

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 11th  
day of April, 2022.

Volume I

APPEARANCES:

The Plaintiffs TOM ALONZO, et al, appeared  
by Sharon Brett & Elisabeth Theodore, Attorneys  
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The Plaintiffs FAITH RIVERA, et al,  
appeared by Lalitha Madduri, Attorney at Law,  
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The Defendants SCOTT SCHWAB and MICHAEL  
ABBOTT appeared by Anthony Rupp & Gary Ayers,  
Attorneys at Law, 1551 N. Waterfront Pkwy, Suite  
100, Wichita, KS 67206.

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PROCEEDINGS

THE COURT: On the record in Rivera, Alonzo, Frick v Schwab and Abbott and Shew. The appearances of the parties, although the Plaintiffs are a bit diminished, are pretty much the same. Are you having co-counsel at some point today, Curtis, or are you on your own?

MR. WOODS: I am on my own.

THE COURT: All right. And the Defense, always so well represented by their counsel. All right. So a few housekeeping measures, Tony, you said you wanted to take up first?

MR. RUPP: Yes. And Your Honor, one of the things we talked about back there is Curtis has a declaration. The first three paragraphs of that declaration are consistent with all of the other declarations that we've agreed to in the case. The last three go into testimony that, in the absence of cross examination, we would object to. So our -- we would stipulate to paragraphs one through three of the declaration.

THE COURT: Curtis?

MR. WOODS: Well, Your Honor, the whole reason for this was because we were going to have them live on Wednesday, but for his chemotherapy

1 treatment. And then we were told at that point  
2 that there wouldn't be any witnesses today, and  
3 so Mr. Johnson pointed out to you that we would  
4 have to do a declaration that would most likely  
5 go little bit beyond what the other declarations  
6 are. And if you look at those paragraphs, it's  
7 what he would testify. It's what other  
8 Plaintiffs have testified -- at least, our  
9 Plaintiff -- without objection. And I don't see  
10 any reason why the entire declaration should go  
11 in.

12 THE COURT: The problem the Court is  
13 struggling with, Curtis, is that Mr. Lea's  
14 declaration does seem to be a bit more  
15 all-encompassing than the other declarations that  
16 the Court has had the opportunity to review. And  
17 as Tony points out, as far as four, five, and  
18 six, if I have those right, Tony, are the ones  
19 you object to?

20 MR. RUPP: Yes.

21 THE COURT: He does not have the  
22 opportunity to cross examine Mr. Lea on. I'm not  
23 sure for jurisdictional purposes, it's fatal to  
24 your case one way or the other whether four,  
25 five, and six come in anyway.

1           MR. WOODS: It's not, Your Honor. But I  
2 do again reiterate that had things been  
3 different, and we had been told in time that  
4 there would be live witnesses today, he would be  
5 sitting in the box, testifying to this. And all  
6 that four and five say is what his belief is, in  
7 terms of the value of his vote in the 2nd  
8 District and in the 1st District. And six is  
9 just factual, in terms of the distance between  
10 points. So six has -- I don't see any way that's  
11 objectionable. It just lays out, you know, his  
12 travel to family and how he gets there and how  
13 long the mileage is. But I would also reiterate  
14 with four and five again, it's simply states that  
15 he believes his vote will be impacted by the  
16 Adastra map, and that's consistent with all the  
17 other testimony that's been given in the case.

18           THE COURT: It certainly is consistent,  
19 Curtis, in that respect. Although the Court will  
20 remind everyone that on Friday, when I think Mark  
21 announced that you were not going to call him,  
22 that we discussed going into Monday. The Court  
23 certainly indicated that he could come and  
24 testify in person today. I know apparently you  
25 had made some other plans --

1 MR. WOODS: Right. He's unable to.

2 THE COURT: -- as to treatment. I  
3 understand that. You want to reconsider six?  
4 Its a geographic issue.

5 MR. RUPP: All right. I'll reconsider six  
6 and object to four and five.

7 THE COURT: All right. Four and five will  
8 be stricken as the Defense does not have the  
9 opportunity to cross examine Mr. Lea. Six -- so  
10 one, two, three, and six will be part of the  
11 declaration.

12 MR. WOODS: Your Honor, for the record,  
13 can I make a proffer of paragraphs four and five?  
14 So it's noted in the record?

15 THE COURT: Tony?

16 MR. RUPP: I think you've got their  
17 there -- those will just be struck out, so I  
18 think the court will see what four and five was  
19 anyway, so I think it's going to be part of the  
20 record in that regard.

21 THE COURT: I would suggest that that is  
22 true as well, Curtis. I don't know if you still  
23 want to do it. I did not let Tony proffer the  
24 Princeton report because I didn't think that he  
25 could establish a foundation to have it admitted

1           into evidence and I thought it was improper for  
2           him to be able to then get it into the record  
3           without it being an admissible exhibit. I don't  
4           want to run into the same issue with Mr. Lea's  
5           declaration. Typically, I would allow you to  
6           make a proffer, but I think we're all in  
7           agreement that it will simply be in the record I  
8           struck four and five, and the Supreme Court, if  
9           they wish, can review it.

10           MR. WOODS: I understand, Your Honor.

11           THE COURT: Is that sufficient?

12           MR. WOODS: Yes. Thank you.

13           THE COURT: All right. Thank you, Curtis.

14           MR. RUPP: Your Honor, as another  
15           housekeeping matter, I believe that Exhibit 1066  
16           A through C were used as demonstratives in Rodden  
17           and Chen. And I don't believe, from our records,  
18           that they've ever been admitted, so we would move  
19           for their admission.

20           THE COURT: All right.

21           MS. BRETT: No objection.

22           THE COURT: Tony's hiding you back there,  
23           Sharon. All right. 1066 A through C are  
24           admitted without objection.

25           MR. RUPP: The only other thing from a

1 housekeeping perspective. I don't believe we've  
2 talked about it at any point, either in back or  
3 out here, but just -- on the Sunday before trial  
4 started, the parties reached joint stipulations,  
5 stipulating and agreeing that any party may cite,  
6 discuss, and otherwise rely on as admitted  
7 evidence a number of things. So accordingly, the  
8 parties reached agreement to admit a large amount  
9 of evidence that hasn't been referred to yet in  
10 the trial, including the legislative record. And  
11 both parties agreed that for purposes of anything  
12 that we do in the trial, those things can be  
13 cited as part of the record. And I just wanted  
14 to make sure the Court was aware of that.

15 MS. BRETT: That's correct, Your Honor.

16 THE COURT: All right then. So  
17 stipulation accepted, if that's what --

18 MR. RUPP: I just wanted to make sure the  
19 Court was aware because there will be references  
20 in the proposed findings and conclusions to  
21 things that were said in the legislative record  
22 that haven't been said here in open court, and  
23 that's by agreement of the parties.

24 THE COURT: Good. And Tony, I think it  
25 was important that we establish that, so thank



1           you for doing so.

2                   MR. RUPP: And with that, I think  
3           Mr. Ayers is up next.

4                   THE COURT: Hold on just a second, Gary.  
5           One second.

6                   MS. BRETT: I have one small housekeeping  
7           as well, Your Honor.

8                   THE COURT: Let's make sure the house is  
9           sparkling clean.

10                   MS. BRETT: Let's get it clean. Let's get  
11           it clean. So we had previously submitted on our  
12           exhibit list the declarations that had been filed  
13           on behalf of all our individual named Plaintiffs,  
14           and those were moved into evidence at the start  
15           of our case. There was one Plaintiff declaration  
16           that had been filed on the record but had not  
17           been included in our exhibit list, just by mere  
18           oversight. I've given a copy to Mr. Rupp, as  
19           well as to Curtis and just want to give a copy to  
20           the Court. We'll be filing it through Eflex.  
21           It's going to be Plaintiff's Exhibit 758. It's  
22           the declaration of our named Plaintiff, Connie  
23           Brown Collins, who's actually been in court the  
24           entirety of this trial trial. So apologies to  
25           Ms. Brown Collins that was left off the exhibit

1 list.

2 MR. WOODS: What's the exhibit number?

3 MS. BRETT: Plaintiff's Exhibit 758. And  
4 I can give the Court a copy as well. It will be  
5 stamped and filed on Eflex.

6 THE COURT: Thank you. Ms. Collins has  
7 been invaluable in making sure people were not  
8 coming into the courtroom when they were not  
9 supposed to, and the Court acknowledges and  
10 thanks you for that, Ms. Collins. And what do we  
11 say to 785?

12 MR. RUPP: No objection.

13 THE COURT: 785 is a stipulated exhibit,  
14 which is admitted.

15 MR. WOODS: Your Honor, can we then mark  
16 the declaration of Darryl Lea as 759? Is that  
17 available?

18 MS. BRETT: 759 is now available. So what  
19 you just were given, Your Honor, is 758, and that  
20 declaration can be 759.

21 MR. WOODS: Darryl Lea would be 759.

22 MS. BRETT: Thank you.

23 THE COURT: Plaintiff's 759 is admitted  
24 with the provisions of four and five. As  
25 indicated by the Court in its earlier ruling.

1 End of the housekeeping?

2 MR. RUPP: I think that's it from our  
3 side.

4 THE COURT: All right. Curtis, you're the  
5 only one who didn't do any dishes today.

6 MR. WOODS: The dishwasher is full.

7 THE COURT: Thank you, Curtis. Gary?

8 MR. AYERS: Your Honor, we would call John  
9 Alford.

10 THE COURT: Good morning, sir. I know  
11 you've been here, so if you'd come up here close  
12 where we can see eye to eye and raise your right  
13 hand for me please.

14 JOHN ALFORD,  
15 having been first duly sworn,  
16 was examined and testified as follows:

17 THE WITNESS: I do.

18 THE COURT: How would you like for me to  
19 refer to you, sir?

20 THE WITNESS: John is fine.

21 THE COURT: Thank you, John.

22 MR. AYERS: Please the Court? Your Honor,  
23 the Alford report is been admitted as Exhibit  
24 1057. And the Alford CV has been admitted as  
25 1058.

## 1 DIRECT EXAMINATION

2 BY MR. AYERS:

3 Q. Please state your name for the record, please.

4 A. John Alford.

5 Q. And I'm going to call you Dr. Alford, if that's  
6 okay with you.

7 A. It's all right with me.

8 Q. Okay. Could you give the Court a brief history  
9 of your educational -- your academic experience?10 A. I have a Bachelor of Science in Political Science  
11 from the University of Houston, a Masters of  
12 Public Administration from the University of  
13 Houston, and a Master of Arts in Political  
14 Science from the University of Iowa, and a Ph.D.  
15 in Political Science from the University of Iowa.

16 Q. What is your current teaching position?

17 A. I am a Professor of Political Science at Rice  
18 University in Houston, Texas.

19 Q. And you are fully tenured there?

20 A. I am.

21 Q. What courses do you teach there?

22 A. I teach courses broadly in American politics from  
23 introductory American politics, to election  
24 behavior, political behavior, I teach a course --  
25 topical course on the election every two years,

1           so I'll be teaching election 2022 in the fall. I  
2           do that every two years. I've taught courses on  
3           redistricting. I teach a course pretty much  
4           every year on the biology of politics.

5                        I've taught in the past courses on  
6           methods, public policy evaluation. I once taught  
7           a course on the presidency. I think that's about  
8           it.

9   Q.   And is voting behavior part of the course work  
10       that you teach?

11   A.   Yes.

12   Q.   And do you teach statistical methods in political  
13       science?

14   A.   I have. I don't any longer. We over time have  
15       acquired some specialized faculty that primarily  
16       teach our methods sequence. But earlier in my  
17       career, that was one of my fields in graduate  
18       school and early in my career, I taught methods  
19       at both graduate and undergraduate level, and for  
20       many years was the Director of the Political Data  
21       Lab, both at University of Georgia and at Rice  
22       University.

23   Q.   Have you been involved in consulting in the  
24       redistricting area?

25   A.   Yes. So I've been involved in drawing districts

1           for entities large and small. I redistricted  
2           China, Texas. I usually tell people I  
3           redistricted China. That sounds more impressive.  
4           But it was actually China, Texas. I've been  
5           involved for, I think, maybe 25 years in actually  
6           drawing election districts for local entities,  
7           and once for the congressional districts for  
8           state of Texas.

9    Q.    Has your redistricting work involved Voting  
10       Rights Act issues?

11   A.    Yes. So I think of my work as being centered in  
12       one of two areas: In the drawing of districts  
13       for localities and in defending -- mostly  
14       defending entities in issues involving Voting  
15       Rights Act in districting. But in the  
16       redistricting work, Voting Rights Act concerns  
17       are always a part of drawing districts as you  
18       have to be aware in Texas is where I've done most  
19       of the local redistricting. And it was for many  
20       years a covered state, so all those plans that I  
21       drew had to be precleared, and I had to work with  
22       Justice on that, so that's a bit in both of those  
23       areas.

24   Q.    So in those cases, have you worked with the  
25       United States Attorney in Houston?

1 A. Yes.

2 Q. And what about the Texas Attorney General?

3 A. I've worked for the Texas Attorney General for  
4 several decades. I also worked for the  
5 Legislative Redistricting Board when it was  
6 drawing state districts in the 2000s. And I've  
7 worked for various other states along the way.

8 Q. So with regard to the 2001 redistricting for US  
9 Congress, Texas Senate, Texas House of  
10 Representatives, and the Texas State Board of  
11 Education, were you an expert for the state of  
12 Texas in those redistricting cases?

13 A. So I was an expert for the Legislative  
14 Redistricting Board. In Texas, if the  
15 legislature and the Governor can't agree on a  
16 plan, then the State House, the State Senate, and  
17 the State Board of Education are drawn by a  
18 special entity called the Legislative  
19 Redistricting Board that consists of a variety of  
20 state officials. The legislature failed to  
21 achieve plans for any of its responsibilities  
22 that year, and so I worked with the Legislative  
23 Redistricting Board on the State House, State  
24 Senate, and State Board of Education plan. The  
25 Legislative Redistricting Board doesn't draw

1 congressional districts because the Constitution  
2 gives that responsibility to the legislature. So  
3 that was the plan, that that -- for that period  
4 was drawn by a three-Judge panel. And the  
5 three-Judge panel asked me to both provide some  
6 notions about what a nonpartisan plan might look  
7 like, and then to provide them with a draft map  
8 that they could use as a starting point for  
9 drawing the districts. And they -- I provided  
10 that map, they edited it, and that's the map that  
11 the 2002 congressional elections in Texas were  
12 held under. That was the last time the map was  
13 used, unfortunately, but I did get one  
14 election under the map.

15 Q. Were you involved in the 2010 redistricting in  
16 Texas?

17 A. Involved in the -- not in the redistricting -- in  
18 the state redistricting itself, but in the  
19 lawsuits that consumed the rest of the decade,  
20 working for the Attorney General.

21 Q. Did those involve the districts for the United  
22 States Congress? The congressional districts.

23 A. Yes.

24 Q. And also the Texas Senate and House districts?

25 A. Yes.



1 Q. Also the Justices to the Supreme Court there?  
2 And the Court of Appeals there, districting?

3 A. So the Supreme Court and Court of Appeals are  
4 elected at large in Texas. There was a lawsuit  
5 charging that that was a violation of the Voting  
6 Rights Act, the Constitution. I asked them if  
7 they (unintelligible) my districts, and I was an  
8 expert witness for the state of Texas in a trial  
9 where they successfully defended the at-large  
10 election of the Supreme Court and Court of  
11 Appeals.

