh-huh.

13 Q. Typically, do you vote for the candidates of one
14 party?

15 A. Yes.

16 Q. Which party is that?

17 A. The Democratic Party.

18 Q. Do you intend to continue to vote for Democrats?

19 A. Yes.

20 Q. Have you learned that Lawrence is going to be
21 moved into the 1st Congressional District?

22 A. I've heard that they want to do that.

23 Q. Okay. How do you think that's going to change
24 the impact your vote has?

25 A. I think it will utterly dilute me and the

1 community that I live in, in terms of our
2 interests when you combine it with a large part
3 of this state that has significant concerns of
4 their own that do not match with ours. I'm
5 afraid it will make other people not vote anymore
6 because it won't mean anything. We never get a
7 shot.

8 Q. Are you talking about the so-called Big First
9 Congressional District?

10 A. Uh-huh.

11 THE COURT: Hold on one second. Please
12 say yes or no, ma'am.

13 THE WITNESS: Yes.

14 THE COURT: Thank you.

15 BY MR. JOHNSON:

16 Q. Thank you. And that's western Kansas, for the
17 most part.

18 A. Yes.

19 Q. How do you know western Kansas?

20 A. My father grew up in Almena, Edmond, Norton
21 County. A lot of relatives out there. We spent
22 time out there summers when I was a kid.

23 Q. So you think you know western Kansas pretty well?

24 A. I know that part of it pretty well.

25 Q. Okay. Now, knowing what you know about western

1 Kansas and what you know about Lawrence from
2 living there, are the people in western Kansas
3 and Lawrence concerned about the same things?

4 A. I would say some of the same things. Roads.

5 Q. Are they concerned about different things?

6 A. Other things, absolutely not.

7 Q. What about the economies of the two areas? For
8 example, there's been a lot of testimony about
9 the agricultural nature of the Big First
10 Congressional District. To your knowledge, are
11 there any large farms of the size you see in
12 western Kansas? Any farms like that in Lawrence?

13 A. No. Not that big.

14 Q. And there's a substantial oil and gas industry in
15 western Kansas. Does Lawrence have any oil or
16 gas wells?

17 A. I think I would know if they did.

18 Q. And does it?

19 A. No.

20 Q. Is there an oil refinery in Lawrence?

21 A. No.

22 Q. Does Lawrence sit atop the Ogallala Aquifer as
23 much as western Kansas does?

24 A. No.

25 Q. Does Lawrence have any feed lots?

1 A. No. We just had a big fight over not being
2 surrounded by chickens not too long ago.

3 Q. And that's the Tyson controversy?

4 A. Uh-huh.

5 Q. About Tyson building a -- potentially building a
6 plant near Lawrence.

7 A. Yeah. It was more the chickens that would have
8 to go to the plant that we had a problem with
9 than the plant, but yes.

10 Q. And from your recollection, there were many
11 people in Lawrence who were opposed to that.

12 A. Lawrence, Leavenworth County, everybody. I mean,
13 it was going to have 100-mile radius of --

14 Q. I asked you about feed lots, of which there are
15 many in western Kansas. What about packing
16 houses? Are there packing houses in the Lawrence
17 area?

18 A. Packing houses, more processing. A lot of dog
19 food.

20 Q. Okay. Do you know anyone who commutes to work
21 from Lawrence to Topeka?

22 A. Yes.

23 Q. Do you know anybody who commutes from Lawrence to
24 worker in Hays or Russell?

25 A. No.

1 Q. I'm going to ask you a couple of questions about
2 traveling from Lawrence to Salina. And I picked
3 Salina because that's the home of the Congressman
4 who represents the 1st Congressional District,
5 Tracey Mann. If you wanted to drive to Salina,
6 what would you do?

7 A. I would get on 70. I can see it from my
8 backyard. Drive straight to Salina.

9 Q. Do you know how long it would take you to get to
10 Salina?

11 A. Just short of two hours last time I did it.

12 Q. Okay. And driving to Salina on Interstate 70,
13 that would take you through Topeka. Is that
14 right?

15 A. Uh-huh.

16 Q. And it would take you --

17 THE COURT: Is that yes, ma'am?

18 THE WITNESS: Yes.

19 THE COURT: Yes? Thank you.

20 BY MR. JOHNSON:

21 Q. Take you close to Manhattan.

22 A. Yes.

23 Q. And then Salina is sort of the next big town.

24 A. Pretty much.

25 Q. Okay. But with the 1st Congressional District

1 being sort of extended to Lawrence, if you wanted
2 to stay in the 1st District, driving from
3 Lawrence to Salina, do you agree that you would
4 have to drive north, and then west, and then
5 south --

6 A. Yes.

7 Q. -- to get to Salina?

8 A. I looked at that. Yes.

9 Q. And by my calculations, you would have to drive
10 through -- I actually had to write this down
11 because it was so complicated. Is it correct you
12 would have to drive through -- driving north from
13 Lawrence, Jefferson County, Jackson County,
14 Pottawatomie County, Riley County, Clay County,
15 and Ottawa County, until you could get to --

16 A. Right. If you take 70, yeah.

17 Q. Yeah. Pardon me?

18 A. If you weren't going to take 70, yes.

19 Q. Yeah. And the next one would be Saline County,
20 where Salina actually is located. So you would
21 driving sort of the equivalent of the great
22 circle route to get to Salina.

23 A. Uh-huh.

24 Q. Whereas the straight shot on I-70 would take
25 you -- you would have to leave the 1st

1 Congressional District as you drove west from
2 Lawrence. Is that right?

3 A. Uh-huh.

4 Q. And you -- have to answer yes.

5 A. Yes.

6 Q. Thank you. And then you would enter the
7 second -- pardon me. The first -- the 2nd
8 Congressional District, drive through Topeka.
9 Right?

10 A. Uh-huh.

11 Q. Drive west from Topeka?

12 A. Then back in the first then. Right?

13 Q. And then reenter the 1st Congressional District
14 when you arrived in Saline County. Did you hear
15 about a listening tour that the redistricting
16 committees conducted last year?

17 A. Yes.

18 Q. Did you hear that there was going to be one of
19 those meetings in Lawrence?

20 A. Belatedly, yes.

21 Q. Were you able to go to that meeting?

22 A. No.

23 Q. Why not?

24 A. I don't remember what day it was, but I believe
25 it was work.

1 Q. You couldn't go because you had to work.

2 A. Right.

3 MR. JOHNSON: Your Honor, that's all I
4 have. Thank you, Lauren.

5 THE COURT: Thank you so much. Hold on
6 just a minute, ma'am. Other people get a chance.

7 THE WITNESS: More people.

8 CROSS EXAMINATION

9 BY MR. RUPP:

10 Q. Hello. How are you?

11 A. I'm good. How are you?

12 Q. I'm good. I'm just going to take a moment of
13 your time. Jamie, can you put up any of the maps
14 of Kansas? Doesn't matter which one. Excuse me
15 for just a moment while she does that. And I
16 won't be very long with you. Just be a moment.
17 Appreciate your time here today.

18 A. Thank you.

19 (Pause in the proceedings.)

20 Q. Aadastra 2 map. Buffalo map. There we go. This
21 is a map of the state of Kansas. It's marked as
22 Exhibit 102 -- 002. And it depicts the new
23 enacted plan, but I'm not going to be asking you
24 about the enacted plan. I'm just going to use it
25 for reference of the state of Kansas. And I-70

1 crosses the state from east -- from west to east.
2 Correct?

3 A. And the other way too.

4 Q. And the other way too. Both ways. Thank you.
5 And it does, in fact, connect Lawrence to Salina.
6 Is that correct?

7 A. Uh-huh.

8 Q. You can do a straight shot from Lawrence, to
9 Abilene, to Manhattan, to Hays. All of those are
10 right on --

11 A. Manhattan is actually a little bit north.

12 Q. Manhattan is a few miles in the interstate, but
13 not far. It's essentially on I-70. Salina is on
14 I-70, Hays is on I-70, K State, KU, Fort Hays are
15 on I-70. Correct?

16 A. Uh-huh.

17 THE COURT: Say yes, ma'am.

18 THE WITNESS: Yes. Other than the fact
19 that K State is in Manhattan, and I'd have to get
20 off I-70 with a ways to get there.

21 BY MR. RUPP:

22 Q. On the other hand, if one would look at the
23 northwest corner of Kansas and the southeast
24 corner of Kansas down by Baxter Springs, there's
25 no interstate that covers that diagonal, is

1 there?

2 A. No. I don't see one.

3 Q. You'd be taking two-lane roads and really odd
4 configurations to get from one corner -- assuming
5 that somebody moved the 1st District such that it
6 would cover that diagonal, there would be, what?
7 I'm speculating here, but somewhere in the area
8 of a 10, 11-hour drive?

9 A. I would say longer. But 69 going north into
10 Johnson County, and then 70 over is not that bad
11 a drive.

12 MR. RUPP: All right. I have no further
13 questions. Thank you.

14 THE COURT: Thank you, Tony. Mark?

15 MR. JOHNSON: No redirect.

16 THE COURT: All right. Thank you so much
17 for your testimony today.

18 THE WITNESS: Thank you for having me.

19 THE COURT: Yes, ma'am. Tell me where we
20 are.

21 MS. BRETT: We'd like to take a 10-minute
22 break, and then we will come back and put
23 Dr. Collingwood if that's okay with Your Honor.

24 THE COURT: I was struck deaf for just a
25 moment, Sharon. I don't recall you ever asking

1 to take a break.

2 MR. GABER: It's for me.

3 THE COURT: Let's do 15 so that everyone
4 has a chance to use the restroom or get a drink
5 or whatever they need. So let's be back then at
6 10:40, please.

7 (Short break taken at this time.)

8 THE COURT: Back on the record in the same
9 case that we have been on for the last two
10 and-a-half days. The appearances of the parties
11 are reasonably similar or almost identical, and
12 we are ready for the Plaintiff's next witness.

13 MR. GABER: Good morning, Your Honor.
14 Mark Gaber for the Plaintiff. And we call
15 Dr. Loren Collingwood to the stand.

16 THE COURT: Good morning. Stop right
17 there for the second. And how would you like me
18 to refer to you?

19 THE WITNESS: Loren or Dr. Collingwood is
20 fine.

21 THE COURT: First name if that's okay,
22 Loren.

23 THE WITNESS: I love it.

24 THE COURT: Thank you so much.

25

1 LOREN COLLINGWOOD,
2 having been first duly sworn,
3 was examined and testified as follows:

4 THE WITNESS: I do.

5 THE COURT: Thank you, sir. Please be
6 careful getting up.

7 MR. RUPP: Your Honor, at this point, I
8 would like to renew our Daubert motion, renew our
9 cumulative motion, because you've read his expert
10 report, and he speaks to issues that have been
11 covered in particular by Dr. Miller as to race.

12 The only thing he adds is what's called
13 the ecological inference theory. And I'm going
14 to hand you and counsel what I've marked as
15 Defendant's Exhibit 1068.

16 THE COURT: Thank you, Tony.

17 MR. RUPP: And this is an article written
18 in 2016 by Dr. Collingwood. And I'd turn your
19 attention to the first paragraph under
20 Introduction. Recognizing that under Daubert,
21 there needs to be a standard, and it needs to be
22 recognized as the standard in the industry or in
23 the topic. It says ecological inference is a
24 widely-debated methodology for attempting to
25 understand individual or micro behavior from

1 aggregate data. Ecological inference has
2 come under fire for being unreliable, especially
3 in the fields of biological sciences, ecology,
4 epidemiology, public health, and many social
5 sciences. For example, Freedman explains that
6 when confronted with individual-level data, many
7 ecological aggregate estimates in epidemiology
8 have been proven to be wrong.

9 He then goes on and talks about in the
10 area of elections. And he reads -- or in the
11 third paragraph down, he says this article does
12 not conclude that ecological inference is
13 appropriate or reliable outside the specific
14 domain of American elections. Indeed, scholars
15 in the field of epidemiology and public health
16 have correctly pointed out the limitations of
17 individual-level inference from aggregate data.

