

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et al.*,)
)
Plaintiffs,)
)
v.)
)
STATE OF NORTH CAROLINA, *et al.*)
)
Defendants.)
_____)

DEFENDANTS’ RULE 26(a)(3)(A) PRETRIAL DISCLOSURES

Defendants, under Fed. R. Civ. P. 26(a)(3)(A), provide the following pretrial disclosures for the trial set to begin on April 11, 2016:

I. WITNESSES DEFENDANTS EXPECT TO PRESENT OR MAY PRESENT AT TRIAL

Under Fed. R. Civ. P. 26(a)(3)(A)(i), Defendants expect to present the following witnesses at trial:

Dr. Thomas Hofeller
c/o Ogletree Deakins
4208 Six Forks Road
Suite 1100
Raleigh, NC 27609

Representative David Lewis
North Carolina House of Representatives
16 W. Jones Street
Room 2301
Raleigh, North Carolina

Brian Neesby
North Carolina State Board of Elections (“NC SBE”)
441 North Harrington Street

Raleigh, North Carolina 27603

Senator Bob Rucho
North Carolina Senate
300 N. Salisbury Street
Room 300-A
Raleigh, North Carolina 27603

Under Fed. R. Civ. P. 26(a)(3)(A)(i), Defendants may call the following witnesses
at trial if the need arises:

Valencia Applewhite
5813 Mondavi Place
Fayetteville, NC 28314

Dr. Thomas L. Brunell
c/o Ogletree Deakins
4208 Six Forks Road
Suite 1100
Raleigh, NC 27609

Susan Sandler Campbell
1208 Brookstown Ave.
Winston-Salem, NC

Erika Churchill
Principal Legislative Analyst, Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, North Carolina

Scott Falmlen
Nexus Strategies, Inc.
434 Fayetteville Street
Suite 2020
Raleigh, NC 27601

Dan Frey
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, North Carolina

Jamal Fox
2026 Chapel Park Lane
Greensboro, NC 27405

Dr. Trey Hood
Professor
University of Georgia
Athens, GA 30602

Ruth Samuelson
1432 Ferncliff Road
Charlotte, NC 28211

Kim Westbrook Strach, Executive Director
NC SBE
441 North Harrington Street
Raleigh, North Carolina 27603

Mr. Sean P. Trende
146 Elderberry Loop
Delaware, Ohio 43015

Douglas A. Wilson
15163 Deshler Court
Charlotte, NC 28273

Defendants reserve the right to present other witnesses depending upon the evidence offered by Plaintiffs at the trial, including witnesses to impeach or rebut any witness's testimony or evidence.

II. WITNESSES WHO DEFENDANTS EXPECT TO PRESENT BY DEPOSITION

Under Fed. R. Civ. P. 26(a)(3)(A)(ii), Defendants submit the following designations of the deposition testimony taken during discovery in the above-captioned matter:

Defendants are contemporaneously filing their Designations of Deposition Testimony from depositions taken in this action along with these disclosures. These designations are hereby incorporated by reference.

In addition to the designations contained in Defendants' Designations of Deposition Testimony, Defendants also designate the following testimony from depositions taken in *Dickson v. Rucho*¹:

Deposition Designations for Theodore S. Arrington ² May 15, 2012			
BEG PAGE	BEG LINE	END PAGE	END LINE
22	24	23	13
30	8	32	2
85	17	88	8
105	12	106	7
112	22	114	18
142	2	146	19
191	2	191	21
215	10	216	25

Defendants also designate all deposition testimony cited by the three-judge panel in *Dickson v. Rucho* in their Judgment and Memorandum Decision and the Appendices to

¹ All references herein to *Dickson* or *Dickson v. Rucho* means the combined cases of *Dickson v. Rucho* and *North Carolina State Conference of Branches of the NAACP v. The State of North Carolina* (Wake County Superior Court Case Nos. 11-CVS-16896 and 11-CVS-16940).

² A condensed copy of Mr. Arrington's deposition transcript with these designations highlighted is attached to these disclosures.

the Judgment and Memorandum Decision that relate to the North Carolina House and Senate districts at issue in this litigation, including but not limited to the following testimony cited in the Memorandum Decision: Arrington Dep. pp. 78, 80, 99-100, 119, 202; Deposition of Cherie Poucher (March 27, 2012) pp. 49, 43; Deposition of Charlie Collicutt (March 15, 2012) pp. 46-47; Deposition of Anthony Fairfax (May 17, 2012) pp. 24, 76-77; Deposition of Gary Bartlett (Aug. 1, 2012) pp. 21-22; Deposition of Kelly Doss (March 15, 2012), pp. 19-20.

III. DOCUMENTS AND EXHIBITS, INCLUDING SUMMARIES OF EVIDENCE, THAT DEFENDANTS EXPECT TO OFFER OR MAY OFFER AT TRIAL

Under Fed. R. Civ. P. 26(a)(3)(A)(iii) Defendants provide below the following list of exhibits that they expect to offer at trial:

- **Exhibit 1** contains a list of joint exhibits that Defendants have proposed to Plaintiffs. Defendants will continue to work with Plaintiffs as instructed by the Court to agree upon a joint exhibits list, however, Defendants expect to offer all of the exhibits listed in Exhibit 1 at trial.
- **Exhibit 2** contains a list of all documents filed with the Court and attached to Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction.

Under Fed. R. Civ. P. 26(a)(3)(A)(iii), Defendants provide the following list of exhibits that they may offer at trial:

- **Exhibit 3** contains a list of exhibits used in depositions taken by Defendants in this action that Defendants may offer at trial. Additionally, transcripts of the depositions that have been designated and referenced in Section II above, including those portions designated from *Dickson v. Rucho* deposition transcripts, may be offered as trial exhibits.

- **Exhibit 4** contains a list of exhibits from *Dickson v. Rucho* that Defendants may offer at trial. In addition to the items listed in Exhibit 4, Defendants also may rely upon the following affidavits and documents from *Dickson v. Rucho* not listed elsewhere in these disclosures: First Affidavit of David Lewis (Jan. 19, 2012); First Affidavit of Thomas B. Hofeller (Jan. 19, 2012); Second Affidavit of Thomas B. Hofeller (Feb. 8, 2012); Complete Report on Racially Polarized Voting in North Carolina by Thomas L. Brunell (June 14, 2011); All Exhibits to the Deposition of Erika Churchill. In providing this list of exhibits, Defendants do not waive and reserve the right to present and rely upon at trial any additional exhibits from this matter or from *Dickson v. Rucho* that may be relevant to the claims or defenses at issue in this action.

- All documents, including but not limited to affidavits, exhibits to affidavits, and deposition exhibits, cited by the three-judge panel in *Dickson v. Rucho* in their Judgment and Memorandum Decision and the Appendices to the Judgment and

Memorandum Decision that relate to the North Carolina House and Senate districts at issue in this litigation.

- Documents showing the population and voting age population by race of city council districts in Greensboro and Fayetteville, including relevant documents submitted by those municipalities to the United States Department of Justice to obtain preclearance of those districts.

This the 14th day of March, 2016.

NORTH CAROLINA DEPARTMENT OF
JUSTICE

By: /s/ Alexander McC. Peters
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Raleigh, North Carolina 27609

Telephone: (919) 787-9700

Facsimile: (919) 783-9412

Co-counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' RULE 26(a)(3)(A) PRETRIAL DISCLOSURES** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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Attorney for Plaintiffs

This the 14th day of March, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

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thomas.farr@odnss.com

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EXHIBIT 1- PROPOSED JOINT EXHIBITS

1.	Historical Senate Maps Notebook and all Exhibits (First Declaration of Dan Frey)
2.	Historical House Maps Notebook and all Exhibits (Second Declaration of Dan Frey)
3.	Historical Congressional Maps Notebook: Tab 1 (Section 5 Submission for 1991 Congressional Plan), Tab 3 (1997 Plan), Tab 6 (2001 Plan/2010 Census) Tab 7 (1022 SCSJ Plan), Tab 11 (2011 Fair and Legal Congress) Tab 12
4.	<p>2003 Senate House</p> <p>SCSJ Senate and House</p> <p>Fair and Legal Senate and House</p> <p>Possible House Senate and House</p> <p>2011 Senate (Rucho 2) and House (Lewis)</p> <p>(a) maps</p> <p>(b) stat packs</p> <p>(c) VAP by race and ethnicity for each district by VTD</p> <p>(d) split voting tabulation district report</p> <p>(e) district and municipality report</p>
5.	5 Divided Municipality Reports (Third Frey Decl. Exs. 9 and 10)
6.	<p>Density Maps Notebook for all challenged or corresponding districts</p> <p>2003 Senate/House</p> <p>SCSJ Senate/House</p> <p>Fair and Legal Senate/House</p> <p>Possible Senate House</p> <p>Third Frey Declaration Exs. 5 and 6</p>

7.	Section 5 Submissions Notebook for House and Senate Notebook 1991-92 2001 2002 2003 2011
8.	All Rucho/Lewis public statements 6/17/11 6/22/11 7/1/11 7/12/11 7/19/11
9.	Dickson Affidavit of Robert Rucho
10.	Rucho Ex. 1 – Summary of Redistricting proceedings for 2011 House Plan, 2011 Senate Plan and 2011 Congressional Plan (9/26/22)
11.	Rucho Ex. 2 – Summary of Redistricting Proceedings for 2001, 2002, and 2003 (9/20/11)
12.	Rucho Ex. 3 – 3/24/11 letter from Sen. Rucho and Rep. Lewis to members of the General Assembly
13.	Rucho Ex. 4 – 3/31/11 letter from Sen. Rucho and Rep. Lewis to Minority Contact list
14.	Rucho Ex. 5 – 4/5/11 letter from Sen. Rucho and Rep. Lewis to Legislative Black Caucus
15.	Rucho Ex. 6 – 5/9/11 Transcript of Public Hearing (Excerpts)
16.	Rucho Ex. 7 – 5/9/11 letter from Anita Earls
17.	Rucho Ex. 8 – Expert Report by Ray Block

18.	Rucho Ex. 9 – Voting Rights in NC 1982-2006
19.	Rucho Ex. 10 – Brunell Expert Report
20.	Rucho Ex. 12 – 6/23/11 letter from Anita Earls
21.	<i>Dickson</i> , Second Affidavit of Robert Rucho
22.	3/17/11 letter from Sen. Rucho and Rep. Lewis to Legislative Black Caucus
23.	3/24/11 letter from Sen. Rucho and Rep. Lewis to Legislative Black Caucus
24.	3/29/11 letter from Sen. Rucho and Rep. Lewis to Rev. Barber
25.	3/31/11 letter from Sen. Rucho and Rep. Lewis to UNC School of Government
26.	3/31/11 letter from Sen. Rucho and Rep. Lewis to Rev. Barber
27.	3/31/11 letter from Sen. Rucho and Rep. Lewis to Minority Contact list
28.	4/18/11 memo from George Hall re having authorization for redistricting support for LBC
29.	5/17/11 letter from Sen. Rucho and Rep. Lewis to Sen. McKissick re question for redistricting with cc list including Anita Earls and others
30.	5/24/11 response to 5/17/11 letter from Rep. Hackney, Sen. Nesbitt and Sen. McKissick
31.	5/27/11 letter from Anita Earls in response to 5/17/11 letter
32.	5/27/11 letter from School of Government in response to 5/17/11 letter
33.	6/1/11 letter from Sen. Rucho and Rep. Lewis
34.	6/14/11 letter from O. Walker Reagan
35.	6/17/11 letter from Sen. Rucho and Rep. Lewis to General Assembly members
36.	6/17/11 Joint Statement by Sen. Rucho and Rep. Lewis
37.	6/22/11 Joint Statement by Sen. Rucho and Rep. Lewis

38.	6/3/11 letter from NC Institute for Constitutional Law
39.	Legislator's Redistricting Guide
40.	<p>Notebook of House and Senate Committee Public Hearings</p> <ol style="list-style-type: none"> 1. 4/13/11 Senate and House Redistricting Committee Hearing 2. 4/20/11 Public Hearing Durham, Lee, Vance Counties 3. 4/2/11 Public Hearing Cumberland, Robeson, Hertford Counties 4. 4/28/11 Public Hearing Guilford, Forsyth, Rockingham Counties 5. 4/29/11 Public Hearing Harnett, Randolph, Lenoir Counties 6. 4/30/11 Public Hearing Mecklenburg, Cabarrus, Cleveland Catawba Counties 7. 4/30/11 Public Hearing Buncombe, Watauga, Jackson Counties 8. 5/5/11 Public Hearing New Hanover, Brunswick, Bladen Counties 9. 5/6/11 Public Hearing Onslow, Craven, Wayne Counties 10. 5/7/11 Public Hearing Pitt, Wilson, Beaufort, Edgecombe Counties 11. 5/7/11 Public Hearing Halifax, Pasquotank, Davie, Chowan Counties 12. 5/9/11 Public Hearing Wake County 13. 6/23/11 Public Hearing Cumberland, Guilford, Mecklenburg, New Hanover, Pitt, Hertford, Wake Counties 14. 7/7/11 Public Hearing Wake, Cumberland, Guilford, Mecklenburg, New Hanover, Jackson, Hertford, Watauga, Buncombe Counties 15. 7/7/11 Public Hearing Buncombe County 16. 7/18/11 Public Hearing Wake, Cumberland, New Hanover, Hertford, Nash Counties 17. 7/18/11 Public Hearing Mecklenburg, Guilford, Boone Counties

	18. 7/18/11 Public Hearing Buncombe County
41.	Notebooks of Joint Senate/House Committee hearings and all House and Senate Committee Hearings and Floor Debates, Redistricting Guide, 2001 NC NAACP letter, 2001 Report by Dr. Richard Engstrom
42.	<p><i>Dickson</i> Erika Churchill Affidavit and attached Exhibits</p> <ol style="list-style-type: none"> 1. Certain Contested Congressional Election Races 2004-2010 2. Certain Minority Contested General Elections Races 2004-2010 3. Certain Minority Contested General Election Races 2004-2010 4. NC General Assembly Senate Seniority 2011 Session 5. NC General Assembly House Seniority 2011 Session 6. NC General Assembly House Election Winners 2006-2012 7. NC General Assembly Senate General Election Winners 2006-2010
43.	<p><i>Dickson</i> Affidavit of Dan Frey and attached exhibits</p> <ol style="list-style-type: none"> 2. Count of County Cluster Sizes for Enacted and Proposed Plans 3. Division of Sharpsburg Map 4. Division of Rocky Mount Map 5. Division of High Point Map 6. Split Precincts for Enacted and Proposed Plans 7. VTD Splits in Section 5 Versus Non-Section 5 Counties 8. Black Versus White Likelihood of Living in Split VTDs 9. White Adults in Split VTDs 10. Comparison of Senate Districts 11. Comparison of House Districts
44.	<p>Second Affidavit of Dan Frey and exhibits</p> <ol style="list-style-type: none"> 14. Comparison of 2003, 2011 Enacted and 2011 Alternative Senate Districts 15. Comparison of 2009, 2011 Enacted and 2011 Alternative House Plans 16. Split VTDs involving Districts with 40% or Greater Total Black VAP 17. 2009 House Plan – Split VTDs in Districts with 40% or Greater Total Black VAP 18. Lewis-Dollar-Dockham 4 Split VTDs in Districts at 40% or Greater Total Black VAP 19. SCSJ House Split VTDs in Districts with 40% or Greater TBVAP

20. House Fair and Legal Split VTDs in Districts with 40% or Greater TBVAP
21. Possible House Districts Split VTDs in Districts with 40% or Greater Black VAP
22. 2003 Senate Plan Split VTDs in Districts with 40% or Greater Total Black VAP
23. Rucho Senate 2 Split VTDs in Districts with 40% or Greater Total Black VAP
24. SCSJ Senate Split VTDs in Districts with 40% or Greater Total Black VAP
25. Senate Fair and Legal Split VTDs in Districts with 40% or Greater Total Black VAP
26. Possible Senate Districts Split VTDs in Districts with 40% or Greater Total Black VAP
32. NC Senate Reock Compactness Scores
33. NC House Reock Compactness Scores
34. 2003 Senate Districts with non-Hispanic whites under 50%
35. Rucho Senate 2 – Districts with non-Hispanic whites under 50%
36. SCSJ Senate – Districts with non-Hispanic whites under 50%
37. Senate Fair and Legal – Districts with non-Hispanic whites under 50%
38. Possible House Senate – Districts with non-Hispanic whites under 50%
39. 2009 House – Districts with non-Hispanic whites under 50%
40. Lewis-Dollar-Dockham-4 – Districts with non-Hispanic whites under 50%
41. SCSJ House Districts with non-Hispanic whites under 50%
42. House Fair and Legal – Districts with non-Hispanic whites under 50%
43. Possible House Districts – Districts with non-Hispanic whites under 50%
44. 2003 Senate – Districts with Black Voter Registration above 40%
45. Rucho Senate 2 – Districts with Black Voter Registration above 40%
46. SCSJ Senate – Districts with Black Voter Registration Over 40%
47. Senate Fair and Legal – Districts with Black Voter Registration Over 40%
48. Possible Senate Districts – Districts with Black Voter Registration Over 40%
49. 2009 House Plan – Districts with Black Voter Registration Over 40%

	<ul style="list-style-type: none"> 50. Lewis-Dollar-Dockham 4 - Districts with Black Voter Registration Over 40% 51. SCSJ House – Districts with Black Voter Registration Over 40% 52. House Fair and Legal – Districts with Black Voter Registration Over 40% 53. Possible House Districts – Districts with Black Voter Registration Over 40% 54. Senate Influence Districts 10/13/11 SCSJ letter to USDOJ 55. Senate Influence Districts – NAACP Amended Complaint in <i>Dickson</i> 56. Senate Influence Districts Lichtman Affidavits in <i>Dickson</i> 57. House Influence Districts SCSJ 10/13/11 letter to USDOJ 58. House Influence Districts NAACP Amended Complaint in <i>Dickson</i> 59. House Influence Districts Lichtman Affidavits in <i>Dickson</i>
45.	<p>Third Affidavit of Dan Frey and Exhibits</p> <ul style="list-style-type: none"> 68A. Hofeller House Exemplar 68B. Hofeller House Exemplar Overview 69. Hofeller House Exemplar – Northeast Region 70. Hofeller House Exemplar – South Central Region 71. Hofeller House Exemplar – Triad Region 72. Hofeller House Exemplar Mecklenburg County 73A. Hofeller Senate Exemplar 73B. Hofeller Senate Exemplar Overview 74. Hofeller Senate Exemplar – Northeastern Region 75. Hofeller Senate Exemplar Triad Region 76. Hofeller Senate Exemplar – South Central Region 77. Enacted House District TBVAP Percentages versus Highest Alternative Plans 78. Enacted Senate District TBVAP Percentages versus Highest Alternative Plans 79. Maptitude for Redistricting 84. 1991 Congressional Maps
46.	<p><i>Covington</i> First Declaration of Erika Churchill and all exhibits</p>

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**EXHIBIT 2 – EXHIBITS TO DEFENDANTS’ MEMORANDUM IN OPPOSITION
TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION 10/11/2015**

DE 33-1	Ex. 1	Second Declaration of Dan Frey
DE 33-2	Ex. 2	1991 Section 5 Submission
DE 33-3	Ex. 3	1992 Section 5 Submission
DE 33-4 and DE 33-5	Ex. 4	2001 Section 5 Submission
DE 33-6	Ex. 5	2003 Section 5 Submission
DE 33-7	Ex. 6	First Affidavit of Dan Frey
DE 33-8 through 33-10	Ex. 7	Second Affidavit of Dan Frey
DE 33-11	Ex. 8	Affidavit of Erika Churchill
DE 33-12	Ex. 9	Legislator’s Guide to Redistricting
DE 33-13 and DE- 14	Ex. 10	First Affidavit of Robert Rucho
DE 33-15	Ex. 11	Affidavit of Thomas Brunell
DE 33-16	Ex. 12	Statements from the Public Hearing on Redistricting
DE 33-17	Ex. 13	<i>Dickson</i> Exhibit 55 (5 Public Statements by Rucho- Lewis)
DE 33-18	Ex. 14	May 17, 2011 Letter from Rucho/Lewis to McKissick
DE 33-19	Ex. 15	May 27, 2011 Letter from Michael Crowell and Bob Joyce
DE 33-20 and DE 33-21	Ex. 16	<i>Dickson v Rucho</i> NC NAACP Plaintiffs’ First Amended Complaint
DE 33-22	Ex. 17	Revised Affidavit of Sean P. Trende
DE 33-23 and DE 33-24	Ex. 18	Third Affidavit of Dan Frey

DE 33-25 and 33-26	Ex. 19	Third Affidavit of Thomas Hofeller, Ph.D.
DE 33-27	Ex. 20	Excerpts from Stephen Ansolabehere's <i>Harris</i> Testimony
DE 33-28	Ex. 21	First Declaration of Thomas Hofeller, Ph.D.
DE 33-29	Ex. 22	Affidavit of David R. Lewis
DE 33-30	Ex. 23	Declaration of Kim Westbrook Strach
DE 33-31	Ex. 24	First Declaration of Thomas L. Brunell
DE 33-32 through DE 33-37	Ex. 25	Historical House Map Notebook
DE 33-38 through DE 33-41	Ex. 26	Historical Senate Map Notebook
DE 33-42	Ex. 27	First Declaration of Dan Frey

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Sandra Little Covington, et al., v. State of North Carolina, et al. 1:15-CV-00399
DEPOSITION EXHIBITS LIST

EXHIBIT NO.	DESCRIPTION	DATE
Alston 1	NC Public Voter Information	
Alston 2	First Amended Complaint <i>Covington, et al. v. State of North Carolina, et al.</i>	07.24.2015
Alston 3	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents	01.08.2015
Alston 4	Caption Page <i>NAACP v. State of North Carolina</i>	
Alston 5	Caption Page <i>Dickson v. Rucho</i>	
Ansin 1	NC Public Voter Information	
Ansin 2	First Amended Complaint <i>Covington v. State of North Carolina</i>	07.24.2015
Ansin 3	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production Documents	01.08.2015
Ansin 4	Plaintiffs' First Supplemental Responses to Defendants' First Set of Interrogatories	02.03.2016
Ansin 5	Caption Page <i>Dickson v. Rucho</i>	
Ansin 6	Caption Page <i>NAACP v. NC State Board of Elections</i>	
Ansin 7	June 1st, 2012, E-mail	06.01.2012
Appelwhite 1	NC Public Voter Information	

Appelwhite 2	First Amended Complaint <i>Covington, et al. v. State of North Carolina, et al.</i>	07.24.2015
Appelwhite 3	City of Fayetteville Map of Electoral Districts	
Appelwhite 4	Fayetteville City Council Meeting Minutes	04.11.2011
Appelwhite 5	Fayetteville City Council Meeting Minutes	04.26.2011
Appelwhite 6	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents	01.08.2015
Appelwhite 7	Plaintiffs' First Supplemental Responses to Defendants' First Set of Interrogatories	02.03.2016
Arrington 1	Defendants' Joint Notice of Deposition of Marvin Arrington	01.28.2016
Arrington 2	NC Public Voter Information	
Arrington 3	First Amended Complaint <i>Covington v. State of North Carolina</i>	07.24.2015
Arrington 4	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents	01.08.2015
Arrington 5	Plaintiffs' First Supplemental Responses to Defendants' First Set of Interrogatories	02.03.2016
Arrington 6	Caption Page <i>Dickson v. Rucho</i>	
Arrington 7	Caption Page <i>NAACP v. State of North Carolina</i>	
Brunell 10	First Declaration of Thomas L. Brunell	11.10.2015
Brunell 11	Report on Racially Polarized Voting in North Carolina, June 14, 2011 Thomas L. Brunell, Ph.D.	06.14.2011

Brunell 12	2004 General Election Results - Auditor	
Brunell 13	2008 Primary Election Results	
Brunell 14	2008 General Election Results	
Campbell 1	North Carolina Public Voter Information	
Campbell 2	Facebook Posting (Senator Garrou)	06.17.2011
Campbell 3	Facebook Posting (GOP well within rights on redistricting)	06.22.2011
Campbell 4	Facebook Posting (Proposed suit against redistricting lines)	11.04.2011
Campbell 5	Complaint <i>Dickson v. Rucho</i>	11.03.2011
Campbell 6	Caption Page of First Amended Complaint	
Campbell 7	Winston-Salem Journal Editorial	07.26.2011
Campbell 8	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents	01.08.2015
Covington 1	Defendants' Joint Notice of Deposition of Sandra Covington	01.28.2016
Covington 2	North Carolina Public Voter Information	
Covington 3	First Amended Complaint <i>Covington v. State of North Carolina</i>	07.24.2015
Covington 4	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents	01.08.2015

Covington 5	Plaintiffs' First Supplemental Responses to Defendants' First Set of Interrogatories	02.03.2016
Covington 6	Caption Page First Amended Complaint <i>Dickson v. Rucho</i>	
Covington 7	Caption Page First Amended Complaint <i>NAACP v. State of North Carolina</i>	
Covington 8	E-mail from Abi Strayer to Sandra Covington	06.17.2015
Covington 9	E-mail from Congressman Mark Schauer to Sandra Covington	05.09.2015
Dickson 1	03.19.2015 E-mail String	03.19.2015
Englander 1	North Carolina Voter Information	
Englander 2	First Amended Complaint <i>Covington, et al. v. State of North Carolina, et al.</i>	07.24.2015
Englander 3	Plaintiffs' First Supplemental Responses to Defendants' First Set of Interrogatories	02.03.2016
Englander 4	Caption Page First Amended Complaint <i>Dickson v. Rucho</i>	
Englander 5	Caption Page First Amended Complaint <i>NAACP v. State of North Carolina</i>	
Figueroa 1	Defendants' Joint Notice of Deposition of Viola Figueroa	02.01.2016
Figueroa 2	NC Voter Information	
Figueroa 3	First Amended Complaint <i>Covington, et al. v. State of North Carolina, et al.</i>	07.24.2015

Figuroa 4	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents	01.08.2015
Figuroa 5	Plaintiffs' Second Supplemental Responses to Defendants' First Set of Interrogatories	02.04.2016
Figuroa 6	Caption Page First Amended Complaint <i>Dickson v. Rucho</i>	
Figuroa 7	Caption Page First Amended Complaint <i>NAACP v. State of North Carolina</i>	
Fox 1	NC Voter Information	
Fox 2	City of Greensboro Council District Map	
Fox 3	Plan E	
Fox 4	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents	01.08.2015
Fox 5	Plaintiffs' Second Supplemental Responses to Defendants' First Set of Interrogatories	02.04.2016
Freeman 1	NC Voter Information	
Freeman 2	First Amended Complaint <i>Covington, et al. v. State of North Carolina, et al.</i>	07.24.2015
Freeman 3	Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents	01.08.2015
Freeman 4	Caption Page First Amended Complaint <i>Dickson v. Rucho</i>	
Freeman 5	Caption Page First Amended Complaint <i>NAACP v. State of North Carolina</i>	

Frey 1	Subpoena to Testify at a Deposition	12.11.2005
Frey 2	First Declaration of Dan Frey	11.09.2015
Frey 3	2003 Senate Plan - 2000 Census Non-Hispanic White Portion of District Populations	
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Frey 5	Second Declaration of Dan Frey	11.09.2015
Frey 6	Affidavit of Dan Frey	01.19.2012
Frey 7	GS 163-132.1B - Participation in 2010 Census Redistricting Date Program of the United States Bureau of the Census	
Frey 8	Second Affidavit of Dan Frey	01.06.2012
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Harris 4	Copy of NAACP Membership Card	
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Hofeller 44	Second Expert Report of Thomas B. Hofeller, Ph.D.	01.08.2016
Hofeller 45	Senate district maps - Possible Re-Configuration of Certain Clusters in Rucho Senate 2	
Hofeller 46	Table 9, Demographic for House Optimum Groups	
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Hofeller 19	Previously marked - Third Affidavit of Thomas B. Hofeller, Ph.D.	12.10.2012
Hofeller 21	Previously marked - First Declaration of Thomas B. Hofeller, Ph.D.	11.06.2015
Hood 31	Notice of Deposition of M.V. Hood, III	02.11.2016
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Hood 37	Affidavit of Thomas Brunell, Ph.D.	12.10.2012
Hood 38	Report on Racially Polarized Voting in North Carolina, June 14, 2011, by Thomas Brunell, Ph.D.	06.14.2011

Hood 39	Excerpt of deposition transcript of Melvin Hood, III, October 1, 2013, Rios-Andino v Orange County	10.01.2013
Hood 40	Excerpt of deposition transcript of Melvin Hood, III, October 1, 2013, Rios-Andino v Orange County	10.01.2013
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Hood 42	Stranger Danger: Redistricting Incumbent Recognition and Vote Choice M.V. Hood, III; Seth McKee	
Hood 43	Unwelcome Constituents: Redistricting and Countervailing Partisan Tides M.V. Hood, III and Seth McKee	
Hood	Previously Marked Exhibit 6 Lichtman - Second Affidavit of Allan J. Lichtman	
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Lichtman 1	Intentional Discrimination Against African Americans in the Adoption of North Carolina's Voter Information Verification Act, <i>NAACP v McCrory</i> Allan J. Lichtman, Ph.D.	02.12.2015
Lichtman 2	Barry Burden Expert Report <i>NAACP v McCrory</i> , February 12, 2015	02.12.2015
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Lichtman 9	Sur-Rebuttal Report of Dr. Allan J. Lichtman to Reports Submitted by Expert for Defendants, January 29, 2016 <i>Covington v State of North Carolina</i>	01.29.2016

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Rucho 25	Exhibit 11, NC Senate Exemplar Plan Mecklenburg	
Rucho 26	E-mail between Bob Rucho and Joel Raupe, June 27, 2011	06.27.2011
Rucho 27	E-mail to Senator Bob Rucho from Brent Woodcox, June 17, 2011, subject: Re: Release of proposed Voting Acts Districts	06.17.2011
Rucho 28	Second Affidavit of Robert Rucho Dickson v. Rucho	
Rucho 29	Transcript of public hearing on, June 23, 2011	06.23.2011
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Wilson 1	Subpoena to Testify at a Deposition	02.08.2016
Wilson 2	First Amended Complaint, <i>Dickson v. Rucho</i>	12.12.2011
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Wilson 5	E-mail String Re: Redistricting Litigation - Federal Court To Patsy Kever, Doug Wilson, Jesse Presnell	04.23.2015
Wilson 6	E-mail String Re: Redistricting Litigation - Federal Court To Patsy Kever, Doug Wilson, Scott Falmlen	04.23.2015
Wilson 7	E-mail String Re: Redistricting Lawsuit	04.29.2015
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Wilson 12	E-mail String Re: BOE Appointment	05.11.2015
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Wilson 14	E-mail String Re: Redistricting Case	05.15.2015
Wilson 15	E-mail String Re: Fire Drill	07.20.2015
Wilson 16	E-mail String (no subject)	07.21.2015
Wilson 17	E-mail String Re: VM	07.22.2015

EXHIBIT 4 – Rule 26(a)(3) Disclosures – *Dickson* Exhibits

<i>Dickson</i> Exhibit No.	Description
48	Rucho Senate VRA district (and Stat Pack)
49	Lewis House VRA correlated (and Stat Pack)
51	Senate Bill 455/S.L. 2011-402
52	House Bill 937/S.L. 2011-404
55	Lewis/Rucho Joint Statements
65	Inquiry Senate Rucho re: Cromartie ruling on compact districts
68	Agenda 3/30/11 Joint Redistricting Committee/Redistricting Guide Overview
81	Congressional Races 1992-2010
82	Senate Legislative with Minority Candidates 2006-2010
83	House Legislative Races 2006-2010 with Minority Candidates
89	Emails with SCSJ on bloc files
94	Statewide Partisan and Non-Partisan and U.S. Senate Races 2000-2010
189	Lewis House Corrected VRA
192	First Affidavit of David Lewis
199	Rucho Senate VRA

211	6/23/11 SCSJ letter
212	Cohen email re: <i>Cromartie II</i> 3/21/11
235	5/9/11 SCSJ letter
238	2/13/96 objection letter to whole precinct statute
243-253	All exhibits to Ted Arrington Deposition
267	SCSJ strategy memo
	First Lichtman Affidavit
	Second Lichtman Affidavit
	Sur Rebuttal Report Lichtman
401	Oldham group maps
402	Oldham group maps
403-415	County Group Maps
428	NC House 2

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STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF WAKE 11 CVS 16896
11 CVS 16940

MARGARET DICKSON, et al.,)
)
Plaintiffs,)
vs.)
ROBERT RUCHO, in his)
official capacity only as)
the Chairman of the North)
Carolina Senate)
Redistricting Committee,)
et al.,)
)
Defendants.)

