1   STATE OF NEW MEXICO
    COUNTY OF LEA
2   FIFTH JUDICIAL DISTRICT COURT

3

    REPUBLICAN PARTY OF NEW MEXICO,
4   et al.,

5   Plaintiffs,

6   v.   Case No. D-506-CV-2022-00041

7   MAGGIE TOULOUSE OLIVER,
    et al,
8
            Defendants.
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                    TRANSCRIPT OF PROCEEDINGS
13
                     September 28, 2023
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    HEARD BEFORE:
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            THE HONORABLE FRED VAN SOELEN
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    TRANSCRIBED BY:
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25   are phonetic.

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 1                    A P P E A R A N C E S


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 4      MR. MISHA TSEYTLIN
        MS. MOLLY DIRAGO

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 6   FOR DEFENDANT TOULOUSE OLIVER:


 7      MR. PETER AUH


 8

     FOR THE LEGISLATIVE DEFENDANTS:
 9

        MR. RICHARD OLSON
10      MS. SARAH SANCHEZ
        MR. LUCAS WILLIAMS

11      MS. ANN TRIPP

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I N D E X

1   TRANSCRIPT OF PROCEEDINGS

2   THE COURT: Go ahead and be seated. Thank

3   you.

4   Mr. Trende, you can go ahead and -- is

5   there anything we need to take care of beforehand?

6   Okay. Let's -- let me get.

7   MR. HARRISON: Yes, your Honor. We were

8   just hoping to get an update on the document

9   production and the production of witnesses.

10   THE COURT: Okay. All right. So we are

11   back on the record in Lea County Cause Number

12   CV-22-041.

13   As far as the documents, Ms. Sanchez?

14   MS. SANCHEZ: Yes, thank you, your Honor. I

15   have several updates for the Court and plaintiffs'

16   counsel.

17   One, just wanted to close to loop on the

18   declaration from Raul Burciaga about Leann Leith. We

19   did provide that to the Court and plaintiffs' counsel

20   yesterday afternoon. I think that clarifies that on

21   the legislative session on redistricting, she was an

22   employee of the legislature.

23   She was paid by the legislature. She

24   had a title, I think, that was -- find it. Her

25   position was leadership analyst, and she had an

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 1   office in the roundhouse during that time.  I think

 2   that that captures the information that the Court

 3   wanted some clarity on in terms of Ms. Leith's role.

 4   I think it clarifies that she was not sort of an

 5   outside advocate, outside of the process, but rather

 6   was an employee of the lecture in that position

 7   engaging in work on behalf of the legislature.

 8            THE COURT:  Mr. Harrison.

 9            MR. HARRISON:  Yes, your Honor.  So, of

10   course, we're not waiving our original position.

11            THE COURT:  Right.

12            MR. HARRISON:  But under the Court's order,

13   we accept that.  Now, that's still -- that puts her

14   within the privilege group, but we would still gets

15   her communications with outsiders, but just not with

16   Brian Egolf, et cetera.  Your Honor, insiders to the

17   privilege is our understanding of what that means.

18   But we accept -- we don't like it, but we accept it.

19            THE COURT:  Okay.  All right.  Ms. Sanchez.

20            MS. SANCHEZ:  And we agree with that same

21   analysis.  So we have been endeavoring to do, your

22   Honor, is burning the midnight oil to make sure we

23   get this done as quickly as we can.  We know the

24   Court's on a tight time frame, and we want to

25   accomplish that as much as we can.
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1   So we have -- let me just pull up thank

2   you right thing here. Sorry.

3   Okay. So -- and my understanding, based

4   on our discussions yesterday, is we're focusing on

5   the trial subpoenas, the document requests within

6   those trial subpoenas. I do have confirmation that

7   the -- those subpoenas have been served on three

8   legislators and Ms. Leith. Mr. -- Senator Cervantes

9   has not been served. He has been traveling out of

10   town or out of state for a week or two now. But the

11   others have been served.

12   The contours under the Court's ruling of

13   the legislative privilege, we've been looking at how

14   we can identify category -- documents that are

15   responsive within that category, sort of

16   communications with members of the public, using that

17   term the Court used generally, and trying to figure

18   out how we can do searches of those for these

19   individuals as quickly as possible to make production

20   as quickly as possible.

21   We have gathered, so looking at just the

22   year 2021, which was the redistricting year, the

23   total number of e-mails. So at the legislature,

24   there's a centralized IT person, department. And

25   they have administrative access. So without having

1   individual legislators have to actually go into their

2   e-mail accounts, which they may or may not know how

3   to do, the IT department can do that.

4   So the IT department has pulled the

5   e-mails for these individuals for 2021. That's over

6   32,000 e-mails total that would need to be searched.

7   What I am proposing to the Court, and,

8   again, this is keying off of the terms that are in

9   the plaintiffs' trial subpoenas, is that we use

10   really all or most of all of the search terms that

11   are included in those subpoenas. I'm just going to

12   get one in front of me for reference. And looking at

13   the legislative process, trying to define that, so we

14   have a date range that we don't have to search the

15   entire calendar year. Because I think that's -- it

16   would help to hone it down a bit.

17   If we use July 1st of 2021 as our

18   starting point, that's when this CRC really began its

19   work, sort of in that role with the interim

20   legislative committee having meetings, developing

21   plans, and then through the date of passage of SB-1,

22   which is on December 11th, 2021.

23   So we take that July one to December

24   11th, 2021, time frame, apply the search terms that

25   are contained in the plaintiffs' subpoena for, you

1   know, the -- I guess they call they'll bullion search

2   terms, but they're just word searches that you

3   conduct on the e-mails. And we would apply the same

4   thing to the -- to text messages, same date range,

5   word searches, to the extent you can search for text

6   by words.

7   The one problem that we're running into

8   as we've started applying these things overnight, and

9   one problem that we're running into is that some of

10   these are pretty overinclusive. Given the Court's

11   ruling on sort of which communications -- because

12   we're obviously going to be pulling up a lot

13   communications that are privileged and then having to

14   sort through that.

15   So what would help that process is if we

16   can identify individuals we're looking for

17   communications with. And those subpoena lists,

18   several of them that fall sort of into the Court's

19   category, and that would be the congresswoman from

20   CD-1 and CD-2, Stansbury and Leger Fernandez, their

21   respective staff people, I guess, Scott Forrester and

22   Kyra Ellis-Moore. And then there's an individual who

23   I believe is with Center for Civic Policy, Oriana

24   Sandoval is listed.

25   And so if we can use that list that's in

1   the subpoena as sort of the to/from list, then that

2   would be helpful.

3   And I'm just trying to be very

4   transparent and concrete with the Court about what

5   we're proposing to do. I don't -- I want to make

6   sure that we're doing everything we can to fulfill

7   the Court's order and to do it as quickly as we can

8   to get documents to plaintiffs' counsel before any

9   final submissions go to you, before you have to make

10 your decision.

11   THE COURT: Okay.

12   Mr. Harrison, as far as -- how do you

13 proposal that...

14   MR. HARRISON: Yes, your Honor. So the

15 time -- we had picked a couple of time frames, but we

16 would be willing to accept the start date of July

17 1st. I think one of -- we have three time frames,

18 but we'd be willing to forfeit the other two and use

19 our July 1st.

20   Now, we had our December 18th, which I

21 believe is the governor's signature date. And I

22 think the date quoted by Ms. Sanchez was the passage

23 of the legislature.

24   We'd ask for the 18, just because we

25 presented the Court with an e-mail from Senator

1   Cervantes that was immediately after passage.

2   THE COURT: December 18th, 2021?

3   MR. HARRISON: 2021, yes, your Honor. But

4   that -- we're close on that. And so, you know, if

5   there were -- unfortunately, without a sophisticated,

6   you know, like a third party, you know, IT vendor,

7   this could be done pretty easily, because you just

8   filter out -- you know, you list in the legislators

9   and you filter out anything that was exclusively

10   circulated to the legislators. Which here, I think,

11   probably the easiest way would be to eyeball it. Our

12   subpoenas, I do want to -- I don't know that they --

13   we do want to be avoid being ridiculous overbroad.

14   Now, what they are is they're law. And

15   if you think about it, to use an easy example, saying

16   give me docks that have the words X and Y and Z

17   captures a lot fewer documents that say give me all

18   the documents that capture X, right? But it's a

19   longer subpoena. And that's kind of what we have

20   with our subpoena.

21   We'd will willing at this point to

22   reconfigure and to give them something shorter. I

23   mean, we can keep it to a page easily and -- but I

24   don't know that it really is easier in the long run.

25   The only -- I guess actually, my biggest

1 concern from what was proposed, is we individually

2 served legislators as people, and we would like

3 (inaudible) we ask for any type -- you know, text

4 messages, Facebook. I don't necessarily every

5 legislative -- a legislator has four e-mail accounts,

6 to search all four. But they know and they have an

7 ethical obligation in any -- you know, any one a

8 subpoena in any case. They know what they use.

9 Like, they're -- I mean, I work with political

10 figures, and there are some people who always use

11 their campaign account.

12   Jay (inaudible), Jake for New Mexico

13 dot-com. There's some people who will use a personal

14 account set up for that purpose. You'll still run

15 into some older folks who use, like, the prodigy, you

16 know, legacy type accounts. I don't think I've ever

17 known anyone, I'm sure I can't think of anyone that I

18 transact my business with who uses their legislative

19 account probably because it is, as we learned in one

20 of the depositions of the IT people, they do conduct

21 IPRA searches of those periodically.

22   And so, you know, we would ask for each

23 legislator to go through. And, again, it doesn't

24 take forever. I ran one of these on mine. I may be

25 for tech savvy than the average legislator. And it

1   takes an hour. That didn't include -- that included

2   just doing the searches, not pulling the documents

3   over to a file. That wouldn't take that long either.

4   But, you know, we would ask that

5   legislators check their text messages, check the

6   e-mail accounts they know they use to conduct that

7   type of business. And, like I said, we can simply

8   this, and we'd certainly be willing to keep it to a

9   single date range to July 1st to December whatever,

10   whichever date the Court decides is the relevant

11   date, legislative passage or gubernatorial signature.

12   But we would ask for each legislator to make a

13   decision based on what they know they use. Right?

14   And for some that will be -- I'm totally

15   fine if, you know, a legislator who knows that they

16   don't have a text, you know, about politics, doesn't

17   check their text. But a legislator who does, should

18   check their texts and produce any text messages that

19   are responsive and non-privileged on the Court's

20   ruling.

21   THE COURT: All right. Did I hear earlier

22   that they -- you've already had them run a search and

23   there's thousands?

24   MS. SANCHEZ: So we're -- we've already

25   pulled the sort of universe of potential e-mails on

1   the legislative e-mails account, and there are --

2   THE COURT: Are those just government

3   accounts?

4   MS. SANCHEZ: Just in the legislative

5   account. That's the only one we have a centralized

6   IT for.

7   THE COURT: Okay.

8   MS. SANCHEZ: And that is the universe is

9   tens of thousands. But I'm confident that applying

10 search terms will narrow that down. Really, we're

11 just kind of in a race against the clock here, your

12 Honor. And really, the more we ask people to do,

13 especially if we're asking legislators to search,

14 some of them, I don't know if it's a gmail or an AOL,

15 or whatever people may have, searching those can be

16 pretty cumbersome and difficult.

17   I don't want to represent that there's

18 been a thorough search be of an e-mail account by an

19 individual who really is not familiar with how to

20 search that. You know, if -- if they can do it,

21 fine. But -- but I'm -- I want to propose something

22 where we are getting -- where we're making this

23 production, you know, no later than Tuesday, and not

24 an as a tight -- that's going to be tight already. I

25 mean, I have people already starting to apply terms.

1   I wanted to get a start overnight, but it's going to

2   be tight already.

3   I do agree. I think we should have

4   folks search their text messages. I'm not objecting

5   to that. I think that the text message searchings is

6   really only feasible if you can -- because you can't

7   do sort of one unified search of all our text

8   messages, at least not very capably when you're

9   searching for things two years ago back.

10   THE COURT: Mm-hmm.

11   MS. SANCHEZ: So if we can narrow that at

12   least to that sort of list of sender and recipients

13   that are contained in the trial subpoena, I think

14   that would make it easier for people to search text

15   messages and try to identify if they have any

16   responsive ones.

17   THE COURT: Okay. And I -- I don't know

18   what the subpoena is directed towards. Is it two

19   certain recipients?

20   MR. HARRISON: So -- and to be clear, are we

21   talking about the six -- the six trial subpoena...

22   MS. SANCHEZ: I think that's certainly what

23   I'm working off of. My understanding is the ship has

24   sort of sailed for the 80 discovery subpoenas. But

25   we're focusing on to be trial subpoenas.

1   For example, in the text message

2   section, I'm looking at one of the legislator

3   subpoenas. In the text message section, it asks for

4   text messages send or received by you, it says,

5   anytime in 2021. But if we're limiting it -- between

6   you and one or more of the following individuals.

7   And then I'll just read the ones that don't fall into

8   the privilege category: Kyra Ellis-Moore, Scott

9   Forrester, Teresa Leger Fernandez and Oriana Sandoval

10   and Melanie Stansbury.

11   So that -- if the -- I think if we -- if

12   we use that list for searching the text messages, I

13   mean, there -- the request goes on to be broader than

14   that. I mean, there's even a request for all text

15   messages during the period of the legislative session

16   that they sent to anybody who is not themselves or

17   immediate family member. I mean, we can't do that.

18   But if we limit to the individuals that

19   are being requested for, I actually think that that's

20   doable and that we can search text messages and

21   produce those.

22   THE COURT: Mr. Harrison.

23   MR. HARRISON: To be clear, the broadest in

24   scope was limited in time to a four-day period, what

25   we thought was the four most likely.

1   I mean, we did craft these with --

2   contemplating the fact that -- like, there are no

3   sophisticated search terms that we've asked to

4   conduct on text messages. We did things like, within

5   this time frame, give us your texts with so and so.

6   And the expectation was, if it happened

7   to be the case that /STPHEUB, you know, texts with,

8   you know, hey, I text with this person all the time,

9   I've got a thousand text messages, okay, sorry, "Can

10 you go in there" -- on an iPhone, for example, you

11 can run a simple word search, and, "Can you give us

12 everything that says district? Or, if you'd prefer,

13 just do a qualitative review and send up everything

14 that related to redistricting. Is that a manageable

15 number of texts?"

16   And that would normally be the type of

17 thing that would get talked about and we're doing

18 with Ms. Ellis-Moore. I expect to have her issues

19 resolved.

20   And, again, I want to both address the

21 situation I know we're at now, which is what's

22 important --

23   THE COURT: Mm-hmm.

24   MR. HARRISON: -- but to also, you know,

25 memorialize my complaint that we served these back in

1 July. The normal expectation is, and, you know,

2 there's case law on this, you collect the documents

3 and you call it a privilege log, call it what Rule 26

4 calls it, which is, you know, a -- shall describe the

5 nature of the documents, communications of things not

6 produced and disclosed in a manner without revealing

7 itself privilege or protected will unable other

8 parties to assess the applicant of the privilege or

9 protection.

10   That's from the rules of civil

11 procedure. You know, that process would have allowed

12 this to go smoothly. And there was more than enough

13 time. We would contend that even given that they had

14 a colorable privilege claim, the reality is that,

15 yeah, having to do everything now, starting on day

16 two of a three-day trial is going to be tough. And

17 we want to -- obviously, we (inaudible) work with the

18 situation that we're at, but not let it escape the

19 Court's notice because we're -- you know, anything is

20 impossible when you wait late enough before the

21 deadline.

22   THE COURT: Okay. And all of that is clear

23 and it's on the record, that you've raised that.

24   As far as practicality, I do have a

25 question about this. What -- you know, I think you

1   were saying by Tuesday you're hoping to have all this

2   done? What is the point of get all this after the

3   trial's over.

4   MR. TSEYTLIN: Well, your Honor, I think

5   with the reality -- with all candor, they should be

6   able to search all their personal e-mail accounts and

7   text messages and introduce everything by tomorrow

8   morning. It's not that hard over a short period of

9   time to search the accounts that we know that we use.

10   This is frankly, an attempt to run out

11 the clock on something that should have been done

12 since July. But I'm very cost you tell five people,

13 "Everything you sent about redistricting in a couple

14 month period, give that, court order, give that by

15 tomorrow morning," we'll get that information.

16   You know, if they have other things they

17 want to produce on a rolling basis thereafter and we

18 can supplement to the Court, that's fine. But I

19 think that there should be an order that by tomorrow

20 morning, at least for the trial deponents, they got

21 to search the personal text messages, e-mail

22 addresses, WhatsApp, Facebook that they use and

23 everything about redistricting to the public as

24 defined in the court, is turned to us by 8:00 a.m.

25 tomorrow, so that when these folks come in, we can --

1 we can ask them things like, "Were you sending

2 messages to other people about this?"

3   Obviously we can't inquire about the

4 contents of the messages they turn over, but we can

5 say, "Hey, you turned over this stuff to us," you

6 know, this person and that person texted this, "Did

7 you text anybody else?" Things of that sort.

8   So that, I think, is imminently

9 manageable. I think it's entirely not credible to

10 say that five people can't look at their commonly

11 used medium of communications in a 24-hour period in

12 order to comply with a court order.

13   THE COURT: All right. As far as the --

14 and, again, I don't know what the subpoena says. I

15 know it's broad. But you're saying that you're

16 willing to narrow it down to certain people they're

17 communicating with?

18   MR. HARRISON: Yes, your Honor. Well, I

19 mean --

20   THE COURT: Well, who are those people?

21 Tell me who they are.

22   MR. HARRISON: I think you're -- your Honor

23 said Lisa Curtis couldn't be asked. So Kyra

24 Ellis-Moore, Scott Forrester. Dominic Gabello is in

25 another gray area. Ms. Leger Fernandez, Oriana

1   Sandoval, and Melanie Stansbury. But -- go ahead.

2   So what my colleague pointed out, so

3   that is a way of doing, quote, unquote, search terms,

4   right? And so when we send it out to a large number

5   of people, the general rule is, if you've got a ton

6   of e-mails, if you do have 10,000 e-mails that are

7   potentially responsible on a given topic, search

8   terms are easier to use than a qualitative

9   description of, "Hey, give me everything that relates

10   to redistricting and mentions in any way political

11   composition." Right? If you have a small number, if

12   you're sitting there thinking, oh, yeah, I texted

13   with two people about this and I remember it, then

14   it's way easier to get a qualitative description like

15   the one I just gave, quote, any communications that

16   that relate to redistrict and mention in any way, you

17   know, the partisan composition of the districts.

18   We would take -- if the later is easier,

19   then we'd take it. Now, my expectation, and you send

20   out 80 subpoenas, is you're going to set at least

21   some people who say, "That's impractical for what I

22   have on my computer and my phone because," whatever,

23   "I was tasked with doing the map drawing."

24   So search terms for some people can be

25   easier, but if it is more manageable for the

1   legislators to do a qualitative search, we would be

2   willing to accept, like I said -- I think probably

3   what I just said, e-mails, text messages, whatever

4   form of, medium of communication you use within the

5   time frame of July 1st to December 18th of December

6   10th, depending on what the Court prefers, that

7   relate to the subject of redistricting and mention in

8   any way the political or election outcome likely mood

9   effect of the new district.

10   And I can clean up that language, but,

11   you know, that mention D v. R percentages or named

12   candidate percentages in connection with the

13   communication. So, I mean, we could probably trade

14   the admittedly far longer subpoenas that -- although,

15   again, I will push back to say they're overbroad,

16   they're just kind of are long.

17   We'd be willing to trade all that for

18   that kind of qualitative, you know, three-prong test.

19   The limited time frame and at -- you know, that you

20   search whatever accounts you use and then search --

21   do just a qualitative search based on a combination

22   of your memory and who you know you talked to and

23   eyeballing the communications and then produce those.

24   And, again, I think if it's conceptualized, the way

25   that we served these subpoenas, which is on

    1   individual legislators, it just is not that

    2   burdensome for Mimi Stewart or Joseph Cervantes to

    3   sit down and take an hour or two doing this.

    4   You know, it's unfortunate, they're

    5   nonparties. But, your Honor, there are burdens of

    6   litigation, and it just can't be the case that -- you

    7   know, we were diligent in serving -- in fact, most of

    8   these folks got -- the trial folks have gotten three

    9   subpoenas requesting the same documents. They got a

   10   document subpoena with everybody, a deposition

   11   subpoena for a deposition they didn't sit for, that

   12   reiterated the same document request, and then a

   13   trial subpoena for a trial they haven't showed up to

   14   that reiterated the exact same document request.

   15   So it can't be the case, and we move to

   16   compel, we've done all the right things, not just for

   17   a redistricting trial. No trial works, right, if the

   18   plaintiff can -- can do all the right things to

   19   compel evidence, not get any evidence, and then be

   20   penalized for not having any evidence?

   21   THE COURT: Right. So the people that these

   22   subpoenas are going to, you -- that's who you're

   23   speaking for right now?

   24   MS. SANCHEZ: Yes. I am speaking for

   25   Senator Wirth, Senator Stewart, former Speaker Egolf,

1   and Ms. Leith. And Senator Cervantes has not been

2   served with a subpoena. So --

3   THE COURT: Didn't you say he was available?

4   MS. SANCHEZ: No. He's been traveling.

5   He's the one that's been traveling. He hasn't been

6   served with a subpoena.

7   THE COURT: Okay.

8   MS. SANCHEZ: I have a number of responses,

9   and I don't think it's worth rehashing the history of

10   how we got here. I am concerned that plaintiffs are

11   really raising criticisms of the Court and its

12   handling of these things, and I think that's not

13   appropriate.

14   But I -- I'm reiterating what the Court

15   made clear yesterday, which is given the Court's

16   ruling about the scope of the privilege and that

17   these individuals being considered within the

18   privilege are not compelled to be requested or asked

19   about these communications, what we're talking about

20   here is document production. We are not talking

21   about bringing people in to testify about their

22   communications. We are talking about contemporaneous

23   statements to the plaintiffs, which the Court said

24   those statements have to speak for themselves. And

25   we need clearly structured search terms on parameters

1   to comply with, so that I can make sure that we are

2   accurately complying with what the Court wants us to

3   do.

4   It sounds to me as if plaintiffs'

5   counsel aren't sure what they want. And at this late

6   juncture, it's very hard to tell people, "Well, just

7   use your memory and try to come up with what you

8   think is relevant." I don't feel comfortable as an

9   attorney giving people that instruction. So I think

10   we need a list of clear search terms.

11   And the other piece of this, your Honor,

12   and what makes it frankly impossible to produce

13   anything tomorrow, is that we have to review the

14   documents before they're produced. We have to review

15   for attorney-client privilege, we have to review them

16   for responsiveness to this search. I mean, we can

17   have people do a first cut, but they're not going to

18   exactly understand what the contours are of what's

19   responsive or what's not, or what's privileged and

20   what's not, you know, if there's an e-mail with a

21   staff member that slips through.

22   So we have to conduct a review. I'm

23   committed -- I'm spend my weekend doing this. If I

24   can get it out first thing Monday, I'll get it out

25   first thing Monday. But if the plaintiffs find that

1 there's something relevant in this production, they

2 still have time to make a something else, a

3 supplemental something else to the Court.

4   I think the Court was indicating that it

5 would be open to receiving some updated findings and

6 conclusions after the trial. If the plaintiffs find

7 something in here that they think is useful for their

8 case, they could submit it to the Court then in time

9 for the Court's final decision.

10   But we are talking about document

11 production under the trial subpoenas, and I'm trying

12 to --

13   THE COURT: So what terms would you all

14 propose for search?

15   MS. SANCHEZ: I would propose, and this is

16 taken from the subpoena, and I -- it's going to sound

17 a little funny, because they -- there's different --

18 search terms are sensitive to punctuation and

19 capitalization and spaces and all that sort of thing.

20   So I have -- well, we couldn't -- would

21 the Court like a copy of one of these trial subpoenas

22 to look at?

23   THE COURT: No.

24   MS. SANCHEZ: Okay. I get it. That's fine.

25   So here's the list that I started

1   putting together. S.B.-1 with periods after S and B.

2   SB1 with no periods and no spaces. No SB-1. We

3   should probably at SB space 1, Concept H, Concept E,

4   CCP map, People's map, Chaves map, CD-2, CD 2 without

5   a dash. We should probably add CD separation 2. The

6   word congressional, the word gerrymander, the name

7   Yvette and the name Harrell.

8   That's the list that I have so far. If

9   plaintiffs want to add some to that list, that's

10   fine. But I think we -- the more concrete we can be

11   about what we're searching for, the better.

12   THE COURT: Do you have anything you'd like

13   to at to that list?

14   MR. HARRISON: DPI.

15   You have something?

16   Sanderoff.

17   Is that okay?

18   I think -- I think that would be

19   acceptable, your Honor.

20   THE COURT: All right. So with those two

21   added terms, DPI and Sanderoff?

22   MS. SANCHEZ: I'm happy to include the

23   search term Sanderoff, the -- the under the Court's

24   ruling, Mr. Sanderoff isn't himself as a -- /SPHAOUPB

25   communicating with as a consultant.

1   THE COURT: Why Sanderoff.

2   MR. TSEYTLIN: Your Honor, we're obviously,

3   given their delay here, we're in a situation that the

4   best thing we have is those texts that we talked

5   about from Senator Stewart, and she mentions

6   Sanderoff.

7   THE COURT: Yeah.

8   MR. TSEYTLIN: So we think intuitively there

9   may be other folks that were discussing (inaudible)

10   matter. We're also saying, hey, Sanderoff said this

11   is -- we were going to DPI at -- up to this, or

12   according to Sanderoff, we're going to end up

13   capturing three districts in a typical year. That's

14   the kind of thing.

15   THE COURT: Actually, I think that if

16   they're going to talk about Sanderoff, they're going

17   to mention what else they're talking about, so I

18   think any other terms would be sufficient.

19   So to avoid bringing in things that are

20   privileged, we'll leave out Sanderoff.

21   So can you do it with the added term

22   DPI?

23   MS. SANCHEZ: Yes, we certainly can. And

24   then what I would ask is to -- I don't know that we

25   need to do this. Well, it would probably be helpful

1   to do this for the e-mail, as well as the text

2   message search, is then to use that list of senators

3   and recipients that I think -- I think we're in

4   agreement on who they are. Ms. Ellis-Moore,

5   Mr. Forrester, Ms. Leger Fernandez, Ms. Stansbury,

6   and Ms. Sandoval.

7   THE COURT: Who is the other person you said

8   there's a question about?

9   MR. HARRISON: There were others, your

10 Honor, but -- but again that was one of -- if it --

11 if they're just going to run the search terms that we

12 just ran, we ask them to run it on everybody and then

13 exclude those communications that are privileged

14 under the Court's ruling.

15   THE COURT: Just everybody?

16   MR. HARRISON: Just all is their e-mails

17 which makes the actual searches simpler, because

18 you're just putting in a search term parameters and a

19 time -- you know, within a time frame, as opposed to

20 adding other search parameter.

21   But the reality is, we don't know who --

22 I mean, some of these folks -- again, you know, you

23 can work buzz into admissible evidence. And some of

24 these folks we learned about, but there's no reason

25 that the relevance or lack of privilege is limited to

1   just a brief -- you know, a list of folks. The

2   reality is is there could be some, you know, DNC

3   person in D.C. that, your Honor, Peter Wirth Mimi

4   Stewart talked to whose name I don't know.

5   THE COURT: Okay. But I thought earlier you

6   said you were willing to limit it to those names.

7   MR. HARRISON: So that was within the

8   context, your Honor. I don't -- I'm sorry. So what

9   I -- I've got -- like, I believe this is Peter

10   Wirth's subpoena here, and text messages, we asked

11   for three categories. We asked for virtually all

12   nonimmediate family member text messages from that

13   four-day period. And secondly, we asked for

14   November 1st to December 7th, which is the

15   pre-legislative period; post CRC pre-legislature

16   period; texts with certain individuals; and -- and

17   then anytime in 2021, texts with a smaller number of

18   individuals.

19   Again, we did, like, a belt and

20   suspenders type of approach. We would ask if they're

21   running -- if we're talking about e-mail searches,

22   which I assume we are, which that's the most --

23   typically how you run search terms, then we would ask

24   how you produce -- they run the search terms on

25   everybody on obviously withhold those communications

1   that went exclusively to other members of the

2   privilege group, i.e. the legislature.

3   THE COURT: I may be wrong, but wouldn't

4   that increase the time that it will take to get this

5   done. If we limited it to those names, I think the

6   search would go a lot quicker.

7   MR. HARRISON: I think we'd be -- we'd be

8   more apt to agree to limit it to -- in time frame to

9   July 1st at the beginning of the CRC process, which

10   would actually probably capture a lot of, like, jilt

11   advocacy of the -- toward the CRC. We'd willing to

12   go to the end of the process, which is like November.

13   Which then now is very narrow. I mean, that -- that

14   is now like a -- well, I won't try to do math on the

15   fly, but from November first to the end of the

16   legislature is, you know, a less than two-month

17   period.

18   THE COURT: So they finished their process

19   November 20ed -- November 1st?

20   MR. HARRISON: I think the report was issued

21   November 2nd or some -- I don't know. Yeah, it's

22   basically November 1st.

23   THE COURT: Okay. All right.

24   Ms. Sanchez.

25   MS. SANCHEZ: So a narrower time frame

1 definitely helps, your Honor. That should help it go

2 more quickly. Although albeit, there's probably a

3 higher volume of communications during that time

4 ramping up to the session. But it still helps to

5 have a shorter time period.

6   I think that we can -- because applying

7 the word searches to e-mail is fairly

8 straightforward, we can probably do that without

9 limiting that to the -- to just those --

10   THE COURT: All right.

11   MS. SANCHEZ: -- senator recipients. But I

12 think for the text messages, in terms of searching

13 for them, if we can -- if we can limit it to those

14 five individuals for the text messages for that

15 period, that's going to allow us to do that much more

16 quickly. I'm not even sure from a technical

17 standpoint how to assist people with that, but we'll

18 figure it out.

19   THE COURT: Because you think they're going

20 to be just a hand search or scrolling through?

21   MS. SANCHEZ: I mean, we're talking about

22 messages that are going -- I mean, two years -- two

23 years back. I know that there's different

24 capabilities, whether you have an iPhone or an

25 android phone, and I'm not sure what these people

 1 have.

 2   But -- you know, so I just -- I really

 3 don't know. I would be guessing if I told the Court

 4 what the search capabilities are.

 5   THE COURT: Right.

 6   MS. SANCHEZ: But I know that when I look at

 7 my text messages, I can see -- I can sort of search

 8 be who they're to or from much more quickly that and

 9 I can find a text from two years ago with a word in

10 it. So that's why I'm suggesting for the text

11 messages, that we use this sender/recipient list.

12 And again, it's the same names that are in the

13 subpoena.

14   I think the individual that Mr. Harrison

15 mentioned that he said was a gray area, I don't think

16 is a gray area at all. It's Dominic Gabello, who was

17 accounting on behalf of the governor. And my

18 understanding of the Court's decision letter on

19 privilege is that the governor and her staff are

20 within the scope of the legislative privilege,

21 they're part of the legislative process. Because

22 obviously the governor has to veto or sign off on any

23 legislation ultimately. So I don't think that's a

24 gray area and he shouldn't be included.

25   THE COURT: What about Mr. -- is it Gabello?

1   MR. HARRISON: It is, your Honor. So he --

2   he is the governor's person. Well, so he doesn't

3   have any role at all I think anymore in the formal

4   role.

5   THE COURT: But at the time, what was he

6   doing.

7   MR. HARRISON: But he is another one that --

8   again, I actually -- I've always thought that he was

9   a -- like a political -- someone paid by the Lujan

10   Grisham campaign arm. But, again, I'd accept the

11   same type of -- you know, I mean, they got the thing

12   from Burciaga within, your Honor, 30 minutes. And if

13   somebody -- if somebody could talk to the state

14   personnel office, or even Holly Agjanian, I could

15   take her representation that he was on the payroll of

16   the government.

17   THE COURT: Okay. All right.

18   Can you do that?

19   MS. SANCHEZ: I can try, your Honor. I know

20   that Mr. Gabello, he was represented by counsel and

21   he filed some motions in this case. I don't have

22   them in front of me. There maybe information in

23   there. But that's certainly my understanding, is

24   that any involvement he would have had occurring that

25   redistricting session would have been on behalf of

1 the governor. He's very -- he was very much in a

2 capacity of an advisor to her.

3   Again, I don't think it matters who

4 signs his paycheck or if he's getting a paycheck.

5 But that was his function and that was his purpose

6 for being there.

7   MR. HARRISON: And she actually reminded me.

8 He does -- he has Al Park. I got a (inaudible)

9 impression from Al Park. But I'll talk to him and

10 I'll accept his representation of what --

11   THE COURT: Okay.

12   MR. HARRISON: -- Mr. Gabello's rule.

13   THE COURT: All right.

14   MR. HARRISON: But I guess we would

15 reiterate. It sounds like we have an agreement, I

16 think, on the e-mail side, which is the narrow time

17 frame from November 1st to, we say, December 18th

18 of -- and then running the search terms that we -- we

19 agreed to for Ms. Sanchez about DPI.

20   And on the text side, however, we could

21 do a similar time narrowing. I guess would the

22 legislative defendants be -- think it would be

23 practical to do a similar time narrowing of, you

24 know, November 1st to enactment of legislation, and

25 just, again, do a qualitative all text messages

         1   relating to redistricting that refer in any way to

         2   the expected or projected partisan composition or

         3   likely electoral results of the new districts?

         4   The reality, I mean, you're going to

         5   know, okay, there would have been -- yeah, maybe in

         6   time period you have a thousand texts with your wife,

         7   but you don't need to search those. I have --

         8   THE COURT: I'm guessing that's probably a

         9   thousand text messages back and forth between

        10   legislators and their staff. And so you want them to

        11   search through all of that?

        12   MR. HARRISON: All right. And that's where

        13   I think it actually easier with a text. Because most

        14   texts are one-to-one things. So you don't even need

        15   to look -- if you're Brian Egolf, you don't need to

        16   look at your texts with Leann Leith or with Mimi

        17   Stewart or whomever. But the folks outside of the

        18   privilege group.

        19   Again, he likely -- if there's someone

        20   at DNC in Washington whose name I don't know, you

        21   know, Mr. Egolf would know and would know to go and

        22   look at it.

        23   THE COURT: Technologically, are you saying

        24   like a computer type searching, or are you saying

        25   someone scrolling through their texts?

1   MR. HARRISON: I'll be talking about the

2   latter, which, again, is more practical and easier

3   when it's a manageable number of things. And as

4   we've narrowed this down both by time and by the fact

5   that now, for example, Mr. Egolf knows he doesn't

6   have to look at Leann Leith, he doesn't have to look

7   at Peter Wirth, et cetera, and also knows as a

8   practical matter, you know, the folks who I would

9   have talked to about this are Ms. So-and-so at the

10   DNC in Washington, and, you know, a prominent

11   demographer out of California that we're asked to run

12   all of -- I mean, he -- had reality is he knows. And

13   I guess my hope is that if there's relevant -- I

14   mean, as a citizen, my hope is that they're not

15   talking to 50 different people about, you know, a

16   gerrymander, they're talking to a relatively small

17   number folks whose opinions they value about this.

18   Now, if that's not the case, if it is,

19   in fact, true that within that time frame Brian Egolf

20   has 1,000 different text messages, you know, with

21   folks outside of to privilege group about

22   redistricting that reference, you know, the partisan

23   or electoral impact of the new districts, then they

24   can come back and we can fashion some search terms

25   for them to use. But I really doubt that's the case

1   now that we're talking about six people.

2   And on that front, I did want to say,

3   Senator Cervantes has been served twice. He was

4   served with a document subpoena, he was served with a

5   deposition subpoena. He went out of town before

6   trial, but they also, I believe, moved to quash on

7   his behalf, so --

8   THE COURT: All right.

9   MR. HARRISON: -- we would ask that he be

10 included in this.

11   THE COURT: Okay. One last thing,

12 Ms. Sanchez. As far as December 18th being the

13 signing of legislation, I think that's probably --

14 any comment on that?

15   MS. SANCHEZ: I don't know that that's a big

16 deal, your Honor. I think technically speaking and

17 then looking at the Court's decision, I think the

18 Court identified the ends of the legislative process

19 as the passage of the bill. That's the ends of the

20 legislature's work on it. The bill has passed and

21 then, frankly, statements made by legislators of the

22 passage of the bill really are kind of immaterial to

23 what we're talking about here.

24   But if the Court wants to go to December

25 17th or 18th or whatever the date is, we can include

1 that. But I think it's --

2   THE COURT: I don't think it'll put too much

3 extra burden on there to go to December 18. So we're

4 looking at November 1st to December 18th,

5 communications by e-mail, texting, any other form of

6 messaging that mention the agreed-upon terms. But

7 not with limiting to these six people named.

8   MR. HARRISON: That's correct, your Honor.

9   MS. SANCHEZ: Your Honor, could I speak to

10 the text message issue just one more time.

11   THE COURT: Yeah.

12   MS. SANCHEZ: I'll try to keep this brief,

13 but searching for text messages is qualitatively

14 different than searching e-mails. When I look at my

15 texts, they're not organized by year or by month or

16 by date. They're organized by sender and recipients.

17   And if it's somebody that I'm texting

18 with now, today, that I also texted with two years

19 ago, that could be the same text string that I've got

20 to go into and serve back two years ago to identify

21 whether there's anything responsive in that and then

22 take screenshots of it, which is laborious, but

23 really the only way to capture text messages.

24   So when we get these after people have

25 searched, in the hospital only are they going to have

1   to go through manually through their phone and try to

2   find these things, but we're also going to be getting

3   non -- nonelectronic just basically screenshot

4   pictures of text messages to review before

5   production.

6   And to try to make this happen in this

7   short of a period of time, if we don't limit the text

8   searches somehow, I don't know how to instruct people

9   to go through their phone through -- through text

10 strings that go back two years ago with different

11 people unless there's a clearer definition of who are

12 we looking for texts with. And frankly, these

13 subpoenas already identify the individuals and I

14 think we should just use the same names. And if we

15 start expanding this into any text with anybody

16 during this time frame, the search for it is going to

17 be that much more time consuming.