18 Your Honor, for all the reasons we talked
19 about and the citations we gave, where he
20 indicated there are no standards in his
21 deposition, we would renew our motion under
22 Daubert and ask that he not be permitted to
23 testify.

24 THE COURT: Thank you, Tony.

25 MR. GABER: Well, Your Honor,

1 Dr. Collingwood can obviously testify about this
2 article. He knows it better than I would. But I
3 would point out that the sentence that counsel
4 just read says that it's not appropriate outside
5 the specific domain of American elections, which
6 I think is the topic that we'll be talking about
7 here today in his testimony. Dr. Alford, who is
8 the expert for the Defendants, routinely relies
9 upon ecological inference, as do courts across
10 the country. Dr. Alford testified in his
11 deposition that Dr. Collingwood's analysis and
12 use of ecological inference was appropriate. I
13 have examined Defendant's expert on several
14 occasions about his use of ecological inference.
15 It is the main source, main methodology that
16 courts across this country use in making racially
17 polarized voting determinations. The Supreme
18 Court of the United States relies upon ecological
19 inference, as do every other court that I have
20 seen in this area of law. And so I think
21 certainly, that's a proper topic of cross
22 examination if counsel wishes, but the idea that
23 in racially polarized voting analysis, the use of
24 the main method that is used to make that
25 analysis would be inappropriate topic of

1 testimony for an expert in Kansas state courts I
2 think would make this court the only court to
3 have reached that conclusion.

4 MR. RUPP: If I may, Your Honor, you've
5 seen the testimony in the deposition. You've
6 seen the article written by this expert, talking
7 about its unreliability. And to the extent
8 you're relying on the US Supreme Court, the US
9 Supreme Court has said the problem is -- with
10 justiciability is there are no standards. And I
11 would submit to you, Your Honor, that this is
12 absolutely consistent with that.

13 THE COURT: Thank you, Tony. Any further
14 response?

15 MR. GABER: Just the conflating of
16 the justiciability of partisan gerrymandering
17 cases that don't rely upon ecological inference
18 analysis. And I'm not aware of a single court
19 that's ever said that a racial discrimination
20 claim is nonjusticiable. I think Defendants have
21 conceded that in their opposition to -- or their
22 motion to dismiss. And I don't think the Court
23 has seen the deposition of this witness.
24 Depositions are hearsay, and it's not part of
25 the record.

1 THE COURT: I have not seen the deposition
2 of this witness, nor would I have looked at it if
3 it would have been available to me at this time.
4 Okay, counsel. So perhaps there is a basis for
5 what I'm about to say: Before Plaintiffs brought
6 this issue to the Court's attention, the Court
7 was not educated in the type of case that is
8 presently before it. The Court has spent the
9 last two weeks trying to become as educated as
10 the Court could, not only on the type of issues
11 that arise legally in these cases, but the Court
12 has also had the opportunity to review a number
13 of expert reports, all in this case. Loren is
14 not the only one who has used ecological
15 inference in their reports. The Court, to some
16 extent, places faith on what Plaintiff's counsel
17 has told me about that -- these reports have been
18 admitted in cases throughout the country.

19 Now, as far as the underlying first
20 objections that the Defendants have made as to
21 the expertise of all of the Plaintiff's experts,
22 this Court finds that Loren is as qualified as
23 any of the other experts that have testified on
24 paper. And I'm sure, counsel, you'll address
25 that after you lay an adequate foundation for the

1 Court to make a ruling about whether or not he
2 should be allowed to testify as an expert in this
3 case.

4 The Court further finds that whether or
5 not ecological inference is reliable outside of
6 American elections doesn't concern the Court
7 here. As far as I'm aware, there will be no
8 testimony, nor if there was, would I probably
9 admit it about epidemiology. It's just not an
10 issue here. And public health. So as to the
11 issue that we -- issues that we are dealing with
12 in this case about whether or not ecological
13 inference is appropriate in making determinations
14 about partisan or racial gerrymandering -- and
15 the Court has been educated by other experts that
16 perhaps there's not a difference between
17 political and racial gerrymandering, although the
18 Court has not finalized its view on that at this
19 point.

20 The Court will overrule your objection,
21 Tony. Of course, I am sure you will cover this
22 area in cross examination with Loren. So having
23 said that, Tony, anything else you want to put on
24 the record?

25 MR. RUPP: No, Your Honor.

1 THE COURT: All right. And counsel, are
2 we ready?

3 MR. GABER: Yes, Your Honor.

4 THE COURT: Shall we?

5 DIRECT EXAMINATION

6 BY MR. GABER:

7 Q. Good morning, Collingwood. I think it's still
8 morning. Can you state your name for the record,
9 please?

10 A. Loren Collingwood.

11 Q. And how are you currently employed?

12 A. I'm an Associate Professor of Political Science
13 at University of Mexico -- New Mexico. Excuse
14 me. And also run a research organization company
15 called Collingwood Research. That's my surname.

16 Q. Are you tenured at the University of New Mexico?

17 A. Yes.

18 Q. And how long have you been a professor there?

19 A. A year and-a-half.

20 Q. And prior to that?

21 A. I was an assistant and Associate Professor at
22 University of California Riverside.

23 Q. And for how long were you a professor there?

24 A. I think about eight years.

25 Q. What are your general fields of academic

1 expertise?

2 A. I do a lot of research, broadly under American
3 politics, a lot of political behavior research,
4 which is trying to understand how voters vote.
5 So voting behavior. Political methodology, a lot
6 of applied statistics. I also increasingly work
7 in racially polarized voting.

8 Q. Do you teach courses on these topics?

9 A. I've covered courses in all of these topics to
10 some degree, yes.

11 Q. And do you write peer-reviewed academic articles
12 on these topics?

13 A. Yes.

14 Q. Roughly how many times have you published papers
15 on these topics?

16 A. In these topics, taken together, I have probably
17 about 39 papers, a couple of books, and then a
18 dozen or so book chapters.

19 Q. Can you just -- and we'll get into this later,
20 but can you briefly describe for the Court what
21 the concept of racially polarized voting?

22 A. It's a very basic concept. Let's take the very
23 basic situation of, say, African American or
24 black voters and white voters, non-Hispanic white
25 voters, or in New Mexico, as we might say Anglo

1 voters. If there's a set of candidates running
2 for office over a series of elections, the black
3 voters disproportionately prefer those voters --
4 or those candidates. So at least a majority of
5 black voters need to vote for a certain set of
6 candidates, and then a majority of white voters
7 would vote for a different set of candidates in
8 the same set of elections.

9 Q. And in your academic research, what methodology
10 do you use to study the presence or absence of
11 racially polarized voting?

12 A. The primary method that I use and the Courts rely
13 upon -- there are other methods as well, but in
14 this case, I'm using what's known as ecological
15 inference or King's EI.

16 Q. And you actually developed a software package
17 that uses EI. Is that right?

18 A. Right. The R software package EI compare -- many
19 people who are doing voting rights around the US
20 working in this line of work in racially
21 polarized voting rely upon this software package
22 effectively that I'm one of the lead authors on.

23 Q. And is that a publicly available software
24 package?

25 A. It is publicly available, yes.

1 Q. Is that the same methodology that you applied in
2 this case? Using the EI compare software?

3 A. Yes, I use the EI compare software.

4 Q. Have you published peer-reviewed academic papers
5 on the EI methodology that you applied in this
6 case?

7 A. Yes, I have.

8 Q. And roughly how many?

9 A. I've used EI compare methodology probably in at
10 least five published papers, and a couple more
11 that are getting ready to be submitted.

12 Q. Have you presented expert reports or testimony in
13 other cases on redistricting using the EI
14 methodology that you applied in this case?

15 A. Yes, I have.

16 Q. And have courts credited your analysis?

17 A. Yes, they have.

18 Q. Now, we have one of the papers here, and I
19 don't -- I don't think you have a copy of it,
20 Dr. Collingwood, but perhaps you are familiar.
21 And I can hand you mine. It's titled EI Compare,
22 Comparing Ecological Inference Estimates Across
23 EI and EI By R x C.

24 THE COURT: Counsel, I'll hand him mine.

25 MR. GABER: Thank you, Your Honor.

1 MR. RUPP: And we did mark that. 1068.

2 BY MR. GABER:

3 Q. Defendant's Exhibit 1068? Now, this is always
4 dangerous, Dr. Collingwood. I have not read
5 this, but I did read the intro paragraph and the
6 conclusion paragraph. Can you tell the Court
7 roughly what the topic of this article was and
8 what the conclusions were?

9 A. It was introducing the initial development of our
10 software. That relies upon a couple known other
11 R software packages. I'm happy to expand upon
12 this as needed for the Court. And the general
13 thrust of a lot of this academic research is
14 essentially to compare different types of
15 methodologies that we use to understand how
16 voters vote using aggregate data. And there's a
17 lot -- so this was one of the initial cuts of
18 that.

19 Q. And in the third paragraph, where it says that
20 the article does not conclude that EI or
21 ecological inference is appropriate outside the
22 context of American elections, I gather that
23 means what it says, that in the context of
24 American elections, it is a reliable methodology
25 to use to assess voting behavior in racially

1 polarized voting.

2 A. Oh, definitely. You have to understand how it
3 works, and you have to understand the ins and
4 outs of the method and the data that you're
5 working with, but it's the go-to standard.

6 Q. And then I just briefly looked at the conclusion
7 paragraph of your article, which is on page -- in
8 the summary on page, I guess, 99 of the
9 contributed research articles journal, maybe?
10 The R Journal? What is the R Journal?

11 A. So this is honestly one of my favorite topics.
12 So I know the Court and everyone else doesn't
13 want to expand too long, but R is a statistical
14 program used by social scientists, statisticians,
15 and other quantitative-inclined individuals, and
16 it's freely available software. And the R
17 Journal basically covers new packages that have
18 been developed by anyone, but typically
19 professors or people working at Google or other
20 software type individuals. And it highlights the
21 development, the new functions, the new -- how to
22 use the functions in it, how to basically use the
23 program. And I published a couple articles in
24 the R Journal.

25 Q. So in the summary paragraph, am I correct that

1 you're noting that you're introducing your new
2 package and discussing in this article how it
3 improves upon the then standard King EI
4 methodology?

5 A. Yes. What it is effectively -- what we're
6 effectively doing is we're looking at the
7 ecological inference methodology, and then
8 comparing -- it's letting, basically, scholars,
9 academics, researchers use the EI methodology,
10 what's known as the ROSE by Collings methodology,
11 put them together, see if they're different, see
12 if they're similar. Then later, we then expanded
13 that to look at other types of methodologies and
14 data inputs that's required in ecological
15 inference.

16 Q. Was the purpose of this article to communicate
17 your view that EI is not reliable for American
18 politics?

19 A. No. That was not the purpose of the article.

20 Q. And is that what the article says?

21 A. Sorry?

22 Q. The article doesn't say that it's not reliable
23 for American politics.

24 A. No. No. That debate on reliability comes in in
25 other fields, other reviewers in different areas.

1 You know, it's an -- ecological inference can be
2 applied anywhere. Right? It doesn't have to be
3 voting. It could be any method. Any subfield.
4 So there's different debates in different areas.

5 Q. You produced all of the data that underlied your
6 ecological inference analysis in this case to the
7 Defendants. Right?

8 A. That's correct.

9 Q. Did any of the Defendant's experts -- you read
10 the Defendant's experts' reports?

11 A. Yes, I've reviewed them.

12 Q. And did you see anything in any of them that
13 suggested there was something flawed with the
14 results of your analysis?

15 A. I would have to review it. Nothing really
16 came -- you know, jumped out at me, I would say.

17 Q. Did you see any sort of attempt to replicate
18 anything that you had done?

19 A. I didn't see any replication.

20 Q. Now, have you testified on behalf of parties
21 challenging maps adopted by Republican
22 legislatures before?

23 A. Yes, I've done that.

24 Q. And have you testified on behalf of parties
25 challenging maps adopted by Democratic

1 legislators before?

2 A. Yes, I've done that.

3 Q. Dr. Collingwood, your CV was produced in this
4 matter. And for the Court's reference, it's
5 Plaintiff's Exhibit 744. And you have a copy in
6 that folder I placed in front of you there. Does
7 the CV include your experience and
8 qualifications?

