

February 16, 2023

The Honorable Judge Andrew M. Edison  
United States Magistrate Judge  
United States District Court  
601 Rosenberg, Seventh Floor  
Galveston, TX 77550

**Re: Petteway et. al, v. Galveston County, et al., Civil Action No. 3:22-cv-00057**

Dear Judge Edison,

The parties seek a ruling from this Court concerning whether certain instructions not to answer questions on the basis of privilege were proper. This dispute involves questions asked of Commissioners Joseph Giusti and Darrell Apffel, County Judge Mark Henry, Mr. Tyler Drummond, and Mr. Nathan Sigler about their discussions and interactions with Mr. Dale Oldham. Relatedly, Plaintiffs seek an order instructing Mr. Oldham and Mr. Thomas Bryan to answer questions concerning the political, strategic, or policy decisions concerning the redistricting process in Galveston County in their upcoming depositions that are currently scheduled for the week of March 13th. Defendants contend that it is improper for Plaintiffs to request an advisory opinion regarding hypothetical questions and topics that are not before this Court.

### **I. Plaintiffs' Position**

Plaintiffs maintain that Defendants have not met their burden of showing that the attorney-client privilege protects conversations involving Mr. Oldham.

In April 2021, the Galveston County Commissioners Court hired Mr. Oldham to assist in carrying out its duty to redistrict Commissioners Court precincts by drafting map proposals for the commissioners court's consideration. His retainer also covered the map-drawing services of an expert demographer, Mr. Bryan. Despite the clear policy and strategic work Mr. Oldham and Mr. Bryan performed, Defendants now erroneously assert attorney-client privilege over nearly all communications with those individuals.

First, "a statement is privileged only if it was for the 'primary purpose' of legal advice or services." *LULAC v. Abbott* ("*LULAC IV*"), 342 F.R.D. 227, 232 (W.D. Tex. 2022) (quoting *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997)). Courts applying the attorney-client privilege in redistricting cases have consistently held that individuals do not provide legal advice merely by virtue of being lawyers retained to aid in the redistricting legislative process. *See, e.g., LULAC v. Abbott* ("*LULAC III*"), No. EP-21-CV-00259, 2022 WL 3353409 \*4 (W.D. Tex. Aug. 12, 2022) (holding that documents "concerning advice on political, strategic or policy issues are not shielded from disclosure by the attorney-client privilege") (citation omitted).<sup>1</sup>

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<sup>1</sup> The authority on this point is uncontroverted. *See also Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645, at \*2 (E.D. Wis. Dec. 20, 2011) (finding that communications between redistricting consultant and outside counsel were not privileged because they likely "concerned

Second, “[f]acts within the client’s knowledge are not privileged, even if the client learned those facts through communications with counsel.” *LULAC IV*, 342 F.R.D. at 235.

In *LULAC IV*, the Texas statewide redistricting case, the court recently evaluated questions at a deposition seeking to uncover policy advice or underlying facts, as opposed to legal advice. *Id.* at 233. There, the court found no privilege over answers to questions “inquiring exclusively about [the legislator’s] personal knowledge, his actions (or inaction), and empirical features of the redistricting plans.” *Id.* For example, the plaintiffs could inquire about whether a proposed plan “created two new majority Hispanic [voting age population] districts as compared to the prior plan,” whether he “review[ed] any analysis of racial block voting, otherwise known as racially polarize[d] voting in drawing up” the plan, and whether the initial plan “decrease[d] Latino population share” in a specific district. *Id.*

These questions are analogous to questions Plaintiffs have already attempted to ask Defendants and County employees regarding the policy deliberations during the 2021 redistricting process in the depositions of Judge Mark Henry, Commissioner Darrell Apffel, Commissioner Joseph Giusti, and County employees Tyler Drummond and Nathan Sigler. *See generally* Pls.’ Ex. 1. For example, Plaintiffs have asked about the decision to create a coastal commissioner precinct comprised of Galveston Island and the Bolivar Peninsula, *id.* at ¶ 10; whether the Defendants considered or received racial demographic data, *id.* at ¶ 17; and whether the Defendants considered maintaining Commissioner Precinct 3 as a majority-minority district, *id.* at ¶ 22. These are plainly questions pertaining to strategic and political decisions made during the County’s 2021 redistricting process.

Yet, Defendants ignored the existing precedent and objected on the basis of an astonishingly broad interpretation of attorney-client privilege, instructing the deponents not to answer. For example, after a series of overbroad objections, Counsel for the NAACP Plaintiffs asked Judge Henry: “So you are not willing to say whether or not you were aware of a fact later if that fact was told to you by counsel and only counsel?” Pls.’ Ex. 4 Henry Dep. 262:15-18. Judge Henry responded, “I guess, yes.” *Id.* Despite Counsel’s assertion that this “oversimplif[ied]” the objection, Judge Henry himself acknowledged that was his understanding of his attorneys’ instruction to him. *Id.*

Third, to the extent any privilege exists over the communications, Defendants waived this privilege through their own testimony. Specifically, Defendants have waived privilege with regard to any communications related to draft maps; any communications related to population, including shifts in population, demographic data, *etc.*; and procedures related to the redistricting process. For example, during Commissioner Apffel’s deposition, when asked what was discussed during a meeting with Mr. Oldham, Commissioner Apffel stated, “The maps and population.” Pls.’ Ex. 2 Apffel Dep. 97:9-10. Later, he stated the lawyers spoke to him about “identifying the procedure

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advice on political, strategic, or policy issues”); *S.C. State Conf. of NAACP v. Alexander*, No. 21-CV-03302-TJH-MBS-RMG, 2022 WL 2375798, at \*5 (D.S.C. Apr. 27, 2022) (rejecting assertions of attorney-client privilege over redistricting communications concerning “legislative strategy”); *Perez v. Perry*, No. SA-11-CV-360-OLG-JES-XR, 2014 WL 3359324, at \*1, 2014 U.S. Dist. LEXIS 93294, at \*15. (W.D. Tex. July 9, 2014) (noting that attorney-client privilege does not protect communications between legislator and outside counsel where “the topics of these communications are political in nature”).

that was going to take place.” *Id.* 116:13-14. Additionally, when Commissioner Giusti was asked about his meeting with Mr. Oldham and Mr. Bryan, he disclosed that he “did look at a couple of maps on Zoom.” Pls.’ Ex. 3 Giusti Dep. 54:21-55:17; *cf.* Pls.’ Ex. 2 Apffel 152:25-153:10 (objecting to a similar line of questioning).

On January 31, 2023, this Court ordered Plaintiffs to outline the specific questions that Plaintiffs seek to ask Defendants and their staff regarding conversations with Mr. Oldham. Plaintiffs have identified the questions previously asked as well as additional questions in Exhibit 1. Plaintiffs now seek a ruling from this Court on whether Plaintiffs are permitted to ask the questions listed in Exhibit 1 and any reasonable follow-up questions that will naturally flow from the answers to those questions.

Finally, Plaintiffs also seek a ruling from this Court regarding the scope of information that Plaintiffs may ask about in the depositions of Mr. Oldham and Mr. Bryan. “[Q]uestions about the rationale behind legislative choices do not necessarily transgress privilege, even if the answers have legal consequences or expose the [government body] to legal liability.” *LULAC IV*, 342 F.R.D. at 235. Deposition testimony has made clear that Mr. Oldham was retained to “draft the map” in 2021. *E.g.*, Pls.’ Ex. 4 Henry Dep. 140:2-141:4. Plaintiffs intend to depose Mr. Oldham and Mr. Bryan regarding the political and technical decision-making that informed the map-drawing redistricting process in Galveston County. In light of the previous privilege assertions made by Defendants, Plaintiffs seek an order instructing Mr. Oldham and Mr. Bryan to answer any questions concerning political, strategic, or policy decisions or objectives concerning the 2021 redistricting process in Galveston County. Defendants cannot use potential liability as a broad shield to prevent Plaintiffs from learning whether certain facts, such as racial demographic data, were considered during the 2021 redistricting process in Galveston County.

\* \* \*

In sum, Plaintiffs seek an order reopening the depositions of Judge Mark Henry, Commissioner Darrell Apffel, Commissioner Joseph Giusti, and County employees Tyler Drummond and Nathan Sigler, and instructing the witnesses to answer the questions listed in Plaintiffs’ Exhibit 1, as well as reasonable follow-up questions. Additionally, Plaintiffs request that the Court order future deponents to answer similar questions. Finally, Plaintiffs request that Mr. Oldham and Mr. Bryan be instructed to answer questions concerning the political, strategic, or policy decisions concerning the redistricting process in Galveston County.

## II. Defendants’ Position

The U.S. Supreme Court describes the process of redistricting as a “legal obstacle course” requiring legislators to avoid competing hazards of liability: the Fourteenth Amendment’s prohibition against racial gerrymandering and Section 2 of the Voting Rights Act’s requirement that legislators periodically consider race. *See Abbott v. Perez*, 138 S. Ct. 2305, 2315 (2018). For Commissioners to navigate this complex legal thicket, the attorney-client privilege is essential. *See United States v. Chen*, 99 F.3d 1495, 1499 (9th Cir. 1996) (citing *United States v. Zolin*, 491 U.S. 554, 562 (1989)).

Defendants hired Mr. Oldham and Holtzman Vogel to help navigate the legal obstacle course of redistricting and provide Galveston County with legal advice. Defs’ Ex. 1. Holtzman Vogel stated that they would provide a separate person, a technical expert, “to draw the map.” *Id.*

Plaintiffs agree that the “technical expert” to draw the map was Tom Bryan, not Mr. Oldham. Henry Dep. 204:1-14. It is also understandable that witnesses testified that Mr. Oldham drew the map when they never met Mr. Bryan. *See, e.g.*, Henry Dep. 147:20-22. Commissioners Apffel and Giusti however testified that Mr. Oldham was legal counsel and Mr. Bryan was the map demographer. Apffel: 96:10-12, 106:12-17. Giusti Dep. 54:24-25, 55:1. And although the Plaintiffs try to characterize Mr. Oldham as a political consultant, *see, e.g.*, Giusti Dep. 51: 8-12, even Plaintiffs acknowledge that Mr. Oldham is a lawyer. Henry Dep. 127:8-11, 138:1-5, 265:14-16; Giusti Dep. 302:1-4; Apffel Dep. 32:22-24. Mr. Oldham even defended the county before this Court during the last round of redistricting. Plaintiffs cannot intercept communications with Mr. Oldham.<sup>2</sup>

*First*, the underlying facts exception to the attorney-client privilege requires a witness to testify to facts within their personal knowledge. This is uncontroversial as the attorney-client privilege protects communications, not facts. *Thurmond v. Compaq Computer Corp.*, 198 F.R.D. 475, 479 (E.D. Tex. 2000).<sup>3</sup> Still protected, however, are communications *of and about* those facts; and this basic misunderstanding is a major source of the dispute here. Opposing counsel may ask a witness “what do you know about the accident?” but opposing counsel cannot ask “what did you tell your lawyer about the accident?” *Id.* The attorney-client privilege also prohibits counsel from asking questions where the answers would reveal the substance of confidential attorney-client communications. *See id.* at 482. Plaintiffs’ hypothetical questions demonstrate that they misunderstand the underlying facts exception. The majority of Plaintiffs’ hypothetical questions listed in Plaintiffs’ Exhibit 1 seek communications with Mr. Oldham, not facts within the witnesses’ personal knowledge. *See, e.g.*, Pls.’ Ex. 1 at ¶¶ 2, 5, 6, 7, 8, 11, 12, 15, 16).

Importantly, Defendants privilege assertions are not “blanket”-style objections. Defendants have properly answered questions as to their understanding but objected when the question required the witness to reveal communications with counsel. Giusti Dep. 27:17-25; 47:19-25; 296:11-14; *Compare* Giusti Dep. 87:16-25, 88:1 (attorney-client privilege instruction because question asked about Commissioner Giusti’s opportunity to present redistricting preferences) *with id.* at 88:2-15 (Commissioner Giusti explaining his redistricting preferences when asked what his preferences were). Apffel Dep. 136:5-13; Henry Dep. 234:12-25. Proper instructions were also given when the answer to the question would reveal the substance of confidential attorney-client communications. *See, e.g.*, Henry Dep. 204:7-14 (premiering the question with whether the witness became aware of a fact during pre-deposition meetings with counsel and answer would have revealed those very communications); *Thurmond*, 198 F.R.D. at 482.

Although, and importantly, some of Plaintiffs’ questions drew cautionary instructions from Defendants’ counsel, **all but seven questions were answered.** Defs.’ Ex. 2. In fact, the three questions highlighted in Plaintiffs submission above were answered. Defs.’ Ex. 3.

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<sup>2</sup> Defendants have also invoked the attorney work-product protection for some of their questions.

<sup>3</sup> Plaintiffs overstate *LULAC IV*’s holding. The court held that questions calling for attorney-client communications were generally privileged. *LULAC IV*, 342 F.R.D. at 235.

*Second*, although the attorney-client privilege protects only legal advice and not political, strategic, or policy advice, Plaintiffs' argument would destroy the privilege to unravel all communications with counsel. Communications giving non-legal advice are still privileged when the communications are tethered to the legal implications of that advice. *Exxon Mobil Corp. v. Hill*, 751 F.3d 379, 381-82 (5th Cir. 2014). Thus, for example, a criterion adhering to the one person, one vote constitutional principle can create legal liability under Fourteenth Amendment's prohibition against racial gerrymandering. *See Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 271-72 (2015). A criterion achieving compactness also triggers legal liability under both Section 2 of the Voting Rights Act and the Fourteenth Amendment's prohibition against racial gerrymandering. *Gingles*, 478 U.S. at 50-51; *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433-35 (2006). Even conversations regarding drawing districts for partisan advantage can trigger legal liability under the Fourteenth Amendment's one person, one vote principle when population deviations are systematically skewed to favor one political party. *Larios v. Cox*, 300 F. Supp. 2d 1320, 1329 (N.D. Ga. 2004) (three-judge court) *aff'd mem.* 542 U.S. 947 (2004). Questions about whether Mr. Oldham discussed or reviewed racial demographic data with the Commissioners also triggers potential liability under Section 2 and Fourteenth Amendment. *Abbott*, 138 S. Ct. at 2315. The Commissioners rightly retained legal counsel to help traverse this minefield.

Furthermore, in determining whether the attorney-client privilege applies, context is key. *Exxon Mobil Corp.*, 751 F.3d at 382. For example, in all three cases that Plaintiffs cite, the context demonstrated that the person at the center of the privilege fight was acting in a political/policy making capacity, not a legal capacity. *Baldus v. Members of the Wis. Gov't Accountability Bd.*, No. 11-cv-562, 2011 U.S. Dist. LEXIS 146869 \*4, 9-11 (E.D. Wis. Dec. 20, 2011) (holding that communications between legislator and non-lawyer government relations specialist not protected under attorney-client privilege because the non-lawyer was likely providing political/policy advice, not legal advice); *see also Perez v. Perry*, No. 11-cv-360, 2014 U.S. Dist. LEXIS 93294 at \*15-16 (W.D. Tex. July 9, 2014) (holding that the attorney-client privilege does not protect comments from chief of staff to legislator and legislator's political consultant concerning the "political ramifications of pending legislation[]" because it was untethered from any discussion of the legislation's legal implications) (internal quotation marks omitted) (citing *Exxon Mobil Corp.*). The record establishes that Mr. Oldham was hired as an attorney to provide legal advice concerning redistricting. Plaintiffs have not adduced any evidence to indicate that Mr. Oldham was providing any political or policy advice that "was divorced from its legal implications." *Exxon Mobil Corp.*, 751 F.3d at 382.

*Third*, Plaintiffs are wrong that to assert that Commissioners Apffel's and Giusti's short non-substantive responses to questions waive any attorney-client privilege, much less all privileged communications. The Fifth Circuit has long recognized that waiver occurs only when a "significant portion" of the attorney-client communication is revealed. *United States v. El Paso Co.*, 682 F.2d 530, 538 (5th Cir. 1982). These short responses contained topics of conversation, not the substance of the conversation, and therefore are not even privileged. *RLIS, Inc. v. Cerner Corp.*, No. 3:12-CV-209, 2014 WL 12599509, at \*1 (S.D. Tex. Dec. 24, 2014).

Respectfully submitted,  
February 16, 2023

/s/ Valencia Richardson

Mark P. Gaber\*  
Simone Leeper\*  
Valencia Richardson\*  
Alexandra Copper\*  
Campaign Legal Center  
1101 14th St. NW, Ste. 400  
Washington, DC 20005  
(202) 736-2200  
[mgaber@campaignlegal.org](mailto:mgaber@campaignlegal.org)  
[sleeper@campaignlegal.org](mailto:sleeper@campaignlegal.org)  
[vrichardson@campaignlegal.org](mailto:vrichardson@campaignlegal.org)

Chad W. Dunn (Tex. Bar No. 24036507)  
Brazil & Dunn  
4407 Bee Cave Road  
Building 1, Ste. 111  
Austin, TX 78746  
(512) 717-9822  
[chad@brazilanddunn.com](mailto:chad@brazilanddunn.com)

\*admitted *pro hac vice*

*Counsel for Petteway Plaintiffs*

/s/ Sarah Xiyi Chen

**TEXAS CIVIL RIGHTS PROJECT**

Attorney-in-Charge  
Hani Mirza  
Texas Bar No. 24083512  
Sarah Xiyi Chen\*  
California Bar No. 325327  
1405 Montopolis Drive  
Austin, TX 78741  
512-474-5073 (Telephone)  
512-474-0726 (Facsimile)  
[hani@texascivilrightsproject.org](mailto:hani@texascivilrightsproject.org)  
[schen@texascivilrightsproject.org](mailto:schen@texascivilrightsproject.org)

\*admitted *pro hac vice*

*Counsel for NAACP Plaintiffs*

JENNIFER B. LOWERY

/s/ Dallin B. Holt

Dallin B. Holt  
Attorney in Charge  
Texas Bar No. 24099466  
S.D. of Texas Bar No. 3536519  
Shawn T. Sheehy\*  
[dholt@holtzmanvogel.com](mailto:dholt@holtzmanvogel.com)  
[ssheehy@holtzmanvogel.com](mailto:ssheehy@holtzmanvogel.com)  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK  
15405 John Marshall Hwy  
Haymarket, VA 2019  
P: (540) 341-8808  
F: (540) 341-8809

\*Admitted *Pro Hac Vice*

*Counsel for Defendants*

KRISTEN CLARKE

United States Attorney  
Southern District of Texas

Assistant Attorney General  
Civil Rights Division

DANIEL D. HU  
Civil Chief  
United States Attorney's Office  
Southern District of Texas  
Texas Bar No. 10131415  
SDTX ID: 7959  
1000 Louisiana Ste. 2300  
Houston, TX 77002  
713-567-9000 (telephone)  
713-718-3303 (fax)  
daniel.hu@usdoj.gov

/s/ Catherine Meza  
T. CHRISTIAN HERREN, JR.  
ROBERT S. BERMAN\*  
CATHERINE MEZA\*  
Attorney-In-Charge  
BRUCE I. GEAR\*  
THARUNI A. JAYARAMAN\*  
ZACHARY J. NEWKIRK\*  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530  
202-307-2767 (telephone)  
202-307-3961 (fax)  
catherine.meza@usdoj.gov

\* *Admitted Pro Hac Vice*

*Counsel for the United States*

# Exhibit 1

### List of Proposed Questions

#### Questions to Defendant Commissioners and Defendant County Judge Henry:

1. In your phone conference(s) with Mr. Oldham, what steps were identified that would be taken to undergo the redistricting process? *E.g.*, Ex. 2 Apffel Dep. 133:22 - 134:16; Ex. 3 Giusti Dep. 60:14-16.
2. Did Mr. Oldham talk to you about redistricting criteria? What redistricting criteria were identified in your conversation(s) with Mr. Oldham? *E.g.*, Ex. 2 Apffel Dep. 135:4-136:4, 139:3-7; Ex. 3 Giusti Dep. 52:14-15, 296:15-18.
3. What is your understanding of traditional redistricting criteria, based on your conversation with Mr. Oldham? *E.g.*, Ex. 2 Apffel Dep. 139:3-7; Ex. 3 Giusti Dep. 296:15-18.
4. What do you need to consider when drawing the maps? *E.g.*, Ex. 2 Apffel Dep. 137:7-138:18.
5. Did Mr. Oldham discuss any factors to consider during the redistricting process with you? *E.g.*, Ex. 2 Apffel Dep. 139:3-7.
6. Did you receive any materials in your meeting(s) with Mr. Oldham? What materials did you receive? *E.g.*, Ex. 3 Giusti Dep. 50:23-24, 302:1-4.
7. In your meeting(s) with Mr. Oldham, did you discuss the Voting Rights Act? *E.g.*, Ex. 2 Apffel Dep. 140:2-15.
8. In your meeting(s) with Mr. Oldham, did you discuss the U.S. Constitution? *E.g.*, Ex. 2 Apffel Dep. 140:16-22; Ex. 3 Giusti Dep. 297:13-16.
9. In your meeting(s) with Mr. Oldham, did you discuss any policy objectives for redistricting? What policy objectives did you discuss? *E.g.*, Ex. 2 Apffel Dep. 141:9-16; Ex. 3 Giusti Dep. 297:23-298:1, 298:11-13.
10. In your meeting(s) with Mr. Oldham, did you discuss the need or desire for drawing a coastal precinct? *E.g.*, Ex. 2 Apffel Dep. 142:6-12; Ex. 3 Giusti Dep. 119:22-25, 299:12-14.
11. In your meeting(s) with Mr. Oldham, did you discuss the impact of any proposed changes on the Bolivar Peninsula, and the constituents that live there? *E.g.*, Ex. 2 Apffel Dep. 152:8-15.
12. In your meeting(s) with Mr. Oldham, did you discuss the impact of any proposed changes on the Black and Latino residents of Galveston County? *E.g.*, Ex. 2 Apffel Dep. 151:25-152:7, 152:16-24; Ex. 3 Giusti Dep. 300:23 to 301:2; Ex. 4 Henry Dep. 241:20-242:5, 242:6-243:2.
13. Did Mr. Oldham ask you what your ideal map would look like? *E.g.*, Ex. 2 Apffel Dep. 149:3-18; 150:22-151:3; Ex. 3 Giusti Dep. 87:16-19 ; Ex. 4 Henry Dep. 141:20-143:9.
14. Did Mr. Oldham ask you which redistricting factors were important to you? *E.g.*, Apffel Dep. 151:4-10.
15. Did you discuss the issue of precinct splitting in your discussion(s) with Mr. Oldham? *E.g.*, Ex. 5 Sigler Dep. 71:23-72:7.
16. Did you review any census data in your discussion(s) with Mr. Oldham? *E.g.*, Ex. 2 Giusti Dep. 294:7-12, 295:1-6, 295:15-16.

17. Did you receive any racial demographic data from Mr. Oldham? *E.g.*, Ex. 2 Apffel Dep. 143:3-7, 144:7-17; Ex. 3 Giusti Dep. 302:1-4, 302:23-24; Ex. 4 Henry Dep. 261 :17-262 :14, 261:17-262:14.
18. Did you have any opportunity to present your preferences for redistricting during your meeting with Mr. Oldham? *E.g.*, Ex. 3 Giusti Dep. 87:16-19, 240:2-3; Ex. 4 Henry Dep. 141:1-19.
19. How did Mr. Oldham present the proposed maps to you? For example, did he present those maps via Zoom, or did he use any other software to show you the precincts? *E.g.*, Ex. 2 Apffel Dep. 152:25-154:3; Ex. 3 Giusti Dep. 55:15-21.
20. How many map proposals were presented to you by Mr. Oldham? *E.g.*, Ex. 3 Giusti Dep. 55:15-21, 96 :4-22.
21. Did you ever have an occasion to speak with any of the other Commissioners or their staff and Mr. Oldham about the redistricting process? *E.g.*, Ex. 3 Giusti Dep. 163:4-8.
22. Did you have any discussion with Mr. Oldham regarding Precinct 3 being a majority-minority population? *E.g.*, Ex. 4 Henry Dep. 241:20-242:5.
23. Are you aware that Thomas Bryan was a map drawer that provided technical expertise about the maps? *E.g.*, Ex. 4 Henry Dep. 204:21-205:21.

**Questions to County Employees:**

24. Did Mr. Oldham talk to you about redistricting criteria? What redistricting criteria were identified in your conversation(s) with Mr. Oldham? *E.g.*, Ex. 6 Drummond Dep. 198:5-16.
25. What is your understanding of traditional redistricting criteria, based on your conversation with Mr. Oldham? *E.g.*, Ex. 6 Drummond Dep. 198:5-16; 199:1-6.
26. Did you discuss the impact of any proposed changes on the Bolivar Peninsula, and the constituents that live there with Mr. Oldham? *E.g.*, Ex. 6 Drummond Dep. 89:2-90:2.
27. Did you discuss the issue of precinct splitting in your discussion(s) with Mr. Oldham? *E.g.*, Sigler Dep. 71:23-72:7, 72:8-12.
28. Did you receive any racial demographic data from Mr. Oldham? *E.g.*, Ex. 6 Drummond Dep. 200:6-15.
29. Did you review any census data in your discussion(s) with Mr. Oldham?
30. Did you discuss the impact of any proposed changes on the Black and Latino residents of Galveston County with Mr. Oldham?
31. Are you aware that Thomas Bryan was a map drawer that provided technical expertise about the maps?

# EXHIBIT 2

*Excerpts from the Deposition of Darrell Apffel on January 5, 2023*

<b>From Page: Line Number</b>	<b>To Page: Line Number</b>
97:9	97:19
116:13	116:14
133:22	134:16
135:4	136:4
136:14	137:1
137:7	138:18
139:3	139:7
140:2	140:15
140:16	140:22
141:9	141:16
142:6	142:12
143:3	143:7
144:7	144:17
144:18	146:6
149:3	149:18
150:7	150:21
150:22	151:3
151:4	151:10
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY PETTEWAY,\*  
ET AL., \*  
\*  
PLAINTIFFS, \*  
\* CASE NO. 3:22-CV-00057  
VS. \*  
\*  
GALVESTON COUNTY, ET AL.,\*  
\*  
DEFENDANTS. \*

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
DARRELL APFFEL  
JANUARY 5, 2023

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF DARRELL  
APFFEL, produced as a witness at the instance of  
the PLAINTIFF(S), and duly sworn, was taken in the  
above-styled and numbered cause on JANUARY 5, 2023,  
from 9:17 A.M. to 6:01 P.M., before AMY PRIGMORE,  
CSR, in and for the State of Texas, reported by  
stenographic means, at the offices of GREER HERZ &  
ADAMS, One Moody Plaza 18th Floor, Galveston,  
Texas, pursuant to the Federal Rules of Civil  
Procedure and the provisions stated on the record  
or attached hereto.