18   And I want to make sure that we're

19 fulfilling the Court's instructions and get the most

20 we can as quick as we can.

21   MR. TSEYTLIN: Your Honor, almost everyone

22 uses either iPhones or androids. I just searched --

23 you know, I'm a Detroit Lions fan. They're playing

24 today and they're going to win. I just searched

25 Lions on my iPhone in the texting. Every text I sent

1   about the Lions popped up. You press on it, it's

2   right on the screen. It's easy as pie. I don't have

3   an android, but I just did it a search. Apparently,

4   android works the same way. If someone has got some

5   windows phone or some old flippy Nokia thing, maybe

6   that will be more challenging. But it seems to me

7   that this is eminently doable and quite easy,

8   especially when you're just having those search

9   terms. You just put -- put DPI, it'll just pop right

10   up and all the text messages that you sends. Works

11   very easy.

12   THE COURT: All right. I don't -- I don't

13   know how to search for -- I've never once searched

14   through my text messages, so -- I mean, do you know

15   if that's something that your people can do? I

16   mean...

17   MS. SANCHEZ: I don't. I truly don't know

18   if it's something I can do. And that's why I want to

19   make this as doable. I don't have a basis to

20   disagree with counsel's representations, but I have

21   no experience with doing word searches on text

22   messages, particularly -- and I have no idea how

23   android phones work.

24   THE COURT: So they would have to search it,

25   then go through and look at -- I mean, I mean

1   guessing a legislator speaks to -- you said you think

2   it's a small group of people, I think it's a large

3   group of people, about these things, that are going

4   to be other legislators or legislative staff. I

5   think that's going to be 90 percent of what is

6   brought up when you run a search for those things.

7   MR. TSEYTLIN: I mean, look, I can just -- I

8   know it's unusual, but I can show your Honor and

9   counsel on an iPhone how easy it is.

10   THE COURT: Okay. But -- I'm going to take

11 your word for it, that it's easy. But then they'll

12 have to go through each one of those and decide which

13 once are protected by privilege, which ones aren't.

14   MR. TSEYTLIN: So --

15   MR. HARRISON: So here's what I would

16 expect, if it were me and who I imagine I would talk

17 to. I agree that I would talk to a large number of

18 my colleagues and staff in the legislature. So you

19 take out an iPhone. Obviously it's got your -- the

20 names of who you texted. You don't even go to those

21 folks.

22   THE COURT: Well, that's you searching just

23 all of your text messages?

24   MR. TSEYTLIN: Yes. So there's a search bar

25 on top, your Honor. You type in DPI.

 1   THE COURT: Right.

 2   MR. TSEYTLIN: It will pop up literally and

 3   it will say, like --

 4   THE COURT: Every text you ever sent with

 5   that.

 6   MR. TSEYTLIN: -- Jane Smith, blah, blah,

 7   blah, and so obviously you know the ones that are

 8   legislators, you just take those out. And then

 9   you've got someone at the -- you know, at the CCP.

10   Oh, they're not a staffer, so you click on that,

11   screenshot, the screenshot, those two buttons on the

12   front, screenshot, turn it over to counsel.

13   It would take someone who knows what

14   they're doing 10 minutes. Someone that doesn't know

15   what they're doing, maybe an hour.

16   MR. HARRISON: And there's an alternative,

17   which is if we just give them a topic, which is the

18   traditional way to propound RFPs and subpoenas to get

19   what you're going to propose that are about

20   redistricting and mention partisanship or likely

21   electoral results.

22   THE COURT: Mm-hmm.

23   MR. HARRISON: Okay. I'm bringing it up.

24   Okay. I talked to a ton of people, they're mostly

25   legislators and my staff. I did talk to these four

1   people. Okay. I scroll down to those four people's

2   names, I scroll up to the time period, which is a

3   manageable time period, and I go through and okay,

4   yeah, for these people, within that month and a half,

5   okay, I've got, you know, 40 texts and 46 of them do

6   relate to --

7   THE COURT: Okay. So let me ask you about

8   that. You're -- because I was thinking the same

9   thing, that most of these people will probably know

10   who they talked to outside of the privileged people.

11   MR. HARRISON: Correct.

12   THE COURT: So why don't we just ask them,

13   basically, on their honor, you know, to identify

14   those and just get those instead of running it

15   through everything? I mean, that's, I think, a lot

16   easier than running these search terms that just look

17   for people they know are outside the privilege.

18   MR. HARRISON: And I -- for text messages, I

19   personally agree. I think that makes sense.

20   Because, again, you're effectively going to your list

21   of names and --

22   THE COURT: Okay.

23   MR. HARRISON: -- going to what I have to

24   imagine is a short /TPUB of folks who recollects are

25   not legislators or staff, and who you know you would

1   have talked to about -- candidly, about the partisan

2   equity of redistricting.

3   THE COURT: Right.

4   MR. HARRISON: And I've got to think that

5   even for the important legislators, it's a single

6   digit number of folks, you scope up to that time

7   periods, you give us the stuff within that time

8   period.

9   THE COURT: I tend to agree with that. I

10   think that the -- for text messaging, you can

11   instruct them to -- I mean, you explain to them who

12   the privilege -- I think that they can grasp that the

13   privilege is legislators, legislative staff,

14   consultants who are in a formal relationship with a

15   legislature, people who are in legislative agencies,

16   like the CRC, things of that nature. You can -- they

17   will understand that. And I think that they will

18   probably know who they spoke outside of is that group

19   and then be responsive to that.

20   MS. SANCHEZ: Within that time frame.

21   THE COURT: Within the time frame of

22   November 1st to December 18th of 2021. And that's

23   for text messages. I think the search would be

24   easier for the e-mails.

25   MR. TSEYTLIN: Just to clarify, including

 1   personal e-mails, your Honor.

 2   THE COURT: Any e-mails sent, not just

 3   government account.

 4   MS. SANCHEZ: Yeah, I have concerns about

 5   that happening in the short time frame that we've

 6   got.

 7   THE COURT: Yeah.

 8   MS. SANCHEZ: But we will --

 9   THE COURT: No, I understand. What I'd ask

10   you to do is whoever you're going to have working on

11   this, next time we take a break or just get a report

12   from them about when they think that realistically,

13   with their best efforts, they can get this done. And

14   let me know. Okay.

15   MS. SANCHEZ: I will do that, your Honor.

16   One quick clarification. Plaintiffs' counsel keeps

17   referencing to the term redistricting. Obviously

18   during that session and the lead-up to it, there was

19   a lot of discussion about house redistricting, senate

20   redistricting PRC redistricting, all that. I

21   think --

22   THE COURT: I think the --

23   MS. SANCHEZ: And I assume we're focusing on

24   congressional redistricting.

25   THE COURT: Right. In SB-1, and I thought

1 that that was a good thing to look at, you know, for

2 a search terms, and all the iterations, you came up

3 with.

4   MS. SANCHEZ: Okay. Thank you.

5   MR. HARRISON: And we would agree for texts,

6 if they can look at and determine that the texts is

7 about exclusively house or senate redistricting, they

8 don't have to produce it.

9   THE COURT: Right, right.

10   MR. HARRISON: But we don't think it has to

11 "Congress." It's clear they're talking about

12 three -- you know.

13   THE COURT: Rights.

14   MR. HARRISON: And if they're talking about

15 Congress, if they're talking about something, one of

16 the other ones, exclusively, then they can withhold

17 it.

18   MS. SANCHEZ: Thank you, your Honor.

19   THE COURT: Okay? All right. Anything else

20 before we bring Mr. Trende back?

21   MR. HARRISON: Not from the plaintiffs, your

22 Honor.

23   THE COURT: Mr. Trende, do you want to come

24 up here.

25   UNIDENTIFIED MALE: Your Honor, we've been

1   going now for almost two and a half hours. I'm going

2   to need to set up some technology here. And can we

3   take a break?

4   THE COURT: Sure. All right. We'll take

5   10 minutes and then we'll start with Mr. Trende.

6   (Recess held from 9:38 a.m.

7   to 9:52 a.m.)

8   THE COURT: Back on the record.

9   Mr. Trende, you are still under oath.

10 And Mr. Williams.

11   MR. WILLIAMS: Yes, your Honor. Thank you

12 very much.

13   CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15   Q. Dr. Trende, you've testified under oath,

16 Mr. Trende -- let's just say we'll call you

17 Dr. Trende, you've passed the tough hurdle.

18   A. Probably the nicest thing you're going to

19 say to me for the next two hours or so.

20   Q. No, no. We're going to be friends at the

21 end of this.

22   Dr. Trende, you've testified under oath

23 four times in this litigation via your verified

24 report, via your first deposition, via your second

25 deposition, and now in trial; is that right?

 1   A.   Yes.

 2   Q.   All right.   And you were -- you testified

 3   yesterday that you are a trained lawyer; is that

 4   right?

 5   A.   Yes.

 6   Q.   And you understand the import or verifying a

 7   report for truthfulness, correct?

 8   A.   Right.

 9   Q.   And you understand the import of taking the

10   oath during a deposition or at trial to tell the

11   truth, correct?

12   A.   Correct.

13   Q.   All right.

14   MR. WILLIAMS: Your Honor, I'm going to try

15   and to minimize my requests of you to change inputs

16   on your computer there.   So I'm going to start by

17   using the ELMO right here.   It's already set up to do

18   documents.   But at some point, I pay need you to give

19   me permission to change to a laptop.   You don't have

20   to do negative right this second.

21   THE COURT: All right.

22   MR. WILLIAMS: All right.   Thank you, your

23   Honor.

24   BY MR. WILLIAMS:

25   Q.   Mr. Trende, do you recall this exhibit that

1   plaintiffs put forward yesterday?

2   A.   Yes.

3   Q.   All right.   Did you create that exhibit?

4   A.   Yes.

5   Q.   All right.   And what does that exhibit

6   purport to show?

7   A.   From Dr. Chen's you computer, from

8   Dr. Chen's shapefiles, the number of active oil wells

9   in each county.

10   Q.   All right.   And when you say Dr. Chen's

11   shapefiles, do you know if he generated those

12   shapefiles?

13   A.   No.

14   Q.   All right.   Would you believe me if I told

15   you that shapefile came from the New Mexico oil

16   conservation division?

17   A.   Yes.

18   Q.   Okay.   All right.   What do you know about

19   Colfax and Harding counties, Mr. Trende?

20   A.   Nothing.

21   Q.   All right.   Do you know if there's any oil

22   and gas production in Colfax or Harding County?

23   A.   No.

24   Q.   All right.   Would it surprise you to know,

25   Mr. Trende, that there are no, no active oil and gas

1 wells -- or excuse me, there are no active oil wells

2 in Colfax or Harding County?

3   A. I wouldn't know one way or the other.

4   Q. Well, did you look in the shapefile to

5 determine whether -- you pulled your data off of a

6 column that was total number of wells as opposed to

7 separate columns that enumerated wells in each county

8 for oil, for example, or gas, for example, or CO_2, for

9 example, or produced water wells, for example, or

10 carbon sequestration wells, or brine wells?

11   A. I believe it was pulled off the oil column.

12   Q. All right. So your testimony is that that

13 represents oil wells in New Mexico?

14   A. I believe the way it was filtered was oil

15 and then active.

16   Q. If Dr. Chen testifies that he knows what you

17 did and you made a mistake, are you going to disagree

18 with him?

19   A. It would depend.

20   Q. Okay. All right. Well we'll keep that in

21 our pockets for Dr. Chen.

22   You recall in your verified report that

23 you wrote that -- on Page 47, that you performed

24 50,000 simulations; is that right?

25   A. Yes.

1   Q.   And I believe in your deposition you

2   testified that wasn't correct, that was a mistake?

3   A.   Correct.

4   Q.   Correct? And I think you said it was

5   probably an artifact from an earlier report you had

6   drafted?

7   A.   Yes.

8   Q.   All right. And at Page 20 of your verified

9   report, you were very specific when you testified that

10   you used the Dell Alienware desktop with an immaterial

11   nine processor. Do you recall that?

12   A.   Yes, ma'am.

13   Q.   And it turns out that also wasn't true,

14   correct?

15   A.   Has an AMD Ryzen processor, that's right.

16   Q.   Okay. So that wasn't true. And if I had

17   not an opportunity to take your deposition to test you

18   on those issues, I would not have known about that

19   mistake in your report; is that correct?

20   A.   I suppose.

21   Q.   Yeah. At Page 21 of your report,

22   Mr. Trende, you stated that you instructed your

23   simulation to allow a population tolerance of plus or

24   minus 1 percent. Do you recall that?

25   A.   Yes.

1   Q.   And 1 percent of the New Mexico

2   congressional district is approximately 7,058 people;

3   is that right?

4   A.   That sounds right.

5   Q.   All right. And congressional districting,

6   as I appreciate it, requires virtually equal

7   populations, correct?

8   A.   That's right.

9   Q.   And so your plus or minus 1 percent

10   population deviation is well in excess of equal

11   populations?

12   A.   That's right.

13   Q.   By about 7,500 -- 7,058 people, right?

14   A.   I'll accept that representation.

15   Q.   And I believe you testified that

16   notwithstanding that differentiation, that's just how

17   it's done in simulations in the industry; is that

18   correct?

19   A.   That's how it's typically done, that's

20   right.

21   Q.   And these the way you do it; is that right?

22   A.   Correct.

23   Q.   All right. Were you an expert in a case

24   styled Szeliga versus Lamone?

25   A.   That's right.

1   Q.   And did you review a memorandum opinion and

2   order from Szeliga versus Lamone?

3   A.   That's right.

4   Q.   All right. You didn't use a plus or minus

5   1 percent population deviation in that engagement, did

6   you?

7   A.   No. I think for that one, I did two-tenths

8   of a percent, maybe.

9   Q.   Would you believe me if I today you it was

10   one-tenth of a percent?

11   A.   I believe you.

12   Q.   All right. So that is different than what

13   you did in this case; is that right?

14   A.   It's a different percentage, but it's still

15   more than what the allowable population tolerance is

16   for one person, one vote. It's the same -- what's the

17   same is the concept that you get close enough to the

18   political distribution that fixing the districts to be

19   equipopulous wouldn't change their partisanship very

20   much.

21   Q.   How do you pick between using one-tenth of a

22   percent and plus or minus 1 percent for a particular

23   engagement?

24   A.   I started with 1 percent here. It is

25   typical threshold that's been used. Sometimes it's

1 been more. Sometimes it's been less. I suppose if

2 someone wanted to see if it was sensitive to that,

3 they could test it by running with a smaller

4 population threshold.

5   Q. Well, we'll get to testing your opinions in

6 a minute, Mr. Trende.

7   I believe, Mr. Trende, that you have

8 testified that your simulations that formed the basis

9 of your August 11th, 2023, opinion had a 50 percent

10 duplication rate; is that right?

11   A. Roughly, yes.

12   Q. Roughly? And you presented some charts to

13 the court, some dot plots in particular, that you

14 represented to the Court each contained 3 million

15 distinct dots. Do you recall that?

16   A. I don't think I said distinct. That's the

17 problem you would -- because they don't show up as

18 distinct at that number, that's why I also included

19 box plots.

20   Q. At a 50 percent duplication rate, there

21 could be at most, under an ideal circumstance,

22 approximately 1.5 million distinct dots. Would that

23 be true?

24   A. At most, yes.

25   Q. Yeah. So there couldn't have been 3 million

1   as you represented, right?

2   A. Well, of course, there's 3 million, it's

3   just two of them are placed on top of each other.

4   Q. Okay. Why didn't you discard your

5   duplicates?

6   A. Because that doesn't give you the true

7   distribution. Let's say you wanted to know the

8   distribution of the height of American males. You do

9   a poll and you get your sample and it ranges from 5'3"

10   to 6'7". If you discarded all the duplicate heights,

11   you would look at it and say 5'3" is the typical

12   height because it's within the range. You need to

13   know where the distribution peaks in order to make

14   that type of representation.

15   You would completely mess it up if you

16   did he duplicated. Something I've learned along the

17   way.

18   Q. And you've testified that you use the Redist

19   SMC algorithm based in large part upon Kosuke Imai's

20   SMC paper; is that right?

21   A. Correct.

22   Q. All right. And you have, I guess, recently

23   learned that Dr. Imai has some concerns about sample

24   diversity. Do you recall that testimony?

25   A. That's right, yeah.

1   Q.   And Dr. Imai's concern is that with a large

2   number of duplicates and a lack of sample diversity,

3   there could be difficulties in interpreting results of

4   the simulations; is that right?

5   A.   That's my understanding, yes.

6   Q.   Now, in that same case, the Szeliga case, at

7   Paragraph 99, the trial court noted that you performed

8   250,000 simulations and you discarded your duplicative

9   maps and arrived at between 30,000 to 90,000 maps. Do

10   you see that?

11   A.   I discarded the duplicative maps and the

12   maps that weren't consistent with the VRA. That's

13   right.

14   Q.   Well, it doesn't say VRA there, does it?

15   A.   It doesn't in the order, but it did in my

16   report.

17   Q.   The order says that you discarded

18   duplicates, and that's not something you did in this

19   case, correct?

20   A.   That's right. Like I said, I've learned

21   along the way that you shouldn't discard the duplicate

22   maps.

23   Q.   I believe one of the things you testified

24   yesterday that will sequential Monte Carlo

25   algorithm -- or excuse me, the Sequential Monte Carlo

1   paper that I presented to you about the sample

2   diversity issues -- I'm going to show you what was the

3   Exhibit B we talked about yesterday, that you had read

4   a version of this paper, but you had not read this

5   version 5 that was residentially -- this 5th version

6   of a working draft paper that Dr. Imai has published.

7   Do you see that?

8   A. That's right.

9   Q. All right. When is the last time you read

10   one of Dr. Imai's Sequential Monte Carlo algorithm

11   papers?

12   A. I think what I -- if I didn't testify to

13   this, then I misspoke, but I didn't read that at the

14   time of my report. I read it subsequently.

15   Q. Okay. Had you read any earlier versions of

16   Dr. Imai's Sequential Monte Carlo paper before you

17   drafted your report?

18   A. Yes.

19   Q. Had you, for example, read the fourth

20   version of Dr. Imai's paper?

21   A. I don't believe so.

22   Q. All right. Well, that paper was drafted on

23   June 14th of 2022. That's well before you performed

24   your expert services in this case; is that right?

25   A. That's right.

1   Q.   And on Page 11 of Dr. Imai's fourth draft,

2   he has the same concerns there that he does in his

3   fifth draft. Do you agree with that?

4   A.   Yes.

5   Q.   All right. So --

6   MS. DIRAGO: Can we get a copy of that?

7   MR. WILLIAMS: Sure.

8   MS. DIRAGO: Thank you very much.

9   BY MR. WILLIAMS:

10   Q.   So for quite awhile Dr. Imai has been aware

11   of the problem of sample diversity, and he has

12   recommended for a long while that diagnostics be

13   performed on the data that is generated, and that's

14   something I don't do in this case; is that right?

15   A.   That's right.

16   Q.   All right. So we don't know, and there's no

17   way for us to know, that for the 2,040,000 maps that

18   form the basis of your expert report, there's no way

19   for us to run any diagnosis -- excuse me --

20   diagnostics against those maps; is that correct?

21   A.   Not directly on those maps, but you could

22   run the simulation and see what it said.

23   Q.   So, again, my question is, there's no way

24   for us to run diagnostics on those maps; is that

25   right?

1   A. The way you particularly phrase the

2 question, that's true.

3   Q. Dr. Kosuke Imai's Sequential Monte Carlo's

4 paper has not been published formally, has it?

5   A. It's forthcoming, but no, it hasn't been

6 formally published.

7   Q. So it's a working draft, correct?

8   A. It's been accepted at the annals of applied

9 statistics. So I don't think it's working anymore.

10   Q. Would you agree that it was a working draft

11 between versions 1, 2, 3, 4 and 5?

12   A. Yes.

13   Q. And when you generated your report in this

14 case, was it a final draft?

15   A. I don't know.

16   MS. DIRAGO: Objection, vague. I don't know

17 what's a final draft of what, the report or the

18 article.

19   THE COURT: He answered it.

20   MR. WILLIAMS: Yeah.

21 BY MR. WILLIAMS:

22   Q. So while it's a working draft, Mr. Trende,

23 do you think it's important to keep track of the most

24 current versions of his SMC article so that you can be

25 aware of his opinions regarding that article?

          1   A.   It could be.

          2   Q.   Would it have been useful to you to have a

          3   read the fourth and fifth versions of Dr. Imai's

          4   article before you performed your services in this

          5   case?

          6   A.   It could have been.

          7   Q.   But you don't know?

          8   A.   But I don't know.

          9   Q.   And we can't know because we can't test the

         10   data, correct?

         11   A.   You can't test the exact maps that were

         12   produced to first time around.

         13   Q.   One of the things we've talked about over

         14   the past couple of times, Mr. Trende, is that you've

         15   told us that, well, you could reproduce a reasonable

         16   facsimile of the 2,040,000 maps with the source cold

         17   that you produced; is that right?

         18   A.   That's right.

         19   Q.   Now, do you recall when I took your

         20   deposition the first time, that when we reviewed the

         21   source code that you produced, it wouldn't generate

         22   2,040,000 maps? Do you recall that?

         23   A.   As it stood at the time of my deposition,

         24   that's right.

         25   Q.   And at the time of your deposition was after

1 your report had been filed, correct?

2   A. Correct.

3   Q. And the code that you produced to us would

4 have generated 240,000 simulations; is that right?

5   A. That's right.

6   Q. And that's far less than the 2,040,000 that

7 are reflected in your report?

8   A. That's right.

9   Q. After your deposition, you changed your code

10 and produced it to us so that that changed version of

11 your code would produce 2,040,000 simulations,

12 correct?

13   A. Yeah. I changed it to it would be as it was

14 when I ran the code.

15   Q. All right. Do you recall testifying that

16 the version of the code you produced was some earlier

17 version, not the one that you used to generate your

18 opinions?

19   A. No.

20   MR. WILLIAMS: May I approach, your Honor?

21 BY MR. WILLIAMS:

22   Q. If you turn to Page 38 of your deposition,

23 Mr. Trende, I think we printed it on both sides to

24 limit the number of trees that would have to die for

25 this litigation, at Lines 6 through ten, you stated:

1   It probably would have been an earlier version of the

2   code, and then, when I produced it, I took the hash

3   tags out to it would create titles for you to

4   reference the titles in the report.

5   Do you see that?

6   A. Yes.

7   Q. And we did not get that earlier version of

8   the code, did we?

9   A. Right. The code that I ran was earlier, and

10   then I changed some things. That one, I changed so

11   that it would actually print titles for you, which I

12   thought would be useful in interpreting the maps.

13   Q. Well, let's talk about those titles. I

14   believe you testified that the histograms charts and

15   figures in your expert report are some collateral

16   indicia that you actually did do 2,040,000

17   simulations. Do you recall that testimony?

18   A. Yes.

19   Q. And you base that, I think, on the

20   histograms, suggesting that if we were to stack up all

21   the bars on the histograms, it would add up to

22   approximately 2 million?

23   A. That's right.

24   Q. All right. In all of your report, the

25   charts and figures within Section 6.4 have the word

         1   simulated in them; is that right?

         2   A.   I think it's -- oh, in the report, yeah,

         3   that's right.

         4   Q.   But in your code that generated those charts

         5   and figures, it doesn't have the word simulated, it

         6   has the word simultated, s-i-m-u-l-t-a-t-e-d; is that

         7   right?

         8   A.   That's right.

         9   Q.   And that's different?

        10   A.   No, that's right.

        11   Q.   Yep.   And that's not what we have in the

        12   report, correct?

        13   A.   No.   Like I explained in any deposition, the

        14   function that creates the plot, when I ran the code

        15   for the report, didn't print the report titles.   For

        16   you all, since I thought you'd want to try to run the

        17   code and replicate, I made it so that it would print

        18   the titles, so that you could match it with what is in

        19   the report, instead of getting a bunch of blank maps.

        20   Q.   Well, let's talk about what you thought we

        21   would want to do by running the code and replicate.

        22   In your deposition, when I was asking

        23   you questions about the lack of the 2,040,000

        24   simulations, you twice testified that you had

        25   anticipated that we would want to see those maps so

1 you had configured your code so that it could create

2 exact reproductions. Do you recall that testimony?

3   A. Yes.

4   Q. All right. And when you testified, we

5 weren't hearing about, well, you don't need to see the

6 simulations, you can just run it again and get the

7 distribution. You said specifically, you anticipated

8 that we would want to see those names, didn't you?

9   A. You know, I think I'd like to see the exact

10 quote on that.

11   Q. Sure. Why don't you turn to Page 23 of your

12 deposition. Look at Lines 1 through 3.

13   A. Yes.

14   Q. All right. You don't dispute that you said

15 that: But because the code is created with the seed

16 set in it, it should be replicable be plaintiffs'

17 experts or defendants' experts. That was your

18 testimony, right?

19   A. Oh, yeah. And I'm glad I asked about this,

20 because that's different than saying: I thought you

21 would want to look at the maps.

22   Q. Okay. Then let's look at Page 48

23 (inaudible)?

24   A. Actually, it's --

25   Q. That may be one of (inaudible).

1   At Line 6 through 10, you said: Well,

2   because presumably your expert will want to see and

3   reproduce the maps that were created, and noticing

4   that (inaudible) is 100,000, would realize that to

5   replicate that would be set to a million and would do

6   so, perhaps.

7   Do you see that?

8   A. I do see that.

9   Q. And so you acknowledged then that we would

10 want to see your maps?

11   A. Correct.

12   Q. But we can't do that, can we?

13   A. You can't. You can see the distribution

14 that's created.

15   Q. And that distribution, we can't check your

16 distribution because we don't have the maps?

17   A. No. You can run the code again and see if

18 the distribution looks the same.

19   Q. I can check a different distribution, that's

20 correct?

21   A. No. Because the distributions are printed

22 in the report, you can check it against what's printed

23 in the report.

24   Q. I recall you testifying yesterday, Dr. --

25 Mr. Trende, that you had reviewed all thousand of the

1 maps that Dr. Chen generated do you recall that?

2   A. Yes.

3   Q. And that was something you were able to do

4 so that you could offer testimony in this case because

5 we produced the work that Dr. Chen had saved to you;

6 is that right?

7   A. Right.

8   Q. And that is something that we have not been

9 able to do because you did not save your maps.

10 Although you have them, you created them, you say you

11 analyzed them, you say you generated charts and

12 figures, and then they went away; is that right?

13   A. Right. You got a second run of them that

14 you could use to check the maps, but --

15   Q. We would get a different run of a different

16 set of maps; is that correct?

17   A. You would get a different run of the maps.

18 I don't know how different they would be overall.

19   Q. You'd agree they wouldn't be the same?

20   A. They wouldn't be identical, that's right.

21   Q. Mr. Trende, I believe you have testified

22 that this is an egregious partisan gerrymander in

23 SB-1; is that right?

24   A. Yes.

25   Q. All right. The margin of victory for

1 Congressman Vasquez over Congresswoman Harrell was

2 1,350 votes; is that right?

3   A. That's right.

4   Q. Do you know a Senator Gallegos?

5   A. No.

6   Q. Do you know -- I guess no one has told you

7 about Senator Gallegos and his testimony in this case?

8   A. No.

9   Q. I'll represent to you that Senator Gallegos

10 is a state senator I believe in the Eunice area. And

11 he offered testimony yesterday regarding the current

12 climate for Republican voters in CD-2.

13   Would it surprise you to know that

14 Senator Gallegos thought that the Republicans could

15 win CD-2 if they would increase voter turnout?

16   A. I suppose that's literally true, but yes, it

17 would surprise me.

18   Q. Are you aware of recent polling regarding

19 CD-2 and the race between Congressman Vasquez and

20 Congresswoman Harrell?

21   A. No.

22   MR. WILLIAMS: Your Honor, may I approach

23 the witness?

24   THE COURT: Yes.

25   MS. DIRAGO: So what is this?

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 1   BY MR. WILLIAMS:

 2        Q.  Dr. Trende, this is a news story from

 3   KOB-TV.  Do you see that?

 4             MS. DIRAGO:  So I'm going to object on

 5   relevance, on hearsay.

 6             MR. WILLIAMS:  Your Honor, experts can rely

 7   upon hearsay.  Relevance will become apparent.

 8             MS. DIRAGO:  He didn't rely upon this, and

 9   it doesn't mean it admissible in court.  He can rely

10   upon it if he wishes, it's not admissible in court.

11             MR. WILLIAMS:  I haven't moved to at mitt --

12             MS. DIRAGO:  I'm sorry.

13             MR. WILLIAMS:  I haven't used to admit it,

14   your Honor.  I'm using this to challenge the opinions

15   of Mr. Trende.

16             MS. DIRAGO:  It's hearsay.

17             MR. WILLIAMS:  Hearsay is admissible -- or

18   is usable by expert witnesses.

19             MS. DIRAGO:  No, it's not.

20             THE COURT:  (Inaudible) reports.

21             MR. WILLIAMS:  Excuse me?

22             THE COURT:  (Inaudible) the reports.

23             MR. WILLIAMS:  And in rendering opinions.

24             MS. DIRAGO:  But he didn't use it.  It

25   doesn't mean it comes in at trial.
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 1              THE COURT:  You're asking him to render his

 2    opinion now?

 3              MR. WILLIAMS:  I just want to find out if

 4    this will inform and change his opinion, your Honor.

 5              MS. DIRAGO:  But we don't know what it is.

 6    We can't test -- I mean, this is a random piece of

 7    paper with a poll.

 8              MR. WILLIAMS:  Oh.

 9              MS. DIRAGO:  Right, we don't know who did

10    this, we don't know what they were using to create a

11    poll.  It's irrelevant and there's know

12    authentication and it's hearsay.  I cannot

13    cross-examine the person who did this poll.

14              MR. WILLIAMS:  Your Honor, if we're going to

15    start excluding evidence for not being testable, I'm

16    fine with that.

17              MS. DIRAGO:  I am, too, in fact.

18              MR. WILLIAMS:  Your Honor, I'd like to move

19    to exclude Mr. Trende's report.

20              THE COURT:  No, we're not going to do that.

21    So as far as this, your wanting to question him about

22    a report.  Lay your foundation for how this poll was

23    done.

24

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1 BY MR. WILLIAMS:

2   Q. Mr. Trende, do you see in this article, a

3 reference to a poll that was performed?

4   A. Yes.

5   Q. All right. And are you familiar with survey

6 USA?

7   A. Yes.

8   Q. All right. Is that a reputable polling

9 organization?

10   A. Yes.

11   Q. All right. Do you have any reason to

12 disagree with the story that says that the current

13 congressional race between Congresswoman Harrell and

14 Congressman Vasquez is a neck and in the case race?

15   A. I don't have any reason to dispute that

16 that's what the article says.

17   Q. All right. The fact that there is polling

18 that suggests the race is in the case and in the

19 case, does that in any way change your opinion about

20 entrenchment or extreme partisan gerrymander?

21   A. No. Because it also says that only 32

22 percent of the respondents has unfavorable -- I'm

23 sorry. Only 28 percent of respondents had an

24 unfavorable impression of Vasquez compared to 32 of

25 Harrell. And generally, incumbent with 28 percent

1   unfavorables don't lose. Those undecideds are going

2   to be voters who don't have unfavorable opinions of

3   the Congressman, are going to tend to break his way.

4   Q. So you don't necessarily disagree with the

5   poll, you just think it could be a more thorough?

6   A. No, you asked me if I changed my opinion.

7   It doesn't change my opinion, because those undecideds

8   are people who don't have unfavorable opinions of the

9   Congressman and are unlikely to throw him out.

10   Q. All right. Thank you, Mr. Trende?

11   MR. WILLIAMS: Your Honor, may I approach?

12   THE COURT: Okay.

13   BY MR. WILLIAMS:

14   Q. Mr. Chairman Trende, are you familiar with

15   the -- what the New Mexico Legislature is?

16   A. Yes.

17   Q. All right. And are you aware that it has a

18   legislative financial committee?

19   A. I am now.

20   Q. Okay. What I've handed you'd is a letter

21   from Senator George Munoz of the legislative finance

22   committee. Do you see that?

23   A. Yes.

24   Q. And in that letter, he talks about the

25   general fund. Do you see that?

1   A. Yes.

2   Q. And I believe he talks about $9.57 billion

3   in the general -- in the recurring general funds. Do

4   you see that?

5   A. Yes.

6   Q. All right. In the attached document, which

7   is it is fiscal review and outlook from the

8   legislative financial committee, do you see a chart in

9   the left-hand side of the page?

10   A. Yes.

11   Q. And in that chart, it reflects that gross

12   receipts taxes from Eddy and Lea, as well as out of

13   state, are up to about 40 percent of our general

14   revenue; is that right?

15   A. That's right.

16   Q. All right. Would it be fair to say,

17   Mr. Trende, that based upon those numbers, all of

18   New Mexico has a pretty significant interest in oil

19   and gas production?

20   MS. DIRAGO: Objection. Foundation.

21   A. Yeah, I don't --

22   THE COURT: Mr. Trende.

23   THE WITNESS: I'm sorry.

24   THE COURT: The objection?

25   MR. WILLIAMS: The objection is foundation.

1   We've established this is a letter from the

2   legislative financial committee. This is a public

3   record generated in the ordinary course of business.

4   It's sort of evidence that an expert can consider

5   (inaudible).

6   THE COURT: You're asking his opinion

7   about --

8   MR. WILLIAMS: I'm asking whether that 40

9   percent number demonstrates essentially that there is

10 a larger community of it based upon oil and gas

11 production in Lea and Eddy County for the entire

12 State of New Mexico.

13   MS. DIRAGO: That was not the question. The

14 question was whether New Mexico cares about -- has a

15 vested interest in Lea and Eddy County.

16   MR. WILLIAMS: In oil and gas production

17 from Lea and Eddy County.

18   MS. DIRAGO: Okay. I mean, that's not a --

19 no, you didn't ask that.

20   THE COURT: So your question was, would you

21 agree that the -- all of New Mexico has an I object

22 in oil and gas in Eddy and Lea County?

23   MR. WILLIAMS: That sounds like a better

24 question than what I probably asked, but yes.

25   MS. DIRAGO: That's a better question but

1   I'm still objecting. How would he know? He's not an

2   expert in what New Mexico cares about.

3   THE COURT: I'll let him answer to whatever

4   extent he thinks he knows the answer.

5   A.   Yeah, I'm really not an expert on the

6   New Mexico budget, and don't feel comfort in having

7   skimmed a few paragraphs in this in trial transcript

8   that going to follow me the rest of my life giving

9   that opinion.

10   Q.   Hypothetically.

11   A.   Hypothetically.

12   Q.   Hypothetically then, Mr. Trende, would you

13   agree with me that it's fairly significant to any

14   state to have -- a state has an interest in where 40

15   percent of its revenue comes from?

16   MS. DIRAGO: Same objection.

17   THE COURT: I'll let him answer it, again,

18   to the state that he has an opinion.

19   A.   Yeah, I don't have an opinion on how -- on

20   New Mexico's budget on how it allocates funds or what

21   this chart means. In the tax and revenue stuff,

22   there's always important nuances and I just don't feel

23   comfortable getting into that.

24   Q.   How would you feel if 40 percent of your

25   revenue went away, Mr. Trende?

1   MS. DIRAGO: Objection.

2   THE COURT: Yeah, I'm going to sustain that

3 objection.

4   MR. WILLIAMS: All right.

5 BY MR. WILLIAMS:

6   Q. Mr. Trende if I am correct in what I've

7 heard in your testimony today, your expert report had

8 at least two errors in it that related to the machine

9 that you performed your simulations on and the /TPUB

10 of simulations performed; is that right?

11   A. That's right.

12   Q. Okay. And if I understand the testimony

13 that you've given over the past couple of days and in

14 your deposition, your initial testimony was that your

15 code preserved the 2,040,000 simulations by virtue of

16 a set seed a; is that right?

17   A. That's right.

18   Q. And it didn't do that, correct?

19   A. That's correct.

20   Q. I believe at your second deposition you

21 testified that -- or excuse me, at your first

22 deposition, you had testified that Dr. Chen's 1,000

23 maps had duplicates in them. Do you recall giving

24 that testimony?

25   A. I do.

1   Q.   And do you recall then correcting your

2   testimony?

3   A.   Yes.

4   Q.   All right. So then I believe you testified

5   that -- excuse me -- that we could check whether you

6   actually did the work against the charts and figures

7   in your report that is spelled differently than would

8   have been generated by the codes you produced to us,

9   is that correct, simulated versus simultated; is that

10 right?

11   A.   The titles are different. But I don't think

12 there's any dispute that the charts are the same.

13   Q.   How would I know that, Mr. Trende? I don't

14 have the data?

15   A.   I don't think you've accused me of changing

16 the contents of the chart.

17   Q.   Well, Mr. Trende, would you agree with me

18 that the charts are the product of your analysis of

19 the data?

20   A.   Yes.

21   Q.   And you'd agree with me that we don't have

22 the data; is that right?

23   A.   The original data, no.

24   Q.   All right. Which is the data, correct?

25   A.   I don't think so.

1   Q.   Did you analyze any other data for your

2   report?

3   A.   For the declaration, yes.   I'm not going

4   to --

5   Q.   I'm not asking you about your declaration,

6   Mr. Trende. My question was, did you analyze any

7   other data for your report?

8   A.   Okay. So that's a different question than

9   you asked. No, for the initial report, I didn't

10 analyze any other data.

11   Q.   That was the report on was due on August

12 11th, 2023, correct?

13   A.   Yes.

14   MR. WILLIAMS: Your Honor, I know the Court

15 has ruled, but based upon Mr. Trende's testimony,

16 they cannot lay an evidentiary foundation for the

17 charts and figures or for the opinions in 6.41 or

18 6.42. There's no way anyone can test that data.

19 Mr. Trende has relied on the exact form of data to

20 criticize Dr. Chen that we have been deprived of in

21 this case, the maps.

22   Mr. Trende has testified that he knew we

23 would want to see the maps, and today we don't have

24 them and we will never have them.

25   The rules of evidence are very clear.

1 They have to set up an evidentiary foundation that is

2 testable. The rules of evidence contemplate the

3 production of the underlying data and we don't have

4 it.