NORTH CAROLINA STATE)
CONFERENCE OF BRANCHES OF)
THE NAACP, et al.,)
)
Plaintiffs,)
vs.)
STATE OF NORTH CAROLINA,)
et al.,)
)
Defendants.)

DEPOSITION OF
THEODORE S. ARRINGTON, Ph.D.

8:31 A.M.

TUESDAY, MAY 15, 2012

OGLETREE DEAKINS NASH SMOAK & STEWART
4208 SIX FORKS ROAD
SUITE 1100
RALEIGH, NORTH CAROLINA 27609

By: Denise Myers Byrd, CSR 8340, RPR

2

1 APPEARANCES

2

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4 Loretta King, US Dept of Justice,

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9 in North Carolina 15

10 244 Affidavit of Theodore S. Arrington, Ph.D.

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34 252 Affidavit of Theodore S. Arrington, Ph.D.

35 NC State Conference of Branches of the

36 NAACP vs. State of North Carolina 155

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38 Theodore S. Arrington, Ph.D. 190

39

40 --o0o--

3

1

2 For the Legislative Defendants:

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7

8 Also Present: Martha Kropf - UNC Charlotte

9

10 --o0o--

11

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1 STIPULATIONS

2

3 It is hereby stipulated and agreed between the

4 parties to this action, through their respective

5 counsel of record:

6 1. That the deposition of THEODORE S. ARRINGTON,

7 Ph.D., may be taken on May 15, 2012, at 8:30 a.m. in

8 Raleigh, NC, before Denise Myers, CSR 8340, RPR.

9 2. That the deposition shall be taken and used

10 as permitted by the applicable North Carolina Rules

11 of Civil Procedure.

12 3. That any objections of any party hereto as to

13 notice of the taking of said deposition or as to the

14 time or place thereof, or as to the competency of the

15 person before whom the same shall be taken, are

16 deemed to have been met.

17 4. That objections to questions and motions to

18 strike answers need not be made during the taking of

19 this deposition, but may be made for the first time

20 during the progress of the trial of this case, or at

21 any pretrial hearing held before any judge of

22 competent jurisdiction for the purpose of ruling

23 thereon, or any other hearing at which said

24 deposition shall be used, except that objections to

25 the form of the question must be made at the time

6	8
1 such question is asked or objection as to the form of 2 the question is waived. 3 5. That the witness reserves the right to read and 4 sign the transcript prior to it being sealed. 5 6. That the sealed original of the transcript shall 6 be mailed First Class Postage Paid or hand-delivered 7 to the party taking the deposition for preservation 8 and delivery to the Court if and when necessary. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 in an inartful manner, and if you don't like my 2 question or if you don't understand it, would you 3 ask me to rephrase it? 4 A. I will. 5 Q. I figured you would. 6 So, Dr. Arrington, I've looked at your 7 resume, but there may be a judge reading this 8 deposition at some point in time, so if you could 9 just give a short summary of your professional 10 background. 11 A. Sure. I took my Baccalaureate degree in Political 12 Science at the University of New Mexico, my 13 Master's and Ph.D. at the University of Arizona, 14 and then I came to North Carolina as an Assistant 15 Professor of Political Science at UNC Charlotte. 16 I spent 37 years there, including going on 17 through the ranks to full professor, and served as 18 chair of the department for 18 years and was 19 president of the faculty for a year, and before I 20 retired was president of the North Carolina 21 Political Science Association and published various 22 articles in refereed journals and then also 23 participated in a number of voting rights cases 24 starting with the Gingles case. 25 Q. Okay. You have been engaged before as an expert
7	9
1 THEODORE S. ARRINGTON, Ph.D., 2 having been first affirmed by the Certified Shorthand 3 Reporter and Notary Public to tell the truth, the whole 4 truth and nothing but the truth, testified as follows: 5 EXAMINATION 6 BY MR. FARR: 7 Q. Would you please state your name. 8 A. Theodore S. Arrington. 9 Q. And you are a doctor; is that correct? 10 A. That's correct. 11 Q. May I refer to you as Dr. Arrington? 12 A. You may. 13 Q. Dr. Arrington, my name is Tom Farr, and I'm one of 14 the attorneys for the legislative defendants in the 15 redistricting lawsuits that are pending in 16 North Carolina, and I understand you've been 17 retained by the plaintiffs to testify as an expert 18 witness in this case; is that correct? 19 A. Yes. 20 Q. So I'm here to ask you some questions about your 21 testimony and some other matters. You know, I've 22 had great respect for your expertise. 23 A. Thank you. 24 Q. I'm very familiar with your background, and if 25 I -- I may ask a question in an awkward manner or	1 witness? 2 A. Yeah, about 40 times. Well, I'd have to count, but 3 a large number of times. 4 Q. That's close enough. Do you recall how many times 5 you've testified in either a deposition or a court? 6 A. Actually testifying in court about half that time, 7 about 15 or 20 times. I could go through the -- I 8 could go through the vita and count them, but 15 or 9 20 times, been deposed probably 25 or 30 times. 10 Q. Have you prepared redistricting plans? 11 A. Yes. 12 Q. How many times have you done that, do you think? 13 A. Well, statewide plans -- I think we count 14 Congressional and State House and State Senate 15 plans different. Probably statewide plans about 16 half dozen, plans for counties and cities another 17 ten or so. If we include illustrative plans for 18 voting rights cases, that would add another five or 19 six, I guess. So what are we up to, about 15 or 20 20, something like that. 21 Q. Now -- 22 A. When you said prepared, I meant I sat down at the 23 machine and drew the districts and that's how I 24 responded. 25 Q. Yes, sir. You may have been looking over someone's

3 (Pages 6 to 9)

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10

1 shoulder on other occasions, but I'm interested in
2 the ones that you were the principal author for.
3 A. Yes.
4 Q. Now, you are being paid here by the plaintiffs to
5 give expert testimony; is that correct?
6 A. Yes.
7 Q. And in 2011 did you give any testimony or
8 statements to the North Carolina General Assembly
9 during the legislative process?
10 A. No.
11 Q. Did anybody call you to talk with you about doing
12 that?
13 A. No.
14 Q. Did you -- did you ever consider doing that on your
15 own initiative?
16 A. No. I was living in another state, remember. If
17 somebody called and offered me travel, I might have
18 been willing to do so but not on my own hook.
19 Q. Okay. Just to the best of your ability, what
20 documents do you recall looking at to get ready to
21 give this deposition today?
22 A. Well, of course, extensive statistical materials
23 that I requested from the Southern Coalition, plus
24 depositions -- I'm sorry, not depositions --
25 reports we're calling them here, what, affidavits

11

1 from various people, Hall, Lichtman, Faye.
2 Q. You mean Frey?
3 A. Frey, and others, and the report that was prepared
4 to guide the General Assembly, and that's pretty
5 well it. I mean, that's not a systematic list, but
6 the systematic list is in my -- is in my report.
7 Q. Okay. I understand you can't -- don't worry about
8 that.
9 When you say extensive statistical
10 materials from the Southern Coalition, what were
11 you referring to?
12 A. I'm referring to statistics on the districts that
13 were drawn by the General Assembly that I asked for
14 in various forms such as, for example, lists of the
15 voting age population and percentage black voting
16 age population for the precincts that were split
17 and so forth and so on, in other words, the basic
18 data that I needed in order to prepare the
19 statistical results in my report.
20 Q. Do you know there were alternative plans offered
21 during the legislative session?
22 A. I did know that.
23 Q. Did you know that the Southern Coalition for Social
24 Justice offered some plans during the public
25 hearing stage?

12

1 A. I did know that.
2 Q. Did you look at those plans?
3 A. Only from the Frey report.
4 Q. You didn't conduct any independent study of those
5 plans?
6 A. I did not.
7 Q. So some of the things that you have said about the
8 enacted plans, you haven't looked at the other
9 alternative plans to see if they've got the same
10 issues?
11 A. I did not except insofar as it's in the Frey
12 report. Excuse me for calling it a report, but,
13 you know, there's affidavits and declarations and I
14 get confused about which I'm doing depending on
15 local rules.
16 Q. We know what you're referring to.
17 A. I know.
18 Q. You say you looked at some depositions?
19 A. I misspoke. I have not looked at depositions.
20 Q. Have you looked at the complaints?
21 A. I did.
22 Q. Which complaint did you look at?
23 A. Southern Coalition's complaint, and I believe I
24 looked at the response, too.
25 Q. So you looked at the answer filed by the State

13

1 defendants?
2 A. Yes, I think so. Remember, I'm in the midst of
3 other cases, too, and so I have to sometimes
4 remember which legal documents I've looked at for
5 which cases.
6 Q. Sure. Dr. Arrington, you know, this is not a
7 memory test.
8 A. I know.
9 Q. We have a great deal of confidence in your
10 integrity, so if you forget something, I'm not
11 going to hold it against you and no one else will,
12 and I know you will answer the questions to the
13 best of your ability.
14 Did you look at any documents that your
15 clients or their lawyers prepared which were
16 submitted to the Justice Department during the
17 pre-clearance process?
18 A. No, I don't think so. I'm pretty sure I did not.
19 Q. Do you recall any discussions you had with your
20 clients or their counsel about the complaint that
21 you reviewed?
22 A. No. They just sent that to me and I read it.
23 Q. Okay. Have you reviewed anything that was in the
24 legislative record before the General Assembly?
25 A. No, except for those documents that I have listed

4 (Pages 10 to 13)

14

1 in the report, that is, the press releases that
2 Senator Rucho and Representative -- I forget the
3 other man's name -- Lewis did and the report, but
4 other than that, no. I haven't looked at any
5 transcripts of hearings or anything.
6 Q. I think -- did you look at the report that
7 Dr. Brunell did?
8 A. Yes, I did look at the Brunell -- no, I did not. I
9 have not read Dr. Brunell's report. I just looked
10 at what Dr. Lichtman said about it.
11 Q. Okay. Did you know that the Southern Coalition for
12 Social Justice submitted an expert report during
13 the public hearing process?
14 A. No.
15 Q. And so you didn't look at that report?
16 A. Not unless it's -- not unless it's been repeated as
17 submitted in this case.
18 Q. Did you look at any statements that the Southern
19 Coalition for Social Justice submitted during the
20 public hearing process?
21 A. No.
22 Q. Did you make any review of the plans that the
23 Southern Coalition for Social Justice submitted
24 during the rehearing process?
25 A. Did I look at any what that they submitted?

15

1 Q. Did you look at any of the plans that the Southern
2 Coalition for Social Justice submitted during the
3 rehearing process?
4 A. No except the data that's in the Frey report.
5 Q. So, Dr. Arrington, I want to show you some things
6 that I pulled that you've written in scholarly
7 journals in the past and ask you some questions
8 about some of the things that I found.
9 (WHEREUPON, Exhibit 243 was marked for
10 identification.)
11 BY MR. FARR:
12 Q. Can you identify this for the court reporter.
13 A. Yes. It's an article that I wrote several years
14 ago with Tom Watts published in the Western
15 Political Quarterly on The Election of Blacks to
16 School Boards in North Carolina.
17 Q. And, Dr. Arrington, when I give you these articles
18 that you've written, which will be several, please
19 feel free to answer my questions, but I'm not going
20 to ask you about the whole article. When I ask you
21 a question, you can read as much as you want before
22 you answer my question.
23 A. I understand.
24 Q. Okay. Good. I wanted to turn to page 1120 and
25 there's --

16

1 MR. SPEAS: Would you give that page
2 again?
3 MR. FARR: I'm sorry, Eddie, 1102.
4 BY MR. FARR:
5 Q. My problems with citing page numbers are comparable
6 to Adam's issues with sending e-mails out.
7 Dr. Arrington, there's some text at the
8 bottom of the page and there's a sentence that says
9 "District election appears to be the method most
10 congenial to black representation in areas where
11 blacks constitute a substantial proportion of the
12 voters."
13 Could you tell me what you meant by that?
14 A. Sure. What Tom and I are doing here are comparing
15 the different methods by which election -- by which
16 school board elections are held in North Carolina,
17 and what that conclusion and the table both show is
18 what scholars have generally found is that blacks
19 will do better in district election systems than in
20 at-large systems.
21 Now, that will vary depending on the number
22 of blacks that are in the school board, that are in
23 the school district. Obviously, if blacks are a
24 tiny minority in a school district, then having a
25 district's not helpful, and if they're the

17

1 overwhelming majority of the people in the school
2 district, then district elections are not going to
3 help them because they're already going to win all
4 the seats.
5 Q. That raises a couple questions I wanted to ask you.
6 School board elections -- how is the
7 turnout in school board elections in your
8 experience in North Carolina as compared to
9 legislative races, voter turnout?
10 A. Depends on when they're held. If they're held at a
11 totally separate time, they're going to be a lot
12 lower than general elections for the legislature.
13 For primaries, I don't know, that might be
14 comparable. And sometimes the school board
15 elections are held at the time of the primaries, so
16 they would be the same as the primary elections for
17 the legislature.
18 They're held at a lot of different times or
19 they were then held at a lot of different times.
20 Q. And when you lived in Charlotte, did the county
21 commissioner elections, were those held at the same
22 time as the even-year general elections or were
23 they held in off years?
24 A. You said county commission. County commission
25 elections are held every two years in November in

5 (Pages 14 to 17)

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18

1 even-numbered years.
2 Q. What about the elections to the city council?
3 A. They're held in the off year in the fall, in the
4 odd-numbered years.
5 Q. And are the city elections in Mecklenburg partisan
6 or non-partisan?
7 A. They're partisan.
8 Q. What about school board elections in Mecklenburg
9 county?
10 A. They're non-partisan. They were when I left.
11 Q. And when -- were they held in off years or were
12 they held in the regular, even-year elections?
13 A. That changed. Initially school board elections
14 were held at the same time as the primary and then
15 that was changed so that they're now held -- I'm
16 not sure I remember -- I think at the same time as
17 the city elections, but I'm not sure I remember.
18 But they used to be held at the same time
19 as the primary in the even-numbered years and that
20 got changed when they went to districts.
21 Q. So in general election years, is it fair to say
22 that the turnout in November is better than the
23 turnout in the primary?
24 A. Oh, yes.
25 Q. And is it fair to say that the turnout in November

19

1 for general elections is a lot higher than the
2 turnout for elections for city council or school
3 board in the off-year elections?
4 A. Yes.
5 MR. SPEAS: Tom, I'm sorry for
6 interrupting. Could you tell me what capacity Dale
7 is appearing in?
8 MR. FARR: Yes. He's here helping me as
9 co-counsel.
10 MR. SPEAS: Which organization is Dale
11 affiliated with?
12 MR. FARR: He is providing legal advice to
13 the legislative defendants.
14 MR. SPEAS: Is Dale licensed in
15 North Carolina?
16 MR. FARR: He is not.
17 MR. SPEAS: Okay.
18 MR. OLDHAM: I'm licensed in
19 South Carolina.
20 MR. SPEAS: Good for you.
21 BY MR. FARR:
22 Q. I'm still on Exhibit 243. I want you to turn to
23 page 1105 and there's a paragraph that's called
24 Conclusion. Could you just read the first sentence
25 in that paragraph.

20

1 A. "These data confirm the mainstream consensus that
2 district elections help blacks to win office
3 proportionally to their voting strength when
4 compared to at-large systems."
5 Q. So the question I wanted to ask you about was the
6 term "proportionally." Dr. Arrington, were you a
7 witness in -- an expert witness in the DeGrandy
8 case?
9 A. I was. Let me -- I was an expert witness before
10 the judge who was special master, not in the court
11 case. So, in other words, in that case, the court
12 appointed a special master and he appointed an
13 expert and the special master and the expert had
14 hearings and I testified in those hearings.
15 I think that's separate from the DeGrandy
16 formal court hearing which had the DeGrandy
17 decision as a result of that, and if that's so,
18 then I did not testify in the DeGrandy case. I
19 testified before the special master.
20 Q. Was the evidence before the special master
21 presented to the District Court eventually?
22 A. Yes.
23 Q. Now, did you prepare a plan in that case?
24 A. I did not.
25 Q. Are you familiar with the DeGrandy case?

21

1 A. It was a long time ago, but I am familiar with it
2 in general, yes.
3 Q. Do you understand what's meant by the term
4 "proportionality"?
5 A. In that case, no, I'm not sure I do, but I think
6 that's different than what's being discussed in
7 this article.
8 Q. What's being discussed in this article?
9 A. Well, the methodology in this article is to say
10 let's look at school boards in which everything's
11 elected at large, no districts, and ask the
12 question what is the relationship between the
13 proportion of blacks in that district and the
14 proportion of blacks elected to the school board.
15 Now, let's separately look at the
16 relationship between the proportion of blacks in
17 the district -- in the school board districts where
18 they have district elections and the proportion of
19 blacks who were on the school board and, say, in
20 the one case where you've got districts, the more
21 blacks in that school district, the more seats they
22 win whereas in the at-large system you don't have
23 that same relationship because blacks don't win any
24 until they get above a certain number and then they
25 win them all in an at-large system, so there's not

6 (Pages 18 to 21)

22

1 a proportionality there and that's what's meant
2 here.
3 I'm not sure that's what the Court was
4 talking about when they talked about
5 proportionality in DeGrandy. It may have been, but
6 I don't remember that it was.
7 Q. Do you know what is meant by the term "proportional
8 representation"?"
9 A. Oh, yes.
10 Q. Could you explain that?
11 A. Well, proportional representation is a kind of
12 election system in which the seats in the
13 legislative body are allocated in proportion to the
14 votes that the various parties receive.
15 In American politics, since we don't have
16 PR, proportional representation, sometimes one
17 refers to proportional representation as simply
18 meaning does a particular group get a proportion of
19 seats which is roughly the same as their proportion
20 of their votes, a seats/votes kind of relationship.
21 So it has two meanings, the formal in
22 international politics and the American
23 application, if you will.
24 Q. Let's focus on the American application. Have you
25 been an advocate of election systems that would

23

1 provide black voters proportionality, as you have
2 described it, in plans that you've drawn or in
3 articles that you've written?
4 A. Yes, but only in terms of rough proportionality.
5 As you know, there is a section, the Dole Amendment
6 of the Voting Rights Act, that says that nobody
7 is -- nobody is entitled to proportional
8 representation, but if I'm judging an election
9 system, I would like that system to offer
10 minorities and parties rough proportionality, not
11 exact proportionality, because you never get that
12 with a single-member district system, but rough
13 proportionality.
14 MR. FARR: Could with mark another
15 exhibit.
16 (WHEREUPON, Exhibit 244 was marked for
17 identification.)
18 BY MR. FARR:
19 Q. Are you familiar with this document?
20 A. I am.
21 Q. Can you tell the court reporter what it is.
22 A. Yes. It's my report for the special master in the
23 North Carolina redistricting case in 1992. It's an
24 affidavit.
25 Q. Okay. What was the purpose of this affidavit?

24

1 A. Judge Frederick Lacey, a retired federal district
2 court judge, was appointed by the three-judge panel
3 in New York to draw Congressional districts and
4 then in a separate case to draw State House and
5 State Senate districts for the State of New York
6 because the legislature was hung up and could
7 not -- could not decide on redistricting.
8 Judge Lacey hired me as his expert to draw
9 those plans and to testify about them before the
10 three-judge panel, and this is my affidavit
11 outlining what I did and why I did it.
12 Q. So you prepared a plan for this case?
13 A. I did.
14 Q. Did you -- did your plan include districts in which
15 minorities constituted a majority?
16 A. Yes. At least in the case of Hispanic districts
17 I'm sure some of them did.
18 Q. Why did you do that?
19 A. Well, with Hispanics, remember, you have a large
20 segment of citizens -- I'm sorry -- a large segment
21 of adults who are not citizens and the voting --
22 the voting rate among Hispanics who are citizens is
23 lower than that of blacks, so when you're drawing
24 Hispanic districts -- and remember, even by this
25 time New York City was basically a Hispanic

25

1 city -- you have to draw districts that are -- that
2 are more concentrated than you would have to do for
3 blacks.
4 I do not remember as I sit here today what
5 the concentrations were for either the black
6 districts or Hispanic districts were in the plans I
7 drew, but I'm sure that the districts I drew for
8 Hispanics had higher concentrations than for
9 blacks.
10 Q. Do you believe that the districts you drew for
11 African Americans were in excess of 50 percent?
12 A. I do not know.
13 Q. Let's see if we can refresh your memory a little
14 bit. Could you read to yourself paragraphs 26
15 through, let's say, 35, and when you're done doing
16 that, I will ask you some questions about this
17 affidavit.
18 A. Through which paragraph, Mr. Farr?
19 Q. I'm suggesting maybe 35. I mean, you can read as
20 much as you like.
21 A. Okay. I think I've read far enough.
22 Q. Okay. I wanted to direct your attention to this
23 section of your affidavit that's called Compliance
24 with the Voting Rights Act, is that correct,
25 between page 25 and 26?

7 (Pages 22 to 25)

26

1 A. That's correct.
2 Q. Was that a heading that you gave the affidavit or
3 is that something that the Court put in there?
4 A. You mean this subheading?
5 Q. Where it says Compliance with the Voting Rights
6 Act.
7 A. I put it in there.
8 Q. I'll direct your attention to paragraph 28.
9 There's a statement which says "Where a single
10 concentration of minority citizens is large enough
11 to form a single district within an appropriate
12 majority of African Americans or Hispanics, there
13 is no question that a minority district should be
14 drawn."
15 And my question is: What did you mean by
16 that?
17 A. That was the instructions that I received from the
18 special master about what the law said. Remember,
19 at that time -- and this was before Shaw, before
20 the Shaw line of cases -- the rule was if you can
21 draw it, you draw it.
22 Now, DeGrandy would modify that and say if
23 they already have proportion, you don't have to
24 draw any more, but the law, as this special master
25 explained it to me, since I'm not a lawyer, was if

27

1 you can draw it, you have to draw it, and those
2 were the instructions he gave me when I drew the
3 districts.
4 Q. Well, there's two issues there: One is whether you
5 have to draw it or not and secondly is the size of
6 the population that needs to be in the district?
7 A. The concentration in the district, that's correct.
8 Q. So this sentence said it had to be a majority of
9 African Americans.
10 A. Not that sentence. Where a single concentration --
11 I'm reading. Quote, "Where a single concentration
12 of minority citizens is large enough to form a
13 single district with an appropriate majority of
14 African Americans or Hispanics, there is no
15 question that a minority district should be drawn."
16 Q. So at that time did you believe that the districts
17 had to be drawn with a majority?
18 A. In New York at that time. Those were the
19 instructions I was given by the special master, and
20 it's what seemed to be indicated by the ecological
21 regression analysis that Dr. Lichtman had done for
22 New York, which I was relying on, and some
23 ecological regression analysis which I did myself
24 during that time, although my time was fully
25 occupied drawing the districts, because we were on

28

1 a very tight timeframe, so I didn't do much.
2 I mainly relied on Dr. Lichtman and his
3 research for New York at that time indicated that
4 in order for blacks to have a reasonable
5 opportunity, they needed to have a majority.
6 That's what the later paragraph indicates.
7 Q. Okay. Had you drawn any plans before you gave this
8 affidavit?
9 A. I'm sorry?
10 Q. Had you drawn any other plans before you gave this
11 affidavit?
12 A. This one in New York you mean?
13 Q. Or in general.
14 A. Yeah. I drew plans for the State of North Carolina
15 for the Gingles case.
16 Q. Did those plans have an actual majority of black
17 population in them?
18 A. I don't remember. That was a very long time ago,
19 and I've never even seen those plans since then.
20 Q. You said something about the DeGrandy case, that
21 DeGrandy says that once there's proportionality,
22 the state can't be ordered to draw any additional
23 districts, or something along those lines.
24 A. Remember, I'm not a lawyer. I'm trying to
25 interpret these cases in political terms. And my

29

1 understanding of DeGrandy not as a lawyer but just
2 as a person who testifies in these cases and trying
3 to understand them is DeGrandy said if you have a
4 part of the state, let's say the Miami area, in
5 which a minority group, let's say Cubans, for
6 example, or blacks, are already receiving the
7 number of districts that their voting population
8 would entitle them to on a proportional basis, then
9 you can't argue that statewide they don't have
10 enough representation and so you should draw more
11 in Miami.
12 Now, that's the only thing about DeGrandy
13 that I remember because that came up in a later
14 case in Maryland in which I testified.
15 Q. What was that case?
16 A. That was the NAACP versus Maryland. I'm not sure
17 that's the title, but you'll find it in my vita.
18 Q. How did that issue come up?
19 A. Blacks already had, in the city in Baltimore,
20 proportional representation, but they did not have
21 anything close to proportional representation
22 statewide.
23 The NAACP argued -- remember, this is their
24 argument, not my testimony -- argued that therefore
25 they were entitled to draw more black districts in

8 (Pages 26 to 29)

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1 Baltimore so that the statewide numbers would be
2 closer to proportional. The Court, however, said
3 no, they already have proportional in Baltimore so
4 what happens statewide is not relevant and they
5 cited DeGrandy, and therefore, my testimony with
6 regard to Baltimore -- therefore, I was not allowed
7 to testify with regard to Baltimore.

8 Q. Have you advocated in writing that the proper test
9 is to look at the statewide proportionality in
10 election systems that involve statewide groups such
11 as the General Assembly? Haven't you said that in
12 your scholarly works?

13 A. As I said earlier, I'm sure I have said that I'm an
14 advocate for rough proportionality, not a rule that
15 says that you have to have proportions, but the
16 desirability of drawing single-member districts in
17 such a way as to produce proportionality, if that's
18 a reasonable outcome.

19 Sometimes you just can't do it. I mean,
20 almost never can you do it. Minorities almost
21 never have proportionality, but you want to draw
22 districts in -- you want to draw -- I'm not saying
23 this is a legal requirement. I'm saying if I'm
24 sitting down and somebody asks me to draw districts
25 for North Carolina that will be good districts, I

31

1 would want to draw districts in such a way as
2 blacks have a reasonable opportunity to get
3 something close to a proportion of the seats in the
4 General Assembly to reflect their proportion of the
5 population.

6 Same thing for parties. The Republicans
7 and Democrats should compete, but they should be
8 able to get something proportional to the votes
9 that they're getting.

10 Q. So in order to get -- to have the black voters be
11 able to elect black candidates in rough
12 proportionality to the General Assembly, have you
13 not advocated that sometimes you may need to draw
14 more -- I don't know how you would call it -- black
15 opportunity districts? There's all sorts of
16 differences in how these things are defined, but
17 districts where the blacks could elect the
18 candidate of their choice, have you not advocated,
19 say, for example, you might have to draw more of
20 those in Charlotte in order to make up for the
21 absence of those types of districts in other parts
22 of the state?

23 A. Yes. That's indeed what the NAACP had done in the
24 districts that they had drawn in Maryland, and I
25 would have testified that that was the way to go,

32

1 but the Court said under DeGrandy it's not legally
2 possible so I didn't testify.

3 Now, you changed your question.

4 Q. I didn't mean to.

5 A. I know you didn't, but you said first to elect
6 blacks and then you said candidates of choice, and
7 I'm answering the second of those, candidates of
8 choice, because if blacks want to elect a white,
9 that's fine, whatever their choice is.

10 Q. Once they have -- once they have a system where
11 they can elect proportional or roughly proportional
12 number of candidates of choice, are you aware of
13 any legal obligation on the part of the state to
14 draw additional districts beyond proportionality?

15 A. I wouldn't know. That sounds like a legal question
16 to me. I'm not aware of any. There may be one.
17 That's what LexisNexis is for to find such things.

18 Q. Didn't you just say that's what the Court held in
19 DeGrandy?

20 A. With that specific -- yes, but with those
21 specific -- with that specific outline. They have
22 more than a proportion in this region as defined by
23 the Court, so it doesn't -- so you can't fix the
24 statewide problem by changing that, if that's
25 clear, but that's -- that's separate from the

33

1 question that you're asking.