12 Q. And have you been an expert in various Voting  
13 Rights Act cases in other states other than  
14 Texas?

15 A. Yes.

16 Q. And would that include Michigan?

17 A. Yes.

18 Q. Washington?

19 A. Yes.

20 Q. Louisiana?

21 A. Yes.

22 Q. New Mexico?

23 A. Yes.

24 Q. Mississippi?

25 A. Yes.

1 Q. Wisconsin?

2 A. Yes.

3 Q. Florida?

4 A. Yes.

5 Q. New York?

6 A. Yes.

7 Q. Georgia?

8 A. Yes.

9 Q. Alabama?

10 A. Yes.

11 MR. AYERS: And the balance of the names  
12 of those cases are Your Honor, in the CV, Exhibit  
13 1058.

14 BY MR. AYERS:

15 Q. Now, with regard to your work in redistricting,  
16 have you given expert opinions and analysis on  
17 racially polarized voting?

18 A. Yes, I have.

19 Q. Could you please explain your involvement in that  
20 for the Court?

21 A. So my involvement there is largely in relation to  
22 Gingles (sic) two and three, so largely related  
23 the issue of racially polarized voting, as  
24 opposed to in number one. So I provide analysis  
25 in the old days that would have been ecological

1 aggression. Now it's ecological inference. But  
2 again, evidence across that area of election  
3 analysis related to both the cohesion of minority  
4 groups and the estimates of cohesion or bloc  
5 voting on the part of the majority group.

6 Q. And with regard to -- I think you just mentioned  
7 that ecological inference. How have you been  
8 involved with the ecological inference theory of  
9 predicting individual voting behavior over the  
10 years? I think you somewhat described it. Let's  
11 just focus on ecological inference or what you  
12 did before ecological inference, what you did  
13 after it became a theory.

14 A. So ecological inference is a term -- a general  
15 term for a kind of analysis in which you have an  
16 individual-level theory, but you only have  
17 aggregate-level data. So trying to make some  
18 inference about what's going on with the  
19 individual level, where aggregate data is broadly  
20 referred to as ecological inference.  
21 Unfortunately, there's also a technique for doing  
22 that, a mathematical approach for doing that  
23 that's also called ecological inference, which I  
24 like to refer to as just EI to distinguish the  
25 technique from the broader exercise.

1           Prior to Dr. King's development of the  
2           technique of EI, most ecological inference  
3           preceded by at least in the era that I became  
4           involved through some form of ecological  
5           regression. So again, a mathematical technique  
6           to utilize aggregate data to make inference about  
7           individual-level behavior, relying on a technique  
8           ordinarily squares regression or some variant of  
9           it that was already fairly common and still is  
10          fairly common in the social sciences. There are  
11          issues with that technique. It provided  
12          estimates that often were out of bounds. It was  
13          a simple form, unnecessarily linear in its  
14          fitting of the relationship, and it did not  
15          produce any estimates of statistical significance  
16          or confidence intervals that were appropriate.  
17          So a lot of limitations. Professor King  
18          developed the -- this alternative to that that's  
19          sometimes called a King's EI or 2 by 2 EI in an  
20          effort to provide a more useable less restrictive  
21          and more efficient method of making the same  
22          estimation of individual behavior from  
23          aggregate-level data. So that's what we -- the  
24          EI, what we sometimes refer to just as ecological  
25          inference -- the technique is really King's

1 replacement for ER, or ecological regression with  
2 ecological inference. So this is a technique  
3 that does several things. It is a method of  
4 bounds analysis, so it takes advantage of some  
5 information that's -- that is in aggregated data  
6 in the nature of the bounds at the precinct level  
7 that's ignored by ecological regression. So it's  
8 more efficient in the sense of using the data  
9 that's available. It does not make a linear  
10 assumption. It produces estimates that always  
11 fall between zero and 100%, which is comforting.  
12 And it provides estimates of statistical  
13 significance or confidence intervals that are  
14 mathematically appropriate. So a substantial  
15 improvement. There's -- for a period was a lot  
16 of debate back and forth about whether it really  
17 produced substantively different estimates or  
18 not. I think generally, the consensus is the  
19 estimates are often not substantively different,  
20 but the King's EI is simply more appropriate. It  
21 has these other preferable performance  
22 characteristics. And that over time has led to  
23 it being by far the most widely used technique  
24 for ecological inference in -- certainly in the  
25 area of voting rights.

1 Q. In the Voting Rights Act cases.

2 A. Correct.

3 Q. All right. So is it always the best first  
4 alternative when you are trying to analyze  
5 individual voting behavior?

6 A. No, it's not. It's typically not used to analyze  
7 individual voting behavior. Not in recent.

8 Q. So have you been involved in your work in  
9 redistricting in analyzing partisan  
10 gerrymandering?

11 A. Less so than most of my work is in -- the legal  
12 side has been with Voting Rights Act issues,  
13 particularly with racially polarized voting,  
14 although on my district-growing side, some  
15 involvement there. But less so than with regards  
16 to racially polarized voting.

17 Q. Was it involved when you were drawing maps for  
18 the three-Judge panel, for example?

19 A. It was -- that was a central issue for the  
20 three-Judge panel, was basically to differentiate  
21 or establish what might be appropriate neutral  
22 redistricting principles and to fashion something  
23 that would -- as a map would not be unnecessarily  
24 or inappropriately partisan.

25 Q. And in your redistricting work, have you run into

1 the concept of the efficiency gap?

2 A. Yes. It's not something that I personally  
3 utilize, but I'm certainly aware of the  
4 literature. I'm a fan, a supporter of the  
5 efficiency gap. I think it's -- could be a very  
6 useful major. I'm a believer in the  
7 justiciability of partisan gerrymanders, and I  
8 think the efficiency gap is probably the best  
9 measure that we've got to move forward in  
10 addressing that issue. So I follow that  
11 literature. I have been approached about  
12 testifying against partisan gerrymanders. But in  
13 the one case that I would have been involved in,  
14 which was Pennsylvania, the League case, I didn't  
15 have the time to do it at that point. And then  
16 of course, the Supreme Court shut that down, at  
17 least with regard to Federal cases.

18 Q. Is this the first time you've been asked to  
19 examine a redistricting plan involving the state  
20 of Kansas?

21 A. I believe it is.

22 Q. In doing what we've asked you to do in this case,  
23 have you applied your 30 years of experience that  
24 you've just described to your analysis of the  
25 redistricting plan that was just adopted in

1 Kansas?

2 A. Yes.

3 Q. Are the principles the same, or are they  
4 different? I mean, if you take these principles,  
5 can you apply them to Kansas as well as you can  
6 to these other states you've been involved with,  
7 in terms of giving expert testimony?

8 A. Yes.

9 Q. Now, you said that you were familiar with the  
10 literature, for example, in efficiency gap. So  
11 over your 30 years of experience in  
12 redistricting, have you taken that experience and  
13 written academic papers, peer-reviewed papers,  
14 that sort of thing? Have you gathered it all  
15 together and published it in your -- in academic  
16 work?

17 A. No.

18 Q. Why not?

19 A. Several reasons. It's my area of research about  
20 the time I started working in -- or actively in  
21 districting and eventually in Voting Rights Act  
22 cases, had shifted from being an interest  
23 primarily in congressional elections and toward  
24 an interest in sort of my current research focus,  
25 which is biology of politics. Also partly, I



1           didn't think as a -- my interest in research is  
2           primarily at trying to understand some very basic  
3           things that drive individual behavior, and I  
4           didn't feel that I had a lot to contribute in  
5           this particular area. And I've always been a  
6           little uneasy about sort of conducting research  
7           in an area that I was already an active  
8           consultant in. I think there's just always some  
9           question there about, you know, whether the  
10          research is being fitted to the consulting work  
11          or the other way around. And since it -- this  
12          area wasn't my -- an area of research interest,  
13          but more an area of practical, my public  
14          administration background, I like working with  
15          entities, so I enjoyed very much redistricting  
16          probably more than anything at the local level.  
17          But that's with the exception of my first  
18          published paper, which was a public policy paper.  
19          My research interests have not been in public  
20          policy or local governments, but in more abstract  
21          issues related to ideology and biology.

22        Q.    Have you been able, in your 30 years of being  
23              involved in redistricting cases and Voting Rights  
24              Act cases -- have you been able to continue  
25              studying and applying the academic research in

1 each of these areas we've discussed?

2 A. Yes.

3 MR. AYERS: Your Honor, we offer Professor  
4 Alford as an expert in redistricting, and also  
5 racially polarized voting and its application to  
6 vote dilution. But with regard to redistricting,  
7 we would include all the areas that he's  
8 discussed this morning that he has studied and  
9 applied in his redistricting.

10 THE COURT: Sharon? Whoever on the  
11 Plaintiffs is going to respond, do so. Thanks,  
12 Lali.

13 MS. MADDURI: No objection, Your Honor.

14 THE COURT: All right. He is admitted as  
15 an expert witness in this case, Gary.

16 BY MR. AYERS:

17 Q. So Professor Alford, what did we ask you to do in  
18 this case?

19 A. I was asked initially to review some expert  
20 reports, kind of as they were coming in. The  
21 initial discussion was -- very short time frame.  
22 The initial discussion was, as I recall,  
23 primarily about racially polarized voting,  
24 focussing particularly on what would be  
25 Dr. Collingwood's analysis. And as other reports

1           came in, that was broadened to sort of look at  
2           what I could be responsive to, and that both  
3           of -- my immediate sense of the case was that  
4           there are two sort of competing claims here, one  
5           to do with partisan gerrymandering, and the other  
6           to do with racial gerrymandering, and that became  
7           what I focussed on given the time constraint.

8       Q.   And so did you review the reports of  
9           Doctors Chen, Collingwood, Rodden, Warshaw, and  
10          Miller?

11       A.   I believe that's correct, yes.

12       Q.   And I -- although your opinions are contained in  
13          your report, Exhibit 1057, at a very high level,  
14          what conclusions did you draw having studied the  
15          Adastra 2 map and having looked at the six expert  
16          opinion reports?

17       A.   So focussing first on the racial issues with  
18          regard to vote dilution and gerrymandering, my  
19          conclusion there was that there is not sufficient  
20          evidence to demonstrate sort of even the most  
21          fundamental requirements. In particular, there's  
22          not sufficient evidence here to conclude that  
23          voting was racially polarized in the area of  
24          either CD3 or CD2 or the state of Kansas, for  
25          that matter. And so I don't see the -- I didn't

1 see evidence that particular areas of racial  
2 concentration were divided in the sort of classic  
3 cracking fashion, or that they were combined in a  
4 classic packing fashion. So I don't -- my  
5 conclusion is they're -- I don't see anything  
6 here that's sufficient to provide evidence of a  
7 racial vote dilution in large part because there  
8 just isn't evidence here of racially polarized  
9 voting.

10 On the -- with regard to partisan  
11 gerrymandering, my conclusion is that there's  
12 certainly evidence of partisanship from -- I  
13 don't know -- I'm not addressing intent, but it  
14 looks to me like the plan reflects what I would  
15 think of as the areas of typical partisan concern  
16 when a legislature is redrawing a district map.  
17 But those -- they are reflection in the actual  
18 map and the performance of the map. And the  
19 estimates that people have brought up about the  
20 map suggest a very modest level of partisanship  
21 in the drawing of the map. About what you'd  
22 expect if you give that responsibility to a  
23 partisan legislature. Nothing on the order of  
24 what we've seen in other states historically or  
25 in other states in the surrounding redistricting.

1           It doesn't look like Maryland or New York or -- I  
2           won't mention Texas at this point, although Texas  
3           always tried very hard to stay in the Hall of  
4           Fame of various forms of election behavior. But  
5           certainly, we have plenty of examples of what  
6           extreme partisan gerrymander looks like. A  
7           couple of things you -- are just obvious things  
8           you look for is a party that's losing its  
9           majority in the state set itself up to remain the  
10          majority in the legislature. This is what the  
11          Democrats did in Texas as they lost their vote  
12          statewide. They districted themselves into a  
13          permanent majority status until the Republicans  
14          got the redistricting taken out of the  
15          legislature and into the Legislative  
16          Redistricting Board where they have the majority.  
17          And then they turned the gerrymander around into  
18          an extreme Republican gerrymander. That's kind  
19          of where they sit now. So that's -- we're not  
20          seeing the kind of gerrymander that entrenches a  
21          party into power, so that it could lose its  
22          majority, it could hold its position. We don't  
23          see -- one of the obvious things that you see,  
24          you're seeing this cycle, for example, taking --  
25          in this case, the Republican legislature taking

1 Democratic incumbent and pairing them in a new  
2 district with the Republican incumbent. So the  
3 standard way of knocking off one of the other  
4 party's members is either required pairing or  
5 involuntary pairing. And you don't have pairing  
6 here. You don't have the basic character of the  
7 districts, in terms of their partisan character,  
8 is little changed from the plan that was put in  
9 place by a three-Judge panel. There just --  
10 again, I don't -- this is all in the analysis of  
11 the Plaintiff's expert. You can look at any of  
12 the tables or charts. You don't need a fancy  
13 major like the efficiency gap. It's very  
14 apparent from a simple table that these are very  
15 modest, modest changes.

16 Q. we'll take a look at those. In terms of the  
17 partisan -- allegations regarding a partisan  
18 gerrymander, I think in your report, you refer to  
19 the history of the 3rd Congressional District  
20 from the reports of Professor Miller and  
21 Professor Chen and others, where you saw their  
22 tables in terms of vote. Kansas vote shares.  
23 What is your opinion with regard to the history  
24 as presented by the Plaintiff's experts on the  
25 3rd Congressional District, where it was and

1 where it is today?

2 A. Well, again, if we go back to the plan adopted by  
3 the court, the plan was -- and it clear in its  
4 early functioning was a 4-0 plan. All four  
5 districts were Republican. The third  
6 competitive, but a Republican district.

7 Over time, there's a modest shift in that  
8 district in more recent elections, whether that's  
9 a shift in the elections -- obviously, the  
10 district changes as well. Population growth and  
11 so forth. But in the more recent elections,  
12 2018, 2020, the existing 3rd District has come --  
13 moved from tilting -- from competitive tilting  
14 Republican to competitive tilting Democrat. In  
15 the redraw, rather than go back to the 4-0 plan,  
16 the redraw makes the third a little more  
17 competitive, but it is -- I mean, it's in some  
18 ways, almost an ideal district from a point of  
19 view of what voters want in a district. A  
20 district that can be won by either party. It's a  
21 district that doesn't draw its incumbent --  
22 Democratic incumbent out of the district. So my  
23 strong prediction is that district will do what  
24 it's done for the last two cycles. It will --  
25 they will reelect the Democratic incumbent,

1 meaning that over time, the plan has moved from  
2 being a 4-0 Republican plan --

3 THE COURT: Hold on a minute, please.

4 MS. MADDURI: That opinion is far beyond  
5 the scope of Dr. Alford's reports in this case.

6 THE COURT: Gary, I think Lali is talking  
7 about his prediction that a Democrat will win  
8 CD3.

9 MR. AYERS: He's talking about -- and it  
10 is very clear in his report. He talks about CD3  
11 being a Republican district that's been trending  
12 toward the Democrats, and now it's a slightly  
13 Democratic district. It's certainly within the  
14 scope to say it looks like a Democratic district,  
15 which is what he just said.

16 THE COURT: Certainly agree with the first  
17 part of your analysis there, but I don't recall  
18 reading in his report -- and refer to me  
19 specifically where he made a prediction that the  
20 Democrats would win the 2022 election.

21 MR. AYERS: It's certainly within the  
22 scope of his report. I mean, he's saying it's a  
23 Democratic district. To say it's a Democratic  
24 district, or to say the Democrats are going to  
25 win is basically saying the same thing, Your



1 Honor.

2 MS. MADDURI: Your Honor, I think in his  
3 report he said it's a competitive district, and  
4 he makes no prediction about what will happen in  
5 the future in CD3, so I think it's beyond the  
6 scope.