5   I don't want to go to war with your

6 Honor's ruling, but I urge you, that now that we've

7 got the benefit of Mr. Trende's testimony, that there

8 is a full already record and that the Court could

9 revisit its ruling.

10   Thank you. I'll pass the witness.

11   MS. DIRAGO: I don't know if I need to

12 object on the record to that.

13   MR. WILLIAMS: Oh, your Honor, I --

14   MS. DIRAGO: If that was a motion or what,

15 but --

16   MR. WILLIAMS: I do have one other

17 housekeeping.

18   THE COURT: Okay. Was that a motion?

19   MR. WILLIAMS: It was a motion. But before

20 we get to that, can I do my housekeeping?

21   THE COURT: Okay.

22   MR. WILLIAMS: Your Honor, I would move the

23 admission of -- I'm in the wrong examination. I'm

24 very tired, your Honor.

25   THE COURT: Okay.

1   MR. WILLIAMS: All right. I am done. And

2   yes, we can do that motion right now.

3   THE COURT: All right.

4   MS. DIRAGO: I object to the motion maybe

5   the third or fourth time on the same basis that I

6   objected before, that Mr. Trende's results are

7   reproducible, they are testable. It's just -- this

8   is oversimplifying it a lot, but it's just like if I

9   gave you a recipe and I said, "This makes a chocolate

10 cake. You can do it yourself and see if it does

11 indeed make a chocolate cake and not a buttermilk

12 cake and not brownies."

13   And if that's something that Dr. Chen

14 wants to do, come in and say, "This recipe did not

15 make a chocolate cake," he free to do it. That is

16 not what I'm hearing. He is perfectly free to test

17 the results.

18   THE COURT: All right. I understand now

19 more how his report was produced. I understand your

20 objection to it. I don't think the rules of evidence

21 preclude its admission, so I'm not going to change my

22 ruling on that.

23   Obviously, your cross-examine, your

24 requesting him in deposition and here today brings

25 out what you view as shortcomings of his report, and

1   I'll take that into consideration. So I believe it

2   goes to the weight of his evidence, but not its

3   admissibility. So I'm not going to change my ruling.

4   MR. WILLIAMS: Thank you, your Honor.

5   THE COURT: Redirect.

6   MS. DIRAGO: Yes.

7   REDIRECT EXAMINATION

8   BY MS. DIRAGO:

9   Q. Okay. I would like to talk to you a little

10 bit about the population deviation that you programmed

11 in for your simulations. And can you remind me what

12 that deviation was?

13   A. Plus or minus 1 percent.

14   Q. And in your experience and as an expert in

15 this field, have you seen that 1 percent population

16 deviation employed before?

17   A. Yes.

18   Q. And have you, in fact, used a that

19 population deviation?

20   A. Yes.

21   Q. Did you read Dr. Cotrell's report -- first

22 of all, do you know who David Cotrell is?

23   A. Yes. He's another professor who works in

24 the simulation field. I shouldn't say. He is a

25 professor that works in the simulation field.

1   Q.   And do you know if he did an expert report

2   for the CRC analyzing all of the maps that the CRC

3   adopted?

4   A.   Yes.

5   Q.   And do you know what population deviation he

6   used for the congressional districts?

7   A.   I believe it was 1 percent.

8   Q.   Why don't you remove duplicates from your

9   simulated maps? And we were talking about this just

10 this morning and you explained it well. So if you

11 could do that for the Court, please.

12   A.   Right. So if you wanted to know what

13 typical distribution of anything in America is, but I

14 used the allege gentlemen of American male heights,

15 and you cut off all the simulations, you might -- I'm

16 sorry, all the duplicates -- it's been a day for me,

17 too, you get (inaudible) in your sample, or Shaq.

18   Q.   Who is the first person you said?

19   A.   (Inaudible), but --

20   Q.   I don't know who that is?

21   A.   -- (inaudible), so he's not a good example.

22 Shaq.

23   Q.   I get Shaq. Okay.

24   A.   If you include Shaq -- if you get Shaq in

25 your sample and you let me nature all the duplicates,

1   you're not going to know how much of an outlier he is.

2   And you're going to look at that distribution of

3   heights and say, well, you know, 7'3", it's within the

4   bounds. It's not until you include all the -- all the

5   American males who say they're 5'11", 5'10", 6-foot

6   that you can really see that Shaq is a duplicate -- or

7   is an outlier. So that's why I don't did he

8   duplicate.

9   Q. Okay. So if -- I guess if you were polling

10 American males, you would get -- my husband is 5'8".

11 He doesn't like me to say he's average, you would get

12 a bench of duplicates that say -- that are 5'8"?

13   A. That's correct.

14   Q. So does that affect your results in a

15 negative way?

16   A. If you're trying to detect outliers, it

17 makes it better.

18   Q. Okay. And what is the common practice now,

19 to remove duplicates or not?

20   A. It is not to remove duplicates.

21   Q. The titles -- the simulated versus

22 simultated in your titles, did that affect your

23 results?

24   A. Not at all.

25   Q. Did that affect the partisan distribution of

1 the maps that you created?

2   A. Not at all.

3   Q. What about your conclusions, did that affect

4 your conclusions?

5   A. Not at all.

6   Q. Oh, another issue that was brought up by

7 opposing counsel was this issue about Dr. Chen having

8 duplicate maps. Can you explain -- he said that

9 during your deposition you testified that he did have

10 a few duplicate maps. Can you explain what happened

11 there?

12   A. Yeah. I had gone through and looked and

13 done a visual inspection of the maps, and there were

14 maps that looked to be duplicated on the 29 that I

15 managed to produce -- or high 20s that I managed to

16 produce in a timely fashion.

17   During my deposition, counsel asked a

18 couple questions about things I had done or could have

19 done, and I thought they were well taken questions.

20 So at a break, I went back and tried the techniques

21 that he had described, and turned out that there were

22 some maps that were very, very similar were not, in

23 fact, duplicates, so I corrected myself. I was wrong.

24   Q. And did you correct yourself on the record?

25   A. I did.

1   Q. Do you know -- you know Dr. Chen?

2   A. Yep.

3   Q. Do you know Dr. Imai?

4   A. I don't know that I've met him.

5   Q. Okay. But you know of him?

6   A. Yeah, I know him. And I've conversed with

7 Dr. McCartan. I think he's Dr. McCartan now.

8   Q. Okay. Was Dr. Imai an opposing expert on a

9 case that you were on?

10   A. Yes.

11   Q. And is it typical between experts -- sorry,

12 you contested yesterday that you asked I think

13 Dr. Imai to produce some maps because they were

14 running slowly, right?

15   A. Correct.

16   Q. And then there was maps that were drawn in a

17 language you didn't code, so you asked for them?

18   A. Correct.

19   Q. So is that typical that experts,

20 professionally and collegially might point out some

21 differences or issues that they have with the code and

22 that the other experts will respond?

23   A. Typical, yeah.

24   MS. DIRAGO: Okay. That's it.

25   THE COURT: All right. Anything else for

1   this witness.

2   MR. WILLIAMS: No, your Honor.

3   THE COURT: All right. Thank you.

4   Mr. Trende. You may step down.

5   THE WITNESS: Thank you, your Honor.

6   THE COURT: Plaintiffs, call your next

7   witness.

8   MR. HARRISON: So, your Honor, we are done

9   with the witnesses, other than the witnesses that

10 we've subpoenaed for trial, which I guess brings us

11 to what's going to happen with those witnesses.

12   THE COURT: Okay.

13   MR. HARRISON: They've received subpoenas.

14 I believe all to be here today and tomorrow, received

15 two days of wants fee covering two days. And I guess

16 the normal practice anyway would be to pay them as

17 they need to stay an extra day, and so no one is

18 here.

19   THE COURT: So name one. Which one are you

20 talking about.

21   MR. HARRISON: The individuals -- so it is

22 true that we did not successfully serve for trial

23 Mr. Cervantes, although he's gotten two subpoenas for

24 (inaudible) documents. But Mr. Egolf, Ms. Leith,

25 Ms. Stewart and Mr. Wirt.

1   THE COURT: Okay. So if you were going to

2   call them, what would it be for?

3   MR. HARRISON: It would be for the purposes

4   of asking them about the conversations and other

5   communications that they have had regarding the

6   construction of Senate Bill 1, your Honor.

7   THE COURT: You want to address.

8   MS. SANCHEZ: Your Honor, I feel like we've

9   been over this a few times. And I specifically asked

10   tore clarification on this point when we were

11   discussing this yesterday, that the Court's privilege

12   ruling includes on your elaboration of it that these

13   witnesses are not subject to questioning and

14   compelled testimony on the subject of their

15   communications. We're talking about producing

16   contemporaneous statements within the period defined,

17   all the things we talked about this morning. And

18   those statements will speak for themselves and these

19   witnesses are not to be questioned about it.

20   So given that, my understanding is we

21   are not bringing these people in to testify. There

22   is not a non-privileged basis for doing that.

23   We are earnestly working on the

24   documentation production. I've been e-mailing this

25   whole time that we've been -- that the examination

1   has been going on to get this going and progressing

2   quickly.

3   But that's my understanding of where we

4   are based on my (inaudible).

5   THE COURT: All right. And so that's my

6   understanding, too. And I'm -- either I -- maybe I'm

7   not explaining it well enough. My reading of the

8   case law, I cited a certain case in my decision

9   letter where questioning of a legislator actually

10 came up, and wasn't necessarily legislative privilege

11 that was raised but they're contemporaneous thoughts

12 on statements on passage of legislation at the time

13 it was being made or admissible and relevant. But

14 anything afterwards, I would not.

15   And then with -- on top of that,

16 legislative privilege, which, again, has not been

17 ruled on in New Mexico, but I think that the way it's

18 been viewed around the country and other states and

19 the way it's written into our Constitution, I don't

20 think they can be called to question what -- "Why did

21 you pass SB-1, or why did you" -- "what were your

22 thoughts in passing SB-1?" That they can't be

23 questioned about that. I think that's what falls

24 under legislative privilege.

25   Statements that they made to the public

1   outside of that privilege can be. And, again, I

2   believe those statements just have to speak for

3   themselves. So, you know, if those statements are

4   admitted, those statement come into the record as to

5   what they said at that time about passage of SB-1.

6   And so I don't -- I kind of agree. I

7   don't see what you would get out of calling to the

8   stand now. I don't see what they could testify to

9   that is not privileged or is not already a public

10 statement.

11   MR. HARRISON: Certainly, your Honor. So we

12 agree with some of that sentiment, and (inaudible) we

13 understand within what's the Court's order was. So

14 we wouldn't be asking about their deliberative

15 process or whatnot. But just to use an example of

16 what we were -- continuing on our previous

17 conversation, I could probably give Ms. Sanchez a

18 list of folks to conduct document searches for if I

19 asked Brian Egolf, "Who did you talk to about" --

20 "outside of caucus and senate and Ms. Leith, and

21 whoever (inaudible), who did you talk about

22 redistricting with?"

23   And if he says, you know, "Sarah Jones

24 at the DNC," okay, first we could ask what

25 conversations did he have.

 1   "Well, I flew out to D.C. They talked

 2   about how they really wanted the southern district to

 3   turn blue," we would know then to add Sarah Jones to

 4   our list of folks for him to search for

 5   communications with so we could ask -- again, the way

 6   that we're defining public is not necessarily stuff

 7   that you can Google, but stuff that, you know, we

 8   would -- we believe we could ask them about. And

 9   that's more natural for a deposition.

10   THE COURT: Right.

11   MR. HARRISON: That is -- you know, it was

12   always going to be -- the question was going to be a

13   little awkward, because we haven't deposed them, so

14   we're kind of flying blind. But we do think there's

15   nonpublished material that's perfectly relevant.

16   THE COURT: Okay. I guess I'm thinking that

17   that would not fall under public statements. It's

18   something that -- I don't know how to define it

19   exactly. But that it's known, it's -- you can -- you

20   can get it from another source, is what I'm saying.

21   So I don't -- I agree with the defendants that I

22   don't think there's anything relevant or

23   non-privileged that they can testify to.

24   MR. HARRISON: Okay. We've made our record,

25   obviously. We respectfully disagree with your Honor.

1   But I think with -- with your -- with the Court's

2   ruling, the plaintiffs rest.

3   THE COURT: Okay. All right. Let's take a

4   quick break, and then what are your plans on pursuing

5   this.

6   MR. WILLIAMS: Your Honor, we'll call

7   Dr. Chen and put his testimony (inaudible).

8   THE COURT: Okay. All right. Let's take

9   10 minutes and come back.

10   (Recess held from 10:43 a.m.

11   to 10:57 a.m.)

12   THE COURT: Dr. Chen, you'll raise your

13   right hand.

14   Do you solemnly swear or affirm under

15   penalty of perjury that the testimony you'll give

16   will be the truth, the whole truth and nothing but

17   the truth?

18   THE WITNESS: Yes, your Honor.

19   THE COURT: Thank you.

20   Go ahead.

21   JOWEI CHEN

22   having first been duly sworn, testified as follows:

23   DIRECT EXAMINATION

24   BY MR. WILLIAMS:

25   Q. Good morning, Dr. Chen. I appreciate you

 1 coming out from Michigan for this trial.

 2   MR. WILLIAMS: Your Honor, I'd like to

 3 approach the witness and provide him a copy of his

 4 expert report.

 5   THE COURT: Okay.

 6   MR. WILLIAMS: Thank you. I have marked

 7 that as Exhibit C, your Honor. Would your Honor like

 8 a copy?

 9   THE COURT: Yes. Thank you.

10 BY MR. WILLIAMS:

11   Q. Dr. Chen, would you place state your name

12 for the record?

13   A. Jowei Chen.

14   Q. And how are you employed, Dr. Chen?

15   A. I am an associate professor in the

16 department of political science at the university of

17 Michigan in Ann Arbor, and I'm also a research

18 associate professor at the Center for Political

19 Studies at the Institute For Social Research at the

20 University of Michigan.

21   Q. What is your academic degree?

22   A. In 2004, I received a bachelor's degree in

23 ethics, politics and economics from Yale University.

24 In 2007, I received a master's in statistics from

25 Stanford University. And in 2009, I received a Ph.D.

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 1   in political science from Stanford University.

 2          Q.  Are you an accomplished author, Dr. Chen?

 3          A.  Yes, sir.

 4          Q.  And what are you published in?

 5          A.  I've written academic papers on legislative

 6   districting and political geography and distributive

 7   spending.

 8          Q.  Would it fair to say that some of those

 9   publications relate to ensemble simulations?

10          A.  Yes, sir.

11          Q.  Based upon your academic work, your

12   published work, what are your areas of expertise?

13          A.  My academic areas of expertise are

14   legislative elections, spatial statistics, geographic

15   information, systems data, redistricting, racial

16   politics, legislatures, and political geography.

17              MR. WILLIAMS:  Your Honor, based on

18   Dr. Chen's background, I would like to move him as a

19   qualified expert witness in those areas.

20              MS. DIRAGO:  No objection.

21              THE COURT:  All right.  I'll declare

22   Dr. Chen an expert in those stated areas.

23   BY MR. WILLIAMS:

24          Q.  Dr. Chen, what questions have we retained

25   you to answer in this case?
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1   A. Defense counsel to evaluate the partisanship

2 of the SB-1 plan. And specifically, defense counsel

3 asked me to determine whether or not to partisan

4 characteristics of the SB-1 plan are ones that could

5 have plausibly emerged from a partisan neutral map

6 drawing process that follows certain nonpartisan

7 district and criteria.

8   Q. And based upon the question that we present

9 to you, did you arrive at any conclusions?

10   A. Yes, sir. So I found that the partisan

11 characteristics of the SB-1 plan at both a district by

12 district level, as well as at a plan wide level, are

13 within the normal range of computer simulated

14 districting plans that follow these certain

15 nonpartisan district and criteria.

16   So I found, in summary, that the

17 partisan characteristics of the SB-1 plan could

18 reasonably have emerged from a partisan neutral map

19 drawing process that adheres to all of these

20 districting criteria in this computer system

21 algorithm.

22   Q. All right. A Paragraph 6 of your expert

23 report, Dr. Chen, the heading is: The use of computer

24 simulated districting plans.

25   Do you see that?

1   A.   Yes.

2   Q.   Could you explain that paragraph to us?

3   A.   Yeah.   I'm explaining how in my research I

4   use computer simulation techniques that allow me to

5   produce a large number of partisan blind districting

6   plans that adhere to any particular districting or

7   specified districting criteria that I program into the

8   algorithm and that normally I would use as geographic

9   building blocks for these computer simulations, things

10   like census precincts.

11   Q.   What is the algorithm that you used to

12   perform your simulations?

13   A.   It's an MCMC version of Sequential Monte

14   Carlo algorithm.

15   Q.   And I'm sure that means something to someone

16   with a Ph.D. from Stanford.   What does that mean to a

17   mere mortal like myself.

18   A.   So in general, what the algorithm does is it

19   draws random districting plans.   However, it doesn't

20   just draw these lines completely at random.   In

21   drawing random lines on random borders, it is

22   nevertheless, still adhering to specific districting

23   criteria, nonpartisan districting criteria, that I'm

24   programming into the algorithm.   These are districting

25   criteria like equal population, geographic contiguity,

1   and several others.

2   So I program the algorithm to follow

3   these criteria, but in following these criteria, it's

4   trying to draw a random districting plan. So every

5   time you run the algorithm and produce a new plan,

6   it's going to be a different map. But all of these

7   maps are still adhering to the set of criteria that

8   I've programmed into the algorithm.

9   Q. Dr. Chen, I've put on the screen, your Map 1

10 from Page 10 of your expert report. Can you kind of

11 walk us through at very lie level how your algorithm

12 would have gone about generating this map?

13   A. This here on Map 1 is just an example of a

14 computer simulated map that's been produced by the

15 algorithm that I was just describing. And so this is

16 just one example of the 1,000 computer simulated maps

17 that my algorithm produced.

18   So at a very high level, what this

19 algorithm is going is it's drawing these various

20 borders.

21   Now, to go into a little bit more

22 detail, it starts by taking all of these areas of

23 New Mexico, and so there are roughly 2000 precincts in

24 New Mexico, a little over 2,000 precincts, and it's

25 going to divide these areas up into three

1   congressional districts. But it's not just drawing

2   these three districts at random. It's following the

3   specific criteria that I've programmed into the

4   algorithm.

5   So as I said, one example of these

6   criteria is equal population. There's also geographic

7   continuity and several others. The algorithm starts

8   by taking all of these areas in New Mexico and

9   dividing them first into two parts. One that has one

10 district and a second part that has two districts

11 worth of population. Then the next step is to divide

12 that two district area up into single district areas.

13 And that's how you end up with three districts.

14   Now, an algorithm also uses what's

15 called MCMC iterations. And that's just a fancy way

16 of saying that the algorithm proposals iterative

17 random changes to the borders between two districts.

18 And it does so repeatedly a large number of times.

19 Not all of these proposed changes are accepted, are

20 actually put into -- set in stone, though. Some are

21 accepted and some rejected. And it's doing this in

22 order to pursue all the various nonpartisan district

23 criteria that I've programmed into the algorithm.

24   So the algorithm, every step along the

25 way, is directed at following, adhering to these

1   nonpartisan district and criteria.

2   Now, it gets me into the algorithm, and

3   then this is very important. The algorithm has a map,

4   a congressionally simulated map, and it outputs that

5   map, it saves that map, it makes a permanent record of

6   that map. So the algorithm saves the map and that way

7   we can look at the map and analyze the map. So it's

8   outputting the map, it's saving it permanently onto

9   the computer hard drive to that we can come back later

10 and actually look at exactly what that map looks like

11 that was just produced by the computer algorithm.

12   So that's how the algorithm works. It

13 generates and saves 1,000 computer simulated maps.

14 And you end up with 1,000 computer simulated maps that

15 are saved on your hard drive that you can then look at

16 and analyze.

17   Q. You've mentioned 1,000 computer simulated

18 maps. Are any of your maps duplicates, Dr. Chen?

19   A. No, they're not.

20   Q. And why is that?

21   A. This is a random computer simulation

22 algorithm, so it is designed to draw random

23 districting plans that are adhering to these certain

24 nonpartisan districting criteria. Every one of the

25 algorithm is different. It would be problematic, it

1   would not really be random if I were to run this

2   algorithm and find that it's producing the same exact

3   map over and over and over again. That's not a random

4   simulation. That's just producing the same map over

5   and over and over again.

6   So what's really important here is when

7   the algorithm has produced the map, it saves the map.

8   And it does that a thousand times. And that way we

9   can actually look at these 1,000 different maps and

10   verify, which I did, that they are actually all

11   different.

12   Now, they're not completely different.

13   They all still adhere to these certain nonpartisan

14   districting criteria. They, for example, are all

15   equally populated. They have some certain features in

16   common, like equal population and other criteria. So

17   they're not completely random, but they are all

18   different, they are all unique maps. And that's the

19   importance of it. That is a hallmark of having a

20   random simulation algorithm that's drawing random maps

21   while adhering to certain nonpartisan districting

22   criteria.

23   Q. Dr. Chen, you've mentioned the phrase

24   nonpartisan districting criteria a couple of times.

25   What does that mean?

1   A.   There are a couple of different criteria

2   that I was asked to incorporate into my analysis.

3   I've talked about population equality, district

4   contiguity and there are several others.

5   But nonpartisan districting criteria

6   means that the algorithm is not using, is not

7   considering, is not inputting any partisan data. The

8   algorithm is partisan blind. It is blinded to

9   information about how many, say, Republican or

10   Democratic voters there are in a particular area.

11   That place no role in the algorithm.

12   That's what I mean by nonpartisan districting

13   criteria. The algorithm is not using partisanship as

14   a criteria. It is a nonpartisan algorithm.

15   Q.   Let's walk through the criteria that we've

16   asked you to use to perform your work for us today,

17   Dr. Chen.

18   At Paragraph 9.A of your report, you

19   talk about population equality. Can you explain to

20   the Court what population equality means in the

21   context of your expert work?

22   A.   Yes. So New Mexico, under the 2020 census,

23   has a population of about 2.1 million. And that means

24   that every congressional district has an ideal

25   district population of 705,840.7. And so that's

1 one-third of New Mexico's total population A that's

2 the ideal district population. And my understanding

3 is it's been the past practice in New Mexico to have

4 congressional districts that are virtually equally

5 populated. Not a deviation of, say, 1 percent, but

6 virtually equally populated.

7   And so the SB-1 plan, for example, has

8 populations such that the difference between the most

9 and the least populated district, the most populated

10 district is CD-2, and the least populated is CD-1, but

11 they have a difference of our 14 people, so it's

12 virtually equally populated, a total difference of

13 only 14 people from the most to the least populated

14 districts. So that is the virtual equal population

15 standard in the SB-1 plan.

16   So defendants' counsel expected me to

17 follow this same degree of population equality in all

18 the computer simulated maps. Every simulated map was

19 required to have a population of between 705,834 and

20 705,847. So that is a total difference of no more

21 than 14 people from the top to the bottom populated

22 district.

23   Q. Thank you, Dr. Chen. Paragraph 9.B

24 references the criteria we gave you on precincts

25 boundaries. Do you see that?

1   A.   Yes.

2   Q.   And I know you covered that in broad brush

3   strokes. Can you give us just a little snippet as to

4   what precinct boundaries, or how you instructed your

5   algorithm to deal with precinct boundaries?

6   A.   In essence, don't split precincts. So

7   New Mexico's 2,163 precincts, don't take any one of

8   those precincts and split it between two or more

9   districts.

10   Q.   I don't have a (inaudible) Ph.D., but I got

11   that.

12   Paragraph 9.C, contiguity, what does

13   that mean?

14   A.   Contiguity means that all the areas of any

15   single district need to touch one another. So you

16   can't just jump, for example, from the southeast to

17   the northwest coroner of the state if those are areas

18   that are not otherwise touching one another. So every

19   district needs to be composed of areas that all touch

20   one another.

21   Q.   Paragraph 9.D addresses municipality

22   considerations. Can you explain that to the Court?

23   A.   So I was instructed to consider municipal

24   boundaries by first making sure that the three largest

25   metro areas, Albuquerque, Las Cruces, and the Santa Fe

1 metro area, that are -- these three are each primarily

2 assigned to their own representative districts. So

3 there's going to be for example one district that has

4 the Santa Fe metro area. And that's going to be

5 different from the district that contains Las Cruces.

6 Las Cruces and Santa Fe metro area are to be kept

7 intact and to never be split apart into multiple

8 districts.

9   The Albuquerque metro area, certainly

10 larger than a single congressional district can hold,

11 but I made sure that Albuquerque had 60 percent of its

12 population assigned to a single district.

13   And then finally, South Valley and the

14 Rio Grande River valley were required to be kept

15 together in the same district.

16   But collectively what all this means is

17 that you're going to have, of course, three

18 congressional district in New Mexico in any computer

19 simulated plan. And one out of those will be the

20 Santa Fe metro area district. The second one will be

21 the Las Cruces district. And the third will be the

22 one that contains most of Albuquerque.

23   Q. Does that criteria, as it affects your

24 algorithm Dr. Chen, have the effect of combining urban

25 and rural communities?

1   A. Well, yeah, exactly. So like I said,

2   there's going to be one district that contains all

3   after Las Cruces, because Las Cruces isn't going to be

4   split apart. But of course that district is not going

5   to also include, say, Santa Fe. Instead, that means

6   Las Cruces district will combine Las Cruces with

7   surrounding rural areas and rural counties. And every

8   district is like that. It's going to be a /KPEUPBGS

9   of urban and rural.

10   Q. Your next criteria is titled I know January

11   reservation considerations. How did that impact your

12   work, Dr. Chen?

13   A. Defense counsel instructed me to treat

14   Indian reservations in a couple of different ways.

15   So first, the Mescalero Apache

16   reservation was always to be split apart so that

17   precinct 11 and precinct 56 in Otero County were to be

18   split apart.

19   I was also instructed to consider the

20   pueblo -- the Zuni Pueblo rest situation in such a way

21   that precinct 28 in McKinley County was split apart

22   from the rest of the Zuni Indian reservation.

23   And then finally, I was instructed to

24   always keep the Navajo Nation together and do that by

25   keeping San Juan County and most of McKinley County

1   together in the same district so that the Navajo

2   Nation wouldn't be split apart, with the exception of

3   the aforementioned Zuni Pueblo portion of McKinley

4   County. But basically, the Navajo Nation was to

5   believe kept together.

6   Q. All right. Dr. Chen, I'm going to skip the

7   oil industry considerations. We're going to come back

8   to it last.

9   At Paragraph 9.G, we have the

10 redistricting criteria of minimizing county splits.

11 How does that criteria impact your work?

12   A. So this criterion is saying, unless you need

13 to do so, unless the computer needs to do so in order

14 to follow one of the aforementioned criteria, try not

15 to split counties. So one of the times you might

16 actually -- the computer might actually need to split

17 counties, well, for example, to create equally

18 populated districts, you can't create perfectly

19 equally populated districts just by using county

20 boundaries alone. At some point, you can going to

21 have to split up a county in order to create equally

22 populated districts.

23   And so the computer algorithm bus allow

24 for that. It allows for county splits only when

25 necessary to avoid violating one of these

1 aforementioned criteria. But in general, it tries not

2 to split counties.

3   Q. The final criteria on your list,

4 Paragraph 9.H, is geographic compactness. How does

5 that criteria impact your expert report, Dr. Chen?

6   A. The computer tries to favor drawing

7 geographically compact districts. So intuitively,

8 what's geographic compactness. A compact district, is

9 a nice looking district, a nicely shaped district, a

10 cleanly shaped district. And so the algorithm is

11 trying to avoid oddly shaped districts and trying to

12 promote compactness in the drawing of the district

13 boundaries.

14   Q. All right. Let's return to what I think is

15 going to be the contentious criteria, Dr. Chen, which

16 is oil industry considerations, at Paragraph 9.F of

17 your report. Do you see that?

18   A. Yes.

19   Q. All right. Tell me how oil industry

20 considerations impacted the work you do?

21   A. So the instruction that I followed was to

22 require that no single district in any computer

23 simulated plan contains more than 60 percent of the

24 state's active oil wells. I programmed that criterion

25 into the simulation algorithm.

1   Q. And after running your simulations, do you

2   have an opinion as to how that criterion affected the

3   output of our simulations?

4   A. Well, yeah. I looked at -- I saved, of

5   course, the 1,000 simulated plans, the computer

6   algorithm saves -- permanently saves and outputs the

7   1,000 computer simulated plans so that I could analyze

8   them later with respect to -- with respect to oil

9   wells. And so that's what I did. I looked at the

10   number of oil wells in each simulated plan across the

11   various districts.

12   And I programmed that 60 percent oil

13   well rule, like I just said, and then I looked at the

14   distribution of oil wells in these simulated plans,

15   and I saw that indeed in these simulated plans, this

16   rule had the effect of spreading out the state's oil

17   wells across multiple congressional districts.

18   Q. Did you observe an effect of this criteria

19   on the splitting of Eddy and Lea counties?

20   A. Yeah. I can see that many times this

21   criterion results in Lea and Eddy will go placed into

22   different districts. Doesn't always happen, but at

23   that certainly happens many times.

24   Q. All right. To the extent that you've

25   testified today that it doesn't always happen, what do

1 you mean it doesn't always happen, Dr. Chen?

2   A. Well, it doesn't necessarily have to be the

3 case. There's no guarantee that all of Lea County is

4 one district and all of Eddy County is in a separate

5 district. It could be, for example, and it does

6 occasionally happen, that all of Lea County and a

7 portion of Eddy County can be placed into the same

8 district. So that does sometimes happen in the

9 simulated plans. But, like I said, most of the time,

10 certainly Lea County and Eddy County are placed two

11 different districts.

12   Q. Thank you, Dr. Chen. I'd like to talk to

13 you a little bit about your SMC -- excuse me, I think

14 you describe it as an MCMC version of SMC algorithm.

15 Am I getting that right?

16   A. Yes.

17   Q. All right. Can you tell me first, is your

18 MCMC version of SMC algorithm peer reviewed?

19   A. Yes.

20   Q. And where has it been peer reviewed,

21 Dr. Chen?

22   A. Most recently, until Yale Law Journal.

23   Q. Do you know who your pierce were who

24 reviewed your paper in the Yale Law Journal.

25   A. No. That's not the way that peer review

1   works. Peer review, in journal, is blind. So, for

2   example, when I review papers for the Yale Law

3   Journal, I am sent an anonymized manuscript, an

4   anonymized paper. So I don't know who the author is,

5   and I'm not supposed to consider who the author is,

6   which is why I'm not told. It's blind peer review.

7   And so I write up comments, I read the

8   paper, I write up comments, send them back to the

9   journal, and then the journal considers those peer

10   review comments in its publication process or in it's

11   editorial process. So it's a blinded peer-review

12   process.

13   Likewise, when I am the one submitting a

14   paper to the Yale Law Journal, I don't know who the

15   peer reviewers are. And so it's pretty typical like

16   that. Peer review is typically, not always, but it's

17   very commonly blinded on both ends. Neither the

18   author nor the peer reviewers no the identity of the

19   other party.

20   Q. Now, in your deposition, Dr. Chen, I believe

21   Ms. DiRago asked you questions about peer review. And

22   in response to her question at your deposition, you

23   testified that you thought your document -- excuse me,

24   your paper and algorithm were peer reviewed in both

25   the Yale Law Journal and in the Cal Berkeley Law

1 Journal; is that right?

2   A. Yeah. I did say that. I went back and

3 checked after the deposition, so jail law journal is

4 peer reviewed, California Law Review, is not.

5   Q. Okay. Thank you, Dr. Chen.

6   Let's talk about what's different with

7 your algorithm than the SMC algorithm that's used in

8 Dr. Imai's Redist SMC?

9   A. Yeah, so like I said, my algorithm as an

10 MCMC. And as I explained earlier, I'll just briefly

11 explain it again, an MCMC is -- stands for Monte Carlo

12 Markov Chain. But what that means is there are

13 iterative changes, random changes that are proposed in

14 the algorithm, random changes that are proposed to do

15 borders between different districts.

16   And the fact that these are random

17 proposed changes is really important, the randomness

18 of it, and I'll explain in a minute why that's so

19 important. But they're random changes. Some are

20 proposed -- they're proposed. And some are accepted

21 and some are rejected, all in pursuit of the criteria

22 that I've built into the algorithm.

23   So why is this important to me, that

24 I -- I have MCMC, is because the SMC algorithm that

25 Imai and McCartan describe in their working paper, in

1   which they document and describe the Redist SMC code,

2   is -- it is a working paper, but more importantly, it

3   is code that is in progress. It's code that they're

4   proposing.

5   Now, the authors McCartan and Imai are

6   very honest and acknowledge that there are

7   limitations. And they're very helpful in describing

8   these limitations. So they note for example, and I've

9   certainly seen this in that Redist SMC code, that Imai

10   and his co-authors have developed, Imai and McCartan

11   are very honest in pointing out an important

12   limitation of their code, which is that in some

13   contexts, in some situations, in some settings, some

14   jurisdictions, some redistricting scenarios, the code

15   has a tendency to produce duplicate plans. And

16   sometimes, at a high rate. And they describe this as

17   plan diversity. So they are very open in discussing

18   this problem or this limitation of their code.

19   They're very helpful about it, too. They're very

20   helpful in cautioning the users of that Redist SMC

21   algorithm, that code that they put out there. They're

22   very careful in cautioning the user to not blindly

23   accept the results of their algorithm without

24   diagnosing and trying to fix duplicate problems.

25   They're very honest about this and helpful in

1   suggesting steps that you take if you have had that

2   you have a lot of duplicates that emerge from the

3   algorithm that they have developed.

4   And so they suggest some various steps.

5   One of these steps is that they simply suggest in

6   their working paper that future research could fry to

7   tackle this problem of plan diversity or duplicates.

8   And they suggest, for example, that future research

9   might incorporate MCMC into the SMC.

10   Now, back to my algorithm, what I do

11 here is the plan algorithm or the districting

12 algorithm combines SMC portion that sets up initial

13 districting blinds and then uses MCMC, uses MCMC

14 iterations, or an MCMC kernel to pursue these various

15 criteria that I've built into the algorithm.

16   Q. And does that have the effect of eliminating

17 or significantly reducing duplicates?

18   A. I checked and I found that in 1,000 plans,

19 it thousands zero duplicates.

20   Q. When you use the phrase plan diversity, does

21 the term plan diversity and sample diversity, are

22 those interchangeable?

23   A. Yeah. Plan diversity is basically saying,

24 you know, intuitively, if you're producing the same

25 plan over and over again, you're obviously not

1 producing a bunch of random plans. That's a lack of

2 plan diversity. So plan diversity is just a term that

3 Imai and McCartan use to describe that problem.

4   Q. All right. So absent the existence of some

5 externality, like a statute, is there a problem with

6 having a lot of duplicates?

7   A. Yeah. I mean, absence some kind of external

8 limitation, like what you're suggesting, a lack of

9 plan diversity or seeing a bunch of duplicates would

10 suggest that what you're running is not really a

11 random algorithm.

12   Q. And just so that we can clarify, when I'm

13 talking about an externality, have you see

14 externalities imposed upon redistricting that force

15 the existence of duplicates?

16   A. Yeah. In situations completely outside of

17 New Mexico, there may be statutory or constitutional

18 requirements that are very specific and very esoteric

19 that might require that a particular district or set

20 of districts be drawn in a very particular way in some

21 jurisdiction. But the examples I've seen are not in

22 New Mexico.

23   Q. Are you aware any externality that would

24 have caused duplicates in redistricting New Mexico?

25   A. No.

1   Q. Dr. Chen, I want to talk to you about a

2 portion of your expert report at Page 13 that is

3 titled measuring the partisanship of districting

4 plans. Tell me what that section of your work is

5 about.

6   A. I'm explaining in this section how I'm

7 booing to compare the SB-1 plan and all of the 1,000

8 computer simulated plans in terms of their

9 partisanship. And I'm going to compare partisanship,

10 or I do compare partisanship in my report both at a

11 district level, district by district, as well as at a

12 plan wide level.

13   And so I explain in this section here

14 how I use two different ways, two different measures

15 of measuring the partisanship of districts. And so

16 one of these measures. And so one of these measures

17 is to use the former man's index, and a second measure

18 is to use voter registration data.

19   Q. Paragraph 13 of your report, that section is

20 titled the "Republican Performance Index." What do we

21 need to understand about the Republican Performance

22 Index, Dr. Chen?

23   A. The most common way of measuring

24 partisanship of districts used by map drawers is to

25 use recent statewide elections, and that's exactly

          1   what the performance index is. So the performance

          2   index is a measure, it's developed by Research &

          3   Polling, and it essentially aggregates together

          4   statewide elections. Specifically it aggregates

          5   together the 26 competitive statewide elections that

          6   have been held in New Mexico since 2012, from 2012 to

          7   2020. And what it's doing is it's going to be able to

          8   characterize any given district in terms of its

          9   Republican Performance Index.

         10   And you can just think of this

         11   Republican Performance Index as the Republican

         12   candidates collective share of the two-party votes

         13   across these 26 elections for any given district.

         14   So, for example, if we were looking at

         15   CD-1 in the SB-1 plan, that's a single district, and

         16   we can characterize it's Republican Performance Index

         17   by first counting up the total number of votes for all

         18   the Republican candidates in those 26 contest, those

         19   26 statewide contests, and then do the same for the

         20   Democratic candidates in those 26 contests.

         21   So you can see here in the Paragraph 14

         22   table that for CD-1, there are a total of a little

         23   over 4 million votes for Republican candidates in

         24   CD-1. And then the Democrat I can candidates get a

         25   little over 4.6 million. So what is the republic

1 share of that two party vote total? It's

2 46.5 percent. So we can characterize CD-1 in the SB-1

3 plan as have a Republican Performance Index of

4 46.5 percent. And you can just intuitively think of

5 that as for the voters in CD-1, 46.5 percent of the

6 votes cast during 2012 to 2020, were in favor of the

7 Republican candidate in the statewide elections.

8   Q. The next portion of your expert report,

9 Paragraph 15, is title "Partisan Affiliation of

10 Registered Voters."

11   Tell the Court what the import of that

12 section is, Dr. Chen.