2 If I'm sitting down to draw the districts,
3 okay, I might draw districts in such a way as
4 blacks get more than their share in Charlotte so
5 that they'll have something closer to
6 proportionality in the General Assembly.

7 That's me drawing it. That's not a legal
8 requirement, or it may be a legal requirement. I
9 don't know. That's a legal question.

10 But as a matter of is that good public
11 policy, the answer is, yes, it's good public
12 policy, but how do you define the Charlotte region?
13 What does that mean? When you get to the General
14 Assembly, I don't think it means anything.

15 So I don't know how to define and say we
16 can't elect a few more blacks in Charlotte because
17 that's a region that is somehow separate from the
18 rest of the state, although I know people that
19 people thing is the great state of Charlotte or --
20 but it's not, or the great state of Mecklenburg,
21 but it's not.

22 Q. So understanding your testimony, you would support
23 a system in North Carolina that would allow African
24 Americans to elect their candidates of choice in
25 proportion to their total numbers in the state for

34

1 the General Assembly?
2 A. But you keep going back to proportions and I keep
3 talking about offering opportunities that would
4 lead in that direction.
5 And again, I'm still talking about what I
6 would do if I'm drawing the districts, not
7 necessarily what's required by the law. What's
8 required by the law is something for you guys to
9 fight about and the Court to decide.
10 Q. Okay, but I want to understand what you're saying.
11 As far as Dr. Arrington is concerned, you support a
12 system that would allow African American voters to
13 have rough proportionality in the General Assembly
14 in terms of their ability to elect their candidates
15 of choice?
16 A. Let me rephrase. I would support drawing the
17 districts in such a way as African Americans have
18 enough opportunities to elect candidates of choice
19 that they might end up with proportionality in
20 terms of their representatives in the General
21 Assembly, not necessarily blacks in the General
22 Assembly.
23 Q. Would you support a plan that would give them more
24 than proportionality?
25 A. No, any more than I would support a plan that gives

35

1 whites more than proportionality.
2 Q. I want to ask you to look at paragraph 29 on
3 Exhibit 244.
4 A. I'm sorry. You're talking about paragraph 29?
5 Q. Right.
6 A. Packing.
7 Q. Yes, sir. Could you read that into the record,
8 paragraph 29.
9 A. "The second rule is that it is important to avoid
10 packing districts with more African American or
11 Hispanic voters than are necessary to give them an
12 opportunity to elect candidates of their choice.
13 Such packing reduces the minority vote and
14 therefore the influence of minority voters in
15 surrounding districts."
16 Q. I have some questions I want to ask you about that.
17 Could you please give me your definition of
18 packing.
19 A. Yes. First, one determines the concentration of
20 the minority group which would give them a
21 reasonable opportunity and an ability to elect
22 candidates of their choice, and then if the
23 district has a higher concentration than that, it's
24 packed.
25 Q. How is that point to be determined in each state?

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1 A. By an in-depth analysis of election results using
2 ecological regression or ecological inference or,
3 in some cases, extreme precinct analysis until you
4 determine -- or reconstituted election analysis or
5 simply observation within a state of the number of
6 districts that blacks obviously can elect their
7 choice in, and so we experts -- it is an expert
8 employment opportunity.
9 Q. Expert Full Employment Act.
10 A. Yeah. To determine what that level is and then
11 that's the level at which you would draw. And when
12 I draw districts, that's what I try to do.
13 Q. Okay. So you're saying that in all the
14 redistricting cases, the State should hire experts
15 to determine the exact percentage of black
16 population that's needed in a district in order to
17 give black voters a reasonable opportunity to elect
18 candidates of choice?
19 MR. SPEAS: Objection to the form.
20 MR. FARR: That means he didn't like the
21 way I asked the question, but you can answer it.
22 THE WITNESS: I know.
23 The answer to that is if I were in the
24 General Assembly, especially if I were on one of
25 those committees, I would very much want to do

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1 that. I would at least want to look at the Voting
2 Rights litigation in the state to determine if
3 experts had already determined such levels. I
4 would want some kind of information about what that
5 level is, and I would want to draw the districts at
6 that level.
7 You know, that might mean hiring my own
8 experts to do some original analysis or it might be
9 looking at what's already out there, perhaps
10 consulting political scientists in the state to say
11 where is that level or at least looking at the
12 districts you've used the last ten years and say
13 what is the level in those districts that have
14 produced, that have been effective, and that will
15 tell you pretty much where it is. So you don't
16 have to hire new people necessarily, but that's not
17 a bad idea.
18 BY MR. FARR:
19 Q. But you're saying that it requires expert testimony
20 to decide what the trigger point is to give blacks
21 a reasonable opportunity to elect their candidate
22 of choice?
23 A. No. I'm saying it requires expert opinion.
24 Q. Expert opinion. Okay.
25 A. They don't necessary have to testify. You don't

10 (Pages 34 to 37)

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1 necessarily have to pay somebody else, but you need
2 to determine where that level is in my view.
3 Q. Does that change on a district-by-district basis?
4 A. A little bit. In my experience, there are some
5 states where it changes a lot from place to place
6 and some places where it doesn't seem to vary too
7 much from place to place within the state.
8 Q. Now, could experts disagree on what the trigger
9 point is?
10 A. Sure, experts can disagree just like lawyers can.
11 Q. In fact, have you not been in cases where experts
12 have disagreed about what the right percentage was?
13 A. Not as a political matter, that is -- it's not
14 rocket science. When you use these techniques, you
15 came out with the same numbers, so at least I can
16 say generally, even where experts on the other side
17 have been saying you shouldn't do what it is that
18 Arrington's opinion leads you to believe you should
19 do, the numbers basically agree. Even sometimes
20 when we use different data sets the numbers
21 basically agree.
22 So as I'm sitting here today, I can't
23 remember of a case in which I said that number is
24 40 and somebody else said, no, the right number is
25 45. May have happened.

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1 Q. I'm thinking I read something about that between
2 you and Mr. Weber where you may have disagreed on
3 some percentages.
4 A. No. Mr. Weber and I have always agreed on the
5 percentages. We've disagreed about what they mean.
6 Mr. Weber has said, for example, that the
7 standard procedures for using these are unreliable,
8 and I disagree with that as does the Supreme Court.
9 He has said that the data set I used in the
10 Montana case was the wrong data set, but his
11 numbers showed the same thing my numbers showed.
12 So to answer your original question, I
13 can't remember of a case in which the scenario
14 occurred in which I said the number was X and
15 somebody else said no the number is Y. That may
16 have happened, but I can't remember a case in which
17 that's happened.
18 And it is interesting that Dr. Weber and I,
19 his numbers and mine -- for example, in the
20 Charleston case, in the Montana case, in the
21 Maryland case, in the Maryland Eastern Shore case,
22 have agreed in fact and that's somewhat
23 embarrassing for Dr. Weber.
24 Q. I would be interested to hear his opinion on that.
25 A. He lost those cases. What can I say.

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1 Q. Well, do you know whether or not there were experts
2 in this particular proceeding that disagreed with
3 what the right percentage is?
4 A. Now you're not saying what is the percentage where
5 the district has to be drawn. You're saying what
6 is the level at which they have an opportunity to
7 elect candidates of their choice. No, I do not
8 know whether they disagree or not.
9 Q. Now, are there cases that you're familiar with
10 where packing has been described where the black
11 concentration is so high in one district that that
12 prevents the creation of a second district in which
13 the African Americans can elect their candidate of
14 choice?
15 A. Yes, I'm aware that that happens sometimes.
16 Q. Are you aware of any case where a court has
17 found -- or do you know what an influence district
18 is?
19 A. I do.
20 Q. How would you describe an influence district?
21 A. I would describe that, first of all, as a district
22 in which the minority does not have a reasonable
23 opportunity or an ability to elect candidates of
24 their own choice but at which a majority
25 candidate -- majority race candidate can be elected

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1 who would -- who would count on them in elections
2 and therefore would be heavily influenced by their
3 opinions about things.
4 Q. Are you aware of any case where a jurisdiction has
5 been found guilty of packing because it created a
6 majority black district at such a level as to
7 prevent the creation of an adjoining influence
8 district?
9 A. I'm not aware of any, no. That doesn't mean there
10 aren't any. I'm just not aware of any right
11 offhand.
12 Q. Are you aware of the LULAC case?
13 A. The LULAC case, yes.
14 Q. Do you recall what the court --
15 A. Which LULAC case? LULAC has dozens and dozens of
16 cases.
17 Q. One on influence districts.
18 A. Which state are we talking about?
19 Q. Texas.
20 A. Yes, but I don't know what the decision is in that
21 case. I don't remember what the decision is in
22 that case. I was not a party to that case.
23 You're talking about the recent Texas case?
24 Q. I think it was 2006.
25 A. The 2006 case, no, I was not an expert in that

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1 case. I have not studied it. There are many Texas
2 cases, remember, and LULAC is involved in almost
3 all of them.
4 Q. There is one that means more to me than others so I
5 should have clarified that.
6 Do you know of a case where a jurisdiction
7 has been found guilty of packing because they
8 created a majority African American district at
9 such levels so as to prevent the creation of an
10 adjoining influence district?
11 A. I think that's the question you just asked, and I
12 still don't know of any such case.
13 Q. I think I asked it a little different, but I'm
14 satisfied with your answer.
15 Dr. Arrington, back in the days that --
16 where you were signing this 1992 affidavit, was
17 there sort of a general understanding that to
18 create a district that the African Americans would
19 have a reasonable opportunity to elect candidates
20 of choice that the population would have to be in
21 the range of 60 to 65 percent?
22 A. That's a myth.
23 Q. That wasn't true?
24 A. It was never -- it was never the rule in the
25 Justice Department, and it's never a rule that

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1 experts ever adhered to.
2 It is the case that in some places in the
3 South at some times 65 percent may have been
4 needed. Indeed, when I did work on Louisiana, in
5 New Orleans specifically, for the Department of
6 Justice, I found that you really needed more than
7 60 percent in order for blacks to be able to elect
8 candidates of their choice there ten years ago,
9 before Katrina, of course.
10 But experts always thought you needed to
11 find that level by a searching analysis of election
12 data, and that's certainly my position.
13 And I do want to make clear that the
14 positions presented in this particular affidavit
15 are my opinions and the position of the special
16 master in 1992. They do not necessarily reflect my
17 positions in 2012.
18 I mean, I've done a lot of work in
19 North Carolina and elsewhere since 1992 and my
20 position is certainly different than reflected in
21 one of these later paragraphs where it suggests
22 that a majority is necessary. That may have been
23 the position of the special master who was advising
24 me, but it's not my position as a political
25 scientist. I want to make that clear.

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1 Q. This is your testimony in this affidavit, correct?
2 A. In 1992.
3 Q. Would you have put something in this affidavit that
4 you didn't believe was correct?
5 A. No, but that was -- that was 20 years ago.
6 Q. I understand.
7 A. And my position has changed in 20 years. If my
8 position rather than that of the -- well, my
9 position and that of the special master, as you can
10 see from the paragraph, is that the districts have
11 to be drawn at more than 50 percent because blacks
12 do not have an ability to control the district
13 unless they're more than 50 percent.
14 That's not my position today. It was
15 obviously my position in 1992 because I signed the
16 affidavit, but it's not my position today.
17 Remember, in 1992, it was also the position
18 that it didn't matter what the shape of the
19 district. Well, that's not my position today
20 because the courts have said you do have to take
21 that into account, so I learned something in
22 20 years.
23 Q. Okay. Well, let's --
24 A. Let me also point out, whatever the legal position
25 is, what was necessary in New York in 1992 is not

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1 what's necessary in North Carolina in 2012.
2 Q. Okay. Well, could you just look at paragraphs 30
3 and 31 for a second in your affidavit.
4 A. Sure. "Experts have come to modify this rule in
5 practice" citing Brace, Grofman, Handley and Niemi,
6 where they very clearly say in this article the
7 65 percent rule in theory and practice, that
8 essentially it was never a rule. It was a rule of
9 thumb that was used at a time when we didn't have
10 election data.
11 Remember, after Gingles -- or coming into
12 Gingles and after Gingles, we simply didn't know in
13 most jurisdictions what level of concentration was
14 necessary for minorities to elect candidates of
15 their choice.
16 And so people began to say, well, if you
17 get to 65, by golly, they ought to be able to do
18 it. Now, that was based on nothing, absolutely
19 nothing, and as we've begun to look at it,
20 especially in North Carolina, we've begun to see,
21 well, 65 is not necessary, 50 percent is not
22 necessary, but 40, that's about where you got to
23 have it.
24 Q. Now, in 1992, had you made any comparisons between
25 the extent of racially polarized voting in New York

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1 as compared in North Carolina?
2 A. Did I do it for this case, no.
3 Q. You didn't study racially polarized voting in
4 New York?
5 A. In New York?
6 Q. Yes.
7 A. I mainly relied on Dr. Lichtman's work, but I did
8 do a separate ecological regression of my own to
9 confirm what he had said, but his was much more
10 extensive involving a number of elections with
11 regard to a case involving the city council, as I
12 remember.
13 Q. Do you recall whether you found that the extent of
14 racially polarized voting in New York was greater
15 than it was in eastern North Carolina?
16 A. I don't remember. It depends which part you're
17 talking about.
18 Remember, most of the districts drawn in
19 New York were Hispanic districts, Hondurans,
20 Ecuadorians and others were Puerto Ricans.
21 Puerto Rican had a very different from the other
22 Hispanics and they, in turn, were different from
23 the blacks.
24 Q. Well, it appears from this affidavit you were
25 drawing at least a few majority African Americans

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1 districts.
2 A. I'm sorry.
3 Q. You're talking about African American voters in
4 this affidavit, so is it correct that you drew some
5 majority African American districts?
6 A. Oh, of course.
7 Q. Now, read into the record, please, paragraph 33.
8 A. Quote, "The current practice is to perform a
9 jurisdictional-specific analysis to determine the
10 appropriate concentration of minorities necessary
11 to assure control over a district.
12 "However, any district with less than
13 50 percent minority VAP is inappropriate for a
14 'minority control district.' It is important that
15 minority control districts be constructed so that
16 the protected racial or language minority can elect
17 a candidate of its choice and not just a minority
18 candidate who can appeal to non-Hispanic White
19 voters.
20 "By definition, such control can never be
21 assured if non-Hispanic Whites constitute a
22 majority of the eligible voters in the district.
23 More than a majority may be required."
24 And again, as I said previously, Mr. Farr,
25 that obviously was my position in 1992 based in

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1 part on the advice of special master. It's not my
2 position today.
3 Q. Okay.
4 A. And hasn't been my position in other cases. I
5 mean, this is not new in this North Carolina case.
6 This is something that I changed my mind about a
7 very long time ago.
8 Q. But in this affidavit when -- in a section where
9 you've described the testimony as compliance with
10 the Voting Rights Act, you stated that the
11 districts had to be drawn so that the minority
12 voters could control the election without the
13 assistance of any other voters. Is that not
14 correct?
15 A. I'm not saying -- I am not saying that that's what
16 the Voting Rights Act says because I'm not a lawyer
17 and this is not a legal document.
18 Q. Well, that wasn't my question.
19 A. Okay.
20 Q. My question was there's a section in this affidavit
21 called Compliance with the Voting Rights Act, and
22 your testimony in this affidavit was in compliance
23 with the Voting Rights Act, which this paragraph is
24 under that section, you believed at the time that
25 the Voting Rights Act required minority control

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1 districts which would allow African Americans to
2 decide who would win the election without getting
3 help from any other voters.
4 Isn't that a fair statement?
5 A. Yes and no. Let me -- let me come back. The
6 purpose of this section is to indicate how I'm
7 applying what I understood to be the requirements
8 of the Voting Rights Act to the specific districts
9 that I drew.
10 Paragraph 33 is not a legal definition of
11 the Voting Rights Act. I'm trying to determine how
12 to define minority control districts. Now, I'm not
13 even sure that -- I got that in quotes. I'm not
14 even sure minority control district is a term from
15 the Voting Rights Act. Seems to me Section 2 and 5
16 of the Voting Rights Act do not use that wording,
17 so I'm not sure where there's a quote from.
18 But I'm trying to say if you're talking
19 about minority control, if that's what we're
20 talking about, then you need, according to what I
21 thought in 1992, that it has to be majority
22 minority by voting age population. That's all I'm
23 saying there.
24 How that applies to the law is something
25 different. I don't know how that applies to the

13 (Pages 46 to 49)

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1 law.
2 Q. But even today, Dr. Arrington, if African Americans
3 are not in the majority in a district, in theory,
4 it's possible that all the other voters in the
5 district could align against them and choose
6 someone other than the minority population's
7 candidate of choice. That's theoretically
8 possible, is it not?
9 A. Yes, but that's also possible if they're a
10 majority. And that's also the problem with setting
11 majority as the rule. You cannot -- let's put it
12 this way: Nothing is certain in politics. Nothing
13 is certain in politics.
14 There is no level at which you can set
15 minority concentration and be assured that they
16 will be able to elect a candidate of their choice.
17 For example, suppose you set it at
18 65 percent, but in the primary, in the democratic
19 primary, there are five or six black candidates who
20 are reasonable candidates and one white. The one
21 white may very well win. He's a Democrat. He gets
22 black support in the general, but he's not their
23 candidate of choice. He's their second candidate.
24 That can happen.
25 So 50 percent is not, in fact, that

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1 majority point at which blacks are able to elect a
2 candidate of their choice.
3 Q. But if we had it -- hypothetically speaking, if we
4 had a race where there was an African American
5 candidate running against a white candidate and
6 that's all we had, if the district was under
7 50 percent, theoretically, the non-African American
8 population could control the district instead of
9 the African American population. Is that not
10 correct?
11 A. That is true, but it's also true that you don't
12 hold elections theoretically. You hold them in the
13 real world.
14 Q. All right. I want you now to turn to paragraph 90
15 of this affidavit.
16 A. You said 90.
17 Q. Yes, sir. I'm sorry. Could you read that
18 paragraph into the record.
19 A. Quote, "Individual candidates are often more
20 important than partisanship. This is especially
21 true given the power of incumbency, which is an
22 aspect of fairness not covered in Exhibits 5 to
23 11."
24 Q. So the reason I wanted you to read that to me is
25 what is your position about the impact of

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1 incumbency on elections, in legislative elections
2 in North Carolina?
3 A. Incumbents have an advantage. They usually win,
4 but they usually win because they're in districts
5 where they've already won before, so it's already a
6 district in which their race or ethnicity and their
7 party does well. That's how they won before.
8 They also have financial advantages and
9 they have name-recognition advantages so they do
10 better.
11 Q. Do you have any range of how that equates? Is that
12 worth two percentage points, five percentage
13 points?
14 A. Well, of course, it depends if the district has
15 been changed. There's a lot of literature on that.
16 So if the incumbent is now in the district that's
17 very different from the district in which he was
18 previously elected, then it may be very little
19 advantage, so that's the first thing to say.
20 Then the second thing to say is, no, I
21 don't have a specific number. It's just -- it's
22 going to vary.
23 I mean, some incumbents are not very
24 visible in their district and some incumbents go to
25 everything, they become very visible. It also

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1 depends upon how good the incumbent is at scaring
2 off good competition.
3 Sometimes if the incumbent has been in a
4 scandal, for example, he's going to attract a
5 really interesting opponent and therefore his
6 incumbency is not going to be very helpful, so much
7 of incumbent advantage is if you scare off the good
8 guys to run against you.
9 Q. I read something Dr. Lichtman wrote where he said
10 it could be worth up to five percentage points. Do
11 you disagree?
12 A. Oh, sure, I don't disagree with that. It could be
13 more than that, and I don't know where the average
14 is, and I don't know any literature that's actually
15 attempted -- I don't know of any literature that's
16 actually attempted to put a number on it; just
17 everybody knows it's there in part because even if
18 you had an average -- five percent is perfectly
19 good number -- the variation around that, the
20 deviation around that is going to be so large that
21 I'm not sure it would be a very helpful number.
22 Q. So you're saying Dr. Lichtman's kind of got a good
23 rough estimate but it could vary in either
24 direction because of all sorts of variables?
25 A. Absolutely.

14 (Pages 50 to 53)

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1 Q. Now, I wanted to ask you about name ID. I think --
2 is that the right term for political scientists to
3 know as far as how many people in the district know
4 who is running?
5 A. Yes.
6 Q. Have you ever looked at that issue?
7 A. Oh, yes, I've looked at it in terms of analyzing
8 elections for 40 years. Have I written on it, no,
9 I don't think I've written on it, but there is
10 literature on the subject.
11 Q. Do you have an opinion when people go to the polls
12 in North Carolina to vote on legislative races how
13 many people know who the incumbent is and how many
14 people know who the challenger is when they walk
15 into the ballot booth?
16 A. Well, of course, that's the other advantage of
17 incumbency is they generally have a name
18 recognition that the challenger does not. Now,
19 again, that depends upon how good a challenger you
20 attracted.
21 If you're a strong incumbent, you won big
22 last time, you're not going to attract anybody who
23 has name recognition. If you're in scandal or
24 you've been invisible for the last few years or you
25 squeaked by two years ago, then the guy runs

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1 against you may be a local news commentator or
2 sports figure or somebody from another office and
3 therefore has name recognition.
4 Q. I understand there's all sorts of exceptions, but
5 do you have an idea when people go to vote how many
6 people, when they walk in to vote, know who the
7 incumbent is and how many know who the challenger
8 is?
9 A. No. About all you can say is they're going to know
10 the incumbent better than they know the challenger
11 usually. How many people know either name? Far
12 fewer than members of the General Assembly think.
13 Q. I've asked the pollster about this and just tell me
14 if you disagree or not. This fellow I talked to
15 said that the ID for the incumbent can be anywhere
16 from 25 to 33 percent. Do you think that's a fair
17 statement?
18 A. The incumbent's ID is anywhere from 25 to 33
19 percent. Again, it's going to vary. We're talking
20 about General Assembly, I assume.
21 Q. Yes, sir.
22 A. Not congress. That's different.
23 From General Assembly, I think that's high.
24 And it depends whether you're talking about easy
25 name recognition or hard name recognition. Easy

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1 name recognition is: Do you know who John Smith
2 is? Oh, yeah, I think he's one of my
3 representatives. That's easy.
4 Do you know who your representative in the
5 General Assembly is? John Smith. Bingo, that's
6 hard. That's nowhere near 25 percent.
7 Q. So the incumbents would be less than 25 percent and
8 then the challengers would be somewhat below the
9 incumbents?
10 A. Yes, absolutely. Generally. Again, variation's
11 big.
12 Q. Would it be a fair statement to say that if you had
13 a strong, well-thought-of, entrenched African
14 American incumbent running in a district that the
15 percentage of black population that he would need
16 to get re-elected could be lower than if you had a
17 new person running?
18 A. Yes.
19 Q. Okay.
20 (WHEREUPON, Exhibit 245 was marked for
21 identification.)
22 BY MR. FARR:
23 Q. Could you tell the court reporter what this is?
24 A. Yes. It's an article that Bernie Grofman,
25 G-R-O-F-M-A-N, and I published in Political

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1 Geography. Party registration choices as a
2 function of the geographic distribution of
3 partisanship: A model of hidden partisanship and
4 an illustrative test.
5 Q. This was published when, Dr. Arrington? Does it
6 say?
7 A. 1999. Written probably a year or so previous to
8 that, maybe two years previous.
9 Q. You're welcome to read the whole document, but I
10 just have one question on one paragraph which is on
11 page 176.
12 A. Okay.
13 Q. I'm looking at the paragraph at the bottom of the
14 page which starts with "on the other hand."
15 A. Page 176, "On the other hand."
16 Q. Yes, sir.
17 A. You wish me to read it to myself?
18 Q. You can read it into the record.
19 A. Quote, "On the other hand, there is another type of
20 contextual effect also operative such that the
21 areas of the state that are the most Democratic are
22 also those with the highest proportion of black
23 voters. Since black voters are very unlikely to
24 vote Republican, this type of contextual effect
25 would lead us to expect that a sub 2 is less than

15 (Pages 54 to 57)

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1 zero."
2 Q. You can stop there because I'm not going to ask you
3 about the analysis.
4 A. All right.
5 Q. I just have a couple questions on that.
6 A. Okay.
7 Q. You say that African Americans are unlikely to vote
8 for Republicans.
9 A. That's correct.
10 Q. Can you explain the basis of your opinion?
11 A. Basis of the opinion is every public opinion poll
12 that's been taken in the last 30 years and every
13 election analysis that's been done on the basis of
14 ecological regression, ecological inference,
15 extreme precinct analysis or just plain 'ole
16 looking at the results, overwhelmingly black
17 precincts vote overwhelmingly for Democrats and
18 mixed precincts vote mixed and precincts that have
19 very few blacks vary enormously in North Carolina.
20 Q. Do you know of the registered African American
21 voters how many -- what percentage is registered
22 black or registered Democrat in North Carolina?
23 A. I don't have that figure off the top of my head.
24 It's very high.
25 Q. Like 90 percent?

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1 A. I mean, nationwide if you're talking about party
2 identification, which is not quite the same thing
3 as registration, blacks are often about 85 percent
4 Democrat and another five or ten percent
5 independent, but often it's at 90 percent.
6 I wouldn't be surprised if the registration
7 was 90 percent, but I don't know what it is off the
8 top of my head.
9 Q. I don't know what it is, Dr. Arrington. I seem to
10 recall it's 90 percent.
11 A. 80, 90 percent, somewhere in that range, and the
12 rest are mostly unaffiliated. It may be somewhat
13 lower now because all of the groups are now
14 trending to unaffiliated so that hurts the
15 Democrats even among blacks, I would think, but I
16 haven't looked at it.
17 Q. Have you ever looked at the issue of
18 straight-ticket voting?
19 A. Of straight-ticket voting?
20 Q. Yes, sir.
21 A. Yes, a little.
22 Q. Do you have an opinion on whether African Americans
23 use straight-ticket voting in North Carolina?
24 A. Well, everybody uses straight-ticket voting.
25 Q. Do you know if they do that at a higher percentage

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1 than other groups?
2 A. Yes. The analysis that I have done not for this
3 case but in general in North Carolina would
4 indicate that straight-ticket voting is higher
5 among Democrats -- higher among blacks than among
6 whites. How much higher, I never put a number on
7 it, but it's certainly higher.
8 In other words, whites are more likely to
9 split their ticket than blacks are.
10 Q. Have you ever done a study -- sounds like you
11 didn't but I want to ask the question so it's
12 clear.
13 Have you ever done a study to try to
14 project the percentage of African Americans who
15 vote -- who vote a straight ticket, Democratic
16 ticket?
17 A. No.
18 Q. Have you studied in North Carolina elections,
19 legislative elections, the percentage of African
20 Americans that tend to vote for the Democratic
21 candidate?
22 A. Well, sure. I mean, in terms of my overall
23 interest and in terms of various cases, blacks vote
24 overwhelmingly for Democratic candidates. That's
25 what this paragraph that you just had me read says.

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1 Q. So if an African American voter was typical of the
2 voters that you just described to me who mostly
3 don't know who's running for legislature, would
4 they tend to vote for the Democratic candidate?
5 A. If they don't know who's running?
6 Q. Yes.
7 A. Oh, yeah, they would be more likely. Yes, that's
8 true of everybody. If you don't know the
9 candidate, you vote your party or you just leave it
10 blank which accounts for fall off.
11 Q. So the African American voters who don't know who's
12 on the ballot for their legislative offices, is it
13 fair to say they would vote in very high numbers in
14 favor of the Democratic candidate?
15 A. Yes.
16 Q. Like 80 to 90 percent in favor of the Democratic
17 candidate?
18 A. I would be reluctant to put a figure on it. It
19 would partly depend whether they associate the name
20 that they don't know with something.
21 For example, people with a very strange
22 name, hard to pronounce, too many vowels, what have
23 you, often don't get voted on, and people would
24 also judge on the basis of gender, to the extent
25 they can tell that from the name, and some people

16 (Pages 58 to 61)

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1 will be more prone to vote for a woman and some
2 people less prone to vote for a woman, and so that
3 will make a difference, too. So people read all
4 kinds of things into it when they don't recognize
5 one of the names and when they don't fall back on
6 party.
7 Q. Have you done -- and I know enough about this to be
8 dangerous to myself so this is an area where I may
9 not ask the question the right way, but when you
10 have done ecological regression analysis, have you
11 looked at election results on a
12 precinct-by-precinct basis?
13 A. No. The purpose of an ecological regression is to
14 look at all the precincts and come up with an
15 average of what's happening in all the precincts.
16 Do I look at individual ones? Well, we do
17 in terms of extreme precinct analysis, so you would
18 want to look at the precincts that are more than
19 90 percent black and the ones that are more than
20 90 percent white and look at the results in those
21 precincts to say is that giving you the same kind
22 of result. Wouldn't be the same numbers but the
23 same kind of results you're getting with the
24 ecological regression. That's a check on the
25 ecological regression.