9 A. It doesn't include my Ironman times, but other
10 than that, yes.

11 MR. GABER: Well, Your Honor, we will not
12 offer Dr. Collingwood as an expert on the
13 Ironman, although I suppose he probably is, but I
14 would like to offer him at this time as an expert
15 in the fields of American politics, voting
16 behavior, race and ethnicity, including racially
17 polarized voting and political methodology.

18 MR. RUPP: Same objections.

19 THE COURT: All right. The Court
20 recognizes him as an expert in those fields and
21 disregards his Ironman time since I have no
22 (unintelligible).

23 MR. GABER: Thank you, Your Honor.

24 THE COURT: You're welcome.

25

1 BY MR. GABER:

2 Q. Dr. Collingwood, could you briefly summarize what
3 the Alonzo Plaintiffs asked you to analyze in
4 this case?

5 A. The exercise or the task is conceptually very
6 straightforward, so I'll stick to that. The
7 first task is to understand whether voting is
8 racially polarized as I have previously defined
9 it in -- could I hold on a second?

10 (Siren sounding.)

11 THE COURT: It will keep coming around a
12 couple times.

13 THE WITNESS: So in Congressional
14 Districts 2 and 3, to examine racially polarized
15 voting among minority voters, broadly speaking,
16 and white voters in that area, and then to make
17 an assessment, looking at election returns --
18 statewide election returns is what I ended up
19 using, subset to those specific areas -- to make
20 an assessment whether the changes to the map,
21 specifically from District 3 to District 2,
22 resulted effectively in a dilution of the racial
23 minority population in that area.

24 BY MR. GABER:

25 Q. And broadly, what did you find? we'll get into

1 the specifics in a bit here, but --

2 A. Right. Broadly, voting is racially polarized
3 between minority voters and white voters in this
4 region.

5 (Siren sounding.)

6 A. It's good. It helps me slow down. And that the
7 movement, particularly of minority voters out of
8 the old CD3 into the new CD2 produces a situation
9 where that group is very unlikely to be able to
10 elect, or less likely than it had been to elect
11 their preferred candidates in the new District 3,
12 and extremely unlikely to elect candidates in the
13 new District 2.

14 Q. Now, we talked a little bit about EI, but I want
15 to -- at the broad level of its acceptance among
16 courts, but I want dig in just a little bit for
17 the Court's benefit to understand what it is.
18 Can you briefly explain what is ecological
19 inference and why it's used?

20 A. Sure. So a little bit more -- we often don't
21 have individual-level survey data at the subset
22 that we're trying to look at. You might get an
23 exit poll at the state. You rarely get an exit
24 poll, say, at congressional districts.
25 Furthermore, a lot of exit polls, especially in

1 places like Kansas relative to, say, New Mexico
2 or California, if you're trying to understand the
3 minority vote, there may not be enough minority
4 voters in that poll to be able to give a reliable
5 assessment.

6 So it's normal practice to then turn to
7 what's known as voter tabulation data or precinct
8 level data. That's the lowest aggregate unit,
9 what may be a neighborhood or a couple
10 neighborhoods put together where you go vote at a
11 poll. Think of it that way. Where data are
12 collected on vote choice. Okay? So we know, for
13 example, in Precinct 1A, wherever we're talking,
14 we know how many voters live there, roughly how
15 many voters voted there, and who they preferred.
16 Well, what we can do then to begin to understand
17 how, say, black voters vote relative to the white
18 voters is we can incorporate either census data,
19 some sort of American community survey data, some
20 sort of voter file data depending on the
21 availability, and we can then begin to understand
22 the demographic nature of that precinct. But
23 it's important to note that the data do come from
24 different sources. Okay? And so for example, we
25 might have a precinct that has 100 people, 75% of

1 the people there are white, 25% are black, and at
2 the same time, maybe Trump gets 75% of the vote
3 and Biden gets 25% of the vote. You could begin
4 to conclude that oh, yeah, that 75% of voters --
5 they're the white voters. But we don't actually
6 know that. Right? It could be the fact that the
7 25 voters that voted for Biden were white, and
8 the 25 black voters actually voted for Trump.
9 Right? And so we're able to take information
10 about different precincts across the geospatial
11 terrain that we're examining. Some are
12 definitely going to have areas that are 80%
13 black, or 70% black, 60% black, and then 90%
14 white. Taken together, we can begin to
15 understand the general patterns of how these
16 different group are voting.

17 Q. And when you run an EI analysis, the output is --
18 is that a point estimate for the percentage that
19 that particular racial group has given to a
20 particular candidate?

21 A. Correct. And that's one of the advancements that
22 ecological inference has, say, on ecological
23 regression or homogenous precincts analysis.
24 That's kind of in line with what I was talking
25 about, is that you get a point estimate. The

1 best estimate, according to the model and
2 according to the data, that voters of, say, one
3 race -- say 85% are voting this way, and 65% are
4 voting the other way based on the racial
5 estimates.

6 Q. And in your experience, courts and academics now
7 recognize EI to be an improvement over the
8 ecological regression and the homogenous precinct
9 analysis that sort of started this.

10 A. I would say that's the case, yes.

11 Q. And -- but in your experience, courts also do --
12 have accepted ecological regression and
13 homogenous precincts analysis as reliable
14 methodologies in addition to EI.

15 A. Yeah. Definitely.

16 Q. Now, turning to page four of your report, which
17 you have a copy of, but which is also Plaintiff's
18 Exhibit 122, can you tell the Court which
19 elections you analyzed in this case?

20 A. All right. So I basically looked at statewide
21 contests between 2016 and 2020, subset down to
22 the specific geographic area that I'm examining.

23 Q. And how many elections is that for that range?

24 A. That's nine.

25 Q. Now, at one point in your report, I believe you

1 mentioned 10 elections. Is that -- was that a
2 typographical error?

3 A. The 10 sounds like even number, so that was a
4 typo.

5 Q. And why did you choose statewide elections?

6 A. The issue with statewide elections is people,
7 especially -- with racially polarized voting
8 analysis, you also typically do what's called an
9 electoral performance analysis, and you typically
10 look at the same set of elections to keep things
11 consistent. Maybe not always, but most of the
12 time. And the issue that we're dealing with here
13 is we have precincts or voting tabulation
14 districts, VTDS for short, that are getting moved
15 out of one area, to another area. And so even
16 though we might have had CD3 before, the new
17 people that have joined into CD3 are voting in
18 different, say, congressional or state senate
19 elections. And so to keep things consistent in
20 terms of electoral environments, we typically
21 look at statewide contests if we're looking at a
22 jurisdiction like this.

23 Q. Is it common in your field for statewide
24 elections to be used in this type of analysis?

25 A. Yes. It's extremely common.

1 Q. And do you find the use of statewide elections to
2 be reliable indicators of future voting patterns?

3 A. Yes.

4 Q. And then why did you choose the 2016 to 2020
5 range?

6 A. There's two reasons: One, in general, you want
7 to use the most proximate round of elections in
8 general because the further you go back, there's
9 demographic changes, other things that can occur,
10 political things can change. And so to get an
11 understanding of how the electorate is now and
12 how it's going to be in the next couple years,
13 the most recent round of elections is generally
14 going to be the most appropriate. But in
15 addition to that, the Secretary of State data
16 past 2016, I don't think I could even get. I
17 remember I looked for it, couldn't get it, and so
18 it was really just unavailable.

19 Q. Now on page four of your report, you present the
20 results of your racially polarized voting
21 analysis for the prior version of CD3. What did
22 you find?

23 A. I find in general, every single contest in the
24 prior version of CD3, racially polarized voting
25 exists, with the exception of the 2018 Governor's

1 race. So in that contest, there's not racially
2 polarized voting as defined. But the other
3 cases, there are. But I should add a caveat to
4 this, which is that relative to other states and
5 places that I do research in, racially polarized
6 voting among white voters in CD3 is not as
7 extreme as what I typically see. And so there's
8 a sizeable population of white voters that are,
9 in fact, voting for the Democratic candidate, or
10 in my language, in my language of racially
11 polarized voting, the minority-preferred
12 candidate.

13 Q. And is that -- those minority of the white voters
14 -- is that what is referred to as crossover
15 voters?

16 A. That's right. At least in the context of my
17 report, a crossover voter, how I conceptualize
18 it, is somebody who is a white voter who is
19 voting for -- voting alongside the majority of
20 the black, Hispanic, and/or minority voters as a
21 whole.

22 Q. And given the high level of racially polarized
23 voting you find for -- or cohesion among minority
24 voters and the amount of white crossover voting,
25 does that make CD3 in the old plan a performing

1 effective crossover district for minority voters?

2 A. Yes. I then looked at the same set of elections,
3 subset down to the old CD3. And the clear
4 majority of the time, I'd have to do the exact
5 county, but it is my report. A clear majority of
6 the time, minority voters are allowed -- not
7 allowed. Enabled to vote and win. Their
8 candidates of choice win.

9 Q. Actually, Mitch, could you pull up on Plaintiff's
10 Exhibit 122, page five, and expand figure 1 if
11 you wouldn't mind. And perhaps the bottom row,
12 the 2016 presidential -- I think that's the last
13 one.

14 Dr. Collingwood, would you mind just
15 giving the Court an example from your figure
16 here? And for the Court's record, each of these
17 figures are also separate exhibits in the record
18 with a slightly higher resolution if the Court
19 has difficulty seeing that. So this one is
20 replicated as Plaintiff's Exhibit 123.

21 But Dr. Collingwood, would you just give
22 an example from the 2016 presidential race of
23 what your results here show?

24 A. Right. And I will take my time, Your Honor, just
25 to walk through. So it's -- there's a lot of

1 numbers. And if you are not as familiar with
2 this, it can be a bit overwhelming. And I would
3 also like the caveat that I spend a good amount
4 of my time trying to generate graphics that are
5 relatively easy to understand. I've moved away
6 from tables as well with the hopes of individuals
7 being able to kind of quickly look at this
8 better.

9 Let's begin on the left side under the
10 column that says white preferred candidate. And
11 so that there, the set of candidates in 2016, the
12 white preferred candidate taken from my table, I
13 think one, would be Donald Trump. And so if we
14 look down at the bottom, you see that the red
15 indicators indicate support among white voters
16 for Donald Trump. And that is 55% of the voters
17 -- of the white voters in CD3 I estimate are
18 supporting Donald Trump in the 2016 presidential
19 election. That's a majority. 34.9% are
20 supporting Hillary Clinton who, in this case, I
21 defined the right column as POC, preferred
22 candidate. That's shorthand for people of color.
23 There's a lot of debate about how we
24 conceptualize that in the race metric, politics,
25 literature, etcetera, but that's the shorthand

1 I'm using here. Only 34.9% of white voters are
2 backing Hillary Clinton, who's the preferred
3 candidate of minority voters.

4 Meanwhile -- and I'm just going to focus
5 down now on the bottom right. My estimates show
6 that 95% of black voters in this district are
7 preferring Hillary Clinton, 85% of Latino or
8 Hispanic individuals are supporting Hillary
9 Clinton, and then taken as a whole, when I do the
10 analysis as minority voters as a whole, I
11 estimate that 85% are backing Hillary Clinton.

12 And then you can move down to the left.
13 The bottom left. You can see there are minority
14 voters who are voting for Trump in this
15 particular contest, but not that many.

16 Q. And then on pages five to six, you present your
17 RPB analysis for the newly enacted version of
18 CD2. Why did you look at CD2?

19 A. So what happened with the movement of the
20 individuals out of old CD3, right, is that
21 looking at I-70, that's where the people got
22 moved from CD3 into CD2. So if it's a case that
23 you move those voters into a new district, and
24 then that district, there's even more crossover
25 voting among white voters, say, maybe a more

1 liberal white electorate, you might then run into
2 a situation where it's actually potentially
3 better for those voters, in terms of the minority
4 population. They will be continuing -- able to
5 elect their candidates of choice. But instead,
6 what we find is that that 66% or so of minority
7 voters that were from -- out of that range, the
8 people who were removed from District 3 to
9 District 2, 66% of those individuals, if that's
10 roughly my estimate, are people of color. They
11 now move into a district where, according to my
12 electoral performance analysis, the chance of
13 them being able to win and combine with, say, a
14 white crossover vote is even lower than what we
15 have seen before.