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A P P E A R A N C E S

FOR THE PLAINTIFF(S) :

Diana C. Vall-llobera  
Andrew Silberstein  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York NY 10019  
Dvall-llobera@willkie.com  
Sarah Chen  
Texas Civil Rights Project  
1405 Montopolis Dr.  
Austin TX 78741  
schen@texascivilrightsproject.org

FOR THE PLAINTIFF(S) : (APPEARING REMOTELY)

Bernadette Reyes  
UCLA VOTING RIGHTS PROJECT  
3250 Public Affairs Building  
Los Angeles CA 90065  
bernadette@uclavrp.org  
  
Zachary Newkirk  
Department of Justice CIVIL RIGHTS DIVISION  
VOTING RIGHTS SECTION  
150 M Street, N.E.  
Washington DC 20530  
Zachary.Newkirk@usdoj.gov

Alexandra Copper  
CAMPAIGN LEGAL CENTER  
1101 14th St NW Suite 400  
Washington DC 20005  
acopper@campaignlegalcenter.org  
202-736-2200

Adrienne Spoto  
The Southern Coalition for Social Justice  
1415 West NC Highway 54 Suite 101  
Durham NC 27707  
Adrienne@scsj.org

1 FOR THE PLAINTIFF(S): (APPEARING REMOTELY)  
2 CATHERINE MEZA  
3 Department of Justice CIVIL RIGHTS DIVISION  
4 Voting Rights Section 150 M Street, N.E.  
5 Washington DC 20530  
6 Catherine.Meza@usdoj.gov  
7  
8 DaWuan Norwood  
9 CAMPAIGN LEGAL CENTER  
10 1411 K Street Suite 1400  
11 Washington DC 20005  
12 dnorwood@campaignlegalcenter.org  
13  
14 Hilary Harris Klein  
15 THE SOUTHERN COALITION FOR SOCIAL JUSTICE  
16 1415 West NC Highway 54 Suite 101  
17 Durham NC 27707  
18 hilaryhklein@scsj.org  
19  
20 Joaquin Gonzalez  
21 TEXAS CIVIL RIGHTS PROJECT  
22 1405 Montopolis Dr.  
23 Austin TX 78741  
24 joaquin@texascivilrightsproject.org  
25  
26 K'Shaani Smith  
27 Department of Justice CIVIL RIGHTS DIVISION  
28 150 M Street, N.E.  
29 Washington DC 20002  
30 KShaani.Smith@usdoj.gov  
31  
32 Kathryn Garret  
33 WILLKIE FARR & GALLAGHER LLP  
34 787 Seventh Avenue  
35 New York NY 10019  
36 kgarrett@willkie.com  
37  
38 Mateo Forero  
39 HOLTZMAN VOGEL JOSEFIK TORCHINSKY PLLC  
40 2300 N Street NW Suite 643A  
41 Washington DC 20037  
42 mforero@holtzmanvogel.com

1 FOR THE PLAINTIFF(S): (APPEARING REMOTELY)  
Molly Zhu  
2 WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
3 New York NY 10019  
MZhu@willkie.com

4  
5 Simone Leeper  
CAMPAIGN LEGAL CENTER  
6 1101 14th St NW Suite 400  
Washington DC 20005  
7 sleeper@campaignlegalcenter.org  
8 Valencia Richardson  
CAMPAIGN LEGAL CENTER  
9 1101 14th St NW Suite 400  
Washington DC 20005  
10 vrichardson@campaignlegalcenter.org  
202-266-2574

11  
12 Richard Mancino  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
13 New York NY 10019  
RMancino@willkie.com  
14 212-728-8243

15  
16 FOR THE DEFENDANT(S) and WITNESS:  
Joseph R. Russo  
17 GREER HERZ & ADAMS  
One Moody Plaza 18th Floor  
18 Galveston TX 77550  
jrusso@greerherz.com  
19 (409) 797-3200

20  
21 ALSO PRESENT:  
Ray Burchette, Videographer

22  
23  
24  
25

1 Q. So, this meeting took place in his  
2 conference room, but he was not there?

3 A. Correct. That's -- it's a central meeting  
4 place.

5 Q. Do you regularly have meetings in his  
6 conference room without him there?

7 A. Of course. We all do. It's a county  
8 building. It's a -- it's my conference room, too.

9 Q. What did you discuss?

10 A. The maps and population.

11 MR. RUSSO: Let me just caution the  
12 witness about revealing attorney-client privileged  
13 communications, and that specifically is  
14 communications between Mr. Oldham, Mr. Ready,  
15 advising the county as to legal issues for which  
16 they were retained.

17 THE WITNESS: Okay.

18 MR. RUSSO: But other than that, you  
19 can answer.

20 MS. CHEN: And to that, we'll also  
21 state on the record our argument against that  
22 assertion of attorney-client privilege with respect  
23 to conversations with Dale Oldham, on redistricting  
24 matters, as we've discussed. And our letter to the  
25 judge --

1 we'll again preserve our arguments, as to what --

2 A. What -- what was going to happen -- the what  
3 is that he and his firm had an expert who would  
4 look at the census data and create maps equalizing  
5 the population among the precincts. That's what I  
6 understood.

7 Q. (BY MS. VALL-LLOBERA) So during that  
8 September conference call, they already had a  
9 mapping expert.

10 Is that correct?

11 A. I don't know that.

12 Q. Who was speaking to you about who --

13 A. The lawyers. The lawyers, identifying the  
14 procedure that was going to take place.

15 Q. You just said he and his firm had an expert.

16 A. Yeah. I now know, because I ended up  
17 meeting with him in that meeting I referred you to,  
18 the only other meeting I had, where the expert was  
19 on the Zoom.

20 And did he specifically mention him then? I  
21 don't recall.

22 Q. When did you first see the census data?

23 A. I don't recall. When it came out.

24 Well, when you say did -- yeah, I -- I don't  
25 ever remember seeing the data, like in a big

1 conference. But after that, when he met with me, I  
2 was aware that he was going to meet with everyone.

3 Q. At this September 8, 2021, meeting, did  
4 Mr. Oldham provide an overview of the 2021  
5 redistricting process?

6 A. I -- I'm not sure, but when you say that, I  
7 don't know.

8 Q. Did he provide an overview of the 2011  
9 redistricting process?

10 A. No, we didn't discuss it.

11 Q. Did you discuss the 2011 redistricting  
12 process at all?

13 A. No.

14 Q. Back to the 2021 redistricting process.

15 Did he provide an overview of the process,  
16 such as referring a -- to a timeline?

17 MR. RUSSO: Counsel, asked and  
18 answered.

19 A. Yes. I mean, he -- we talked about what  
20 ultimately was going to happen, and what -- what  
21 happened, I should say.

22 Q. (BY MS. VALL-LLOBERA) Did you identify  
23 deadlines by which redistricting had to occur?

24 A. We knew that it had to have --

25 MR. RUSSO: Let me just interpose

1 the objection.

2 On attorney-client privilege  
3 grounds, in terms of, you know, the -- what the  
4 process -- what or -- what you were doing, is --  
5 has already been stated, frankly, on the record.

6 But just be very careful here about  
7 revealing conversations between counsel and the  
8 county, related to the redistricting effort.

9 Other than that, you can answer,  
10 which is a very fine line.

11 A. My understanding was that we were behind,  
12 because the census data had taken so long to come  
13 out, and that we needed to finish by the end of the  
14 year.

15 And so, that timeline was established, just  
16 because of my understanding. That's the only  
17 timeline we knew -- I knew of.

18 Q. (BY MS. VALL-LLOBERA) At this meeting,  
19 you -- did you review the census data?

20 A. Like I said, I didn't have a stack in front  
21 of me. We -- I -- and Mr. Oldham talked to us  
22 about certain things, the population and so forth,  
23 that...

24 Q. At this time, you -- you already knew that  
25 the populations would have to be rebalanced,

1 correct?

2 A. That was my general understanding, yes, of  
3 the whole redistricting every ten years, period.

4 Q. Did Mr. Oldham talk to you about  
5 redistricting criteria?

6 MR. RUSSO: Objection. Don't --  
7 objection, based on privilege, and instruct the  
8 witness not to answer.

9 MS. VALL-LLOBERA: And we'll reserve  
10 our arguments that these conversations are not  
11 privileged.

12 MR. RUSSO: The objection is on the  
13 record.

14 MS. VALL-LLOBERA: We'll have  
15 several of these questions. Would you be amenable  
16 to stipulating that you object and we'll preserve  
17 our arguments, without reiterating our full  
18 arguments?

19 MR. RUSSO: Without you re --  
20 reiterating your arguments? I mean, I -- my  
21 objection stands. Whether you argue against it or  
22 not, doesn't matter.

23 I mean, if you want to ask all the  
24 questions, I'll pose the objection as -- as  
25 necessary. I -- I understand you don't agree with

1 our position, but I don't -- you know, it's  
2 deposition procedure. I just need to make sure I  
3 maintain my -- and preserve the objections for the  
4 record.

5 Q. (BY MS. VALL-LLOBERA) Did -- without  
6 revealing the substance of any conversations with  
7 counsel, as we sit here today, what is your  
8 understanding of traditional redistricting  
9 criteria?

10 A. The county grows by people. The precincts  
11 become imbalanced by people. And we are required  
12 to continually balance the representation of the  
13 people.

14 Q. Specifically, how do you have to rebalance  
15 the populations?

16 A. In my simple little way --

17 MR. RUSSO: Let me object -- just  
18 let me interpose -- interpose the objection on  
19 attorney-client privilege grounds. And you've  
20 heard the basis before.

21 So don't reveal conversations or  
22 information you've learned from Dale, related to  
23 the redistricting effort.

24 A. Well, my simple understanding is to -- to  
25 redraw the lines to balance the population, to be

1 within compliance with the law.

2 Q. (BY MS. VALL-LLOBERA) Is the only criteria  
3 for redistricting that the numbers line up?

4 A. I don't know.

5 Q. You've stated that the imbalances needed to  
6 be corrected, based on population shifts.

7 What -- do you need to consider anything  
8 other than population numbers, in redrawing maps?

9 A. I don't --

10 MR. RUSSO: Same objection on  
11 attorney-client privilege grounds.

12 To the extent you can answer without  
13 revealing conversations between the county, you,  
14 and any of your counsel, you can answer.

15 MS. VALL-LLOBERA: And we  
16 preserve --

17 A. I trust that the people we hired to do the  
18 job, do it in compliance with the law.

19 Q. (BY MS. VALL-LLOBERA) Are there any other  
20 factors considered in drawing the maps?

21 A. I don't know.

22 Q. Earlier, you stated that you were looking  
23 to -- to cut Bolivar.

24 Was that a factor that you were considering  
25 in redrawing the maps?

1           A. No, I wasn't looking to cut Bolivar. I  
2 wasn't looking to cut anyone. I was understanding  
3 that in order to balance the -- the four precincts,  
4 that I would have to give up something and give it  
5 to someone else, to -- to make that -- to  
6 accomplish that.

7           And so, that's -- that's what I understood.

8           Q. When looking at what areas you could peel  
9 off of your district, what factors did you  
10 consider?

11          A. I've told you, that made sense to me. And  
12 part of that analysis, in -- the -- the Excel  
13 spreadsheet, I was trying to see how many -- I was  
14 trying to see the numbers by the voting precincts  
15 to say, okay, we can give up this -- 103 and 104,  
16 because I have to -- for a 20-minute meeting in  
17 by -- in High Island, I have to drive four hours,  
18 because of the ferry, the geographical split  
19 between the -- the island and the peninsula.

20          But -- so, it was -- I was thinking, okay,  
21 this -- this is what makes sense. If I've got to  
22 give something up, I'll give up this.

23          Q. Did you consider any other factors?

24          A. I wasn't --

25                   MR. RUSSO: Object as vague.

1           A. -- considering factors. I was just looking  
2 at numbers.

3           Q. (BY MS. VALL-LLOBERA) Did Mr. Oldham  
4 discuss any factors?

5                       MR. RUSSO: Objection.

6                       I'll instruct the witness not to  
7 answer, based upon attorney-client privilege.

8           Q. (BY MS. VALL-LLOBERA) If a constituent  
9 asked you about the redistricting process and asked  
10 what kind of things you were thinking about in  
11 redrawing the maps, what would you have said --  
12 what would you say?

13           A. I would say our county grew by whatever  
14 number, 80,000 people, whatever the number was. I  
15 don't remember the number.

16                       And the law requires us to balance the  
17 precincts, based on that population, and we've  
18 hired a law firm and a demographer to -- to do that  
19 for us the best way possible to be within the  
20 bounds of the law.

21           Q. Did you discuss the Voting Rights Act?

22           A. Never.

23                       MR. RUSSO: Objection.

24                       What -- what are you talking about?

25           Are you talking about a meeting with -- who are --

1 with who?

2 Q. (BY MS. VALL-LLOBERA) Referring still to  
3 the September 8, 2021, meeting, and your other  
4 meeting with Mr. Oldham, the in-person conference,  
5 did you discuss the Voting Rights Act?

6 MR. RUSSO: I'm going to object to  
7 that and instruct the witness not to answer based  
8 upon attorney-client privilege.

9 MS. VALL-LLOBERA: We'll preserve  
10 our arguments that these are not protected  
11 communications.

12 A. And for clarification, when I said never, it  
13 was because I thought you were talking about  
14 constituents still. I didn't have those  
15 conversations.

16 Q. (BY MS. VALL-LLOBERA) Did you discuss the  
17 U.S. Constitution?

18 MR. RUSSO: Objection. Instruct the  
19 witness not to answer, based on attorney-client  
20 privilege.

21 MS. VALL-LLOBERA: And we preserve  
22 our arguments.

23 Q. (BY MS. VALL-LLOBERA) Without revealing the  
24 substance -- without -- without revealing the  
25 substance of any conversations with counsel, as we

1 sit here today, what is your understanding of the  
2 Voting Rights Act?

3 A. I've answered that twice.

4 Q. Without revealing the substance of any  
5 conversations with counsel, as we sit here today,  
6 what is your understanding of the requirements of  
7 the U.S. Constitution with regard to redistricting?

8 A. I don't know.

9 Q. Did you discuss policy objectives with  
10 Mr. Oldham?

11 MR. RUSSO: Same objection,  
12 attorney-client privilege, instruct the witness not  
13 to answer.

14 MS. VALL-LLOBERA: And we preserve  
15 our arguments that these are not privileged  
16 communications.

17 Q. (BY MS. VALL-LLOBERA) Did you discuss  
18 policy objectives with the other commissioners?

19 A. No.

20 MR. RUSSO: Wait. Let me clarify  
21 it. When? Anytime?

22 Q. (BY MS. VALL-LLOBERA) Okay. I'll rephrase.

23 Did you discuss policy objectives with other  
24 commissioners during -- between the two meetings  
25 you had with Mr. Oldham?

1 A. No.

2 Q. During your two meetings with Mr. Oldham  
3 that we previously referred to, did you discuss  
4 political objectives?

5 A. No.

6 Q. During those two meetings, did you discuss  
7 the need or desire for a coastal precinct?

8 MR. RUSSO: Let me object, and  
9 instruct the witness not to answer that question,  
10 based on attorney-client privilege.

11 MS. VALL-LLOBERA: And we preserve  
12 our arguments that these are not privileged.

13 Q. (BY MS. VALL-LLOBERA) Did you run an RPV  
14 analysis -- excuse me.

15 Separate from these two meetings, did you  
16 run an RPV analysis?

17 MR. RUSSO: Objection; vague and  
18 ambiguous.

19 A. I don't know what -- I don't understand the  
20 question.

21 Q. (BY MS. VALL-LLOBERA) RPV stands for  
22 racial -- racially polarized voting.

23 Are you familiar with the term, racially  
24 polarized voting?

25 A. I am not.

1 Q. Have you heard this term before?

2 A. I have not.

3 Q. So Mr. Oldham and you did not discuss an RPV  
4 analysis in either of these meetings?

5 MR. RUSSO: Let me object based upon  
6 the attorney-client privilege, and instruct the  
7 witness not to answer.

8 MS. VALL-LLOBERA: And we preserve  
9 our arguments that these are not privileged  
10 communications.

11 Q. (BY MS. VALL-LLOBERA) Have you ever seen an  
12 RPV analysis?

13 A. No.

14 Q. Generally --

15 A. Maybe, but I didn't know what I was looking  
16 at.

17 Q. When might you have seen an RPV analysis?

18 MR. RUSSO: Object as ambiguous.

19 A. During the process --

20 MR. RUSSO: And again, are you  
21 talking about in the conversation with his  
22 attorneys --

23 MS. VALL-LLOBERA: Generally.

24 MR. RUSSO: -- or any time?

25 Q. (BY MS. VALL-LLOBERA) Generally, when might

1 have you --

2 MS. VALL-LLOBERA: The witness  
3 stated that he may have seen an RPV analysis, in  
4 answer to my question, have you ever seen an RPV  
5 analysis.

6 MR. RUSSO: Okay.

7 Q. (BY MS. VALL-LLOBERA) So my follow-up  
8 questions, still in the context of have you ever  
9 seen an RPV analysis, was, when might you have seen  
10 one.

11 MR. RUSSO: Again --

12 A. I wouldn't know.

13 MR. RUSSO: -- we can't -- he's not  
14 going to answer a question as to whether he saw an  
15 RPV analysis with his lawyers present.

16 So other than that, he can answer  
17 your question.

18 Q. (BY MS. VALL-LLOBERA) Has anyone ever tried  
19 to explain RPV to you?

20 MR. RUSSO: Again, same objection.  
21 It's not limited to conversations with lawyers and  
22 counsel.

23 To the extent you can answer the  
24 question without referring to communications in  
25 consultation with lawyers and counsel on that

1 question, you can answer.

2 MS. VALL-LLOBERA: Underlying facts  
3 learned by a witness are not privileged just  
4 because they were conveyed by counsel.

5 MR. RUSSO: But --

6 MS. VALL-LLOBERA: I am merely  
7 stating --

8 MR. RUSSO: We can -- we can  
9 have the --

10 MS. VALL-LLOBERA: -- for the  
11 record --

12 MR. RUSSO: We can have the  
13 colloquy, if you'd like to. The problem is, is  
14 that I -- I don't know whether he's had  
15 conversations with lawyers, and I need to make sure  
16 that what he's telling you does not come from a  
17 conversation with counsel, in terms of how  
18 they're -- they're going to do redistricting  
19 effort, or even related to our conversations  
20 dealing with this case.

21 A. Well, I don't recall. So let's -- well,  
22 that will -- I don't know.

23 MR. RUSSO: I mean, do you  
24 understand what I'm saying, Counsel? It's very  
25 possible that we looked at an RPV count between the

1 two of us.

2 Surely not claiming that's something  
3 you're entitled to know.

4 I'm -- so I'm suggesting you clean  
5 your questions up at least a little bit, so that  
6 it -- we don't have to keep doing this.

7 Q. (BY MS. VALL-LLOBERA) Did you consider the  
8 impact on minority populations when you were going  
9 through the redistricting process?

10 A. I would have to say yes.

11 Q. How?

12 A. I knew that equalizing the population was  
13 going to change precinct lines. But I never saw it  
14 as a deterrent for someone to represent the people  
15 or win office.

16 Q. How did that relate to impacting minority  
17 populations?

18 A. I don't understand your question.

19 MS. VALL-LLOBERA: If the court  
20 reporter could read --

21 A. You said did I consider it. And I said yes.  
22 Now, this question is a follow-up to that or I  
23 don't --

24 MS. VALL-LLOBERA: Could you read  
25 his -- and Mr. Apffel's answer to my prior

1 with proposals on how to modify the maps?

2 A. They did not.

3 Q. In your communications -- in your meetings  
4 with Mr. Oldham, did you discuss geographic  
5 modifications to the maps?

6 MR. RUSSO: Again, same objection  
7 related to attorney-client communications, specific  
8 to the legal services, and the relationship -- the  
9 legal services relationship in providing counsel to  
10 the county.

11 A. Can you read me that question one more time,  
12 please?

13 Q. (BY MS. VALL-LLOBERA) In your two meetings  
14 with Mr. Oldham, did anyone propose geographic  
15 modifications to the maps, to -- to the existing  
16 map?

17 A. The demographer would -- did, in the -- the  
18 in-person meeting.

19 Q. How many -- how many maps did you -- did you  
20 see?

21 A. We didn't have maps in that meeting. He was  
22 just discussing how to balance the -- the  
23 population, among the four precincts, and you --  
24 you know, clicking on this one to move it, saying  
25 if we move this one, that will bring down the

1 number in Precinct 4 and add to Precinct 3. If we  
2 can click out 103 and 104, and add them to  
3 Precinct 2, that will get -- that will get you in  
4 Precinct 1, where you need to be.

5 And he was showing it. That's the only --  
6 that was it.

7 Q. Did you share with Mr. Oldham, or his  
8 mapping expert, what your ideal map would look  
9 like?

10 A. I didn't draw a map. Jay did --

11 MR. RUSSO: Hold on. Just -- hang  
12 on a second.

13 THE WITNESS: I'm sorry.

14 MR. RUSSO: Please let me interpose  
15 an objection related to attorney-client privilege.

16 Same objection with that line of  
17 questioning. Do not discuss communications between  
18 the county and its counsel.

19 MS. VALL-LLOBERA: And we preserve  
20 our arguments that these communications are not  
21 privileged.

22 Q. (BY MS. VALL-LLOBERA) Did Mr. Oldham ask  
23 you what your ideal map would look like?

24 MR. RUSSO: Objection, based upon  
25 attorney-client privilege.

1 MS. VALL-LLOBERA: And we preserve  
2 our arguments that these are not privileged  
3 communications.

4 Q. (BY MS. VALL-LLOBERA) Were you asked about  
5 what factors you thought were important?

6 MR. RUSSO: Same objection.  
7 Objection, based on attorney-client privilege.

8 MS. VALL-LLOBERA: And we preserve  
9 our arguments that these are not privileged  
10 communications.

11 Q. (BY MS. VALL-LLOBERA) How long was the  
12 phone call with Mr. Oldham?

13 A. I've answered that. Certainly less than 30  
14 minutes.

15 Q. And the --

16 A. But I don't recall how long.

17 Q. And the in-person meeting?

18 A. Hour and a half, hour.

19 Q. When you were -- when you were discussing  
20 proposed changes to the maps with the mapping  
21 expert, did you see a map that you liked?

22 A. I didn't see a map.

23 Q. Did you discuss communities of interest?

24 A. I don't know what that means.

25 Q. Did you discuss the impact of any proposed

1 changes on any specific communities or groups of  
2 people?

3 MR. RUSSO: Object, based upon  
4 attorney-client privilege.

5 MS. VALL-LLOBERA: And we preserve  
6 our arguments that these aren't privileged  
7 communications.

8 Q. (BY MS. VALL-LLOBERA) Did you discuss the  
9 impact of any proposed changes on Bolivar, and the  
10 constituents that live there?

11 MR. RUSSO: Object, based on  
12 attorney-client privilege.

13 MS. VALL-LLOBERA: And -- and we  
14 preserve our arguments that these are not  
15 privileged communications.

16 Q. (BY MS. VALL-LLOBERA) Did you discuss the  
17 impact of any proposed changes on people of color,  
18 specifically on black and brown residents in  
19 Galveston County?

20 MR. RUSSO: Object, based upon  
21 attorney-client privilege.

22 MS. VALL-LLOBERA: We preserve our  
23 arguments that these are not privileged  
24 communications.

25 Q. (BY MS. VALL-LLOBERA) Earlier, you said, we

1 didn't have -- earlier, you said you didn't have  
2 maps in the meeting, that you were just discussing  
3 how to balance the population. And you referred to  
4 the map drawn -- clicking on precincts.

5 What -- what was he clicking on?

6 MR. RUSSO: Let me object, based  
7 upon attorney-client privilege.

8 A. I -- what --

9 MR. RUSSO: And instruct you not to  
10 answer.

11 MS. VALL-LLOBERA: And we preserve  
12 our arguments that these were not privileged  
13 communications.

14 Q. (BY MS. VALL-LLOBERA) What were you looking  
15 at during this meeting?

16 MR. RUSSO: Object, based upon  
17 attorney-client privilege. Instruct the witness  
18 not to answer.

19 MS. VALL-LLOBERA: We preserve our  
20 arguments that these were not privileged  
21 communications.

22 Q. (BY MS. VALL-LLOBERA) Previously, you said  
23 you did not look at a map during this meeting, but  
24 you did meet with a mapping expert.

25 What were you looking at?

1 MR. RUSSO: Same objection, based on  
2 attorney-client privilege.

3 MS. VALL-LLOBERA: And preserve --

4 MR. RUSSO: And let me ask you a  
5 clarifying question for the record.

6 Was the expert that was there, to  
7 your knowledge, there on behalf of the --  
8 Mr. Oldham --

9 THE WITNESS: Absolutely.

10 MS. VALL-LLOBERA: Counsel --

11 MR. RUSSO: -- as part -- as part of  
12 his work?

13 THE WITNESS: Absolutely.

14 MS. VALL-LLOBERA: Excuse me, are  
15 you --

16 MR. RUSSO: I'm clarifying the  
17 privilege being asserted. The expert there, was  
18 there at the behest of the counsel.

19 MS. CHEN: And performing a service  
20 for the county.

21 MR. RUSSO: As a -- as a lawyer.

22 MS. CHEN: As a policy --

23 MR. RUSSO: Brought in by a lawyer.

24 MS. CHEN: -- (unintelligible)

25 legislative critical objective --

# EXHIBIT 3

*Excerpts from the Deposition of Joseph Giusti on January 5, 2023*

<b>From Page: Line Number</b>	<b>To Page: Line Number</b>
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY PETTEWAY, \*  
et al., \*

Plaintiffs, \*

VS. \*

Case No. 3:22-cv-00057

GALVESTON COUNTY, et al., \*  
Defendants. \*

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
JOSEPH GIUSTI  
JANUARY 6, 2023  
(Reported Remotely)

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF JOSEPH  
GIUSTI, produced as a witness at the instance of the  
United States and duly sworn, was taken via  
videoconference in the above-styled and numbered cause  
on the 6th day of January, 2023, from 9:23 a.m. to  
6:01 p.m., before Marsha Yarberry, Certified Shorthand  
Reporter in and for the State of Texas, reported by  
machine shorthand, in Galveston, Texas, pursuant to the  
Federal Rules of Civil Procedure.

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APPEARANCES

FOR THE NAACP PLAINTIFFS (Dickinson Bay Area Branch  
NAACP, Galveston Branch NAACP, Mainland Branch NAACP,  
Galveston LULAC Council 151, Edna Courville, Joe A.  
Compian, and Leon Phillips):

Ms. Kathryn Garrett (Via Zoom)  
Mr. Andrew Silberstein  
787 7th Avenue  
New York, New York 10019-6099  
kgarrett@willkie.com  
asilberstein@willkie.com

--and--

Ms. Diana C. Vall-Ilobera  
WILLKIE FARR & GALLAGHER LLP  
1875 K Street, NW  
Washington, DC 20006-1238  
dvall-ilobera@willkie.com

--and--

Ms. Molly Zhu (Via Zoom)  
WILLKIE FARR & GALLAGHER LLP  
300 North LaSalle Drive  
Chicago, Illinois 60654-3406  
mzhu@willkie.com

--and--

Ms. Sarah Chen  
Mr. Joaquin Gonzalez (Via Zoom)  
TEXAS CIVIL RIGHTS PROJECT  
1405 Montopolis Drive  
Austin, Texas 78741  
schen@texascivilrightsproject.org  
joaquin@texascivilrightsproject.org

FOR THE PETTEWAY PLAINTIFFS:

Ms. Bernadette Reyes (Via Zoom)  
UCLA VOTING RIGHTS PROJECT  
3250 Public Affairs Building  
Los Angeles, California 90065  
bernadette@uclavrp.org

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APPEARANCES (continued)

--and--

Ms. Alexandra Copper (Via Zoom)  
Ms. Simone Leeper (Via Zoom)  
Ms. Valencia Richardson (Via Zoom)  
CAMPAIGN LEGAL CENTER  
1101 4th Street, NW, Suite 400  
Washington, DC 20005  
acopper@campaignlegal.org  
sleeper@campaignlegal.org  
vrichardson@campaignlegal.org

FOR THE UNITED STATES:

Ms. Catherine Meza (Via Zoom)  
Mr. Bruce Gear  
Mr. Zachary Newkirk (Via Zoom)  
DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION  
950 Pennsylvania Avenue, NW  
4CON 8th Floor  
Washington, DC 20530  
catherine.meza@usdoj.gov  
bruce.gear@usdoj.gov  
zachary.newkirk@usdoj.gov

FOR THE SOUTHERN COALITION FOR SOCIAL JUSTICE:

Ms. Adrienne Spoto (Via Zoom)  
SOUTHERN COALITION FOR SOCIAL JUSTICE  
1415 West NC Highway 54, Suite 100  
Durham, North Carolina 27707  
adrienne@scsj.org

FOR THE DEFENDANTS:

Mr. Joseph Russo (Via Zoom)  
Ms. Angie Olalde  
GREER HERZ & ADAMS, LLP  
One Moody Plaza, 18th Floor  
Galveston, Texas 77550  
jrusso@greerherz.com  
aolalde@greerherz.com

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APPEARANCES (continued)

--and--

Mr. Mateo Forero (Via Zoom)  
HOLTZMAN VOGEL  
2300 North Street, NW, Suite 643A  
Washington, DC 20037  
mforero@holtzmanvogel.com

ALSO PRESENT:

Ms. Brittany Wake (Via Zoom)  
Mr. Clint Thomas, Concierge (Via Zoom)  
Mr. Josh Stivers, Videographer (Via Zoom)

1 A. Not that I recall.

2 Q. Did you discuss redistricting criteria with  
3 any of the other commissioners during the 2021  
4 redistricting process?