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1 Q. Maybe I asked the question the wrong way.
2 Can you determine from your ecological
3 regression studies that you've done in
4 North Carolina the percentage of the African
5 American voters who are voting for the Democratic
6 candidate?
7 A. Overall, yes. That's the purpose of the analysis.
8 Q. What does that show typically as far as the
9 percentage of African American voters who vote for
10 the Democratic candidate?
11 A. 90 percent black. Some elections it might be a
12 little less than that, but that's a reasonable
13 number.
14 Q. All right. What number are we up to?
15 (WHEREUPON, Exhibit 246 was marked for
16 identification.)
17 BY MR. FARR:
18 Q. I hope you can read this, Dr. Arrington, but it's
19 the best copy that I could find.
20 A. Yes, I remember it.
21 Q. Could you tell the court reporter what I've handed
22 you as Exhibit 246.
23 A. This is the hearing before the Subcommittee of the
24 Constitution of the Committee of the Judiciary of
25 the House of Representatives of the United States

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1 in their Voting Rights Act Reauthorization in 2005,
2 and I testified and this is my testimony.
3 Q. I have a couple of questions about this. On the
4 first page could you -- starting with the second
5 paragraph, could you read that paragraph into the
6 record, please.
7 A. Quote, "I have submitted to the Committee a paper I
8 presented to a roundtable at the Annual Meeting of
9 the American Political Science Association. In
10 that paper I discuss the effect of implementation
11 of the Voting Rights Act on partisan
12 gerrymandering, a subject I first broached in my
13 testimony before the Federal District Court in the
14 case that became Thornburg versus Gingles in the
15 mid 1980s.
16 "Prior to Gingles many jurisdictions with
17 heavy minority populations had districting
18 arrangements which favored the Democratic Party.
19 Minority populations were disbursed across many
20 districts in such a fashion as to enable the
21 election of white Democratic candidates, but with
22 few or no districts having sufficient minority
23 population for the election of representatives of
24 choice of minority voters.
25 "Because Republican voters are more

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1 homogeneous in terms of race, ethnicity and (at
2 that time) class, Republican districts were easily
3 packed with more Republican voters than are needed
4 to win. It does not matter whether this
5 arrangement, which favored white Democrats over
6 minority Democrats and Republicans, was intentional
7 or the result of what are often called 'traditional
8 redistricting principles.'
9 "The effect was the same, Minority voters
10 were denied equal participation in the political
11 process because they did not have equal opportunity
12 to elect representatives of their choice, and
13 Republican voters were underrepresented."
14 Q. Okay. Thank you. I have a couple questions I want
15 to ask about this.
16 So prior to -- the Gingles case was an
17 interpretation of an amendment to the Voting Rights
18 Act that was passed in 1982. Am I correct about
19 that?
20 A. Well, the amendment that was passed in '82 was
21 critical because that said clearly that you didn't
22 have to prove intent, you only had to prove effect.
23 Q. Well, prior to the '82 amendment, the courts had
24 said to prove a vote dilution claim under the
25 Constitution, you had to prove a dilutive effect

17 (Pages 62 to 65)

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1 plus you had to prove intent to discriminate; is
2 that correct?
3 A. That's correct.
4 Q. Is it your understanding that the effects test
5 under Section 2 as amended is the same as what the
6 effects test would have been under the
7 Constitutional line of cases prior to the 1982
8 amendments?
9 A. That sounds to me like a legal question. I have no
10 idea.
11 Q. I was just wondering if you remembered. Do you
12 know whether or not in passing Section 2 that the
13 Congress adopted an effects test that had been used
14 in a Constitutional case?
15 A. No.
16 Q. All right. That's fine.
17 A. No, I don't remember it. That's legal
18 complications. I'm sorry.
19 Q. How would you define the term "cracking"?
20 A. Cracking means that you take a concentration of
21 voters -- those could be Republican voters,
22 Democratic voters, blacks, Hispanics,
23 whatever -- and you divide them into different
24 districts so that they're unable to elect a
25 candidate of their choice in any of the districts.

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1 Q. Does that describe what was happening to minority
2 population concentrations prior to the 1982
3 amendments to the Voting Rights Act?
4 A. Yes, although it mainly affected at-large
5 districts, and I think you can interpret at-large
6 districting as basically cracking. It's not
7 exactly cracking, but it has the same effect. It's
8 dilutive.
9 Q. So you're talking about multi member districts
10 where a concentration of minority voters is
11 submerged?
12 A. Well, for North Carolina I was, yes. There were
13 other states where they had districts but they drew
14 the districts in such a way as to crack minority
15 populations and therefore to provide more
16 opportunities for white Democrats and they also
17 then cracked Republican districts as well.
18 Q. So the redistricting process that was occurring in
19 North Carolina prior to the 1982 amendments worked
20 to the political advantage of white Democrats; is
21 that correct?
22 A. Yes.
23 Q. And minority voters were unable to elect a
24 candidate of their choice?
25 A. That's correct.

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1 Q. Now, Dr. Arrington, are you aware of a case where a
2 court has held that a minority population was
3 cracked because the state created a majority
4 African American district which resulted in
5 influence districts that adjoined the majority
6 African American district?
7 A. I think I'm going to answer no to that as I
8 answered no when you asked it previously, but ask
9 it again. Maybe I didn't catch a distinction.
10 Q. I didn't mean for there to be a distinction but
11 I'll try again.
12 Cracking -- as I understand cracking, a
13 classic example of cracking would be where you had
14 a concentration of African Americans who could
15 elect a candidate of choice in a single-member
16 district and you split that population up into two
17 different districts so they could not elect a
18 candidate of choice in either district.
19 Is that a fair description?
20 A. Yes.
21 Q. Are you aware of a case where a court has found a
22 jurisdiction guilty of cracking because the
23 jurisdiction created a majority black district
24 where the African Americans could elect a candidate
25 of choice which resulted in the adjoining districts

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1 being an influence district?
2 A. No. I'm sure there are such districts, but I'm not
3 sure where you're going with that question, and I
4 don't want to try to put words in your mouth, so
5 I'm not quite sure -- I'm not aware of any case
6 that is like that, but I'm not quite sure what
7 you're defining.
8 You've got a majority black district, as I
9 understand your question. Now because you've
10 created that district -- and now let's assume that
11 district's not packed or should I assume it is
12 packed?
13 Q. Let's say under your definition of packing it's not
14 packed.
15 A. It's not packed. This is a black district that's
16 not packed. Now, because you've drawn that
17 district, what happened?
18 Q. You have an adjoining district where minorities
19 have influence but cannot elect a candidate of
20 choice.
21 A. That happens all the time.
22 Q. Is that called cracking?
23 A. No.
24 Q. All right. That's all I wanted to know.
25 A. Now, we've separated it out from the rest of the

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1 universe. This is an isolated place. There's no
2 other blacks around. Here's a concentration of
3 blacks. We've drawn a district in which there is
4 the ability to elect and in the adjoining district
5 there's some influence.
6 Okay. I don't see anything wrong with
7 that. I don't know why any court would say that's
8 a bad thing.
9 Q. Well, what if there is not any influence in the
10 adjoining district as you define it?
11 A. Well, no, the ability to elect is the most
12 important. Influence is a secondary thing.
13 Q. So I understand your testimony, if you've created a
14 district that allows a minority to elect a
15 candidate of choice, as you may define that term,
16 and the adjoining district results in a district
17 where African Americans don't have influence, have
18 you ever -- are you aware of a case where a court's
19 held that to be cracking?
20 A. No.
21 Q. Thanks.
22 A. Now, again, there are no other blacks anywhere
23 else. You didn't crack because you cut off some
24 other blacks there someplace else. And our
25 scenario is this is the only concentration of

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1 blacks. And you can't create two districts there
2 in which blacks have the ability to elect a
3 candidate of choice. You can only elect one. So
4 you put one and you put all the other blacks in a
5 district so they have some influence there. I
6 can't imagine a court saying that's a bad thing.
7 Q. Okay. That's not really what my question was,
8 though. I understand that testimony. I'm trying
9 to understand what cracking means, okay.
10 As I understand, cracking means when you
11 don't create a district that allows minorities to
12 elect a candidate of choice; is that right?
13 A. Right. Right, but we've got this concentration,
14 and you and I have agreed there are not enough
15 blacks there to create two districts in which they
16 have the ability to elect a candidate of choice.
17 You can only create. So you create one. The
18 remaining blacks are in the adjoining district in
19 which they have influence.
20 Now, maybe there are not enough blacks to
21 even have an influence district next door, and
22 that's a possibility, too. And again, there are no
23 other blacks in the rest of the universe you could
24 connect them to under Shaw. That's the scenario.
25 That's not cracking. You've done the best

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1 you can do in that situation, if that's what you
2 did. And again, there's no packing here either.
3 Q. Are you aware of any case where a court's held that
4 the jurisdiction is guilty of cracking because the
5 jurisdiction didn't create an influence district?
6 A. I'm not aware of such a district.
7 Now, Mr. Farr, you're asking me a lot of
8 those questions, and I'm perfectly glad to answer
9 them, but when I answer, I'm not aware. It doesn't
10 mean there aren't any. It just means I'm not
11 aware.
12 Q. I understand that.
13 A. I've done a lot of this stuff, but I haven't been
14 involved in all the cases and I haven't studied
15 them all and there are hundreds of them, as you
16 know.
17 Q. I'd like you to turn to page 83 of this exhibit,
18 and I would like for you to read into the record
19 the paragraph that starts "In Georgia v. Ashcroft"
20 and the other next to that one.
21 A. "In Georgia v. Ashcroft the U.S. Supreme Court
22 seemed to support the notion that a jurisdiction
23 could satisfy Section 5 (and perhaps by implication
24 Section 2) by substituting what are called
25 'influence districts' to provide 'substantive

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1 representation' instead of creating or maintaining
2 districts in which minority voters have a
3 reasonable opportunity to elect representatives of
4 their choice.
5 "There are a number of problems with this.
6 First, there are no clear guidelines for measuring
7 influence districts or substantive representation.
8 Like the Court's decision about district shape in
9 Shaw versus Reno and its progeny, we are left with
10 no clear guidelines for drawing districts; no way
11 to know how to comply with the Court's mandate.
12 "This is quite unlike the
13 one-person-one-vote standard, which can be
14 mathematically determined as the districts are
15 being drawn. At what level of minority
16 concentration, short of a reasonable opportunity to
17 elect representatives of their choice, does a
18 district provide 'influence'? Do minority voters
19 have influence over a representative they voted
20 against and whose policies they oppose? How many
21 influence districts are equal to one opportunity to
22 elect district in providing equal representation
23 (sic)?"
24 Did you want me to read the next one also?
25 Q. Yes, sir.

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1 A. "Second, to the extent that I can imagine what
2 measures would be used to determine whether
3 substantive representative or influence has been
4 enhanced to prevent retrogression, these measures
5 amount to simply helping Democratic Party
6 Candidates.
7 "In virtually every state legislature, in
8 the Congress and in many local jurisdictions,
9 minority representatives -- especially African
10 Americans -- are strongly allied with the
11 Democratic Party. Helping Democratic Party
12 candidates would be argued to be equivalent to
13 increasing minority voter influence and helping
14 minorities substantive representation.
15 "In other words, influence districts, if
16 seen as a replacement for opportunities for
17 minority voters to elect representatives of their
18 choice, would become simply a rationale for
19 creating Democratic Party gerrymanders. This takes
20 us back to the situation before Gingles when
21 minority voters did not participate equally in the
22 political process and Republican voters were
23 underrepresented."
24 Q. Okay. Can you tell us what you meant by those
25 statements, summarize what your intentions behind

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1 writing those statements.
2 A. Sure. The appropriate way to draw districts is to
3 provide opportunities for minority voters to elect
4 candidates of their choice and to provide a fair
5 vote/seat relationship between the votes of the
6 parties and the seats that they win, and it is
7 possible, in my view, and therefore desirable to do
8 both.
9 Q. Could you, Dr. Arrington, now read the next
10 paragraph in your statement.
11 A. Quote, "Substantive representation is often
12 contrasted with what is called 'descriptive
13 representation,' which means that only a black
14 person can represent African American voters, only
15 women can represent female voters, and so forth.
16 Quite frankly, the concept of descriptive
17 representation is a straw man.
18 "The Voting Rights Act does not require the
19 election of minorities, and I know of no competent
20 expert or voting rights lawyer who has argued that
21 it does. But I believe that the Voting Rights Act
22 should require that minority voters have an equal
23 opportunity to elect representatives of their
24 choice.
25 "The fact derived from extensive analysis

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1 of voting patterns shows that minority voters, like
2 the rest of us, usually prefer candidates who are
3 like themselves in race, ethnicity and
4 partisanship. This is not descriptive
5 representation, it is just giving minority voters
6 the same opportunity that Anglo voters have to
7 elect their choice.
8 "If minority voters are restricted to
9 choosing among Anglo candidates, they cannot be
10 said to be participating equally in the political
11 process. Experts have developed procedures for
12 determining whether a district offers minority
13 voters a reasonable opportunity to elect
14 representatives of their choice, and this can be
15 known as the districts are drawn."
16 Q. I am going to ask you a question about that when we
17 get to the next paragraph, but the first question I
18 wanted to ask you is I've read some of your other
19 literature, and have you -- this statement you made
20 in the paragraph you just read into the record,
21 does that represent your opinion that African
22 Americans typically will want to vote for someone
23 of their own race if they're given the chance to do
24 that?
25 A. Other things being equal, yes.

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1 Q. So is it a fair statement that in most instances,
2 if there's a white candidate running against an
3 African American candidate, the candidate of choice
4 for African American voters would be the African
5 American candidate?
6 A. In a primary, yes. In a general election, not
7 necessarily.
8 Q. So like in a general election, if it was an African
9 American Republican running against a Democrat, the
10 African Americans will be more likely to vote for
11 the Democrat?
12 A. That's correct.
13 Q. But in a Democratic primary, if it was an African
14 American candidate running against an Anglo
15 candidate, the African Americans would be more
16 likely to support the African American candidate?
17 A. Usually.
18 Q. Okay. Now, could you now read into the record the
19 next paragraph which starts "So far in my
20 testimony."
21 A. "So far in my testimony I may have annoyed some
22 Democratic members in this Committee. What I am
23 about to say may annoy some Republican members.
24 "Just as failure to construct minority
25 districts can result in a Democratic Party

20 (Pages 74 to 77)

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1 gerrymander, so too the packing of minority voters
2 can be used to create a Republican Party
3 gerrymander. Some court decisions seem to indicate
4 that a remedy for a violation of Section 2 or an
5 attempt to avoid retrogression under Section 5
6 requires the construction of districts in which a
7 majority of the voting age population or registered
8 voters are minority -- a so-called
9 'minority-majority district.'

10 "I do not believe that this is the best
11 standard. Qualified experts usually rely on court
12 rulings that specify that minority voters in the
13 district must have a 'reasonable opportunity to
14 elect representatives of their choice, even if
15 their choice happens to be a member of that
16 minority.'

17 "Notice that the standard is a reasonable
18 opportunity, not a certainty. There is no
19 certainty in politics. Packing a district with
20 more minority voters than are needed to provide a
21 reasonable opportunity weakens the participation of
22 minority voters in surrounding districts, and could
23 be used to unfairly favor Republican Party
24 candidates, creating a Republican Party
25 gerrymander.

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1 "The concentration of minority voters
2 necessary to provide a reasonable opportunity to
3 elect varies from place to place and from office to
4 office."

5 Q. Okay. I've got a couple questions about this.
6 This statement was given by you in November
7 of 2005?
8 A. That's correct.
9 Q. And this was given by you prior to the decision by
10 the Supreme Court in Strickland v. Bartlett?
11 A. That's correct.
12 Q. Now, prior to the decision in Strickland v.
13 Bartlett you reference that there have been court
14 decisions that have said that districts that allow
15 African Americans to elect their candidate of
16 choice had to be drawn at majority minority?
17 A. No, I'm not aware there were such cases. There may
18 have been.
19 Q. I thought you just said there were in this
20 statement.
21 A. No. Maybe I did. Let's look.
22 Q. As you go on page 4 it says some court decisions --
23 A. -- seem to indicate. It can be read that way.
24 Lawyers read all kinds of things into court
25 decisions. I'm not a lawyer so I didn't want to

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1 say this is what the courts have said. I just say
2 it seemed to indicate that a remedy.
3 Q. Had to be actual majority black?
4 A. That's what that -- that's what that's saying.
5 Yeah. Let me look at it again. Right, seem to
6 indicate.
7 Q. And in your testimony you stated that you disagreed
8 with those court decisions.
9 A. No. Let's clarify that. The law means what the
10 court says it means, period. I'm not a lawyer and
11 I'm not a judge.
12 I'm saying I would prefer the law were to
13 be different than it is, if that's the law. Now,
14 what I'm saying there seem to indicate -- I don't
15 know what the law is in that regard, but if that's
16 the law, I would prefer it would be different and,
17 of course, to make it different the Congress would
18 need to change it.
19 Q. And --
20 A. So I want to make it clear I'm not saying I
21 disagree with what the court says. I'm not a
22 lawyer. I'm not qualified to do that, but I would
23 prefer it not be the law.
24 Q. Okay. And that's what you meant when you said,
25 quote, "I do not believe that this is the best

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1 standard," unquote?
2 A. That's correct.
3 Q. And then in this paragraph you also made a
4 reference to testimony you've already given today
5 that experts could be hired in each state to
6 determine what the right percentage was that would
7 allow African Americans a reasonable opportunity to
8 elect candidates of choice; is that correct?
9 A. It could be hired or you could simply look at
10 testimony they had already given.
11 Q. And I want to ask you -- Dr. Arrington, my mind
12 wanders during these depositions so if I ask you
13 something that I've already asked, I apologize. I
14 just may not remember it exactly right, but I want
15 to ask you another packing question.
16 A. I believe you.
17 Q. Are you aware of any case where a jurisdiction drew
18 a majority black district, majority African
19 American district and they were ordered to
20 dismantle that district and replace it with a
21 district that only had 42 percent black population?
22 A. I'm aware of no such district, no such case.
23 Q. Could we take a break, please.
24 A. Yes, I would like one, as a matter of fact.
25 (Brief Recess: 10:15 to 10:30 a.m.)

21 (Pages 78 to 81)

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1 BY MR. FARR:
2 Q. Could you turn to page 87. There is in the first
3 full paragraph -- there on 87 there's a sentence
4 that begins with "Limited voting and cumulative
5 voting."
6 A. "Since the shape" page 87 or you want to go down
7 further?
8 Q. You can read the whole paragraph if you want to. I
9 just want to ask you about the question that begins
10 "Limited voting and cumulative voting." Could you
11 read that into the record.
12 A. Right. "Limited voting and cumulative voting are
13 widely used in various local governments,
14 especially in Alabama and Texas, to provide all
15 races and ethnic groups with an equal opportunity
16 to elect representatives of their choice without
17 drawing any kind of districts.
18 "I have coauthored one of the many peer
19 reviewed, scholarly articles which present the
20 statistical evidence of the effectiveness of these
21 election procedures," end quote.
22 Q. And I just wanted to ask you, Dr. Arrington, if you
23 could explain what limited voting and cumulative
24 voting are and how they would apply to cases like
25 this.

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1 A. Well, I'm not sure they would apply to cases like
2 this, but I can tell you what they are.
3 Suppose we've got a jurisdiction that has a
4 City Council of five members. If you're going to
5 elect them at large, the way it's usually done is
6 that each voter has five votes and they can vote
7 for any five individuals they choose.
8 Limited voting would say, okay, we're
9 electing five but you can only vote for three. You
10 can vote for any three you want but you can only
11 vote for three.
12 Strategically, that would allow minorities
13 who -- people who are minority in that jurisdiction
14 to actually elect a candidate of their choice even
15 though they're electing at large, so that's what
16 limited means, the vote is limited to less than the
17 number you're electing.
18 Cumulative voting is different. It says,
19 okay, we're going to elect five members to the City
20 Council or school board, whatever it is. You have
21 five votes. You can vote five times for one
22 person, three times for one person, two times for
23 another person, distribute them any way you want or
24 vote for five different people. That's called
25 cumulative voting.

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1 The only type of cumulative voting that I
2 favor is equal allocation cumulative voting which
3 says I have -- they were electing five people. If
4 I vote for one person, he gets five. If I vote for
5 two, they each get two and a half, so that I don't
6 have to determine how to distribute my votes
7 because voters can't in fact do that very well.
8 But, you know, single-shot voting which
9 occurs all the time in multi candidate elections,
10 that's just single-shot voting except when I single
11 shot, my vote still counts.
12 Both of those can be used in small
13 jurisdictions. I would not use them in a large
14 jurisdiction, but can be used in a small
15 jurisdiction to provide minority representation
16 with at-large elections.
17 Q. So when you say you wouldn't use those in a large
18 jurisdiction, does that mean you wouldn't use those
19 for legislative races?
20 A. Well, you wouldn't elect statewide with either of
21 those. That would overwhelm the voter. You could
22 have, say -- construct -- and this is done in some
23 places. I don't know if it's done in the
24 United States, but instead of constructing
25 single-member districts for the whole legislature,

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1 you could construct a lot of districts with three
2 members and have cumulative voting or limited
3 voting within those three members. You could do
4 that. That might be an advantage.
5 If you have a situation where the black
6 population is very scattered, under Shaw you can't
7 draw a district even though there are lots of
8 blacks there, so one way to take care of that would
9 be a multimember district with cumulative voting,
10 that would be one way to take care of that problem,
11 and provide more representation for minorities
12 without violating Shaw. You could do that.
13 Now, of course, Stephenson says you have to
14 draw single-member districts.
15 Q. Maybe not. That might be an excuse for doing it.
16 All right, sir, I just got one more
17 question on this exhibit. Would you turn to page
18 87 and read the last paragraph at the bottom of
19 page 87 to the conclusion.
20 A. Quote, "Last of all, I would like to address the
21 numerous court decisions, which have provided that
22 minority representation for state legislatures
23 should be measured within a geographic region
24 rather than in the legislature as a whole.
25 "For example, if minority examples are

22 (Pages 82 to 85)

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1 proportionally represented in one or two parts of a
2 state where they are mostly concentrated, then it
3 may be impossible to successfully bring a Section 2
4 action or object to pre-clearance under Section 5
5 even though the minority group does not participate
6 equally in the political process because they have
7 less than an equal opportunity to elect
8 representatives of their choice in the state
9 legislature as a whole.
10 "Geographic regions are artificially
11 defined, and it is the legislature as a whole which
12 should provide equal opportunities for minority
13 citizens to elect representatives of their choice.
14 (In Georgia v. Ashcroft the Court seems to
15 recognize the importance of looking at the
16 legislature as a whole.)
17 "Therefore, it may be necessary to have
18 higher concentrations of minority opportunity
19 districts in some places so that minority citizens
20 have an equal opportunity to elect representatives
21 of their choice in the legislature as a whole," end
22 quote.
23 Q. So could you tell me what -- how that would apply
24 to drawing House or Senate districts for the State
25 of North Carolina, your opinions on

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1 proportionality?
2 A. Sure. That would mean that taking the Mecklenburg
3 region as a whole -- and how you define that, I
4 don't know, but in that area, at least in
5 Mecklenburg county, you're going to have probably
6 the ability to draw more black districts than their
7 proportion of the votes in Mecklenburg county, and
8 so you would do that.
9 And similarly, in the eastern part of the
10 state, particularly the northeastern part of the
11 state, you might have the ability to draw more
12 districts there than black population would entitle
13 them to in that part of the state, and similarly in
14 Forsyth, Guilford, Wake you might have those
15 opportunities.
16 And if you take those opportunities in each
17 of those regions, blacks would be overrepresented,
18 but taking the legislature as a whole, then, they
19 might just be adequately represented.
20 Q. So, in other words, you're saying that the
21 proportionality should be looked at from the
22 standpoint of the proportion of the black
23 population statewide?
24 A. That's correct. Again, I always want to be clear
25 that I'm certain I'm talking about proportional

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1 opportunities, not necessarily results.
2 Q. I understand.
3 A. And I'm only say rough proportionality, and I'm
4 only saying this is the way I would draw districts
5 if I were the General Assembly, not what the law
6 necessarily requires because the Dole Amendment is
7 pretty clear nobody's entitled to proportional
8 representation.
9 (WHEREUPON, Exhibit 247 was marked for
10 identification.)
11 THE WITNESS: Do you wish me to identify
12 it?
13 BY MR. FARR:
14 Q. Yes, sir.
15 A. This is my testimony before a hearing before the
16 Committee of the Judiciary of the United States
17 Senate. It was on May 16, 2006. And I notice just
18 in passing, although this is 2006, you may notice
19 that the chairman of the committee was Senator
20 Kennedy. The Republicans controlled the Senate in
21 2006.
22 Q. Well, it looks like Arlen Specter was the chairman
23 of the Judiciary Committee.
24 A. He was, but Senator Kennedy was the presiding
25 officer of the hearing.

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1 Q. I think Senator Kennedy had a good relationship
2 with his colleagues, as I understand it.
3 I want to ask you to read a couple things
4 from this statement. This was given by you on
5 May 16, 2006?
6 A. That's correct.
7 Q. What were you -- this is for the judges who may
8 read this, Dr. Arrington. What was the purpose of
9 you going up to testify in front of the Congress at
10 this time and the other statement that you gave to
11 the House that we've gone over?
12 A. Congress was considering the reauthorization of
13 Section 5 of the Voting Rights Act.
14 Q. Were there any concerns about some of the Supreme
15 Court decisions that had come out interpreting
16 Section 5 that were ultimately addressed by this
17 legislation when it was reauthorized?
18 A. Yes, Georgia v. Ashcroft.
19 Q. Can you turn to page 8. Could you read into the
20 record the first -- the last paragraph that starts
21 on the bottom of page 8.
22 A. Quote, "Georgia v. Ashcroft is an unworkable
23 standard that undermines the ability of minority
24 voters to have an opportunity to elect
25 representatives of their choice. In that case, a

23 (Pages 86 to 89)

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1 narrow 5-4 majority of the U.S. Supreme Court
 2 concluded that a jurisdiction could satisfy
 3 Section 5 -- and perhaps, by implication,
 4 Section 2 -- by substituting what are called
 5 influence districts to provide substantive
 6 representation instead of creating or maintaining
 7 districts in which minority voters have a
 8 reasonable opportunity to elect representatives of
 9 their choice."
 10 Q. And then could you read the next paragraph.
 11 A. "There are a number of problems with this. There
 12 are no clear guidelines for measuring influence
 13 districts or substantive representation. Like the
 14 Court's decisions about district shape in Shaw
 15 versus Reno and its progeny, we are left with no
 16 clear guidelines for drawing districts.
 17 "There is no way to know how to comply with
 18 the Court's mandate. This is quite unlike the
 19 one-person/one-vote standard, which can be
 20 mathematically determined as the districts are
 21 being drawn."
 22 Q. Can I just ask you a couple questions about that.
 23 What was your opinion of the Georgia v. Ashcroft
 24 decision? Did you support it or did you think it
 25 was a bad decision?

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1 A. Let me answer that the same way I answered
 2 previously. The law is what the court says it is.
 3 That's the way the system works. And what I'm
 4 doing here is asking the Congress to overturn that
 5 because they were -- in Georgia v. Ashcroft, in
 6 terms of influence districts, my understanding was
 7 they were interpreting the Voting Rights Act, which
 8 Congress is free to change.
 9 Now, in Shaw, for example, they're
 10 interpreting the Constitution. You'd have to
 11 change the Constitution to change that, but I'm
 12 saying to the Judiciary Committee here, this is
 13 something that will be unwise. The law is what the
 14 law says, what the court says, but in my opinion
 15 you should change the law.
 16 Q. What was the change that you were advocating?
 17 A. To make clear that the purpose of Section 5 is to
 18 set up election districts and not substitute
 19 influence for election or, as Congress said,
 20 ability to elect. I would have preferred they said
 21 opportunity so that it could be consistent with
 22 Section 2, but they said ability to elect.
 23 But I want to be clear here, the law -- I
 24 was not advocating that the law should say
 25 influence districts are not important. Simply that

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1 you can't substitute one for the other, that
 2 ability to elect is the main item and influence is
 3 secondary and you can't trade off influence for
 4 ability to elect, which is what the court said you
 5 could do in Ashcroft.
 6 Q. If you go down to page 9 to the last paragraph
 7 before you thank the chairman, there's a statement
 8 that racially polarized voting continues to be a
 9 pervasive --
 10 A. Do you want me to read it allowed?
 11 Q. Sure.
 12 A. "Racially polarized voting continues to be a
 13 pervasive feature of American politics. Race,
 14 ethnicity, and partisanship are inextricably
 15 intertwined, as every student in an introductory
 16 American politics course knows.
 17 "Some experts for defendants in voting
 18 rights cases argue that partisanship or some other
 19 variable related to race or ethnicity is the 'true
 20 cause,' but the truth cause can always be traced
 21 back to race or ethnicity.
 22 "The reauthorization of the Voting Rights
 23 Act should make it clear that influence districts
 24 and substantive representation are not acceptable
 25 substitutes for districts in which minority

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1 citizens have a reasonable opportunity to elect
 2 representatives of their choice," end quote.
 3 Q. The question I wanted to ask you is related to the
 4 first sentence. Racially polarized voting
 5 continues to be a pervasive pattern of American
 6 politics. Do you still hold that opinion?
 7 A. I do.
 8 Q. Is that true in North Carolina?
 9 A. It is.
 10 Q. Thanks.
 11 Could you turn to page 35 of your written
 12 statement that accompanies your oral statement.
 13 Could you read into the record the first paragraph
 14 on page 35.
 15 A. Quote, "No, I do not believe that partisanship and
 16 race can be separated in any meaningful way.
 17 First, race and partisanship are so closely
 18 intertwined in many jurisdictions that there is no
 19 way to separate them in statistical analysis. In
 20 technical terms, there is a problem of
 21 multicollinearity.
 22 "Second, they are intertwined in the minds
 23 of voters. Black citizens are strongly allied with
 24 the Democratic Party and Latinos somewhat less so.
 25 "The prevalence of racially (and

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1 ethnically) polarized voting (RPV) in partisan
2 general elections is a clear indication that some
3 white (or Angelo) voters are 'polarized' or driven
4 to the Republican Party, perhaps in part because
5 they identify the GOP with their interests seen to
6 be in conflict with the interest of minority
7 citizens.
8 "This was evident in my analysis in the
9 Charleston County Council case (see discussion
10 above). The degree of racial polarization was
11 greater in partisan Council contests than in
12 non-partisan School Board elections held at the
13 same time. Party and race complimented or
14 reinforced each other when the party labels were on
15 the ballot," end quote.
16 Q. Okay. Thank you, Dr. Arrington.
17 I wanted you to explain the first sentence
18 where you say, "No, I do not believe that
19 partisanship and race can be separated in any
20 meaningful way."
21 A. Well, you have to look at the question that's being
22 asked here. Can politics be separated from race in
23 examining evidence of polarized voting? And that's
24 the question. And the answer is statistically you
25 cannot do it and it's not a meaningful thing to do.