7 THE COURT: Yes. Your objection is  
8 sustained. I think he's free to testify about  
9 what he thinks the leanings are. I don't think  
10 he or anyone else perhaps in the entire world is  
11 qualified to predict who will win the next  
12 election. So sustained in that respect.

13 MR. AYERS: And we don't disagree with you  
14 on that point, Your Honor. It's entirely  
15 speculative who's going to win the 3rd  
16 Congressional District.

17 THE COURT: Thank you, Gary. It's always  
18 reassuring when you agree with me on something.

19 BY MR. AYERS:

20 Q. Could you similarly describe your conclusions on  
21 the 1st, 2nd, and 4th Districts as they have  
22 moved from 2012 until the Adastra 2 plan.

23 A. There's very little change in the 4th. It looks  
24 like it is pretty much what it was, performs  
25 pretty much as it did. The 1st has been unpacked

1 a little bit, and I think anybody could look at  
2 the numbers and see that the 1st is a packed  
3 Republican district that's, again, from the point  
4 of view of a legislature controlled by  
5 Republicans, you -- that might be an objective --  
6 a sort of modest partisan objective. Maybe  
7 unpack that district a little bit. And it is  
8 unpacked. It's made more competitive.

9 And in the process, Democrats are shifted  
10 into the 2nd and 3rd. And that makes the -- in  
11 particular makes the first slightly -- I'm sorry.  
12 Makes the 3rd slightly more competitive than it  
13 was previously.

14 MR. AYERS: Jamie, could I have Exhibit  
15 58, which is the Miller report? And page 27.  
16 This is the Patrick Miller, Plaintiff's expert.  
17 Ah. It's up.

18 BY MR. AYERS:

19 Q. So you refer in your report to tables four and  
20 five in the Miller report. And with regard to  
21 table four, what is it in Dr. Miller's table four  
22 in Plaintiff's expert's report that you're using  
23 as part of your conclusion on the current leaning  
24 of CD3?

25 A. Well, starting in the first two columns, we can

1 see that existing CD3 is over the entire decade,  
2 average of all the exogenous elections that he  
3 averages together over the entire decade leans  
4 slightly Republican, and we can see that  
5 averaging all the same things together, CD3 in  
6 the new plan also leans slightly Republican.

7 If you look at the next two columns, the  
8 sort of what was the case sort of when the  
9 districts -- the early elections ran when the  
10 districts were drawn. We can see again that the  
11 existing plan had a -- here a more substantial  
12 Republican lean in CD3. And for that set of  
13 elections, 2012, 2016, we also see a more  
14 substantial Republican lean in the new district.  
15 And then finally, looking at the two most recent  
16 election cycles, 2018, 2020, we can see that CD3  
17 in its existing form leans Democratic, and CD3 in  
18 its new form leans Democratic, although it is a  
19 much more competitive -- much more competitive  
20 district than it would have been in its previous  
21 form.

22 Q. And so in Adastr 2, just for the record,  
23 according to Professor Miller's statewide  
24 election data, the CD3 Democratic vote share from  
25 2018 to 2020 under the Adastr plan would be

1 49.7%. Is that correct?

2 A. That's correct.

3 Q. And the Republican share in the 2018 to 2020  
4 elections would be 47.8%. About 2% in favor of  
5 the Democrats in CD3 in the 2018 to 2020  
6 elections. Is that correct?

7 A. That's correct.

8 Q. And that margin was a little bit larger if those  
9 same 2018 to 2020 elections had been held and, in  
10 fact, were held under the 2012 plan. Is that  
11 correct?

12 A. I'm sorry?

13 Q. Those margins between the Democrat and the  
14 Republican, according to the state composite  
15 score, would be larger. The gap would be larger  
16 between the Democrats and the Republicans if you  
17 used the 2018 to 2020 election and the statewide  
18 exogenous election scores.

19 A. Correct.

20 MR. AYERS: And then if we could have  
21 the -- just scroll down, Jamie, to table 5. And  
22 the second question as to -- I think a little bit  
23 more. Oops. Yeah, there you go.

24 BY MR. AYERS:

25 Q. So if you would look at -- this column presents

1 the 2012 plan on the left and the 20 -- and the  
2 2020 -- the 2022 plan on the right, and the AA2  
3 plan on the right. And if you'd focus on the  
4 President and Senate elections for 2020 and  
5 CD3 under the AA2 plan, the Adastra 2 plan, what  
6 is Professor Miller telling us in his table with  
7 regard to how that vote share would have turned  
8 out in Adastra 2 in the 2020 President and Senate  
9 elections?

10 MS. MADDURI: Objection, Your Honor.  
11 Dr. Alford didn't opine on this table or offer  
12 any opinions on about it in his report.

13 THE COURT: You say Dr. Miller?

14 MS. MADDURI: I'm sorry. Dr. Alford did  
15 not.

16 THE COURT: Gary?

17 MR. AYERS: I think he includes both those  
18 reports in his -- and draws conclusions for them  
19 in his expert report.

20 THE COURT: Just get us to that so I can  
21 see it.

22 MR. AYERS: Excuse me?

23 THE COURT: Refer me to the page number  
24 where he has compared these?

25 MR. AYERS: I thought I had it right in

1 front me. I think it's page four of the Alford  
2 report, which is Exhibit 1057.

3 THE COURT: I see the table that you had  
4 him testify before there. But I don't see -- I  
5 don't even see Dr. Miller's table five in his  
6 report, unless I'm just missing it.

7 MR. RUPP: I think it's highlighted, Your  
8 Honor.

9 MR. AYERS: It's what?

10 MR. RUPP: Highlighted there.

11 MR. AYERS: What page is that on? Four?  
12 That's what I thought. Ah, there it is. So the  
13 sentence starts at the bottom of page three and  
14 goes up to the top of page four. He talks about  
15 the nine contests in Professor Miller's table  
16 five.

17 THE COURT: Got it. Lali?

18 MS. MADDURI: We'll withdraw the  
19 objection, Your Honor.

20 THE COURT: Thank you. Go ahead.

21 BY MR. AYERS:

22 Q. So if we could go back to table five, I think the  
23 reference was to the -- at the bottom of page  
24 three to page four. Having compared and looked  
25 at the table four results, you then looked at the

1 table five election results. What conclusions  
2 did you draw from Professor Miller's table?

3 A. This just sort of -- if you're curious about  
4 what's in the -- when you're averaging together  
5 the 2018, 2020 -- what's in there, this is just a  
6 nice breakdown of what's in there. So you can  
7 see that in the two 2020 contests, CD3 leans  
8 Democrat in both the old plan and in the proposed  
9 plan. And you can see that in 2018, it leans  
10 Democratic in the Governor's race and in the  
11 Secretary of State's race. It leans -- in the  
12 Attorney General's race, it leans Democratic in  
13 the old plan and one percentage point Republican  
14 in the new plan. You can see the insurance  
15 commission, it leans Republican in both plans,  
16 and then in the treasurer, it leans Democratic in  
17 the old plan and a fraction of a percentage  
18 Republican in the new plan. So again, you can  
19 see the differences are consistent across the  
20 races. They're a shift. Again, not a complete  
21 change of character. They're -- there's a lot of  
22 variation in there in CD3 in the old plan across  
23 those elections. There's a lot of variation in  
24 the new CD3. Generally, CD3 is a little more  
25 competitive in this new form than it was in its

1 old form. But the basic character of the  
2 districts performance is not changed, other than  
3 that modest shift.

4 Q. You indicated in your report that the current  
5 lean is -- from the 2018 to 2020 election, the  
6 current lean of CD3 is 52.4% Democratic to 45%  
7 Republican? Do you see that on page four of your  
8 report?

9 A. Yes.

10 Q. And did you pull that from Professor Miller's  
11 table five?

12 A. Yes.

13 Q. That's under the Adastra 2 plan. Is that  
14 correct?

15 A. The 52/45 is under the previous plan, and the  
16 497, 478 is under the new plan.

17 Q. And under table five, I think you indicate that  
18 the -- well, strike that. You said you drew some  
19 conclusions from the Professor Rodden figure 19,  
20 which is Defendant's Exhibit 1035, Jamie. What  
21 conclusions did you draw from Professor Rodden's  
22 figure 19?

23 A. It's one of my favorite figures, and I like it  
24 because it's really hard to read. It's -- as is  
25 Dr. Collingwood, I'm a great fan of visually



1 displayed data. There's a whole science of that  
2 a political scientist pioneered visual displayed  
3 data. I think this does really nice job of  
4 visually displaying data, not because it sort of  
5 is big, but because it takes -- one of your early  
6 questions to me was sort of pulling back, broad  
7 picture, what is it? This forces you to have a  
8 broad picture because you can't really find the  
9 detailed picture. One of the things I did with  
10 this, which I think is an interesting challenge  
11 for everybody -- homework assignment -- was  
12 actually to print this out and cut out the four  
13 graphs, mix them up, turn them over, and then try  
14 to figure out which one is which. It's actually  
15 quite a challenge. So if you wonder how similar  
16 is the enacted plan to the previous plan, look at  
17 the previous plan graph, look at the enacted plan  
18 graph. If you're clever enough, you'll look  
19 first at District 1, which we know is unpacked,  
20 and you'll be able to see that District 1 in the  
21 enacted plan is actually more competitive than  
22 District 1 in the old plan. It's hard to tell  
23 that from District 2. It's hard to see much  
24 difference in District 3. And you pretty much  
25 see no difference in District 4. What I think is

1           equally maybe more interesting is when we think  
2           about well, the previous plan had to be changed,  
3           right? The districts are not properly  
4           apportioned. So what if the previous plan had  
5           changed to what he calls his community of  
6           interest plan? And we can see that that really  
7           doesn't look that different than the previous  
8           plan, but it also doesn't look that different  
9           from the enacted plan. The least changed plan,  
10          not surprisingly, doesn't look very different  
11          from the previous plan, but it also doesn't look  
12          that different from the enacted plan. So in the  
13          sense that there's some big -- I think one of the  
14          things that's important in a partisan  
15          redistricting case is to distinguish what this  
16          case would look like in Florida, from what it  
17          looks like in Kansas.

18                        So Florida has a constitutional amendment  
19                        that prohibits partisanship from playing a role  
20                        in redistricting. So there, you're looking at a  
21                        plan and saying is there any evidence that  
22                        partisanship played a role in these districts?  
23                        Here, there is not a constitutional amendment  
24                        that says no role for partisanship. So the job's  
25                        been given to the legislature. The legislature

1 is a partisan body. So we expect to see some  
2 partisanship. And the correct question and I  
3 think the question the Plaintiffs have asked is  
4 is this partisanship predominant, or is  
5 partisanship functioning here at an improper  
6 level? And so we have to distinguish some modest  
7 partisanship that we might expect in a partisan  
8 legislature from an inappropriate level. And I  
9 think this particular set of graphs makes it  
10 really clear that we're -- across these four  
11 kinds of plans, the old plan, the new plan, and  
12 some alternative plans, these districts all stay  
13 in the same part of the universe that they were  
14 in, or that they could be in, even given some  
15 nonpartisan methods of drawing the districts.

16 MS. MADDURI: Objection, Your Honor. Move  
17 to strike that last answer. Finding a legal  
18 standard and testifying to things beyond the  
19 scope of his report, including Florida and  
20 Florida law.

21 THE COURT: Gary?

22 MR. AYERS: Your Honor, in his CV and in  
23 his opening testimony, he talked about working in  
24 these different areas and applying those concepts  
25 to the Adastra plan, which -- he has done so

1 throughout his report. And also, in our  
2 designation of him as an expert, it included all  
3 these redistricting topics. So I think it's  
4 clearly within the scope of his -- what he's  
5 trying to say about this graph and about  
6 redistricting in Kansas. And drawing an example  
7 from someplace where it's not Kansas is perfectly  
8 within the scope of his testimony.

9 THE COURT: The Court agrees. Your  
10 objection is overruled. I think he can talk  
11 about how it compares with other states's plans,  
12 and he has in his report.

13 BY MR. AYERS:

14 Q. I think, Professor, you talked about reviewing  
15 the Chen and Warshaw expert reports with regard  
16 to the efficiency gap. And I think you indicated  
17 that although you thought -- although Dr. Warshaw  
18 thought that he had solved the problem of using  
19 statewide elections, these exogenous elections,  
20 as opposed to congressional elections, that he  
21 had somehow solved the problem of the less than  
22 seven district in a congressional district use of  
23 the efficiency gap. What is your opinion about  
24 the use of -- in your redistricting experience,  
25 use of the efficiency gap in a four-district map?

1 A. I want to just take, if I can, a moment just to  
2 correct something in my report. So in my report,  
3 I consistently refer to the standard as eight,  
4 rather than seven. So I appear to have gone, as  
5 -- I think it was Professor Collingwood who had  
6 gone up to even number from nine to 10. I had  
7 gone up to an even number from seven to eight,  
8 but the correct number is seven, based on the  
9 recommendations of the people who developed the  
10 efficiency gap.

11 Q. What are the cautions that you understand from  
12 your redistricting experience to using the  
13 efficiency gap in a four-district state?

14 A. Well, as I said, I'm a -- want to make it clear  
15 I'm a fan of the efficiency gap. I think it  
16 could be very useful. I think it's going to have  
17 a future as partisan redistricting is addressed  
18 at the state level. Particularly with regard to  
19 state House and state Senate plans. In both of  
20 those cases, many of the issues that we're  
21 talking about here with regard to congressional  
22 elections don't come up. So there are no -- that  
23 I'm -- I'm not familiar with any state House or  
24 state Senate that has less than seven seats, so  
25 that isn't an issue. We know that the upper

1           limit point caution about 75% doesn't exist in  
2           states, so that's not an issue. We know that the  
3           entire body is under consideration. That allows  
4           us to use that percentage standard they talk  
5           about, rather than having to use the  
6           congressional seat standard. And we know that  
7           the -- that state elections -- if we're using  
8           exogenous elections, at least we're comparing  
9           state elections to state elections.

10                        So here, if you think about those cautions  
11           that I think are correctly laid out by McGhee and  
12           Stephanopoulos, things to be careful about --  
13           because the efficiency gap is a useful measure,  
14           but it needs to be used correctly. So this is  
15           like the warning on a prescription bottle that --  
16           you use it correctly, and this is a valuable  
17           tool. It's not being used correctly here. There  
18           are only four things they caution us about. They  
19           say don't use it with less than seven seats, and  
20           we're using it here with four seats. They say if  
21           you do it on congressional elections, be careful  
22           because it's not the same thing. The state of  
23           Kansas is not redistricting the US Congress.  
24           They're just redistricting four seats of Congress  
25           in Kansas. That has real implications. The

1 state of Kansas doesn't change the overall  
2 partisan picture of the US Congress and therefore  
3 can't achieve things that actually would block  
4 change. Right? So whatever the state of Kansas  
5 does with the US congressional plan, it does not  
6 affect representation in the body that created  
7 that plan. It does not affect the Kansas  
8 legislature. It only affects the US Congress and  
9 only a small piece of it. So if you're doing a  
10 congressional plan, then be sure that you do that  
11 in terms of seats. And there, they recommend the  
12 cutoff at two seats. Here, we -- none of the  
13 percentage values that have been brought up here  
14 by anyone in the case comes anywhere close to two  
15 seats. And despite their familiarity with McGhee  
16 and Stephanopoulos, they do not express it as  
17 they suggest appropriately in congressional  
18 seats.

19 And finally, McGhee and Stephanopoulos say  
20 be careful about using state elections.  
21 Exogenous elections. They -- and I quote that  
22 whole section here. There are all sorts of  
23 things about them that are different. Don't do  
24 that. Use the endogenous elections. And I think  
25 that not only is -- that's the only other thing

1           they mention, is don't use this where the  
2           partisan breakdown is more -- is beyond the 75/25  
3           level, which doesn't exist anywhere. So  
4           everything that could apply in this case has been  
5           violated in this case. And that doesn't do a  
6           service to Kansas, and it doesn't do a service to  
7           the efficiency gap, which I think can be used  
8           even though the Supreme Court isn't fond of it.  
9           I think they can usefully be used, but not if  
10          it's used incorrectly.