5 A. Yes, to some degree, I guess, during the  
6 meetings we had.

7 Q. And what meetings are you referring to?

8 A. We had a meeting I guess in September.

9 Q. And who was present during that meeting?

10 A. The first meeting would have been myself, Paul  
11 Ready, Mr. Oldham. I don't remember if he was in  
12 person or on Zoom. I think he was there in person. I  
13 don't remember. And that's all I recall.

14 Q. Yourself, Paul Ready, who is the county  
15 attorney?

16 A. Yes.

17 Q. And Mr. Oldham, who is the redistricting  
18 consultant?

19 A. Correct.

20 Q. And that was September. Do you remember the  
21 day?

22 A. I don't.

23 Q. And did you receive any materials during that  
24 meeting related to redistricting criteria?

25 MS. OLALDE: I'm going to object to any

1 request for attorney-client privileged communications  
2 or attorney-client privileged work product. To the  
3 extent you're asking about facts, the witness can  
4 answer.

5 But otherwise I will instruct you not to  
6 answer.

7 THE WITNESS: Okay.

8 MR. GEAR: And we will reserve our  
9 arguments that we do not believe that attorney-client  
10 privilege applies to Dale Oldham as the redistricting  
11 consultant.

12 MS. OLALDE: He's an attorney, but yes.

13 MS. CHEN: And if you'd like to see -- we  
14 sent a letter yesterday to Joseph Russo --

15 THE REPORTER: I can't hear whoever is  
16 talking right now.

17 MS. CHEN: Sarah Chen. And I'm just  
18 noting that we sent a letter with piecemeal on this  
19 privilege point to Joseph Russo yesterday. If you  
20 would like to see it, we're happy to send it to you as  
21 well.

22 MS. OLALDE: Thank you, Sarah. I think  
23 this is probably something that the court needs to  
24 resolve at this point, though. I do understand that  
25 you sent a letter.

1 Q. (By Mr. Gear) So did you receive any written  
2 materials related to criteria during the September  
3 meeting?

4 MS. OLALDE: Objection to any  
5 attorney-client privileged communications or  
6 attorney-client -- attorney work product that may have  
7 been addressed or discussed during this meeting.

8 If you're looking only at facts, you may  
9 answer only to the extent you have particular facts to  
10 share but not communications.

11 Q. (By Mr. Gear) So the question is did you  
12 receive any materials.

13 A. I -- probably. I don't recall what.

14 Q. Do you recall what was discussed related to  
15 redistricting criteria?

16 MS. OLALDE: Objection, same instruction  
17 to the witness not to reveal any attorney-client  
18 privileged communications or work product.

19 MR. GEAR: And, again, we reserve the --  
20 our argument that attorney-client privilege is not --  
21 does not apply to Dale Oldham.

22 Q. (By Mr. Gear) So following the September  
23 meeting with yourself, Mr. Ready, and Mr. Oldham, did  
24 you have any discussions with commissioners related to  
25 redistricting criteria?

1 MS. OLALDE: Objection; speculation.

2 You can answer. You can answer.

3 MR. GEAR: Well, let me rephrase that.

4 MS. OLALDE: Sure.

5 Q. (By Mr. Gear) When did the 2021 redistricting  
6 process begin for the commissioners court?

7 A. It would have been about the time frame you  
8 mentioned. The exact -- sounds about right.

9 Q. And so what was the name of the redistricting  
10 firm that you and the commissioners ultimately decided?

11 A. I don't recall the name of the firm. I just  
12 remember Mr. Oldham.

13 Q. And what was your understanding of the  
14 services that Mr. Oldham would provide to the county  
15 commissioners?

16 A. That he would take the census that we were  
17 getting in, and he would take that -- the numbers from  
18 that and basically lay it out and give us a couple of  
19 options to choose from on what he determined was the  
20 best and legal maps that he could come up with.

21 Q. And other than Mr. Oldham, was there any other  
22 consultant that you personally dealt with during the  
23 2021 redistricting process?

24 A. He had a -- he had a demographer, I guess,  
25 that did the map -- the actual map drawing, but I never

1 really dealt with him.

2 Q. Did you meet with that demographer at all in  
3 any capacity?

4 A. Not that I recall, other than on the Zoom  
5 meeting, I believe.

6 Q. Is that the same September Zoom meeting that  
7 you referred to?

8 A. No. That would have been later.

9 Q. Do you recall the time period in which he was  
10 involved?

11 A. October I want to say.

12 Q. I'm sorry. Did you say you don't recall his  
13 name?

14 A. I do not.

15 Q. Did that demographer provide you with any  
16 written information or maps of any kind?

17 A. We did look at a couple of maps on Zoom.

18 MS. OLALDE: And, again, I'm going to ask  
19 that the witness not reveal any attorney-client  
20 privileged communications or work product and instruct  
21 him not to answer to that extent.

22 MR. GEAR: And, again, we reserve our  
23 rights that to -- against the claim that  
24 attorney-client privilege applies to Dale Oldham.

25 Q. (By Mr. Gear) So did you have an opportunity

1 process that were discussed in public, in a public  
2 commissioners court meeting?

3 A. Not that I recall.

4 Q. Were there any guidelines related to the  
5 timing of the commissioners court redistricting process  
6 that were formally adopted as a resolution by the  
7 commissioners court?

8 MS. OLALDE: Objection; form.

9 Go ahead.

10 THE WITNESS: Not that I recall.

11 Q. (By Mr. Gear) Were there any guidelines that  
12 were reduced to writing by the commissioners court?

13 A. Not that I recall.

14 Q. Can you explain what, if any, guidelines for  
15 the 2021 redistricting process were discussed amongst  
16 the commissioners?

17 MS. OLALDE: Objection to the extent your  
18 question calls for any response that would reveal  
19 discussions with Mr. Oldham or in executive session.  
20 Otherwise you can answer.

21 MR. GEAR: Again, we reserve the -- our  
22 right to raise the argument that attorney-client  
23 privilege does not apply to Mr. Oldham.

24 Q. (By Mr. Gear) But if you can answer --

25 A. That I don't recall.

1 Commissioner Holmes?

2 A. Commissioner Holmes, myself, I believe Tyler  
3 Drummond, and possibly Jed Webb.

4 Q. Who is Jed Webb?

5 A. Jed was -- at the time Jed -- Jed is gone now  
6 from the county, but at the time Jed was the -- kind of  
7 a communication guy but more governmental relations.

8 Q. And I believe you indicated that there was  
9 a -- that you had met with the demographer, the  
10 redistricting demographer?

11 A. He was on Zoom.

12 Q. And so the October 2021 meeting, was that a  
13 Zoom meeting or was that an in-person meeting?

14 A. Mostly in person, but the demographer, I  
15 believe, was Zoom with maps.

16 Q. And was that during that same October '21  
17 meeting where the demographer was on Zoom?

18 A. Yes.

19 Q. Was there anyone else present such as staff,  
20 your staff, for example?

21 A. No, sir.

22 Q. So can you tell me what was discussed during  
23 the October 2021 meeting?

24 MS. OLALDE: Objection, and instruct the  
25 witness not to answer with respect to any

1 attorney-client privileged information or work product  
2 data that was shared during the meeting.

3 MR. GEAR: And, again, we'll reserve the  
4 claim that the attorney-client privilege does not apply  
5 to Dale Oldham. And you're directing him not to  
6 answer?

7 MS. OLALDE: I am.

8 Q. (By Mr. Gear) Can you tell me during that  
9 October 2021 meeting with the individuals you  
10 identified whether or not there were any text messages  
11 or emails that were exchanged prior to that meeting?

12 A. Not that I recall.

13 Q. Can you tell me following that meeting was any  
14 of the information that you discussed during that  
15 meeting reduced to a written form of any kind?

16 A. Not that I'm aware of other than the maps.

17 Q. So maps were shared with the commissioners  
18 that were present?

19 A. Yes.

20 Q. And would this -- would the October 2021  
21 meeting have occurred prior to the posting of the plans  
22 on the county website?

23 A. I believe so.

24 Q. Did you personally prepare anything in writing  
25 to memorialize your communication during this meeting?

1 A. 13th.

2 Q. September 13th. Thank you. Did you meet with  
3 Attorney Ready and Mr. Oldham?

4 A. I don't remember if Mr. Oldham was in person  
5 or Zoom, but yes.

6 Q. But he did attend the meeting and --

7 A. Yes.

8 Q. And was that meeting related to the 2021  
9 redistricting process?

10 A. Yes.

11 Q. And did you receive any materials related to  
12 the redistricting process prior to the September 13th  
13 meeting?

14 A. Not that I recall.

15 Q. Did you receive any materials while you were  
16 present during the September 13th meeting that relate  
17 to the 2021 redistricting process?

18 MS. OLALDE: Objection; form.

19 THE WITNESS: Not that I recall.

20 Q. (By Mr. Gear) So what did you discuss during  
21 that September 13th meeting?

22 MS. OLALDE: Objection. And I'm going to  
23 instruct the witness not to answer about any  
24 attorney-client privileged communications or contain  
25 work product that was discussed in the meeting.

1 MR. GEAR: We reserve our right to raise  
2 the argument that attorney-client privilege is not --  
3 does not apply to Mr. Oldham.

4 Q. (By Mr. Gear) So other than the  
5 September 13th meeting and the October 19th meeting  
6 which you've identified, did you meet at any other  
7 times with Mr. Oldham?

8 A. I think initially when we hired him he was at  
9 that meeting.

10 Q. And did you have any discussions with  
11 Mr. Oldham prior to hiring him?

12 A. No, sir.

13 Q. So other than the fact that he was present at  
14 the commissioners court meeting, you didn't have any  
15 independent conversation with him.

16 A. Correct.

17 MR. GEAR: Can we put up Exhibit 4,  
18 please, Zach?

19 Q. (By Mr. Gear) Can you identify this document  
20 for me, please? Have you seen it before I guess I  
21 should ask.

22 A. I don't recall seeing it before.

23 Q. And for the record this is Defendants Bates  
24 Stamp No. 00015162. Can you tell me -- can you read  
25 the subject line for me, please?

1 redistricting process assisting you?

2 A. No, sir. I mean, she's on this memo as an  
3 attendee, but I don't remember if she was or not, to be  
4 honest. I don't think she was.

5 Q. Do you have any recollection if Yesenia  
6 reduced the discussions that took place during this  
7 meeting into any written form?

8 A. No.

9 Q. Just so I'm clear on the record, so  
10 September 13th and October 19th, 2021, were the only  
11 dates that you met with Dale Oldham? Is that correct?

12 A. Yes, sir, other than the initial hiring.

13 Q. Where you did not have any independent  
14 discussion --

15 A. Correct.

16 Q. So during the time -- strike that. So did you  
17 have an opportunity to present your preferences  
18 regarding the changes you wanted to see for Precinct 2  
19 during the 2021 redistricting process?

20 MS. OLALDE: Objection. I'm going to  
21 instruct the witness not to answer with respect to  
22 conversations that were had with Mr. Oldham.

23 Otherwise, you can answer. Based on  
24 attorney-client privileged work product.

25 THE WITNESS: That would have been our

1 conversations.

2 Q. (By Mr. Gear) Let me -- let me change the  
3 frame of that question.

4 What preferences did you want to see --  
5 what changes did you want to see to Precinct 2 during  
6 the 2021 redistricting process?

7 A. Me personally, there were a couple of things.  
8 One was to level out the population amongst the  
9 precincts. Two was probably to, as I mentioned  
10 earlier, clarify the lines as to who was where to make  
11 it easier for the public to understand who their  
12 commissioners were, to keep my house in my precinct and  
13 to keep my mom and dad's house in my precinct.

14 Q. Anything else?

15 A. Nope.

16 Q. I believe you testified to this previously  
17 about confusion as to where the commissioners' lines  
18 fell in the previous redistricting plan. What are you  
19 basing that concern upon?

20 A. I guess we -- just personal experience. We  
21 would get phone calls from constituents requesting  
22 help, and it would be things that weren't -- that were  
23 on the edge of my precinct but not in my precinct, or  
24 vice versa, they were in my precinct and they were  
25 calling someone else because the lines at times were --

1 with Mr. Oldham, but if it comes down to just a number,  
2 which I believe is what the question is asking, the  
3 witness can answer as to number.

4 Q. (By Mr. Gear) And that was the question, how  
5 many plans did you review during the 2021 redistricting  
6 process.

7 A. I want to say at some point I saw four.

8 Q. And can you tell me -- did you see all those  
9 plans at one time, or did you see them over a course or  
10 period?

11 A. I think at one time.

12 Q. Can you tell me where you saw the four  
13 plans -- the four 2021 redistricting plans, when did  
14 you review those plans?

15 MS. OLALDE: And I'm going to object as  
16 to attorney-client privilege and work product and ask  
17 the witness not to reveal any attorney-client  
18 privileged communications or any attorney-client work  
19 product and instruct him not to answer.

20 MR. GEAR: So to be clear, the question  
21 was when did he review the plans. I didn't ask him  
22 about details or discussions related --

23 MS. OLALDE: As to date -- as to date you  
24 can answer.

25 THE WITNESS: I believe it was in one of

1 A. Yes, sir. Originally from -- Judge Henry's  
2 was October 29th.

3 MR. GEAR: And I believe -- again, I  
4 believe we've discussed this on and perhaps off the  
5 record that you will be providing us with the Facebook  
6 posts and the comments that go along with it.

7 MS. OLALDE: I -- we did email that. In  
8 fact, I emailed that just during the deposition. I  
9 know you probably haven't had a chance to see it, yeah,  
10 but it's the same thing that you just handed  
11 Mr. Giusti.

12 Q. (By Mr. Gear) So did you post anything else  
13 on social media related to redistricting other than  
14 what we're looking at here?

15 A. Not that I recall, no, sir.

16 Q. And other than the two or three comments that  
17 you received on social media posts, your Facebook post,  
18 do you recall receiving any other comments related to  
19 the 2021 redistricting process that would have come on  
20 your social media posts?

21 A. No, sir.

22 Q. So did you ever have -- during the course of  
23 the 2021 redistricting process, did you have an  
24 occasion to speak with Commissioner Holmes regarding  
25 the creation of a coastal precinct?

1 MS. OLALDE: I'm sorry. What was the  
2 time frame? I apologize.

3 MR. GEAR: During the 2021 redistricting  
4 process.

5 MS. OLALDE: Okay. And I'm going to  
6 object to the extent you're -- the substance of your  
7 question would contain the attorney-client privileged  
8 communications or work product information.

9 Otherwise you may answer.

10 Q. (By Mr. Gear) And I want to be clear that --  
11 being careful to avoid any discussions that may have  
12 taken place with attorneys, did you have an occasion to  
13 speak with Mr. Holmes regarding the creation of a  
14 coastal precinct during the 2021 redistricting process?

15 MS. OLALDE: And the same objection.

16 MR. GEAR: And again we will -- I'll  
17 reserve our claim that the 2021 redistricting process  
18 and attorney-client privilege does not apply to Dale  
19 Oldham.

20 Q. (By Mr. Gear) But you can answer.

21 A. Not that I recall. It would -- had we  
22 discussed that, it would have been during that --

23 MS. OLALDE: Okay. I'm going to just --

24 THE WITNESS: So there you go.

25 MS. OLALDE: -- ask you not to testify

1 about anything that would have been discussed during  
2 those meetings. Thank you.

3 Q. (By Mr. Gear) So changing the subject now,  
4 you're saying that you've commented on the posted plan.  
5 So the posted plan -- when was it actually posted to  
6 the county website?

7 A. I'm not positive. Based on Judge Henry's post  
8 on the 29th, I'm assuming that's about the same time it  
9 went live because his post basically is telling people,  
10 "Here's the plan. Comments, please."

11 Q. So focusing on the October 29th date, is it  
12 correct that the commissioners court posted Maps 1 and  
13 2 to the county website?

14 A. Yes.

15 Q. Were you involved in those discussions to post  
16 Map 1 and 2 to the county website?

17 A. Not that I recall.

18 Q. Were you involved in the decision-making  
19 process in any capacity to post Maps 1 and 2 to the  
20 county website?

21 A. Not that I recall.

22 Q. When did you -- when were you made aware that  
23 Maps 1 and 2 would be posted to the county website?

24 A. I want to say the day they were posted or even  
25 the day after.

1 Dickinson, and I don't remember if he went all the way  
2 into League City or not. I think he might have had a  
3 piece of League City.

4 Q. So during the -- strike that. At any point  
5 during the 2021 redistricting process did you have any  
6 communications with any of the other commissioners or  
7 their staff regarding maintaining your core cities in  
8 Precinct 2?

9 MS. OLALDE: Objection. I would ask the  
10 witness not to answer to reveal any privileged  
11 communications, attorney-client privileged  
12 communications, or attorney work product and any  
13 conversations where Mr. Oldham was involved.

14 But other than that you may answer.

15 Q. (By Mr. Gear) So let's start with did you  
16 have any discussions.

17 A. Not that I recall.

18 Q. During the 2021 redistricting process did you  
19 have any discussions with Commissioner Holmes regarding  
20 maintaining the core of Precinct 3?

21 A. Not that I recall.

22 Q. So are you familiar with the Carver Park area  
23 in Precinct 3?

24 (Reporter clarification)

25 Q. (By Mr. Gear) Are you familiar with the

1 A. No.

2 Q. Did you ever share any ideas or opinions about  
3 the maps to Commissioner Holmes in 2021?

4 MS. OLALDE: Objection. And I will  
5 instruct the witness not to answer with respect to any  
6 kind of attorney-client privileged conversations or  
7 attorney work product that was discussed during a  
8 meeting with Mr. Oldham.

9 Otherwise you can answer.

10 THE WITNESS: With Commissioner Holmes,  
11 not that I recall.

12 Q. (By Mr. Silberstein) Earlier you said that  
13 when a community member submitted a redistricting plan,  
14 you said there's really not a written procedure if  
15 someone emailed the redistricting proposal to the  
16 judge's office. Is that true?

17 A. I think so, yes.

18 Q. But if you distributed -- if Holmes  
19 distributed the maps to the rest of the commissioners,  
20 at some point you knew the question would come in  
21 and -- sorry. Let me rephrase.

22 If Judge Henry distributed the maps to  
23 the rest of the commissioners -- and I'm just quoting  
24 him -- "At some point, you know, the questions would  
25 come in are we discussing this and now do we have more

1 and Maps 2. Under Map 1, would the population center  
2 of your precinct have shifted as much?

3 A. I'm sorry. Under Map 1? I'm trying to  
4 envision it.

5 Q. The one that had all of Galveston Island --

6 A. No, it would not have shifted as much.

7 Q. So let's just turn back to the September phone  
8 call you said you had with Dale Oldham. Exhibit 4  
9 showed the calendar invitation. And this is my final  
10 line of question itself. We're almost there.

11 Did you review any -- any census data  
12 during that call?

13 MS. OLALDE: Objection. I'm going to ask  
14 the witness not to answer as it would reveal any  
15 attorney-client privileged communications and/or  
16 attorney work product communications that were shared  
17 in the meeting with Mr. Oldham.

18 MR. SILBERSTEIN: We're going to reserve  
19 our arguments on the attorney-client privilege issue  
20 that they're not privileged communications.

21 MS. OLALDE: Just one second.

22 Mister -- the videographer, how much time  
23 is left?

24 THE VIDEOGRAPHER: 11 minutes.

25 MS. OLALDE: Thank you.

1 Q. (By Mr. Silberstein) Did you review any  
2 census data during that call?

3 MR. SILBERSTEIN: I'm going to keep  
4 asking questions in order to clarify the record and  
5 reserve our rights to reopen the deposition on these  
6 and other questions.

7 MS. OLALDE: I understand. And I  
8 understand what you have to do, but if you could reask  
9 the question. Sorry.

10 Q. (By Mr. Silberstein) Did you review any  
11 census data during the call?

12 MS. OLALDE: I'm going to object on the  
13 basis of attorney-client privilege and attorney work  
14 product and instruct the witness not to answer.

15 Q. (By Mr. Silberstein) Did you discuss the  
16 meaning of any census data?

17 MS. OLALDE: Again, I'm going to object  
18 on the basis of attorney-client privilege and attorney  
19 work product and instruct the witness not to answer as  
20 to conversations that were had with the attorney who  
21 was retained to provide legal advice.

22 THE REPORTER: Could you speak up,  
23 please?

24 MS. OLALDE: Certainly. I apologize.  
25 It's late in the day. We've been going for a while.

1 MR. SILBERSTEIN: That it is.

2 MS. OLALDE: I apologize. I'm objecting  
3 on the basis of attorney-client privilege and attorney  
4 work product and instructing the witness not to answer.

5 Q. (By Mr. Silberstein) And I'm only asking  
6 about your understanding here. Did you understand the  
7 need to redistrict due to population imbalances?

8 MS. OLALDE: Objection.

9 Are you asking for understandings  
10 based -- what are you asking? Vague, confusing.

11 Q. (By Mr. Silberstein) In -- in the 2021  
12 redistricting process, did you understand that there  
13 was a need to redistrict due to population imbalances?

14 A. Yes.

15 Q. Did -- during your calls -- during your calls  
16 with the other commissioners, did you ever discuss  
17 traditional redistricting -- what traditional  
18 redistricting criteria were?

19 MS. OLALDE: Objection; asked and  
20 answered. I'm going to instruct the witness not to  
21 answer to the extent any conversations took place  
22 before -- or with Mr. Dale Oldham on the basis of  
23 attorney-client privilege and also attorney work  
24 product.

25 But to the extent your answer does not

1 incorporate those communications you may answer.

2 THE WITNESS: With the other  
3 commissioners, I do not recall that.

4 Q. (By Mr. Silberstein) As you sit right here  
5 today, can you name any traditional redistricting  
6 criteria?

7 MS. OLALDE: Objection; asked and  
8 answered.

9 You can answer.

10 THE WITNESS: The population, the idea of  
11 trying to make the precinct lines understandable by the  
12 public. That's the majority of it.

13 Q. (By Mr. Silberstein) In the September call  
14 with Mr. Oldham and other commissioners pending your  
15 October meeting with Mr. Holmes, did you ever discuss  
16 the U.S. constitution?

17 MS. OLALDE: Again, I'm going to object  
18 on the basis of attorney-client privilege and attorney  
19 work product and instruct the witness not to answer as  
20 to communications had in meetings with Mr. Oldham.

21 MR. SILBERSTEIN: We'll reserve our  
22 arguments. These are not privileged communications.

23 Q. (By Mr. Silberstein) In the September call  
24 with Mr. Oldham and the other commissioners and in your  
25 October meeting with Mr. Holmes, did you discuss policy

1 objectives? If so, what were those objectives?

2 MS. OLALDE: I'm objecting as to  
3 compound. I'm also objecting to a request for  
4 attorney-client privileged communications and attorney  
5 work product and instructing the witness not to answer  
6 with respect to communications in meetings with  
7 Mr. Oldham, privileged communications in meetings with  
8 Mr. Oldham.

9 MR. SILBERSTEIN: We will reserve our  
10 arguments. These are not privileged communications.

11 Q. (By Mr. Silberstein) In the -- in the two  
12 meetings we've been discussing did you discuss  
13 political objectives?

14 MS. OLALDE: I'm going to object on the  
15 basis of attorney-client privilege, attorney work  
16 product, and instruct the witness not to answer with  
17 respect to communications -- privileged communications  
18 that took place with Mr. Oldham about redistricting.

19 Q. (By Mr. Silberstein) Can you extend -- can  
20 you answer to the extent not privileged the objectives  
21 that you discussed with the other commissioners about  
22 the 2021 redistricting?

23 MS. OLALDE: Just to be clear for the  
24 record, you're asking about anything that did not take  
25 place in the meeting with Dale Oldham?

1 MR. SILBERSTEIN: Anything, whether in or  
2 out of the meeting, to the extent it is not privileged  
3 communications with Mr. Oldham.

4 MS. OLALDE: Instruct the witness not to  
5 answer to the extent it's attorney-client privilege or  
6 discussion of attorney work product in a conversation  
7 with Mr. Oldham about 2021 redistricting.

8 To the extent you had communications that  
9 were outside of these meetings with Mr. Oldham, you can  
10 answer.

11 THE WITNESS: Not that I recall.

12 Q. (By Mr. Silberstein) And in these two  
13 meetings we've been discussing again, did you discuss  
14 the need or desire for a coastal precinct?

15 MS. OLALDE: Again, same objection and  
16 instruction.

17 Can we -- is it okay if -- will you be  
18 arguing that we waived anything if I don't talk for --  
19 okay. Same objection.

20 MR. SILBERSTEIN: I am okay with that.  
21 Yes.

22 MS. OLALDE: Same objections. I see --  
23 for the record, I see nods from all counsel, right?

24 Yes. All counsel. Same objection, same instruction.

25 MR. SILBERSTEIN: And we're reserving our

1 arguments, same arguments on our end.

2 MS. OLALDE: For the record I am nodding.

3 Q. (By Mr. Silberstein) Can you answer about the  
4 need or desire for a coastal precinct with -- to the  
5 extent non-privileged communications with the other  
6 commissioners?

7 MS. OLALDE: And just for the record, I  
8 am -- that would entail conversations that were not had  
9 with Dale Oldham, and same objection, same instruction  
10 for conversations that were had with Dale Oldham.

11 So if it was outside of a conversation  
12 with Dale Oldham, you can answer.

13 THE WITNESS: Can I get clarification?  
14 At what point?

15 Q. (By Mr. Silberstein) At any point during  
16 your -- during the 2021 redistricting process.

17 A. After the maps came out, there was a little  
18 bit of discussion -- I don't remember who with -- about  
19 the fact that, "Wow, a coastal precinct."

20 Q. So the first discussion about a coastal  
21 precinct came after the maps were enacted?

22 A. From my end, yes.

23 Q. Back to the two meetings we've been  
24 discussing, did you discuss the communities of interest  
25 during these meetings? Specifically did you discuss

1 Q. (By Mr. Silberstein) In the -- in the 2021  
2 redistricting process, did you receive racial  
3 demographic information from Mr. Oldham or any other  
4 redistricting counsel?

5 MS. OLALDE: Same objection and same  
6 instruction, which is attorney-client privilege,  
7 attorney work product, and instructing the witness not  
8 to answer.

9 Q. (By Mr. Silberstein) Did you receive racial  
10 demographic info from Paul Ready?

11 MS. OLALDE: I am going to instruct the  
12 witness not to answer as to communications with counsel  
13 for the county on the basis of attorney work product  
14 and also attorney-client privilege.

15 I instruct you not to answer.

16 Q. (By Mr. Silberstein) Did you receive any  
17 racial demographic information from Nathan Sigler?

18 A. Not that I recall. I mean, no. I mean, I  
19 don't think so.

20 Q. How about from another member of commissioners  
21 court or any of their staff?

22 A. No.

23 Q. You never received racial demographic  
24 information from anybody?

25 A. Not that I recall.

1 MS. OLALDE: Objection. Objection.

2 To the extent your answer would involve  
3 any kind of attorney-client privileged information,  
4 attorney work product, I instruct you not to answer.  
5 Otherwise you can answer.