16 Q. Let's pull up if you would, Mitch, figure 2,
17 which is on page six of the report and is
18 replicated as Plaintiff's Exhibit 124.

19 A. What I would just follow up with too is that
20 usually when I do these analyses and reports, I
21 try to do racially polarized voting assessments
22 in old district, in new district, and that was
23 also one of the exercises that was done here.
24 It's very important to be able to assess the
25 degree of racially polarized voting in different

1 basically, districts.

2 Q. And this -- so what you're looking at on the
3 screen -- this is figure 2 from your report.
4 Does the column on the left reflect what you were
5 testifying, that there is not significant white
6 crossover voting in the new version of CD2?

7 A. So you still have a subset of white voters, as
8 you can see on the red lines off to the right.
9 You're looking at, say, 20 to 30%. But it's -- a
10 lot fewer white voters are crossing over to vote
11 with minority voters in the new CD2. Racially
12 polarized voting in general begins to approach
13 more what I tend to see when I'm doing this
14 around the country.

15 Q. And then on page seven of your report, you
16 provide the results for your racially polarized
17 voting analysis in the newly enacted version of
18 CD3 in the Adastra 2 plan. What did you find in
19 that analysis?

20 A. This analysis is, in fact, somewhat consistent
21 with what I observed in the old CD3. You do see
22 generally, white voters are preferring the
23 Republican set of candidates here. But there is
24 some substantial crossover voting. But you still
25 continue to see racially polarized voting in this

1 area. Would you like to give me -- me to give
2 more details, or --

3 Q. If you want to pick one example. I think maybe
4 the same example, the 2016.

5 A. Right. So in 2016, the estimates are that 56% of
6 white voters are backing Trump in the precinct
7 that outline the new, in this case, CD3, and
8 36.5% are backing Clinton. Meanwhile, 91.3% of
9 black voters are backing Clinton, 84% of Latino
10 voters are backing Clinton, and overall, 71% of
11 minority voters are backing Clinton. So you
12 continue to see very clear patterns of cohesion
13 among minority voting population in this area and
14 cohesion among the white voters, but obviously
15 not as cohesive as the minority population.

16 Q. And we'll get to this in a minute, but the change
17 here was the number -- the raw number of minority
18 voters moved out of the district and the raw
19 number of white voters moved in. Is that fair?

20 A. Yes. That's the change we're observing. I think
21 my calculations are in CD3, the percentage of
22 people that got moved out that are minority are
23 about two-thirds of the people, 66% or so. And
24 the percentage of people that got moved in from
25 the south, it's over 90% non-Hispanic white.

1 Q. And just to clarify, that's the voting age
2 population percentages. Right? 66% VIP?

3 A. I'd have to double check that, but yeah.
4 Population voting -- I did -- I examined both of
5 those.

6 Q. And generally speaking, the total population
7 percentage for minority voters is usually higher
8 than the voting age population because it
9 includes those under the age of 18.

10 A. That's typically the case. And in general the
11 Latino population, which this district does have
12 some of, tends to be younger in the United
13 States.

14 Q. So for each of figures 1, 2, and 3, you provide
15 the point estimates of the vote percentage for
16 each racial group. Is that right?

17 A. Yes. Those are the point estimates.

18 Q. And is there a confidence level associated with
19 these point estimates?

20 A. Yes. The EI command or function that I use does
21 generate confidence intervals.

22 Q. And what is the statistical significance level
23 that it's set to?

24 A. 95% confidence interval, which is the standard, I
25 would say. One of the standards. This is a big

1 debate in political science and social science,
2 generally.

3 Q. The 95% would be at the high end of what it could
4 be set at.

5 A. The sort of norms, I guess I would say, are 90,
6 95, 99. Yeah.

7 Q. Does the -- when you run this, does it generate
8 high and low points within the band?

9 A. Right. So effectively, what it does is it will
10 take the estimates based on simulations that are
11 -- out of, say, 100 simulations, it will take the
12 top 2.5%. So if you sorted all those through --
13 you know, say you're roughly getting 20%. You
14 know, 20% vote one way. You would basically sort
15 all your simulations there and take the low and
16 the high, 2.5% on either side, so together, it
17 makes 5%.

18 Q. And did you determine the confidence intervals
19 for your EI analysis?

20 A. Yeah. They're reported. I gave them to the
21 Defense counsel. I just -- there's a lot of
22 information in this plot. Right? So I've been
23 working on figuring out how to best present the
24 data to courts and stuff like that, and so I like
25 this because I can -- I've been able to automate

1 the placement of those numbers.

2 Q. The numbers being the point estimates?

3 A. Yes. I don't have like a bunch of lawyers who
4 can come in and do all my plots for me for free
5 or whatever.

6 Q. Mitch, could you pull up Plaintiff's Exhibit 375?
7 Dr. Collingwood, is this an example of the data
8 that you produced in this case reporting the
9 confidence intervals for your racially polarized
10 voting analysis?

11 A. Yes. This is an example. So for example here,
12 what the B2 column is showing is that 55.1% of
13 the white voting age population, shorthand for
14 white voters, are backing Trump in 2016. 34.92
15 are backing Clinton. If you push over one, we
16 have the kind of confidence interval or measure
17 of uncertainty, as you will, for the kind of low
18 end of that range of what we kind of have that
19 confidence level in. And then the higher end of
20 the range is the one over, beginning -- and
21 that's like a set of point estimates and
22 confidence intervals for the white voters. And
23 then we move over to the black voting age
24 population, then the Hispanic voting age
25 population. So this is effectively -- we can run

1 the analysis, store the results, spit them out,
2 and then basically, you can -- if you're good at
3 programming and coding, you can then produce a
4 nice map and a set of plots and all that. Yeah.

5 Q. So looking at columns B and C, does -- no. I
6 think I mean C and D. So is this reporting that
7 in 95% of the instances, the result is between
8 54.52% for Trump and 55.52% for Trump?

9 A. That is correct.

10 Q. And the program had settled on 55.1 as the one
11 it's most confident as the estimate of the
12 result.

13 A. That's right.

14 Q. Now, you produced one of these -- or this report
15 with the confidence intervals for each one of the
16 elections that you ran a racially polarized
17 voting analysis on?

18 A. Yes. Every analysis, I produced this, yes.

19 Q. And the header indicates that it's at the 95%
20 confidence level?

21 A. That's correct.

22 Q. In reviewing the confidence intervals, was there
23 anything that jumped out to you as noteworthy or
24 that might change any of your analysis?

25 A. No.

1 MR. GABER: Your Honor, for the Court's
2 record, the confidence intervals associated with
3 Dr. Collingwood's analysis are admitted as
4 Plaintiff's Exhibits 350 through 404. You're
5 welcome to peruse them.

6 THE COURT: Thank you, counsel.

7 BY MR. GABER:

8 Q. Dr. Collingwood, on page seven of your report,
9 you present a performance analysis for the 2012
10 version of CD3 and the newly enacted versions of
11 CD2 and CD3. Can you describe for the Court what
12 a performance analysis is and why that's
13 important?

14 A. Well, in order to understand whether changes to a
15 district might result in a dilution of, say, the
16 minority population's ability to elect candidates
17 of choice, one component of that is to assess
18 whether racially polarized voting occurs, but the
19 other component is really to begin to understand
20 how that affects the vote outcomes. The chances
21 of winning, as it were. I know the Court has
22 heard quite a bit about that, but what is
23 standard is to take statewide elections or
24 potentially elections that occur in a higher unit
25 of analysis than what you're looking at. Okay?

1 And you take statewide elections, as many as you
2 can get -- and in this case I'm looking at
3 general elections -- and I then subset down all
4 of the precincts that fall within the new
5 boundaries for CD3 versus CD2, or the old CD2.
6 Sorry. Old CD3. And then effectively, you sum
7 down a column for candidate A, Trump, candidate
8 B, Clinton, and then you see who would have won
9 in that new boundary, and you do that for all the
10 statewide contests here. In this case, there's
11 nine of them. And you produce a plot here. I
12 don't think that's the plot. Maybe we could pull
13 that up. Yeah. That's great. You produce a
14 plot here that effectively shows -- the green
15 indicates how the white-preferred candidate does
16 in each of those contests. The blue indicates
17 how the minority-preferred candidate does in
18 those contests. And you can just go down the
19 line, look at the differential, make a
20 qualitative assessment, how close that is, how
21 different that is, even take the average
22 difference, or you can count them up and see how
23 much of the times the minority-preferred
24 candidate wins or loses.

25 Q. And just for the Court's record, this is figure 4

1 on page eight of your report that presents the
2 results of your performance analysis.

3 Dr. Collingwood, is it common for experts in your
4 field to rely upon prior election results at a
5 statewide or higher level of analysis than the
6 district at issue to determine the likelihood
7 that a new district will elect a particular
8 candidate?

9 A. Yes, it's very common.

10 Q. And is that a reliable method of predicting
11 future electoral outcomes?

12 A. The best method we have.

13 Q. And in cases in which you have been involved,
14 have courts credited this methodology in making
15 conclusions about future electoral outcomes?

16 A. Yes.

17 Q. Now, when you're researching whether a minority
18 community's voting power has been diluted, is it
19 sufficient to compare the percentage of minority
20 voters in an old district to the percentage of
21 minority voters a new district, and conclude
22 they're roughly equal, and so therefore you can
23 stop your analysis?

24 A. Definitely not.

25 Q. And why is that?

1 A. Well, there's really two major components that we
2 have to deal with here. One is the movement of
3 different populations from one district to
4 another, but then the other -- well, I guess
5 another part of it is whether -- how they're
6 voting, right? Whether they're polarized in
7 their vote. And that then leads to whether the,
8 say, minority population is more or less likely
9 to be able to elect its candidates of choice in
10 one district, the old district, relative to the
11 new district.

12 Q. And what are the sorts of factors that the new
13 district might have that would alter the outcome
14 vis-à-vis the old district for minority voters?

15 A. The main thing would be the degree of racially
16 polarized voting in the new geographic terrain.

17 Q. And would factors like turnout or other electoral
18 conditions affect that as well?

19 A. Right. There's always going to be a whole host
20 of factors. Turnout is definitely a big issue.
21 In a lot of the analyses I do, turnout is
22 quite -- white voting is usually higher than
23 minority voting. Not always, but usually. So
24 that can come into play.

25 Q. Now, staying with figure 4 again, which is page

1 eight of the report -- and it's separately
2 Plaintiff's Exhibit 126. Starting with the prior
3 version of CD3, which I believe it's not -- it's
4 labelled CD3. It's the third column. Is that
5 right?

6 A. Yeah, that's correct.

7 Q. And that's the 2012 enacted version of CD3.
8 Right?

9 A. That's correct.

10 Q. What did your performance analysis for the prior
11 version of the CD3 show overall?

12 A. It's very simple. You can look -- anyone in the
13 courtroom -- they can look at that one. You can
14 look down the column, and in general -- not every
15 single time, but in general, the blue line is
16 further to the right than the green line. So
17 that means there's quantitative evidence here
18 that because the blue line is the
19 minority-preferred candidate, their ability to
20 elect a minority-preferred -- or a candidate --
21 the minority community's ability to elect their
22 preferred candidate is pretty good in the old
23 CD3.

24 Q. In how many of the nine elections did you find
25 that the minority-preferred candidate prevailed?

1 A. I think it's six. Six or seven. Sorry. I have
2 to go down and count. Seven. Yes. Seven.

3 Q. And that's roughly 78% of the elections.

4 A. Yes.

5 Q. And in your view, is that evidence that the 2012
6 version of CD3 was a performing crossover
7 district for minority voters?

8 A. Definitely.

9 Q. With respect to the newly-enacted version of CD3,
10 which I believe is the fourth column in this
11 figure, what did you conclude there?

12 A. Well, again, taking this same kind of logic and
13 going down -- and going down the rows, you see in
14 general, the green line is actually more to the
15 right than the blue line. And I think it's only
16 two or three times is -- are the minority voters
17 effectively -- their preferred candidate is
18 winning in that new district. And I think six of
19 the times, they're losing. So the numbers are
20 essentially flipped.