11                   THE COURT: Counsel, I need to take about  
12          a 10-minute break to deal with some other  
13          business right now. Is 10 minutes enough for  
14          everyone, or shall we do 15? Let's do 15 if that  
15          works better for everyone. Sorry to interrupt  
16          your testimony, John. Let's be back at 10:35,  
17          please.

18                   (Short break taken at this time.)

19                   THE COURT: Back on the record. Same case  
20          that we have been litigating for the last three  
21          days. The appearances of the parties are the  
22          same, or reasonably so. We took a brief recess  
23          for the Court to take care of some other issues,  
24          and we were in the middle of or at least doing  
25          direct examination of John. And please resume,



1 Gary, when you're ready.

2 MR. AYERS: Thank you, Your Honor.

3 BY MR. AYERS:

4 Q. We had just finished talking about the efficiency  
5 gap in the Chen, Warshaw expert reports and  
6 testimony. We're going to move on to racially  
7 polarized voting, racial gerrymandering. That --  
8 the topic of race. And with regard your review  
9 of the Miller and Collingwood's report, did you  
10 draw any conclusions from a very high level  
11 before we break it down?

12 A. Yes. One of the things I find most unusual about  
13 this case is clear -- excuse me -- in their  
14 reports and interestingly is clear in the  
15 discussion of efficiency gap as well is the  
16 almost complete absence of any discussion of  
17 congressional elections. It's presumably a  
18 congressional election case, but there's no  
19 evidence about polarized voting in congressional  
20 elections. There's no evidence of the efficiency  
21 gap in congressional elections. There's really  
22 -- there's discussion with congressional  
23 districts, but I'm not sure I've ever been in a  
24 case where the endogenous elections were  
25 completely absent as a topic of analysis in a

1 case of this sort. I think it's obvious, as I  
2 referred to earlier in that discussion about the  
3 efficiency gap, the recommendation to use the  
4 endogenous elections and not the exogenous  
5 elections is clear there. I'm not even sure you  
6 need to state the importance of using the  
7 endogenous elections in a -- in the Voting Rights  
8 Act or in the racial dilution aspect of a case.  
9 It's the elections on the ground that we're  
10 concerned with. And we simply have no -- we have  
11 no actual evidence, so far I could tell in any of  
12 these reports or in the testimony in court about  
13 whether or not there is racially polarized voting  
14 in congressional elections in Kansas. And that,  
15 to me, is just a fundamental lack. I don't see  
16 how you proceed, given the importance that the  
17 Courts in general and the Supreme Court,  
18 including very recently in the Wisconsin case I  
19 was involved in -- the emphasis they placed on  
20 the importance of taking care and empirically  
21 demonstrating that in the local elections at  
22 hand, there is, in fact, racially polarized  
23 voting. Not simply assuming it because you think  
24 there might be, or maybe it exists in some other  
25 elections. It's not unusual to add exogenous

1 elections where there are a shortage of  
2 endogenous elections but to completely ignore the  
3 endogenous elections is not something I've ever  
4 seen before.

5 Q. The endogenous elections in this case would be  
6 the congressional -- the elections themselves.  
7 Is that correct?

8 A. Yes. So again, the -- there are four  
9 congressional districts in Kansas, and elections  
10 have been held in those four districts in the  
11 last decade, including recently in District 3,  
12 where a minority candidate has been elected in  
13 the district. The idea that an election -- a  
14 congressional election featuring a minority  
15 candidate in the district that's at issue here,  
16 largely is CD3 -- the idea that would not be  
17 examined, there would be no evidence about  
18 whether that election or the election adjacent,  
19 CD2 was racially polarized -- whether voting was  
20 racially polarized -- just, to me, is difficult  
21 to understand.

22 Q. Well, we do have this Fox exit poll. Doesn't  
23 that tell us about racially polarized voting?

24 A. If you could demonstrate in a court on the issue  
25 as serious as whether or not voters in Kansas are

1 racially polarized, if you could demonstrate that  
2 with a Fox news report, then I wouldn't have a  
3 job, frankly, as a consultant. It does not  
4 demonstrate that at all. It certainly suggests  
5 something about minority confusion. In this  
6 case, it suggests something that isn't compatible  
7 with the exogenous elections that have been  
8 analyzed here. It suggests something like  
9 crossover voting. But again, what's the overall  
10 conclusion? To the extent we can say something  
11 about the congressional elections in CD3, we can  
12 say that CD3 is a very small proportion of any  
13 one minority group. We have no evidence that  
14 they can be combined or treated as a single  
15 minority group. It's a coalition district case.

16 And then the successful crossover  
17 district. We don't need to analyze any elections  
18 to determine that because we know that a Democrat  
19 has been elected in the district twice. That  
20 means it's a successful crossover district. And  
21 the Court has said with regard to crossover  
22 districts it's an interesting category because  
23 the very fact that the district succeeded as a  
24 crossover district suggests that there may not be  
25 racially polarized voting. So given that a

1 functionally crossover district, particularly one  
2 with as low minority population as the 3rd --  
3 given that it functions in that suggests that  
4 it's not -- on the surface may not have racially  
5 polarized voting. Makes examining voting in that  
6 congressional election -- in that series of  
7 congressional elections particularly important.  
8 Because on the surface, it appears that voting is  
9 not racially polarized in the congressional  
10 elections in that district, and we have no  
11 evidence to the contrary.

12 MR. AYERS: Jamie, could I have Alford  
13 report Exhibit 1057, page nine?

14 BY MR. AYERS:

15 Q. Now, Professors Miller and Collingwood for the  
16 Plaintiffs both said that the Adastra 2 dilutes  
17 minority representation. What does Miller's  
18 table six, which you have reproduced in your  
19 report at page nine -- what does that -- what  
20 conclusions do you draw from table six, the  
21 racial composition of districts between the 2012  
22 plan and the Adastra 2 plan?

23 A. So taken either collectively or by individual  
24 minority group, it's clear that minority  
25 population is disbursed fairly evenly across the

1 four districts in Kansas. That was true in the  
2 plan -- the three-Judge panel plan for 2012, and  
3 it's true in the Adastra 2 plan. You see  
4 something in the 20, 25, 30% range across these  
5 districts, but this is quite unusual in most  
6 states. You see much more variation than this in  
7 a portion minority in a district -- congressional  
8 district or otherwise.

9 It's also clear that in none of these  
10 districts is there a single minority group that,  
11 on its own, would be a significant force in  
12 controlling or having a strong electoral  
13 independently in the district. The proportion  
14 black is typically something either around 10% or  
15 less, the proportion Hispanic here reaches up  
16 further into the teens, but it's obviously an  
17 exaggeration given that this is not actually  
18 looking at sort of participation or citizenship  
19 levels. The Native American portion is very  
20 small. And again, a Native American is elected  
21 in CD3, and obviously not on the basis of simply  
22 support from Native American voters, but on the  
23 basis of crossover vote. So these are -- these  
24 are both modest, in terms of their overall level.  
25 The changes over time suggest that either packing

1 or cracking has taken place here. The new plan  
2 does not have a substantial gathering of  
3 minorities in a single district. It doesn't have  
4 -- disbursed the minorities anymore than they  
5 were dispersed in the original plan. And I think  
6 that's compatible with all the other visual  
7 evidence that shows that there are various  
8 minority groups located in various places across  
9 Kansas.

10 Q. The Plaintiff's experts have opined that there  
11 was a certain percentage of minority  
12 population under the 2012 plan that existed in  
13 CD3 and that has been reduced, whereas that  
14 minority population in CD2 under the Adastra 2  
15 plan has been increased. What does that tell us,  
16 in terms of diluting minority voting strength if  
17 it tells us anything?

18 A. I mean, quite frankly, these -- there's sort of  
19 discussion about was this the highest, was this  
20 the lowest? The highest and lowest don't -- are  
21 not substantively different here. So there's  
22 some shift across the plans, but it's shifting  
23 within this high 60, 70s range in both of the  
24 plans. The most minority district is, I think,  
25 just a few percentage points different. It

1 happens to be a different district. But again, I  
2 mean, even the movement in CD3 is, I think,  
3 something like 7 percentage points total across  
4 all the groups. These are just very modest  
5 changes. The character of all of the districts  
6 is that they are -- have been and continue to be  
7 over two-thirds majority.

8 Q. Does it matter that if we believe Plaintiff's  
9 claim in this case that the white voters in CD3  
10 are -- tend to vote more Democratic than the  
11 white voters in CD2, does that make a difference  
12 in your opinion on the -- whether or not minority  
13 voting strength has been diluted?

14 A. I mean, I think it's the crux of the claim here.  
15 The crux of the claim is not that the change --  
16 the district that has successfully performed in  
17 the last two elections will not perform in the  
18 future. The crux of the claim is that's not  
19 because of a significant diminution in minority  
20 population of the district, but in this -- both  
21 in the change in the white population of CD3 and  
22 in the difference of the white population in CD2  
23 for the minority population is moved from CD3 to  
24 CD2. So what that hinges is the relative degree  
25 to which those populations vote Democratic or



1 Republican. The notion that that alone -- it's a  
2 very different kind of a claim from minority vote  
3 dilution. And the notion that that alone is  
4 simply taking -- taking Democrats or relatively  
5 -- changing the relative Democratic propensity of  
6 nonminority voters in any district or any  
7 minority population that votes Democratic would  
8 be unconstitutional under the State Constitution  
9 strikes me as a substantial reach because every  
10 Democratic district in the United States has  
11 minority population in it. And if you can't  
12 alter the performance of a Democratic district  
13 anywhere in the country simply because there are  
14 minorities in the district that vote at least  
15 majority Democratic, then I think you -- the  
16 impact of that is considerably larger than what  
17 is normally considered to be the -- I mean, it  
18 just strikes me that that's -- there really is  
19 not any way of disciplining the impact of that.  
20 And the problem is I think that we're left to  
21 answer or ask that question in party terms. Not  
22 in racial terms. Because we have lots of  
23 evidence here from the endogenous or exogenous  
24 elections --

25 MS. MADDURI: Objection, Your Honor.

1 THE COURT: Wait.

2 THE WITNESS: -- that there is partisan --

3 MR. AYERS: Can he finish and then the  
4 objection?

5 THE COURT: No. Of course he can't finish  
6 when there's an objection.

7 MS. MADDURI: We'd move to strike all that  
8 testimony, Your Honor. Dr. Alford is offering a  
9 legal conclusion.

10 THE COURT: Gary?

11 MR. AYERS: You know, Your Honor, I don't  
12 think Dr. Alford thinks he's offering a legal  
13 conclusion, but -- and nor do I. I think he was  
14 talking about the difficulty of trying to protect  
15 any Democratic district just because it has  
16 minority voting in it. And that's a  
17 redistricting difficulty. Not a legal opinion.

18 MS. MADDURI: May I respond?

19 THE COURT: You certainly may.

20 MS. MADDURI: Dr. Alford has opined  
21 specifically on what does or does not violate the  
22 Kansas Constitution, which is purely a legal  
23 opinion.

24 THE COURT: And there's the problem. I  
25 think he is free to make the comparisons that he

1 is and pointing out what he finds to be the  
2 discrepancy in these numbers on that report. But  
3 I don't think he is qualified to say what the  
4 Kansas Constitution says. So insofar as he is  
5 making legal conclusions about the Kansas  
6 Constitution, your objection is sustained.

7 The direction of your inquiry, Gary, I  
8 think is appropriate. Just -- John, do you  
9 understand the ruling here?

10 THE WITNESS: I do.

11 THE COURT: Don't tell me what the Kansas  
12 Constitution says. Compare your numbers, please.

13 THE WITNESS: I agree, Your Honor.

14 THE COURT: All right. Thank you, sir.

15 BY MR. AYERS:

16 Q. Can you finish your answer without referencing  
17 the Kansas Constitution, please?

18 A. More appropriately, yes. I think the issue here  
19 is we can see that this is not about a wholesale  
20 reconfiguring of racial concentration across the  
21 Kansas districts, so it is a question about -- it  
22 becomes then a question about relative Democratic  
23 voting tendencies among non minority voters  
24 across different districts. And if we establish  
25 something more than party polarization here, if

1 we had something more in the endogenous  
2 elections, or even in the exogenous elections --  
3 the exogenous elections don't tell us anything  
4 about racially polarized voting. They just tell  
5 us about partisan voting in a handful of  
6 statewide elections. And that leaves us in the  
7 awkward position of having to deal with a very  
8 delicate issue of racial voting entirely in the  
9 context of party voting. And I -- that's not a  
10 good place to be, and I think that's not a  
11 function of the law or the Constitution. That's  
12 a function of the inadequacy of the evidence  
13 that's been presented.

14 Q. So finally then, do you believe that Adastr 2,  
15 the Kansas enacted plan, reflects an  
16 impermissible level of either racial or partisan  
17 influence in the configuration of the adopted  
18 districts?

19 A. I do not.

20 MR. AYERS: Thank you.

21 THE COURT: Thank you, Gary.

22 MS. BRETT: One moment, Your Honor.

23 THE COURT: I take it Lali is going to do  
24 the cross examination since she made all the  
25 objections.

1 MS. BRETT: That's correct.

2 THE COURT: Take your time. When you're  
3 ready.

4 CROSS EXAMINATION

5 BY MS. MADDURI:

6 Q. Morning, Dr. Alford.

7 A. Good morning.

8 Q. Nice to see you again.

9 A. Good to see you.

10 Q. Dr. Alford, you testified on direct that you  
11 served as an expert for the state of Texas in  
12 defense of its congressional and senate maps in  
13 the 2011 cycle. Is that right?

14 A. That's correct.

15 Q. Isn't it true that both of those maps that you  
16 defended were found by Federal courts in both San  
17 Antonio and Washington, DC to have been  
18 intentionally discriminatory towards minority  
19 voters?

20 A. Parts of the plans were invalidated, yes. Parts  
21 of the plans were invalidated, yes.

22 Q. Because they were found to be intentionally  
23 discriminatory against minority voters?

24 A. It's been a while since I read the opinions, but  
25 I have no reason not to believe that that's true

1           if you say so.

2    Q.    You're also currently serving as an expert for  
3           the state of Texas in defense of its latest  
4           congressional plan.  Right?

5    A.    That's correct.

6    Q.    And you believe that plan to be an extreme  
7           partisan gerrymander?

8    A.    I have to confess I haven't actually looked at  
9           the current plan, but I think it would shock me  
10          if it wasn't, given that Texas has a history of  
11          bipartisan -- extreme partisan gerrymandering.  I  
12          don't -- I have nothing to do with drawing --  
13          with the exception of the one district plan that  
14          I drew for the three-Judge panel in 2001, I have  
15          never had anything to do with the districts being  
16          drawn by the Texas legislature.  I don't work for  
17          the legislature, and I have no role in the plans  
18          they drew this time or any other time.

19   Q.    But you've served as an expert for the state for  
20          the past three redistricting cycles.  Right?

21   A.    Yes.

22   Q.    Okay.  And you've done that even though you  
23          believe the State has been in the partisan  
24          gerrymandering Hall of Fame basically every  
25          decade.

1 A. I actually testified against the State on  
2 precisely that issue in Federal Court. So I have  
3 both worked for the State and testified against  
4 the State. I have not testified for the State on  
5 the issue of partisan gerrymandering. I haven't  
6 had to defend that. But I did testify for  
7 Plaintiffs against the state of Texas on the  
8 issue of whether the plan was partisan  
9 gerrymandering.

10 Q. I understand. But you have continued to serve as  
11 an expert for the state of Texas despite you  
12 believing that the State has been in the partisan  
13 gerrymandering Hall of Fame basically every  
14 decade. Right?