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1 You simply have to acknowledge, as we've
2 already talked about, that blacks vote
3 overwhelmingly for Democrats, whites mostly for
4 Republicans, but they're very split. That's just a
5 fact of life. And because it's a fact of life,
6 statistical analysis cannot separate it out and say
7 here's the proportion of the voting for this
8 candidate that's attributable to race and here's
9 the proportion that's attributable just to party.
10 That's not a meaningful question to begin with you,
11 but secondly, you simply cannot do it.
12 Q. Okay. Thanks.
13 I think you've explained this already, but
14 the African Americans are more likely to vote for
15 the Democrats and the whites are likely to vote
16 Republicans.
17 A. Whites are more likely, but they are split. It's
18 not nearly unanimous as it is with blacks. It's
19 very much split, and it varies a lot in
20 North Carolina from place to place.
21 Q. So the percentage of white voters who vote
22 Republican is lower than the percentage of African
23 American voters who vote for Democrats?
24 A. I think that's right. The proportion of whites who
25 vote for Republicans is much lower than the

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1 proportion of blacks who vote for Democrats, that's
2 correct.
3 (WHEREUPON, Exhibit 248 was marked for
4 identification.)
5 THE WITNESS: This is an article that I
6 wrote for The Forum, which is a peer-reviewed,
7 on-line publication in political science. It's
8 titled Redistricting in the U.S.: A review of
9 Scholarship and Plan for Future Research, and it
10 was published in 2010. I probably wrote it mostly
11 in 2009.
12 Q. Okay. I have a few questions on this,
13 Dr. Arrington. Could you read -- could you turn to
14 page 5 on the section on Community of Interest, and
15 could you read --
16 MS. RIGGS: Sorry. Hold on.
17 THE WITNESS: Page 5.
18 BY MR. FARR:
19 Q. You see there's a section there on Community of
20 Interest?
21 A. I do.
22 Q. Why are you talking about community of interest in
23 this article?
24 A. Because the Supreme Court has identified using
25 community of interest as a way to draw districts.

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1 It's considered one of the traditional districting
2 principles in most jurisdictions.
3 Q. Could you read the first paragraph there on page 5.
4 A. Quote, "Creating districts that comprise people
5 with shared interests and identification is perhaps
6 the most important, but clearly the most elusive,
7 of the conflicting redistricting criteria.
8 "Population is not evenly spread across the
9 landscape, and different political and demographic
10 groups are distributed in different ways. There
11 are partisan as well as ethnic and racial
12 concentrations that must be taken into account.
13 There is research on defining 'community of
14 interest,' but little in-depth study of how the
15 concept is actually used in redistricting.
16 "There is a long and rich history of the
17 idea that districts should be associated with such
18 communities, and a statutory basis for this
19 criteria in some states.
20 "Supreme Court rulings on equal population
21 and historical analysis, however, suggests the
22 appeal of place representation has been
23 overstated," end quote.
24 Q. What did you mean when you said that communities of
25 interest was the most elusive of the conflicting

25 (Pages 94 to 97)

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1 redistricting criteria?
2 A. Because there's no widespread agreement on what it
3 means.
4 Q. Okay. Could you look at your footnote, number 11.
5 Could you read that into the record, please.
6 A. Quote, "A summary of some of the possible criteria
7 for community of interest (see citations in
8 footnote 2) might be: Natural boundaries and
9 barriers, local jurisdictional boundaries,
10 settlement patterns, nodal combinations."
11 Q. Can I stop you for a second. What's a nodal
12 combination?
13 A. That's where you have a central city. That's the
14 node. And then you're going to have the hinterland
15 around it. So if you were drawing Congressional
16 districts, you might, for example, if you were
17 going to ignore the Voting Rights Act, say that
18 Mecklenburg county is the center of that node
19 because the other counties shop there, they have
20 media there, they go there for fine dining --
21 that's a joke, but you wouldn't have gotten it
22 because it has to do with another case -- but in
23 any case they commute in there to work.
24 So you would say, okay, Cabarrus county is
25 associated with Mecklenburg, Mecklenburg being the

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1 node, and therefore that should be part of that
2 district.
3 Q. You can continue reading.
4 A. "Ethnicity or culture, race, language, religion,
5 class or socioeconomic status, transportation
6 patterns, drainage areas, urban versus rural
7 groupings, voting patterns, occupations or
8 industry, population age, place names, trading or
9 shopping patterns, shared history, neighborhoods,
10 self classification based on surveys."
11 And again, that's only some of the possible
12 criteria.
13 Q. So there's --
14 A. I'm sure there are. I'm sure I missed something.
15 Q. Almost an endless number of things that could be
16 described as communities of interest?
17 A. Anybody who wants districts drawn differently than
18 they were or is advocating a particular set of
19 districts will undoubtedly argue, whether they have
20 good reason to do so or not, that their districts
21 define a community of interest.
22 Nobody is going to draw a district and say,
23 "By the way, that is an ad hoc combination of
24 people that have nothing in common." They're not
25 go to say that. So community of interest can mean

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1 lots of things.
2 Q. Do you remember the North Carolina railroad
3 district in the Shaw case?
4 A. In fact, I happen to have thought that was not a
5 bad way.
6 Q. That was pretty creative.
7 A. Yeah, pretty creative. The truth is the 12th
8 District had a common community of interest, but it
9 wasn't the railroad, but it was that it combined
10 urban black concentrations throughout the state,
11 just the Supreme Court did not like that.
12 Q. Now, go on to the next page, which is page 6.
13 Could you read the first sentence in that
14 paragraph, please.
15 A. Quote, "Because community of interest can mean
16 almost anything one chooses, it is rarely
17 operationalized in a fashion to make it useful in
18 either drawing or evaluating districts," end quote.
19 Q. What did you mean by that?
20 A. Well, because it means so many different things,
21 unless there is clear statutory or at least
22 instructions to the General Assembly about what
23 they mean by community of interest, any set of
24 districts can be justified by somebody's definition
25 of community of interest. I know what I think some

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1 better definitions are and worse definitions, but
2 people use all of those.
3 Q. Are you aware of any North Carolina definition of
4 what communities of interest means?
5 A. No.
6 Q. That's never been defined by the courts or the
7 legislature as far as you know?
8 A. No, not unless there's something in Stephenson. I
9 don't think there is.
10 In a sense, there is an answer to that.
11 The Constitution defines counties as having a
12 community of interest.
13 Q. That's fair.
14 A. That's the point of the whole district rule. Now,
15 my opinion about counties as community of interest
16 is sometimes they are and sometimes they aren't, so
17 having that as a rule is unwise, but the law is
18 what the law is.
19 But if I were the legislature, I would -- I
20 would pass something to have that removed from the
21 Constitution because counties are sometimes clearly
22 not a community of interest, but there is a sense
23 in which people in a community have a common
24 interest in the health and vigor and honesty of
25 their county government, so in that case they share

26 (Pages 98 to 101)

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1 a community of interest at least.
 2 Q. Now, look farther down the page you talk about
 3 functional communities of interest.
 4 A. The second paragraph, third, what?
 5 Q. Third.
 6 A. Do you want me to read it?
 7 Q. You can if you want, but I don't really want you
 8 to.
 9 A. Let me read it quietly, then.
 10 Q. So there are things that you would refer to as
 11 functional communities of interest; is that right?
 12 A. That the literature refers to as communities of
 13 interest, that's correct.
 14 Q. What would those be?
 15 A. That's where people share some trait or
 16 characteristic that brings them -- that makes them
 17 share a community, such as race, socioeconomic
 18 status, ways of making a living, something like
 19 that.
 20 Q. What about political affiliation, is that a
 21 functional community of interest?
 22 A. I think -- I think the answer to that is yes, and I
 23 have so stated that the most important measure --
 24 objective measure of community of interest is that
 25 people vote the same way. Now they also have to be

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1 geographically compact, otherwise they share an
 2 interest but they're not a community.
 3 And so if you have an area that votes
 4 heavily Republican, I think you can say that they
 5 share a community of interest.
 6 Q. Okay. Now this is a good time for me to ask you
 7 some questions about precincts.
 8 As I recall, Dr. Arrington, weren't you the
 9 Chairman of the Board in Mecklenburg?
 10 A. I was for six years.
 11 Q. Are you familiar with how precincts are
 12 established?
 13 A. How they're established and how they get changed,
 14 yes.
 15 Q. Are there any mandatory state guidelines that
 16 counties have to follow in drawing precincts?
 17 A. No.
 18 Q. So the precinct lines are established by the county
 19 boards?
 20 A. Yes.
 21 Q. And do they -- you, of course, know that every ten
 22 years we have a Census and we have to change the
 23 election districts based upon the Census.
 24 Are the precincts changed every ten years
 25 based upon the Census?

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1 A. No, but there is a realignment process that starts
 2 two years before the Census in which the Board of
 3 Elections has to begin to coordinate with the
 4 Census Bureau so that the lines for the precincts
 5 will coincide with recognized Census lines and then
 6 those are established as VTDs and then they're
 7 virtually fixed at that point for ten years.
 8 Q. Do the county boards redo the precincts every ten
 9 years to equalize the population in a way that's
 10 similar to what the legislature has to do for
 11 election districts?
 12 A. No. If it gets too big, you usually split it.
 13 Q. Right, but there's no effort to make all the
 14 precincts come within an appropriate deviation to
 15 make sure they're all kind of roughly equal
 16 population, is there?
 17 A. No. The question involves what your voting place
 18 can accommodate.
 19 Q. Right. Do you recall -- I don't know how to ask
 20 this question. This is not going to be a good way
 21 to ask it so maybe you can help me with a good way
 22 to rephrase it.
 23 A. I shouldn't do that.
 24 Q. I need all the help I can get.
 25 It's my impression that the precinct lines

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1 are fairly stable, they don't change all that
 2 often.
 3 A. That's my experience, yes, because it disorients
 4 people, and so you try to keep those lines the same
 5 and you only change them because the administration
 6 of the election process requires you to do so. As,
 7 for example, when it gets too large or when a new
 8 something changes in the physical environment, for
 9 example, somebody puts a free way right through the
 10 middle of your precinct, you've got to do
 11 something.
 12 Q. Do precincts ever divide neighborhoods or
 13 communities?
 14 A. Yes, necessarily they will sometimes do so, that's
 15 correct. You try not to do that because you try to
 16 use major jurisdictions as the boundaries, but
 17 neighborhoods then change and particular
 18 neighborhood, as the people there define it, may
 19 then slop across the precinct lines and you've got
 20 that kind of division. Some defined neighborhoods
 21 are larger than one precinct, so yeah, sometimes.
 22 Q. So you're familiar with Mecklenburg county. Are
 23 there examples of where African American
 24 neighborhoods and communities have been divided by
 25 precinct lines?

27 (Pages 102 to 105)

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1 A. Oh, I'm sure there are. I don't have any examples
2 in my mind, but I'm sure there are. Again, some of
3 those black communities are much larger than a
4 single precinct, and in terms of where you can find
5 a voting place and so forth may very well get you
6 to the situation where you simply have to do that,
7 but you try to avoid it.

8 Q. Have you studied the turnout for early voting in
9 North Carolina?

10 A. I think studied is too strong a word. I am
11 aware -- I have been aware that it's constantly an
12 increasing factor in that we had, in fact, record
13 turnouts in the primary, early voting. That's true
14 across the country.

15 Q. Do you have any knowledge of if you took the total
16 percentage of African Americans who voted in, say,
17 the general election of 2008, do you know what
18 percentage voted in early voting?

19 A. I don't have the percentage in my head, no. It was
20 relatively large. The Obama campaign put a lot of
21 effort into early voting.

22 Q. And I don't know if you're following the papers or
23 if this is something you pay attention to, but do
24 you know what the turnout was like for early voting
25 in the May 2012 primaries?

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1 A. It was record high according to a report I read
2 from Mr. Hall.

3 Q. Just so the court reporter has the question down,
4 your understanding about the turnout in the
5 May 2012 primary is what?

6 A. Was there was record high for a primary. It was an
7 extremely small part of the total population of the
8 total voter registration, but it was very high.

9 Q. So compared to past primaries, it was a very high
10 turnout?

11 A. Especially among Republicans.

12 Q. And, Dr. Arrington, this is the first time I've had
13 to make this suggestion to you, but if we were
14 having a conversation at our house, I would be
15 perfectly -- this would have been a very nice
16 discussion with you in all respects, but for the
17 court reporter, you need to let me finish my
18 question before you answer the question. You're
19 correctly anticipating my question, which would be
20 fine if she didn't have to take down the testimony.

21 A. I apologize.

22 Q. No.

23 A. It's the first time I've done it.

24 Q. It's a common mistake, and I usually am a worse
25 transgressor in terms of interrupting the witness

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1 before they answer their question, so no worries.
2 Could you turn to paragraph 9 of your
3 article, which is Exhibit 248.

4 A. You mean page 9?

5 Q. Yes, page 9 of Exhibit 248. There's a section
6 there called Race and Ethnicity. Do you see that?

7 A. I do.

8 Q. Could you read the last paragraph on page 9 through
9 to its conclusion.

10 A. Quote -- to myself or aloud?

11 Q. Into the record.

12 A. Quote, "But in Bartlett versus Strickland (556
13 U.S.) -- I didn't have the page number -- "2009),
14 the Court indicated that only a district in which
15 the minority group is a majority of the citizens of
16 voting age can be considered a bona fide district
17 to provide an opportunity for that group to elect
18 representatives of their choice.

19 "The Congress is considering legislation to
20 overrule Bartlett, on two grounds as outlined in
21 Persily, et al., (2009). First, there are some
22 places where a district which is less than
23 majority-minority can still provide a reasonable
24 opportunity for minority voters to elect
25 representative of their choice. And second, there

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1 are other places where a simple majority of the
2 citizen voting age population is not sufficient for
3 this purpose.

4 "In Bartlett, the Court set forth a highly
5 reliable but invalid criteria for remedial
6 districts under the Voting Rights Act, VRA."
7 Now, I should add that in Persily, et al.,
8 which included me, I also indicated that the
9 standard they set forth is also unreliable because
10 for small districts you can't know the citizenship.

11 Now, in North Carolina it doesn't matter
12 because the citizenship rate among blacks is higher
13 than the citizenship rate among whites, therefore
14 if they're a majority of the voting age population,
15 there are also majority of citizens voting age
16 population, but you don't know that because there
17 is -- the Census doesn't collect citizenship except
18 in American communities survey.

19 Q. So I've got a few questions about this paragraph.
20 You say that the court indicated that only
21 a district in which a minority group is a majority
22 of the citizens of voting age can be considered a
23 bona fide district to provide an opportunity for
24 that group to elect a representatives of their
25 choice. What did you mean by that?

28 (Pages 106 to 109)

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1 A. Remember, I'm a political scientist, and when the
2 court begins to make political decisions, begin to
3 say something that one contests with politics, then
4 I'm perfectly legitimate to say that's not the
5 right politics.
6 It's the right law because the law is what
7 the court says it is, but it's not -- it's not in
8 accord with what I know about politics, that
9 opportunity does not in fact magically occur at
10 50 percent. 50 percent may not be enough, and
11 there is no certainty, and North Carolina it's
12 usually too much.
13 Q. Okay. Would it -- but you indicate that the law is
14 interpreted by the Supreme Court at this point is
15 that for a district to provide the group with an
16 opportunity to elect a candidate of choice, the
17 Supreme Court held it has to be over 50 percent; is
18 that correct?
19 MR. SPEAS: Objection to the form.
20 THE WITNESS: I used the word "indicated"
21 there, so I think that's what they're indicating,
22 but that's a very -- now, I don't want to sound
23 like a lawyer, because I don't do it very well, but
24 I think that case was in fact more narrowly decided
25 than it would indicate.

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1 That is, you've got a very peculiar set of
2 situations there. You've got a statewide
3 Constitutional provision which the court found that
4 district had violated, and so it seems to me what
5 the court is saying -- to me as a political
6 scientist, what they're saying to me, not what they
7 might be saying to you as a lawyer -- that you
8 can't override a state Constitutional provision to
9 create a Section 2 district unless it's 50 percent
10 plus.
11 Now, that doesn't mean if you're not in
12 that situation, if you're not backed up against a
13 state Constitutional provision that you have to
14 draw them at 50 percent in order for them to count
15 under Section 2. I didn't go into all that detail
16 here because there are a certain number of things
17 that I could say or not say in this article, but
18 that's my position, and I don't know as a legal
19 matter whether it applies more broadly or not.
20 That's something for you guys to argue.
21 BY MR. FARR:
22 Q. But at least in this article you stated that you
23 believe that the court had indicated that the only
24 bona fide district to provide an opportunity for
25 the group to elect a representative of their choice

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1 is one where the group is in the majority?
2 A. That's what they seem to be indicating, that's
3 correct.
4 Q. And you stated that in this article as you're
5 understanding.
6 A. Yeah. I'm not a lawyer. That's what they seem to
7 be indicating.
8 Q. Now, do you think it would be reasonable for the
9 legislature to interpret the Strickland case as
10 you've described it in the first sentence in the
11 paragraph at the bottom of page 9?
12 A. If I were in the legislature, I wouldn't interpret
13 it that way. Again, if the district does not
14 violate a state Constitutional provision, then I
15 don't think that's necessary in order for you to
16 satisfy Section 2.
17 And what you're doing here is you're trying
18 to anticipate -- because we're talking about
19 Section 2, because it's a Section 2 case. It's
20 also not at all clear to me that it applies in any
21 way at all to Section 5. That's a legal question.
22 Q. Did you say -- have you ever written that you
23 thought that the reauthorized Section 5 which says
24 candidates or African Americans should have a
25 reasonable opportunity to elect their preferred

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1 candidates of choice, is that a fair statement of
2 what Section 5 says?
3 A. Section 5 talks about ability.
4 Q. Preferred candidates of choice, right?
5 A. Preferred ability to elect candidates of choice,
6 yes.
7 Q. Haven't you indicated that that definition under
8 Section 5 might mean the same under Section 2?
9 A. As a political matter, I don't think there's a
10 distinction. The difference is that as -- as I try
11 to apply those statutes to my work, that's all I
12 can do.
13 Ability is a dichotomy. You have it or you
14 don't. Whereas opportunity has gradations. There
15 is some opportunity, a very good opportunity, an
16 excellent opportunity, in other words, it's an
17 interval level of variable.
18 Now, in my view, when you get to a
19 reasonable opportunity, that's also an ability in
20 my view.
21 Q. But my question is the term "opportunity to elect
22 candidate of choice," have you not stated -- if you
23 haven't, tell me that I'm wrong, but I thought I
24 read somewhere that you thought that it would be
25 reasonable for whatever that definition is under

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1 Section 5 that it would be the same definition
2 under Section 2.
3 A. Yeah, I think that's what I just said. If you have
4 the ability, you have a reasonable opportunity. If
5 you have a reasonable opportunity, you have an
6 ability.
7 Q. So it -- whatever elect a candidate of choice means
8 under Section 5, it would be reasonable to think
9 it's the same meaning under Section 2?
10 A. Not as a legal matter. As a political matter it
11 would. As a legal matter, that's a separate
12 question you guys can argue about.
13 Q. But as a political matter you treat those
14 definitions the same?
15 A. As a political matter in drawing districts, if a
16 district provides an opportunity, it also provides
17 an ability. If it doesn't provide an ability, it
18 doesn't provide an opportunity.
19 Q. Could you turn to the next page.
20 A. Page 11?
21 Q. Yes, sir. Could you read footnote 17 into the
22 record.
23 A. Which footnote?
24 Q. 17.
25 A. 17.

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1 Q. Yes, sir. I'm on page 10.
2 A. You're on page 10. Okay.
3 Quote, "I call this process 'affirmative
4 districting.' It is sometimes also called 'racial
5 redistricting.' I reject the term 'racial
6 gerrymandering.' 'Gerrymander' has a well-deserved
7 negative connotation and denotation. It means
8 drawing districts to misrepresent. That is, to
9 draw districts to give some group more seats in the
10 legislature than their votes would entitle it to.
11 "Affirmative districting increases
12 appropriate representation, and despite the line
13 drawer's best efforts almost always results in the
14 minority community still having less than
15 proportional representation.
16 "Racial gerrymanders do exist, however, in
17 any situation where the districts are drawn to
18 minimize or cancel out the votes of some racial or
19 ethnic minority. To attempt to enhance the
20 opportunities of minority voters toward
21 proportional representation cannot be a
22 gerrymander."
23 Q. Now, could you explain what you mean by -- and this
24 is again for the judges who might be reading this.
25 What did you mean by the "affirmative districting"?

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1 A. Affirmative districting is taking race into
2 account, not as the primary but as one of the
3 characteristics in districting so that you increase
4 the opportunities of minority voters toward
5 proportional representation.
6 Q. Okay. Now I want to drop to the last two sentences
7 in that footnote. You say "Racial gerrymanders do
8 exist, however, in any situation where districts
9 are drawn to minimize or cancel out the votes of
10 some racial minorities."
11 Could you give me some context as to what
12 that means.
13 A. Remember, all I'm talking about here is the use of
14 terms. People who oppose the Voting Rights Act
15 sometimes use the word racial gerrymander to
16 describe the process of drawing districts to help
17 minority voters have an opportunity to elect
18 candidates of their choice, and what I'm trying to
19 say here, that's a misuse of the word gerrymander
20 because gerrymander specifically means drawing
21 districts to misrepresent whereas affirmative
22 districting is an effort to increase the extent to
23 which votes and representatives are tied together,
24 so it's not gerrymander by definition.
25 Q. So let me ask you a question. Would it be a racial

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1 gerrymander if a jurisdiction -- if it was possible
2 to draw a proportional number of districts where
3 African Americans could elect candidates of choice
4 and the jurisdiction chose not to do that and drew
5 below a proportional number of districts? Would
6 you consider that a racial gerrymander?
7 MR. SPEAS: Objection to the form.
8 THE WITNESS: No. Sometimes you just
9 can't do the proportional thing.
10 BY MR. FARR:
11 Q. Let's say it could be done.
12 A. If it -- if it could be done and it doesn't violate
13 a state Constitutional provision and it doesn't
14 violate the Shaw provisions and you didn't do it,
15 in my view that would be a bad thing.
16 I do not know whether it would be a
17 violation of the Voting Rights Act, but I would
18 certainly tell the judge that I think you could
19 have done it, there was no reason not to do it and
20 you didn't do it and therefore that would be some
21 evidence of intent to discriminate.
22 Q. And then in your second sentence there at the
23 bottom of 17, in contrast, if a jurisdiction tried
24 to draw a proportional number of districts, would
25 you agree that that would not be a racial

30 (Pages 114 to 117)

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1 gerrymander?
2 A. That would not be racial gerrymandering in my view.
3 Q. All right. Excuse me. Dr. Arrington, still on
4 page 10, you talk about the Shaw case, Shaw v. Reno
5 and you say the vast majority of scholars are
6 critical of the Shaw-type decisions.
7 A. I do say that.
8 Q. Are you critical of the Shaw decision?
9 A. Yes, on the same basis that I've given you earlier,
10 that the law is what the Supreme Court says it is,
11 but I would prefer that the law would be different.
12 Q. Can you tell me why you're critical of the Shaw
13 decision?
14 A. Because there is no evidence from political science
15 research that the shape of the district makes any
16 difference at all.
17 Q. What do you mean by it doesn't make any difference?
18 A. It doesn't increase the extent to which voters know
19 who they're voting for. It doesn't affect the
20 extent to which candidates can campaign
21 effectively. It doesn't -- it doesn't necessarily
22 affect either the campaigning or the voting. It
23 simply has no effect as such.
24 Now, to be sure, there are ways that you
25 draw the districts which can aid voters and

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1 candidates or impede them, but it's not shape.
2 It's other -- other characteristics. For example,
3 probably for Congressional districts, the most
4 important factor is the media market, and to the
5 extent the districts can define media markets,
6 you're going to increase the extent to which voters
7 know who they're voting for and who the candidates
8 are and so forth, and it makes it easier for
9 candidates to campaign as well.
10 Shape has little or nothing to do with
11 that. That has to do with other things. And so to
12 make the decision that a district is okay or not
13 okay on the basis of shape is leading us in the
14 wrong direction.
15 And secondly, the Supreme Court has said if
16 you draw a funny shape to give blacks better
17 representation, you can't do that, but if you draw
18 a funny shape to disadvantage Republicans or to
19 disadvantage Democrats, that's okay because they're
20 not the same standard.
21 So again, what sense does that make. Shape
22 is not a good way to go, but it is the law.
23 Q. Okay. All right. I appreciate that. I wanted to
24 ask you about -- you made a comment about in
25 Congress the most important issue is the media

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1 market.
2 A. The most important -- the only thing that scholars
3 have found in terms of the way you draw the
4 district that makes a measurable statistical
5 difference in the ability of voters to know who
6 they're voting for is the media market. A shape
7 doesn't matter, county unit doesn't matter and so
8 forth.
9 Q. Are you familiar with the way candidates or parties
10 do outreach to voters?
11 A. Sure. I was engaged in that for 20 plus years.
12 Q. How do they do that in modern political campaigns?
13 What tools or resources do they use to get in
14 contact with the voters?
15 A. Well, it was essentially two kinds. There's the
16 air campaign and the ground campaign. Air campaign
17 means you use mass media. Ground campaign, you go
18 door to door and you talk to people and you go to
19 churches and speak and you go to rotary clubs and
20 speak and you try to reach them one-on-one.
21 Q. Do you have an opinion on which one of those is
22 more effective in our world today?
23 A. No, it doesn't work that way. It depends on what
24 office you're talking about. It depends on how
25 well the candidates are known. It varies a lot.

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1 What the Obama campaign proved in '08 that
2 a ground campaign can be very, very effective, and
3 if you have enough money and you have enough media,
4 then media turns out to be more effective. It
5 varies a lot, so there is no immediate answer to
6 that. They both work.
7 And the other thing is, let's be modest
8 about this, neither political scientist nor
9 campaign advisors know what works. We don't know.
10 And so what candidates do is everything they can
11 afford because they don't know what will work. And
12 when I talk to candidates and advise them, and I do
13 that a lot, or I did it more here than where I am,
14 I tell them honestly: I don't know what works.
15 Your intuition may be as good as mine, so let's try
16 and see what costs are and so forth.
17 Q. Are candidates able to get a list of the voters
18 that are in their district?
19 A. Sure. Yeah. The Board of Elections will give that
20 to them, print it out or put it on disc for a
21 charge.
22 Q. Are there groups that you can get those lists from
23 that have enhanced information, such as e-mail
24 addresses and phone numbers?
25 A. Oh, yes. Parties and also interest groups will

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1 spend a lot of time adding to that list information
2 that is not there, but typically phone numbers are
3 not there, for example. That may be true in some
4 counties, but I know in Mecklenburg, when we sent
5 that out, it didn't have phone numbers on it.
6 Q. The county board doesn't have phone numbers or
7 e-mail lists?
8 A. No.
9 Q. But can candidates get that information from other
10 groups and enhance the voter lists?
11 A. Sometimes they can buy it from somebody else. And
12 there are firms that specialize in getting that
13 list, putting the phone numbers on it and then
14 selling it, absolutely.
15 Q. Do candidates do robo calls?
16 A. Sure.
17 Q. Where do they get those phone numbers?
18 A. Random-digit dialing, as far as I know. I've never
19 been in charge of robo dialing, robo calling. I
20 don't approve of it so I don't know. My impression
21 is it essentially dials random numbers.
22 Q. Do they get the numbers for the people in their
23 district?
24 A. I have no idea. If you're running in Congress, you
25 know most of a district -- most of a county is in

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1 your district so you could presumably, from the
2 phone company, find out what exchanges are in that
3 and you would call those numbers.
4 Maybe somebody has a list which has the
5 actual phone numbers of people who are actually in
6 your district and will robo call those. I don't
7 know. As I say, I've never done robo calling.
8 MR. FARR: Just to take a short break off
9 the record.
10 (Discussion held off the record.)
11 BY MR. FARR:
12 Q. What about a direct mail, do candidates use that in
13 legislative and Senate races?
14 A. Yes. And that's easier to do than what you get
15 from the Board of Elections because the boards will
16 provide you with the address of each voter and
17 usually there's an indication -- if you buy the
18 whole tape, it will have an indication which
19 districts they're in.
20 Q. What other information is on the list from the
21 Board of Elections?
22 A. Race, age, gender.
23 Q. Party affiliation?
24 A. Party affiliation, I'm sorry. And at least in
25 Mecklenburg county, and I think this is true

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1 throughout the state, but I can't speak for every
2 jurisdiction, you can also get the voting record,
3 in other words, the number of elections in which
4 they've voted.
5 So there will be a column that says 2008
6 primary and it will have either did or didn't vote
7 there, 2000 general did or didn't vote going back
8 for some length of time because they need that in
9 order to put them in the inactive file if they
10 haven't voted for a length of time.
11 And that can be used to sort out what are
12 called the A/B voters, the voters who usually vote,
13 and you would presumably want to send them the
14 direct mail because you know they're going to vote,
15 and C voters, sending them a direct mail may be a
16 waste of postage.
17 Q. So people that don't vote you might not send them
18 something in the mail?
19 A. Well, that's correct. That's an interesting
20 strategic problem. And again, do we know. If I
21 send that mail out to a C voter, will I encourage
22 them for vote, and if they're in my party, and I
23 know that from the list, then maybe that's what I
24 want them to do, but if I mail only to A and B
25 voters, that C voter isn't going to get encouraged

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1 to turn out and vote.
2 So what I do, do I waste the postage and
3 send it to the C voter who maybe won't vote or do I
4 send it to her thinking that maybe that will get
5 them out to vote.
6 Q. But candidates for the legislature and the Senate,
7 they can get a list of all the voters in their
8 district from the State Board of Elections or the
9 county boards, right?
10 A. From the county boards. I don't know if you can
11 get it from the state. You can get it from the
12 county.
13 Q. And any organizations wishing to be active in
14 organizing that area can get the same list of
15 voters in any district they want to get it from,
16 correct?
17 A. That's my understanding. Now, again, there are
18 some very small counties in this state and I don't
19 know what's available in all 100 counties, but
20 certainly that's true in the major counties and
21 it's probably true in almost all the counties. In
22 fact, I think under the Help America Vote Act they
23 have to all have such a thing.
24 Q. Now, if you turn to page 11, could you read the
25 last sentence in the first full paragraph that

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1 starts off with the "The recent reauthorization."
2 A. Quote, "The recent reauthorization of the Voting
3 Rights Act by Congress overturned Ashcroft and
4 clarified that equal opportunity to elect and not
5 influence is the purpose of the Act."
6 Q. Okay. So when you wrote that sentence, what were
7 you trying to convey there?
8 A. When I wrote that sentence I was what?
9 Q. What was your thinking when you underlined that
10 statement?
11 A. Well, again, my interpret as a political scientist
12 of Ashcroft is that they said you can trade off
13 opportunities for influence. You can have fewer
14 opportunities or fewer abilities to elect, but if
15 you increase the influence elsewhere in the state,
16 that's okay.
17 And my understanding from what the Congress
18 did was to say, no, the purpose is to create
19 abilities to elect and influence is a separate
20 thing.
21 Q. So when you say clarify the equal opportunity to
22 elect and not influence is the purpose of the Act,
23 were you referring to the entire Voting Rights Act,
24 the Section 5 and Section 2 or is this just
25 Section 5?