6 THE WITNESS: Outside of that, not that I  
7 recall.

8 MR. SILBERSTEIN: Well, we won't need a  
9 countdown because the moment has come. But as you  
10 know, NAACP plaintiffs will reserve the right to keep  
11 the deposition open pending determination of the  
12 attorney-client privilege issues by the court. Do you  
13 have any questions?

14 MS. OLALDE: Defendants will reserve.

15 MR. SILBERSTEIN: That concludes the  
16 deposition.

17 THE VIDEOGRAPHER: Going off the video  
18 record. The time is 6:01.

19 (Deposition concluded at 6:01 p.m.)  
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# EXHIBIT 4

*Excerpts from the Deposition of Mark Henry on January 17, 2023*

<b>From Page: Line Number</b>	<b>To Page: Line Number</b>
141:1	141:19
141:20	143:9
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260:19	261:11
261:17	262:14
262:15	262:18
262:19	265:8
265:18	266:4
266:13	266:23
266:24	267:4

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY )  
PETTEWAY, et al. )  
 ) Case No. 3:22-cv-00057  
VS. )  
 )  
GALVESTON COUNTY, et )  
al. )

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY  
JANUARY 17, 2023

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY,  
produced as a witness at the instance of the Plaintiff and  
duly sworn, was taken in the above styled and numbered  
cause on Tuesday, January 17, 2023, from 9:08 a.m. to  
6:07 p.m., before Janalyn Elkins, CSR, in and for the  
State of Texas, reported by computerized stenotype  
machine, via Zoom, pursuant to the Federal Rules of Civil  
Procedure and any provisions stated on the record herein.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

HILARY HARRIS KLEIN  
ADRIENNE SPOTO  
TALIA RAY  
SOUTHERN COALITION FOR SOCIAL JUSTICE  
1415 West NC Highway 54, Suite 101  
Durham, North Carolina 27707  
hilaryhklein@scsj.org  
SARAH CHEN  
BERNADETTE REYES  
JOAQUIN GONZALEZ  
TEXAS CIVIL RIGHTS PROJECT  
1405 Montopolis Drive  
Austin, Texas 78741  
Schen@texascivilrightsproject.org  
THARUNI JAYARAMAN  
CATHERINE MEZA  
BRUCE GEAR  
K'SHAANI SMITH  
DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION  
Voting Rights Section 150 M Street, N.E.  
Washington, DC 20530  
Tharuni.Jayaraman@usdoj.gov  
  
VALENCIA RICHARDSON  
MARK GABER  
ALEXANDRA COPPER  
DaWUAN NORWOOD  
SIMONE LEEPER  
CAMPAIGN LEGAL CENTER  
1101 14th Street NW, Suite 400  
Washington, DC 20005  
Vrichardson@campaignlegalcenter.org  
  
KATHRYN GARRET  
ANDREW SILBERSTEIN  
DIANA C. VALL-LLOBERA  
WILLKIE FARR & GALLAGHER, LLP  
787 Seventh Avenue  
New York, New York 10019  
Kgarrett@willkie.com

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**FOR THE DEFENDANTS:**

**JOSEPH R. RUSSO**  
**GREER HERZ & ADAMS**  
**One Moody Plaza, 18th Floor**  
**Galveston, Texas 77550**  
**jrusso@greerherz.com**

**MATEO FORERO**  
**HOLTZMAN VOGEL JOSEFIK TORCHINSKY, PLLC**  
**2300 N. Street NW, Suite 643A**  
**Washington, DC 20037**  
**mforero@holtzmanvogel.com**

**Also Present:**

**DANIEL ALPIZAR (Videographer)**  
**ALEXA PASTOR (Concierge)**

1 pull up Document 34. This is going to be Exhibit 20.

2 (Exhibit No. 20 was marked.)

3 Q. (BY MS. KLEIN) While we're waiting for it to  
4 load, let me ask you, what was your expectation for the  
5 scope of work your redistricting counsel would provide  
6 for you in the 2021 redistricting process?

7 A. What was my expectation about the scope of his  
8 work?

9 Q. What did you think Holtzman Vogel was going to  
10 do for you with respect to the 2021 redistricting  
11 process?

12 A. I -- well, I want to be clear that my belief  
13 was that Dale was really the person that I was hiring.  
14 Holtzman Vogel comes with him. I understand that. But  
15 that Dale would get us a legally compliant map that gets  
16 us in balance for the -- with the census data we have  
17 available.

18 Q. So your understanding was that Dale would draft  
19 the map for you?

20 A. Yes.

21 Q. Did you have the understanding he would draft  
22 several maps for you?

23 A. I don't know that I gave him an upper and lower  
24 limit. The more maps he drafts, the more he charges us.  
25 But, you know, it could be more than one.

1 Q. Did you give him any concept maps or  
2 description before he started drafting?

3 A. Concept maps, no, I don't know how to do that.  
4 Drafts -- I'm sorry. Direction --

5 MR. RUSSO: Before you complete, facts  
6 related to the representation, legal -- the legal  
7 services are okay, but don't provide or disclose  
8 communications between you and Mr. Oldham specifically  
9 related for legal services.

10 THE WITNESS: Well, I think that's what I  
11 would be answering.

12 MR. RUSSO: Well, the difference being the  
13 facts as to -- again, you talked about what he was  
14 supposed to do for you.

15 THE WITNESS: Okay.

16 MR. RUSSO: That's fine. But how he's  
17 going to do it is a different question. Do you  
18 understand?

19 THE WITNESS: Yes, I think.

20 Q. (BY MS. KLEIN) Let me separate this out. I'm  
21 not going to ask you about what Dale thought about the  
22 legal requirements. I'm not going to ask you what  
23 Mr. Oldham thought, you know, about what was legally  
24 required or advice he gave you specifically.

25 But I do want to know about, you know, the

1 drafting process, just the maps and the ideas you had,  
2 not about whether they were legal or not or anything,  
3 but just if you had an idea geographically -- putting  
4 all the legal stuff aside if you had an idea  
5 geographically that you shared with Mr. Oldham when you  
6 retained him about what the maps or proposed maps should  
7 look like?

8 THE WITNESS: Is that okay?

9 MR. RUSSO: There's no question pending.  
10 She's just making a statement so...

11 Q. (BY MS. KLEIN) So I'll ask the question. Did  
12 you share with him any geographic concept ideas about  
13 what one or more proposed maps should look like?

14 MR. RUSSO: Again, you can answer in hiring  
15 and what the general retainage was about and for. But  
16 specifics as to him providing legal services or  
17 financial matters or what the facts could be related to  
18 specific advice he was providing are off the table.

19 THE WITNESS: Well, then I guess I can't  
20 answer that.

21 MS. KLEIN: Okay. I'm going to interpose,  
22 just for the record preserve the right -- because I  
23 understand this is related to an issue that's pending  
24 before the Court. So -- so I'm going to just preserve  
25 the right to ask that question again if we get a

1 different determination from the Court in the future on  
2 this issue. But I'm going to keep asking this line of  
3 questions and just to preserve our rights.

4 MR. RUSSO: I understand.

5 MS. JAYARAMAN: Hi, this is Tharuni  
6 Jayaraman for the United States. The United States also  
7 joins in preserving.

8 MS. RICHARDSON: Petteway plaintiff joins  
9 in the reservation as well.

10 Q. (BY MS. KLEIN) Apart from wanting a legal map,  
11 did you have any other goals or objectives for how the  
12 county commissioners' new precincts should look?

13 MR. RUSSO: Same reservation in terms of  
14 the attorney-client privilege. To the extent that you  
15 can describe the general retainage, that's okay. I  
16 would waive --

17 THE WITNESS: Can I step out and ask him a  
18 question? Because I don't know -- I just don't know if  
19 this is privileged or not.

20 MS. KLEIN: We can go off the record if you  
21 want.

22 THE WITNESS: Yes.

23 MS. KLEIN: But before that, let me just  
24 clarify. That question, I didn't ask anything about an  
25 attorney anywhere. I'm just asking about Judge Henry's

1 Q. And it says -- and on the far right is a  
2 privilege note, (Reading:) Communication from  
3 map-drawer to redistricting counsel, re: preparation of  
4 first draft map for legal review and posing questions  
5 re: redistricting constitutional requirements and  
6 traditional redistricting criteria.

7 So this was sent from -- we can see in the  
8 columns from Tom Bryan to Jason Torchinsky. So -- and  
9 Tom Bryan, you said you -- earlier I remember you saying  
10 you heard about his name in prep.

11 A. Just recently, right.

12 Q. Okay. And he's -- and did you become aware  
13 that he was a technical expert for map drawing used  
14 during the process?

15 MR. RUSSO: Hold on a second. Do not  
16 reveal communications between yourself and attorneys in  
17 prep session. So other than that you can answer.

18 THE WITNESS: Okay.

19 MR. RUSSO: If you knew about him ahead of  
20 time, fine.

21 Q. (BY MS. KLEIN) Are you aware now standing here  
22 today that Tom Bryan was a map drawer that provided  
23 technical expertise?

24 MR. RUSSO: Same objection. On  
25 attorney-client privilege to the extent that you learned

1 that during conversations with attorneys.

2 MS. KLEIN: So an underlying fact is not  
3 privileged just because counsel hears it.

4 MR. RUSSO: You're asking him whether he  
5 knows a person and --

6 MS. KLEIN: I'm not asking --

7 MR. RUSSO: -- he's already told you that  
8 he learned about it in prep. You're continuing to ask  
9 him about how he learned about it.

10 MS. KLEIN: I want to know --

11 MR. RUSSO: So you're out of bounds. Real  
12 simple, you're asking about privileged communications.

13 MS. KLEIN: I'm asking about a fact --  
14 whether he's aware of a fact.

15 MR. RUSSO: You can ask him other than his  
16 communications with counsel whether he's aware of who  
17 Tom Bryan is.

18 MS. KLEIN: Well, we're just going to have  
19 to agree to disagree on this point.

20 MR. RUSSO: Well, I'm not creating a  
21 privilege.

22 Q. (BY MS. KLEIN) So this map that Tom Bryan sent  
23 to Mr. Torchinsky, are you aware of whether you saw this  
24 map before it was sent from Tom Bryan to Mr. Torchinsky?

25 A. I doubt I did.

1 to have been true for the other commissioners?

2 A. Do not know.

3 Q. And then the goal was to have -- the last  
4 sentence says, (Reading:) There was a sense that the  
5 prior map looked gerrymandered.

6 Do you agree with that statement?

7 A. I do.

8 Q. What does "gerrymandered" mean to you?

9 A. Moving lines in a -- in not necessarily in a  
10 sensible manner in order to achieve a specific goal.

11 Q. And which part of the prior map looked  
12 gerrymandered?

13 A. Precinct 3. And I understand it had to be  
14 so...

15 Q. What do you mean it had to be?

16 A. My understanding from the 2011 redistricting is  
17 we had to make every effort to keep a majority/minority  
18 precinct. And the only way we could achieve that was to  
19 have the precinct look like it did.

20 Q. So you knew that by changing things the way you  
21 did in Map Proposal 2 you were getting rid of that  
22 majority/minority precinct, right?

23 MR. RUSSO: Objection, calls for  
24 speculation.

25 THE WITNESS: And what I know would have

1 come to me through one of my lawyers.

2 MR. RUSSO: Object on the basis of  
3 attorney-client privilege. To the extent the  
4 conversations she asked about happened with your  
5 lawyers, do not disclose it.

6 Q. (BY MS. KLEIN) Were you aware -- I'm not  
7 asking you what your lawyers told you or whether you  
8 agreed with it or whether you -- any of those  
9 discussions.

10 But when you chose Map Proposal 2, at that  
11 moment in time you were aware, weren't you, that that  
12 majority/minority Precinct 3 that you had to keep in  
13 2011 that you were breaking that up between all four  
14 remaining precincts, right?

15 MR. RUSSO: Objection to the extent it  
16 calls for a legal conclusion. And same objection  
17 related to attorney-client privilege.

18 THE WITNESS: Yeah, the information would  
19 have come from an attorney working on our behalf.

20 MS. KLEIN: Okay. I'm going -- I'm just  
21 going to preserve for the record that I dispute that  
22 privilege objection and we're going to reserve the right  
23 to call the commissioner back once we get a court  
24 determination on it.

25 MS. RICHARDSON: Petteway will join.

1 MS. JAYARAMAN: United States joins as  
2 well.

3 Q. (BY MS. KLEIN) Okay. The fourth factor, I'm  
4 reading from the page, considered -- was minimizing the  
5 splitting of voting precincts. Do you know what that  
6 one means?

7 A. I assume that what they are saying here is that  
8 we did not want to -- well, some voting precincts had to  
9 be split. They were overpopulated. But except for  
10 those voting precincts, trying not to split up voting  
11 precincts further.

12 Q. What -- isn't it true that the Commissioner's  
13 Court adopted voting precincts after this redistricting  
14 cycle?

15 A. I do not remember. No, I thought we did it --  
16 I thought we did it the same day.

17 Q. So you did it either the same day or after,  
18 right?

19 A. Probably.

20 Q. So if you were passing voting precincts either  
21 the same day or after, why did you have to -- that means  
22 that you were revising them, right?

23 A. We had to change some of them because we were  
24 overpopulated and you had another group threaten to sue  
25 us if we didn't get the population down to less than

1 Republican, for example, leaning precinct, he would  
2 rather not get it changed be a Democrat leaning  
3 precinct.

4 Q. What about Commissioner Holmes? Are you aware  
5 of how his precinct, which we've already talked about,  
6 was split in the new map between four, how it would be  
7 impacted by as far as partisan composition?

8 A. This is going to come back to a conversation  
9 from my lawyer to me.

10 Q. So you were aware, but whatever you were aware  
11 of came from your attorney, right?

12 MR. RUSSO: Let me object and respond to  
13 that to the extent you have to disclose attorney-client  
14 privileged communications. And I'm going to instruct  
15 him not to answer.

16 Q. (BY MS. KLEIN) So without telling --

17 MS. KLEIN: So I'm going to reserve our  
18 prior right to recall him as we've already stated on the  
19 record several times.

20 MS. JAYARAMAN: The United States joins.

21 MS. RICHARDSON: Petteway joins.

22 Q. (BY MS. KLEIN) And so without disclosing the  
23 content of those conversations, you talked with your  
24 counsel about partisan composition?

25 A. I would more accurately describe it as he told

1 cut things down a little bit if I can just confer with  
2 the other counsel.

3 VIDEOGRAPHER: The time is 3:16. Off the  
4 record.

5 (Brief recess.)

6 VIDEOGRAPHER: The time is 3:37. Back on  
7 the record.

8 Q. (BY MS. KLEIN) I'm just going to ask you a few  
9 follow-up questions to clarify a thing that we just went  
10 over.

11 A. Okay.

12 Q. First of all, you mentioned that you had  
13 discussed -- maybe discussed criteria with one of the  
14 commissioners but not more. Which -- which commissioner  
15 were you referring to?

16 A. I don't know if I said criteria. But as far as  
17 the process -- and maybe it was criteria. I don't  
18 recall. Commissioner Apfel.

19 Q. So we have this back and forth privilege  
20 objection and you were saying that -- when I asked you  
21 about racial data, about partisan data, you said  
22 whatever you knew you would have heard from your  
23 attorneys. Can you just specify which attorneys you're  
24 thinking of when you said your attorneys?

25 THE WITNESS: That's okay?

1 MR. RUSSO: Yeah. I'm sorry. I'm just --  
2 which conversation are you speaking about?

3 Q. (BY MS. KLEIN) Right before the break I was  
4 asking, you know, with respect to your awareness of, you  
5 know, racial breakdown by Map Proposal 2 district and  
6 your awareness of that.

7 And you said that you couldn't answer -- if  
8 I remember correctly, you said you couldn't answer  
9 because it was told to you, whatever you knew was told  
10 to you by your attorneys. Do you remember that?

11 A. Yes.

12 Q. So which is who, which attorneys is what I'm  
13 asking?

14 MR. RUSSO: You can answer that.

15 THE WITNESS: Dale Oldham primarily. To a  
16 lesser extent Joe Nixon in 2011-2012.

17 Q. (BY MS. KLEIN) Okay. And Just to clarify the  
18 privilege objection and whether or not you're going to  
19 answer, so you -- your position is you are not willing  
20 to confirm whether you were aware of any of these, you  
21 know, racial data or partisan data facts at a later date  
22 after learning them from an attorney, correct?

23 MR. RUSSO: Well, let me just tell you what  
24 my objection is. It's not to reveal conversations that  
25 he or information he got from the attorney. If he got

1 it later from someplace else, that's -- that's not what  
2 we're objecting to. It's not a point in time, in other  
3 words. It's who the conversation was with.

4 Q. (BY MS. KLEIN) So you are not willing --  
5 pursuant to your counsel's instruction, you are not  
6 willing to tell me whether you were aware of a  
7 particular fact if that fact was told to you by your  
8 attorney?

9 MR. RUSSO: That's like it's an  
10 oversimplification of our objection but...

11 THE WITNESS: And I will also say that  
12 that's the only place I got the information from. So  
13 there was not a point where someone else gave me  
14 information that would not be privileged information.

15 Q. (BY MS. KLEIN) So you are not willing to say  
16 whether or not you were aware of a fact later if that  
17 fact was told to you by counsel and only counsel?

18 A. I guess, yes.

19 MS. KLEIN: So is that attorney-client  
20 privilege?

21 MR. RUSSO: That's -- I think that's an  
22 oversimplification. What we would need to get into this  
23 is particular questions on the record or -- we've had  
24 this conversation. You've asked questions and we've  
25 objected. To be able to just sort of incapsulate the

1 argument here, I mean, you can look at the letter brief  
2 and go into the witness with it is probably improper.  
3 But the point is it's going to -- it dependent upon the  
4 question that you're asking the way you're asking him.

5 MS. KLEIN: I am going to be fully  
6 forthright that I do not understand your privilege  
7 objection and the basis for it. So I am trying to  
8 understand that you are instructing your -- and you're  
9 not the witness in this and that's why I'm talking to  
10 him because he's following your advice.

11 But -- and I want to make sure he  
12 understands what he is not willing to provide. I want  
13 to make sure the witness understands what testimony he  
14 is not willing to provide in this deposition. So that's  
15 why I'm going through him. I'm not trying to get  
16 between you two.

17 MR. RUSSO: Sure.

18 MS. KLEIN: And I'm -- I'm just confirming  
19 that if he was shown -- if he was shown partisan data  
20 from his attorney, he is not willing to testify about  
21 his awareness of that partisan data at a later date  
22 because he says he only got it from his attorney. Am I  
23 understanding it correctly?

24 MR. RUSSO: No, again. That's over --  
25 overly simplified. The point of the objection and the

1 privilege is to prevent disclosure of communications  
2 related to the provision of legal services. So to the  
3 extent that the facts are provided with a specific  
4 regard and primarily for the purpose of providing legal  
5 services, those communications are not going to be  
6 disclosed.

7 MS. KLEIN: So if I don't -- I don't care  
8 about the context of this. I don't care if he was --  
9 why he was reviewing them. I don't care what questions  
10 about legal advice he was -- I don't care about any of  
11 that.

12 All I want to know is if at a later date  
13 and specifically when he was choosing Map Proposal 2, I  
14 want to know what data he was aware of at the point he  
15 was choosing Map Proposal 2, which I believe was, based  
16 on our testimony, around October 29th when he made that  
17 Facebook post.

18 MR. RUSSO: Right. And here's the answer  
19 to my response and this is what I've instructed the  
20 witness. To the extent that provision of data or facts  
21 is balled up with Mr. Oldham providing legal services,  
22 he can't answer that question. If it's just here's some  
23 facts, that's it. That's a different story. If it's  
24 just here, look at the -- look at the data.

25 MS. KLEIN: But I'm not asking for the

1 context of them at all. I'm not going to follow up --

2 MR. RUSSO: I get it. And the problem is  
3 is that we've got to rely on the witness to say the  
4 communication basically was part of providing legal  
5 services, and I think he's established that.

6 But -- so the idea or notion that, well,  
7 you know, there are objections just based upon one thing  
8 or another is -- again, it's oversimplifying.

9 MS. KLEIN: All right. Maybe I'll just  
10 probe a little bit.

11 Q. (BY MS. KLEIN) How was the discussion of  
12 partisan data part of the provision of legal advice? I  
13 mean, was -- let me ask this first.

14 Was any discussion you had with your  
15 lawyers about partisan data part of the provision of  
16 legal advice?

17 A. What was that?

18 Q. Was the -- was any -- you said that you  
19 couldn't answer what -- you couldn't answer me what  
20 exact partisan data you had seen when you voted for Map  
21 Proposal 2 or before you had voted for Map Proposal 2  
22 what you were aware of because you had learned that from  
23 your attorney. So let me ask you this.

24 When you learned that from your attorney,  
25 was that part of you seeking or them providing specific

1 legal advice?

2 A. I'd say yes. It wasn't strictly -- that's it.

3 MR. RUSSO: But that's where the privilege  
4 applies.

5 Q. (BY MS. KLEIN) You know -- so is your  
6 understanding that compliance with state and federal law  
7 relates to the partisan composition of the precincts  
8 you'd be voting on?

9 MR. RUSSO: Object as speculative and calls  
10 for a legal conclusion.

11 THE WITNESS: So I would ask again. Am  
12 I --

13 Q. (BY MS. KLEIN) Was -- is your understanding  
14 based on that answer that the partisan composition of  
15 the enacted precincts for commissioners you'd be voting  
16 on was related to their legal compliance to whether they  
17 were legally compliant?

18 A. I can't say --

19 MR. RUSSO: You responded that the  
20 discussion that you're asking about factually relates to  
21 the provision of legal services. That's all we can  
22 provide you. I mean, that's where the privilege  
23 applies. So I think we've established that.

24 Q. (BY MS. KLEIN) So what would you say -- so if  
25 you learned certain facts from an attorney, are you

1 saying that you can never discuss that again with  
2 anybody?

3 A. I think that I'd be saying that I am allowed to  
4 not discuss that with anybody.

5 Q. So have you talked with anybody besides your  
6 attorneys about the partisan composition of the enacted  
7 2021 commissioner's precinct map?

8 A. I don't know who it would be. Honestly, most  
9 people don't care.

10 Q. If a constituent asked you, hey, when you voted  
11 for Map Proposal 2, did you know that, you know, each  
12 commissioner's precinct was going to be a Republican  
13 precinct, how would you answer that question?

14 A. My belief would be yes.

15 Q. And why would your belief be yes to that  
16 question?

17 A. Because I simply don't think it's possible to  
18 draw a precinct that would elect a Democrat without  
19 making it look like a handprint as I described it.

20 Q. And why do you believe that?

21 A. Just based on the numbers that I see in the  
22 general election. If 34 percent tend to vote Democrat  
23 in a gubernatorial year and they're all spread all  
24 across the county, you don't have 25 percent in any one  
25 location.

# EXHIBIT 5

*Excerpts from the Deposition of Nathan Sigler on December 19, 2022*

<b>From Page: Line Number</b>	<b>To Page: Line Number</b>
71:23	72:12
136:14	138:11

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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY PETTEWAY, )  
et al., )

Plaintiffs, )

) Case No. 3:22-cv-00057

vs. )

GALVESTON COUNTY, et al., )

Defendants. )

\_\_\_\_\_)

REMOTE ORAL DEPOSITION OF

NATHAN SIGLER

DECEMBER 19, 2022

9:14 a.m. CST

Witness Appearing From:  
Galveston, Texas

Conducted Remotely Via Videoconference

1 R E M O T E A P P E A R A N C E S  
2 ON BEHALF OF THE UNITED STATES:

3 MS. THARUNI JAYARAMAN  
4 MS. CATHERINE MEZA  
5 MR. BRUCE GEAR  
6 MS. K'SHAANI SMITH  
7 DEPARTMENT OF JUSTICE  
8 CIVIL RIGHTS DIVISION  
9 950 Pennsylvania Avenue, N.W.  
10 4CON 8th Floor  
11 Washington, D.C. 20530  
12 tharuni.jayaraman@usdoj.gov  
13 catherine.meza@usdoj.gov  
14 bruce.gear@usdoj.gov  
15 kshaani.smith@usdoj.gov

16 ON BEHALF OF THE PETTEWAY PLAINTIFFS:

17 MS. BERNADETTE REYES  
18 UCLA VOTING RIGHTS PROJECT  
19 3250 Public Affairs Building  
20 Los Angeles, California 90065  
21 bernadette@uclavrp.org  
22 MS. ALEXANDRA COPPER  
23 MS. SIMONE LEEPER  
24 MS. VALENCIA RICHARDSON  
25 CAMPAIGN LEGAL CENTER  
1101 14th Street, NW  
Suite 400  
Washington, D.C. 20005  
acopper@campaignlegal.org  
sleeper@campaignlegal.org  
vrichardson@campaignlegal.org

ON BEHALF OF THE DEFENDANT GALVESTON COUNTY:

MR. JOSEPH RUSSO  
MS. JORDAN RASCHKE ELTON  
GREER HERZ & ADAMS, LLP  
One Moody Plaza, 18th Floor  
Galveston, Texas 77550  
jrusso@greerherz.com  
jraschkeelton@greerherz.com

1 ON BEHALF OF THE NAACP PLAINTIFFS (Dickinson Bay  
Area Branch NAACP, Galveston Branch NAACP, Mainland  
2 Branch NAACP, Galveston LULAC Council 151, Edna  
Courville, Joe A. Compian, and Leon Phillips):

3 MS. KATHRYN GARRETT  
4 MR. RICHARD MANCINO  
WILKIE FARR & GALLAGHER, LLP  
5 787 Seventh Avenue  
New York, New York 10019  
6 kgarrett@wilkie.com  
rmancino@wilkie.com

7 MS. MOLLY ZHU  
8 WILKIE FARR & GALLAGHER, LLP  
300 North LaSalle Drive  
9 Chicago, Illinois 60654-3406  
mzhu@wilkie.com

10 MR. JOAQUIN GONZALEZ  
11 MS. SARAH CHEN  
TEXAS CIVIL RIGHTS PROJECT  
12 1405 Montopolis Drive  
Austin, Texas 78741  
13 joaquin@texascivilrightsproject.org  
sarah@texascivilrightsproject.org

14  
15  
16 ALSO PRESENT:  
17 Ms. Brittany Wake - Civil Rights Analyst,  
Voting Section, Civil Rights Division,  
18 Department of Justice  
19 Mr. Clint Thomas - Veritext Zoom Tech  
20  
21  
22  
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1 Clark to discuss the conflicts?

2 A. It wasn't specifically to discuss the  
3 conflicts. We would just review the maps, and if  
4 there was something of note, that we noticed a  
5 split, it wasn't necessarily just me. It could be  
6 anybody that discovered it.

7 Q. When you say "reviewed the maps," what  
8 maps were you reviewing with Commissioner Clark?

9 A. Of the layers from the state, the  
10 commissioner precincts, and the voting precincts.

11 Q. And you said it could be anybody that  
12 discovered it. Were there other --

13 A. I'm sorry. You cut out.

14 Q. Sorry. You said -- you said that there  
15 may be anybody that discovered it. Were there other  
16 people also looking for conflicts?

17 A. I don't know.

18 Q. So what did you mean by "anybody that  
19 discovered it"?

20 A. Commissioner Clark could have discovered  
21 some. Dale could have discovered some. Beyond  
22 that, I don't know.

23 Q. Why were you meeting with Mr. Oldham to  
24 discuss these splits?

25 MR. RUSSO: Counsel, let me interpose an

1 objection just to remind the witness not the  
2 disclose privileged communications between he and  
3 Mr. Oldham, to the extent there were attorney-client  
4 privileged conversations. But to the extent you can  
5 answer the question without disclosing those  
6 communications, you can answer.