15 A. I'm as astonished as you that I continue to work  
16 for the state of Texas.

17 A. Fair enough.

18 Q. I was originally hired by a Democratic lawyer and  
19 a Democratic state of Texas, and why the  
20 Republicans keep hiring me, I'm not sure, but  
21 they do.

22 Q. You haven't published any papers, peer-reviewed  
23 or otherwise, about partisan gerrymandering.  
24 Correct?

25 A. That's correct.

1 Q. And you've never testified as an expert in a  
2 partisan gerrymandering case before this one.  
3 Correct?

4 A. Again, other than that being issue in the Texas  
5 case where I testified for the Plaintiffs in  
6 2002, 2003, about the mid decade redistricting, I  
7 haven't testified in a partisan redistricting  
8 case.

9 Q. And you haven't written any articles about the  
10 use of the efficiency gap with respect to  
11 partisan gerrymandering. Correct?

12 A. Correct.

13 Q. And you don't teach anything related to the use  
14 of the efficiency gap or other metrics of  
15 partisan gerrymandering. Correct?

16 A. Correct. I teach courses on districting and  
17 redistricting, and we discuss partisan  
18 gerrymanders, but I don't teach the application  
19 of the efficiency gap.

20 Q. Or any other metric of partisan gerrymandering.  
21 Correct?

22 A. Correct.

23 Q. Moving now to the work you did in this case, you  
24 didn't conduct any analysis about whether the  
25 enacted plan adheres to the legislative



1           redistricting committee's guidelines. Correct?

2    A.    Correct.

3    Q.    And you didn't examine the legislative process  
4           that took place in enacting Adastr 2. Correct?

5    A.    Correct.

6    Q.    And you didn't conduct any sort of racially  
7           polarized voting analysis in this case. Right?

8    A.    No. There was not time to. I would have liked  
9           to have done that, but there was no time to do  
10          that.

11   Q.    You reviewed Dr. Collingwood's ecological  
12          inference analysis. Correct?

13   A.    I did.

14   Q.    You didn't --

15   A.    Hold on a second. I was going to say I reviewed  
16          the results of it.

17   Q.    You didn't attempt to replicate Dr. Collingwood's  
18          analysis. Right?

19   A.    No. I normally would do exactly that, but again,  
20          there was not sufficient time for either  
21          replication or independent analysis.

22   Q.    And you don't have any reason to dispute  
23          Dr. Collingwood's conclusions with respect to the  
24          elections that he analyzed. Correct?

25   A.    Certainly the conclusions he draws from them, I

1 disagree with. But I believe Dr. Collingwood --  
2 in my experience, Dr. Collingwood is a competent  
3 analyst. I -- that doesn't mean I wouldn't  
4 replicate his analysis, as I've done in other  
5 cases. But my -- I'll tell you my opinions here  
6 are not a reflection of my doubt about the  
7 results Dr. Collingwood got in the elections he  
8 chose to analyze. They're about the -- my doubts  
9 about the elections he chose to analyze.

10 Q. But you don't dispute any of the results that  
11 he -- that came of his ecological inference  
12 analysis.

13 A. I can't confirm that they're correct. I don't --  
14 but I -- my conclusions are not based on  
15 disputing the numbers he provided. Just the  
16 inadequacy of the elections he was analyzing.

17 Q. But you would never dispute the conclusions he  
18 drew from those elections. Correct?

19 A. I think he draws conclusions from those elections  
20 about the issue in this case. I presume about  
21 the congressional -- about about racially  
22 polarized voting as it applies to the  
23 congressional elections, and I certainly dispute  
24 that. He has a small set of elections in which  
25 he demonstrated partisan polarization. That's

1 all he has. And it's not in elections that are  
2 at hand here. Exogenous elections, party  
3 polarization. I don't dispute that that's what  
4 they show.

5 Q. You agree though that no elections have been  
6 conducted under the current congressional map.  
7 Right?

8 A. That's correct.

9 Q. So there are no elections that have taken place  
10 under that map.

11 A. The issue is not -- we don't need the next map to  
12 do racially polarized voting analysis. If we  
13 did, we would be in difficult straits all over  
14 the place. We have a long series of  
15 congressional elections in the same geography,  
16 including the entire state of Kansas if we want  
17 to do it, which seems to be the reason for using  
18 the statewide elections. There's nothing barring  
19 us from analyzing congressional elections here,  
20 except that somebody decided not to analyze  
21 congressional elections.

22 Q. And you also didn't analyze those congressional  
23 elections.

24 A. What?

25 Q. And you also didn't conduct that analysis.

1 A. I said I had -- they just -- I'm not saying it's  
2 simple or I could do it in a day. It takes time  
3 to gather that data, as Dr. Collingwood  
4 suggested. It's not in the best possible form,  
5 but it can be done, had I had the time to do it,  
6 I certainly would have done.

7 Q. Okay. My question was just that you didn't do  
8 it. Correct?

9 A. I did not have the time do it, and I would have  
10 done it.

11 Q. Okay. You agree though, don't you, that  
12 ecological inference is a reliable methodology to  
13 evaluate racially polarized voting?

14 A. For that specific purpose, it is the only, I  
15 think, efficient useful and appropriate  
16 methodology that we have. It isn't ideal, but it  
17 is the best we have, given the data limitations  
18 of analyzing that in a legal setting. And I  
19 utilized ecological inference analysis for that  
20 purpose. And I don't utilize the same technique,  
21 and that's the reason why -- one of the reasons  
22 why I would always want to replicate  
23 Dr. Collingwood's analysis, because I don't  
24 believe that iterative EI is appropriate. So I  
25 would certainly want to check that. But that's

1 -- we're pretty far in the woods at that point, I  
2 think, when we come to quibbles about however  
3 important they are to us academics. I don't --  
4 again, I don't think he's got the wrong results.  
5 I think what he shows is that for that set of  
6 exogenous elections, there's party polarization.

7 Q. You've testified previously that ecological  
8 inference is the gold standard for doing the sort  
9 of analysis. Right?

10 A. Yes.

11 Q. Can we pull up Plaintiff's Exhibit 122? Go to  
12 page five, figure one. So Dr. Alford, as you  
13 know, Dr. Collingwood analyzed all of the  
14 statewide elections from 2016 to 2020. Correct?

15 A. Correct.

16 Q. And this figure is showing the results of his  
17 racially polarized voting analysis? Is that  
18 right?

19 A. I believe that's what this is.

20 Q. And one of those races that was analyzed was the  
21 2018 Insurance Commissioners election. Right?

22 A. Yes.

23 Q. And this figure is looking at the results for the  
24 prior CD3. Correct?

25 A. That's what it says.

1 Q. Okay. So in prior CD3 in the insurance  
2 Commissioners election, is about two-thirds of  
3 white voters supported their preferred candidate.  
4 Right?

5 A. So you're talking about the 44.2%? Am I looking  
6 at the right thing?

7 Q. I'm looking --

8 A. I'm sorry. The red's above.

9 Q. That's right.

10 A. So much for the Governor. Insurance  
11 Commissioner. About a little less than  
12 two-thirds. Yes.

13 Q. And that candidate was different than the  
14 minority preferred candidate. Right?

15 A. That's correct.

16 Q. Okay. So of all the elections analyzed in former  
17 CD3, the Insurance Commissioner race has one of  
18 the higher levels of support that white voters  
19 gave to the white preferred candidate. Is that  
20 right?

21 A. It is -- yeah. I think the two highest are that  
22 and the 2016 Senate.

23 Q. And turning now to page six, figure two of the  
24 same exhibit, which is Plaintiff's Exhibit 122.  
25 So this figure is looking at racially polarized

1 voting, the results of Dr. Collingwood's analysis  
2 for the enacted CD2. Is that right?

3 A. Right.

4 Q. I'm looking again at the 2018 Insurance  
5 Commissioners race, just kind of in the middle  
6 there. About 78% of white voters supported their  
7 preferred candidate. Correct?

8 A. Correct.

9 Q. And again, that candidate was different than the  
10 minority preferred candidate. Right?

11 A. Correct.

12 Q. And of all the elections analyzed here in CD2,  
13 the Insurance Commissioners election -- that race  
14 was the one that had the highest level of white  
15 support for the white preferred candidate.  
16 Right?

17 A. That's correct.

18 Q. Okay. And then turning to page eight of this  
19 same document, figure four. And again, looking  
20 at the 2018 Insurance Commissioners race,  
21 specifically in CD2 enacted. So that's the  
22 second column. The green bar is the share of the  
23 vote for the candidate who won. Sorry. The  
24 green bar is the white preferred candidate's vote  
25 share. Do you understand that?

1 A. Yes.

2 Q. Okay. And so that -- in that election, the white  
3 preferred candidate received the highest vote  
4 margin of any of the elections. Is that right?

5 A. That looks to be correct.

6 Q. And the minority preferred candidate in that  
7 election was black. Right?

8 A. I'm not aware of the race of the candidates.

9 Q. I can represent to you that that candidate was  
10 black, in fact. Would you agree that that  
11 candidate received the highest -- sorry -- the  
12 lowest vote share of any election?

13 A. Unless I overlooked that, I didn't see anything  
14 in the report about race or candidates. So I  
15 don't know -- I mean, if you're representing the  
16 candidate's black, then the candidate's black.

17 Q. And the white preferred candidate was white?

18 A. There's nothing that I know of in the report  
19 about the race of the candidates.

20 Q. No reason to disagree that that candidate was  
21 white?

22 A. No reason to disagree.

23 Q. Okay. We can take down that exhibit. You  
24 reviewed Dr. Chen's simulation analysis. Right?

25 A. Yes.



1 Q. You didn't run any sort of simulations to  
2 generate random political potential districting  
3 plans for Kansas. Right?

4 A. No.

5 Q. And you didn't seek to replicate Dr. Chen's  
6 analysis?

7 A. No.

8 Q. You don't have any experience or expertise in  
9 running or analyzing simulations for  
10 redistricting plans. Correct?

11 A. It's not work that I do.

12 Q. You're familiar with what a crossover district  
13 is. Right? I heard you talk about it on direct.

14 A. Yes.

15 Q. So that means a district where there's a minority  
16 group that is politically cohesive but doesn't  
17 form the majority of the district's population,  
18 and there's another racial group from which a  
19 minority of those voters crosses over to support  
20 the minority preferred candidate of choice in  
21 sufficient numbers to have that candidate  
22 elected. Is that right?

23 A. I think most of the pieces in that are correct.

24 Q. Okay. You would agree that when a legislature is  
25 setting out to stop a performing crossover voting

1 district from continuing to perform for the  
2 minority preferred candidates, one way to do that  
3 would be to remove some of the minority  
4 population from that district. Correct?

5 A. That could be correct.

6 Q. And another way to stop a crossover voting  
7 district from performing for minority preferred  
8 candidates would be by changing the nature of the  
9 white vote in the district, such that it doesn't  
10 cross over at such a high magnitude. Is that  
11 right?

12 A. That could be.

13 Q. And you would agree that previous CD3 is an  
14 example of a district in which there's sufficient  
15 crossover white voting in support of the minority  
16 preferred candidate. Correct?

17 A. I think -- I guess I'm trying to be a little  
18 careful here. You're framing this as if we  
19 established that we have a minority preferred  
20 candidate. It's a coalition district. We  
21 have -- that analysis is not here. So if you're  
22 saying there's a -- that we've established  
23 racially polarized voting, and now we're talking  
24 about crossover in support of a cohesively  
25 supported minority candidate, we just got

1 party -- got some party voting here. Everything  
2 you're saying about party voting is true, but I'm  
3 just hesitant to suggest that we know anything  
4 about that in a racial sense beyond having lumped  
5 the groups together and done some analysis that  
6 suggests that in some exogenous elections, they  
7 might collectively favor the Democratic  
8 candidate. We just don't know -- we know almost  
9 nothing about the behavior. These are not groups  
10 that are normally put together for a single -- as  
11 a Plaintiff in a single vote dilution case.  
12 Asians, Native Americans, Hispanics, blacks,  
13 others. There's a lot that needs to be done  
14 empirically to establish that we even have that  
15 starting point, and that hasn't been done here.

16 Q. Okay. But you don't disagree that in the areas  
17 examined by Dr. Collingwood, that minority voters  
18 and white voters vote in a polarized way.  
19 Correct?

20 A. Again, if by "minority voters", you mean that we  
21 have -- mean the minority voters just all dumped  
22 together? Or that there is such a thing as  
23 defined cohesive minority group? I just don't  
24 know much about how the individual minority  
25 groups here vote. We just don't have any

1 evidence.

2 Q. I'm asking about the analysis that  
3 Dr. Collingwood did, where he did group the  
4 minority voters together in some of those. So  
5 you don't disagree that minority voters and white  
6 voters vote in a polarized way. Correct?

7 A. I don't agree -- I agree that minority voters,  
8 lumped together in his analysis, vote more  
9 Democratic, and then in some areas, there's more  
10 variety in the tendency of white voters to vote  
11 in a Democratic or Republican fashion.

12 Q. Okay. You just -- you're disputing only that  
13 Plaintiffs haven't proven to your satisfaction  
14 why the groups vote differently. Correct?

15 A. Well, I'm disputing that we have evidence for  
16 cohesion for this mixture of ethnic and racial  
17 groups. I'm disputing that we have evidence that  
18 that polarization could be properly viewed as --  
19 or that we have evidence that shows that it's  
20 racial, rather than partisan.

21 Q. So you agree that the analysis demonstrates a  
22 degree of partisan polarization. Correct?

23 A. It demonstrates a degree of partisan  
24 polarization.

25 Q. So your dispute is with the cause behind that

1 partisan polarization. You're saying that it has  
2 not been shown here what causes the partisan  
3 polarization. Correct?

4 A. I don't think the dispute is causal, because we  
5 don't get anything causal out of EI anyway.

6 Q. Right.

7 A. I think the dispute is whether we have done  
8 enough analysis of the right elections in the  
9 right way to establish that we have at least  
10 minimal information that suggests that -- I mean,  
11 the claim here is that -- from Collingwood's  
12 report is that voting in Kansas is racially  
13 polarized. The analysis in his report is not  
14 inconsistent with that, but it does not establish  
15 that. And I think that's a very serious charge  
16 to throw around on the basis of some exogenous  
17 election partisan voting results. It's not just  
18 the absence --

19 THE COURT: Hold on.

20 THE WITNESS: I'm sorry. Not allowed to  
21 do that.

22 THE COURT: Thank you.

23 BY MS. MADDURI:

24 Q. Dr. Alford, you saw Dr. Miller testify. Right?

25 A. I saw two Dr. Millers testify.

1 Q. Certainly. You saw Dr. Patrick Miller testify.  
2 Correct?

3 A. Yes.

4 Q. That's the one I'm going to ask you about. And  
5 you heard him explain that 113,000 people were  
6 shifted out of CD3 from the old plan -- between  
7 the old plan and new plan. Do you recall that?

8 A. I remember him talking about something -- I think  
9 it was in that range, yes.

10 Q. And you heard him explain that of those 113,000  
11 people who were moved, 71% were minorities.  
12 Correct?

13 A. He made some reference to a percentage. I don't  
14 recall the exact percentage.

15 Q. And you also heard him testify that Miami,  
16 Anderson, and Franklin were added into CD3.  
17 Correct?

18 A. I think that's correct.

19 Q. And you heard him testify that about 90% of those  
20 voters were white. Right?

21 A. Again, I don't remember the percentage.

22 Q. But you don't dispute any of those numbers.  
23 Correct?

24 A. Correct.

25 Q. You don't dispute any of the numbers in

1 Dr. Miller's data or calculations. Correct?

2 A. Correct.

3 Q. Okay. So in terms of the change in the district  
4 from a racial demographic standpoint, CD3 was  
5 previously the district with the highest minority  
6 population, and now it's the one with the lowest  
7 minority population. Right?