21 Q. And that's 66% of the time then, roughly -- I
22 guess it might be a little different because
23 there aren't 10, but --

24 A. Yes.

25 Q. Around two-thirds of the time, the

1 minority-preferred candidate will -- is expected
2 to lose.

3 A. That's right.

4 Q. In the new version of CD3.

5 A. That's correct.

6 Q. So the newly enacted version of CD3 in your view,
7 then -- would that not be a performing crossover
8 district for minorities any longer?

9 A. Most probably not.

10 Q. You also present the performance analysis for the
11 prior and the newly enacted version of CD2. Was
12 that because of the shift of Wyandotte County
13 minority voters into that district?

14 A. Correct.

15 Q. And what did you find with respect to the newly
16 enacted version of CD2?

17 A. Other than the 2018 gubernatorial race, which I
18 think has been established as a bit of a unique
19 circumstance, the minority community in CD2, old
20 or new -- the chances of them being able to elect
21 their preferred candidate is very low. Very low.

22 Q. And in fact, taking out the Governor's race --
23 with the Governor's race included, it's 90%
24 roughly loss rate for minority preferred
25 candidates. Is that right?

1 A. Right. And if you set that aside, it's 100%
2 loss.

3 Q. Now, did the movement of all these minority
4 voters into CD2 make it maybe a bit closer to
5 being a performing district for minority voters
6 than the prior version of CD2?

7 A. Well, you can just clearly look. And in fact, it
8 looks like it's worse.

9 Q. For any -- for each one of those, is the minority
10 preferred electoral outcome worse than it was in
11 the prior version of CD2?

12 A. I don't think so. I think it's worse in the new
13 CD2 across the board.

14 Q. That's what I meant to ask you.

15 A. Yeah. That was like a double negative or
16 something.

17 Q. Yes. Sorry. Do you have an understanding of why
18 that's the case, despite the movement of all
19 these minority voters into the district?

20 A. I think it's -- the most likely scenario is the
21 excising of Lawrence out of CD2.

22 Q. And according to your analysis then, is it the
23 case that the Adastra 2 plan provides minority
24 Democrats move to CD2 even less opportunity to
25 elect than the white Democrats who remain in CD3?

1 A. Yes.

2 Q. And significantly less opportunity than the white
3 Republicans across the state.

4 A. Yes.

5 Q. Dr. Collingwood, the last sort of topic of
6 analysis that you provided was pages nine through
7 15 of your report, as well as an errata that is
8 Exhibit 745. And that's your racial
9 gerrymandering analysis. Just briefly, can you
10 explain what the errata -- the purpose of
11 the errata?

12 A. Right. So when I re-replicated or replicated all
13 my analysis, I found in one table, table 4, a
14 very small difference in the count in the
15 different populations estimated -- voting age
16 population. And didn't affect the percentages at
17 all, but I just wanted to make sure that I
18 produced that.

19 Q. And what was the sort of the things you were
20 assessing in this section of your report?

21 A. Here, I wanted to understand tabularly, which is
22 to say table four, as well as graphically,
23 visually, what the changes really looked like.
24 And that is highlighted by figures, really, 7 and
25 8. Right. So figure 7 displays my

1 methodological approach for the Court, and then
2 figure 8 demonstrates kind of the differences
3 between the potentially -- bring up figure 8.

4 Q. Oh. Yeah. Mitch, could you bring figure 8? Oh,
5 I'm sorry. That's from 122. So page 13 of 122.

6 A. Sorry. Maybe I skipped ahead a little there.

7 Q. That's fine. So page 13.

8 A. Fourteen.

9 Q. Oh. Is it 14?

10 A. Yeah.

11 Q. I'm sorry. Yeah. Page 14.

12 A. So the whole section of this report looks at who
13 moved in and who moved out, particularly at CD3.
14 And so there's a couple of squiggly lines
15 separating the bottom part of the geographic
16 region under study, a squiggly line separating
17 the northern part. The part in the middle,
18 that's the area that's kept the same from the old
19 to the new CD2. Beginning at the bottom, what we
20 can see is that the population that was moved in,
21 mostly light color, mostly white voting age
22 population, not a lot of minority population.
23 The part of the district that was moved out, as
24 you can see, very blue. That indicates, you
25 know, the darkest blue is 81% plus minority

1 voting age population in that census block and in
2 that region. And so I concluded, basically, that
3 minority voters have been excised out of that
4 district.

5 Q. And just to correct the record, I think you said
6 CD2. This is CD3. Is that right?

7 A. Sorry. Yes.

8 Q. Is that among the more stark cuts along racial
9 lines that you've seen in your work?

10 A. It's among the highest in my work that I've ever
11 seen.

12 Q. Turning back -- I don't think we need to put it
13 up on the screen. But in terms of the actual
14 demographic changes, am I right that the -- for
15 CD3, the minority population was reduced by 7.4%,
16 and the white population was increased by 7.4%?

17 A. Correct.

18 Q. And then with respect to CD2, the minority
19 population was increased by 9.3%, and the white
20 population decreased by 9.3%. Is that right?

21 A. Correct.

22 Q. And is it your understanding that CD2 and CD3
23 have actually traded places as the least and most
24 minority districts in the map?

25 A. That's my understanding.

1 Q. But again, despite that, CD2 is not a district in
2 which minority voters could elect their candidate
3 of choice in your analysis.

4 A. Correct.

5 Q. And based on your analysis, do minority voters
6 anywhere in the state have an opportunity any
7 longer to elect their candidate of choice?

8 A. The chances are very low.

9 Q. And the corollary, the candidate of -- the
10 opportunity for white voters to elect their
11 candidate of choice has increased from -- in
12 three districts, to in four districts. Is that
13 right?

14 A. Yes. Definitely.

15 Q. Thank you, Dr. Collingwood. I have no further
16 questions at this time. I pass the witness.

17 THE COURT: Thank you.

18 CROSS EXAMINATION

19 BY MR. RUPP:

20 Q. Dr. Collingwood, how are you this afternoon -- or
21 this morning, I guess it still is?

22 A. Well, thank you.

23 Q. I'm going to start with Exhibit 1066 since I
24 raised it in a motion and you've got it in front
25 of you. And we might as well start there. Have

1 you got that in front of you?

2 A. 1068.

3 Q. 1068. Sorry. 1068. Have you got that in front
4 of you?

5 A. Yes.

6 Q. And so if we could go down under introduction,
7 which is -- scroll down a little bit there.
8 First sentence. So it says ecological inference
9 is a widely debated methodology for attempting to
10 understand individual or microbehavior from
11 aggregate data. That is a correct statement,
12 isn't it?

13 A. Yes.

14 Q. And this -- first of all, this is an article you
15 wrote?

16 A. Well, my name is on it, yes. So yes.

17 Q. Yes. There are several other names on it. And
18 if I understand academic writing, usually the
19 first listed name is the primary writer. Is that
20 correct?

21 A. In the field of political science, that's usually
22 the case.

23 Q. All right. Now, in the -- the term widely
24 debated is the opposite of scientifically
25 reliable. Correct?

1 A. Oh, I wouldn't say that.

2 Q. scientifically reliable generally infers commonly
3 accepted in the scientific community. Isn't that
4 correct?

5 A. That sounds about right. Yeah.

6 Q. widely debated means widely debated in the
7 scientific community. Isn't that right?

8 A. I would say widely debated means there's a lot of
9 interest in that topic, and scientists are really
10 trying to spend a lot of effort and -- because
11 they know that this is something that can
12 potentially really help us understand phenomenon.

13 Q. Okay. And so let's go to the second sentence
14 there. It says ecological inference has
15 come under fire for being unreliable, especially
16 in the fields of biological sciences, ecology,
17 epidemiology, public health, and many social
18 sciences. So let's -- that's a pretty broad
19 list, but unreliable -- let's focus on the word
20 unreliable for a second. Unreliable is the
21 opposite of scientifically reliable. Is that
22 correct?

23 A. Sure.

24 Q. Okay. And -- seems obvious. Right?

25 A. Yeah.

1 Q. And so it is unreliable in a whole lot of
2 circumstances: Biological sciences, ecology,
3 epidemiology, public health. Correct?

4 A. Well, what tends to happen is --

5 Q. It's a yes or no question.

6 A. Well, I don't think it's a yes or no answer.

7 Q. All right. Go ahead.

8 A. What tends to happen is someone writes a paper,
9 and they say look at this. These findings don't
10 make sense. And so in this case, that's probably
11 what's happening, is some people are saying in my
12 data, this doesn't work, and then someone else
13 writes a paper that said you put a fire under me,
14 I'm going to bring water to you. And in that
15 case, that person makes a counterargument. And
16 so hence the debate.

17 Q. And then it says in the last one, and many social
18 sciences. Political science is a social science,
19 isn't it?

20 A. That, I can agree with.

21 Q. All right. Very good. Thank you. And then in
22 the second paragraph, it says within the narrow
23 subfield of racial voting patterns in American
24 ecological or -- sorry. Let me read that again.
25 I read it incorrectly. However, within the

1 narrow subfield of racial voting patterns in
2 American elections, ecological inference is
3 regularly used. Let's talk about that for just a
4 second. Regularly used is not the same as
5 scientifically reliable. Would you agree with
6 that?

7 A. I mean, they're two different conceptualizations.
8 But I guess what I would say is that in general,
9 it's the best method we have for studying these
10 types of things.

11 Q. And best method we have does not equate to
12 scientifically reliable. Would you agree with
13 that?

14 A. I definitely would not agree with that.

15 Q. Let's go down to the very last sentence. Today,
16 although there is continued debate among social
17 scientists, the courts generally rely on two
18 statistical approaches to ecological data.
19 Continued debate among social sciences means that
20 there is continued debate as to the reliability.
21 Correct?

22 A. Yeah. I think it is -- there are a lot of people
23 involved in understanding how this works and how
24 we can improve it. But when I usually see the
25 term continued debate, I often in my mind say,

1 oh, people are very interested in this topic.

2 And so that's the way that I read that.

3 Q. All right. So let's go to the second page under
4 debates over ecological inference. First
5 sentence: The challenges surrounding ecological
6 inference are well documented. That's true,
7 isn't it?

8 A. Yes, that is true.

9 Q. Okay. Then it says Robinson, in 2009, pointed
10 out that relying on aggregate data to infer the
11 behavior of individuals can result in the
12 ecological fallacy. And since then, scholars
13 have applied different methods to discern more
14 accurate individual correlations from aggregate
15 data. Correct?

16 A. That's what it says, yes.

17 Q. Okay. And it's been a while since I took
18 philosophy, but fallacy means leaps to the wrong
19 result. Right?

20 A. Right. As I described in my direct, I was
21 describing the nature of the ecological fallacy.

22 Q. Now, in addition to ecological fallacy, you rely
23 heavily -- or your entire report relies on two
24 sets of terms: Ecological inference and racially
25 polarized voting. Is that correct?

1 A. Those are two of the main kind of terms and
2 themes, yes.

3 Q. And the racially polarized voting is terminology
4 from comes from cases involving the Voting Rights
5 Act of 1965 and the 1982 amendments to that act.
6 Correct?

7 A. That's my understanding, yes.

8 Q. Okay. And that's a subject about which you have
9 written. Correct?

10 A. Yes, I have written about that.

11 Q. And in fact, this -- just this winter, you have
12 written about racially polarized voting under the
13 Voting Rights Act. Correct?

14 A. I believe the article was published, but usually
15 we write well before --

16 Q. So let me rephrase it. I don't know when you
17 wrote it, but it was published this winter.
18 Correct?

19 A. Correct.

20 Q. And in that article, you actually address the
21 elements that what you describe as a voting
22 rights advocate must prove in order to prove a
23 case of racially polarized voting under the
24 Voting Rights Act of 1965. Correct?

25 A. That's probably correct.

1 Q. And you write, the focus of such an inquiry is
2 number one, whether the minorities vote
3 differently from the majority, and number two,
4 whether the majority is voting as a block against
5 the minority preferred candidates, thereby
6 preventing minority voters from electing their
7 candidates of choice. Is that your understanding
8 of the elements?