13   A. This is just a different way of measuring

14 the partisanship of a district, using voter

15 registration partisanship data. And so for any given

16 district you just counts up how many registered

17 Republicans and how many registered Democratic voters

18 there were. And then you calculate what was the

19 Republican share of these Democrat plus we public can

20 registered voters of these two-party registered

21 voters.

22   So in Paragraph 16, there's a table

23 there. And the top row of the table is describing

24 CD-1 in the SB-1 plan. And you can see that CD-1 has

25 157,000 registered Republicans, and CD-1 has 211,916

1 registered Democrats. So what's the Republican share

2 of that total, it's 42.6. 42.6 of the two-party

3 registered voters are Republicans. So that's just a

4 different way of measuring the partisanship of

5 districts.

6   Q. On Page 16 of your report, Dr. Chen, you

7 have the heading, "District Level and Plan-Wide

8 Partisans Compares of the SB-1 Plan and Simulated

9 Plans." Do you see that?

10   A. Yes.

11   Q. What do we need to take away from that

12 portion of your report?

13   A. So in this next section of the report, what

14 I do is compare is SB-1 plan at a district by district

15 level, as well as characteristics for the entire plan.

16 And I compare SB-1 to the 1,000 computer simulated

17 plans that I produced.

18   And so in the following sections, I

19 present some district by district comparisons. And

20 then I present some plan-wide comparisons. And these

21 comparisons can be done using the performance index as

22 the measure of partisanship, and they can also be done

23 using the voter registration numbers, the voter

24 registration share of -- the Republican share of voter

25 registration as the measure of partnership. And so

1   presented both ways later on in this report.

2   Q. Did you, Dr. Chen.

3   At paragraph -- beginning at Paragraph

4   20 on Page 17, you have a section of your report

5   titled, "District By District Comparisons Using the

6   Partisan Index. " Do you see?

7   A. Yes.

8   Q. All right. I'm going to put a chart up to

9   help you explain that section to the Court.

10   A. So this is a district by district

11 comparison. And you can see that this figure has

12 three rows. I'll explain what each of these three

13 rows means, I'll explain why you see a bunch of gray

14 circles there and some red stars.

15   These are district by district

16 comparisons, and when I say "district by district,"

17 here's what I mean, for every plan, the SB-1 plan, as

18 well as the 1,000 computer simulated plans, we're

19 going to directly compare the most Republican district

20 within each plan.

21   Now, the SB-1 plan has CD-2 as its most

22 Republican district. So that's why you see CD-2 with

23 a red star labeled on the top row of this figure.

24 Now, what's actually being plotted here is the

25 Republican Performance Index of that district. And so

1   that's what's being plotted along the horizontal axis.

2   And you can see that the Republican Performance Index

3   of CD-1 is 46.5. And that was reported in Paragraph

4   14 of my report. So that's why you see the red star

5   where it is, where CD-2 is on the top row.

6   Now, let's compare CD-2 to the most

7   Republican district in each of the 1,000 computer

8   simulated plans. And that's why you see 1,000 gray

9   circles, that huge blob of 1,000 gray circles on that

10   top row. Those represent the partisanship of the most

11   Republican district Republican district within each of

12   these 1,000 computer simulated plans.

13   And, again, I'm plotting them along the

14   horizontal axis in terms of their Republican

15   Performance Index.

16   So let's just stay for the used on that

17   top row for right now. What is that top row showing

18   us. CD-2 has a Republican Performance Index that is

19   absolutely more favorable to Republican than

20   33 percent of the simulated plans. And 67 percent of

21   the simulated plans have the most Republican district.

22   I'm sorry. I'm going to start over

23   again. I misspoke.

24   So CD-2 is the red star on the top row.

25   CD-2 has a Republican Performance Index that is more

1   Republican than 33 percent of the computer simulated

2   plans most Republican district. 67 percent of the

3   simulated plans have the most Republican that is more

4   Republican favorable, that is more Republican than

5   CD-2 is.

6   So I hope I -- I got that out right this

7   time. I'm going to just restate it again to make sure

8   I stated that correctly.

9   33 percent of the simulated plans have

10   the most Republican district that is less Republican

11   than CD-2. And 67 percent of the simulated plans have

12   the most Republican district that the more Republican

13   than CD-2.

14   So what do those two numbers mean? I

15   mean, first of all, those two numbers are shown in the

16   two red arrows at the top of that first row. Now,

17   what are those two numbers telling us?

18   Well, it's telling us that CD-2 is well

19   within the distribution of the computer simulated

20   plans in terms of it's most Republican district.

21   Sometimes, CD-2 is more Republican than the most

22   Republican district in the simulated plans, bus

23   sometimes it's less. This split the 33 versus 67

24   percent. So it is in the middle of the distribution.

25   It's not right at the middle of the distribution, but

1   it is well within the normal range of the

2   distribution.

3   In other words, in this top row here, CD

4   is not a statistical outlier, it is not a partisan

5   outlier. It has a partisanship that is very much

6   within the norm of what we see in the most Republican

7   district in 1,000 computer simulated plans. It is not

8   a statistical outlier. That's what we see in the top

9   row.

10   Now, we can do the same comparison for

11   the second most Republican district, what you see on

12   the second row of this figure. And that's CD-1 in the

13   SB-1 plan. So CD-1 /TPH-PLT SB-1 plan has -- has a

14   Republican Performance Index of 46.5 percent. And so

15   what you can see here in the second row is that CD-1

16   is more Republican than 87 percent of the simulated

17   plan second-most Republican district. And it is less

18   Republican than 13 percent of the simulated plans most

19   Republican district.

20   So it's actually to the right of the

21   median, but it's still within the normal range of the

22   distribution. In other words, CD-1 a statistical

23   outlier in terms of partisanship.

24   And you go to the third row, and you see

25   the same thing with CD-3. CD-3 is the least

1   Republican district in the SB-1 plan, but it is within

2   the normal range of the distribution of the simulated

3   plans. 33.2 percent of the simulated plans have a

4   least Republican district that is less Republican than

5   CD-3, and 66.8 percent of the simulations have one

6   that's more. So it is within the normal range of the

7   distribution.

8   So we see the same thing for all three

9   of these districts. They are all within the normal

10   range of the distribution at a district level when

11   compared to the 1,000 computer simulated plans. None

12   of the three districts are partisan outliers. None of

13   them are extreme in their partisan characteristics

14   when compared to the 1,000 computer simulated plans.

15   Q. Thank you, Dr. Chen.

16   Let's look at Page 21 of your report

17   that begins with the heading, "District by District

18   Comparisons Using Voters Party Registration." Can you

19   explain that section of your report to us. ?

20   A. We're about to look on Figure 2 on the

21   screen here, at a very similar comparison. And this

22   figure is exactly the same as the last figure that we

23   saw, with one difference. And that one difference is

24   that now I'm measuring partisanship using registered

25   voters rather than the Republican Performance Index.

1   So along the horizontal axis here, you

2   can see that what I'm measuring all these districts by

3   is each district's Republican two-party share of

4   registered voters. Two-party share meaning the share

5   of Democrat plus Republican voters. So it's a

6   different measure of partisanship, but the results are

7   exactly the same in terms of the conclusion.

8   For all three districts we're seeing on

9   this figure, all three districts in the SB-1 plan are

10   well within the normal range of partisanship compared

11   to the 1,000 computer simulated plans at a

12   district-by-district level.

13   So you see in the top row, CD-1, it is

14   more Republican than 58.3 percent of the simulate

15   plans most Republican district. But it's less

16   Republican than 41.7 percent of the simulations. So

17   it is getting close to the median of the distribution.

18   It's not right at the median, but it's very close to

19   the middle of the distribution. It's very much within

20   the normal range of the distribution.

21   Same thing for the second row, which

22   describes CD-2, and same thing for the third row

23   describing CD-3. All three of these districts you see

24   here are well within the normal range of partisanship.

25   None of these three or statistical outliers. None of

1   them are outliers in terms of the Republican

2   partisanship. All of them have partisan

3   characteristics at the district level that are very

4   typical of and can very much be expected from what we

5   see in the 1,000 computer simulated plans.

6   Q. Thank you, Dr. Chen.

7   At the bottom of Page 23, Paragraph 34,

8   you have a heading titled, "Partisanship of the

9   District Containing Las Cruces." What's the import of

10   that section?

11   A. So we're going to do something a little bit

12   different here in this next figure, in this section.

13   This time I'm not going to compare the simulated

14   districts to the SB-1 districts in terms of the most

15   Republican, the second-most Republican district, the

16   third-most Republican district like we just did a

17   moment ago.

18   In this figure, I'm going to do

19   something a little bit different. What this figure is

20   comparing is just the district that contains

21   Las Cruces. And of course in the SB-1 plan, that's

22   CD-2. So if you look at the partisanship of that

23   district, it's about 47 percent using the Republican

24   Performance Index, CD-2 is. So CD-2, that's the red

25   star in the middle of the upper half of this figure.

1   So that's why there's a red star, and it's right

2   around 47 percent, because CD-2 has a Republican

3   Performance Index of 47 percent.

4   Now, let's compare it to the 1,000

5   simulated plans. But what I'm going to compare it to

6   in this figure is I'm just going to compare it to the

7   district containing Las Cruces from each of the 1,000

8   computer simulated plans. So I'm just comparing the

9   Las Cruces based district in the SB-1 plan to the

10   Las Cruces based district in the 1,000 computer

11   simulated plans. And I'm comparing these districts in

12   terms of the Republican Performance Index.

13   So what do we see here in the top half

14   of this figure? Well, 52 percent of the Las Cruces

15   districts in the 1,000 computer simulated plans, are

16   less Republican than CD-2 is, while 48 percent of the

17   Las Cruces districts in the 1,000 computer simulated

18   plans are more Republican. What does that mean? CD-2

19   is very close to the median of the distribution. It's

20   right in the middle of that distribution. You can see

21   that visually here, but you can also see it in terms

22   of the actual distribution. 52 percent below, and 48

23   percent above. It's very close to the median of this

24   entire distribution.

25   And so what that's telling us is is the

1   SB-1 plan's district for Las Cruces has a partisan

2   characteristic that is right near the median of what

3   can be expected for Las Cruces districts among the

4   1,000 computer simulated plans. It's clearly not an

5   outlier. It's clearly not a partisan outlier at all.

6   It's very close to the median.

7   And the bottom half of this figure just

8   shows that same information except in the form of

9   histogram. So the histogram is just telling us that

10   33.3 percent of the simulated plans are creating a

11   Las Cruces district that is right at are 47 percent

12   Republican Performance Index. In other words, that's

13   the most common outcome that you can see on this

14   histogram. And that's pretty clear that that matches

15   CD-2's Republican Performance Index. CD-2 is showing

16   with that read dashed line in the lower half of this

17   figure.

18   And, again, that's just the same thing

19   that we just talked about a moment ago, which is that

20   CD-2 is very typical and very close to the median of

21   the sort of partisan characteristic that you'd see for

22   a Las Cruces based district in the 1,000 computer

23   simulated plans.

24   Q. Dr. Chen, I'm going to show you Figure 4

25   from that same section. What is the import of Figure

```
 1   4?
 2           A.  It's exactly the same thing that we just saw
 3   on Figure 3, in the previous figure, with the only
 4   difference being that here I've measured partisanship
 5   of the district using the Republican share of
 6   registered voters rather than the Republican
 7   performance index.
 8               But you see the results are largely the
 9   same.  When you measure partisanship using registered
10   voters, the results are largely the same.  CD-2 is
11   very much within the normal range of the distribution.
12   It's reasonably close to the middle of.  It's a little
13   bit to the left of the median.  But it's clearly not
14   at all close to being a statistical outlier.  It's
15   very much typical of the partisanship of districts for
16   Las Cruces that emerged in the 1,000 computer
17   simulated plans.
18           Q.  Dr. Chen, on Page 28 of your report, titled,
19   "Statewide Comparisons," what does that section of
20   your report discuss?
21           A.  In this section of the report, I've
22   presented or I've calculated some statewide
23   comparisons of the SB-1 plan to the 1,000 computer
24   simulated plans.  And so here, we've got figure five
25   from the reports on the next -- on Page 29.
```

1   And this figure is presenting as a

2   comparison of a statewide plan characteristic. And

3   specifically what I've measured here is for every

4   plan, whether the SB-1 plan or computer simulated

5   plan, I'm asking how many districts were there in the

6   plan across three district, how many districts have a

7   46 to 54 percent Republican Performance Index.

8   Every plan has three districts, so the

9   answer is going to be zero, one, two, or three.

10   Now, let's start by looking at the

11   simulated plans. The simulated plans are described

12   here with this histogram on this figure. So what's

13   this histogram telling us? It's telling us that the

14   majority, two-thirds of the simulated plans, have

15   exactly one district that is between 46 to 54 percent

16   Republican Performance Index. 67.2 percent is the

17   number under that tallest bar in the middle. That's

18   telling you that two-thirds of the plans have exactly

19   one such district. A very, very small fraction have

20   zero such districts. That's that 1.5 percent on the

21   left. And then one-third of the plans, 31.3 percent,

22   have two such districts, two districts between 46 to

23   54 percent Republican Performance Index. So that's

24   describing the 1,000 computer simulated plans.

25   Now, let's compare the simulated plans

1   to the SB-1 plan. How many districts does the SB-1

2   plan have in this range? It's two. There are two

3   districts that have between a 46 to 54 percent

4   Republican Performance Index. So what this is telling

5   us is that the SB-1 plan, in creating two districts of

6   46 to 54 percent Republican Performance Index is at

7   the high range, at the high end of the range of the

8   simulations. It's -- there are no simulations that

9   create more than two such districts. And the vast

10 majority of the simulations actually create fewer than

11 two. So it's at the high ends of the range.

12   Q. Dr. Chen, having gone through your report,

13 what are the conclusions that you have drawn from your

14 analysis?

15   A. So my conclusions come from a district-level

16 comparison, as well as a plan-wide comparison. And I

17 found that the partisan characteristics of the SB-1

18 plan are typical, are well within the normal range of

19 the partisan characteristics of plans that are drawn

20 with a partisan lined algorithm adhering to the

21 districting criteria that I followed.

22   So both with the plan wide level, as

23 well as district-by-district level. I found that the

24 partisan characteristics of SB-1 could plausibly have

25 emerged from a partisan neutral map drawing process

1 adhering to the criteria that I followed in the

2 algorithm.

3   MR. WILLIAMS: Your Honor, at this time, I

4 would move the admission of Dr. Chen's report into

5 evidence as legislative defendant's Exhibit C.

6   THE COURT: We haven't done C? No, that's

7 how you marked it?

8   MR. WILLIAMS: That's how I've marked it.

9   THE COURT: Any objection?

10   MS. DIRAGO: No.

11   THE COURT: All right. Exhibit C will be

12 admitted.

13   MR. WILLIAMS: Thank you, your Honor.

14 BY MR. WILLIAMS:

15   Q. Dr. Chen, I've got a couple other questions

16 for you. Were you present for the deposition -- or

17 excuse me, the testimony of Mr. Trende?

18   A. Yes.

19   Q. Did you see Plaintiffs' Exhibit 3, which is

20 a chart that reflected the number of what they say is

21 the number of oil wells in New Mexico for ten

22 different counties?

23   A. Yes.

24   Q. All right. Did I ask you to look at that

25 last night?

1   A.   Yes.

2   Q.   And does that chart that plaintiffs have

3   presented, does it reflect the number of oil wells in

4   those ten counties?

5   A.   You're asking me if it reflects the number

6   of active oil wells --

7   Q.   Yes, sir.

8   A.   -- within those ten counties.

9   Q.   Yes, sir.

10   A.   The answer is no.

11   Q.   For Colfax and Harding County, are there any

12   active oil wells in those counties?

13   A.   There are no active oil wells in those two

14   counties.

15   Q.   Were you able to determine what Mr. Trende

16   had done with the shapefile that he analyzed in

17   reaching these incorrect numbers?

18   A.   Yeah. I mean, it was pretty much /*F pretty

19   clear what happened. The shapefile that Mr. Trende

20   clearly looked at was a shapefile describing all wells

21   across the State of New Mexico, at least the ones that

22   were logged by OCD. And so the shapefile lists a lot

23   of wells that are not oil wells. And the shapefile

24   also lists lots of wells that are not active. Lots of

25   wells are plugged up, they've been discontinued,

1 they're not in use, they're not active oil wells.

2   But like I said, a lot of them are

3 just -- on oil wells, are something else. They're CO_2

4 wells, they're gas wells, a couple of other types.

5   And it's pretty clear from the numbers

6 on Mr. Trende's table that he added up all wells,

7 regardless of whether or not they were oil and

8 regardless of whether or not they were active or not.

9   Q. I have one last line of questions for you,

10 Dr. Chen, before I hope the judge lets us go to lunch,

11 and that relates to nonpartisan criteria.

12   I anticipate that you're going to get

13 some cross-examine on nonpartisan criteria. The

14 nonpartisan criteria that I think is going to be at

15 issue are the state oil and gas considerations.

16   In your experience redistricting,

17 Dr. Chen, can nonpartisan criteria have a partisan

18 effect?

19   A. Well, sure. That happens all the time.

20   Q. In what context does that occur, Dr. Chen?

21   A. Pretty much any criterion could have a

22 partisan effect, even if it is a nonpartisan criteria.

23 So to the extent that you would adhere districting

24 lines to county boundaries, to municipal boundaries,

25 those things can have partisan implications. They

1   don't necessarily have partisan implications, but they

2   certainly can.

3   And even better example is in southern

4   states, when, say, a districting plan is drawn on the

5   basis of racial considerations, for example, to create

6   a majority black district, well, if you create a

7   majority black district in a deep south state, you're

8   probably creating a Democratic leaning district.

9   That's just the way that race and political geography

10   works in the south, right? And I mean that's -- of

11   course that's well known.

12   So all kinds of nonpartisan criteria.

13   And when I say counties, when I say race, or racial

14   considerations when drawing the majority black

15   districts, these are obviously considerations that are

16   not actual partisanship. They are something else

17   that's not partisanship. But of course they can have

18   partisan effects.

19   Q. All right. Thank you, Dr. Chen.

20   MR. WILLIAMS: I pass the witness.

21   THE COURT: Okay. I think we'll break for

22   hundred, it's about noon. How many other witnesses

23   do you plan on calling?

24   MR. WILLIAMS: Your Honor, we have one more

25   witness after this.

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1              THE COURT:  Okay.  So my thought is, we'll

2    break till about 130, get a little bit longer lunch

3    so we're not too rushed.

4              MR. WILLIAMS:  That's fantastic.  Thank you,

5    your Honor.

6              THE COURT:  All right.  We'll break till

7    130.  Thank you.

8                   (Recess held from 11:53 a.m.

9                    to 1:31 p.m.)

10             THE COURT:  Dr. Chen, if you want to come

11   back up.  Or do we need -- let me -- before you come

12   up -- are we on the order.

13             THE COURT MONITOR:  Yes.

14             THE COURT:  And update, what do you know as

15   far as subpoenas?

16             MS. SANCHEZ:  Everybody's working on the

17   searches as we speak.

18             THE COURT:  Okay.  Any idea -- do they have

19   any way to say how long it might take?

20             MS. SANCHEZ:  I have varying estimates, but

21   so far we're still looking good for beginning of next

22   week.  Maybe some of it sooner.  But --

23             THE COURT:  Okay.

24             MS. SANCHEZ:  So in progress.

25             THE COURT:  All right.  At the end of the
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 1  day, I might ask you again to see if you have an

 2  update.

 3           MS. SANCHEZ:  Sure, sure.

 4           THE COURT:  I'm sorry, Dr. Chen.  If you

 5  want to come back up.

 6                All right.

 7                CROSS-EXAMINATION

 8  BY MS. DIRAGO:

 9       Q.  Hi, Dr. Chen.

10       A.  Good afternoon, Ms. DiRago.

11       Q.  How are you?

12       A.  I'm doing well.  Thank you.

13       Q.  So we met virtually, never in person.  But

14  as you know, I am counsel for the plaintiffs in this

15  case.  So I want to just kind of get could be to it.

16                So according to you, you used partisan

17  blinds algorithm to create simulated maps, correct?

18       A.  Yes.

19       Q.  And, in fact, it is important that your

20  algorithm be partisan blind, right?

21       A.  It's designed to be partisan blind, so of

22  course it is important that I programmed it the way

23  that I designed.

24       Q.  Okay.  And your simulation process is design

25  to ignore all partisan considerations?
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1   A. It is designed to ignore partisanship

2 because it does ignore partisanship. It ignores

3 partisan data, partisan I know inputs.

4   Q. Okay. Let's look at your report, Page 4,

5 please.

6   MS. DIRAGO: Judge, I assume you have the

7 report still.

8   THE COURT: Yes.

9   MS. DIRAGO: Yeah.

10 BY MS. DIRAGO:

11   Q. This simulation process, this is down at the

12 bottom of Page 4, Paragraph 6. This simulation

13 process ignores all partisan and racial considerations

14 when drawing districts. You agree with that, don't

15 you?

16   A. Yes, ma'am.

17   Q. Okay. Same location here. Okay. Actually,

18 the last sentence on Page 4. The computer simulations

19 are programmed to draw districting plans following any

20 set of specified districting considerations.

21   Is that correct, that the simulations

22 are programmed?

23   A. I think the more accurate way to phrase that

24 is programming a computer algorithm. The algorithm

25 produce the simulations. That's what that sentence

1   means in more detail.

2   Q. Right. So this is actually inaccurate. And

3   trust me, I wouldn't really care normally, but I think

4   it's been brought up a few times. Everybody makes

5   mistakes, right?

6   A. I'm not sure what you're saying.

7   Q. So this sentence is inaccurate?

8   A. No. I just explained that the program is a

9   program of a computer algorithm. The algorithm is

10 produced in computer simulations. That's what I mean

11 when I say computer simulations are programmed. I'm

12 not sure what that's not clear to you.

13   Q. Well, no, it's clear. The simulations are

14 programmed to draw districting plans. You program the

15 simulations?

16   A. The simulation maps prosecute produced by

17 the algorithm.

18   Q. I don't need you to explain it more words.

19 My point is that this is an inaccurate statement.

20   A. Absolutely it's not an inaccurate statement.

21 If you --

22   Q. Then why do you have to keep explaining it

23 with different words?

24   MR. WILLIAMS: Objection, your Honor.

25 Argumentative.

1   THE WITNESS: Yeah, I'm sticking with my

2   same answer.

3   THE COURT: Yeah.

4   BY MS. DIRAGO:

5   Q. Okay. And normally, I'm not the kind of

6   attorney to worry about that. But I think we do have

7   to take some -- point out some the inaccuracies in

8   your report this time, unfortunately?

9   MR. WILLIAMS: Objection, your Honor.

10   That's not a question.

11   THE COURT: Correct, that's not a question.

12   BY MS. DIRAGO:

13   Q. Okay. So let's look at the rest of that

14   sentence. I think that's accurate. You say, let's

15   see, the simulations are programmed to draw

16   districting plans following any set of specified

17   districting consideration, such as population

18   equality, avoiding county splits, protecting municipal

19   boundaries and pursuing geographic compactness.

20   Is that accurate?

21   A. Yes.

22   Q. And do you program -- and you programmed

23   your algorithm here to consider those considerations,

24   right?

25   A. Those considerations are all detailed more

 1 in Paragraph 9, but I think that all those examples

 2 that I gave of districting considerations are

 3 described in more detail in Paragraph 9.

 4   Q. So did you program your algorithm to respect

 5 all these considerations?

 6   A. This sentence right here is me introducing

 7 the abstract concept of computer simulated districting

 8 plan.

 9   Q. Mm-hmm.

10   A. This is not a thorough and complete

11 description of the actual criteria that I used in the

12 computer algorithm that I used to produce the 1,000

13 plans here. For that, I would refer you to

14 Paragraph 9, where I --

15   Q. That's not my question.

16   A. Let me just finish.

17   Q. So those -- those criteria are described

18 clearly in Paragraph 9. Now, go back to the sentence

19 that you're actually asking me about. This is talking

20 about in general, here are some examples of criteria

21 that I could put into -- put as specified district and

22 considerations into algorithm. The purpose of this

23 sentence is not saying this is actually what I did

24 here. These are just some general examples. So a

25 general example is population equality?

1   MS. DIRAGO: Judge, he's not answering my

2   question. I don't know when we cut this off. I'm

3   asking him if he programmed his algorithm with these

4   considerations. That is a fair, direct, simple

5   question that he's not answering.

6   MR. WILLIAMS: Your Honor, he is answering

7   the question.

8   MS. DIRAGO: No, he's not.

9   MR. WILLIAMS: She just doesn't like the

10   answer.

11   MS. DIRAGO: No. It's not an answer.

12   THE COURT: All right. It is a narrative

13   answer that is -- I would say you're trying to answer

14   a question that you believe she's asking rather than

15   the one she is directly asking. So I understand that

16   you think her question should include something else,

17   but for right now, just answer the question that

18   she's asking. The opportunity for you obviously

19   later to further expound on that.

20   THE WITNESS: Thank you, your Honor.

21   THE COURT: Go ahead. Reask your question.

22   BY MS. DIRAGO:

23   Q. The set of criteria that you have on the

24   bottom of Page 4, which I'll read it again, population

25   equality, avoiding county splits, protecting municipal

1 boundaries and pursuing geographic compactness. Did

2 you program your algorithm in this case to respect

3 those considerations?

4   A. I generally did, but this is not a detailed

5 description of what I actually programmed into the

6 algorithm.

7   Q. Do you --

8   A. The answer is yes, I generally did.

9   Q. What do you mean by "generally"?

10   A. This is a general description. So I'm just

11 pointing out that this is not a detailed description

12 of the criteria in the algorithm. That comes later

13 on. This is a very general description of examples of

14 criteria that I could program into the algorithm. But

15 I'm not specifically saying that this -- this actually

16 articulates exactly how I'm including these various

17 criteria.

18   Q. Okay. I'm not asking you about all the

19 criteria. I'm asking you if you programmed your

20 algorithm to -- to consider these criteria. And you

21 said you generally did. And I just don't understand

22 how you generally program an algorithm. You're the

23 expert. I just want you to explain that to me.

24   A. Yeah, I'm sticking with my same answer. I

25 generally did. And I'm happy to explain in some more

1 detail here.

2   Q. I would like you to explain what you mean by

3 you generally programmed your algorithm to respect

4 these criteria.

5   A. Yeah, sure, I'm happy to. So let's take the

6 first one, population equality, that does not say --

7 that phrase, population equality, that's a general

8 statement. It's saying, I'm generally programming the

9 computer simulations in general, as I always do, so

10 pursue population equality.

11   It does not specify exactly what

12 threshold of population equality. For that, we'd have

13 to look later in the report, Paragraph 9, where I do

14 actually say exactly what population equality

15 threshold was used. That's why I'm using the word

16 "generally."

17   Avoiding county splits, same thing.

18 Avoiding county splits is just a general statement. I

19 did not explain exactly what I mean by county splits.

20 For that, we need to look later to the report for the

21 specifics in Paragraph 9, where I explain exactly

22 where county splits follows on hierarchy.

23   There are some times when the computer

24 algorithm is allowed to use county splits. So there

25 are some instances in which the algorithm is not

1   actually avoiding county splits. But in general, it

2   is.

3   That's what I mean when I juice in a

4   qualifier generally. It's because this is a general

5   statement. It is note a specific articulation of

6   exactly how all of the criteria are programmed into

7   the algorithm.

8   Q. Okay. So when you said you generally

9   program these criteria, the generally was not a

10 qualifier of how you program it. It's just a

11 qualifier of how you're describing them in this

12 sentence?

13   A. No, it isn't.

14   Q. I only want to get to the bottom of what

15 generally programmed means.

16   A. I'm sticking with my previous answer, and

17 what I said --

18   Q. It does not quantify the word "program"?

19   A. That's incorrect. I'm sticking with my

20 previous answer, which is that it is a general

21 description of the criteria. And when I use the word

22 general --

23   Q. Okay.

24   A. -- I'm saying --

25   Q. No, no. I didn't mean to stop. Now I get

1 it. It's a general description of the criteria. That

2 I get. Okay. I mean, please finish, though, if you

3 have more to add.

4   A. I'm just sticking with my previous answer.

5   Q. Okay. So are these criteria here at the

6 bottom of Page 4 and bleeding over to Page 5, are

7 these traditional districting criteria?

8   A. They are.

9   Q. Okay. Are there any other criteria that you

10 would consider traditional districting criteria?

11   A. Yes.

12   Q. What are they?

13   A. District contiguity is considered a

14 traditional districting principle, and I'm pretty much

15 I make no mention of that here. Again, it's just not

16 a complete list of criteria here. By I think

17 contiguity is pretty clearly a traditional districting

18 principle.

19   Q. Are there any other traditional districting

20 criteria that you use? Strike that.

21   Are there any other tradition

22 districting criteria besides contiguity that are not

23 listed here on the bottom of Page 4 and bleeding over

24 to Page 5?

25   A. Let me just look through my list of criteria

1   in Paragraph 9 to try to give a more complete answer

2   to your question.

3   It appears that this -- again, this very

4   general, abstract sentence here does not include any

5   mention of preserving precinct boundaries, which I

6   describe at much greater length in Paragraph 9 later

7   on in the report.

8   So preserving precinct boundaries, I

9   think is a traditional districting principle. And I

10   don't believe I've listed it in this paragraph here.

11   Q. Okay. Are there any others that are not

12   listed there and besides contiguity and precinct,

13   respecting precinct lines?

14   A. Off the top of my head, no. I might be

15   misremembering one or two. But off the top of my

16   head, no.

17   Q. What about separating up the oil industry,

18   is that a traditional districting criteria?

19   A. I'm going to answer that question from the

20   standpoint of how I, as a redistricting expert, but

21   not a New Mexico expert, would --

22   Q. I would rather you just answer my question,

23   though.

24   A. I'm going to answer the question. I'm

25   explaining to you the perspective that I'm going to

1 answer the question from.

2   So I'm a redistricting expert. I am not

3 an expert specifically on New Mexico or New Mexico oil

4 industry. So most states do not have the -- the oil

5 extractive industry is not an a significant part of

6 most the state's economy. And it's probably a

7 significant part of very few states, New Mexico being

8 one of them.

9   And so no, oil industry considerations

10 are not traditional districting considerations across

11 the U.S. And that is the perspective from which I am

12 an expert. I am not an expert on New Mexico.

13   Q. Yeah, I'm not asking you about New Mexico.

14 I mean asking you as an expert in redistricting. And

15 you were actually an expert in the Rucho v. -- or is

16 it Common Cause v. Rucho? -- that case, right?

17   A. Yes.

18   Q. And have you read Justice Kagan -- have you

19 read the opinion by the majority and Justice Kagan?

20   A. I'm not sure I've read the whole thing. I'm

21 obviously familiar with it.

22   Q. Okay. And both the majority opinion and

23 Justice Kagan discuss traditional redistricting

24 criteria quite often in that opinion, right?

25   A. I'm happy to take your word for it. I'm not

1   affirming or denying that. But I'm happy to take your

2   word for it.

3   Q. Okay. And I think it was justice Roberts

4   who wrote the opinion. Do you know -- and since you

5   were involved in that case, do you know if they

6   considered oil well -- splitting the oil industry as a

7   traditional districting criteria?

8   A. I don't specifically know, but since the oil

9   extraction industry is not a significant industry in

10 North Carolina, I would be pretty doubtful about that.

11   Q. With it, in fact, you've never programmed

12 your algorithm to respect any -- or to split up any

13 industry, have you?

14   THE WITNESS: I'm going to -- can I ask the

15 Court to repeat the question?

16   THE COURT: I guess you could.

17   Will you repeat.

18   MR. WILLIAMS: You're in Lovington today,

19 Dr. Chen.

20 BY MS. DIRAGO:

21   Q. I will repeat. You can ask me to repeat the

22 question.

23   A. Okay. I'll ask you the question, the repeat

24 it.

25   Q. Okay. In all of your simulations that

1 you've programmed you never been asked to split up an

2 industry before, right?

3   A. I'm going to be as brief as I can. You

4 asked me this question in deposition, and I think I

5 answered it in much more detail to say that, while

6 industry is very broad term, and certainly ways in

7 which -- and the example that gave when you asked me

8 the same question in deposition, was I've certainly be

9 asked to say protect incumbent in congressional -- or

10 sorry, in some kind of legislative simulations.

11   And to the extent that you can consider

12 politicians an industry, for example, or a profession,

13 the term "industry" is just so broad, that there

14 probably would be some considerations that fall within

15 what you're asking about.

16   So I'm going to stick with the way I

17 answered it in deposition, but I'm not going to waste

18 your time by going into all that detail again.

19   Q. I appreciate that. Okay. So you've never

20 before been given the instruction to spread out oil

21 wells, have you, before this case?

22   A. I'm going to first point out that my -- the

23 instructions that were given to me were not to point

24 out oil wells. It was a bit more specific than that.

25 So I'm just going to start with that caveat.

1   Q. So is that a no?

2   A. Okay. I'm going to give that caveat. I'll

3   answer your question. And the answer is that no, I've

4   never -- because I've never worked as an expert in a

5   state where the oil extraction industry was a

6   significant part of the state's economy, so no.

7   Q. Okay. And you gave a caveat, have you ever

8   been -- and I'm going to use the exact instruction.

9   Have you ever been told by lawyers to make sure that

10   no district in the state contains more than 60 percent

11   of the state's oil wells?

12   A. Sorry, I'm going to ask you to repeat the

13   question.

14   Q. This is getting hard. Have you ever been

15   told by counsel, when you're creating simulated maps,

16   to ensure that no district has more than 60 percent of

17   the oil wells in the state?

18   A. Okay. Thank you for repeating it. The

19   answer is no, same thing as before, same explanation

20   as before. I've never worked --

21   Q. I don't need the explanation. What about

22   farms. Have you ever been told to spread out farms in

23   your maps?

24   A. Yes, same answer as before.

25   Q. Okay. Ranches?

1   A. Same answer.

2   Q. Orchards?

3   A. Same answer.

4   Q. Okay. You were an expert in Florida,

5   weren't you?

6   A. I've been an expert witness in -- a Florida

7   case, sure.

8   Q. Okay. But no orchards there?

9   A. Florida, I'm just -- I'm just trying to

10 remember what criteria I was instructed to use in

11 Florida. Florida has a very specific list of criteria

12 in their state Constitution. And I don't think

13 orchards are among the Constitutionally specified

14 criteria. Nothing relating to orchards, I don't

15 recall. But it's a very specific list of

16 constitutional criteria.

17   Q. And you wouldn't remember if you were told

18 to split up all the orchards in Florida? Is that what

19 you're saying right now?

20   A. No, my answer is no, I don't recall being

21 asked to split up orchards.

22   Q. Okay. What about crops?

23   A. Same answer.

24   Q. Chemical plants?

25   A. Same answer.

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1          Q.   Electrical plants?

2          A.   Same answer.

3          Q.   Factories?

4          A.   Same answer.

5          Q.   Greenhouses?

6          A.   Same answer.

7          Q.   Coal mines?

8          A.   Same answer.

9          Q.   What about gas?  You weren't asked here to

10   spread out the gas wells, right?

11         A.   That's correct.

12         Q.   So defendant's counsel informed you that oil

13   industry is -- let me just look at exactly what you

14   say, because I know you are exact.  Paragraph 9 --

15   Page 9, I believe.  No, it's Paragraph 9.  9.F.  okay.

16              You say:  Defendants counsel informed me

17   that due to the economic importance of the oil

18   production city in New Mexico, a policy consideration

19   in the state's congressional districting process was

20   to spread out the state's oil wells across multiple.

21              Is that correct?

22         A.   Yes.

23         Q.   But you weren't told anything more about why

24   this was a policy consideration, right?

25         A.   No.  I think the sentence /EPB Late it.  I
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1 was told that the oil industry, the oil production, or

2 the oil extraction industry is pretty economically

3 important in New Mexico. I think that's -- that's the

4 explanation.

5   Q. And you don't know if this is a policy

6 consideration that was used to draw SB-1, do you?

7   A. I do know.

8   Q. Oh, you do know? What is the answer?

9   A. Well, defense counsel has since informed me

10 that the legislative record supports that there was

11 discussion and advocacy for oil industry

12 considerations in the legislative process?

13   Q. But you don't know whether SB-1 was drawn

14 using that policy consideration, right?

15   A. The information defend counsel gave me is

16 that it was a consideration by legislators, by house

17 representatives and senators during the SB-1 process.

18   Q. Okay. And that was since your deposition

19 that you were informed of that?

20   A. That's correct.

21   Q. So you didn't ask when you originally got

22 that information from defendant's counsel?

23   A. I'm just going to ask you to be more precise

24 about your counsel.

25   Q. You didn't ask if that was a policy

1   consideration that was used to draw SB-1 when

2   defendant's counsel told you to split up the oil wells

3   in New Mexico?

4   A. I -- I think this is first sentence in

5   Section F here in Paragraph 9 says what I did not at

6   the time, which was that it was a policy consideration

7   N congressional districting process of SB-1, and that

8   consideration was to spread out the state's oil wells

9   across multiple districts.

10   Q. But you didn't ask if SB-1 was indeed drawn

11 with that policy consideration, did you?

12   A. I don't think I asked that question. The

13 information that I was given was here, and so I just

14 reported that information. I don't know that I would

15 have asked the precise question that you're posing.

16   Q. Okay. And defendants's counsel did not

17 explain the connection between the importance of the

18 aisle well industry on one hand and the spreading out

19 of the oil wells of your maps on the ordinary person

20 hand?

21   A. That's incorrect. I think defense counsel

22 did inform me of that and I reported that in the first

23 sentence here, in Paragraph 9.F. so I think that was

24 the case and I think I reported that here in my

25 report?

1   Q. So I see defendant's counsel informed me

2 this was a policy consideration, therefore,

3 defendant's counsel instructed me to require that no

4 single congressional district in any computer

5 simulated plan contains more than 60 percent of the

6 oil -- the state's active oil wells.

7   It's the middle part, it's the why that

8 I don't see in here. And I'm asking you, did they

9 explain the connection, and we can all agree it's an

10 important industry. I don't understand why that means

11 you spread them out in your state? So I want to know

12 if you asked that question.