8 A. Correct.

9 Q. And at the start of the last decade, CD3 was a  
10 Republican-leaning district?

11 A. Correct.

12 Q. And by the end of the decade, you would agree  
13 that CD3 was a Democratic-leaning district.  
14 Correct?

15 A. Narrowing, yes.

16 Q. And you would agree Adastral 2 shifted CD3 to be  
17 closer to what it was beginning of the last  
18 decade. Correct?

19 A. It's shifted in that direction, but I don't think  
20 it's -- I mean, it remains on the Democratic side  
21 of the line, or at 50/50, so I don't think it's  
22 closer to where it was necessarily, but it's --  
23 it is closer to being a 50/50 district. It's  
24 moved in the direction. It previously was a more  
25 Republican district and elected a Republican.

1           It's become a less Republican district and  
2           elected a Democrat, and the shift is in the  
3           direction of the Republican, but not -- certainly  
4           not to what it was in 2012.

5       Q.    Okay.  In your report, you comment on the fact  
6           that congressional elections should be used to  
7           measure the efficiency gap.  Right?

8       A.    Correct.

9       Q.    And you cite an article by two professors,  
10           Professor Stephanopoulos and Professor McGhee.  
11           Right?

12      A.    Yes.

13      Q.    But you agree no congressional elections have  
14           been conducted under the new map, as we  
15           discussed.

16      A.    Correct.

17      Q.    And you also agreed that the article you cite  
18           does not recommend using congressional elections  
19           to calculate deficiency gap where no  
20           congressional elections have been conducted under  
21           the congressional plan.  Correct?

22      A.    Correct.

23      Q.    You agree that the changes made to Kansas'  
24           congressional districts between the prior plan  
25           and Adastr 2 reflect partisan considerations.



1 Correct?

2 A. I don't know what -- I don't know anything about  
3 a 10 or anything else, but my view is that the --  
4 in terms of how I would characterize those  
5 changes -- they look to me to be -- to have a  
6 have a modest partisan effect.

7 Q. So you would agree that the changes made to the  
8 3rd District in the new plan are an attempt to  
9 make that district -- make CD3 less Democratic.  
10 Right?

11 A. I don't know what they were an attempt to do. I  
12 guess that's my point. There were some changes  
13 made. And legislatures -- when they do  
14 redistricting, there are personal motivations,  
15 there are the motivations of congressional  
16 candidates, then you throw in the legislature,  
17 there's -- there are policy differences. I don't  
18 know if you've ever been through a redistricting  
19 process, but there's a lot of things that go into  
20 that. And certainly in a partisan legislature,  
21 partisanship is a part of it, but to point to any  
22 one change, even if that change has a partisan  
23 result, and say that's the reason that change is  
24 made, it could have been made for some other  
25 reason and had a partisan effect. It certainly

1           could have been made for a partisan reason. It's  
2           a modest partisanship. It's compatible with the  
3           notion that the majority party is trying to tilt  
4           things in their direction, but it's also  
5           compatible with lots of other considerations that  
6           may have been operating -- these are not  
7           effects -- again, when you redraw a plan and you  
8           end up pairing a Democratic incumbent with a  
9           Republican incumbent and taking a district away  
10          and then the legislator said oh, we didn't mean  
11          to do that, that, to me, sort of doesn't seem  
12          very likely. These are pretty modest changes.  
13          And they could be intentional, or they could be  
14          related to other things, or they could be  
15          something in between.

16        Q.    Can you pull up Dr. Alford's deposition? Page  
17              128? Dr. Alford, you had your deposition taken  
18              in this case. Correct?

19        A.    Correct.

20        Q.    You recall that. Okay. And I think you said on  
21              this page at line 18, I think you know what's  
22              going on here is an attempt to make the -- return  
23              the third to a slightly less Democratic-leaning  
24              district than it had become by the end of the  
25              decade, and that involves moving, you know,

1 reconfiguring some Democrats and Republicans.  
2 Did I read that correctly?

3 A. Yes.

4 Q. We can take that down. You testified on direct  
5 about Dr. Rodden's figure 19, which depicts  
6 election results from the nine most recent  
7 statewide elections.

8 A. Yes.

9 Q. Okay. And you don't dispute any of the  
10 reconstituted elections that are analyzed in that  
11 figure. Correct?

12 A. Again, I've not been able to replicate or had the  
13 time to replicate them, but I'm not disputing the  
14 results.

15 Q. Okay. And you don't actually specifically  
16 dispute anything in Dr. Rodden's report.  
17 Correct?

18 A. Again, other than what he characterizes these  
19 things as showing, I don't dispute the -- the  
20 only figure that I looked at closely is this one.  
21 And I don't -- I'm not disputing the location of  
22 the circles. I'm disputing the interpretation.

23 Q. Okay. So I understand that you take issue with  
24 the elections that Dr. Collingwood analyzed. But  
25 putting that aside, you agree that his analysis

1           showed minority voters as a whole and the  
2           minority groups individually prefer Democratic  
3           candidates in the elections analyzed. Correct?

4    A.    No.

5    Q.    Can we pull up Dr. Alford's deposition, page 123  
6           and 124? And we can look at line 25, and lines  
7           two through eight. I asked you, Dr. Alford -- I  
8           asked you, and you also agree, I think, in your  
9           report that Dr. Collingwood and Dr. Miller's  
10          analyses show that in the elections examined,  
11          minorities voters as a whole and minority groups,  
12          Hispanic and black voters, prefer Democratic  
13          candidates in the elections analyzed. Is that  
14          right? And you responded, that's correct.

15   A.    Yes, that's --

16   Q.    Did I read that correctly?

17   A.    Yes.

18   Q.    Okay.

19   A.    But that's not the same question you just asked  
20          me. There are more minority groups here than  
21          just blacks and Hispanics.

22   Q.    Okay.

23   A.    And they're not being analyzed. You asked me  
24          about the individual groups. So there's nothing  
25          here about Asian voters, there's nothing here

1 about Native Americans, there's nothing here  
2 about other -- so those are all combined in. He  
3 does have one table where he pulls apart black  
4 and Hispanic and shows their Democratic  
5 preference, but we still are throwing in other  
6 important ethnic and racial groups and not  
7 analyzing them at all.

8 Q. You agree under the new plan that CD2 is the new  
9 district with the highest proportion of minority  
10 voters. Correct?

11 A. That's what it looks like, yes.

12 Q. Okay. And based on Dr. Rodden's reconstituted  
13 elections analysis under the elected plan,  
14 Democratic candidates would have only won one of  
15 those nine elections in CD2?

16 A. I think that's correct.

17 Q. And that would have been the 2018 Governor's  
18 race?

19 A. Correct.

20 Q. And that election was the best-performing  
21 election for Democratic candidates. Right?

22 A. I believe that's correct.

23 Q. Okay. Dr. Alford, you would agree that the  
24 presence of a thin geographical connector between  
25 different parts of a district -- that would be a

1 warning flag that there might be some partisan  
2 motive at play. Is that right?

3 A. Could be.

4 Q. And you would agree that splitting a county that  
5 has a large concentration of geographically  
6 compact minority voters could be evidence of  
7 racially-motivated intent in the drawing of those  
8 lines?

9 A. I mean, it obviously would depend how the county  
10 was split, but it could be.

11 Q. Going back to your report, you reproduced  
12 Dr. Miller's table four in that report. Do you  
13 recall discussing that on direct?

14 A. Yes.

15 Q. Okay. So you would agree that under the old  
16 district line, CD3 has a one-point Democratic  
17 lean, making a Democratic victory more likely?

18 A. Under the -- I'm sorry.

19 Q. Under the old plan. We can pull it up if that  
20 would be easier.

21 A. I've got it.

22 Q. Okay.

23 A. So old plan --

24 Q. Yes.

25 A. -- CD3 is what? What's our time period? The

1 whole decade?

2 A. I'm looking at the final column.

3 A. The Cook PDI?

4 Q. That's right.

5 A. I didn't examine the Cook PDI.

6 Q. Okay. But you agree there's a one-point  
7 Democratic lean under the old plan for CD3?

8 A. I'm looking at the election results that he  
9 provided. I don't know what went into the Cook  
10 PDI. I assume it's -- it didn't look to me like  
11 it was -- but that it came out of data he had in  
12 the table. It doesn't match what's in the table,  
13 so I don't know what it is.

14 Q. Okay. But looking at the overall composite, the  
15 2012 to 2020 -- so that first column. CD3, under  
16 the old plan, had a 1% Republican advantage over  
17 that period. Correct?

18 A. That's correct.

19 Q. And under the new plan, it has about a  
20 seven-point advantage in favor of the  
21 Republicans. Correct?

22 A. A little less, but yeah, in that range.

23 Q. That's all the questions I have for you,  
24 Dr. Alford. Thank you for your time.

25 A. Thank you.

1 THE COURT: Thank you, Lali.

2 MR. AYERS: No other questions, Your  
3 Honor.

4 THE COURT: All right. Apparently no  
5 one's been here pursuant to subpoena, and we  
6 didn't put the rule into effect, so John is free  
7 to come and go as he chooses, I think.

8 MR. AYERS: I think he would like to go  
9 home to Houston.

10 THE COURT: Thank you for your testimony  
11 today, John. Appreciate it. And you are free to  
12 return to Houston if you wish to go.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 (Pause in the proceedings.)

16 MR. RUPP: We have no additional  
17 witnesses. I'm just double checking to make sure  
18 we have no exhibits that haven't been admitted.

19 (Pause in the proceedings.)

20 MR. RUPP: Your Honor, the Defense rests.

21 THE COURT: Thank you, Tony.

22 MS. BRETT: The Plaintiffs would like to  
23 call a rebuttal witness, Dr. Jowei Chen.

24 THE COURT: All right. Just come back up.  
25 Hello again, Jowei.



1 THE WITNESS: Good morning, Your Honor.

2 THE COURT: And you're still under oath.

3 So have a seat. As soon as your counsel is ready  
4 and you're ready.

5 DIRECT EXAMINATION

6 BY MS. THEODORE:

7 Q. All right. Welcome back, Dr. Chen. All right.  
8 So you haven't been here for most of the  
9 Defendant's case in chief. But do you recall  
10 from the Defendant's opening statement that they  
11 have argued that the partisan bias in the Adastra  
12 2 map can be explained by a purported overriding  
13 desire of the legislature to keep Johnson County  
14 whole?

15 MR. AYERS: Objection. That's leading and  
16 mischaracterization of our evidence and our  
17 opening.

18 MS. THEODORE: I'm sorry?

19 MR. AYERS: I said it's leading and it's a  
20 mischaracterization of our evidence and our  
21 opening, in terms of how you have tried to  
22 restate what we're saying.

23 MS. THEODORE: I think Your Honor, as the  
24 Court has heard, the Defendants -- one of their  
25 principle arguments has been that the legislature

1 wanted to keep Johnson County whole, and that  
2 explains the map. So I don't think it's a  
3 mischaracterization, and I don't think it's  
4 leading. I asked him if he recalled something.

5 THE COURT: I don't think it's a  
6 mischaracterization. It is certainly leading.  
7 So your objection is sustained. Rephrase your  
8 question, please.

9 BY MS. THEODORE:

10 Q. All right. Dr. Chen, do you recall discussion in  
11 the Defendant's opening statement about the  
12 legislature's desire to keep Johnson County  
13 whole?

14 A. Yes.

15 Q. Okay. And you testified on Monday about your  
16 1,000 nonpartisan simulated congressional plans  
17 for Kansas. Correct?

18 A. Right.

19 Q. All right. And in generating those plans, your  
20 algorithm minimized county splits so that all  
21 1,000 maps have no more than three county splits.  
22 Is that right?

23 A. That's correct.

24 Q. Okay. But you did not require them to keep  
25 Johnson County whole specifically. Correct?

1 A. Not specifically.

2 Q. All right. Have you since gone back to look  
3 specifically at whether a subset of your  
4 nonpartisan maps nonetheless kept Johnson County  
5 whole?

6 A. Yes, I have.

7 Q. All right. And did you conduct an analysis of  
8 the expected partisan characteristics of that  
9 subset of maps that kept Johnson County whole?

10 A. Yes, I did.

11 Q. All right. Mitch, can we pull up Plaintiff's  
12 Exhibit 757?

13 MR. AYERS: I just can't hear. Exhibit  
14 what?

15 MS. THEODORE: 757.

16 MR. AYERS: Okay. Thank you.

17 MR. RUPP: Your Honor, as you may know,  
18 Gary has a hearing issue, so we'll let him scoot  
19 around to the front.

20 THE COURT: Absolutely. Please, Gary,  
21 locate yourself wherever you need to be so you  
22 can hear effectively.

23 MR. AYERS: Appreciate that. Thank you.  
24 It's only a little embarrassing. (Chair tipped.)  
25 That was embarrassing. Sorry, counsel.

1 MS. THEODORE: No problem. I will try to  
2 speak as loudly as I can.

3 MR. AYERS: No, I'm good now. Thanks.

4 BY MS. THEODORE:

5 Q. All right. Dr. Chen, can you tell us what  
6 Plaintiff's Exhibit 757 is showing?

7 A. Like I said, I looked at the 1,000 computer  
8 simulations, computer-simulated plans and Kansas  
9 congressional plans, and I found that 514 of  
10 those 1,000 plans keep all of Johnson County  
11 whole within a single district. So that's 51.4%  
12 of the simulated plans. And those 51.4% of the  
13 plans, those 514 plans are what we're looking at  
14 here on this figure. And this figure is exactly  
15 like figure five from my expert report that we  
16 talked about at length last Monday, except this  
17 time, instead of looking at all 1,000 plans,  
18 we're only going to look at those 514 plans that  
19 keep all of Johnson County together entirely in a  
20 single district. But otherwise, this figure is  
21 exactly the same as figure five that we looked at  
22 last Monday.

23 And so again, just like we talked about  
24 last week, this figure has got four rows because  
25 every congressional plan has four districts --

1 has four congressional districts. The top row is  
2 going to tell us the partisanship of the most  
3 Republican district in every plan. The second  
4 row is going to tell us about the second most  
5 Republican district, and so on. And so the  
6 bottom row is going to tell us about the fourth  
7 most Republican district. In other words, the  
8 most Democratic district. And within each row,  
9 there's 1,000 -- sorry. There's 514 now gray  
10 circles depicting the districts from the 514  
11 simulated plans. And then there's going to be,  
12 of course, a red star which tells us about the  
13 enacted plan. So this figure is otherwise just  
14 laid out exactly like the same figure -- the  
15 analogous figure that we talked about for the  
16 last week.

17 Q. All right. And so what did you find when you  
18 compared the enacted CD3 district with the most  
19 Democratic district in the simulated plans, just  
20 limited to the 514 plans that keep Johnson County  
21 whole?

22 A. CD3 is still an extreme partisan outlier. We're  
23 going to look at the bottom row. This is -- like  
24 you said, this is the most Democratic district in  
25 each plan. That bottom fourth row on this

1 figure. And so we see exactly the same pattern  
2 that we saw last week, except now we're just  
3 looking at the simulated plans that kept all of  
4 Johnson County whole. And when we zoom in, let's  
5 just move that upper bond up a little bit so we  
6 get the entire body fourth row there. So it's  
7 exactly the same pattern that we saw last week.

8 Let's start by looking at the 514  
9 simulated plans, most Democratic district.  
10 Almost all of them are slightly  
11 Democratic-leaning, or more safely  
12 Democrat-leaning, and you can see they all have a  
13 Republican vote share of somewhere between about  
14 46%, to mostly up to about 49%. Almost all of  
15 them are under 50%.