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1 A. This is Section 5 because that's what they
2 reauthorized. They may have changed other parts of
3 the Voting Rights Act at the same time. I don't
4 remember.
5 Q. Can you turn to page 14 of your article. In the
6 first full paragraph, I'm going to read a sentence
7 and then I'm going to ask you to explain it, if you
8 don't mind.
9 There's a sentence that says, "This shows
10 that the judicial standards for partisan
11 gerrymandering are currently unmanageable."
12 Do you see that sentence? It's the second
13 sentence from the end.
14 A. Oh, second sentence from the end. Okay. Right.
15 Q. What did you mean by that statement?
16 A. The Supreme Court's decisions on partisan
17 gerrymandering are all over the map. They have six
18 different opinions, seven different opinions. The
19 cases are often five to four on the direction of
20 the decision.
21 The bottom line is, as this paragraph
22 explains, only two justice agree on any test, so
23 they just haven't grappled with coming to a common
24 standard. So in terms of partisanship,
25 legislatures are out to sea. They don't know what

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1 will work. In Larios, the Democrats learned one
2 thing that won't work.
3 Q. Which was what?
4 A. Having the Democratic districts be systematically
5 smaller and the Republican districts systematically
6 larger, and the Supreme Court said even though it's
7 within the plus or minus five, we won't let you do
8 that.
9 Q. Can you think of any other cases besides Larios
10 where the court has articulated a manageable
11 standard in the area of partisan gerrymandering?
12 A. No. That's the point, they haven't articulated any
13 standard. They all disagree. Only two justices in
14 this most recent opinion agreed on any of the
15 standards, and essentially, several of the justices
16 were still saying this is not justiciable, don't
17 bring this to me.
18 Q. Now I'm going to give you a chance to brag. Are
19 you aware of any cases where a court's found
20 partisan gerrymander?
21 A. Oh, yes.
22 Q. And what would that be?
23 A. Republican Party versus North Carolina.
24 Q. What was that case about?
25 A. That was about at-large districting of Superior

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1 Court judges, statewide election of Superior Court
2 judges, in fact.
3 Q. Do you know who the expert was in that case?
4 A. It was Theodore S. Arrington.
5 MR. SPEAS: Do you know who the losing
6 attorney was? That's where I learned the value of
7 Dr. Arrington's testimony.
8 THE WITNESS: That's where I learned your
9 expertise at deposing.
10 BY MR. FARR:
11 Q. Are you aware of any other cases where a court has
12 found partisan gerrymander?
13 A. My understanding is those are the only two cases.
14 Q. Larios and --
15 A. Larios and Republican Party. And of course,
16 Republican Party vs. North Carolina was not a
17 Supreme Court case.
18 Q. Fourth Circuit, right?
19 A. Yes, but the state wisely gave up.
20 Q. Could you turn to paragraph 15, please. The
21 paragraph that begins with "Brunell makes." Could
22 you just read the first sentence in that paragraph.
23 A. Quote, "Brunell makes a convincing case with logic
24 and empirical data that representation, when
25 conceived exclusively as the correspondence between

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1 the policy views of the constituency and the
2 representative, is stronger if the constituency is
3 homogeneous," end quote.
4 Q. So my question is: Do you know who was Brunell?
5 A. Tom Brunell is a political scientist. He's an
6 expert witness in this case working for the General
7 Assembly.
8 Q. Have you reviewed the report he did?
9 A. I have not.
10 Q. But you believe this paper that you're referring to
11 in Exhibit 248 made a convincing case?
12 A. For a very narrow point that should be considered,
13 yes.
14 Q. All right. Now turn to page 16. Dr. Arrington,
15 you say that you've drawn redistricting plans, and
16 you've drawn quite a few of them. And have you
17 tried to draw those plans to create districts at a
18 certain percentage of black population in various
19 districts within the plan?
20 A. Whenever I draw a plan, I have a target, that's
21 correct.
22 Q. And so in drawing those districts at your target
23 level, are you considering race when you're drawing
24 the districts?
25 A. As one of many characteristics, yes.

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1 Q. In drawing some of your plans in the past, have you
2 ever divided precincts?
3 A. Oh, sure. You have to divide precincts to draw
4 Congressional plans because the accepted standard
5 is zero deviation and you're not going to get that
6 without dividing precincts.
7 Q. Have you ever drawn plans to create majority -- or
8 let's just say majority black districts for
9 legislative or Senate seats without dividing
10 precincts?
11 A. Not -- not for state legislature, no, not that I
12 can remember. Did I do so in New York, for
13 example? I don't know.
14 I will have done so in New York City
15 because the different ethnic groups there,
16 Nicaraguans, Hondurans, Puerto Ricans, to separate
17 them out often probably required dividing some
18 precincts. I say probably. I don't remember.
19 That was 20 years ago, after all, but I may have.
20 I would have avoided it unless it was
21 necessary for either drawing districts which would
22 effectively represent or for one person, one vote
23 standards, but I may very well have done so.
24 (WHEREUPON, previously marked Exhibit 238
25 was re-marked as Exhibit 238 to this deposition.)

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1 BY MR. FARR:
2 Q. Dr. Arrington, before I ask you questions, would
3 you show your counsel this exhibit. We've used it
4 before.
5 Dr. Arrington, I've handed you an exhibit
6 that's been previously identified in earlier
7 depositions as Exhibit 238, and I wanted to know if
8 you had ever seen this exhibit before.
9 A. No.
10 Q. Do you recall -- were you living in North Carolina
11 in 1996?
12 A. Yes.
13 Q. Do you recall that the legislature passed the
14 statute that required that legislative districts be
15 based upon whole precincts and that the Justice
16 Department registered an objection to that?
17 A. I didn't remember that, but I take your word for
18 that.
19 Q. Do you think -- you worked at the Justice
20 Department. Were you aware of their position on
21 whether states should be allowed to have a uniform
22 policy of basing legislative districts on whole
23 precincts?
24 A. That specifically, no, but I know in general, they
25 object to putting in provisions which might

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1 theoretically prevent the creation of minority
2 districts. I mean, that's just their general
3 policy.
4 If in the future this particular provision,
5 whether it's whole precincts or whole counties or
6 any other specific provision, the state has to be
7 divided at this river, whatever that provision is,
8 they would object to that because it might in the
9 future prevent you from drawing minority districts.
10 Q. And are you familiar with the legislative maps that
11 have been enacted in North Carolina over the years
12 and whether or not they divided precincts in
13 creating majority black districts?
14 A. I'm sure they did.
15 Q. And you know that the current plans divide
16 precincts?
17 A. I've heard that.
18 Q. And you've given an affidavit about it, right?
19 A. I have.
20 Q. But dividing precincts is not a new thing in
21 North Carolina for creating majority black
22 districts?
23 A. I think to the extent that it's been done this
24 time, it is a new thing. There comes a point in
25 any transgression from zero to some absolute where

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1 you've made a qualitatively different situation.
2 You're splitting a few tens of districts. You have
3 to do that in Congressional plans for one person,
4 one vote.
5 There are a few places that you have to do
6 it to create districts which come up to some
7 standard, whether it's my standard or your
8 standard, for concentration, but there comes a
9 point in which you split so many districts that
10 you've created a situation which is qualitatively
11 different.
12 I think we understand quantum leap is what
13 it's called. Yes, it's just a difference in
14 degree, but it makes a big difference in quality,
15 so I think in that sense this is new.
16 Q. But the fact is there have been majority black
17 districts created in North Carolina in the past
18 where precincts were divided?
19 A. Oh, yes, sure, especially at the Congressional
20 level.
21 Q. And also at the legislative level.
22 A. Yes, and also at the legislative level. I
23 apologize. Also at the legislative level, of
24 course.
25 Q. And if you read through that letter, is it not fair

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1 to say that the Justice Department objected to the
2 concept in North Carolina that legislative
3 districts had to be based upon whole precincts?
4 MR. SPEAS: Objection to the form. That
5 was not what that legislation provided.
6 BY MR. FARR:
7 Q. You can answer the question.
8 A. You're not satisfied with my previous answer? In
9 general, the Justice Department doesn't like
10 special provisions of any sort which might
11 theoretically prevent you from drawing majority
12 black districts in the future. Whether it's
13 precinct lines, county lines, shape provisions,
14 whatever they are, the Justice Department is likely
15 to object to it on Section 5 grounds and then the
16 state could come back and say, no, this is a
17 legitimate thing and it's not ever going to be a
18 problem, but the state didn't do that in this case,
19 I take it.
20 Q. I'm not sure.
21 A. You didn't take this to the DC District Court.
22 Q. I wasn't representing the state back then.
23 A. North Carolina did not.
24 Q. No, sir.
25 A. There you go.

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1 Q. Now, did you compare the enacted plans against the
2 alternative plans in terms of the number of
3 precincts that the alternative plans split?
4 A. I read the Frey affidavit and that compares them,
5 and I noted that and discussed it in my report.
6 Q. But you didn't -- other than reading the Frey
7 affidavit, you didn't do the analysis that you've
8 done on the enacted plans on each of the
9 alternative plans?
10 A. No.
11 Q. Do you know that the enacted plans draw the
12 districts up to 50 percent plus one?
13 A. Well, some of the districts.
14 Q. The majority black districts. It's fair to say
15 there's more majority black districts in the
16 enacted plans than in any of the alternative plans?
17 A. No, I didn't compare them.
18 Q. If there were, could that be one explanation for
19 why there were more divided precincts in the
20 enacted plans than the alternative plans?
21 A. No, I don't think so. And that's what my second
22 affidavit clearly shows, there was splitting beyond
23 what was necessary to create those plans. And to
24 know whether those splits were necessary to bring
25 the populations together or to do something else,

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1 I'd have to work with the districts to know that,
2 but there are several districts there which are
3 already at 50 percent just using whole precincts,
4 and that's -- that's covered in my report, as you
5 know.
6 Q. Did you study the effect that using the precincts
7 you discovered or the districts you discovered
8 would have been 50 percent using whole precincts,
9 did you check to see what impact that would have
10 had on incumbents?
11 A. What impact it would have on what?
12 Q. On incumbents.
13 A. No.
14 Q. I want to make sure I understand your testimony. I
15 know we disagree on whether they should be drawn at
16 50 percent or 42 percent so that's not what my
17 question is.
18 My question is: If you were drawing them
19 up to 50 percent, could that be a reason for having
20 more divided precincts as opposed to drawing them
21 at 42 percent?
22 A. Again, I don't -- I don't know. It might be and it
23 might not be. Many of the districts which have a
24 lot of split precincts in them were already at
25 50 percent if you just used whole precincts, so I

35 (Pages 134 to 137)

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1 don't know the answer to that.
2 Q. Do you know whether or not some of the issues
3 related to Stephenson compliance may have required
4 the state to split more precincts? Did you study
5 that?
6 A. I looked at -- I looked, again, at the Stephenson
7 decision which I was familiar with before but
8 hadn't looked at in some sometime. It might. I
9 mean, again, theoretically, a lot of things might
10 cause you to split precincts. Obviously, the whole
11 county rule is not a problem there so I'd have
12 to -- in order to answer that, if you put the
13 Stephenson decision in front of me so I see those
14 one, two, three, four that's in that I could answer
15 that question.
16 What everybody remembers from Stephenson is
17 the whole county rule has to be abided by as far as
18 possible, and that obviously does not cause you to
19 split precincts.
20 As for the other aspects of Stephenson, I
21 don't remember what those are so I don't remember
22 whether that might cause you to split a precinct or
23 not.
24 Q. You say the whole county principle wouldn't cause a
25 divided precinct?

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1 A. No, because it says you keep counties whole as much
2 as possible, so splitting a precinct, that would
3 not cause you to split a precinct.
4 Q. Do you understand what the Stephenson case says
5 about grouping counties?
6 A. Yes.
7 Q. What's your understanding what it says?
8 A. You group the counties in such a way that you've
9 got within that group a set number of districts
10 that you could draw that would be one person, one
11 vote and then you draw them.
12 Q. Do you know what it says about what size the groups
13 should be?
14 A. No, I don't remember what it says about what size
15 the groups should be.
16 Q. Could the groups that are formed be on the plus --
17 plus five side of the deviation requirements while
18 other groups could be on the minus five side?
19 A. Are you asking me what Stephenson says or what I
20 think would work?
21 Q. Well, let me start --
22 A. I don't remember what Stephenson says, but that
23 could be the case. If you've got a grouping here
24 that has, let's say, ten districts within it and
25 overall they're up more than five percent, but when

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1 you divide them among all those ten, then none of
2 them might be above five percent and so forth and
3 so on. I don't know, I would have to work that
4 out.
5 Q. It's not something you've looked at?
6 A. It's not something that I've looked at. I think
7 the bottom line is I don't think the whole county
8 rule would cause you to split precincts, but some
9 other aspect of Stephenson might. I don't remember
10 what those other aspects are, if that clarifies my
11 opinion.
12 Q. You've not studied that?
13 A. No.
14 Q. That's speculation on your part?
15 A. I don't think I speculated. I said the whole
16 county rule will not cause you to split precincts
17 and the others might. I don't know. That's not
18 speculation. I said I didn't know.
19 Q. Would you define the whole county rule?
20 A. Well, that you need to keep those counties whole
21 insofar as that's possible.
22 I mean, the decision says that you want to
23 try to accommodate one person, one vote and also
24 accommodate this Constitutional provision that was
25 written before Baker and before Reynolds. That's a

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1 good example of the conflicts that exist endemic to
2 redistricting, and how you bring those about is
3 complicated.
4 And I don't remember as I'm sitting here
5 today what Stephenson says you have to do and what
6 the General Assembly added on in trying to
7 interpret Stephenson and balance these things. I
8 just don't know.
9 Q. Let me hand you another exhibit. This is a new
10 exhibit.
11 (WHEREUPON, Exhibit 249 was marked for
12 identification.)
13 BY MR. FARR:
14 Q. Dr. Arrington, have you seen Exhibit 249 before?
15 Have you seen Exhibit 249 before?
16 A. Not that I remember.
17 Q. Do you remember that in the early '80s the Justice
18 Department objected to the enforcement of the Whole
19 County Provision of the North Carolina
20 Constitution?
21 A. Yes.
22 Q. Would you agree that it's necessary to divide
23 counties in eastern North Carolina to create
24 majority black districts?
25 A. Yes.

36 (Pages 138 to 141)

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1 Q. That's all I have on that.
2 All right. I want you to turn to page 18
3 of your article, and there's a section there on
4 compactness.
5 A. Yes.
6 Q. Do you see that?
7 A. Yes.
8 Q. Could you just read that entire section into the
9 record, please.
10 A. Quote, "Compactness: Courts and reformers often
11 cite compactness as a valuable technical criterion
12 in redistricting, but scholars do not think it
13 should be a priority. One problem is that there
14 are many different and partially conflicting ways
15 to measure the compactness of a district or a
16 district plan.
17 "And there can be no mathematical standard
18 of compactness that can be applied across varying
19 geography in the way that equal population can have
20 a mathematical standard. The most that one can say
21 is that with the use of a particular statistic, one
22 redistricting plan for a particular jurisdiction
23 has more or less compact districts than another
24 plan for that same jurisdiction. But there is no
25 standard that can tell us whether the districts in

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1 a plan are compact enough.
2 "Although the Supreme Court mentions
3 compactness as a traditional redistricting
4 principle, Altman (1998, 179-182) shows that it has
5 a very limited tradition. He also demonstrates
6 that by some measures of compactness, districts
7 recently rejected by the Court as non-compact are
8 more compact than many traditional districts.
9 "Engstrom's half of Rush and Engstrom
10 (2001) discusses the various problems with judicial
11 standards of compactness and contiguity.
12 "Scholars ask: What is the purpose of
13 making districts compact? Forest (2001, 158) shows
14 that compact districts may or may not encompass a
15 community of interest. Compactness is not regarded
16 by scholars as an effective barrier to partisan
17 gerrymanders.
18 "Seeing compactness as related to partisan
19 gerrymanders draws attention away from political
20 realities into superficialities of shape. Some
21 reformers argue that compact districts are more
22 likely to be competitive, but Altman, MacDonald and
23 McDonald (2005B, 60) and Engstrom, RN (2005, 79)
24 show that this is not true. Cain (1984, 32, 43)
25 and Butler and Cain (1992, 72-3) conclude that

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1 compactness does not advance any reform goals
2 except under very unusual circumstances.
3 "However, Engstrom, RN (2005, 67) indicates
4 that oddly shaped districts may add to voter
5 confusion, and Cain (1984, Chapter 3) acknowledges
6 that voters -- and certain judges -- prefer compact
7 districts for aesthetic reasons," end quote.
8 Do you want me to read the next one?
9 Q. Yes, sir.
10 A. "Morrill (1973B, 51) provides the bottom line on
11 compactness: A mindless, mechanical application of
12 a compactness criterion is destructive to the
13 really important criteria that promotes effective
14 representation.
15 "While the Supreme Court has used
16 compactness as a rationale for invalidating some
17 districts plans, we do not know how other
18 participants in the process use this concept. Is
19 it a treasured value or simply a partisan
20 rhetorical weapon?"
21 Q. Thank you for reading that. I wanted to ask you
22 some questions about this.
23 Are you aware of a legal definition of
24 compactness that the General Assembly could have
25 used to evaluate whether districts are compact?

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1 A. Sure, I can cite dozens.
2 Q. Let's say a legal decision that's been approved by
3 a court to define compactness.
4 A. Well, typically, courts use either the Roeck,
5 R-O-E-C-K, or Polsby-Popper or some combination of
6 both, and I'm sure there are court cases which have
7 cited those as evidence, but, again, that can only
8 be used to say that Plan B is more or less compact
9 than Plan A because there's no standard.
10 You can't say -- you can say that a
11 district that's within plus or minus five percent
12 population, that's a standard, or it's zero
13 deviation for Congress, that's a standard, and you
14 can measure whether that's there, but for
15 districting, all you can do is compare one plan to
16 another and say this plan is more compact than that
17 plan.
18 Q. Under a particular test?
19 A. Under any particular test that you pick, including
20 the intraocular test.
21 Q. Is there any standard that shows or demonstrates or
22 adopts how you define whether a district is, quote,
23 compact enough under a particular plan?
24 A. That's what that paragraph says that can't be done
25 by definition.

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1 Q. Has the U.S. Supreme Court ever done that in any of
2 its decisions?
3 A. No, not to my knowledge.
4 Q. Do you know if the North Carolina Supreme Court has
5 ever done that in any of its decisions?
6 A. I don't remember any Supreme Court decision where
7 they identified a particular -- a particular
8 statistic and they can't identify a standard by
9 definition. Compactness doesn't work that way.
10 Q. So the compactness mathematical tests that are
11 available, are some of them contradictory?
12 A. Yes. What will happen is under one test, B is more
13 compact than A, and under another test, A is more
14 compact than B. Absolutely.
15 Q. Under any of the tests that are available, is there
16 any way to determine under those tests when a
17 district is compact enough?
18 A. That paragraph just says -- and I still agree with
19 it -- no, that can't be done by definition.
20 Q. Let's do one more and then we can break.
21 MR. SPEAS: Whatever you want to do.
22 MS. RIGGS: If you're okay.
23 THE WITNESS: I'm fine.
24 (WHEREUPON, Exhibit 250 was marked for
25 identification.)

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1 BY MR. FARR:
2 Q. This is a little bit out of place, Dr. Arrington,
3 because I maybe should have asked about this when
4 we get to your affidavit, but I recall in your
5 affidavit some testimony about everyone agreeing in
6 the Texas litigation that African American
7 opportunity districts could be created at
8 40 percent. Am I remembering that right?
9 A. Yeah, many of them, but about 40 percent, as you
10 can see here, percent black 45, 40, 31.
11 Q. Were you referring to the Texas Congressional
12 districts in your testimony?
13 A. Both the Congressional and State House and State
14 Senate, but I was specifically referring to State
15 House and State Senate. I was referring to State
16 House and State Senate, so I'm not sure where
17 they've drawn those Congressional districts, but it
18 looks here as they've been about 40 percent black.
19 Q. Did you look at the actual statistics for the State
20 House and the State legislative districts as far as
21 the racial composition for those districts?
22 A. Yes.
23 Q. Did you look at what the Hispanic population was in
24 all those districts?
25 A. Yes.

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1 Q. If you look at -- Exhibit 250 I believe was sent to
2 me and prepared by Dr. Hofeller, who I think you
3 know.
4 A. I do.
5 Q. And these, I think, are the stats for the
6 Congressional districts. It looked like the
7 African American CONGRESSIONAL districts in Texas.
8 A. Yes.
9 Q. And these statistics also include the Hispanic
10 population?
11 A. They do.
12 Q. And do these statistics show these Congressional
13 districts are majority-minority districts when you
14 combine the African Americans with the Hispanics?
15 A. That's correct, but it is also correct that the
16 testimony in Texas not contradicted, that everybody
17 agrees to, is blacks and Hispanics oppose each
18 other in the primary.
19 Q. What do they do in the general election?
20 A. They vote together in the general, but remember,
21 the definition of an opportunity or ability
22 district is that the minority voters can elect a
23 candidate of their choice even if their choice is a
24 member of their group.
25 So these are districts in which blacks, in

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1 fact, can elect a black representative if that's
2 their choice, which means that they can win in the
3 primary and then they can win in the general
4 election with the help of Hispanic votes.
5 Q. And the Democratic primary, are the blacks in these
6 districts the majority of the registered Democrats?
7 A. Probably.
8 Q. So in the primary, it's like a majority control
9 district because the blacks are in a majority?
10 A. That's correct, but they're far less than a
11 majority of the citizen voting age population in
12 that district. As you can see the numbers are
13 about 40.
14 Q. But in the Democratic primary they're in the
15 majority?
16 A. Right. That's the situation in North Carolina as
17 well.
18 Q. So the blacks can control the primary in Texas and
19 then in the general election the Hispanics are
20 politically cohesive with the blacks and vote for
21 the same that the blacks prefer; is that right?
22 A. Yes. And there are other districts where the
23 Hispanics can dominate and they can nominate their
24 choice in the Democratic primary and then with the
25 help of blacks that person can win in the general.

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1 Q. Okay. As far as the stats for the Congressional
2 districts, the black opportunity districts are all
3 majority minority when you combine the African
4 Americans with the Hispanics; is that correct?
5 A. In Congress that's necessary because of the
6 intermixing of the neighborhoods for the two groups
7 and Congressional districts are so big that it
8 could be -- it would be impossible, in fact, in
9 these three districts to sort them out.
10 And as I testified in the New York case,
11 when you can sort out blacks from Hispanics, you
12 should do so, but where you can't do so, because
13 that would mean neither of them can elect their
14 choice, then you may have to combine them, which is
15 what you had to do in these three districts in
16 Texas.
17 Q. Now, in the legislative seats that you looked at in
18 Texas, did those districts -- were they also
19 majority-minority district when you combine the
20 blacks with the Hispanic voter?
21 A. In some cases, yes. And in some cases -- certainly
22 in some cases. Whether that was true in all cases
23 or not, I don't remember.
24 Q. So you don't remember that -- if any of them were
25 not majority-minority districts?

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1 A. I don't remember. They may have all been just in
2 the nature of the way the population is combined
3 there.
4 The key point is that blacks are able to
5 elect a candidate of their choice when you get to
6 about 40 percent.
7 Now, if you're going to ask the
8 question -- and I don't mean to put words in your
9 mouth, but could blacks win in a district which was
10 40 percent black and 60 percent Anglo in Texas, the
11 answer to that is probably not. That's Texas.
12 It's not North Carolina.
13 Q. Okay. Well, are there districts in North Carolina
14 where the black population has been at 40 percent
15 where the blacks have not been able to elect the
16 candidate of choice?
17 A. Occasionally, but when they get over 40 percent of
18 the voting age population, they can control the
19 Democratic primary, and with white crossover vote
20 they can elect a candidate of their choice.
21 It doesn't happen every time because
22 nothing is certain in politics, so there's an
23 exception here and there, usually a white Democrat
24 exception.
25 Q. But are any of the 40 percent districts that you

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1 have looked at in North Carolina majority minority
2 through the combination of African Americans and
3 Hispanics?
4 A. Didn't look at that, but there aren't enough
5 Hispanics in North Carolina to make that much of a
6 difference. There might be a few districts where
7 that would be true. I don't know, I didn't look at
8 that.
9 MR. FARR: All right. I think this is a
10 good time to take a break.
11 (Lunch Recess: 12:09 to 1:02 p.m.)
12 (WHEREUPON, Exhibit 251 was marked for
13 identification.)
14 BY MR. FARR:
15 Q. Dr. Arrington, you said that you have reviewed this
16 statement that a gentleman named Dan Frey made
17 earlier in the case.
18 A. Yes.
19 Q. I asked him to give me a chart explaining
20 North Carolina statewide black population
21 percentages based upon the 2010 Census and that's
22 what I put in front of you today.
23 A. Yes.
24 Q. In the section where he's got Ages 18 and Over,
25 Total Black 21.18 percent, do you understand what

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1 that means?
2 A. Yes.
3 Q. So would that -- would that be the same as saying
4 voting age population of a voter who identified
5 himself as any part black in the Census?
6 A. Right. What he's got total black here is people
7 who are any part black which is the standard
8 definition that the Department of Justice uses.
9 Q. And in that chart he's also got age 18 or over, so
10 that would be the voting age population, right?
11 A. That's correct.
12 Q. Could you calculate what a proportional number of
13 seats in the House and the Senate would be by
14 multiplying -- and I've got a calculator here.
15 A. Good because I didn't bring mine. I usually do.
16 Q. Could you put your answers down on that exhibit
17 with a pen.
18 A. Sure. So you've got 120 divided by .2. I think I
19 know how this operates.
20 Q. I was going to ask you to -- can I make a
21 suggestion?
22 A. Yes.
23 Q. Could we get the right number if we multiply 120 by
24 .2118?
25 A. I don't know how to operate this.

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1 MS. RIGGS: I think you have to use this
2 equal button.
3 THE WITNESS: That's not the way mine
4 operates.
5 BY MR. FARR:
6 Q. Times.
7 A. Divide .2 -- nope. I'm sorry. Mine is Polish
8 notation which is a different thing.
9 Q. Can I ask you to try it my way?
10 A. Where was that equal thing that you had?
11 MS. RIGGS: Right here.
12 THE WITNESS: Here it is.
13 No, it doesn't work that way.
14 BY MR. FARR:
15 Q. Can I make a suggestion? How about if you type
16 in -- or on the calculator put in 120, and that's
17 the number of House seats.
18 A. Right.
19 Q. Multiply by .2118.
20 A. .2 is good enough. You're dealing with 24, 25.
21 Q. 24, 25 would be proportionality in the House?
22 A. Yes.
23 Q. What would the answer be for the State Senate?
24 A. As I remember, the State Senate has 50, so we're
25 dealing with 10, 11, right in that range.

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1 Q. Okay. Could you mark that on your exhibit. You
2 can just say House 24 to 25.
3 A. About 24.
4 What is today, the 15th?
5 Q. Yes. Just give that to the court reporter.
6 A. I knew I should have brought my own calculator. I
7 could have given it to you to the nearest seven
8 digits.
9 Q. I'm cutting out a lot of stuff here. Affidavit
10 time.
11 (WHEREUPON, Exhibit 252 was marked for
12 identification.)
13 BY MR. FARR:
14 Q. All right. I have just a few questions on your
15 affidavit, Dr. Arrington.
16 A. Okay.
17 Q. What Exhibit is 252?
18 A. This is my initial affidavit in this case.
19 Q. All right. And that was signed by you on
20 January 4th of 2012?
21 A. 4th of January 2012, that's correct.
22 Q. Paragraph 2 you talk about the concept of disparate
23 impact on one race or another.
24 A. That's correct.
25 Q. What does the main term "disparate impact" mean to

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1 you?
2 A. It means in terms of their ability to vote and
3 their ability to elect candidates of their choice,
4 the actions of the General Assembly have a more
5 severe, negative impact on blacks than it would on
6 whites.
7 Q. Now, are you aware of any constitutional case where
8 a jurisdiction has been found in violation of
9 either a state or federal constitution based solely
10 on evidence of disparate impact?
11 A. Well, sure. Any time you're looking at the way
12 districts are drawn or at any other provision of
13 voting law, what you're looking at is whether it
14 has more of an impact on blacks than it does on
15 whites, and that's the way any case looking at --
16 looking at intent is going to do.
17 That's what the Arlington Heights case is
18 all about. That's language that comes in fact from
19 that, and it says if a jurisdiction takes an action
20 which has a negative effect maybe on everybody but
21 more a negative effect on blacks than on whites,
22 then that's a factor in determining intent.
23 Q. Right.
24 A. So there are lots of cases.
25 Q. I asked the question the wrong way. I think you

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1 already answered this, but in a constitutional
2 case, you would agree you also have to show intent
3 to discriminate besides the disparate impact?
4 A. It's the constitutional case as opposed to a Voting
5 Rights Act case --
6 Q. Yes.
7 A. -- that's what the Supreme Court has said. That's
8 federal law.
9 Q. Are you aware of any state court decision that's
10 taken a contrary view?
11 A. No, but, again, as always, you ask me these am I
12 aware. Doesn't mean there aren't any. It just
13 means I'm not aware of them.
14 Q. Now, throughout this affidavit you talk about the
15 potential for voter confusion because of the split
16 precincts.
17 A. Yes.
18 Q. Is it fair to say that most of your testimony
19 relates to voter confusion that would result from
20 moving the location of the precinct?
21 A. No.
22 Q. Okay. Do you in your affidavit say there would be
23 voter confusion if the precincts were moved or
24 changed?
25 A. Right. The more you divide up what it is precinct

40 (Pages 154 to 157)

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1 officials need to do, based on my experience in
2 administering election law in North Carolina for
3 12 years, the more you confuse what's going on in
4 the precincts, the more you confuse the different
5 ballot types, the more you confuse people who are
6 conducting campaigns by having them not be sure
7 when they're in a precinct what ballot type they're
8 looking for, all of those things have a negative
9 impact on the understanding of voters of what's
10 going on and therefore ultimately on their
11 participation because there is so little -- so
12 little payoff for voting.
13 I mean, it's basically doing one for the
14 team or carrying out my citizen duty that when you
15 make it more complicated, when you make it more of
16 a hassle, when you make them uncertain about what
17 they're doing and who they're voting for, what
18 happens is they don't vote, and that's particularly
19 true of people who are under pressure
20 socioeconomically anyway because they are very
21 sensitive to small changes in the costs of voting,
22 which include figuring out who you're supposed to
23 vote for, where you're supposed to go and what type
24 of ballot type you're supposed to get and so forth.
25 Q. Let's explore that statement a little bit. You

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1 said that there could be confusion because
2 precincts might change, right? That's one of the
3 things you said that could cause confusion.
4 A. Yes. And then also different ballot types within
5 the same precinct which are the two ways you can
6 deal with that problem.
7 Q. I'll ask you about that in a second.
8 You'll admit in this affidavit you
9 expressed concern about the precinct locations
10 being changed.
11 A. Yes, that's one way to approach it. That's one way
12 to deal with it is you split the precinct along the
13 lines that the General Assembly split it.
14 Now, if the General Assembly split it one
15 way for Congress and another way for the House and
16 another way for the Senate and some of these
17 precincts, not a lot, but some of these are split
18 by more than one plan, then obviously you can't do
19 that, but now you've got four or five, six
20 different ballot types to deal with which can be
21 dealt with. You work these problems out, but it
22 creates confusion.
23 It creates a situation where those who are
24 organizing the precinct for candidates and parties
25 will have a more difficult time. That's the point.