13   A. I don't think I asked that question because

14 I think the answer was already given to me in the

15 instructions that defendant's counsel gave to me.

16   So there are two things there. I said

17 that defendant's counsel informed me that this is a

18 policy consideration, that the economic importance of

19 the oil industry was -- well, that the oil industry is

20 important, and that therefore there's this policy

21 consideration. And defendant's counsel obviously gave

22 membership the specific instruction that I programmed

23 into the algorithm.

24   That, therefore, begins the second

25 sentence. I think that is connection between these

1 two things. It was really clear to me that one thing

2 led to the other, that the second was the result of

3 the first thing that defense counsel told me. So I

4 think that's laid out pretty clear in this paragraph

5 in my report.

6   Q. Okay. So how does one thing lead to the

7 other?

8   A. Well, just like I said. I was informed that

9 spreading out oil wells was a policy consideration and

10 that because of that, defense counsel there have

11 instructed me to program my algorithm with this

12 particular criteria.

13   Q. So that's all you know about the criteria,

14 right?

15   A. Exactly what I've written in my report.

16 Exactly.

17   Q. I'm still trying to figure that out. So if

18 you can enlighten me anytime during my cross of you,

19 please do.

20   Okay. And traditionally redistricting,

21 people want to keep communities together, not split

22 them up, right?

23   A. I have no opinion on the veracity of that

24 statement.

25   Q. Haven't you written about communities of

1 interest in redistricting?

2   A. Yeah. Absolutely. When we use the phrase

3 communities of interest in redistricting, we're

4 usually referring to a process. The idea of a

5 community of interest is so didn't there one state to

6 another, from one jurisdiction to another. There is

7 no single universal definition of community of

8 interest. Usually, when states talk about community,

9 or jurisdictions talk about community of interest,

10 they're talking about a process, a process of gather

11 information and testimony about communities of

12 interest.

13   Q. So I'm not asking you about the definition,

14 I'm asking you do you typically want to spread out or

15 split communities of interest or do you typically want

16 to keep them together in redistricting?

17   A. Same answer as before. I have no opinion

18 about this as just a categorical statement. I'm not

19 sure that it's possible to just make a categorical

20 statement or a generalization like that can.

21   Q. So gas introduction the pretty important in

22 New Mexico, right?

23   A. I have no opinion.

24   Q. Do you know if agriculture is?

25   A. I have no opinion.

1   Q. You weren't asked to spread out the

2   agriculture -- any crops or farms or ranches in this

3   case?

4   A. No.

5   Q. Okay. I'm going to get an exhibit.

6   MS. DIRAGO: May I approach, your Honor?

7   THE COURT: Yes.

8   BY MS. DIRAGO:

9   Q. So this is something that I printed off of

10   New Mexico Tech's -- hold on. I did write this down.

11   The New Mexico Bureau of Geology and Mineral

12   Resources. And this is an organization sponsored by

13   New Mexico Tech. And I'd like to direct you to the

14   sentence that starts with 67 percent.

15   And it says: 67 percent of New Mexico

16   Gas is produced in from the San Juan Basin and

17   33 percent is produced from the Permian basis.

18   95 percent of the oil is -- of the oil, so that was

19   gas. 95 percent of the oil is produced from the

20   Permian Basin and 5 percent of the oil is produced

21   from the San Juan Basin. Do you see that?

22   A. I see the sentences.

23   Q. Okay. There's a picture. But, again, you

24   were only asked to spread out the oil wells, which

25   were all in -- or 95 percent of them are all to the

1 Permian Basin, correct?

2   A. Your statement there does not follow from

3 the text that you just read. Text that you just read

4 on this page -- and I'm going to answer your question,

5 but I'm going to first start by staying that you just

6 put this document in front offense me. I don't know

7 what it is. I don't know -- you know you've told me

8 whether it comes from, but I've not reviewed it. I

9 don't know what data it's based on.

10   With all those caveats out of the way.

11 You just read a sentence, and the sentence you read

12 does not support the statement that you just made.

13 The sentence you read --

14   Q. Did I had misread it?

15   MS. DIRAGO: Can he answer, your Honor?

16   THE COURT: What did you say then?

17   MS. DIRAGO: I said, "Did I misread it?"

18   THE COURT: Okay.

19   THE WITNESS: Okay. Thank you, your Honor.

20   A. Okay. The sentence that you just read says:

21 95 percent of the oil is produced from the Permian

22 Basin and 5 percent of the oil is introduced from the

23 San Juan Basin.

24   Now, I'm not verifying the accuracy of

25 any of those numbers. But that statement is different

1　than the statement that you just made in your

2　question, which is about the wells themselves and not

3　the oil. So you just conflated those two things. You

4　read the sentence, but then you interpreted it in a

5　meaning that is clearly different than the words owner

6　this page. So I'm taking issue with the premise of

7　your question because it's clearly contradicted bill

8　the text that you just reads on here.

9　　　　Q. Okay. I understand what you're saying. So

10　you're saying that potentially, more of the wells are

11　not in the southeast -- the majority of the wells

12　within in the southeast corner of New Mexico?

13　　　　A. I did not say that. I just said that the

14　words that you read off the text of this page are

15　different than the premise of the question that you

16　just asked.

17　　　　Q. Do you know where the oil wells are in

18　New Mexico?

19　　　　A. I turned over data about where the oil wells

20　are in New Mexico. I obviously used that information.

21　That information was inputted into my computer

22　simulation algorithm. And I turned over all that

23　information. There are obviously a lot of oil wells,

24　I think over 25,000 of them, active oil wells in

25　New Mexico. I'm not going to be able to tell you the

1 locations of all of them sit over here right now, but

2 I turned over all of that data.

3   Q. Did you ever look?

4   A. Of course I looked at my own data. Like I

5 said, there are 25,000 of them. But I reported the

6 locations of them with respect to the different parts

7 of New Mexico.

8   Q. But you just don't remember; is that what

9 you're saying?

10   A. Well, there are 25,000 of them. I mean, I

11 can't sit up here and tell you the locations of all 25

12 thousands or so of the active oil wells. There are a

13 lot of them.

14   Q. Do you know generally?

15   A. They are located in different parts of

16 New Mexico. That's what I can generally tell you.

17   Q. You didn't look to see if they were

18 clustered initial in particular?

19   A. I'm sure they might be, but, I mean, I'm not

20 going to be able to comprehensively characterize to

21 you the locations of all of them. The point is, it's

22 in the data. I've turned over all of the data.

23   Q. So it was important to you when you were

24 asked to spread out the oil wells, where they were

25 located?

1   A.   Oh, that was --

2   MR. WILLIAMS: Form, foundation, misstates

3   the testimony, misstates the exhibit.

4   THE COURT: What are you trying to get him

5   to answer.

6   MS. DIRAGO: I want to know if it was

7   important to him, to his analysis.

8   THE COURT: Okay. Was it important to you

9   to know where the oil wells were for your analysis at

10   the time you performed it?

11   THE WITNESS: You're asking me to answer

12   that question now, your Honor?

13   THE COURT: Yes.

14   THE WITNESS: Okay. Thank you, your Honor.

15   A.   Yes. And I did have that precise data on

16   the location of all the oil wells. I used that

17   precise location data on all the oil wells. And I

18   inputted that into the algorithm. So of course it was

19   important. That's why I used that data. It was

20   necessary in order for me to incorporate this

21   criteria.

22   Q.   And if you saw the majority of the oil wells

23   were located in the southeast corner and that counsel

24   asked you to make sure that no district contains more

25   than 60 percent of the oil wells, would that raise

1   alarm bells to you?

2   A.   No.   As long as I have accurate location of

3   the -- of all the oil wells.   The important thing to

4   me and the only thing that would raise alarm bells is

5   if it's not, sway, a well defined criteria and if I

6   can't understand that there's not data on.

7   I looked at the data, I looked at data

8   on all the oil wells, I incorporated that data, and

9   that's how I incorporated this consideration.

10   Q.   So if you looked at your oil well data and

11   you saw that the majority of oil wells were in the

12   southeast corner, would that matter to your results

13   that you were then asked that no district contain more

14   than 60 percent of the oil wells in your maps?

15   A.   No.   The criterion works just the same.   I

16   mean, the point is, that the data is being

17   incorporated into the algorithm.   That's what's

18   important to me, is to get it right.

19   Q.   I'm asking though if that matters to your

20   analysis in creating neutral and blind maps?

21   A.   I'm sticking with the same answer.   It's no.

22   MS. DIRAGO: So I have -- can I approach?

23   THE COURT: Yes.

24

25

1 BY MS. DIRAGO:

2   Q. Okay. So these were actually printed out

3 from the website that you say you got the oil and well

4 data from. Do you recognize these at all?

5   A. I don't, but I --

6   Q. I'm not sure that's now how you viewed the

7 data when you did view it?

8   A. Yeah. I mean, as I explained in my report,

9 in 9.F, Paragraph 9.F, I just downloaded the

10 geospatial data. So this is a visual -- this looks

11 like a visual map, you're representing it to me --

12 you're representing to me that it comes from the OCD

13 website. I'm not sure I would have been interested in

14 looking at these sort of visual maps. I was

15 interested in downloading the precise location data.

16   Q. Okay. And the instruction to make sure that

17 no district contains more than 60 percent of the oil

18 wells, looking at this map, it would have the effect

19 of cracking the southeast corner of New Mexico, right?

20   A. Yeah, I have no opinion on that.

21   Q. Do you see that most of -- and there are

22 two. There's one that's oil wells that one that are

23 gas wells. So I'm looking at the one that shows the

24 oil wells, and you can see that by the pink square.

25 And it says 76.1k. And then, if you look, most of

1 those oil wells are concentrated in the southeast

2 corner of New Mexico. Do you see that?

3   A. I'm not sure -- you just put this map in

4 front of me. I don't know how this map was created, I

5 don't know who created it, I don't know what this map

6 is representing. You just put this in front of me.

7 And I don't see any documentation. I don't know what

8 data it's based on. I don't have any context for

9 interpreting this map. So I'm...

10   Q. So if it were true that the majority of the

11 oil wells were in the southeast corner of New Mexico

12 and you were -- you programmed your algorithm to

13 ensure that no district has more than 60 percent of

14 the oil wells in that district, would that have the

15 effect of cracking the southeast corner of New Mexico

16 in every single one of your 1,000 maps?

17   A. I have no opinion.

18   Q. Really? You're an expert in simulation

19 analysis and redistricting, and you don't know whether

20 that criterion would have the effect of splitting the

21 southeast corner of New Mexico in every single one of

22 your 1,000 maps?

23   A. All right. That's a different question.

24 You just asked a different question. You asked me

25 about splitting. And I mean, certainly, if it were

1 the case that a significant portion of oil wells

2 /KWR-R in the Permian Basin, then sure, you'd have to

3 draw lines that often do go through the Southwest

4 corner. Not always. And it would differ in how it --

5 how the line the drawn. But sure, I could see that

6 that's a tendency.

7   But to be clear, the question you just

8 asked is different from your previous question.

9   Q. Okay. Do you know whether there's a

10 community of interest in the southeast corner of

11 New Mexico?

12   A. I have no opinion.

13   Q. So it was and relevant to your work here to

14 figure out if there was a community of interest in

15 that southeast corner of New Mexico?

16   A. No, that was not a question that was put

17 forward to me.

18   Q. Dr. Chen, you were named a defender of

19 democracy my Common Cause and you didn't want -- you

20 weren't curious to see if the instructions that

21 lawyers gave you were cracking a community of

22 interest?

23   A. Same answer.

24   Q. Which is what? No?

25   A. I was not instructed to answer that

1   question, so I did not analyze that question.

2   Identify got no opinion.

3   Q. So you don't know if that instruction

4   affected your results at all?

5   A. Which instruction are you talking about?

6   Q. The 60 percent oil well instruction.

7   A. Okay. The 60 percent oil well instruction

8   was incorporated into my algorithm. And so of course,

9   of course it influenced the maps that were drawn. And

10   specifically, I went and looked through all of the

11   maps, all 1,000 of the maps that the algorithm

12   produced, and I saw that yes, it did have -- in fact,

13   have the affect of treading out New Mexico's oil wells

14   across multiple districts.

15   Q. And does that affect your conclusion?

16   A. Of course that affected my conclusion. That

17   was the basis of my conclusion. The simulations are

18   the basis of my comparisons of comparing the

19   simulations with the SB-1 plan. And that's very much

20   what I opined about throughout my report.

21   Q. Okay. So sitting here today, as an expert

22   in this case, you cannot tell the Court how SB-1 would

23   compare to 1,000 simulated maps that were not drawn

24   with the 60 percent oil well consideration?

25   A. You're asking me about a different

1   hypothetical analysis, which I did not do because I

2   was not asked to answer that question, and so I have

3   no opinion.

4   Q. So you cannot tell the Court how SB-1 would

5   fare to maps where the oil well consideration was not

6   baked in?

7   MR. WILLIAMS: Objection. That's

8   argumentative, your Honor. I don't think Dr. Chen

9   has testified that anything was baked in.

10   THE COURT: What?

11   MR. WILLIAMS: She described it as "baked

12   in." I'm not sure I understand what that means. It

13   seems awfully argumentative.

14   THE COURT: Yeah, I think that that's maybe

15   a colloquialism that you could explain better.

16   MS. DIRAGO: Okay.

17   BY MS. DIRAGO:

18   Q. You cannot tell the Court house SB-1 would

19   compare to 1,000 maps that were not drawn with the

20   60 percent oil well consideration?

21   A. Same answer as before. I was not asked to

22   do that analysis, so I didn't answer that question. I

23   have no opinion.

24   Q. Okay. So you thus cannot tell the Court how

25   likely it would be for a partisan blind map maker to

1　create a map that split the southeast corner of

2　New Mexico into three counties when that map maker was

3　not instructed to adhere to that 60 percent rule?

4　　　　A.　So if I'm understanding you question

5　correctly, you're asking me to consider a map drawing

6　process that ignores the oil well consideration. And

7　so I've got the same answer, I was not asked to answer

8　that, did not do that analysis, and therefore have no

9　opinion.

10　　　　Q.　Is that why you didn't give an opinion here

11　about whether SB-1 gerrymandered?

12　　　　A.　Is what the reason why?

13　　　　Q.　Because you didn't look at how the map says

14　against 1,000 maps that were not drawn with that oil

15　well consideration, we've already testified is not

16　traditional redistricting criteria?

17　　　　A.　Okay. The reason I did not give an opinion

18　about partisan gerrymandering, is I was not asking to

19　analyze that question. Therefore, I didn't analyze it

20　and therefore, I have no opinion.

21　　　　Q.　But you're an expert in gerrymandering,

22　right?

23　　　　A.　Absolutely.

24　　　　Q.　And you've given opinions in many cases

25　before, whether a map was gerrymandered or not?

1   A. Yes.

2   Q. And, you know how to look for indications of

3   a gerrymander?

4   A. In general, I do. I'm not saying that I

5   could have done it in every specific spans, but

6   obviously, that is within my expertise.

7   Q. But you didn't do it here?

8   A. I wasn't asked to answer that question. I

9   didn't analyze it. I have no opinion.

10   Q. So despite the oil instruction, you say that

11 no county in your 1,000 simulated maps is split for

12 the oil well consideration, right?

13   A. There are no county splits that are caused

14 by that consideration. In other words, there are

15 reasons why counties do have to be split in New Mexico

16 congressional maps. They have to be split for equal

17 population reasons. There are the Zuni and the

18 Mescalero considerations that I explained earlier this

19 morning. But there are not additional splits that are

20 caused by the oil -- the oil wells consideration.

21   Q. Did you know none of your maps split

22 Lea County?

23   A. Yes.

24   Q. So then Lea County does not have to be split

25 to respect that 60 percent oil well consideration?

1   A.   It's clearly quite possible to draw a county

2   that does not split Lea -- that does not split Leann

3   still abides by the 60 percent -- the 60 percent oil

4   well rule. I'm not saying that it couldn't happen.

5   But I didn't see it happen in the computer

6   simulations. But I'm not ruling out the possibility

7   of that happening.

8   Q.   Right. So I just asked you that it's not

9   necessary. And so I think you created 1,000 maps but

10   didn't split Lea County, so it's clearly not

11   necessary, right?

12   A.   Yeah. It clearly possible to draw a map

13   that doesn't split Lea.

14   MS. DIRAGO: Can I approach, your Honor?

15   THE COURT: Yes.

16   BY MS. DIRAGO:

17   Q.   So Lea County was split by SB-1, right?

18   A.   Yes.

19   Q.   But Lea County did not have to be split for

20   population reasons, right?

21   A.   I have no opinion on that.

22   Q.   Well, none of your maps split Lea County,

23   and you had actually very tight population deviations.

24   So clearly, Lea didn't have to be split for those

25   reasons?

1   A. No, no, no, no. You asked me a question

2   regarding the intents or the policy goals behind the

3   drawing of SB-1. And I don't have an opinion as to

4   that particular question. You're asking me about

5   whether Lea was split or not split for population or

6   equality reasons. Again, I have no opinion about

7   that. I can only tell you that, yes, Lea County is

8   split. I cannot tell you why because I did not

9   analyze that question, and so that's why I have no

10   opinion on your question.

11   Q. Okay. I don't know if I misspoke or if you

12   misheard. But what I'm asking you is that it was not

13   necessary to split Lea County to account for

14   population equity.

15   A. Well, in general, when you're drawing a

16   New Mexico congressional plan, you are going to have

17   to split a few counties. It never has to be any

18   particular county. It doesn't have to be lady county,

19   it doesn't have to be Roosevelt. But there are going

20   to have to be some counties that one has to split for

21   population equality reasons in general.

22   So, general, no opinion.

23   Q. Yeah, and there's a lot of them that were

24   split southeast corner. Do you see that?

25   A. I don't know what you mean by "oh lot." I

1   mean, I'm happy to tell you what counties were split.

2   Q. So Lea County did not have to be split in

3   order to respect the Indian reservation conversations,

4   were they?

5   A. There were no Indian reservation

6   considerations in Lea County. Those consideration

7   were in McKinley and Otero as well as San Juan County.

8   So there are no Indian reservation considerations in

9   Lea County.

10   Q. So that a no?

11   A. Yeah, there were no Indian reservation

12 considerations in Lea County, so no, there's none that

13 are relevant.

14   Q. You're going to be here a very long time if

15 you add -- you know, you don't have to add all that

16 for me. I'm just asking straightforward questions?

17   MR. WILLIAMS: Objection. That's not a

18 question.

19   THE COURT: If you have an issue with how

20 he's answering, address the Court.

21   MS. DIRAGO: Okay.

22 BY MS. DIRAGO:

23   Q. Speaking of population deviations, I think

24 you wrote a 2013 paper called "Unintentional

25 Gerrymandering," a similar title to that. Do you know

1 what I'm speaking of?

2   A. Yeah. I know what you're talking about.

3   Q. And you authored it with Dr. Rodden?

4   A. Yes.

5   Q. What population deviation did you allow on

6 that paper?

7   A. I don't remember the precise population

8 deviation. I'm sure there was some deviation of some

9 kind that was allowed. I don't remember the precise

10 threshold in that paper, I was not even trying to

11 create valid congressional planning, where your

12 New Mexico or any other state. And so I was not

13 really that interested in adhering to a strict

14 population equality. So I definitely remember it was

15 not a zero deviation.

16   Q. Was it 5 percent?

17   A. I don't specifically remember. I'm not

18 going to dispute that. I'm happy to take your

19 representation for it. But like I said, I wasn't

20 trying to create valid congressional plans for

21 New Mexico or valid plans for any other state. So

22 5 percent would sound about right.

23   Q. Okay. And you testified earlier that -- you

24 testified, I believe, that all of Lea -- well, let me

25 ask you this. In your simulation maps, could all of

1 Lea and all of Eddy be in the same district?

2   A. You're not going to have all of Leann all of

3 Eddy. There certainly are some maps that have, say,

4 all of Lea County and parts of Eddy County together in

5 the same districts. But you're not going to have all

6 of both of those counties.

7   Q. Why is that?

8   A. There might be a variety of reasons. But

9 certainly the 60 percent oil wells criterion is one

10 reason why that's happening.

11   Q. So I'd like you to look at Page 22. Yeah,

12 we'll do 22 first.

13   So every one of those gray circles is

14 one of your simulation maps, right?

15   A. Not quite.

16   Q. Okay. Explain it to me.

17   A. Every gray circle represents a district from

18 one through 1,000 computer simulated maps. So on this

19 figure, you'll actually see a total of 3,000 gray

20 circles. Because each of the 1,000 maps that is three

21 districts.

22   Q. Got it. Okay. Thank you.

23   So I do see -- so what is the

24 percentages on the bottom there?

25   A. You're asking about the horizontal axis?

1   Q. Yes.

2   A. Okay. That the district's Republican

3   two-party share of registered voters.

4   Q. Okay. What does the 50 percent mark

5   indicate?

6   A. That is a point at which a district has the

7   same number of Republican as Democratic registered

8   voters.

9   Q. Okay. And so the 48 percent would be 48

10   percent Democrat?

11   A. No. The 48 percent -- remember, the

12   horizontal axis refers to the Republican two-party

13   share of registered voters. So if there's a district

14   at 48 percent, that means that 48 percent of the

15   two-party share -- of the two-party registered voters

16   are Republican.

17   Q. Okay. Can you look at your map on Page 18.

18   Not a map, I'm sorry. Chart.

19   A. Okay. .

20   Q. Okay. And what does the 50 percent mark

21   mean here?

22   A. It's the same idea, but this is a different

23   measure of partisanship. So the horizontal axis here

24   refers to the district's Republican Performance Index,

25   which I described earlier this morning. And so

1 50 percent here is referring to a district that has an

2 even number or the same number of votes for the

3 Republican and Democratic candidates across all the

4 various statewide elections that are used in the

5 performance index.

6   Q. Okay. And so here, does the 48 mean 48

7 percent RPI?

8   A. It means that 48 percent Republican

9 Performance Index.

10   Q. Okay. So that would be the same as 52

11 percent Democratic DPI?

12   A. Well, you just throughout that term DPI. I

13 don't know what you're referring to. I did not use

14 the term DPI, I don't believe. I'm always measuring

15 districts in terms of the Republican Performance

16 Index.

17   Q. Okay. Fair enough. That's fine. So I'm

18 looking at the top rectangle-ish blob of gray circles.

19 Are there 1,000 circles there?

20   A. Yeah, there are a thousand gray circles.

21   Q. Okay. How many do you see that are both

22 50 percent, roughly?

23   A. It's a pretty small fraction. It looks like

24 it's -- I couldn't real count up the number, but it's

25 a pretty small fraction.

1   Q. Okay. So a very large majority of the

2 districts in your 1,000 maps -- sorry. A very large

3 majority of District 2 in your 1,000 maps are more

4 Democratic than Republican?

5   A. Not quite. Not quite. That's not how you

6 interpret this. Because remember -- I explained this

7 on direct. What happened this is comparing in the top

8 row of this figure, it's the most Republican district

9 within each plan. It is not necessarily CD-2. It's

10 not necessarily the southern district. It is simply

11 the most Republican district within each plan,

12 wherever that district is.

13   Q. Okay. So if you take the to be blob, the

14 middle blob and the bottom blob out of -- that's 3,000

15 circles, right, if you add all the circles up? I

16 think you said that.

17   A. Yes.

18   Q. Okay. So you take all of these. There is a

19 very small portion of your 1,000 maps that had one

20 district, at least one district that was Republican

21 leaning?

22   A. There was a very small -- I'm just going to

23 be more precise.

24   Q. That's okay.

25   A. There's a very small number of the simulated

1 maps that have one district that is above a 50 percent

2 Republican Performance Index.

3   Q. Okay. So the very, very large majority of

4 your maps had through districts that leaned -- where

5 all three districts leaned Democrat?

6   A. Same caveat again. I'm going to state it

7 more precisely. I mean, clearly most of these

8 districts are below 50 percent, in terms of the

9 Republican Performance Index. So certainly, the vast

10 majority of these plans, you've got three districts

11 with the Republican Performance Index is under

12 50 percent.

13   Q. Okay. And so you compared the SB-1

14 districts to all of these districts, wherein the large

15 majority of them were Democratic? That's what the red

16 star is?

17   A. Sure. Within the red stars, I'm comparing

18 the SB-1's -- is the SB-1's plans districts to the

19 computer simulated plans districts in terms of their

20 partisanship. And obviously we've been describing the

21 partisanship of those districts.

22   Q. Okay. So SB-1 compared to 1,000 maps where

23 a larger majority of them were -- drew three districts

24 that were Democratic compared to those SB-1 is not an

25 outlier?

1   A.   Sure.   I mean, I'm obviously laying out the

2   comparisons here, and they're not -- none of the three

3   districts are an outlier.

4   Q.   Well, I'm trying to get to your baseline

5   here.   So the baseline is the three gray blobs.

6   A.   I'm not sure what you mean by baseline.   I'm

7   just going to put it my own words.   I am comparing

8   each of the congressional districts in the SB-1 plan

9   to the individual districts in the computer simulated

10   plans, which, as you noted, the gray circles.

11   Q.   Okay.   And I guess I'm just noting that the

12   large majority of your maps have three districts that

13   are all Democratic.

14   A.   And I'm -- you know, I'm just going to be

15   more precise.   I'm not disputing that

16   characterization, but I'm not describing districts as

17   either Democratic or Republican.

18   I can them in terms of their precise

19   Republican Performance Index, and obviously the vast

20   majority of these are under a 50 percent Republican

21   Performance Index.

22   Q.   Okay.   So in your deposition, you said that

23   you had an article published in the California Law

24   Review, and that it was peer reviewed, correct?

25   A.   Yeah.   I said that in deposition.   I went

1   back and checked. California Law Review is not peer

2   reviewed.

3   Q. Okay. And the only reason you checked is

4   because I told you I went to the University of

5   California and I didn't remember that journal being

6   peer reviewed, right?

7   A. No. You asked me a question, I went back

8   and checked, no, it's not peer-reviewed journal.

9   Q. Okay. I agree, that's fair.

10   My computer died. Hold on just a minute

11 please.

12   My daughter wants Starbucks. Should I

13 order it for her? I don't think so.

14   Okay. So you testified that the

15 parameters -- hold on a minute.

16   Right, so I think before we went to 11,

17 you were testifying that the criteria that you use in

18 your maps can be -- oh, that criteria that's not

19 explicitly partisan on its face can still have

20 partisan implications; is that correct?

21   A. I believe what I testified was that you can

22 have a criterion that is not partisan, that is not

23 partisanship, but the application of many such none

24 partisan criterion can certainly have partisan

25 effects.

1   Q. So to determine whether a criterion is

2 partisan, does the intent of the criterion matter to

3 you?

4   A. I just said partisan effects, so that is

5 just about effects. I mean, that phrase encapsulates

6 what I meant by partisan effects.

7   Q. Okay. So you don't -- in your analysis, you

8 don't care what the intent of the criterion was?

9   A. I'm not saying I do care or don't care. I

10 was not asked to analyze anything regarding intent,

11 and therefore, I have no opinion.

12   Q. So you're not saying you do care or you

13 don't care, so can you answer that? Can you care or

14 do you not care?

15   A. Well, I can certainly answer that with

16 respect to the questions that were posed in front of

17 me, that were posed to me by counsel, I was not asked

18 to analyze intent. Therefore, I have no opinion about

19 intent. And in that narrow sense, you could say I

20 don't care about intent because it was not necessary

21 to answering the questions that were posed to me.

22   Q. Okay. I understand now. What I mean is the

23 intent of the criterion, what the criterion was

24 intended to do.

25   A. Yeah, I don't -- I don't even -- I'm not

1   sure I really understand. When you say the intent of

2   the criterion, I mean, the criterion is not an animate

3   object. It's not an animate person, it can't have

4   intent. People have intent. So I'm not sure the

5   question makes sense to me.

6   Q. Okay. How about the people who designed the

7   criterion, what their intent? Does that matter to you

8   in your analysis?

9   A. Sure. I was not asked to analyze that,

10   therefore, I have no opinion. And from that

11   perspective, I was not trying to answer that question,

12   so I did not -- you know, I was not interested in

13   answering that question.

14   Q. I mean, you are an expert in gerrymandering

15   and I think that's a fair thing to think about --

16   well, okay. That's not a question.

17   Okay. So if you code into your

18   simulation a parameter that was articulated only by

19   those accused of gerrymandering, having no grounding

20   in the state's history or common accepted

21   redistricting practice, what would the maps, the

22   simulation -- what would the maps tell the Court.

23   A. Okay. That was a really long question.

24   Q. Yeah, it was.

25   A. I'm just -- I guess -- I mean, let's just

1   try -- you know, if I could ask you to read it back

2   slowly.

3   Q. So if you code into your simulation a

4   parameter that articulated on the by those accused of

5   gerrymandering, what would those simulated maps tell

6   the Court?

7   MS. DIRAGO: I mean, if you want to object,

8   you can object. Giving faces is probably not

9   appropriate.

10   A. Okay. I'm sorry about this. I'm just going

11 to ask you to repeat it one more time. That was

12 perfect speed. But just need to make sure I'm hearing

13 all the words, just because it's a long question.

14   Q. I understand. It's fine. And since it's

15 written down, it's totally easy for me.

16   Okay. If you code into your

17 simulation -- start over.

18   If you code into your simulation

19 criteria that was articulated only by those accused of

20 gerrymander what would the maps tell the Court?

21   A. Okay. I think I got all the question. I

22 think I heard the question.

23   So my answer is that it's not going to

24 change my opinion. And in general, I have no opinion

25 at all about what -- about how the Court interprets my

1   work. My job is just to accurately report my

2   statistical analysis, my empirical analysis, just to

3   report the science. How that's interpreted by the

4   Court is not -- I am disinterested about that

5   question. So it is just not something I think about,

6   and so I have no opinion.

7   But in general, I'm answering the first

8   part of your question by saying that that does not

9   change my empirical analysis, it doesn't change the

10 opinions that I've expressed.

11   Q. So, Dr. Chen, your speaks a lot about

12 partisan blind algorithm, partisan blind criteria,

13 partisan blind maps. And I guess what I'm asking you

14 is that if you're using criterion that actually had

15 the -- that was designed to have the intent to

16 gerrymander a map, isn't that tainting all of your

17 simulated maps then so, that every one of your 1,000

18 maps are also gerrymanders?

19   A. Yeah. I have no opinion on the premises of

20 your question regarding, say, map drawer intent. I

21 just have to opinion about that.

22   But I'm sticking with my name answer.

23 My job is to understand an empirical question that's

24 been put forward to me. And here, the empirical

25 question was, compare the SB-1 plan to maps that

1   follow these particular criteria. My job is to make

2   sure I can understand those criteria. My job is not

3   to try to go understand the intent of somebody that

4   hypothetically may have proffered or may have proposed

5   to criteria. My job is just to answer scientific

6   questions and to answer what I found. And that's it.

7   I have no more minutes beyond just me trying to

8   accurately report was the scientific answer was.

9   Q. So as long as -- as long as all your

10 simulated maps are -- split up the southeast corner,

11 SB-1 is not an outlier?

12   A. Yeah, no, that just not accurate. I'm

13 just -- I mean, I'm happy to restate what I just said,

14 but I think you know what I just said, so --

15   Q. I do. I thought that you testified that the

16 oil well constraint did split up the southeast corner

17 of New Mexico.

18   A. Sure. It -- I think -- I've -- I've

19 explained that, yeah, in my -- actually, most of these

20 maps, certainly there's going to be a line that's

21 drawn, and very often, it's drawn between Lea and Eddy

22 County.

23   Q. Okay. So when you come paper SB-1 to all

24 maps that also split up the southeast corner, then

25 it's not an outlier.

1   Isn't that what your ultimate conclusion

2   is in this case?

3   A. That's not my ultimate conclusion, but

4   certainly your -- it's perfectly fine to describe the

5   simulated maps as splitting up Lea and Eddy County

6   most of the time. I mean, I've said that's an

7   accurate characterization. Obviously, my opinion is

8   not just that. But certainly, that's perfectly fine

9   to describe it that way.

10   Q. Okay. So you don't compare SB-1 to any maps

11   that didn't split up the southeast corner of

12   New Mexico?

13   A. No, I mean, I've said that yeah, the maps

14   certainly have that characteristic of most of the time

15   placing Lea and Eddy County into a different district.

16   So sure, that is an accurate characterization of the

17   simulations. That's not my ultimate conclusion. My

18   ultimate conclusion is a little bit -- you know, is a

19   little bit broader, is a little bit more extensive

20   than just that.

21   So that's why I said it's not an

22   accurate -- it's not a complete and accurate

23   characterization.

24   Q. So many if the Court wanted to know how does

25   SB-1 fare to 1,000 maps that are not all told to split

1   up the southeast corner, you couldn't answer that

2   question?

3   A.   I did not -- I did not tell the maps split

4   up the southeast corner. I instructed the maps to

5   obviously follow to oil wells criterion, which

6   obviously is going to have some geographic effects

7   with respect to Lea and Eddy County. But with respect

8   to an alternative set of simulations that I did not

9   conduct, I have no opinion.

10   Q.   So Lea and Eddy County are in the Southeast

11   corner of New Mexico, right?

12   A.   Sure.

13   Q.   Okay. So I -- am I wrong, didn't all of

14   your maps split up Lea and Eddy County? Maybe not

15   fully, but to some degree? In all of your maps, Lea

16   and Eddy County, the entire Lea and Eddy County could

17   not be in the same district, right?

18   A.   That is accurate. Lea and Eddy County are

19   not fully within the same district.

20   Q.   Okay. So if the Court wanted to know how

21   does SB-1 fare against maps that are not all told to

22   split up Lea and Eddy County, you cannot answer that

23   question?

24   A.   You used the phrase "all told," okay. And

25   that's what I'm taking issue with.

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 1         Q.  Okay.  That's the result of your

 2   instruction.

 3         A.  That's fine.  Okay.  So that's the effect,

 4   is what you're describing.  They were not told to

 5   split up any particular county.  To be clear.

 6         Q.  Okay.

 7         A.  So you're then asking about -- sure, then

 8   you're asking about a different set of hypothetical

 9   analysis that I didn't conduct.  And so I have no

10   opinion.

11         Q.  Do you have an opinion whether that could be

12   actually an important question to answer here?

13         A.  I have no opinion.

14         Q.  Okay.  I might be almost done.  I've got a

15   lot of notes, so just one minute, but I think I am

16   done.

17              MS. DIRAGO:  Your Honor, I would like to

18   renew our motion to exclude Dr. Chen's testimony as

19   not being helpful to the issue that we're dealing

20   with here.  Because all his maps --

21              THE COURT:  Your motion from previous?

22              MS. DIRAGO:  I'm sorry, yes, yes.

23              THE COURT:  Pretrial motion?

24              MS. DIRAGO:  Yes.  And I believe we said

25   earlier, this is yesterday, that we said that we
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1   would revisit it after requesting Dr. Chen.

2   THE COURT: Okay. Any further argument on

3   it?

4   MS. DIRAGO: Well, I want to point out that

5   as Dr. Chen testified shall everyone one of his 1,000

6   maps did not put Lea and Eddy County in the same

7   district. And so if you're comparing SB-1 to all

8   those maps, it's not useful. It doesn't help you

9   determine whether SB-1 really an outlier of all maps

10   that could be drawn in New Mexico with nonpartisan

11   intent.

12   THE COURT: Mr. Williams.

13   MR. WILLIAMS: Your Honor, ultimately the

14   plaintiffs' motion for conclude Dr. Chen is based

15   upon the notion that the instruction 9.F to divide

16   the oil and gas interests is a partisan criteria.

17   We have presented evident in the court,

18   based on the legislative record that it is not a

19   partisan instruction, that it was a policy that was

20   considered and sad advocated for (inaudible) by the

21   New Mexico Legislature.

22   There is a question of fact before the

23   Court. The Court is going to have to make a decision

24   on that. But there is no ground for excluding

25   Dr. Chen for following the policy consideration.

1   THE COURT: Any final word?

2   MS. DIRAGO: I just don't think it's helpful

3   to you, and that's the standard that he has to

4   follow.

5   THE COURT: All right. I understand your

6   position, and I'm sure you'll argue that, but I don't

7   think that that excludes the testimony of Dr. Chen.

8   I think that he's an experts, which you agreed he is,

9   and you did not object to his report when it came in.

10   And so you can make argument as to the weight of his

11   testimony, but I'm not going to exclude his

12   testimony.

13   MS. DIRAGO: Okay. And I have no further

14   questions then.

15   THE COURT: Do you have -- how much redirect

16   do you have?

17   MR. WILLIAMS: I have one question.

18   THE COURT: Okay.

19   MR. WILLIAMS: Actually, I just -- not true.

20   It is one question.

21   THE COURT: Okay.

22   REDIRECT EXAMINATION

23   BY MR. WILLIAMS:

24   Q. Dr. Chen, I heard plaintiffs' counsel

25   describe you as the defender of democracy, do you

1 recall that?

2   A. Yes.

3   Q. Did they give you a cape?

4   A. Unfortunately, no.

5   MR. WILLIAMS: All right. I have no further

6 questions.

7   THE COURT: All right. I -- hold on a

8 minute. I might have one or two questions. I wrote

9 some down during the direct and cross. Some of them

10 were answered.

11   When you're doing the performance index,

12 you testified, and I think Mr. Trende also testified,

13 that you take about ten years worth of statewide

14 elections, correct?

15   THE WITNESS: Yes, your Honor.

16   THE COURT: Why do you not include district

17 elections for how those -- the performance index?

18   THE WITNESS: Yes, your Honor. So in

19 general, when redistricting experts measure the

20 partisanship of district, they use statewide

21 election, because that way you're doing an apples to

22 apples comparison across the entire State of New

23 Mexico.

24   When you use district elections, whether

25 that's legislative or congressional district

1 elections, that's no longer an apples to apples

2 comparison. It was a different race.

3   In CD-2 than it was in CD-1. So you're

4 not necessarily comparing the same strength of

5 candidates, Sam quality of con dates, same election,

6 circumstances.

7   THE COURT: All right. I understand. Okay.

8 A sum will others, and I'm sure if you can answer

9 them. If you can't, let me know.

10   You described communities of interest as

11 a process of gathering of information.