9 MR. GABLER: Your Honor, I would just
10 object. One, it's asking for a legal conclusion.
11 But two, this is not -- there's not a Voting
12 Rights Act Federal claim in this case, so that's
13 not particularly relevant, and it's outside the
14 scope of both his report and the direct
15 examination of what the elements of a Federal
16 Voting Rights Act claim are.

17 THE COURT: Tony?

18 MR. RUPP: Well, I agree there are no
19 standards for this case under the Kansas
20 Constitution. I absolutely agree with that. But
21 the closest thing we get is he's using a
22 terminology that comes from a Federal statute and
23 is trying to apply it here, which I think is
24 wholly inappropriate. But at least under the
25 Federal statute, there is a very high standard

1 before a Plaintiff can succeed on a racially
2 polarized voting case, and he's written about
3 that in articles he's wrote (sic).

4 THE COURT: Those things all may be true,
5 but it's certainly outside the scope of the
6 direct examination. And Loren isn't here to
7 testify about the Voting Rights Act, is he?

8 MR. RUPP: well, he's -- if he's not here
9 to talk about terminology that only comes from
10 the Voting Rights Act case, I don't know what
11 he's here to talk about. Because there is no
12 such standard under Kansas law.

13 THE COURT: well, the objection is
14 sustained. And if you want to ask him specific
15 questions about how this paper that he has
16 written has something to do with his analysis
17 conducted in this case, that may be a proper
18 cross examination.

19 BY MR. RUPP:

20 Q. All right. I will do that. Have you ever
21 written about racially polarized voting as it
22 applies to the Kansas Constitution?

23 A. No.

24 Q. Have you ever seen any standards for what applies
25 to racially polarized voting under the Kansas

1 Constitution?

2 A. No.

3 Q. Have you ever seen any Kansas cases or literature
4 that described racially polarized voting as in
5 any way an element of a Kansas case under state
6 law?

7 MR. GABER: Your Honor, I'm going to
8 object that this calls for a legal conclusion.
9 He's asking him to opine about the meaning of the
10 Kansas Constitution. Dr. Collingwood is neither
11 a lawyer nor an expert on the Kansas Constitution
12 and has not been testifying as such.

13 THE COURT: Tony?

14 MR. RUPP: I'm just trying to figure out
15 why he's here. What is he talking about if none
16 of this relates to Kansas law?

17 THE COURT: Well, some of the questions
18 that you have asked that the Plaintiff is
19 objecting to do call for a legal conclusion on
20 the part of Loren. But I understand what you
21 want to know. Ask him.

22 MR. RUPP: Would you agree --

23 THE COURT: That's objection sustained.
24 I'm sorry. I want the record to be clear.

25 MR. RUPP: All right. Well, I'm assuming,

1 Your Honor, that if he's written something in a
2 scholarly article and he's testifying on that
3 topic here, Your Honor, that that's fair game.

4 THE COURT: Tony, no advisory opinions
5 from the Court, but in general, the concept
6 sounds good to me. But ask the specific
7 question --

8 MR. RUPP: Well, I'm going to ask the
9 question. If you sustain the objection, I'm
10 going to make a proffer of what the testimony
11 would be. Would that work?

12 THE COURT: Absolutely. There it is.

13 BY MR. RUPP:

14 Q. All right. So I'm going to ask the following
15 question: You wrote in the winter of 2022 -- you
16 wrote in an article published in the winter of
17 2022 the following: The lower courts have not
18 established a quantitative standard for what is
19 or is not legally sufficient or legally
20 significant racially polarized voting. The
21 degree of legally significant minority
22 cohesiveness and the level of white voting bloc
23 sufficient to defeat a minority candidate depends
24 on a variety of factual circumstance, meaning the
25 test hardly lends itself to bright line rules.

1 Is that correct?

2 MR. GABER: Your Honor, I just want to
3 object again that this is an article about the
4 standard under the Voting Rights Act, which again
5 is not the claim at issue here and is not the
6 topic of the direct examination, the report, or
7 anything else.

8 THE COURT: Tony, is the report you're
9 reading from going to be admitted into evidence
10 today?

11 MR. RUPP: I can.

12 THE COURT: I'm curious about it. Are you
13 asking for the admission of that? Because it
14 seems like it would be difficult for the
15 Appellate Courts to review unless they have
16 something to look at. So I'm --

17 MR. RUPP: I would be --

18 THE COURT: I'm curious where we're headed
19 with this, ultimately.

20 MR. RUPP: Well, where we're headed with
21 this is the motion to dismiss that's coming at
22 the conclusion of Plaintiff's case.

23 THE COURT: Uh-huh.

24 MR. RUPP: And so the point that I'm
25 bringing up is that he has written on this topic,

1 and he has said there is no bright line rule.
2 And so if we just have him answer if he wrote
3 that and if it's correct, whether we do that in
4 admissible testimony or in a proffer, that should
5 be good enough.

6 THE COURT: All right. Same objection,
7 counsel?

8 MR. GABER: Same objection. And I'd just
9 note that taking that line out of context about a
10 claim that is clearly justiciable when courts
11 apply standards all the time -- I think it should
12 just be added to the analysis.

13 THE COURT: I'm hopeful that you all have
14 made a sufficient record at this point in time.
15 And I'm overruling your objection. But Tony, you
16 asked two very specific questions in what you
17 want to elicit from Loren today. And ask him
18 again unless he remembers, and he can answer them
19 if he's able to do so.

20 MR. RUPP: All right. And I've got prior
21 deposition testimony, so I know what his answer
22 is. But -- and then you write --

23 THE COURT: Educate me.

24 BY MR. RUPP:

25 Q. All right. And I'm just asking the following

1 question from something that you've written. The
2 lower courts have not established a quantitative
3 standard for what is or is not legally sufficient
4 racially polarized voting. The degree of legally
5 significant minority cohesiveness and the level
6 of white voting bloc sufficient to defeat a
7 minority preferred candidate depends on a variety
8 of factual circumstances, meaning the test hardly
9 lends itself to bright line rules. Is that what
10 you've written?

11 A. That's in the paper, yes.

12 Q. Thank you. In terms of local elections, you'd
13 agree that you don't have -- you don't have
14 personal knowledge of how anybody voted.
15 Correct? In Kansas.

16 A. Well, I believe the person who took the stand
17 just before me said she voted Democrat.

18 Q. All right. You know how one person voted.

19 A. Yes.

20 Q. And you don't have any exit polls to work from.

21 A. I did not examine exit polls in this analysis.

22 Q. So you have used another term. I guess there's
23 one other term you've used. In addition to equal
24 ecological inference and a voting rights term
25 called racially polarized voting, you've used a

1 term called minority preferred candidate.

2 Correct?

3 A. Yeah. That's a standard usage in the field of
4 racially polarized voting.

5 Q. Again, a standard Voting Rights Act term.

6 A. Or if you're just assessing whether there's
7 racially polarized voting.

8 Q. You didn't consider congressional races, as I
9 understand it. You've explained that. Correct?

10 A. Yes, we went over this in our deposition.

11 Q. Yeah. But this is the first time the Judge will
12 have heard it.

13 A. Correct. Sorry.

14 Q. And you did not look at any political primary
15 races. Correct?

16 A. That's correct.

17 Q. So you can't study racially polarized voting, for
18 example, in Democratic primaries. Correct?

19 A. One could study that, but that wasn't an exercise
20 I did here.

21 Q. All right. You have studied racially polarized
22 voting in primaries in other states. Correct?

23 A. Yes.

24 Q. And in your report here, you're using the term
25 minority preferred candidate synonymously with

1 Democrat. Correct?

2 A. Observationally, minority preferred candidates
3 are Democratic candidates in this analysis.

4 Q. And there's nothing you're testifying to here
5 that implies any -- or that states any racial
6 animus. Correct?

7 A. I don't know whether voters or legislators hold
8 racial animus. That's correct.

9 Q. In this case, you were contacted by the Campaign
10 Legal Center, where Mr. Gaber works. Correct?

11 A. Yes, that's correct.

12 Q. And you've worked with them three or four times
13 before. Correct?

14 A. That sounds about right.

15 Q. You were asked to opine on racially polarized
16 voting based on the 2012 congressional districts.
17 Correct?

18 A. I opined on the Congressional District 3, 2012.

19 Q. Right. But you looked at the racially polarized
20 voting throughout Kansas, including on the 2012
21 racial -- or congressional districts. Correct?

22 A. Only in that area.

23 Q. Yeah.

24 A. Yeah I didn't look at the rest of Kansas.

25 Q. Well, you concluded across the state, didn't you,

1 that every vote, every election has racially
2 polarized voting in Kansas. Correct? Every --

3 A. Yes.

4 Q. You looked at nine statewide elections. Correct?

5 A. Yes. I looked at nine statewide elections,
6 subset to specific areas.

7 Q. Right. And you found racially polarized voting
8 in every one of those elections except the 2018
9 Governor's race. Correct?

10 A. That's correct.

11 Q. And all of those elections were under the map
12 created by a three-Judge panel of the Federal
13 Court in Kansas. Correct?

14 A. That's my understanding.

15 Q. It wasn't created by a Republican legislature.
16 Correct?

17 A. I don't know the details of the creation of the
18 map that well.

19 Q. Now, you're not contending that the race of any
20 of the candidates is driving any of these
21 results. Is that correct?

22 A. I don't know for sure, but I think the candidates
23 that I'm looking at are white. Yes. In this
24 case.

25 Q. And you're not contending -- so you're not -- so

1 I guess the -- well, strike that. And with
2 regard to Congressional District 3, you did --
3 your contention is that racially polarized voting
4 is present in old CD3 that was approved by the
5 Federal Court. Correct?

6 A. Correct.

7 Q. And the new CD2 has the same percentage of
8 minority voters and majority voters. Correct?

9 A. No, I don't think that's true.

10 Q. Well, what is the -- essentially the same
11 percentage. Correct?

12 A. Could you restate the question?

13 Q. Sure. New CD2 has the same -- roughly the same
14 percentage of minority voters as old CD3 did.

15 A. That's what you're asking. That sounds about
16 right, yes.

17 Q. Yep. And the difference, in your view, between
18 old CD3 and new CD2 is not the percentage of
19 minority voters, but rather the -- in your view,
20 the white voters -- how the white voters vote.

21 A. That is one of the major factors, yes. That's a
22 big distinction.

23 Q. Right. So the percentage of minority voters, old
24 CD3, new CD2 is the same. And the contention
25 here is that because the white voters, in your

1 view, vote differently, that that's somehow a
2 problem.

3 A. Well, what you're doing is you're taking a
4 district that's quite likely to perform for the
5 set of minority voters that live in that
6 district, such that they can elect their
7 preferred candidate, and you're moving that set
8 of voters -- specifically that set of voters into
9 another district where the chances of them being
10 able to elect their candidates of choice really
11 reduces to a very low level.

12 Q. Now, within CD3, the old CD3, you have not formed
13 an opinion that the reason white voters in old
14 CD3 voted more often for the Democrats had
15 anything to do with race. Correct?

16 A. No, I haven't offered an opinion on that. I have
17 my own personal views. Right? But I don't think
18 that's admissible.

19 Q. I would agree.

20 A. Yeah.

21 Q. You haven't studied, for example, the role that
22 school finance may have played in Johnson County,
23 Kansas in 2018 elections.

24 A. Correct.

25 Q. You haven't studied, for example, the fact that

1 the -- what impact the reaction to Donald Trump
2 and his behavior may have played in the 2018
3 elections or the 2020 elections. Correct?

4 A. Well, I have written about vote change between
5 the Obama years and Trump in an academic article
6 that maybe could be relevant here, but I didn't
7 write about it in the report.

8 Q. Yeah. You have not written, for example -- I
9 mean, you've indicated to me, I think, in our
10 deposition that all politics is local. Correct?

11 A. That was a jovial moment based on our common love
12 of Tip O'Neill, but I think local politics can
13 matter, yes.

14 Q. And so for example, if, in three congressional
15 districts, the Democratic candidates do not have
16 an endorsement from the United States Chamber of
17 Commerce, commonly associated with the Republican
18 Party, and one of the candidates does have an
19 endorsement from the United States Chamber of
20 Commerce, like Representative Davids did in 2020,
21 that might make a difference with moderate
22 Republican voters, might it not?