7 A. Could you repeat the question?

8 Q. Sure. Why were you meeting with  
9 Mr. Oldham to discuss these conflicts?

10 MR. RUSSO: Same objection.

11 A. I'm going to take the advice of my  
12 counsel.

13 MS. JAYARAMAN: Sure. Cathy, can you pull  
14 up Tab 6, please.

15 (Exhibit 5 marked)

16 Q. Believe that Sigler Exhibit 5 should now  
17 be up for -- up in the Marked Exhibits folder. Do  
18 you have it in front of you?

19 A. Yes.

20 Q. Great. Mr. Sigler, I'm showing you what  
21 has been marked as Sigler Exhibit 5 which is Bates  
22 stamped DEFS00020457 through DEFS00020461. Have you  
23 seen Sigler Exhibit 5 before?

24 A. Thank you. Sorry. I'm taking over the  
25 mouse for a second.

1 of perjury that the foregoing is true and correct?

2 A. I do.

3 Q. Okay. So now using the printed page  
4 numbers on the bottom of Sigler Exhibit 13, let's  
5 turn to page 18 of Sigler Exhibit 13.

6 A. You said number 18? I'm sorry.

7 Q. Yes, 18 using the printed page numbers,  
8 and that's page, yeah, 18. Please let me know when  
9 you're there.

10 MR. RUSSO: The page numbers are on the  
11 bottom.

12 A. Okay. Oh, okay. Okay.

13 MR. RUSSO: Okay. He's ready.

14 Q. Okay. At the very top of the page, it  
15 says, "On November 1st, 2021, Nathan Sigler and Dale  
16 Oldham scheduled a Zoom call. Upon information and  
17 belief, this call concerned the verification of what  
18 was posted to the website." Do you see that?

19 A. Yes.

20 Q. Would you agree with defendants' assertion  
21 that your Zoom call on November 1st, 2021, with  
22 Mr. Oldham concerned the verification of what was  
23 posted to the Galveston website?

24 A. Could you repeat that question, please?

25 Q. Sure. Do you agree with defendants'

1 assertion that your Zoom call on November 1st, 2021,  
2 with Mr. Oldham concerned the verification of what  
3 was posted to the Galveston website?

4 A. I believe so.

5 Q. What do you mean by "I believe so"?

6 MR. RUSSO: Let me just caution the  
7 witness that we're not disclosing conversations  
8 other than what is stated in the interrogatories.  
9 So if there are other conversations with Mr. Oldham,  
10 we're not disclosing that on the basis of privilege.

11 To the extent you can answer her question,  
12 you can.

13 A. And is this regarding commissioner -- the  
14 redistricting for commissioner precincts or  
15 redistricting for voting precincts?

16 Q. I do not know. I wanted to know if you  
17 agreed with defendants' assertion that your Zoom  
18 call on November 1st, 2021, with Mr. Oldham  
19 concerned the verification of what was posted to the  
20 Galveston County website.

21 MR. RUSSO: Objection, asked and answered.

22 A. I don't remember the specifics of what was  
23 talked about in that conversation.

24 Q. When I asked the question a moment ago,  
25 you said, "I believe so." And then I asked, "What

1 do you mean by 'believe so,'" and then I don't  
2 believe you answered that. So what did you mean by  
3 "I believe so"?

4 MR. RUSSO: Again, the witness is being  
5 admonished in connection with disclosing  
6 conversations that are between the county and an  
7 attorney hired to represent them on the basis of  
8 attorney-client privilege.

9 To the extent you can answer the question  
10 without revealing such other communications, you can  
11 answer.

12 Q. So, Mr. Sigler, do you disagree that your  
13 November 1st, 2021, Zoom call with Mr. Oldham  
14 concerned what was posted to the Galveston County  
15 website?

16 A. Can you repeat that question, please?

17 Q. Absolutely. Do you disagree that your  
18 November 1st, 2021, Zoom call with Mr. Oldham  
19 concerned what was posted to the Galveston County  
20 website?

21 A. I do not. I don't recall what the  
22 specifics of the conversation were.

23 Q. Okay. What was posted to the Galveston  
24 County website during the 2021 redistricting cycle?

25 A. I'm not sure. I'm not sure if it was -- I

# EXHIBIT 6

*Excerpts from the Deposition of Tyler Drummond on January 18, 2023*

<b>From Page: Line Number</b>	<b>To Page: Line Number</b>
87:16	89:1
89:2	90:2
197:16	199:6
199:7	199:16
200:6	200:15

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY		
PETTEWAY, et al.,		
		CASE NO. 3:22-cv-00057
Plaintiffs,		
V.		
GALVESTON COUNTY, et		
al.,		
Defendants.		

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
TYLER DRUMMOND  
JANUARY 18, 2023

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION of TYLER  
DRUMMOND, produced as a witness at the instance of the  
Plaintiffs, and duly sworn, was taken in the  
above-styled and numbered cause on January 18, 2023,  
from 9:12 a.m. to 5:13 p.m., before Mendy A.  
Schneider, CSR, RPR, in and for the State of Texas,  
recorded by machine shorthand, at the offices of  
GREER, HERZ & ADAMS, 2525 South Shore Boulevard,  
Suite 203, League City, Texas, pursuant to the Texas  
Rules of Civil Procedure and the provisions stated on  
the record or attached hereto; that the deposition  
shall be read and signed.

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A P P E A R A N C E S

FOR THE DEFENDANT:

ANGIE OLALDE  
JOSEPH R. RUSSO, JR.  
JORDAN RASCHKE ELTON  
GREER, HERZ & ADAMS  
2525 South Shore Blvd., Suite 203  
League City, Texas 77573  
281.480.5278  
jrusso@greerherz.com

FOR THE NAACP:

RICHARD MANCINO (Real-time)  
KATHRYN GARRETT (Real-time)  
DIANA C. VALL-LLOBERA (Remote and real-time)  
ANDREW SILBERSTEIN (Remote)  
MOLLY ZHU (Real-time)  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, New York 10019-6099  
212.728.8243  
Rmancino@willkie.com  
SARAH CHEN (Real-time)  
JOAQUIN GONZALEZ (Remote)  
TEXAS CIVIL RIGHTS PROJECT  
PO Box 17757  
Austin, Texas 78760  
schen@texascivilrightsproject.org

ADRIANNE SPOTO (Remote)  
AMERICANS FOR SEPARATION FROM CHURCH AND STATE  
1310 L Street NW, Suite 200  
Washington, DC 20005  
202.466.3234  
Americansunited@au.org

FOR TYLER DRUMMOND:

MATEO FORERO (Remote)  
HOLTZMAN VOGEL  
2300 N Street NW, Suite 643A  
Washington, DC 20037  
202.737.8808  
mforero@holtzmanvogel.com

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A P P E A R A N C E S (CONTINUED)

FOR THE DEPARTMENT OF JUSTICE:

THARUNI A. JAYARAMAN (Real-time)  
CATHERINE MEZA (Real-time)  
BRUCE GEAR (Remote)  
US DEPT OF JUSTICE  
950 Pennsylvania Avenue NW  
Washington, DC 20530  
202.305.5194  
Tharuni.jayaraman@usdoj.gov

ZACHARY NEWKIRK (Remote)  
PERKINS COIE  
700 13th Street, NW, Suite 800  
Washington, D.C. 20005  
202.654.6200

FOR PLAINTIFF HONORABLE TERRY PETTEWAY:

VERONICA RICHARDSON  
MARK GABER  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, DC 20005  
202.736.2200  
Mgaber@campaignlegal.org  
Vrichardson@campaignlegal.org

ALSO PRESENT:

DANIEL ALPIZAR, Videographer  
BRITTANY WAKE  
DAWUAN NORWOOD

1 A. Correct.

2 Q. Okay. Now, I don't want to get into -- well,  
3 was this a -- a -- a -- a phone call to discuss  
4 whether Mr. Oldham should be retained or could be  
5 retained in connection with the redistricting process?

6 A. I can't recall the -- if this happened after  
7 that e-mail with Paul Ready that he copied me on or  
8 not.

9 Q. Yeah.

10 A. Did it?

11 Q. I believe so, yes.

12 A. Yes. This would have been in follow-up to  
13 discuss whatever Paul Ready and Dale Oldham had been  
14 working out from this e-mail that you showed me  
15 previously.

16 Q. Okay. Was there a discussion on that phone  
17 call of what services Mr. Oldham would provide?

18 A. I believe so.

19 Q. Okay. Do you recall what services Mr. Oldham  
20 said he could provide?

21 A. Not specifically, outside of retaining him  
22 for the redistricting. Like specific services I can't  
23 recall.

24 Q. Okay.

25 A. Yeah.

1 Q. Was there a discussion of price?

2 A. Possibly. I can't recall the specifics. It  
3 was two year -- two years ago, over two years ago, so  
4 it could have.

5 Q. Okay. Did Judge Henry have anything to say  
6 on this call?

7 For example, did he -- did he explain to  
8 Mr. Oldham what he was looking for through having  
9 Oldham work on the redistricting process?

10 A. Possibly. I don't recall the specifics in  
11 the conversation.

12 Q. Okay. Do you recall a discussion on this  
13 call of Precinct 3?

14 MS. OLALDE: Objection to the extent  
15 that this request would reveal attorney-client  
16 privileged data or information, communications with  
17 Mr. Oldham, and instruct the witness not to answer to  
18 that extent. Otherwise, you can answer.

19 Q. (BY MR. MANCINO) Can you figure that out?  
20 Can you answer?

21 A. You asked if I recall if Precinct 3 was  
22 brought up?

23 Q. Yeah.

24 A. Was that your question?

25 Q. Yeah.

1 A. No, I can't recall.

2 Q. Okay. Was the Bolivar Peninsula a topic that  
3 came up?

4 MS. OLALDE: Object --

5 Q. (BY MR. MANCINO) And I don't know what, you  
6 know, may have been said about it.

7 A. Yeah.

8 Q. Just the topic.

9 A. Sure.

10 MS. OLALDE: And, again, I'm going to  
11 object to the specifics of conversations with  
12 Mr. Oldham on the basis of attorney-client privilege  
13 and instruct the witness not to answer to the extent  
14 that your answer would contain any communications that  
15 occurred. Otherwise, you can answer.

16 MS. VALL-LLOBERA: Petteway plaintiffs  
17 would like to preserve our prior objections to any  
18 communications related to Dale Oldham as those issues  
19 before the court, we would just like to --

20 (Discussion off the record.)

21 MS. VALL-LLOBERA: Petteway plaintiffs  
22 would like to preserve our prior objection to this  
23 privilege claim just based on prior decisions  
24 currently before the court regarding Dale Oldham's  
25 attorney-client privilege status, so...

1 MS. MEZA: And the United States joins  
2 in that preservation of objection.

3 MR. MANCINO: Okay. Let's look at  
4 Tab 12.

5 (Marked Drummond Exhibit No. 8.)

6 (Discussion off the record.)

7 Q. (BY MR. MANCINO) Okay. Tab 12 is now going  
8 to be Exhibit 8.

9 (Discussion off the record.)

10 Q. (BY MR. MANCINO) And it's an e-mail from Paul  
11 Ready to an e-mail address dloesq, I believe, at  
12 aol.com. And from other information, we've learned  
13 that that's Dale -- I'll represent that that's Dale  
14 Oldham's e-mail address.

15 And it's a chain of e-mails, is it not,  
16 Mr. Drummond?

17 A. It appears, yes.

18 Q. Okay. And you're on these e-mails at  
19 least --

20 A. Some.

21 Q. -- at some point in the chain?

22 A. Yes. I'm copied on some of the e-mails in  
23 this chain.

24 Q. Okay. What was -- what was -- what was this  
25 e-mail chain concerning itself with as it relates to

1 retention of the Holtzman firm would be considered  
2 didn't make into the public record?

3 A. I'm sorry, rephrase the question.

4 Q. Yes.

5 Did you ever hear or learn that the --  
6 the Holtzman's engagement letter and this other  
7 documentation, which was backup for the agenda item  
8 for the Commissioner Court to consider retaining this  
9 firm didn't make it into the public record?

10 A. I don't -- I don't recall.

11 Q. Okay. Do you -- do you recall forwarding  
12 this same documentation to Mr. Ferguson who made a  
13 request for it?

14 A. I don't recall off the top of my head that I  
15 did.

16 Q. Okay. All right. Let me just -- we touched  
17 on this before, and by "this," I mean your  
18 communications with Dale Oldham. And I just want to  
19 make a record of -- ask you some questions about  
20 topics that you may have discussed with Mr. Oldham --  
21 Oldham, okay.

22 So Mr. Oldham was retained by the County  
23 to assist with the redistricting process?

24 A. Yes.

25 Q. And you had communications with him from time

1 to time?

2 A. Yes.

3 Q. Including telephone conversations?

4 A. Yes.

5 Q. Okay. In -- in any of your discussions with  
6 Mr. Oldham, did you discuss a topic like the  
7 redistricting criteria to be applied in drawing new  
8 maps for Galveston County?

9 MS. OLALDE: I'm going to object to any  
10 communications that would have occurred with  
11 Mr. Oldham that contain, you know, privileged  
12 information.

13 So to the extent you had a conversation  
14 with Mr. Oldham that delved into substantive issues  
15 like counsel has asked about, I'm going to instruct  
16 you not to answer. Otherwise, you can answer.

17 MS. RICHARDSON: Petteway plaintiffs are  
18 going to reserve, again, their objection to that --  
19 the substance of that privilege claim.

20 MS. MEZA: And the United States joins  
21 in that reservation.

22 MR. MANCINO: And me too.

23 A. Can you restate that question --

24 Q. (BY MR. MANCINO) Sure.

25 A. -- before the objection?

1 Q. In -- in -- in any of your communications  
2 with Mr. Oldham, concerning the redistricting work  
3 that he was performing, did you discuss what  
4 redistricting criteria, if any, he was using?

5 MS. OLALDE: Same objection.

6 A. Not that I can recall.

7 Q. (BY MR. MANCINO) Okay. Did you discuss with  
8 Mr. Oldham any population analyses he might have run?

9 MS. OLALDE: I'm going to object. It's  
10 the same basis for the objection, counsel. Would you  
11 like to repeat everything out, or can we just say  
12 same? Is that cool with you?

13 MR. MANCINO: Yeah, that's fine.

14 MS. OLALDE: Same instruction as well.

15 MS. RICHARDSON: Same reservation.

16 A. Again, not that I can recall.

17 Q. (BY MR. MANCINO) In any of these  
18 communications -- strike that.

19 When you were talking with Mr. Oldham, there  
20 were occasions when other -- others were present on  
21 the call?

22 A. Yes.

23 Q. Okay. In any of those conversations, was  
24 there a discussion about whether and how Mr. Oldham  
25 would pull population out of benchmark Precinct 3 and

1 split it up among Precincts 1, 2 and 4?

2 MS. OLALDE: Same First Amendment --  
3 sorry, same attorney-client privileged objection.

4 And same instruction.

5 A. Yeah, not that I can recall.

6 Q. (BY MR. MANCINO) Did you discuss with  
7 Mr. Oldham, or overhear discussions between Mr. Oldham  
8 and somebody else, about whether he did an analysis of  
9 black voting age population and Latin voting age  
10 population in Precinct 3?

11 MS. OLALDE: Same objection based on  
12 attorney-client privilege; also work product.

13 And same instruction.

14 MR. MANCINO: Okay.

15 A. Not that I can recall.

16 Q. (BY MR. MANCINO) Okay. Now, thinking back to  
17 what we've covered today, including your interaction  
18 with Commissioner Holmes at a time when he was  
19 commissioner -- well, strike that.

20 Having in mind our prior discussion about  
21 Precinct 3, the benchmark Precinct 3, were you aware  
22 that Precinct 3, again before the adoption of this new  
23 map, had a substantial black and Latino population?

24 A. Yes.

25 Q. And were you aware that the voters, including

# DEFENDANTS' EXHIBIT 1



HOLTZMAN  
VOGEL  
JOSEFIK  
TORCHINSKY PLLC

2300 N Street, NW, Suite 643A  
Washington, DC 20037  
202-737-8808

15405 John Marshall Hwy  
Haymarket, VA 20169  
540-341-8808

January 20, 2021

**VIA EMAIL**

[paul@ready.law](mailto:paul@ready.law)

Galveston County, Texas  
c/o Paul Ready  
Ready Law Firm, PLLC  
1300 McGowen Street  
Suite 120  
Houston, TX 77004

Re: Holtzman Vogel Josefiak Torchinsky PLLC Engagement Letter

Dear Mr. Ready:

We are very pleased to provide legal services to you and to provide this engagement letter which will set forth the current fee arrangement and terms under which Holtzman Vogel Josefiak Torchinsky, PLLC (“Counsel” or the “Firm”) will represent Galveston County, Texas (“Client”) in connection with legal advice relating to the creation of the Galveston County Commission map.

Specifically, the Firm has been engaged to provide legal representation and advice regarding redistricting in Galveston County, Texas, including provision of a technical expert to draw the map. The firm will be associated with Dale Oldham, P.C. in representation on this matter.

The terms of our engagement, which shall apply to all matters pertaining to this engagement and the relationship between Client and the Firm, are set forth on the following pages. If you approve of the terms, please execute this agreement in the space provided and return it to my office.

At this time, our Texas Bar attorney Phil Gordon (Of Counsel at HVJT), assisted by Dale Oldham and Jason Torchinsky will be primarily responsible for overseeing representation and will serve as your principal contacts with respect to this engagement. Other partners, associates and professional staff will also be engaged to assist as may be appropriate. Please contact us with any questions or concerns that you may have about our work or any other aspect of our representation.

We look forward to working with you and appreciate your confidence in our firm.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Holtzman Vogel", with a long horizontal flourish extending to the right.

Jill Holtzman Vogel

### Commencement of Representation

To protect both Client and Counsel, this agreement will not take effect until Client returns a signed copy of this Agreement.

### Legal Fees

Counsel is charging Client a flat fee of Eighty Thousand Dollars (\$80,000) plus any authorized expenses for which Counsel will provide the representation set forth above. This one-time flat fee is to be paid on the following schedule:

- \$10,000 upon execution of this engagement letter;
- \$15,000 per month beginning the month the Texas PL 94 data is released for each of 4 months;
- \$10,000 upon adoption of the maps.

Any additional legal work outside the scope of the representation set forth above will be charged at Counsel's usual and customary hourly fees, including legal fees and expenses to be charged for any litigation over the maps. Hourly fees range from \$350 per hour for junior associates to \$1,300 for senior partners (billed in .25 hour increments). Billable rates are established by the rate for services as measured by the local Washington-area market. Our statements for professional services will be based upon the amount of time spent by partners, associates, paralegals, and other professionals who perform services on your behalf and their respective hourly rates as then in effect

### Costs and Expenses

Counsel will bill separately for any out-of-pocket expenses arising out of this agreement, including costs and expenses incurred for computer research, delivery charges, agency costs and filing fees.

### Client Discharge or Counsel Withdrawal

Client may discharge Counsel at any time and Counsel may withdraw at any time at Counsel's discretion. In either such circumstance, Client agrees to sign the documents necessary to permit Counsel to withdraw.

Client has been informed that among the events that should be expected to cause Counsel's withdrawal from this matter are Client's breach of any portion of this Agreement (including its payment provisions), Client's refusal to cooperate with Counsel, or to follow Counsel's advice on a material matter, or any other fact or circumstance that would render Counsel's continuing representation unlawful, unethical, or impractical.

#### Disclaimer of Guarantee

Nothing in this Agreement and nothing in Counsel's statements to Client will be construed as a promise or guarantee regarding any outcome in Client's legal matters.

No advice is given regarding tax consequences, and Counsel specifically is not providing tax advice, although questions relating to tax matters may very well come up during the course of representation. Client agrees to seek tax advice elsewhere, and to hold Counsel harmless from any tax effects.

#### Effective Date and Severability

This agreement will take effect when Client has performed the conditions stated in paragraph one, but its effective date will be retroactive to the date Counsel first provided services, if earlier. Even if this Agreement does not take effect, Client will be obligated to pay Counsel the reasonable value of any services Counsel may have performed for Client.

The provision of this Agreement is severable. This means that if one or more provisions of this Agreement are found to be void or unenforceable for any reason, the remaining provisions of this Agreement will still apply.

#### Scope of Client Engagement

Unless otherwise noted, the client for purposes of this representation is the Client , and not any affiliates of such person or entity.

Counsel represents many other companies and individuals in a variety of matters. It is possible that during the course of the representation, other present or future clients will have disputes with you. As a condition to undertaking the current representation, it is agreed that Counsel may continue to represent or in the future undertake to represent existing or new clients in matters not substantially related to the current representation, even if the interests of such other clients are directly adverse to your interests. This consent shall not apply in the event that during the course of representation Counsel has obtained sensitive, proprietary, or other confidential information, of a non-public nature, that could be used to the advantage of such other client or to your disadvantage in any matter for which Counsel is approached for representation by that client.

#### Termination of Representation

Client has the right at any time to terminate representation upon notice to Counsel. Such termination does not, however, relieve Client of the obligation to pay for all services rendered and expenses paid or incurred on behalf of the client prior to or in connection with such termination.

#### Conclusion of Representation

The Counsel-client relationship is terminated upon completion of the services that Counsel has been retained to perform. If Counsel is later retained to perform further or additional services, the Counsel-client relationship will be revived subject to these terms of engagement, as they may be supplemented or changed at that time.

Agreed to and Accepted:

Name: Galveston County, Texas

By:   
**Mark Henry, County Judge**

Date: April 5, 2021

**DEFENDANTS'  
EXHIBIT 2**

Questions to County Employees:	Commissioner APFFEL	Commissioner GIUSTI	Nathan Sigler	Commissioner Henry
<p>1. In your phone conference(s) with Mr. Oldham, what steps were identified that would be taken to undergo the redistricting process? E.g., Ex. 2 Apffel Dep. 133:22 - 134:16; Ex. 3 Giusti Dep. 60:14-16.</p>	<p>Apffel 133:22 - 134:17</p> <p><b>Page 133</b>                      22 Q. (BY MS. VALL-LLOBERA) Did you identify                      23 deadlines by which redistricting had to occur?                      24 A. We knew that it had to have --                      25 MR. RUSSO: Let me just interpose</p> <p><b>Page 134</b>                      1 the objection.                      2 On attorney-client privilege                      3 grounds, in terms of, you know, the -- what the                      4 process -- what or -- what you were doing, is --                      5 has already been stated, frankly, on the record.                      6 But just be very careful here about                      7 revealing conversations between counsel and the                      8 county, related to the redistricting effort.                      9 Other than that, you can answer,                      10 which is a very fine line.                      11 A. My understanding was that we were behind,                      12 because the census data had taken so long to come                      13 out, and that we needed to finish by the end of the                      14 year.                      15 And so, that timeline was established, just                      16 because of my understanding. That's the only                      17 timeline we knew -- I knew of.</p>	<p>Giusti Dep. 60:14-61:6</p> <p><b>Page 60</b>                      14 Q. Can you explain what, if any, guidelines for                      15 the 2021 redistricting process were discussed amongst                      16 the commissioners?                      17 MS. OLALDE: Objection to the extent your                      18 question calls for any response that would reveal                      19 discussions with Mr. Oldham or in executive session.                      20 Otherwise you can answer.                      21 MR. GEAR: Again, we reserve the -- our                      22 right to raise the argument that attorney-client                      23 privilege does not apply to Mr. Oldham.                      24 Q. (By Mr. Gear) But if you can answer --                      25 A. That I don't recall.</p> <p><b>Page 61</b>                      1 Q. So just to be clear, your answer has been you                      2 don't recall if any guidelines were reduced to writing.                      3 Does that mean they weren't reduced to writing?                      4 MS. OLALDE: Objection; asked and                      5 answered.                      6 THE WITNESS: It means I don't recall.</p>		
<p>2. Did Mr. Oldham talk to you about redistricting criteria? What redistricting criteria were identified in your conversation(s) with Mr. Oldham? E.g., Ex. 2 Apffel Dep. 135:4-136:4, 139:3-7; Ex. 3 Giusti Dep. 52:14-15, 296:15-18.</p>	<p>Apffel Dep. 135:4-139:2</p> <p><b>Page 135</b>                      4 Q. Did Mr. Oldham talk to you about                      5 redistricting criteria?                      6 MR. RUSSO: Objection. Don't --                      7 objection, based on privilege, and instruct the                      8 witness not to answer.                      9 MS. VALL-LLOBERA: And we'll reserve                      10 our arguments that these conversations are not                      11 privileged.                      12 MR. RUSSO: The objection is on the                      13 record.                      14 MS. VALL-LLOBERA: We'll have                      15 several of these questions. Would you be amenable                      16 to stipulating that you object and we'll preserve                      17 our arguments, without reiterating our full                      18 arguments?                      19 MR. RUSSO: Without you re --                      20 reiterating your arguments? I mean, I -- my                      21 objection stands. Whether you argue against it or                      22 not, doesn't matter.                      23 I mean, if you want to ask all the                      24 questions, I'll pose the objection as -- as                      25 necessary. I -- I understand you don't agree with</p>	<p>Giusti Dep. 52:14-53:4, 296:15-297:12 (see below)</p> <p><b>Page 52</b>                      14 Q. Do you recall what was discussed related to                      15 redistricting criteria?                      16 MS. OLALDE: Objection, same instruction                      17 to the witness not to reveal any attorney-client                      18 privileged communications or work product.                      19 MR. GEAR: And, again, we reserve the --                      20 our argument that attorney-client privilege is not --                      21 does not apply to Dale Oldham.                      22 Q. (By Mr. Gear) So following the September                      23 meeting with yourself, Mr. Ready, and Mr. Oldham, did                      24 you have any discussions with commissioners related to                      25 redistricting criteria?</p> <p><b>Page 53</b>                      1 A. I don't recall, sir.                      2 Q. Based on your understanding, was there a                      3 decision made to establish redistricting criteria?                      4 A. I don't recall that either.</p>		
	<p><b>Page 136</b>                      1 our position, but I don't -- you know, it's                      2 deposition procedure. I just need to make sure I                      3 maintain my -- and preserve the objections for the                      4 record.                      5 Q. (BY MS. VALL-LLOBERA) Did -- without                      6 revealing the substance of any conversations with                      7 counsel, as we sit here today, what is your                      8 understanding of traditional redistricting                      9 criteria?                      10 A. The county grows by people. The precincts                      11 become imbalanced by people. And we are required                      12 to continually balance the representation of the                      13 people.                      14 Q. Specifically, how do you have to rebalance                      15 the populations?                      16 A. In my simple little way --                      17 MR. RUSSO: Let me object -- just                      18 let me interpose -- interpose the objection on                      19 attorney-client privilege grounds. And you've                      20 heard the basis before.                      21 So don't reveal conversations or                      22 information you've learned from Dale, related to                      23 the redistricting effort.                      24 A. Well, my simple understanding is to -- to                      25 redraw the lines to balance the population, to be</p>			

Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
	<p>Page 137</p> <p>1 within compliance with the law.</p> <p>2 Q. (BY MS. VALL-LLOBERA) Is the only criteria</p> <p>3 for redistricting that the numbers line up?</p> <p>4 A. I don't know.</p> <p>5 Q. You've stated that the imbalances needed to</p> <p>6 be corrected, based on population shifts.</p> <p>7 What -- do you need to consider anything</p> <p>8 other than population numbers, in redrawing maps?</p> <p>9 A. I don't --</p> <p>10 MR. RUSSO: Same objection on</p> <p>11 attorney-client privilege grounds.</p> <p>12 To the extent you can answer without</p> <p>13 revealing conversations between the county, you,</p> <p>14 and any of your counsel, you can answer.</p> <p>15 MS. VALL-LLOBERA: And we</p> <p>16 preserve --</p> <p>17 A. I trust that the people we hired to do the</p> <p>18 job, do it in compliance with the law.</p> <p>19 Q. (BY MS. VALL-LLOBERA) Are there any other</p> <p>20 factors considered in drawing the maps?</p> <p>21 A. I don't know.</p> <p>22 Q. Earlier, you stated that you were looking</p> <p>23 to -- to cut Bolivar.</p> <p>24 Was that a factor that you were considering</p> <p>25 in redrawing the maps?</p>			
	<p>Page 138</p> <p>1 A. No, I wasn't looking to cut Bolivar. I</p> <p>2 wasn't looking to cut anyone. I was understanding</p> <p>3 that in order to balance the -- the four precincts,</p> <p>4 that I would have to give up something and give it</p> <p>5 to someone else, to -- to make that -- to</p> <p>6 accomplish that.</p> <p>7 And so, that's -- that's what I understood.</p> <p>8 Q. When looking at what areas you could peel</p> <p>9 off of your district, what factors did you</p> <p>10 consider?</p> <p>11 A. I've told you, that made sense to me. And</p> <p>12 part of that analysis, in -- the -- the Excel</p> <p>13 spreadsheet, I was trying to see how many -- I was</p> <p>14 trying to see the numbers by the voting precincts</p> <p>15 to say, okay, we can give up this -- 103 and 104,</p> <p>16 because I have to -- for a 20-minute meeting in</p> <p>17 by -- in High Island, I have to drive four hours,</p> <p>18 because of the ferry, the geographical split</p> <p>19 between the -- the island and the peninsula.</p> <p>20 But -- so, it was -- I was thinking, okay,</p> <p>21 this -- this is what makes sense. If I've got to</p> <p>22 give something up, I'll give up this.</p> <p>23 Q. Did you consider any other factors?</p> <p>24 A. I wasn't --</p> <p>25 MR. RUSSO: Object as vague.</p>			
	<p>Page 139</p> <p>1 A. -- considering factors. I was just looking</p> <p>2 at numbers.</p>			
<p>3. What is your understanding of traditional redistricting criteria, based on your conversation with Mr. Oldham? E.g., Ex. 2 Apffel Dep. 139:3-7; Ex. 3 Giusti Dep. 296:15-18.</p>	<p>Apffel Dep. 139:3-20</p> <p>3 Q. (BY MS. VALL-LLOBERA) Did Mr. Oldham</p> <p>4 discuss any factors?</p> <p>5 MR. RUSSO: Objection.</p> <p>6 I'll instruct the witness not to</p> <p>7 answer, based upon attorney-client privilege.</p> <p>8 Q. (BY MS. VALL-LLOBERA) If a constituent</p> <p>9 asked you about the redistricting process and asked</p> <p>10 what kind of things you were thinking about in</p> <p>11 redrawing the maps, what would you have said --</p> <p>12 what would you say?</p> <p>13 A. I would say our county grew by whatever</p> <p>14 number, 80,000 people, whatever the number was. I</p> <p>15 don't remember the number.</p> <p>16 And the law requires us to balance the</p> <p>17 precincts, based on that population, and we've</p> <p>18 hired a law firm and a demographer to -- to do that</p> <p>19 for us the best way possible to be within the</p> <p>20 bounds of the law.</p>	<p>Giusti Dep. 296:15-297:12</p> <p>Page 296</p> <p>15 Q. Did -- during your calls -- during your calls</p> <p>16 with the other commissioners, did you ever discuss</p> <p>17 traditional redistricting -- what traditional</p> <p>18 redistricting criteria were?</p> <p>19 MS. OLALDE: Objection; asked and</p> <p>20 answered. I'm going to instruct the witness not to</p> <p>21 answer to the extent any conversations took place</p> <p>22 before -- or with Mr. Dale Oldham on the basis of</p> <p>23 attorney-client privilege and also attorney work</p> <p>24 product.</p> <p>25 But to the extent your answer does not</p> <p>Page 297</p> <p>1 incorporate those communications you may answer.</p> <p>2 THE WITNESS: With the other</p> <p>3 commissioners, I do not recall that.</p> <p>4 Q. (By Mr. Silberstein) As you sit right here</p> <p>5 today, can you name any traditional redistricting</p> <p>6 criteria?</p> <p>7 MS. OLALDE: Objection; asked and</p> <p>8 answered.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: The population, the idea of</p> <p>11 trying to make the precinct lines understandable by the</p> <p>12 public. That's the majority of it.</p>		

Questions to County Employees:	Commissioner APFFEL	Commissioner GIUSTI	Nathan Sigler	Commissioner Henry
<p>4. What do you need to consider when drawing the maps? E.g., Ex. 2 Apffel Dep. 137:7-138:18.</p>	<p>Apffel Dep. 137:5-138:18</p> <p>5 Q. You've stated that the imbalances needed to be corrected, based on population shifts.</p> <p>7 What -- do you need to consider anything other than population numbers, in redrawing maps?</p> <p>9 A. I don't --</p> <p>10 MR. RUSSO: Same objection on attorney-client privilege grounds.</p> <p>12 To the extent you can answer without revealing conversations between the county, you, and any of your counsel, you can answer.</p> <p>15 MS. VALL-LLOBERA: And we preserve --</p> <p>17 A. I trust that the people we hired to do the job, do it in compliance with the law.</p> <p>See also response to Question 2</p>			
<p>5. Did Mr. Oldham discuss any factors to consider during the redistricting process with you? E.g., Ex. 2 Apffel Dep. 139:3-7.</p>	<p>Apffel Dep. 139:3-20</p> <p>3 Q. (BY MS. VALL-LLOBERA) Did Mr. Oldham discuss any factors?</p> <p>5 MR. RUSSO: Objection.</p> <p>6 I'll instruct the witness not to answer, based upon attorney-client privilege.</p> <p>8 Q. (BY MS. VALL-LLOBERA) If a constituent asked you about the redistricting process and asked what kind of things you were thinking about in redrawing the maps, what would you have said -- what would you say?</p> <p>13 A. I would say our county grew by whatever number, 80,000 people, whatever the number was.</p> <p>15 don't remember the number.</p> <p>16 And the law requires us to balance the precincts, based on that population, and we've hired a law firm and a demographer to -- to do that for us the best way possible to be within the bounds of the law.</p>			
<p>6. Did you receive any materials in your meeting(s) with Mr. Oldham? What materials did you receive? E.g., Ex. 3 Giusti Dep. 50:23-24, 302:1-4.</p>		<p>Giusti Dep. 50:23-52:13, 302:1-25</p> <p>Page 50</p> <p>23 Q. And did you receive any materials during that meeting related to redistricting criteria?</p> <p>25 MS. OLALDE: I'm going to object to any</p> <p>Page 51</p> <p>1 request for attorney-client privileged communications or attorney-client privileged work product. To the extent you're asking about facts, the witness can answer.</p> <p>5 But otherwise I will instruct you not to answer.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. GEAR: And we will reserve our arguments that we do not believe that attorney-client privilege applies to Dale Oldham as the redistricting consultant.</p> <p>12 MS. OLALDE: He's an attorney, but yes.</p> <p>13 MS. CHEN: And if you'd like to see -- we sent a letter yesterday to Joseph Russo --</p> <p>15 THE REPORTER: I can't hear whoever is talking right now.</p> <p>17 MS. CHEN: Sarah Chen. And I'm just noting that we sent a letter with piecemeal on this privilege point to Joseph Russo yesterday. If you would like to see it, we're happy to send it to you as well.</p> <p>Page 51 (cont)</p> <p>22 MS. OLALDE: Thank you, Sarah. I think this is probably something that the court needs to resolve at this point, though. I do understand that you sent a letter.</p> <p>Page 52</p> <p>1 Q. (By Mr. Gear) So did you receive any written materials related to criteria during the September 3 meeting?</p> <p>4 MS. OLALDE: Objection to any</p>		
		<p>Page 51 (cont)</p> <p>22 MS. OLALDE: Thank you, Sarah. I think this is probably something that the court needs to resolve at this point, though. I do understand that you sent a letter.</p> <p>Page 52</p> <p>1 Q. (By Mr. Gear) So did you receive any written materials related to criteria during the September 3 meeting?</p> <p>4 MS. OLALDE: Objection to any attorney-client privileged communications or attorney-client -- attorney work product that may have been addressed or discussed during this meeting.</p> <p>8 If you're looking only at facts, you may answer only to the extent you have particular facts to share but not communications.</p> <p>11 Q. (By Mr. Gear) So the question is did you receive any materials.</p> <p>13 A. I -- probably. I don't recall what.</p>		

Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
		<p><b>Page 302</b></p> <p>1 Q. (By Mr. Silberstein) In the -- in the 2021</p> <p>2 redistricting process, did you receive racial</p> <p>3 demographic information from Mr. Oldham or any other</p> <p>4 redistricting counsel?</p> <p>5 MS. OLALDE: Same objection and same</p> <p>6 instruction, which is attorney-client privilege,</p> <p>7 attorney work product, and instructing the witness not</p> <p>8 to answer.</p> <p>9 Q. (By Mr. Silberstein) Did you receive racial</p> <p>10 demographic info from Paul Ready?</p> <p>11 MS. OLALDE: I am going to instruct the</p> <p>12 witness not to answer as to communications with counsel</p> <p>13 for the county on the basis of attorney work product</p> <p>14 and also attorney-client privilege.</p> <p>15 I instruct you not to answer.</p> <p>16 Q. (By Mr. Silberstein) Did you receive any</p> <p>17 racial demographic information from Nathan Sigler?</p> <p>18 A. Not that I recall. I mean, no. I mean, I</p> <p>19 don't think so.</p> <p>20 Q. How about from another member of commissioners</p> <p>21 court or any of their staff?</p> <p>22 A. No.</p> <p>23 Q. You never received racial demographic</p> <p>24 information from anybody?</p> <p>25 A. Not that I recall.</p>		
<p>7. In your meeting(s) with Mr. Oldham, did you discuss the Voting Rights Act? E.g., Ex. 2 Apffel Dep. 140:2-15.</p>	<p>Apffel Dep. 139:21 - 140:15</p> <p><b>Page 139</b></p> <p>21 Q. Did you discuss the Voting Rights Act?</p> <p>22 A. Never.</p> <p>23 MR. RUSSO: Objection.</p> <p>24 What -- what are you talking about?</p> <p>25 Are you talking about a meeting with -- who are --</p> <p><b>Page 140</b></p> <p>2 Q. (BY MS. VALL-LLOBERA) Referring still to</p> <p>3 the September 8, 2021, meeting, and your other</p> <p>4 meeting with Mr. Oldham, the in-person conference,</p> <p>5 did you discuss the Voting Rights Act?</p> <p>6 MR. RUSSO: I'm going to object to</p> <p>7 that and instruct the witness not to answer based</p> <p>8 upon attorney-client privilege.</p> <p>9 MS. VALL-LLOBERA: We'll preserve</p> <p>10 our arguments that these are not protected</p> <p>11 communications.</p> <p>12 A. And for clarification, when I said never, it</p> <p>13 was because I thought you were talking about</p> <p>14 constituents still. I didn't have those</p> <p>15 conversations.</p>			
<p>8. In your meeting(s) with Mr. Oldham, did you discuss the U.S. Constitution? E.g., Ex. 2 Apffel Dep. 140:16-22; Ex. 3 Giusti Dep. 297:13-16.</p>	<p>Apffel Dep. 140:2 - 141:8</p> <p>2 Q. (BY MS. VALL-LLOBERA) Referring still to</p> <p>3 the September 8, 2021, meeting, and your other</p> <p>4 meeting with Mr. Oldham, the in-person conference,</p> <p>5 did you discuss the Voting Rights Act?</p> <p>6 MR. RUSSO: I'm going to object to</p> <p>7 that and instruct the witness not to answer based</p> <p>8 upon attorney-client privilege.</p> <p>9 MS. VALL-LLOBERA: We'll preserve</p> <p>10 our arguments that these are not protected</p> <p>11 communications.</p> <p>12 A. And for clarification, when I said never, it</p> <p>13 was because I thought you were talking about</p> <p>14 constituents still. I didn't have those</p> <p>15 conversations.</p> <p>16 Q. (BY MS. VALL-LLOBERA) Did you discuss the</p> <p>17 U.S. Constitution?</p> <p>18 MR. RUSSO: Objection. Instruct the</p> <p>19 witness not to answer, based on attorney-client</p> <p>20 privilege.</p> <p>21 MS. VALL-LLOBERA: And we preserve</p> <p>22 our arguments.</p> <p>23 Q. (BY MS. VALL-LLOBERA) Without revealing the</p> <p>24 substance -- without -- without revealing the</p> <p>25 substance of any conversations with counsel, as we</p>			
	<p>Page 141</p> <p>1 sit here today, what is your understanding of the</p> <p>2 Voting Rights Act?</p> <p>3 A. I've answered that twice.</p> <p>4 Q. Without revealing the substance of any</p> <p>5 conversations with counsel, as we sit here today,</p> <p>6 what is your understanding of the requirements of</p> <p>7 the U.S. Constitution with regard to redistricting?</p> <p>8 A. I don't know.</p>			

Questions to County Employees:	Commissioner APFFEL	Commissioner GIUSTI	Nathan Sigler	Commissioner Henry
<p>9. In your meeting(s) with Mr. Oldham, did you discuss any policy objectives for redistricting? What policy objectives did you discuss? E.g., Ex. 2 Apffel Dep. 141:9-16; Ex. 3 Giusti Dep 297:23-298:1, 298:11-13.</p>	<p>Apffel Dep. 141:9-19</p> <p>9 Q. Did you discuss policy objectives with Mr. Oldham?</p> <p>10 Mr. Oldham?</p> <p>11 MR. RUSSO: Same objection,</p> <p>12 attorney-client privilege, instruct the witness not to answer.</p> <p>13 to answer.</p> <p>14 MS. VALL-LLOBERA: And we preserve</p> <p>15 our arguments that these are not privileged</p> <p>16 communications.</p> <p>17 Q. (BY MS. VALL-LLOBERA) Did you discuss</p> <p>18 policy objectives with the other commissioners?</p> <p>19 A. No.</p>	<p>Giusti Dep 297:23-299:11</p> <p><b>Page 297</b></p> <p>23 Q. (By Mr. Silberstein) In the September call</p> <p>24 with Mr. Oldham and the other commissioners and in your</p> <p>25 October meeting with Mr. Holmes, did you discuss policy</p> <p><b>Page 298</b></p> <p>1 objectives? If so, what were those objectives?</p> <p>2 MS. OLALDE: I'm objecting as to</p> <p>3 compound. I'm also objecting to a request for</p> <p>4 attorney-client privileged communications and attorney</p> <p>5 work product and instructing the witness not to answer</p> <p>6 with respect to communications in meetings with</p> <p>7 Mr. Oldham, privileged communications in meetings with</p> <p>8 Mr. Oldham.</p> <p>9 MR. SILBERSTEIN: We will reserve our</p> <p>10 arguments. These are not privileged communications.</p> <p>11 Q. (By Mr. Silberstein) In the -- in the two</p> <p>12 meetings we've been discussing did you discuss</p> <p>13 political objectives?</p> <p>14 MS. OLALDE: I'm going to object on the</p> <p>15 basis of attorney-client privilege, attorney work</p> <p>16 product, and instruct the witness not to answer with</p>		
		<p><b>Page 298 (cont)</b></p> <p>17 respect to communications -- privileged communications</p> <p>18 that took place with Mr. Oldham about redistricting.</p> <p>19 Q. (By Mr. Silberstein) Can you extend -- can</p> <p>20 you answer to the extent not privileged the objectives</p> <p>21 that you discussed with the other commissioners about</p> <p>22 the 2021 redistricting?</p> <p>23 MS. OLALDE: Just to be clear for the</p> <p>24 record, you're asking about anything that did not take</p> <p>25 place in the meeting with Dale Oldham?</p> <p><b>page 299</b></p> <p>1 MR. SILBERSTEIN: Anything, whether in or</p> <p>2 out of the meeting, to the extent it is not privileged</p> <p>3 communications with Mr. Oldham.</p> <p>4 MS. OLALDE: Instruct the witness not to</p> <p>5 answer to the extent it's attorney-client privilege or</p> <p>6 discussion of attorney work product in a conversation</p> <p>7 with Mr. Oldham about 2021 redistricting.</p> <p>8 To the extent you had communications that</p> <p>9 were outside of these meetings with Mr. Oldham, you can</p> <p>10 answer.</p> <p>11 <b>THE WITNESS: Not that I recall.</b></p>		
<p>10. In your meeting(s) with Mr. Oldham, did you discuss the need or desire for drawing a coastal precinct? E.g., Ex. 2 Apffel Dep. 142:6-12; Ex. 3 Giusti Dep. 119:22-25, 299:12-14.</p>	<p>Apffel Dep. 142:6-12</p> <p>6 Q. During those two meetings, did you discuss</p> <p>7 the need or desire for a coastal precinct?</p> <p>8 MR. RUSSO: Let me object, and</p> <p>9 instruct the witness not to answer that question,</p> <p>10 based on attorney-client privilege.</p> <p>11 MS. VALL-LLOBERA: And we preserve</p> <p>12 our arguments that these are not privileged.</p> <p>13 Q. (BY MS. VALL-LLOBERA) Did you run an RPV</p> <p>14 analysis -- excuse me.</p> <p>15 Separate from these two meetings, did you</p> <p>16 run an RPV analysis?</p> <p>17 MR. RUSSO: Objection; vague and</p> <p>18 ambiguous.</p> <p>19 A. I don't know what -- I don't understand the</p> <p>20 question.</p> <p>21 Q. (BY MS. VALL-LLOBERA) RPV stands for</p> <p>22 racial -- racially polarized voting.</p> <p>23 Are you familiar with the term, racially</p> <p>24 polarized voting?</p> <p>25 A. I am not.</p>	<p>Giusti Dep. 119:22-120:22, 299:12-300:22</p> <p><b>Page 119</b></p> <p>22 Q. So did you ever have -- during the course of</p> <p>23 the 2021 redistricting process, did you have an</p> <p>24 occasion to speak with Commissioner Holmes regarding</p> <p>25 the creation of a coastal precinct?</p> <p><b>Page 120</b></p> <p>1 MS. OLALDE: I'm sorry. What was the</p> <p>2 time frame? I apologize.</p> <p>3 MR. GEAR: During the 2021 redistricting</p> <p>4 process.</p> <p>5 MS. OLALDE: Okay. And I'm going to</p> <p>6 object to the extent you're -- the substance of your</p> <p>7 question would contain the attorney-client privileged</p> <p>8 communications or work product information.</p> <p>9 Otherwise you may answer.</p> <p>10 Q. (By Mr. Gear) And I want to be clear that --</p> <p>11 being careful to avoid any discussions that may have</p> <p>12 taken place with attorneys, did you have an occasion to</p> <p>13 speak with Mr. Holmes regarding the creation of a</p> <p>14 coastal precinct during the 2021 redistricting process?</p>		
		<p><b>Page 120 (cont)</b></p> <p>15 MS. OLALDE: And the same objection.</p> <p>16 MR. GEAR: And again we will -- I'll</p> <p>17 reserve our claim that the 2021 redistricting process</p> <p>18 and attorney-client privilege does not apply to Dale</p> <p>19 Oldham.</p> <p>20 Q. (By Mr. Gear) But you can answer.</p> <p>21 A. Not that I recall. It would -- had we</p> <p>22 discussed that, it would have been during that --</p> <p><b>Page 299</b></p> <p>12 Q. (By Mr. Silberstein) And in these two</p> <p>13 meetings we've been discussing again, did you discuss</p> <p>14 the need or desire for a coastal precinct?</p> <p>15 MS. OLALDE: Again, same objection and</p> <p>16 instruction.</p> <p>17 Can we -- is it okay if -- will you be</p> <p>18 arguing that we waived anything if I don't talk for --</p> <p>19 okay. Same objection.</p> <p>20 MR. SILBERSTEIN: I am okay with that.</p> <p>21 Yes.</p> <p>22 MS. OLALDE: Same objections. I see --</p> <p>23 for the record, I see nods from all counsel, right?</p> <p>24 Yes. All counsel. Same objection, same instruction.</p> <p>25 MR. SILBERSTEIN: And we're reserving our</p>		



Questions to County Employees:	Commissioner APFFEL	Commissioner GIUSTI	Nathan Sigler	Commissioner Henry
<p>13. Did Mr. Oldham ask you what your ideal map would look like? E.g., Ex. 2 Apffel Dep. 149:3-18; 150:22-151:3; Ex. 3 Giusti Dep. 87:16-19; Ex. 4 Henry Dep. 141:20-143:9.</p>	<p>Ex. 2 Apffel Dep. 149:3-18; 150:22-151:3</p> <p>3 Q. In your communications -- in your meetings</p> <p>4 with Mr. Oldham, did you discuss geographic</p> <p>5 modifications to the maps?</p> <p>6 MR. RUSSO: Again, same objection</p> <p>7 related to attorney-client communications, specific</p> <p>8 to the legal services, and the relationship -- the</p> <p>9 legal services relationship in providing counsel to</p> <p>10 the county.</p> <p>11 A. Can you read me that question one more time,</p> <p>12 please?</p> <p>13 Q. (BY MS. VALL-LLOBERA) In your two meetings</p> <p>14 with Mr. Oldham, did anyone propose geographic</p> <p>15 modifications to the maps, to -- to the existing</p> <p>16 map?</p> <p>17 A. The demographer would -- did, in the -- the</p> <p>18 in-person meeting.</p>	<p>Giusti Dep. 87:16-88:15</p> <p>Page 87</p> <p>16 Q. So during the time -- strike that. So did you</p> <p>17 have an opportunity to present your preferences</p> <p>18 regarding the changes you wanted to see for Precinct 2</p> <p>19 during the 2021 redistricting process?</p> <p>20 MS. OLALDE: Objection. I'm going to</p> <p>21 instruct the witness not to answer with respect to</p> <p>22 conversations that were had with Mr. Oldham.</p> <p>23 Otherwise, you can answer. Based on</p> <p>24 attorney-client privileged work product.</p> <p>25 THE WITNESS: That would have been our</p> <p>Page 88</p> <p>1 conversations.</p> <p>2 Q. (By Mr. Gear) Let me -- let me change the</p> <p>3 frame of that question.</p> <p>4 What preferences did you want to see --</p> <p>5 what changes did you want to see to Precinct 2 during</p> <p>6 the 2021 redistricting process?</p> <p>7 A. Me personally, there were a couple of things.</p>		<p>Henry Dep. 145:10-19 (141:20-143:9)</p> <p>10 Q. (BY MS. KLEIN) So putting aside Mr. Oldham, at</p> <p>11 the -- when you -- at the beginning of this process,</p> <p>12 right, in April when you were retaining counsel, what</p> <p>13 were your own desires -- other than just a legal map,</p> <p>14 your own desires for how the commissioners' precinct map</p> <p>15 would look?</p> <p>16 A. The thing that I had -- it wasn't just in</p> <p>17 April. It was for many years before that I thought the</p> <p>18 county would benefit greatly from having one coastal</p> <p>19 precinct.</p>
		<p>Page 88 (cont)</p> <p>8 One was to level out the population amongst the</p> <p>9 precincts. Two was probably to, as I mentioned</p> <p>10 earlier, clarify the lines as to who was where to make</p> <p>11 it easier for the public to understand who their</p> <p>12 commissioners were, to keep my house in my precinct and</p> <p>13 to keep my mom and dad's house in my precinct.</p> <p>14 Q. Anything else?</p> <p>15 A. Nope.</p>		
<p>14. Did Mr. Oldham ask you which redistricting factors were important to you? E.g., Apffel Dep. 151:4-10.</p>	<p>Apffel Dep. 151:4-10</p> <p>4 Q. (BY MS. VALL-LLOBERA) Were you asked about</p> <p>5 what factors you thought were important?</p> <p>6 MR. RUSSO: Same objection.</p> <p>7 Objection, based on attorney-client privilege.</p> <p>8 MS. VALL-LLOBERA: And we preserve</p> <p>9 our arguments that these are not privileged</p> <p>10 communications.</p>			
<p>15. Did you discuss the issue of precinct splitting in your discussion(s) with Mr. Oldham? E.g., Ex. 5 Sigler Dep. 71:23-72:7.</p>			<p>Sigler Dep. 71:23-72:7</p> <p>Page 71</p> <p>23 Q. Why were you meeting with Mr. Oldham to</p> <p>24 discuss these splits?</p> <p>25 MR. RUSSO: Counsel, let me interpose an</p> <p>Page 72</p> <p>1 objection just to remind the witness not the</p> <p>2 disclose privileged communications between he and</p> <p>3 Mr. Oldham, to the extent there were attorney-client</p> <p>4 privileged conversations. But to the extent you can</p> <p>5 answer the question without disclosing those</p> <p>6 communications, you can answer.</p> <p>7 A. Could you repeat the question?</p> <p>8 Q. Sure. Why were you meeting with</p> <p>9 Mr. Oldham to discuss these conflicts?</p> <p>10 MR. RUSSO: Same objection.</p> <p>11 A. I'm going to take the advice of my</p> <p>12 counsel.</p>	
<p>16. Did you review any census data in your discussion(s) with Mr. Oldham? E.g., Ex. 2 Giusti Dep. 294:7-12, 295:1-6, 295:15-16.</p>		<p>Giusti Dep. 294:7-12, 295:1-6, 295:15-21.</p> <p>Page 294</p> <p>7 Q. So let's just turn back to the September phone</p> <p>8 call you said you had with Dale Oldham. Exhibit 4</p> <p>9 showed the calendar invitation. And this is my final</p> <p>10 line of question itself. We're almost there.</p> <p>11 Did you review any -- any census data</p> <p>12 during that call?</p> <p>13 MS. OLALDE: Objection. I'm going to ask</p> <p>14 the witness not to answer as it would reveal any</p> <p>15 attorney-client privileged communications and/or</p> <p>16 attorney work product communications that were shared</p> <p>17 in the meeting with Mr. Oldham.</p> <p>Page 295</p> <p>1 Q. (By Mr. Silberstein) Did you review any</p> <p>2 census data during that call?</p> <p>3 MR. SILBERSTEIN: I'm going to keep</p> <p>4 asking questions in order to clarify the record and</p> <p>5 reserve our rights to reopen the deposition on these</p> <p>6 and other questions.</p>		
		<p>Page 295 (continued)</p> <p>15 Q. (By Mr. Silberstein) Did you discuss the</p> <p>16 meaning of any census data?</p> <p>17 MS. OLALDE: Again, I'm going to object</p> <p>18 on the basis of attorney-client privilege and attorney</p> <p>19 work product and instruct the witness not to answer as</p> <p>20 to conversations that were had with the attorney who</p> <p>21 was retained to provide legal advice.</p>		