12   THE WITNESS: Yes, your Honor.

13   THE COURT: And what do you mean by that?

14   THE WITNESS: When you -- you see the phrase

15 communities of interest used in different

16 jurisdictions, it never means the same thing in

17 different states, different jurisdictions. Every

18 locality, every state, every jurisdiction has a

19 different conception of their communities of

20 interest.

21   And so usually what communities of

22 interest refers to is a process for learning about

23 communities of interest.

24   THE COURT: Okay.

25   THE WITNESS: So the process can involve,

1   for example, taking testimony, hearing from ordinary

2   citizens about what they believe their communities of

3   interest to be.

4   THE COURT: So if that is a traditional

5   districting principle which it has been described in

6   other cases as being a traditional districting

7   principle, how would you run a simulation or, you

8   know, program an algorithm to take that into effect

9   without having that information beforehand? Would

10 you be able to.

11   THE WITNESS: Well, your Honor, I

12 personally, in my -- and I describe this in my

13 academic work, I don't believe that the phrase -- I'm

14 sorry, I don't believe that the phrase communities of

15 interest refers to anything specification and

16 consistent from state to state, from jurisdiction to

17 jurisdiction. And that's exactly why you cannot

18 program a computer to automatically be able to define

19 what communities of interest are in this State versus

20 that state, because the computer is not going out

21 there taking testimony from ordinary people.

22   THE COURT: I understand.

23   THE WITNESS: The computer isn't being given

24 anything specific about communities of interest.

25   THE COURT: In your research and your work,

1 | have you ever seen economic base designed as a

2 | community of interest?

3 | THE WITNESS: I'm sure I've heard of that,

4 | your Honor. I'm sure some people have described

5 | their community of interest in the that way.

6 | THE COURT: And then you mentioned it,

7 | several times it's been asked, about nonpartisan

8 | criteria possibly having partisan effect.

9 | THE WITNESS: Yes, your Honor.

10 | THE COURT: You mentioned race in certain

11 | states where there's taken into consideration.

12 | THE WITNESS: Yes, your Honor.

13 | THE COURT: And I don't know if you can

14 | answer this, or may be another witness could have or

15 | should have answered this. Would you agree that --

16 | or disagree that the criteria of measuring the number

17 | of active oil wells, which also creates an economic

18 | base could have a partisan effect, even though it is

19 | technically nonpartisan criteria?

20 | THE WITNESS: Yes, your Honor, I think I

21 | testified to that this morning, in response to

22 | Mr. Williams' question, that certainly, there are any

23 | number of criteria and certainly oil wells is an

24 | example of that, that are, by their nature,

25 | obviously, not partisan. There's nothing inherently

1 partisan about oil wells. But applying those

2 criteria can certainly have a partisan effect.

3   THE COURT: Okay. But that's not anything

4 that you studied or considered in your algorithm?

5   THE WITNESS: That's correct, your Honor.

6 I'm just -- I'm just noting that that is certainly a

7 possibility. I have not studied that and so I don't

8 have any opinion beyond noting that that is a

9 possibility, your Honor.

10   THE COURT: Okay. And then the last thing

11 is, you did -- your are giving an opinion in this

12 case that the -- and I'll mangle it, so correct me

13 one I mangle it, that SB-1, when -- compared to the

14 1,000 maps that your algorithm generated, a

15 nonpartisan -- or that there are -- it's a

16 nonpartisan basis for its creation?

17   I mangled that pretty bad, but if you

18 can (inaudible) with that.

19   THE WITNESS: Your Honor, I'll just restate

20 that in my own words.

21   THE COURT: Okay.

22   THE WITNESS: And I do get what you're

23 getting at. I'm just going to restate that in in the

24 words that I use as an expert.

25   So I looked at the district level as

1   well as the plan-wide partisan characteristics of

2   SB-1. And the partisan characteristics of the SB-1

3   plan are within the normal distribution of, are

4   typical after, are within what we could normally

5   expect from plans that are produced by a map drawing

6   process that adheres in the various criteria that I

7   was instructed to program into the algorithm.

8   So in essence, I'm testifying that it is

9   not an outlier, it's not a statistical outlier in

10 terms of its partisanship.

11   THE COURT: Okay. All right. That ends my

12 questioning.

13   Any further questioning based on the

14 Court's questioning, Mr. Williams.

15   MR. WILLIAMS: No, your Honor.

16   MS. DIRAGO: No your Honor.

17   THE COURT: All right. Thank you, Dr. Chen.

18 You may step down.

19   THE WITNESS: Thank you, your Honor.

20   THE COURT: Let's take a break. Who is

21 going to be next.

22   MS. DIRAGO: Mr. Sanderoff will be next,

23 your Honor.

24   THE COURT: Okay. All right. So let's take

25 about 15 minutes.

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 1                   (Recess held from 2:54 p.m.

 2                to 3:14 p.m.)

 3          THE COURT:  All right.  If you'll raise your

 4   right hand.

 5          Do you solemnly swear or affirm under

 6   penalty of perjury that the testimony you'll give

 7   will be the truth, the whole truth and nothing but

 8   the truth?

 9          THE WITNESS:  I do.

10          THE COURT:  Thank you.  Have a seat.

11          Ms. Sanchez.

12          MS. SANCHEZ:  Thank you, your Honor.

13                   BRIAN SANDEROFF,

14    having first been duly sworn, testified as follows:

15                   DIRECT EXAMINATION

16   BY MS. SANCHEZ:

17       Q.  Good afternoon, Mr. Sanderoff.  Could you

18   please introduce yourself to the Court?

19       A.  Yes.  I'm Brian Sanderoff.

20       Q.  And where do you live, Mr. Sanderoff?

21       A.  I live in Albuquerque.

22       Q.  How long have you lived in New Mexico, since

23   when?