23 A. One would require a study and measurement to be
24 able to support or refute that claim.

25 Q. And you haven't done that study.

1 A. Right. But I could speculate about other topics
2 that could be driving that as well.

3 Q. And I'm not asking you to speculate. Now, in
4 terms of many cases that involve racially
5 polarized voting deal with what's called the
6 majority-minority district. Are you familiar
7 with that?

8 MR. GABER: Objection. Your Honor, again,
9 this is an inquiry into the Voting Rights Act
10 requirements for an effect claim under Federal
11 law, which is entirely different than the claim
12 that is brought in this case and that is the
13 topic of Dr. Collingwood's direct and expert
14 report.

15 THE COURT: Tony?

16 MR. RUPP: Your Honor, I couldn't agree
17 more that there are no standards in this case.

18 MR. GABER: Just for the record, Your
19 Honor, that's the second time that counsel has
20 said that. That's actually not what I have said.
21 What I've said is that's a standard under the
22 Federal Voting Rights Act.

23 THE COURT: Yeah. Tony, if you could keep
24 your comments to a response to the objection,
25 without editorial, I'd appreciate it.

1 MR. RUPP: All right. The terminology
2 that he uses, racially polarized voting, minority
3 or ecological inference, are all terms that
4 relate to the Voting Rights Act. He's not
5 testifying under Kansas law, but there are no
6 definitions of what the burden of proof is here.
7 We're going to find out at some point, I guess,
8 what it is. The Voting Rights Act does deal with
9 trying to protect majority-minority voting
10 districts. And that's his history. And so I was
11 going to ask him about whether there are
12 majority-minority voting districts in Kansas.

13 THE COURT: Thank you, Tony. The
14 objection is sustained.

15 BY MR. RUPP:

16 Q. You've indicated that you do believe that in
17 Congressional District 3, the Republican
18 candidate will win about six out of eight -- or
19 six out of eight times. Correct?

20 A. That's the analysis, yes, that I did.

21 Q. In CD3, under the Court-approved map, the
22 Republican won three out of five times. Correct?

23 A. I think based on our conversation a couple weeks
24 back, you had indicated that in the congressional
25 district among congressional candidates. But I

1 didn't, you know, analyze those elections
2 specifically.

3 Q. All right. Are you aware of any times when the
4 Democratic candidate has won in the 2nd
5 Congressional District in the 10 years under the
6 Court-approved plan?

7 A. The 2nd District or the 3rd District?

8 Q. Second.

9 A. No.

10 Q. Now, I don't want you to show it yet, but I want
11 you to have the Princeton Gerrymandering Project
12 ready.

13 MR. GABER: Your Honor, I just want to
14 note that the Plaintiffs have an objection.

15 MR. RUPP: That's why I'm not asking it be
16 shown.

17 MR. GABER: Okay.

18 THE COURT: I'll take that to mean you
19 resolved your own differences.

20 MR. RUPP: No. No. I'm just -- I haven't
21 offered it as an exhibit. I haven't offered it
22 as an exhibit yet. It hasn't been admitted yet,
23 so I'm not going to put it on the screen, but I
24 am going to lay the foundation for placing it on
25 the screen.

1 THE COURT: Gotcha. Counsel didn't make
2 an objection. You two had a bit of a colloque,
3 and --

4 MR. RUPP: Oh, yes. I knew where he was
5 going. He was going to say don't publish it
6 until I've -- until you've admitted it.

7 THE COURT: Fair enough. Thank you, Tony.

8 BY MR. RUPP:

9 Q. You consider the Princeton Gerrymander Project to
10 be reliable. Correct?

11 A. Yeah. Given the scope of what their goals are,
12 yeah, it's good.

13 Q. In fact, you've said it's one of the best.

14 MR. GABER: Objection, Your Honor. To the
15 extent that's from the deposition testimony, I
16 think it was a reference to Princeton University
17 being one of the best universities, which we'll
18 all agree. But the question was not whether
19 Princeton Gerrymandering Project was the best.

20 THE WITNESS: Yes.

21 MR. RUPP: Well, he's already testified
22 that it's reliable.

23 THE WITNESS: Yes. But I think you asked
24 me about the Princeton University or political
25 science department, and I said they're one of

1 the best.

2 Q. Yes.

3 A. In terms of the listening (unintelligible).

4 THE COURT: Let's make sure the record's
5 clear here. So at deposition, you asked Loren
6 about whether or not Princeton University was an
7 outstanding institution or not.

8 MR. RUPP: No. No. No.

9 THE COURT: But not about this project.

10 MR. RUPP: Absolutely wrong.

11 THE COURT: Okay.

12 MR. RUPP: I asked him the following
13 questions:

14 MR. GABER: Well, now I'll object, Your
15 Honor, to improper impeachment.

16 THE COURT: Counsel, this is a simple
17 question, and I just need a simple answer to the
18 thing. So Loren indicated that this Princeton
19 project that you referred to was outstanding.

20 MR. RUPP: Yes.

21 THE COURT: In deposition.

22 MR. RUPP: Well, he said it right in
23 there. He said it's reliable within the context
24 of what it is.

25 THE COURT: Well, reliable and outstanding

1 are two different things, but let's don't argue
2 about that now. So counsel, your objection, if I
3 get this, is that Tony is misstating what
4 happened at the deposition, and that Loren said
5 the university itself, perhaps the science
6 department, was outstanding. Is that the bone of
7 contention here?

8 MR. GABER: Well, that was -- that's part
9 of the objection. There will be more objections
10 to this line of inquiry. But at the moment, the
11 objection was to misleading the witness as to
12 what he had said.

13 THE COURT: Okay. Well, counsel, I have
14 no idea of knowing what the question was.
15 Loren's answered it to some extent. But it
16 doesn't appear to me we have an agreement about
17 what the question in the deposition was. So
18 let's start that whole line of questioning all
19 over, and then I'll rule on objections as we go
20 if you wish.

21 BY MR. RUPP:

22 Q. All right. So I think I asked, and you answered
23 that you consider the Princeton Gerrymander
24 Project to be reputable. Correct?

25 A. Correct.

1 Q. And within this, it's put out by the Political
2 Science Department at Princeton University.
3 Correct?

4 A. That sounds right. I think it's -- there might
5 be maybe Dr. Wang, who is a physicist, might be
6 associated with it. I know he does a lot of
7 election stuff.

8 Q. And do you consider the Princeton Political
9 Science Department, where they publish the
10 Princeton Gerrymandering Project, to be one of
11 the best. Correct?

12 A. Yes. It's a great department.

13 Q. And you consider the analytics on this website to
14 be reliable. Correct?

15 A. Well, given the data that they're putting in and
16 that they're presenting on that specific data,
17 sure. There's no reason to think that that's not
18 useful or informative to evaluate districts.

19 Q. So assist the Court in knowing what I'm -- where
20 I'm going, may I publish the Princeton
21 Gerrymander Project, which is an exhibit?

22 THE COURT: Well, since it has not been
23 admitted, the answer is no.

24 MR. RUPP: Okay.

25 THE COURT: So now let's figure out -- are

1 you asking for it to be admitted?

2 MR. RUPP: I am asking -- I suppose you
3 need to see it before you can decide whether to
4 admit it or not.

5 THE COURT: Well, I don't, actually.

6 MR. RUPP: All right. If you don't.

7 THE COURT: What I need to know is what it
8 is.

9 MR. RUPP: Okay.

10 THE COURT: And how it is relevant and
11 material to this case.

12 MR. RUPP: All right. So the Princeton
13 Gerrymandering Project is a project that uses
14 Princeton's analytics to analyze the -- similar
15 to team score that you've seen before, as to
16 whether the 3rd Congressional District leans
17 blue, is competitive, or leans odd. And it
18 shows, Your Honor, that the Princeton
19 Gerrymandering Project concludes that it leans
20 deep.

21 MR. GABER: Your Honor, I would object
22 he's now self-publishing the exhibit that's not
23 been admitted into evidence and that is subject
24 to several objections. But I don't want to
25 interrupt too much.

1 THE COURT: Yes. And thank you. And
2 counsel, all I wanted to know is what the project
3 is. I think I have a grasp that it does cover
4 CD3 in Kansas.

5 MR. RUPP: Correct.

6 THE COURT: The old, or the new?

7 MR. RUPP: The new.

8 THE COURT: All right. And is there
9 someone here, Tony, who is going to lay some
10 foundation for that document?

11 MR. RUPP: He just did.

12 MR. GABER: Your Honor --

13 THE COURT: Did he publish the document?

14 MR. RUPP: He did not publish the
15 document, but he said it's reliable. We've heard
16 in this case from lots of experts as to documents
17 that they relied on, that they consider reliable
18 in the field, and experts are always allowed to
19 rely on documents in the field.

20 THE COURT: Absolutely. No argument.
21 Nobody's objected to it. Now there's objection
22 to this Princeton Project. So what's the nature
23 of the objection?

24 MR. GABER: It's several bases, Your
25 Honor: One, the foundation basis that you have

1 just mentioned. Dr. Collingwood was never shown
2 this analysis. He was asked in a deposition
3 whether or not Princeton and the Princeton
4 Gerrymandering Project were reputable entities.
5 He was not shown the analysis. He was not shown
6 the data that was used underlying the analysis.
7 He didn't cite the Princeton gerrymandering
8 report in his report. He's not, as far as I
9 know, ever seen it. We have no witness here who
10 has seen it. It is the case that Defense is
11 attempting to have an undisclosed expert, I
12 suppose, vis-à-vis this exhibit from the website
13 of the Princeton Gerrymandering Project. There's
14 no one here for us to examine about what these
15 data inputs are, what elections are analyzed in
16 that analysis. And so in addition to all of
17 that, it's hearsay that he's offering for the
18 truth of the matter asserted. And there's no
19 witness to testify about it.

20 THE COURT: Thank you, counsel. Tony,
21 without telling me what is in the project,
22 respond to that objection, if you wish. If you
23 want to tell me more than you already have.

24 MR. RUPP: Your Honor, I think he has laid
25 the foundation, in the questions and answered

1 that I've already asked him. If the objection is
2 sustained for the purposes of the Appellate
3 Court, I would like to make a proffer.

4 THE COURT: Well, the objection is
5 sustained. Now, the proffer that you want to
6 make, I take it, is to tell what the results of
7 the --

8 MR. RUPP: To show the exhibit and have
9 it -- so that we can take that up to the
10 Appellate Court.

11 THE COURT: Counsel?

12 MR. GABER: Well, Your Honor, I don't
13 think this would be a proffer of testimony
14 vis-à-vis Dr. Collingwood. If they -- they have
15 offered it as an exhibit. If they want to object
16 to Your Honor's relevant -- to Your Honor's
17 ruling on the objection, they can certainly
18 appeal that issue, and the Appellate Court would
19 be able to look at the exhibit that they say you
20 should not have sustained an objection to. I
21 don't think it's a proper proffer of testimony
22 with a witness who's never seen the document, is
23 not an expert on that document, and was not asked
24 questions about it on direct and didn't write
25 about it in his report.

1 THE COURT: Tony, seems like that's how it
2 normally works.

3 MR. RUPP: Well, normally it -- normally
4 in any case that I've been familiar with, if an
5 exhibit is excluded from evidence and the lawyer
6 makes a proffer, the exhibit is considered so
7 that there's a document that can go up to the
8 Appellate Court for -- I mean, you wouldn't
9 consider the document in making your decision.
10 That's the purpose of excluding it. But it would
11 be provided to the Court for purposes of the
12 appellate record. Because how can the Court
13 decide whether it's an appropriate decision
14 without knowing what the document is?

15 THE COURT: In my trial experience, as
16 limited as it may have been, the proffer is about
17 testimony. Not about documents. And you want to
18 proffer in a document that you can't lay any
19 foundation for. And if the Appellate Courts
20 determine that the District Court has erred on
21 the side of allowing this Princeton review in,
22 then they can certainly ask you to submit it. So
23 your proffer is denied.