16 Now, all 100% of them are more Democratic  
17 favorable than CD3. That's that red star right  
18 there. CD3 has a Republican vote share using the  
19 same statewide election composite of 50.5%. So  
20 it's obviously very competitive, but slightly  
21 Republican-leaning district. That stands in  
22 contrast to all 514 -- all 514 simulated  
23 districts on this row. So it's an extreme  
24 partisan outlier. It is more Republican  
25 favorable than all 100% of the 514

1 computer-simulated plans.

2 Q. All right. And Dr. Chen, nothing in this  
3 analysis involves the efficiency gap. Right?

4 A. No.

5 Q. Okay. And would any of your opinions change in  
6 this case if you hadn't done any efficiency gap  
7 analysis?

8 A. No. They would be the same.

9 Q. All right. Let's switch to Congressional  
10 District 1, which is the most Republican  
11 district. When you keep Johnson County whole, do  
12 you see the same pattern when you compare CD1 in  
13 the enacted plan to the most Republican district  
14 in the simulated plans that you saw when you were  
15 looking at all 1,000 plans?

16 A. Yes. We see the same pattern here. It's an  
17 extreme partisan outlier here. Again, this is  
18 the most Republican district within each plan.  
19 So this is going to be the western Kansas  
20 district. In every plan, this row is telling us  
21 about what the whatever that western Kansas  
22 district is. And let's start by looking at all  
23 of these computer-simulated plans here. These  
24 514 western Kansas district plans. And they all  
25 have a Republican vote share of higher, around

1 70%, sometimes higher than 70%. Right? Now,  
2 let's look at the red star. And of course, the  
3 western Kansas district in the enacted plan --  
4 that's CD1 -- that has -- let's just zoom out  
5 here so we can see the X axis on this figure.  
6 That has a Republican vote share of around 65%.  
7 So it is less Republican than 99.8% of the  
8 computer-simulated western Kansas districts. So  
9 it has less Republicans. It was intentionally  
10 drawn to intentionally remove Republicans,  
11 compared to a districting process that is  
12 partisan blind and just follows traditional  
13 districting principles and keeps all of Johnson  
14 County together in single district.

15 Q. Defendant's counsel has characterized this  
16 evidence as an argument that the legislature was  
17 somehow required to pack CD1 with Republicans.  
18 Can you respond to that?

19 A. It's not packing. When you look at the  
20 computer-simulated plans, the plans that are  
21 drawn adhering to traditional districting  
22 principles and keeping all of Johnson County  
23 whole, you can see that that western Kansas  
24 district is usually around 70% Republican vote  
25 share. And often, you can see that it sometimes



1 goes up to about 72 or 73% Republican vote share.  
2 That's because it's a western Kansas district.  
3 Western Kansas, the political geography is very  
4 heavily Republican. So naturally, you're going  
5 to end up with districts that are around 70%  
6 Republican vote share.

7 Now, by contrast, CD1 actually has a  
8 lower, not a higher but a lower Republican vote  
9 share. CD1 was drawn in a way that intentionally  
10 removed Republicans. And by removing Republicans  
11 from that western Kansas district, CD1, that  
12 enabled the legislative map drawer to take those  
13 Republican voters and put them into other  
14 districts, thereby increasing the Republican vote  
15 share of other districts like CD2 and CD3. And  
16 the reason that's important here is because CD1  
17 with the Republican vote share of around 65%,  
18 it's still a safe Republican district. It is  
19 obviously a district that's always going to elect  
20 a Republican. So even though the legislature  
21 intentionally removed Republican voters from CD1,  
22 it's still a safe Republican seat. But by  
23 removing those Republican voters, those  
24 Republicans could be used in other districts to  
25 increase the Republican vote share of closer

1 districts like CD2 and CD3. So that's what we  
2 see here in these couple of rows.

3 Q. All right. Mitch, can we pull up Plaintiff's  
4 Exhibit 756? All right. Dr. Chen, can you  
5 explain what Exhibit 756 is?

6 A. This figure is reporting the number of Republican  
7 districts, districts that have over a 50%  
8 Republican vote share, as measured using this  
9 statewide election composite in the 514 simulated  
10 plans, as well as the enacted congressional plan.  
11 And again, these are the same 514 simulated plans  
12 that always keep all of Johnson County whole in a  
13 single district. And so this figure is telling  
14 us how many Republican districts were there.  
15 Were there three, or were there four? And so we  
16 can see in this histogram here that 98.8% of the  
17 simulations in simulations that were following  
18 traditional districting criteria and kept Johnson  
19 County together, 98.8% of these plans create  
20 three Republican districts. Only 1.17% of them  
21 actually create four Republican districts, which  
22 is what the enacted plan creates.

23 Q. All right, Dr. Chen. So summing up, in your  
24 opinion, could a hypothetical intent by the  
25 legislature to preserve Johnson County explain

1 the extreme pro-Republican bias you identified in  
2 the map?

3 MR. AYERS: Objection to this witness  
4 trying to impute intent into the legislature  
5 body.

6 MS. THEODORE: Your Honor, the witness has  
7 testified extensively about how his method allows  
8 him to draw conclusions about intent. The Court  
9 already admitted him as an expert on that  
10 subject, and the rebuttal evidence is simply  
11 analyzing the claim about Johnson County. And I  
12 think it's well within his expertise.

13 THE COURT: Court agrees. Your objection  
14 is overruled.

15 THE WITNESS: Okay. Even if we look at  
16 computer simulations that are keeping all of  
17 Johnson County together, even if you want a  
18 districting process that doesn't just follow  
19 traditional districting principles, but also  
20 specifically keeps all of Johnson County  
21 together, even using that as a baseline, the  
22 enacted plan still is an extreme partisan outlier  
23 both at a plan-wide level, as well as with  
24 respect to the same individual district we've  
25 been talking about over the past week.

1 MS. THEODORE: Thank you. I have no  
2 further questions, but I'd like to move  
3 Plaintiff's Exhibit 756 and 757.

4 MR. AYERS: No objection, Your Honor. If  
5 we can have them for our cross examination. We  
6 don't have them.

7 THE COURT: Absolutely. You may use them.  
8 But they are admitted without objection. I  
9 suppose we can coordinate their IT with yours,  
10 Gary, to just let them know and he'll bring them  
11 up if you wish to use them. Since I don't think  
12 Allison has those on her computer.

13 CROSS EXAMINATION

14 BY MR. AYERS:

15 Q. Dr. Chen, there are five constraints in your  
16 program, in your algorithm which are equal,  
17 contiguous, three-county splits, three VTD  
18 splits, and as compact as possible. Is that  
19 correct?

20 A. That's correct.

21 Q. So what does the constraint look like in compact  
22 as possible? Did you put a number on that for  
23 your algorithm to create districts that were a  
24 certain percentage of compactness under either  
25 the Reock or the Polsby-Popper scores?

1 MS. THEODORE: Your Honor, I'd like to  
2 object. This is completely outside the scope of  
3 the rebuttal, and I don't think that the Defense  
4 is permitted to essentially conduct a second  
5 cross examination. They need to just focus on  
6 the rebuttal evidence.

7 THE COURT: Gary?

8 MR. AYERS: Your Honor, I'm cross  
9 examining him about his Johnson County only, and  
10 how that -- what that simulation looks like and  
11 why it looks like that. It has to do with the  
12 constraints in his algorithm.

13 THE COURT: I'm sorry, Gary. It sounds  
14 like to the Court that you're asking him  
15 questions that were covered in the direct  
16 examination, cross examination originally. It  
17 appears to me that he has been called back as a  
18 rebuttal witness to testify to some very specific  
19 parameters involving Johnson County.

20 MR. AYERS: That's all I'm talking about,  
21 is Johnson County. And the questions I'm asking  
22 go straight to Johnson County and have nothing to  
23 do with the rest. It's all about Johnson County.

24 THE COURT: So then rephrase your question  
25 if you would, please.

1 MR. AYERS: Well, I have to ask him about  
2 his compactness scores because I think that's why  
3 we have Johnson County on these maps the way  
4 they're portrayed.

5 THE COURT: So your question about  
6 compactness scores is somehow going to ultimately  
7 lead us into his analysis, as far as the 514  
8 plans involving Johnson County.

9 MR. AYERS: Yes, Your Honor.

10 THE COURT: I'll give you a shot at it and  
11 see, but get there, please, Gary.

12 So your objection is overruled, subject to  
13 counsel's proffer that we're headed right towards  
14 where we ought to be. Do you remember what the  
15 question was, Jowei?

16 THE WITNESS: If I could have the court  
17 reporter or Mr. Ayers repeat it.

18 THE COURT: Can you repeat it, Gary, or  
19 should I have it read back?

20 BY MR. AYERS:

21 Q. I can. One of the constraints is compactness,  
22 and my question was did you program in a certain  
23 compactness score into your algorithm, beyond  
24 which the simulations could not go?

25 A. The answer to that is no.

1 Q. That was easy.

2 THE COURT: Yes, it was.

3 MR. AYERS: So Jamie, if I could have  
4 Miller, Exhibit 58, page 27.

5 (Pause in the proceedings.)

6 MS. THEODORE: Would you mind putting it  
7 on that screen as well, please?

8 MR. AYERS: I'm sorry? Yes. It will get  
9 there.

10 BY MR. AYERS:

11 Q. Dr. Chen, you were here for Dr. Alford's  
12 testimony, were you not?

13 A. This morning, yes.

14 Q. And you were here for his testimony regarding  
15 Dr. Miller's table four and the Adastra plan,  
16 where Dr. Miller projected that the -- or used  
17 the composite scores from 2018 to 2020 to show  
18 that under those election results, that CD3 was a  
19 49.7 to 47.8 lean. Do you remember that  
20 testimony?

21 A. I don't specifically --

22 MS. THEODORE: Your Honor, I'll just  
23 object again on the same basis. This is  
24 completely outside the scope of Dr. Chen's  
25 rebuttal evidence. It's not even about his

1 report.

2 MR. AYERS: It's completely within because  
3 if you move the dot, you get a completely  
4 different result, and this is going to move the  
5 dot on his composites, versus any other composite  
6 score in this -- in the testimony and in all the  
7 exhibits, Your Honor.

8 THE COURT: I'm sorry, Gary. You may be  
9 making a point I just don't get. When you say  
10 moving a point, what does that have to do with  
11 what the testimony of Dr. Chen has been on direct  
12 examination?

13 MR. AYERS: Because Dr. Chen has testified  
14 that in his statewide composite score, it puts  
15 CD3 at 50.6, barely to the right of his  
16 simulation. And if you use two or three other  
17 results, like Dr. Miller and others, it puts it  
18 to the left of the line, which puts it right in  
19 the middle of the simulation, which goes right to  
20 the rebuttal.

21 THE COURT: No disagreement with what  
22 you've said there, but I didn't hear Dr. Chen  
23 testify about any of this information on his  
24 direct examination.

25 MR. AYERS: I'm just asking him whether or



1 not he remembers that there was testimony as to  
2 CD3 in the 2018, the 2020 elections being a 49.7  
3 Democrat to 47.8. And then I have to ask him the  
4 next question to get to his exhibit, Your Honor.

5 THE COURT: Well, Gary, I'm assuming we  
6 can agree that there's a distinction between what  
7 he's testified to, which is the question the  
8 Court asked you to resolve today, and what he may  
9 have heard by sitting in the courtroom, listening  
10 to someone else. And you're wanting to get back  
11 to Dr. Alford's testimony about Dr. Miller's  
12 chart. And I'm not sure how --

13 MR. AYERS: It's the foundation for the  
14 hypothetical, Your Honor. It's very simple.  
15 Very simple.

16 THE COURT: I'm not sure simplicity is the  
17 issue I'm asked to resolve here, Gary. I'm asked  
18 to resolve whether or not the question that you  
19 are asking is outside of the scope of the direct  
20 examination of Dr. Chen today, and it is.

21 MR. AYERS: Your Honor --

22 THE COURT: Way outside.

23 MR. AYERS: Your Honor, it's not. If his  
24 exhibit completely depends upon Adastra 2 being a  
25 50.6 Republican district, if that's his

1 testimony, and all the other evidence in this  
2 courtroom says it's a lean Democrat by 49 or 52  
3 point -- to 48%, that moves his little red dot  
4 into the middle of the simulations. It's no  
5 longer, quote, an extreme partisan bias. And so  
6 I'm just asking him does he remember that we have  
7 other election scores from other of his side's  
8 witnesses that demonstrate that that dot is not a  
9 permanent dot? That it goes wherever the  
10 evidence goes. And if you move the dot, we're no  
11 longer in a, quote, extreme partisan bias plan.  
12 It's a very simple point.

13 THE COURT: Okay. Extremely compelling,  
14 but still outside of the scope. And if you would  
15 like to talk me out of sustaining your objection,  
16 you certainly may, or if you want to make sure  
17 the record is clear about your objection, please  
18 do.

19 MS. THEODORE: All I'll say is this,  
20 because there's been a lot of characterization of  
21 what the what the answers to the questions that  
22 you're about to sustain the objection to would --  
23 what the answers would be. I'll just note for  
24 the record that if you -- if the dot moves to the  
25 left because the elections change, the

1           simulations move to the left too. And with that,  
2           I will sit down.

3           THE COURT: Counsel, so that we're all  
4           clear about it, nothing that any attorney has  
5           said in this courtroom is evidence. So -- now, I  
6           know you want to make a point, and you may be  
7           able to do so. But ask it in a different way,  
8           please.

9           MR. AYERS: Could I have Exhibit 757,  
10          please?

11 BY MR. AYERS:

12 Q. Dr. Chen, your little red dot for CD3 is to the  
13 right of your 50% line because in your statewide  
14 composite score, it's a 50.6 Republican  
15 district under AA2. Isn't that correct?

16 A. I'm not sure I heard what the question was.  
17 You're asking me if --

18 Q. Well, let me reask it then. What I'm asking you  
19 is under your state composite scores, where you  
20 conclude that under Adastr 2, CD3 is a 50.6  
21 Republican district, that's why that little red  
22 dot is to the right of the 50% line on Exhibit  
23 757. Isn't that correct?

24 A. Well, the red dot is certainly plotted right at  
25 50 -- you know, just to the right of 50%. That's

1 not what makes it an extreme partisan outlier.

2 MR. AYERS: Your Honor, please. That's a  
3 yes or no question.

4 THE COURT: Jowei, can you answer that  
5 question yes or no?

6 THE WITNESS: Okay. I think I answered  
7 the question. What is being plotted there is the  
8 Republican vote share. It's right at -- it's  
9 just to the right of 50%.

10 BY MR. AYERS:

11 Q. And if that Republican vote share isn't 50.6, but  
12 instead 47.5, then the red dot moves right into  
13 the middle of your -- most of your thousand dots  
14 on CD3, does it not?

15 A. No ,no, no. You're completely misunderstanding.  
16 Okay?

17 Q. That's just a yes or no.

18 A. The answer is --

19 Q. You're saying no.

20 MS. THEODORE: Objection, Your Honor.

21 THE WITNESS: The answer is no, and you're  
22 misunderstanding --

23 THE COURT: Hold on. Everybody take a  
24 deep breath. You asked him a question that  
25 requires explanation. He cannot answer that

1 question yes or no because he's saying that you  
2 have your facts completely wrong. Finish your  
3 answer, please, Jowei.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 THE WITNESS: So if you choose a different  
7 set of elections, and that different set of  
8 elections gives you a somewhat slightly different  
9 score for the Republican vote share of CD3,  
10 and under your hypothetical, you're saying it  
11 moves it to the left, to the left of that dotted  
12 line, to the left of 50%, then all of those gray  
13 circles on the bottom row also move to the left.  
14 And this isn't me speculating. We actually went  
15 through every single statewide election last  
16 Monday. Every single statewide election from  
17 2016 and 2020. And we saw some elections that  
18 were more Democratic, and we saw some elections  
19 that were more Republican. We saw some elections  
20 that took that red star on the bottom row and  
21 moved it to the left of that dotted line. And we  
22 when we saw that happen, we saw all these gray  
23 circles also move to the left on that bottom row.  
24 And what was really striking about it was that  
25 regardless of the partisan environment, whether

1 we were looking at elections that were relatively  
2 more favorable to the Democrats or relatively  
3 more favorable to the Republicans, the red star  
4 was always an extreme partisan outlier relative  
5 to wherever those gray circles move. In other  
6 words, the red star and the gray circles moved in  
7 tandem, which -- regardless of what election we  
8 were looking at, it was still more extremely  
9 favorable to the Republicans -- the red star was  
10 more favorable to the Republicans than almost all  
11 of the gray circles. Almost all of the simulated  
12 plans.