24       A.  Fifty-two years.

25       Q.  Okay.  And what did you do for a living sir?
```

1   A.   I'm the president of Research & Polling,

2   Incorporated.

3   Q.   What kind work does Research & Polling do?

4   A.   Research & Polling is a public opinion

5   demographic analysis, market research firm in

6   Albuquerque. We work throughout the state, providing

7   both quantitative and qualitative type research.

8   Q.   Okay. Does Research & Polling do work in

9   the area, as the name might suggest, of political

10   polling?

11   A.   Yes.

12   Q.   Can you tell me generally about Research &

13   Polling's work, and your work in that area?

14   A.   Sure. Decades ago, we used to do it for

15   organizations and campaigns and the like. But we

16   changed over many decades ago and do it primarily for

17   the media. We've done all the political and election

18   polls for the *Albuquerque Journal* for 30 some odd

19   years, since 1986.

20   We conduct public policy and election

21   polls for lots of nonprofit organizations,

22   corporations that want to stay on top of things and

23   know what the score is politically in the state. So,

24   you know, an up will thousand dollars of them.

25   Q.   Okay. Do you do any other political

1 analysis for any other media out the let's besides the

2 *Albuquerque Journal*?

3   A.   Yes.

4   Q.   And can you give us a sense of what that

5 includes?

6   A.   Sure.   Well, I think for 20 some odd years,

7 I've been the political analyst, election expert as

8 they call medical on KOAT, the Albuquerque based A, B,

9 C affiliate.

10   You know, I've appeared on CNN and Fox

11 News and *New York Times* and *LT times*, just this lost

12 month, both of them talking be New Mexico politics and

13 elections.

14   Q.   Okay.   And do you really specialize with

15 politics and elections within the State of New Mexico?

16   A.   Yes, I think so.

17   Q.   As opposed to --

18   A.   Oh, I see what you're saying.

19   Q.   -- other states in the country?

20   A.   We do work throughout the nation and quite a

21 bit in Texas.   But I'd say 95 percent of our work is

22 in New Mexico.

23   Q.   Okay.   Okay.   And in connection -- well, can

24 you give us an idea over all those many decades, how

25 many political polls you've oh done?

1   A.   It gets into the thousands.

2   Q.   Okay.

3   A.   You know, we've done 2,000 polls and at

4   least half of those would be on, let's say, a public

5   policy matter.

6   Q.   All right. Has Research & Polling ever been

7   the subject or recognized by any kind of /TPHABL

8   recognition for -- in context with its polling work?

9   A.   Yes.

10   Q.   Tell us about that, please.

11   A.   There's a nationally regarded website could

12   538, formally owned by Nate Silver, who is a well

13   known national statistician, and now by ABC News, I

14   guess that bought them out. And so they maintain a

15   database of 500 or so polling companies nationwide.

16   And they actually track all of our accuracy of our

17   polls in the media.

18   And for this last year now, they've had

19   only four polling organizations in the nation with an

20   A plus rating, and we're one of them. So we're proud

21   of that.

22   Q.   Sure, sure. Thank you. And in terms of

23   your work over that past 40 years or so in elections

24   and polling in New Mexico, has that work required you

25   to analyze or evaluate whether a district or race is

1   competitive or not?

2   A.   Sure.

3   Q.   Is that something that you do all the time?

4   A.   Yeah, for corporations and nonprofits, in

5   the past candidates. You see look at the election

6   results, and people want to know what it means, am I

7   in good shape, am I in bad shape, how much money to I

8   need to raise to win. Sure, anytime you do a poll,

9   the client is going to want to know what it all means.

10   Q.   Sure. And in terms of your work for the

11   media, for the *Albuquerque Journal* or for KOAT or any

12   other media outlet that you're doing polling for, does

13   the fact that you're preparing that for a media

14   organization impact in any way the way you approach

15   your analysis?

16   A.   I think so. When you do your work for the

17   media, and so you know your poll is going to end up,

18   the governor's race or congressional race, on the

19   front page, we have a great responsibility to the

20   readers, to the candidates. Because that poll could

21   actually have an impact on the election, fundraising

22   and the line.

23   Is when it comes to our media polling,

24   we take it up one notch higher in terms of

25   methodological approaches to make sure it's as

1   accurate as possibly can be.   Because we know we're

2   going to be scrutinized.

3   No one has ever questioned the results

4   of one of our polls when they like the results, when

5   but they don't like the results, they go and do that.

6   And so we really -- and it's also good business,

7   frankly. You want your polls to be as accurate at

8   possible. Especially those that make it into the

9   public eye.

10   Q. So you may have already answered this, but

11   just to be clear, does Research & Polling perform any

12   polling work or election analysis on behalf of any

13   political candidates or political parties?

14   A. No.   We stopped doing that decades ago.   And

15   the reason is, once we started doing the media, we

16   wanted to avoid the /PRAERPBS of a conflict of

17   interest so that hopefully everyone will trust us.

18   Q. Okay.   Let me shift gears just a little bit

19   and ask about your work in the area of redistricting

20   in New Mexico.

21   Can you tell me a little bit about the

22   roll that you have played and maybe more broadly

23   Research & Polling, but start with the roll that you

24   have played with redistricting in New Mexico?

25   A.   Well, you're going to think I'm a will the

1 older than I am. But this is my fifth cycle of

2 redistricting for the state. 1981, '91, '01, '11, 21

3 years. So this is the fifth cycle for redistricting.

4 The first time I was a state government employee

5 assigned by the governor to work on it and with the

6 legislature. The our four times, Research & Polling

7 was -- actually had a contract with the state

8 legislature to provide the professional and technical

9 services to make the whole process work, to staff the

10 process.

11   Q. Okay. So can you tell us a little bit more

12 about what that involves, what staffing the process

13 for legislature involves under those contractors

14 you've had now for 30 some odd years? What are those

15 professional and technical services, generally, that

16 Research & Polling provides?

17   A. Most of it is really -- it's the center for

18 hardware and software to allow legislatures to draw

19 plans to set up the technology to provide the website

20 information so plans can be put on the public website.

21   The precinct is the building block in

22 New Mexico for redistricting. And precincts are, one,

23 authorized by the county commissions. And the state

24 law provides that under certain conditions, precincts

25 have to be split. I won't get into the details.

1   And so we work a year before

2   redistricting with all the county commission and the

3   census bureau to make sure that any precinct

4   boundaries that the county commissions create conform

5   to a census block boundary so that the census bureau

6   will give us precinct-level population and racial data

7   so that the legislature, the county commissions and

8   the city councils can all accomplish their work.

9   So it's a vast effort for fix the census

10   bureaus' maps or to fix the county commission precinct

11   maps so that the line conform.

12   Then, as we move closer, we are setting

13   up the software technology, the GIS systems, so that

14   when legislators make requests to have -- we honor --

15   satisfy all legislative requests for redistricting

16   plans. If a legislator wants a plan drawn, we can

17   draw it for them and give it to them. And so we have

18   to come up with common hardware and software issues

19   sos that other people Democrat, Republican caucuses,

20   for example, can also draw their even plans.

21   And so basically, we're setting up the

22   technology, and we're also drawing plans at

23   legislators requests, house districts, senate

24   districts, public education commission districts,

25   county commission, congressional districts and the

1 like.

2   Q. Okay. All right. And when Research &

3 Polling, you know, honest one of those requests, you

4 get asked to process a particular plan on behalf of,

5 you know, legislator X, what does the actual product

6 look like that you generate? What kind of information

7 does that contain?

8   A. Every plan that's requested by a legislator

9 gets a form. Oh, and one thing I forgot to mention

10 earlier was the mapping technology. But when a plan

11 is drawn by us or if someone else draws a plan and

12 submits it to us, it mass to go through a process

13 where we calculate the precinct level population,

14 racial statistics, partisan performance index, which

15 incumbent are paired, if any.

16   And it's a standard form that, then, if

17 the legislator decides to introduce the plan, then it

18 goes public and everybody can see it. If they decide

19 not introduce the plan, then it just stays with the

20 legislator. So basically providing population, racial

21 and political data and maps, beautiful maps of all of

22 the boundary lines of that particular plan.

23   Q. All right. Thank you, Mr. Sanderoff. So

24 within that package, you mentioned something called a

25 partisan performance index, and I want to ask you a

1   little bit about that.

2   Can you explain for us in layman's terms

3   what a partisan performance index is?

4   A.   Sure.   It's really not complicated.   So you

5   want to have a partisan measure, or at least

6   legislators do, to understand how an average Democrat

7   or an average Republican might perform in a given

8   district as you shift the boundaries and compare and

9   contrast of.

10   So what we do is we take all the

11 statewide raises that occurred in the State of

12 New Mexico, 2012, '14, '16, '18 and 2020.   Remember we

13 were doing this for the session in '21.

14   And we take those raises, there are 26

15 of them, that we aggregated estimated precinct

16 boundary shifts overtime, as the boundaries and the

17 precincts changed and came up with the partisan

18 performance index.   So anybody who drew a plan and the

19 boundaries started shifting, the numbers would start

20 shifting on the partisan performance index.

21   In this index, that included 26 raises

22 throughout the decade, we excluded any race where a

23 candidate won by more than 20 percentage points.

24 Winning by more than 20 percentages points became an

25 outlier to us.   If the objective was to come up with

1 something reasonable accurate, that people can count

2 on, you can average all the other raises. And we

3 excluded three raises that we were what we considered

4 outliers.

5   Q. Okay. And is that methodology that you just

6 outlined for us, is that the same methodology that

7 Research & Polling used to create its partisan

8 performance index in 2011 and 2001 and 1991, as well?

9   A. Yes.

10   Q. And I guess one question is, have you ever

11 seen any need to change the way that you do the

12 partisan performance index? Has it been pretty

13 reliable?

14   A. I think so. Because again, the goal is to

15 come up with something that realistic. You know, one

16 of those raises the candidate won by 29 personal

17 point, is a well known powerful incumbent with lots of

18 money running against a placeholder that was just put

19 on the ballot who didn't do anything. And that

20 candidate won by almost 30 points, so why include that

21 in the index.

22   Q. Sure, sure. Let me ask you a slightly

23 different question from what is the partisan

24 performance index to what is the purpose of the

25 partisan performance index?

1   A.   The purpose of the index is to /KPW*EUF

2   legislators a sense of partisanship of

3   competitiveness, of safety, of particular districts

4   that are drawn.   So if people draw through different

5   districts, they can compare and contrast the partisan

6   performance index of the different -- among the

7   different districts.

8   So for the legislature, for example, you

9   know, you have 70 house seats.   You can quickly look

10 at the Democrat and Republican parties and performance

11 for all 70 seats and compare it to another plan that

12 another legislator may support for state house

13 districts.   It's a handy way of measuring competition.

14   Q.   Okay.   Is it meant to necessarily predict

15 the county some of the next election in that district

16 for whatever seat?

17   A.   It's not designed for that.   And we

18 constantly tell the legislators, it's not designed for

19 that.   It's designed to be an average of how 26

20 statewide candidates' raises occurred.   And so it

21 doesn't take into account the quality of the

22 candidates or incumbency or how much money they've

23 raised.   Those things have to be taken into account by

24 the people who are looking at the numbers to give them

25 a better sense.

1   That doesn't mean that everyone doesn't

2   immediately think of them as predicting the outcome,

3   but that was not the intent.

4   Q. Sure, sure. Okay. Thank you. So you've

5   already mentioned this, but just to come back around

6   to 2021, did Research & Polling play this same sort of

7   professional technical services role for legislature

8   for redistricting in 2021?

9   A. Yes. Yes, from '91 -- for four cycles.

10   Q. Okay. And in 2021, did Research & Polling

11   have any role and connection with the work of the

12   citizens redistricting committee?

13   A. Yes.

14   Q. Can you tell us a little bit about what that

15   looks like?

16   A. Okay. The legislature and the -- I guess in

17   the session prior to redistricting past a statute to

18   create a citizen redistricting commission. And the

19   citizen redistricting commission was made up of

20   committee members, and they traveled the state in two

21   rounds of public hearings. And people realized, oh my

22   goodness, this has happened really fast that the

23   legislature passed this major undertaking.

24   And so they needed somebody to staff the

25   process. So we were still building the technology for

1 the legislature. We staffed the process, went to all

2 the meetings, creating the technology for them to do

3 everything they wanted to do. And we took a break

4 from the legislature during that period of July and

5 into October, staffing the citizens redistricting

6 committee, we took a break from our work with the

7 legislature, sort of to wear a different hat.

8   And then we went back to the legislative

9 had once we finished our work for the citizen

10 redistricting committee.

11   Q. Okay.

12   A. So it was performing the same type of

13 services for a different group.

14   Q. Understood. Okay. Let me ask you this.

15 Did you -- did you or Research & Polling have any role

16 in designing the map that is what we're calling SB-1,

17 the congressional redistricting map that's at issue

18 here?

19   A. No.

20   Q. And did you have any communications with

21 legislators about the design or the intent or the

22 effects of SB-1?

23   A. No.

24   Q. All right. And I think you mentioned

25 earlier that there are -- Research & Polling can

1 perform the task of drawing a plan upon request, but

2 there also may be plans that come to Research &

3 Polling that legislators may have developed without

4 your assistance?

5   A. That's true.

6   Q. Is that's something that happens?

7   A. That is something that happens. We still

8 have to process any plan that's going to be

9 introduced, whether we drew it at the request of the

10 legislator, whether some other organization drew it.

11 They have to process it through us so we get those

12 forms and those maps to make sure the populations add

13 up to the population of the state and they haven't

14 left out precincts. So people are forced to practices

15 their plans through us if they want them to be

16 introduced into the legislative process.

17   Q. And are there requests that come through

18 Research & Polling -- is it your understanding that

19 any requests Research & Polling gets to develop maps

20 or process maps, that those are treated as

21 confidential within the legislature?

22   A. Yes. It's in our contract that we're sort

23 of an arm of the legislative council service, like

24 attorneys who are trained that we -- that anything a

25 legislator asks us stays with us. We're not even

1   allowed to tell legislative leadership what we might

2   be doing for their own members. Everybody we do works

3   with the attorneys for legislative council service.

4   Q. Okay. I want to shift gears just a little

5   bit still in the area of redistricting, but I want to

6   ask you about your experience testifying as an expert

7   witness.

8   As I said it, Mr. Sanderoff, you were

9   involved in not only the redistricting process in

10   New Mexico back in 1991, I realize in a different roll

11   in 1981, but jumping to 1991, but did you also have

12   some involvement in 1991 with some court action that

13   took place surrounding some of the redistricting in

14   the state?

15   A. Yes. 1991 was different. In 1981,

16   New Mexico not once, but twice was found to racially

17   gerrymander by the U.S. courts. And so New Mexico was

18   under preclearance in 1991 and actually had to have

19   its plan precleared by the justice department.

20   So we staffed the 1991 process. The

21   house plan was precleared by the justice department.

22   But the senate plan -- the state senate plan was not.

23   And so the justice department basically came back to

24   New Mexico said, "We want you to create two minority

25   districts in Southeastern New Mexico."

1   So we worked with the legislature to

2   come up with something that would satisfy the justice

3   department, and then they sent me back to Washington,

4   D.C. to work with the justice department and get their

5   preclearance. And then once getting it precleared,

6   the legislature passed that plan.

7   So it changed the face of the state

8   senate in Southeastern New Mexico, and Research &

9   Polling was an active participant in helping the

10   legislature with the justice department.

11   Q. Okay. All right. Thank you.

12   Outside of that experience, have you

13   testified as an expert witness in court in connection

14   with redistricting litigation?

15   A. Yes. In the 2001, in the 2011 case, just

16   like this. That one was a little given, because the

17   governor and the legislature couldn't come to terms

18   with the plans, so it was just an impasse. And so it

19   was the judge who had to choose the plans. And so we

20   staffed the same process, answered any questions that

21   came up in court. So yes, we were experts in the 2001

22   and 2011 in court.

23   Q. Okay. Let me just ask you a follow-up

24   question about the 2011 litigation. That was, again,

25   a situation where there had been an impasse between

1   the legislature and the executive in terms of enacting

2   plan?

3   A.   Right.

4   Q.   In the course of that litigation, did some

5   of the district court's decision-making, and I realize

6   there were multiple plans at issue, but did some of

7   the district court's decision-making go up to the

8   state Supreme Court for review?

9   A.   Yes.

10   Q.   Okay. And to your knowledge, did the state

11   Supreme Court on that review, in its opinion, make any

12   suggestions or recommendations about what your role

13   might be going forward for the district court?

14   A.   Yes, the Supreme Court told the district

15   court that they had to change the map and make some

16   changes based on the Supreme Court opinions. And the

17   Supreme Court recommended to the district judge that

18   it was okay to use Research & Polling to help the

19   district court judge accomplish it, accomplish the

20   wishes of the Supreme Court. So we worked with the

21   district judge to satisfy the district judge's

22   requests.

23   Q.   And in that capacity, I realize this is

24   probably more of a legal them than in your field, but

25   does the term Rule 11-706 expert sound familiar to

1 you?

2   A. Yeah, that does sound familiar.

3   Q. Was that the role that the played for the

4 district court in that 2011 --

5   A. It was.

6   Q. Okay. All right. And did your expert

7 /W-RBG in that 2011 case, which is sometimes referred

8 to as the Egolf case, sometimes as the Maestas case,

9 I'll just call it the 2011 case, did your work in that

10 case involve -- I realize there were not claims of

11 partisan gerrymandering as there are now, but did your

12 work at that point involve looking at issues

13 surrounding partisan performance and competitiveness

14 and (inaudible)?

15   A. It did.

16   MS. SANCHEZ: Your Honor, at this point, I

17 would tender Mr. Sanderoff as an expert in New Mexico

18 elections and political performance.

19   MS. DIRAGO: No objection.

20   THE COURT: All right. Mr. Sanderoff is an

21 expert in New Mexico elections political performance.

22   MS. SANCHEZ: Yes. Thank you.

23   May I approach, your Honor?

24   THE COURT: Yes.

25 BY MS. SANCHEZ:

1   Q. Mr. Sanderoff, I've handed you what we've

2   marked as legislative defendants Exhibit D, as in

3   David. Do you recognize that document?

4   A. I do.

5   Q. Is this a copy of the expert report you've

6   issued neighborhood connection with this case?

7   A. It is.

8   Q. I would like to ask you, we won't go over

9   the -- your experience and credentials, because we

10   already have talked about that, but I would ask you to

11   please flip to Page 5 of the report.

12   Towards to top of Page 5, you see

13   there's a Roman Numeral II, where it says "Scope of

14   Expert Engagement"?

15   A. Yes.

16   Q. Okay. It says there that you were retained

17   by counsel for the legislative defendants to evaluate

18   the political competitiveness of the congressional

19   redistricting plan that we're calling SB-1. Do you

20   see that?

21   A. Yes, I do.

22   Q. Okay. And is that a fair statement of the

23   scope of what you were engaged the in this case?

24   A. I think so, yes.

25   Q. Okay. Look at the next section of your

1   report, identifying the data and materials that you

2   relied upon, these are -- these are really pretty

3   self-explanatory, but I'd like to ask you specifically

4   about the fifth bullet point there, which references

5   Justice Kagan's dissenting opinion in Rucho v. Common

6   Cause.

7   Can you talk to us a little bit about

8   why that was something that you looked at in the

9   course of developing your opinions in this case?

10   A.   Well, I think that I read the New Mexico

11   Supreme Court order, and I think it mentioned Justice

12   Kagan's dissenting opinion in Rucho, so I figured I

13   better read it.

14   Q.   And did you, in fact, read it?

15   A.   I did. Well, at least the relevant parts.

16   Q.   Sure, sure. In -- let me -- let me --

17   before we dive into your opinions in connection with

18   that, let me just ask you about something here that's

19   at the bottom of the page, where you note, as we've

20   already discussed, that you didn't have any role in

21   designing SB-1 or consulting on the development of

22   SB-1.

23   Is it true, Mr. Sanderoff, that your

24   opinions that you've developed here are solely based

25   on the information you've identified in your report,

1 not on any type of involvement in the creation of

2 SB-1?

3   A. Correct.

4   Q. Okay. Let's -- let's dive into your

5 opinions then on Page 6 so your first opinion here

6 says SB-1 does not entrench the Democratic party in

7 power. Is that a fair statement of your opinion?

8   A. Correct.

9   Q. Okay. Can you tell us what -- how you were

10 using the term entrenched in making that opinion?

11   A. Well, the term entrenched to me, has always

12 meant something that is entrenched, that change would

13 be very difficult, if not impossible. The first thing

14 I did was look it up in a few dictionaries, and came

15 up with the same conclusion, that to entrench someone

16 or something is to make it difficult or impossible to

17 change.

18   And so, in Justice Kagan's dissent, she

19 was speaking about entrenchment as -- you have to

20 demonstrate evidence of entrenchment as one of the

21 tests that she has in a case. So the first prong, if

22 you will, of Justice Kagan, which just quoting from my

23 report which quotes from her, as to whether state

24 officials predominant purpose in drawing the district

25 lines was to entrench their party in power by diluting

1   votes of citizens and favoring it's rival.

2   And then the second prong was effect,

3   did they pull it off, they had they did he know

4   trench? And so when I -- reading that, I then looked

5   at the second congressional district and felt that

6   given -- for two different reasons, which I suspect

7   you're going to ask me about, I felt it was not

8   entrenched.

9   Q.   Okay. And I am going to ask you about those

10   reasons.

11   A.   Okay.

12   Q.   So you identified two bases for this

13   opinion. Can you start with the first one, which I

14   believe referenced the partisan performance index?

15   A.   Right. When one runs the partisan

16   performance index for Senate Bill 1 and looks at the

17   average of those 26 statewide elected officials over

18   that time frame, one finds that the average Democrat

19   receives 53.0 percent, and the average Republican

20   receives 47.0 percent. So a 53/47 margin among those

21   26 statewide elected officials.

22   It's been my experience over the decade,

23   when people start talking about a competitive race,

24   they start with a range of 54 to 46, and then look at

25   lots of other factors to determine if a race is

1 competitive.

2   In this case, it's -- the margin is

3 smaller than 54 to 46. It's 53 to 47. So in my

4 world, and the world, in the world of people who I've

5 associated with over the years, when they're looking

6 at whether or not a race is worth spending lots of

7 resources to hold on to, or to try to defeat and

8 incumbent, 53 to 47, would be a competitive race, and

9 therefore not be entrenched, if entrenchment means

10 making it very difficult if not impossible to change.

11   Q. Okay. Thank you for that explanation. And

12 I think you were asked some questions in your

13 depositions about in your deposition about this 46 to

14 54 percent competitive range.

15   Do you recall being asked in your

16 deposition whether you could identify any races in

17 New Mexico where the Democratic performance was 54 or

18 higher, the Republican at 46 or lower, and yet the

19 Republican actually won the race? Do you remember

20 being asked about that?

21   A. Yes.

22   Q. When you were asked about that in your

23 deposition, could you off the top of your head come up

24 with examples?

25   A. Not off the top of my head. I didn't even

1 try. But no, I did not come up with any off the top

2 of my head.

3   Q. Okay. Since you had your deposition, have

4 you had an opportunity to look at records of election

5 results and raises and performance index and identify

6 whether you did find any examples that fit that

7 category?

8   A. Yes.

9   Q. Okay. And did you?

10   A. Yes.

11   Q. Can you share those?

12   A. So we looked at the legislative races, and

13 we found that house District 39, which is in the

14 Silver City, Sierra County area, touches of Dona Ana

15 fell into that category where the average Democrat I

16 can performance in 2014 with, the average Democratic

17 performance was 56.7, but the Republican won it 53/47.

18   And actually, House District 39, which

19 is one of those districts that's bounced back and

20 forth over the decades, Representative Terrazas is

21 there now, Rudolpho Martinez was there, we all know

22 that seat going back and forth over the years, it also

23 fell into that category in 2020 and 2022.

24   So even with the new district boundaries

25 after redistricting, once again House District 39

1   three times -- so it would go back and forth between

2   Democrats and Republicans, but three times the

3   Republican won it, despite the relatively high

4   Democratic Performance Index.

5   The other example that we found was in

6   the state senate, State Senate District 30. Joshua

7   Sanchez. He is a Republican and he won with a

8   Democratic Performance Index of 54.1. So even the

9   Democratic performance never was above 54 or 54.1, the

10 Republican won it by two percentage points.

11   Q. And do you know, Mr. Sanderoff, do you have

12 any reason to think that in any of those raises you've

13 just identified, where the Republican won, had there

14 been some kind of scandal or disaster for the

15 Democratic candidate in those races where they went to

16 jail or got caught doing something awful?

17   A. Not to my knowledge. I did have have a

18 staff person check, anticipating that.

19   Q. Okay.

20   A. But no, not to my knowledge.

21   Q. So let's -- coming back to your report,

22 then. So I think we've kind of talked about the first

23 basis of no entrenchment opinion based on the

24 competitive range under the partisan performance

25 index. What is the second basis of your opinion that

1 there's no entrenchment?

2   A. Well -- and the first one, as you said was

3 the partisan performance index. And there's I think a

4 lot of value in that, generally. But you know,

5 there's nothing like looking at an actual election

6 within the actual congressional district under the new

7 boundaries.

8   And so we did have an election in

9 November of 2022 under the new district boundaries,

10 and in that election, Gabe Vasquez was running against

11 Yvette Harrell, and in that election, Gabe Vasquez one

12 by seven-tenths of one percentage point. So it was a

13 really close race, and the Democrat won it by the

14 smallest of margins.

15   It was a margin of 1350 votes out of

16 192,000. And so therefore, that was the second prong

17 of my opinion on that (inaudible) of one does not

18 entrench the party in power, since one, performance

19 index is at 53/47, and the actual election, the

20 Democrat performed even lower than what we had in that

21 Democrat performance figure of 53 to 47.

22   So it was based on those two things. I

23 said, this doesn't look like entrenchment.

24   So under the first item, the index. It

25 appears to be a competitive race. Under the second

1 item, the actual election returns, it appears to be

2 what we call a toss-up race, you know. And I think

3 that word's self-explanatory.

4   Q. Okay. And included in that toss-up, does

5 that mean a candidate of either major party could win?

6   A. Yes. In 2024, any party, any candidate

7 could win, absolutely.

8   Q. Okay. Before we leave this topic, I want to

9 come back to -- you've indicated you had read Justice

10 Kagan's dissent on this subject. Are you aware that

11 just about a week ago, our state Supreme Court issued

12 an opinion in this very case to provide some

13 additional guidance to the district court about what

14 the Court should be evaluating or looking for in this

15 case?

16   A. Yes. I read it.

17   Q. You did. Okay? And I want to read to you

18 really just a sentence from the that opinion and ask

19 you if it -- well, I'll read it first and then ask you

20 the question.

21   The sentence is, and this is, for

22 residence, this is September 2022 -- September 22nd,

23 2023 opinion of the state Supreme Court in this case,

24 at Paragraph 30. And the sentence is, quote,

25 talking -- again, talking about entrenchment, quote,

1 the consequences of such entrenchment under a partisan

2 gerrymander include the that ensuing elections are

3 effectively predetermined, essentially removing the

4 remedy of the franchise from a class of individuals

5 whose votes have been diluted.

6   A. Yes, I read that.

7   Q. You read that? Okay. And does that -- does

8 that sentence, does that description of entrenchment

9 and its consequences jibe with your understanding

10 operate entrenchment that you use to develop your

11 opinion?

12   A. So as -- to restate, to make sure I

13 understand, the Supreme Court was basically saying,

14 they're associating having to have a predetermined

15 county come for ensuing of future races as associated

16 with entrenchment.

17   So I would say, if I you understand your

18 question, that no, we're not predetermining the

19 outcome of future raises here. We have a toss-up race

20 that was won by seven-tenths of a point. And it would

21 be a big question mark about what would happen in this

22 district in the future.

23   Perhaps, it can go back and forth over

24 the years or what have you. It is no predetermined

25 outcome in future races.

1   Q.   Would you agree that a competitive or

2   toss-up district, such as this one, effectively the

3   opposite of a predetermined entrenched outcome?

4   A.   A toss-up is the opposite of predetermined,

5   sure.

6   Q.   Okay. So, Mr. Sanderoff, I'd like to move

7   on to your second opinion on Page 7 of your report.

8   And here you say prior to SB-1, CD-2, or congressional

9   District 2, was not a safe Republican district but was

10   a strong leaning Republican district.

11   Is that your opinion?

12   A.   Yes. I believe that CD-2, under the old

13   boundaries, was a strong leaning Republican district.

14   Q.   And in order to form your opinion on the

15   topic, what types of raises did you analyze?

16   A.   This time, I stuck to the actual elections

17   that occurred within the congressional district among

18   the congressional district candidates over time.

19   Again, we talked about the partisan

20   performance index. It's has its value, everybody uses

21   it. But there's nothing like also looking at, well,

22   what happened in that congressional district over the

23   years in real elections with the candidates who live

24   there, who lives in Hobbs, who live in Las Cruces, who

25   live in Alamogordo, and all the dynamics of the local

1   race itself.

2   Q. Okay. And it indicates here in your report

3   that you looked at those races within CD-2, going all

4   the way back to 2002. Can you talk to us about why

5   you used that time frame?

6   A. It was perfectly appropriate to not only go

7   back ten years, but to go back 20. And the reason is,

8   the simple answer is the boundaries of the second

9   congressional district did not change much between

10 decades ago and last decade.

11   In the 2011 litigation -- in the 2011

12 litigation, where the judge had to choose a

13 congressional plan, he mandated what was called a

14 least changed plan. All the different plaintiffs and

15 defendants could pitch their plan, and the judge chose

16 the plan that made the least change in the boundaries

17 from the 2002 boundaries to the 2011 boundaries and up

18 to 2020.

19   So it was okay to look back 20 years

20 since the boundaries hadn't changed much.

21   Q. Just a minor follow-up on that. Are you

22 familiar with what the judge's reasoning was for

23 taking that least change approach we know he had to

24 draw the map?

25   A. I am.

1   Q. And what was that?

2   A. Well, because that happened twice, those two

3   impasses with the legislature in the executive 2001

4   and 2011, the judge's rationale in both decades was,

5   I'm going to go back to the expression of legislative

6   intent, when they drew the congressional boundaries.

7   So the last time the legislature, the

8   governor actually got together and passed the bill was

9   in 1991. And so the judges would continue to pass

10 least changed plans since the last -- the judges did

11 not want to get into the business of redrawing the

12 maps. So they went with the smallest boundary changes

13 possible to account for population shifts.

14   And since all three districts have a

15 major population center, Las Cruces, Albuquerque,

16 Rio Rancho, the population shifts did not have to be

17 major.

18   Q. Okay. So when you looked at the history of

19 these congressional raises within CD-2, between 2002

20 and 2020, what did you find?

21   A. Well, so if we study the 2002, you know,

22 that was the year that Steve Pierce first got elected

23 to Congress. And before Steve Pierce was in Congress,

24 he served two terms in the state house, 1996, he was

25 elected, 1998, he was elected. So he had already

1   established a significant amount of name recognition

2   and fame in his district.

3   And so -- and Steve Pierce stayed in

4   that district until 2019, with one stint when he was

5   out for a while, and we'll talk about that. So

6   basically, from 2002 to 2019, with one break in

7   between, Steve Pierce was the Congressman.

8   And I was around then, of course, and

9   observed things. And what I was impressed by was the

10   margins. He would win his elections by big margins.

11   And Steve Pierce prided himself on not just working

12   the conservative areas. Steve Pierce focused on

13   Democratic constituencies. He went into predominantly

14   Hispanic communities and Native American communities

15   where, frankly, they usually vote Democrat, and would

16   talk to the leaders there.

17   And so he was going beyond what a

18   typical candidate would do, and as a result, he would

19   win his races by big margins. I don't think I'm you

20   have school in telling the story that in 2011, I

21   received two calls from Native American leaders and

22   they said, "Yeah, we know we all vote Democrat," this

23   and that, "but holding all things equal, when you're

24   drawing plans for legislators, we don't care about the

25   boundaries, we would like keep Steve Pierce as the

 1   person who represents us in the Second Congressional

 2   District." So it showed that he worked hard, will he

 3   did well. And he won by big margins.

 4   So what am I getting at here? Well, in

 5   2008, Steve Pierce decided to run for higher office

 6   and he left his term, he left his position in the

 7   house. And so here he had an even playing field where

 8   you didn't have an incumbent, and powerful incumbent,

 9   he's no longer running, and what happens, the Democrat

10   wins the district, Harry Teague. And he wins it by a

11   pretty comfortable margin.

12   Then, Steve didn't win his raises

13   statewide, but he ran for re-election after using the

14   race for U.S. Senate, then in 2010, beat hairy

15   together by big margins and was back in Congress.

16   Then in 2018, Steve Pierce decides to

17   run for governor. So he's not in his house seat

18   again, and what happens, a Democrat wins it. So the

19   two times he's not there within that 20-year appeared

20   and backs down to run for higher office, a Democrat

21   wins.

22   So what that tells me was, I'm note --

23   this is a safe -- excuse me -- a strong leaning

24   Republican district, it is, and most of the time. But

25   in the two cases here where he didn't run, the

1 Democrat won. So that's why I call it a strong

2 leaning Republican district, not a safe guaranteed

3 one, because of the story I just told.

4   Q. All right. Thank you okay. Let's turn

5 to -- and just I think we can briefly do these last

6 couple of opinions.

7   Your third opinion on Page 9 of your

8 report, talks about all three -- under SB-1, all three

9 of New Mexico's congressional districts became more

10 politically competitive. Can you tell just briefly

11 explain how you arrived at that (inaudible)?

12   A. Yes, very simply. Kept away from the

13 indexes. Simply averaged.

14   So in CD-1, for example, there were five

15 congressional races. During the decade and looked'

16 average margin on victory and compared it to do margin

17 of victory for 2022 with the new boundaries.

18   So, for example, in CD-1, under the old

19 boundaries in five elections, the average margin of

20 victory was 21 percent. It was cut in half to 11 and

21 a half percent with the new district. And I don't

22 know if you want me to go over the numbers, but that

23 was the methodology we chose. It's within the report.

24   And in all three cases, the most recent

25 raise in 2022, with the new boundaries, the margin of

1 victory was less than the average of the five raises

2 under the old boundaries.

3   Q. Okay. We've heard in this case, and I

4 realize you haven't been here until today, but we've

5 heard some testimony some argument that the fact that

6 of all these three districts becoming more competitive

7 is actually a bad thing, that's a negative -- goes not

8 negative column about the map.

9   Did you agree or disagree with that in

10 terms of the value of making these districts more

11 competitive?

12   A. Well, I guess that a public policy question.

13 People could agree to disagree. I mean, my view, if

14 you're just asking my view, people who represent very

15 safety districts can be very strong willed about their

16 opinions and sometimes inflexible. If you look at

17 what happens in Congress right now, it seems like the

18 people who are trying to break the gridlock and try to

19 work out a bipartisan agreement are the ones who live

20 in swing district. They want to get reelected by not

21 taking a very right wing position or left wing

22 position. I personal think competition is good, if

23 it's (inaudible) competition, yeah.

24   Q. And I'm going to read you another quote from

25 another decision. This is in Maestas v. Hall case,

1   2012-NMSC-006. This was the Supreme Court's decision

2   in that -- the case we've been talking about, the 2011

3   redistricting case. And I'm in paragraph -- at the

4   end of Paragraph 41.

5   And the opinion states there, this is

6   the chief Justice Chavez, competitive distinct are

7   healthy in our representative government because

8   competitive districts allow for the ability of voters

9   to express changed political opinions and preferences.

10   Do you agree with that statement?

11   A.   Yes.

12   Q.   Based on your experience following elections

13   in New Mexico?

14   A.   Yeah. That's my viewpoint.

15   Q.   Okay. All right. I think I want to keep my

16   eye on the time here, moving on to -- let me just ask

17   you briefly about your fourth opinion, Mr. Sanderoff,

18   and that's on Page 11 of your report.

19   Here you say political party

20   registration numbers are not meaningful predictors of

21   partisan performance in elections, especially in

22   Southeastern New Mexico.

23   Can you explain to us the basis of that

24   opinion?

25   A.   Yes. So -- and if everyone is looking at

 1 their report, there's a visual on Page 13. It just

 2 shows the percentage of registered Democrats,

 3 Republicans and Independents in the State of

 4 New Mexico over time. And what it shows is that the

 5 percentage of Democrats continues to decline,

 6 Republicans have been pretty stable, and Independents

 7 rise.

 8   Yet, at the same time in the State of

 9 New Mexico, the state has become more blue, more

10 Democratic, especially in places like Albuquerque.

11 And we see that graphic visually on Page 12, where we

12 just take as an example, the president raises. Look

13 at 2000 and 2004 on Page 12. New Mexico was known as

14 the battleground of battleground states in president

15 race razz.

16   Then by 2014, Obama won by 15, then by

17 10 percent, then by 8. And this chart, I made a

18 mistake in cutting and pasting. I left off the 2020

19 race where Biden won't by 10.8 percent, so that should

20 have been on the chart as well.

21   And so the point was, on the one hand,

22 New Mexico is becoming more blue, especially in the

23 cities. On the other hand, the Democratic voter

24 registration continues to dramatically. And so I'd be

25 cautious about using Democratic voter registration as

1   the predictor of partisan performance. Especially you

2   then have all those Independents who are more fickle.

3   They're up to 25 percent.

4   So that was, in a nutshell, why I

5   concluded that.

6   Q. Okay. Great. And I think on Page 13 of

7   your report, underneath that chart you were pointing

8   to, you offered some observations or reasons why, you

9   know, there might be that disconnect between the

10   registration numbers and the actual political

11   performance.

12   A. Right. One of the biggest reasons why

13   Democrats are declining and Republican has been

14   stable, is because a lot of conservative Democrats

15   have switched their registration to Republican. We

16   saw a lot of that Southeastern New Mexico over the

17   last couple decade.

18   There was a time not that long ago in

19   Southeastern New Mexico, where there were Democrats

20   and Republicans in Eddy County. You know, those days

21   are gone. And so if you have conservative Democrats

22   switching over to become Republicans, Republican are

23   passing on (inaudible). They're being replenished by

24   Democrats and they're switching parties.

25   And then Independents is another we have

1   to be careful. Because a lot of young people have

2   dismissed both parties. A lot of young parties are

3   disenchanted with the Democrats and the Republicans.

4   And so they're registering without any affiliation,

5   and so that's confusing the data as well for the

6   purposes of using registration to protect partisan

7   performance.

8   Q. Thank you. Mr. Sanderoff, kind of shifting

9   gears a little bit and, again, kind of harkening back

10 to your deposition in this case, do you recall being

11 asked some questions about using or taking into

12 consideration the location of oil and gas wells and

13 the oil and gas industry in redistricting? Do you

14 recall being asked some questions about that?

15   A. I do.

16   Q. And I think, if I'm correct, you indicated

17 in your deposition that you hadn't before in your

18 experience redistricting in New Mexico, you hadn't

19 been asked to do that or to take that particular

20 factor into consideration.

21   A. The factor of where the oil wells are in

22 drawing district boundaries?

23   Q. Right.

24   A. I've never been asked that.

25   Q. Okay. Okay. Let me ask you this, though,

1   just based on your decades of experience here in

2   New Mexico following the politics in the state

3   government and all the issues that you follow, there

4   at Research & Polling.

5   Are you familiar with whether the oil

6   and gas industry place a roll in the New Mexico any?

7   A. Yes.

8   Q. And how would you describe that?

9   A. They play a fantastic roll, a big role.

10 (Inaudible) quoted in the newspaper at -- people use

11 different numbers, but 40 percent of the state's

12 government revenue comes from oil and gas. Revenue

13 streams are coming in from the leases, the royalties,

14 the taxes, gross receipts tax, the payroll taxes. And

15 so oil and gas is a big driver of New Mexico's

16 economy.

17   Q. Okay. And do you recall being asked in your

18 deposition a question about whether it makes sense to

19 split the oil wells among different congressional

20 districts in the State of New Mexico?

21   A. I don't remember exactly what I said. I

22 think that I had never asked to. If somebody had a

23 plan to create two voices within this monolithic

24 group, that would be an example of what could be done,

25 I guess.

1   Q.   Sure.   And have you seen examples, even in

2   this last redistricting cycle of any groups who

3   specifically asked to be split month different -- two

4   have two voices, for example, in Congress instead of

5   one, and to be drawn across district lines?

6   A.   We're not talking oil and gas now?

7   Q.   Right, yeah.   Just any -- any example that

8   comes to mind?

9   A.   Yeah.   The prominent example is June any

10   pueblo.   They wanted to be split between two

11   congressional districts, because Native Americans have

12   a lot more work with the federal government than they

13   have with the state.   And so they want to be split

14   between congressional districts.   And the boundary

15   happens to fall in a place where that's doable.

16   Mescalero wanted to be split between two congressional

17   districts.

18   Los Alamos County are, I drew all these

19   beautiful plans for their consideration to unify

20   Los Alamos County, they said, "No, we want to be

21   split."

22   Los Alamos -- I'm talking state senate

23   now.   I'm sorry.   They wanted Los Alamos townsite in

24   one state senate district and White Rock in another

25   state senate district to have two voices there.   And I

1   don't know if you were just talking about Congress. I

2   probably shouldn't have said that, but...

3   Q. No, no. Just general examples, I mean, as a

4   general matter, based on again, your experience, your

5   knowledge of the state, of how politics works in the

6   state, how districting works, is there anything

7   inherently wrong with wanting to have two voices

8   representing a particular area, a particular industry,

9   a tribe, as opposed to one?

10   A. If that's their strategy. You know, Eddy

11   County grew so much, as did Lea County. And so with

12   the citizen redistricting committee, I drew these

13   beautiful maps that Lea County could have its own

14   senator, Eddy County could have their own state

15   senator. And Eddy County commission said, "No. We

16   want to be split two or threes ways. We like having

17   rep .45's Lea County, Otero County, Eddy County and

18   sometimes" -- but it's just strategic decision of the

19   /TKPWHROUP about whether they want to be kept together

20   or have more voices, where they might not ever elect

21   somebody. But so I see examples of that.

22   Q. And it's a policy decision?

23   A. It's policy political decision.

24   Q. Okay. Well, thank you very much

25   Mr. Sanderoff. Appreciate your time this afternoon.

1   MS. SANCHEZ: I'll pass the witness.

2   THE COURT: All right. Thank you.

3   Cross-examination.

4   CROSS-EXAMINATION

5   BY MS. DIRAGO:

6   Q. Hello.

7   A. Hello. How are you?

8   Q. Good. How are you?

9   A. Fine. Thank you.

10   Q. So I deposed you virtually. You're taller

11   in person. I'm probably shorter in person than you

12   expected, so I guess we're even. As Sarah mentioned,

13   I have too much paper.

14   Okay. I guess it's probably easiest to

15   just go into what you were just testifying about, I

16   think you said, the Indian reservations mentioned they

17   wanted to be split up. You might have mentioned

18   another -- I think you weren't talking congressional

19   redistricting or -- but maybe Los Alamos, or --

20   A. Yeah, state senate.

21   Q. State senate. Okay? Did anyone from the

22   oil and gas industry indicate that they wanted to be

23   split up in this redistricting process?

24   A. No, not to me.

25   Q. Well, and you actually participated in the

1   CRC redistricting process, right?

2   A.   We did.

3   Q.   And -- that's pretty cool, by the way. You

4   attended most of the public meetings that the CRC held

5   because RPI staffed -- your company staffed those

6   meetings, right?

7   A.   Right. And the ones I didn't attend, I

8   watched on Zoom.

9   Q.   Oh, I didn't know that. Okay. So during

10 all those public meetings, did you ever see anybody

11 ask for the gas and oil industry to be split up?

12   A.   No.

13   Q.   As far as you know, no one at the CRC

14 committee had the goal of spreading out the oil wells

15 in the state, right?

16   A.   They -- to my knowledge, no. They've never

17 requested any plan from us to draw that would do that.

18   Q.   Okay. And what about -- I think you said

19 you've been doing this since 1981. Have you ever had

20 a request to split up the oil wells in the state?

21   A.   No.

22   Q.   Have you ever -- before this case, have you

23 ever even heard of somebody wanting to do that?

24   A.   No.

25   Q.   So there are a lot of oil wells in the

1 southeast, right?

2   A. Yes.

3   Q. Southeast of New Mexico. I don't know if

4 that's why you hesitated, but I should -- I should

5 clarify.

6   A. I was just clearing my throat.

7   Q. Okay. And a lot of people who live in the

8 southeast also work for the oil industry, right?

9   A. Yes.

10   Q. And you agree that a lot of voters in

11 Southeastern New Mexico have a common outlook, right?

12   A. Yes.

13   Q. And some might even call that a community

14 after interest?

15   A. Yes.

16   Q. And do you think it's because of this common

17 employer -- not a common employer, but working for the

18 same industry?

19   A. Among other things, yes, sure.

20   Q. Are so you also were testifying that SB-1

21 made D-2 more Democratic, right?

22   A. Yes.

23   Q. And I think you said under RPI's partisan

24 performance index, D-2 is now 53 percent Democrat and

25 47 percent Republican?

1   A. Correct.

2   Q. And you weren't looking at what the partisan

3   performance index of D-2 was under the previous map,

4   right?

5   A. No.

6   Q. Okay. So it wouldn't matter to you if SB-1

7   made D-2, that's congressional District 2, like 20 map

8   number of times more Democratic? It wouldn't matter

9   to your analysis that it's competent now?

10   A. We didn't focus on that topic. We focused

11 on the topics in my report regarding competitiveness.

12   Q. Okay. So you weren't looking at, like, the

13 changes that had been made.

14   A. Correct.

15   Q. Okay. Are and your personal definition of

16 competitiveness is where the district is between 54

17 and 46 percent Democratic to Republican?

18   A. As a starting pointed, yes.

19   Q. Okay. Or either, I guess it could be

20 Republican to Democrat?

21   A. Sure.

22   Q. Okay. But this range is not based on any

23 research or ^ studies ^ studs, right?

24   A. No. It's based on my experience of 40 years

25 of using it.

1   Q.   Okay.   So -- and I understand in your

2   deposition you couldn't remember any examples where a

3   Republican had gone a district that was percent

4   Democrat.   And you have since gave a couple examples,

5   right?

6   A.   Correct.

7   Q.   But you also testified at your deposition

8   that a Republican winning a district that was 54

9   percent Democratic would be a rare event.   Do you

10 still agree with that?

11   A.   Under many circumstances, I believe -- well,

12 I found two and where one of them it happened three

13 times.   But I would say, to answer your question, that

14 the 54/46 would be the starting point.   I would want

15 to see more factors for me to then say the Republican

16 has a reasonable chance of winning.

17   If, let's say, the Democrat had a higher

18 name recognition or there was some baggage with the

19 Republican, then the 54/46 could become very, very --

20 the Democrat could become very vulnerable.

21   So that's why I say it's a starting

22 point.   I would look deeper into other factors to

23 determine whether it's feasible for a Republican to

24 win a 54/46 district.

25   Q.   Okay.   So --

1   A.   All things equal, it would be a long shot at

2   54.

3   Q.   Okay. So it would be difficult?

4   A.   Holding all things equal. But oftentimes,

5   there's not. Oftentimes there's great opportunities

6   for the Democrats or the Republicans at the 54/4611.

7   Q.   Okay. And I think we agreed in your

8   deposition that if anyone could guarantee that Juan

9   party would win a district, that either one of us

10   would be a very wealthy person. So I understand that

11   there's -- anything could happen?

12   A.   Right.

13   Q.   Okay. And you did also say in your

14   deposition that the only way -- well, I don't want to

15   put words in your mouth. I think you said that if a

16   Republican won a district that was 54 percent

17   Democratic, that it would be for a special reason.

18   And that sounds to me what you're saying now?

19   A.   Well, it could be for a special reason. I'm

20   saying it could be for other reasons, as well. But

21   yeah, sometimes legislators get defeated because of

22   controversies. Oftentimes those people end up getting

23   defeated in their primary, so they don't even make it

24   to the general election.

25   Q.   Right. Okay. So you testified that D-2 is

1 now 53 percent, which is an emergency more -- a

2 percentage -- well, a percentage less -- wait, it's 53

3 percent Democratic is what you said. Okay? Right?

4   A. Yeah. It's actually 2 percent, but which is

5 a spread of --

6   Q. Oh, yes.

7   A. -- 6 points versus 8 points, right, 54 --

8   Q. Yes, thank you. I'm glad you clarified that

9 for me. That really helps. Okay. So anyway, the

10 question is, if the DPI is 53 percent, would it still

11 be difficult for a Republican to win?

12   A. Well, I guess -- no. I guess because we're

13 seeing evidence of that now, we're seeing a percent

14 Democratic performance and a 47 percent Republican

15 performance in that same district, CD-2, and the

16 Republican came within seven-tenths of a percent of

17 winning it. So I would say no, it would not be

18 difficult.

19   Q. Okay. Now, what about -- and we talked

20 about incumbent at your deposition, too. And I

21 believe you agreed that incumbent have an advantage at

22 the polls, correct?

23   A. Oftentimes, yes.

24   Q. Okay. So now why don't we make that

25 district just 53 percent Democratic, but there's a

1   Democrat who is an incumbent? Now is it difficult for

2   a Republican to win that district, all things being

3   equal, you know, putting aside a special situation

4   where there's a scandal or something?

5   A. I think it's -- the case of CD-2, no, I

6   wouldn't agree with you, because CD-2 is a

7   conservative district. And the Democrats to be more

8   liberal.

9   Look what happened with Xochitl Torres

10   Small, she won when she had no record. But then when

11   she had a record, Republicans were able to paint her

12   as too liberal, and then she lost.

13   I think Vasquez could fall into that

14   same phenomenon, where even though he's the incumbent

15   now, I think he's fairly vulnerable.

16   Q. Okay. So there are a lot of people in CD

17   two that are conservative, I think you just said?

18   A. Yes.

19   Q. Okay. Hold on just a second.

20   MS. DIRAGO: May I approach?

21   THE COURT: Sure.

22   MS. DIRAGO: I promise we will be quick. I

23   am exhausted.

24   BY MS. DIRAGO:

25   Q. Okay. So I don't think I've actually asked

1   you about this at your deposition. So this was from

2   Mr. Brace's expert report. And Mr. Brace is one of

3   the defendants' experts. I know I asked you at your

4   deposition if you read Mr. Brace's report. Is that

5   still true, haven't? And you said no. Is that still

6   true haven't read it?

7   A.   Still true. I have not -- I have not seen

8   this or read his report.

9   Q.   Okay. So that's fair. So with what I want

10 you to look at, then, is this second row here. And by

11 the way, the title here is NM underscore past SB-1

12 matrix. So this is information data that Mr. Brace

13 collected and put together in sort of easy to read I

14 think chart. And then the second row here shows

15 presidential elections, 2020, 2016 and 2012. And then

16 you can see on the left, you can go across by district

17 to see -- now, what would happen if SB-1 the lines

18 were in play during these years, where the -- who the

19 district would vote for.

20   And so what I want -- let's start with

21 2020 and look across -- so we're cons rating here on

22 District 2. And you see that District 2 under SB-1

23 would have elected Biden by 53 percent, would have

24 voted for Biden by 53 percent?

25   A.   Just for clarification --

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 1        Q.   Sure?

 2        A.   -- are we on the second row?  What you --

 3        Q.   He.

 4        A.   -- are we on?

 5        Q.   I'm sorry.  Yeah.

 6        A.   Can I ask a question to help me understand

 7   this.

 8        Q.   Please.

 9        A.   So we're at the three presidential years,

10   2012, '16 and '20.

11        Q.   Yeah?

12        A.   Are we looking --

13        Q.   '20 -- yes, you're right?

14        A.   2020.  Are we looking at actual election

15   returns, or are we looking at what would happen under

16   the new boundaries?  I got lost there.

17        Q.   Yes, under the new boundaries.

18        A.   So these are --

19        Q.   So it didn't actually happen.

20        A.   Got it.

21        Q.   Yeah.

22        A.   Got it.

23        Q.   But it's -- I guess it's if that election

24   took place today and SB-1 was in -- or I guess a

25   better way to say it is if the SB-1 lines were in
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1 place at that time of that election?

2   A.   It took me 2020 election results and

3 reconfigured them under the new CD boundaries.

4   Q.   That's right.

5   A.   Okay.   Just want to sure I understand.

6   Q.   No.   I -- that's totally fair.   So it

7 strikes me -- and District 2 would have elected --

8 would have voted for Biden?

9   A.   So there's that 53.0, the same as the

10 partisan performance index.

11   Q.   Right, because -- right because it is, yeah,

12 yeah.

13   A.   Now, this is actual elections as compared to

14 (inaudible).

15   Q.   Yeah.   So --

16   A.   That's good.

17   Q.   No.   You have a got index.   And by the way,

18 I've talked to people about you, and they all say

19 you're the man, so you know your stuff.

20   Okay.   So CD-2 would have -- this --

21 well, we're not in District 2 anymore, but District 2

22 would have elected Biden.   And then why don't you look

23 at 2016.   District 2 with all the conservatives would

24 have elected Hillary Clinton by 53.   We got 53.37

25 percent.   And Obama, go across, District 2 would have

1   elected Obama by 54.89 percent, which is funny, base

2   even more than District 1 there.

3   But my question to you is, does that

4   surprise you, knowing -- and you just said that

5   District 2 has a lot of conservative people. Does

6   that surprise you?

7   A. Well, I guess the answer is no, because we

8   testified our partisan performance index for C2

9   through assistant 3 percent. And so we're seeing