24 MR. RUPP: Thank you, Your Honor. I have
25 no further questions of this witness.

1 THE COURT: Thank you, Tony. Following
2 up?

3 MR. GABER: Yes, Your Honor.

4 THE COURT: All right.

5 MR. GABER: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. GABER:

8 A. Dr. Collingwood, I have a few questions for you.
9 First, do you still have a copy of that article
10 -- the EI compare article? I forget the
11 Defendant's exhibit number.

12 A. Yes, I have it.

13 Q. I think it's 1068, maybe?

14 A. Something like that. Yes.

15 Q. If you could turn -- the bottom of page 93, and
16 to the top of page 94, you talk about an analysis
17 done by Owen and Groffman. Do you see that?

18 A. Yeah.

19 Q. And then on the top of page 94, what do you --
20 can you read for the Court the first sentence --
21 the first full sentence on the top of page 94.

22 A. In extensive review, Owen and Groffman conclude
23 that despite the valid theoretical concerns,
24 linear ecological regression still holds up and
25 provides meaningful and accurate estimates of

1 racially polarized voting.

2 Q. Dr. Groffman is one of the -- well, he's sort of
3 the grandfather of this concept. Is that
4 correct?

5 A. He very well may be. I think he was an expert in
6 Thornburg v Gingles. Yes.

7 Q. Do you have any reason to believe that
8 Dr. Groffman's views on measuring racially
9 polarized voting would be unreliable or
10 inaccurate?

11 A. Dr. Groffman is potentially the most established
12 person in this entire field.

13 Q. Now, you were asked a bit about racially
14 polarized voting, and I just want to clarify
15 things a bit. Is it the case that the concept
16 that racially polarized voting is a concept?
17 It's a sort of a fact that you analyze to
18 determine whether or not it exists?

19 A. Yeah. It's a very basic concept.

20 Q. And that's that voters of one racial group vote
21 differently than voters of another racial group.

22 A. Correct.

23 Q. That's not a legal test. It's a fact.

24 A. Correct.

25 Q. And is that -- in the academic field, is that a

1 fact that you routinely analyze?

2 A. Probably every single day.

3 Q. Now, when you're setting out to analyze the
4 presence or absence of dilution of minority
5 votes, is the first step determining which
6 minority groups are voting for which types of
7 candidates?

8 A. Yes.

9 Q. And that's, in fact, what you did in your report
10 here. You set out to first see whether or not
11 minority -- black, Hispanic, and other minority
12 voters vote differently than white voters. Is
13 that right?

14 A. That's the crux of the report.

15 Q. And then once you've determined that, the purpose
16 then was to see, okay, they vote differently.
17 Let's see how they're affected by this vis-à-vis
18 their electoral performance analysis. Correct?

19 A. That's correct.

20 Q. And now this type of methodology -- would you say
21 that this is standard academic methodology for
22 determining whether or not a minority group's
23 votes are being diluted?

24 A. Definitely.

25 Q. And you were asked several times about the voting

1 Rights Act. In your experience as a testifying
2 expert, is determining this question also
3 relevant to other types of claims? Say
4 Constitutional claims?

5 A. Yes.

6 Q. Because it's a fact about whether or not racial
7 groups are having disparit impact.

8 A. Yeah.

9 Q. Now, in the second article that you were asked
10 about and that you were asked about on your -- in
11 your deposition, one of the sentences when you
12 talked about some uncertainty or some
13 disagreement among the Courts or a lack of
14 settled standards under the Federal Voting Rights
15 Act was that -- and I'm not going to get the
16 exact words right, but I think it was along the
17 lines of courts struggle or courts have different
18 views on legally significant racially polarized
19 voting, and it relies upon the local conditions
20 in a given case. Is that right? Is that a fair
21 summation?

22 A. Yeah. Yes.

23 Q. And you've done voting rights analysis in several
24 different cases. Is that right?

25 A. That's correct.

1 Q. And in each case, have you examined the local
2 conditions to reach your conclusions in that
3 particular case?

4 A. I mean, the local conditions by looking at
5 precinct data and local demographic patterns?
6 That's the core of what I do.

7 Q. And have you needed to have a bright-line test in
8 order to examine local conditions and see how
9 facts on the ground affect a particular case?

10 A. No.

11 Q. And in fact, in this case, do you -- your whole
12 report is an analysis of the local conditions in
13 Kansas. Is that right?

14 A. Well, there -- it analyzes racially polarized
15 voting using data from those areas and electoral
16 performance of data from those areas and
17 basically establishes that there's racially
18 polarized voting and that in general, minority
19 voting in the region are now less likely be able
20 to elect candidates of choice.

21 Q. And I think we talked a little bit about how the
22 level of polarization that might dilute a
23 minority group's votes would depend upon a sort
24 of functional analysis of the particular
25 district. Is that right?

1 A. This, I believe, is the first time you've said
2 functional analysis. So just for the Court, I
3 think what you mean is also an electoral
4 performance analysis. They're kind of
5 interchanged in the -- I guess the lingo. But
6 yes, that would require that.

7 Q. And that's why you did that performance analysis
8 of CD2, and that's when you discovered that
9 there's a very low level of white crossover
10 voting and that that effects the ability of
11 the minority candidates to elect their candidate
12 of choice.

13 A. Yes.

14 Q. Now, you said observationally in Kansas, minority
15 preferred candidate is synonymous with the
16 Democratic candidate. Do you recall that?

17 A. Yes.

18 Q. Now, that does not necessarily mean that minority
19 Democratic voters were treated the same way as
20 white Democratic voters in this map. Is that
21 true?

22 A. That's correct.

23 Q. And in fact, your analysis showed that minority
24 Democrats are treated much less favorably than
25 white Democrats by the Adastra 2 plan.

1 A. Right. What the plan does is it extracts black,
2 Hispanic, and racial minorities in general
3 disproportionately from the old CD3. Perhaps
4 they're Democrats again run if we run into an
5 ecological situation, but disproportionately,
6 Democrats. It is possible that the plan could
7 instead have extracted out, say, white Democrats
8 or white Republicans.

9 Q. But they remained in that district.

10 A. Yes.

11 Q. And CD2 offers minority Democrats a substantially
12 lower likelihood of electing a preferred
13 candidate than CD3 would offer white Democrats.

14 A. Without a doubt.

15 Q. And in either event, both of them -- they're not
16 likely -- they're less likely than not to lose.
17 I did like three double negatives there, so I
18 don't even want you to answer that question.

19 A. Yeah.

20 Q. Your analysis showed that in both CD3 and CD2 in
21 the new plan, the Democratic candidate is likely
22 not to win.

23 A. That's correct.

24 Q. But the magnitude or the chance of that happening
25 on an occasion is much lower for the minority

1 Democrats who have been moved into now the
2 largest minority district in the state, CD2.

3 A. That's correct. So to the extent that there is a
4 chance, as it were, a chance in CD3, it's the
5 white Democrats who get that chance. Not the
6 minority Democrats who get the chance to elect a
7 candidate of choice, yes.

8 Q. And you were also asked about racial animus. You
9 recall that?

10 A. Yes, I do.

11 Q. And whether or not there was racism or racial
12 animus, your report shows that legislators moved
13 that group black and Hispanic Democrats and left
14 behind that group of white Democrats.

15 A. Yeah. It's very evident, based on my figures.

16 MR. GABER: Thank you, Your Honor. No
17 further questions.

18 THE COURT: Thank you. Tony?

19 MR. RUPP: Nothing further.

20 THE COURT: Assume he's not here on a
21 subpoena.

22 MR. GABER: He is not. No, Your Honor.

23 THE COURT: Okay.

24 MR. GABER: He's here willingly.

25 THE COURT: No one anticipates calling

1 Loren again, I take it. Thank you for your
2 testimony today, sir. You're welcome to go, free
3 to stay. Whatever suits you. Hand me back that
4 exhibit.

5 THE WITNESS: I'm so sorry.

6 THE COURT: That's all right. Thank you.
7 I do have an extra copy if you want one.

8 THE WITNESS: No. I got them on the wall
9 back home.

10 THE COURT: Gotcha. All right.

11 MS. BRETT: Your Honor, may I clean up the
12 record on something from the end of the day
13 yesterday?

14 THE COURT: Let's let Loren get squared
15 away here, and then answer is yes. All right.

16 MS. BRETT: Thank you. Just -- we went
17 over demonstratives that were moved into evidence
18 yesterday at the end of the day. I just wanted
19 to give a printout copy to the Court and to
20 Defense. And I just want to explain which --
21 what each demonstrative is briefly, as well as
22 the PX number that's now been assigned to it.
23 And I understand these have been filed on Eflex
24 at this point. So they are on the Court's
25 docket, but just to walk through for the

1 appellate record.

2 THE COURT: All right.

3 MS. BRETT: So what's now marked as
4 Plaintiff's Exhibit 749 is, I believe, a -- one
5 of the charts from Dr. Warshaw's -- a chart from
6 Dr. Warshaw's report. PX 750, also a --

7 MR. FREEDMAN: So this is from his chart,
8 taking up the other plan. So this is the first
9 one he did -- Warshaw did. That is the second
10 one he did.

11 MS. BRETT: But another chart from
12 Dr. Warshaw.

13 MR. FREEDMAN: It's a modified version
14 of -- yes. From his --

15 MS. BRETT: From his direct exam. PX 751
16 is a photograph that I believe was used in
17 Senator Corson's direct exam. PX 752. This one
18 I know because it's my demonstrative -- was a map
19 used in Commissioner Portillo's direct exam. PX
20 753 is the mushroom rock two map, which was used
21 in Representative Burroughs' direct exam. And
22 then PX 754 is a chart that was in Dr. Warshaw's
23 exam.

24 MR. FREEDMAN: That's correct.

25 MS. BRETT: Just to have that on the

1 transcript, Your Honor.

2 THE COURT: Thank you, Sharon.

3 MS. BRETT: I think that was the only
4 record cleanup that I needed to do from
5 yesterday. But we may have some housekeeping
6 measures once we're on off the record.

7 THE COURT: All right. Thank you. I'm
8 assuming that was an adequate explanation about
9 their exhibits, Tony.

10 MR. RUPP: Yes. Have those been admitted?

11 MS. BRETT: They were admitted at the end
12 of the day yesterday.

13 THE COURT: So before we get to
14 housekeeping or other things, where are we?

15 MS. BRETT: I think the Plaintiffs rest
16 their case.

17 THE COURT: Plaintiffs rest. All right.
18 I'm going to make sure that all the Plaintiffs
19 rest. Is that true, Mark? Curtis?

20 MR. JOHNSON: Well, Your Honor, we have
21 the one Plaintiff who has a chemotherapy
22 treatment today. He would be available on
23 Monday.

24 THE COURT: Okay. So the Plaintiffs rest,
25 except for the one witness that the Defense has

1 already graciously allowed to go out of order.

2 MR. JOHNSON: Thank you.

3 THE COURT: But other than that, yes.

4 MR. JOHNSON: Yes. Thank you.

5 THE COURT: I anticipate some motions.

6 Tony?

7 MR. RUPP: You are correct. And I suspect
8 it will take 15 or 20 minutes, so I don't know
9 what the Court's preference is, to whether you
10 want to hear it now or after --

11 THE COURT: Actually, the Court's
12 preference would be that we take a break because
13 the Court needs to use the restroom and the
14 Court's hungry. Just to be --

15 MR. RUPP: That's reasonable.

16 THE COURT: -- candid with everybody.

17 Thank you, Tony. So --

18 MR. CURTIS: We wouldn't be able to hear
19 him over the stomachs growling.

20 THE COURT: I bet. So counsel, I would --
21 I know you want to do some housekeeping. Do you
22 need something else to be on the record?

23 MS. BRETT: I was going to say we could go
24 go off the record and talk about the length of
25 the lunch break and the order for the afternoon

1 after what I assume to be Mr. Rupp's motion to
2 come.

3 THE COURT: Tamara, thank you. We will be
4 off the record.

5 (Court adjourned at 12:36.)

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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 April 6th, 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 150 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 7th day of April, 2022.

/s/ Tamara Diane Ross
 Tamara Diane Ross, RMR, RPR, CSR No. 1736