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1 Q. Okay. Have you had any personal experience where
2 you had difficulties in your own activities
3 organizing a precinct for a candidate or a party
4 because the precincts were split, you personally?
5 A. Me personally, I have to think about that.
6 Certainly experience on the Board of Elections in
7 terms of administering split precincts.
8 In terms of my organization with one, no.
9 I've counseled and talked to and helped people
10 figure out how to deal with that, but actually my
11 going out and talking to people in that precinct
12 and having -- no, but talking to candidates about
13 how to deal with those problems, yeah, that's
14 something I've done.
15 Q. Can you recall any specific examples of that?
16 A. No. Now you're asking me to come up with names and
17 so forth and so on. My experience is very broad,
18 but it's not the kind of thing where I keep track
19 of that, so no, I don't have specific examples of
20 it.
21 Q. Can you think of any example where someone reported
22 to you that they just had this horrible time
23 organizing their campaign because of a divided
24 precinct?
25 A. No, just my general observation in terms of working

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1 in North Carolina politics for 40 years.
2 Q. But you can't think of an example?
3 A. No, not off the top of my head.
4 Q. Now, in Mecklenburg county or anywhere in the state
5 following the 2011 redistricting, are you aware of
6 any instances where precincts have been changed?
7 A. Can you repeat that again, please.
8 Q. Are you aware of any changes in precinct locations
9 that have been made anywhere in North Carolina
10 following the 2011 redistricting?
11 A. No. As I said, that's one way to approach it.
12 It's a required way in Texas. North Carolina we
13 generally would do it by having different ballot
14 types and having the poll workers simply try to
15 keep track of who's supposed to get which ballot
16 type.
17 Q. So you're not aware of any precinct locations being
18 changed?
19 A. No. The precinct locations change for other
20 reasons as well, as you know.
21 Q. Do you know if any of these precincts are divided
22 because of local or county level elections? Have
23 you studied that?
24 A. No, but in my experience in Mecklenburg, they often
25 are. Sometimes you've also got splits for county

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1 commission or for -- not for school board
2 traditionally because those lines were the same,
3 but I'm not sure what they did this last year.
4 City council cut in a different way and sometimes
5 divide precincts, though not usually, but of
6 course, those are elections in a different cycle so
7 that works out pretty well.
8 So for local, you're pretty much talking
9 about county commission.
10 Q. During the general elections?
11 A. Yes. And county commission lines are often cross
12 cutting -- are always cross cutting and they may be
13 cross cutting in split precincts, although in my
14 experience county commissions usually use whole
15 precincts.
16 Q. But if there are jurisdictions in North Carolina
17 where precincts have been divided because of county
18 commission elections, school board elections or
19 municipal elections, those divisions could account
20 for some of the different ballot styles that would
21 be used in that county; is that correct?
22 A. Well, you're asking me two questions. The first
23 question are there -- are there other jurisdictions
24 that have cut precincts. I don't know the answer
25 to that.

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1 Q. I said if there were.
2 A. Well, if there were, then what?
3 Q. Would that not account for some of the different
4 ballot styles that would be used inside of that
5 county?
6 A. Sure, but that would be on top of the different
7 ballot styles created by the three plans drawn by
8 the General Assembly.
9 Q. Sure. I understand.
10 Now, when did you last serve at the
11 Mecklenburg County Board of Elections?
12 A. I have to look at my vita. It was some time ago.
13 I mean, it's in the vita. I don't remember.
14 Q. Did you -- were you serving in the 2000s?
15 A. In 2000?
16 Q. Yes.
17 A. I don't think so.
18 Q. What type of voting equipment was Mecklenburg
19 county using when you were the chairman of the
20 county board?
21 A. Those monster AVM boxes.
22 Q. Lever machines?
23 A. Lever machines. We then -- we were then -- I was
24 on the blue ribbon commission that selected the new
25 voting machines which were essentially an

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1 electronic AVM lever machines. The same thing
2 except by an electronic version.
3 Q. Do you know what type of equipment is used in
4 Mecklenburg county today?
5 A. No.
6 Q. Do you know what kind of equipment is used in other
7 counties in North Carolina?
8 A. It's a wide variety since the counties get to do
9 that within the number of different machines that
10 are authorized by the State Board, and so
11 everything -- I suspect everything authorized by
12 the State Board is used somewhere in a hundred
13 counties. It's all different things.
14 Q. Now, do you know of the type of equipment that is
15 used in the precincts to help the precinct workers
16 make sure that the voters get the right ballot
17 style?
18 A. Sure. There's -- what you've got are barcode kind
19 of systems to make sure that this is the barcode
20 for that blip, blip, blip, he gets that style,
21 sure.
22 And then if it's a paper ballot, the poll
23 worker has to make sure when he knows what that
24 style is that he gets that style out of the right
25 pile.

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1 If it's a direct record machine, he knows
2 what the style is, he pushes some button so that
3 that style comes up on that machine, and the person
4 who's doing that is on average in his 70s and has
5 been working --
6 Q. Well, what does that mean, that old people aren't
7 capable of doing a good job on election day?
8 A. Well, after 12 or 18 hours I am and I'm only 66.
9 What I am saying here is that this is a process
10 which is -- which is relatively complicated. You
11 try to train them as best you can, but I will tell
12 you the perfect election has never been held, not
13 in North Carolina and not anywhere else, because
14 poll workers in fact make mistakes and the more
15 complicated you make it the more mistakes they're
16 going to make.
17 Q. Does that depend upon the technology that's
18 available?
19 A. Technology can do some help. There's no question
20 that technology is good. Barcode thing, this is
21 the ballot style you're supposed to get, I don't
22 have to find him on a map, that's a good thing. I
23 still have to pick the right one.
24 All I'm saying is -- among other things,
25 what we do is we underpay them, understaff these

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1 precincts, especially in presidential elections,
2 and don't buy enough voting machines. It's all
3 economics in the end. We don't spend enough. Or
4 as a friend of mine used to say, Americans spend
5 more money on bubble gum than they spend on
6 elections. True fact.
7 So when you do that, what happens is you
8 have more mistakes. If you also make it
9 complicated by cutting the precinct across a couple
10 different ways, I'm just saying you make it more
11 complicated. You get through it as best you can
12 get through it, and these people are good people
13 and they work hard, but they do make mistakes.
14 Q. Are you aware of a scanner that they have in the
15 precincts where they check the voter authorization
16 form against the ballot to confirm that the voter
17 has the right ballot?
18 A. I'm sure they do that.
19 Q. That wasn't around when you were running the
20 Mecklenburg County Board of Elections?
21 A. No. Lots of technology and procedures for dealing
22 with this have arisen in recent years. We're
23 getting more and more sophisticated in trying to do
24 that, no question about it.
25 Q. And has early voting taken some of the pressure off

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1 precinct workers on election day?
2 A. Yes, it does, but you see what's happened is
3 counties respond to that by buying fewer boxes,
4 okay. So yes, it does help, but there's an
5 anticipated reaction there we're going to have a
6 number of early voting so we don't need quite as
7 many machines in the precincts as we used to have,
8 we don't need quite as many workers as we used to
9 have.
10 Does it make a significant difference? It
11 makes a difference, no question about it. How
12 significant the difference is, I don't know,
13 because we've had early voting here for a long
14 time.
15 Q. I remember my own personal experience. I used to
16 wait in line for an hour, hour and a half, and that
17 hasn't happened to me in recent times.
18 So what's your experience? When is the
19 last time you voted in North Carolina?
20 A. In 2010.
21 Q. Did you do early voting?
22 A. I never do early voting. I want to know at the
23 very last minute what those fools have to say
24 before I vote for them.
25 Q. That's a good practice.

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1 Did you have a long line when you went to
2 vote in 2010?
3 A. Not very long. Cabarrus county doesn't have --
4 doesn't have that high of a turnout, but it was a
5 line. You know, we waited 20 minutes, 25 minutes.
6 Q. Now, I may ask you more in detail what you meant by
7 this, but you said there was a quantum leap in the
8 number of divided precincts in the enacted plans.
9 Would you have expected there to be a lot
10 of problems on election day for the May primary
11 because of divided VTDS?
12 A. More problems than would otherwise be, but the real
13 thing doesn't hit you in the primary because the
14 turnout is not all that high.
15 What really hits you is the November, the
16 presidential. That's when you really know when
17 you've made a good decision or not about the
18 procedures you've set forth.
19 Q. Well, don't the county boards put out fewer voting
20 machines and a smaller staff for the primary than
21 they do in the general election?
22 A. They do.
23 Q. And so --
24 A. But you see there are certain minimums you can't go
25 below. You have to have two judges, you have to

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1 have one registrar, and so you don't go below a
2 certain limit. So generally, in my experience in
3 the primary, you're overstaffed, if anything, and
4 when the presidential hits, that's when you really
5 have the problems.
6 Q. And your experience is based in the days before we
7 have -- we have -- we have today with early voting
8 at the high levels that we experience today?
9 A. Early voting has continued to become more and more
10 as we've gone along, but remember, in Mecklenburg
11 county, we made special efforts, especially when I
12 was on the board, to make early voting as readily
13 available as possible and at as many sites as
14 possible, and so this varies a lot from county to
15 county depending on how many sites are established
16 by the county and so forth.
17 Q. Dr. Arrington, you're going to have to educate me
18 here. I thought back in the day you had to have an
19 excuse to do early voting like you were going to be
20 out of town or not available to vote; is that
21 correct?
22 A. I don't remember, but it's the person's word. If
23 they said I'm going to be out of town or they
24 say -- they just said that. I mean, that's always
25 been true for absentee voting. It's the voter's

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1 wish. It's just more recently where -- even where
 2 you don't have no-excuse voting that people have
 3 realized everybody else is doing it so I guess I'll
 4 go in and say I can't make it on election day and
 5 vote.
 6 Q. But early voting has picked up dramatically in the
 7 last --
 8 A. Because it's no excuse.
 9 Q. Right. I'm sorry. I apologize.
 10 Back when you were running the county
 11 board, you had to at least say you had an excuse
 12 for not being able to vote on election day; isn't
 13 that right?
 14 A. I don't remember when the no excuse came in. It
 15 seems to me that no excuse came in while I was
 16 still on the board or shortly after I had left and
 17 was still very much in contact with the staff, so I
 18 don't remember when it came in.
 19 Q. All right.
 20 A. But your point is with no excuse you have more
 21 early voting than you had before?
 22 Q. Yes.
 23 A. No question about it.
 24 Q. Now, are you aware of any problems or complaints
 25 that arose during the May 2012 primary because of

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1 divided precincts?
 2 A. No.
 3 Q. So going through your affidavit, the first
 4 affidavit, I'm looking at paragraph 14. Just
 5 looking at paragraph 14, you're not aware of any
 6 new precincts that have been established because of
 7 divided -- or because of divided legislative
 8 districts, right?
 9 A. I'm not aware.
 10 Q. Okay. And what's your comment about a mini
 11 precinct in paragraph 15? I didn't understand
 12 that.
 13 A. Well, as I say, one way to deal with divided
 14 precincts, which are synonymous with VTDs in these
 15 terms that we're dealing with is to divide the
 16 precinct along that line, if there's only one line.
 17 You can't do that if one part of them is smaller
 18 than the other.
 19 In places where you have provisions that
 20 specify the ballot type needs to be the same in the
 21 precinct, like in Texas, that's where you have this
 22 kind of problem.
 23 In North Carolina, the Board of Elections
 24 doesn't have to respond this way and in most
 25 case -- in many cases I suspect they would not.

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1 Again, if the Senate deals with it one way and the
 2 House another way, then that's not practical any
 3 longer and it may not be a practical way to deal
 4 with it.
 5 So I don't know of any Board of Elections
 6 that has had to deal with it this way, but that's
 7 one possibility.
 8 Q. But you're not aware of any North Carolina county
 9 board that established mini precincts because of
 10 divided precincts?
 11 A. No. That's something that we considered when I was
 12 on the Board of Elections in some instances, but I
 13 suspect in most cases we determined you couldn't do
 14 it.
 15 Used to be that if a part of the precinct
 16 was out of the -- out of that district but in an
 17 adjacent district, you could move it over, but with
 18 the new provisions where you have to keep the VTDs
 19 intact, you can't do that, if you follow what I'm
 20 saying.
 21 Q. There's a state law that says you got to keep the
 22 2008 Vote Tabulation Districts intact?
 23 A. You have to keep the VTDs the same so that
 24 restricts you from making changes that you could
 25 have made to adjust to these numbers, to these

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1 districting lines.
 2 Q. All right. Sir, in paragraph 15 there's a sentence
 3 that talks about equipment must be capable of
 4 counting the different styles or different voting
 5 machines made available for different styles. Do
 6 you see that?
 7 A. Right.
 8 Q. Do you have any evidence that any of the county
 9 boards in North Carolina did not have equipment
 10 that was capable of counting the different ballot
 11 styles?
 12 A. No. I suspect they all have equipment that can do
 13 that, but I don't know that.
 14 Q. But you have no evidence that any county had to go
 15 buy new voting equipment because of the different
 16 ballot styles?
 17 A. No. They wouldn't have to anyway if they had
 18 enough boxes. If you don't have -- if you don't
 19 have a direct record machine which can handle
 20 different ballot styles, then you would have to
 21 have different machines with the different styles,
 22 which is what we had to do with the old AVM lever
 23 machine because you couldn't adjust it, so if you
 24 had two ballot styles, you had to have two
 25 different lever machines, one for one style and one

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1 for another.
2 The new direct record equipment generally
3 can handle different ballot styles and the
4 different digital read, where it reads the marks
5 that you have, you just have to have different
6 ballots, so it's something you can handle.
7 Q. So there's direct recording equipment used in
8 North Carolina and that equipment can handle the
9 different ballot styles?
10 A. I don't know that, but there's certainly direct
11 record equipment out there that can do so and
12 there's direct record equipment recommended by the
13 State Board that can do so. Whether all counties
14 bought that or not, I don't know. There's a
15 hundred different counties. I don't know what they
16 all do.
17 Q. Do you have any evidence that the counties don't
18 use direct record -- have not purchased machines
19 that can record all the ballot styles?
20 A. No evidence one way or the other.
21 Q. And then there's the electronic scanners that scan
22 the paper ballots.
23 A. Correct.
24 Q. Aren't they capable of recording different ballot
25 styles?

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1 A. The ones I'm familiar with are. I suspect all that
2 they bought are, but I don't know that.
3 Q. Do you have any evidence that there's any scanning
4 equipment in North Carolina that is not capable of
5 recording all the ballot styles?
6 A. No.
7 Q. Paragraph 16 you talk about how dividing the
8 precincts is likely to be costly for county
9 budgets. Do you see that?
10 A. I do.
11 Q. Do you have any information about how the division
12 of the VTDs by the legislative districts has
13 increased the county budgets or required additional
14 costs for any specific county Board of Elections?
15 A. No.
16 Q. Do you have -- have you conducted any studies or do
17 you know how the lines on election day at the
18 precincts compare to the lines on election day
19 prior to the time at which the state adopted the
20 no-excuse early voting? Do you follow my question?
21 A. I do, but I know what happened. You have -- you
22 have generally fewer lines once you have no-excuse
23 early voting. You have -- let me clarify that.
24 You have shorter lines on election day if
25 you have no-excuse early voting generally. That

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1 may not always be true, but generally.
2 Q. Now, if the --
3 A. That's one of the purposes of having it, obviously.
4 Q. Yes. Now, Dr. Arrington, I think I'm right about
5 this, so if I'm not, I apologize, but in 2008 I
6 think 70 percent of the African Americans who voted
7 in the general election voted in early voting.
8 A. It was a very large number. I don't know whether
9 it was 70 percent.
10 Q. Would that tend to decrease the lines in districts
11 that might have been divided by these legislative
12 plans to create majority black districts?
13 A. Yes, but it wouldn't have shortened them as much if
14 those precincts were not divided.
15 Q. But the early voting opportunity would tend to
16 shorten the lines in districts under this plan that
17 have been drawn to be drawn majority black; is that
18 correct?
19 A. As opposed to not having early voting, sure.
20 Q. Right. I wanted to ask you about paragraph 20
21 about election day as a community gathering in the
22 black parts of the city.
23 A. Yes.
24 Q. Then you say it's not the same in the white parts
25 of the city. Would you explain to me what facts or

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1 information you're relying on for that statement.
2 A. Certainly. My experience for 12 years in the Board
3 of Elections of Mecklenburg county where every
4 single election day and for some days when they
5 were doing early voting, too, I traveled around
6 from precinct to precinct to precinct and we were
7 very careful to go to both black and white
8 precincts more or less at random, more or less at
9 random to see what's going on. We had a
10 communication with the central office so if there
11 was a problem someplace we would go to that place.
12 And what I noticed in that, which was
13 really stark and amazing, was that voting in the
14 black precincts was a community event, an important
15 community event.
16 Q. Explain that to me. What were the indicia of it
17 being an important community event?
18 A. Well, in white precincts people would come, they
19 would stand in line as long as they needed to, when
20 they voted they would leave.
21 In the black precinct they would stand
22 outside the voting place, as you're required to do,
23 talk to the people who were there, handing out
24 literature there, talk to each other, gossip,
25 perhaps go to another part of it, particularly, if

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1 it's a church where there's maybe some food to eat,
2 talk with each other, then eventually they get
3 around to going in and voting and then eventually
4 they would come back out and talk and stay around.
5 It was like a fair.
6 The white precincts you don't see anything
7 like that whether in a school, in a church or in
8 any kind of public building. You get in, you do it
9 and you get out. It's a very different atmosphere.
10 Q. And this was just based upon your personal
11 observations?
12 A. Absolutely for 12 years, and I enjoyed every minute
13 of it.
14 Q. What's happened to that phenomena now if what I
15 said is true that 70 percent of the African
16 Americans who voted in the general election in 2008
17 voted in early voting, would that make it less of a
18 community activity?
19 A. It's a smaller fair.
20 Q. They elected to vote early instead of going to the
21 fair?
22 A. They were encouraged to do that in 2008. Whether
23 that will continue or not we'll have to see. If an
24 early voting place is placed in a black part of the
25 community, you will probably see a similar fair

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1 there, but I don't have personal experience with
2 that.
3 Q. Do you have any experience with this concept
4 outside of Mecklenburg county?
5 A. Personally, no.
6 Q. Has anyone conducted any studies about this
7 concept?
8 A. It's not something you're going to study.
9 Q. So the answer is no on the study?
10 A. The answer is no.
11 Q. So is it possible, then, rural counties that there
12 may be areas where it's a community gathering, as
13 the way you described it, for white voters in
14 eastern North Carolina?
15 A. Could be. You're asking me to speculate. Yeah,
16 it's possible.
17 Q. Is it possible that that could also be so in some
18 urban county where a voting precinct is located in
19 a church and that the people who were voting in
20 that precinct are members of that church?
21 A. Sure, it's possible. Lots of things are possible.
22 I think it's highly unlikely.
23 Q. Did you go to any predominantly white churches that
24 were used as precincts in Mecklenburg county?
25 A. Yes.

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1 MR. PETERS: Tom, we need to stop for a
2 minute and go on the record.
3 My understanding was -- and I'm sorry.
4 MS. KROPP: Martha.
5 MR. PETERS: -- Martha was here solely to
6 observe and not make suggestions to counsel about
7 the deposition.
8 MS. KROPP: Sorry about that.
9 MR. FARR: Okay.
10 BY MR. FARR:
11 Q. I'm looking at paragraph 24 where you say when you
12 work for U.S. Justice Department you estimated the
13 level of black VAP necessary for them to elect
14 representatives of their choice to be about
15 42 percent.
16 A. Roughly 40 percent, yeah. I think 42 is stuck in
17 my mind, but lower 40s. Dr. Lichtman says 40, flat
18 40. So I guess that's what it is currently.
19 Q. I may have asked you this before, but do you know
20 of any cases where jurisdictions have been found
21 guilty of packing because they put a higher
22 percentage of black population in a district
23 between the range of 42 percent and 55 percent?
24 A. Between 43 and 55?
25 Q. Yeah, 42 and 55 percent.

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1 A. No. I understand that's a question in the Florida
2 case, but -- before the Florida Supreme Court, but
3 I don't have firsthand knowledge of that and I
4 don't know those exact numbers.
5 Q. Okay. I know you said you looked at Dr. Lichtman's
6 testimony, but have you looked at election data for
7 the 2000 cycle to determine whether 42 percent
8 remains the target that you would elect to follow
9 to create a district that would elect a candidate
10 of choice? Have you personally done that study?
11 A. No. I relied on Dr. Lichtman for that.
12 Q. Do you know of any cases that would require
13 North Carolina to draw legislative districts with a
14 black voting age population in excess of 25 percent
15 but below 42 percent?
16 A. I'm sorry. Repeat that again.
17 Q. Do you know of any cases that could be construed as
18 requiring that North Carolina create legislative
19 districts with a black voting age population in
20 excess of 25 percent but below 42 percent?
21 A. No. Same stipulation as before: Because I don't
22 know it doesn't mean they aren't there.
23 Q. Could you turn back to page 3 for a second. In
24 paragraph 9, about two-thirds of the way down, you
25 use the term minority election district.

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1 A. Uh-huh.
2 Q. Could you tell me what you meant by that.
3 A. Minority election districts from my perspective is
4 synonymous with ability districts or reasonable
5 opportunity districts, just a synonym for the same
6 idea.
7 Q. If a jurisdiction created a redistricting plan that
8 provided a rough proportional number of minority
9 election districts as you've just described it,
10 would you view such a plan as being a direct attack
11 on black political participation?
12 A. It might.
13 Q. And how could it be?
14 A. Well, it depends on what you're doing overall.
15 Remember that in the Voting Rights Act you have
16 more than the three Gingles prongs and you have
17 more than what you might call proportional
18 representation.
19 You have to look at the totality of the
20 circumstances, and if the totality of the
21 circumstances are such that it actually discourages
22 blacks from voting in various ways, then it could
23 be indeed discriminatory even though you've created
24 some number of opportunity districts.
25 You have to look at the totality of the

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1 circumstances. You have to look at what those
2 districts are doing and how they were constructed.
3 It's much more than just those three Gingles prongs
4 or proportionality. That's the starting place but
5 that's not where you end up.
6 Q. Well, what would be -- in that situation, what
7 would be examples of how a proportional plan could
8 be a direct attack on political participation by
9 blacks? What would be the things that you would
10 rely upon to make that argument?
11 A. Well, the extent to which -- the extent to which
12 precincts are divided is one indicator. There may
13 be plenty of others, but if you've divided
14 precincts and if the evidence is from my experience
15 that the divided precincts can have a detrimental
16 effect on turnout and if it is the case that those
17 are predominantly constructed in minority
18 districts, then in terms of the influence of blacks
19 in at-large elections and countywide elections and
20 the like their influence is going to be decreased.
21 If you're also talking about drawing
22 districts in such a way as to segregate the races,
23 what you're doing is driving a stake through the
24 heart of biracial coalitions.
25 And because blacks are only 20 percent of

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1 the population in North Carolina, if they're going
2 to have a significant effect on the political
3 process, significant influence in the political
4 process, they have to form biracial coalitions, and
5 to the extent that you disrupt those biracial
6 coalitions you're working systemically against the
7 ability of blacks to participate equally in the
8 political process, because remember there's two
9 parts to the Voting Rights Act: Participate
10 equally in the political process and elect
11 candidates of their choice.
12 And I have never seen that as a political
13 scientist -- you can fight over what the law means,
14 but as a political scientist, I have always seen
15 that as two separate things. That's why the court
16 says it's a totality of the circumstances because
17 you might have theoretically a number of
18 opportunities to elect candidates of their choice,
19 but overall looking at what's happened in the plan
20 a reduction in their influence in other ways.
21 Q. So this would be a reduction in their influence to
22 elect Democrats in other districts?
23 A. Perhaps, to be influential with any Republican who
24 might be subject to such influence. To some extent
25 a Republican might want to discourage blacks from

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1 voting by not becoming a target. I don't know, any
2 number of ways that they might be influential in
3 just saying to Democrats and Republicans we're
4 important here, we're part of a biracial coalition
5 and that biracial coalition, because it is
6 biracial, therefore it's more than just 20 percent
7 of the voters, is important to you.
8 If you want to run for governor sometime --
9 so you're in an all white district now, perhaps, or
10 a district with a few blacks but a Democrat can
11 win, but if you want to run for governor, you
12 better look at us. I mean, there's all kinds of
13 ways that you can have influence.
14 Politics is all about the psychology of
15 influence. That's really what it's all about, and
16 that's not something that you can necessarily pin
17 down.
18 Q. Well, so let's say you have a district that has a
19 20 percent total black voting age population,
20 80 percent white. Why can't the black voters
21 attempt to establish biracial coalitions in that
22 district?
23 A. Well, they can and they need to, but part of the
24 way they do that is through the precinct
25 organization because precinct organization in the

47 (Pages 182 to 185)

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1 black community and especially in others is the way
2 you do it. I mean, it's a ground campaign and
3 ground campaigns are usually organized through the
4 precinct.
5 Q. What is your personal experience with you being
6 involved in a political campaign where the ground
7 campaign was organized through the precinct?
8 A. Well, I started being active in the Republican
9 party in 1960, and from then right on through until
10 I went on the Board of Elections. I was involved
11 in every single election organizing people at the
12 precinct level and so forth, including when I was
13 vice chairman of the Republican Party in
14 Mecklenburg county for two years, and that's what
15 we did because, remember, the parties as such did
16 not at that time and still do not to any great
17 extent engage in the air campaign.
18 If you're going to have a ground campaign,
19 it's the parties that have to do it. And one of
20 the things that I observed in that time, especially
21 in Mecklenburg county, because that's where most of
22 my experience was, is Republicans weren't very good
23 at doing that. It was like pulling teeth to get
24 people to do it, but in the black community they
25 were able to do it.

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1 Q. Dr. Arrington, I may have asked you this before.
2 Are you aware of a case where a state's been found
3 to have committed a Constitutional violation
4 because of divided precincts?
5 A. No. It was part of the evidence that I presented
6 to the DC District Court with regard to the Texas
7 redistricting case.
8 The DC District Court has not yet found on
9 that yet, but I found in my opinion in that case
10 that the dividing of precincts on the basis of race
11 and ethnicity was an indication and I
12 gave -- there's more to it than that, but that was
13 an indication of the intent of the Texas
14 legislature to discriminate.
15 Q. Was that the case where the Supreme Court ruled in
16 January?
17 A. No. This is a case before the DC circuit which was
18 not yet come down. I know that's confusing because
19 there's a Section 2 case which the court wrote a --
20 redid the districts for and those were the ones
21 that the Supreme Court sent back, but that
22 Section 2 case has not been settled, and the case
23 that I testified in was a Section 5 case.
24 Can we break?
25 MR. FARR: Sure.

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1 (Brief Recess: 1:52 to 2:01 p.m.)
2 BY MR. FARR:
3 Q. Dr. Arrington, I wanted to see if I could
4 understand your understanding of the Texas case.
5 The case that you have given some testimony
6 in is a pre-clearance case in District of Columbia?
7 A. That's correct, the District of Columbia District
8 Court.
9 Q. And then there was -- do you know what an impasse
10 case is where the Federal Courts jump in to draw
11 the plans because they haven't been able to pass
12 one?
13 A. Right, but the Section 2 isn't quite an impasse.
14 The judges just decided -- as I understand it they
15 couldn't finish the Section 2 case in time for the
16 election so they had to draw their own plan, so I
17 guess that's an impasse in a sense.
18 Q. So there's a case pending in Texas where the court
19 drew a plan and then there's the DC case which is
20 about whether the plan enacted by the General
21 Assembly or the Texas legislature, whatever it's
22 called, should be pre-cleared, right?
23 A. That's my understanding, that's correct.
24 Now, remember, I did not participate in the
25 Section 2 case in Texas, in San Antonio. I read

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1 the reports from that case, but I didn't
2 participate in it. I used those reports in part in
3 my testimony on the intent of Texas in that
4 Section 5 case.
5 Q. All right. Was there any identity of the parties
6 who hired you in the DC case as compared to the
7 parties in the Texas -- in the case pending in the
8 Texas District Court?
9 A. No, because the district -- because the Department
10 of Justice is overwhelmed doing Section 5. They
11 don't have time to involve themselves in a
12 Section 2 case in Texas.
13 So my understanding they were not involved
14 directly in the Section 2 case whereas they are
15 the -- or they are the defendant in that Section 5
16 case.
17 Q. Who hired you in DC?
18 A. DOJ.
19 Q. Did you study the Texas case?
20 A. I studied the expert reports and some of the
21 testimony -- and testimony of experts in the case.
22 I didn't look at the testimony of lay witnesses.
23 Q. Did any of the experts in the Texas case argue that
24 the state should use whole precincts?
25 A. No.