Questions to County Employees:	Commissioner APFFEL	Commissioner GIUSTI	Nathan Sigler	Commissioner Henry
		<p>Giusti Dep. 53:22-54:20  <b>Page 53</b>                      22 Q. And so you mentioned Mr. Oldham, the                      23 redistricting consultant. Did the county's post-2020                      24 census redistricting processes begin at the April 5th,                      25 2021, commissioners court?  <b>Page 54</b>                      1 MS. OLALDE: Objection; speculation.                      2 You can answer. You can answer.                      3 MR. GEAR: Well, let me rephrase that.                      4 MS. OLALDE: Sure.                      5 Q. (By Mr. Gear) When did the 2021 redistricting                      6 process begin for the commissioners court?                      7 A. It would have been about the time frame you                      8 mentioned. The exact -- sounds about right.                      9 Q. And so what was the name of the redistricting                      10 firm that you and the commissioners ultimately decided?                      11 A. I don't recall the name of the firm. I just                      12 remember Mr. Oldham.                      13 Q. And what was your understanding of the                      14 services that Mr. Oldham would provide to the county                      15 commissioners?                      16 A. That he would take the census that we were                      17 getting in, and he would take that -- the numbers from                      18 that and basically lay it out and give us a couple of                      19 options to choose from on what he determined was the                      20 best and legal maps that he could come up with.</p>		
<p>17. Did you receive any racial demographic data from Mr. Oldham? E.g.,                      Ex. 2 Apffel Dep. 143:3-7, 144:7-17; Ex. 3 Giusti Dep. 302:1-4, 302:23-24;                      Ex. 4 Henry Dep. 261:17-262:14, 261:17-262:14.</p>	<p>Apffel Dep. 143:3-13, 144:7-145:22;  <b>Page 143</b>                      3 Q. So Mr. Oldham and you did not discuss an RPV                      4 analysis in either of these meetings?                      5 MR. RUSSO: Let me object based upon                      6 the attorney-client privilege, and instruct the                      7 witness not to answer.                      8 MS. VALL-LLOBERA: And we preserve                      9 our arguments that these are not privileged                      10 communications.                      11 Q. (BY MS. VALL-LLOBERA) Have you ever seen an                      12 RPV analysis?                      13 A. No.  <b>Page 144</b>                      7 Q. (BY MS. VALL-LLOBERA) So my follow-up                      8 questions, still in the context of have you ever                      9 seen an RPV analysis, was, when might you have seen                      10 one.                      11 MR. RUSSO: Again --                      12 A. I wouldn't know.                      13 MR. RUSSO: -- we can't -- he's not                      14 going to answer a question as to whether he saw an</p>	<p>Giusti Dep. 302:1-19, 302:23-24;  <b>Page 302</b>                      1 Q. (By Mr. Silberstein) In the -- in the 2021                      2 redistricting process, did you receive racial                      3 demographic information from Mr. Oldham or any other                      4 redistricting counsel?                      5 MS. OLALDE: Same objection and same                      6 instruction, which is attorney-client privilege,                      7 attorney work product, and instructing the witness not                      8 to answer.                      9 Q. (By Mr. Silberstein) Did you receive racial                      10 demographic info from Paul Ready?                      11 MS. OLALDE: I am going to instruct the                      12 witness not to answer as to communications with counsel                      13 for the county on the basis of attorney work product                      14 and also attorney-client privilege.                      15 I instruct you not to answer.                      16 Q. (By Mr. Silberstein) Did you receive any                      17 racial demographic information from Nathan Sigler?                      18 A. Not that I recall. I mean, no. I mean, I                      19 don't think so.                      20 Q. How about from another member of commissioners                      21 court or any of their staff?                      22 A. No.                      23 Q. You never received racial demographic                      24 information from anybody?                      25 A. Not that I recall.</p>		<p>Henry Dep. 261:17-262:14  <b>Page 261</b>                      17 Q. (BY MS. KLEIN) Okay. And Just to clarify the                      18 privilege objection and whether or not you're going to                      19 answer, so you -- your position is you are not willing                      20 to confirm whether you were aware of any of these, you                      21 know, racial data or partisan data facts at a later date                      22 after learning them from an attorney, correct?                      23 MR. RUSSO: Well, let me just tell you what                      24 my objection is. It's not to reveal conversations that                      25 he or information he got from the attorney. If he got  <b>Page 262</b>                      1 it later from someplace else, that's -- that's not what                      2 we're objecting to. It's not a point in time, in other                      3 words. It's who the conversation was with.                      4 Q. (BY MS. KLEIN) So you are not willing --                      5 pursuant to your counsel's instruction, you are not</p>
	<p><b>Page 144 (cont)</b>                      15 RPV analysis with his lawyers present.                      16 So other than that, he can answer                      17 your question.                      18 Q. (BY MS. VALL-LLOBERA) Has anyone ever tried                      19 to explain RPV to you? 20 MR. RUSSO: Again, same objection.                      21 It's not limited to conversations with lawyers and                      22 counsel.                      23 To the extent you can answer the                      24 question without referring to communications in                      25 consultation with lawyers and counsel on that  <b>Page 145</b>                      1 question, you can answer.                      2 MS. VALL-LLOBERA: Underlying facts                      3 learned by a witness are not privileged just                      4 because they were conveyed by counsel.                      5 MR. RUSSO: But --                      6 MS. VALL-LLOBERA: I am merely                      7 stating --</p>			<p><b>Page 262 (cont)</b>                      6 willing to tell me whether you were aware of a                      7 particular fact if that fact was told to you by your                      8 attorney?                      9 MR. RUSSO: That's like it's an                      10 oversimplification of our objection but...                      11 THE WITNESS: And I will also say that                      12 that's the only place I got the information from. So                      13 there was not a point where someone else gave me                      14 information that would not be privileged information.</p>
	<p><b>Page 145 (cont)</b>                      8 MR. RUSSO: We can -- we can                      9 have the --                      10 MS. VALL-LLOBERA: -- for the                      11 record --                      12 MR. RUSSO: We can have the                      13 colloquy, if you'd like to. The problem is, is                      14 that I -- I don't know whether he's had                      15 conversations with lawyers, and I need to make sure                      16 that what he's telling you does not come from a                      17 conversation with counsel, in terms of how                      18 they're -- they're going to do redistricting                      19 effort, or even related to our conversations                      20 dealing with this case.                      21 A. Well, I don't recall. So let's -- well,                      22 that will -- I don't know.</p>			

Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
<p>18. Did you have any opportunity to present your preferences for redistricting during your meeting with Mr. Oldham? E.g., Ex. 3 Giusti Dep. 87:16-19, 240:2-3; Ex. 4 Henry Dep. 141:1-19.</p>		<p>Giusti Dep. 87:16-88:1, 240:2-11;</p> <p><b>Page 87</b> 16 Q. So during the time -- strike that. So did you 17 have an opportunity to present your preferences 18 regarding the changes you wanted to see for Precinct 2 19 during the 2021 redistricting process? 20 MS. OLALDE: Objection. I'm going to 21 instruct the witness not to answer with respect to 22 conversations that were had with Mr. Oldham. 23 Otherwise, you can answer. Based on 24 attorney-client privileged work product. 25 THE WITNESS: That would have been our</p> <p><b>Page 88</b> 1 conversations.</p>		<p>Henry Dep. 141:1-19.</p> <p><b>Page 141</b> 1 Q. Did you give him any concept maps or 2 description before he started drafting? 3 A. Concept maps, no, I don't know how to do that. 4 Drafts -- I'm sorry. Direction -- 5 MR. RUSSO: Before you complete, facts 6 related to the representation, legal -- the legal 7 services are okay, but don't provide or disclose 8 communications between you and Mr. Oldham specifically 9 related for legal services. 10 THE WITNESS: Well, I think that's what I 11 would be answering. 12 MR. RUSSO: Well, the difference being the 13 facts as to -- again, you talked about what he was 14 supposed to do for you. 15 THE WITNESS: Okay. 16 MR. RUSSO: That's fine. But how he's 17 going to do it is a different question. Do you 18 understand? 19 THE WITNESS: Yes, I think.</p>
		<p><b>Page 240</b> 2 Q. Did you ever share any ideas or opinions about 3 the maps to Commissioner Holmes in 2021? 4 MS. OLALDE: Objection. And I will 5 instruct the witness not to answer with respect to any 6 kind of attorney-client privileged conversations or 7 attorney work product that was discussed during a 8 meeting with Mr. Oldham. 9 Otherwise you can answer. 10 THE WITNESS: With Commissioner Holmes, 11 not that I recall.</p>		
<p>19. How did Mr. Oldham present the proposed maps to you? For example, did he present those maps via Zoom, or did he use any other software to show you the precincts? E.g., Ex. 2 Apffel Dep. 152:25-154:3; Ex. 3 Giusti Dep. 55:15-21.</p>	<p>Apffel Dep. 152:25-154:13;</p> <p><b>page 152</b> 25 Q. (BY MS. VALL-LLOBERA) Earlier, you said, we</p> <p><b>Page 153</b> 1 didn't have -- earlier, you said you didn't have 2 maps in the meeting, that you were just discussing 3 how to balance the population. And you referred to 4 the map drawn -- clicking on precincts. 5 What -- what was he clicking on? 6 MR. RUSSO: Let me object, based 7 upon attorney-client privilege. 8 A. I -- what -- 9 MR. RUSSO: And instruct you not to 10 answer. 11 MS. VALL-LLOBERA: And we preserve 12 our arguments that these were not privileged 13 communications. 14 Q. (BY MS. VALL-LLOBERA) What were you looking 15 at during this meeting? 16 MR. RUSSO: Object, based upon 17 attorney-client privilege. Instruct the witness</p>	<p>Giusti Dep. 55:15-21</p> <p>15 Q. Did that demographer provide you with any 16 written information or maps of any kind? 17 A. We did look at a couple of maps on Zoom. 18 MS. OLALDE: And, again, I'm going to ask 19 that the witness not reveal any attorney-client 20 privileged communications or work product and instruct 21 him not to answer to that extent.</p>		
	<p><b>Page 153 (cont)</b> 18 not to answer. 19 MS. VALL-LLOBERA: We preserve our 20 arguments that these were not privileged 21 communications. 22 Q. (BY MS. VALL-LLOBERA) Previously, you said 23 you did not look at a map during this meeting, but 24 you did meet with a mapping expert. 25 What were you looking at?</p> <p><b>Page 154</b> 1 MR. RUSSO: Same objection, based on 2 attorney-client privilege. 3 MS. VALL-LLOBERA: And preserve -- 4 MR. RUSSO: And let me ask you a 5 clarifying question for the record. 6 Was the expert that was there, to 7 your knowledge, there on behalf of the -- 8 Mr. Oldham -- 9 THE WITNESS: Absolutely. 10 MS. VALL-LLOBERA: Counsel -- 11 MR. RUSSO: -- as part -- as part of 12 his work? 13 THE WITNESS: Absolutely.</p>			

Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
<p>20. How many map proposals were presented to you by Mr. Oldham? E.g., Ex. 3 Giusti Dep. 55:15-21, 96 :4-22.</p>		<p>Giusti Dep. 55:15-21, 96:4-97:1  <b>Page 55</b> See answer at Question 20  <b>Page 96</b>                      4 Q. (By Mr. Gear) And that was the question, how                      5 many plans did you review during the 2021 redistricting                      6 process.  <b>7 A. I want to say at some point I saw four.</b>                      8 Q. And can you tell me -- did you see all those                      9 plans at one time, or did you see them over a course or                      10 period?  <b>11 A. I think at one time.</b>                      12 Q. Can you tell me where you saw the four                      13 plans -- the four 2021 redistricting plans, when did                      14 you review those plans?                      15 MS. OLALDE: And I'm going to object as                      16 to attorney-client privilege and work product and ask                      17 the witness not to reveal any attorney-client                      18 privileged communications or any attorney-client work                      19 product and instruct him not to answer.                      20 MR. GEAR: So to be clear, the question                      21 was when did he review the plans. I didn't ask him                      22 about details or discussions related --                      23 MS. OLALDE: As to date -- as to date you                      24 can answer.  <b>25 THE WITNESS: I believe it was in one of</b>  <b>Page 97</b>  <b>1 the -- the two meetings we discussed.</b></p>		
<p>21. Did you ever have an occasion to speak with any of the other Commissioners or their staff and Mr. Oldham about the redistricting process? E.g., Ex. 3 Giusti Dep. 163:4-8.</p>		<p>Giusti Dep. 163:4-21.                      4 Q. So during the -- strike that. At any point                      5 during the 2021 redistricting process did you have any                      6 communications with any of the other commissioners or                      7 their staff regarding maintaining your core cities in                      8 Precinct 2?                      9 MS. OLALDE: Objection. I would ask the                      10 witness not to answer to reveal any privileged                      11 communications, attorney-client privileged                      12 communications, or attorney work product and any                      13 conversations where Mr. Oldham was involved.                      14 But other than that you may answer.                      15 Q. (By Mr. Gear) So let's start with did you                      16 have any discussions.  <b>17 A. Not that I recall.</b>                      18 Q. During the 2021 redistricting process did you                      19 have any discussions with Commissioner Holmes regarding                      20 maintaining the core of Precinct 3?  <b>21 A. Not that I recall.</b></p>		
<p>22. Did you have any discussion with Mr. Oldham regarding Precinct 3 being a majority-minority population? E.g., Ex. 4 Henry Dep. 241:20-242:5.</p>				<p>Henry Dep. 241:20-242:5.  <b>Page 241</b>                      20 Q. So you knew that by changing things the way you                      21 did in Map Proposal 2 you were getting rid of that                      22 majority/minority precinct, right?                      23 MR. RUSSO: Objection, calls for                      24 speculation.  <b>25 THE WITNESS: And what I know would have</b>  <b>Page 242</b>  <b>1 come to me through one of my lawyers.</b>                      2 MR. RUSSO: Object on the basis of                      3 attorney-client privilege. To the extent the                      4 conversations she asked about happened with your                      5 lawyers, do not disclose it.                      6 Q. (BY MS. KLEIN) Were you aware -- I'm not                      7 asking you what your lawyers told you or whether you                      8 agreed with it or whether you -- any of those                      9 discussions.                      10 But when you chose Map Proposal 2, at that                      11 moment in time you were aware, weren't you, that that                      12 majority/minority Precinct 3 that you had to keep in</p>
				<p><b>Page 242 (cont)</b>                      13 2011 that you were breaking that up between all four                      14 remaining precincts, right?                      15 MR. RUSSO: Objection to the extent it                      16 calls for a legal conclusion. And same objection                      17 related to attorney-client privilege.  <b>18 THE WITNESS: Yeah, the information would</b>  <b>19 have come from an attorney working on our behalf.</b></p>

Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
<p>23. Are you aware that Thomas Bryan was a map drawer that provided technical expertise about the maps? E.g., Ex. 4 Henry Dep. 204:21-205:21.</p>				<p>Henry Dep. 204:21-205:25.</p> <p><b>Page 204</b>                  21 Q. (BY MS. KLEIN) Are you aware now standing here                  22 today that Tom Bryan was a map drawer that provided                  23 technical expertise?                  24 MR. RUSSO: Same objection. On                  25 attorney-client privilege to the extent that you learned</p> <p><b>Page 205</b>                  1 that during conversations with attorneys.                  2 MS. KLEIN: So an underlying fact is not                  3 privileged just because counsel hears it.                  4 MR. RUSSO: You're asking him whether he                  5 knows a person and --                  6 MS. KLEIN: I'm not asking --                  7 MR. RUSSO: -- he's already told you that                  8 he learned about it in prep. You're continuing to ask                  9 him about how he learned about it.                  10 MS. KLEIN: I want to know --                  11 MR. RUSSO: So you're out of bounds. Real</p>
				<p><b>Page 205 (cont)</b>                  12 simple, you're asking about privileged communications.                  13 MS. KLEIN: I'm asking about a fact --                  14 whether he's aware of a fact.                  15 MR. RUSSO: You can ask him other than his                  16 communications with counsel whether he's aware of who                  17 Tom Bryan is.                  18 MS. KLEIN: Well, we're just going to have                  19 to agree to disagree on this point.                  20 MR. RUSSO: Well, I'm not creating a                  21 privilege.                  22 Q. (BY MS. KLEIN) So this map that Tom Bryan sent                  23 to Mr. Torchinsky, are you aware of whether you saw this                  24 map before it was sent from Tom Bryan to Mr. Torchinsky?                  25 A. I doubt I did.</p>
<p><b>Questions to County Employees:</b></p>	<p><b>Drummond, Tyler</b></p>		<p><b>Sigler, Nathan</b></p>	
<p>24. Did Mr. Oldham talk to you about redistricting criteria? What redistricting criteria were identified in your conversation(s) with Mr. Oldham? E.g., Ex. 6 Drummond Dep. 198:5-16.</p>	<p>Drummond Dep. 198:5-199:6</p> <p><b>Page 198</b>                  5 Q. Okay. In -- in any of your discussions with                  6 Mr. Oldham, did you discuss a topic like the                  7 redistricting criteria to be applied in drawing new                  8 maps for Galveston County?                  9 MS. OLALDE: I'm going to object to any                  10 communications that would have occurred with                  11 Mr. Oldham that contain, you know, privileged                  12 information.                  13 So to the extent you had a conversation                  14 with Mr. Oldham that delved into substantive issues                  15 like counsel has asked about, I'm going to instruct                  16 you not to answer. Otherwise, you can answer.                  17 MS. RICHARDSON: Petteway plaintiffs are                  18 going to reserve, again, their objection to that --                  19 the substance of that privilege claim.                  20 MS. MEZA: And the United States joins                  21 in that reservation.                  22 MR. MANCINO: And me too.                  23 A. Can you restate that question --                  24 Q. (BY MR. MANCINO) Sure.                  25 A. -- before the objection?</p>			
	<p><b>Page 199</b>                  1 Q. In -- in -- in any of your communications                  2 with Mr. Oldham, concerning the redistricting work                  3 that he was performing, did you discuss what                  4 redistricting criteria, if any, he was using?                  5 MS. OLALDE: Same objection.                  6 A. Not that I can recall.</p>			
<p>25. What is your understanding of traditional redistricting criteria, based on your conversation with Mr. Oldham? E.g., Ex. 6 Drummond Dep. 198:5-16; 199:1-6.</p>	<p>See response to Question 24</p>			
<p>26. Did you discuss the impact of any proposed changes on the Bolivar Peninsula, and the constituents that live there with Mr. Oldham? E.g., Ex. 6 Drummond Dep. 89:2-90:2.</p>	<p>Drummond Dep. 89:2-90:2.</p> <p><b>Page 89</b>                  2 Q. Okay. Was the Bolivar Peninsula a topic that                  3 came up?                  4 MS. OLALDE: Object --                  5 Q. (BY MR. MANCINO) And I don't know what, you                  6 know, may have been said about it.                  7 A. Yeah.                  8 Q. Just the topic.                  9 A. Sure.                  10 MS. OLALDE: And, again, I'm going to                  11 object to the specifics of conversations with                  12 Mr. Oldham on the basis of attorney-client privilege                  13 and instruct the witness not to answer to the extent                  14 that your answer would contain any communications that                  15 occurred. Otherwise, you can answer.                  16 MS. VALL-LLOBERA: Petteway plaintiffs                  17 would like to preserve our prior objections to any                  18 communications related to Dale Oldham as those issues</p>			

Questions to County Employees:	Commissioner APFFEL	Commissioner Giusti	Nathan Sigler	Commissioner Henry
	<p><b>Page 89 (cont)</b>                      19 before the court, we would just like to --                      20 (Discussion off the record.)                      21 MS. VALL-LOBERA: Petteway plaintiffs                      22 would like to preserve our prior objection to this                      23 privilege claim just based on prior decisions                      24 currently before the court regarding Dale Oldham's                      25 attorney-client privilege status, so...</p> <p><b>Page 90</b>                      1 MS. MEZA: And the United States joins                      2 in that preservation of objection.</p>			
<p>27. Did you discuss the issue of precinct splitting in your discussion(s) with Mr. Oldham? E.g., Sigler Dep. 71:23-72:7, 72:8-12.</p>			<p>Sigler Dep. 71:23-72:12,</p> <p><b>Page 71</b>                      23 Q. Why were you meeting with Mr. Oldham to                      24 discuss these splits?                      25 MR. RUSSO: Counsel, let me interpose an</p> <p><b>Page 72</b>                      1 objection just to remind the witness not the                      2 disclose privileged communications between he and                      3 Mr. Oldham, to the extent there were attorney-client                      4 privileged conversations. But to the extent you can                      5 answer the question without disclosing those                      6 communications, you can answer.                      7 A. Could you repeat the question?                      8 Q. Sure. Why were you meeting with                      9 Mr. Oldham to discuss these conflicts?                      10 MR. RUSSO: Same objection.                      11 A. I'm going to take the advice of my                      12 counsel.</p>	
<p>28. Did you receive any racial demographic data from Mr. Oldham? E.g., Ex. 6 Drummond Dep. 200:6-15.</p>	<p>Drummond Dep. 200:6-15</p> <p>6 Q. (BY MR. MANCINO) Did you discuss with                      7 Mr. Oldham, or overhear discussions between Mr. Oldham                      8 and somebody else, about whether he did an analysis of                      9 black voting age population and Latin voting age                      10 population in Precinct 3?                      11 MS. OLALDE: Same objection based on                      12 attorney-client privilege; also work product.                      13 And same instruction.                      14 MR. MANCINO: Okay.                      15 A. Not that I can recall.</p>			
<p>29. Did you review any census data in your discussion(s) with Mr. Oldham?</p>				
<p>30. Did you discuss the impact of any proposed changes on the Black and Latino residents of Galveston County with Mr. Oldham?</p>				
<p>31. Are you aware that Thomas Bryan was a map drawer that provided technical expertise about the maps?</p>				

# DEFENDANTS' EXHIBIT 3

Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
<p>1. The decision to create a coastal commissioner precinct:</p>	<p>Giusti Dep. 106:4-109:</p> <p><b>Page 106</b></p> <p>4 Q. Were you involved with any of the 5 commissioners in private communications regarding the 6 creation of a coastal precinct between 2014 and 2021? 7 A. Are we talking prior to the maps coming out? 8 Q. Let me restate my question just so we're 9 clear. 10 So I'm asking you for a date range, 2014, 11 when you were elected, to 2021, when the maps were 12 ultimately adopted. Were you involved in any private 13 discussions with any of the other commissioners on the 14 court related to the creation of a coastal precinct? 15 MS. OLALDE: I'm going to object and ask 16 the witness not to answer with respect to any 17 attorney-client privilege or to any work product, 18 shared communications. 19 And otherwise you can answer. 20 THE WITNESS: Not that I recall. 21 Q. (By Mr. Gear) Was there any records of any 22 kind distributed by any of the county commissioners 23 related to the creation of a coastal precinct between 24 2014 to 2021? 25 A. Not that I recall.</p>	<p>Henry Dep. 145:10-19, 174:16-24, 200:15-20; 238:15-23;</p> <p><b>Page 145</b></p> <p>10 Q. (BY MS. KLEIN) So putting aside Mr. Oldham, at 11 the -- when you -- at the beginning of this process, 12 right, in April when you were retaining counsel, what 13 were your own desires -- other than just a legal map, 14 your own desires for how the commissioners' precinct map 15 would look? 16 A. The thing that I had -- it wasn't just in 17 April. It was for many years before that I thought the 18 county would benefit greatly from having one coastal 19 precinct.</p> <p><b>Page 174</b></p> <p>16 Q. I understand. You also said you felt strongly 17 about this coastal precinct, right? 18 A. That's something that had been coming for 19 years, yes. 20 Q. So is it fair to say like in general terms you 21 carried about the configuration of the precincts? 22 A. In general terms I thought it would be far more 23 efficient for our county to have one commissioner 24 responsible for all coastal issues.</p>	<p>Apffel Dep. 184:8-18; 192:17-23; 195:20-25; 198: 17-21</p> <p><b>Page 184</b></p> <p>8 Q. Could you be more specific on who the idea 9 of a coastal precinct was intriguing to? 10 A. Well, I say everybody. I'm just meaning 11 that was the map that ultimately was -- that -- 12 well, both of them -- I think both of those maps 13 were Gulf Coast districts. 14 So, it was -- so it just kind of happened, 15 in the -- in the equalization of the population. 16 And then it would -- it became a, well, this is 17 a -- this is a great idea because of all of the 18 coastal issues.</p> <p><b>Page 192</b></p> <p>17 Q. Why did you ultimately vote for Map 2? 18 A. Because I believed it was the best map to 19 equalize the population. And it created the 20 coastal district, which allowed one commissioner to 21 have the entire Gulf Coast district to deal with 22 coastal issues, coastal agencies. And that was my 23 governing -- governing drive.</p>
	<p><b>Page 107</b></p> <p>1 Q. Were there any written proposals or analysis 2 developed by the commissioners court as a result of -- 3 related to the concept of the creation of a coastal 4 precinct? 5 MS. OLALDE: Objection; form. 6 Q. (By Mr. Gear) Do you understand my question? 7 A. Not that I recall. 8 Q. So was any type of analysis ever done by the 9 commissioners court regarding the development of a 10 coastal precinct? 11 MS. OLALDE: Objection; form. 12 And to the extent your answer would 13 contain any attorney-client privilege or attorney work 14 product information or communication, I would instruct 15 you not to answer, but otherwise you may answer. 16 THE WITNESS: Not that I recall. 17 Q. (By Mr. Gear) So based on your knowledge, 18 have there been any surveys or public polls conducted 19 by the commissioners court to determine the interest in 20 establishing a coastal precinct? 21 A. Not that I recall. 22 Q. So during the 2021 redistricting process, did 23 you engage in any communications with elected officials 24 in the City of Galveston related to the creation of a 25 coastal precinct?</p>	<p><b>Page 200</b></p> <p>15 A. Again, you know, the commissioner cares about 16 where the lines are drawn and I don't. So for me it was 17 strictly I've got the coastal precinct that I thought 18 would be advantageous to the county. And beyond that, 19 the actual lines are for the commissioners to be okay 20 with.</p> <p><b>Page 238</b></p> <p>15 Q. How did you decide it would be Commissioner 16 Giusti? 17 A. I didn't. It's where his house fell. So upon 18 Map -- Map No. 2, that's the one we adopted, Map No. 2, 19 he lived in the coastal precinct. And that's -- at some 20 point in that time frame I just went and said, "I want 21 to make sure you're okay with this because I don't want 22 to force you on it if you don't want to do it." And he 23 said, "I'm fine with it. I like it."</p>	<p><b>Page 195</b></p> <p>20 Q. Did others at this -- excuse me. 21 Did people at that meeting express a desire 22 for a coastal precinct? 23 A. They liked the idea very much. It -- 24 Bolivar, more than anywhere, needed this district 25 to be like this.</p> <p><b>Page 198</b></p> <p>17 Q. And so, you cared about the -- the -- you 18 know, the unique needs of -- the community 19 interests of these group of people who lived on 20 Bolivar and Galveston Island? 21 A. Correct, the whole coastline.</p>

Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
	<p><b>Page 108</b>                      1 A. No, sir.                      2 Q. Did you engage in any communications with                      3 elected officials from the Bolivar Peninsula related to                      4 the creation of a coastal precinct?                      5 A. No, sir.                      6 Q. Did you engage in any communications with the                      7 Galveston Chamber of Commerce related to the creation                      8 of a coastal precinct? And again I'm talking about                      9 this 2021.                      10 A. Right. No, sir.                      11 Q. Did you engage in any communications with the                      12 Bolivar Peninsula related to the creation of a coastal                      13 precinct?                      14 MS. OLALDE: Objection; asked and                      15 answered.                      16 THE WITNESS: No, sir.                      17 Q. (By Mr. Gear) And I may repeat questions from                      18 time to time, and that's not intentional. It's not an                      19 attempt to throw you off. And feel free to tell me if                      20 you believe you've answered the question before.                      21 So during the 2021 redistricting process,                      22 did the commissioners court as a whole engage in any                      23 communications with elected officials from any of the                      24 cities in the City of Galveston related to the creation                      25 of a coastal precinct?</p>		
	<p><b>Page 109</b>                      1 A. No, sir.                      2 Q. Do you have any personal knowledge of any                      3 commissioner or staff -- or their staff engaging in                      4 communications with elected officials in any of the                      5 cities in Galveston related to the creation of a                      6 coastal precinct?                      7 A. No, sir.                      8 Q. Do you have any personal knowledge of any                      9 commissioner or their staff engaging in communications                      10 with any Chambers of Commerce from the various cities                      11 in Galveston County related to the creation of a                      12 coastal precinct?                      13 A. No, sir.</p>		

Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
<p>2. Whether Defendants considered or received racial demographic data:</p>	<p>Giusti Dep. 250:14-15; 251:5-8; 302:16-25;</p> <p><b>Page 250</b> 14 Q. (By Mr. Silberstein) Mr. Giusti, do you 15 understand what racially polarized voting is? 16 A. Not really. I should say no. I mean no.</p> <p><b>Page 251</b> 5 Q. (By Mr. Silberstein) And has anyone ever 6 discussed before me right now racially polarized voting 7 with you? 8 A. No, sir.</p> <p><b>Page 302</b> 16 Q. (By Mr. Silberstein) Did you receive any 17 racial demographic information from Nathan Sigler? 18 A. Not that I recall. I mean, no. I mean, I 19 don't think so. 20 Q. How about from another member of commissioners 21 court or any of their staff? 22 A. No. 23 Q. You never received racial demographic 24 information from anybody? 25 A. Not that I recall.</p>	<p>Henry Dep. 215:24-216:1; 217:3-16;</p> <p><b>Page 215</b> 24 Q. (BY MS. KLEIN) I'll clarify. Are you aware of 25 what racially polaris voting study is?</p> <p><b>Page 216</b> 1 A. No.</p> <p><b>Page 217</b> 3 Q. Scroll to the next page. This is a document 4 titled November 8, 2021. And the third paragraph says, 5 (Reading:) Voting patterns in Galveston County are 6 definitely characterized by racially polarized voting. 7 So you don't -- your testimony is that you 8 don't know what that means? 9 A. I do not recall having heard RVP -- or RPV 10 before today. 11 Q. What about racially polarized voting? 12 A. No, I don't think so. 13 Q. And did you ever view a racially polarized 14 voting study? Do you ever recall reviewing a study at 15 any point in the 2021 process? 16 A. No.</p>	<p>Apffel: 79:4-6, 142:23-25, 143:1-13, 160:10-161:17</p> <p><b>Page 79</b> 4 Q. Did you know the racial makeup of your 5 precinct? 6 A. I do not.</p> <p><b>Page 142</b> 23 Are you familiar with the term, racially 24 polarized voting? 25 A. I am not.</p> <p><b>Page 143</b> 1 Q. Have you heard this term before? 2 A. I have not. 3 Q. So Mr. Oldham and you did not discuss an RPV 4 analysis in either of these meetings? 5 MR. RUSSO: Let me object based upon 6 the attorney-client privilege, and instruct the 7 witness not to answer. 8 MS. VALL-LLOBERA: And we preserve 9 our arguments that these are not privileged 10 communications. 11 Q. (BY MS. VALL-LLOBERA) Have you ever seen an 12 RPV analysis? 13 A. No.</p>
			<p><b>Page 160</b> 10 Q. Did you receive racial demographic 11 information from Mr. Oldham? 12 A. I wasn't concerned about race. 13 Q. But did Mr. Oldham provide you with any 14 racial demographic information? 15 A. Huh-uh, not that I recall. Other than in 16 our discussions and -- I mean, but no -- no, I 17 don't even recall that. 18 Q. I'm a bit unclear. You did discuss racial 19 demographics in your discussions -- 20 A. No. That's why I say, I don't recall that. 21 It was just population. 22 Q. So you saw demographics on a TV screen? 23 A. What's -- so what's demographics? I -- I 24 don't know what demographics are. 25 Q. So racial demographic -- did you see</p> <p><b>Page 161</b> 1 information that showed the race of the people who 2 lived in certain areas of Galveston County, as part 3 of your redistricting process?</p>

Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
			<p><b>Page 161 (cont)</b>                      4 A. No. We were looking at population, and how 5 to equalize that.                      6 Q. Did you look at the percentages of 7 African-Americans or Hispanics in the county?                      8 A. No.                      9 Q. Are you -- are you aware -- currently, this 10 day, are you aware of the percentage of 11 African-Americans and Hispanics in Galveston 12 County?                      13 A. I'm not.                      14 Q. Are you aware of the percentage of 15 African-Americans or Hispanics in your precinct 16 today?                      17 A. I'm not. I probably should be, but I'm not.</p>
<p>3. Whether the Defendants considered maintaining Commissioner Precinct 3 as a majority-minority district:</p>	<p>Giusti: 163:18-21, 169:3-11, 174:7-19, 175:24-176:4</p> <p><b>Page 168</b>                      18 Q. During the 2021 redistricting process did you 19 have any discussions with Commissioner Holmes regarding 20 maintaining the core of Precinct 3?                      21 A. Not that I recall.</p> <p><b>Page 169</b>                      3 Q. And what do you know about Carver Park?                      4 A. Not a lot, to be honest.                      5 Q. Did your work as a police officer take you 6 through that area at all?                      7 A. No, sir.                      8 Q. Was that any -- was that one of the areas that 9 you were involved at all in community outreach when you 10 were a police officer?                      11 A. No, sir.</p> <p><b>Page 174</b>                      7 Q. Do you have an opinion whether or not it was 8 necessary to reduce Precinct 3 under the adopted plan 9 to eliminate the majority-minority black and Hispanic 10 voting age population?                      11 MS. OLALDE: Objection; argumentative.</p>	<p>Henry Dep. 224:4-225:1; 236:16-20;</p> <p><b>Page 224</b>                      4 Did you ever ask for an option for Map 5 Proposal 2 that had a coastal precinct that still kept 6 Precinct 3 in that middle corridor we were talking about 7 earlier?                      8 A. I doubt it.                      9 Q. Why do you doubt it?                      10 A. I don't know why I would have done that. I 11 mean, this creates a coastal precinct and if you're 12 going to start moving things around, then you're going 13 to affect the whole four precincts.                      14 Q. Did you ever ask for a map that would not have 15 split the old Precinct 3 among all four new precincts?                      16 A. Every precinct had to change boundaries.                      17 Precinct 3 was underpopulated from the beginning. There 18 was no way to keep it intact. So aside from this, this 19 is saying that the coastal precinct was one of the 20 things I want to get done.                      21 Q. So you never asked whether there was a way to 22 preserve -- to prevent Precinct 3 from being split 23 amongst all four new precincts?                      24 A. I do not know where the splits occurred. I did 25 not ask for anything other than these two maps after</p>	<p>Plaintiffs did not ask him this question</p>

Plaintiff's Question	Commissioner Giusti	Judge Henry	Commissioner Apffel
	<p><b>Page 174 (cont)</b>                      12 You may answer.                      13 THE WITNESS: Based on going back to                      14 sheer numbers of population, I don't know. I just                      15 don't know how else it could have been done, to be                      16 honest. And from a layman's perspective, not knowing                      17 where all the numbers are and looking at the maps that                      18 were presented to us, I don't know how that could have                      19 changed much.</p> <p><b>Page 175</b>                      24 Q. Are you aware of any efforts to maintain, by                      25 any of the commissioners or anyone responsible for</p> <p><b>Page 176</b>                      1 drawing the 2021 redistricting plans, efforts to                      2 maintain Precinct 3 as a majority-minority black and                      3 Hispanic precinct?                      4 A. Not that I'm aware of.</p>	<p><b>Page 225</b>                      1 these were shown to me.</p> <p><b>Page 236</b>                      16 Q. So, like, for example, like, keeping Precinct 3                      17 together was not a factor that you felt was important?                      18 Like you had felt uniting Galveston Island and Bolivar                      19 Peninsula was important, right?                      20 A. Correct.</p>	

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY PETTEWAY, \*  
et al., \*

Plaintiffs, \*

VS. \*

Case No. 3:22-cv-00057

GALVESTON COUNTY, et al., \*  
Defendants. \*

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
JOSEPH GIUSTI  
JANUARY 6, 2023  
(Reported Remotely)

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF JOSEPH  
GIUSTI, produced as a witness at the instance of the  
United States and duly sworn, was taken via  
videoconference in the above-styled and numbered cause  
on the 6th day of January, 2023, from 9:23 a.m. to  
6:01 p.m., before Marsha Yarberry, Certified Shorthand  
Reporter in and for the State of Texas, reported by  
machine shorthand, in Galveston, Texas, pursuant to the  
Federal Rules of Civil Procedure.

1 2015?

2 A. Yes, sir.

3 Q. And which commission precinct were you elected  
4 to?

5 A. Precinct 2.

6 Q. And how many times have you run for reelection  
7 for that position?

8 A. Just my third time recently.

9 Q. And so you were elected in 2015. When would  
10 the reelection campaigns have been?

11 A. It's a four-year term.

12 Q. Four-year term. Okay. So the most recent  
13 period would have been, what, 2022?

14 A. November.

15 Q. November.

16 A. Yeah.

17 Q. And so in 2014, based on your experience, your  
18 understanding, what was the racial demographic makeup  
19 of Precinct 2?

20 A. Honestly I don't know the exact makeup. I've  
21 always felt the precinct was pretty well split,  
22 probably more Caucasian, maybe 45 -- 40, 45 percent  
23 Caucasian. And then -- well, maybe more than that,  
24 actually, in the old precinct. 50 percent, maybe even  
25 60 percent Caucasian.

1 read paragraph 3 for the record?

2 A. Make sure I'm on the right paragraph here.

3 "Whereas, it is the intent of the county to comply with  
4 the Voting Rights Act and with all other relevant law,  
5 including Shaw versus Reno jurisprudence and the  
6 consent judgment and election orders in Hoskin versus  
7 Hannah, et al."

8 Q. What do you personally know about the Voting  
9 Rights Act as it applies to redistricting for Galveston  
10 County?

11 A. Very little. Nothing, actually.

12 Q. What do you know about other relevant laws as  
13 they apply to the redistricting process for Galveston  
14 County?

15 MS. OLALDE: Objection to the form to the  
16 extent you're asking for any kind of a legal opinion.

17 Go ahead. You can answer.

18 (Reporter clarification)

19 Q. (By Mr. Gear) And I'm asking for your  
20 understanding of what laws you were -- you were  
21 attempting to comply with when going through the 2021  
22 redistricting process.

23 A. The Voting Rights Act, which I know nothing  
24 about, really, other than it's supposed to be fair and  
25 impartial I guess is the way I would answer that.

1 request for attorney-client privileged communications  
2 or attorney-client privileged work product. To the  
3 extent you're asking about facts, the witness can  
4 answer.

5 But otherwise I will instruct you not to  
6 answer.

7 THE WITNESS: Okay.

8 MR. GEAR: And we will reserve our  
9 arguments that we do not believe that attorney-client  
10 privilege applies to Dale Oldham as the redistricting  
11 consultant.

12 MS. OLALDE: He's an attorney, but yes.

13 MS. CHEN: And if you'd like to see -- we  
14 sent a letter yesterday to Joseph Russo --

15 THE REPORTER: I can't hear whoever is  
16 talking right now.

17 MS. CHEN: Sarah Chen. And I'm just  
18 noting that we sent a letter with piecemeal on this  
19 privilege point to Joseph Russo yesterday. If you  
20 would like to see it, we're happy to send it to you as  
21 well.

22 MS. OLALDE: Thank you, Sarah. I think  
23 this is probably something that the court needs to  
24 resolve at this point, though. I do understand that  
25 you sent a letter.

1 really dealt with him.

2 Q. Did you meet with that demographer at all in  
3 any capacity?

4 A. Not that I recall, other than on the Zoom  
5 meeting, I believe.

6 Q. Is that the same September Zoom meeting that  
7 you referred to?

8 A. No. That would have been later.

9 Q. Do you recall the time period in which he was  
10 involved?

11 A. October I want to say.

12 Q. I'm sorry. Did you say you don't recall his  
13 name?

14 A. I do not.

15 Q. Did that demographer provide you with any  
16 written information or maps of any kind?

17 A. We did look at a couple of maps on Zoom.

18 MS. OLALDE: And, again, I'm going to ask  
19 that the witness not reveal any attorney-client  
20 privileged communications or work product and instruct  
21 him not to answer to that extent.

22 MR. GEAR: And, again, we reserve our  
23 rights that to -- against the claim that  
24 attorney-client privilege applies to Dale Oldham.

25 Q. (By Mr. Gear) So did you have an opportunity

1 redistricting process assisting you?

2 A. No, sir. I mean, she's on this memo as an  
3 attendee, but I don't remember if she was or not, to be  
4 honest. I don't think she was.

5 Q. Do you have any recollection if Yesenia  
6 reduced the discussions that took place during this  
7 meeting into any written form?

8 A. No.

9 Q. Just so I'm clear on the record, so  
10 September 13th and October 19th, 2021, were the only  
11 dates that you met with Dale Oldham? Is that correct?

12 A. Yes, sir, other than the initial hiring.

13 Q. Where you did not have any independent  
14 discussion --

15 A. Correct.

16 Q. So during the time -- strike that. So did you  
17 have an opportunity to present your preferences  
18 regarding the changes you wanted to see for Precinct 2  
19 during the 2021 redistricting process?

20 MS. OLALDE: Objection. I'm going to  
21 instruct the witness not to answer with respect to  
22 conversations that were had with Mr. Oldham.

23 Otherwise, you can answer. Based on  
24 attorney-client privileged work product.

25 THE WITNESS: That would have been our

1 conversations.

2 Q. (By Mr. Gear) Let me -- let me change the  
3 frame of that question.

4 What preferences did you want to see --  
5 what changes did you want to see to Precinct 2 during  
6 the 2021 redistricting process?

7 A. Me personally, there were a couple of things.  
8 One was to level out the population amongst the  
9 precincts. Two was probably to, as I mentioned  
10 earlier, clarify the lines as to who was where to make  
11 it easier for the public to understand who their  
12 commissioners were, to keep my house in my precinct and  
13 to keep my mom and dad's house in my precinct.

14 Q. Anything else?

15 A. Nope.

16 Q. I believe you testified to this previously  
17 about confusion as to where the commissioners' lines  
18 fell in the previous redistricting plan. What are you  
19 basing that concern upon?

20 A. I guess we -- just personal experience. We  
21 would get phone calls from constituents requesting  
22 help, and it would be things that weren't -- that were  
23 on the edge of my precinct but not in my precinct, or  
24 vice versa, they were in my precinct and they were  
25 calling someone else because the lines at times were --

1 Q. (By Mr. Silberstein) In the -- in the 2021  
2 redistricting process, did you receive racial  
3 demographic information from Mr. Oldham or any other  
4 redistricting counsel?

5 MS. OLALDE: Same objection and same  
6 instruction, which is attorney-client privilege,  
7 attorney work product, and instructing the witness not  
8 to answer.

9 Q. (By Mr. Silberstein) Did you receive racial  
10 demographic info from Paul Ready?

11 MS. OLALDE: I am going to instruct the  
12 witness not to answer as to communications with counsel  
13 for the county on the basis of attorney work product  
14 and also attorney-client privilege.

15 I instruct you not to answer.

16 Q. (By Mr. Silberstein) Did you receive any  
17 racial demographic information from Nathan Sigler?

18 A. Not that I recall. I mean, no. I mean, I  
19 don't think so.

20 Q. How about from another member of commissioners  
21 court or any of their staff?

22 A. No.

23 Q. You never received racial demographic  
24 information from anybody?

25 A. Not that I recall.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY )  
PETTEWAY, et al. )  
 ) Case No. 3:22-cv-00057  
VS. )  
 )  
GALVESTON COUNTY, et )  
al. )

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY  
JANUARY 17, 2023

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY,  
produced as a witness at the instance of the Plaintiff and  
duly sworn, was taken in the above styled and numbered  
cause on Tuesday, January 17, 2023, from 9:08 a.m. to  
6:07 p.m., before Janalyn Elkins, CSR, in and for the  
State of Texas, reported by computerized stenotype  
machine, via Zoom, pursuant to the Federal Rules of Civil  
Procedure and any provisions stated on the record herein.

1 MR. RUSSO: Objection, calls for  
2 speculation.

3 MS. KLEIN: If you could just let him --  
4 not speak over each other somehow.

5 MR. RUSSO: She's telling you to wait for  
6 me.

7 THE WITNESS: Okay.

8 Q. (BY MS. KLEIN) So you say you sought out Dale.  
9 Do you remember receiving -- Dale Oldham, rather, do you  
10 remember receiving communications from other perspective  
11 counsel for redistricting?

12 A. I do not remember getting anything else.

13 Q. Okay. Let's pull one of those documents up.  
14 This is Doc 15 and it will be Exhibit 16.

15 (Exhibit No. 16 was marked.)

16 MS. KLEIN: So Alexa, that's Tab 15.

17 Q. (BY MS. KLEIN) Just one more question on the  
18 criteria issue. I'm sorry to go back and poke around.

19 A. That's okay.

20 Q. You said, "probably." I heard you say,  
21 "probably." Is there any reason you can think of that  
22 you would need census numbers first before drafting up a  
23 set of criteria to guide the redistricting process?

24 MR. RUSSO: Object. Calls for speculation.  
25 Misstates the record. It's vague and ambiguous.

1 Q. (BY MS. KLEIN) Other than Dale Oldham, do you  
2 know of any other counsel who worked -- who represented  
3 you in the 2021 process that also specifically had  
4 worked with you in 2011 on the redistricting process?

5 A. No, I -- no.

6 Q. Do you remember what discussion, if any, there  
7 was in the April 2021 meeting where you decided to  
8 retain counsel what discussion there was at that meeting  
9 about retaining counsel?

10 A. There was no discussion. It's on consent.

11 Q. Which means it just goes to a vote?

12 A. Right.

13 Q. Do you remember the vote on this item?

14 A. I do not. Unless someone pulled it off, it was  
15 everyone present, but I don't know who was present at  
16 that meeting.

17 Q. Let's go to the meeting minutes for this.

18 That's Tab 33. And this will be Exhibit 19.

19 (Exhibit No. 19 was marked.)

20 Q. (BY MS. KLEIN) Do you want to guess who voted  
21 for and who voted against?

22 A. Was it --

23 MR. RUSSO: Objection, calls for  
24 speculation.

25 THE WITNESS: Was it removed from consent

1 But do you know when you started discussing the 2021  
2 redistricting process and planning after this letter was  
3 executed?

4 A. It would have been at some point after this,  
5 but exactly when I do not remember.

6 Q. Scrolling back up to the first page of the  
7 engagement letter, which I think is, like, PDF page 3 of  
8 this document. Yeah, that's correct.

9 The second paragraph says, (Reading:)  
10 Specifically, the firm has been engaged to provide legal  
11 representation and advice regarding redistricting in  
12 Galveston County, Texas, including provision of a  
13 technical expert to draw the map. The firm will be  
14 associated with Dale Oldham, PC and representation on  
15 this matter.

16 Who's the technical expert referred to in  
17 this? Do you know?

18 MR. RUSSO: Calls for speculation.

19 THE WITNESS: I don't know.

20 Q. (BY MS. KLEIN) Does Tom Bryan ring a bell?

21 A. I heard that name in preparation for this only.  
22 That's the first time I've heard it.

23 Q. And then if we -- if we go down to the fourth  
24 paragraph, it says -- the fourth paragraph, it says,  
25 (Reading:) At this time our Texas bar attorney,

1 Q. And it says -- and on the far right is a  
2 privilege note, (Reading:) Communication from  
3 map-drawer to redistricting counsel, re: preparation of  
4 first draft map for legal review and posing questions  
5 re: redistricting constitutional requirements and  
6 traditional redistricting criteria.

7 So this was sent from -- we can see in the  
8 columns from Tom Bryan to Jason Torchinsky. So -- and  
9 Tom Bryan, you said you -- earlier I remember you saying  
10 you heard about his name in prep.

11 A. Just recently, right.

12 Q. Okay. And he's -- and did you become aware  
13 that he was a technical expert for map drawing used  
14 during the process?

15 MR. RUSSO: Hold on a second. Do not  
16 reveal communications between yourself and attorneys in  
17 prep session. So other than that you can answer.

18 THE WITNESS: Okay.

19 MR. RUSSO: If you knew about him ahead of  
20 time, fine.

21 Q. (BY MS. KLEIN) Are you aware now standing here  
22 today that Tom Bryan was a map drawer that provided  
23 technical expertise?

24 MR. RUSSO: Same objection. On  
25 attorney-client privilege to the extent that you learned

1 know when they were finalized?

2 A. No, I don't.

3 Q. Okay. Do you know if these criteria 1 to 6 are  
4 listed in order of priority?

5 A. Only -- I mean, I would say that No. 1 is the  
6 highest priority, make sure they don't do anything that  
7 they can't do. Other than that, I haven't -- I haven't  
8 seen the others to see if they are or not.

9 Q. Okay. We'll go through them and then I'll ask  
10 you the question at the end.

11 A. Okay.

12 Q. So the first factor that you said, (Reading:)  
13 Compliance with the requirements under the 14th  
14 Amendment to the US Constitution and Voting Rights Act,  
15 what was your understanding of the requirements of the  
16 Voting Rights Act in adopting the 2021 plan?

17 A. I wouldn't have one. That's, again, why we're  
18 going pay to lawyers to do their job.

19 Q. So you didn't have an understanding of what the  
20 Voting Rights Act would require when you were  
21 considering whether to adopt Map 2 or Map 1?

22 MR. RUSSO: Objection, misstates prior  
23 testimony.

24 THE WITNESS: My understanding is that the  
25 Voting Rights Act has changed some. So, no, this is not

1 something that I keep track of. And this is why we have  
2 a lawyer who are well versed in this area of the law.

3 Q. (BY MS. KLEIN) The second sentence says,  
4 (Reading:) In particular, the most important factor in  
5 crafting the redistricting lines for the Commissioners  
6 Court precincts was the equalization of population and  
7 to make the four Commissioners Court precincts  
8 geographically sound.

9 A. Okay.

10 Q. What does geographically sound mean?

11 A. As compact as you can get them is how I  
12 interpret this. Understanding this is a document from  
13 the court, not just from me.

14 Q. It's from your counsel.

15 A. Correct. But I think -- well, I believe on  
16 behalf of the court, not just me.

17 Q. Okay.

18 MR. RUSSO: Court meaning?

19 THE WITNESS: Commissioner's Court.

20 Q. (BY MS. KLEIN) Commissioner's Court, yeah.

21 Okay. The second factor is unified  
22 representation on Galveston Island and Bolivar  
23 Peninsula.

24 MS. KLEIN: If we scroll down, Alexa. Just  
25 make sure I got that right.

1 context of them at all. I'm not going to follow up --

2 MR. RUSSO: I get it. And the problem is  
3 is that we've got to rely on the witness to say the  
4 communication basically was part of providing legal  
5 services, and I think he's established that.

6 But -- so the idea or notion that, well,  
7 you know, there are objections just based upon one thing  
8 or another is -- again, it's oversimplifying.

9 MS. KLEIN: All right. Maybe I'll just  
10 probe a little bit.

11 Q. (BY MS. KLEIN) How was the discussion of  
12 partisan data part of the provision of legal advice? I  
13 mean, was -- let me ask this first.

14 Was any discussion you had with your  
15 lawyers about partisan data part of the provision of  
16 legal advice?

17 A. What was that?

18 Q. Was the -- was any -- you said that you  
19 couldn't answer what -- you couldn't answer me what  
20 exact partisan data you had seen when you voted for Map  
21 Proposal 2 or before you had voted for Map Proposal 2  
22 what you were aware of because you had learned that from  
23 your attorney. So let me ask you this.

24 When you learned that from your attorney,  
25 was that part of you seeking or them providing specific

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY PETTEWAY,\*  
ET AL., \*  
\*  
PLAINTIFFS, \*  
\* CASE NO. 3:22-CV-00057  
VS. \*  
\*  
GALVESTON COUNTY, ET AL.,\*  
\*  
DEFENDANTS. \*

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
DARRELL APFFEL  
JANUARY 5, 2023

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF DARRELL  
APFFEL, produced as a witness at the instance of  
the PLAINTIFF(S), and duly sworn, was taken in the  
above-styled and numbered cause on JANUARY 5, 2023,  
from 9:17 A.M. to 6:01 P.M., before AMY PRIGMORE,  
CSR, in and for the State of Texas, reported by  
stenographic means, at the offices of GREER HERZ &  
ADAMS, One Moody Plaza 18th Floor, Galveston,  
Texas, pursuant to the Federal Rules of Civil  
Procedure and the provisions stated on the record  
or attached hereto.

1 the county submitted a preclearance letter with  
2 proposed maps to the DOJ, pursuant to Section 5 of  
3 the Voting Rights Act?

4 MR. RUSSO: Vague and ambiguous.

5 A. Was I aware? Maybe. But I don't recall.

6 Q. (BY MS. VALL-LLOBERA) But you did  
7 understand that the DOJ had to approve the new maps  
8 before they could be enacted.

9 Is that correct?

10 A. Not -- not specifically. I just knew what  
11 you said was the law.

12 Q. What did you understand preclearance to  
13 mean?

14 A. I don't -- in the common sense, to me, it  
15 means they had to approve it. But I don't know.

16 Q. Do you know that the Department of Justice  
17 rejected the county's submission?

18 A. No. It obviously didn't matter.

19 Q. Why is that?

20 A. Because the Federal court ruled that what  
21 they did was sufficient and legal.

22 Q. Did you know that the attorney, Dalton  
23 Oldham, was part of the team hired by the county to  
24 prepare that preclearance proposal?

25 A. No.

1 Commissioner Clark and Dale Oldham take place?

2 A. I don't know. In the fall, before the maps  
3 were approved, if you...

4 Q. The fall of 2021?

5 A. Yes. I only had one in-person meeting with  
6 Dale Oldham, so...

7 Q. And it was this meeting?

8 A. Yes.

9 Q. Who else was there?

10 A. Me, Dale Oldham, Ken Clark, Tyler -- Tyler  
11 Drummond, and Paul Ready. And on the TV was our  
12 expert map demographer.

13 Q. Where did this meeting take place?

14 A. The county judge's conference room.

15 Q. And you said fall 2021, before the maps were  
16 adopted, correct?

17 A. Yes.

18 Q. Could you be more precise, August or  
19 September or October --

20 A. Well, it's in the discovery, isn't it? I  
21 thought it was -- I thought those dates were  
22 listed, but possibly -- could I be -- yeah, August  
23 or September. I don't remember those dates, but...

24 Q. And the -- Judge Henry was there, or no?

25 A. No.

1 Q. Would it be unusual for only one  
2 commissioner to get a proposal?

3 A. No.

4 Q. Did you receive any proposals?

5 A. No.

6 Q. Going back to the approval of the contract  
7 with Vogel and Oldham, when was -- when was  
8 Mr. Oldham's contract approved?

9 A. I believe -- I believe in April.

10 Q. April 2021?

11 A. Yes, ma'am.

12 Q. What kind of services does Mr. Oldham  
13 provide?

14 A. Again, it was all about determining --  
15 looking at the population and having his  
16 demographer draw the maps, to equalize the  
17 population.

18 Q. Okay. What did you know about the  
19 redistricting process?

20 A. Nothing.

21 Q. Did you see a proposal from him?

22 A. That we approved? That -- that we  
23 ultimately approved? Yes, I saw that.

24 Q. Do you recall how much that proposal was  
25 for?

1 our position, but I don't -- you know, it's  
2 deposition procedure. I just need to make sure I  
3 maintain my -- and preserve the objections for the  
4 record.

5 Q. (BY MS. VALL-LLOBERA) Did -- without  
6 revealing the substance of any conversations with  
7 counsel, as we sit here today, what is your  
8 understanding of traditional redistricting  
9 criteria?

10 A. The county grows by people. The precincts  
11 become imbalanced by people. And we are required  
12 to continually balance the representation of the  
13 people.

14 Q. Specifically, how do you have to rebalance  
15 the populations?

16 A. In my simple little way --

17 MR. RUSSO: Let me object -- just  
18 let me interpose -- interpose the objection on  
19 attorney-client privilege grounds. And you've  
20 heard the basis before.

21 So don't reveal conversations or  
22 information you've learned from Dale, related to  
23 the redistricting effort.

24 A. Well, my simple understanding is to -- to  
25 redraw the lines to balance the population, to be