10 (inaudible) number in 2020. Remember that /WHAOER

11 looking at is exogenous raises, you know what if Joe

12 buy again don't live in the congressional district,

13 they don't live in Hobbs and Las Cruces, so all those

14 local factors you're not taking into account. So

15 these indicators have value. But let's remember what

16 actually happens within the congressional districts

17 themselves.

18   Q. Right. So anything can happen, and you did

19 testify to this at your deposition that, you know, it

20 depends on where somebody lives and if they're an

21 incumbent and a lot of things. But this is sort of, I

22 don't know, almost removing those considerations and

23 just saying on an average what would have happened in

24 District 2, which is so conservative. They would have

25 elected Hillary Clinton. Does that -- I mean, that

1 surprises me?

2   A. Again, because we had an index showing

3 something similar, and then explain the difference

4 between the performance indexes and the actual

5 election returns in the district, I'm not surprised.

6   Q. Okay. So we are not in district -- we're

7 not sitting in District 2 anymore; is that correct?

8   A. We are --

9   Q. Or do you know?

10   A. -- in Lovington, and Lovington is in CD-3.

11   Q. CD-3. Okay. Are we in the same district as

12 Santa Fe?

13   A. Lovington is they same district as -- it's

14 CD-3, the same as Santa Fe, correct.

15   Q. Okay. How far is that?

16   A. Well, let's just call it a four-hour drive.

17   Q. Okay. What about San Juan County, however

18 is that?

19   A. Six hours.

20   Q. Really? Is that all?

21   A. Given the road network, it's not a -- not as

22 the crow flies. (Inaudible).

23   Q. Okay. And I can testify to that?

24   A. San Juan is the northwest corner of the

25 state, yes .

 1   Q. I'm very, very close to being done, but I do

 2   have to ask you another question about (inaudible).

 3   So this is exhibit --

 4   MS. DIRAGO: Can I approach, your Honor?

 5   THE COURT: Yes.

 6   MS. DIRAGO: So, so this is Exhibit 1 from

 7   yesterday. I don't know if you want these

 8   (inaudible).

 9   THE COURT: I've got one. I've got it.

10   MS. SANCHEZ: I have it, too.

11   BY MS. DIRAGO:

12   Q. Okay. I believe I did show you these at

13   your deposition.

14   A. You did. Yeah, I had given it a very quick

15   read, but yes.

16   Q. Yeah. Okay. Well, like I said, you get a

17   shout out and a good one in these, but that's not why

18   I'm asking you, exactly. But my question, so why

19   don't we go down -- I do want to ask you in this,

20   like, a green box that says: That's good. You're

21   using Sanderoff's DPI, right?

22   Do you see that box?

23   A. I do.

24   Q. And it says, NCEC gave them at 53 percent,

25   but their methodology is too generous, Brian is

1 better.

2   Yeah, okay. So does that mean that NCEC

3 skews more Democratic with their numbers?

4   MS. SANCHEZ: Objection to the foundation.

5 She's asking him to speculate what some unidentified

6 person said in a text message.

7   MS. DIRAGO: Well, and I can lay a little

8 bit more foundation. I assume, he does polling, that

9 he would probably know who this is and what it means.

10 But it could -- fair point, I could ask him that

11 first.

12   THE COURT: Go ahead and ask that.

13   MS. DIRAGO: If I weren't so tired, I'd

14 probably think of that.

15 BY MS. DIRAGO:

16   Q. But do you know what NCEC is in this

17 context, or can you guess?

18   A. I think it's the Democratic party's -- it's

19 a partisan performance index of another organization.

20 Frankly, I'm not sure exactly which one.

21   Q. Okay. And I don't really -- I'm not asking

22 this to know who they are or for the truth of it.

23   My question is, do you think that

24 your -- that RPI's index skews Republican?

25   A. Do I think it does?

1   Q.   Yeah.

2   A.   No.

3   Q.   Okay. Have you been told that before?

4   A.   I've been told everything. All sides tell

5   me --

6   Q.   I don't doubt that.

7   A.   All sides tell me everything.

8   Q.   Okay. So let's move down to that -- the Red

9   Box that starts with Sanderoff's DPI.

10   And it says: Sanderoff's DPI for your

11   Map H is 51.8 percent. That's not enough for a

12   midterm election. So we adjusted some edges, scooped

13   up more of Albuquerque and now are at 53 percent.

14   And you did testify that CD-2 is now 53

15   percent Democrat. I just want to know if you agree

16   that CD-1 under SB-1 is now 54 percent.

17   A.   Under a DPI?

18   Q.   Yes. Was the DPI 54 percent -- is CD-1's

19   DPI now 54 percent under SB-1?

20   A.   Off the top of my head, I'm not sure. But

21   it would be close to that.

22   Q.   Okay. And what about CD-3 being 55.4

23   percent?

24   A.   I think that -- again, I don't want to

25   overly speculate, but that's not an unreasonable

1   number. I don't know if it's to the 10th --

2   Q. Okay.

3   A. -- because I don't have those numbers in

4   front of me.

5   Q. So you don't have any reason to think that

6   what Senator Stewart is saying she did, you don't have

7   any reason to doubt that's what happened?

8   A. When you say "what happened"?

9   Q. That --

10   A. Oh, that they --

11   Q. That that's what they did to SB-1.

12   A. Well, let me just read this.

13   Q. Sure.

14   A. So we adjusted some edges, scooped up more.

15   It looks like they increased the

16   Democratic performance in CD-2.

17   Q. And what about the other districts?

18   A. Well mathematically, they'd fall, they would

19   go down.

20   Q. Okay. So if you increase the Democratic --

21   the DPI in one district, it's got to come from

22   somewhere, right, so the DPI in the other districts

23   would go down?

24   A. Correct.

25   Q. And is that --

1   A.   At least in one of them.   Possibly in both,

2   at least in one.

3   Q.   True, true.   Okay.

4   A.   Just simple math.

5   Q.   And is that what happened between Map H and

6   SB-1?

7   A.   Map H, Concept H, is a CRC map.   Just

8   thinking out loud here.

9   Q.   Yeah, sure.   Go ahead.

10   A.   Well, so what is your question?

11   Q.   My question is if that actually happened.   I

12 just want to know if that happened, that what she's

13 texting she's saying she did, did that actually

14 happen?

15   A.   You're asking me if Senate Bill 1 ended up

16 at 53 percent DPI.   And the answer is yes.

17   Q.   Yeah, that we know.   I'm asking about now

18 senate -- CD-1 and CD-3.

19   A.   I don't have those numbers in front of me to

20 know if it's the exact number.

21   Q.   Okay.   But you have no reason to doubt that

22 those are the exact numbers?

23   A.   I have no reason to doubt that -- I don't

24 know for sure.   They don't seem unreasonable.   But I

25 don't have those numbers in front of me.

1   Q. Okay. That's great. Thank you. Let me see

2   here. I think we're almost done.

3   Okay. You did not look for indications

4   that the drawers of SB-1 had partisan bias, right?

5   A. Whether I looked for indications?

6   Q. Right. As an expert here and with your

7   expert report --

8   A. No.

9   Q. -- that's not what you were looking at?

10   A. That's not what I was looking at.

11   Q. Okay. And I think you said that you're not

12   in the business of assessing or evaluating plans,

13   right?

14   A. Correct.

15   Q. And it's not --

16   A. What I meant by that was, on the fancy

17   computer simulations and --

18   Q. Okay.

19   A. -- doing that highly specialized work, we're

20   not in that business.

21   Q. Yeah.

22   A. Obviously I look at DPI as partisan

23   performance index and assessing things. But no, we

24   don't -- we don't do that very specialized work. But

25   I guess experts on both sides had spoken about it

1 today or yesterday.

2   Q. Yeah, I don't know if they're continue doing

3 that work after this trial.

4   Okay. So but you've never provided

5 analysis about whether a map has been partisan

6 gerrymandered, right?

7   A. I've never -- correct.

8   Q. Okay. And you -- you're not providing an

9 expert opinion about whether SB-1 has be part January

10 gerrymandered here?

11   A. Correct.

12   Q. Okay. That's it.

13   A. Great.

14   THE COURT: Redirect?

15   MS. SANCHEZ: No, thank you. Your Honor.

16   THE COURT: All right. I apologize. I just

17 have a couple quick questions.

18   You mentioned, and it's been testified

19 otherwise, too, about the increasing number of

20 interested or no party -- I'm not even sure how

21 they're indicated now in New Mexico, but people who

22 are not Democrat or Republican or even really third

23 party, that that number increased last several years,

24 correct?

25   THE WITNESS: Yes. They're technically

1   unaffiliated. They're not independent party, small

2   i, independent, unaffiliated, where they -- when they

3   register to vote they choose not to select in -- any

4   established party.

5   THE COURT: All right. And you mentioned in

6   your report that many young people decline to state a

7   party affiliation when they register but they often

8   vote for Democratic candidates, correct?

9   THE WITNESS: Yes. The young ones.

10   THE COURT: So is that significant enough,

11   and if so, how do you -- when you're doing this

12   two-party system analysis for, you know, RPI or PP I,

13   political -- the partisan performance index, does

14   that skew that? Because there's an increasing number

15   in the district that aren't voting. How do you

16   account for that?

17   THE WITNESS: Well, the DPI is based on

18   election returns. So it takes into account how

19   Independents are voting.

20   THE COURT: Okay.

21   THE WITNESS: So it doesn't skew anything.

22   Where it backs tricky in our polling, our public

23   opinion polling --

24   THE COURT: Right.

25   THE WITNESS: -- where we segment the

1   results by party and we get to see how those young

2   Independents are voting more live really. But it

3   doesn't affect our DPI because we're looking at

4   actual election returns.

5   THE COURT: Last question about

6   competitiveness. You had mentioned that 54 to 46 is

7   your competitiveness range, you said your starting

8   point.

9   THE WITNESS: Starting point.

10   THE COURT: And then you -- in your report,

11 you say other factors taken into account to determine

12 whether a race is competitive, are name recognition,

13 favorability, relative stepping and quality of the

14 candidates and their ability to raise campaign funds,

15 et cetera is there any way to quantify that?

16   THE WITNESS: No. That just takes judgment

17 and experience.

18   THE COURT: Experience, correct.

19   THE WITNESS: You know, if one candidate is

20 really well known and well liked and the other

21 candidate is unknown, you know, that's going to be

22 really valuable in your assessment.

23   THE COURT: So, for example, and this was

24 testified to yesterday, I believe, by the plaintiffs'

25 expert, for this past election for District 2 that's

1 under the SB-1 plan, even though Yvette Harrell was

2 an incumbent and even though it was a good year or

3 Republicans, they took back the house of

4 representatives, she was one of only two incumbent to

5 lose re-election in the house.

6   THE WITNESS: That's correct.

7   THE COURT: So those other factors, the

8 incumbency, name recognition, all those didn't really

9 help her. Even though she same close, it didn't

10 really help her, correct.

11   THE WITNESS: Yeah. She's a one high who

12 term incumbent. So maybe it gave her some help. Not

13 to the level of 20 years worth, like Steve Pierce.

14   You take other things into account. She

15 did have the race against Xochitl Torres Small where

16 she was beaten up pretty bad in terms of negative TV

17 adds. But then again, she ran her own adds that were

18 very positive and very good, take that into account.

19   But in this case, the incumbency

20 advantage that she had was not enough to get her over

21 the finish line.

22   THE COURT: So does that affect at all your

23 assessment that it is still a competitive district?

24   THE WITNESS: Yeah, it is. I believe it is

25 a really competitive district, just because of what I

1 said earlier about, you know, now that Gabe Vasquez

2 has a record, you know, typically in political

3 campaigns, the other side will use a record against

4 you. And so I sincerely believe that that's -- that

5 this raids could go either way. And he doesn't

6 necessarily have the advantage or the disadvantage.

7   THE COURT: Okay. All right. Thank you I

8 appreciate it.

9   Any other questions based on the Court's

10 questioning.

11   MS. DIRAGO: No, your Honor.

12   MS. SANCHEZ: No.

13   THE COURT: All right. Thank you.

14 Mr. Sanderoff, you can step down.

15   THE WITNESS: Thank you.

16   THE COURT: Okay. Do you have any other

17 witnesses.

18   MR. OLSON: No witnesses, your Honor. We

19 just need a couple things.

20   THE COURT: Okay. I also want to make sure,

21 just because I wasn't certain, was his report moved

22 into evidence.

23   MS. SANCHEZ: I failed to do that. I guess

24 we could do it now, because we're going to move

25 (inaudible).

1   MR. OLSON: Move Exhibit D, your Honor into

2   evidence.

3   THE COURT: That's his report?

4   MR. OLSON: Is it C.

5   MS. SANCHEZ: D. D is --

6   MR. OLSON: I think D.

7   THE COURT: D. Any objection to Exhibit D.

8   MS. DIRAGO: No. No objection.

9   THE COURT: All right. Exhibit D will be

10 admitted.

11   MR. OLSON: Your Honor, just so it's clear

12 for the record, we talked about stipulation after the

13 exhibits that were attached. The annotated findings

14 and conclusions, but we would formally move the

15 admission of Exhibits 1 through 36 that were attached

16 to our annotated findings and conclusions.

17   1 through 35, your Honor, was attached

18 to the annotated findings and conclusions submitted

19 on September 15th, 2023.

20   And Exhibit 36 was attached to the

21 annotated sort of rebuttal findings of fact and

22 conclusions of law submitted on September 20th, 2023.

23 So we would make sure -- we'd move formally for the

24 admission of those.

25   THE COURT: 1 through --

1   MR. OLSON: 36.

2   THE COURT: Are there two groups then, are

3 you saying.

4   MR. OLSON: There's one through 35 are

5 attached to the initial.

6   THE COURT: Okay.

7   MR. OLSON: The filing on September 15th.

8 And 36 was attached top the filing on September 20th.

9   THE COURT: Okay.

10   Any objection from plaintiffs?

11   MS. DIRAGO: No objection. But I would like

12 clarification on -- and it doesn't have to be right

13 now. But I know you said we're going to revise our

14 findings of fact. Are we going to be allowed to use

15 evidence that were in our previous findings of fact

16 that were not admitted here at trial.

17   MR. WILLIAMS: Except (inaudible).

18   MS. DIRAGO: Sure, sure, sure. Well, you're

19 right. I don't take issue with the ones they have

20 objected to based on authenticity, but all the other

21 ones. But I'm not just not clear on the procedure.

22 I wasn't aware that we had to move them all into

23 evidence. And maybe we don't, in order to use them

24 in our forthcoming brief.

25   THE COURT: So my understanding at the

1   beginning is that there was a stipulation that they

2   were coming in.

3   MR. OLSON: Yeah, I want to make sure for

4   the record. Yeah, there is a stipulation, your

5   Honor.

6   THE COURT: I think he's just making a

7   record formalizing that they're coming in.

8   MR. TSEYTLIN: Your Honor, you know, not

9   only -- we also are going to have additional ones

10 that come in /TW production, so --

11   THE COURT: Okay. We'll talk about that in

12 a minute.

13   MR. OLSON: Sure.

14   MS. DIRAGO: Okay.

15   THE COURT: So they'll be admitted.

16   MR. OLSON: The only other thing, your

17 Honor, we would move Exhibit E. I'll show to the

18 Court. This is the first eight pages of the report

19 post section review, the legislative finance

20 committee after this last session, regular session of

21 the legislature.

22   And the reason for that, your Honor, is

23 it just is being tendered for the -- to -- because it

24 highlights the importance of the oil and gas industry

25 to the state as a whole, both from standpoint of the

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 1   state's economy, and the state's budget.  So we would

 2   tender it for that purpose, Exhibit E.

 3             THE COURT:  Any objection?

 4             MS. DIRAGO:  So what -- sorry.  What is

 5   this?

 6             THE COURT:  This is -- this was used in

 7   questioning one of the witnesses today, correct?

 8             MR. OLSON:  It was, your Honor.  And it's a

 9   report from the legislative finance committee, which

10   is an arm of the legislature.  It's -- has a duty to

11   handle budgeting and revenue matters.  And it's being

12   tendered for the purposes that I just stated.

13             MS. DIRAGO:  I don't really -- I don't have

14   a problem with that.  I mean, I obviously can't read

15   it to see if there's like hearsay and other things in

16   here that's objectionable.  But I don't think your

17   Honor will use it for that purpose.  So I don't have

18   a problem with.

19             THE COURT:  It's a government probation

20   report.

21             MR. OLSON:  It's a government document, your

22   Honor.

23             THE COURT:  I'll admit Exhibit E.

24             MR. OLSON:  And then we rest, your Honor.

25             THE COURT:  All right.  Rebuttal witnesses?
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1   MS. DIRAGO: No.

2   THE COURT: Okay. All right. Do you want

3 to talk about the exhibits that were in question now?

4   MR. TSEYTLIN: Your Honor, the only exhibits

5 in question were a couple that they objected to in a

6 motion in limine. As I indicate then, we hadn't

7 intended to rely on those and we didn't rely on them

8 in trial and we don't intend to rely on them now.

9   THE COURT: All right. So are you gag to --

10 you'll withdraw those.

11   MR. TSEYTLIN: Yeah.

12   THE COURT: Okay.

13   MS. DIRAGO: Yeah. If we could -- we'll

14 would you those, if any. I just don't know offhand

15 if we have any exhibits that we haven't used here

16 that are in there. I don't think we do.

17   THE COURT: Okay.

18   MS. DIRAGO: But if you want me to go and

19 check to be sure, I can do that. But if we do have a

20 stipulation that they all come in, besides the ones

21 that they've objected to based on he or she, I

22 believe, then that's fine.

23   THE COURT: Are you okay with that?

24   MR. OLSON: I'm okay with that, your Honor.

25   THE COURT: Okay. All right. Let me ask,

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 1   is -- is it the intent to do closing arguments?

 2              MR. TSEYTLIN:  Yeah.

 3              MS. DIRAGO:  Yeah.

 4              MR. TSEYTLIN:  I mean, I understand we're

 5   late.  It's late here.  I can do brief in my closing,

 6   just --

 7              THE COURT:  You want to do it tonight or you

 8   want to do it tomorrow?

 9              MR. TSEYTLIN:  I'm sorry, your Honor?

10              THE COURT:  Tonight or tomorrow.  We have

11   the courtroom reserved for tomorrow.

12              MR. TSEYTLIN:  Sorry?

13              THE COURT:  We have the courtroom reserved

14   for tomorrow.

15              MR. TSEYTLIN:  I think I'd only prefer to do

16   it today.  (Inaudible) till 5:30 yesterday.  I can't

17   imagine that -- I mean, I'm not -- I mean, I can

18   limit myself to 15 means minutes.

19              MS. SANCHEZ:  I can, too.

20              MR. TSEYTLIN:  (Inaudible).

21              THE COURT:  Okay.  We're going to have to

22   take a short break before we do that then.  Okay?

23                   And then, do you have any other report

24   on -- from your people with the discovery.

25              MS. SANCHEZ:  I haven't had an opportunity
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1   to check since we last spoke, but I can run out now

2   and try to get an update on this /PWRAOEBG.

3              THE COURT:  All right.  That would be good.

4   And then --

5              MR. TSEYTLIN:  (Inaudible).

6              THE COURT:  And I do want to talk about

7   that, then about how we're going to handle that f and

8   when it comes through.  Okay?  All right.

9              MR. OLSON:  Thank you, your Honor.

10                 (Recess held from 4:50 p.m.

11                  to 5:07 p.m.)

12             THE COURT:  What was Exhibit D?  We're

13  looking for Exhibit D.  I probably have it here, but

14  do you remember what it was?

15             MS. SANCHEZ:  D is Mr. Sanderoff's report.

16             THE COURT:  Okay.  And was the marked copy

17  his or.

18             MS. SANCHEZ:  I think I handed it -- I think

19  I put the marked copy on the witness stand.

20             THE COURT:  Okay.  You want to -- you want

21  to put a --

22             MS. SANCHEZ:  Sticker?

23             THE COURT:  -- sticker on this one and --

24             MS. SANCHEZ:  Sure.

25             THE COURT:  You're good, you're good.
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1   MS. SANCHEZ: That's the marked one? Okay.

2   Great.

3   THE COURT: I think this is a deposition and

4   some other things.

5   (Inaudible crosstalk.)

6   THE COURT: I don't think anything in there

7   is an exhibit, correct.

8   MR. WILLIAMS: None of this was admitted,

9   your Honor.

10   THE COURT: All right. On the record?

11   Okay. We are on the record. The

12   evidence is closed. Plaintiffs may make closing

13   argument.

14   CLOSING ARGUMENTS

15   MR. TSEYTLIN: Thank you, your Honor.

16   When I stood up here yesterday, I said

17   that we would bring into trial eight categories of

18   evidence that showed beyond any reasonable dispute

19   that this was an unconstitutional gerrymander under

20   Justice Kagan's test.

21   Now, there was obviously a lot of heat

22   about the simulations. But I think most of the eight

23   categories that I promised were essentially

24   undisputed. So I'm just going to go quickly through

25   them and summarize some of the evidence that we did

1   put.

2   First with regard to the statements, we

3   have the statements of Senator Stewart which provided

4   the DNA of the gerrymander. We asked multiple

5   witnesses about those statements. There really is

6   only one account of those statements that makes any

7   sense, which is that the Democrats who controlled the

8   legislature were trying to create a near perfect

9   gerrymander by pushing up the DPI in District 2,

10   while not pushing -- as close to 54 as they could,

11   while not pushing it below 54 in other districts,

12   making it a near perfect gerrymander.

13   We have additional discovery that we're

14   going to be getting in the next couple of days. Some

15   of it has already started rolling in from the

16   congressional staffer. You'll see in our later

17   submissions more evidence of the same character.

18   There's a clear, obvious, undisputed plan of creating

19   a balance of near perfect gerrymander with a rob

20   Peter to pay Paul principle. That's the statements.

21   Text category is the process. We put on

22   three witnesses here, completely undisputed that this

23   process was entirely partisan. Republicans in the

24   house and the senate were completely locked out of

25   the process. It was done entirely one-sided.

1 Democrats wouldn't even invite Republicans into the

2 meetings. They accepted none of their ideas, none of

3 their changes. Again, entirely undisputed.

4   Next is the voter registration stuff.

5 We put in undisputed from the secretary of state's

6 office through Mr. Trende's testimony and report that

7 the registration in D-2, which was the craft

8 district, went from zero percent, exact by even, to

9 13 percent Democrat.

10   Now, understanding Mr. Sanderoff doesn't

11 like registration as much, but the state Supreme

12 Court asked us to focus on it. Footnote 13 in the

13 Supreme Court's decision specifically talks about the

14 change in the voter register separation, and I think

15 with regard to change, what Mr. Sanderoff said he

16 didn't like about registration is you've got folks

17 who are increasingly -- young folks, increasingly

18 registered as Independents and things of that sort.

19 You know, that might account for kind of the static

20 state of where the registration starts, but it

21 wouldn't account for the delta, the change that

22 occurred, the change that occurred when they moved

23 from where it was before to SB-1 was a 13 point

24 registration swing in the Democrats favor. Exactly

25 the kind of thing the state Supreme Court told us to

1   look at.

2   Next, this is the DPI, the various

3   aggregators. And here are the story from actually

4   all four expert witnesses and the three that

5   testified here and then Mr. (Inaudible) report is the

6   same, which is the same story as in Senator Stewart's

7   Texas that will be in the additional evidence that's

8   being produced now, which is that the district were

9   essentially balanced to be a near perfect

10 gerrymander, 53 for D-2 and then 54 and 55 for the

11 other two. So a near perfect gerrymander, which a

12 perfect gerrymander would be 54, 54, 54, given the

13 political geography.

14   And by the way, the kept of a perfect of

15 gerrymander was 54, 54, 54, which Mr. Trende talked

16 about was undisputed in this trial. My friends asked

17 him a lot of hard questions, harsh questions about

18 his simulations. Actually no questions, no push back

19 on that part of his analysis. And that is I think

20 undisputed before this Court, and it's actually

21 supported by the evidence in the other three and kind

22 of the aggregate of -- some would call it DPR, some

23 would call it RPR, some would call it an index. But

24 it all really leads to the same.

25   Now, what we just heard from

1   Mr. Sanderoff, is that well, notwithstanding this,

2   this doesn't lead to entrenchment. But what

3   Mr. Sanderoff also testified is that he defines

4   entrenchment as impossible or difficult to win the

5   district.

6   We're happy with that phrasing. It is

7   clearly difficult for a party to within a district

8   where the undisputed evidence is that it's a 53

9   percent to 47 percent district. That means that in a

10 neutral year, with equally strong candidates and

11 equal funding, everything being equal, the Democrats

12 are going to win that 6 by 6 points.

13   Is it difficult for a party to win a

14 seat that the other side has by 6 points? Of course

15 it is. That's six points. And we -- and I heard

16 Mr. Sanderoff talk about the 2022 election. But that

17 really supports the same conclusion. You have an

18 incumbent, which is worth a couple of points. You

19 had a national public -- I think Mr. Trende's report

20 says that a Republican won nationally by like 3 or 4

21 points. That's almost close to the 6 points right

22 there. That would account entirely for the close

23 race.

24   But I think it is most fair to measure

25 difficulty, which is Mr. Sanderoff's account for

1 entrenchment, standard for entrenchment, based on and

2 a neutral year, with neutral -- that's why, by the

3 way, Senator Stewart was talking about DPI and saying

4 that 51.eight percent DPI in a midterm is not enough.

5   Because what you want -- so what's

6 difficult for the other side to win is that buffer.

7 So that when you have a difficult year for you, a

8 hard year for you, because the other side has gotten

9 to could you please because the other side has got --

10 wind at their sails due to the national environment,

11 you're still like lip to win.

12   And so -- and I understand my friends

13 focused a lot on the fact that the 2022 race was

14 close. Again, I would underline that the state

15 Supreme Court said that the Maryland case that was

16 decided in Rucho is an important benchmark. There,

17 there was also a very close raise that happened under

18 that map, ins a Republican year. And there, that was

19 a Democrat incumbent that almost lost.

20   Now, the next category of -- and then

21 also just one comment that they made during one of

22 their questions. They brought up Mr. Gallegos see

23 testimony that Republicans could win if they boosted

24 up their -- the turnout.

25   But Mr. Gallegos' testimony in Texas,

1 what he said afterwards, is that it's not an even

2 playing field, that it could be difficult, which is

3 exact I will the standard that Mr. Sanderoff talked

4 about is this -- for entrenchment, which is difficult

5 to win. And that's completely consistent.

6   Now the text door of evidence that I

7 promised we'd talk about is the unnecessary movement

8 of a lot of people. You've heard Mr. Trende talk

9 about that, but in order to balance the districts for

10 equal population to comply with the constitutional

11 requirement for equal populaceness. You needed to

12 move about 23,000 people.

13   What happened here is a movement of over

14 500,000 people, which is exactly the kind of thing

15 that happened in Maryland that Justice Kagan relied

16 upon. And that evidence came in from Mr. Trende. He

17 wasn't questioned on it and nobody pushed back in any

18 way on it. So that aspect of our proof is

19 undisputed.

20   The next thing that I promised that we'd

21 present is the DNA of the gerrymander, how exactly

22 did the Democrats do this almost near perfect

23 gerrymander. And you heard Mr. Trende testify that

24 what happened is they took (inaudible) and they

25 surgically moved around voters so you were adding

1   Democrats to District 2 and you were taking

2   Republicans out. You pointed to objective data

3   showing that. There was no questions from my friends

4   on the other side on that part of his testimony from

5   either of their experts or their expert that was not

6   testifying, Mr. Brace, owner that. So that is also

7   undisputed.

8   And by the way it also matches up with

9   what Senator Stewart said in text messages, was that

10   they took Concept H, 51.8, said that's not quite

11   enough for a midterm. And they moved -- they scooped

12   Republicans into the -- Democrats into that district,

13   scooped Republicans out, made it a near perfect

14   gerrymander.

15   The next category of evidence which got

16   the most during this trial was the simulations.

17   Mr. Trende's simulations which he testified, I with

18   submit, very credibly those that this is an extreme

19   outlier. Mr. Trende coded into his simulations only

20   traditional registering criteria, neutral criteria.

21   There was no question from the other side that any of

22   this criteria were somehow inadequate. So I'm not

23   belabor that. I think -- I think he's testified very

24   credibly.

25   Now, with regard to Dr. Chen, he's

 1 obviously a very technically proficient expert and if

 2 he had not been forced or asked by my friends on the

 3 other side to cook the books but putting into a

 4 clearly partisan factor into the simulations, I have

 5 every confidence that his simulations would have

 6 shown exactly what Mr. Trende showed. And while we

 7 don't have that as evidence before the Court, we've

 8 asked him, "Do you" -- "could you say that you're --

 9 that SB-1 would not be an outlier if you didn't put

10 in that oil well considerations?" He couldn't say

11 that. He feels very, very careful to say that I'm

12 not giving any opinions that this is not a

13 gerrymander.

14   Which, by the way, in other cases he

15 testified he has given that opinion for. And he kept

16 saying very careful, because he's a very careful

17 expert, that he was not going beyond that.

18   And I think the reason for that is what

19 he also testified right at the beginning of my

20 colleague's questioning, which is that the oil wells

21 constraint is not a traditional redistricting

22 criteria. And it's not a traditional redistricting

23 criteria nationwide. He didn't -- he didn't have an

24 expertise to testify what was actually (inaudible)

25 criteria in New Mexico. But it's not a traditional

1   redistricting criteria in New Mexico, and we get that

2   from the testimony of Mr. Sanderoff was asked, in 50

3   years of experiencing redistricting, has he ever

4   heard of such a thing, splitting the oil wells. No.

5   And that's -- we asked, and then the attempt -- my

6   friends attempted to kind of bolster the fact that

7   they knew from his deposition that he was going to

8   make that concession. So (inaudible) okay to split

9   only other communities of it.

10   And I thought what he said was very

11   telling. He said. Yeah, you can split come

12   communities of interest because I heard some

13   testimony during my evolvement that the pueblos want

14   to be split or these other folks wanted to be split

15   in this other redistricting.

16   And then Ms. DiRago asked him, did

17   anyone in the industry say they wanted the oil wells

18   to be cracked. No. I mean, he was dismissive of

19   that. Has he heard of that in his 50 years of doing

20   redistricting work in New Mexico. No. So it's not a

21   traditional redistricting criteria nationwide.

22   They're own expert, Dr. Chen, said that. It's not a

23   traditional redistricting criteria in New Mexico

24   their own expert, Mr. Sanderoff explained to you why

25   that is so.

1   So my friend says, well, Dr. Chen's

2   report is excluded because it's a factual question.

3   So factual question for your Honor under Justice

4   Kagan's rule book for considering simulation, is this

5   a traditional redistricting factor, or is this

6   pretext.

7   Now, the evidence that we have that it's

8   not -- that it's pretext, it has no grounding in

9   New Mexico history, no grounding in New Mexico law,

10   wasn't asked for by the industry or any meaningful

11   number of people, was only even mentioned in -- and

12   we're going to quote in more detail in our proposed

13   findings, only obliquely by a couple of the very

14   folks that are accused of gerrymandering. And the

15   results of that, and Dr. Chen, after some pressing,

16   he admitted it, is to crass southeast New Mexico,

17   which is exactly what a gerrymanderer would do.

18   And I thought was one exchange was very

19   telling. Ms. DiRago asked Dr. Chen to look at his

20   distributions to show, you know, where all his 3,000

21   districts. It was the thousand maps broken up by the

22   three districts. Why? And he showed and he admitted

23   that almost all those districts are -- are less than

24   50 -- or in -- in Mr. Sanderoff's problems, plus 51

25   DPI. Which means that once you bake in the clearly

1   pretextual oil constraint, you gets only

2   gerrymanders. Almost every single map that Dr. Chen

3   produced had three Democrat districts, zero

4   Republican districts in a typical year.

5   I'm not faulting Dr. Chen. He

6   obviously, as far as we know, performed the analysis

7   with the partisan constraint that my friends fed him

8   inspect a technically competent manner. But garbage

9   in, garbage out.

10   When you force a simulation to put in a

11   partisan criteria, and as my friend said, that's a

12   factual matter. It will be your Honor's decision who

13   had the better of the factual showing about whether

14   that was a traditional redistricting criteria in

15   New Mexico or a partisan pretext. You just get

16   garbage out, and that's unfortunately what we had

17   with his (inaudible) simulations, which is mostly 3-0

18   Democrat maps.

19   And finally criteria we talked about,

20   and said this would be at least etch citizen was the

21   traditional redistricting criteria, objective ones,

22   which is the county splits and the compactness. You

23   know, this map is one of the worst in New Mexico

24   history. The considerations that they relied on most

25   heavily with that are the oil well considerations and

1   the way they got to beat kind of a dead horse on

2   that.

3   So with all of that taken into account,

4   I will end now as I ended. Given these overwhelming

5   eight categories of evidence, that it is a partisan,

6   this is (inaudible) partisan intent, this has an

7   egregious partisan effect. And that my friends have

8   no justification for that effect. Which would ask

9   your Honor to hold that this is unconstitutional

10 (inaudible) gerrymander, and to schedule remedial

11 potion at the earliest possible time.

12   Thank you?

13   THE COURT: Thank you. Who will be closing?

14 Ms. Sanchez?

15   MS. SANCHEZ: Yes. Thank you.

16   There's no clock, so I'm going to try to

17 keep -- oh, thank you. I did not catch that.

18   Your Honor, thank you. On behalf of my

19 team here for the legislative defendants, we want to

20 thank the Court for undertaking this rather huge

21 amount of work on a very compressed scheduled on a

22 matter of first impression that's frankly important

23 to the whole state.

24   I am going to cut to the chase and just

25 jump right to the bottom line. SB-1 is not a

1   egregious partisan gerrymander for one very simple

2   reason. Under this plan, Congressional District 2 is

3   a highly competitive, toss-up district that either

4   party can win.

5   By definition, not just my definition,

6   but Justice Kagan's definition and our state Supreme

7   Court's definition, a competitive district that

8   either party with win is not entrenchment of the

9   dominant is, in fact, it is the opposite.

10   I want to read again the words of Chief

11   Justice Bacon in the opinion that was issued just

12   last week when she's talking about entrenchment.

13   Again, the consequences of such

14   entrenchment under the a partisan gerrymander include

15   that ensuing elections are effectively predetermined,

16   essentially removing the remedy of the franchise from

17   a contraction individuals who's votes have been

18   diluted, essentially rendering the voters choice moot

19   because it's locked in.

20   That's what egregious gerrymanderers do,

21   and this map does not do that.

22   The other thing this map doesn't top is

23   it doesn't PAC and it doesn't crack. Again, from

24   Justice Bacon's decision in this case from last week,

25   mere in Footnote 8 of the decision, she's quoting

1   Justice Kagan from -- I believe from the Rucho case,

2   and talking about what does packing and cracking mean

3   in this context. Okay.

4   So the partisan gerrymanderer, quote,

5   packs super majority of those voters into a

6   relatively few districts in numbers far greater than

7   needed for their preferred candidates to prevail. So

8   their votes become wasted in those districts.

9   And then he cracks the rest across many

10   more districts, spreading them so thin that there

11   candidates will not be able to win. That is what

12   cracking is, and that did not happen here because we

13   know, looking at CD-2, from the metrics that

14   Mr. Sanderoff used both from the partisan performance

15   data, taking all of those considerations into play,

16   and from the endogenous races, the history of raises

17   in CD-2 and then the race that we have under this

18   map, which was such an incredibly close race, a

19   toss-up race.

20   So the map under SB-2, under this map,

21   this is not what the Supreme Court is worried about.

22   The Supreme Court is worried about entrenchment such

23   that votes don't matter anymore. That's why I submit

24   to the Court that the Supreme Court's opinion talks

25   so much about the importance of the franchise, the

1   importance of the vote to our democracy, to our whole

2   system. Votes have to matter, voters should choose

3   politicians, not the other way around. And that's

4   exactly what happens in CD-2.

5   You heard Mr. Sanderoff, the sort of

6   guru of New Mexico elections and in politics tell you

7   that they expects this race to be very competitive

8   going forward. That Mr. Vasquez is, frankly,

9   vulnerable, and we could see this district flip back

10   and forth election to election; somewhat as it did

11   even before redistricting. We looked at that history

12   of CD-2 and saw, at least when Mr. Pierce isn't a

13   candidate, that district can go back and forth even

14   before the current lines.

15   So we also heard from Senator Gallegos,

16   who testified, quite frankly and candidly that

17   there's a problem with public voter turnout in the

18   southern part of the state, and that he does think

19   that that affected -- that affected the you be 2022

20   election.

21   We see that in the turnout numbers. We

22   included that in our findings and conclusions for the

23   Court, looking at the number of votes that --

24   registered voters in CD-2 that just didn't come out

25   to vote in the 2022 election.

1   So there clearly are other factors at

2   play and it's still a neck and neck race. In fact,

3   we briefly talked about here I think with Mr. Trende,

4   and then submitted in our supplemental findings and

5   conclusions. Our third expert, Mr. Brace, who we

6   didn't fly out for trial, but who submitted a lot of

7   material to the Court, talked about a survey USA poll

8   just from would weeks ago that find Ms. Harrell

9   leading Mr. Vasquez by about a point, 46 to 45 in the

10   race right now.

11   So if that was and enough, we also know

12   that prior to SB-1, CD-2 was not a safe Republican

13   district. And Mr. Sanderoff just walked us through

14   that history, that a Democrat could win it and had

15   won it on two occasions in the last two cycles of

16   redistricting.

17   So plaintiffs' don't particularly like

18   those facts. But no amount of text messages or

19   simulation analysis changes the political reality

20   under this map and that under the test that the

21   Supreme Court has so clearly laid out, this does knot

22   meet the test for egregious gerrymandering.

23   And a lot of the companion, I think,

24   theme to the importance of that entrenchment that the

25   Court stresses is the danger of venturing in and

1 decreeing something an egregious partisan gerrymander

2 when it is not, when in enact, it is a set of policy

3 decisions that many people vehemently disagree with.

4 Clearly, this is a highly unpopular map in parts of

5 this state. But when courts get in the business of

6 weighing in on partisan preferences in a

7 redistricting map, when it's not egregious to the

8 point of being unconstitutional, to the point of

9 impairing the right to vote, then it becomes the

10 Court stepping in to the political fray. And that is

11 a danger that our Supreme Court, that even Justice

12 Kagan in her dissent warns against. That is not what

13 courts should be in the business of doing.

14   That's why it's so important to ensure

15 that if we're going to strike down a map as

16 unconstitutional, we better be really sure that it

17 is, in fact, egregious entrenchment under this test.

18 And this map just doesn't satisfy that test.

19   I want to touch on just briefly these

20 eight categories that plaintiffs' counsel have kind

21 of focused on. We have heard a lot about the text

22 string that Senator Stewart was involved in. It's

23 been -- it's been sort of trotted out at every

24 opportunity.

25   Frankly, there's not really any new

1 information there. We know -- we can look at the

2 maps, we can see the difference between Concept H and

3 SB-1. We can see how the partisan performance

4 numbers changed. No one is suggesting that SB-1 was

5 developed without partisan considerations. No one is

6 saying this is an agnostic map that had no partisan

7 aspect to the decision-making.

8   But that's exactly what the Supreme

9 Court has acknowledged that redistricting is an

10 inherently political exercise. It is

11 constitutionally assigned to the political branch of

12 government; of course politics are going to come into

13 play.

14   So there's really not a lot new there.

15 It may be kind of spicy to see the candid thoughts of

16 an individual lawmaker. But I think it's was

17 representative Townsend agreed, long time legislator.

18 You know, there's 112 legislators in the body. They

19 have their own reasons for supporting maps, they have

20 their own reasons for voting against maps.

21   So I would urge the Court to give

22 appropriate weight to what any one particular

23 individual has to say about their reasons for pouring

24 the map or what they were trying to do with their

25 input into the map.

1   Next, we heard some testimony that GOP

2   legislators felt sort of left out of this process.

3   But when we (inaudible) that a little bit more, you

4   know, they clearly participated in committee hearings

5   and floor debates, they commented, they proposed a

6   different plan. You know, the political reality is

7   that the GOP is in the minority in the legislature.

8   The governor is Democrat. And so that's probably not

9   the best political environment for a whole lot of

10   bipartisan compromise to happen.

11   It was very different in 2011 and 2001.

12   And, in fact, what happened, there was no enacted

13   maps because the legislature wanted to do one thing

14   the governor wanted to do another, and everybody had

15   to go to court. So it's not like it was panacea

16   before now. But that's sort of a political reality

17   and I think not very persuasive evidence for the

18   Court to be able to make a decision on.

19   The -- we've heard about change in voter

20   registration, composition in CD-2. We've heard

21   comparison to the Benasik case in Maryland. I got

22   ready for this closing pretty quickly, so I don't

23   have all those numbers to prepare for the Court. I

24   think the changes here are pretty significantly than

25   they were in the Benasik if you look at the full

1 picture.

2 But of course, we also heard from

3 Mr. Sanderoff that putting too much weight on voter

4 registration composition for a whole plethora of

5 reasons is probably a bad idea. And what we have as

6 much better data to evaluate CD-2 is the political

7 performance index numbers of course the actual raise

8 that took place and even recent polling indicating a

9 toss-up.

10 The next category, plaintiffs say, yeah,

11 it was a close election, they can't dispute that.

12 But in Benasik and Maryland, that -- that -- there's

13 a close raise, too. Well, if you look at Justice

14 Kagan's dissent in Rucho when she's talking about a

15 facts in Benasik, there actually had been four

16 congressional elections. And in that case -- in that

17 situation, that district had been flipped by the

18 Democrats. It had been flipped from a very safe

19 Republican district, where the -- unlike here, in

20 CD-2, the Republican was absolutely safe in that

21 district, and then it got flipped, and then there

22 were four elections after that, congressional

23 elections, where the Democrat won that race,

24 sometimes by a lot, by 21 percent, I think in one

25 case.

1   So there was powerful evidence that you

2   had -- they took a safe Republican district and

3   turned it into a safe Democratic district. Again,

4   not the case here.

5   The unnecessary moving and shift of

6   voters between districts. Your Honor, the Court

7   heard from -- at least from Mr. Sanderoff and I know

8   we've presented a bunch of information about this in

9   our written findings and conclusions, about the fact

10   that 2021 was the first time in 30 years that

11   New Mexico had an opportunity to have a congressional

12   map that actually reflects the policy decisions of

13   the legislature; that's actually an expression of

14   policy as opposed to that sort of least change,

15   court-drawn, very conservative map where /SKWR-PBLGS

16   are in the unfortunate position of having to draw a

17   map and saying, "I'm not a policymaker, I'm not in

18   the political branch, I'm in the judiciary. And so

19   I'm going to make the fewest choices when I have to

20   draw the map as I possibly can. And so I'm going to

21   equal out the population. That's it. I'm going to

22   do as little as I can."

23   Well, now you have the decision back if

24   the hands of political branch. Of course they were

25   going to policy decisions that's going to reflect

1 growth and change and developments in the state that

2 have happened over 30 years. So it is not surprising

3 that we're going to see quite a bit of change in this

4 map, and there's no constitutional will requirement

5 to have a least change map.

6   Let's see. There's been a lot of talk

7 about, you know, the starting point was Concept H,

8 and then it was -- the map was sort of transformed

9 into SB-1. I believe that -- now I'm -- even though

10 it's only been two days, I'm losing track of who said

11 what. But I think we heard some testimony that -- I

12 think it was from Trende, actually, that a lot of

13 these districts sort of stayed the same, both from

14 their old districts, from 2011, so the cores of the

15 districts stayed the same. Mr. -- I know Mr. Brace

16 in his report testified that about 70 percent of the

17 core districts stayed the same from the 2011 map.

18 And then when you look -- when you compare Concept H

19 to SB-1, I think it's, you know, 150, 160 precincts

20 that changed. So there wasn't all that much change.

21   Just to remind the Court, Concept H was

22 approved by the CR C. It was one of those maps that

23 sort of made it through the gauntlet with the CR C.

24 And it also passed Mr. Cotrell's -- or maybe

25 Dr. Cotrell's partisan fairness test I think he had

1   to do as part of that CRC process.

2   So the fact that Concept H was a

3   starting pointed I think really is in line with how

4   this process was supposed to work using the CRC.

5   The simulations, I'm not going to spend

6   a whole lot of time on that. There's been a lot of

7   discussion today. You know, there's -- I will just

8   point out, without retreading the ground, your Honor,

9   Mr. Trende's 2,040,000 maps that he testified about

10 are not testable. And we've seen why testing is so

11 important. Particularly using the kind of program

12 that he used.

13   And the other problem, the key problem

14 here, is that his maps are really not tied to any

15 reality of New Mexico. Even just taking his

16 population deviations as an example. Plus or minus

17 1 percent population deviations may not sound like a

18 big proportion of movement or allowance for

19 population and equality, but in the context of

20 congressional redistricting and the history of how

21 New Mexico has done it and what the law requires,

22 it's enormous.

23   1 percent of 700,000 people, which is

24 about how much each district should have, is 7,000

25 people. And to have a population difference of 7,000

1   people, or even up to 14,000 people, if you're

2   talking about plus or minus 1 percent, is huge

3   deviation that is in no way a map that New Mexico

4   would ever draw or adopt or be able to enact into

5   law. So there's disconnect between what Mr. Trende's

6   doing and the realities of New Mexico.

7   Contrast with Dr. Chen and his

8   simulation analysis, which actually was built to

9   acknowledge and recognize some of the policy choice

10 that were heard throughout the CRC, heard throughout

11 the legislative record, and incorporated to stop

12 extent into the SB-1 map. So rather than being

13 disconnected from that reality of New Mexico

14 redistricting, Mr. Chen's simulations took that into

15 account. And running his analysis that he testified

16 about I think explained very capably, SB-1 is not a

17 partisan outlier. Right? It's -- when you actually

18 run realistic simulations, it's actually comfortably

19 in the -- roughly in the middle of the pack.

20   Lastly, this sort of community of

21 interest splitting of the oil wells concept that

22 we've heard a lot about. The first thing that I want

23 to say about that, we've provided it with our

24 findings and conclusions. We didn't want to take the

25 Court's time here to play the videos and have you

1   watch the floor debates and the clips that we've

2   pulled together. But we have provided them to the

3   Court and I think we've given video clips.

4   THE COURT: And transcripts, too.

5   MS. SANCHEZ: And transcripts attached to

6   our findings and conclusions. So you can -- you can

7   see those. But it's absolutely something that was

8   discussed and debated in the legislative process.

9   And harkening back again to the state

10   Supreme Court's decision from last week, I think they

11   gave the Court some really important guidance about

12   this concept. I lost track of how many times

13   plaintiffs' counsel mentioned the phrase traditional

14   redistricting principles in his closing. But that's

15   sort of been a major argument here, by plaintiffs, is

16   that, well, this splits up a community of interest in

17   the southeast and that violates tradition redistrict

18   principle, it's bad, it's a sign of a gerrymander.

19   And what the state Supreme Court told

20   us, and this is in their September 22nd opinion at

21   paragraph 46, pages 33 to 34, they talk about

22   plaintiffs' argument, because on -- when they case

23   was on appeal, there was also a lot of talk about

24   traditional redistricting criteria.

25   And the Court makes clear that

1   plaintiffs' reliance of tradition redistricting

2   principles is misplace; that that is not something

3   that the Court should use to analyze whether this is

4   an egregious partisan gerrymander in violation of

5   Kagan's Rucho test. And so, again, I would urge the

6   Court to take a look at paragraph 46 of their on that

7   point.

8   Okay. One final category that

9   plaintiffs really didn't address is the -- whether or

10   not the individual plaintiffs in this case, whether

11   their votes were substantially diluted under this

12   map. We heard from one plaintiff, we heard from

13   Senator Gallegos, and while he testified that he felt

14   like his vote was diluted, he really didn't have any

15   evidence to important that. And, in fact, when

16   Ms. Tripp talked with him a little bit more about the

17   2022 election under these knew boundaries in CD-2, he

18   pretty much, you know, candidly talked about the lack

19   of voter turnout amongst Republicans and that he

20   thought that was a factor in Ms. Harrell's loss. And

21   we haven't heard testimony or evidence regarding vote

22   dilution of the other -- any of the other plaintiffs.

23   So in closing, I'm wrapping it up,

24   again, we thank the Court. This case presents really

25   interesting and important issues that affect our

1   entire state. And the functioning of our coequal

2   branches of government. We are confident, your

3   Honor, that if the Court dutifully follows and

4   applies the test and guidance set forth by the state

5   Supreme Court in the September 22nd opinion, that the

6   Court will conclude that SB-1 is a constitutional map

7   and that the Court will deny the plaintiffs' claims.

8   Thank you.

9   THE COURT: Thank you. Any rebuttal.

10   MR. TSEYTLIN: We've been here long enough,

11   your Honor.

12   THE COURT: All right. All right. So as

13   for the findings and conclusions, since they've

14   already been submitted as proposals, we talked about

15   supplementing them with new information, tell me

16   about the -- you said some things have already come

17   in.

18   MR. TSEYTLIN: Yeah. We've already started

19   receiving some discovery from (inaudible) staffer,

20   pretty explosive stuff. And assume with the

21   introduction that's coming, we're going to get more

22   stuff (inaudible). We obviously want the opportunity

23   to put that into our proposed findings. Obviously

24   that means the timing of the proposed findings should

25   hopefully be tied to some extent to when we can

1   expect to get that full production.

2   THE COURT: How -- how do you -- how do the

3   parties propose we're going to deal with that as far

4   as objections and...

5   MR. OLSON: Your Honor, there may be a few

6   things we don't know yet. (Inaudible) privilege log.

7   But, I mean, I guess with respect to those -- and we

8   aren't going to claim -- given the Court's order,

9   (inaudible) Court's order, a privilege log, I mean,

10 we'll submit them to plaintiffs. If they want to

11 tender them as additional evidence, I guess they can.

12 I mean, we'll be able to stipulate to where it came

13 from.

14   THE COURT: Okay.

15   MR. OLSON: So there should be any problem

16 there.

17   THE COURT: All right.

18   MR. OLSON: I do think, and identify --

19 we've got a draft, and I'll try to get it

20 Mr. Harrison or tomorrow, Saturday, at the latest, of

21 an order I think documenting what your order has

22 been. We'll probably do of document of record, your

23 Honor, just in case it's something the Supreme Court

24 needs to look at on the privilege issue.

25   THE COURT: All right.

1   MR. OLSON: But we'll do that.

2   THE COURT: I think -- so October 6th is the

3 deadline that I have to make a decision by. I think

4 that -- I've got to have a cutoff date for

5 submissions. I -- Monday, Tuesday?

6   MR. HARRISON: My apologies. Are the

7 legislative defendants going to make their production

8 by Monday; is that right?

9   THE COURT: I know you were talking about

10 Tuesday. Can you do it by Monday.

11   MS. SANCHEZ: I'm really pushing folks. I

12 mean, it's possible. It's possible. I mean --

13   THE COURT: We got tomorrow.

14   MS. SANCHEZ: Literally people are still

15 searching as we speak, so I just don't know what the

16 volume is going to be.

17   I will -- I mean, I can -- I can provide

18 an update tomorrow. I certainly will strive to do it

19 Monday. I think I can safely commit to doing it, you

20 know, later than Tuesday, but if I can -- if I can

21 get it earlier, I absolutely will.

22   MR. HARRISON: We don't need much lead time

23 in terms of if -- I would say it could be good enough

24 if they could produce by close of business on Monday.

25 We could have our submissions done on Tuesday. We

1   don't need tons of time with the documents. If

2   that's at all possible. That's what I'd like. By

3   Monday, that gives you three -- four days by close of

4   business Monday so that any supplements can be filed

5   by Tuesday so that I can have a decision by Friday.

6   THE ATTORNEY:

7   Q. I understand, your Honor, I guess -- I know

8   that I will have at least a bulk of it by the close of

9   Monday. If there's some, you know, stragglers or

10 something, you know, I can indicate that. But I think

11 that's fair. I will do that?

12   THE COURT: Okay. All right. I'd

13 appreciate that.

14   MR. HARRISON: And the only other thing I

15 think, quick housekeeping type things, Mr. -- so

16 we've obviously accepted our, quote, unquote, loss on

17 Ms. Leith. Mr. Park has confirmed for husband that

18 Mr. Gabello was an outside advisor to the government,

19 not a government employee, but a consultant and

20 advisor on issues related to politics and policies.

21 So I may reach out to Mr. Park and ask for

22 production. They were fairly willing initially to

23 produce.

24   And the only reason I would say that

25 comes up is, I wanted to raise it in case the

1 legislative defendants have an objection. But then,

2 in addition, most of the documents we'll be getting

3 in will need to be -- the Ellis-Moore documents that

4 we just got, and I hate to put them on the spot, but

5 if they can tell me if there's any authentication

6 problems with those, it would be nice (inaudible).

7 Obviously the ones they'll be producing, I would hope

8 we can agree to them producing them as an agreement

9 to authentication. And then anything that comes are

10 from Mr. Gabello. Those are the only documents that

11 we think might be coming in.

12   Obviously if we can -- if we can show

13 that production by -- all the folks are represented.

14 Mr. Vince Ward for Ellis-Moore. They were produced

15 earlier today. And then Mr. Park, for Mr. Gabello.

16 And so if we can agree to production by an attorney,

17 we'll suffice to authenticate. (Inaudible) here to

18 avoid what I think are probably technical disputes.

19   MR. OLSON: (Inaudible).

20   MS. SANCHEZ: That's -- he's who produced

21 the Ellis-Moore stuff to Carter. And I think we got

22 a copy.

23   MR. OLSON: Yeah. I mean, I don't think we

24 have a problem with authentication, your Honor. We

25 just -- we just need to look at what he got from

1   Mr. Ward. I haven't seen it yet, but I can't imagine

2   there would be any problem with authentication.

3   THE COURT: All right. One last thing. I

4   just -- I thought about this during closing.

5   Mr. Auh, I didn't mean to ignore you all

6   afternoon. But right now, if you tell me you have

7   any witnesses or anything...

8   MR. AUH: I appreciate the thought. But

9   that's just fine.

10   THE COURT: Okay. I apologize.

11   All right. So I think that that clears

12   everything up, and we'll be able to get a decision

13   out when we're supposed to. I want to thank you all

14   for excellent pleadings, excellent presentation. It

15   was -- it was very good, it enjoyable, it was

16   pleasant even for as contentious as it could get, it

17   was a pleasant experience, so I thank you all.

18   And if there's nothing else, we'll be in

19   recess.

20   (Proceedings adjourned 5:52 p.m.)

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1   RE: REPUBLICAN PARTY OF NM, et al. v.
          TOULOSUSE OLIVER, et al.

2

3   REPORTER'S CERTIFICATE

4   I, PAUL BACA, CCR #112, DO HEREBY CERTIFY

5   that the foregoing transcript was prepared from a

6   provided audio recording, that the audio was reduced

7   to written transcript by Kelli Gallegos, and that the

8   foregoing pages are a true and correct transcription

9   of the recorded proceedings, to the best of our

10   knowledge and hearing ability. The audio quality was

11   FAIR.

12   I FURTHER CERTIFY that I am neither employed

13   by nor related to nor contracted with (unless excepted

14   by the rules) any of the parties or attorneys in this

15   matter, and that I have no interest whatsoever in the

16   final disposition of this matter.

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18   _____
                   PAUL BACA

19   NEW MEXICO CCR #112
                   Commission Expires: 12/31/23

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