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1 Q. Did the court use whole precincts in drawing its
2 plan in Texas?
3 A. I don't know.
4 Q. Did you read the Supreme Court's decision
5 overturning the Texas court's ruling?
6 A. No.
7 Q. I am going to hand you one final exhibit, I think.
8 (WHEREUPON, Exhibit 253 was marked for
9 identification.)
10 BY MR. FARR:
11 Q. Can you tell us what Exhibit 253 is, Dr. Arrington?
12 A. I'm just looking for a date. That is my second
13 affidavit in this case dated 5 May 2012, and it
14 also includes the current version of my vita.
15 Q. Okay. That's the only question I have on that.
16 A. I'm sorry, Mr. Farr. You said that's the only
17 question you had about this one?
18 Q. Yes.
19 Was there ever a point in time in your
20 career of being a map drawer in cases like this
21 where you thought the districts had to be over
22 50 percent?
23 A. Yes, obviously I must have thought that when I did
24 the New York districts.
25 Q. Do you recall when you changed in that opinion?

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1 A. No.
2 Q. Do you know how many plans you've drawn where you
3 believe that the districts had to be at least over
4 50 percent?
5 A. Several. Let me explain why. The Department of
6 Justice believes that districts do not have to be
7 over 50 percent. However, they also know that it
8 could be a legal question.
9 So when I'm asked to draw an illustrative
10 plan for them, they ask me to draw it specifically
11 at more than 50 percent, and the reason for that is
12 that that means there's no question, this question
13 that you and I are talking about right now whether
14 it has to be or not, so that eliminates one legal
15 question about satisfying Gingles one, the first
16 Gingles prong. However, it is their belief that
17 that's not necessary, as it is mine.
18 So for many of the cases that you look at
19 on my vita where I was doing an illustrative plan,
20 I will have constructed that plan at over
21 50 percent in order not to have the legal question.
22 Q. But you can't recall when you changed your mind
23 about it being over 50 percent?
24 A. No, I can't. It would have been fairly soon after
25 the New York case, because I didn't even remember

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1 that I had ever had that opinion until you brought
2 it to my attention. Shows you what memory will do
3 for you.
4 Q. Are you aware of any case where African Americans
5 got rough proportionality in the number of the
6 districts that were created by the plan where the
7 plan has been found to discriminate against black
8 voters?
9 A. I'm sorry, I don't understand the question. Can
10 you repeat it again?
11 Q. Yes. Are you aware of any cases where a
12 legislative plan has provided black voters with
13 roughly proportional number of districts for the
14 entire state where that plan has been found to
15 discriminate against black voters?
16 A. I don't know of such a case.
17 Q. And I think you said, Dr. Arrington, when you're
18 drawing plans where you're trying to create
19 districts that will elect candidates of choice that
20 you consider race as a factor?
21 A. As a factor, that's correct.
22 Q. Are there factors that are more important than race
23 if you're trying to draw plans up to a certain
24 level of black population?
25 A. Oh, yes. One person, one vote is always the

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1 predominant factor in drawing districts first
2 because it's a Constitutional principle and,
3 second, because it's not only a Constitutional
4 principle but it's one which can be readily
5 measured and therefore, if you don't make it,
6 everybody will know, so that's the number one
7 factor.
8 Number two is always going to be the
9 geography. You have to take into account the
10 geography of the place you're drawing it, where are
11 the roads, where are the precinct lines, where are
12 the county boundaries, where are the whatever, and
13 those two things shape the district predominantly,
14 and then race or ethnicity comes in as another
15 factor, as does community of interest, trying to
16 keep them compact, whatever other traditional
17 districting principles may be applicable for that
18 jurisdiction.
19 Q. Does your vita explain the number of times you've
20 drawn plans?
21 A. No, but I could go through the vita and tell you
22 whether I drew plans in that case or not. Do you
23 want to do that?
24 Q. Yes.
25 A. I've got it here as part of 253. Do you want me

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1 just to count it or do you want me to tell you
2 which ones?
3 Q. Why don't you go through it and make an oral
4 statement on the entries where you think you made
5 plans.
6 A. Gingles versus Edmisten.
7 Now, you want ones where I drew the plans
8 as opposed to ones where I was specifically
9 advising somebody who was drawing plans?
10 Q. Either one.
11 A. Okay. Burton versus Sheheen, a South Carolina
12 case.
13 Q. Is that on the second page?
14 A. Yes. That's on page 10 of the vita.
15 Q. What were you doing in that case?
16 A. I was giving testimony about how the districts
17 should be drawn in South Carolina --
18 Q. Do you recall --
19 A. -- in the 1980 cycle -- I'm sorry -- the 1990
20 cycle.
21 Q. Do you recall, were those districts drawn at
22 majority level or were they below majority level?
23 A. No, I don't. I was working for Republican
24 plaintiffs in that case. I think, in fact, for the
25 Republican Party, if I'm not mistaken, and their

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1 districts were different from the districts that
2 the governor had drawn, but where they were and
3 what level, I don't remember. That was a long time
4 ago.
5 MacKinnon versus Prince Edward Island.
6 That's a Canadian case. We drew the districts
7 there.
8 Q. We'll skip that one.
9 A. That's the second full entry on page 10.
10 Of course, the New York case which we've
11 already discussed.
12 And there's two New York cases there, one
13 for Congress and then the second one is for State
14 House and State Senate.
15 Q. And you drew districts for both of those?
16 A. I drew districts for both of those, that's correct.
17 I drew districts in the Cleveland County
18 case, but then those districts were abandoned
19 because they would quite obviously not pass the
20 Shaw test.
21 I drew districts for Mecklenburg County
22 Commission in 1992. That was not part of a court
23 case but rather was part of their redistricting
24 process.
25 Q. Did you draw majority districts in that plan?

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1 A. Probably not, but I don't remember.
2 I drew districts -- we're on page 12
3 now -- for the Albemarle, North Carolina City
4 School; Hickory School District; Winston-Salem,
5 Forsyth School District; Mecklenburg County
6 Commission.
7 Q. What page are you on?
8 A. Page 12. The third citation down is a summary of
9 my activity in the 1990 cycle where I drew
10 districts for several of these places.
11 Q. Did you create majority black districts in these
12 cases?
13 A. I don't remember.
14 Q. Do you still have this information? Do you have
15 these plans at your house?
16 A. No, no. If I kept all that kind of material, I
17 wouldn't have any room to live in my house. No, I
18 don't have those. Those districts might have them.
19 I don't know.
20 I do districts -- now I'm on page 13,
21 Mr. Farr, the second full citation down there
22 advising the United States Department of Justice
23 for the pre-clearance of things of various aspects
24 and so forth.
25 Either that or maybe in another one of

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1 these citations I drew plans for the North Carolina
2 House and Senate, not throughout the state but in
3 parts of the state to see what was different from
4 the plans that were submitted by the General
5 Assembly.
6 Q. Did you ever submit proposed Congressional plans to
7 the General Assembly during redistricting that --
8 not in the capacity working for DOJ but for
9 somebody else?
10 A. Not that I can remember, but there may have been a
11 submission of a plan that somebody else drew that I
12 signed onto. I mean, you know, I was here for
13 37 years, several cycles, I did a lot of things,
14 but did I ever draw a Congressional plan that I
15 submitted to the General Assembly, the answer
16 is -- that's a lot of work so I can tell you I
17 never did that.
18 Q. Did you ever sign off or approve on a plan that Bob
19 Hunter did for congress?
20 A. I may very well have. Again, that's in the nature
21 of advising somebody or commenting upon somebody
22 else's plans as opposed to drawing one myself, so I
23 may very well have.
24 Dean Butch Wilson versus John W. Jones, I
25 drew plans there, in fact, two sets of plans.

50 (Pages 194 to 197)

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1 Blaine County Montana, I drew plans for
2 that.
3 Q. Can I ask you a question about the Dean Butch
4 Wilson case. Did you draw majority black districts
5 in that case?
6 A. I may have because, remember, we're talking about
7 Alabama here and we're talking about Selma. We're
8 not talking about North Carolina.
9 Again, the level of concentration that's
10 required is jurisdiction specific, so I don't know
11 that I did, but I may very well have, and if I did
12 it was because the data that we had indicated that
13 that's where you had to go in Selma, Alabama, in
14 order to get a majority black district -- I'm
15 sorry, let me rephrase that -- an opportunity
16 district, that it might have had to be majority
17 black in order to be a minority opportunity
18 district.
19 Blaine County Montana.
20 I definitely drew districts for Charleston.
21 Q. Did you draw majority black districts in Montana?
22 A. I don't remember.
23 Q. What about in Charleston?
24 A. Again -- oh, in Blaine County I did. That's an
25 Indian -- that's an Indian case. Indians have a

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1 very low level of voter turnout. If you don't give
2 them majority -- in fact, more than a majority,
3 they're not going to win. They don't have any
4 chance at all to win.
5 So in Blaine County, those were definitely
6 majority-minority districts or a majority-minority
7 district. There's only one district.
8 Charleston -- and I don't remember the
9 level at Charleston. Again, that would be
10 dependent upon what the data said was required.
11 I didn't draw districts for Connecticut,
12 did not.
13 I didn't in Illinois.
14 I advised on the districts in the
15 South Carolina case. This is the second full
16 citation on page 14. I didn't draw those districts
17 but I did advise on them.
18 Q. What year was that?
19 A. This is Colleton County Council versus Glenn
20 McConnell?
21 Q. Yes. Were these cases decided in that paragraph in
22 2010? Or I don't know, I'm just speculating. Do
23 you know what this engagement was?
24 A. This South Carolina case, the second one down on
25 page 14, that's the 2000 cycle.

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1 Q. Okay.
2 A. I don't know why there's not a date in that, but
3 that's the 2000 cycle.
4 Q. So you had several different engagements in
5 South Carolina in 2000?
6 A. Two cycles, yes.
7 Q. Did you draw or recommend majority black districts
8 in those engagements?
9 A. Again, you find out what's necessary in that
10 jurisdiction and that's where you set it.
11 Certainly by this time -- I'm not sure when
12 I realized that you didn't have to have majority,
13 but certainly would have been done by this time in
14 the 2000 cycle.
15 The Louisiana case which focused on
16 New Orleans but also Baton Rouge, those districts I
17 drew for New Orleans and Baton Rouge.
18 Q. Were those majority black?
19 A. Yes. In New Orleans it has to be majority black.
20 In fact, it has to be more than a majority and that
21 has to do with their unusual voting system where
22 they don't really have a primary, they have a first
23 election and a second election.
24 And the African Americans there don't have
25 the advantage of first getting the Democratic label

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1 and then getting the white crossover vote that
2 comes from that, as is the case in North Carolina,
3 because they're essentially two open elections, and
4 so that plus the greater degree of racial animosity
5 in Louisiana as opposed to North Carolina, which is
6 why in New Orleans -- this is pre-Katrina. I don't
7 know what it's like now -- you had to have more
8 than a majority. In fact, you had to have more
9 than 60 percent.
10 And I determined that by ecological
11 regression analysis and reading the reports of
12 others, and that's the level that's necessary so
13 that's where I drew the districts.
14 I drew districts in Osceola County
15 Florida. And this is a good example of what I had
16 said earlier. The Department of Justice wants
17 illustrative districts to be majority minority so
18 that that question is off the table, but that's the
19 only reason they did it.
20 And if I had determined that I could not
21 draw a majority -- this is very clear in Osceola
22 County. If I had determined that I could not draw
23 a majority black district in Osceola County without
24 violating Shaw, then I would have gone back to them
25 and said I can draw you one, but to keep it inside

51 (Pages 198 to 201)

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1 of Shaw it won't be majority minority, but it will
 2 be sufficient that the Hispanics can elect a
 3 candidate of their choice and I would have drawn it
 4 that way and they would have gone forward, but then
 5 they would have had to debate this issue which is
 6 what they wanted to do.
 7 Q. How do you know what is within Shaw and what is
 8 without Shaw since I have previous testimony by you
 9 that the court doesn't define what is within or
 10 without Shaw?
 11 A. My judgment. I look at the district and I say, you
 12 know, somebody is going to say that violates Shaw,
 13 and the DOJ would say, well, then, don't draw it
 14 that way. Draw it in such a way as it looks
 15 compact when you look at it. It's the intraocular
 16 test, and if it looks like it's compact that way,
 17 that's okay.
 18 Q. But people could disagree on whether a district
 19 passes that type of test or not, right?
 20 A. Not only could, they do.
 21 Q. Okay.
 22 A. I've advised on how the districts should be drawn
 23 in the state of Alaska, but I didn't draw the
 24 districts. They have a guy that did that. I
 25 simply told him the way it needed to be done.

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1 Q. Were those black districts or Indian districts?
 2 What minority was involved in Alaska?
 3 A. Native Alaskans. They call them natives up there
 4 American Indians, but they're Eskimos, Aleuts.
 5 Q. Did you recommend they be over 50 percent?
 6 A. I'm glad you asked that. The answer is no, those
 7 districts are not being drawn. The level happens
 8 to be about 40 percent, but it varies. In one part
 9 of the state it has to be more than 50, but in the
 10 rest of the state 40 is enough. In fact, her
 11 figure -- the woman who did the ecological
 12 regression, her figure in fact is 42. That just
 13 happens to be the number that I cited in this
 14 report here. That's happenstance.
 15 But it so happens that's where she puts the
 16 number, 42 voting age population Native Alaskans is
 17 sufficient for them to elect a candidate of their
 18 choice and therefore satisfies Section 5 and that's
 19 what the DOJ accepted and I agree with it.
 20 Now, in one part of the state -- doesn't
 21 matter which part. One part of the state that's
 22 not sufficient. It's got to be 50 percent. So
 23 what you have to do when you're advising on those
 24 districts is say this district has sufficient
 25 overlap with where it requires to be 50 but you got

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1 to go above 42. So again, it's a jurisdictional
 2 specific analysis.
 3 Q. My question for you: All these cases that we've
 4 talked about so far, were they all wrapped up
 5 before the Strickland case was decided by the
 6 Supreme Court?
 7 A. No. The one we're talking about now is Strickland,
 8 is post Strickland.
 9 Q. Which one, the Alaska?
 10 A. The Alaska case.
 11 Q. Is that the first one we've done that's post
 12 Strickland?
 13 A. Yes. I advised -- I advised on a daily basis about
 14 how the districts should be drawn in New Mexico. I
 15 didn't draw the districts. There was another guy
 16 who was doing that, but he and I were in daily
 17 contact as they were being developed. That's it.
 18 Q. Did you draw or did you recommend the drawing of
 19 illustrative maps in the Alaska case that were
 20 50 percent plus one?
 21 A. Well, I think that's what I just talked about. No.
 22 42 is the magic number in Alaska except in that
 23 part of the state where a higher number is
 24 necessary.
 25 Q. Was it possible to draw the district up to

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1 50 percent plus one?
 2 A. Not without reducing the total number of
 3 opportunities.
 4 Q. How many opportunity districts were there?
 5 A. There are five in the House, three in the Senate.
 6 Q. And how many majority districts were there in the
 7 House?
 8 A. Majority minority?
 9 Q. Yes.
 10 A. None.
 11 Q. How many were there in the Senate?
 12 A. None.
 13 Q. So I thought you said one was over 50 percent.
 14 A. No. I said that in one part of the state you have
 15 to get over 50 percent in order to provide an
 16 opportunity, but the district that was drawn in
 17 that area, because it is just at 50 percent,
 18 was -- is a very iffy district.
 19 It's the 6th -- it's the 6th House district
 20 in Alaska and it's a district which sometimes
 21 elected the candidate of choice of natives and
 22 sometimes didn't, and the reason is because it was
 23 drawn ten years ago right at that 50 percent mark.
 24 And so Dr. Handily's opinion, and I agree
 25 with it, even though we were on opposite sides of

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1 that case, is that if you overlap significantly
 2 with the 6th District, you're going to have to go
 3 above 42 because the white crossover there is lower
 4 than it is in the rest of Alaska.
 5 Q. So this Alaska case, was this in state court?
 6 A. No, no. Well --
 7 Q. It's says Fourth Judicial District of Fairbanks.
 8 A. Yes, it was in state court, but Section 5 of the
 9 Voting Rights Act is a key part of it, and the
 10 question is -- the plan that was submitted to the
 11 Department of Justice and pre-cleared violates --
 12 clearly violates several provisions of the Alaska
 13 Constitution, and so the question is is it possible
 14 to draw a plan that does not retrogress and
 15 also -- and also violates the Alaska Constitution
 16 less than the plan that was submitted, and the
 17 answer that that is yes, it is possible, but the
 18 districts in both the submitted plan and the
 19 alternatives have districts that are below
 20 majority-minority districts.
 21 Q. I want to make sure I understand this. The only
 22 post Strickland -- was there a decision by the
 23 court in Alaska?
 24 A. It's still ongoing. There was a decision that the
 25 Supreme Court said -- the State Supreme Court said

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1 you're going to have to redraw those districts, so
 2 my testimony was listened to at least in part and
 3 the Supreme Court has said these districts will not
 4 fly, do it again.
 5 Q. Why did they say the districts won't fly?
 6 A. Because they violate the state constitution more
 7 than is necessary to abide by Section 5 of the
 8 Voting Rights Act.
 9 Q. And I'm just confused about this, Dr. Arrington.
 10 A. I don't blame you. It's a confusing case.
 11 Q. The districts that the Supreme Court of Alaska
 12 struck down, were those districts that you
 13 supported or you opposed those districts?
 14 A. I opposed those districts.
 15 Q. What was wrong with the districts that were
 16 declared illegal by the state court?
 17 A. Because one could construct a plan which is not
 18 retrogressive and violates the State of Alaska
 19 Constitution less than the one that the state
 20 adopted.
 21 Q. Okay. Now -- so this case has been in state
 22 court --
 23 A. Well, it's also before the Department of Justice
 24 again for pre-clearance because the Supreme Court
 25 sent it back to the redistricting commission, I

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1 think they call it a board, board or commission,
 2 whatever they call it. And so they redrew the plan
 3 and that's now before the Justice Department, and
 4 it's also going back to the Supreme Court. It's
 5 almost as complicated as what's happened in Texas.
 6 Q. So let me see if I can understand this. Who
 7 originally drew the plans in Alaska?
 8 A. A statewide redistricting commission.
 9 Q. And how did it end in court? Did someone sue?
 10 A. Yeah, the natives sued.
 11 Q. When the plan was adopted by the commission --
 12 A. Let me correct that. The natives and also the City
 13 of Fairbanks sued.
 14 Q. These are State Senate and House districts?
 15 A. That's correct.
 16 Q. And the commission plans, were they ever
 17 pre-cleared?
 18 A. Yes.
 19 Q. Did they have majority black districts in them?
 20 A. No. Majority native.
 21 Q. Majority native districts?
 22 A. No.
 23 Q. And then the Alaska trial court made a ruling on
 24 the plans?
 25 A. Yes. The Alaska trial court before which I

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1 testified ruled that it would be possible to not
 2 retrogress and violate the state constitution less
 3 than was done in the enacted plan.
 4 Q. And did that go to the Alaska Supreme Court?
 5 A. That went to the Alaska Supremes and the Alaska
 6 Supremes said redo it and they sent it back to the
 7 court.
 8 Q. They agreed with the trial court?
 9 A. They did. Well, in substance they did. You know
 10 how courts are, they always rewrite it, so how much
 11 they agreed with the reasoning of the district
 12 court I couldn't tell you, but the outcome was the
 13 same.
 14 Q. Have either of the decisions by those two courts
 15 been pre-cleared by Justice?
 16 A. Not yet. Not to my knowledge.
 17 Q. Now, the plans that existed before this controversy
 18 started, did they have majority Native American
 19 districts before?
 20 A. No.
 21 Q. So that's different than North Carolina where we've
 22 had majority black districts, right?
 23 A. Right, but you also have a lot of districts that
 24 are less than majority and they are clearly
 25 effective districts.

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1 And the key in Alaska, as should always be
2 the key, is whether the district is effective in
3 allowing blacks to elect a candidate of their
4 choice.
5 Q. But the benchmark Alaskan plan did not have
6 majority Native American districts in it before?
7 A. That's correct.
8 Q. And this has been in state court?
9 A. So far.
10 Q. And that's the only post Strickland case that
11 you've listed today?
12 A. That's the only case where this question has come
13 up since Strickland, that's correct.
14 Q. The only case whether it should be majority, this
15 is the only case you've been involved in post
16 Strickland?
17 A. No. I've been involved clearly in the Texas case.
18 And again, as a lot of those districts in Texas for
19 the State House and State Senate are not majority
20 black, nor majority Hispanic.
21 Q. But they're majority minority?
22 A. Well, they may be.
23 Q. You're not aware of any?
24 A. In the pre-clearing of the Nueces County districts
25 where I recommended to the Department of Justice

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1 that they settle the case, those are not majority
2 minority -- well, no, I take it back because those
3 majority because those are Hispanic cases, Hispanic
4 districts, and Hispanic districts have to be
5 majority. In fact, they need usually more than a
6 majority because of the low citizenship rate for
7 Hispanics, very different than for blacks.
8 MR. FARR: Can I just take a second with
9 my colleagues and I think I'm finished.
10 (Brief Recess: 2:34 to 2:48 p.m.)
11 BY MR. FARR:
12 Q. I've just got a few questions about Alaska.
13 A. Okay. I love the case.
14 Q. Is Alaska -- is the population of Alaska similar to
15 the population of North Carolina?
16 A. No. It's less than the population of Wake county.
17 Q. Wake county is what it is. Okay. The Wake county
18 population is about the same as Alaska; is that
19 right?
20 A. No. I think it's more than Alaska.
21 Q. And I got turned off a little bit when you were
22 talking about Native Americans because I have my
23 own concept, being a North Carolinian, about what
24 that means. How many tribes are there in Alaska?
25 A. Hundreds.

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1 Q. Are they all politically cohesive?
2 A. Some are and some are not, and that's the central
3 point of dispute in the Alaska cases is the
4 commission drew a district -- and we're really only
5 talking about one district -- that in fact contains
6 two native groups who have long-time antipathy and
7 one anthropologist described the difference in
8 their language as being at least as great as the
9 difference between English and Chinese. They can't
10 speak to each other unless they speak in English,
11 and they have been fighting each other for
12 centuries.
13 Q. So one of the questions I had is: Is there a
14 cohesive group of Native Americans in Alaska who
15 are politically cohesive who could constitute a
16 majority in a single district?
17 A. My guess is no. You said in a single district. So
18 could we combine natives here and there and draw a
19 bug splat district in Alaska which would have a
20 majority natives, I don't know. Maybe. I don't
21 know the answer to that.
22 If you want to draw reasonably compact, by
23 whatever measure, districts that try to follow at
24 least some of the many requirements in the state
25 constitution, you're not going to get much over

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1 about 40.
2 Q. So again, my question is: Is there any evidence
3 that there is a cohesive group amongst all the
4 various tribes --
5 A. Yes.
6 Q. -- that could create a district that was over
7 50 percent?
8 A. Well, again, I don't know because I haven't tried
9 to do that. If you want to have five House
10 districts and three Senate districts, the answer to
11 that is no.
12 Could you go over 50 percent if instead of
13 five you had only four or if you dropped one of the
14 Senate districts, the Senate districts -- it's
15 nested by the way. Each House -- each Senate
16 District constitutes two House districts, and
17 again, that is state constitutional provision.
18 So if you dropped one or more of those to
19 create an over 50 percent, I don't know. I
20 haven't -- you know, I only gave advice to somebody
21 who was drawing the plans. I haven't done it
22 myself. I don't know. Maybe.
23 Q. But I guess from my understanding of the cohesiveness
24 of the African Americans in North Carolina is quite
25 different than the cohesiveness of all the various

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1 Native American tribes in Alaska. Is that a fair
2 statement?
3 A. Their cohesiveness is less than the cohesiveness
4 than the African Americans in North Carolina, but
5 they are generally cohesive. There are exceptions.
6 And also the matter of you've got these two
7 groups in this one district who fight with each
8 other, but in terms of statewide office like
9 Congress, which is statewide, or governor, you've
10 got people who are from neither of those tribes so
11 they're quite cohesive, if you're with me.
12 It's only when you got a nominee from one
13 of those tribes that you've got a problem and
14 that's what creates the cohesion problem in that
15 one district, but outside of that one district,
16 natives in Alaska are generally cohesive.
17 They're not cohesive at the rates that
18 African Americans are. It's a lesser rate than
19 that. It's more like two-thirds voting for the
20 same candidate as opposed to 90 percent voting for
21 African Americans.
22 Q. But the districts you were working on were the
23 State House and State Senate districts?
24 A. That's correct.
25 Q. Okay. I think I'm -- well, there's Congressional

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1 district issue in this case and I don't want to ask
2 about it and I'm done.
3 Alec?
4 MR. PETERS: I know Mr. Speas will be
5 disappointed, but I'm not going to ask any
6 questions.
7 MR. SPEAS: I am disappointed.
8 EXAMINATION
9 BY MS. RIGGS:
10 Q. Dr. Arrington, I just have one clarifying followup
11 topic about the illustrative maps that you draw.
12 So, for example, I think you said in the Osceola
13 County Florida -- I'm referring to Exhibit --
14 whatever this is -- 253. I'm looking at page 15,
15 the Osceola County case.
16 A. Yes.
17 Q. That was a Section 2 case; is that right?
18 A. That's correct.
19 Q. So in that case, were you looking to draw another
20 Hispanic district in the illustrative plan?
21 A. Yes. The challenge was a challenge of the at-large
22 election system in Osceola County, and you have
23 essentially two factors there.
24 The first is that you don't have a history
25 of the ability of Hispanics in that case to elect

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1 candidates of their choice for county commission
2 because it's been at large and they've been shut
3 out of the system, so you don't have any record of
4 what level of concentration is necessary.
5 You have to rely on ecological regression
6 and ecological inference numbers to try to estimate
7 what that is, so that's one reason why if you want
8 to satisfy the first prong of Gingles you want to
9 draw a plan that nobody will question that they can
10 clearly win so that there's just no question that
11 that will work.
12 Incidentally, in that case, that was the
13 only real issue, but that's another question, but
14 that's why you do that.
15 And then secondly, again, because there is
16 a legal question about whether it has to be
17 majority or not. And notice what I say a legal
18 question, there's not a political question about
19 it, but if there is a legal question and you can
20 get rid of it, that's what you want to do.
21 And so the DOJ lawyers want to have to
22 fight about as little as possible. They don't want
23 to fight about Gingles one, so they say draw it to
24 50 percent plus, then we don't have to fight about
25 it. As it turned out, we did have to fight about

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1 it.
2 Q. The illustrative part is illustrating prong one of
3 Gingles?
4 A. That's all that has to do with prong one. Prong
5 two and prong three were essentially a given in
6 that case. They said, yeah, you're right.
7 Q. That's all I have. Thank you so much,
8 Dr. Arrington.
9 MR. SPEAS: No questions.
10 MR. FARR: Dr. Arrington, the only issue
11 that is of slight concern to me is I haven't looked
12 at this, which I just got today, which is apparently
13 documents that were in your file.
14 MS. RIGGS: Data files.
15 MR. FARR: So there's a slight chance that
16 we would want to ask you more questions. If we do,
17 I think we could do it by telephone or something
18 like that.
19 THE WITNESS: I've done that before. It's
20 not a problem.
21 MR. FARR: And thank you very much for
22 coming, and I appreciate your very candid
23 testimony.
24 [SIGNATURE RESERVED]
25 [DEPOSITION CONCLUDED AT 2:57 P.M.]

55 (Pages 214 to 217)

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1 ACKNOWLEDGEMENT OF DEPONENT
 2
 3 I, THEODORE S. ARRINGTON, Ph.D., declare
 4 under the penalties of perjury under the State of
 5 North Carolina that I have read the foregoing 217
 6 pages, which contain a correct transcription of
 7 answers made by me to the questions therein recorded,
 8 with the exception(s) and/or addition(s) reflected on
 9 the correction sheet attached hereto, if any.
 10 Signed this the day of , 2012.
 11
 12
 13
 14 THEODORE S. ARRINGTON, Ph.D.
 15
 16 State of:
 17 County of:
 18 Subscribed and sworn to before me
 19 this day of , 2012.
 20
 21
 22
 23 Notary Public
 24 My commission expires:
 25

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1 STATE OF NORTH CAROLINA)
) CERTIFICATE
 2 COUNTY OF WAKE)
 3
 4 I, DENISE L. MYERS, Court Reporter and
 5 Notary Public, the officer before whom the foregoing
 6 proceeding was conducted, do hereby certify that the
 7 witness(es) whose testimony appears in the foregoing
 8 proceeding were duly sworn by me; that the testimony
 9 of said witness(es) were taken by me to the best of
 10 my ability and thereafter transcribed under my
 11 supervision; and that the foregoing pages, inclusive,
 12 constitute a true and accurate transcription of the
 13 testimony of the witness(es).
 14 I do further certify that I am neither
 15 counsel for, related to, nor employed by any of the
 16 parties to this action, and further, that I am not a
 17 relative or employee of any attorney or counsel
 18 employed by the parties thereof, nor financially or
 19 otherwise interested in the outcome of said action.
 20 This the 21st day of May 2012.
 21
 22
 23
 24 Denise L. Myers
 Expires September 14, 2013
 25

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1 ERRATA SHEET
 2 Case Name: NAACP vs. State or North Carolina, et al. and
 3 Margaret Dickson et al. vs. Robert Rucho, et al.
 4 Witness Name: Theodore S. Arrington, Ph.D.
 5 Deposition Date: Tuesday, May 15, 2012
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 7 Page/Line Reads Should Read
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 25 Signature Date

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