13 MR. AYERS: Your Honor, I move to strike.  
14 That was completely unresponsive to my question.

15 MS. THEODORE: Your Honor, it was  
16 completely responsive to the question.

17 THE COURT: The Court agrees. Gary, you  
18 were asking him about percentages of moving the  
19 red dot. His explanation was if you move the red  
20 dot -- and you can -- to the numbers that you  
21 were discussing, that all of the gray circles  
22 shift as well. And that may not have been the  
23 answer that you wanted, and I understand that,  
24 but it was responsive to your question. So his  
25 testimony is not stricken in that regard.

1 BY MR. AYERS:

2 Q. Dr. Chen, if we took the red dots off of this  
3 Exhibit 757, you would have gray circles and a  
4 plotted 50% line. In other words, the gray  
5 circles would not move if we took the red dots  
6 off. Is that correct?

7 A. You're saying if I just cosmetically took the red  
8 circles off the figure.

9 Q. Right.

10 A. Took eraser, moved those red circles.

11 Q. Right.

12 A. Sure. If we didn't erase the gray circles, the  
13 gray circles -- you could still leave it there.

14 Q. The simulations create the most Republican,  
15 second most Republican, third most Republican,  
16 and fourth most Republican districts. They are  
17 not actually CD1, CD2, CD3, or CD4 because your  
18 simulation isn't numbering the districts.

19 Correct?

20 A. Well, the simulation algorithm does actually  
21 assign district numbers, but the numbers are  
22 meaningless. The numbers, you can just think of  
23 as just random numbers.

24 Q. Right. And so we don't know, just looking at  
25 your simulation, that any one of these set of

1           gray dots is or is not assigned to a particular  
2           district because it doesn't assign them to the  
3           Kansas congressional districts. Right? They're  
4           just first, second, third, and fourth ranked  
5           least Republican districts?

6    A.   No. They are specific geographic districts. For  
7           example, just to give you an example, when we  
8           talk about in the top row, the most Republican  
9           district in each plan, that is always going to be  
10          the western Kansas-based district. There's no  
11          way around it. When you draw a congressional  
12          plan, and you look at -- and you identify  
13          whatever the most Republican district is, I don't  
14          care whether you call it number one, number two,  
15          number three, or number four, it's going end --  
16          and that's just not an important -- it's just not  
17          an important number here. The point is that is  
18          the western Kansas-based district.

19   Q.   We don't know that just from running the  
20          simulations. We don't know -- we have to have  
21          more data, which is your state composite score,  
22          to know which is the most Republican district.  
23          Correct? Your state composite score tells us in  
24          Kansas, which is the most Republican district.  
25          Correct?



1 A. I think it's safe to say that the western  
2 Kansas-based district in any congressional plan  
3 is going to be the most Republican district.  
4 That's just Kansas' political geography. I  
5 didn't make it that way. I didn't make that up.  
6 That's just the way that political geography in  
7 Kansas works.

8 Q. But we learned that from your statewide election  
9 composite score. Correct?

10 A. I don't think you learned it from statewide  
11 election composites. The statewide election  
12 composite reflects that reality of Kansas'  
13 political geography.

14 Q. If you just ran the simulations without  
15 superimposing your composite scores, all we would  
16 have was the most, second, third, and fourth most  
17 Republican districts, but we wouldn't have  
18 assignments to specific congressional districts.  
19 we've established that. Correct?

20 A. I'm just not sure I understand the question. I'm  
21 just -- I can't make sense of that question.

22 Q. Your simulation runs a simulation that shows the  
23 most, second most, third most, and fourth most  
24 Republican district. That's what your simulation  
25 does. Correct?

1 A. No. The simulation algorithm doesn't assign any  
2 district to be the most Republican or second most  
3 Republican. The simulation algorithm just  
4 follows districts following partisan blind  
5 traditional districting principles.

6 Q. The ones we've talked about in earlier testimony.

7 A. Sure.

8 Q. Okay.

9 A. It just draws congressional districting plans.  
10 It doesn't assign any district to any particular  
11 row here. After the simulation algorithm has  
12 produced 1,000 plans, I can certainly go back and  
13 using a statewide election composite or using any  
14 individual election, I can calculate the  
15 partisanship of every district in every one of  
16 those congressional plans. And that's obviously  
17 what you see reported on here.

18 Q. The red stars are assigned, based upon the state  
19 composite score. Isn't that correct?

20 A. Just to be precise, the red stars are just  
21 reporting. They're not assigning anything.  
22 They're just me reporting what the Republican  
23 vote share of the enacted plans districts are.  
24 And those red stars have nothing to do with the  
25 simulated plans. It's just the enacted plan.

1 Q. Right. So that if the statewide composite score  
2 showed that under AA2, CD3 had a 47% Republican  
3 share, where would the star be? For CD3.

4 A. You're asking me to accept the hypothetical world  
5 in which, under statewide election composite, the  
6 enacted plan CD3 has a 47% Republican vote share.

7 Q. That's right.

8 A. Under that hypothetical world, which is different  
9 than what I actually found in reality. But under  
10 your hypothetical world, then obviously, I would  
11 have reported -- if the truth had been that it  
12 was 47%, I would have reported it as 47%. I'm  
13 not really sure -- I'm not really sure if that's  
14 what you're asking me in your question. You're  
15 asking me to accept --

16 Q. That's exactly what I'm asking you, Dr. Chen. In  
17 other words, when you reported it, you would  
18 report it at 47%.

19 A. Okay.

20 Q. Right? Not 50.6%.

21 A. Yeah. I think under your alternative universe,  
22 where CD3 has a 47% Republican vote share, and if  
23 I found that to be the truth, I would have  
24 reported that fact. Under your alternative  
25 world.

1 Q. And all you're doing with the red stars is  
2 reporting the results of your state composite  
3 score. Correct?

4 A. I'm not reporting the results of the state  
5 composite score. I'm recording the results of  
6 the enacted plans and the simulated plans with  
7 respect to the Republican vote share, as measured  
8 by the statewide election composite.

9 MR. AYERS: Right. No more questions.

10 THE COURT: Thank you, Gary.

11 MR. AYERS: Oh, I do have one more  
12 question.

13 THE COURT: Go ahead.

14 MR. AYERS: If you could put up 756.

15 BY MR. AYERS:

16 Q. Dr. Chen, your Exhibit 756 purports to show that  
17 Aadastra 2 is 4-0 plan, and your simulations are a  
18 3-1 plan. Is that correct?

19 A. It's showing that under the statewide election  
20 composite as a measure of the Republican vote  
21 share, we've got the enacted plan with four  
22 Republican districts, and the 98.8% of  
23 the simulated plans have three Republican  
24 districts, 1.17% of are as formed.

25 Q. Exactly. So what you're trying to tell the Court

1 is that under your simulations, you'd have a 3-1  
2 state, but under Adastr 2, based on your state  
3 composite score, we have a 4-0 state. That's  
4 what you're trying to tell the Court. With this  
5 Exhibit.

6 A. I'm just going to answer it the same way that I  
7 answered your previous question. What this shows  
8 is that 98.8% of the time, you end up with a  
9 three Republican district plan. 1.17% of  
10 the time, you end up with a 4-0 plan.

11 Q. Based on your algorithm.

12 A. Under the simulated plans.

13 Q. Based on your algorithm.

14 A. It's based on my algorithm.

15 Q. Right. Thank you.

16 THE COURT: Thank you, Gary. Redirect?

17 MS. THEODORE: Just two quick questions,  
18 and then I know Dr. Chen has a plane to catch.

19 REDIRECT EXAMINATION

20 BY MS. THEODORE:

21 Q. Dr. Chen, Mr. Ayers suggested an analysis in  
22 which you would measure the partisanship of  
23 enacted CD3 using a different set of elections  
24 that's more favorable to Democrats while  
25 continuing to measure the simulated districts

1 using your same composite shown in PX 757. Does  
2 that type of analysis make any sense to you?

3 A. Yeah. That wouldn't really make sense. You have  
4 to do an apples to apples comparison. You have  
5 to use the same elections to analyze the enacted  
6 plan as you do the simulated plan. So if you are  
7 going to use a different set of elections that's  
8 more Democratic favorable, that's totally fine,  
9 but you would have to do that same analysis for  
10 both the simulated plans and the enacted plans so  
11 you can have an apples to apples comparison.  
12 That's why I was explaining to Mr. Ayers if a red  
13 star moves to the left because you've chosen a  
14 more Democratic favorable set of elections, then  
15 so too do all of those gray circles on the bottom  
16 row also move to the left. And like I said,  
17 that's not me speculating. We actually did that  
18 last Monday. We looked at every single -- we  
19 looked at a lot of different statewide elections  
20 during 2016 to 2020. Last Monday, I showed  
21 analysis in the appendix of my report using every  
22 single statewide election from 2016 to 2020.  
23 Some of them were, in fact, more Democratic  
24 favorable electoral environments. And we saw  
25 that when the red star moves to the left, so too

1 do the gray stars move to the left. And even in  
2 those environments, the red star was still more  
3 Republican favorable than almost all of the gray  
4 circles on that bottom row. That pattern -- it  
5 was striking how that pattern was very  
6 consistent, even in diverse electoral  
7 environments.

8 Q. You used your composite, and you also used all  
9 nine individually. Right?

10 A. Exactly.

11 Q. And under any of those elections, did you ever  
12 find a scenario in which the enacted CD3 is not  
13 an extreme partisan outlier in comparison to your  
14 simulations?

15 A. No.

16 MS. THEODORE: Thank you, Your Honor.

17 THE COURT: You're welcome. Thank you.  
18 Gary?

19 MR. AYERS: No more questions.

20 THE COURT: All right.

21 MR. AYERS: But I would like to make a  
22 point: I predicted noon, and opposing counsel  
23 predicted much earlier than that, so I've been  
24 right at least on one point.

25 (Laughter.)

1 THE COURT: Thank you for your testimony  
2 today, Jowei. And I hope you catch your plane.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Appreciate you being here.

5 (Discussion held off the record and  
6 out of the hearing of the court reporter.)

7 THE COURT: Back on the record. Okay,  
8 counsel. Typically, I would say let's go to  
9 lunch, but I'm guessing I'm going to hear a  
10 motion. Do you want to do that before, or after?

11 MR. RUPP: Well, my motion will just be a  
12 renewal of the motion to dismiss and the motion  
13 for judgment at the close of the case. And so  
14 we've made our points on that in prior argument.  
15 I don't intend to reargue that at this point in  
16 time but would stand on the prior motions.

17 THE COURT: All right. I will take that  
18 as your motion, and you are simply renewing the  
19 things you have told me before, Tony.

20 MR. RUPP: Correct.

21 THE COURT: Yes. Curtis?

22 MR. WOODS: Your Honor, may I?

23 THE COURT: Yes.

24 MR. WOODS: I'd like you to reconsider  
25 Exhibit 759, the fourth paragraph. Because if



1           you -- if you compare 758, which Sharon put in to  
2           our paragraph four, the first two sentences are  
3           identical. The first sentence just states where  
4           Mr. Lea is under the old congressional map, and  
5           where he is under the new congressional map, and  
6           then the second sentence is identical. So it  
7           doesn't go beyond the other declarations.

8           Mr. Rupp was incorrect in stating that. I'm okay  
9           if you want to strike the last sentence, because  
10          that's not in all the other declarations. But I  
11          ask you to reconsider with respect to the first  
12          two sentences of paragraph four of Exhibit 759,  
13          Mr. Lea's declaration and admit that.

14                   MR. RUPP: I am just such an agreeable guy  
15                   that I would allow him to have the first two  
16                   sentences of that declaration.

17                   MR. WOODS: That's not what you said a  
18                   half an hour ago.

19                   THE COURT: So are you happy with the  
20                   first two sentences? You want all of the  
21                   sentences but the last.

22                   MR. WOODS: Well, I'd ask for the last  
23                   too. Yeah. But --

24                   THE COURT: You want them all.

25                   MR. WOODS: Yes.

1           THE COURT:  And you're okay with the first  
2           two.

3           MR. RUPP:  I would be okay with the first  
4           two.

5           MR. AYERS:  Now you made a more persuasive  
6           argument.

7           THE COURT:  All right.  So we will let in  
8           all -- the Court reconsiders its argument in lieu  
9           of what Curtis has pointed out, what Tony agrees  
10          to.  We will allow in everything except for the  
11          last sentence, where it says, as a resident of  
12          the 2nd Congressional District, I feel -- I feel  
13          my vote may make a difference, but I believe my  
14          vote will be meaningless in a congressional  
15          election in the 1st District.  That part is  
16          stricken.

17          MR. RUPP:  Yes.  And paragraph five is  
18          still stricken.

19          THE COURT:  And five still.  Yes.  No  
20          change there.

21          MR. WOODS:  Thank you, Your Honor.

22          THE COURT:  You're welcome.  Thank you,  
23          Curtis, for pointing that out.  Thank you, Tony,  
24          for your partial agreement.  All right.  So your  
25          response to that -- I know that was kind of an

1 unusual procedural move, but we are now ready for  
2 the Plaintiff's response to the motion to  
3 dismiss.

4 MS. BRETT: We will stand on the arguments  
5 made earlier. No need to rehash what was  
6 previously argued.

7 THE COURT: All right. The Court's mind  
8 is not changed either, so the Court's ruling will  
9 remain what it had been at the initial motion to  
10 dismiss before the trial started when the Court  
11 made some additional rulings then on the first  
12 motion to dismiss after the presentation of  
13 evidence. So the Court viewed that, of course,  
14 as a motion to dismiss at the close of the  
15 Plaintiff's evidence. Now, at the close of all  
16 the evidence, the parties have -- one party has  
17 renewed its motion, the other party has responded  
18 in the same manner, and the Court denies the  
19 motion.

20 Now let's talk about where we go from  
21 here. But let's put anything else on the record  
22 that we need to. Sharon?

23 MS. BRETT: I do not need this to be on  
24 the record.

25 THE COURT: All right. Curtis, Tony,

1 anything else for the record? This is logistics,  
2 where we go from here.

3 MR. WOODS: Nothing, Your Honor.

4 MR. RUPP: No, Your Honor.

5 THE COURT: Good. Thank you. All right.  
6 Thank you so much.

7 (Court adjourned at 12:16 p.m.)  
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## C E R T I F I C A T E

STATE OF KANSAS            )  
   )  
 COUNTY OF WYANDOTTE    ) ss:

I, Tamara Diane Ross, a Certified Court Reporter for the State of Kansas and the regularly appointed, qualified and acting official reporter for the 29th Judicial District of the State of Kansas, do hereby certify that, as such official reporter, I was present at and reported the above and foregoing proceedings in Case No. 2022-CV-89, Faith Rivera, et al, Tom Alonzo, et al, Susan Frick, et al, Plaintiffs, v. Scott Schwab, et al, Defendants, heard on April 11th, 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 125 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 12th day of April, 2022.

/s/ Tamara Diane Ross  
 Tamara Diane Ross, RMR, RPR, CSR No. 1736